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Document and Publication Services, Western Illinois University, Macomb, Illinois

**Production Assistant**

Linda Brines

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# Editorial

Credibility is an indispensable asset and a major factor of success for law enforcement officers and police departments. To ensure that law enforcement credibility is not damaged, police personnel have a responsibility to avoid any activity that would compromise their integrity. Officers are obligated to behave ethically; abide by laws, protocols, and procedures; and openly disclose outside activities. Compliance with such policies guarantees professional conduct and helps maintain the law enforcement community's reputation for fairness and honesty.

Unfortunately, when citizens perceive law enforcement officers as being interested in serving themselves rather than serving the needs of the community, the citizen/law enforcement relationship erodes, and trust is destroyed. Recently, there have been several isolated incidents in which police officers have acted unethically or with criminal intent and become subjects for liability cases. Sadly, these unfortunate incidents cultivate the perception among citizens that law enforcement administrators accept this type of behavior and that police agencies are incapable of changing this atavistic mode of operations.

The mission of each law enforcement executive is to provide moral leadership and integrity-based policing to make institutional power more transparent and administrators more accountable. Citizens clearly recognize unethical behavior on the part of law enforcement personnel, but police ethics is a multidimensional issue, and its many elements are not always obvious. Law enforcement administrators often need to address ethical issues through department-wide training and education to ensure that all personnel have a complete understanding of what is expected.

For the last several decades, American police have made tremendous progress in professionalizing law enforcement service because of watchful attention from the media and legislators who provide powerful and effective remedies against police misconduct.

This issue of the *Law Enforcement Executive Forum* is dedicated to police ethics, civil liability, and law enforcement efforts to serve in accordance with integrity, honor, and truth.

As Albert Schweitzer simply stated in his speech on receiving the Nobel Prize in 1952, . . .

*Truth has no special time of its own. Its hour is now—always.*

Vladimir A. Sergevnin, PhD  
Editor  
*Law Enforcement Executive Forum*



# Furnishing and Disciplining the Mind on Dark Streets and in Bright Libraries Through 35 Years of Intellectual and Civic Life

Ed Delattre

I have been asked to give a sketch of the history of my scholarship, research, and teaching in ethics and the public trust. Specifically, I am charged to briefly describe my work as a philosopher on ethics and the public trust in policing and law enforcement generally and also in such specialized assignments as gang intelligence and enforcement, narcotics, vice, homicide, anti-terrorism, illegal immigration, domestic violence, child abuse and molestation, fraud, public corruption, and professional standards/internal affairs.

As I prepared to write, I remembered that at the age of 26, the astronomer Johannes Kepler wrote in his *Astrological Diary* (Gilder & Gilder, 2004, p. 10) that he had been conceived in his mother's womb at 4:37 in the afternoon of May 16, 1571. My story, you will be relieved to learn, starts much later: when I was about to enter the 12th grade in the fall of 1958.

Several colleges had invited me to skip 12th grade and matriculate early. My parents instead arranged for me to spend as many school days during my senior year as I wished at the Pennsylvania State Library. There, I first began to read philosophers, among them Plato, Aristotle, and William James. My father gave me the then new book of the great intellectual historian and teacher, Jacques Barzun: *The House of Intellect*. Chapter III especially had a profound influence on me. Titled, "Conversation, Manners, and the Home," the chapter describes the collapse of conversation in private life in modern America into a mere exchange of opinions: no one really listening, each person busily thinking of what he or she will say next, eager to interrupt. The failure of listening marks a disrespect for others, a failure of manners and morals (as manners are minor morals), inimical to friendship and intellectual intimacy, and also to the arts of learning and teaching. Later, Barzun would write of similar obstacles in schooling and higher education to the acquisition and formation, not of mere skills, but rather of genuine intellectual powers.

With William James, Barzun has extolled the ideals of conversation as the "sifting" of opinions, intense mutual listening with the shared purpose of trying to frame judgments as lucidly as possible and subject them to the application of reason and relevant evidence. Here, we see a reflection of the Socratic vision of genuine dialogue, with reciprocal moral consideration and intellectual regard among the participants: conversations as dialogue—not debate, not contests won or lost, not arguments as confrontation but shared rigorous critique in pursuit of the closest approximation of the truth. We see a model of reasonable people of good will, who are open-minded but not empty-headed, acting in concert, even though



dialogue among them will not always lead to agreement about what to infer from the evidence that can be gathered and assessed.

Barzun's critique is as apt today in 2006 as it was in 1959. For many, listening is an undiscovered art. Public and private discourse have been harmed by the defining down of the word *share*; public speakers and mere celebrities on talk shows tell audiences they want to share one thing or another with them, when what they really want is to tell or sell something. They speak as if they were performing an act of generosity, extending some self-sacrificing personal revelation for the sake of the audience. Seldom is there any genuine reciprocity, any willingness to listen or to sift what they think through the genuinely shared applications of both logic and reason. In my experience, many speakers who claim to want to share really want only to brag or manipulate. This self-centeredness spills over into private "conversation" that is not sifting, but mere exchange, just as Barzun described.

Today, few broadcast journalists give interviewees the chance to finish a thought; the interviewers are poor listeners, too eager to be on camera themselves. The staple of discourse on the air is confrontation (this in the name of balanced coverage!). The violence done to civilized conversation and the possibility of dialogue by such patterns of behavior seems to me more dangerous to the sound education and maturation of the young than the mindless "action" programs that feature explosive physical violence. After all, undermining the formation of dispositions and habits of patient, intense, and reflective listening diminishes any vision of friendship and obscures or closes entire avenues of learning.

I didn't see all of this at 17, of course, but I was glib, verbally quick and agile. I recognized myself in Barzun's description and felt ashamed of myself, for often I did *not* listen to others and thought mostly about what I would say next. Learning that manners are part of morals and listening is part of manners, grasping the ideal of conversational respect, and coming to understand discourse as shared "sifting" changed my life. Over time, coming to a progressively greater familiarity with the 2,400-year legacy of Socratic dialogue gave direction to my intellectual and moral aspirations. I began to recognize intellectual humility; forced myself to read more slowly; and tried to grasp, even enter, the points of view of others, both in person and in print. These lessons led to the maturation of the talents that have formed me as a philosopher, teacher, scholar—and person.

Also at 17, I was spending considerable time in the pool rooms in central and eastern Pennsylvania that drew the most accomplished players and high stakes gamblers. I learned both pool and gambling by watching fine players from all over the United States; nagging them with questions; imitating their habits and patterns of play; reading every book in print in English on pool, snooker, and billiards; and disciplined practicing. Most importantly, those pool rooms taught me first hand about dimensions of the darker side of human nature: exploitation, intimidation, humiliation, deceit, and sadistic pleasure taken in inflicting these on others for the sake of gains in money and reputation. I witnessed pride, envy, greed, lust—and some of their effects—in men whose mastery of slate table games was as glorious as their larger ambitions and treatment of others was base.

In time, these lessons about human nature took broader and deeper form in the context of my formal education and my systematic study of the history of

philosophy and political theory in conjunction with work in other disciplines, including history, literature, religion, and political science, plus a small range of psychology, sociology, and law. Profound analyses of human nature have helped to form my thinking in ethics and political theory, and therefore to underlie much of my work on the public trust in policing and law enforcement. Some of the thinkers to whose works I return year after year are James Madison, Alexander Hamilton, and John Jay in *The Federalist Papers*, Shakespeare, Aristotle, Plato, Augustine, Dante, Machiavelli, Immanuel Kant, Flaubert, Stendahl, Zamyatin, Reinhold Neibuhr, Solzhenetsyn, Robert Conquest, Hadley Arkes, William James, Jacques Barzun, Roger Shattuck, Beryl Markham, Iris Murdoch, Mary Midgely, Ralph Ellison, Charles Griswold, John Silber, Dorothy L. Sayers, Jack Katz, James Q. Wilson, and Shelby Foote.

Sayers' commentary on Dante's *Inferno* has been especially instructive to me, as she stresses Dante's identification of "wrath, lust, and the will to dominate" as the principal sources of violence. Katherine Drinker Bowen emphasizes James Madison's resolve to build a constitutional republic while understanding that when things are bleakest, they are "too serious for despair." This important truth has led to my focus on frustration and despair that impede the fulfillment of duties entailed by an oath of public office as luxuries public servants, such as police and teachers, cannot afford.

The theologian Reinhold Neibuhr's explanation that there is in each of us a child of darkness and the potential for great evil has illuminated for me the grave danger in the temptation to believe our motives always to be noble, our actions to be right, our sincere feelings and views to be good and true. In most of us, there may also be a child of light. That is, we may lean toward the ethical high ground and act from the conviction that some worthwhile ends transcend mere self-interest and therefore oblige us to make sacrifices. We may be faithful to an oath of public office, upholding and defending the Constitution even when doing so involves serious personal risk, but the existence of our better self must not blind us to the darker side of human nature—the capacity for moral self-righteousness, intellectual arrogance, selfishness, injustice—in ourselves. Niebuhr's work stands as a brilliant rejection of both cynicism and innocence as reliable guides to the conduct of life and marvelously echoes the Socratic injunction to come to know ourselves, to pursue self-knowledge.

The brilliant writings of the late sociologist Edward Shils of the University of Chicago in *The American Ethic* and *The Calling of Education* have greatly enriched my conception of how institutions can become worthy of public confidence and how individuals can work together to live up to the public trust. Frederick Douglass's echo in practice of the Socratic insistence that it is better to suffer injustice than to do it has made me look for means in policing and education and the broader reaches of public service by which we can avoid both. The imperative to avoid both doing and suffering injustice underlies much of my work on morally obligatory reciprocity between public servants and their institutions—as in the obligation of public servants to become very good at performing the duties they have voluntarily accepted and the reciprocal obligation of their institutions to give them the education, training, and equipment they need to fulfill their duties at the highest levels of competence and with the lowest possible levels of exposure to personal danger.

The partnership of Anne Sullivan Macy and Helen Keller has elevated my idea of real devotion to the well-being of students and colleagues and expanded my understanding of conversation, dialogue, and listening. I learned from many great teachers, including such teachers of disadvantaged children, youths, and adults as Mina Shaughnessy, the importance of examining carefully the mistakes students make. Often, their mistakes are a sign of intelligence and thoughtfulness that reveals substantial potential that has been overlooked by others. This element of good teaching has influenced my own ways of focusing on students and their work, whether in a doctoral program or a police academy. In my guidance of teachers, administrators, and curriculum specialists, in schools, colleges, universities, police academies, federal law enforcement training centers, and other settings, I have urged that teaching and assessment involve students or recruits in the gathering of relevant evidence and the giving of reasons for positions advocated. To some extent, I have identified intellectual objectivity, not with multiple choice tests, but rather with essay assignments, because well-designed essay questions require the student to offer objective reasons for positions advocated. Much can be learned about a student's potential for public service (and other demanding walks of life) by observing the intelligence, or the lack of it, in the student's reasoning. My study of formal and informal logic has been an irreplaceable asset in teaching and administration.

My expectations and hopes in life have been made reasonable by witnessing the spectacle of both real people and literary figures such as Gustave Flaubert's Madame Bovary who, by demanding entirely too much, condemn themselves forever to dissatisfaction and unhappiness. Many more clear thinkers—some of them wise in the ways of war, some in wholesome family life, some in religious faith, some in scientific research, some in public service, some in academe (deeply immersed in scholarship and the preservation and illumination of intellectual history)—have likewise helped to form me in adulthood by suggesting my path as a philosopher and shedding light on the questions in ethics and the public trust worth my extended attention.

That last year of the 1950s drew me toward such ideas and ideals. These ideals, in turn, have informed my work on mean streets and in welcoming libraries and classrooms. They safeguarded me in the course of my reflections from Machiavelli's cynical insistence that fear is the only durable bond among men. They drew me away from Hobbes's reduction of the possible among us to the tyranny of Leviathan—a tyranny supposedly necessary to prevent us from being driven by our lusts and ambitions to devour one another. The integration of idealism (respect for and dedication to high intellectual, civic, moral, and spiritual ideals) with realism (respect for the irreducible facts of life and action based on recognition of limits to the possible) has been a chart for the directions of my work.

I have witnessed and confronted human nature at its best and worst and reached the conclusion that St. Augustine was right about the inevitability of war. Augustine argued that because all human beings desire peace, but each desires peace in a form of his or her own choosing that can never satisfy everyone else, there will always be war, if only to change the terms of peace. Our pursuit then, of civilized existence together, has to be framed in such a way as to embrace honorable compromise on the one hand and stand unflinchingly for principle, such as justice for all, wherever compromise would be unprincipled and dishonorable on the other. My view here, framed partly during thousands of hours on the streets with police and

law enforcement personnel, implies that the use of force, even deadly force, is not only sometimes right; it is sometimes obligatory.

Against Machiavelli and Hobbes, unflinching, stands Madison:

What is government itself but the greatest of all reflections on human nature. If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. (*The Federalist Papers*, 1961, p. 322)

Madison held, as constitutional scholar, Robert Goldwin, has explained beautifully, that although we are, all of us, flawed and imperfect, we are nonetheless good enough to govern ourselves. This assessment implicitly underlies the entire idea of policing and law enforcement in a constitutional republic and gives substance to the ethical obligations of all public servants.

Many kind and patient reference librarians and teachers helped me to find my way in the Pennsylvania State Library. They went out of their way to teach me how to navigate and chart the expansive intellectual and moral waters they knew so thoroughly. By the end of my senior year, I knew I wanted to be a philosopher and that I wanted to work in the agora, the public arena, as Socrates had done, as well as in academe. I wanted to conduct my work in accordance with the Socratic view that high intellectual standards apply everywhere, and not only in what has come to be called the ivory (or ivied) tower.

Those librarians set the course of my undergraduate work, concentrating on great books in the liberal arts seminars at the University of Virginia and in philosophy. That program, by the way, was the legacy of Scott Buchanan and Stringfellow Barr. They designed the great books program in 1936 at Virginia that they would implement in 1937 as the full curriculum of St. John's College in Annapolis.

At the end of my sophomore year, when I was accepted into Virginia's Honors Program in philosophy, came an especially important moment in my life: My principal philosophy teacher and mentor, Harry Pemberton, took me for a congratulatory stroll. As we reached the sidewalk in front of Alderman Library, he stopped, put his arm around my shoulders, pointed and said, "It's in there, Ed. The University is in there." In many respects, for me, it was. During my college years, I spent more time in the library and in pool rooms than anywhere else.

Having completed my doctorate in philosophy at the University of Texas at Austin in 1975, I became a tenured associate professor at the University of Toledo. In Texas, I benefited greatly from three years as a teaching assistant for John Silber. In terms of his splendid career as a philosopher, teacher, and university president, John has no peers. Both he and Harry Pemberton contributed greatly to my study of ethics, especially deontological ethics and to my sense of how best to teach ethics. By the time I reached Toledo in 1968, I was ready to begin the work on ethics and the public trust that has come to define my career.

That work took a direction in 1975 that I had not foreseen. Early that year, several members of Toledo's political science/criminal justice faculty attended a conference in Dallas. The theme was that criminal justice programs suffered from too little study in the humanities. When they came home, they asked me to teach courses in ethics for their police students: one on justice, one on privacy, and one on constitutional heritage.

I said no, explaining that I thought it presumptuous and arrogant for academics to teach ethics for people in walks of life about which they knew little at first hand. I offered instead to teach a course on ethics in the daily work of policing, if they would arrange for me to start spending 40 hours a week at night with police on duty. We started the work on the streets right away and the course at the beginning of the following semester. That gave me time to read all the available literature on ethics in policing and law enforcement, learn a little about cop work, and outline the first course.

I had already formed by then my fundamental philosophical position on ethics and the public trust. I drew on the tradition that those who hold positions of public trust in a constitutional republic are obligated to live up to higher intellectual and moral standards than the public they serve. Since holding public or private office in which the public trust at stake is voluntary—whether in teaching, or law enforcement, or other professional or quasi-professional service—individuals who do not wish to live up to higher standards are free to choose less consequential work. They may freely decline to hold or exercise the special authority and powers of a position of public trust.

Later, I worked extensively with my friend and colleague, the late philosopher John Howard Burkett, on the logic and rationale for this position, especially as it is framed in the work of the 18th century Scottish theologian, philosopher, and minister, Francis Hutcheson. Hutcheson's position was well known to many of the founders of the United States. They learned of his views in the senior course in ethics most of them took in college: specifically, public servants owe the public fidelity to higher standards of thought and action precisely because they exercise great authority and powers that can affect for better or worse the lives and interests of our "objects of endearment"—our loved ones and friends. Because so much is at stake for the public, public servants owe us intellectual and moral integrity in their lives and work, and they owe us thorough competence in the performance of their duties. The capacity to fulfill their duties—their settled dispositions and habits of feeling, thought, and action—transcends differences of personality among us, whether we be essentially phlegmatic, choleric, sanguine, or melancholy, even though some dimensions of a personality can severely, even decisively, obstruct fitness to hold a position of public trust. Above all, fitness to hold a position of public trust turns on intellect and character.

My duty in 1975 was to learn how these fundamentals of obligation and ethical principle should be applied in practice within policing and law enforcement. During thousands of hours with police and law enforcement officials, under the meanest and most dangerous conditions and in matters related to the most heinous crimes, I have studied that question ever since. My book, *Character and Cops: Ethics in Policing*, now in its fifth edition, reflects my concern for this question. It is based on the idea that ethics is ethics, that the fundamentals of ethics apply everywhere. There is not a special field of police ethics or business ethics or parenting ethics, and so on, but only the fundamental principles of ethics, as universal in their

application as the fundamental principles of logic. Hence, my subtitle, “Ethics in Policing,” rather than “Police Ethics.”

I started the course for police with 70 students, from new officers to department chiefs. I set the schedule for classes so that all students could attend, no matter which shift they worked. My review of the literature—with my wife Alice’s help in the light of her experience working in the Medical College of Virginia Library and University of Texas Library—showed the field of ethics in policing to be quite barren. There was an important national report, the Wickersham Report of 1931, mostly written by the police visionary and leader, August Vollmer. Later reports, such as Knapp in 1972, were inspired by one crisis or another and shed light on the condition of specific departments, but the literature on ethics in policing was scant and not very good. The most striking observation I came upon was Vollmer’s claim in the Wickersham Report: “In America, law enforcement is generally held in contempt, and policing is one of our national jokes” (U.S. National Commission on Law Observance and Enforcement, 1931, p. 17; see also Vollmer, 1969). To my knowledge, no major leader rose in 1931 to contradict him. I have kept this appraisal in mind, for purposes of comparison, ever since I first read it.

Very good work was being done by the mid- to late 1970s on the nature and causes of crime, the police mission, and best practices. Nothing I saw then on crime compared with sociologist Jack Katz’s later book, *Seductions of Crime: Moral and Sensual Attractions of Doing Evil*, but a very serious body of excellent work has grown from the earlier work of such thinkers as Vollmer, O. W. Wilson, Patrick V. Murphy, Herman Goldstein, James Q. Wilson, Charles Silberman, Egon Bittner, Lawrence Sherman, Carl Cohen, Thomas Nagel, Michael Feldberg, Howard Cohen, Lon Fuller, and William Ker Muir, Jr. Both Muir’s *Police: Streetcorner Politicians* and Goldstein’s *Policing in a Free Society* have elevated study of and commentary on police and policing since 1977. O.W. Wilson and George Kelling later tested the now famous “broken windows” hypothesis about best practices. Their work has greatly advanced problem-solving and community-oriented policing and has drawn attention to questions of justice in terms of the equal distribution of benefits rather than merely equal distribution of resources.

In my early review of books and articles and course syllabi available from police academies, I found that authors and teachers routinely misrepresented both teleological and deontological ethics and the positions taken by specific philosophers. As with textbooks routinely used in schools of education today, authors of secondary works often taught, for example, that Immanuel Kant said we should never treat people as means. This is a sophomoric mistake of great import. Kant held that we should always treat others as ends in themselves and never as means merely. There is a world of difference between treating a person as a means and as a means merely. In policing, a confidential informant is necessarily a means, just as police themselves are means to safeguarding the public, but imagine how profoundly different it is to treat a cop or an informant as a means and also an end, rather than as a means merely.

Conflation of the distinction does violence to Kant’s entire position. It takes only a bit of philosophical insight or reflection to see that in protecting the confidentiality of an informant’s identity, faithfully paying the informant what is owed, and otherwise looking out for the person’s safety, we are giving moral consideration to

the informant understood as an end in himself, and thus not treating that person as a means merely. To do otherwise—simply to use the person as a means merely, without regard for safety or for payment owed—would condemn many informants to a death sentence on the streets.

I knew the classical philosophical positions, of course, so I could ensure that my students were spared reliance on glaringly incompetent writings, but I had to read scholarly journals and literature about policing generally to form a trustworthy sense of the field. And I had to learn from police.

At first, police were hesitant to teach me. I was an academic in their midst who might harbor prejudices against police. Once they learned, however, that I had no fantasies about being a cop, was no Monday morning quarterback, respected confidentiality, and kept my word as a teacher, they showed me the ropes in earnest. Then, they began to seek my counsel. After four months of nights on the streets and classes on ethics in policing, I had 750 police and law enforcement personnel on the waiting list for my course.

In 1978, Alice and I decided to relinquish my tenured position at Toledo. Ever since, when accepting new positions, I have declined offers of tenure. I believe it would be wrong for me to be teaching and advising cops in matters of ethics that could have enormous and potentially adverse effects on their careers, while I had the protection of tenure and they did not. My wife, Alice, and I took this step, because we believed it to be obligatory—and also because my teaching would be hindered, if cops said to themselves, “Well, it’s easy for him to talk about acting with integrity; he has tenure.” For me, as a person and as a teacher, that prospect made the price of tenure too high.

When I was offered the presidency of St. John’s in 1979, the Board of Visitors and Governors asked me to stop working with police because of the time and danger involved. I declined the presidency on those terms and explained that while I wanted to work on the critical problems St. John’s needed to face, I expected to stay no more than six to eight years. Questions of ethics and the public trust in policing and law enforcement, in contrast, were the abiding work of my life as a philosopher. They reached far deeper into my life than a college presidency could. The Board agreed that I could continue that work while president of the college.

## **Furnishing and Disciplining**

After spending several hundred hours with police on duty over several years, I published an article in the *FBI Law Enforcement Bulletin*, “The Police: From Slaying Dragons to Rescuing Cats.” Picked up and reprinted rather widely, it struck a chord in the field and led to my becoming known to the Justice and Treasury Departments and to my teaching in policing and law enforcement at the local, state, and federal levels, both nationwide and in other countries. Teaching at the FBI Academy in Quantico introduced me to police leaders throughout the free world and led to my being asked to help many departments and agencies with problems of failure to live up to the public trust. I have participated in many internal investigations, served as an expert witness, worked in the streets with homicide, narcotics, and gang investigators and with violent and white collar crime task forces. By the time the fifth edition of *Character and Cops* was published in 2006, I had responded to

requests for assistance from police and public servants with whom they work in Australia, New Zealand, Europe, Canada, Central America, and the Caribbean.

In most cases, when I am asked to work with a department or agency, I request that in return for my help, they show me the work of their personnel in areas where they are strongest in policy and practice. By this reciprocity, I have learned as I taught and acquired a detailed sense of what competence in general and specialized assignments entails. This reciprocity has begun some of the closest and most enduring friendships of my life. During the years of my teaching in the Police Executive Research Forum's Senior Management Institute for Police, I have been kindly invited to visit departments known for their excellence in one area or another. Generously made welcome, I sometimes deliver a lecture or lead a seminar on a topic in ethics of particular local interest, but the principal reason for my visits is to learn in the field. I know of no substitutes for the study of relevant literature on the one hand and direct experience with practitioners in a walk of life on the other.

Over the years, I have worked in and with many of the major city police departments in the United States, as well as sheriff's offices, and with the Border Patrol, INS and ICE, DEA, ATF, the U.S. Marshals, a range of FBI field offices, and the International Association of Chiefs of Police. In addition to teaching at Quantico over a span of more than 20 years, I have lectured at the Federal Law Enforcement Training Center in Georgia and in many police academies, conferences, and executive institutes for police. My work on ethics and the public trust in policing and law enforcement between 1975 and 2006 has become the center of my intellectual and civic life, the focus of my career as a philosopher. In order to understand the mission and demands of policing, I have also worked in corrections institutions with corrections personnel and spent considerable time in conversation with individuals convicted of murder, rape, gang crimes, and other grievous offenses.

By 1986, my assignment as president of St. John's was complete. Without any initiative on my part, the Lynde and Harry Bradley Foundation committed \$600,000 to enable me to continue my work with police and to write a book on ethics in policing. By then, many of the police leaders I knew were pressing me to write the book. Given the extent of my experience and scholarship, I felt ready to proceed. As a resident Bradley Fellow at the American Enterprise Institute, surrounded by distinguished scholars and policy mavens, I met with some of the most respected police leaders in America to discuss the topics and questions in ethics they most wanted me to cover in the book.

In writing the book, I followed the practice of having very good philosophers and experienced police leaders read and criticize each chapter of the manuscript before I wrote the final drafts. I have had the benefit of such candid help with all five editions of *Character and Cops*—nearly 20 years of the “sifting” of judgment by philosophers, scholars, and researchers in a variety of fields and practitioners in policing and law enforcement. This practice is enormously time consuming, partly because different readers come at the material in different ways and identify different strengths and weaknesses. Moreover, I have found that the more people know, the more they understand in common and agree about the fundamentals of a field, the more they may tend to disagree on the finer points of a specific position. Thus, in writing a book while taking seriously the diverse and sometimes conflicting



criticisms offered by highly qualified people, the challenge is not to secure universal agreement, but rather to give due weight to the relevant considerations they bring into play and try to reach conclusions and recommendations that are intellectually and morally defensible and can be realistically and practically implemented.

Meeting this challenge is far different from supposing that because reasonable people of good will can disagree, but only within the boundaries of reasonability itself, there are no better or worse answers to questions of ethical moment. Instead, as with Socrates, we must continue to seek the best approximation of the truth in the light of the available preponderance of evidence and hope to refine our conclusions, recommendations, policies, and practices over time as we learn more. This view, I think, combines the spirit of intellectual humility with the courage to act in a contingent world, knowing ourselves to be fallible.

Over the years, I have relied on police to teach me the origins and evolution of such gangs as the Crips and Bloods, various motorcycle and white supremacist gangs, the Latin Kings, and Mara Salvatrucha: MS-13. Since 1983, I have studied domestic and international terrorism, as they relate to law, policy, law enforcement, education, and public safety. Talking with and listening to gang members is the only way I have found to enter very far into their thinking, but police have provided me with access. Deeply informed and considered reflections on Islamic fundamentalist terrorism by such scholars as Bernard Lewis, Roger Scruton, Daniel Pipes, Farouk El-Baz, and Uri Ra'anan, to name only a few, have taught me a great deal; so have manifestos by terrorists and their sympathizers, including Osama Bin Laden and his predecessors. The most instructive film I have seen on terrorism is *The Battle of Algiers*.

The study of terrorism, however, should not be confined to the study of one terrorist ideology. Reflection on human nature and conduct, broader consideration of human possibilities, is essential. My study of terrorism and my work with anti-terrorist officials in the United States and other countries relies on my prior study of the work of Abraham Lincoln; Winston Churchill; Golda Meir; Benjamin Netanyahu; Hannah Arendt; Clausewitz; Elie Wiesel; C. S. Lewis; George Steiner; Edmund Pincoffs; Gertrude Himmelfarb; Nien Cheng; James Bond Stockdale; Donald Kagan; Alasdair MacIntyre; John Fletcher Moulton; Elijah Lovejoy; Ralph Ellison; J. Glenn Gray; John Passmore whose book, *The Philosophy of Teaching*, is arguably the best treatment of that rich subject because of Passmore's comprehensively insightful understanding of human nature); Sarah Lawrence Lightfoot; the classics by Homer, Herodotus, and Thucydides; and many others. Barzun rightly calls terrorism "bargaining by outrage," and he stresses that there is nothing fundamentally new about this or any other form of fanaticism.

While learning about the manifold dimensions of public service in policing and law enforcement, I have done what I can to reduce the impact on policing and other forms of public service of trends, fads, and fashions that demean or diminish ethical seriousness.

During the 1970s and 1980s, I criticized values clarification and simplistic versions of moral stage development in human beings. My wife and I worked together on an extended review of conflict resolution programs in schools, colleges, peace institutes, businesses, and law enforcement agencies. In my writing and teaching

thereafter—including my teaching about terrorism now—I have sought to show the intellectual and moral indefensibility of the fashionable idea in conflict resolution literature that all conflicts admit of successful compromise, that every position in a dispute must be granted initial legitimacy and validity, that violence must be avoided at all costs, that when we treat others decently, we can expect reciprocity.

Against these claims, often treated by their advocates as unchallengeable assumptions or self-evident truths, I have taught resolutely that not all problems can be solved by honorable compromise and emphasized that according to some terrorist ideologies, only the complete conversion or the death of opponents, adversaries, or infidels is tolerable. It is, after all, not only in policing that underestimating the ruthlessness of someone who thrusts the innocent and helpless into harm's way can be fatal.

Studying and teaching philosophy, learning from books and articles and manuals, from conversations and lectures, from observation and direct experience with practitioners in the field, is not a lifestyle, but rather a way of life. This way of life necessarily includes exposure to intelligent and informed criticism, eagerness to learn, and willingness to take risks in order to do so. Work with police on ethics in policing and law enforcement leads to friendships and inevitably to the heartache of losing friends in the line of duty.

Direct exposure to the worst in human nature, to real and resolute evil, makes for nightmares—and not only during sleep. Confronting such evil in the company of people who have chosen to go in harm's way is profoundly edifying, just as encountering people who deliberately betray the public trust is disgusting.

For me, this way of life has been rewarding beyond description.

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**Edwin J. Delattre** is Professor Emeritus of Philosophy in the College of Arts and Sciences and Dean Emeritus of the School of Education at Boston University. He is President Emeritus of St. John's College in Annapolis, Maryland, and Santa Fe, New Mexico, and an adjunct scholar at the American Enterprise Institute in Washington, DC. He received his BA in Philosophy at

the University of Virginia, and his PhD in Philosophy from the University of Texas at Austin.

Dr. Delattre is the author of two books: *Character and Cops: Ethics in Policing*, now in its fifth edition, and *Education and the Public Trust: The Imperative for Common Purposes*. With his wife Alice, he wrote *Teaching Your Child Responsible Behavior*. He has authored many articles and essays on ethics and the public trust, ethics in private life and the raising of children, policing and law enforcement, organized crime, narcotics, gangs, governance of academic institutions, and liberal arts education. He has lectured at the FBI Academy, the Federal Law Enforcement Training Center, and many police academies in the United States and other countries. Over a period of more than thirty years, he has spent thousands of hours with police on duty.

# I'd Rather Pay for a Million Doughnuts and Coffee Than for One Bad Apple: A Brief Look at What Bad Police Officers Cost Society

Michael A. McMorris, PhD, Associate Professor, Department of Criminal Justice, North Carolina Central University, Durham

## Introduction

Society's image of the lovable, doughnut-eating, coffee-drinking cop has long vanished from the scene. For many years, American society was inundated with this friendly, yet inept cop, who loved life, his job, and the people he served. Even though he could get tough when it was called for, he always preferred taking the path of least resistance; convincing the perpetrator that turning him- or herself in and refraining from criminal activity was clearly the best course of action to take.

According to Mittleman (2004), "policing is a highly discretionary and coercive activity, that affords its members the opportunity to conduct their duties in private places, out of the sight of supervisors, but in the presence of witnesses, who are often regarded as unreliable" (p. 101). Consequently, when considering acts of misconduct, one must understand that police officers have been accused of unethical and improper conduct since their inception (McMorris, 2004; Mittleman, 2004; Walker & Katz, 2005). That fact, coupled with the amount of discretion afforded officers, perpetuates the perception (and reality) that the police accept and, to a great extent, encourage a level of misconduct.

According to Mittleman (2004), "one would be hard pressed to provide any real evidence that policing hasn't improved its image and become more professional in the past several decades" (p. 103). It also seems totally unreasonable, however, to suggest that the majority of law enforcement is graft ridden and corrupt. According to Snow and Cordova-Wentling (2005), the police are the most visible representatives in the criminal justice system. Their position in society allows them to act on their prejudices by using their police powers and targeting minority group members or anyone else that they don't care for. Moreover, the police are the first criminal justice system component that citizens have contact with, and officers are often the subject of targeted citizen frustrations. Because of this unique position, the police are both powerful and potentially volatile (Snow & Cordova-Wentling, 2005, p. 143).

When viewing the issues surrounding police abuse practices, civil liability, and overall citizen dissatisfaction with police service, one must also consider that police, for the most part, lack accountability to those by whom they are paid and charged with protecting. Adding further uniqueness to the police officer is the concept and practice of police officer discretion. This concept is one that has been hotly debated for decades (McMorris, 2007). According to Peak, Stitt, and Glensor (1999), police have always worked with little direct supervision as a result of what has been accepted as a necessary component of their job. They go on to state, "... no one can reasonably expect the police to work without discretion and totally within the letter of the law—

for instance, to cite all traffic violations for driving one mile per hour over the speed limit. But our society requires that they employ their discretion in a professional, fair, and equitable manner” (p. 26). “To a great extent, the work of the patrol officer is unsupervised, and to a lesser extent, it is unsupervisable” (Lundman, 1979, p. 160).

According to Shepard-Engel (2000), although most scholars and practitioners can agree that one of the roles that police field supervisors have is to control their officers, they can’t agree to what extent of control the supervisors actually have.

Are these corrupt, brutal, and costly cops unsuitable for police work before they enter the police ranks, or are their undesirable practices being taught and encouraged during their police academy training and/or “on-the-job training”? How do internal and external influences impact the kind of control that police administrators have over police officers? How much money do undesirable officers actually cost taxpayers? Do female police officers engage in misconduct and cost taxpayers as much lawsuit/payout money as their male counterparts do? What can be done to address these issues that continue to cost municipalities so much money? These are a few of the questions addressed in this article.

## **The New Recruit**

According to White (2007), recruitment is the first component of accountability. It is with this crucial first step that police administrators must make their mark as true leaders. It may seem unfair, but when criticism is leveled against a police department, it is often the chief or director that is singled out for hiring the unfit person in the first place. Clearly, there are times when recruits have been selected, only to reveal that they are totally unfit for police service well after having been on the job, and caused major or minimal damage to the department, the citizens, and even to their own reputations. Hiring these undesirable and unfit officers is ultimately the responsibility of the police administrator; however, in all honesty, some people do slip through the cracks. Selecting qualified, topnotch, officers is an art, not an exact science. If it were, that would mean that police administrators could predict human behavior, and that feat hasn’t, yet, been mastered by social scientists or anyone else. At best, police administrators can only rely on the application process, itself, and the personnel charged with administering each phase of the process. From there, the blame gets passed down the chain of command until the actual person, or group of people, responsible for hiring the new officer is identified, but, again, those individuals cannot predict the future behavior of officers anymore than the chief can. Depending upon how one views the concept of accountability, one might also align it with ethical standards and behavior.

According to Mittleman (2004), because of the increase in the number of legal cases pertaining to police misconduct and the large monetary awards handed to plaintiffs in these misconduct cases, it is paramount that police administrators and the training academies address the issues involved and tailor their curricula accordingly. Those police administrators who do not take heed to what’s happening in the courts, do not provide the appropriate ethics and integrity training, or fail to impress upon their officers the grave consequences they will face if they fall short of the expectations of the department are doing the citizenry, the department, and the officers a great disservice. Moreover, they are placing their agencies and themselves in a position to be deemed liable, if the officer violates the rights of a citizen (Mittleman, 2004). According to White (2007), “careful recruitment and selection must be followed

up with effective training in the police academy, through field training programs and inservice training. The goal of police academy training is to provide officers with the basic skills and knowledge necessary to become a police officer (p. 272). According to Walker (1999) and McMorris (2004), there are many shortcomings involved in police academy training including the lack of ethics training.

According to Peak et al. (1999), . . . police agencies wishing to have the highest possible moral standards must recruit persons who possess a moral disposition. Good moral character is essential for all police officers, particularly those who are assigned to work closely with the community and engage in problem-solving activities (p. 26). They go on to note that with regards to recruiting ethical police officers, many people believe that an “amoral” police recruit cannot be transformed into a moral one and that no one can make another person moral. According to Delattre (1994), “Only those already decent enough to care what is good and right can have a moral problem about what is good and right.”

With regards to ethics training, Peak et al. (1999) offered, . . .

. . . Ethics training sessions can heighten ethical awareness—that is, sensitize officers to be increasingly aware of the ethical dimensions of their everyday conduct. Ethics training can address such topics as character, organizational values, and formal ethical codes. Various training scenarios may also be presented and examined in terms of relativism, absolutism, utilitarianism, and ethical formalism and systems, and so on, and identify different ethical dilemmas and problems (brutality, corruption, thefts, misuse of authority), and what to do about them. This training will have an even stronger impact if it is clear in the minds of the employees that the training has the unequivocal support of the chief executive officer and is reinforced by managers and supervisors. (p. 27)

Moreover, Mittleman (2004) points out, “There is a great need to specify and personalize the abstract concept of ‘doing the right thing’” (p. 103). For instance, trainers discussing the problem of, “conduct unbecoming an officer” can cite disciplinary rulings that uphold the terminations of employees who engaged in inappropriate sexual behavior, used police authority for personnel gain, or made false or misleading statements.

For the most part, it is presumed that police officers are ethical unless and until an officer is involved in an incident that challenges that presumption. The police recruits also make that presumption; however, sometimes the presumption is also challenged by how a new officer perceives his or her introduction into the police department. Cox and Allen (2005), touch upon an interesting, but not frequently discussed topic involving new officers:

. . . The “don’t ask, don’t tell” approach to ethics in policing has been utilized by many police recruiters and administrators for years. This approach, in which neither new recruits nor sworn officers are asked to openly discuss ethical violations or misconduct, appears to assume that if these issues are not addressed, they don’t exist. Nothing, of course, could be further from the truth. Open and frank discussions concerning ethical conduct that begin in the recruitment process and continue throughout officers’ careers have the potential to minimize misconduct. (p. 35)

They go on to write, “that by openly discussing ethical issues with their subordinates, they set a tone and environment that instills an idea that in the long run, the officers will know and appreciate the fact that the subject of ethics is relevant to their daily existence on the department, and that they will accept the reality and behave ethically, they will have the full support of their supervisors” (pp. 38-39).

According to Piotrowski (2004), when the new employees come into the agency, it’s quite noticeable that the quality of those individuals desirous of law enforcement jobs is changing. They tend to have various and different goals, desires, and attitudes that need an encouraging environment to help stimulate their attributes. It is the good leader who recognizes these facts and works with the new officers in that regard.

Piotrowski (2004) goes on to say that leaders have to modify their styles in an effort to offer employees the opportunity to take part in some of the decisionmaking that impacts and directs their professional careers. These employees must be allowed to be productive. Finally, Piotrowski (2004) offers . . .

. . . Empowerment should be used to increase staff job satisfaction, job enrichment, and staff sense of self-worth, and to facilitate a rewarding atmosphere. Staff accountability is a fundamental desire to a progressive police agency. The use of proper and positive empowerment techniques will yield staff accountability. (p. 7)

When viewing practical reasons to include and emphasize ethics training in law enforcement academies, one needs only to look at the example given by Louis Freeh, former FBI director from 1993-2001. According to Freeh (2005), he was totally disappointed with an incident that had occurred while he served as a federal judge. He stated that he observed a solid criminal case against drug dealers go slowly downhill for federal prosecutors because an agent who had a very small role in conducting surveillance on the case lied on the witness stand. Freeh stated that after the jurors delivered their “not guilty” verdict, one of them spoke with him later, in the courthouse and told him, “Judge . . . we felt that if an agent would lie about something that unimportant, how could we trust the government on the big issue? We had a terrible time, and we felt terrible about it, but we couldn’t convict” (p. 164). Freeh (2005) went on to state that when he became FBI director, he remembered that case and consequently revised the FBI training curriculum by increasing the ethics course from two hours in the last week of the academy to two days during the first week of the academy. He even suggested that the FBI add an ethics award for the class member deemed the most reliable, trustworthy, and honest. That award is still being given out today. To Freeh, “. . . integrity is the most important asset law enforcement officers have—more important than anything else. If the people we serve don’t trust us, we can have the most impressive evidence in the world and still not win a conviction” (p. 165).

## **Civil Liability Legislation and the Law**

In an effort to provide a brief but thorough discussion on police and liability, one must include the civil and criminal laws that impact the police, relative to their misconduct. These federal criminal and civil laws go a long way in protecting citizens against police abuses when they are applied and acted upon appropriately. The following is a summary of federal laws that address police misconduct:

- 18USC Sec. 241 provides that police may be prosecuted for conspiracy.
- 18USC Sec. 242 prohibits police excessive force, and violating a person's civil rights.
- 42USC Sec. 1983 provides that victims of police abuse may file civil suits against police officers, their departments, and the municipalities for discrimination.

According to the Movement Support Resource Center (2006), the Violent Crime Control and Law Enforcement Act of 1994 (also known as the Omnibus Anti-Crime Bill of 1994) allows the U.S. Justice Department to enforce the constitutional rights of police abuse victims by seeking both declaratory and equitable relief against a municipality and/or its law enforcement officers who engage in a pattern or practice of misconduct that violates a person's constitutional rights. The Act also requires the U.S. Attorney General to collect data on excessive use of force by police and publish an annual report on the data.

The Movement Support Resource Center (2006) further states, . . .

. . . To date, the federal government has failed to comply with this requirement under the Act, and since data on police abuses has not been compiled, as required, no reports have been issued. Failure to collect and review data on police brutality makes it highly unlikely law enforcement officials, police departments, and municipalities will be held accountable for misconduct, especially in communities of color where there has been a greater number of police brutality complaints and concrete evidence of police brutality. Although, the Act of 1994 has inspired federal intervention in patterns of police brutality in some cities and may help prevent further police abuses in others, it does not provide legal redress for individuals who encounter police misconduct. (p. 8)

## **Examples of Civil Suits and Payouts Against Police Agencies**

According to Shusta, Levine, Wong, & Harris (2005) the last two decades of the 20th century helped to marshal in a dramatic increase in the number of class action and individual suits filed against police agencies for mistreatment and killing of citizens by officers. They go on to cite the following:

. . . The scope of this national problem can be appreciated by citing statistics from Detroit. Between 1997 and 2000, Detroit paid out \$32 million because of lawsuits brought against the police. A city council analysis showed that 78% of the money so expended involved cases with only a small number of officers; 261 officers were named in more than one suit. The issue is what the city administration should do with such repeat offenders. Furthermore, are the officers guilty of unprofessional behavior and maltreatment or simply the victims of legal strategies by lawyers? (p. 494)

Another municipality that's familiar with litigation is the Los Angeles Police Department (LAPD). According to Shusta et al. (2005), . . .

The City of Los Angeles had to pay \$14,658,075.00 in 1991 as a result of settlements, judgments, and awards related to excessive force litigation



against its police. . . . In 1994, a jury awarded Rodney King \$3.8 million to compensate for police actions. A federal judge ruled on August 28, 2000, that the LAPD can be sued as a racketeering enterprise in the so-called Rampart corruption scandal. This unprecedented decision, subject to judicial review by higher courts, could open this municipality to scores of lawsuits capable of bankrupting the city. U.S. District Judge William Rea ruled from the bench on a civil suit brought against the LAPD by a man who claims he was beaten and framed in 1997 for a crime by rogue police officers in the LAPD's Ramparts Division. Such illegal actions by officers within this division caused 100 cases to be dismissed, resulting in five officers being charged with both conspiracy and even attempted murder. This latest ruling cleared the plaintiff to pursue the case under the federal racketeering statutes against conspiracies. His lawyers maintain that [the] innocent man was a victim of a police conspiracy to deny him of his lawful rights as a citizen." (p. 494)

The move towards shared accountability within police agencies at all levels is a concept and practice that will continue to be emphasized because of the increasing public dissatisfaction with law enforcement agencies, highlighted by the legal settlements against officers (Shusta et al., 2005).

Additional records of lawsuits paid out are reported by Hernandez (2003) who stated that the City of Fresno, California, paid \$575,000 in a settlement for an assault and battery case involving an off-duty police officer on October 15, 1999, and that an excessive force case against the City was settled for \$45,000 in 1996. Hernandez (2003) also reported that after having received some 61 pages of documents secured through the Public Records Act, involving claims (not lawsuits) against the City of Fresno (and its police department) from fiscal year 1998 to fiscal year 2002, several were of interest to her, including the following: excessive force (\$278,836); animal bites (\$1,813); civil rights violations (\$82,124); mental anguish (\$11,763); assault and battery (\$66,850); sexual harassment (\$50,000); bodily injury (four minors) (\$544,710); and false arrest (\$1,336). These claims were filed when officers were pursuing cars, running stop signs, towing vehicles, striking parked cars, and so on (Hernandez, 2003). None of these amounts, listed from the City of Fresno include the lawyers' fees and court costs, which would increase the total amounts by almost another 30% to 40%.

In two separate cases, the City of Portland, Oregon, City Council voted to approve a settlement of \$300,000 for 24 people who had been pepper-sprayed and suffered other abuses by police at protest actions in 2002 and 2003 (Portland Copwatch, 2005). One group of protesters, that included an infant, was pepper-sprayed while they protested a visit by President George W. Bush in August 2000; the other group was pepper-sprayed while they protested the invasion of Iraq in March 2003 (Portland Copwatch, 2005).

The monies paid out to individuals and groups throughout the years as a result of civil suits and claims are difficult to track. Edwards, Hughes, and Grossi (2005), however, cited a survey conducted by Barrineau (1987) that included over 215 municipalities where outstanding civil claims in excess of \$4.3 billion were found. Clearly, there are many more millions of dollars spent in settlements by municipalities in an effort to stave off even costlier full-blown legal battles. One might ask, "What do these suits and claims accomplish, other than liberating funds from the city, township, or county coffers?" According to Edwards et al. (2005), civil suits against the police are believed to provide two positive social outcomes: (1) they tend to deter future behaviors that

would cause similar suits by requiring a change in policy and behavior and (2) the financial payments made to victims of police abuse tend to make them whole.

## **Comparing Female and Male Police Misconduct and Civil Liability Payouts**

According to Lonsway, Moore, Harrington, Smeal, and Spillar (2002), police executives should hire more women into the police ranks for many reasons, including the fact that women police officers cost their departments substantially less than their male counterparts, relative to civil liability payouts for excessive force lawsuits. They go on to note that women are substantially underrepresented in the both citizen complaints and sustained allegations of excessive force when compared to their male counterparts. To support their claims, Lonsway et al. (2002) analyzed data from the LAPD. Their analysis revealed that in Los Angeles from 1990 to 1999, there was a total of \$63.4 million (approximately 94%) paid out for judgments or settlements in civil lawsuits involving excessive force by male officers, compared to only \$2.8 million (approximately 6%) paid out for female police officers' use of excessive force for the same period of time. When viewing total offenses committed by male officers in Los Angeles (e.g., assault and battery, shooting, killing, other excessive force/misconduct, sexual assault and molestation, and others involving domestic violence), the total number of offenses committed by male officers was 255; whereas, their female counterparts committed some 27 offenses. Lonsway et al. (2002) go on to cite a San Jose Police Department independent police auditor report conducted between 1996 and 2001 that received some 664 complaints of excessive force against officers. Of the numbers reported, 2.9% of the complaints listed female officers; male officers accounted for 97.1%.

## **Internal Influences on Police Misconduct**

According to the U.S. Commission on Civil Rights (2000), "... Law enforcement agencies should police themselves primarily because they possess the tools to internally change policies and practices. However, there are problems with internal regulations regarding the use of deadly force, racial profiling, as well as officer misconduct investigations" (p. 3).

They go on to say, . . .

Internal affairs divisions, charged with investigating allegations of police misconduct and resolving complaints, increasingly lose credibility and effectiveness when they are accused of unequally disciplining the same types of offences, taking too long to investigate complaints, being unable to break through the code of silence among police officers, failing to keep the public apprised of complaint dispositions, and lacking computerized data systems to track needed information on misconduct incidents. (p. 3)

## **External Influences on Police Misconduct – Local and State Prosecutors**

According to the U.S. Commission on Civil Rights (2000), . . .

. . . local prosecutors are reluctant to prosecute the officers upon whom they must rely for the investigation and prosecution of criminal cases. The criminal law is

a limited vehicle for preventing or deterring police misconduct. Nonetheless, vigorous prosecution of such cases by local prosecutors is essential. However, in most police abuse cases, local prosecutors decline to bring criminal charges, often with the explanation that the officers' use of force was justified. Under these circumstances, many citizens have lost faith in the ability of their local governments to discipline the police, and instead have begun to seek aggressive federal intervention to curb police misconduct. (pp. 3-4)

Within that same report by the U.S. Commission on Civil Rights (2000), it was noted that a special prosecutor from the state may help to eliminate the conflict of interest that plagues local prosecutions of police misconduct cases. It was also noted, however, that a special prosecutor does not guarantee that police officers accused of wrongdoing will be prosecuted and ultimately punished (p. 5).

## **External Influences on Police Misconduct – Civilian Review Boards**

When reviewing the various controls on police conduct and those that hold the police accountable for their actions (or inaction), one must bring into the discussion the entity generally known as Citizen Oversight, Civilian Review Boards, etc. Although these formal and informal entities take on a variety of names, relative to their location and jurisdiction, Walker (2001) provides a breakdown of what are typically known as the Four Models of Oversight Systems:

1. Citizens investigate allegations of police misconduct and recommend a finding to the head of the agency.
2. Officers investigate allegations and develop findings; then citizens review and recommend that the head of the agency approve or reject the findings.
3. Complainants may appeal findings established by the police to citizens who review them and make recommendations to the head of the agency.
4. An auditor investigates the process the police use to accept and investigate complaints and reports to the agency and the community about the thoroughness and fairness of the process.

