Public Relations, Media, and Political Affairs

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Editorial

Law enforcement administrators are called upon to effectively manage media relations as a critical component of their job. In many respects, it makes little difference whether the organization is a major city police agency or a small rural department. The murder cases of JonBenet Ramsey in Boulder, Colorado, and of Laci Peterson in Modesto, California, prove that the chief administrators in “Anytown, USA” may find themselves at the center of a media firestorm—and they better be prepared.

While the cases cited above are examples of the extreme involving the national news media, local news outlets, including newspapers, radio, and television, can be equally tenacious in pursuing stories of local interest involving police matters. The chief administrator who does not properly plan for managing media inquiries is setting him- or herself up for failure. The media and the public are going to expect a response, and the manner and style in which the message is delivered, as well as the substance, are critical to projecting a professional demeanor of efficiency and care.

One noted big city chief once said, . . .

When a major crime story breaks, you have to feed the media, or they will feed themselves. If the police do not respond to the press, there will nevertheless be a story in the next edition, with or without the police. The media will put their own spin on the story, and the police will have essentially forfeited their opportunity to get on top of the story.

Instances of mismanaged media relations have led to the downfall of many public officials. That is why it is critical to preplan. Several articles in this edition of the Law Enforcement Executive Forum focus on police/media relations and provide direction and proven strategy for law enforcement administrators to consider.

Thomas J. Jurkanin, PhD
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Managing the Media in an Ugly Situation

Rick Rosenthal, Media Relations Trainer and Consultant

Stuff happens. When something wrongful happens within your law enforcement agency, it’s about as ugly as an outhouse on a hot summer day. In an Ugly Situation (UgSit), the impact on your relationship with the citizens of your community can be devastating. An UgSit presents one of the biggest media and public relations challenges law enforcement will ever face; still, you can succeed with the media and the public when an UgSit hits.

An UgSit is composed of two elements: (1) one or more of your officers (or the department as a whole) appears to have made a major mistake and (2) the media finds out about it. Now the fudge has hit the fan. A shooting incident of apparent “contagious force” on the part of sheriff’s deputies trying to arrest a fleeing suspect who turned out to have been unarmed (Compton, California, May 2005.) A video that shows one of your officers punching a handcuffed teenager in the face (Inglewood, California, July 2002.) Cocaine stolen from one of your department’s evidence lockers (Chicago, Illinois, April 2001.)

How you plan and prepare for the UgSit media firestorm—and how you execute those plans and preparations—will be a major factor in determining the overall success or failure of your department’s management of the incident and will significantly shape the public’s perception of your department’s integrity and professionalism for years to come. The best-practices agencies of law enforcement understand the tremendous impact and importance of effective media management in an UgSit. In this monograph, we will help you and your department be one of those best-practices organizations.

Some Basics

As with every other law enforcement endeavor, the “Rule of 7 Ps” is critical: Proper Prior Planning Prevents Pathetically Poor Performance. In preparing to manage an UgSit, the mandatory first step is to make a commitment that you and the department will deal with it. Choosing to ignore—or worse, cover-up—an UgSit will never work and will create a new threat that is even more grave than the original situation. As Sergeant Randy Force, PIO of the Phoenix (AZ) Police Department puts it, “The story goes from being possibly about a rogue cop, to a second story, about a rogue agency.”

In an UgSit, your natural inclination may be to lock out the media and the public, but you must never do that. You may not want to call reporters and voluntarily alert them to your ugly situation, and that’s okay; although as we’ll see with the Chicago Police Department Incident, sometimes that kind of “good offense” really is the “best defense.” Reporters will almost always learn of your UgSit anyway, usually fairly quickly (and often aided by a tip from someone within your department who has an agenda against the boss.) When reporters do find out, a department representative must be accessible to the media quickly, and he or she must be as forthcoming as possible! Anything less, and you’ll turn your already bad situation into a public relations nightmare. If you hide, stonewall, or play armadillo, the media will perceive and
report this as a clear admission of terrible department wrongdoing and guilt. You will be convicted in the court of public opinion in half a heartbeat, and you’ll find that your relationship with the media and the public will be in a hole so deep that you’ll have to stand on a chair just to reach bottom. I can’t emphasize this too strongly: In an UgSit, the department must respond and respond quickly. As Joel Chandler Harris wrote in Song of the South, “You can’t run from trouble, there ain’t no place that far.”

Once your department is committed to hitting it head on, the next step in applying the “Rule of 7 Ps” and preparing to manage the media in an UgSit is to have a public information officer (PIO). This individual will be valuable in assisting with media management on routine day-to-day matters and will be downright indispensable when things get ugly. These days, many agencies already have a PIO. For those that may not, the following information contains some quick tips concerning the PIO function.

First, don’t appoint a PIO; recruit one! Too many law enforcement administrators make the PIO function a punishment tour of duty. That’s a mistake. Public information—public relations!—is too important. Select someone who’s motivated, enthusiastic, and who wants to do the job.

Do you select someone from the news business or someone from law enforcement? I’ve known some great PIOs; some were sworn; some were civilian. There are valid arguments on both sides. A civilian PIO may remain in the job longer than an officer who might be promoted or transferred out after a couple of years; this gives the civilian PIO more experience and more time to build and maintain relationships with reporters. On the other hand, a sworn PIO has been to the Academy, walked the walk, and can now talk the talk. Also, in my opinion, it’s easier to teach a cop how to be a PIO than it is to teach a former newsperson the insides of law enforcement. Civilian PIO or sworn? This one’s a toss-up, your call.

Either way, you need to get that PIO some training. On-the-job training can be valuable, but formal instruction is also mandatory. (I’m not soliciting business here; this is just common sense.)

A final thought on this: If you can’t afford a full-time PIO, then pick someone who’s willing to take on the job as a collateral duty. But fill the slot—the PIO function is an essential element of best-practices law enforcement, not only in managing an UgSit but also in handling less urgent media contacts.

Now that you’ve got a PIO in place, use him or her to build relationships with local mainstream news media—reporters and their bosses. Visit every local newsroom once a month, and put faces with names and voices on the phone. Go out for coffee or lunch once a quarter with at least one “go-to” reporter or assignment editor or photographer in every local newsroom. Invite “go-to” newspersons to do ride-alongs with your department, and ask to ride along with them! The relationships of mutual trust and mutual credibility that are built early on will be of significant benefit to the department every day of the year, and especially when things turn ugly. (Law enforcement chiefs and sheriffs should also build relationships with their executive counterparts in the news media.)
Phase I of an Ugly Situation: Ignition

There are three phases of an UgSit. The first phase is called “Ignition” (as in, someone just torched your headquarters). For purposes of this monograph, ignition is not when the incident occurs; it’s when the media first finds out about it. Usually, media awareness (ignition) will come within minutes of incident occurrence (usually, but not always). The more time you have between incident occurrence and ignition, the more time you will have to understand just what happened and craft careful messages providing details and explanations (not excuses!).

At ignition, you should respond with your first message as soon as possible, certainly within an hour or two at the most from the time the first media reports hit. To get that message out, I recommend that you hold a full-dress news conference. This will accomplish two important objectives for you:

1. You’ll be efficient. Instead of spending all day answering questions from individual news organizations one after the other, you answer all reporters’ questions at the same time and are done with it.
2. You’ll be consistent. Every news organization and every reporter gets the same facts, the same messages, the same statements, the same answers to questions. This will eliminate conflicting communications from you and reduce the opportunity for media misinterpretations and misunderstandings.

Who should speak for the department at this first acknowledgement of an UgSit? One school of thought here is that we keep the boss in reserve and let the PIO or another veteran officer speak for the department and take the early hit for the team. This means that the chief or the sheriff is not on the spot and is out of the spotlight until more is known and reporters’ questions can be answered more accurately and effectively. It keeps the boss from appearing ignorant or making statements that later turn out to be incorrect. That’s an understandable tactic, but this may create an impression in the minds of reporters and the public that the boss can’t take the heat, that perhaps the boss may even have something to hide. In my opinion, having the chief or sheriff lead the way from the very first moments of the ignition phase—including fronting the ignition news conference—is the best way to go, from both media relations and public relations standpoints. The chief or sheriff is the one who will be ultimately responsible for the UgSit; let him or her show leadership and begin to accept that responsibility right now.

At your ignition news conference, you probably won’t have much solid information; you may not know many of the facts. In this first phase of an UgSit, facts and information—while welcome—are not as important as your simple public acknowledgement that the UgSit exists and your determination to deal with it. You do not have to agree that the allegation is valid; you do not have to agree that whatever appears to have gone wrong did go wrong. What you do have to do is concede that the incident does in fact look ugly and does raise legitimate concerns. In an UgSit, you must clearly acknowledge that there does appear to be a problem and that the department will look into it.

The best way of doing this is by first expressing empathy with the situation and with those who may have been harmed. Merriam Webster Online defines empathy as “the action of understanding, being aware of, being sensitive to . . . the feelings, thoughts,
and experience of another . . . ” You do this by simply acknowledging that there is an apparent problem and by expressing sympathy with anyone who may feel they have a legitimate grievance. Use language such as the following:

- “We share your concern about . . . ”
- “That’s a good question, one which we are asking ourselves . . . ”
- “What’s alleged is deeply troubling to this department . . . ”
- “We are taking this matter very seriously . . . ”
- “We care about what is alleged to have happened . . . ”
- “We are committed to finding out what happened and correcting any problems . . . ”

In July of 2002, several officers from the Inglewood, California Police Department were involved in what started as a routine traffic stop involving a motorist and his 16-year-old son, Donovan Jackson. Jackson gave officers a hard time and was taken into custody. His hands were cuffed behind his back. Suddenly, IPD officer Jeremy Morse picked Jackson up off the ground and slammed him face down onto the trunk of a squad car. A few seconds later, Morse punched Jackson in the face. It was all caught on videotape by a civilian bystander. Ugly. And of course, that tape quickly found its way to the news media. Ignition.

As fate would have it, Inglewood Police Department’s chief and two captains were out of town; the PIO had to handle the media. At her ignition news conference, PIO, Lieutenant Eve Irvine (she’s now Captain Irvine), stated, “What occurred within the videotape is extremely disturbing to the Inglewood Police Department as well as the administrators of the City of Inglewood. We are taking this matter very seriously.” Good job.

Using such empathetic language in your ignition news conference—often repeating words such as concern, care, and commit—will go a long way toward reassuring a watchdog media and your public that your department does indeed see the matter as “very serious” and that you are determined to get to the bottom of it.