According to the U.S. Commission on Civil Rights (2000), as a result of the perception that city, state, and federal agencies have failed to address police misconduct adequately, many communities are turning to independent civilian review boards to investigate allegations of police abuse. Although most major cities have some form of oversight, these bodies still do not exist in some municipalities (p. 6).

## **The Problem Employee**

When officers are involved in improper behavior and they know that what they're doing is suspect, yet, they still engage in that behavior, it is known as *noble cause corruption*. This mindset allows the officer to believe that the ends justify the means (Pollock, 2007, p. 274).

According to Sherman (1982), . . .

. . . There are two ways police learn proper or improper behavior: (1) One way is to learn on the job, to make or not make moral decisions in the stress and time pressures of police work. This method is by far the most common

and is influenced by peer group pressures and the heat of difficult situations. (2) The other means is in the formal training environment where recruits hear war stories about values. (p. 17)

According to Peak et al. (1999), “. . . The temptations faced by the average patrol officer are much greater than those confronted in other occupations, but the work also entails activities that can easily cross the line from acceptable to unethical conduct” (p. 25).

They go on to add, “. . . For the police officer who must uphold the law on the streets, ethics is particularly important because of the discretionary nature of policing, the authority of police, the temptations and the peer pressure confronted on the job, and the fact that not all officers are totally moral” (p. 25).

When dealing with officers and misconduct aimed at the rights of citizens, Mittleman (2004) offers, . . .

. . . When an officer (or group of officers) violates a citizen’s rights, the best way to defend the department against a “deliberate indifference” allegation is to provide clear evidence that the department trained, supervised, and disciplined officers in accordance with the mandates of the law, the U.S. Constitution, the Oath of Honor, and the IACP Code of Ethics. Police departments should adopt a case-law approach rather than one that depends solely on philosophical rationales for ethical decisionmaking. (p. 103)

According to Collins (2004), . . .

. . . Your problem employee may be smart, capable, and even your best employee. Even though he or she has abilities, he/she is for some reason a problem employee. Most managers have said that these employees lack motivation, have poor attitudes, and really do not care about the job. These employees must be controlled, or they can spread unrest through an organization. (p. 25)

While Collins admits that there is no exact method of identifying problem employees, he goes on to say that managers often fail to recognize the problem employee. He offers the following as to why it is so difficult to identify the problem employee:

- Sometimes managers and supervisors do not want to admit that they have a problem.
- Some employees are so effective in some areas that their bosses overlook or downplay their weaknesses.
- Many supervisors accept the fact that some workers are weak in certain skills or habits.
- Sometimes supervisors overlook weaknesses because the employee is a friend, family member, or just a nice person.
- The employee is slick.
- Supervisors/managers get too busy in their own work.
- Some bosses get involved with their employees.

When dealing with the existence of police officers who are brutal and/or corrupt, some might argue that they are just “a few bad apples” that make it bad for law enforcement,

in general. While I concur with that statement, there is another side of this argument that speaks to a more prevalent abuse of authority in certain communities. According to Movement Support Resource Center (2006), “. . . Police brutality against people of color, in America, is not an isolated event carried out by a few bad apple police officers. It is an ingrained and thoroughgoing part of police practices, demonstrating a pattern of violence and abuse targeted to people of color” (p. 1).

## **Risk Management and Civil Liability**

Risk management refers to the process of reviewing organizational assets that could be damaged, lost, or stolen and the countermeasures used to prevent those major occurrences (Curtis & McBride, 2005). When referring to criminal justice related agencies, it addresses the items listed above, but it also takes into account anything that could cause monies to be paid out in the form of insurance payments, civil liability suits, and settlements. In short, it addresses all of the areas (and items) that have value and attempts to protect those areas, through contingency planning and asset coverage by implementing policies and procedures that would lessen the probability that the assets are threatened.

According to Thibault, Lynch, and McBride (2007), part of risk management involves identifying the organization’s members who can be held legally liable for actions taken or not taken. They go on to state that most police departments are very slow when it comes to making these considerations. Furthermore, they contend that the most active areas of litigation in policing involve internal employment practices, use of force, arrest situations, high-speed pursuits, and civil rights violations (Thibault et al., 2007).

According to Alpert, Dunham, and Stroshine (2006), when victims of police misconduct attempt to hold officers and their departments accountable for that misconduct, there are potentially long-term, severe financial and operational consequences for those departments. The irony is that departments fail to examine their high-risk functions until after the litigation occurs. Alpert and Smith (1991) offer an approach to the management of departmental operations that relies on the analysis and planning that reviews the department’s activities and attempts to foresee its risks.

Alpert et al. (2006) offer what they deem “front-end” management practices that seek to identify the likelihood of real and potentially damaging hazards and implement cost-effective protective measures so that these incidents don’t occur. In an effort to lessen the severity of damage that a police agency could suffer, Alpert et al. (2006) provide that a risk management plan should be put into place long before an incident occurs. Risk management is an ongoing process, and the actual plan consists of four basic steps:

1. Identifying the hazards or potential hazards that face a department
2. Determining the means of reducing the exposures
3. Implementing appropriate measures for reduction of the exposure
4. Monitoring the effectiveness of the selected exposure reduction measures and implementing changes as appropriate (p. 205)

Alpert et al. (2006) go on to say that managing risk before a situation occurs or before a lawsuit is filed is an important step that could involve the internal affairs, the command staff, and the units that audit the agency's functions.

According to Ross (2003), there are two areas of liability: (1) criminal, in which a person commits a crime while performing his or her duties and (2) civil (tort), in which a wrong has been committed against another individual and monetary damages are sought by the victim. When viewing torts against the police, one usually addresses the intentional actions involving assault, defamation, false arrest, and malicious prosecution (Thibault et al., 2007). When discussing questions of negligence, the officer or organization is alleged to have failed to perform an act or exercise due care. When addressing strict liability, the person is held responsible because the act occurred; it doesn't matter if there is intent or negligence. The officer's agency is brought into the legal liability argument when the officer is held responsible while acting as an agent of the department. This involves the concept of vicarious liability (Thibault et al., 2007).

There are many reasons that victims and prisoners file tort actions against police departments, including the following: unlawful search of property, discrimination, retaliatory discharge, freedom of speech, union or political activity, discipline or termination action, personal appearance or dress code, unfair labor practice, and compensation for on-the-job injury (Thibault et al., 2007, p. 412).

Meadows (1999) lists the top eight legal issues causing litigation against the police as a result of a survey of police chiefs of 20 cities with populations over 100,000: (1) use of force; (2) auto pursuit; (3) arrest/search; (4) employee drug test; (5) hiring and promotion; (6) discrimination based on race, sex, age; (7) record keeping and privacy; and (8) jail management (p. 156).

## **Conclusion and Recommendations to Reduce Civil Liability Suits Against the Police**

There is a great deal that needs to be done relative to providing positive contacts between the police and the citizens in an effort to garner citizen satisfaction, instead of provoking lawsuits (Shusta et al., 2005). The main problem that tends to generate lawsuits against the police and their agencies is the perception by citizens that police use excessive or deadly force, unnecessarily, during an arrest (Shusta et al., 2005). According to the agencies that analyze these types of citizen complaints, those filing the complaints tend to be from persons who feel disenfranchised.

Clearly, the issues of police misconduct and civil liability are very critical and continue to plague police departments and the public equally. Because of the millions of dollars of payouts and settlements made to victims of police abuse, it is very clear that police administrators must adjust their training practices in an effort to teach and emphasize ethical behavior to their officers (Freeh, 2005). Although there are internal and external influences on police behavior, it is really up to the individual officers to make adjust their mindsets and their behaviors so that they are fulfilling the expectations that the police service requires and those of the citizens that they are charged with protecting and serving (Mittleman, 2004). One would be delusional to think that positive change would be contemplated and acted upon by any other means. The continued practice of recruiting, hiring, and training officers who are corrupt or corruptible, and those who are brutal in their thoughts and deeds

long before they enter the police service, will only serve to bankrupt municipalities, alienate the police and the community, and perpetuate the status quo. This practice must cease. Initial screening of applicants must be improved.

As was suggested previously, a risk management approach should be undertaken by police administrators to decrease and eliminate those persons and practices that place their departments, municipalities, and themselves in jeopardy of civil liability (Curtis & McBride, 2005). More importantly, when allegations are sustained against police officers, confidence and trust from the community may also be damaged. When the community begins to mistrust the police, the level of cooperation essential to safe and effective police work is lost (Lonsway et al., 2002). All efforts must be geared toward effective collaboration with the community.

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**Michael A. McMorris**, PhD, is a product of the Detroit Public Schools System. He earned his PhD in education (criminal justice cognate) at Capella University. He earned his MA in criminal justice and political science, as well as a BS in criminal justice from Saginaw Valley State University.

As a law enforcement practitioner, Dr. McMorris has received awards and recognition for his service as a police officer for the City of Saginaw (Michigan) and as a special agent for the U.S. Treasury Department (U.S. Customs Service). As an educator, Dr. McMorris has taught at the secondary, community college, and university levels. He has been named four times as one of America's Top Teachers in *Who's Who Among America's Teachers* and has been tenured twice. Dr. McMorris also served as an international scholar and visiting professor for two universities in Beijing, China, and he is a regular presenter and guest lecturer at criminal justice, multicultural, and education conferences throughout the United States.

Among Dr. McMorris' publications are *Perceptions of Criminality: The Police, The Media, & Stereotyping in Multicultural America* (2002), *Hostile Corridors: Advocates & Obstacles to Educating Multicultural America* (2003) and (2007), and *Criminal Justice Scenarios: Problem Solving, Critical Thinking, and Ethical Exercises for Criminal Justice Students* (2004) and (2007). Dr. McMorris is the founder and executive director of American Law Enforcement Trainers, LLC, a law enforcement consulting firm.

Dr. McMorris' research and publication interests are in police recruitment, selection, and training practices; international perceptions of criminality; and multicultural issues in higher education. He is currently an associate professor of criminal justice at North Carolina Central University in Durham. He has also served as a tenured associate professor of criminal justice at a state university in Michigan.

# Liability and Operational Implications of Off-Duty Police Employment

James F. Pastor, PhD, JD, Assistant Professor, Public Safety, Calumet College of St. Joseph; President, SecureLaw, Ltd.

Those familiar with the police culture know that just as the sun will rise in the east, so will police officers work in part-time positions. It is widely accepted that police officers engage in various forms of part-time work, typically in some “security” function. This practice has existed for decades. This article will address the contemporary legal and societal implications of this age-old practice. In doing so, we will review typical police practices related to off-duty police employment, set out the related legal principles, survey important cases, and then describe how contemporary circumstances may affect these practices. In order to get a better sense of these issues, it is necessary to first take a step back to obtain a historical perspective.

## Historical Observations and Operational Models

### Historical Observations

As with any historical overview, it is necessary to identify an appropriate starting point to describe the subject. For the reasons explained later in this article, we will commence with the prohibition era. At the close of prohibition, it became clear that police officers were exposed to many corrupting influences, arguably related to the institutional style of policing common at that time. In order to limit corrupting influences, the rise of police as a “profession” became a widely advocated remedy.<sup>1</sup> As part of this movement toward professionalism, secondary employment of police was often restricted. For example, it was common for police departments to prohibit police officers from wearing their uniforms in an off-duty capacity. Related to this prohibition, a more compelling requirement was also advocated: police officers could not exercise police powers on behalf of private employers.<sup>2</sup>

By the 1960s, these restrictions were gradually removed, or it least, relaxed. While the precise reasons for this change are hard to quantify, some factors are apparent. First, as crime rates increased, it became increasingly obvious that police agencies could not meet the demands of private sector employers for uniformed personnel.<sup>3</sup> Businesses were faced with growing crime rates coupled with reduced police presence and response. With this situation, it is understandable that private firms sought to secure their property and environment with uniformed police personnel. As this trend continued, the movement toward employment of off-duty police personnel became widespread.

Early research by Reiss (1988) presents statistical evidence that illustrated the scope of this practice. As far back as 1982, the Seattle Police Department reported that 47% of its 1,002 police officers had work permits for off-duty employment. In addition, Colorado Springs issued work permits to 53% of its 426 officers in 1985, and in 1986, these officers worked 20,000 off-duty hours while in uniform.<sup>4</sup>

Private employment of police, however, was not just market-based. Obviously, police officers themselves had a lot of interest in this work. Those who recall the typical police salaries of this era will agree that police were greatly underpaid. At that time, salaries were not nearly as competitive with the private sector compared to those of contemporary America. Indeed, Reiss asserted that police officers from Metro Dade Police Department made more than \$4 million in uniformed off-duty work in 1986.<sup>5</sup> Without getting into a debate over the relative value of police salaries, most would agree that union negotiations over the past few decades have increased police salaries substantially. Placing oneself back into the context of the 1960s, one is struck by the need of police officers to work secondary employment simply to survive.

At least partly designed to combat the corrupting influences of “street money,” city officials and police administrators may have seen secondary employment as a way to increase police salaries without a corresponding budgetary increase. In this sense, the typical police officer could increase his or her “salary” by working off-duty. At the same time, the temptation to resist corrupting influences was also lessened due to this secondary income stream. Secondary employment, therefore, offered many benefits to city budgets, private employers, police officers and their families, and to their ability to resist corruption through socially and legally acceptable means.

These factors proved to be powerful incentives for a virtual “cottage industry” of private employers. In recent years, many of these employers have been private security firms, who have tapped into a market for highly skilled and trained police officers to perform “security services” to private entities and environments. The functions performed range from preventing and apprehending shoplifters, securing and screening entrances to private facilities, protecting key employees and offices, and the like. For reasons set out later in this article, I predict the widespread use of off-duty police has seen its day. Suffice to say, societal trends, such as the threat of terrorism and the ever-rising liability exposures attending to public safety, will greatly reduce this practice.

### **Models of Off-Duty Police Employment**

It is generally accepted that three specific models illustrate off-duty police employment: (1) the Officer Contract Model, (2) the Union Brokerage Model, and (3) the Department Contract Model.<sup>6</sup>

In the Officer Contract Model, each officer acts as his or her own independent contractor. This model is the most fluid, with each officer finding his or her own part-time work. In keeping with this level of independence, each officer contracts for specific employment conditions, such as hours, pay, benefits, etc. If required by the department, each officer is responsible to seek permission to work secondary employment. Typically, the department will grant permission provided that the secondary job meets minimum standards. Finally, the private employer pays the officer directly for the services rendered.

In the Union Brokerage Model, the union or association seeks out paid security details from the private sector. The union also selects police officers, who volunteer for particular assignments. Once the job and the officer are assigned, the union

and the department often bargain over the status, pay, and conditions of the paid details.

In the Department Contract Model, the police agency directly contracts with private sector employers. Once the contract details have been determined, the police agency assigns police officers to particular paid details and also pays the officers from funds provided by the private firm. Typically, in order to manage this arrangement, the police agency assigns a secondary employment coordinator to receive detail requests from private firms, issue off-duty work permits, and assign officers to paid details. In most cases, the police agencies also are required, through bargaining unit agreements, to negotiate with the union over pay, conditions, and regulations governing this secondary employment.

As these models illustrate, there is a great deal of difference in how off-duty employment is managed. To most police officers, these differences have no distinction because they simply seek to obtain work. To police administrators and city officials, however, the liability exposures related to secondary employment may be paramount. This stems from the nature of the work and actions of police officers in the performance of secondary employment, however, the widely accepted notion that police are *always* "on-duty" must be reconciled with the actions of police officers while performing secondary employment. Simply stated, from this perspective, how is it possible to work in an "off-duty" capacity? The answer, from a legal perspective, is determined by two separate approaches: (1) whether the police officer performed public functions in the secondary employment capacity (public function test) or (2) whether the employer at the time of the incident was deemed the municipal government or the private employer (scope of employment test).

## Legal Principles and Cases

### Public Function (State Actor) Test

In assessing liability exposure for off-duty police actions, some states view the threshold issue as whether the officer performed a "public function." The classic example of a "public function" is effecting an arrest. Throughout much of recorded history, the act of effecting an arrest, even if performed by private citizens, was done on behalf of government.<sup>7</sup> In this sense, whenever an arrest is made, it inevitably involves governmental power. Furthermore, it is generally understood that the constitutional protections contained in the Bill of Rights were designed to limit the power of the government.<sup>8</sup> In legal parlance, the applicability of these protections is triggered when a "state actor" was involved in the arrest or other incident. *State actor* is a legal term used to describe government employees, agents, or officials, such as a police officer or some other law enforcement official.

The question of whether an individual acts as a state actor is not as clear-cut as it may appear. When police officers perform their job as on-duty police officers, the answer is straightforward: constitutional protections are applicable. When police officers perform a security function in an "off-duty" capacity, the answer is more complicated. There are a number of criteria that courts use to assess whether an individual acted as a "state actor," including the following:<sup>9</sup>

- Whether the security personnel are licensed by the state (or other governmental entity)
- Whether the security personnel acted in cooperation with or by the supervision of public police
- Whether the security personnel were the police working secondary employment (off-duty or moonlighting)
- Whether the security personnel were designated with “special police powers”
- Whether a nexus exists, meaning a significant connection or contact with government
- Whether security personnel were performing a public function, a question that typically hinges on whether the individual was . . .
  - Acting to enforce the law versus merely serving a private interest
  - Wearing a “police-like” uniform, firearm, and other police equipment
  - Identified as the “police”
  - Conducting the arrest on private or public property

Many of these factors relate to nonpolice security personnel. For our purposes, the relevant factors include whether security personnel were actually off-duty police. Even if this is established, it is not determinative. It is also necessary to assess whether the security officer was performing a “public function.” An explanation of these criteria may be helpful.

For purposes of employer liability, the public function question may be controlled by governmental regulations providing that police officers are always on duty. This does not, however, follow that all off-duty acts equate with the duties of a police officer. Some duties may only serve a private employer. Some duties may serve the larger community. This is true even though policing agencies may provide certain requirements to police officers who are off-duty. These often include requiring possession of firearms, adhering to orders from superior officers, being responsive to calls from private citizens, and taking proper police actions. Such requirements on off-duty personnel, however, do not necessarily equate with liability exposure. As a general principle, a municipality is only liable for those acts of an off-duty officer that are performed to serve some larger public function. This usually relates to acts performed to enforce the law or preserve the peace. Liability will not be imposed on the municipality for negligent or willful acts clearly not in furtherance of a public (or official) function. For example, when off-duty actions are motivated solely by personal reasons or for independent malicious purposes, liability exposure generally does not reach the city.

In this public function approach, courts assess all relevant factors related to the incident, including whether the officer was wearing a police uniform and other “police-type” equipment, such as firearms, handcuffs, chemical sprays, batons, and the like. In addition, whether the off-duty police officer was identified as “the police” is a critical factor. Of course, the specific actions taken by the off-duty police officer are also significant. In states that use this test, if an arrest is made, it is often determined as a public function. Conversely, if an act is designed to serve a private employer, then it is not likely to be considered a “public function.” In this way, the typical trigger of city liability is when the police officer acted to serve a public function. Hence, even though the police officer may be employed in a security capacity, if the action was designed to serve a public function, it may be deemed to be made on behalf of the government.

The distinction between a private act and a public function, while sometimes artificial, was aptly articulated by the court in *Morgan v. City of Alvin*.<sup>10</sup>

. . . [In] determining status of [the] off-duty police officer, who works for a private employer as a security guard, courts analyze the capacity in which the officer acted at the time he committed acts for which the complaint is made. If the police officer is performing a public duty [function], such as enforcement of general laws, [the] officer's private employer incurs no vicarious responsibility for that officer's acts, even though the employer may have directed the activities. But, if the police officer was engaged in protecting employer's property, ejecting trespassers, or enforcing rules and regulations promulgated by employer, the trier of fact decides whether the officer was acting as [a] public officer or as a servant of the employer.

### Scope of Employment Test

The common theme of this test is that the "master" (employer) may be liable for the acts of the "servant" (employee). To answer this question, one must know who is deemed the "employer." Is it the city or the private firm? A municipality or the private employer (or both) may be vicariously liable for the negligent or wrongful acts committed within the scope of employment.

This test is grounded on the concept of "agency." This entails a relationship in which one party (agent) is empowered to represent or act for another (principal) under the authority of the principal. Stated more formally, "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."<sup>11</sup> Key components of this relationship include the principal's right to select the agent, to discharge the agent, and to direct both the work and the manner in which the work is done. The basic elements of agency are as follows:<sup>12</sup>

- Manifestation by principal that the agent shall act in his or her behalf
- Agent's acceptance of the undertaking
- Understanding of the parties that the principal is in control of the undertaking

Closely related to agency is the doctrine of *respondeat superior*, which literally means "let the master answer."<sup>13</sup> This doctrine often shifts liability for the actions of the servant to the master because the servant acted on behalf of the master. Logically this makes sense, because the injury caused by the servant was imputed to the master—due to the servant acting on behalf of the master.<sup>14</sup> The doctrine applies only when a master and servant relationship existed at the time of the injury and in respect to the transaction from which it arose. Conversely, the doctrine is not applicable when the injury occurred while the servant was acting outside the legitimate scope of employment.<sup>15</sup>

For our purposes, the key question related to scope of employment requires that the off-duty officer (servant) does something in furtherance of the duties he or she owes to his or her employer (whether city or private firm), and that the employer is, or could be, exercising some control, directly or indirectly, over the work or activities.<sup>16</sup> In this way, the work of the off-duty officer must be fairly and reasonably incident to the employment or logically and naturally connected

with the employment. Actions carried out for personal desires or motivations by the servant are not attributable to the master. For example, if an off-duty police officer rapes a woman while he was guarding a parking garage, the rape would not be viewed to have occurred "within the scope of employment."<sup>17</sup> The factors to assess whether the servant acted for the principal (employer), in the scope of employment, are as follows:<sup>18</sup>

- Time, place, and purpose of the act
- Authorization of the act by the employer
- Common performance of the act by employees on behalf of the employer
- Extent to which employee's interests were advanced by the act
- Length of departure of the employee from company business for personal interest
- Furnishing of the means and instrumentalities by the employer that inflicted the injury
- The knowledge on the part of the employer that the employee would do the act or had done the act before
- Whether act was motivated, at least in part, to serve the employer
- Whether misconduct of the employee was engendered by events or conditions of employment, such as responsibilities, conditions of workplace, and events at work

In assessing these factors, typically the right to control and the amount of control exercised by the "employer" over the "contractor" is a key to indirect legal responsibility being imposed on the employer.<sup>19</sup> In this sense, the more control exercised by a particular party, the more likely the liability for an injury will shift to that party. For example, if the off-duty police officer has a long standing employment relationship with a security firm and an incident occurs during the time the officer was performing security services for that firm, then it is more likely that the private firm will be deemed the employer (for liability purposes). Similarly, if there is evidence of joint control by both the municipality and private firm or if the incident stemmed from a contract between the city and the firm, then liability may be jointly shared by both parties. Conversely, a municipality or private employer is typically not liable for the acts of a police officer that are outside the scope of his or her employment or when those actions are personal or criminal in nature.

### **Governmental Immunity and Liability**

Whatever test is applied, either public function or scope of employment, the next inquiry is to assess whether governmental immunity applies. If the action did not involve a public function or if the employer was deemed to be the private firm, no immunity would apply since immunity is only afforded to government. Generally, immunity is an affirmative defense available to policing agencies. It is widely acknowledged that police officers must exercise discretion in enforcing laws and protecting public safety. For that reason, a municipality often enjoys immunity for actions police officers take or fail to take in performing discretionary activities inherent in policing. It is available if the underlying action was not a breach of a clearly established right and the officer's conduct was objectively reasonable.<sup>20</sup> For example, municipalities may be liable when officers act outside the realm of acceptable police practice and not subject to discretion or when they engage

in willful and wanton conduct, in bad faith, or with malice. Whether qualified immunity applies is a question of law for the court to consider.<sup>21</sup>

In summary, as you consider the liability exposure from off-duty police employment, the key factors are the nature and the scope of the work involved and the relationship between the parties. It may be useful to survey a few cases to illustrate this point. These are actual court decisions, which were heavily edited in an effort to illustrate the principles mentioned above and provide context to the suggested guidelines to be discussed at the end of this article.

## Case Summaries

In *Turk v. Iowa West Racing Association*,<sup>22</sup> an incident took place at the casino operated by Iowa West Racing Association, Inc. (Bluffs Run). The Turks were walking through the casino; carrying glasses of alcohol; laughing; and on occasion, staggering and stumbling. The couple was stopped by Bluffs Run security supervisor Diana Rodriguez, accompanied by uniformed security guards. The Turks were stopped because Jacqueline Turk appeared to be intoxicated.

Jacqueline was informed that she could either leave the casino or submit to a preliminary breath screening test (PBT). This was in accord with standard casino policy and with a state statute, which prohibits casinos from allowing visibly intoxicated persons to gamble. Jacqueline refused to leave the casino or submit to a PBT. Within a few moments, Rodriguez and the guards were joined by security manager Don Coniglio, who requested the assistance of uniformed off-duty police officers. Officers Galvin and Sellers were working at the casino pursuant to a contract between Bluffs Run and the City of Council Bluffs. Officers Galvin and Sellers briefly interacted with and observed the Turks.

This interaction led to Robert Turk being taken down to the floor by Officer Galvin and Officer Sellers. During the course of subduing and handcuffing Robert, who can be seen on a video struggling despite the efforts of the officers and casino security guards, Officer Sellers gave one clear, and perhaps a second less forceful, knee strike in the general area of Robert's upper buttocks. Jacqueline tried to intervene and was also handcuffed. Both Robert and Jacqueline were charged with offenses stemming from the incident. Jacqueline entered guilty pleas to her charges. Robert was found guilty of interference with official acts and assaulting a peace officer, and these convictions were upheld by the court.

The Turks subsequently filed suit against Bluffs Run, the City, and Officers Galvin and Sellers. The court determined that the claims against Bluffs Run failed as a matter of law and that the officers as well as the City had qualified immunity for any actions of the officers. The Turks appealed.

The Turks contended that the officers demanded that they submit to PBT tests even though they did not have probable cause to believe they were intoxicated and that Officer Sellers assaulted Jacqueline and Robert by pushing him, laying both hands on him, and throwing him to the floor. In addition, they alleged unreasonable force was used by Officers Sellers and Galvin in throwing Robert to the floor and by Officer Sellers in delivering the knee strike(s). In regard to all three counts, the district court ruled that Officers Sellers and Galvin were entitled to qualified



immunity for their actions. The court found that a reasonable officer would suspect that the plaintiffs were intoxicated and that the officers acted reasonably in detaining the Turks. The court further found the City immune.

In regard to the civil rights violations, the officers were shielded from liability for civil damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” The relevant question is whether a reasonable officer “could have believed” the officers’ actions were lawful, “in light of clearly established law and the information [Sellers and Galvin] possessed.”

We conclude that Officer Sellers acted in an objectively reasonable manner when he took Jacqueline’s drink and pushed or moved back Robert with his arm and when both Officer Sellers and Galvin took Robert down to the floor. The officers were faced with two uncooperative individuals, one who became physically aggressive with Officer Sellers. The officers responded by taking Robert to the floor and handcuffing him. Under the circumstances, a reasonable officer could conclude that, as the situation escalated, the steps the officers took were reasonably necessary to control the situation and ensure their own safety.

Finally, as to the allegations of unreasonable force, it was objectively reasonable for the officers to take Robert down to the floor and restrain him. The videotape reveals that the knee strike(s) were used by Officer Sellers in an attempt to subdue and handcuff Robert, who was continuing to struggle and resist the efforts of both officers and casino personal. The strikes were also objectively reasonable, so long as that amount of force was reasonably necessary to subdue and handcuff Robert, who was being arrested for assaulting Officer Sellers. Under the circumstances, the knee strike(s) aimed in the general area of the upper buttocks was objectively reasonable. We conclude that Officers Sellers and Galvin did act in an objectively reasonable manner in fulfilling their duties. Thus, the City is also immune. The court then affirmed the summary judgment of the Turk’s claims.

In another off-duty police case, *Martin v. Hughes*,<sup>23</sup> Robert Hughes, and his wife, Lori Hughes, arrived at Graham Central Station (GCS), a bar and dance club. Martin, an off-duty police officer from the Tatum, Texas, Police Department was working as a security guard at GCS. Martin ejected Robert from the club after an altercation with another patron. While each party gives different versions of the events that occurred in the parking lot, it is undisputed that after the incident, the Longview Police Department (LPD) arrived at the scene. The LPD did not arrest Robert Hughes after the incident.

Robert and Lori Hughes later sued Martin and GCS for personal injury damages, alleging that Martin was negligent in his use of unnecessary and excessive force and that GCS was negligent for hiring Martin. Martin and GCS filed motions asking the trial court to dismiss the case. They argued that as a police officer discharging his duty, Martin was entitled to official immunity from being sued. The trial court denied the motions. Martin and GCS appealed.

The elements of the defense of official immunity are the performance of a discretionary function, within the scope of the employee’s authority, and while performing that function in good faith. In order to establish good faith as a matter

of law, Martin was required to show that a reasonably prudent officer, under the same or similar circumstances, could have believed that his conduct was justified based on the information he possessed when the conduct occurred. The principal element of the official immunity defense at issue is whether Martin acted in good faith. The record reflects numerous conflicting versions of the incident between Robert and Martin. Even the Texas Alcoholic Beverage Commission report compiled after an investigation of the incident notes that “all accounts are different depending on which party [the investigator] spoke to.” Texas jurisprudence mandates that a movant on summary judgment fails to conclusively establish good faith when the material facts relied on to support good faith are in dispute. We, therefore, leave to the fact finder the determination of whether Robert’s or Martin’s version of the facts is the correct one. Because the material facts relied on to support good faith are in dispute, Martin has not conclusively proven his good faith, specifically, that a reasonably prudent officer, under similar circumstances, might have taken the same action he took after Robert dropped the pipe in the parking lot of GCS. Consequently, Martin and GCS failed to conclusively establish that Martin acted in good faith; therefore, the trial court did not err by denying his motion for summary judgment on official immunity grounds. The judgment of the trial court was affirmed.

In another off-duty police case, *Lovelace v. Anderson*,<sup>24</sup> a hotel guest brought a personal injury action against an off-duty police officer, owners of hotel, the city, and city police department, seeking recovery for a wound that guest suffered when struck by a bullet, which the officer fired during a gun battle with two armed robbers in the hotel lobby during the officer’s shift as a security guard. In this case, an off-duty Baltimore City police officer, Kenneth Anderson, was employed by a hotel as a private security guard. While Anderson was on duty, two men entered the hotel lobby and pointed a sawed-off shotgun at the desk clerk, attempting a robbery. Anderson, who was in the hotel lobby at the time, took out his police service handgun, and a gun battle ensued between Anderson and the robbers. The plaintiff, James Lovelace, a guest of the hotel who happened to be in the lobby at the time, was struck and injured by a bullet fired from Anderson’s handgun.

Kenneth Anderson was employed by the Baltimore City Police Department, working 40 hours per week as an administrative sergeant. Anderson’s duties for the Baltimore City Police Department at that time consisted of “administrative stuff that came across my desk, with reference to photographs, vehicles, vehicle maintenance . . . medical.” He did not, at the time, work the streets for the police department. During his off-duty hours, Anderson was employed as a security guard at a hotel outside of Baltimore City. According to Anderson’s deposition testimony, he worked 24 or 25 hours per week for the Days Inn. Anderson further testified that, at the time he and other security guards were hired by the hotel, the person who hired them “wanted us to work security. She had special assignments for us, and one of them was to prevent robberies if we could . . .” When on duty as a security guard, Anderson would not wear his police uniform but would dress in “just regular everyday plain clothes.” Anderson further testified that when on duty as security, the management “did not want our guns to show.” Anderson’s police service handgun was a Glock 17 nine millimeter semi-automatic pistol, which, when fully loaded, would hold 17 bullets. He carried this handgun, concealed, when acting as a security guard for the hotel. Anderson had not obtained a permit to carry a handgun when employed as a security guard from the Maryland State Police.

In December 1993, two individuals, later identified as Earl Jennings and Randy Terry, entered the hotel lobby and walked to the front desk. Terry removed a sawed-off shotgun from under his coat, pointed it at the front desk clerk, Michael Gordon, and yelled "hold up." Jennings immediately took out a bag and handed it to Gordon. When Terry pointed the shotgun at Gordon, Anderson stood up, unzipped his jacket, got out his pistol, and announced "police." According to Anderson, Terry turned around and fired at Anderson. Anderson stated that he returned the fire, that he was shooting with "tunnel vision," that the "only thing I could see was that shotgun and the two suspects," and that he "lost sight of Mr. Lovelace." Anderson discharged 12 rounds of ammunition in "about three seconds."

Jennings was killed by a shot to his head. Terry was shot in the back, but he was able to flee. Terry was later apprehended, convicted of attempted robbery and attempted murder, and sentenced to 32 years in prison. Anderson lost three fingers from his left hand as a result of the gun battle. Anderson did not know that Lovelace had been shot until sometime after the gun battle. A ballistics expert, who had worked 15 years for the Maryland State Police Crime Laboratory, stated that the bullet recovered from Lovelace's body was fired from Anderson's Glock 17 nine millimeter pistol.

Certain regulations of the Baltimore City Police Department, as well as state statutory provisions, are relevant in this case. These concern secondary employment of police officers, authority of police officers outside of their territorial jurisdiction, and immunities of police officers. For example, the Baltimore City Police Department's general orders specifically regulate secondary employment by police officers, including obtaining the department's permission to engage in secondary employment and to limit allowable secondary employment to that specified in the permission. The same general order requires a police officer engaging in secondary employment to "obtain a handgun permit from the Maryland State Police, when you are required by your secondary employers to be armed as a condition of your employment. In this case, you are armed under the authority of your secondary employer."

The same general order relates to secondary employment outside of Baltimore City, which, among other factors, requires the off-duty police officer to . . .

- Act as a private citizen, without exercising powers and duties of a police officer.
- Not use Baltimore City Police credentials or equipment.

Anderson had received permission from the Baltimore City Police Department to work as a security guard at the Days Inn. Nevertheless, as previously mentioned, Anderson had not obtained a permit from the Maryland State Police to carry a handgun while engaged in his secondary employment. In an affidavit filed by Colonel Wilbert T. Travers, Jr., a former superintendent of the Maryland State Police, he expressed the opinion that Anderson's secondary employment was in violation of Baltimore City Police Department regulations concerning secondary employment, that he was not acting as a Baltimore City Police Officer during the gun battle, and that he was guilty of gross negligence.

The plaintiffs argue that, for several reasons, neither Anderson nor the hotel owners and operators were entitled to any form of immunity. The plaintiffs claim that Anderson was not acting as a police officer during the evening of December 2, 1993; that Anderson was acting in the scope of his employment as a security guard for the hotel; and that he was, during the attempted robbery and gun battle, doing precisely what he was hired to do and paid to do for the hotel. A principal thrust of the plaintiffs' argument is that Anderson was acting exclusively for the hotel owners and operators during the incident. Alternatively, the plaintiffs assert that Anderson was acting within the scope of his employment for both the hotel and the police department during the incident, and that, therefore, a jury could properly find that both the hotel and the city were liable under the doctrine of *respondent superior*.

While acting as a private security guard for the hotel, Anderson was clearly not entitled to public official immunity. One is entitled to public official immunity only when he is acting as a *public official* rather than in some other capacity and only when "his conduct occurred while he was performing discretionary, as opposed to ministerial, acts *in furtherance of his official duties*." In addition, privately employed security guards are not entitled to immunity when their negligence in attempting to prevent crimes or apprehend criminals is a proximate cause of injury to innocent third persons. A person, including an off-duty public official, who negligently injures someone while acting in the scope of his or her employment for a private employer, is not entitled to public official immunity.

The trial court's holding overlooked the settled principle of Maryland law that "[a] worker may simultaneously be the employee of two employers." This court has frequently discussed the various factors or criteria for determining whether an employer-employee relationship existed at a particular time and whether the employee's actions were within the scope of that employment relationship. As to whether a particular action is within the scope of the employment relationship, numerous considerations are relevant: whether the action was in furtherance of the employer's business or was personal to the employee, whether it occurred during the period when the employee was on duty for the employer, whether it related to the employee's duties, whether the action was in a broad sense authorized by the employer, whether the employer had reason to expect that the type of action might occur, and whether it occurred in an authorized locality.

Turning to the present case, the evidence was more than sufficient to show an employment relationship between Anderson and the hotel during the attempted robbery and that Anderson was acting within the scope of that employment relationship, even assuming *arguendo* that he was also acting as a Baltimore City police officer. Anderson was hired as a security guard by the hotel, and he was paid by the hotel for the entire period of time in question. He was on duty as a hotel employee at the time of the incident. The hotel had the authority to discharge him as a hotel security guard.

The evidence also shows that providing security for the hotel and its guests was part of the hotel's business. Anderson himself testified that, when he was hired, he was told that one of his duties for the hotel was to prevent robberies, if he could. In addition, under Maryland common law, an innkeeper owes a duty of providing

security for the innkeeper's guests and their baggage and is liable if that duty is breached by the negligence of the innkeeper or the innkeeper's employees.

Furthermore, Anderson's testimony concerning the duties for which he was hired by the hotel, the manner of dress, the hotel management's direction that security guards' handguns be concealed, and the assignments given to Anderson and other security guards showed the type of control that is typical of an employer-employee relationship. Anderson testified that the hotel management person who hired and supervised the security guards "wanted us to work security assignments, such as to prevent robberies, and police the lot to prevent vehicle thefts, thefts from the vehicles, and wanted us to check on rooms because people would more or less get done with the room and pass the key on to a friend."

The hotel management may not have exercised control over all of the details of how a security guard would attempt to stop a robbery in progress, regardless of whether the security guard was an off-duty police officer or was a trained security guard who was not connected with a police department. Nevertheless, such control is not a prerequisite for an employer-employee relationship.

The evidence demonstrated that, during the attempted robbery, Anderson was employed by the hotel as a security guard and was acting within the scope of that employment. In preventing the completion of an armed robbery, Anderson was performing one of the specific duties for which he had been hired by the hotel management.

In other jurisdictions that apply normal principles of agency law under circumstances similar to those in the present case, courts regularly hold that the off-duty police officers and their private employers are liable for injuries resulting from the police officer's conduct in the scope of secondary private employment. For example, in [citation omitted], the plaintiff, while shopping at the defendant's department store, was arrested for alleged shoplifting by an off-duty police officer employed by the store as a security guard. In affirming a judgment in favor of the plaintiff and against the store, the Supreme Court of Arkansas stated<sup>25</sup>. . .

In essence the appellant contends that . . . an employer, by engaging an off-duty policeman as its agent, can immunize itself from liability for an unlawful arrest whenever the officer acts upon his own initiative. That contention, however, runs counter to the basic rule that a principal is liable for its agent's torts when committed in the course of his employment and for the principal's benefit. (p. 25)

Moreover, there is little rational basis for exempting off-duty police officers employed as security guards and their private employers from liability for the wrongful acts of the security guards but not exempting former police officers, retired police officers, trained security guards, and their employers from liability. Several cases applying traditional agency principles have made this precise point.

The Supreme Court of Tennessee in [citation omitted] pointed out that cases applying special rules and refusing to apply traditional agency principles to the private secondary employment of off-duty police officers, have "resulted in over-

insulating private employers who would otherwise be subject to liability if the security guard were not also employed by a municipal police department.” The court continued “moreover, eliminating vicarious liability for private employers who hire off-duty police officers encourages such employers to shift their risk of liability to the municipality solely because their employees are also employees of the local police department.” The Supreme Court of Tennessee concluded . . .

the private employer may take advantage of the benefits of hiring an off-duty officer without assuming any of the normal risks of liability associated with hiring non-officer employees. We simply do not believe that in many cases, the risk of loss is properly shifted from the private employer to the municipality or to an innocent plaintiff, and we therefore disagree with the public policy rationales advanced by many of our sister jurisdictions . . . on this issue.

In conclusion, numerous cases apply ordinary agency law principles to the employment of off-duty police officers by private businesses. This position, we believe, is most consistent with the prior holdings of this Court. In light of settled principles of Maryland agency law, the motions for summary judgment by Anderson and the hotel should have been denied.

In another off-duty police case, *White v. Revco Discount Drug Centers*,<sup>26</sup> the issue of whether private employers may be held vicariously liable for the torts committed by an off-duty police officer employed as a private security guard. In the typical case involving the doctrine of *respondeat superior*, an employer may be held liable for the torts committed by his or her employees while performing duties within the scope of employment. Although a private employer is certainly “not immune from liability for the negligent or wanton acts of an employee for the reason that the employee has official status as a police officer,” we recognize that issues stemming from the private employment of off-duty officers do not fit precisely within the typical framework of *respondeat superior*. This incongruity arises largely because the special status of peace officers in this state permits an off-duty officer to act within the scope of his or her public employment, even while otherwise performing duties for the private employer.

Other jurisdictions that have examined this issue are divided as to whether, and under what circumstances, a private employer may be held liable for the actions of an off-duty officer employed as a security guard. Irrespective of the ultimate conclusion reached, though, most jurisdictions, if not all, resolve this type of issue by looking to the “nature” of the act committed by the off-duty officer. A majority of jurisdictions find that because the officer’s actions giving rise to the tort were taken in the officer’s official capacity, the private employer cannot be held vicariously liable.

While various rationales are used to reach this conclusion, most jurisdictions reason that the officer’s actions were “official” because police officers have an ever-present public duty to preserve the peace and enforce the law or the officer’s action was taken to vindicate a public right or to benefit the public in general. In addition to these considerations, some courts have even declined to impose vicarious liability on employers based, in part, on public policy grounds, holding that employment of police officers as security guards is a deterrence of crime. Consequently, even

though jurisdictions may disagree as to the proper resolution of any given case, virtually all jurisdictions ultimately follow a nature-of-the-act (public function) approach in determining private employer liability for the actions of an off-duty officer employed as a security guard.

Upon due consideration, we decline to strictly analyze this issue according to the nature of the officer's actions (the public function test), as this approach does not closely comport with existing Tennessee law. When analyzed in terms of current Tennessee law and practice, the nature-of-the-act analysis has three primary shortcomings. First, this type of analysis fails to take into account the fact that many of the actions taken by officers to "vindicate public rights" may also be lawfully taken by private citizens to serve other interests. For example, police officers in Tennessee do not possess the exclusive authority to make arrests, as private citizens possess this power in many of the same circumstances as officers on official duty. In addition, private citizens employed as security guards in Tennessee are authorized by statute to undertake many actions for private interests that also appear to be consistent with a general vindication of public rights. For example, private security guards in this state are authorized to protect persons and/or property from criminal activities, including, but not limited to the following:

- Prevention and/or detection of intrusion, unauthorized entry, larceny, vandalism, abuse, fire or trespass on private property
- Prevention, observation, or detection of any unauthorized activity on private property
- Enforcement of rules, regulations, or local or state laws on private property
- Control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise on private property
- Street patrol service

As the state statute makes clear, private security guards are authorized to enforce local and state laws and to protect persons and property against general criminal activities, irrespective of whether the guard is a private citizen or an off-duty officer. Because many of these statutorily authorized activities could legitimately be viewed either as serving the interests of the private employer or as vindicating public rights, analysis focusing on the "nature" of the act may not provide a meaningful basis upon which to impose vicarious liability on the private employer.

Secondly, an approach that looks to the private nature of the officer's actions ignores the fact that police officers in Tennessee still possess the full panoply of "official" police power, even when they are off duty. Indeed, this benefit is one of the considerable advantages of employing off-duty officers as private security guards, and we are unwilling to restrict the powers of an off-duty officer solely to accommodate a test that examines the nature of the acts committed. For the same reasons that we reject a test denying vicarious liability when the off-duty officer performs "official actions," we must necessarily reject a rule that holds private employers liable in situations solely because the acts committed by the off-duty officer were "private" in nature.

Lastly, while most states decline to impose vicarious liability on private employers because police officers have a continuous duty to keep the peace and enforce the law, we can find no corresponding statute or rule of law in this state that places

a mandatory duty upon police officers to keep the peace when “off duty.” To the contrary, when officers are “off duty,” our statutes generally treat the officer as an ordinary private citizen and not as an agent or employee of the municipal police department under a general duty to keep the peace. Consequently, to the extent that a nature-of-the-act analysis focuses upon some continuous duty of police officers to keep the peace, that analysis is impractical in this state.

Of course, to say that officers do not continuously function in an official capacity is not to say that off-duty officers are prevented from assuming a duty to remedy a breach of the peace or that officers are incapable of being summoned to official duty by the municipality. Nevertheless, it is clear that officers are not under a general duty to enforce the law while “off duty,” and a blanket rule declaring that police officers are under a never-ending duty to keep the peace is contrary to existing Tennessee law. We, therefore, decline to use this rationale in determining the scope of private employer liability.

For these reasons, we conclude that a test examining the nature of the officer’s actions to resolve the question of employer liability is probably unworkable within the current framework. No doubt because of the practical difficulty in determining the proper nature of the actions committed by a security guard, this test has resulted in overinsulating private employers who would otherwise be subject to liability if the security guard were not also employed by a municipal police department. While a few states in minority jurisdictions have held employers liable under this approach, the vast majority of jurisdictions using this approach have held that private employers are not liable. We are unwilling to provide such practical immunity for private employers based only upon negligible distinctions concerning the “nature” of the officer’s conduct.

Several jurisdictions have also used public policy considerations to hold that private employers are not liable for the actions of off-duty officers employed as security guards. These jurisdictions generally reason that because deterrence of crime is furthered by employing police officers, private employers should be encouraged to hire such officers as security guards. In its most basic sense, therefore, these jurisdictions have decided to grant practical immunity to private employers in exchange for the perceived benefit derived from private employers hiring off-duty officers as security guards.

Although we agree that deterrence of crime may be rationally furthered by the hiring of off-duty officers, we also recognize that some level of deterrence is provided simply by hiring private security guards, irrespective of whether the guards are off-duty officers or private citizens. Moreover, eliminating vicarious liability for private employers who hire off-duty police officers encourages such employers to shift their risk of liability to the municipality solely because their employees are also employees of the local police department. As jurisdictions following a nature-of-the-act approach recognize, at least implicitly, the private employer would have been vicariously liable for the torts of its security guard except for the fact that the security guard is also a municipal police officer. As such, allowing liability based only upon the official status of the employee undermines the modern rationale of vicarious liability and is the result of “deliberate allocation of risk.”



After due consideration, we conclude that issues of employer liability for the acts of off-duty police officers are best resolved under traditional principles of agency law. Use of agency principles to resolve this complex issue has several advantages. To summarize agency principles in terms of application to the issue in this case, we conclude that private employers may be held vicariously liable for the acts of an off-duty police officer employed as a private security guard under any of the following circumstances:

- The action taken by the off-duty officer occurred within the scope of private employment.
- The action taken by the off-duty officer occurred outside of the regular scope of employment, if the action giving rise to the tort was taken in obedience to orders or directions of the employer and the harm proximately resulted from the order or direction.
- The action was taken by the officer with the consent or ratification of the private employer and with an intent to benefit the private employer.

Consistent with agency law, the private employer of an off-duty officer cannot generally be held vicariously liable for actions taken by the off-duty officer outside of the officer's regular scope of employment as a security guard. As such, when the officer is summoned to official duty by the municipality, or otherwise performs traditional police actions outside of the scope of his or her private employment, the private employer will not be generally liable. The private employer would be liable, however, for acts taken outside of the regular scope of private employment under the following two scenarios: the employer ordered or directed the action or the employer gave consent to the action, which was taken by the officer with a primary intent to benefit the employer. We also recognize that the municipality may also be vicariously liable—along with the private employer—for the actions taken by one of its off-duty police officers.

In yet another off-duty police case, *Melendez v. City of Los Angeles*,<sup>27</sup> a restaurant patron was shot in the back by the nonuniformed, off-duty police officers employed as security guards at the restaurant where shooting occurred. The plaintiff, Adan Melendez, was shot while attempting to obtain a refund for a ticket he had bought at an "underground" party that was broken up by police. He was one of many seeking refunds at the location where tickets to the concert had been sold. He was kicked by a security guard and then shot by another guard. His injuries are permanent and severe. Because the security guards were off-duty officers of the Los Angeles Police Department, an agency of the City of Los Angeles, he sued the restaurant owner and operator, the underground party organizer, Officers Burris and Oskierko, and the City of Los Angeles. The plaintiff's lawsuits were successful, and he obtained substantial dollar judgments. The appellate court reversed the judgment against the City.

The incident occurred at the Gala Restaurant. A table was set up at an entrance to the restaurant, facing a parking area. Customers approached the table to buy tickets. Two young women sold the tickets. Two persons were hired as security guards for the occasion. Their function was to protect the money collected. The guards were Thomas Burris and Stephen Oskierko. Each was a full-time officer of the Los Angeles Police Department (LAPD), and each was working this event while off-duty. They were either employed directly by the event organizer or by

Lawman Security. Instead of an LAPD uniform, each wore casual clothes and a blue nylon jacket on which the word "Security" was printed in large white letters, front and back. Neither had the permission of the City to work on this occasion as security guards. Each was armed with an LAPD-approved pistol, and each had his official badge attached to his belt. Respondents presented three theories of liability against the City: (1) *respondeat superior*, based on the tortious acts of Burris and Oskierko, (2) "direct" liability for failure of the City to adequately supervise these employees, and (3) a federal civil rights act claim (USC, Section 1983).

It has been, and remains, the rule that peace officers such as sworn personnel of the LAPD retain peace officer status and authority, both during and beyond regular duty hours; however, some caveats of this general rule are relevant. First, if a police officer is to work as a private security guard for a private employer, members of the public must have the full notice provided by the uniform that the person is acting as a peace officer. They are thus effectively warned to govern their activity accordingly. The principal employer has full control: it may allow its officers to work part time, or not, according to its policy. It may, for example, allow some to do so while declining permission to others who have a doubtful record in connection with excessive force. The exceptions prove the rule. Peace officers who work as private security guards pursuant to the conditions laid out in the statute have the authority and protection given to peace officers in their usual, public work. Otherwise, they do not.

As we have pointed out, neither Burris nor Oskierko was in uniform when Melendez was shot; neither had permission to do the off-duty work; and neither was authorized to work this unapproved assignment. Whatever these officers may have thought at the time, it follows that neither was acting as a peace officer when Melendez was shot. Since the officers were acting without official authority, there can be no *respondeat superior* basis for City liability.

The same circumstance defeats the respondents' second basis of liability: that the City failed to adequately supervise Burris and Oskierko. Respondents focus on citizen complaints against Burris and on expert opinion testimony that the department was not sufficiently sensitive to complaints of excessive force. The City argues that the complaints in hand were not sufficient to alert it to any dangerous propensity by either officer. We need not and do not decide that issue. As we have discussed, each officer was acting on his own without City approval. The law enforcement agency has the authority to allow or not allow a particular officer to work a particular private security guard assignment. If a city in the situation of the City in this case could be held liable, the protection of the statute would be entirely removed and its condition meaningless.

Respondents' final theory of liability against the City is that Burris and Oskierko violated their civil rights (Section 1983). Respondents count on evidence that Burris and Oskierko used excessive force in the encounter and that there is a pattern of such problems when the law enforcement agency fails to deal properly with problems of excessive force, as the LAPD did in this case.

Not every act by a government agent, violating a federal right, triggers liability. The government may not be held liable solely because it employs an errant officer; "[i]nstead, it is when execution of a government policy or custom, whether made

by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983.”

The injury suffered by respondents did not flow from any policy or custom. Nor was there a state actor whose actions triggered the statute. Neither Burris nor Oskierko was acting as a peace officer or in any other public capacity in connection with the events at the Gala Restaurant. Nor are any City employees responsible, since none approved of Burris’ or Oskierko’s employment at the restaurant, much less of their use of force.

There is, in sum, no basis to hold the City liable under Section 1983 or under any other theory respondents have presented.

## **Suggested Guidelines in Light of Liability and Contemporary Circumstances**

As was illustrated by the cases and by the legal principles developed above, the liability implications derived from off-duty police employment are both diverse and complicated. While this subject cannot be definitively resolved in this article, certain suggested guidelines may prove helpful. As an initial suggestion, since different states use different tests to assess liability, get to know the applicable test in your state. The answer to this question should trigger policy and operational guidelines as outlined below.

### **Public Function Test: Issues and Implications**

If your state uses the public function test, it is advisable that you take a hard look at the use of secondary employment. While it may not be advisable to absolutely prohibit secondary employment, it is important to understand that the liability exposures inherent in this test are very difficult to effectively limit. This is so because the mere application of an arrest by off-duty police may trigger this liability exposure. Indeed, it may be impossible or at least ill advised to seek to prevent off-duty police from performing acts that may be construed as public functions. This would not foster public safety; it may be construed as bad public policy; and it could be terrible for public relations. In short, preventing the “police from being the police” while off-duty is a difficult and problematic policy to pursue.

While the municipal government has immunity protections—if the arrest or other action was objectively reasonable—this is still a rather broad potential liability for government, particularly smaller towns and villages. As illustrated in *Martin v. Hughes*, even when the police officer may not be at fault, defeating the claim before trial is not always possible. In any case, it costs money and resources to defend the claim. One way to limit the exposure is to remove the department from any direct contact with the private employer. This means avoiding the use of Department Contract and the Union Brokerage models and prohibiting the wearing of police uniforms, display of badges, and other police equipment during secondary employment. This should be articulated in agency policies and manifested in the larger custom and practice. Of course, these restrictions will not guarantee a liability free environment; they may, nonetheless, provide for reduced liability exposure.

## Scope of Employment Test: Issues and Implications

Effecting liability exposure for states that use this test is less problematic than the public function test. This is so because the department can seek to “contract away” liability by framing any secondary employment as being done with the private entity as the “employer.” As illustrated in *Lovelace v. Anderson*, the department maintained a series of specific restrictions designed to limit its liability. Significantly, agency policy required that in any secondary employment, the police officer acts as a private citizen, without exercising powers and duties of a police officer. In addition, the police officer was not to use police credentials or equipment. For example, Baltimore Police policy language required a police officer engaging in secondary employment to “obtain a handgun permit from the [state police], when required by secondary employers to be armed as a condition of your employment” (*Lovelace v. Anderson*, *Supra*). In this case, officers armed under the authority of the secondary employer has been shown to be very effective. The policy language should also specifically provide that any and all secondary employment can be cancelled by department directive, pursuant to public safety or emergency purposes. Of course, this cancellation provision must be reconciled (and often bargained for) with union bargaining agreements.

While it is generally advisable to maintain the Officer Contract Model for all secondary employment, if this cannot be accomplished, it is advisable to provide various provisions within all contracts with private entities. These agreements should require the private firm to secure appropriate insurance coverage, naming the municipality as an additional insured. The contract should have indemnification and hold harmless provisions in favor of the city, with the private firm assuming any and all liability for damages sustained from the actions of an off-duty officer during secondary employment for the private entity. The contract should also stipulate that the private firm is the “employer” for both liability and workers’ compensation purposes. Finally, the parties should affirmatively agree that the policing agency has the right to cancel any and all secondary employment or adjust personnel schedules, in the event of a public safety threat or emergency. This provision should specifically preclude any and all liability related to consequential or other damages related to secondary employment.

## Future Observations

With the seemingly constant threat of terrorism and its related public safety implications, it seems safe to assert that the widespread use of secondary employment of police officers will be greatly curtailed. Consider that many municipalities are already stretched, both financially and from personnel constraints. At the same time, many cities have had to step up the presence of police officers when terrorist threats are discerned or communicated. Each time this occurs, police decision makers need to assess how many officers are available from current on-duty personnel—and how to deploy the personnel. With the uncertainties related to terrorism, this decision process is sure to be a common occurrence in the years ahead. For purposes of this article, however, the question is this: What effect will this dynamic have on secondary employment?

My answer is it will greatly affect the status quo. Police administrators will be forced to implement alternative scheduling, which may include canceling days off, working 12-hour schedules or extended overtime. These scheduling variations will have the net effect of canceling secondary employment. Even if the intent or the directive is unrelated to secondary employment, the natural consequence of alternative scheduling is to impact secondary employment. How often this occurs is the only real question. If this occurs too frequently, or if a widespread crisis occurs (e.g., World Trade Towers and Katrina), then private firms will move away from hiring police officers—since they will not be there when they need them most. Stated another way, private firms must be able to count on secondary police employment. If threats of terrorism (or successful events) and/or natural disasters occur, the result will be the imposition of alternative police scheduling. When these occur, police personnel will not be able to serve their part-time employer. In police parlance, the police will have to tend to the “real job,” and the secondary employers will have to fend for themselves. How often this occurs and the intensity of the consequences will determine the ongoing viability of current police secondary employment practices.

As we prepare for this eventuality, I suggest that we consider increased, if not widespread, use of “special police” as a substitute for “off-duty” police. The use of “special police” would allow private employers (and even municipalities) to expand the use of security personnel empowered with “police powers.” These individuals vested with “special police” designation would be better able to provide security services to a market that may not be able to afford or engage police officers.

In closing, rising crime rates helped create a market for police secondary employment. Paradoxically, the increased threat of terrorism will limit, or even negate, the market for police secondary employment. The market need for security services, however, will not disappear. Indeed, the market will increase, probably substantially. What will change is who will serve this market. I predict that police officers will be too busy with their primary responsibilities to tend to secondary employment. It is time to consider the implications of this assertion. I hope this article triggers such consideration.

## Endnotes

<sup>1</sup> For an excellent discussion on this issue, please see Wadman, R. C., & Allison, W. T. (2004). *To protect and to serve: A history of police in America*. Upper Saddle River, NJ: Pearson/Prentice Hall.

<sup>2</sup> Reiss, A. J. (1988, December). *Private employment of public police*. Washington, DC: National Institute of Justice, Office of Justice Programs.

<sup>3</sup> Reiss op. cit. at 2.

<sup>4</sup> Reiss op. cit. at 1.

<sup>5</sup> Reiss op. cit. at 2.

<sup>6</sup> Reiss op. cit. at 3.

- <sup>7</sup> Inbau, F. E., Farber, B. J., & Arnold, D. W. (1996). *Protective security law*. Burlington, MA: Butterworth-Heinemann; and Pastor, J. F. (2003). *The privatization of police in America: An analysis and case study*. Jefferson, NC: McFarland and Company.
- <sup>8</sup> Pastor, J. F. (2006). *Security law and methods*. Burlington, MA: Butterworth-Heinemann; and Nemeth, C. (2005). *Private security and the law*. Burlington, MA: Butterworth-Heinemann.
- <sup>9</sup> Pastor, op. cit. at 567; and Nemeth op. cit. at 89-94.
- <sup>10</sup> *Morgan v. City of Alvin*, 175 S.W.3d 408 (Texas, 1st Dist., 2004).
- <sup>11</sup> Closen, M. L. (1984). *Agency, employment, and partnership law: Contemporary cases and materials*. St. Paul, MN: Mason Publishing Company; Pastor, op. cit. at 299.
- <sup>12</sup> *Knight v. City Streets, LLC*, 167 S.W.3d 580 (2005).
- <sup>13</sup> See *Black's Law Dictionary* (5th ed.). (1979). St. Paul, MN: West Publishing Company.
- <sup>14</sup> Pastor, op. cit. at 300.
- <sup>15</sup> Closen, op cit. at 40.
- <sup>16</sup> *Little v. Omega Meats*, 615 S.E.2d 45 (2005).
- <sup>17</sup> See for example, *K. M. v. Publix Supermarkets, Inc.*, 895 So. 2d 1114 (Florida, 2005).
- <sup>18</sup> *Adorno v. Correctional Services Corporation*, 312 F. Supp. 2d 505 (2004).
- <sup>19</sup> Clifford, M. (2004). *Identifying and exploring security essentials*. Upper Saddle River, NJ: Prentice Hall.
- <sup>20</sup> Holtz, L. E. (2001). *Contemporary criminal procedure*. Longwood, FL: Gould Publications.
- <sup>21</sup> Holtz, op. cit. at 831-832.
- <sup>22</sup> *Turk v. Iowa West Racing Association*, 690 N.W.2d 695 (Iowa, 2004).
- <sup>23</sup> *Martin v. Hughes*, 2005 WL 3201336 (Texas, 2005).
- <sup>24</sup> *Lovelace v. Anderson*, 785 A.2d 726 (Maryland, 2001).
- <sup>25</sup> Quoted directly from court decision in *Lovelace v. Anderson*, 785 A.2d 726 (Maryland, 2001).
- <sup>26</sup> *White v. Revco Discount Drug Centers*, 33 S.W.3d 713 (S.C. Tenn., 2000).
- <sup>27</sup> *Melendez v. City of Los Angeles*, 63 Cal. App. 4th 1 (California, 2nd Dist., 1998).

**James F. Pastor**, PhD, JD, is an assistant professor in public safety at Calumet College of St. Joseph; the president of SecureLaw, Ltd., a public safety and security consulting firm; and author of two books: *The Privatization of Police in America* and *Security Law & Methods*.

In his law practice, Dr. Pastor established a public safety niche, representing four security guard firms and two police unions and served as legal counsel/operational auditor for SecurityLink.

Dr. Pastor started his career with the Chicago Police Department as a patrol officer and tactical officer in the Gang Crime Enforcement Unit and later became an assistant department advocate, representing the department in internal disciplinary matters.

Dr. Pastor has a PhD in public policy analysis from the University of Illinois at Chicago; JD from John Marshall Law School; MA in criminal justice from the University of Illinois at Chicago, where his thesis was entitled *A Critical Analysis of Terrorism*; and a BS in law enforcement administration and sociology from Western Illinois University.

# Convicting the Innocent

**Elliot B. Spector, Esquire, Public Safety/Criminal Justice Program,  
University of Connecticut Center for Continuing Studies**

As I am writing this article, the federal government is being sued for allegedly participating in the framing of four innocent<sup>1</sup> members of the mafia for a murder that occurred in 1965. Three were sentenced to death but ultimately had their sentences commuted to life imprisonment, the sentence imposed on the other defendant. Two died in prison, and the other two spent most of their adult lives in prison. The trial began in Boston in the second week of November 2006 with plaintiffs claiming that the FBI knew of the planned murder weeks before it occurred and were motivated to frame them to promote a high-level informant program initiated by then U.S. Attorney General Robert Kennedy and FBI Director J. Edgar Hoover. Plaintiffs are demanding \$100 million.

The apparent wrongful convictions of these members of the mafia are an alleged extreme example of law enforcement misconduct. Although many plaintiff attorneys would like to convince juries that their clients were illegally prosecuted due to such misconduct, the reality is that most misidentification/innocent liability cases involve honest mistakes and unfortunate circumstances. All too often, the stories we read or hear about in the media involving innocent citizens wrongfully convicted and incarcerated involve victim/witnesses who at the time are sure of their identifications and law enforcement officials who act on probable cause and the sincere belief that the arrestee is the one who committed the crime. In fact, to render findings of guilt, juries must believe beyond a reasonable doubt that the defendants have committed the crimes, and many times appellate courts uphold the verdicts rendered against these factually innocent parties.

There are a number of common factors that result in erroneous convictions:

- Credible victims and/or witnesses mistakenly pick such persons out of in-person show-ups, line-ups, or photo arrays.
- Conscientious police officers focus on the primary suspect(s) and concentrate their efforts on finding and presenting evidence aimed at developing probable cause to arrest suspects they honestly believe have committed the crime(s). Of course, there are some lazy and even incompetent officers who barely collect enough evidence to establish probable cause but choose to conclude their investigations rather than take the effort to seek out additional evidence that may be exculpatory.
- Prosecutors and judges rely, as the law requires, on the four corners of the warrant and frequently do not question the apparent probable cause.
- Although the mantra of our criminal justice system is “innocent until proven guilty,” the reality is that when an officer shows a victim or witness a live potential suspect or photo, the victim/witness tends to think (especially one-on-one) that the suspect is involved in the crime. More significantly, after



identifying the suspect during the investigation, the victim/witness is likely going to perform an even more certain identification in court.

- The jury will, in most cases, believe the innocent victim/witness and not the defendant, who it is assumed has committed the crime and has the motivation to lie to stay out of jail.
- The most common factor in these cases is the later appearance of evidence that at the time of arrest or trial was not known to the police, prosecutors, or even the criminal defense team.

This article will discuss the theories of liability proposed by plaintiffs and the defenses raised by defendants. We will also explore the standards of liability, some steps that may be taken to reduce the risk of convicting an innocent person, and all the attendant liability costs and burdens.

## Inadequate Descriptions and Misidentifications

It is common knowledge that persons witnessing an event will often describe the incident differently and provide different descriptions than the persons involved. This is especially true during an emotional and rapidly evolving crime. Not only do they see things differently, but their recollections and ability to communicate what they saw or heard differs dramatically. In many cases in which there is little physical evidence or video, the recollection of victims and witnesses is the best evidence investigators have. As noted in *Brown v. City of Oneonta*, a description of a perpetrator received by the police will often include only general attributes such as race, age and sex. “. . . They can never be sure of the accuracy of the victim’s description or whether the person so described has somehow subsequently altered his or her appearance, perhaps by shedding tell-tale clothing” (at 775-776).

Traditionally, courts are very forgiving of mistaken identifications by victim/witnesses and give broad latitude to officers who rely on such identifications. For example, in *Tangwall v. Stuckey* (1998), the victim, Smith, was sexually assaulted by a man she described as a white male, in his 20s, who was approximately 5’11” and stocky with blond curly hair and blue eyes. Two months after the attack, she observed a man she recognized as her attacker walk into the restaurant where she worked as a waitress. The man, Tangwall, was 43 years old, approximately 6’ tall and weighed 220 pounds. He had straight medium brown hair and green eyes. Based on her positive identification, he was arrested. Approximately 18 months later, Tangwall was excluded as the assailant based on DNA analysis. He sued, and the district court denied the arresting officer’s motion for summary judgment, finding issues of disputed fact. The appellate court found the disputed issues to be immaterial and determined that the officers’ were entitled to qualified immunity. To begin with, the court found that the victim’s positive identification supported probable cause. The fact that her physical description at the time of the crime differed from the plaintiff’s actual description did not negate probable cause. “Indeed, it is a common experience that after encountering strangers, an individual may not be able to meaningfully describe them to others. Yet, the faces may be etched in his or her memory, and upon seeing them again there is an immediate recognition” (at 517).

The second disputed issue related to the victim's failure to identify the attacker in the presence of the arresting detective. The court applied the "collective knowledge doctrine": "effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information" (at 517).

Finally, the plaintiff attacked the detective's credibility based on a discrepancy between the detective's and the victim's testimony regarding whether they spoke on the night of the plaintiff's arrest. Because it is undisputed that the identification was determinative of the reasonableness of the detective's decision to arrest the plaintiff, an attack on his credibility was inconsequential. This case is typical of many cases, resulting in erroneous identifications and convictions and ultimately lawsuits. Recognizing these problems, the federal government took steps to reduce the number of misidentification arrests and convictions.

The National Institute of Justice (NIJ) published a report titled, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*. In 1998, Attorney General Janet Reno directed NIJ to address the pitfalls in investigations leading to wrongful convictions. Realizing that a common denominator to such cases was eyewitness testimony, NIJ put together a technical working group to design a guide for law enforcement on eyewitness evidence. The goals and objectives of the study were as follows:

- Increase the amount of information elicited from witnesses through improved interview techniques.
- Heighten the validity/accuracy of eyewitness evidence as police, prosecutors, and other criminal justice professionals work with witnesses to identify suspects.
- Improve the criminal justice system's ability to evaluate the strength and accuracy of eyewitness evidence.

Some key activities to achieve these goals include the following:

- Dispatchers must obtain and disseminate complete and accurate information.
- Officers shall obtain, preserve, document, and use the maximum amount of accurate information from the scene, including information from witnesses.
- Those preparing mug books/photo arrays shall compose them in a way to ensure they are *not* suggestive.
- Composites shall be produced in a manner to ensure that the witness description is reasonably depicted.
- Witnesses must be properly instructed prior to the identification procedure.
- Identification procedures must be accurately documented.
- Procedures should be followed for the preparation of the witness interview from pre-interview through follow up with the witness.
- Proper procedures should be followed for show-ups, lineups, and photo lineups.

The *Eyewitness Evidence Guide* provides detailed recommendations to law enforcement officers on all of the above activities and more. In addition, a training manual on this subject has also been produced by NIJ.

The impact of this study was recently felt in Connecticut when the state Supreme Court adopted, as a matter of law, one of the *Guide's* procedures. In *State v. Ledbetter* (2005), one of several victims during nighttime assault/robberies participated in the following identification procedure. The victim, Leonard, described his assailants in their vehicle to Officer Droun of the East Hartford Police Department. After broadcasting the description, they heard that five individuals in a vehicle matching the description had been stopped by other East Hartford officers. Droun drove Leonard to where the vehicle had been stopped. Five black males that had occupied the vehicle were lined up in front of the police cruiser with officers on either side of them, and the light from the headlights of several police cruisers shining on them. Droun stopped his cruiser approximately 50 to 100 feet from the suspects with his headlights shining on them. After verifying that Leonard could see the suspects clearly, Leonard identified two of the suspects and tentatively identified a third but could not be 100% positive.

The court determined that the street show up was not unnecessarily suggestive. Although the police had no reason to suspect that Leonard would be unavailable for future identification, the suspects were not placed under arrest, and without probable cause to arrest the suspects, there was no practical method to arrange for a series of lineups involving each of the individuals. There was also a real need to determine whether they had apprehended the correct individuals in a timely manner. At the time of the identification, the police had received three telephone calls involving four or five black males in the general vicinity. If Leonard had not identified any of the occupants, the police could have continued their search for the perpetrators. Leonard viewed the suspects within approximately 20 minutes of being attacked while his recollection of his assailants was fresh in his mind. Finally, there was nothing unnecessarily suggestive about the identification procedure itself. Officer Droun told Leonard to take his time, take a look, and be sure.

The court also found that the identification procedure was reliable. Even though the attack happened at night, it happened in a well-lit area. Also, the victim had an opportunity to observe his assailants' faces as they approached him and as he struggled with them from a very close range. Although the struggle occurred over a matter of seconds, the man looked at and focused on their faces. His level of certainty in the identification was exceedingly high, and the procedure occurred within a short time of the robbery. The factors weighing against reliability included the fact that Leonard had been awake for approximately 18 hours and had 3 to 4½ ounces of alcohol earlier that evening. Also, his initial description was not particularly specific. These factors, however, did not outweigh the factors demonstrating that the identification was reliable.

The court refused to modify the identification process pursuant to the United States or Connecticut Constitutions. It did, however, exercise its supervisory power and required jury instructions consistent with the U.S. Department of Justice, National Institute of Justice (1999) guide, *Eyewitness Evidence – A Guide for Law Enforcement*, which suggests that witnesses should be instructed "that the person who committed the crime may or may not be present in the group of individuals." Where police fail to provide such instruction, the court directed trial courts to incorporate an instruction to charge the jury, warning them of the risk of misidentification. Based on this ruling, the Chief State's Attorney's Office provided instructions for such an admonishment to witnesses during identification procedures.

## Claim of Innocence Is Insufficient to Support a Liability Claim

It is unknown how many innocent persons are in prison or have served prison terms because of erroneous convictions. Such individuals may never be able to successfully sue to recover damages for loss of liberty for other injuries suffered due to their convictions. In order to succeed in a malicious prosecution claims, plaintiffs have to prove that they received a favorable disposition in their criminal prosecution. In most states, this requires a dismissal, an acquittal, or some equivalent favorable disposition. A disposition that leads to a dismissal but results from the participation in some pretrial program or bargained for disposition with the prosecutor may not be deemed a favorable disposition sufficient to support a malicious prosecution claim. In addition, probable cause is an absolute defense to false arrest and malicious prosecution. As will be discussed later, even if there is a lack of probable cause, officers may still escape liability by proving arguable probable cause.

The United States Supreme Court ruled in *Heck v. Humphrey* (1994) that a Section 1983 action may not be brought in a false arrest and malicious prosecution case unless the plaintiff first establishes that the conviction or sentence has been reversed on appeal, expunged, declared invalid by a state tribunal with the power to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus.<sup>2</sup>

For example, in *Wilson v. Lawrence County, Mo.* (1998), the plaintiff, a mentally retarded man, was arrested for the murder of an elderly woman. He submitted to an Alford plea and served 9 years of a life sentence. The governor of Missouri granted him a pardon as a result of an intensive investigation in which it was determined that the plaintiff was innocent. The district court granted the defendant's motion for summary judgment, finding that under Missouri law, a person pardoned remains guilty in the eyes of the Missouri court and therefore under *Heck v. Humphrey*, the plaintiff's claim could not survive. The appellate court disagreed holding that federal not state law controls, and that the pardon was an executive order that expunged the conviction thereby fulfilling the *Heck* requirement.

## Arguable Probable Cause Will Support a Qualified Immunity Defense

A police officer who secures an arrest warrant without probable cause cannot assert an absolute immunity defense; however, such officers will be entitled to qualified immunity if reasonable officers would hold different opinions as to whether or not an objectively reasonable officer believed that probable cause could have existed for the arrest (*Malley v. Briggs*, 1986). The Supreme Court recently extended qualified immunity to cases in which officers may make an arrest for an offense that doesn't exist or charge a suspect with the wrong crime, as long as the objective facts are sufficient to support arguable probable cause for an offense under which the individual could have been arrested. In *Devenpeck v. Alford* (2004), Sergeant Devenpeck arrested Alford for tape recording their conversation during a motor vehicle stop.

This type of activity did not support probable cause for an arrest for "invasion of privacy," however, because Alford's other actions and equipment in his vehicle

could have arguably amounted to probable cause for “impersonating a police officer.” The Supreme Court found that the sergeant should be entitled to qualified immunity.

The reasoning in *Devenpeck* is equally applicable in a misidentification case. If an officer may be entitled to qualified immunity if he or she charges a suspect for the wrong crime or an offense that doesn’t exist, then he or she certainly should be entitled to qualified immunity for arresting the wrong person, if arguable probable cause exists for such an arrest, even if it later turns out that the arrestee was the wrong person. This is especially true when the arrest is made with a warrant.

An arrest made with a warrant is presumptively lawful, and a plaintiff bringing a false arrest or malicious prosecution claim bears a heavy burden to prove that such an arrest was unconstitutional. The public policy issue supporting arrests with warrants is stated in *Porterfield v. Lott* (1998) in which the plaintiff’s conviction on money laundering charges was reversed. He sued the arresting officers for false arrest and malicious prosecution. The court overturned the district court’s denial of summary judgment, finding that a false arrest claim cannot be made when the arrest is made pursuant to a facially valid warrant. The officers argued that their objective reasonableness was confirmed by the magistrate who found probable cause, the prosecutor who elected to prosecute, the grand jury that found probable cause, the jury that found guilt beyond a reasonable doubt, and the state trial judge who denied the plaintiff’s motion for judgment of acquittal. The court found ample probable cause to support the motion for summary judgment.

The significant deference given to the judgment of government officials acting in good faith is particularly appropriate in cases involving law enforcement officials investigating serious crimes. The police must have the ability to move swiftly to solve crimes or apprehend dangerous criminals before evidence is destroyed or becomes stale, witnesses die or vanish, or a suspect has a chance to escape or repeat the crime. The ability of police officers to protect the public can be severely hampered . . . if their every decision is subject to second-guessing in a lawsuit.

Securing a warrant will not always protect police officers, especially when police officers fabricate information or intentionally or recklessly leave out material exculpatory information, which would have effected a determination of probable cause. In *Lee v. Gregory* (2004), defendant, FBI Agent Gregory, was assigned to speak to Julian Christopher Lee, plaintiff, the brother of a fugitive, (Robert Q. Lee), who had a warrant issued out of New Jersey. When Gregory told Julian over the phone that the law did not require him to speak with Gregory, Julian angrily told Gregory to stop harassing him, cursed, and hung up. Gregory had the Dade County Sheriff’s Department fax a copy of a warrant for Christopher Lee described as a black male, 6 feet 1 inch tall and 200 pounds with a Florida address and driver’s license. The date of birth and social security number on the warrant were the same as Julian’s. The FBI file contained information indicating that Robert was living in Alabama under the name Christopher Lee and was using Julian’s birth date and social security number. Gregory passed the warrant on to the San Diego Sheriff’s Department, which executed the warrant on Julian, who was 6 feet 3 inches tall and 270 pounds—even though he stated that he had never been to Florida and was not the man named in the warrant. Four days later, after prompting by Julian’s

attorney, Gregory sent photographs of Robert to Florida. Officials confirmed that they matched Christopher Lee.

Julian claimed that Gregory knew he was not the man sought by the Florida warrant but arrested him in order to obtain information about Robert. Gregory moved for summary judgment, claiming he had probable cause to arrest Julian and that no clearly established law prohibited him from executing a facially valid warrant.

The court ruled that Gregory was correct in claiming that ulterior motives cannot invalidate police conduct that is justified by probable cause; however, knowingly arresting the wrong man pursuant to a facially valid warrant issued for someone else violates the 4th Amendment. Qualified immunity will not protect an officer in such a situation even if there is no analogous case law. Some wrongs are self-evident, and every officer knows, or should know, that he or she needs a warrant that correctly identifies the arrestee, or probable cause, to arrest a particular individual.

In *Hinchman v. Moore* (2002), the plaintiff's best friend stayed with her throughout an investigation of the murder of the friend's husband. After the friend admitted to killing her husband, police went to the plaintiff's home to speak to her. After she refused, the officers were advised by a detective that there was an investigative subpoena on the way and they should return to the plaintiff's apartment. Upon observing the plaintiff leaving her apartment and getting in her car, they asked her to wait for the investigative subpoena. She refused and in backing up, one of the officers claimed he was struck by the vehicle. The plaintiff was charged with felonious assault. She claimed that she never struck the officer and was acquitted by a jury.

In the false arrest action, the district judge granted the defendant's motion for summary judgment because a state judge at a preliminary hearing had determined probable cause, and the record indicates that probable cause existed.

Collateral estoppel applies when the following criteria is present:

- An identity of parties
- A valid final judgment
- The same issues actually litigated and necessarily determined in the first proceeding
- The party against whom the doctrine is asserted given a full and fair opportunity to litigate the issue

The appellate court found that a finding of probable cause in a prior criminal proceeding did not bar the plaintiff's subsequent civil action for malicious prosecution in which the claim was based on the officers supplying false information to establish probable cause. The key factor is that the claim here is more accurately characterized as a challenge to the integrity of the evidence than to its sufficiency; therefore, the identity of the issues is lacking.

The court concluded that at the summary judgment stage, they were required to accept the plaintiff's factual assertions, and falsifying facts to establish probable cause is patently unconstitutional.

In the context of an innocent person being mistakenly identified as the culprit, officers will normally be entitled to qualified immunity. In such cases, officers dealing with credible witnesses or victims will generally be found to have arguable probable cause. If an officer makes an arrest based on what he or she believes is an honest complaint from a private citizen and it later turns out that the complaint was unfounded, the officer will more than likely be entitled to qualified immunity. This is because "arguable probable cause exists when a reasonable police officer in the same circumstances and possessing the same knowledge as the officer in question could have reasonably believed that probable cause existed in the light of well established law" (*Gold v. City of Miami*, 1997). In addition, "an arresting officer advised of a crime by a person who claims to be the victim, and who has signed a complaint for information charging someone with the crime, has probable cause to effect an arrest absent circumstances that raise doubts as to the victim's veracity" (*Singer v. Fulton County Sheriff*, 1995; *McKinney v. George*, 1984, similar conclusion).

### **Claims That Police Performed Inadequate Investigation**

It is commonly claimed that police negligently conducted the investigation. Such claims rarely will survive summary judgment. First of all, negligence will not support a constitutional claim, and once officers develop sufficient evidence amounting to probable cause, they are under no legal obligation to conduct further investigation. Claims of innocence and claims that a witness or some other evidence will demonstrate a suspect's innocence do not generally have to be sought out by officers already armed with probable cause. The following cases illustrate these points.

In *Panetta v. Crowley* (2006), a state trooper received a complaint from two well-credentialed horse experts detailing the physical condition of a horse, which they claimed was due to abuse and neglect of the plaintiff. After personally observing the poor condition of the horse, the trooper arrested the plaintiff for animal cruelty. The plaintiff complained that the trooper ignored the horse's age, which might have explained some of its symptoms. Furthermore, the trooper ignored multiple statements that the horse was under veterinary care and refused to speak on the phone with the veterinarian, which would have cleared her of wrongdoing.

The court explained that the detailed complaints from apparently credible and knowledgeable witnesses plus the officer's own observations, which confirmed the complaint, were sufficient to support probable cause. Once an officer has probable cause, he or she is not required to continue investigating, nor was the officer required to accept explanations of innocence or speak to the veterinarian after the plaintiff was taken into custody.

Quoting prior case law, "We consider only information [the officer] relied on in concluding that there was probable cause to arrest . . . not every theoretically plausible piece of exculpatory evidence or claim of innocence that might have existed. . . . It is therefore of no consequence that a more thorough or more probing

investigation might have cast doubt upon the situation” (*Panetta v. Growley*, 2006, p. 398, citing *United States v. Manley*, 1980).

In *Crockett v. Cumberland College* (2003), two male and two female students were in a college dormitory room dancing, tickling, and slap boxing. After a third male entered the room, one of the girls was held down and raped during which a couple of other male students entered the room. Two of the male students were arrested for complicity in first-degree rape. The investigator and county attorney interviewed the females and reviewed reports from Cumberland officials prior to submitting an arrest warrant application. The boys were not indicted and brought suit, claiming lack of probable cause.

The court found that there was sufficient probable cause to make the arrest and that once probable cause is established, an officer is under no obligation to continue an investigation or look for additional evidence, which may exculpate the accused. Officers are also under no obligation to give any credence to a suspect’s story, nor should a plausible explanation require them to forego an arrest pending further investigation. Reliance on the statements of the victim and an eyewitness may alone be sufficient to establish probable cause. Absent evidence that the officers knowingly or in reckless disregard of the truth, made material misstatements, officers would be entitled to qualified immunity.

In *Pasiewicz v. Lake County Forest Preserve District* (2001), two women riding horses in a forest preserve saw a naked man standing in the middle of a trail. They reported their observations to rangers giving similar descriptions. The next day, one of the women saw the person she believed had been in the woods sitting in a car in a school parking lot. She saw him again the following day and reported this to the officers who made a warrantless arrest without inquiring as to his whereabouts on the day of the viewing.

In his objection to the motion for summary judgment, the plaintiff argued, at length, his innocence and airtight alibi. The court found this to be essentially irrelevant since when officers obtain information from an eyewitness or a victim establishing the element of a crime, the information is almost always sufficient to provide probable cause absent evidence that the information or person providing it is not credible. When probable cause has been gained from a reasonable victim or eyewitness, there is no constitutional duty to investigate further. The court did agree with the plaintiff’s arguments that the officers “should” have obtained a warrant; however, they did not have to. Finally, the plaintiff claimed that the arrest was unlawful because the officers violated state statute by making the arrest outside their jurisdiction. The court rejected this argument finding that a violation of a state statute is not a *per se* violation of the federal Constitution.

The U.S Supreme Court set the tone for the above cases in *Baker v. McCollan* (1979). In *Baker*, a brother used his sibling’s identification during arrest processing. When the accused failed to appear in court, a re-arrest warrant was issued. Just before Christmas, the innocent brother was stopped for a motor vehicle violation and arrested on the warrant. Despite his protestations of innocence, he remained in jail for several days. The Court stated, . . .



We do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense of lack of requisite intent. . . . Nor is the official charged with maintaining custody of the accused named in the warrant required by the Constitution to perform an error-free investigation of such a claim. (at 145-146)

These cases recognize that it is an officer's responsibility to investigate facts sufficient to determine probable cause. It is not the officer's responsibility to determine guilt or innocence.

It would be unreasonable and impractical to require that every innocent explanation for activity that suggests criminal behavior to be proved wrong, or even contradicted, before an arrest warrant could be issued with impunity. . . . Once officers possess facts sufficient to establish probable cause, they are neither required nor allowed to sit as prosecutor, judge, or jury. Their function is to apprehend those suspected of wrongdoing, and not to finally determine guilt through a weighing of evidence. (*Krause v. Bennett*, 1989, p. 372)

"If reasonable grounds to arrest exist, probable cause is established and there is no further duty to investigate" (*Franco-de Jerez v. Burgos*, 1989, p. 1042).

These standards were applied in *Panfil v. City of Chicago* (2002) in which Daniel Panfil was mistakenly arrested on December 24 on a warrant issued for his identical twin brother, Dale. Despite his repeated protests to the arresting officer, jail personnel, and a magistrate, he was not released until December 30. The court ruled that the 4th Amendment is not violated by an arrest based on probable cause even if the wrong person is arrested. Where an arrest is made on a warrant, it is constitutional when the officers have probable cause and reason to believe the person arrested is the person sought. In this case, the plaintiff matched every physical characteristic of the individual named in the warrant except for slightly different first names. Because suspects often use an alias, it was reasonable for the officer to believe that the person named in the warrant, was in fact, the plaintiff.

If an officer executing an arrest warrant, must do so at peril of damage liability under Section 1983, if there is any discrepancy between the description in the warrant and the appearance of the person to be arrested, many a criminal will slip away while the officer anxiously compares the description in the warrant with the appearance of the person named in it, and radios back any discrepancies to his headquarters for instructions. (p. 532)

Claims that are based on a continued detention of individuals after they have been arrested on a valid warrant are governed by the due process clause. The plaintiff claimed that he was deprived of his due process because his fingerprints were not compared with his brother's. Jailing a person for a period of time over his vigorous protests that he is the wrong person, without investigating or bringing him before a magistrate can raise serious constitutional questions; however, in this case, the plaintiff was brought before a magistrate and the jail personnel, with the public defender's office, and an investigation was conducted, which proved his innocence.

## Exculpatory Evidence Issues

Because the law so strongly favors defendants in misidentification cases, plaintiffs typically claim that officers failed to include in their warrants and failed to provide prosecutors with material exculpatory evidence. In order to ensure criminal defendants their right to a fair trial under the Due Process Clause of the 14th Amendment, The U.S. Supreme Court held in *Brady v. Maryland* (1963) that, “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution” (at 87).

The duty to disclose exculpatory evidence has been extended by case law and statute to police officers. Officers have a duty to disclose such evidence *not to defendants* but to prosecutors. This obligation requires officers to disclose information that would tend to prove the defendant’s innocence and is known only to the police. Information that is already known by the defendant and/or the prosecutor and not included in the materials turned over to the prosecutor should not be considered Brady materials.

The duty does not require officers to turn over every tidbit of information that, with the benefit of hindsight and in the context of other evidence, could assist the defendant (*Newsome v. McCabe*, 2001). The test of materiality is whether collectively the evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

The Supreme Court applied its prior rulings on the issue of withholding exculpatory evidence in *Strictler v. Greene* (1999). Strictler was convicted of capital murder and sentenced to death for the robbery and murder of a female college student. There was one witness who saw Strictler and his accomplice abduct the victim from a shopping center parking lot. At trial, the witness gave detailed information incriminating Strictler. During habeas proceedings, defense counsel discovered materials from police files including notes taken during the witness interviews and letters from the witness to a detective contradicting her testimony. The Court described the elements of a Brady violation:

. . . There is never a real “Brady violation” unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict. There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. (at 281-282)

The court found the first two components but not the third, prejudice. There was sufficient evidence to indicate that discrediting the witness testimony *might have* changed the outcome of the trial, but that is not the test. The standard necessary to obtain relief requires the plaintiff to convince the court that the result of the trial *would have* been different if the suppressed information had been disclosed.

When challenging information in a warrant, the courts apply the correcting test originating in *Franks v. Delaware* (1978). Simply stated, the court puts in all

of the exculpatory evidence allegedly left out and takes out all of the allegedly fabricated information put in the warrant. If there is sufficient evidence amounting to probable cause remaining, the warrant will stand. In *Mack v. City of Abilene* (2006), the plaintiff claimed that the warrant was invalid because the affidavit contained conclusory, vague, and ambiguous allegations regarding the credibility of the informant. The court found the warrant to be valid as it contained specific information regarding the informant's knowledge, and there were no claims that the warrant contained false information.

Similarly, in *Haire v. Thomas* (2006), the plaintiff claimed that an FBI agent intentionally fabricated facts in the affidavit, and without those fabrications, the magistrate would not have found probable cause. Reviewing the warrant on a motion to dismiss, the court found that assuming all of the plaintiff's allegations to be true, there was still adequate information in the warrant to support probable cause even after removing the alleged fabrications.

In *Skunda v. Pennsylvania State Police* (2002), after being arrested for possession of marijuana, McMillen agreed to work as a confidential informant. He identified Skunda as a seller and agreed to make a controlled buy. Two troopers searched McMillen, gave him \$180, and escorted him to the defendant's residence where they observed him enter the residence and leave approximately 7 minutes later. McMillen handed them one plastic baggie containing an ounce of marijuana and related what the defendant was wearing and that the marijuana was purchased in the kitchen. The state trial court, at a suppression hearing, found the troopers' explanations of the controlled buy vague and that the affidavit did not establish probable cause leading to a *nolle prosequi* of the charges.

In the malicious prosecution action, the appellate court analyzed the *Franks* correcting test.

**Step One:** "Plaintiff must show that the affiant knowingly and deliberately, or with reckless disregard for the truth, made false statements or admissions that create a falsehood in applying for a warrant."

**Step Two:** "That such statements or omissions are material, or necessary, to the finding of probable cause."

**Facts Removed:** In his testimony, the informant mentioned that the troopers waited at the cemetery; therefore, the fact that the troopers saw him enter and exit the residence should be removed.<sup>3</sup>

**Omissions That Should Be Added to the Affidavit:** The fact that there was another person in the home and that McMillen was a first time and untested C/I against whom there was pending criminal charges and would have been unable to complete subsequent buys

The court found that after removing the misstatements and adding the omissions, probable cause still remained since the informant identified Skunda as the seller of drugs and performed a controlled buy during which he was taken to the location near Skunda's home, searched, and given money. He then returned minutes later with the marijuana, explaining that he bought it from Skunda.

Because the reliability of an informant is not a sine qua non for probable cause (see *Illinois v. Gates*, 1983) the fact that the informant was untested and unreliable did not destroy probable cause.

More recently, in a case involving discrepancies in witness descriptions, the court found that the alleged exculpatory evidence did not diminish probable cause. In *Brown v. Abercrombie* (2005), Detective Abercrombie investigated several robberies at an apartment complex. She interviewed two security guards who saw the suspects and identified a brown van seen at the apartment complex on two occasions when it was burglarized. The van was registered to Brown's cousin, but documents indicated that Brown copurchased the van with another individual. When brought in for questioning, he did not acknowledge the burglary and refused to be photographed or provide fingerprints. A security guard positively identified Brown as a suspect he had seen at the scene.

Brown claimed that Abercrombie failed to include exculpatory information in the warrant application including the following:

- His cousin's statement that he had never loaned the van to Brown
- The security guard's initial description, which indicated the suspect weighed 170 pounds when Brown weighed 230 pounds
- A gas receipt with no name showing that gas had been purchased at the same time that the second burglary occurred, but 50 miles away

The court ruled that "she need not have included every bit of information gleaned by her investigation in her application so long as she did not knowingly omit any information that would be material to the finding of probable cause" (p. 894).

A catastrophic award of damages was upheld in a misidentification case in which it was alleged that the exculpatory evidence withheld pertained to the nature of the identification process (*Newsome v. McCabe*, 2003).

Fifteen years after his conviction, the plaintiff was pardoned on the grounds of innocence after fingerprints and other information implicated another individual. A jury found officers liable for concealing evidence favorable to the defense and awarded Newsome \$15 million in damages followed by a court award of \$850,000 in attorney's fees and costs. At the initial trial, three individuals positively identified Newsome as the killer. Twenty years later, at the civil trial, one of the witnesses was dead and one could not be found, leaving Rounds, who denounced his earlier testimony, claiming that the two detectives insisted that he select number 3 in a line-up. The officers admitted that one of the other witnesses had improperly been shown photos before the line-up to improve the chance that the witness would pick out Newsome.

Rounds testified that the officers threatened him with imprisonment if he told the prosecutors what actually happened at the line-up. The City's interpretation of this was that the officers told Rounds that he faced criminal investigation unless he told the whole truth.

Liability was premised under the due process clause based on the concealing of exculpatory evidence, namely details of how witnesses were induced to finger

Newsome. The court discussed the difficulty in cases relying on eyewitness identification, concluding, "this is why it is vital that evidence about how photo spreads, show-ups, and line-ups are conducted be provided to defense counsel and the court" (p. 304).

In *Sutkiewicz v. Monroe County Sheriff et al.* (1997), two witnesses, who saw the plaintiff in the car of a woman who had been abducted and raped, positively identified the plaintiff in a line-up. The plaintiff who was homeless and mentally unstable was taken to a Baptist mission. During the following two days, he was interviewed by a reverend who recorded the conversations. The nature of the interview indicated that the reverend may have led the plaintiff and improperly suggested certain facts related to the events, which tainted a later confession given to the police. The plaintiff was arrested, charged with the murder, and later judged to be incompetent to stand trial. He spent the next 10 years in the Center for Forensic Psychiatry.

Two and a half weeks after being charged with murder, the department received information about another suspect who had committed several similar crimes. Follow-up showed that he had obtained a one-day Michigan fishing license on the day of the murder and fished 30 feet from where the victim's body was found, and his hand was reportedly cut on that date. He was positively identified in a line-up by another witness who saw him at the scene of the abduction, and the detective who interviewed him said that he all but admitted to the murder. This information was allegedly documented and forwarded to the prosecutor's office, but none of the reports were found in the prosecutor's files.

In the 1983 malicious prosecution and false imprisonment action, the judge refused to admit the reverend's tapes, and the detectives were found not liable. The appellate court reversed, finding the recordings were relevant and were not confusing and misleading and therefore should have been admitted.

The court found that if the plaintiff was able to cast doubt upon the reliability of the confession through the tapes, they would be relevant. The plaintiff suffered a substantial injustice in that he "spent ten years confined in a mental facility as a result of a crime for which he was never tried, and of which it was apparent to the police, mere months after he was confined, that he was innocent" (p. 361). Not only did the department not provide the prosecutor with information of another suspect who more likely committed the crime, but they may have attempted to unconstitutionally acquire a confession from the plaintiff. The reverend's tapes were a key piece of relevant evidence, lending credibility to the plaintiff's assertions.

Where police have facts that would tend to negate probable cause or, at the very least, sway the probable cause in favor of a suspect, they must reveal such exculpatory evidence. "Even though an officer is not obligated to actively search for exculpatory evidence, when an officer is aware of exculpatory facts and circumstances, he has a duty to disclose those facts and circumstances to the prosecutor" (p. 358).

## Policy and Training Liability

A municipality cannot be held liable under Section 1983 under a theory of *respondent superior*. This simply means that a municipality may not be held liable merely because it employs an officer who violates a person's constitutional rights. The Supreme Court first determined that a municipality may be sued under Section 1983 when it is alleged that a policy is the moving force behind the constitutional violation (*Monell v. Department of Social Services*, 1978). Under *Monell*, a policy may consist of a written order or directive, an act or order from a policy maker or a custom or practice of a municipality. In the context of a misidentification arrest and prosecution, if a chief ordered the arrest or told a detective not to provide exculpatory evidence, or if there was a widespread practice of arresting and pursuing prosecutions of innocent persons the city could be held directly liable, even if there was no written order, directive, or policy on the issue.

In *Canton v. Harris* (1989), the Supreme Court held that a municipality could be held liable for a failure to train. The test for liability for inadequate training is deliberate indifference. In order to prove deliberate indifference, a plaintiff would have to prove that the alleged unconstitutional act involved a recurring task, officers perform and that if officers are not properly trained on how to perform this task, it is highly likely that a constitutional harm will occur. In *Board of County Commissioners v. Brown* (1997), the Supreme Court further defined the liability standard for facially lawful administrative decisions like hiring, setting policy, training, etc. In order to be held liable, a plaintiff would have to show that it was a plainly obvious consequence of the facially lawful administrative decision that a particular constitutional harm occurred. The court further noted that consequences of failure to train are easy to predict. The same could be said of inadequate policies.

These standards were applied in *Gregory v. City of Louisville* (2006) to training and policy issues concerning identification procedures and withholding exculpatory evidence. The plaintiff claimed in pertinent part that he was falsely arrested for a series of rapes because of the victim's inconsistent descriptions, suggestive identification procedures, and the withholding of exculpatory evidence. The court denied the city's motion for summary judgment, finding sufficient evidence to support a claim of failure to train on the handling of exculpatory evidence and a custom of overly suggestive show-ups.

On the training issue, the court relied on prior precedent that a "city's failure to train its officers on warrantless arrests was so likely to result in constitutional violations that the city's failure amounted to deliberate indifference" (*Cherrington v. Skeeter*, 2003, p. 753). Citing *Brown*, the court determined that because officers in their investigative capacities regularly uncover exculpatory evidence, widespread ignorance on the proper handling of exculpatory evidence would have the highly predictable consequence of due process violations. The city presented no evidence of formal training on handling exculpatory evidence, and the chief believed officers were confused about their Brady obligations but took no remedial steps.

There was also sufficient evidence that the city had a custom of using overly suggestive show-ups. Plaintiffs presented evidence that the city had a custom of using show-ups instead of line-ups in nonexigent circumstances. Expert affidavits

claimed systematic deficiencies in training, and supervisors found it perfectly acceptable for officers to use show-ups days after crimes occurred if suspects agreed to sign a waiver. Also, it was established practice to ask suspects to participate in a line-up, and then rather than taking steps to perform a line-up, suspects would be asked to consent to a show-up and given the department preprinted waiver form. Noting that one-on-one show-ups are inherently suggestive (*Stovall v. Denno*, 1967) and that the primary evil to be avoided with identification procedures is any substantial likelihood that an irreparable misidentification will take place (*Neil v. Biggers*, 1972, at 199-200), the unconstitutional consequences of such a custom and practice were highly predictable.

In *Fairley v. Luman* (2002), the plaintiff was arrested on an outstanding warrant for his twin brother who allegedly violated a restraining order filed by his neighbors. The plaintiff and his brother had similar characteristics, but one was 66 pounds heavier. The officers knew the wanted person had a twin brother, and the plaintiff and his wife continually argued that they were arresting the wrong brother. The officers arrested the plaintiff, however, and he was held in custody for a substantial time. The officers were not found liable, but the jury awarded damages against the city finding the constitutional violation resulted from an inadequate policy. The chief testified that it was not uncommon for people to be arrested on a wrong warrant and that this problem was particularly acute when there were twins. Even with this knowledge, the chief did not create a policy to prevent potential constitutional violations. The appellate court affirmed the award of damages and attorney fees of over \$103,000.

It should be noted that if the court or jury finds that the plaintiff's constitutional rights have not been violated by an officer's actions, then the city cannot be held liable (*City of Los Angeles v. Heller*, 1986). In *Fairley*, the officers were found to be entitled to qualified immunity. In such a case, the jury may still find a constitutional violation and can find the city liable if the city's policy was a moving force behind the constitutional violation.