The flip side of empathy is to try to “spin” your way out of the corner that you’re in. Don’t even think of doing that. My friend and colleague, former FBI media relations instructor Jim Vance, puts it this way (I’ll clean this up just a bit): “Don’t try to shine fudge,” Vance says, “cause it don’t buff.” Perfect! In an UgSit, do not try to defend the indefensible, excuse the inexcusable, or justify the unjustifiable. Take the incident “very seriously.” Acknowledge. Empathize. Express caring and concern. Commit to finding out exactly what happened and to discipline and corrective measures if needed. Take the advice of Derek Johnson, a former PIO for the Royal Canadian Mounted Police (RCMP). When the RCMP got hit with an UgSit, his mantra was, “If we mess up, we fess up and dress up.” In other words, deal with it.

**Phase II of an Ugly Situation: Investigation**

This is the phase in which the department determines just what happened: The Who, What, Why, When, Where, and How. This investigation should be among the department’s highest priorities; remember, your relationship with your citizens is at stake.
Your two principal goals in this investigative phase are as follows (in this order): Get it right; get it fast. Getting it “right” means gaining a full and accurate understanding of what happened, who did it, and why. It also means following all applicable laws, department policies and procedures, and union agreements, if any. Getting it “fast” runs a close second in importance. The sooner you can get to Phase III (resolution), the better, since that cuts down on the amount of time your critics can attack you and minimizes the innuendo, hearsay, and speculation that will often erupt during an UgSit.

Sometimes the boss will need no time at all (see the case study involving Los Angeles County Sheriff Lee Baca appearing later in this article). The facts of the UgSit are as obvious as a church steeple in a corn field; little time is needed for the investigative phase, and the chief or sheriff can transition quickly from the ignition phase through that empathetic news conference to Phase III. Other times, policy, procedure, the law, and union agreements will require a much more tedious investigative process, especially if the UgSit involves allegations of criminal misconduct by one or more of your personnel. Play by the rules, but get the job done as quickly as you can to avoid the criticism of cover-up. If the investigation is going to take many weeks, help the media (and through reporters, your citizens) understand the necessary steps that you are required to take. Help them understand that it’s the thoroughness required by law, policy, and procedure that will slow things down, not a cover-up.

Throughout the investigation phase, some high-ranking member of the department should be available to reporters to answer questions as forthrightly as possible. The boss may choose to do this him- or herself (again, see Baca). Other times, a deputy chief or undersheriff or PIO can be as effective. Regardless, someone must be readily available to represent the department’s important media relations and public relations interests.

This doesn’t require a full-dress news conference every day; certainly it does mean that the PIO or other approved department spokesperson is accessible to reporters, returns phone calls in a timely manner, and offers clear and concise responses to reporters’ questions. The department must always strive to avoid even the appearance of ignoring or white-washing the UgSit, or hiding anything from the media or the public. Get caught up in that hurricane, and you’ll get blown away.

**Phase III of an Ugly Situation: Resolution**

Your investigation has determined Who, What, Why, When, Where, and How. (And maybe what looked really bad at the beginning has turned out to be righteous, after all. Usually that doesn’t happen with an UgSit; you know, if it walks like a duck and squawks like a duck . . . For purposes of this monograph, we’ll save that happy-ending scenario for another time.) Nope, this one was “out of policy”; now it’s time to acknowledge individual and/or department failures and announce steps to keep this UgSit from ever happening again. The department has indeed “messed up.” Now it’s time for you to “Fess up and dress up.”

Once again, I recommend that the department call a formal news conference to announce the results of the investigation. Same reasons as for the ignition news conference: efficiency and consistency of message.
While there may be some debate about the person who should speak for the department at the ignition news conference, there is no doubt about who should step up at the resolution news conference: reporters and the public will absolutely want to hear from the chief or sheriff.

The PIO should assist the boss in hand-carving a written news release summarizing as succinctly as possible the findings and conclusions of the investigation and any disciplinary and remediation steps that will be taken. Once again, empathy should be a part of this statement (and an apology might also be appropriate, see below.) KISS it: that is, Keep It (the news release) Short and Simple. Write it in sound bites—brief, simple declarative sentences with a noun and a verb and a period. A subject and a predicate and a period.

It’s also absolutely essential for the PIO to help the boss rehearse before going in front of the news media: Rehearse reading the news release aloud a time or two and the Q & A that will follow the boss’s opening statement. Here, the PIO and the boss should try to anticipate the hardest questions they can imagine any reporter firing their way and prepare brief answers—even write them down!—before “getting in the ring with the 900-pound gorilla.” (Once again, we’re simply applying the Rule of 7 Ps.)

To summarize to this point, quick acknowledgement and empathy at ignition; a thorough investigation conducted as quickly as possible; and a prompt resolution that includes findings, conclusions, discipline, and remediation. These are your keys to successfully managing the media relations and public relations aspects of an UgSit.

An important note: You will not win every round in this heavyweight bout with that 900-pound gorilla. What we’re discussing here is best efforts, not perfect outcomes. The media and your critics will undoubtedly land some blows, but I can promise you they will not score a knockout, and they will not win the fight; you will. I can promise you that if you follow these guidelines, you will minimize the damage; you will maximize your effectiveness with the news media and your citizens; and you will win the fight to maintain—even enhance—a positive relationship with reporters and the citizens that you serve and protect.

Some Additional Thoughts

Don’t Speculate – When managing the media in any situation including an UgSit, don’t ever speculate. Don’t ever deal in what “would” have happened, what “should” have happened, what “could” have happened. Stick to facts and information. If you do not have all the facts, then “I don’t know” is a perfectly acceptable and credible response. If for some reason you do know and are prohibited from sharing the information, tell reporters why you must withhold it.

No Comment – Don’t ever say, “no comment.” Those two words imply that you have something to hide and make you look dirty. Saying “no comment” will create the appearance of impropriety and cover-up that you must try to avoid. (It’s like the subject of a criminal investigation invoking his or her 5th Amendment protection against self-incrimination: He’s entitled to do that, but sure looks dirty doing it.) In the January-February 1996 issue of Sheriff magazine, Jim Onder of the National Highway Traffic Administration put it this way: “No comment’ is a comment.” Find some other way of answering the reporter’s question, perhaps by saying, “That’s a
good question, one that we are asking ourselves. As soon as we know the answer, you’ll know, too.”

Example 1: On March 17, 2005, St. Louis Cardinals all star Mark McGwire was called before the House Government Reform Committee to testify about athletes’ abuse of steroids. When questioned, he repeatedly responded, “I’m not here to talk about the past.” In other words, “No comment.” Whether he abused steroids himself or had knowledge of abuse by others didn’t matter. What mattered was, he looked dirty. He created the appearance of impropriety, and the next day, articles and commentaries in newspapers all around the country questioned McGwire’s fitness for election into the Hall of Fame.

Example 2: The July 2005 flap over whether Karl Rove (deputy chief of staff and top adviser to President Bush) had been involved in the possibly illegal leak of the name of an undercover CIA operative. Back on September 29, 2003, White House spokesman Scott McClellan told reporters, “I have made it very clear that it [allegations of Rove’s involvement] was a ridiculous suggestion in the first place . . . It is simply not true.” But 2 years later, additional information indicated that Rove was involved. On July 11, 2005, reporters pressed McClellan on the matter. His response this time was as follows: “This is an ongoing investigation at this point. The President directed the White House to cooperate fully with the investigation, and as part of cooperating fully with the investigation, that means we’re not going to be commenting on it while it is ongoing” (“Democrats,” 2005). In other words, “No comment.” Again, whether Rove was or wasn’t involved isn’t the point here; the point is, McClellan’s “no comment” makes Rove and the White House look dirty, like they have something bad that they have to hide. The smoke that McClellan was blowing indicated there was a fire burning. Does this sound like “ignition”?

Democratic political strategist Jim Jordan summed up the Rove flap this way: “People . . . get it that the White House is refusing to comment and White House officials have clammed up. They can immediately feel the seriousness of this . . . There is nothing worse than a cover-up” (“Bush’s Offense,” 2005). Or the appearance of a cover-up.

Visual Image – When responding to the media at the ignition news conference of an UgSit, dress professionally but in civilian clothes rather than in uniform. It’s subtle, but important: visually, you are putting distance between the uniform—the department—and the Ugly Situation. Conversely, in a good news situation, absolutely do wear that uniform when you talk to the media. Your resolution news conference is good news, so put the uniform back on. (If the boss always appears in uniform, and you’re concerned that his or her sudden change into civilian clothing will create an appearance of evasion, then reconsider this guidance.)

Officer Reassignment – If officer misconduct is alleged (as is almost always the case in an UgSit), then I recommend you quickly reassigned the officer to a less sensitive position that will minimize/eliminate his or her contact with citizens. (Of course, such action must always be consistent with local and state laws, department policy and procedure, and any union agreements that may apply.)

Reassigning an officer who’s under a cloud carries two important messages:

1. By your behavior, you’re not only telling your citizens but also showing them that you do take the matter seriously, you do care and are concerned about the
incident, and you are placing that officer on the shelf to prevent any further possible harm until the UgSit can be sorted out. It also tells the citizens that you expect this officer to continue to provide service for the pay he or she continues to earn, just not on the street. (Reassignment makes more sense than placing the officer on administrative leave, which amounts to a paid vacation, and a suspension—punishment—can’t be handed down until the UgSit investigation has been completed.)

2. Keeping the officer on paid duty while the UgSit is being investigated sends a powerful leadership message to all personnel within the department that the chief or sheriff will not prejudge anyone and that everyone is entitled to due process and will be treated fairly. (Of course, if your local laws or departmental policies and procedures require administrative leave, you must follow those rules.)

Timing—As already stated, when your UgSit ignites, you must respond to the media within an hour or two. Often, you will not be able to control the timing of your ignition news conference, but sometimes you can, especially if you decide to preempt and announce the UgSit yourself before the media finds out about it on its own. If you have the option, schedule your ignition news conference in the afternoon. This way, you’ll bypass the noon TV news cycle and eliminate that much coverage of your UgSit. If you have the option, pick a busy news day where other stories are competing with your UgSit for coverage and the attention of viewers/readers. If you can hold your ignition news conference on a Friday afternoon, that will also reduce the impact of media coverage: your story will appear in the local newspapers on Saturday, the day of the week with the fewest readers. (Conversely, in a good news situation, absolutely do talk to the media before the noon news cycle, and try to stay away from busy news days, Fridays, and weekends.)

Here’s an example of a timing choice: When the Bush Administration revealed the bad news that senior citizens were going to be hit with a huge 17% increase in Medicare health insurance premiums in 2005, the announcement was quietly released at 5:00 PM on Friday, September 3, 2004, going into the Labor Day holiday weekend. Who reads a newspaper on Labor Day Saturday?

Another example involves MasterCard, International, Inc. When MasterCard revealed the bad news that computer hackers had accessed data that put as many as 40 million credit card holders at risk for fraud, the announcement came in a statement released late on the afternoon of Friday, June 17, 2005.