## **Separating False Arrest and Malicious Prosecution**

It is particularly important to understand the difference between a false arrest and a malicious prosecution claim in a misidentification case because the risk of liability and potential damages may be at stake. A cause of action for false arrest accrues at the time of the arrest or when a person is taken into custody for the purpose of charging him or her with a crime. Damages for false arrest only cover the time of detention up until issuance of process or arraignment. After arraignment, recoverable damages must be based on proof of malicious prosecution (*Jaegly v. Couch*, 2006; *Jaegly* citing Prosser and Keeton on the Law of Torts at 888). "The plaintiff is entitled to compensation for loss of time, for physical discomfort or inconvenience, and for any resulting physical illness or injury to health. Since the injury is in large part a mental one, the plaintiff is entitled to damages for mental suffering, humiliation, and the like" (at 48).

The significance of separating the arrest of an innocent person from the prosecution is enormous. Imagine an officer arresting a suspect based on a victim/witness description and subsequent identification. The arrestee is transported to jail; processed; and after several hours, released on bond. The arrestee is arraigned

in court and prosecuted. The jurors believe the victim/witness who erroneously identifies the accused in court. After spending 5 years in prison, it is determined that another person actually committed the crime. During the litigation on the false arrest and malicious prosecution claims, it is determined that the officers ignored plainly obvious exculpatory evidence and did not have arguable probable cause at the time of the arrest. They are held liable for the false arrest. Immediately after the arrest, the entire police file is turned over to the prosecutor. No exculpatory evidence known to the officers is withheld. The officers are found not liable for malicious prosecution. Analyze the damages for the false arrest claim, which start at the time of arrest through the arraignment and then for the malicious prosecution claim, starting at the arraignment through the period of incarceration to release.

The generally accepted standards applicable to different stages in the arrest through conviction stages was described in *Lopez v. City of Chicago* (2006). Mr. Lopez was wrongfully arrested because of erroneous eyewitness identification for the accidental drive-by murder of a 12-year-old innocent bystander. Following his warrantless arrest, he claims he was shackled to a wall in an interrogation room for four days and nights. He claimed there was no place to sleep and no toilet and that he was given little food. After 2½ days, he became disoriented and gave a false confession. On the fifth day, he was removed to the city lock-up. The following day, detectives received a confession from the actual murderer. Lopez's first claim was that his constitutional rights were violated because he was held for more than 48 hours without being brought before a magistrate. The Supreme Court has ruled that if a probable cause hearing is not held within 48 hours of a warrantless arrest, the government must demonstrate the existence of emergency or other extraordinary circumstances to justify its failure to properly present the arrested person to a judicial officer (*Gerstein v. Pugh*, 1975; *County of Riverside v. McLaughlin*, 1991).

As to the standards that applied to Mr. Lopez's conditions of confinement, the court explained that the 4th Amendment applies from the time of the warrantless arrest until a Gerstein probable cause hearing. The 14th Amendment's due process standard applies for the time of the probable cause hearing until conviction, and the 8th Amendment cruel and unusual test applies following conviction. For the purpose of liability, the standards increase as the stages of the criminal process proceed.

To succeed in a false arrest claim, plaintiffs need to prove that the arrest was made without probable cause. For example, in *Sornberger v. City of Knoxville, Illinois* (2006), three employees of a bank observed the tape of a bank robbery. One thought that the robber looked like Scott Sornberger who was an acquaintance and former customer whose account had been closed for lack of funds. When reviewing the tape, he was less sure of the likeness. The robber's description was given as a male, 5'9", approximately 160 pounds, dark complexion, dark eyes, dark hair, clean shaven, and in his 30s. Police interviewed Scott, who was 5'11", blonde hair, blue eyes, a fair complexion, and a mustache. Despite the discrepancies, both Scott and his wife were brought to the police station for questioning. Their alibi was that at the time of the robbery, they were at Scott's parents' home using the computer. Both were charged with robbery based, in part, on an alleged coerced confession. While in prison, awaiting trial, another man who had committed a string of robberies was identified as more closely resembling the individual committing the robbery



on the tape. In a closer examination by the FBI of Scott's ear and the one on the videotape, he was excluded as a suspect.

The court first determined that there was insufficient probable cause to arrest Scott as his physical description did not even come close to matching the robbery suspect. The only other evidence was the grainy video and his financial situation.

The fact that the police were advised by the state attorney that they had probable cause did not entitle them to qualified immunity because the information they provided was incomplete and one-sided. They told him that one bank employee remarked that Scott resembled the perpetrator on the tape, however, neglected to say that he questioned the resemblance upon viewing the tape from another angle. Nor did they comment on the witness discrepancies in the description. Although reliance on a prosecutor's advice is normally powerful evidence of good faith and deserving of qualified immunity, here it appeared that the officers realized the weakness of their case and attempted to manipulate the available evidence to mislead the prosecutor.

The court further criticized the police for making an arrest prior to evaluating the computer evidence, which would have confirmed or dispelled the alibi. "A police officer may not close her or his eyes to facts that would help clarify the circumstance of an arrest" (p. 1016).

An innocent person who prevails on a false arrest claim may be able to succeed in a malicious prosecution claim. In order to prevail on a Section 1983 claim against an officer for malicious prosecution, a plaintiff must show a violation of 4th Amendment rights and establish the elements of a malicious prosecution claim under state law. The most common elements are as follows:

- The defendants initiated or procured the institution of criminal proceedings against the plaintiff.
- The criminal proceedings terminated in favor of the plaintiff.
- The defendant acted without probable cause.
- The defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.

Obviously, potential damages are greater and the plaintiff's burden of proof is more difficult in a malicious prosecution claim.

To put this in the context of an officer who arrests an innocent person on a clearly faulty identification, the officer may escape liability if he honestly (albeit foolishly) relied on the identification and he provides all of the information within his possession to the prosecutor. If the prosecutor chooses to now proceed with the prosecution, the officer should not be responsible for any damages beyond the time of arraignment. An example of how liability and damages may be limited by independent judicial action is found in *Townes v. The City of New York* (1999).

Townes was sitting in a taxicab when his companions stepped away. Upon noticing several on-duty plainclothes police officers watching him, he removed two fully loaded handguns and hid them under the seat. When his companions returned, the taxicab drove off. Although the cab driver did not violate any traffic law, the

officers stopped the cab, ordered the passengers out at gunpoint, frisked them, and searched the cab finding the two handguns. Townes was arrested and charged with two counts of criminal possession of a weapon and one count of criminal possession of a controlled substance that was discovered during the search at the precinct station. Townes' motion to suppress was denied after which he entered a plea of guilty. Two years later, the appellate court reversed the conviction on the grounds that the police officers lacked probable cause to stop and search the taxicab.

The court ruled that Townes enjoyed a clearly established right to be free from unreasonable seizure while a passenger in a taxicab. He was, therefore, entitled to damages for the harm suffered as a result of the invasion of privacy during the unreasonable search or seizure.

The court held that his conviction and incarceration were not proximately caused by the unconstitutional search and seizure because the intervening and superseding judicial action in denying his motion to suppress was the cause of his conviction. He was not, therefore, entitled to damages for his incarceration.

It is well-settled that the chain of causation between a police officer's unlawful arrest and any subsequent conviction and incarceration is broken by the intervening exercise of independent judgment. At least, that is so in the absence of evidence that the police officer misled or pressured the official who could be expected to exercise independent judgment. Victims of unreasonable searches or seizures may recover damages related to invasion of privacy but cannot be compensated for injuries resulting from the discovery of incriminating evidence and consequent criminal prosecutions.

## Conclusion

When compared to the total number of arrests made, it is extremely rare that innocent persons are arrested and very unusual that such persons are convicted; however, when such incidents occur and innocent citizens' are sent to prison, the resulting human tragedy and liability claims can be catastrophic. Law enforcement agencies can take steps to reduce the risk of misidentification arrest and convictions through policies and training:

- Adopt recommendations of NIJ's *Eyewitness Evidence* guide.
- Ensure that officers comply with their duty to disclose exculpatory evidence.
- Encourage officers to conduct competent and complete investigation, pursuing all leads.

The available defenses and heavy burdens of proof described in this article make it difficult for many innocent persons who have been wrongfully incarcerated to prevail in false arrest and malicious prosecution suits. While the relatively remote risk of liability should (as it is intended to do) allow officers to aggressively pursue criminals, they should also be wary of relying solely or even primarily on eyewitness descriptions and identifications. They should be encouraged to corroborate such identifications and reach beyond mere probable cause.

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## Endnotes

<sup>1</sup> Mahony, E. (2006, November 19). Claimed innocence as to this particular crime. *Hartford Courant*, 2.

- <sup>2</sup> *Heck* actually applies to all 1983 actions in which a successful suit would bring into question the validity of the underlying criminal conviction.
- <sup>3</sup> In a supplemental affidavit, the informant later stated that he had no personal knowledge as to the troopers' movements after he left the cemetery.

**Elliot B. Spector, Esq.**, is a professor in the Public Safety/Criminal Justice Program at the University of Connecticut Center for Continuing Studies. Mr. Spector was a former police officer in Hartford, Connecticut, and an attorney specializing in the representation of law enforcement officers. He is also an adjunct instructor at P.O.E.T. and an active member of the Connecticut and International Chiefs of Police organizations.

# Individual Responses to Criminal Procedures in Law Enforcement Agencies: Implications for Training and Civil Liability

K. B. Turner, PhD, Assistant Professor of Criminology and Criminal Justice,  
The University of Memphis

James B. Johnson, PhD, Professor, Department of Political Science,  
University of Nebraska at Omaha

## Introduction

The constantly evolving nature of law requires that American law enforcement officers not only know the law but also stay abreast of court decisions affecting law enforcement practices. By maintaining knowledge of court decisions, law enforcement officers are less likely to find themselves and their respective departments named in lawsuits. The literature suggests that lawsuits are a major concern to police line personnel (Garrison, 1995; Scogin & Brodsky, 1991). Lawsuits are also a source of apprehension for government officials outside the police chain of command (MacManus, 1997). Moreover, law enforcement officers' failure to remain knowledgeable about recent court decisions could lead to diminished public confidence and serious violations of the constitutional rights of citizens.

Police procedures have been greatly affected by court decisions. Some examples include *Mapp v. Ohio* (1961), which channeled the way police can collect evidence. *Escobedo v. Illinois* (1964) directed police to provide counsel to a suspect when requested. Many citizens are aware that they have the right to remain silent and to an attorney, resulting from *Miranda v. Arizona* (1966). The aforementioned cases collectively are largely responsible for what became known as the "due process revolution." In each case, the Court ruled in favor of individual citizens rather than the police (Walker, 1988, p. 19). Consequently, officers felt that they were "handcuffed" from doing their jobs (Graham, 1970). This assertion has largely been without foundation, as researchers have found that officers were not necessarily hampered from performing their jobs (Krantz, 1979; Walker, 2001, pp. 87-95). Clearly the courts play an important and essential role in setting the limits on policing in a free and democratic society. Consider the following comments by Meares and Harcourt (2000):

Modern constitutional criminal procedure emerged in a legal culture shaped by American legal realism and historically has been driven by empirical and pragmatic concerns about police practices, police-civilian encounters, crime prevention and detection, and civil liberties. One of the most notable features of the constitutionalization of criminal procedures in the 1960s was the Supreme Court's focus on the realities of street policing, custodial interrogation, investigations, and the impact of these activities on individual freedoms. Judicial decisions and academic writings in modern criminal procedure, to a far greater extent than in most legal fields, especially other areas of constitutional

law, routinely centered on empirical issues surrounding the effectiveness of police practices and their impact on liberty interests. (pp. 736-737)

High-quality, ongoing police training is essential to decreasing civil litigation (Gallagher, 1990). Thus, there has been an increase in mandating inservice training for veteran officers throughout the country as well as an increase in the number of hours required (Flink, 1997). Moreover, police academies have decreased their emphasis on the physical aspects of training, such as firearms instruction and pursuit driving, to put a greater emphasis on academic areas (Berg, 1994).

Training of police personnel is a critical managerial responsibility and is no longer observed as a luxury (Vaughn, Cooper, & del Carmen, 2001). In the *City of Canton v. Harris* (1989), the Supreme Court essentially ruled that inadequate police training may result in municipal liability when the failure to train could be construed as a deliberate indifference to the constitutional rights of persons with whom the police come into contact (Alpert & Smith, 1991). Failure to train is one of the foremost areas of liability for police supervisors and agencies, and law enforcement administrators should heed the pronouncements advanced by *Canton*. Training alone, however, cannot eliminate lawsuits filed against law enforcement agencies. Hence, Trautman (1986) points out that effective training can serve to reduce the number of cases filed and lessen the potential for large financial awards.

## The Research Problem

The focus of this study is to assess the level of awareness of law enforcement officers on various issues of police procedures. In particular, the study examines four broad areas: (1) Miranda warnings, (2) automobile searches, (3) person searches, and (4) home searches. Constitutionally, the first area involves the 5th Amendment protection against self incrimination, 6th Amendment right to an attorney, and the due process clause of the 14th Amendment. The other three areas are controlled by the 4th Amendment protection against unreasonable searches and seizure and the due process clause of the 14th Amendment. These areas, particularly the area of home searches, have been the subject of much litigation (Vaughn et al., 2001). Ross (2000) in an examination of frequently litigated training categories found that of the 170 involving search and seizure issues, 44% were residence, 23% were personal, 19% were vehicle, and 14% were strip.

The primary goal of this article is to determine to what extent law enforcement officers are aware of police procedures resulting from case law. To answer this question, the following section includes a discussion of several selected landmark court decisions relevant to various police procedures. This will be followed by an empirical analysis of law enforcement officers' responses to various scenario-based police procedures. The position taken in the article is that knowledge of police procedures by law enforcement officers is a training issue, and failure to provide proper training and retraining can result in civil lawsuits. The article concludes with several recommendations for training of police personnel in the area of civil liability.

## Four Awareness Areas

While it is not the purpose of this article to examine every case related to police procedure, it is deemed prudent to lay the framework for demonstrating the

importance and the role the courts have played in guiding police procedure. The following cases are illustrative and worthy of reviewing:

### **Miranda Warnings**

This area is perhaps best known by citizens and law enforcement officers alike. A cursory viewing of any popular law enforcement television show will quickly inform viewers of their rights when questioned by a police officer. The case from which the Miranda warnings originate is *Miranda v. Arizona* (1964). Specifically, the case involved Ernesto Miranda, an Arizona native with only an elementary school education, who was arrested for robbery, kidnapping, and rape. He was interrogated by police and confessed. At trial, prosecutors offered only his confession as evidence. Miranda was convicted of rape and kidnapping and sentenced to 20 to 30 years on both charges. Miranda's lawyer appealed to the Arizona Supreme Court, but the charges were upheld. The case was then taken by the U.S. Supreme Court. The Court, citing the coercive nature of custodial interrogation by police, ruled that no confession could be admissible under the 5th Amendment self-incrimination clause and 6th Amendment right to an attorney unless a suspect had been made aware of these rights and the suspect had then waived them. Thus, Miranda's conviction was overturned, and the Supreme Court set down guidelines for custodial interrogations. The ruling stated . . .

The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. (*Miranda v. Arizona*, 1964, pp. 467-473)

It is also important to note that the Supreme Court made clear that if the individual indicates in any manner, at any time prior to or during questioning, that he or she wishes to remain silent, the interrogation must cease. If the individual states that he or she wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have counsel present during any subsequent questioning.

Miranda warnings have been the subject of considerable debate in recent years. Most notably, the efforts of law professor Paul Cassell gained nationwide attention in his unsuccessful attempt to get the Supreme Court to overturn the landmark decision (Walker & Katz, 2003), arguing on the grounds that the warnings harm innocent suspects (Leo & Ofshe, 1998). In a 7-2 ruling, the justices reaffirmed the Miranda warnings (*Dickerson v. United States*, 2000).

### **Automobile Searches**

Much of what American law enforcement officers do involves the 4th Amendment of the United States Constitution. This amendment commands . . .

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath



or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The authority of a police officer to search a vehicle, which is also controlled by the 4th Amendment, has been the subject of numerous Supreme Court decisions. This should not come as a surprise given the mobility of society and the frequency of contact between law enforcement officers and motorists. The Supreme Court has been called upon to address not only when it is permissible for law enforcement officers to engage in a warrantless search but also the permissible scope of such searches. The motor vehicle exception, first recognized in *Carroll v. United States* (1925) and often referred to as the Carroll doctrine, has provided law enforcement officers with an excellent tool to search a vehicle without a warrant, so long as certain conditions are met. Basically, law enforcement officers may conduct a warrantless search of a vehicle if there is probable cause to believe that the vehicle contains evidence of a crime, and it is likely that, due to exigent circumstances, the vehicle will be unavailable for search by the time a warrant is obtained.

The facts in *Carroll* involved the “Carroll boys” who were believed by the officers to be bootleggers in Grand Rapids, Michigan. Officers had watched them traveling from Grand Rapids to Detroit across an international boundary that was known as an artery for the illegal importation of alcoholic beverages. Later, the same men were observed driving back from Detroit to Grand Rapids. The officers, suspecting that the automobile carried bottles of alcohol, stopped and searched the vehicle. They discovered several bottles of whiskey hidden in the automobile’s upholstery.

The United States Supreme Court justified the warrantless search of the automobile based on two factors: (1) probable cause existed to believe that the vehicle contained contraband, and (2) it was not practicable to secure a warrant because the vehicle could be quickly moved out of the locality or jurisdiction in which the warrant was sought. The Court expressly distinguished the search of a store, residence, or other fixed structure, for which obtaining a search warrant is practicable, from the search of moveable items such as cars, boats, and wagons, for which it is not practicable to obtain a search warrant.

## Person Searches

One case that has generated much interest in the law enforcement community regarding the search of persons is *California v. Hodari* (1991). This case concerns a group of youths, including respondent Hodari D., who fled at the approach of an unmarked police car on an Oakland, California, street. Officer Pertoso, who was wearing a jacket with “Police” embossed on its front, left the car to give chase. Pertoso did not follow Hodari directly but took a circuitous route that brought the two face to face on a parallel street. Hodari, however, was looking behind as he ran and did not turn to see Pertoso until the officer was almost upon him, whereupon Hodari tossed away a small rock. Pertoso tackled him, and the police recovered the rock, which proved to be crack cocaine. In the juvenile proceeding against Hodari, the court denied his motion to suppress the evidence relating to the cocaine. The state court of appeal reversed, holding that Hodari had been “seized” when he saw Pertoso running towards him and that this seizure was “unreasonable” under the 4th Amendment, the state having conceded that Pertoso did not have the “reasonable suspicion” required to justify stopping Hodari. The

court, therefore, concluded that the evidence of cocaine had to be suppressed as the fruit of the illegal seizure.

When heard by the U.S. Supreme Court, the state court's decision was overruled. The Court's ruling in *California v. Hodari* surrounded one issue: whether, at the time he dropped the drugs, Hodari had been "seized" within the meaning of the 4th Amendment. The Court responded in the negative. In answering this question, the Court looked to the common law of arrest. To constitute a seizure of the person, just as to constitute an arrest—the quintessential "seizure of the person" under 4th Amendment jurisprudence—there must be either the application of physical force, however slight, or, where that is absent, submission to an officer's "show of authority" to restrain the subject's liberty. No physical force was applied in this case, since Hodari was untouched by Pertoso before he dropped the drugs. Moreover, assuming that Pertoso's pursuit constituted a "show of authority" enjoining Hodari to halt, Hodari did not comply with that injunction, and therefore was not seized until he was tackled. The Court concluded that the cocaine abandoned while he was running was not the fruit of a seizure, and his motion to exclude evidence of it was properly denied by the trial court.

## Home Searches

The search of citizens' homes by police is a practice that takes place daily across the country. Because of the premise that people have a certain expectation of privacy in their home, the Court, through various rulings, has outlined the circumstances under which law enforcement officers may engage in this practice. The landmark decision under search and seizure is *Mapp v. Ohio* (1961).

Dorlee Mapp was suspected of having information in her home that would implicate a suspected bomber. The police came to her home and asked whether they could search the residence. Ms. Mapp called her lawyer and was advised to ask for a warrant. The police did not have a warrant and were asked to leave. Hours later, the police returned and forcibly entered the residence. Ms. Mapp demanded to see the warrant, but a piece of paper was waved in her face. Ms. Mapp grabbed the paper and tucked it in her blouse. A struggle ensued in which Ms. Mapp was knocked to the ground as police retrieved the supposed warrant. Outside, Ms. Mapp's attorney arrived on the scene but was prevented from entering the residence. The police found pornographic materials in the house, and Ms. Mapp was arrested for possession of lewd materials and convicted of this crime. Ms. Mapp appealed her conviction on the grounds that the search of her home was in violation of her rights. The U.S. Supreme Court ruled that the evidence obtained in the search was inadmissible because it was seized in an illegal search. With this ruling upholding the principles of the 4th Amendment, the court created the "exclusionary rule," which makes illegally obtained evidence inadmissible in court.

Another illustrative case that is relevant to home search and seizure is *Chimel v. California* (1969). In this case, local police went to Chimel's home with a warrant authorizing his arrest for burglary. Upon serving him with the arrest warrant, the officers conducted a comprehensive search of Chimel's residence. The search uncovered a number of items that were later used to convict Chimel. State courts upheld the conviction. On appeal to the United States Supreme Court, it held in a

7 to 2 decision, that the search of Chimel's house was unreasonable under the 4th and 14th Amendments.

The Court reasoned that searches "incident to arrest" are limited to the area within the immediate control of the suspect. While police could reasonably search and seize evidence on or around the arrestee's person, they were prohibited from rummaging through the entire house without a search warrant. The Court emphasized the importance of warrants and probable cause as necessary bulwarks against government abuse.

In sum, the cases discussed above regarding the four areas of police procedure awareness (Miranda warnings, automobile searches, person searches, and home searches) deal with crucial areas that law enforcement officers are confronted with on a daily basis. Are law enforcement officers knowledgeable of the consequences of the Court's rulings in these cases and subsequent cases that may have modified the earlier ruling? The next section of the article presents the methodology employed to assess the awareness of law enforcement officers in the four areas.

## **Methods**

The data for this study was collected in 1999 from sheriffs' deputies in Lancaster County, Nebraska, and from police officers in the Lincoln and Omaha, Nebraska, Police Departments. The questionnaires were filled out by respondents with the permission of their supervisors during roll call. A total of 373 deputies and officers completed the questionnaire.

## **Variables**

Demographic variables measured included respondents' age, sex, education (measured both in years of education and highest degree earned), years of service, type of department (sheriff or police), rank, and current assignment. Age, years of service, rank, duty assignment, and degree earned were collapsed into groups for the bivariate analyses. Table 1 presents frequencies and means for the demographic information collected on the respondents.

The main portion of the questionnaire attempted to measure the respondents' knowledge of police procedures by presenting five scenarios for each area of knowledge described above and asking whether the officer acted correctly. Respondents were given an index score for each of the four areas that represented the number of correct responses. The four index scores were summed to create an index of overall awareness of proper procedures. T-tests and ANOVAs were run to determine whether there were any significant differences in awareness related to any of the demographic characteristics measured. For the dichotomous variables (sex and race), t-tests were used to test the significance of differences in means. For the variables with more than two categories, one way Analysis of Variance was used. The continuous variables, age and years of service, were broken into three categories as described in the table. Regression analyses were completed to see what, if any, variables accounted for differences in index scores. For the regressions, noncontinuous variables were reconstructed as dummy variables.

**Table 1. Sample Characteristics**

Variable	N	Percent
<b>Race</b>		
Non-White	34	9.2
White	336	90.8
<b>Sex</b>		
Female	67	18.2
Male	302	81.8
<b>Highest Degree Earned</b>		
No Degree	117	31.9
Associate's Degree	34	9.3
Bachelor's Degree	202	55.0
Master's Degree	11	3.0
PhD Degree	1	.3
Law Degree	2	.5
<b>Type of Department</b>		
Sheriff's Department	51	13.6
Police Department	323	86.4
<b>Current Rank</b>		
Officer	261	62.8
Deputy	39	9.9
Corporal	53	.2
Sergeant	5	12.0
Lieutenant	12	1.1
Captain	2	2.9
Chief Deputy	1	.5
Assistant Chief	1	.2
Chief	2	.5
Other	4	.9
<b>Current Assignment</b>		
Patrol	288	78.0
Investigations	39	10.6
Traffic	6	1.6
Administration	15	4.1
Other	21	5.7
<b>Age (in years)</b>		
N	Mean	Standard Deviation
362	35.89	8.649
<b>Education (in years)</b>		
N	Mean	Standard Deviation
371	14.68	3.363
<b>Service (in years)</b>		
N	Mean	Standard Deviation
362	10.85	8.505

## Results

### *Area and Overall Awareness*

Table 2 shows the number of correct answers for each of the four areas of awareness, along with the mean scores and standard deviations. It appears that among the four areas, the greatest level of awareness is in regard to auto searches, for which the modal score was 4 (by 43% of the respondents), and the mean score was 3.9. For the other three areas, the modal score was 3; however, it is searches of persons, which had the lowest mean score (2.60), that showed the lowest level of awareness. Since 3.5 is the middle of the range of possible scores, it is only on the auto index that the average respondent scored above that midpoint. All four areas showed that at least one was unable to answer any of the questions correctly, while some were able to answer all correctly.

**Table 2. Number of Correct Answers, Means, and Standard Deviations on Four Indexes of Police Procedure Awareness**

Number Correct	Miranda		Auto		Persons		Home	
	N	%	N	%	N	%	N	%
0	1	.3	1	.3	3	.8	1	.3
1	7	1.9	2	.5	30	8.2	10	2.7
2	71	19.2	17	4.6	136	37.2	59	16.0
3	170	46.1	88	24.0	144	39.3	137	37.1
4	108	29.3	157	42.9	48	13.1	119	32.2
5	12	3.3	101	27.6	5	1.4	43	11.7
Mean	3.12		3.92		2.60		3.33	
SD	.839		.889		.894		.989	

On the index of overall awareness (see Table 3), the midpoint of the index (with a possible range of scores from 0 to 20) is 10.5. The average score was almost 2.5 points of that midpoint at 12.96, and more than 91% of the respondents scored at or above 11. The lowest score was only 3 out of 20, and the highest was 18, only 2 points away from a perfect score.

An interesting and perhaps alarming additional finding is that there is virtually no correlation in awareness of the four areas. There were only two significant correlations between areas. Miranda and Auto showed the following relationship:  $r=.14$ ;  $p=.0007$ . Miranda and Home showed a relationship of  $r=.106$ ;  $p=.042$ . For the other pairs, correlation coefficients ranged from .015 to .040 and had significance levels that ranged from .45 to .774. These correlations indicate that those aware of proper procedures in one area are not necessarily aware in another.

**Table 3. Index of Police Procedure Awareness**

Number Correct	N	%
3.00	1	.3
8.00	6	1.7
9.00	8	2.2
10.00	16	4.5
11.00	43	12.0
12.00	65	18.2
13.00	77	21.6
14.00	65	18.2
15.00	49	13.7
16.00	18	5.0
17.00	7	2.0
18.00	2	.6
Mean	12.96	
SD	1.94	

### ***Exploration of Awareness Indexes***

*Bivariate Analysis.* Table 4 explores the differences in scores on the five indices in terms of eight group characteristics: (1) sex, (2) race (white/non-white), (3) department type (police or sheriff), (4) years of service (collapse into three groups: 10 or fewer years, 11 to 20 years, and 21 years or more), (5) age (collapse into three groups: 30 or younger, 31 to 45 years old, and over 45), (6) rank (collapse into three groups: corporal and below, sergeant or lieutenant, and captain and above), (7) type of duty (collapse into three groups: patrol and traffic, investigations, and administration and other), and (8) education (collapsed into four categories: no degree, associate's degree, bachelor's degree, and advanced degree). Columns in Table 4 represent the N, mean, and significance level for each of the five indices.

*Miranda Awareness.* The first three result columns in Table 4 contain the results for the Miranda Index. Of the eight variables examined, only two, sex and duty, show a significant difference between or among the groups. Females were found to have a significantly lower mean score (2.88) than males (3.19). The significant F statistic for duty assignment results from the difference between those assigned to investigations compared to those with patrol and traffic assignments ( $p=.015$ ). There was no difference between investigators and administrators or between administrators and patrol/traffic officers.

*Awareness of Auto Search Procedures.* The analysis of the auto index of awareness shows three variables that display significant differences in group scores: (1) race, (2) sex, and (3) department. Non-white respondents (mean=3.56) scored significantly lower than white respondents (mean= 3.94). As with the Miranda Index, females scored lower than males (3.67 to 3.96). Members of police departments scored lower than members of sheriffs' offices (3.87 to 4.18).

*Awareness of Search of Persons Procedures.* On the Person Index, two variables showed significant differences in scores: sex and age (see Table 4). As previously, females scored lower than males (2.21 to 2.69). The Scheffe tests for age show that the

youngest group, those 30 and below, scored significantly lower than either those 31 to 45 ( $p=.000$ ) or those over 45 ( $p=.005$ ). There was no significant difference in the scores of the two older groups.

*Awareness of Search of Homes Procedures.* The Home Index (see Table 4) showed none of the variables to have an influence on scores.

*Overall Awareness of Police Procedures.* Table 4 displays the results of analyses of the overall Police Procedure Awareness Index. Since this index is the sum of scores on the four area indices, the results for this index tend to parallel the results for the area indices. Four characteristics mark differences in mean index scores: (1) sex, (2) race, (3) age, and (4) duty. Females showed lower scores than males, and non-whites scored lower than whites. Those age 30 and below scored significantly lower than those 31 to 45 years old ( $p=.003$ ). There is no significant difference, however, between the youngest group and those over 45 ( $p=.302$ ) nor between those 31 to 45 and those over 45 ( $p=.228$ ). The pattern for duty is the most complex. Those with investigations assignments score significantly higher than either those with patrol/traffic assignments ( $p=.002$ ) or administrative assignments ( $p=.013$ ). There is no significant difference in the scores of those with patrol/traffic assignments and those with administrative assignments ( $p=.428$ ).

### **Summary of Bivariate Results**

An examination of Table 4 shows that sex is the variable that most consistently shows differences in index scores. In all areas except home searches, females scored significantly below males. Four other variables were significant in one area of awareness:

1. Race – non-whites scored lower than whites.
2. Department type – police personnel scored lower than sheriff personnel.
3. Age – the youngest group was less knowledgeable than the older groups in regard to searches of persons.
4. Duty type – those assigned to patrol or traffic duty were less knowledgeable of Miranda procedures than were those assigned to investigations.

In all cases except department type, if a variable was significant in regard to at least one of the specific areas, it was also significant in regard to the overall index.

*Multivariate Analysis.* OLS regressions were run to determine whether the bivariate results were maintained once the effects of other variables were simultaneously controlled. For these analyses, education and service were treated as continuous variables rather than grouped variables as in the bivariate analyses. Age and years of service were highly correlated such as to cause multicollinearity. Years of service was chosen for inclusion rather than age because in most models, the coefficient of determination was higher when it was used. The variable used substantively affected the results in only one model, the Home Index. Rank and duty assignment were converted into dummy variables corresponding to the categories reported in Table 4. In the regressions, officers/deputies is the omitted category in regard to rank, and patrol and traffic assignment is the comparison category for duty assignment. The results are presented in Table 5. As in Table 4, columns represent the results for each of the indices.

**Table 4. Comparisons of Differences in Means on Five Indices of Police Procedure Awareness**

	Miranda			Auto			Person			Home			Police Procedure Awareness		
	N	Mean	Sig.	N	Mean	Sig.	N	Mean	Sig.	N	Mean	Sig.	N	Mean	Sig.
	Sex														
Female	66	2.88	.006	67	3.67	.017	66	2.21	.000	66	3.35	.891	66	12.10	.000
Male	307	3.19		304	3.96		304	2.69		306	3.33		296	13.17	
Race															
Non-White	35	2.91	.111	34	3.56	.017	35	2.74	.335	34	3.06	.060	34	12.29	.034
White	339	3.15		337	3.94		336	2.59		339	3.36		328	13.03	
Department															
Sheriff	51	3.10	.773	50	4.18	.032	51	2.76	.163	52	3.23	.425	49	13.24	.281
Police	327	3.13		324	3.87		324	2.58		325	3.35		316	12.92	
Years of Service															
10 Years or Fewer	209	3.15	.767	208	3.99	.278	206	2.53	.123	208	3.39	.614	204	13.05	.492
11 to 20 Years	92	3.09		91	3.81		91	2.63		92	3.32		89	12.82	
21 Years or More	56	3.18		57	3.95		57	2.81		57	3.26		54	13.17	
Age															
30 or Fewer Years	113	3.07	.289	113	3.83	.162	111	2.32	.000	113	3.42	.611	110	12.61	.011
Old	188	3.21		187	4.01		186	2.73		187	3.32		184	13.28	
31-45 Years Old	56	3.09		57	3.84		57	2.75		57	3.30		54	12.94	
Over 45 Years Old															
Rank															
Corporal and Below	297	3.12	.854	294	3.90	.823	294	2.59	.468	297	3.32	.843	288	12.93	.522
Sergeant or	57	3.12		56	3.98		56	2.71		57	3.40		54	13.19	
Lieutenant	15	3.00		16	3.88		16	2.44		15	3.33		15	12.60	
Captain and Above															
Duty															
Patrol and Traffic	290	3.06	.036	289	3.91	.514	288	2.58	.204	290	3.34	.066	281	12.88	.006
Investigations	39	3.41		38	4.08		38	2.82		39	3.56		37	13.89	
Administration	35	3.23		35	3.89		35	2.46		35	3.03		35	12.60	
and Other															
Education															
No Degree	116	3.07	.122	116	3.81	.248	114	2.59	.344	116	3.35	.089	114	12.80	.347
Associate's Degree	33	2.88		34	4.06		34	2.79		33	2.94		33	12.67	
Bachelor's Degree	199	3.22		195	3.93		197	2.60		199	3.40		189	13.15	
Advanced Degree	14	3.07		14	4.21		14	2.29		14	3.50		14	13.07	



**Table 5. Regression Coefficients for Five Indices of Police Procedure Awareness**

	Miranda		Auto		Person		Home		Police Procedure Awareness	
	B	Sig.	B	Sig.	B	Sig.	B	Sig.	B	Sig.
(Constant)	2.735	.000	3.736	.000	2.327	.000	3.108	.000	11.849	.000
Race – White = 1	.122	.420	.327	.040	-.299	.074	.296	.108	.431	.207
Sex – Male = 1	.286	.015	.250	.041	.359	.006	.055	.701	.943	.000
Department – Police = 1	.084	.521	-.354	.011	-.176	.222	.039	.805	-.396	.189
(Years of Education)	-.002	.890	.005	.733	.017	.244	.001	.948	.025	.420
(Length of Service in Years)	-.004	.504	-.012	.078	.017	.017	-.014	.081	-.014	.367
Sergeant or Lieutenant	-.088	.520	.175	.224	-.111	.461	.145	.382	.113	.718
Captain and Above	.034	.889	.403	.103	-.311	.229	.452	.124	.565	.300
Assignment: Investigation	.375	.009	.147	.331	.153	.335	.215	.218	.926	.005
Assignment: Administration	.291	.068	.004	.979	-.249	.153	-.246	.204	-.175	.625
	R2 = .04		R2 = .06		R2 = .07		R2 = .03		R2 = .08	

*Miranda Index.* The regression analysis of the scores on the Miranda Index (see Table 5) shows the same two variables to be significant as did the bivariate analysis. The sex of the respondent makes a difference such that, on average, males score .122 points higher on the index than do females. The other significant variable was assignment. Those assigned to investigations scored .375 points higher than did those assigned to patrol or traffic duties. The seven variables in this model, however, explain only 4% of variations in index scores.

*Auto Index.* The pattern of significant variables is somewhat different for the Auto Index than for Miranda (see Table 5) and also reflects the bivariate findings. While sex again is significant, with males scoring an average of .25 points higher than females, assignment has no apparent effect. Instead, race and type of department show significant coefficients. White individuals score an average of .327 points higher than non-white individuals, and police personnel score an average of .354 points lower than sheriff’s department personnel. Variation in this area of awareness is somewhat better explained by these variables than was the case for Miranda ( $R^2 = .06$ ).

*Person Index.* As in previous analyses, the Person Index (see Table 5) reflects a pattern similar to that of the bivariate analyses. Two variables, sex and length of service, are significant below the .05 level.\* As in the previous models, males tend to outperform

\* In the bivariate analyses, it was age, not length of service, that was significant. These variables, however, are highly correlated. While coefficients change slightly, there are no substantive changes in results when age is substituted for years of service. If the model is run with age instead of years of service, age is significant ( $p=.003$ ). Each year of age adds .021 points on average. While coefficients change slightly, there are no substantive changes in results when age is substituted for years of service.

females by an average of .359 points. Each additional year of service increases scores by an average of .017 points. This model explains 7% of variance.

*Home Index.* The model for the Home Index (see Table 5) shows little complexity. This is the only model in which sex is not significant. In fact, none of the variables in the model were significant at the .05 level. Only length of service approached significance ( $p=.081$ ). It was in this area that the variable age was a better predictor of scores than years of service. When age is substituted in the model, it is significant ( $p=.037$ ). Interestingly, each year of age actually decreases scores by an average of .016. Only 3% of variance is explained by this model regardless of whether age or length of service is included.

*Index of Police Procedure Awareness.* The last two columns of Table 5 examine differences in scores on the combined Index of Police Procedure Awareness. This index shows the greatest divergence from the bivariate results. While four variables were found significant when treated individually, only two variables significantly explain variation on these scores once the effects of other variables are controlled. These variables are sex and duty assignment. As in the individual areas, males tend to outscore females by an average of .943 points. Those with investigation duties tend to score .954 points higher than those assigned to patrol or traffic duties. The variables in this model explain 8% of the variation in scores.

## Discussion

This research utilized a survey to examine the awareness of law enforcement officers from a Midwestern state on four criminal procedures issues: (1) Miranda, (2) Automobile searches, (3) Person searches, and (4) Home searches. The results of the survey indicated that generally, law enforcement officers scored well in their overall awareness of court decisions affecting police procedures. Individually, however, the bivariate analysis revealed that sex is the variable that most consistently shows differences in index scores. With the exception of home searches, female respondents scored significantly below male respondents. Additional variables that were significant in the bivariate analysis in area of awareness included race, department type, age, and duty assignment. If a variable was significant in regard to at least one of the specific areas, it was also significant to the overall index. The only exception was department type.

When attention was turned to the multivariate analysis, OLS regression showed, similar to the bivariate analyzes, sex and duty assignment were the only significant variables for the Miranda Index. For the Auto Index, sex is again significant. Race and type of department, however, also show significant coefficients. The regressions for the Person Index also reflects a pattern similar to that of the bivariate analysis; sex is significant as well as length of service. In the individual specialty area, Home Index, none of the variables in the model were significant at the .05 level. Finally, a regression analysis on the specialty areas combined found sex and duty assignment to be the only significant variables.

Many questions were raised as a result of differences in the scores among the respondents. For instance, why did sheriff's deputies score higher than police officers on the Auto Index? Is it logical that investigators would score higher than noninvestigators? Perhaps the most complex of all questions concerns gender differences in index scores. Specifically, the Home Searches Index is the only area in which sex does not make a

difference. The results in regard to sex are puzzling, and we have yet to think of a reason for the pattern of differences presented in the instant research.

It should also be recognized that in police work, no two events are exactly alike and decisions are often made with little or no time to deliberate. It may, therefore, be difficult to capture how an officer would actually respond based on the results of a survey. It is plausible that training is supplemented by on-the-job training and particularly by specialty job assignments, such as traffic, accident investigations, or warrants unit. Law enforcement training officers should utilize multiple approaches to prepare officers to perform their duties. Hence, the results from this study may best be observed as a baseline.

## Conclusion

In this litigious society, it would be in the best interest of law enforcement administrators to ensure that their sworn personnel are knowledgeable of court decisions affecting their responsibilities. Police administrators must make certain that officers routinely receive updated training that is commensurate with the law (Ross, 2000). Administrators neglecting that task are possibly setting themselves up for failure and lawsuits to be filed by citizens alleging constitutional violations.

By staying abreast of recent court decisions, officers can engage in more effective officer safety techniques. For instance, the controversial practice of removing all occupants from a vehicle during a traffic stop may serve to protect an officer from injury or death. Are officers aware that they may remove all passengers from a vehicle if they have questions about officer safety? In *Maryland v. Wilson* (1997), the Court held that after lawfully stopping a speeding vehicle, an officer may order all of its passengers to step out. Officers must be permitted such authority over passengers if the overriding government's interest in officer safety is to be protected. Moreover, officers may be able to make more arrests that lead to a greater probability of convictions.

Based on the types of lawsuits filed by citizens, police need expanded and continuing training on unlawful search/seizure (Vaughn et al., 2001). Currently, many progressive law enforcement agencies devote training blocks to provide their personnel with information on recent court decisions affecting police procedures. This is a desirable approach; however, some departments do not engage in this practice. The departments in this latter category are most vulnerable to civil liability suits. Hence, it is recommended that all law enforcement agencies continually provide training in the area of recent court decisions affecting police procedure.

Whereas this current study focused on one jurisdiction, during one year, with a limited number of cases and control variables, future research should be encouraged to utilize larger data sets with additional information. Future research is also recommended to address the questions posed earlier, specifically, gender differences with regard to Miranda, automobile, and person searches.

Knowledge about the training philosophies and practices of the chief administrator and training officers within law enforcement agencies may prove beneficial. Such information could serve to contribute to our understanding of the culture surrounding the preparation of law enforcement officers. Despite the aforementioned limitations, we feel that this study does add to the currently sparse

amount of research focusing on law enforcement officers' awareness of criminal procedures, training, and civil liability. The overall goal of training should be to effectively prepare law enforcement officers to be the best they can be in serving citizens. This includes keeping officers abreast of current court decisions affecting their responsibility. Maintaining high-quality training practices may lead to fewer allegations of constitutional rights violations and reduce the number of successful civil liability cases brought by citizens.

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**K. B. Turner**, PhD, is an assistant professor of criminology and criminal justice at The University of Memphis. He earned his BS from Jackson State University, his MS from University of Nebraska at Omaha, and his PhD from University of Nebraska–Lincoln. Dr. Turner has over 20 years of law enforcement experience and has served in various capacities with several police agencies. He is a certified law enforcement instructor and remains active in the training of law enforcement officers. His current research interests are focused on race and criminal justice in America, judicial decisionmaking, and police administration issues. His previous research has appeared in *American Journal of Criminal Justice*, *Challenge*, *Criminal Law Bulletin*, *Federal Probation*, *Journal of Criminal Justice Education*, *Journal of Criminal Justice*, *Journal of Ethnicity in Criminal Justice*, and *Law Enforcement Executive Forum*.

**James B. Johnson**, PhD, is a professor in the Department of Political Science at the University of Nebraska at Omaha. He earned his BA from Columbia University and his MA and PhD from Northwestern University. Dr. Johnson has published research in *Criminal Justice Policy Review*, *Journal of Black Studies*, *Journal of Crime and Justice*, *Journal of Criminal Justice*, *Justice Quarterly*, *Social Science Quarterly*, *Southeastern Political Review*, *Western Journal of Black Studies*, and *Western Political Quarterly*. His research interests are local and state politics and the politics of race in America, especially in regard to the criminal justice system.

## Appendix A

### Basic Criminal Procedure Issues for Law Enforcement Officers Questionnaire

We are conducting a survey to ascertain the general awareness level of law enforcement officers in the area of criminal procedure. We would greatly appreciate it if you would answer a few questions regarding basic criminal procedures. Please respond to all questions and do not leave any questions blank. Select only one answer to each of the following questions. The survey should take less than 20 minutes.

1. An officer arrives at a home to execute a search warrant for stolen jewelry. The warrant specifies the kitchen, which is located on the first floor, as the area to be searched. Not finding the jewelry in the kitchen, the officers proceeded to the second floor bedroom where they find and seize the jewelry. Is this an **illegal** search and seizure?

\_\_\_ 1 Yes \_\_\_ 2 No

2. Responding to a shooting incident, police arrive at the suspect's home where several people are present. After identifying the suspect, the officer asks the suspect, "where is the gun?" The officer retrieves the gun after the suspect informs him that the gun is in the closet. Is the gun **admissible**?

\_\_\_ 1 Yes \_\_\_ 2 No

3. Deputy Osborne went to a suspect's home to follow up on a homicide investigation. After arriving, the deputy finds that no one is home. As he pulls from the driveway, he observes three trash bags on the curb in front of the suspect's residence. Believing that the bags may contain evidence from the crime, Deputy Osborne looks into the bags and finds a blood-stained shirt. The shirt is taken and booked into evidence. Was it **unconstitutional** for Osborne to search the bags?

\_\_\_ 1 Yes \_\_\_ 2 No

4. A detective believes that Smith was involved in a recent murder. At the request of the detective, Smith voluntarily comes to the police station to visit with the police about the murder. The suspect knows that he is not under arrest. Without informing the suspect of his *Miranda* rights, detectives thoroughly interrogate Smith. Was the confession to the murder by the suspect, obtained during the interrogation, in violation of the suspect's *Miranda* rights?

\_\_\_ 1 Yes \_\_\_ 2 No

5. A suspect was in custody at the police station after being arrested on suspicion of armed robbery. He asserted his *Miranda* right to remain silent until he consulted with an attorney. He was not subjected to any direct questioning about the crime; however, two interrogation officers engaged in a conversation between themselves about the murder. The officers had plenty reason to believe that if the suspect overheard their conversation, he might incriminate himself regarding the crime. The suspect, after overhearing the conversation,

confessed to the robbery. Does the private conversation between the officers constitute a violation of the suspect's *Miranda* rights?

\_\_\_ 1 Yes \_\_\_ 2 No

6. While walking his beat that he had been assigned for 30 years, Officer Powell noticed that a male was riding a bike several times back and forth down the street pausing each time to stare into a men's clothing store. Believing the man was casing the store, Officer Powell approached the male and asked for identification. After receiving a driver's license, can Officer Powell legally pat down the outside of the man's clothing?

\_\_\_ 1 Yes \_\_\_ 2 No

7. Officer Jones made a lawful custodial arrest of four men riding in a car. After he had directed the men to get out of the car, he searched the entire passenger compartment of the car, including a jacket that belonged to one of them. He found contraband on the back floor of the car and in the pocket of the jacket on the back seat. Were *both* the search of the car and the jacket pocket **legal**?

\_\_\_ 1 Yes \_\_\_ 2 No

8. Police officers make a warrantless and nonconsensual entry into a suspect's home in order to make a felony arrest. There are no emergency circumstances. Is evidence found during the search of a chest of drawers located two feet from the bed on which the suspect was lying **admissible** as evidence?

\_\_\_ 1 Yes \_\_\_ 2 No

9. Officer Brown stopped an automobile for violating a red light. The officer asked whether he could search the car. The driver replied, "Sure, go ahead." The consent to search was voluntarily given. Officer Brown did not have a warrant. Furthermore, he did not have probable cause to believe any criminal activity had occurred. Was the search **constitutional**?

\_\_\_ 1 Yes \_\_\_ 2 No

10. A police officer shot a fleeing felony (burglary) suspect matching the description provided by the dispatcher, in the back of the head. The officer was also informed that the same suspect had fired two shots into the house as he fled. Was the officer's shooting of the suspect an **unconstitutional** use of deadly force?

\_\_\_ 1 Yes \_\_\_ 2 No

11. Police officers arrested a murder suspect. In the process of driving him to the station, they did not formally interrogate him because he invoked his *Miranda* right to remain silent. The officers did deliberately set out to elicit information from him by telling him a sad story about the victim's family. After hearing the story, the suspect confessed to the murder. Was the confession obtained **unconstitutionally**?

\_\_\_ 1 Yes \_\_\_ 2 No

12. Is there a **constitutional** requirement to give the *Miranda* warnings prior to routine questioning of a motorist detained pursuant to a routine traffic stop?  
\_\_\_ 1 Yes \_\_\_ 2 No
13. An officer stopped defendant's car for a traffic offense. The defendant was placed under lawful custodial arrest based on probable cause. The defendant was then subjected to a full search without a warrant. Is the search **unconstitutional**?  
\_\_\_ 1 Yes \_\_\_ 2 No
14. A state trooper makes a traffic stop of an automobile containing three occupants for exceeding the speed limit. Landers, a passenger, appears extremely nervous. Can the trooper **constitutionally** order Landers out of the car during the traffic stop?  
\_\_\_ 1 Yes \_\_\_ 2 No
15. Armed with a search warrant, officers arrived at the residence of the defendant who was known to be selling drugs from his home. Upon arrival, the officers observed that the door was open. Believing they were not in any imminent danger and that evidence would not be destroyed, they identified themselves as police officers as they entered the residence, where they subsequently seized illegal drugs. Since the officers did not knock and announce their presence before entering, was the search **invalid** and the evidence **illegally** seized?  
\_\_\_ 1 Yes \_\_\_ 2 No
16. While on routine patrol, deputies observed a group of youths standing around a parked car. Upon seeing the deputies, the youth panicked and fled from the scene. One youth tossed what appeared to be a small rock moments before he was caught by one of the deputies. The rock was found and later determined to be crack cocaine. Is the retrieval of the crack cocaine a product of an **illegal** seizure and **inadmissible** in court if the police did not have reasonable suspicion to stop the suspect in the first place?  
\_\_\_ 1 Yes \_\_\_ 2 No
17. Several officers enter a home to execute an arrest warrant for Jones after verifying that Jones was home. They dispersed throughout the first and second floors. After Jones was arrested and taken outside, an officer entered the basement because he had reasonable suspicion to believe that other persons who might present a danger to those on the arrest scene were hiding there. Since Jones had already been arrested and taken outside, was entry into the basement **constitutional**?  
\_\_\_ 1 Yes \_\_\_ 2 No
18. A police officer saw a man leave an apartment known to contain marijuana. He was carrying a brown paper bag similar to bags containing marijuana observed earlier by police. The officer had probable cause to believe that the



bag contained marijuana. The man put the bag in the trunk of his car. As he drove away, the officer stopped him, opened the trunk, and opened the bag. The police did not have a warrant to search the bag nor the car. Was the search **constitutional**?