Let’s be clear: I do not counsel you to be sneaky in handling your UgSit; you must face the music and avoid even the appearance of impropriety or cover-up. Still, when you have the option, judicious timing can be an asset.

Think About Preempting—Sounds crazy, but I’d encourage you to at least consider lighting the match and igniting the UgSit yourself rather than waiting for the media to find out about it. I’m not suggesting that every agency do this in every UgSit, but if circumstances are right and you do choose to announce your own problem, you’re delivering a very clear message to news reporters and your citizens that yours is a righteous organization that has nothing to hide. Your credibility soars, as does your relationship with the media and the community.
Warren Carmichael, veteran PIO for the Fairfax County, Virginia Police Department (now retired) says, “When [reporters] realize you will put out the ‘bad stuff,’ they are more willing to accept that you are not hiding something when you really can’t say anything (as in the case of a sensitive criminal investigation.) They will have confidence that if you volunteer the bad news, you will give them whatever you can about anything else.”

Example: In 2001, the Chicago Police Department undertook an internal audit and discovered the loss of 20 kilograms—$400,000 worth—of cocaine from an evidence locker. Ugly. The superintendent at the time, Terry Hillard, made a smart move and decided to go public and announce the loss before the media found its way to the incident on its own. According to Pat Camden, who was (and is) deputy director of CPD’s Office of News Affairs, “Once the superintendent became aware of [the theft], his philosophy was very simple. Rather than letting it leak out to the media [in a department of 13,600 sworn officers, you know someone will drop a dime] we immediately said we need to have a news conference to announce the findings of our audit.” They did just that, igniting this UgSit themselves but also pretty much putting out the fire the same day, even before investigation and resolution.

At this preemptive ignition news conference, CPD portrayed itself as the victim of some unscrupulous individual, expressed concern about the incident, and committed to “moving swiftly to determine the source of the theft” and to bringing the perpetrator to justice. The preempt worked. Because this wasn’t one news organization’s exclusive story or a so-called “investigative” news piece (which reporters and news organizations love to drag on for days), the story was pretty much a one-day wonder; it was front-page news the day after the news conference, and then it went away.

Something else CPD did that I liked: They controlled the timing of the announcement of their UgSit. The initial news conference was held on Friday afternoon, April 20, 2001. They dealt with their UgSit publicly, but bypassed the noon TV news cycle to reduce coverage. Newspaper coverage of the Friday announcement of their UgSit came out on Saturday, historically the day of the week with lowest newspaper readership. This was just plain smart management of media relations and public relations.

As for the investigation and resolution phases of the case of the missing cocaine, on February 6, 2003, retired Chicago Police Officer John L. Smith was charged with theft and tax evasion in a nine-count federal indictment (among other things, he’d bought a $174,000 Rolls Royce with his ill-gotten gains.) Superintendent Hillard—not the Office of News Affairs but the boss—released a statement announcing the indictment and underscoring “the Chicago Police Department’s zero-tolerance policy concerning corrupt activities by any of its members.” During this resolution phase, he was emphasizing the positive aspects of the cocaine UgSit. Good job. (On November 10, 2004, Smith was found guilty of 7 of the 9 counts against him; he remains behind bars, awaiting sentencing.)

Think About Apologizing: Okay, when you get back up off the floor, I’ll repeat that. Think about apologizing. I understand that every single agency of law enforcement in the United States worries about being sued. Since an apology can easily be construed as an admission of guilt, you’re thinking you might as well write the complainant(s) a big check right now and avoid the legal hassles. Well, that is certainly one valid school of thought, but—please keep in mind I am not an attorney—I still think an apology might be the righteous way to go, at least in some circumstances.
Example 1: On May 18, 2000, the *Wall Street Journal* ran a front-page article with the headline, “Doctors’ New Tool to Fight Lawsuits: Saying ‘I’m Sorry.’” The article cited a small but growing school of thought that suggests that a doctor’s sincere apology to a patient who’s suffered malpractice can actually prevent a lawsuit or at least reduce the judgment if a suit does indeed go forward. The *Journal* quoted Colorado surgeon Michael Woods, who teaches seminars for doctors and malpractice insurers on the importance of apologizing, as saying “Nothing is more effective in reducing liability than ‘an authentically offered apology.’” If this strategy works for doctors, why not cops?

To be fair, that same article also quoted lawyers who warned, “As a legal strategy, apologies remain a big gamble.” Indeed they may. And I suspect most of you in law enforcement are thinking, “This ain’t gonna happen!” Just give the concept of an UgSit apology some thought (and review the case study of Los Angeles County Sheriff Lee Baca and 10 of his deputies, below.)

Example 2: On June 29, 2005, the Illinois General Assembly gave final approval to Senate Bill 475, a medical malpractice reform bill that Governor Rod Blagojevich has said he will sign. One part of 475 would establish a pilot program to test the concept of apologies as a way of reducing the costs of medical malpractice. The program—called “Sorry Works”—would select two Illinois hospitals as lead participants. When malpractice is alleged, the doctor and hospital involved would offer a timely apology and compensation. Over time, the hope is that the hospitals and doctors will save money in malpractice cases. If that doesn’t work, and the program actually increases malpractice costs, the state of Illinois promises to make up the difference.

A similar program of state support for police apologies is unlikely; still, I think the fact that the concept of apology is being tried by the medical profession makes that same concept worth consideration by the profession of law enforcement, which is also frequently targeted by “malpractice” lawsuits.

**Case Study: L.A. County Sheriff’s Deputies and “Contagious Fire”**

Shortly before midnight on Sunday, May 8, 2005, a citizen of Compton, California, called the Los Angeles County Sheriff’s Department (LACSD) and reported hearing gunshots fired. A lieutenant with the department was in that neighborhood and also heard the shots.

For responding deputies, the initial call concerning unlawful shooting quickly escalated into an incident of potentially grave threat. Additional information directed them to look for a white Chevy Tahoe sport utility vehicle, the driver of which was alleged to have been involved in an earlier “245” (assault with a deadly weapon) and a “187” (homicide). (All of this “information” was later determined to have been incorrect, but responding deputies did not know this at the time.)

The subject vehicle was quickly spotted. The lone occupant ignored deputies’ attempts to stop his SUV and sped off, with deputies in hot pursuit. At times, the chase hit a speed of 60 MPH in a 25-MPH zone. Add felony evasion to the charges the driver would face. In all, 13 officers from the LACSD were involved: 12 on the ground, plus a tactical flight officer (TFO) in the air overhead.
The pursuit went on for 12 minutes (into the early moments of Monday, May 9) before deputies were able to corral the vehicle on Butler Street between Muir and Linsley in a tidy working class neighborhood of Compton, California. The driver—later identified as 44-year-old Winston Eugene Hayes—ignored deputies’ repeated orders to exit the vehicle; in fact, at one point, he backed toward one of the deputies’ squad cars. The TFO overhead urgently radioed, “He’s aiming to hit you! He’s aiming to hit you!” and the deputies on scene opened fire. (Remember, they’ve been told the driver might have been involved in an assault with a deadly weapon and homicide.) Hayes then rolled his SUV forward, hitting the back of another squad, and more shots were fired.

In the 18 seconds of gunfire, approximately 120 rounds were discharged. Six houses were struck and damaged by bullets. Hayes was wounded four times, and one deputy was slightly injured when one round struck his body armor. Hayes was taken into custody and hospitalized for treatment of his wounds. He was not armed; no gun was found in his vehicle. He was not involved in an assault with a deadly weapon or homicide as had been radioed earlier in the incident. Hayes was charged with evading police and driving under the influence of drugs. Bond was set at over one million dollars. Hayes remains in custody, awaiting trial. [While not immediately relevant to this incident, it was later learned that Hayes had a long rap sheet that included two felony convictions (attempted arson, 1983, and assault on a peace officer, 1993.) The District Attorney’s Office also reported Hayes had six misdemeanor convictions in the previous 13 years, including resisting arrest and evading police.]

The shooting was caught on videotape, and that tape quickly ended up in the hands of the TV news media. For Sheriff Lee Baca and the Los Angeles County Sheriff’s Department, an UgSit had just ignited; as we’ll see, LACSD’s response was masterful.

According to Steve Whitmore, Senior Media Advisor to Sheriff Baca and LACSD, a PIO was promptly dispatched to the scene to handle the initial media that showed up on Butler Street. Whitmore added, “I needed to get the sheriff out in front of this,” and that’s what he did. Whitmore and Baca scheduled a news conference for later that same morning (Monday, May 9) to begin to deal with their UgSit. The media briefing started at 11:00 AM in time to hit the noon TV news cycle. Sheriff Baca personally took the lead.

His message was one of empathy; he expressed regret that the incident had to occur. He expressed concerns about the tactics the deputies had used. He committed to transparency in the investigation of the incident and promised that the people of Los Angeles County would know what he learned at each stage of the investigation. Sheriff Baca also promised that if discipline was warranted, it would be meted out. He also committed to reporting back to the community within 30 days concerning the findings of the investigation and his resulting decisions. Baca’s bottom line was to work with the media—even use them, if you will—to communicate to the Butler Street residents (and all the other citizens of L.A. County) that this was a regrettable incident that he intended to make right. It was a great strategy, and it worked extremely well.

Of course, the investigative phase of the Butler Street UgSit began immediately, but Sheriff Baca didn’t withdraw behind the “No comment” curtain and say, “We can’t say anything because the matter is under investigation.” Far from it (remember transparency?). Instead, he went on the offensive and had the mainstream news
media as his partners every step of the way. He and PIO Whitmore and several others on staff were up at 2:00 AM, Tuesday, May 10 for appearances on every major local and network morning news program, including NBC’s Today, ABC’s Good Morning America, and CBS’s The Early Show. Once again, he was empathetic: Instead of trying to “shine fudge,” Sheriff Baca made statements such as, “I know that there were too many shots fired. I don’t need an investigation to tell me that.”

Later that same day, the sheriff went to the Butler Street neighborhood, knocked on doors, visited with residents to hear their concerns and reassure them that he was indeed going to make things right. He promised those whose homes had been damaged by gunfire that they would receive compensation that would be twice the cost of repairs. Baca was following through on his commitment to make things right, and once again the mainstream news media was right there with him to report his outreach. This was outstanding media relations and outstanding public relations.

On Wednesday, May 11, the Reverend Al Sharpton airlifted in to Los Angeles and visited Hayes in the hospital. Sharpton angrily criticized LACSD, saying deputies “reduced Compton to the OK Corral. An apology isn’t equal to what happened.” On Saturday, May 14, the Reverend Jesse Jackson also found time in his busy schedule to stop by Hayes’ hospital bed. Jackson called the deputies “terrorists,” accused them of “attempted murder,” and decried the gunfire as “a hate crime.” (For the record, the deputies involved were a mix of whites, African Americans, and Hispanics.) The news media reported Sharpton’s and Jackson’s beefs, but they never gained traction in the media relations and public relations battle because Sheriff Baca (and the deputies who were involved, as we’re about to see) had gotten so far out in front of them. Baca (and soon, the deputies) were on a PR express train, and Sharpton and Jackson ended up under the wheels.

On Friday, May 13, ten of the deputies who were involved weighed in. The two white deputies, three blacks, and five Hispanics met the media for a full-dress news conference. They wanted to maximize coverage, so—as Sheriff Baca had done earlier in the week—they scheduled their news conference for 11:00 AM (ahead of the noon TV news cycle). None of the ten was in uniform; they purposely chose to wear civilian clothing to emphasize the fact that they are not only deputies but also human beings and regular people.

Because investigations were underway or being considered (by the federal government, the District Attorney’s Office, the Office of Independent Review, the Internal Affairs Division, etc.), the deputies asked their attorney to speak for them. Gregory Emerson, general counsel of the Los Angeles County Professional Sheriffs Association told reporters (and the public), “These fine deputies that stand with me today wish to offer their unqualified and sincere apology [emphasis added] to those who reside on Butler who were affected by the shooting early Monday.” Emerson added, “They’re not hiding. They’re honorable, decent individuals. They’re proud professionals of the Los Angeles County Sheriff’s Department, and they’re willing to stand up and tell the community that they do apologize.” It was an important and powerful message. The PR express train had just run over the Reverends Sharpton and Jackson. Again, outstanding.

Later, Emerson said he thought the news conference had “worked out great”; in fact, he’d been “surprised” by how well it went and was “shocked” by the
community’s response. “The media immediately lost interest,” he said, “and the community leaders who were most vocal in their demand for an investigation were silenced, if not supportive. The local papers offered favorable analysis and perspective.” Emerson added, “When Jesse Jackson arrived in town to rally against the deputies, he was sent away. There was not a single rally against the deputies after the apology.”

Emerson also offers the opinion that “these deputies prevented a Rodney-King-like protest by accepting responsibility for their actions and making it clear to the residents of Compton that they were working for them, not against them.” Well done. (For the record, please note that neither the accused offender Hayes nor anyone else has filed a lawsuit against any of the deputies or LACSD. The sheriff’s prompt, open, empathetic response and the deputies’ apology worked marvelously on several different levels.)

The final phase of this UgSit, resolution, came just as Sheriff Baca promised it would, exactly 30 days after the incident. On Thursday, June 9, 2005, the sheriff held another news conference to accept full responsibility for the actions of his deputies, conceding the Compton shooting incident was “excessive gunfire” that he stated was “frankly unacceptable.” Once again, he was empathetic, saying “The Sheriff’s Department can do better, and it will do better. I can do better, and my deputies can do better.” At no time did Sheriff Baca try to shine fudge. He said, the deputies’ “tactics needed to improve. The community itself was exposed to more danger than was warranted.” He added, “We know that we didn’t do the best we can do. In fact, it was pretty bad.” And he repeated, “We have to do better. That is my message.” It was a message that was once again important and powerful.

Beyond the words, at his resolution news conference, the sheriff also announced his decisions on discipline and remediation. All 13 personnel who were directly involved in the Butler Street incident took a hit, ranging from written reprimands to—in one case—a 15-day suspension. Baca also announced revisions in department policy to prevent a similar incident from happening in the future. Among the changes were the following: deputies will not fire at a vehicle or its occupants unless there is an imminent deadly threat; if there is no imminent deadly threat, a SWAT unit is to be called in; there will be additional training in this area. Sheriff Baca also announced the start of a community action plan to evaluate and improve police services in Compton.

With his empathetic words and leadership behavior, from ignition through investigation and resolution, Sheriff Baca was able to deal with this UgSit effectively, minimizing the damage and even strengthening his relationship with the citizens of Compton and the rest of Los Angeles County. He stepped up to the plate, kept his eyes on the ball, took an UgSit curve ball, and hit a grand slam home run.

**Summary**

Stuff does happen in law enforcement. When an UgSit ignites and the media become aware of it, the best-practices agencies are prepared. They have made a commitment to deal with any UgSit that ignites and have a response plan in place. They quickly acknowledge the incident. They are empathetic. They express care, concern, and commitment. They don’t spin. They don’t speculate. They don’t say, “no comment.”
They at least consider an apology. They deal with the UgSit forthrightly, openly, and transparently. They understand that the mainstream news media can be a major asset and the single biggest force multiplier in resolving the UgSit and commit to working with the media as arms-length partners in this process. The best-practices agencies of law enforcement often use the boss as the lead spokesperson. They always present spokespersons who are knowledgeable about the department and the incident and articulate in stating their position. They investigate thoroughly, fairly, and quickly. They resolve the UgSit by promptly announcing findings, conclusions, remediation, and discipline (if any.) They understand and apply every part of, “If we mess up, we fess up and dress up.” And they move on.

By following this media relations (public relations) guidance in an UgSit, agencies of law enforcement can continue to enjoy—even enhance—solid, positive relationships with the citizens that you serve and protect. An UgSit will rock your boat, but you shouldn’t let it sink your boat.

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References


Rick Rosenthal is a nationally recognized media relations trainer and consultant. In the past 10 years, he has trained thousands of officers from hundreds of local (e.g., Chicago Police Department; Chicago Fire Department), county, state police (e.g., Illinois, Indiana, Kentucky, New Jersey, Washington, Alabama), and federal agencies (e.g., U.S. Marshals Service, FBI, USDEA, USDOI, USEPA-CID). He has presented numerous programs for the Northwestern University Center for Public Safety (formerly the Traffic Institute) Executive Management Programs; the Southern Police Institute’s Command Officer Development Courses; and the Federal Law Enforcement Training Center’s Management Institute. From 1996 to 2002, he wrote a monthly media relations column for Law & Order magazine. His training has also been seen on the Law Enforcement Television Network and was included in a report on the PBS Newshour with Jim Lehrer. Rick is on your side but teaches from his unique perspective as an award-winning, 30-year-veteran TV and radio news anchorman and reporter (22 years on the air in Chicago, including 10 years as senior news anchor on WGN-TV). He delivers the inside story on who reporters are; how they’ll behave with you and why; and practical, real-life techniques and controls that you can use to win with the media.
Police Officers and Reporters: Understanding the Relationship

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“Without an informed and free press, there cannot be an enlightened people.”

Justice Potter Stewart

“Perhaps the most important source of common conceptions and myths of crime, criminals, and crime control policy is the media. . . . One thing is certain; the media presents a distorted crime picture to the public” (Braswell, McCarthy, & McCarthy, 2005, p. 314). If for no other reason, this is the case because some of the most important factors in determining what crime news is reported include not only the seriousness of the offense (the more serious or sensational the offense, the more likely it is to be reported) but also whether the offense is particularly dramatic and whether it involves famous people (e.g., movie stars or sports personalities) or high-ranking government or corporate officials. As Pollock (2004) puts it, “The constant barrage of murders, rapes, and robberies in television drama contributes to the public’s general fear of crime, as does the local news media’s sensationalistic treatment of such crimes even when ignoring more pervasive social problems” (p. 182).

“In their efforts to routinize the creation of news, news agencies come to rely on standing social institutions from government and business as sources of news. . . . From this reliance, a cyclic pattern develops. The media and these institutions develop a working relationship, each fulfilling organizational needs of the other” (Surette, 1992, p. 59). Since crime news typically comes initially from the police, crime reporters attempt to develop working relationships with the police. Such relationships must be based on mutual access and trust if they are to be beneficial to both parties. At the same time, however, as consumers of crime news provided by reporters on television, in newspapers and news magazines, and over the Internet, most of us have developed an ambivalent attitude toward those who report the news. It is not, for example, uncommon for practitioners in the field of law enforcement (as well as in other areas of criminal justice) to place at least partial blame on the media for crime waves, copycat crimes, increases in terrorist activities, and damaged public image. The media tends to focus on police misconduct while failing to cover the many positives contributed by these practitioners.

Nonetheless, much of the information about police, crime, and the relationships between the two comes from these same media sources (Surette, 1992). In addition, the image of crime and the police created by the media provides a sense of reality for a large segment of the public. To the extent that the “reality” created is an accurate portrayal of policing and crime, the public is well-served. To the extent that it is based on rumor, anonymous or unreliable resources, an overwhelming desire for profit, and ideological agendas, no one is well-served.
While many reporters and police officers have established working relationships that are satisfactory to both parties, what may be described as an uneasy truce exists between some police officers and the reporters who detail their exploits. In this article, we briefly examine some of the sources of distrust and occasional outright hostility between the two groups and suggest some ways in which the truce may become more stable.

**Police Officers’ View of Reporters**

Most police officers clearly recognize the importance of media reports concerning their activities and the value of developing positive relationships with reporters. They willingly provide information to reporters they trust so long as it doesn’t compromise ongoing investigations and the information they provide is accurately reported. This typically means that the information provided is reported in context with proper attribution of sources and that quotes reflect what the officer actually said. When this occurs, officers are typically open with reporters so long as the conditions described above are respected. Even under the best of circumstances, however, officers tend to be wary of both the motivations and techniques employed by at least some reporters. The police, like other citizens, are aware that not all reporters can be trusted. A brief discussion of some possible reasons for this lack of complete trust follows—first from the perspective of the police, then from that of reporters.

**Use of Anonymous Sources**

The use of anonymous sources (people who give reporters information only on condition that their identities not be divulged) has received a great deal of attention recently because the information provided by some of these sources turned out to be partially or totally false. Use of anonymous sources is alarming to police officers (and to many others as well) for a variety of reasons. Numerous questions come to mind when such sources are utilized. Why do the sources need to remain anonymous if what they report is accurate? How reliable are such sources? Are there really any sources at all? Are there other sources who are not concerned about anonymity? Police officers are wary of anonymous tips and are, in fact, often required to attest to the reliability, based on information previously provided, of sources who wish to remain anonymous.