\_\_\_ 1 Yes \_\_\_ 2 No

19. Detectives arrived at the home of Mr. Burgin with a warrant for his arrest. A party answered the door and informed the detectives that Burgin was not home but was visiting a neighbor around the corner. After learning the address, the detectives proceeded to the address, forced their way in, and arrested him. Was it **legal** for the detectives to force their way into the neighbor's home to make the arrest?

\_\_\_ 1 Yes \_\_\_ 2 No

20. Mr. Austin was observed by officers leaving a building known for drug trafficking. The officers approached Austin and ordered him to submit to a pat down search. The search revealed no weapons, but one of the officers felt a small lump in Austin's jacket pocket. As he continued to squeeze and touch the lump, the officer believed the lump to be crack cocaine. The officer then reached into Austin's pocket and retrieved a small bag of crack cocaine. Austin was arrested for possession of a controlled substance. Was the police seizure of the small bag of cocaine, under the circumstances, **constitutional**?

\_\_\_ 1 Yes \_\_\_ 2 No

## Appendix B

The table below identifies the court cases that affect police procedures and are used in the construction of the questionnaire scenarios. A brief description of the holding of each case is presented.

*Belton v. New York*, 453 U.S. 454 (1981). The search of the respondent's jacket was a search incident to a lawful custodial arrest, and hence did not violate the 4th and 14th Amendments.

*Berkemer v. McCarty*, 468 U.S. 420 (1984). A person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in *Miranda*, regardless of the nature or severity of the offense of which he or she is suspected or for which he or she was arrested, even for a misdemeanor arrest.

*California v. Carney*, 471 U.S. 386 (1985). The warrantless search of the respondent's motor home did not violate the 4th Amendment. The court determined that when a vehicle is being used on the highways or is capable of such use and is found stationary in a place not regularly used for residential purposes, it is subject to a range of police regulations inapplicable to a fixed dwelling.

*California v. Greenwood*, 486 U.S. 35 (1988). The Court held that garbage placed at the curbside is unprotected by the 4th Amendment and that there was no reasonable expectation of privacy for trash on public streets.

*California v. Hodari*, 499 U.S. 621 (1991). To constitute a seizure of the person, just as to constitute an arrest—the quintessential “seizure of the person” under 4th Amendment jurisprudence—there must be either the application of physical force, however slight, or, where that is absent, submission to an officer's “show of authority” to restrain the subject's liberty.

*Carroll v. U.S.*, 267 U.S. 132 (1925). With probable cause to believe seizeable evidence or contraband is concealed in a vehicle capable of mobility, an officer may search that vehicle without a warrant. Moreover, that officer may search anywhere, and/or open any container, to which the probable cause extends, wherein the object of the search could logically be concealed in a vehicle .

*Chimel v. California*, 395 U.S. 752 (1969). The police may search the area within a person's immediate control incidental to an arrest.

*Maryland v. Buie*, 494 U.S. 325 (1990). The Court authorized a protective “sweep search” in a person's home during an arrest. The 4th Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.

*Maryland v. Wilson*, 519 U.S. 408 (1997). The Court held that after lawfully stopping a speeding vehicle, an officer may order its passengers to step out. While burdening their personal liberty somewhat, officers must be permitted such authority over passengers if the overriding government's interest in officer safety is to be protected.

*Miranda v. Arizona*, 384 U.S. 436 (1966). The court held that the prosecution may not use statements made by a person in police custody unless certain minimum procedural safeguards were in place. Before questioning, a person must be given what is now known as a “Miranda warning.”

*New York v. Quarles*, 467 U.S. 649 (1984). The Court held that there is a “public safety” exception to the requirement that officers issue Miranda warnings to suspects.

*Nix v. Williams*, 467 U.S. 431 (1984). The Court relied on the “inevitable discovery doctrine,” as it held that the exclusionary rule did not apply to the child’s body as evidence since it was clear that the volunteer search teams would have discovered the body even absent Williams’ statements.

*Oregon v. Mathiason*, 429 U.S. 492 (1977). If a suspect voluntarily comes to the station for questioning, is advised that he or she is not under arrest, and is allowed to leave after the interview, he or she is not “in custody” or otherwise deprived of freedom. The Miranda warning is not required. Miranda warnings are required only when there has been such a restriction on a person’s freedom as to render him or her “in custody.”

*Payton v. New York*, 445 U.S. 573 (1980). The 4th Amendment, made applicable to the States by the 14th Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest.

*Rhode Island v. Innis*, 446 U.S. 291 (1980). The Court held that the Miranda safeguards came into play “whenever a person in custody is subjected to either express questioning or its functional equivalent.”

*Schneekloth v. Bustamonte*, 412 U.S. 218 (1973). The Court ruled that when the subject of a search is not in custody and the State would justify a search on the basis of consent, the 4th and 14th Amendments require that it demonstrate that the consent was in fact, voluntary; voluntariness is to be determined from the totality of the surrounding circumstances.

*South Dakota v. Operman*, 428 U.S. 364 (1976). The Court held that the police procedures followed in this case did not involve an “unreasonable” search in violation of the 4th Amendment. The expectation of privacy in one’s automobile is significantly less than that relating to one’s home or office.

*Tennessee v. Garner*, 471 U.S. 1 (1985). Deadly force cannot be used to prevent the escape of a suspect unless there is a significant threat of death or injury to the officer or others. The Tennessee statute was determined to be unconstitutional as it authorizes the use of deadly force against an unarmed, nondangerous fleeing suspect. Such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

*Terry v. Ohio*, 392 U.S. 1 (1968). The Court held that a police officer who observed conduct by the defendant and another consistent with the hypothesis that they were contemplating daylight robbery, acted reasonably, when nothing appeared to dispel his reasonable belief of their intent, in seizing the defendant in order to search him for weapons, and did not exceed reasonable scope of search in patting down outer clothing of the defendants without placing his hands in their pockets or under outer surface of garments until he felt weapons. At that point, he merely reached for and removed guns.

*United States v. Robinson*, 414 U.S. 218 (1973). The Court distinguished between searches done to discover concealed weapons and those conducted coextensively with an arrest.

*Wilson v. Arkansas*, 514 U.S. 927 (1995). The Court held that the common-law “knock-and-announce” principle forms a part of the 4th Amendment reasonableness inquiry.



# Strategic Benefits of Consolidation of Local Police Departments with Sheriffs' Offices

**Adam Dobrin, PhD, Associate Professor, Department of Criminology and Criminal Justice, Florida Atlantic University**  
**Andrea Mucklow, Graduate Student, Department of Business, Executive Programs, Florida Atlantic University**

Most research and commentary regarding police department mergers concern the financial and managerial advantages, as well as the increased benefits to personnel and service. Issues relating to the negative impact of merging agencies generally have to do with the loss of local control of police. These issues are important, but they do not address how mergers fit in existing policing strategic models. Strategies in policing have moved from professional policing to community-oriented policing to problem solving policing, then transitioning to a more inclusive community-oriented policing and problem solving (COPPS). Consolidation of forces, usually due to financial reasons, appears to be a theme sweeping the nation's metropolitan areas. Recent mergers of local police departments with the Broward County (Florida) Sheriff's Office (BCSO) can be used to highlight strategic benefits of merging agencies.

## Policing Strategies

Professional policing was the first true policing strategy. It developed in the 1920s in response to the failures of the ineffective, corrupt, and brutal policing systems in turn-of-the-century America. The crux of the professionalism movement was to turn policing into a profession, similar in organization and management to any other profession (Wilson & McLaren, 1977). True professions have standards for hiring, training, and promotions; clear goals and objectives; and identified means to achieve them. Additionally, professionals are the experts in their particular fields (Bucher & Strauss, 1961; Carr-Saunders & Wilson, 1933; Goode, 1957; Greenwood, 1957). On the path towards professionalism, policing developed such standards and removed the import of political cronyism (Fyfe, 2001; Griffin, 1998; Uchida, 2001; Walker & Katz, 2002; Wilson & McLaren, 1977). The goal of professional policing is to control crime, and it attempts to achieve this goal through the use of technology and scientific personnel management in order to be fair and impartial law enforcers. Crime is the professional jurisdiction of the police; in this model, the police respond only to the crime problem, and they are the only profession whose responsibility it is to do so.

The father of professional policing, August Vollmer, an early police chief for Berkeley, California, stressed strict adherence to departmental rules with very limited personal flexibility, strict discipline among the police ranks, and organization along militaristic lines (Fyfe, 2001; Wilson & McLaren, 1977). The goals of these policies were to create incorruptible, meticulous, by-the-book crime fighters who did not question the authority of their commanders.

The techniques of professional police are reactive, which means that they respond to crime after it has taken place. The primary crime control tools, then, are police patrol, rapid response to calls, and after-the-fact investigations (Alpert & Moore, 2001; Chaiken, 2001a). Professional police personnel conduct these tactics with a focus on the newest technological and scientific advances they have available to them. Weaponry and investigatory devices are crucial to this model.

The *raison d'être* for professional police is crime control. By the late 1960s, it was apparent that this strategy was not an effective path towards this goal, as crime was increasing. Also problematic was the social and physical distance this design intentionally placed between the public and the police (Carter & Radelet, 1999; Uchida, 2001; Walker & Katz, 2002). Police develop an "us versus them" mentality and subculture and have difficulty relating to people other than police. Herman Goldstein (1990) points out that professional police are more interested in the appearance of efficiency and order, rather than actually helping the public. They are also inflexible to the differing needs within the community. This inflexibility is due to the bureaucracy and the distance created between the police and the public resulting from this strategy.

By the 1970s, community-oriented policing (COP) evolved as an answer to some of the concerns with the professional model (Greene, 2000; McDonald, 2001), such as the ineffectiveness of patrol and investigation and the social barriers between the police and the public. The focus of COP is less on crime control and more on general issues of public concerns. Increased accountability to the public, nonemergency services, order maintenance activities, community service, fear reduction, creating a more harmonious relationship between the police and the public (Greene, 2000, p. 302), and the attention paid to making members of the community feel better about their day-to-day lives are more important in this model. Police listen to community concerns as a primary form of direction, instead of simply the rulebook, as was done in the professional model. The techniques of community policing rely on arrest as a last resort, while the primary goal is to find other means to enhance community order. The aims of community policing are to encourage the smooth day-to-day activities within the community, strengthen feelings of safety and reduce fear, and elicit cooperation from citizens by forming a bond between community residents and the police (Chaiken, 2001a, 2001b). In this model, police are members of the community who interact with and are part of the larger public.

COP is a service-driven strategy that relies on the police to respond to the specific needs of the members of the community that is being policed (Goldstein, 1990). The police respond to a myriad of public concerns, well beyond simply responding to crime (Sherman, 1995). Crucial to this model, however, is that the police focus their attention on the needs of their community and not people or places who are not of that particular community. The risk becomes unequal or unfair treatment: community members are listened to by the police and are treated one way, and noncommunity members are not listened to and treated differently.

In the 1980s, in an effort to improve the effectiveness of policing, problem-oriented policing emerged. Research in the field of policing during the 1970s found that police deal with many different community problems, not just criminal issues (Goldstein, 2001). It was soon understood that arresting criminals was not a

solution to the problems faced by communities; arrests were merely bandages on the wounds. Incidents are “merely overt symptoms of the problem” (Goldstein, 1990). Understanding the root of the issues became the focus in order to solve the problems there and keep them from reoccurring. Officers were acknowledged as having a greater understanding of the community and root problems involved and, thus, were given more discretion to create solutions that better fit the incident in order to resolve the issue at the root.

Moving in a direction to create a better balance between reactive and proactive policing led to a combination of strategies; the end result is known as community-oriented policing and problem solving (COPPS). This is a “proactive philosophy” that focuses on solving issues that are not only criminal but those that affect the quality of life or increase the community’s fear of crime (Glensor & Peak, 1999). This strategy focuses on a long-term goal of reducing crime and disorder by involving community leaders and citizens to assist in efforts to reduce the factors that contribute to criminal activity. As opposed to the crime control focus of professionalism, COPPS is determined to go farther in eliminating the problems that lead to criminal activity, not just reducing the activity itself. By involving the community in the efforts to eliminate the factors that contribute to criminal activity in their neighborhoods, community leaders and citizens have a greater understanding of their police department, seeing them as problem solvers, not just incident managers.

## **Consolidation**

There are both advantages and disadvantages that come with the merging of police departments. The benefits of consolidating police departments generally focus on the economy-of-scale issues. Larger departments can spread the costs of training, staffing, and equipping themselves more efficiently than multiple agencies. Instead of having many different agencies within a county with different hiring and training requirements, different motor pools, different pay and retirement, different communication, record keeping, laboratories, and so on, consolidation would allow for a more efficient use of resources and eliminate unnecessary duplication. This would allow for the larger, consolidated departments to have a greater number of specialized units, greater flexibility in scheduling, and the ability to recruit and keep better quality employees. It would reduce duplication in criminal investigations as well (Baranzini, 2002; Crank, 1990; Krimmel, 1997; Wilson & McLaren, 1977).

In a related vein, an additional benefit to consolidation has to do with the city management and finances. Policing services often constitute a majority of a city’s budget and liability concerns (Baranzini, 2002). Contracting these services, particularly to a county entity, removes the liability from the city’s door and often reduces many of the costs of the department, as mentioned above. Instead of enduring headaches related to liability, the city, after consolidation, is now a client and can demand improved service from its contract. These issues are particularly significant when a small city grows rapidly, and the local police department is unable to provide adequate services.

Another benefit of merging has to do with the increase in services the larger agency can provide. Services such as canine, air support, school resource officers,



forensic specialists, community watch liaisons, DARE, and even 24-hour staffing are unlikely to be possible in small agencies but expected from larger ones. By reducing duplications and costs, consolidated departments are able to provide greater services to the citizens in the community (Krimmel, 1997).

The downside of mergers rests mostly on the fear of the loss of local community control. In smaller cities, police departments are typically controlled by community leaders and elected officials. These officials more often than not live in the neighborhood and have more personal knowledge about the concerns of the residents. Additionally, these officials have more genuine concern for the safety of the community in which they live. When larger municipalities take over the control of the police department in a smaller town, residents in the local area fear that the top-level management of the larger department will not have the same level of concern for the livelihood and safety of the local community.

The reality of the situation is that resources are shifted in order to better achieve the goals set forth in the community by its residents. Striking a balance between reactive and proactive policing seems to create a blend between community-oriented policing and problem solving policing, which results in COPPS.

Reactive policing is what most citizens would recognize as crime fighting; responding to an incident at the time it is occurring or shortly thereafter. Police officers with a reactive sense of duty handle the situation at hand and move on to the next crime-fighting episode. Implementing a proactive sense of duty would be going above and beyond the call of duty. The officers responding to an incident would be charged with looking at the circumstances that created the situation to begin with and attempt to solve the issue there, at the root. This is the basis of problem solving policing.

Add to this problem solving focus an attempt to draw in the community by personal engagement with community members, allowing them to take part in the prevention of future incidents and participate in the crime fighting aspect. Together, you have the basics of COPPS.

When discussing strategic benefits of merging, the focus is often on problem-oriented policing (POP) goals. POP focuses on addressing the underlying causes of patterns of crime, instead of simply responding to individual occurrences of crime (Goldstein, 1990).

With larger areas under coverage, merged departments have a much greater opportunity to observe and solve larger problems that might be overlooked if the multiple incidents that make up the problem cross jurisdictional borders. POP forces police to realize the patterns and the fact that multiple crimes over a larger area can, in fact, be related to one another (Goldstein, 1990), something that smaller municipalities may not have the capacity to handle. Additionally, with the greater shared resources that result from merging departments, officers have more manpower, time, support, information, and training to identify and solve problems.

Community policing offers opportunities to involve residents in the policing process. While quite efficient in small municipalities, these concepts are applicable

and achievable in larger departments, as well. Mergers in police departments can expand or hinder these initiatives in COP. Broward County Sheriff's Office (BCSO) offers a unique model for consolidation that has allowed the concepts of COP to thrive even in a larger department.

Merging forces, at first glance, seems to contradict the basic tenets of COP. As policing responsibilities are passed from small, local departments to larger, often county ones, the input of community concerns may be reduced. A fear is that county managers may not be aware of or concerned about local issues to the degree that the local police officials are.

## Cooper City and BCSO

There are approximately 1.6 million people who call Broward County home. Broward is made up of 29 municipalities and several unincorporated areas. It has 16 municipal police departments, while the remaining 13 municipalities, unincorporated areas, the county courthouse, waterways, port, and airport are policed by the sheriff's office. BCSO is the largest nationally accredited sheriff's department, with over 6,000 employees, 2,800 of whom are deputies (BCSO, 2004).

Cooper City is a 7.5-square-mile bedroom community. This western suburb of Fort Lauderdale is ranked as the fourth highest in household income in Broward County, with a population of approximately 29,000 (Cooper City, 2004). The desire to reduce costs associated with internal policing is what led Cooper City to merge with Broward County.

The two departments merged in early 2004. All 75 members of the Cooper City Police Department were consolidated into BCSO. The merger saved the city an estimated \$1.5 million (BCSO, 2004). Additionally, as the table below indicates, both the violent and property crime rates dropped after the merger. While that is not the focus of this article, it is important to note that there were immediate tangible benefits from the merger besides cost savings.

### Cooper City Crime Rates

	2003	2004	Percent Change
Population	29,400	29,494	0.3
Violent Crime	63 (214.2)	55 (186.4)	-12.9
Property Crime	716 (2435.3)	570 (1932.5)	-20.6

Source: Federal Bureau of Investigation, 2005, 2006

The sheriff's office in Cooper City actively seeks interface with the community members, including residents, visitors, and businesses. BCSO prides itself on interacting with the community, even when there is no criminal activity. This increases the community's support in the police force in addition to their ability to keep residents safe. The police have a visible presence in the community, which has

a deterrent effect, sending a strong message to would-be criminals and increasing the community's safety.

Even after the merger with BCSO, Cooper City has managed to keep a strong police presence in the community. With additional resources resulting from merging, BCSO is actually able to provide a larger presence. The fear that the larger BCSO force would eliminate this personalization was diminished shortly after the merger, as residents were able to see for themselves that the police presence and local focus had not been reduced. The uniforms and patrol cars changed; however, the officers and their sense of community had not. The new faces that were added to the force adapted to the philosophy of community.

BCSO's unique model for consolidating forces allows each community to keep their identity while gaining the resources necessary to adequately enforce the laws and protect the community. The merger with Cooper City Police Department has benefited the community. Nothing negative has been reported about the merger, and the city and its residents appear to be satisfied with the results. Despite the political overtones that shadow these mergers across the country, the results from this merger are positive.

If resources that enhance the capacity to carry out the job that a department has been assigned can be increased without losing the identity of the department, it would be impractical not to take that route. When it comes to public safety, the more resources a department has to devote to that goal, the more successful the department will be in carrying out that goal.

## **Conclusion**

Previous work concerning the consolidation of local police departments with county sheriffs' offices has overlooked the strategic benefits of this process. The loss of local input in the department is often overstated but is mitigated by the gain of the possibility of being able to implement a COPPS-based program. This will both keep the local community involved with the policing practices and reduce crime. The example of the merger between the Cooper City Police Department and the BCSO highlights the benefits from consolidation.

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# Conducting an Effective Compstat Meeting

Larry T. Hoover, PhD, Director, Police Research Center, Sam Houston State University

## More Than a Ritual

The primary characteristics of Compstat include instant and detailed crime analysis, immediate responsive deployment of resources, active and relatively rigid enforcement, concentration of several diverse organizational units and approaches upon emerging crime patterns, and a strict management accountability program centered upon crime control. These characteristics come together in the famous—or if you choose, infamous—Compstat meeting. The hallmark of Compstat accountability is periodic meetings, weekly or monthly, during which patrol command staff make presentations about crime patterns and trends in their area of responsibility and field “tough” questions about what they are doing to counter those specific patterns and trends.

While Compstat originated with the New York City Transit Police under the tutelage of William C. Bratton, the integration of the elements listed above manifested themselves as a strategic approach during his administration of the New York City Police Department. Vincent Henry (2002) characterizes Compstat as a “paradigm.” It is too early to judge whether Compstat is actually a paradigm shift in law enforcement; however, certainly Compstat is more than an approach. It is a unique combination of a strategy and a management style. As a strategy, Compstat strongly emphasizes crime-specific policing. Crime-specific policing is targeted enforcement aimed at specific offenses committed by specific offenders at specific times and specific places. As a management style, the core of Compstat is strict management accountability for achieving crime reduction goals.

Compstat is perceived by many as synonymous with Compstat meetings. It is the organizational hostility of those meetings as conducted in the NYPD in the 1990s that have become legend. Precinct commanders were literally told to retire on the spot. The degree of turnover among the command staff at NYPD immediately following Compstat’s implementation was astounding. Henry (2002) reports that within one year, more than two-thirds of the agency’s 76 precinct commanders had been replaced. The stories about NYPD precinct commanders being sent down the hallway to turn in their retirement papers are true. With this legacy, it is a small wonder that many police managers have rejected Compstat out of hand as a potential approach for their agency. Compstat frightens many police managers because of the New York City confrontational style. Compstat’s practice, however, does not generally follow the “hard, cold, and cruel” model initially employed in New York.

## Prerequisite Characteristics for Successful Meetings

The perception of every citizen who is west of the Appalachian Mountains is that Americans on the East Coast speak relatively abruptly. Those who live on the East

Coast would respond, of course, that they are forthright and forthcoming, that the pace of life in the East Coast big cities does not allow for routine exchange of “how’s the family doing?” niceties. In that context, the assertion is often made that the degree of confrontation in the NYPD model would only be tolerable in the New York City culture. Another perspective is that the program as implemented by Bratton was designed to jumpstart a moribund organization, and the confrontation had nothing to do with the local culture but rather a necessary evil to rid the organization of civil-service-protected deadwood. Both factors probably played a role.

Whether a confrontational character was required in NYPD to make Compstat work in that setting is certainly debatable. Regardless, the style is not a necessary component of Compstat when implemented in an otherwise healthy department policing a community where crime is perhaps not as low as one would like but not out of control. The vast majority of police agencies that have implemented Compstat argue vehemently that confrontation is unnecessary. In fact, they all suggest that confrontation would be counterproductive to the effectiveness of the program. Indeed, observers of the NYPD have noted that while still stressful, Compstat is not the accountability confrontational model that it was in the 1990s (J. O’Keefe, personal communication, 2004). Nevertheless, Compstat meetings should not be run like family reunions. They are “no nonsense” business meetings. On numerous occasions, what the U.S. State Department would call “frank and forthright” conversations should occur. For an effective meeting, six characteristics must be present:

1. Balance between accountability and tactical planning
2. Crime pattern specificity
3. Geographic Information Systems (GIS) integration
4. Challenging questioning
5. Appropriate presenting entities
6. Base of divisional meetings

Each is discussed below.

**Accountability vs. Tactical Planning.** If one were to conceive a continuum anchored at a 1 with Compstat as a pure accountability program and a 10 with Compstat as a pure tactical planning program, an effective meeting would be a 7 or 8—that is, leaning heavily toward tactical planning. A key to discerning whether that balance exists is the currency of the data used at the Compstat meeting. If the data being presented is a month old, then Compstat is an accountability program, not a tactical planning session. The use of monthly data is appropriate if Compstat is indeed an accountability program—with division commanders reporting on patterns, trends, and related interdictions already implemented. If, on the other hand, the department Compstat meeting is regarded as a tactical planning session, then one would argue that the most recent data possible should be employed—weekly not monthly. Most agency reporting systems are not “up to the minute,” but the system should certainly be current within two or three days. Tactical planning is premised upon evolving crime pattern and trend information, not that from a month ago.

**Crime Pattern Specificity.** Several years ago, the Houston Police Department implemented its variation of Compstat, the STAR program. The program “fizzled” within months. Discussion with Houston command staff indicated that the primary shortcoming of the program was its “show and tell” character. That is, rather than tactical planning sessions, the Compstat meetings became a tedious display of statistic after statistic. Critical to the success of Compstat is that very specific crime interdiction tactics be discussed. It is not enough to simply review crime patterns and trends. It is interdiction that makes a difference, and if this is not included in a Compstat format, the meetings are doomed to degenerate into staff briefings.

The key to Compstat success is depth, not breath. Although a portion of the Compstat meeting is legitimately dedicated to broad trends in crime rates, the purpose of the meeting is to develop tactics to interdict specific offense patterns. The fact that burglary is up or down 5% year-to-date compared to last year-to-date can be communicated in a brief memo. The purpose of a Compstat meeting is to examine what types of burglaries are now occurring and where and when they are occurring and develop interdiction tactics.

Several related points are worth noting. First, seasonal variation in crime statistics requires that the analysis used include not only patterns and trends in the last several months but a comparison to “this month last year” and “year-to-date this year compared to year-to-date last year.” In addition, Uniform Crime Report crime categories are insufficient for Compstat analysis. For example, agencies emphasizing tactics break theft into categories that made sense from an interdiction perspective—rather than theft in UCR aggregate (e.g., theft from a vending machine, gasoline drive-offs, so-called “beer runs” snatch and grab merchandise at the doorway of convenience stores, shoplifting). Similarly, burglaries are broken down not only by commercial and residential but within residential by apartment and single family dwelling. The key is the need for targeted enforcement, and targeted enforcement requires delineation of specific offenses, at specific locations, at specific times, by a specific offender type.

**GIS Integration.** In effective Compstat meetings, there are two computer projectors and two screens in the room. Projected on one screen are the types of data that are being discussed, presented in table and graph format. Projected on a second screen are Geographic Information Systems (GIS) crime occurrence maps. In the best Compstat meetings, the GIS projection is not of static slides transferred to *PowerPoint*<sup>®</sup> but rather is drawn from a live interactive GIS database. If a good GIS operator is available, the second projection can be modified on the fly for such purposes as rapid zoom into a high crime density location. Additionally, a good GIS technician can immediately apply filters to the data, such that auto thefts can be projected first in totality and, if a query is made regarding time of day, immediately filtered to reflect only those occurring during daytime hours. It should be emphasized that for this type of system to be functional, a highly skilled GIS analyst is necessary. Considerable skill is necessary to employ GIS in real time. An agency contemplating employment of GIS should expect to spend far more on thorough training of analysts/operators than they spend on the software itself.

Participants in Compstat meetings indicate that while GIS is useful, it usually does not meet original expectations. It does not obviate much in the way of aggregate crime patterns that could not otherwise be observed in a table of addresses.



It certainly does not solve crime. No one suggests that GIS was not worth the investment of effort, just that expectations have to be set realistically. The most cited problem is that a GIS display is too often a blur of scores if not hundreds of dots on a jurisdictional map. When there are too many dots on the map, nothing is obvious. When such intensely populated maps do illustrate a pattern, it is frequently a pattern known to everyone in the room (e.g., dots representing thefts from autos cluster around commercial shopping areas).

**Challenging Questioning.** Nonconfrontational does not mean comfortable. Commanders who are in the “hot seat” should be frequently challenged: “Have you tried this technique? Have you employed this approach? Should you talk to this or that unit?” There may be congenial conversation, with coffee served before the meeting and lunch together after the meeting, but during the meeting, the interactions should be characterized better by the term *civility* than *congeniality*. On the other hand, the interactions involve *challenge*, not *confrontation*.

For example, when asked about the management in a specific problem apartment complex, division captains should know the manager’s name. Patterns should be pointed out *by* the commander in the hot seat, not pointed out *to* her or him. An illustration of inadequate questioning occurred during one of my observations. During a presentation by the detective division, there was a slide regarding financial fraud incidents. The number of such instances had dropped from 132 in April to 28 in May, yet this slide was passed by with no comment or question regarding what is clearly an issue that should be discussed. The fact that it was a drop and not an increase is irrelevant—an 80% change in the rate of any offense merits discussion.

A critical issue is “Who does the questioning?” I recommend that questioning be led by an assistant chief (second in command). Questioning should be from the highest level of the agency; however, the preparation time necessary to effectively challenge argues against the questioner being the chief of police (except perhaps in agencies with fewer than 100 sworn officers, and even then it is debatable). Additionally, the line between tough challenge and confrontation can be thin. A chief may want to leave “challenging” interaction to an assistant chief in order to assure sound relations with command staff. That being said, it is absolutely critical to the success of Compstat that the chief of police be present. The absence of the chief conveys a clear message that this is not a priority. The chief should ask him- or herself the same question that should be asked of commanders requesting excessive absences, “What in your job description is more important than crime?”

**Appropriate Presenting Entities.** In 1950, O.W. Wilson characterized patrol as the backbone of law enforcement. A half a century later, there is nearly universal agreement that it still is. Compstat-driven interdictions are dominated by patrol; however, numerous other police units and programs are also involved. Compstat interdiction tactics frequently draw upon ancillary police agency programs. In some instances, they are prevention oriented (e.g., having a law enforcement explorer scout group go door-to-door urging residents to close their garage doors). Community policing specialists are often called upon. A few police departments include discussion of working cooperatively with probation or parole. It is important to understand that more often than not, a particular crime problem is addressed using multiple tactics and employing multiple units. This argues for breadth of

reporting, to include units beyond patrol and tactical. Another purpose of having all divisions report is to maintain communication throughout an agency.

That being said, there are several issues that need to be addressed. First, the nature of the presentations changes dramatically when the meeting moves from patrol divisions to special and ancillary units. The format of the patrol division reports are classic Compstat, with a focus upon crime incidents and control tactics. Once the meeting moves to the ancillary divisions, the character of the presentations too often changes to that of a staff briefing. If police command staff perceives that there is sufficient value to include presentations by all divisions, then the character of the presentations by the ancillary divisions needs to parallel that of the patrol divisions. More specifically, the data presented by the ancillary divisions should be in the format of rates, not raw numbers. Furthermore, rates should be depicted in trend or pattern format—not in the form of “this month we investigated 23 auto thefts.” For a number of ancillary divisions, it is possible to include productivity information (e.g., response time trends from a communications division).

An option is to rotate presentations at Compstat meetings, with the geographic patrol divisions always presenting and a rotational schedule for other divisions. Some agencies employ this technique. Another option is for the ancillary divisions to produce written reports but either eliminate or substantially abbreviate their oral presentations.

**Base of Divisional Meetings.** Division-level meetings are a critical element of Compstat in agencies large enough to have substations. Many agencies will attest that “where Compstat really occurs” is at the substation division meetings. Division-level meetings are particularly effective when they reach all the way down to patrol officers. Yes, this creates logistics and overtime issues; however, engagement of regular patrol is critical to crime interdiction. It should be stressed that the division-level meetings should employ data that is as current as possible—these meetings are designed to develop tactical response.

## **Data Analysis Format**

A Compstat meeting is only as good as the data presented. Data should not be a mass of individual numbers. The format should be in easy-to-understand graphical figures. At the same time, a Compstat meeting cannot be allowed to degenerate into a “dog and pony show.” When a “PowerPoint® of the Month” prize starts to be informally awarded, it is time to pull back. Several principles apply.

First, most analytic comparisons should be very recent—the last four weeks. Data providing longer term perspective is also needed, however. For example, employing “this month this year” compared to “this month last year” is appropriate. Crime rates fluctuate considerably by month of the year—related to weather effects, school schedules, and holiday seasons. Thus, such comparisons should be maintained. It is also useful for some of the trend data to include a line graph that illustrates patterns in the last several months—at least the last 3 months. While it is important to know whether theft from automobiles is up or down compared to this month last year, it is also important to know the recent trend.

Analysis of rates by telescoping from large to small reporting areas is important. Part of Compstat is the comparison of rates by reporting area for analysis and targeting purposes. In addition, it is useful to incorporate information regarding problematic addresses (e.g., the most frequent locations for gas station drive-offs). There should also be some delineation of crime type by victim or target. For example, many agencies have found it useful to distinguish thefts from autos from thefts of auto parts, which tend to be committed by a different type of offender. Robbery of an individual should be distinguished from robbery of a convenience store. In general, the crime categories used for analysis should reflect the type of targeted intervention that is possible for the department to attempt.

## **Role of Crime Analysts**

Talented crime analysts are critical. Effective crime analysis does not equate to pretty electronic pin maps. As noted, specificity, or targeted enforcement, is an essential component of Compstat. Even in the large departments' agency-wide meeting, discussion frequently zeros in on a specific offense or offense series. Crime analysis is not the production of simple trend line graphs. An effective crime analysis unit routinely "drills down" in an effort to link offenses and offenders.

Additionally, target selection for concentrated effort month to month should be guided by recommendations from crime analysis. In effect, target "nomination" should come from the crime analysis unit. There should then be a meeting with division commanders to review the nominations and settle on specified target issues/locations. Nominations from crime analysis should never be rubber-stamped. One model is to have the crime analysis unit document three to five issues/areas for consideration by each division, and the division commanders then select two to three of the five. Occasionally, division commanders would even be expected to substitute a different target at their own discretion.

## **Tactics**

Division-level discretion and flexibility is essential for Compstat to operate successfully. If everything is controlled from headquarters, program effectiveness is severely hampered. Division commanders need to be provided the discretion to develop not only their own targeting but their own tactics as well.

The most important tactical consideration is the availability of discretionary resources to focus and concentrate upon a problem issue/area. Some kind of discretionary quick deployment resource must be available if Compstat is to work. Discretionary resources might be patrol staffed at a sufficient level so that officers can be pulled from call for service response and assigned to ad hoc tactical response. It might be the use of community policing specialists. It might be the temporary reassignment of divisional detectives, gang officers, auto theft detectives, or other investigative personnel. It might be a standing full-time tactical unit. If some kind of discretionary resource is not available, an agency might as well save its time and resources. Focused interdiction, not sophisticated crime analysis or a monthly meeting, is the key to Compstat success.

The issue of specific tactics appropriate to Compstat response is beyond the scope of this article. It should be noted that the issue merits much closer examination—

an effort currently being pursued by the Police Research Center at Sam Houston State University.

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**Larry T. Hoover** received his PhD from Michigan State University and has been on the criminal justice faculty at Sam Houston State University (SHSU) since 1977. Dr. Hoover, a past president of the Academy of Criminal Justice Sciences, is director of the Police Research Center at SHSU. He is an associate editor of the *Law Enforcement Executive Forum*.



# Conducting Program Evaluations in Rural Environments: The Challenges and Benefits

**Fran S. Danis, PhD, Associate Professor, School of Social Work, University of Missouri–Columbia**

**Elizabeth C. Pomeroy, PhD, LCSW, Professor, School of Social Work; Codirector, Institute for Grief, Loss, and Family Survival, University of Texas at Austin**

Like their urban counterparts, the capacity of many rural social service organizations to conduct evaluations may be limited by resources, knowledge, and experience. Resources such as personnel time and money to pay for the costs of evaluation are often not available. While agency staff has expertise in client populations and the delivery of services, they often do not have designated staff persons with expertise and experience in conducting program evaluations. When these agencies are faced with mandated evaluations to satisfy funding sources, they can either choose to use money designated in their grant to hire staff to conduct an evaluation in-house or find organizations or individuals with program evaluation experience with which to contract.

Federally funded programs in the area of domestic violence have created opportunities for community-based social service organizations, local criminal justice systems, and program evaluators to work together. Federal laws codifying the criminalization of domestic violence (Danis, 2003; Fagan, 1996) created a number of programs that encourage community collaborations to hold batterers accountable for their behavior and provide safety for victims. One federal program that encourages these entities to work together is the Grants to Encourage Arrest. Because communities and their institutions may differ in their approaches, these grants have required a program evaluation to track the program's progress in implementation and its outcomes.

The purpose of this article is to discuss the challenges and benefits of conducting such an evaluation from the point of view of the evaluation team. While this is not necessarily a new topic, this article offers insights and recommendations to conducting program evaluations within a rural environment. Using a case study from our own experience as evaluators, we will provide readers with lessons learned and recommendations for conducting program evaluations within a rural service delivery context.

## Overview of Evaluation Project

A domestic violence agency serving three rural counties in a large southwestern state in the United States received federal funding for two years through the Grants to Encourage Arrest program of the U.S. Department of Justice. The primary goal of the project was to build a coordinated community response to domestic violence in the service delivery catchment area. For the year prior to grant funding, there were 375 reported domestic violence incidents in these rural counties. Abusers in these rural communities frequently move their families from town to town often crossing county lines in an effort to evade local law enforcement. To provide law enforcement officers with more comprehensive information when responding to a

domestic violence call, a unique feature of this grant was linking law enforcement agencies through a shared electronic database to track offenders. In addition to the electronic database, the project included policy development and continuing education components. The criminal justice agencies worked to develop common policies regarding arrest and prosecution of domestic violence offenders, and all law enforcement officers in these counties were offered continuing education training.

All of these three rural counties have an economy mostly built on ranching. The population estimates according to the 2000 census include County 1 with a population of 57,733, County 2 with a population of 21,804, and County 3 with a population of 20,390. Each of these counties has their own elected sheriffs with their own departments, separately elected district attorneys, and three to eight local municipal police departments per county. Many domestic violence shelters serving urban areas may only have one police agency, one sheriff's department, and one district attorney with which to coordinate their work. What this one rural domestic violence agency was attempting to do was remarkable in its ambition and complexity.

## **Challenges to Rural Domestic Violence Service Delivery**

Besides the overwhelming task of organizing independent criminal justice entities that bring their own relationship histories to the table, there are a number of challenges to domestic violence service delivery in rural areas that must be noted. While progressive isolation is one of the ways batterers typically exercise power and control over their partners, isolation in remote rural areas is a more deadly issue (Adler, 1996). In rural areas, the nearest neighbor may be miles away, where no one can overhear acts of violence, and emergency assistance may never arrive.

Increased access to weapons also complicates this picture. It is common to have several firearms, including pistols and rifles, on a ranch or farm. Many ranching and farm implements are also sharp and heavy, creating a choice of weapons for a batterer. Rural areas also tend to enforce stricter gender roles with women expected to be subservient to their husbands. Men are supposed to be the breadwinners and rule their households. In rural areas, gender roles are often reinforced through a "rural patriarchy" and "good ole boy network," allowing men to exercise considerable power in the community and at home (Websdale, 1998). These issues can affect the level of community support domestic violence shelters receive and the level of assistance women might receive for ending the abuse.

Other issues facing women in rural communities include a lack of confidentiality and privacy. Women seeking help are faced with enormous challenges to keep their actions secret. If they had a car of their own, it could easily be spotted outside a shelter or police department by someone who might mention it to their abusive partners. When battered women attempt to leave their abusive partners, the lack of social services available, as well as the lack of public transportation, affordable housing, day care, legal assistance, employment opportunities, or job training, makes their efforts to secure a life free of the abuser overwhelming and may necessitate their leaving the rural community to which they feel attached (Murty & Elfe, 2002).

One of the challenges of delivering services in rural areas, however, can also be one of its strengths. Because everyone does know everyone else, these tighter networks, when activated with knowledge of the dynamics of domestic violence, can also

serve to protect a battered woman by keeping her location secret and sending a consistent message from a number of sources that abuse is not to be tolerated.

Sending a consistent message that abuse is not tolerated is one of the core objectives of a coordinated community response to domestic violence. The coordinated community response strategy proposes coordination to protect battered women, hold abusers accountable, deter future abuse, and coordinate the flow of information so that neither party gets lost in the cracks of a multifaceted system (Hart, 1995). This approach brings together criminal justice, health, and human services providers to adopt common policies, procedures, and tracking systems. Coordinated responses can lead to increases in arrest, prosecution, and mandated counseling (Gamache, Edleson, & Schock, 1988). Men arrested and court ordered to treatment are least likely to repeat their violence, followed by those who are not arrested, and then by those who are arrested but not ordered to treatment (Syers & Edleson, 1992). Lower recidivism rates are associated with the degree of sanctions levied by the court and the level of compliance with those sanctions (Murphy, Musser, & Maton, 1998). Since previous evaluations of coordinated community responses were conducted in urban and suburban environments, the present project delineates the challenges of conducting an evaluation in a rural area.

## **Vision of Evaluation of the Rural Coordinated Community Response Project**

Within this rural context, the evaluation of the project included both process and outcome components to track the implementation and impact of the project. In consideration of the difficulties of securing a matched comparison community and the ethical issues involved in randomizing service delivery, evaluators planned a simple pretest/posttest evaluation design. During the first year of the project, evaluators collected data at coordinating council meetings, during interviews with key informants, through a survey of law enforcement officers, and through tracking of previous domestic abuse criminal cases.

Attending coordinating council meetings gave evaluators an opportunity to both observe and interact with project participants. By creating an evaluation committee, we hoped to engage participants in the evaluation process by adopting the role of consultants and resource professionals. Our goal was to demystify the evaluation process, and, to that end, we actively solicited participant ideas about the types of information that would help them decide whether the project was effective. We also hoped that by developing a participatory approach, we would overcome the hesitancy of rural residents to discuss their problems with outsiders (Murty, 2004).

To help us understand some of the contextual issues facing the project, we decided to conduct one-on-one key informant interviews of law enforcement personnel and district attorney offices. These interviews included questions on the history of criminal justice response to domestic violence in their county and what participants hoped the project would accomplish. Interviews with each key informant were to be conducted twice, once at the beginning of the project and then at the end of the project to assess any changes. Besides creating an opportunity for community leaders to express their perspective as a valued component of the evaluation, we hoped that interviews served as an opportunity to build trust with these individuals.



A written survey was also distributed to law enforcement officers in the project area. The survey contained questions on officers' practices when responding to a domestic violence call, their attitudes toward domestic violence victims, and their level of training and education about the topic. Again, evaluators envisioned administering the survey twice, once at the beginning and once at the end of the project.

Evaluators also planned to collect baseline data about how criminal cases of domestic violence were handled by the criminal justice entities for the proceeding one to two years. This baseline data would include the number of domestic violence arrests made, number of prosecutions, disposition of each case, whether the defendant was convicted or acquitted, and number of court referrals to batterer intervention programs. This data would also be used as a point of comparison after the shared electronic database was fully operational.

Lastly, evaluators planned to conduct a number of focus groups with women who received services from the local domestic violence service agency. The focus groups were designed to collect baseline information from the women about their experiences with law enforcement and the criminal justice system. It was hoped that with a shared database and standardized policies adopted by each of the criminal justice entities, the experiences of battered women with the criminal justice system would also improve. This was, after all, the central reason for implementing this project.

## **Challenges to Process Evaluation in the Rural Environment**

As stated earlier, one component of the evaluation was gathering information about arrests and dispositions prior to the implementation of the project. The evaluators quickly discovered that these documents were housed in the county courthouse according to an antiquated record-keeping system. None of the court documents had been updated with computer assistance and instead were recorded in large notebooks. These handwritten ledgers seemed to have some cases filed alphabetically by offender, and some information was entered according to the date that the case entered the criminal justice system. Many of the entries were incomplete. It was virtually impossible to discern which cases were domestic violence cases as opposed to cases for other types of crimes. Many of the documents were found in large cardboard boxes on an upper floor of the courthouse. In addition, courthouse staff was unable to assist the evaluators in locating documents due to the lack of knowledge about how these documents were organized. The often-heard response from courthouse staff was, "Well honey, you just have to poke around." This situation led to the evaluators spending an inordinate amount of time attempting to reorganize the documents needed for data collection and finding that the data on offenders was often missing, incomplete, or unusable due to the lack of a uniform data collection tool. After only being able to find complete information on six offenders, we decided to abandon this part of the project.

Another problem encountered by the evaluators was the limited availability and accessibility of staff in many of the rural towns. For example, one 911 emergency operator explained to an evaluator that if she left her desk and phone for a few minutes and a call came in, there would be no one to answer the call and the phone would just continue to ring unanswered. We shuddered to think what this would mean for a real emergency! Sometimes it was difficult to find anyone with whom to communicate after 12:00 PM when the office closed for lunch and few staff members returned for the rest of the business day. This laissez-faire attitude was pervasive throughout this rural area

and made communicating with staff and professionals very time-consuming and drawn out. Requests for information often took several weeks to obtain. Many offices had no voicemail, and e-mail was rarely available. A final barrier to evaluation research in this rural area was the multiple roles that professionals played. The cliché that “everyone knows everybody” was complicated by the fact that many of the professionals not only directed agencies but also chaired community committees and held public offices. Attempting to uncover which office was responsible for various aspects of the arrest process and crisis intervention for the victim was a more complicated process than anticipated. For example, despite approval by agency leadership, focus groups with victims were never organized by front-line staff.

## **The Benefits of Program Evaluation in a Rural Environment**

Despite these barriers, we were able to conduct surveys of law enforcement professionals. As mentioned earlier, a three-page written survey was distributed to law enforcement officers across the three counties. Responses were received from 64 officers representing five different law enforcement agencies that included the three county sheriff departments and two municipal law enforcement agencies. The surveys included personal demographic factors such as gender, primary racial or ethnic identification, highest education completed, years as a sworn officer, tenure in current position, and hours of continuing education or inservice training in domestic violence for the past two years.

Three separate five-point Likert-like scales were used in the survey. To capture self-reports about personal factors that might affect an officer’s capacity for responding to domestic violence, the level of academic preparation, personal experiences, organizational support, and policy support were measured (1 = not at all, 5 = a great deal). A second scale (1 = strongly disagree to 5 = strongly agree) was used to capture opinions about the work of their community partners (e.g., courts, prosecutors, batterer intervention program, and local domestic violence shelter). The third scale measured their current practices while responding to domestic violence calls (1 = none of the time, 3 = some of the time, and 5 = all of the time). At the end of the survey, one open-ended question asked, “tell us in your own words, what law enforcement officers need to do to help stop domestic violence in your community.”

## **Uncovering the Rewards: Law Enforcement Survey Findings**

Of the 64 completed surveys, 93% were men, 77% were Anglo, 72% worked for a county sheriff’s department, 72% had some college, 76% had 3 years or less in the present position, and 36% had 3 years or less experience as a sworn officer. The majority of respondents reported some to a moderate amount of coursework in domestic violence. All but 7 reported attending continuing education training in the past 2 years on domestic violence. Twenty-five percent reported no to a little academy preparation for working with domestic violence. Almost two-thirds felt they had access to expertise about the issue and that their departments participated in community coordination projects. Over two-thirds (43%) reported a moderate amount to a great deal of workplace policies addressing domestic violence affecting officers. Over 51% reported that domestic violence had affected them or members of their families.

Out of 48 items on the survey, there were significant differences between the municipal law enforcement officers and county sheriffs’ deputies on only 4 items. Sheriff’s deputies

were more likely to take pictures of destroyed property. They also felt they were more prepared by their law enforcement academy for domestic violence work. On the other hand, municipal police were more likely to take money out of their own pocket to help battered women than county sheriffs' officers. They were also less likely to believe that battered women don't follow through with referrals. The level of continuing education training had no bearing on these findings (see the following table).

**Significant Differences Between Rural County Sheriffs' Deputies and Rural Municipal Police Officers**

Survey Item	County Mean	Municipal Mean	df	t
To what extent do you feel your law enforcement academy training prepared you for working with domestic violence?	3.28	2.71	61	2.18*
I take pictures of destroyed or damaged property.	4.60	4.11	61	2.48*
I have taken money out of my own pocket to help a victim get to a safe place.	1.73	2.39	60	2.04*
Battered women don't follow through with referrals for help.	3.30	2.83	62	1.96*

\* p = <.05, two-tailed

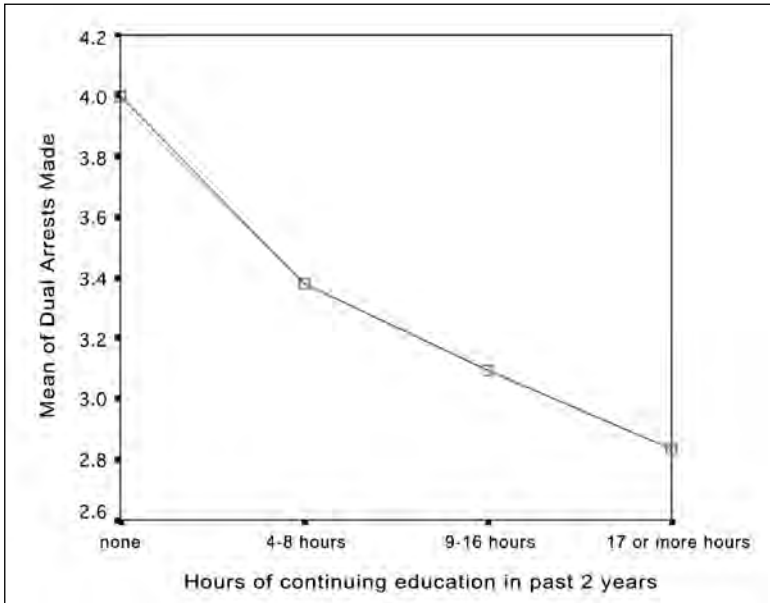
Also of interest were responses to a question regarding dual arrests for which the level of continuing education training did have a bearing. A surprising 69% (n = 44) of respondents said that when both parties are injured, they arrest both of them some or most of the time. The more training an officer had, however, the less likely he or she was to arrest both parties (r = -.363, p = .006.) (see the figure on the following page).

Respondents indicated general satisfaction with the role of their community partners: 66% believed that bail was set at an appropriate level, 61% somewhat to strongly agreed that the prosecutor's office prosecuted domestic violence offenders successfully, and 75% believed that the judge in their county took domestic violence cases very seriously. Eighty-three percent thought the local batterer intervention program was an important community resource, and 84% reported some to a great deal of satisfaction with the help victims of domestic violence received from the local domestic violence agency. Despite these answers, responses to an open-ended question at the end of the survey indicated that many officers did not think that prosecutors or judges were tough enough on offenders. Comments included the following:

- "To get a new prosecutor with some teeth."
- "Have a direct prosecution and mandated sentences for all abuse, no probation."
- "The lack of deterrent . . . comes from light sentencing or probation after probation, without high fines or jail time. I have seen perpetrators get 'extended probation' for family violence offenses while being on probation for family violence offenses."
- "Stronger penalties, more jail time for offenders regardless of previous arrest convictions."