Equally alarming, for the same reasons, are “sources close to,” “those in a position to know,” or “high-ranking officials,” all of whom are often reported as being “willing to provide information based on the provision that their names not be associated with the information.” At one level, of course, it is understandable that informants may be concerned about what their superiors may say or do if damaging information is reported. Whistleblowers, while protected by law in many instances from retribution, are not generally popular figures. But how do we know the information they provide is accurate, not the result of jealousy or revenge, and not created for personal advantage? And, if it is accurate, why are others not willing to come forward with similar information?
Leaks

Leaks occur when an informant perceived to be in a position to know confidential information reveals that information without authorization and, in some cases, in violation of law and they are often provided by sources wishing to remain anonymous. Recently, it seems, information intended to remain confidential or to be released at some later date is “leaked” by someone “in the know.” Secret grand jury proceedings have been reported; choices for future Supreme Court appointees “leak out”; information about ongoing law enforcement investigations is frequently revealed through leaks; and suspects who haven’t yet been arrested or charged are often named prematurely. Many of these leaks turn out to be totally false; some contain a grain of truth; and others prove to be reasonably accurate. But how is fact to be separated from falsehood? Which version of the “truth” are we to believe?

Such leaks are sometimes very damaging to police operations. Consider for a moment the statement that “reliable sources have said that a particular individual is a suspect in an ongoing criminal investigation, though the police refuse to confirm or deny the allegation.” If the individual is in fact a suspect at large, such leaks may alert the suspect to take evasive action immediately. If the individual is not actually a suspect but is identified as such by media reporters, what damage is done to the individual’s reputation?

Misstatement of Quotes, Misattribution, and Out-of-Context Statements

We have spoken to hundreds of police officers over the past 35 years, and most have stories about how they cooperated with reporters only to be misquoted or to have their quotes attributed to someone else. The authors have themselves experienced all of these difficulties and have, as do many police officers, learned it is often better not to comment to reporters at all. Slight changes in quotes can change the intended meaning completely. Selecting quotes without providing accurate context can make the quote appear trivial (extremely important), negative (positive), or controversial when the intent within the context was quite different. Wrongly attributing quotes can also cause obvious problems. The underlying question here is why would these “mistakes” occur?

Off-the-Record Comments

Most police officers have probably been asked to comment or provide information “off-the-record,” only to find that their comments or the information provided appears in the media. Even when the officer’s name is not used, it is often easy to determine who must have provided the information. Why would a reporter ask an officer to comment off-the-record? The obvious answer is that the officer was not prepared to comment “on-the-record.” Why was the officer willing to do the former but not the latter? Was it because the officer was uncertain of the information provided or unwilling to have the comment attributed to him or her? If so, why was that the case? Was the off-the-record comment made as the result of a perceived friendship between reporter and officer? If so, what happens to that friendship and the trust involved if the off-the-record comments/information appear in print or on the television, radio, or Internet?
Ideological Bias

“There is no such thing as an objective point of view. Human communication always takes place in a context, through a medium, and among individuals and groups who are situated historically, politically, economically, and socially. This state of affairs is neither bad nor good. It simply is. Bias is a small word that identifies the collective influences of the entire context of a message” (Media, 2005).

“Is the news media biased toward liberals? Yes. Is the news media biased toward conservatives? Yes. These questions and answers are uninteresting because it is possible to find evidence—anecdotal and otherwise—to ‘prove’ media bias of one stripe or another” (Media, 2005). While the issue of political bias is certainly of great interest, the topic deserves a thorough examination in its own right and will not be dealt with in this discussion.

The news media are clearly biased toward bad news because they believe bad news draws customers. Thus, they tend to focus on police mistakes and misconduct whenever and wherever they occur. The bad news bias makes the world appear to be a more dangerous place than it really is and often makes government officials, including the police, appear to be more corrupt and brutal than they really are. Police officers are clearly aware of this bad news bias, and many resent it and those who report it. When it exists, the police lose legitimacy as they are publicly degraded in front-page headlines, and the loss of legitimacy accompanying such headlines may be perceived as not being limited to those directly involved but as tarnishing the profession (Caldero & Crank, 2004, p. 142).

Journalism is a competitive, 24-hour deadline-driven profession. This creates a need for information that can be obtained quickly, easily, and inexpensively. Thus, reporters develop lists of those who can provide expert and/or official quotes, who can be reached quickly, and who are willing informants/commentators, whether or not they are familiar with the details of the incident in question. Second guessing by such experts/authorities is a familiar phenomenon to most police officers.

For our purposes, it matters little which side of the ideological fence the reporter is on. The important thing is that the fence exists and that police officers often find themselves entangled in it. Issues such as police corruption, police brutality, biased enforcement, racial profiling, and use of tasers are examples of highly charged “bad news” topics. Currently, potential abuses resulting from the Patriot Act, weaknesses in homeland security efforts, and the inability to control terrorism are among the bad news issues regularly reported in the media. None of these issues reflects terribly well on the police.

False or “Created” Reports

Police officers also distrust reporters/journalists who simply create reports with no basis in fact and those whose reports are demonstrably false. In the former case, there is no basis in fact for the reports, and sources are simply made up. In the latter case, the reports are demonstrably false upon examination of the facts and/or sources cited. Recent examples abound. In 2004, USA Today foreign correspondent Jack Kelley was forced to resign after he repeatedly misled editors during an internal investigation into stories he wrote. When neither the newspaper nor Kelley
could verify a story he reported in Belgrade in 1999, Kelley essentially invented a witness to corroborate the account. Kelley’s incredible stories from abroad were, according to some colleagues, not credible and difficult if not impossible to verify (USA Today, 2004).

In 2004, Dan Rather, CBS Evening News anchor, attested to the veracity of documents relating to President Bush’s National Guard service. Shortly thereafter, Andrew Heyward issued the following statement:

> Based on what we now know, CBS News cannot prove the documents are authentic, which is the only acceptable journalistic standard to justify using them in the report. We should not have used them. That was a mistake we deeply regret. Nothing is more important than our credibility and keeping faith with the millions of people who count on us for fair, accurate, reliable, and independent reporting. (CBS, 2004)

In 2003, Mike Barnicle, a Boston Globe columnist, was exposed regarding the lies found in his columns. Eventually, the paper was forced to fire him when his column regarding interracial friendships in cancer wards was found to be completely made up. Christopher Newton, an Associated Press reporter, was fired in September 2002 for fabricating numerous sources in some 40 articles (Callahan, 2004).

There are numerous other examples of false or created news stories as well, but these will suffice to indicate why reporters are sometimes viewed with considerable suspicion, not only by police officers but also by the general public. One of the most comprehensive surveys of the public’s general opinion of the media was done in 1997 by the Pew Research Center for The People & The Press. This research compared poll results from the mid-1980s with the late-1990s, using identical questions. Two-thirds of those surveyed said that “in dealing with political and social issues,” news organizations “tend to favor one side.” That was up 14 points from 53% who gave that answer in 1985. Those who believed the media “deal fairly with all sides” fell from 34% to 27%. Finally, the percentage who felt “news organizations get the facts straight” fell from 55% to 37% (“Media Bias Basics,” 2005).

Furthermore, a Gallup Poll conducted in 2005 revealed that, at least in New York, . . .

> Public trust in newspapers and television news continued to decline as indicated in a survey of “public confidence in major institutions” in the United States, reaching an all-time low this year. Those having a “great deal” or “quite a lot” of confidence in newspapers dipped from 30% to 28% in one year, the same total for television. The previous low for newspapers was 29% in 1994. Since 2000, confidence in newspapers has declined from 37% to 28% and TV from 36% to 28%, according to the poll. (Public, 2005)

**Reporters’ Views of the Police**

Journalists hold political views, but they are taught and encouraged not to advertise them, particularly during the performance of their duties. These political views are typically moderated by the journalistic ethics of objectivity and fairness.
Instead, a journalist attempts to be objective by two methods: (1) fairness to those concerned with the news and (2) a professional process of information gathering that seeks fairness, completeness, and accuracy. As we all know, the ethical heights journalists set for themselves are not always reached, but, all in all, like politics, it is an honorable profession practiced, for the most part, by people trying to do the right thing (Media, 2005).

**Use of Anonymous Sources**

Editors at about one in four newspapers who responded to a recent survey conducted by the Associated Press (AP) and the Associated Press Managing Editors (APME) association say that they never allow reporters to quote anonymous sources, and most others have policies designed to limit the practice. The project drew replies from 419 publications or about 28% of the nation’s 1,450 daily newspapers. Editors at 103 papers, mostly from small and mid-size markets, indicated that they don’t ever permit reporters to cite anonymous sources in their articles. They argue that when reporters get people “on the record,” they rarely have to retract the resulting stories (Crary, 2005).

Newspapers that allow the use of unnamed sources are often based in large cities, including Washington, DC, where requests by sources for anonymity occur most frequently. The majority of these newspapers say that they have formal policies intended to minimize the reliance on anonymity, typically limiting the use of such sources to situations in which reporters and/or editors/producers believe there is no other way to obtain information concerning an important story. (It should be noted here that other media outlets often base their stories on reports initially appearing in print and thus are affected by anonymous source consideration as well.)

“The AP’s own policy permits use of anonymous sources only when the material is information—not opinion—vital to the news report; when that information is available only under the conditions of anonymity imposed by the source; and when the source is reliable and in a position to have accurate information” (Crary, 2005).

Other guidelines employed by the media to help ensure the accuracy of anonymous sources include the requirement that information from an anonymous source be corroborated by at least one additional source and that at least one senior editor be told the source’s name.

Following these limitations and guidelines, reporters might argue, increases the likelihood that information provided by anonymous sources is accurate. Furthermore, use of such sources may be the only way to collect information concerning some types of potentially important stories.

**Leaks**

Leaks, as indicated above, occur when those perceived to be “in the know” reveal information without authorization and often in violation of the law. Reporters actively cultivate “leakers” who can provide them with information before it is officially released, thus allowing the reporters to “break stories” before their competitors. Here again, reporters would prefer to use official or named sources,
but waiting for information provided by such sources often results in competing reporters releasing stories earlier and thus losing the competitive edge. Information leaked by informants turns out to be accurate or partially accurate frequently enough to tempt reporters to rely on these informants, especially perhaps, when the information provided has been proven accurate in the past (the equivalent of reliable informants in the police world).

**Misstatement of Quotes, Misattribution, and Out of Context Statements**

When news sources are misquoted, when their statements are reported out of context, or when quotes are attributed to sources other than those providing the information, considerable damage can be done to all parties involved, and the public may be misled. In some cases, these issues arise as the result of mistakes in memory or writing down the information initially. In other cases, reporters use “journalistic license” in order to make stories more concise, interesting, and sometimes, controversial.

The addition or omission of a single word may change the meaning of an entire quote, especially if taken out of context. Lack of context is frequently said to occur as a result of time or space limitations (i.e., only so much time on the radio or television and only so much space in newspapers and news magazines). When quotes are offered without context, or when they are shortened or changed slightly in order to fit time or space limitations, reporters argue that every effort is made to maintain the meaning of the original material. In some cases, the accuracy of quotes, attribution, and context cannot be resolved since perceptions and memories of the parties involved differ and there is no way to prove who said what to who and under what circumstances. Reporters insist that they are skilled in recording information and unlikely to make serious errors in this endeavor; police officers insist that they are trained to phrase responses in clear-cut fashion using proper safeguards, which are sometimes altered in the course of reporting.

**Off-the-Record Comments**

Off-the-record comments are solicited by reporters when “on-the-record” comments are unavailable or when they seek to go beyond official comments in their search for information. Again, reporters often cultivate informants who will provide off-the-record information, which can frequently be used without revealing the source of the information and may help in breaking a story in advance of competing reporters. Over time, reporters again learn which informants typically provide the most reliable information and tend to return to these sources when they need additional information.

**Ideological Bias**

It is difficult for reporters to deny that they have an ideological bias in the form of “bad news” delivered as rapidly as possible. The argument here is simply that good news doesn’t sell unless it is extremely rare and extremely good. Heroic efforts of police officers are reported; “routine” positive contributions are typically not reported. It is, presumably, not news when the police (or any other group) perform their duties as they should. It is news when they don’t. Thus, the latter is almost always reported, while the former is typically neglected. In fact, most
reporters probably don’t view such reporting as biased but as a response to public demand.

**False or “Created” Reports**

“There are a number of ethical issues between the police and the media. Should the police intentionally lie to the media for a valuable end?” (Pollock, 2004, p. 202). Clearly, journalists would argue, the police have used such tactics in the past and therefore, they are not always to be trusted. Here, of course, the false reports are deliberately created by police officers and fed to reporters as truth. The unethical conduct is thus a product of police minds, not reporters’ deceit.

The following suggests that reporters have good reason not to trust the police on all occasions as well as vice versa:

> Journalists who unwittingly assist the police by believing and publishing a false story also criticize this type of deception . . . An example might be lying about the stage of an investigation or about the travel path of a public figure for security reasons . . . In the 2002 Washington, DC, sniper case, the media and the police had an extremely close relationship, and the police were especially sensitive to media issues (i.e., how the media could be used to encourage tips, but also how it might create public panic). There were some who believed the media were fed “red herrings,” such as the importance of the white van, in order to divert the snipers’ suspicions regarding how the police investigation was going (Pollock, 2004, pp. 202-203).

Most reporters attempt to corroborate the stories they report, and seasoned reporters might argue that they have worked the police beat long enough to “fill in the gaps” when the police are less than completely cooperative. Most reporters are embarrassed by their colleagues who fail to adequately check out sources and/or create stories that are either not entirely accurate or are completely untrue. Finally, reporters would argue that in a substantial number of false reporting cases, colleagues of the violator actually discover and report the violation(s).

**Suggestions for Police Officers Dealing with Reporters**

According to Surette (1992), “People live today in two worlds: a real world and a media world. The first is limited by direct experiences; the second is bounded only by decisions of editors and producers (p. 81).

For most people not directly involved in crime events, the images and impressions of the participants in police encounters, of the issues involved, and of police procedures are shaped by the media. Because press, radio, and television, to some degree, select the events, the people, and the issues to be covered, and because these are the principle sources of information about what is happening in a community or in the nation as a whole, the media are recognized as very powerful forces. They reach large numbers of people on a regular, frequent, and continuing basis, and no police department can long maintain a favorable image without their support. (Cox & Fitzgerald, 1996; McCamey, Scaramella, & Cox, 2003, p. 76)
What, then, in light of the above discussion, are some of the techniques that police officers can employ to gain and maintain media support while operating within ethical bounds?

First, it might be suggested that since police officers frequently distrust anonymous sources, they not provide information to reporters anonymously. If officers are convinced that the information they have is accurate and that providing it does not violate departmental policy, there is no reason for requesting anonymity. In addition, since there is no legal guarantee of anonymity in terms of conversations between reporters and their sources, guarantees of anonymity are only valuable if the reporter is willing to go to jail to protect the anonymous source. Some reporters are clearly willing to do this, at least on a short-term basis. Others are probably not. Thus, avoiding the issue of anonymity would appear to be the wisest course of action. If officers are uncertain of the information they possess, it is probably best not to share it with reporters. The same reasoning applies to officers who are encouraged to “leak” information. Such leaks are likely to be discovered, and the consequences can be most unpleasant.

When police officers are interviewed by reporters, if there is the slightest element of distrust on the part of the officers, they might simply inform the reporter that they are recording the interview and then proceed to do so by openly beginning the tape with the date, time, name of reporter, and subject of the interview. If the reporter’s story is accurate, the tape can be filed or destroyed. If inaccurate quotations appear, statements are taken out of context, or quotes are misattributed, the recording can and should be used to correct the record. Reporters who strive to achieve accurate reporting should have no problem this procedure. Those who fear the procedure are probably untrustworthy.

No matter what a reporter promises, officers should realize that there is never a guarantee that they are speaking “off the record.” Of what value are comments made off the record? If officers are willing to tell reporters what they know and they believe the information they can provide is accurate, why should they not report “on the record?” Recognizing that reporters and police officers sometimes become friends, there may be a strong temptation to tell such reporters details that are not part of the record. An unwillingness to give such reports should not be interpreted by reporters as a lack of trust but as an ethical choice made by the officers in question.

Ideological bias may be one of the most difficult issues for police officers to combat because of the very nature of police work. Much of what the police do involves bad news—robberies, rapes, batteries, homicides, traffic fatalities, child molesters, drug sales, and so on. Other police actions, especially when they involve officer misconduct, are also bad news and are certain to be covered by the media. To be sure, the public has a right to know and the media the right to report such incidents. Police officers, however, are also involved in numerous positive activities—catching offenders involved in the crime listed above, community relations programs, programs for youth, crime prevention programs, saving lives, and dealing with police personnel who engage in misconduct. Officers should continuously report their involvement in these positive activities to members of the media and request that such programs receive media exposure. While such requests may be turned
down frequently, if even a few are reported, they may help balance the picture of crime and policing.

A final issue for the police centers around which officers are authorized to speak to reporters. “Police administrators today typically prefer to develop open, honest relationships with representatives of the media, although this has not always been the case” (McCamey, Scaramella, & Cox, 2003, p. 213). In order to accomplish this goal, in some departments, public information or media relations officers provide frequent briefings, and other officers are discouraged from responding to reporters. This strategy is generally implemented so that the official police position is provided by a consistent source who is prepared to answer appropriate questions and deflect/dismiss inappropriate questions (e.g., those dealing with ongoing investigations). While the strategy is understandable, and perhaps even desirable, it is probably unrealistic to expect that reporters will be totally satisfied with “official reports.” Almost certainly, they will attempt to gather further information from officers they believe are familiar with the case in point. Thus, many of the problems discussed above arise. For this reason, among others, police departments should develop, implement, and train officers on media relations policies. Officers who are aware of the issues discussed in this article and incorporated into such policies will be better prepared to recognize and deal with them when they arise.

In summary, while the First Amendment to the Constitution provides that “Congress shall make no law . . . abridging the freedom . . . of the press,” the provision does not guarantee the media access to information or provide protections from other governments—jurisdictional, local, or state. Still, the intent of the framers of the Constitution may have been as Justice Potter Stewart explained in 1974, “to provide a fourth institution outside the government as an additional check on the three official branches.” Thus, the fourth estate was created. Stewart also noted that the Supreme Court has upheld the right of the press to perform its function as a check on official power (Goodale, 1997).

While the Constitution protects the press from government censure and control, it does not require that governments furnish information to the press. The acquisition of information that is being withheld from inquiring persons is covered in freedom of information (FOI) legislation and open meetings acts.

Although reporters may use FOI to acquire needed data to inform the public of events of interest, the best-case scenario would allow reporters to gain that same information concerning crime and police actions through good relationships with the police officers with whom they interact. In the past few years, this trust relationship has been strained in a number of instances. Hopefully, in the future, both reporters and police officers will benefit from cooperative relationships, which result in a public that is accurately informed concerning most types of police activity.

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Nonlinear Analyses: Passing Fad or Viable New Lens for Enhancing Police Public Relations?

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The dust cover of Malcolm Gladwell’s (2002) popular book, The Tipping Point: How Little Things Can Make a Big Difference, skims the nature of social epidemics by describing how seemingly insignificant changes in diverse variables can impact society in profound ways. Indeed, seasoned law enforcement officials are well aware of how these variables can trigger moments when an idea, trend, or social behavior crosses a threshold and spreads rapidly, resulting in unprecedented outcomes such as a single sick person starting an epidemic, a targeted marketing push causing a new fashion trend, a mishandled arrest sparking a race riot, or an innovative police program causing a remarkable drop in the crime rate. In many ways, Gladwell’s tipping points resonate with findings described in the literature on chaos theory and postmodernism. These approaches to reasoning may have special relevance to the study of individual crime, crime rates, public disorder, or other cataclysmic events at local, national, and international levels.

Moreover, whether tipping points—or whatever we prefer to call them—have direct bearing or not on social phenomena, given its ubiquity throughout history, there is little reason to believe that crime-related deviance will diminish in the 21st century (Muraskin & Roberts, 2002). Hence, a need for probing analyses based on traditional as well as emerging sciences appear to be essential if police chiefs are to continue to explore the following questions: What’s going on out there? Why is behavior so unpredictable? What future conditions could emerge that would affect us? (Cole, 1995).

Because many forms of aberrant behavior are viewed as inimical to social order and often lead to crime, the primary purpose of this article is to explore whether enough is known about postmodernism and the “new science” of chaos theory (the technical term is “nonlinear dynamical systems theory”) and their potential for providing enough insight into social phenomena to recommend them to current and aspiring law enforcement executives seeking alternative perspectives to demystify the sorts of social problems typically encountered by their officers. A secondary purpose is to introduce uninitiated managers with potentially useful insights emerging from nonlinear studies who are gaining respectability within the academic community to the extent that some prominent social scientists are beginning to proclaim that “the investigation of nonlinear effects should open up a new area of research in criminology, with the possibility of substantially improving our explanations of crime” (see Thaxton & Agnew, 2004, p. 787).

Very briefly, postmodernism provides alternative perspectives on how the “dead weight” of bureaucracies can be understood by questioning linear core assumptions of social institutions such as courts and the police (institutions with historical records of ignoring the voices of disenfranchised minorities) and stressing the importance
of going beyond what is seemingly obvious by probing the meanings of images and imagining. Postmodernism also suggests that through the rejection of grand narratives and macropolitics that have underlain important thinking during the last five centuries, voices heretofore kept out of the arena of public debate and policy development may finally be acknowledged by empowered politicians, judges, police, and other public officials (Farmer, 1995). With respect to how the business of information-gathering is conducted, postmodernity also predicts the collapse of traditional hierarchies of knowledge, with boundaries between the scientific, the aesthetic, and the normative gaining equal footing as forms of discourse. For example, under postmodern reasoning, statements made by university scholars or learned jurists are not privileged; in fact, they are merely viewed as other forms of knowledge, not necessarily superior to that of the low-level bureaucrat or “mere practitioner” or other individuals. In fact, in a Public Administration Review article questioning the “specious” relevance of academic research, Bolton and Stolcis (2003) urged university scholars and public managers to jointly create easily accessed communication pathways for the sharing of ideas that do not emphatically favor one viewpoint over the other.