Other suggestions from respondents included more education for victims, offenders, officers, and dispatchers and more community awareness.

### Relationship of Continuing Education to Dual Arrests



### Making the Most of the Rewards: Discussion of Survey Findings

The idea that there would be differences between county and municipal law enforcement agencies was a revelation to us. Despite discussions about the differences between rural and urban law enforcement responses to domestic violence, previous literature did not discuss potential differences within the rural environment. Some of the findings may have simple explanations. For example, perhaps county deputies had access to Polaroid cameras and film while their municipal counterparts did not. Providing municipal police departments with the appropriate equipment to take pictures of destroyed or damaged property is a simple solution with potentially important impact. It is hard to dismiss these pictures in a courtroom.

Other findings had more complex explanations requiring additional research and inquiry. The issue of taking money out of their own pockets to help victims get to a safe place needs further inquiry. How much money are we talking about? Are we talking about five dollars for gas or a more expensive bus ticket to a big city? Perhaps small town officers, who respond often to a particular address, might get to know an individual victim well and develop an understanding of the level of violence her abuser is capable of, so they may feel compelled to offer the victim money to get to a safe place. We also wonder about the personal characteristics of such officers, who despite their own low pay, wind up subsidizing the local social service delivery system. We think these officers deserve recognition for going above and beyond their call of duty.

The issue of law enforcement academy preparation also requires more research. Since both deputies and officers receive the same training, is there a difference in culture of the two organizations that might account for these differences? Anecdotally we have heard that rookies are often told to forget about the academy training: "this is how we handle things here."

The difference in responses to the question regarding whether battered women follow through with referrals for help is also interesting. We could not find any correlation between this item and other factors. This finding could reflect the inaccessibility of services in the more isolated rural areas of the county rather than more accessible services in small towns. Is it possible that sheriffs' deputies are more biased against battered women than municipal police officers?

The tendency of the majority of respondents, irrespective of law enforcement agency, to make dual arrests when both parties are injured is of greatest concern. One of the unintended consequences of mandatory arrest policies has been a rise in dual arrests (Martin, 1997). Police trained to respond to crime as single discrete incidents and not as a pattern of behavior may arrest both batterers and victims, even though the victims may have used violence as an attempt to defend themselves (Martin, 1997). We hope that our finding that officers with more continuing education on domestic violence are less likely to arrest both parties encourages all officers to increase their training on this issue. Dual arrests send a conflicting message about who is responsible for the violence, may traumatize children who may be forced to enter the child welfare system, and create a legal nightmare for victims.

## **Suggestions for Future Evaluations**

So what would we do differently? First and foremost, we would encourage the project managers and evaluators to add an evaluability assessment as the first phase of the project. The evaluability assessment would include reviewing existing data and documents and interviewing key players to determine whether the project could have a meaningful evaluation that would contribute to improved program performance (Rossi, Lipsky, & Freeman, 2004).

If our assessment had identified noncomputerized record-keeping earlier on, we could have identified software to assist community partners with record keeping. For example, the Domestic Abuse Information Network is a database program that organizes information on offenders and victims and helps to track and monitor domestic-assault-related cases through the social service and criminal justice system (Minnesota Program Development, Inc., 2004). While the project's original intent, the development of the shared database for law enforcement, may lead to better protection for victims and for front-line law enforcement officers, without the capacity to track offenders through the entire criminal justice system, the bigger picture might be lost because outcome evaluation data would not be available.

We would also recommend that the project start on a smaller scale and then expand. Implementing a project in a three-county area was quite ambitious. It may have been better to work with one county at a time and include representatives from the other counties for decisionmaking and training. This would pare down the number of players considerably while still offering quite a challenge. Demonstrating how the project would work with one county would encourage other counties to follow

suit. Often, no one wants to be the first to try something new; however, they don't want to be the last either.

In conclusion, conducting evaluations in rural environments may present special challenges to even experienced social work evaluators. The rural community environment, without resources available in urban areas, may not have the tools that evaluators take for granted, such as electronic databases and personnel with specialized responsibilities. The importance of conducting an evaluability assessment is even more critical in this environment.

For program evaluators with perseverance, valuable information can be obtained from rural samples that may lead first and foremost to enhancing the quality of life for rural residents. Additionally, findings from rural communities may lead to research questions and programs that can be adapted to bigger cities.

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**Fran S. Danis**, PhD, is an associate professor of social work at the University of Missouri–Columbia where she teaches courses on program evaluation, social work administration, and domestic violence. Her recent publications address the capacity of professional social workers to respond to victims of domestic violence and other crimes.

**Elizabeth C. Pomeroy**, PhD, LCSW, is a professor and codirector of the Institute for Grief, Loss, and Family Survival at the University of Texas at Austin. Her research interests include clinical interventions and assessment, HIV/AIDS, grief and loss, and domestic violence. Her recent publications address these issues.

# Global Victimization of Law Enforcement by Terrorists

Dean C. Alexander, Assistant Professor; Director, Homeland Security Research Program, Department of Law Enforcement and Justice Administration, Western Illinois University

## Introduction

The police are the first line of defense against terrorism. For instance, police may confront terrorists during traditional activities (e.g., routine traffic stops, serving arrest warrants, and responding to disturbances).<sup>1</sup> Among other duties, police investigate crimes that, at first glance, may not appear to be terror-related but, subsequently, reveal they are as such. A case in point relates to a series of gas station robberies in Southern California in the fall of 2005. Further police inquiries revealed that a radical, Islamic group—comprised of some former convicts—was using monies obtained from the robberies to fund prospective terror operations against U.S. military and other targets in the Los Angeles area.<sup>2</sup>

Terrorists frequently target police—both directly and indirectly—because terror groups view them as instrumentalities of the government and distinct tools of the group's oppressors.<sup>3</sup> In that sense, law enforcement is both a tactical and strategic target of terrorists, as harming them assists terror groups in achieving their avowed goals. Terror attacks on police also have symbolic value. As such, law enforcement's role in combating terrorism is critical, as officers, too, are victims of such violence.

Since 2000, victimization of U.S. policemen by domestic and international terror groups has nearly exclusively occurred during routine law enforcement activities, rather than specific targeting of police.<sup>4</sup> Two domestic terror incidents targeting American police are particularly worth noting. In July 2002, a North Carolina Ku Klux Klan leader was suspected of planning to kill a sheriff as well as bomb a county courthouse, jail, and a sheriff's office in that state.<sup>5</sup> Also, during a November 2002 incident at a gas station, an antigovernment activist purposely shot and killed a police officer in California as a demonstration of his animus to government officials—in this case, law enforcement.<sup>6</sup> Additionally, while not specifically targeting police on 9/11, the attacks at the World Trade Center complex resulted in the deaths of 37 Port Authority of New York/New Jersey policemen and 23 New York City Police Department policemen.<sup>7</sup>

While the record of terror attacks against U.S. police is very troublesome, the targeting of law enforcement internationally by terrorists groups is actually more pervasive. Such targeting is also telling of the value terrorists place on attacking this segment of government.

It is within this framework that this article discusses terror attacks against law enforcement abroad since 2000 by various modus operandi as well as places of attack. The examples provided, while not exhaustive, are representative of methodologies of terror incidents and disparate settings of these instances against



law enforcement globally. In doing so, the article seeks to illustrate the principal challenges that foreign law enforcement faces from terror groups operating in their countries.

With the globalization of terrorism (i.e., recruitment and mobility of terrorists and adoption of modus operandi from across the globe), the increasing cooperation among terror groups, and the growing ferocity and boldness of attacks, U.S. law enforcement must be made aware of the likely challenges they will face in the future. It is nearly certain that most—if not all—of the tactics and targets used abroad against police will be replicated here in the coming years (some already have been). Better recognition of such risks will allow for improved awareness training, adoption of multifaceted security measures, modified procedures and tactics, and other measures aimed at hardening U.S. law enforcement personnel and other assets.

### **Commentary on Modus Operandi and Location of Attacks**

A survey of selected terror attacks against law enforcement outside the United States from 2000 through July 2006 illustrates the full panoply of modus operandi of terror—ambush, arson, grenades, gunfire, bombings/explosives, suicide bombers, kidnapping, and landmines, among others—used by terror groups. Fortunately, at this point, law enforcement has not been targeted with biological, chemical, radiological, or nuclear terrorism; although, in responding to the first two types of superterrorism, some policemen have been injured.

The majority of attacks reviewed took place against police-related facilities and assets, including vehicles, police stations/offices, warehouses, housing/barracks, training facilities, recruitment centers, retreats, and roadblocks/checkpoints. Locations of other targets were varied, including soft targets (e.g., restaurants and bars), private residences, and other settings, even while commuting to work.

Roadblocks and checkpoints are tools that law enforcement uses to limit terrorist movement and access (and potential victimization of societal assets); whereas, incidents at retreats underscore that terrorists threaten police at all times—even in more relaxed settings. In targeting offices/police stations, training facilities, and recruitment centers, law enforcement is challenged on their “own turf.” Such acts telegraph to the public that police cannot protect itself. Also, terrorists target such locations because they frequently have a high concentration of law enforcement officials, raising the human toll.

Incidents arising against police cars occur due to the ubiquity of the targets and the vulnerability of the assets (i.e., vehicle and law enforcement personnel in the vehicle). Examples of attacks during other traditional law enforcement functions—including while providing security at a foreign consulate—demonstrate that police officers can be harmed at any point. Terrorist attacks at bars, restaurants, one’s home, and private vehicle infer no respite for law enforcement.

Why a terror group chooses to use a particular modus operandi and location is beyond the scope of this article but includes the following: the traditional tactics of the group, attacks of opportunity, or well-designed operations seeking to strike

when law enforcement would be particularly vulnerable (e.g., soft targets or while traveling).

Likewise, terrorists weigh the prospective severity of the attack in terms of human and property damage, coupled with the symbolic and strategic importance of the target (e.g., police station) prior to choosing a target. The financial costs, manpower, equipment, and sophistication needed to undertake particular terror attacks are other factors in choosing a modus operandi. Also, the level of security at a particular asset—its “softness” or “hardness”—impacts the likelihood (and frequency) of attack. Assets protected with greater vigor are avoided; whereas, poorly fortified assets essentially “invite” attack.

Among the countries where these terror incidents took place included all areas of the globe: from Asia (Afghanistan, India, Nepal, Sri Lanka) and the Middle East (Algeria, Iraq, Israel, Palestinian territories, Turkey) to South America (Colombia, Ecuador, Peru) and Europe (France, Greece, Italy, Spain, United Kingdom). Here again, the international nature of these acts underscores that terror groups view law enforcement as a legitimate and important target.

The ideological underpinnings of these groups include nationalists/separatists, specific political ideologies (e.g., anarchists), and religious-based groups. Some groups have overarching ideologies, with, for instance, both nationalist and religious justifications for their actions.

Although some terror incidents could be classified among several designations, terror attacks cited here are listed only once. For stylistic purposes, the terms *police officer*, *policeman*, and *law enforcement* are used interchangeably and without regard to rank.

## **Selected Modus Operandi**

### **Ambush**

- Three Colombian policemen were shot and killed during an ambush undertaken by members of the Revolutionary Armed Forces of Colombia (FARC) in Ipiales, Colombia, in February 2006.<sup>8</sup>
- Two Afghan policemen were shot and killed, and another was injured during an ambush in Kandahar, Afghanistan. The Taliban undertook the January 2005 operation.<sup>9</sup>

### **Arson**

- During a firebomb attack by the Maoist Communist Center (MCC) at a police post in Jharkand, India, in September 2001, one policeman was killed, and five others were injured.<sup>10</sup>
- The Revolutionary Memory group set fire to a police car in Athens, Greece, in June 2003.<sup>11</sup>

## **Bombs**

### ***Acid***

- In August 2001, in Portugalete, Spain, acid bombs hurled at a patrol car injured two policemen. The Basque Fatherland & Freedom (ETA) group was suspected in the attack.<sup>12</sup>

### ***Homemade***

- In July 2005, nine homemade explosive devices were thrown at police and journalists at a parade in Ardoyne, Northern Ireland. The Continuity Irish Republican Army (CIRA) claimed credit for the attacks.<sup>13</sup>

### ***Letter/Parcel***

- In July 2001, a letter bomb sent by the Cooperative of Handmade Fire & Related Items exploded at a police station in Genoa, Italy, injuring a police officer.<sup>14</sup>
- In May 2005, the Informal Anarchist Federation (IFA) sent a parcel bomb to police headquarters in Turin, Italy. A police officer was injured during the blast.<sup>15</sup>
- The IFA sent a parcel bomb to police headquarters in Lecce, Italy, in May 2005. The package did not explode, as a security guard noticed the suspicious package.<sup>16</sup>

### ***Miscellaneous Bomb***

- In June 2003, a new police station in Bihar, India, was bombed by MCC.<sup>17</sup>
- Four policemen were killed during a bombing and subsequent firearms barrage on a police van in Norte de Santander, Colombia, in August 2005. The Popular Liberation Army (EPL) took responsibility for the attack.<sup>18</sup>
- During an August 2005 bombing and gunfire attack on a police station in Bihar, India, Communist Party of India-Maoists (CPIM) members killed two and injured three others. Weapons were stolen during the incident, followed by demolition of the building.<sup>19</sup>
- In July 2006, gas-cylinder bombs thrown at a police post in El Arenillo, Colombia, resulted in six deaths and three injuries. The FARC was responsible for the attack.<sup>20</sup>

### ***Petrol***

- A petrol bomb was thrown at a police station in Saint-Pe-Sur-Nivelle, France, in March 2002, by Gora Euskadi Askatata, a Basque group.<sup>21</sup>

### ***Remote Control***

- During a remote-controlled detonation of a police vehicle in Kishi, Afghanistan, two policemen were killed and two others wounded. The Taliban took responsibility for the August 2005 incident.<sup>22</sup>

## **Grenades**

- A Hamas mortar and grenade attack on a Palestinian police station in Al-Shati, Gaza, in October 2005, killed three and injured 50 others.<sup>23</sup>
- The Liberation Tigers of Tamil Eelam members undertook a grenade attack at a police station in Trincomalee, Sri Lanka, in August 2005, resulting in two injuries.<sup>24</sup>

## **Gunfire**

- In May 2004, Kurdistan Workers' Party (PKK) members injured three Turkish policemen at a police checkpoint in Yuksekova.<sup>25</sup>
- In March 2002, al-Aqsa Martyrs Brigades members shot and killed an Israeli policeman while on patrol in Baka al-Gharbiya, Israel.<sup>26</sup>
- In August 2004, PKK/Kurdistan Democratic Congress (KONGRA-GEL) members shot and injured two Turkish policemen in Semdinli, Turkey.<sup>27</sup>
- In December 2005, four policemen on patrol were shot and killed by FARC members in Campoalegre, Colombia.<sup>28</sup>
- A policeman was shot and killed in Barcelona, Spain, in December 2000 by members of ETA.<sup>29</sup>

## **Kidnappings**

- Hamas members kidnapped and killed the Palestinian Authority police chief in Gaza City in October 2002.<sup>30</sup>
- The Taliban kidnapped and murdered two policemen in Helmand, Afghanistan, in July 2005.<sup>31</sup>
- The police chief of Najaf, Iraq, was kidnapped and killed in April 2005 by members of Al-Qaeda in Iraq.<sup>32</sup>
- Ten policemen were taken hostage following an armed attack on a police station in Andahuqylas, Peru, in January 2005. During the siege, which lasted several days, four policemen were killed, and several others were wounded. Antauro Humala, who lost the 2006 Peruvian presidential elections, led the perpetrators of the attack, Ethnocacerista.<sup>33</sup>
- A Nepalese police officer was kidnapped in July 2005 by the CPNM in Dolakh, Nepal.<sup>34</sup>

## **Landmine**

- A remote-controlled landmine in the Kunar province killed four Afghani policemen in June 2005. The Taliban is suspected of undertaking the attack.<sup>35</sup>
- In June 2005, a remote-detonated landmine killed three police personnel in Gadchiroli, India. CPIM is suspected of orchestrating the attack.<sup>36</sup>

## **Suicide Bombers**

- A Mujahideen Shura Council suicide car bombing near a police station in Iskandariyah, Iraq, in March 2006 killed the bomber and injured a dozen others.<sup>37</sup>
- In May 2002, a Palestinian Islamic Jihad suicide bomber undertook an attack near an Israeli border policeman in Jenin, Israel, killing them both.<sup>38</sup>

- A Hamas suicide bomber killed an Israeli border policeman and injured six others during an attack in Gaza in January 2005.<sup>39</sup>

## **Location of Terrorist Attacks**

### **Police-Related Facility/Assets**

#### ***Automobile***

- Two Iraqi police officers were shot and killed during an ambush while they were driving to work in August 2005. Al-Qaeda in Iraq claimed responsibility for the attack.<sup>40</sup>
- Seven policemen were shot and killed, and the Shining Path in Aucayacu, Peru, injured another during an ambush of their vehicle in December 2005.<sup>41</sup>
- In August 2005, a bomb attached to a bicycle detonated in Areca, Colombia, as a police car crossed an intersection. FARC and National Liberation Army of Colombia (ELN) claimed responsibility for the attack that killed one and injured 29 others.<sup>42</sup>

#### ***Office/Police Station***

- In January 2005, the CIRA forced a taxi driver to deliver a bomb to a police station in Belfast, Northern Ireland. The device was defused on its arrival.<sup>43</sup>
- In November 2005, FARC members bombed and destroyed a newly constructed police station in Alpujarra, Colombia.<sup>44</sup>
- In September 2005, the PKK members shot and killed one policeman and injured three others during a shooting at a police station in Van, Turkey.<sup>45</sup>
- One man was killed and two policemen were injured during a Revolutionary People's Liberation Party-Front suicide bombing at a police station in Istanbul, Turkey, in January 2001.<sup>46</sup>

#### ***Warehouse***

- In October 2003, a bomb exploded near a police department warehouse in Quito, Ecuador. The incident, undertaken by the Revolutionary Youth of Ecuador, injured one person.<sup>47</sup>

#### ***Housing/Barracks***

- In March 2005, the IFA detonated a rudimentary bomb in a trash bin near a police barracks in Genoa, Italy.<sup>48</sup>
- In November 2002, al-Madina fired two grenades at a housing complex in Kashmir, India.<sup>49</sup>
- In January 2005, a suicide bomber linked to Al-Qaeda in Iraq rammed his vehicle into a Iraqi police housing compound, killing ten (eight police officers) and injuring 60 others in Baghdad, Iraq.<sup>50</sup>

#### ***Training Facility***

- In September 2004, Kurdistan Freedom Hawks members bombed a police training facility in Ankara, Turkey.<sup>51</sup>

### ***Recruitment Center***

- An Ansar al-Sunnah Army suicide bomber undertook an attack near a police recruitment center in Arbil, Iraq, killing over 60 and injuring more than 150 in May 2005.<sup>52</sup>

### ***Retreat***

- In July 2004, an al-Mansoorain suicide bomber attacked a police retreat in Kashmir, India, killing five, including a police officer, and injuring two.<sup>53</sup>

### ***Roadblock/Checkpoint***

- The People's Defense Forces shot and killed two policemen and injured another at a checkpoint in Pervari, Turkey, in May 2004.<sup>54</sup>
- Using grenades and gunfire, a Palestinian Islamic Jihad member attacked a police checkpoint in the Gaza Strip in April 2002, killing two and injuring seven.<sup>55</sup>
- In December 2001, three policemen were shot and wounded at a roadblock in Auch, France, by ETA.<sup>56</sup>
- In March 2006, an Islamic Army in Iraq suicide car bomber killed 11 policemen and wounded 14 at a police checkpoint in Ramadi, Iraq.<sup>57</sup>

### ***Other Locations***

#### ***Bar***

- Baseball bat-wielding individuals—alleged Real Irish Republican Army members—at a bar in Londonderry attacked a senior member of the Northern Ireland Policing Board in September 2005.<sup>58</sup>

#### ***Commuting to Work***

- Two Iraqi police officers were shot and killed during an ambush while driving to work in August 2005. Al-Qaeda in Iraq claimed responsibility for the attack.<sup>59</sup>

#### ***Foreign Consulate***

- A Revolutionary People's Liberation Party Front suicide bomber killed two and injured 17 police officers outside the German Consulate in Istanbul, Turkey, in September 2001.<sup>60</sup>

#### ***Individual's Automobile***

- In August 2005, an Algerian policeman's booby-trapped car exploded killing him and injuring his wife and two children in Zamouri, Algeria. The Salafi Group claimed responsibility for the attack.<sup>61</sup>

### ***Individual's Home***

- In January 2006, an explosion at the home of a police superintendent in Pakhara, Nepal, was undertaken by the CPNM.<sup>62</sup>
- In October 2001, five people were killed when a bomb exploded at a policeman's home in Peol, Colombia. The ELN took responsibility for the attack.<sup>63</sup>
- A police constable and his wife were shot and killed in their Kashmir, India, home in November 2003 by Lashkar-e-Taiba.<sup>64</sup>

### ***Other Commercial Settings***

- In October 2001, the Popular Revolutionary Front detonated an explosive device near a police pavilion at a trade fair in Thessaloniki, Greece.<sup>65</sup>

### ***Restaurant***

- ETA shot and killed a Basque police officer while he ate at a restaurant in February 2003, in Andoain, Spain.<sup>66</sup>

## **Conclusion**

The aforementioned overview of terror attacks globally sadly illustrates terrorists' unending imagination and thirst for violence against the principal instrument of society's protection force—law enforcement. The terror acts cited included—among others—arson, grenades, gunfire, bombings/explosives, and suicide bombings at a broad array of locations, from police-related facilities and assets to soft targets and diverse other settings. The modus operandi and chosen targets have tactical and strategic goals, symbolic value, and disparate victimization in terms of people and property. Ostensibly, this survey enables us to better appreciate the vast risks law enforcement faces from terrorists overseas with implications at home.

In seeking to defeat terrorists, law enforcement officers must comprehend the challenges they might encounter on patrol, while investigating crimes and commuting to work, and even in traditionally "safe" settings (e.g., restaurants and at home). Such an understanding enables law enforcement personnel to craft appropriate responses with greater rapidity and efficacy, leading to increased awareness and vigilance, revising standard operating procedures for law enforcement on- and off-duty, adopting additional offensive measures vis-à-vis terror groups, and incorporating the aura that law enforcement is a frequent target of terrorists.

Improved measures will prove essential in the coming years as generations of terrorists—domestic and foreign—operating on U.S. soil will likely have their sights on U.S. law enforcement. In the terrorist mindset, undertaking successful attacks against law enforcement is essential to engendering greater terror and chaos in society. After all, if the principal combaters of terror are unsafe, then the rest of society will ultimately crack under terror's menace. It is imperative, then, that we learn from the past so that we may have a future with less victimization of law enforcement by terrorists.

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**Dean C. Alexander** is the director of the Homeland Security Research Program and an assistant professor at Western Illinois University. He teaches courses in homeland security. He has authored several books, including *Business Confronts Terrorism* (University of Wisconsin Press, 2004).

# Anti-Terrorism and the Relationship of Police to Their Communities

**Colleen Clarke, PhD, Assistant Professor, Department of Political Science and Law Enforcement, Minnesota State University–Mankato**

Following 9/11, threats from terrorist activities put additional pressure on police to respond to public concerns via anti-terrorism legislation. This legislation challenges police to act in accordance with attitudes and beliefs consistent with state and federal expectations for what constitutes the role of a police officer at the street level. With increased demands for systemic security to combat terrorism, both governments expanded their mandate to employ protection strategies at the municipal, state/provincial, and federal levels of policing (Ashcroft, 2002a; Public Safety and Emergency Preparedness Canada, 2004). The United States implemented the Homeland Security Act (The White House, 2002) to connect the federal government to municipal and state police forces. This incongruence presents a danger to both Canadian and American police in how they interact with minorities within their communities. This study considers the implications of utilizing community policing as a way to respond to terrorism. It describes chiefs' and police managers' responses to questions on the use of community policing within departments and the relationship to terrorism.

The U.S. Department of Justice (2002) published a community-oriented policing services document promoting data analysis, threat assessment, and communication between agencies. The material is presented as a means of preventing and responding to terrorism with a focus on community policing as well as responding to the Patriot Act.

Community policing is conceptually ambiguous (Ponsaers, 2001), an abstract notion, and an instrument for police accountability to the citizens they serve. There are a number of definitions of community policing. A straightforward description is proactive policing with respect to security and crime prevention that entails close community involvement. Despite the move to more sophisticated management practices and the public demand for more community-centered policing, more policing resources go toward weapons, technology, and large-scale investigations (Carlson, 2005). There are many diverse descriptions and practices in community policing across Canada and the United States, with much debate over the best approach (Carlson, 2005; Goldstein, 1993; McKenna, 1998).

The literature suggests that closer community-based policing includes sensitivity to cultural and ethnic groups (Flores, 1992; Jackson & Lyon, 2002; Riley & Hoffman, 1995). Canada's pledge to cultural diversity and dedication to the Charter of Rights and Freedoms and the United States Constitution may be challenged if Canadian and American police officers are adverse to the community policing concept and associating with minority and ethnic groups in the communities they serve. With the increased legal authority afforded to police officers in both countries in the fight against terrorism, "the danger is reinforced in policing ethnic minority groups where the police officer is not as attuned to the signals of respectability" (Reiner, 2000, p. 93). A police agency's stance toward community policing should reflect the positive standards and relationships with the range of population groups in

its area. It is not enough for police departments to write mission statements or articulate the goals of their agencies. Without education and emphasis for proactive policing undertaken by a department, “a culture may create a *de facto* mission that may differ substantially from the *de jure*, or official, mission of the organization” (Stojkovic, Kalinich, & Klofas, 2003, p. 28).

Proactive community commitment requires officers to approach community concerns in a manner that is inconsistent with traditional police work. Forming close social bonds to problem solve is equated by many police officers as social work—not in keeping with the confrontational, exciting employment they expected (Lurigio & Rosenbaum, 1994; Meese, 1993; Skogan, & Hartnett, 1997). Stojkovic et al. (2003) raised concern about the reluctance of public administrators to be responsive to the needs of the public.

The literature views police accountability and community in a variety of ways. Reiner (2000) believes community policing serves to legitimize police, fostering accountability to the people they serve. Ponsaers (2001), however, sees the prevention model as a means of repression and control with a top-down approach, leaving final decisions open to review by superiors. Sherman (1991) criticizes the lack of program evaluation in response to community dilemmas, particularly the more serious and costly apparent solutions.

In recent years, the Royal Canadian Mounted Police (RCMP) has been criticized for downsizing and restructuring by using community policing as a means of delegating work to provinces and communities. The practice of delegating (also known as downloading) as a cost-saving measure is often thought to be the cause of failure of community policing by the RCMP (Clarke, 2002).

Community policing has been labeled as costly with no proven success rates (Sherman, 1991); however, various studies are now analyzing its benefits. Sherman outlines a method scrutinizing community programs in terms of cost and success. Others offer more self-interested comparisons when faced with the possibility of losing their community police officers (Sack, 2001) or weighing the cost of crime per household in terms of taxes based on police, private security, Medicare, or surveys on the quality of life (Waller, 1997). While some researchers have attempted to calculate service and productivity (Sherman, 1991; Van Dijk, 1997), others predict inequitable community policing across racial and class lines. Criminal justice researchers have suggested police might adopt a future policing model for the wealthy that differs from those in poor, high-crime areas. Policing efforts gauge taxes paid for policing (Bayley & Shearing, 1998).

Research suggests that the success of community policing on cultural and linguistic issues provides a strong link to incidences of success. Latinos in Chicago who preferred speaking Spanish viewed police with the same level of distrust as they did the police in their home country; English-speaking Latinos, however, reported improved relationships (Skogan & Hartnett, 1997). Some academics suggest police officers who get to know their citizens build trust and a close working relationship. Community policing, therefore, lessens the alienation felt by minorities when they are involved with police. Critics of this philosophy suggest relaxed controls over police will increase prejudicial decisions by police officers. The belief is that increased discretionary powers will negatively increase extralegal influences of race, gender, and wealth (Mastrofski, Worden, & Snipes, 1995).

Police education regarding the social conditions of a community appears relevant to the community policing program's success. The educational requirement of Canadian and American police officers varies from a Grade 12 diploma to a minimum of two years of postsecondary education. The significance of the interaction of anti-terrorism policy, cultural diversity, and community policing is as yet undetermined. It is important to note the inadequate research about the connection of community policing to terrorism.

Community-Oriented Policing Services offers a symposium for American chiefs and sheriffs to address criminal intelligence policy, as well as safeguards to discuss criminal intelligence and homeland security in the development of new methods of implementing intelligence operations while maintaining ethical and constitutional principles (U.S. Department of Justice, Office of Community-Oriented Policing Services, 2002). Close connections between police and their communities yield more trusting relationships.

By building on these relationships at the street level, it is possible to obtain information on criminal activity that may be pertinent to preventing terrorism. Furthermore, connections between police and their communities lessen the possibility of abuses of civil rights. Educating police officers on the importance of familiarizing themselves with their community members enables them to build trust and respect for one another.

This study addresses proactive efforts by police departments toward their communities, raising questions about the impact of anti-terrorism policies on these relationships. There are numerous definitions of community policing and even more methods practiced (Carlson, 2005; Goldstein, 1993; McKenna, 1998; United States Department of Justice, Office of Community Oriented Policing Services, 2002). The cost of community policing is prohibitive (Sherman, 1991), and it is difficult to prove success of programs (Sack, 2001; Waller, 1997). Some proponents of community policing say police build trust when they work closely with citizens (Goldstein, 1993).

Building trusting relationships with communities and the proactive goals of community policing may be important outcomes for terrorism policy. How chiefs of police utilize terrorism policy in their community policing programs will reflect their relationship with their communities.

## **Selection of Participants**

The selection of police departments for the study was based on the willingness of police chiefs and upper-level managers to participate. For this study, when a police chief was unable to be interviewed, an upper-level manager was designated to participate. Police chiefs frequently deny academics access to their departments because of the frequency of requests for involvement in research studies; furthermore, police culture is steeped in suspicion. Gaining access to police agencies is less complicated when the chief knows the researcher or an individual who will vouch for the researcher. Both instances applied in my case. A few former and present colleagues assisted me in gaining admission to the chiefs of police or managers in charge of anti-terrorism measures. Colleagues volunteered names or suggested departments they believed played an important role in police involvement in anti-terrorism in different parts of the United States. In addition, a few chiefs I interviewed offered names of other



persons they thought would be valuable to the study. Reaching an agreement with American police chiefs was less problematic than my Canadian experience. Initially, there was concern that the chiefs referred by participants may be like-minded and, therefore, influence the results of the study. This was not an issue because the referred participants varied in their approaches to terrorism policy.

Twelve police agencies and departments of varying sizes agreed to participate. There were four Canadian police departments and eight American police agencies participating in the study. The sample included police agencies varying from small municipal departments with populations from 50,000-100,000, with limited capacity to those with populations over 500,000, serviced by the most modern infrastructures with the latest technology; others fell somewhere in between. The participants in this study are limited to males largely due to the fact that the majority of chiefs and upper-level managers on both sides of the border are male, as are the majority of police officers. Age, ethnic background, education, and other characteristics may have identified some of the participants in the study. For this reason, to protect anonymity, background information on the participants is not included in the study. Interviewees were audiotaped during face-to-face interviews. The interviews took place between July and October 2004. The interviews lasted from 40 minutes to just under 4 hours.

The category construction method was used to analyze the data. The data was further divided into subcategories. This method involves capturing themes or patterns in the data by "continuous comparisons of incidents, respondents' remarks, and so on, with each group . . . . A unit of data is any meaningful (or potentially meaningful) segment of data" (Merriam, 1998, p. 179). This method was a good match, comparing the responses of each participant to each question asked and then breaking it down into smaller units.

## **Anti-Terrorism Policies and Police Community Relations**

Most respondents acknowledged the importance of community relations to anti-terrorism measures. The differences arose in the type of community policing followed by different departments. The most prevalent link between anti-terrorism and police-community relations was intelligence gathering.

### **Community Policing**

The majority of Canadian and American police in this study acknowledged the importance of community policing and its role in the collection of data. It was viewed as significant to intelligence gathering as a proactive response to terrorism, possibly because they understood the connection of access to criminal intelligence at the community level. One important distinction among the police agencies in this study was that some did community or community-oriented policing and some operated at a distance from their communities. Those who operated separate from their community presented themselves as in control by stressing their power as law enforcers. Rather than working with the community, they seemed to value opportunities to demonstrate their authority. Frequently, responses to the question about the fit between community policing and anti-terrorism policy depended upon how the interviewer defined community policing. Such responses suggest discrepancies in beliefs and functioning of community-oriented policing, as mirrored in the literature on this subject. Seagrave (1996) claims community policing differs between agencies and cannot be compared,

and Goldstein (1990) evaluates the piecemeal design of community-oriented programs. In other words, there is ambiguity about what community policing really is.

Descriptions of community policing varied, covering a range from full community policing to a community policing structure that divided the city into quadrants. One department assigned officers to areas in the city even though the process was costly because that is “what the community wants.” Two did not like the term *community policing*, claiming the term is passé because all departments have had some form of community policing or community-oriented policing. A second department had satellite stations for community police officers at one time but decided it was too expensive, and there were further issues about span of control.

Discussion with respondents regarding their department’s philosophy on community policing offered insight into community relations. There were disagreements on whether community policing should even be a priority. The inference was that all police are involved in community-oriented policing and are doing it well. Others preferred the term *community-oriented policing* to *community policing*.

Some departments viewed community policing as the practice of public relations; whereas, other agencies described community interaction with police in a more profound way. Descriptions ranged from commonplace statements such as “you strengthen your relationship with your citizens” to explanations recommending officers get out of their cars to speak with citizens, initiating constant contact with businesses, and participating in sporting events to cultural awareness training and neighborhood coordinated groups such as Block Watch. Four of the 12 agencies described community policing in very inclusive terms. Descriptions from these four departments included welcoming invitations and many cultural and ethnic group interactions with the organization through open communication and regular, active involvement in the development of internal police policy. While most departments articulated an interest in community, only a few produced documents that listed actual input and described changes they had made based on recommendations from various ethnic groups.

The majority of respondents described community policing as important to intelligence gathering. There were differences in the way community policing was practiced between departments. Some of the departments worked very closely with their communities, and others interpreted community policing in a more authoritative way. The working models described by the participants offered some insight into the relationships the police have with their communities.

## **Connection to Community and Intelligence Gathering**

One chief described community policing as “a fundamental role of policing.” Community Oriented Policing Services recognized the importance of local law enforcement and terrorism issues shortly after 9/11 (U.S. Department of Justice, Office of Community Oriented Policing Services, 2002). The FBI hosted a conference in Washington, DC in June 2004 and emphasized the importance of community-oriented policing and how it relates to anti-terrorism, communication, and intelligence gathering.

Education was a key component of community policing in five agencies. There are practices of educating both the public and officers on information flow. Cultural

awareness and education regarding persons with disabilities was seen as vital to community-oriented policing by three respondents.

Although all 12 of the respondents understood a relationship between community policing and terrorism in gathering intelligence, their styles differed. Three of the 12 respondents viewed community outreach by police on the street as paramount to positive community relations. They believed community members would share information with their police departments when there was mutual trust and respect. One respondent said, "What the chief of police does in the community is important, but more importantly, what the officers do on the street defines the temperament of the citizens." One chief believed we all have personal bias that we learned in our homes, and with this thought, he turned this opinion back to the community:

Our position has been with some of our partners that if you constantly hear in your home that cops are bad that you don't like them, what do you think they are going to learn when they get older? So if we have a black family that does nothing but criticize police and call them bigots and the kids hear that from their formative years, then what chance have we got when they go out on the street and deal with the police?

Two of the four Canadians, as well as two of the eight Americans interviewed, said they requested input from community members from different ethnic groups. These four agencies actively involved ethnic groups in the consultation and managing of their departments and designing yearly business plans. Other managers spoke of inviting different ethnic and physically disabled groups into the department to familiarize officers with their issues and perspectives. Another respondent spoke of community policing as going beyond educating officers to educating citizens, managers, and residents.

The chief of the smallest department said terrorism was a non-issue in the community. He spoke of responding to social concerns, not just those of a criminal nature, by developing entertainment events for teenagers, for example, as a crime prevention practice. Respondents in the largest three departments described officers regularly stopping and talking to people as community policing. One of the three chiefs recommended that officers get out of their cars and go back to the basics of serving people. This particular agency also believed that officers on the street were the best strategy for gathering criminal intelligence. Another variation was the strategy of community-oriented policing within high-crime areas or where there were specific problems. Intervention in troubled areas rather than the entire community, it may be argued, is more closely related to reactive policing.

Community-oriented/community policing was also described as outreach, with police acting as a reassurance and reinforcement to community members. One respondent could see how some of the relationships in the world of terrorism might be connected with local mosques and different Islamic groups. Others believed police have personal relationships with many facets of the community and that maintaining relationships with groups in society was critical.

While interviewed, managers frequently spoke of making friends with other department managers before an emergency, yet when it came to their communities, it appears that interaction with ethnic, cultural, and religious groups was only

superficial at best. This may be because, although police were encouraged to group to obtain funding, in terms of cooperating with community, there are few incentives. One American chief said the funding normally provided through Community-Oriented Policing Grants had gone by the wayside; whereas, funding for terrorism response will continue for several years.

Some respondents said community policing fit with counter and anti-terrorism policy because having a close connection helps with "information flow both ways from the local to the national region." One chief said . . .

We've done very well with community-oriented policing. We've created community partnerships; we've developed trust and respect in the communities we serve; and overall we've reaped tremendous benefits . . . we have to continue to have community policing and have that trust and respect because that will help us in our new level, and I don't know what the term is going to be. I don't know if it is going to be called enterprise policing or web-based policing intelligence. I haven't heard a term attached to it.

The American Community-Oriented Policing Services (COPS), under the mandate of the U.S. Department of Justice, noted the importance of community and terrorism in 2002. The FBI spoke to community-oriented practitioners about terrorism prevention and community at a community policing conference in June 2004. The FBI identified community policing as a means of gathering information at the community level. Canadian and American police respondents requested input from ethnic groups in their communities. While some of the departments considered their relationship with the community as important in preventing criminal activity, others considered community policing as an applied outreach to their communities.

## **Racial Profiling vs. Incident Profiling**

Police have been accused of racial profiling in many communities in the United States and Canada. After 9/11, due to these accusations of racial profiling, concern was raised over further targeting of minorities (Her, 2002; Vanderpool, 2002). When asked whether profiling was employed in their police departments, all 12 respondents denied this practice. Racial profiling is antithetical to community-oriented policing, hindering connections between police and their divergent neighborhoods and thwarting efforts to build upon the sharing of information.

One chief said that his department did not use racial profiling nor a system of identifying terrorists. This chief said that if they developed a profiling method, it would focus on criminal activity. This was a typical response. One-third of the interviewees said the practice of racial profiling was either illegal or that the departments referred to their written or unwritten policy on the matter. One of the departments kept statistics on traffic stops to discourage such actions. Two of the 12 said that they believe racial profiling occurred at the street level because "everyone has their own bias and that is human nature." These two participants believed the larger the agency, the more likely this practice would occur.

Although the managers did not condone profiling and said they believed such practices were dissipating over the years, one said, "I would think that if there is a chief of police in this country that says racial profiling doesn't exist in their

department, they should do a reality check.” A third manager from one of the larger agencies said that he believed officers on the street followed the anti-racist profiling policy. In reality, this agency was in conflict with ethnic communities throughout the region. The manager of this department said . . .

If you are working an area that is made up of a particular group and everybody you stop is of that particular group, they can claim profiling anytime they want. If there is a crime that’s been committed, then you’re reinforcing the law equitably and fairly, then you’re enforcing the law. So, there will always be claims of that occurring.

If each of the different ethnic groups claim profiling exists, then this particular individual considered this a sign that police are doing their jobs. The geographical area managed by this individual was comprised predominately of minorities. The inference was that there are always complaints against police. If there are no complaints, then police are not exercising their authority. Another chief had a different perspective: if you knew members of a particular ethnic group were involved in criminal activity and the police watched people within these groups, then that was good racial profiling. The individual put it this way:

You know racial profiling has to apply; it is just the nature of the beast. How do you have an open society and have law enforcement . . . if I know a certain ethnic group are [sic] doing these types of crimes and I start watching persons of these ethnic groups, then I’m racial profiling, but is that a good way of racial profiling as opposed to I start stopping persons of a certain ethnic group because I don’t like them and giving them tickets? There are [sic] good racial profiling and bad racial profiling.

Another chief of police on the Canadian border said that following 9/11, there had been a number of complaints from Middle Eastern people having problems at the border. This chief said, “They were being targeted; we had to be honest with them. They were being asked more questions than a white Anglo Saxon because of their background.” Half of the respondents reported that criminal, behavioral, or incident profiling was practiced by their police departments. The difference between this and racial profiling was described by one as “identifying on the basis of behavior and the context of behavior rather than basing investigations on race, cultural heritage, sexual orientation, or gender.” A second claimed, “The information obtained must not rely on the race of an individual but what that person is doing and whether it is consistent with past surveillance.” In other words, past surveillance may offer information from another investigation, linking a new subject to criminal behavior. Regardless of the race of the individuals, the criminal act is what is to take precedence in criminal profiling.

One respondent said that prior to 9/11, it appeared to him that society was more accepting of ethnic groups, but following 9/11, society had little patience for minorities. He said because personal safety was an issue, there were few complaints about standing in long lines at airports and having baggage thoroughly checked, but as time passed, patience also dissipated. The officer described society moving from acceptance to intolerance with the following story. There had been numerous drive-by shootings in the center of his city “and for the most part, well, it was, those folks (African Americans).” The police department was not accepting of the behavior, but public opinion was against police exercising excessive authority to

handle the situation. It was not until a downtown businesswoman drove through that area, got caught up in the gun fire, and was killed that public opinion changed. At that point, white society was no longer tolerant, demanding the police stop every suspect vehicle and get them out of their cars with guns drawn.

You know, at one point it was ok to felony stop those people, and what I mean by felony stop is you pull up behind them, order them out of a car on a PA; you get them face down on the cement; you walk up with a shot gun pointed to their head; you handcuff them; and then you find out there is no gun. Oh well, un-cuff them and send them on their way. That was ok then; it was not ok now . . . as time passes, the community becomes less tolerant of that, and we as a police department, we respond to those ups and downs in society's opinion. The community, in my mind, looks at who we should be targeting. If it is this person, that skin color, that religion, driving these cars, or whatever the background may be that they have formed this biased opinion, that is the target population. We can't do that; it is not the right thing to do.

From a police perspective, society will not support aggressive actions by police that threaten basic freedoms. Society is willing, however, to make concessions where race is concerned. Drawing an analogy to terrorism and profiling, this police manager was aware that not all terrorists are Middle Eastern Muslim males; however, that is what he believes many in society believe. He believes people expect police to use racial profiling or whatever means necessary when their safety is the issue.

Some departments built better relationships than others with their communities, but even these departments might have difficulty with race-related issues. There were still complaints of prejudice, bias, and lack of sensitivity to cultural customs. One respondent said, "(the police) know that the Somalia community has strong financial ties to Al-Qaeda . . . there is no doubt there is a terrorist threat here."

The more common comments regarding race focused on the difficulty of gaining access to some ethnic groups within their communities because these people have come from countries with police states. Police managers spoke of the struggles of trying to talk with citizens who viewed police as a threat because in their own countries police were corrupt, oppressive, and abusive. A similar difficulty was found with recruiting minorities for police work because of the negative view of police. One manager said, . . .

I've been involved in recruiting for more than a decade, and our problem is reaching many of the different cultures. Policing is not seen as a profession that they choose to go to, especially many of the African nations, Rwanda, Ghana, Somalia, and Nigeria. We have a hard time breaking into that group. They are very responsive to their parents, and their parents want them to do other professional work. So, from that point of view, we are having a hard time.

When there is no dialogue between minority groups and police, there appears to be a lack of understanding of between views and values.

All respondents accepted racial profiling as illegal and unacceptable in their departments, but there were a couple of chiefs who acknowledged that it may exist at the street level. It was believed by these individuals that the practice has lessened

over time. The practice was not condoned, and policies are in place in departments regarding racial profiling. The majority of chiefs were in favor of criminal profiling regardless of the race of the criminal. Overall, it appeared that some departments have better relationships with their communities than others, but there is still difficulty recruiting minorities into the police profession, and certain minorities will be targets of racial profiling regardless of policies prohibiting such actions.

## **Effort to Connect with Communities**

Of the 12 agencies participating in this study, four practiced extensive two-way communication and involvement with their communities. Three of the four respondents described clear strategies to connect with different ethnic groups in their communities. There are a number of reasons why departments do not expand their interaction with ethnic groups in their communities; one of the reasons is the time, energy, and resolve required. Building these relationships with the community expended considerable emotional energy. As one manager said, . . .

When you go out and speak with the 16-, 17-, and 18-year-olds on the street that we're having problems with and you say, well we're meeting with so and so, and the youths say, "That has nothing to do with me. I don't recognize him as my leader; you should be talking to so and so." So you have to develop new relationships, and the other person at the opposite end of the spectrum is put off. We've got this outstanding relationship and have to continually work at it. It is a work in progress where you are constantly working through those kinds of things. Some of them are struggles, and some . . . a lot of trust goes into those relationships.

It takes time to build relationships. Bascia and Hargreaves (2000) write that socio-emotional effort usually develops voluntarily. What follows are innovative approaches in the change and development process: "emotional understanding is threatened when policies, structures, and change practices create excessive distance between [implementers] and those around them" (Bascia & Hargreaves, 2000, p. 11). This occurs when anti-terrorism policies do not exhibit values of police and their communities. What is important to police at the street level differs from one department to another. The relevance of community policing to terrorism is determined by the ideology of the department and the relationship to the community.

## **Findings**

Anti-terrorism policies and police community relations were relevant to the connections police had with their communities. The importance of community policing to anti-terrorism policy varied between departments, depending upon the philosophy and previous involvement with the communities. Beliefs in the importance of this orientation corresponded to funding allotted to community policing; departments that placed a high value on community put the funding into place in those areas. Some departments placed effort into building relationships with their community, and others operated in a hierarchical way, with the community at the bottom. The practice of racial profiling was denied by all participants. A few chiefs said that while it is not condoned, they know it exists. Civilians who fit racial profiles might face racial abuse.

There are too many factors influencing policy to expect conformity across all departments (Bascia & Hargraves, 2000). For example, one respondent said that he was speaking to the community addressing Homeland Security procedures when he realized the government had completely missed the boat. The police were talking about policing, protection, and terrorism, and one woman got up who was deathly afraid and wanted to know how she would get her kids from school to reunite the family. This respondent thought that police have to change their thought process and go back to what is important to their community: "the basic building blocks of life." In this case, he said his chief and the other managers felt obligated to address local community needs as well as complying with federal mandates.

A difference exists between governmental criterion and what a department chief at the street level might consider standard. ". . . Context involves not simply a different factual foundation but often a difference of normative perspective as well. Part of the challenge and subtlety of policy analysis is the often implicit choice of normative perspectives" (Clune, 1990, p. 260). Situations at governmental levels affect design of policy that may differ between what is reality and normal at the departmental level and, therefore, realities may not coincide. There is obviously missing communication in the relationship between government and departments at the street level. Clune (1990) points to the instability of policy and the need for continuous modifications as a view that "policy is an endless, recursive dialogue, rather than a series of self-sealing implemented commands" (pp. 258-259). Demands of police from the state and federal level may not reflect the needs of the community. Police at the municipal level must then mold state or provincial and federal policy to meet disparities arising from community concerns.

## **Conclusion**

Variance between government expectations and outcomes at the local level appear to result from policy makers' lack of consideration of the situation from the local perspective. Governments did not comprehend the range of circumstances facing local police departments. Consideration was not given to the possibility of developing solutions based on the values, beliefs, and concerns held by police departments at the community level.

Scrutinizing police departments' unique characteristics reveals a range of ideologies; some value reactive policing and military style preparedness training, while other departments value close community ties. There were consistent differences between large agencies and midsized to smaller departments in terms of dynamics between police and their communities. How leaders of police departments interacted with the community they serve reflected their beliefs, ideals, and motivation.

Implementation decisions are influenced at the local level by the methods departments use to interact with their communities. Pressures surfaced in the study in terms of how police practiced community policing and the ways different ethnic groups interacted with their police departments. Although all police agencies responded that they practiced community policing, some were more clearly proactive by including input from all ethnic groups in police management and community relations. How police perceived the nature and extent of interaction with their communities defined the context of their professional role. Police professionalism is viewed differently across departments. Some departments



maintain a traditional role with their communities with emphasis on responding to calls; whereas, others work toward close community involvement. Police face complex challenges of changing populations and altered social norms in the communities they serve. Some of the agencies interacted with their communities through open communication and exchange of ideas, and some approached their diverse communities in an attempt to bridge these notions.

There was a lack of conformity in responses to terrorism legislation in relation to their communities among the 12 police departments participating in this study. The divergent responses to state and federal expectations mirrored the relationship departments have with their communities. Those with more traditional hierarchical management styles placed more emphasis on a reactive policing response to terrorism legislation. Other departments with more inclusive ties to their communities acted differently, placing significance on input from cultural groups within their communities. Anti-terrorism legislation at the community level varied across the departments participating in the study based on the beliefs and philosophy of each department.