Beyond the liberation of marginalized voices, nonlinear findings based on principles of chaos theory (Walters, 1999) also appear suitable for the study of crime-related deviance because they explore the interdependency of relationships in natural and social phenomena. What is impressive when comparing differences between traditional linear systems and rapidly evolving postmodern nonlinear dynamical systems is how the latter ambitiously seeks ways to examine changes in social phenomena—criminal behavior, for example—that typically are irregular, unpredictable, not always proportional, discontinuous, changing, even “jumping” to new states of being over extended periods of time (Lorenz, 1979; Williams & Arrigo, 2002).

According to Durkheim (1982), social phenomena are things and ought to be studied as things (p. 27). In his classic study of suicide—highly individualistic behavior—Durkheim (1951) found that this form of deviance was influenced by multiple factors beyond structure and process. Not surprisingly, as law enforcement officers have suspected, and scholars have found in studying other forms of aberrant behavior, his analysis of this form of social deviance revealed that suicide rates were strongly impacted by degrees of social integration and a myriad of factors that often resist the types of prediction typically found in traditional linear studies.

Conversely, given the complexities of social interactions, postmodernism and chaos theories refreshingly question why legislators, judges, lawyers, law enforcement officials, and social scientists insist on describing human events as if all the rules that control those events are manifestly clear and linear (i.e., easily understood, additive and based on straight lines—a decidedly poor choice for capturing the essence of nonlinear behavior) (Guastello, 1995). Beyond questioning the efficacy of using linear models to explain social phenomena, these concepts also seek to understand the ostensible disorder in orderly systems by focusing on changes in the characteristics of systems over extended time periods (Williams & Arrigo, 2002).

Most findings in nonlinear analyses, however, are still in their early stages, developing rapidly in the past decade from the application of quantum physics, fractal geometry, and other advanced mathematics to the physical sciences
Writings on the discovery of chaos—the “order that lurks behind or within apparent randomness” (Williams & Arrigo, 2002, p. 3)—have been more gradual in the social sciences, particularly in studies of psychology (Arrigo & Williams, 1999; Williams & Arrigo, 2002), criminology (Arrigo & Bernard, 1997; Milovanovic, 1997a; Pepinsky, 1991), and sociology (Butz, 1997; Milovanovic, 1992). Interestingly, however, writings on postmodernism and chaos (Williams & Arrigo, 2002; Young, 1991) generally are not found in readings in police studies, administration, and management (see Goode, 2001; McCaghy, Capron, & Jamieson, 2000; Pontell, 2002; Terrell & Meier, 2001; Thio & Calhoun, 2001; Tittle & Paternoster, 2000).

Difficulty in applying these principles to an endless array of criminal behaviors may account for the scarce coverage in law enforcement literature. To complicate research further, interpreting systems’ interactions cannot be undertaken until researchers and professionals are presented with a range of definitions for deviant behavior. This is an extraordinarily difficult task. Indeed, Thio and Calhoun (2001), suggest that the study of deviant behavior is probably the most “deviant” of all subjects in sociology. They cite a classic study by Simmons in which the public was asked who they considered deviant; not surprisingly 252 different kinds of people were listed, covering more than the vast range of child molesters, homosexuals, drug addicts, corporate criminals, alcoholics, prostitutes, pornographers, mentally ill persons, and others typically discussed in deviant behavior textbooks (Goode, 2001; McCaghy, Capron, & Jamieson, 2000; Pontell, 2002; Terrell & Meier, 2001; Thio & Calhoun, 2001; Tittle & Paternoster, 2000).

Many questions drive initial inquiries into criminal behavior and the public disorder that can stem from some forms of it—foremost among them being “What is criminal behavior?” Before attempting an answer, thought should be given to the perspectives of critical or radical criminologists who would recommend that law enforcement managers, who hope to benefit from positive public relations, ask the following questions: “What are the power differentials between who does the labeling, and who gets labeled?” “What consequences result from being labeled criminal or deviant?” “What distinctions, if any, exist between criminal and non-criminal deviance?” “And in what ways do rule making and rule breaking differ?” (Goode, 2001; Heitzeg, 1996; McCaghy, Capron, & Jamieson, 2000). Again, exploring these questions is not conducive to linear modeling. Moreover, though frameworks for understanding these subjects are found in some police studies literature, criminal deviance remains an inescapably elusive subject because theoretical terminology in the field is itself arcane and subject to multiple interpretations (Tittle & Paternoster, 2000).

**Toggling Lenses to Understand Crime and Social Conflict**

Confusion in universities and law enforcement agencies is understandable when considering how chance, randomness, flux—“tipping points”—invariably emerge as key components for how social systems behave. Indeed, even deterministic systems can generate very erratic behavior over time (Kiel & Elliott, 1996). Natural science research points to nonlinearity, instability, and uncertainty as essential to the evolutionary progress of natural systems. Similarly, social scientists have long been aware of extraordinary inconsistencies in the behavior of human systems (in this context the individual is viewed as a “system”), suggesting that contrary
to popular belief, deviance—*not order*—is normal. To this end, police executives wishing to improve public relations should consider Forrester’s (1987) assertion: “We live in a highly nonlinear world, where the social realm is clearly unclear and unstable, where changing relationships between variables often create a puzzling maze” (p. 104). Thus, postmodernism and chaos theories strive to relieve modern science and legal systems of their preoccupation with precise order or explanatory formulae, suggesting potential intrinsic benefit for interpreting social deviance (Arrigo & Williams, 1999).

In addition, forward-thinking police chiefs may wish to have their research staffs keep abreast of emerging nonlinear mathematics, which are beginning to enhance understandings of a wide variety of both natural and social sciences, such as economics (Baumol & Benhabib, 1989; Grandmont, 1985), political science (Kiel & Elliott, 1992; Saperstein & Mayer-Kress, 1989), sociology (Young, 1992), and criminology (Milovanovic, 1997a, 1997b). To reduce some of the complexities surrounding nonlinear systems, interested law enforcement personnel should understand that key dimensions of behavior are mapped along a fundamental axis of time. Behavior is recorded, measured at successive time points, and later described (Byrne, 1998). Instead of examining criminal events with single indicators, the nonlinear perspective permits analyses of many variables, especially the effects they have on internal (i.e., the person him- or herself) and external (i.e., police, courts, social service, educational systems) entities. A brief discussion of the concepts of attractors and bifurcations may provide police supervisors, who hope to develop enlightened public relations policies, with a context for understanding how changes in human systems may occur over lengthy time periods and even alter identities.

**Attractors**

Systems tend either to oscillate between mathematical points in a stable, smooth, or periodic manner; in a somewhat different manner, they may also oscillate through seemingly random, nonperiodic, or chaotic behavior. Technology now permits graphical analysis of nonlinear time series data, by plotting these “geometries of behavior,” in order to gain a sense of their response to attractors (Abraham & Shaw, 1982, p. 16).

Discerning the roles played by attractors is vital to gaining any fundamental understanding of nonlinear analysis. Goerner (1994, p. 39) notes that attractors are “patterns of stability that a system settles into over time,” suggesting that like metal filings drawn to magnets, behaviors of a system are pulled in specific directions, thereby eventually producing order and stability (Williams & Arrigo, 2002, p. 65). Stable, predictable, point, “nondeviant” systems, for instance, describe behavior as a sort of circular mapping picture of long-term behavior, with data that revolves back and forth between consistent mathematical points.

Conversely, unpredictable, unstable, “deviant”—or in this instance, “criminal”—patterns depicted by “strange attractors” portray a system not entirely random, or “out of control” but one in which new forms of behavior may be developing without retracing previous mappings, indicating that the system may be undergoing an evolutionary change (Byrne, 1998; Guastello, 1995). This receptivity to difference may be seen in the capacity of the strange attractor to embrace nonlinear behavior (Arrigo & Williams, 1999). If persons manifesting deviant behavior—child molesters,
for example—undergo change through time, thought must be given to the character of those changes, particularly the extent to which they are impacted by mental health, criminal justice, and social service systems. Because of the “hot button” media attention given to sex offenders released back into the community, analyzing these changes is imperative. In other words, as Byrne (1998) suggests, “by examining what has happened with robust, determined measurements, we may not be able to predict what will happen, but we may be able to act so that some things occur and others don’t” (p. 42).

**Bifurcation**

Bifurcation occurs when a system’s stability is interrupted, derailed, or knocked off balance (Williams & Arrigo, 2002). A multiplicity of internal and external factors can trigger bifurcations, which can result in substantial changes in human systems. Cancer, exercise, alcoholism, heart disease, training, education, divorce, unemployment, criminal victimization, arrest, prosecution, incarceration, the attack on the Twin Towers, and Hurricane Katrina are all examples of factors that can trigger bifurcations, resulting in profound and potentially lasting changes. Police managers may gain valuable insights, for instance, by identifying which mechanisms for producing social order and preventing deviant behavior can intentionally “produce chaos and pave the way for radical social transformations” (Harvey & Reed, 1994, p. 390). By instigating external sources of chaos (e.g., intervention strategies such as Neighborhood Watch, community policing, and drug and gang awareness programs) and later evaluating them, effective approaches for thwarting harmful behavior may be identified.

A proper understanding might allow us to detect bifurcations or the beginning of changes in individual behavior in stable, semi-stable, or chaotic states (Guastello, 1995). Going back to our original example, conceivably, graphical histories of thousands of child molesters could provide the basis for examining behaviors preceding and following specific interventions that currently are not possible with linear mathematical models. In terms of public or community relations, therefore, better distinctions might be drawn between the fixated child molester with a long history of repetitive behaviors who may be impervious to treatment strategies, and the situational offender who is seldom involved with children and may be more responsive to therapeutic intervention.

In terms of applying nonlinear principles as a way of preventing injury to criminal justice personnel, Walters (1998) used an SPSS Curvefit software program in a time series analysis to examine inmate-initiated assaults reported by staff over a 9-year period in a large correctional institution. He selected nonlinear models because variables “cannot be studied in isolation . . . they are part of a larger network of interacting influences” (p. 127). In addition, Walters noted that inmate-initiated assault is an extremely complex phenomenon that “responds to changes in both individual and system variables” and found assault curve data followed a nonlinear path and that nonlinear quadratic equations did a significantly better job of explaining inmate-initiated violence than did simple linear equations. Similarly, Williams and Arrigo (2002) and Barton (1994) found linear equations inadequate for assessing mental illnesses and behavioral changes in psychological studies.
Can Nonlinear Analyses Serve as Useable Tools for the Future Police Manager?