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**Colleen Clarke**, PhD, is an assistant professor in the Department of Political Science and Law Enforcement at Minnesota State University–Mankato. Dr. Clarke is a former Canadian police officer who taught in the law enforcement field in Canada and is presently teaching law enforcement in the United States.

# Hurricane Katrina: Law Enforcement, Social Disorganization, and the Altruistic Community: An Ethnographic Study

Wendy L. Hicks, PhD, Associate Professor, Loyola University New Orleans

## Introduction

When Hurricane Katrina roared ashore on August 29, 2005, few could foresee the ultimate destruction that would be wrought by the storm's end. While Katrina wasn't the most powerful storm to ever strike the Gulf coast, its effects were felt over a much more extensive area than that of Hurricane Camille in 1969 (National Weather Service, 2005). Damage extended into western Louisiana, eastward into Florida, and farther to the north than Interstate Highway 10. Entire sections of St. Bernard Parish are no longer habitable, and the small towns of Waveland; Long Beach; and Bay St. Louis, Mississippi, are little more than memories of times past. Apart from the damage to smaller cities and towns along the Louisiana and Mississippi Gulf Coast, there were extensive flooding and damage to the city of New Orleans. The world watched as the levees designed to protect the metropolis of New Orleans were breached and most of the city plunged into darkness as power and water systems failed.

Most residents of New Orleans will readily state that the media was primarily responsible for the sensational stories of murders, rapes, and pillaging engaged in by the evacuees sheltered inside the Superdome. To date, there has been little direct evidence of any such behavior occurring inside the Superdome during the onslaught of the hurricane. While the response to the aftermath of the storm was admittedly less than desirable, one important fact remains: the effects of Hurricane Katrina displayed before all a surprising look into the underbelly of America's welfare state. As the authorities pointed fingers and tried to decide upon a proper course of action, looting and lawlessness were unleashed on the devastated city. Police officials were without proper equipment; communication was nonexistent. There existed no discernable plan for the evacuation of stranded residents; deployment of rescue forces; or distribution of much needed food, water, and supplies.

Research conducted in the area of disaster and its culminating effects focus primarily on the organization or emergent organization and its functions in disaster recovery rather than the social behaviors resulting from the sudden onslaught of social disorganization (Kreps, 1984; Quarantelli & Dynes, 1977). Research conducted in the field of criminal justice utilizes social disorganization as a primary basis of explanation for a variety of social ills resulting from economic factors (Shaw & McKay, 1929, 1969), immigration (Thomas & Zaniecki, 1920), urbanization, technological growth (Park, 1967), political instability (Elliot & Agenton, 1980; Liska, Chamlin, & Reed, 1985), and social crises (Williams, 1990). Relatively few scholarly research projects have focused on the combined social

effects of disaster and subsequent criminal behavior; therefore, it is the purpose of this article to make use of the theory of social disorganization, the perspective of the altruistic community, and Barton's disaster role typology for the starting points on a qualitative discussion into the effects and aftermath of Hurricanes Katrina and Rita on the police response and administrative protocols in New Orleans and the surrounding areas encompassed by Jefferson Parish, Louisiana. The underlying methodology of this project is one of basic ethnology. Personal observations, interviews, academic research, and media reports are all combined in an effort to reach some understanding of what went wrong and what went right during the aftermath of Hurricane Katrina and, to a lesser extent, Hurricane Rita.

As New Orleans and the entire Gulf Coast endeavor to repair the damage sustained as a result of Hurricane Katrina, speculation continues regarding the proper role of police, public officials, National Guard, the Federal Emergency Management Agency (FEMA), and the U.S. government. It is the intention of this article to explore the role of the police before, during, and after the storm's landfall as well as the overall planning process of the New Orleans Police Department and the Jefferson Parish Sheriff's Office. Not only does it make sense intuitively to couch the disaster resulting from Hurricane Katrina, and to a lesser extent Rita, in terms of a social disorganization and altruistic community theoretical perspective, but the recovery allows a researcher to observe the entire process of disorganization from beginning to end. Before any discussion begins pertaining to the role of planning and the police during the storm, it is necessary first to place Hurricane Katrina in scientific context.

## **Hurricane Katrina**

For the uninitiated to get an adequate appreciation of the extent and severity of the problems facing the entire Gulf Coast, perhaps some background information on the characteristics of Hurricane Katrina are in order. Putting the severity of the storm into a scientific context provides a better description of the storm's rampage through the states of Louisiana, Mississippi, and Alabama.

The most powerful hurricane to hit the Gulf Coast to date was Hurricane Camille. Camille roared ashore on August 17, 1969, as a full Category 5 storm with sustained winds of 190 MPH. Hurricane Camille had the lowest pressure ever recorded in the Gulf of Mexico at 909 MB (National Weather Service, 2005).

Hurricane Katrina roared ashore as a strong Category 3 storm near Waveland, Mississippi, on August 29, 2005 (National Weather Service, 2005). The third lowest pressure ever recorded in the Gulf of Mexico was documented during Katrina at 920 MB. At landfall, the NASA Michoud facility recorded a pressure of 949.88 MB. The University of South Alabama at Pascagoula documented a pressure of 976 MB. Hurricane Katrina had 2-minute sustained winds of 126.5 MPH (107 KT) recorded at the NASA Michoud Facility. The wind gage at the Eastern New Orleans Air Products Facility recorded sustained winds of 119.6 MPH (104kt) before finally failing. Winds at Long Beach, Mississippi, were recorded at 121.9 MPH (106 KT). New Orleans' Algiers area experienced 12.49 inches of rainfall by day's end on August 31, 2005.

While wind damage was certainly to blame for some of the severe storm damage, the storm surge was an additional problem encountered by residents along the storm's path. Hancock County, Mississippi, experienced a storm surge of 22 feet, resulting in the near total destruction of Waveland and Bay St. Louis. The Biloxi River was recorded at a level of 26 feet near the I-10 bay bridge. Pascagoula, Mississippi, recorded a storm front of 16.1 feet. Lake Ponchartrain experienced a mid-lake storm surge of 6.8 feet, with Lake Mauripas recording a surge of 3.08 feet before the gage finally failed (National Oceanic Atmospheric Administration, 2005). Finally, the small town of Grand Isle recorded a 12-foot storm surge (National Weather Service, 2005).

While Hurricane Katrina is astonishing on a scientific level, the resulting property losses and damages are equally astounding. Communities up to 76 miles east of the center of Hurricane Katrina experienced severe damage resulting from high winds and flooding (National Weather Service, 2005). According to the National Weather Service (2005), "almost total destruction was observed along the immediate coast in Hancock and Harrison (Counties) with storm surge damage extending north along bays and bayous to Interstate Highway 10" (p. 1). High storm surge was observed over a much more extensive area than that seen in Hurricane Camille. Insured property losses in the state of Louisiana totaled \$22.6 billion with the state of Mississippi experiencing an additional \$9.8 billion in damages (National Weather Service, 2005). By October 30, 2005, there were a total of 1,053 deaths in Louisiana and 228 in Mississippi (National Weather Service, 2005).

## **New Orleans Disaster Response**

It has been argued that "the identification of the 'core' activities of policing . . . represent value choices" (Greene & Klockars, 1991, p. 274). As can be observed during the response to Hurricane Katrina, the New Orleans Police Department (NOPD) and the Jefferson Parish Sheriff's Office (JPSO) were forced by the constraints placed upon them by the environment to prioritize their activities and reevaluate their law enforcement functions. The priorities of the police response changed in accordance with the surrounding circumstances in which they worked. Often, the law enforcement function was sacrificed, as rescue efforts became the focal point of the police duty.

The impact of a disaster on an existing community's social structure can be divided into the damage to the physical structure of an area and the destruction of the symbolic structure (Zhou, 1997). The existing physical structure of an area has been termed the "life line system of the city or community with the symbolic structure pertaining to socioeconomic stratification, social relationships, social bonds, and social mobility" (Zhou, 1997). As is usually evident by casual inspection, the most immediate physical damage after a disaster is to an area's life line system. While damage to an area's electricity, water, gas, and transportation system can be devastating, the severity of this damage is "understood only through how it affects the symbolic structure" (Zhou, 1997, p. 7). Damage to a community's symbolic structure cannot be understood without consideration of its physical structure and the damage sustained to that very real facet of society.

It can be argued that the emergency response following Hurricanes Katrina and Rita demonstrated that not all impacts of a disaster on a community's symbolic

structure are negative. While the world was witness to the massive looting and pillaging that occurred in New Orleans, the news media also brought reports of cooperative rescue efforts and citizens assisting others as they tried to flee the storm-ravaged area. Destruction to the community's physical structure brought destruction to its existing symbolic structure, creating both an altruistic community as well as a marginalized segment of society using the storm as an excuse to engage in otherwise socially disapproved behavior—primarily looting, burning, and burglary.

In an effort to come to some sense of understanding regarding individual behavior patterns during and after a disaster, Barton (1970) borrowed from Merton's means-ends framework to categorize individual behavior patterns. Barton speculated that all people are motivated to engage in recovery efforts to some extent after any specific disaster; however, it is the focus on individual behavior that is of interest when discussing incidents related to the Katrina disaster.

Barton theorizes that there are four fundamental categories of behavior relating directly to disaster scenarios. These four behavior patterns can be used to form a typology of human behavior during a disaster and the resulting recovery efforts. While the research is somewhat dated, it has definite benefits to current understanding of the ongoing recovery efforts as well as a glimpse into what might have gone awry during the Katrina disaster.

The first behavior pattern of this typology centers on well-defined disaster roles. Individuals possess both the knowledge of what to do as well as with whom to work to accomplish the desired tasks during a disaster (Barton, 1970). In the aftermath of Hurricane Katrina, evacuees and rescue workers knew what needed to be done to secure the city and ensure the safety of its residents. Before any concentrated rescue efforts could begin, federal agencies needed to be coordinated; law enforcement agencies needed to arrive at an agreement pertaining to chains of command and jurisdictional considerations; evacuees needed to be fed; and water, food, and fuel needed to be brought into the city.

As the news media reported, however, in the initial stages immediately preceding and directly after the hurricane swept ashore, federal officials had no organized plan for evacuation or rescue efforts. Federal authorities were waiting for state governor's offices to decide upon a course of action, which were, in turn, waiting for confirmation of an actual emergency situation from local mayor's offices, which were, in turn, waiting for local law enforcement to react to the emergency at hand. The lines of communication were vague at best.

The failure of the federal emergency disaster response could be somewhat understood considering the troubled past of the Federal Emergency Management Agency (FEMA). It has been stated that county (or parish) governments may "be the most logical and hospitable hosts for emergency management agencies because of their unique roles in state and local governance" (Waugh, 1994, p. 253). In fact, it is the General Accounting Office (GAO) that focuses on the problems of bringing federal resources to an area when local and state capacities and volunteer agency capacities begin to get overwhelmed in an emergency situation. The problems encountered in the aftermath of Katrina were not new to the federal emergency response scenario. The GAO recommended improvements in the

damage assessment process at local and state levels as well as in the functioning of FEMA.

In response to studies conducted by the National Academy of Public Administration (NAPA) and the GAO, the sponsors of the "Federal Disaster Preparedness and Response Act of 1993" (§995) sought a reorganization of FEMA and amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131) to accomplish six tasks essential to effective and efficient disaster recovery: (1) authorize federal agencies to be more proactive in preparing for anticipated disasters; (2) clarify local, state, and federal government and private organization roles in disaster preparedness and response; (3) create an accessible inventory of disaster response resources; (4) manage private agency and volunteer participation; (5) assist local and state officials in assessing damage and requesting federal aid; and (6) improve local and state government capacities, including financial incentives for state compliance (Waugh, 1994).

The Senate Committee on Governmental Affairs scheduled hearings on §995 for the fall of 1993 (Waugh, 1994). The primary goals of the hearings were to design a lead agency with the capacity to ensure communication between the U.S. President and state governors and to facilitate effective interaction among emergency management agencies at all levels (Waugh, 1994). The effort was essentially to reform FEMA.

In an effort to untangle the intricate web of disaster response, the emergency management function can be divided into four separate phases: (1) mitigation, (2) preparedness, (3) response, and (4) recovery (McLoughlin, 1985; Petak, 1985). This four-phase model was the product of a National Governor's Association study in the late 1970s (Petak, 1985). This model provides much of the conceptual language in use by emergency response agencies. The question of the Senate Committee on Governmental Affairs' hearings on §995 was whether a reorganized FEMA could successfully carry out each of the separate functions described in the four-phase National Governor's Association model.

As was painfully evident in the news media reports from New Orleans, FEMA was unable to coordinate rescue efforts immediately after the passing of the storm. Evacuees housed in the Superdome were left without adequate sanitation, food, or water. Police agencies were essentially operating without adequate communications resources, and rescue efforts were uncoordinated and haphazard at first. According to the Barton (1970) typology, the immediate after-effects of Hurricane Katrina epitomized the absence of adequate and well-defined disaster roles.

Barton's second component of the typology pertains to improvised disaster activities in well-defined role relationships. This element of the typology refers to the cooperation of people in efforts to do something wrong. When studying the Katrina disaster, the behaviors of the looters and criminals during the rescue period following the storm could be considered good examples of this component of the typology.

In interviews conducted with members of the JPSO and officers of the NOPD, the universal sentiment centered on the fact that although the looting was unrehearsed



or improvised, much of the criminal behavior had been planned by area criminals. Once the public officials called for a mandatory evacuation of the city, local gangs of criminals knew that with few remaining residents and police preoccupied with storm duties, burglary, car theft, and other criminal behavior would be much simplified. Looters, too, quickly realized that with the lack of police organization after the storm, they were free to loot and burn almost at will. Several officers noted that it was an impossible task trying to secure area businesses and homes. Police could chase looters and criminals away from an area, but as soon as darkness fell, the looting and criminal behavior would return. Once looters were finished ransacking a home or business, they would set the building ablaze. Without adequate water pressure, firefighters were unable to properly extinguish many of the arsons resulting from the looting. Officers were left without proper resources to curb the tide of looting and crime in the aftermath of the storm.

The third element of Barton's typology pertains to improvised relationships for suitable activities. This element centers on people not cooperating well in an effort to do something right after a disaster. This is best illustrated by the cooperation that existed between area law enforcement, business leaders, volunteers, and federal authorities in the rescue efforts after Hurricane Katrina.

As word quickly spread regarding the disaster occurring in the city of New Orleans, volunteers began arriving by the hundreds to assist in rescue and recovery efforts. Once federal authorities realized the extent of the disaster, the National Guard was mobilized and sent into the city. The Naval warships sitting in the gulf during the storm moved into the Mississippi River, and police agencies from all over the nation sent thousands of officers to assist in rescue and law enforcement. Food, water, ice, fuel, and clothing began to trickle into the city after approximately four days of chaos.

In interviews conducted with officers of the JPSO and NOPD, however, the rescue efforts began in earnest, but the lack of communication and a clear chain of command hindered many of the well-meaning cooperative attempts. Once the hurricane-proof communications towers of the JPSO were destroyed by the high winds, inner and inter agency communications were essentially shut off. With no high-technology communication capabilities, local law enforcement was left to rely solely on hand-held radios for all interpersonnel communications. There were hundreds of law enforcement officers trying to make use of a single radio channel for all of their communications (Arey & Wilder, 2005).

In addition, as assistance began to arrive, there existed no clear chain of command. JPSO and NOPD officers had become trapped out of their usual jurisdiction, away from their regular command supervisors. As a result, although they were able to assist in rescue efforts, it was unclear exactly who should command or supervise these officers. Supervisory personnel, unable to communicate with Sheriff Harry Lee of the JPSO or Chief Eddie Compass of the NOPD, were reluctant to make executive decisions. National Guardsmen were uncertain as to their place within the existing command structure of the JPSO and NOPD. No single agency claimed the top command position.

As a result, officers were often forced to make due with what they could find on their own. In several instances, officers were forced to run through waist-high

water to secure food or equipment. Some officers of the JPSO personally asked the men aboard the USS Bataan anchored in the Mississippi River for fuel to run generators. While necessities were given when requested, the lack of command was a serious hindrance to distribution of supplies and command of the thousands of police and soldiers working in the area.

Local business leaders and residents also proved to be of great assistance during the rescue efforts after Hurricane Katrina. While there was no clear, organized attempt to assist in rescue efforts, the additional assistance from businesses proved to be beneficial. Area residents provided boats and shelter for rescue efforts. One officer of the JPSO interviewed for this project stated emphatically that Sheriff Harry Lee is so respected by area residents that assistance in the form of flatboats and air boats arrived without his asking. The owners of the boats simply showed up asking whether there was any need for their equipment. Local restaurant owners opened up their kitchens and freezers to rescuers so that meals could be provided. As one officer of the JPSO stated, one local restaurateur arrived to open one of his facilities to rescuers and even stayed to help distribute the food. National chain restaurants also opened up their kitchens to rescuers to offer decent food in hopes that it would boost morale of the officers and volunteers. Thus, even without a clear chain of command or cooperative effort, local residents were able to assist one another with each providing what they could for use in rescue efforts in the aftermath of the storm.

The last component of the Barton typology pertains entirely to improvised roles with no individual knowledge of well-defined disaster roles. In the aftermath of a large-scale disaster, there are those individuals forced to improvise an appropriate course of action to best fit their needs. There were hundreds of evacuees trapped in the Central Business District (CBD) of New Orleans after the storm had passed. These residents were ignorant of the proper or well-defined disaster roles existing as a result of the storm. These were families and individuals who simply needed to find a way out of the city. One young man who worked at a local hotel found himself, along with two of his friends, trapped in the Convention Center. He noted that the angst and anger of the evacuees was beginning to build to dangerous levels by the fifth day after the storm when food, water, and medical attention failed to arrive. He began a trek through the streets of the city in an attempt to find transportation out of the area. He and his friends were finally able to locate a truck belonging to a local contractor in a parking garage that was unlocked. They quietly stole the truck and drove to Texas where they telephoned the owner of the truck informing him of where he could find his property. They subsequently left the truck, unharmed, in a gas station parking lot for the owner to retrieve.

There are many stories similar to the one above. Residents and evacuees were forced to improvise in an effort to flee the devastated area. In addition, in my interviews with local police officers, there were many instances in which officers and rescuers were forced to improvise due to the lack of a clear command structure. Several officers reported instances in which they were forced to break into local grocery stores and hardware stores in an effort to acquire food, water, and ammunition. Some officers knew of relatives in the area who would allow rescuers to use their homes as shelters.

This ability for local residents to band together might also be considered an excellent example of an altruistic community developing out of a shared catastrophic event. Conversely, the looting and subsequent criminal behavior arising out of the anarchy created by the storm provides examples of social disorganization. The resulting confusion, anarchy, crime, and violence created in the aftermath of Hurricane Katrina provide support for both the social disorganization hypothesis, as well as the competing altruistic community perspective. It is the position of this research, based on interviews, personal observation, and news reports that it is social position that dictates which role individuals play during a disaster. Trying to force fit a theoretical perspective onto any particular disaster or catastrophe is shortsighted and neglects many of the existing nuances of the larger social community already in place prior to the emergence of the disaster.

## **Lessons Learned**

As the problems encountered during and after Hurricane Katrina were displayed upon the world stage, concerns began to grow that a lack of preparation was the primary element in much of the devastation wrought upon the city of New Orleans. Poor planning by local, parish, and state officials had resulted in property damage and loss of life that could have been avoided. Due to the fact that the 2005 hurricane season was only about half over, Galveston Mayor Lyda Ann Thomas called an emergency town meeting in an effort to avoid many of the pitfalls that had proven so troublesome not only to New Orleans but Biloxi, Mobile, and Gulfport.

The experiences of New Orleans had exposed vulnerabilities for many towns and cities across the Gulf coast. As upper and middle class residents were able to evacuate, there remained the elderly and the poor without adequate transportation in case of an emergency evacuation. In addition, an overreliance on technology had proven catastrophic for New Orleans and Jefferson Parish police agencies. Therefore, drawing upon the disaster that had devastated the New Orleans area, Mayor Thomas vowed the City of Galveston would be spared learning the lessons of New Orleans.

The Galveston Mayor's Office called upon volunteers and local residents to find out who was in need of transportation in the case of an evacuation. Those citizens unable to obtain the necessary transportation to flee were provided a means of escape. Evacuation in the Galveston area began on the Tuesday before Rita hit. By the time Rita made landfall, the city of Galveston was a ghost town. The only remaining citizens were those opting to remain of their own accord. The elderly and the poor were evacuated in an all-out effort to avoid the loss of life encountered in New Orleans.

Researchers considering the lessons of New Orleans and the successful preparations in Galveston commented that there are four very valuable lessons any metropolitan area can learn from the problems encountered during and after a major disaster. While the research was primarily aimed at hurricane evacuation, the lessons can be extrapolated to any disaster, whether natural or man-made.

Brooks (2005) has stated that one vital lesson learned from the 2005 hurricane season was the fact that public officials need to take care of those who are unable to care for themselves. While the City of New Orleans did provide the use of

the Louisiana Superdome for residents unable to evacuate, public officials had no contingency plans in effect to provide for those evacuees. In the aftermath of Hurricane Katrina, the Superdome evacuees were not only evacuated from their own homes but faced an additional evacuation from the Superdome. New Orleans and Jefferson Parish public officials were unprepared for the evacuation of thousands of urban poor and elderly citizens.

A second lesson learned from Hurricane Katrina centers on one simple fact: a public official cannot count on assistance from any outside agencies, be them state or federal. In the aftermath of Hurricane Katrina, state and federal assistance did not arrive in the city until the fourth day after the storm struck. The New Orleans Mayor's Office was counting on assistance from Governor Blanco's office, who, in turn, was expecting federal assistance from FEMA and the National Guard. Brooks (2005) states that in the event of a catastrophe, public utilities will not be in operation; therefore, it falls to the elected public officials to plan before the actual disaster by having stockpiles of food, water, batteries, and fuel.

The third major lesson learned from Katrina concerns communication and coordination of rescue efforts. Brooks notes that "nearly every evaluation of the emergency response to Hurricane Katrina noted failure of these two critical activities" (2005, p. BS1). Agencies involved in the rescue efforts after hurricane Katrina had no centralized authority or communications ability. Regular telephone service was lost during the storm, as were most cellular service towers. Emergency responders were unable to communicate with one another, and in some instances, people were forced to run to actually find assistance. In addition, rescuers were unable to inform one another and citizens of incoming supplies of food and water due to their inability to communicate.

Finally Brooks states that public officials must resign themselves to the fact that something will go wrong. No amount of planning could have anticipated the disaster that was wrought over the New Orleans area. No amount of planning could have prepared city officials or the general public for multiple levee breaches holding back Lake Ponchartrain and the Gulf of Mexico. While the flooding and collapse of the urban infrastructure devastated the residents of the New Orleans area, it was the inability of rescue personnel to coordinate their efforts that exacerbated an already thorny situation.

Brooks recommends public officials and emergency workers train the personnel in lower command positions to perform vital upper echelon command functions. By having a repetitive command structure, rescue efforts could be enhanced since lower command personnel would be able to assume command should the situation necessitate.

As of this point in time, neither the JPSO nor the NOPD have an actual emergency contingency plan in writing for the 2006 hurricane season. The JPSO has stockpiled MREs, water, and fuel, but there continues to be squabbling between parish officials, city planners, and federal agencies as officials strive to protect existing jurisdictional boundaries and command lines.

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# The Roots of Radical Muslim Suicide Terrorism

Michael Aman

Most terrorist groups that are currently conducting suicide attacks are religiously motivated. There are notable exceptions, such as the LTTE/Tamil Tigers of Sri Lanka, but the most serious potential threat of terrorist suicide attacks within the United States originates from radical Muslim groups, in particular Al-Qaeda and affiliated organizations and cells. This article focuses on the radical Muslim terrorist spectrum. For radical Muslim terrorist groups, religious fanaticism is a creed, as well as a way of life. Frequently, it is the most important motivating factor for individuals who embark on suicide missions in furtherance of their vision of Islam. The religion of Islam in itself is not a terrorist threat; there are extremist off-shoots, however, which condone and engage in violence against non-Muslims as well as Muslims who are not supportive of an extremist doctrine. The current situation may be described as a struggle for “the soul of Islam” between moderates and extremists. The terms *radical Muslim* or *Muslim extremist* are used interchangeably, and whenever used in this article, they mean a form of the Muslim faith that . . .

- Subordinates all aspects of an individual’s life and society to the Muslim faith.
- Is hostile to any other faith or any other form of the Muslim faith and its adherents, including other Muslims.
- Propagates violent means to spread the Muslim faith.

## The Muslim Religion

Islam originated in the 7th century A.D. and is the youngest of the world’s major religions. It grew out of the same monotheistic tradition as Judaism and Christianity, and the Islamic Allah is the same deity as the God of Abraham and Moses. In Islam, God is an ever-present, all-knowing authority, and there are no other Gods beside him. He is the final authority on all human endeavors, and serving Him is the only purpose of human life. Islam connects to the Christian Old Testament, and Judeo-Christian figures like Abraham, Moses, and Jesus play a role and are acknowledged in Islam. Jesus is seen as one of the prophets, not as the son of God. Muslims believe in a succession of prophets, and God—*Allah* in Arabic—speaks to humanity through the prophets. The final and most important prophet was Muhammad, the founder of Islam. God’s will as conferred through Muhammad’s teachings is laid down in the Koran, the holy book of Islam. It is seen as the definitive and final commandment by God because Muhammad is believed to be the final prophet; there will be no others until Judgment Day, and there will be no other revelations after the Koran. Islam acknowledges the common roots it shares with Judaism and Christianity but believes that after the advent of Muhammad, these religions became corrupt digressions from the true faith. Islam, in theory, does not know any church, hierarchy, or priesthood; it is not an organized or institutionalized religion, as, for example, Catholicism. Even though Muslims are not supposed to worship any person or place, worshipping certain holy men and “martyrs” occurs extensively in practice. The martyr concept has especially grave implications for the rise of the phenomenon of Muslim



suicide terrorism. In practice, Iranian *mullahs* and Arabian *sheiks* hold tremendous religious authority and power, even though this is a violation of the teachings of the Koran, which stipulate that no man shall stand between Allah and the believer. Compared to Christianity, the Muslim faith is much more assertive in that it controls the personal and social lives of believers as well as the political life of nations that are founded on Islam. Allah and His literal word, the Koran, dominate everything from the thinking and daily life of the individual person to peoples' social interaction, the law (*Sharia*), and the structure and actions of the Islamic nation as a whole. The Koran is accepted as an eternal document; it is not subject to change, update, simplification, or modernization. There is no separation of religion and state. Even though the Islamic God is described as generous and merciful and the believers are urged to live modest, chaste, and tolerant lives, the Koran specifically endorses *violence in defense of the faith* and teaches that those who take up this fight are more likely to enter Paradise on Judgment Day. The Muslim faith is based on the "five pillars of Islam." These five pillars establish the minimum requirements of every individual Muslim that must be fulfilled in order to have a chance to obtain admission to Paradise. If one of the five pillars is not being established by the individual believer, the hope for Paradise collapses. The pillars are religious obligations and serve as a roadmap to a virtuous life. The five pillars are as follows:

1. *The Profession of the Faith*. Allah is the only God to be worshipped; in theory there is no worship of man, places, icons, statues, etc. His word is laid down in the Koran, and the acceptance of God's revelations is an absolute and unequivocal obligation for the believer. Fear of God's vengeance and eternal damnation in hell is a dominating theme in the Koran and appears to be the believers' principal motive for the acceptance of God and his revelations. God's primary image is the punisher of nonbelievers and the destroyer of corrupt, non-Muslim (*Kufr* in Arabic) societies. This last aspect has important implications for the moral justification of suicide attacks by radical Muslim terrorist organizations.
2. *Ritual Prayer*. Muslims are required to deliver ritual prayers five times a day. This is a minimum requirement, and Muslims are urged to pray at all times and on any occasion; group prayer is considered superior to individual prayer. Friday is the only day when group prayer in a mosque is mandatory. These extensive prayer requirements have important potential implications for the identification of an impending suicide attack. For the radical Muslim suicide terrorist, his or her action is primarily a religious act, not so much a military tactic. It is likely that his or her final act will be preceded by some religious utterance that could give potential victims a last-second warning. On the cockpit tapes of United Flight 93, which was brought down in Pennsylvania on September 11, 2001, when the passengers attempted to re-take the airplane from the suicide hijackers, the final religious invocations of the terrorists are clearly discernible. In theory, Islam doesn't know priesthood; however, the Friday prayer in the mosque is typically led by an *imam*, who is an individual with religious training. Occasionally, these Friday prayers are used to incite religious fervor in the attending believers. Israel has witnessed spikes in terrorist attacks immediately following the Friday sermons at mosques in the occupied territories of the West Bank and Gaza. Another requirement for Muslims is to be clean in body and spirit before engaging in prayer. For the radical Muslim suicide terrorist, the attack is the ultimate religious act and, therefore, he or she will make efforts

to achieve this cleanliness before executing the suicide mission. Islam believes in the resurrection of the body, and there are strict requirements to wash and shroud the body after death and bury it as quickly as possible. This poses special problems for the suicide terrorist because for obvious reasons, these rituals will not be performed on his or her body. It appears that this conflict is resolved by essentially declaring the suicide terrorist dead as soon as he or she sets out on the mission, a walking dead, so to speak. Cleansing rituals will be performed prior to the mission, and the terrorist may actually wear a burial shroud underneath his clothing and the explosive suicide device.

3. *Alms-Tax (Zakat)*. This tax is a religious obligation to support the less fortunate. Its degree of institutionalization differs from country to country. The most important aspect of this religious tax for the non-Muslim world is the fact that one of the permissible uses is to support *the propagation of Islam*. This has important implications for the financing of radical Muslim terrorism. Holy War (i.e., *jihad*) is widely seen as a legitimate form of the propagation of Islam.
4. *Fasting*. Muslims are obligated to fast during the month of *Ramadan*, one of the 12 months of the Islamic calendar. Fasting means to abstain from food, drink, smoking, and sex during daylight hours. Drink means any fluids; alcohol is prohibited at all times. The Muslim calendar is based on the lunar cycles; it does not correspond to the Gregorian calendar that is used in Western countries, which parallels the seasons. That means that *Ramadan* can fall in any season of the year. Especially when *Ramadan* falls in the summer months when daylight hours in the Middle East can extend up to 16 hours, the fasting causes a substantial disruption of normal daily life. Its primary purpose is to convey a unifying experience to all believers. The beginning and end of *Ramadan* are important symbolic dates in Islam; this has a potential impact on the timing of terrorist attacks.
5. *The Pilgrimage to Mecca*. Every Muslim is required to make this pilgrimage, the *hadjj*, once in his or her lifetime. The pilgrimage consists of a physically strenuous 10-day series of religious events in and around the Holy City of Mecca in Saudi Arabia. The event attracts about two million people each year. It is celebrated during one of the lunar months of the Islamic calendar and can fall in any season, like *Ramadan*. The 1987 pilgrimage became the scene of violent confrontations between Saudi security forces and Iranian pilgrims, which caused about 400 fatalities. For many poor Muslims, the Mecca pilgrimage is the only time they leave their village in their lifetime. For many, the pilgrimage is unattainable altogether.

These five pillars establish the foundation of the Muslim faith and are the minimum that an individual must accomplish in order to be considered for entry into Paradise. In addition to these five pillars, there is an extensive set of requirements that the true believer must abide by in his or her personal and social life. The believer must orient his or her life towards God and recognize that life in this world is only a temporary and transitional episode on the way to Paradise. The same applies to the Islamic State, and there is no distinction between duty to the State and duty to Islam. Islamic law and State law are the same. The Koran does not establish norms for acceptable political behavior but only for religious behavior and then declares the two one and the same.

In the *hadith*, a collection of the prophets' sayings that supplements the Koran, believers are urged to change evil when they see it. Preferably, this should occur through deeds; only if that is impossible, speech or attitude are permissible but still inferior. One of the Muslim's important duties is to defend the faith against nonbelievers. Islam is not a fatalistic religion, and followers are encouraged to actively change their, the faith's, and the Islamic society's fortunes for the better. The duty to spread the Islamic faith is a duty for the individual believer as well as for the Islamic State.

The *jihad* concept has major implications for the phenomenon of radical Muslim suicide terrorism. There is no unequivocal definition of the term *jihad*. Some sources define it as the internal struggle of every individual believer to achieve personal adherence to the true faith. The literal translation of the term means an "extreme effort" in the defense of the faith but leaves open the question of whether this defense includes violent means or not. At the other end of the spectrum is the definition of *jihad* as an armed offensive with the purpose of spreading Islam. The Palestinian terrorist organization Palestinian Islamic Jihad has included the concept of *jihad* in the name of their organization. To them, *jihad* is the sixth pillar of Islam and an obligation for every Muslim.

The Koran is also ambiguous about the way Islam is to be propagated. It commands followers to be tolerant with nonbelievers, yet at the same time, it advises ruthlessness against the enemies of Islam. The Koran is ambiguous as to whether the propagation of the Islamic faith should be conducted offensively or violence should only be employed in the defense of the faith against prior aggression. Overall, the Koran's tone is hostile against nonbelievers. This ambiguity in the Koran allows contemporary radicals to pick and choose the citations that best serve their purposes. As previously mentioned, Muslims do regard the Koran as the literal word of God. The Koran contains passages that instruct Islamic armies not to take prisoners of war until the enemy is completely routed and to kill persistent nonbelievers. The Koran knows several classifications of nonbelievers: on the lowest rung are prisoners of war and slaves; the next higher step is occupied by pagans. Traditionally, Christians and Jews were awarded special status as "people of the book" (i.e., monotheists). Contemporary Muslim extremists, however, reserve most of their contempt for the latter two groups. The aggressive definition of the *jihad* concept, as described above, has its roots in the early years of Islam when the Kalijite sect advocated the inclusion of armed struggle to advance the cause of Islam as a sixth pillar of the faith. The spiritual origins of the contemporary worldwide network of Islamic "jihadists" can be traced back to that sect and others like it that appeared during centuries of Muslim history. Osama bin Laden issued his 1998 declaration of war against the United States in that spirit. Specifically, he demanded from every Muslim to kill as many Americans and Jews as possible.

The founder of the Islamic faith, Muhammad, died in 632 A.D., and within a century of his death, a Muslim-Arabian empire had been established that stretched from southern France to the Indus River. Modern Islamic extremists are dissatisfied with the current fragmented condition of the Islamic *ummah*, the Islamic community, and they yearn to reestablish Islam to its historic status of global power. Modern-day Islamic extremists frequently refer to the crusaders and draw parallels to Islam's contemporary enemies, the Christians and the Jews. Around the 12th century A.D., European-Christian armies invaded Palestine and

attempted to establish a Christian kingdom there. Eventually, these attempts were defeated, but they left an indelible mark on the Muslim psyche. The crusades marked the irreversible end of the zenith of Muslim power, prestige, and wealth, which had occurred under the Caliphs in the 9th century. At that time, the Caliphs were based in Baghdad, and it was the closest the Muslim world ever came to being a true pan-Islamic nation and global power.

The schism of Islam's two factions, the Sunnis and the Shiites, has its roots in the first century after Muhammad's death and was caused by disagreements over the legitimate Caliph (i.e., successor of the Prophet). The schism holds to this day and has been the cause for many bloody struggles within the Islamic faith and violent arguments as to who holds the true faith. The violent confrontations between Sunnis and Shiites continue into the present, the latest example being the current Iraq war. There are specific characteristics of the Shiite form of Islam that arose out of the split; these are important to the non-Muslim world. The legitimate immediate successors to the Prophet Muhammad, according to the Shiite faith, were both murdered. This feeling of victimization has awarded the concept of martyrdom great admiration and importance in the Shiite faith.

## The Assassins

The modern term *assassin* has its roots in the Muslim extremist sect of the Assassins in the late 11th and early 12th centuries. They operated out of Syria and were famous for knife killings of prominent political and religious figures. Their attacks were conducted without regard to the attacker's own life and thus were an early version of suicide terrorism. Their leaders reportedly provided them with the necessary courage for their missions by administering the drug hashish before they deployed them on their missions.

The Shiite faith is expressed through physical action to a much greater degree than in the more legalistic and less emotional Sunni version of Islam. Examples of these physical actions include religious mass parades and demonstrations unknown in Sunni Islam and self-flagellation. In its extreme form, this form of absolute physical devotion to the faith found its expression in the Iranian human-wave tactics during the Iran-Iraq war in the 1980s, and the suicide missions of the Shiite terrorist group Hezbollah in Lebanon, which ignited the current wave of worldwide suicide terrorism. The Iranian revolution in the late 1970s was a product of Shiite fervor, and the Iranian regime for all practical purposes has adopted terrorism as a tool of foreign policy. It should be noted that Iraq is also a state with a Shiite majority. Due to its fervent anti-Western orientation and activism, the Shiite form of Islam has attracted widespread attention and admiration in Sunni-majority countries as well.

Wahhabism is a puritan, ascetic, back-to-the-roots form of Sunni Islam. It has developed over the past 300 years and was a reaction to mystical, feel-good tendencies that had invaded the Islamic religion in the course of the first 1,000 years of its history. Even though Wahhabism, in a religious sense, is an extremely conservative and narrow application of the Islamic faith, it espouses modern technology and has become the basis for the modern Saudi-Arabian State. Saudi Arabia is religiously ultraconservative but technologically advanced at the same time. In the Saudi-Arabian model, that conflict is resolved by making huge financial

contributions to fundamentalist Islamic and terrorist causes outside Saudi-Arabia. Essentially, the intent is to pay for not being placed on the hit list of radical Muslim terrorist organizations. This strategy has failed with Osama bin Laden and his Al-Qaeda organization. Wahhabism is the spiritual force behind Osama bin Laden's Al-Qaeda. He is denouncing the current Saudi rulers as having strayed from the true path of the faith and for allowing U.S. troops into the Holy Land of Islam.

The Muslim Brotherhood was founded in Egypt in 1928 in response to the secularization and Westernization of that country. The Brotherhood promotes a totally Islamic State that encompasses all aspects of the life of its citizens. It is anti-Western and pan-Islamic. It advocated the prohibition of TV, movies, and scientific education and demanded the implementation of religious courts. The Muslim Brotherhood's successor organization Egyptian Islamic Jihad assassinated President Sadat of Egypt in 1981, and its most notable contribution to modern terrorism is the invention of the cell concept. Due to being constantly pursued by the Egyptian State, the Muslim Brotherhood was forced to exist in secret cells and establish storefront businesses in order to finance itself. The concept of storefront businesses and charities is important for modern terrorism because it provides all necessary assets to the terrorist organization. These businesses or charities generally have names that sound legitimate and generate real revenue that is then used for terrorist purposes. The Muslim Brotherhood also pioneered the establishment of paramilitary training camps for terrorists.

Members of the Taliban are by most accounts the most backward, anti-Western, and narrow-minded representatives of Islam in recent history. The term means "students" and refers to the roots of the movement in Pakistani Koran schools (*madrassa*). These schools were established by the Pakistani government to create an outlet for Muslim zealots in Pakistan, which has been run as a military dictatorship for much of its history; the Islamic façade served as a sham to deflect criticism by the radical Muslims. The Koran schools are no more than institutes for indoctrination that provide no other education but a narrow-minded and extremist interpretation of the Muslim religion, in essence terrorist Sunday school. The Pakistani secret service actively supported the Taliban who took over Afghanistan in 1994 after the exit of the Soviets and a ferocious intra-Muslim civil war. The Taliban were recognized only by three other governments as the legitimate rulers of Afghanistan: (1) Saudi-Arabia, (2) Pakistan, and (3) the United Arab Emirates. Remarkably, these are all nominal allies of the United States. The Taliban provided safe haven for Osama bin Laden and Al-Qaeda in Afghanistan, and the 9/11 attacks were planned there. The Taliban regime was ousted by a U.S. invasion after the attacks of September 11, 2001. The ouster of the Taliban is a model for a successful offensive anti-terrorism intervention. It was accomplished by a mix of massive air strikes, Special Forces operations, and subsequent occupation by U.S. forces in conjunction with European allies.

Extremism has a long history within the Islamic religion, and contemporary fanatics can choose from a long list of extremist factions that best represent their views. Religious fanaticism is only one, but quite likely, it is the most important motivating factor that makes a suicide terrorist.

## **The Muslim Extremist**

After establishing the basis with this overview of Islam, the focus will now be on the individual. It is important to recognize that not all suicide terrorists are the same, and even among the group for whom religious fanaticism is the primary motivator, there are differences. A common element is the belief in the martyrdom concept. The suicide mission is not an act of personal despair due to some worldly problem such as money, marriage, health, etc. These are the common causes of “conventional” suicides, and they don’t have anything to do with the religiously motivated suicide terrorist. For the suicide terrorist, his or her act is a religious statement, not just a military tactic and certainly not just an escape from an unbearable problem in his or her personal life. In a confrontation with a suicide terrorist, conventional persuasion and negotiating tactics for the “normal” suicidal subject do not apply. Radical Muslim suicide terrorism is a phenomenon that transcends national boundaries. Certain nationalities that are traditionally regarded as U.S. allies cannot be excluded from the potential pool of suicide terrorists.

## **Suicide vs. “Homicide” Terrorists**

There has been some discussion as to whether the “suicide terrorist” should be labeled “homicide terrorist” instead, but “suicide terrorist” is the more appropriate term because it describes the unique tactical method of operation. Homicide is certainly the intention, but it is the intention of any terrorist, to include those who do not sacrifice their own lives.

## **Self-Sustained Religious Fanaticism**

The suicide terrorist thinks of him- or herself in the tradition of the warriors who have fallen in the cause of Islam and have thereby fulfilled the ultimate duty to the faith. As mentioned, the Koran demands that the individual believer take physical action if there is an infringement upon Islam. Human life is not a value in itself but has meaning only if it serves God and is completely dedicated to Him. The logical extreme extension of that command is death in a suicide mission. Osama bin Laden has specified and quantified this command by demanding the highest possible number of Americans and Jews killed. Terrorist suicide missions are a certain and proven way to deliver maximum casualties. The suicide terrorist identifies with the Koran’s stipulation that life is but a temporary station on the path to Paradise; violent death is seen as a short and temporary inconvenience during the transition to eternity. This kind of motivation is mainly based on factors internal to the individual and is self-sustaining. It is typical of individuals with higher education and above-average intelligence. These are the most dangerous suicide terrorists because they are self-motivated, which means they don’t need a leader looking over their shoulder to keep them focused on the mission by constant indoctrination. To some extent, that eliminates the need for communication, which is an important indicator of an impending terrorist attack. Individuals of this type are assigned the more complex and dangerous, but also the most important and prestigious, missions. The leaders of the 9/11 attacks were perfect examples of this kind of suicide terrorist. From a Western outlook on life, their actions are completely incomprehensible, even taking into account their Muslim faith. They were educated and well-situated in life. They had the means and opportunity to

fulfill the five pillars of their faith and could have lived long and comfortable lives that would still have been considered meritorious in Muslim terms. They were the most dangerous type of suicide terrorists.

## **Fear-Driven Fanaticism**

The Muslim God is to be feared and obeyed. Especially in the more legalistic Sunni branch of Islam, religious activities and worshipping are primarily motivated by the fear of eternal damnation. The five pillars of Islam establish a minimum that every believer must fulfill in order to be considered for Paradise. In addition to these minimum demands, there is a complex set of rules and regulations controlling the personal and social life of every Muslim. Only considering the five pillars, it is obvious that many believers do not have the means and opportunity to fulfill these obligations. The alms-tax requires a monetary sacrifice for the support of the poor or for the furtherance of Islam. Millions of Muslims are so poor that they cannot afford to give the *zakat* but are rather on the receiving end of it. The daily prayer rituals are sometimes unrealistic, especially for believers who live in non-Muslim societies in which observance of the prayer rituals would create a public nuisance at the least and be cause for arrest at the worst. The pilgrimage to Mecca causes perhaps the biggest problem of all: it is unaffordable for many Muslims. These forced inadequacies have the potential to cause a guilt complex in many believers. They are forced to acknowledge that they will never be able to achieve even the most basic and minimal requirements of their faith. They will be condemned to a sinner's life with dubious chances of entering Paradise. If this guilt complex is coupled with religious fervor and the Koran's promise of automatic entry into Paradise for martyrs, it is easy to see how some believers who suffer from the described guilt complex might regard martyrdom (i.e., a terrorist suicide mission as a shortcut from a sinner's life to Paradise). Fear-inspired fanatics may regard natural death as a penalty they can avoid because a suicide mission will mean immediate admission to Paradise without having to wait in a grave for resurrection on Judgment Day. This type of motivation is more compatible with a follower-type individual, with less education and intelligence. Compared to the self-sustained fanatics, they will be easier to distract from the mission, will require more effort by their handlers to keep them on track, and might be more prone to intimidation and failure during their mission. Very young suicide terrorists frequently fall into the fear-inspired category. Suicide terrorists acting on this type of motivation offer a better chance for law enforcement officers to intervene with success. Each suicide terrorist will not be exclusively either self-motivated or fear-inspired. A combination of the two will motivate each one of them, but one factor will be the dominant one.

## **Rewards**

The suicide terrorist's expectation of rewards is closely related to his or her religious fanaticism. For suicide terrorists, there are two basic groups of expected rewards: (1) spiritual rewards and (2) material rewards.

## **Spiritual Rewards**

Islam as a religion has its roots in Arabia, which mostly consists of arid desert. The concept of the oasis is very important in the cultural and religious experience of

that land. The Koran describes Paradise along the lines of a desert oasis, with palm trees and flowing rivers. The Islamic martyr is promised automatic and immediate admission to Paradise as a reward for self-sacrifice. The believer who dies an ordinary death will have to wait for Judgment Day to be (hopefully) resurrected. The martyr goes to the highest level of Paradise (occupied by saints and prophets) immediately and is treated with special favors. Probably the best known example of these special favors is the tale of the 72 virgins who will attend to the martyr's desires. It may seem an outlandish belief in the Western culture and religious experience, but it is still held firm by Muslim suicide terrorists. Martyrs are also granted the privilege of intercession with Allah on behalf of 70 of their relatives. Another expected reward for the martyr is to be allowed to touch the face of Allah. In a religion that forbids any image, statue, or physical description of God, to be chosen as one of the select view that will ever—even in Paradise—be allowed to have physical contact or communication with God must be a very special privilege. These beliefs are probably a natural human reaction to the general emotional depravity of the Muslim faith, especially the Sunni variation. The extreme reaction to the publication of cartoons depicting Allah and Muhammad illustrates this point. Another important consideration for the suicide terrorist is post-mortem religious status in his or her local and faith community. Radical Muslim suicide terrorists are widely revered as heroes in the Islamic world. In most cases, their parents and families support their missions, at least outwardly. The families of suicide terrorists are elevated in their religious status as well. Funerals of dead suicide terrorists frequently have the character of a victory celebration. In Muslim countries, support for suicide terrorism appears to hover around 50%.

## **Material Rewards**

There can't be any material rewards for the suicide terrorist to recognize him or her for a successful mission—except for the brief training period in which the future “martyr” is likely the center of attention within the terrorist squad and will in all likelihood be taken care of well. Especially in Muslim societies that did not profit from the oil boom, there are little retirement benefits or social security. Seniors are taken care of by their offspring, as has been the case for centuries. Especially male children are obligated to care for their parents when they can no longer support themselves due to age or sickness. The loss of a child in a suicide mission, therefore, has severe impact on a family because it represents the loss of a wage-earner and future security for parents. Muslim societies have come up with a fund system in which the families of suicide terrorists will be financially taken care of after the death of the family member in a suicide mission. The money for these funds is typically collected by charities within Muslim countries as well as abroad. In the United States, Muslim charities do not openly pay the families of suicide terrorists; however, a certain percentage is clandestinely diverted from some of these charities to support the suicide terrorism cause. For suicide terrorists, it is an important consideration and motivating factor that there is no worry about the future well-being of their families.

## **Life Experience**

Besides religious fanaticism, the specific life experience of each individual suicide terrorist is probably the other most important factor that drives an individual to commit a suicide attack. Just as with religious fanaticism, there seems to be a



certain dualism: there are those whose life, specifically their success in life makes it almost incomprehensible why they would embark on a suicide mission. Others are stuck in a life that offers little if anything positive, nothing to look forward to, and little hope of improvement. These suicide terrorists typically are young and hail from war-torn countries and refugee camps, or they grew up in an environment where violence and poverty are an everyday occurrence. It seems that for every Muslim suicide terrorist, religious faith is always at least a second foundation of motivation for a suicide mission. This is especially pronounced in Palestinian suicide terrorists. Some of them have been interviewed by journalists before their missions, and it appears that God and the freedom of Palestine provide equally strong motivators. The life experience and background of suicide terrorists will affect their conduct during the planning, preparation, and execution of terrorist suicide missions.

## **Suicide Terrorists with a History of a Positive Lifestyle**

Typically, the planners and leaders of terrorist suicide missions, especially the more difficult and important attacks outside of the Islamic world (e.g., in the United States) have a history of a positive lifestyle. These individuals are educated, typically in some technical discipline and may even have a degree. Their intelligence is above average; they are resourceful and show self-initiative and autonomous thinking. Typically, they are mature and tend to be at the upper end of the age spectrum for suicide terrorists; some of them are in their 30s. Many are independently wealthy, typically by means of a business or the professional status of their parents or family. Most of them have lived or live in Western countries, usually as international students or in a fraudulently obtained asylum status; many speak a foreign language. Their underlying motive for committing a suicide attack is still radical Islam, but sometimes their missions are also induced by motives that are more nationalist in nature. In many cases, these suicide terrorists start out as lackluster Muslims; in their youth, some are not religious at all and commit sins such as drinking alcohol and indulging in a Western way of life. Some might have gone to Christian schools or have non-Muslim ancestors. The key element in their conversion into radical Islamic suicide terrorists seems to be a certain degree of seclusion and sect-like life that they adopt in their Western host country. Even though they adopt the outward habits of the host country, they experience estrangement with the foreign culture, which is based on individual freedom and material exploits and not at all on piety and religion, as in their native culture. True internal assimilation beyond wearing Western clothing and so forth never occurs, and this lack of a bond to the host culture eventually leads into sectarianism. Muslim sectarianism in the midst of Western culture that appears to be hostile to Islamic ideas and lifestyle then breeds hostility towards that culture; feelings of hostility further increase the self-imposed isolation, and the whole process becomes a self-sustaining cycle. Like-minded individuals tend to gravitate together, and the essential building block for a terrorist cell is established. Mosques in Western countries sometimes play an important role in converting foreign Muslim transplants in these countries into radicals. Some of these mosques feature radical leaders that came to the West under the pretense of being persecuted in their home countries. Western guarantees of freedom of speech allow them to preach their extremist views with impunity; calls for violent *jihad* against the very country that hosts them are common. This model of the international terrorist dates back to the times before the emergence of suicide terrorism; for example, the leader of the 1972

attack on the Munich Olympics fits that pattern perfectly. The terrorist suicide attacks in London in July 2005 show that even native-born citizens of Western countries are susceptible to Muslim extremist indoctrination. The perpetrators of these attacks lived in a ghetto-like Muslim enclave in the city of Leeds. This isolation from mainstream British culture, coupled (in at least one case) with a two-month visit to a Pakistani Koran School was apparently enough to overcome any Western influence working against a suicide mission in the minds of these individuals. A radical British mosque also appears to have played a role in their mental preparation for the suicide mission. Other important recent examples are the ringleaders (e.g., the pilots of the planes in the 9/11 attacks). We will examine the lives and actions of two of them in order to gain a full understanding of their motives and behavior.

Mohamed Atta became the operational and spiritual leader of the 19 hijackers on 9/11, and he piloted American Airlines Flight 11, which was the first plane to hit the World Trade Center. He was born in Egypt in 1968 into a middle class family; his father was an attorney. Atta obtained a degree from Cairo University and worked as an urban planner. In 1992, he came to Germany as a student through a contact with a German tourist family he had met in Egypt. He enrolled at the Technical University of Hamburg and worked towards a city engineering and planning degree, which he received shortly before leaving Germany for Afghanistan. Atta worked with dedication on his studies and obtained an excellent command of the German language. When he first arrived in Germany, he came across as religious but not fanatical. Initially, he appeared to be a fairly nice person to be around. Atta began to change significantly shortly after arriving in Germany, though. He tried to organize a Muslim student association at his university; joined a working group at a Hamburg mosque; and began to exhibit assertiveness, intolerance against other opinions, and extreme anti-Semitic and anti-American attitudes. He became the leader of a hard core of four like-minded extremists, two of which were also his roommates; three of the four eventually became pilots of the attack planes on 9/11. His apartment served as a meeting place for this small group, and they became increasingly isolated from the outside world. Atta gained undisputed leadership of the group, and he was described as a charismatic and intelligent leader but intolerant of other opinions and increasingly bound on violence. The violent brand of *jihad* was a major topic of discussion in that group, and it led to dissent with other, more moderate Muslim students and reportedly also to disputes within the group. Atta was able to silence or overcome opposition to his ideas, however. In 1998, Atta visited Egypt, and a close friend who met him there saw a different person. He had grown a beard and according to the friend, he had adopted Muslim fundamentalism.

Ziad Jarrah was born in Lebanon in 1975 into a wealthy family. He attended Christian private schools and came to study in Germany in 1996. On 9/11, he piloted United Airlines Flight 93 that was brought down by passengers at Shanksville, Pennsylvania. When he left Lebanon, he was an unlikely candidate to become a Muslim extremist, much less a suicide terrorist. He drank beer, liked parties, and indulged in a Western life style. Upon arrival in Germany, he got a girlfriend and initially continued his secular way of life. By the end of 1996, less than one year after his arrival in Germany, he began to change and showed signs of radicalization. He started to live according to the Koran and began studying and advocating *jihad*. He stated to friends that he did not want to die in a normal

way. In September of 1997, he moved to Hamburg and changed his course of study from dentistry to aerospace engineering. It is unclear why he did so, but by that time, he had obviously already fallen under the influence of radical Muslims. He attended the same university as Atta and eventually met him and his roommates. He became a core member of their fundamentalist sect even though he never moved in with them. The relationship with his girlfriend became troubled because he started accusing her of not adhering to the Koran and being too Westernized. Jarrah also grew a beard. In retrospect, Jarrah's transformation is even harder to understand and was also more rapid than Atta's.

Atta, Jarrah, and the other two members of their Hamburg fundamentalist sect came under the influence of an outspoken radical who attended their mosque. His name was Mohamed Haydar Zammar. He was a veteran of the Afghanistan insurgency against the Soviets and took every opportunity to praise the virtues of violent *jihād*. He was known to German and American intelligence, but the connection to the future 9/11 terrorists was not investigated and detected prior to the attacks. Zammar took credit for pressing Atta and his group to wage *jihād* and go to Afghanistan. By late 1999, Atta and his sect were ready to put their radicalized beliefs into practice and go to Chechnya to wage holy war against the Russians. In all likelihood, at this time, they did not yet have any connections with Al Qaeda, and the decision to start a career as jihadists was essentially their own.

## **Suicide Terrorists Coming from a Troubled Background**

Typically, the "workhorse" suicide bombers in sustained campaigns using body-borne explosives come from a troubled background. Examples are the campaigns waged by Hamas in Israel and Al-Qaeda in Iraq. They are also used as foot soldiers in more complex operations, like the cabin hijackers in the 9/11 operation, whose task was to subdue the passengers. They are typically younger and may not be as highly educated as the group previously described. Nevertheless, when compared to a military organization, they are still equal to Special Operations troops in status and motivation, if not in training. The 9/11 cabin hijackers, for example, lacked the extensive training within the United States, which the pilots had received. In the case of Palestinian suicide terrorists, they frequently come from refugee camps.

In 1948, the newly founded State of Israel annexed land that had previously been the British Mandate of Palestine. Many Palestinians left voluntarily, but others were evicted in order to form a purely Jewish state. The surrounding Arab countries refused to assimilate the Palestinians, and they ended up in cramped refugee camps across the region. Conditions in these camps were appalling, and they became the perfect breeding ground for terrorism, long before the emergence of suicide missions. It is significant that Palestinian terrorism became a real issue when the first children born in these camps reached adulthood in the late 1960s. People in the camps had little hope of improvement or of ever being able to regain their country. Arab states realized that it was to their advantage to keep the Palestinians confined in their camps, causing an indefinite, festering problem for Israel. Palestinian terrorist organizations such as al Fatah, the Black September, and later Hamas and Palestinian Islamic Jihad, refused to accept any compromise and continued to demand the elimination of Israel. Israel saw its existence threatened and embarked on a hard-line crackdown against the Palestinians and sometimes even attacked the camps. The inhabitants of the camps felt extreme oppression

and victimization by forces beyond their control. The memory of the lost country was actively kept alive and gave rise to a violent brand of Palestinian nationalism that to this day is the driving force behind Palestinian terrorist attacks. They are motivated by religious factors to a lesser degree, as Al-Qaeda's operations are. That has important implications for the method of their attacks, especially the use of females. For suicide terrorists that grew up in a climate like the refugee camps, a terrorist suicide mission frequently provides the first and only time in their life in which they feel a sense of purpose, control, and dignity. The objective of the attack, killing as many Israelis as possible, has a direct connection to their main objective, the destruction of the Israeli State. Their handlers from Hamas and PIJ realize that their best hope of preventing an accord with Israel is to constantly provoke Israel by murdering its citizens.

Refugee camps are not the only instances where the environment is right for the emergence of suicide terrorists. The occupied territories of the West Bank and Gaza Strip have been under Israeli control since the 1967 Middle East War, and conditions are similar to the refugee camps, if not as crowded. Iraq and Lebanon, as well as Afghanistan, have been in constant war or turmoil for 25 years. For years, Algeria was embroiled in an exceptionally brutal civil war. Conditions in which violence is an everyday occurrence are well suited to the development of suicide bombers because the value of human life, including one's own, is regarded as low. The LTTE/Tamil Tiger terrorist organization of Sri Lanka is not Muslim or religious at all for that matter but purely nationalistic; its objective is the establishment of a Tamil homeland. Conditions in the Tamil north of the island are extremely violent, and poverty and underdevelopment are rampant.

The female suicide bomber, Dhanu, who assassinated the Indian politician Rajiv Gandhi in 1991 by blowing herself up, was certainly a product of these conditions. She had been gang-raped by Indian soldiers who were supposed to keep the peace on the island. These soldiers had been sent by her victim, the Indian Prime Minister Rajiv Gandhi. As a Tamil woman, Dhanu was no longer eligible for marriage and childbirth after she had been raped. In addition to the nationalist objective, Dhanu had a very personal reason for her suicide mission. From research done in Israel, it appears that the majority of female suicide terrorists have one thing in common that distinguishes them from their male counterparts: a very personal reason that they felt could best be resolved by embarking on a suicide mission. The very first Palestinian female suicide terrorist could not have any children, which in her Muslim society caused her to be regarded as worthless; her husband had divorced her. She might have felt that a suicide mission would redeem her and enable her to gain respect. Indeed, after her successful suicide mission, the same community that had made her an outcast celebrated her as a hero. The generally suffocating climate for females in Muslim societies may also be a factor. There are indications that at least one Palestinian female suicide bomber was forced into her suicide mission after getting caught cheating on her husband. The non-Muslim suicide terrorist with a troubled life background may or may not have a secondary religious motive.

Muslim suicide bombers always seem to have that second religious motive, at least they profess it; it is likely of the fear-inspired type described above. As these terrorists are generally younger, they are also less mature and more dependent on outside guidance and motivation. For them, an important element is support

among their community. Generally, that support is a given in the troubled regions from which they originate. Many suicide attacks in Israel are committed by terrorists who actually live in the vicinity of the target. On the other hand, terrorists with the fear-based kind of motivation are probably less likely to be successful on long-term overseas missions where they have to operate independently in a nonsupportive environment.

Palestinian psychiatrist, Dr. Ejad Sarraj, wrote an essay in August 1997, titled "Why We Have Become Suicide Bombers." He explains the proliferation of Palestinian suicide missions with the collective despair of the Palestinian people caused by the Israeli occupation of their homeland and the lack of support for the Palestinian cause by the West, the United Nations, and the Arab world and the ineptitude of the Palestinians' own leaders. He expressed surprise that there are not more of these suicide attacks. Dr. Sarraj has gained his insights through his treatment of family members of suicide terrorists.

## Conclusion

Radical Muslim suicide terrorism has its roots in the religion of Islam itself, the history of the Muslim faith, and the feeling of victimization that many contemporary Muslims feel because of perceived injustices by the hands of Western nations and governments. The 2005 suicide attacks in London have shown that extremist Islam is capable of overriding Western cultural influences even in individuals who were born and have lived in Western countries all their lives. The key for such individuals seems to be a lack of integration into the host culture and indoctrination by radical clerics that are allowed to operate within Western countries. The principal breeding ground for "home-grown" radical Muslim suicide terrorists in Western countries appears to be ghetto-like Muslim enclaves that provide insulation from the influences of the Western host nation.

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**Michael Aman** is a detective in the Cold Case Homicide Squad of the El Paso Police Department. He has also served in the Gang and Dignitary Protection Units, as well as in the Criminal Investigations and Patrol Divisions.

Before joining the El Paso Police Department, Detective Aman served 13 years in the German Air Force as an Air Defense Tactical Officer, Executive Officer, and Instructor Officer. He has an MBA from the German Armed Forces University, Munich, Germany.

Detective Aman is the author of the book *Prevention of Terrorist Suicide Attacks* (Jones and Bartlett Publishers, September 2006).

# Robbery: Offenders, Victims, and Places

DeVere D. Woods, Jr., PhD, Associate Professor, Department of Criminology,  
Indiana State University

## Introduction

Robbers are on the loose; people shun the streets; and police appear ineffective. Robbers steal more than money. They turn society against itself as people lock themselves in their homes for safety and avoid strangers. The passing motorist with car trouble is shirked as a potential predator. No help is offered; there are robbers on the streets.

Police become victims, too. The public's perception of police effectiveness can plummet amidst a rising wave of robbery. Robbers can paralyze a community, disrupt tourism, and leave police stammering as they attempt to salvage their image as the protectors of the community.

To better deal with the problem of robbery, we need to better understand the crime and its components. What is robbery? Who are the robbers? Who are the victims? Where do robbers strike?

## What Is Robbery?

Lloyd Ohein and James Vorenberg call robbery a "bellwether" crime in America (as cited in Conklin, 1972). Robbery is a crossover crime containing elements of both property and violent crime. It is traditionally defined as the theft of property from a person through the use of force or threat of force (Dabney, 2004; Miethe & McCorkle, 2001). Prosecution of robbery requires proof that property was taken, force was used, and the victim experienced fear. If the victim was not placed in fear, the theft may not be robbery.

Robbers employ violence to steal property. While thieves who commit larcenies or frauds rely upon stealth, guile, or misrepresentation, robbers are confrontational. When robbers confront their victims, their purpose and determination are evident. Victims clearly understand they are becoming crime victims. No matter how completely victims cooperate, they are aware that they may be brutally attacked at any moment. Though most robberies take no more than minutes to complete, the duration of the event is generally intensely stressful for both victims and robbers.

## Problem of Various Types of Robbery

The study and prevention of robbery is complicated by the variety of acts that come under the definition of the crime. We often think of robbery as a single type of event when in reality, there are many forms of robbery. The most common public perception of robbery is the armed gunman accosting his victim in a back alley. While this is a common form of robbery, it also includes the sophisticated bank

heist, the carjacking, and the bully stealing lunch money from classmates. Each of these crimes has its own dynamics, motivations, and characteristics.

Significant variation is found within the categories of robbery. Some robberies are extensively planned; whereas, others result from a series of haphazard circumstances. Some robbers choose only targets that are likely to produce large payoffs; others seek only enough for an immediate need, such as a junkie's next fix. Some rob to acquire money; others rob to enhance their status or demonstrate their power. Motivation varies greatly as do appropriate preventative measures. Because there is not just one kind of robbery, we must be cognizant of the limits of generalities when attempting to understand or apply research. As with most social issues, the problem of robbery defies a simple solution.

## **Literature Review**

Findings from previous studies and National Crime Victimization Survey (NCVS) data are presented within the structure of Routine Activities Theory. Academic researchers and government literature have touted this approach for the past 20 years. It has become an important element of community and problem-oriented policing. Essentially, the theory holds that a criminal event consists of three components: (1) motivated offenders, (2) vulnerable victims, and (3) unguarded places. The theory is often modeled as a triangle with offenders, victims, and location representing the sides. Individuals motivated to commit a crime must find a vulnerable victim in a place suitable (lacking sufficient guardianship) to commit the crime. Crime prevention efforts entail eliminating one, ideally two of the components, to collapse the triangle. Absent an essential component, the crime cannot occur. Police efforts to address the problem of robbery, to the extent they rely upon theoretical approaches, likely will employ Routine Activities Theory.

Data from the 2003 NCVS (the most recent data available for analysis at the time of this writing) is used to elaborate and clarify what we have learned from previous studies of robbery. The NCVS annually collects data on crime victimization from individuals age 12 years or older from households across the nation.

## **Characteristics of the Crime of Robbery**

Robbery rates are higher in the United States than in any other industrial nation (Miethe & McCorkle, 2001). Often robbery is a high-risk crime with low yield (Dabney, 2004; Scott, 2002). It is not surprising that studies have found robbery to be more frequent in economically depressed, socially disorganized neighborhoods. It is more common in areas where the social structure restricts offenders' social and economic choices (Sullivan, 1989). Poverty, lack of legitimate employment, and weak social control environment tend to steer youths to crime.

Rates of robbery increase with population density (Dabney, 2004), ethnic heterogeneity, high population turnover, low family income, high unemployment, and high levels of single-parent families (Miethe & McCorkle, 2001). They often follow seasonal patterns and are more prevalent at particular times of day (Miethe & McCorkle, 2001).

Robbery more often involves the use of guns and multiple perpetrators than other violent crimes and results in substantially higher monetary loss<sup>7</sup> than most property offenses (Miethe & McCorkle, 2001). Reporting rates for robbery are high (over two-thirds) compared to other crimes, but only about a quarter of them are cleared by an arrest (Miethe & McCorkle, 2001). Though most robbers successfully avoid punishment for their crimes, robbery generally produces firm formal response from law enforcement and a hard-line response from the courts (Dabney, 2004).

## Offender

Most robberies are committed by a lone offender, but it is not uncommon for multiple offenders to work in concert. Robbers differ greatly in demographic characteristics, criminal history, level of specialization, and amount of planning (Miethe & McCorkle, 2001), but overall they tend to be poor, have low levels of education, and gain very little from each crime (Hochstetler, 2001).

Most offenders progress to robbery from other crimes, such as burglary, picking pockets, or shoplifting. Sullivan (1989) found that offenders progress from burglary to robbery as a faster way to obtain cash but discover it is more unstable and leads to identification and more severe sanctions.

Economics is not the only motivator for robbers. Male street robbers tend to see robbery as a means of competing with other males for status and money, and in part as a way to project an image (Jacobs & Wright, 2004; Miller, 1998). Though most carjackers quickly dispose of the vehicle, some drive around the neighborhood to show off for their associates (Topalli & Wright, 2004). Robbers see life as survival of the fittest (Dabney, 2004). It is a way to meet their economic and social needs. Robbery provides easy money and status. In their street culture, borrowing money is emasculating (Jacobs & Wright, 2004).

*Alcohol and Drugs.* It is not uncommon for robbers to be under the influence of drugs or alcohol when committing their crimes (Dabney, 2004; Hochstetler, 2001; Miethe & McCorkle, 2001). About 25% of robbers are perceived to be under the influence of drugs or alcohol as compared to 28.7% of assaulters and 55.1% of sexual assaulters (NCVS, 2003). High rates of robberies are likely where crack cocaine markets flourish (Scott, 2002). Drug addicts most often commit robbery to get money for their next fix, while alcoholics may commit their crimes while disoriented as an afterthought to assaulting someone (Conklin, 1972; Miethe & McCorkle, 2001).

*Planning.* Planning is not extensive in most robberies (Dabney, 2004; Hochstetler, 2001; Scott, 2002). Typically robbers report they did little planning and never considered being caught (Hochstetler, 2001; Miethe & McCorkle, 2001; Scott, 2002). When crimes are planned, the planning may not be extensive or sophisticated. Planning may be as simple as waiting until close to the end of a route to rob bus passengers when there are fewer passengers and less risk of being overpowered (Paes-Machado & Levenstein, 2004). The few robbers (less than 5%) who planned

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<sup>7</sup> Other studies show that robbery does not produce large amounts of money for the perpetrator. To interpret this apparent contradiction, we must consider that many property crimes are thefts of small amounts and robbery is attractive because money is taken; property, on the other hand, needs to be resold or fenced for a fraction of its value in the legitimate market.



their crimes tended to be adults and those engaged in robbing commercial establishments, but there is some evidence that planning increases as the offender commits more robberies (Miethe & McCorkle, 2001).

*Violence.* Street robbery is an unskilled crime in which perpetrators employ fear and intimidation to accomplish their goal (Dabney, 2004). Robberies tend to be extremely abrupt and volatile (Dabney, 2004). The robber is often very efficient, speaking few words and escaping before victims can reflect on what has happened (Miethe & McCorkle, 2001). Any delay in the progression of the crime causes nervousness and increases the risk of violence (Scott, 2002).

For robbers, violence is more than a functional tool to accomplish economic crime; it is expressive (Dabney, 2004; Sullivan, 1989). Surrounded by violence, the underclass is more likely to see violence as appropriate for dealing with problems (Miller, 1998). Many robbers have a history of engaging in violent acts unrelated to theft (Conklin, 1972). Fighting often precedes economic crime as the individual establishes a place in cliques and territories (Sullivan, 1989). The use of violence, however, increases the risk of retaliation and police intervention.

*Lifestyle.* Individuals who commit robbery cannot be understood without examining their lifestyle and its affect on their decisions to commit crime (Hochstetler, 2001). Robbers tend to be urban nomads perpetually looking for a good time with little inclination to exercise restraint (Jacobs & Wright, 2004). They pursue pleasure and status through conspicuous consumption and leisure with little concern for obligation or commitment outside their immediate social context (Hochstetler, 2001).

Early thrill-seeking crime eventually transforms into more systematic economic crime (Sullivan, 1989). These unskilled and poorly educated individuals find legitimate employment too restrictive with wages far short of what they need for their cash-intensive lifestyles (Jacobs & Wright, 2004; Topalli & Wright, 2004). Robbery allows them to escape from the rigors of legal work and flaunt their independence (Jacobs & Wright, 2004).

The theory of relative deprivation seems to best explain the robber's motivation (Conklin, 1972). The robber's expectations far exceed his or her capability to acquire resources legitimately. "With few exceptions, the decision to commit a robbery arises in the face of what offenders perceive to be a pressing need for fast cash . . ." (Jacobs & Wright, 2004, p. 140), but neither the professional nor the opportunist is on the verge of starvation when they rob (Conklin, 1972). The money robbers acquire is generally spent recklessly on maintaining their lifestyle, drugs, women, or gambling (Jacobs & Wright, 2004; Topalli & Wright, 2004).

Risk-taking, fearlessness, and the ability to provide money and drugs for the next party are admired (Hochstetler, 2001). Street life imbues norms, making crime feasible and likely. Life is a party—expensive and self-indulgent (Jacobs & Wright, 2004)—in which you live for the moment (Hochstetler, 2001). Street offenders commonly sleep in cheap motels or crash on a friend's couch as they move from party to party with little idea of where they will next find shelter. Restraining influences diminish as those wary of crime depart from the party, leaving only the more crime-prone to plot, scheme, and bolster each other's confidence (Hochstetler, 2001).

*Target Selection.* Robbers are opportunist and crime generalists with extensive criminal careers (Dabney, 2004; Hochstetler, 2001; Jacobs & Wright, 2004; Miethe & McCorkle, 2001). They strike when reward seems to outweigh risk or when compelled by situational inducements such as peer pressure or the need for cash to buy drugs. They choose targets that are convenient or familiar, with low protection or guardianship (Miethe & McCorkle, 2001). Addiction, however, may push the offender to be less selective in finding opportunity (Hochstetler, 2001).

Robbers construct their perception of opportunity incrementally based upon the situation and the actions of others. Their recognition of opportunity varies. Some offenders are merely alert to opportunities; others are motivated to create opportunities for crime (Topalli & Wright, 2004).

*Peer Group.* Robbers tend to interact with other criminals in cliques or peer groups (Dabney, 2004). Friends, family, and other acquaintances sometimes push potential robbers into crime (Topalli & Wright, 2004). Robbers often live in a subculture of violence and theft (Conklin, 1972). Cajoling or encouragement from friends and family helps enable robbers to commit their crimes (Hochstetler, 2001). After many successes, stealing with a group can become routine and provide a sense of security.

Youths form cliques that drive behavior (Sullivan, 1989). Sometimes peers ply each other with drugs or alcohol to reduce fear and bolster courage (Hochstetler, 2001). The peer group can become the primary recruiter for youthful theft.

*Motivation.* Financial motives are most common for bank and commercial robbers; whereas, anger and previous encounters often motivate robbers of individuals (Miethe & McCorkle, 2001). Revenge is a factor in some robberies (Miller, 1998; Topalli & Wright, 2004). Many robbers blame their victim for the crime (Dabney, 2004).

Most street robbers commit crimes to acquire symbols of status, money, and jewelry (Miller, 1998). Offenders are motivated by both thrill and economic gain. Some engage in crime to show off their ability to take risks and calmly face danger (Hochstetler, 2001). Crime, in part, is recreational and helps to relieve boredom for those with few legitimate recreational or economic opportunities (Miller, 1998; Sullivan, 1989).

*Weapons.* Strong-arm tactics are most commonly used in robberies, but firearms are used nearly as often. Knives and cutting instruments are used only about 10% of the time (Miethe & McCorkle, 2001). About 70% of carjackers use weapons (Topalli & Wright, 2004). Weapons are instrumental in that they create a buffer zone between the offender and the victim. They intimidate the victim, and they help the robber carry out his or her threat, ensuring escape after the crime. Carrying a weapon makes it less likely that the robber will use force (Conklin, 1972). Armed offenders are more likely to strike at night (65.5%) rather than during the day (34.5%) (NCVS, 2003). Robbers who work in groups are less likely to use weapons (Conklin, 1972).

*Age.* Most robberies in the United States are committed by young, black men (Dabney, 2004; Miethe & McCorkle, 2001). Peak participation in street robbery is by youths in their middle to late teens (Sullivan, 1989). Over half of the robberies (52.1%) committed by lone perpetrators are between 12 and 29 years of age; whereas, 60.8% of assaults and 43.6% of sexual assault are committed by perpetrators of that

age range (NCVS, 2003). When multiple perpetrators are involved, 41% of robbers are between the ages of 12 and 29 years; 49.3% of assaulters and 63.8% of sexual assaulters are in that age range (NCVS, 2003).

*Gender.* Males commit most robberies (Dabney, 2004; Miethe & McCorkle, 2001). Female robbers are more likely to target other females who they perceive are less likely to be armed or to fight back. The female robber tends to target other females with physical assaults, entice male victims by sexual advances, or participate with male robbers. When women target male victims, they are generally armed (Miller, 1998).

*Race.* According to the NCVS (2003), for single offender crimes, whites commit a greater proportion of assaults (65.4%) or sexual assaults (47.9%) than robbery (40.8%). Black offenders commit a greater proportion of robberies (39.5%) than sexual assaults (24.4%) or assaults (19.7%). When multiple offenders are involved, robbery teams are more likely to be all black (46.9%) than all white (14.4%), other races (11.8%), or mixed races (15.3%) (NCVS, 2003).

Robbers tend to target people of their own race. Single-offender white robbers are more likely to target white victims (54.2%) than they are black victims (25.9%); single-offender blacks are more likely to target black victims (80.1%) than they are white victims (5.5%). The picture changes when we look at same-race multiple-offender teams. Black teams are still more likely to target black victims (68.7%) than white victims (5.9%), but white teams are more likely to target black victims (36.7%) than white victims (20.2%). Mixed race teams account for 20.3% of robberies of white victims and 8.5% of robberies of black victims (NCVS, 2003).

## **Victim**

Most robbery victims are male and are attacked by a stranger (Conklin, 1972; Dabney, 2004; Miethe & McCorkle, 2001). This is true for both single offenders (60.4%) and multiple offenders (74.9%) and is true for violent crime in general (NCVS, 2003). Most victims are chosen randomly or by situational factors such as availability (Miethe & McCorkle, 2001; Sullivan, 1989). Carjackers, on the other hand, appear to target the object rather than the subject (Topalli & Wright, 2004).

Easy targets or weak victims are tempting opportunities (Topalli & Wright, 2004). Flashing money, disrespecting the robber, or merely being “where you don’t belong,” can target you for robbery (Hochstetler, 2001). Undocumented aliens are tempting targets because they cannot report the crime to police (Sullivan, 1989). Some victims are selected because they are easy targets (e.g., older people). Adolescents and young people involved in street life are targeted because of their availability (Miethe & McCorkle, 2001; Miller, 1998). Some are seen as deserving targets, such as people showing off or those who have insulted the perpetrator in the past (Miller, 1998).

Targeting someone the robber knows increases the risk of violence through resistance and retaliation (Topalli & Wright, 2004). It is more common after personal assaults, thefts from rival gang members, or a bad drug deal (Miethe & McCorkle, 2001).

*Injuries.* Physical injuries are sustained in more than 25% of robberies (Miethe & McCorkle, 2001). Robbers are more apt to use force if the victim resists, but many compliant victims are also assaulted (Conklin, 1972). Some robbers use violence to

preempt resistance (Scott, 2002). Robbers are more likely to be the first to use force (96.1%) than other violent offenders (87.3%) and sexual assaulters who are only slightly more likely (54.6%) to be first to use force (NCVS, 2003).

Male robbers frequently use physical force with male victims but typically will not assault female victims who are not seen as resisting. In general, women are not targeted because they are perceived as less likely to be carrying significant amounts of money (Miller, 1998).

Many victims fear reprisals if they report the crime. Conklin's (1972) interviews of robbers, however, found that offenders generally thought of their victims as merely carriers of money and would not retaliate against those who reported to the police and honestly testified in court.

## **Place**

The NCVS (2003) data shows that victims' activities and location are correlated to robbery. It is more likely that you will be robbed when engaged in leisure activities away from home (26.8%) or when home and involved in activities other than sleeping (21.5%) than at any other time (NCVS, 2003). This also holds true for most crimes of violence. People are much less likely to be robbed while working; attending school; shopping; or traveling to work, school, or other places (NCVS, 2003). Using an ATM machine off the premises of a bank increases your likelihood of being robbed (Scott, 2002).

Armed offenders are more likely to rob you when you are on the street away from home (31.4%) or in a parking lot or garage (18.1%); whereas, unarmed robbers are more likely to attack at or near your home (30.75%) or on the street away from your home (14.8%) (NCVS, 2003).

## **Reducing and Preventing Robbery**

If a robbery is going to be solved, it will likely be solved soon after the crime occurs. After a week, detectives begin to move on to other cases (Conklin, 1972). Conklin found that robberies were solved in the following manner: arrested near scene (38%), information from victim or witness (19.7%), identification in another case (18.2%), multiple confessions (17.9%), and informant and development of evidence (6.2%).

## **Offender**

*Social Conditions.* Street robberies are difficult to deter because opportunities flourish; for many robbers, very little cash is needed to justify the risk, and little skill or planning is required (Scott, 2002). Demographic profiles are not as useful for solving robberies as they are for other crimes. By definition, robbery requires a physical encounter between perpetrator and victim, so physical descriptions of the perpetrator are more common.

Some have advocated social programs to provide legitimate work and educational opportunities. Such programs can be a component of community policing. Keeping potential offenders in school is beneficial as long as it does not undermine the learning

environment. Dropping out of school, which shapes attitudes toward authority and develops skills to adapt to life as well as employment skills, constrains future options for both crime and employment (Sullivan, 1989). Dropouts too often encounter trouble with the justice system, and soon occupational goals are abandoned (Miethe & McCorkle, 2001). Those who engage in robberies are not likely to have good work skills. Their work records are characterized by a lack of reliability and high absenteeism (Sullivan, 1989). Social programs that improve economic opportunities are promising, but if offenders do not find legitimate stimulating opportunities, they are likely to return to crime (Miethe & McCorkle, 2001).

Even if economic conditions could be improved in crime prone areas, cultural factors remain. As long as robbers acquire status and relieve boredom through their crimes, economic approaches alone will not be sufficient. Robbery will remain an attractive option. Conklin (1972) states, "The only effective solution for the robbery problem would be to reduce the number of people who are motivated to rob. Measures aimed at the reduction of poverty, racial discrimination, and relative deprivation will benefit society in many ways, including a reduction in robbery rates" (p. 188). Conklin also recognizes, however, that even if economic and social conditions improve, the problem of relative depravity remains.

*Police Tactics.* Police tactics can have an impact on robbery rates. Societies less sensitive to civil rights have used draconian measures to curtail robberies. Brazilian police reduced bus robberies by two-thirds through heavy-handed tactics such as frisking black male passengers and summarily executing robbers (Paes-Machado & Levenstein, 2004).

More appropriate tactic for American police is to target chronic offenders. Identifying and tracking robbers with extensive criminal records, cultivating informants, and offering rewards offer the most promise (Miethe & McCorkle, 2001; Scott, 2002). Targeting the worst offenders and increasing high visibility patrols reduced purse snatches in Buffalo by 200% (Trojanowicz, Kappeler, Ganies, & Bucqueroux, 1998). Additionally, curtailing street-level drug dealing will likely reduce street robbery rates (Scott, 2002).

Other attempts to increase deterrence are less likely to succeed with inexperienced robbers. Miethe & McCorkle (2001) found that robbers did little planning and didn't consider being caught, though more seasoned robbers were more likely to consider getting caught. Interviews with offenders suggest the fear of getting caught induced them to limit or give up robbery. Incapacitation may offer the most hope for curtailing robberies. "Stopping such criminals exogenously—in the absence of lengthy incapacitation—is not likely to be successful" (Jacobs & Wright, 2004, p. 149).

## **Victim**

Other than common sense measures, there is little victims can do to avoid being robbed. Many, though, argue the benefits of increased public awareness (Miethe & McCorkle, 2001). Clearly, being careful not to display your money or valuables and avoiding, when possible, high-crime areas are prudent, but limited, precautions. Individuals should stay away from secluded locations and travel with a companion whenever possible. Businesses should ensure that employees are not

alone when exposed in public areas. Though cautious people are robbed in all types of neighborhoods every day, being aware and alert remains useful advice.

Police generally advise potential victims (and businesses commonly instruct their employees) to cooperate with a robber's demands. Once a robbery begins, victims who resist being robbed are more likely to maintain their valuables, but resistance increases the likelihood that robbers will use their weapons (Dabney, 2004). The risk of injury outweighs the chance to foil a robber.

## Place

Measures to reduce opportunity for robbery, such as increased security and enhanced surveillance, can be effective (Miethe & McCorkle, 2001). Improving street lighting (Conklin, 1972) and improving natural surveillance through properly placing windows and landscaping (Peak & Glensor, 2004) are just a few such steps. These types of measures become less effective, though, as the social disorganization of the neighborhood increases (Smith & Davison, 2000).

The Gainesville Police Department demonstrated how target hardening and increasing guardianship could dramatically reduce convenience store robberies (Trojanowicz et al., 1998). Removing advertisements from windows so those passing by can see into the store, moving the cash registers to the front of the store where they are visible from the street, and prohibiting employees from working alone during high-crime hours significantly reduced the number of convenience store robberies.

## Conclusion

The public perception of safety is significantly affected by robbery rates. Robbery is more than an economic crime. It is rooted in such factors as economic opportunity, social disorganization, and cultural norms. Law enforcement strategies can impact robbery rates, but alone, they will likely be insufficient and remain primarily reactive. A combination of targeted police action and incapacitation of offenders, along with socioeconomic rehabilitation of high-crime areas, offers the most promise.

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# Cook County Sheriff's Department: Policing in the 21st Century

Ray Farinella

## History

Although the Cook County Sheriff's Police can trace its history back to 1831, when John Kinsey became the first sheriff of Cook County, movement towards its present structure actually began in 1922 when the Cook County Highway Police Department was formally organized with 12 police officers patrolling 235 miles of paved roadways.<sup>1</sup> During that year, the force was expanded to 70 officers who were stationed throughout north and south Cook County with a north station being established in Niles, Illinois, located on Milwaukee Avenue. The Highway Police patrolled the unincorporated area on motorcycles.

In 1952, the Highway Deputy Sheriff's Department was renamed the County Police and during this era, department members wore what was informally known as a "Tombstone Patch." The transition to motor vehicle patrol took full effect in the 1950s. During this period, the department opened its first training school for Cook County police officers and started a major investigations unit. It also operated its own ambulance and towing service. The color of the squad cars changed from black and white to all white during the 1960s. To this day, Sheriff's Police operate all white vehicles.

The image of the County Police began to change in 1962 under Sheriff Richard Ogilvie. He began by changing the color of the uniform from blue to tan and switched from the "Tombstone Patch" to a shield-style patch that was worn on both shoulders. A "County Flag" patch was approved in the late 1970s for the right shoulder of the uniform that is still worn today.

Between 1966 and 1970, Joseph Woods served as sheriff of Cook County. During his tenure, a group of pioneering department members drafted the first ever quadrennial report for the Cook County Sheriff's Police Department (CCSPD).<sup>2</sup> This report noted the accomplishments under the current administration, forecasted personnel growth, and recommended changes within the department. The report's recommendations were remarkable, including pay scales, equipment purchases, and a new communications center, which were eventually adopted by Woods' successor, Sheriff Richard Elrod.

Under Sheriff Richard Elrod's term (1970-1986), the department opened a station in Maywood consolidating specialized services in one central location. The state attorney's investigative section was expanded to more than 100 officers, assisting Cook County States Attorneys with the processing of criminal cases, and a state crime lab was located in the building's lower level to process drug, gun, and fingerprint evidence in partnership with the police department.

Sheriff James O'Grady was elected in 1986 and began the process of embracing new and evolving technology. The purchase of a Police Information Management System



(PIMS) as the first centrally linked computer database for crime and information sharing between suburban departments was implemented. In addition, computers were purchased for vehicles, giving street officers the capability to receive Area Law Enforcement Radio Terminal System (ALERTS) notification, allowing them to inquire whether a suspect was wanted on an arrest warrant or had a criminal history.

In 1990, Sheriff Michael F. Sheahan was sworn in as the 50th sheriff of Cook County. Under his tenure, several specialized units were inaugurated, and a decentralization of the department took place, which moved department resources to district stations in Bridgeview, Markham, Rolling Meadows, and Skokie. Decentralization was the first attempt to enhance productivity in all areas of operations in an effort to strategically position the department for the 21st century. Other work by Sheriff Sheahan included his initiation of several specialized full-time units to deal with new aspects of crime, including the Child Exploitation Unit, handling investigations of child sex offenders online; the Bomb Unit, featuring officers trained by the federal government to handle a variety of dangerous materials from illegal fireworks to chemical and biological agents as well as weapons of mass destruction (WMDs); and two, certified polygraph examiners to help further investigations in a number of areas.

As a new sheriff prepares to take office and as history has shown, all previous sheriffs in the modern era have attempted to manage the department with an eye on the future. With that perspective in mind, the next elected sheriff will face additional complex challenges that prior administrations did not envision. Some of the problems the department must overcome in an effort to move forward in the 21st century are both geographic and political as the following article attempts to address.

All police departments are patrol-orientated with the bulk of their resources assigned to that function. As demographics have rapidly changed in unincorporated Cook County, towns and suburban municipalities have exponentially increased in size and population; this was facilitated by incorporating areas that were once policed by the CCSPD.

## **Executive Summary**

Cook County runs the largest and most extensive county public safety operation in the State of Illinois. Among the many different offices and departments, the CCSPD plays a very important role. The CCSPD has the sole responsibility for patrolling the unincorporated area of Cook County and plays an integral role in providing for the public safety of Cook County citizens. The CCSPD jurisdiction has decreased by 53% since 1977, and the population of unincorporated Cook County has decreased by 40% in the past 10 years. Incorporation of an area that is currently serviced by the CCSPD is inevitable, and a patrol presence will always have to be maintained. Interviews with current chiefs show agreement that focus must shift from a patrol-orientated agency to a specialized enforcement agency.

Pressure by some Cook County commissioners to downsize has been challenged by the sheriff at every budget hearing with success at this time. The lack of a clear understanding and the knowledge of the services provided by CCSPD personnel

by commissioners must be addressed by management. A series of open houses and annual reports are being produced in an attempt to inform the Cook County commissioners on the daily operations within the department. Suburban law enforcement agencies are seeking additional assistance from the CCSPD with regards to specialization, as they are unable to provide the manpower or funding to provide the needed specialized services. Due to the vast number of responsibilities inherent to such a role, the CCSPD will be required to institute new initiatives for policing in the 21st century.

It will be the added responsibility of the next elected sheriff to propose a plan for law enforcement to move ahead in the 21st century. He will have to display a vision of policing and work with the Cook County commissioners on the essential need for sophisticated technology to combat the ever-evolving criminal element(s).

Some of the immediate areas that require his attention are the specialization of units and expanding the powers and consolidation of law enforcement services within the corporate limits of Cook County. He has to re-energize that part of our mission concerning developing and maintaining cooperative and supportive relationships with local, state, and federal law enforcement agencies.

### **Problem Analysis**

By Illinois Statute, the CCSPD is the chief law enforcement agency in Cook County and has primary jurisdiction throughout the unincorporated areas in Cook County. Since the 1990s, the jurisdiction of the CCSPD has diminished in size, the patrol area population has decreased, and Part One crimes have fallen. Newly developed land in unincorporated Cook County is quickly being incorporated by towns for many reasons.

The principal rationale for incorporation is the anticipated tax revenue the towns receive and for contracting for the infrastructure (i.e., water and sewer service) the county does not provide. These additional services that are provided by towns and municipalities are attractive to housing developers and potential purchasers, which, of course, buttresses the reason for incorporation.

Unincorporated Cook County is the sheriff's patrol jurisdiction. Over the past five years, the patrol area of the CCSPD has had a significant decrease from 161 miles to 76 miles, a total loss of 53%. Population in the unincorporated area, according to the 2000 census, is at its lowest point, 109,300 residents.

Cook County commissioners have referred to the diminished area in several budget hearings and have threatened to cut positions in the police department. Some commissioners, in reality, do not understand what operations the CCSPD performs and where its areas of responsibility are located. Many commissioners' districts only involve corporate areas of the City of Chicago and have no suburban areas within their area of jurisdiction. Due to their lack of understanding, there is an increased pressure on the sheriff's office to justify every purchase and request for additional resources. This impacts every decision that is made relative to those areas of responsibility and raises it to the level of critical urgency, hampering the department's effectiveness in adjusting to crime in all areas of Cook County.

Suburban police departments in Cook County have increased their demands on the CCSPD to provide specialized services because they do not have the ability or resources to perform those functions. Since 9/11, Federal Agency multijurisdictional task forces have expanded to include terrorism, the securing of possible targets throughout Cook County, and other homeland security issues. These added responsibilities need to be addressed, and a prospective plan should be presented to the Cook County commissioners so they have a more complete understanding of what the responsibilities of the CCSPD entail and the necessary resources and funding needed to meet these objectives.

## **Problem Solution**

Within the last two years, the CCSPD has had two open houses for Cook County commissioners and suburban police chiefs highlighting the capabilities of specialized units within the department. We also have produced brochures and annual reports for commissioners during budget hearings in an attempt to detail what our specific goals and objectives require. This has brought some success, but more in-depth knowledge, proportional to the types of responsibilities we are committed to and the need for sophisticated technology in partnership with Cook County suburban law enforcement, is needed to deter crime in the 21st century.

## **Technology**

The CCSPD needs to be an innovator when issues of technology arise in the law enforcement field. We are one of a few agencies with the qualified work force and budget to start, manage, and perfect these initiatives. A case in point is the Criminal Apprehension Booking System (CABS) also known as Live Scan. Live Scan is the main computer booking and fingerprinting system for offenders charged with criminal offenses throughout suburban Cook County. It has facilitated the identification of subjects wanted on a federal terrorist watch list. The CCSPD maintains Live Scan computer systems at 110 suburban police agencies and is scheduled to add additional agencies this year. In addition, the department technicians provide 24/7 on-call troubleshooting and software assistance service. Given economic limitations, 20% of agency users cannot afford to maintain their system; therefore, the sheriff's personnel provide that service at no cost. In 2006, all Live Scan equipment is scheduled to be upgraded and replaced, at a cost of \$5.1 million, which will be funded with a grant from Homeland Security secured by Cook County.

Another initiative currently underway is the Cook County Wireless Network, a project that will include all of Cook County in a seamless and secure wireless network as it relates to law enforcement and its allied activities. Police vehicles throughout the county will be equipped with digital cameras, allowing them to stream live video to any other agency connected to the network. If a major event was to occur, vehicles would be dispatched to the location and provide live real-time video. Police chiefs would be able to view the live video from their office and direct resources for a complete operation from their vantage point or any computer located in their station.

In partnership with the Chicago Police Department, the CCSPD is implementing another technology initiative, the Illinois Citizens Law Enforcement Analysis

Report (ICLEAR), a program that allows police agencies to share crime data and relevant intelligence information. ICLEAR allows user agencies to acquire information on arrests, gangs, records, and crime analysis. When completed as planned, it will serve as a statewide repository for all criminal information and standardize the way police in Illinois report and document crime.

As new technologies evolve and are developed, the Cook County Sheriff's Police Department must place itself in a position to share resources with police agencies throughout Cook County. The implementation of the aforementioned technologies highlights the sheriff's office for its innovations and leadership as we continue in the 21st century.

## **Specialization**

The Sheriff's Police provide many specialized services that local municipalities do not have an ongoing need to provide or the requisite resources necessary to sustain a thoroughly trained field force. Suburban police agencies rely on the Sheriff's Police for support when faced with crime outside of their normal operations. The Sheriff's Police have always been a leader in specialized fields throughout Cook County. Below are samples of services that exist today as we look forward to future developments in crime patterns in the 21st century. Some of the more recognizable are listed below.

### **Child Exploitation Unit**

The Child Exploitation Unit focuses on Internet-related child sex crimes, child predators, and cases involving child pornography. Additionally, officers are involved in the education of both the public and suburban law enforcement agencies as it relates to the techniques employed by child molesters involving the Internet and the manufacturing of child pornography. This unit has recently assigned an officer to the Regional Computer Forensics Laboratory (RCFL) specifically for forensically reviewing computers. Additionally, the unit has one officer assigned to the FBI Innocent Images Child Exploitation Task Force.

### **The Bomb Squad**

The Cook County Sheriff's Police Bomb Squad's main purpose is to support local, state, and federal enforcement agencies and area fire departments' management of standard and improvised explosive devices. Due to the changing environment, in which terrorists threaten our lifestyle across the country, all squad members have received training from the U.S. Department of Homeland Security, ATF, Secret Service, FBI, and the U.S. military. The Bomb Squad recently acquired two specially trained explosive detection canines and robotic devices that search for hidden explosives at threat sites. In 2005, the Bomb Squad was called out to assist suburban agencies over 200 times.

### **The Polygraph Unit**

The Polygraph Unit is comprised of specially trained police officers from various units within the CCSPD. Each polygraph examiner is licensed by the State of Illinois following the completion of a 10-week training and testing program. The

unit conducted over 225 polygraph examinations in 2005 for 22 agencies including the Illinois State Police, Will County state attorney's office, and several federal agencies. Examiners obtained confessions 41 times in cases ranging from murder and murder for hire to aggravated battery and criminal sexual assault.

One of the recent high-profile cases in which this unit participated was the murder of a federal judge's immediate family. The examiners administered eight polygraph examinations, which cleared those individuals and led the FBI agents to their eventual target. Another new CCSPD innovation, a forensic sketch artist and facial reconstructionist assisted the polygraph examiners and was instrumental in the eventual identification of the murderer. The unit for all of their excellent professional work in the law enforcement field received the Chicago Crime Commission's Stars of Distinction Award for the year 2005.

These units are just a small sampling of more than 16 specialized services offered by the Cook County Sheriff's Police Department. Most of the work and activity these units produce is not measured in reported crime statistics but is an important service function that supports all county law enforcement. As a department, we need to promote and expand on the operations of all specialty units.

### **Increase Law Enforcement Responsibilities**

Another area of policing the Sheriff's Office should address is the possibility of consolidation of police functions within Cook County. Merging the Cook County Forest Preserve Police with the Sheriff's Police would be cost-efficient and beneficial for both agencies to better serve the citizens. At the present time, the Cook County Forest Preserve Police are a patrol-based operation with no specialized services and patrol the 86 square miles of forest preserve in Cook County. When a crime is committed in the Cook County Forest Preserve, the Cook County Sheriff's Police respond and perform a number of specialized functions, including evidence gathering by trained technicians and working with detectives for follow-up investigations. Merging the departments would create one unified police agency operating under Cook County government that would provide the citizens who use the forest preserve with an operationally diverse department better able to service their needs.

### **Contracting Services**

Another option that should be explored is contracting police service to local municipalities within Cook County. Several villages in Cook County are experiencing a decrease in tax revenue and are struggling to provide services to their residents. Some towns in the south suburbs are only able to hire part-time employees with little training, paying them minimal wage. Those towns suffer from high turnover and are unable to provide sufficient training for their officers. This is not an effective way of policing and puts the residents at risk living in towns with inept, ill-trained police service.

An example of successful police contracting can be found in California with the Los Angeles County Sheriff's Department. The sheriff's office has contract services with 40 of the 88 municipalities in Los Angeles County. The sheriff's office has accomplished this by working closely with each community to provide a level

of service that reflects their needs. Municipalities have realized that the range of services provided by the sheriff's department could not be replicated by a small community. Communities also benefit financially, as costs for services will be demonstrably less than that of providing them within their own agency. The sheriff's department would benefit financially, as it would offset our operating expenses by providing a revenue stream from those municipalities and towns that utilized our services. The next sheriff's administration should study and put forth a contracting plan that would be economically feasible for municipalities to institute.

## **Ordinance and Law Changes**

The Sheriff's Police operate under an ordinance system that has not been amended since 1980. Laws and their accompanying fine schedules are completely outdated and need to be immediately addressed by the Cook County commissioners. In 2004, the CCSPD submitted a proposal (Operation Safe Town) for new enforcement changes and fine schedule increases. It would give police better tools in fighting crime but would also raise additional revenue for the county by instituting higher fines and fees more in line with 2006 than 1980. As of this writing, we have been only able to convince the county board of one change, wheel tax enforcement; however, this one enforcement change and the fees it would provide would raise an additional \$2 million annually. The police department needs to continue advocating ordinance changes and laws that assist them operationally and bring additional revenue to the county.

## **Conclusion**

The Cook County Sheriff's Police Department faces several tough issues in the 21st century. It must be a leader in the law enforcement community and build strong partnerships with law enforcement agencies throughout the county. The need for new and developing technology and the continued creation of specialized units that address current law enforcement concerns will go a long way to help build a department that is a leader in local law enforcement. Updated and changing current laws reflecting contemporary concerns must be addressed by county commissioners, whose education on the operations and value of the police department is paramount. The consolidation of police services will better serve the public and should be addressed at the earliest opportunity. By taking a proactive approach, the Sheriff's Police Department has the ability to become an upfront leader within the law enforcement community well into the 21st century.

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Pierce County Sheriff's Office

Los Angeles County Sheriff's Office

## **Interviews**

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Signature \_\_\_\_\_