If postmodernists are to be believed, the need for clarifying distinctions between linear and nonlinear perspectives is a pressing one because they portend a fundamental break with the current era as we move into a new reality, driven by mass media, information systems, and the Internet (Farmer, 1995). Whether this is actually happening, few would argue that future developments in studies of criminal deviance and police response will require the synthesis of concepts and methodologies across a number of fields (Cole, 1995). Current linear methodologies are woefully inadequate for predicting criminal behavior.

Hence, strident as it seems, extraordinary uncertainties and unprecedented challenges facing today’s law enforcement executives suggest that any sensible forecasting is impossible when remaining wedded to homeostatic, linear, and monological approaches to science. By clinging to outdated procedures, Williams (1984) claims that intelligent theoretical (and operational) imagination will continue to be sacrificed in order to meet the demands of methodological rigor and statistical precision. He further contends that postmodernism and chaos theories can help by providing an organizational framework for combining approaches from disparate theoretical traditions.

In essence, by offering researchers—and professionals—an alternative approach to traditional science, postmodern scholars claim that nonlinear models not only do a better job in testing the complex relationships between variables and the systems in which they are embedded (i.e., offenders and police), but nonlinear equations also may account for the bizarre variance or strange “noise” commonly overlooked by linear equations (Walters, 1998). Taken to the next level, and of direct relevance to police administrators, Williams and Arrigo (2002) energetically argue that with respect to bizarre behavior among individuals and groups, more tolerance is needed, further adding that “living organisms are nonlinear, unpredictable, spontaneous, creative, and, ultimately uncontrollable” (p. 24).

Demystifying the Binary Fallacy in Criminal Justice

Law enforcement officials seeking to find merit in using nonlinear analysis as a tool for improving relations with their constituents should first attempt to understand how language used to describe the positivist/modernist (linear) mindset and, conversely, language used to explain the social constructivist/postmodern (nonlinear) mindset differ. In reviewing them, some differences are modest; others are striking. Whereas Thio and Calhoun (2001) construe positivism, with its penchant for control, objectivity, precision, and predictability, as being informed primarily by sciences, they view social constructivism as closely aligned to the humanities, languages, arts, and philosophy (p. 7). Returning briefly to the critical/radical perspective, managers may further benefit from perceiving positivism (current) as a lens primarily used to focus on rule-breaking behavior; whereas, social constructionism (future) appears better suited as a device for gaining insights into the consequences of labeling and complex power relationships within social systems (Thio & Calhoun, p. 8). Hence, whereas adherents of positivism—professionals in our court system, in particular—view deviant or criminal behavior as real, mainly straightforward, and linear, social constructivism sees behavior as complicated,
resistant to measurement, nonlinear, and chiefly defined not by the actions of offenders but by actors in the criminal justice system (e.g., legislators, lawyers, police, prosecutors, judges, jurors).

More to the point, it has been suggested that while social construction scholars acknowledge the linear level at which positivists function, they reject positivism as an advanced form of knowledge, regarding it as neither superior nor inferior to any other viewpoint interpreting life processes (Williams, 1984). Moreover, adherents of social constructionism argue that instead of being liberating, useful, and informative, linear thinking has resulted in excessive forms of oppression and alienation (Vold, Bernard, & Snipes, 2002). They also suggest that linear reasoning’s overreliance on binary models (e.g., guilt/innocence, right/wrong, good/evil)—as opposed to nonlinear interpretations, which indicate that aberrant behavior is provisional, not absolute, and always a matter of degree, plotted more accurately on a continuum—exacerbates some forms of criminal behavior.

In fact, when applied to our courts and police, this type of reasoning leads to harsh punitive forms of social control that often target marginalized minorities (Dickens & Fontana, 1994; Farmer, 1995; Williams & Arrigo, 2002) and can lead to community outrage. Moreover, in terms of public relations, especially within minority communities, law enforcement executives may benefit from understanding that in urban settings police are often viewed as enforcing laws selfishly created by privileged possessors of power against disenfranchised “others” (e.g., black, Hispanic, mentally ill, gay persons). In fact, similar to other social institutions such as the military and prisons, law enforcement is “noteworthy in [its] complicity in encouraging the production of docile bodies through inventive mechanisms of control” (Arrigo, Milovanovic, & Schehr, 2005, p. 34) that in extreme cases can lead to acts of aggression toward officers.

Police and Other “Innocent Voyeurs”

This last section discusses how enlightened law enforcement managers may wish to pursue additional insights into nonlinear reasoning as a tool by remaining “healthily skeptical” of the motives and actions of the politicians and professionals with whom they routinely associate. To begin, Jean Baudrillard (1983), a postmodern “luminary par excellence” (Arrigo et al., 2005, p. 20) posits that because the “real” has been imploding with the contrived or fictional for some time now, history as we have known it has ended. Rapid changes in technology, coupled with the fabrication of images by the media, trial attorneys, and marketing and entertainment executives have led to a “hyper-real” situation in which truth, sincerity, and genuineness no longer exist.

Instead, we have a public that has grown comfortable with manipulated fraudulent copies of other fraudulent copies ad infinitum to the extent that society has reached a juncture where what is truly real has vanished and has been replaced by the imaginary. In addition, postmodern writers and critical criminologists warn that objects or commodities have been “devouring” the consumer’s “perception, thoughts, and behavior,” as cybernetic control systems simulate reality. These simulations of the real—TV detectives on Law and Order and crime scene techs on CSI, for instance—can trigger “hallucinatory resemblances” that are more real than real (Arrigo et al., 2005, p. 20).
Consequently, a real court trial, particularly one allowing the presence of media, can be likened to a cinema with attorneys (defense and prosecution) serving as “directors” (Arrigo et al., 2005) skilled in the persuasive use of metaphor and jurors as voyeurs who view subjects with unrealistic expectations and willingly render not guilty verdicts because of fanciful portrayals of evidence in fictional dramas. Indeed, American jurisprudence may become rife with instances in which jurors believe that DNA evidence always is available and with due diligence can be found in all cases.

Regrettably, if fiction masquerading as reality constituted the total extent of the problem, nothing more would need to be said; however, even in so-called “reality TV” shows (e.g., COPS and America’s Most Wanted), another potentially destructive myth is created from the notion of “good police work.” This creates the illusion that conscientious cops, detectives, and agents always bring order to disorder, capture offending criminals, and relentlessly bring “bad guys” to justice. Unfortunately, an unkind result of these fictions is that they tend to aggravate existing prejudices by having the armchair viewer ignore or disidentify with the plight of the disenfranchised, while fueling an “us” versus “them” mindset (Arrigo et al., 2005).

Moreover, with regard to the frequent coverage given to issues such as racial profiling and media reports of jury nullification, police managers may gain insights from postmodern literature in understanding that while black citizens may disidentify with lawbreakers within their communities and expect the full power of the state to control them, a vastly different situation occurs when “race rebels” or prominent black men are arrested. In these cases, a reversal of sentiment may occur, with the community doing a complete turnaround and vehemently insisting that the state not punish them (Arrigo, Milovanovic, & Schehr, 2005). As Arrigo, Milovanovic, and Schehr (2005) imply, by applying a nonlinear lens of analysis, the law enforcement executive of the future may do a better job getting to the heart of obvious inconsistencies in sentencing by being open to the notion that perceived historical injustices (e.g., police brutality) epitomized in one criminal trial (e.g., Rodney King and the LAPD) can later influence jury verdicts in a different criminal trial having nothing at all to do with police brutality (e.g., O. J. Simpson).

**Conclusion**

Baker and Davin (2002), authors of the final chapter in Muraskin and Robert’s book concerning visions of change for criminal justice in the 21st century, chose as their title “Criminal Justice in the New Millennium: The Crises of System and Science.” They dedicated their chapter to Detective Charles Douglas “Doug” Jacobs, a member of the Riverside, California, Police Department who’d completed all degree requirements for a master’s degree at Chapman University but was killed in the line of duty before the book was published. Their central thesis is that the present state of affairs for both the U.S. system of justice administration and the discipline of criminal justice are in institutional states of crises, primarily due to the inability of justice professionals to dispense justice with equity, impartiality, and fairness. They describe this bleak state of affairs as “the tragedy of criminal justice” (p. 507). Among their narratives, they discuss police lawlessness, racism, courts and partiality, sentence disparity for minorities, and gender bias. They further assert that the criminal justice system is a “system of the privileged, by the privileged, and for
the privileged,” firmly situated within a capitalist culture in which practices of social inequality based on race, gender, and class routinely violate principles of equity. “Ours,” they boldly assert, “is a system where blame for crime and criminality is placed squarely on the shoulders of powerless persons” (p. 523). In part, this explains why police officers, agents, and other criminal justice professionals view themselves as somehow apart from the greater social system—the “we versus them” mentality mentioned earlier—and why their relationship with the huge community of people they are sworn to protect has been adversarial. To add to this predominantly negative portrayal, Baker and Davin conclude their remarks by stating that as a scientific discipline, criminal justice will never find a comfortable home in academia unless it employs the tools and methods to conduct neutral, unbiased searches for truth, wherever it lies (p. 526).

This is a risky statement because any attempt to adequately describe disputatious efforts at truth-seeking is patently flawed from the outset and rarely attempted within the academy. Moreover, despite the fact that the “new science” of chaos theory is influenced by principles originating in French Postmodernism, that have been around for decades, the concept of “Truth” per se (note the capital T) is rejected in favor of evolving, ephemeral tiny knowledges and understandings (little “ts”) that are dynamic, fleeting, and nonlinear, thereby requiring public leaders of strong intellect to remain open-minded, flexible, and adaptable to sudden changes that can have enormous impact on the welfare of their communities and personnel.

With all this said, examinations of crime, deviance, and social conflict resulting from findings in nonlinear analyses are still in their infancy and may never reach a level of respectability in broader academic and professional communities. More importantly, the language and analytical approaches extolled by postmodernists and chaos theorists can be esoteric and abstruse. Indeed, some critics suggest that ideas flowing from them are the erratic, poorly-defended emanations of “liberal left-leaning minds.” Moreover, while quantum-based, nonlinear approaches (such as chaos theory) are on solid footing in the natural or physical sciences, developments in their application to the social sciences are slow and thus far have not been embraced by the multitude of investigators and academics seeking to understand the phenomena of crime and deviance.

In closing, the public relation dilemmas presented in this article, as well as potential strategies for dealing with them, are far from over. As the title suggests, nonlinear approaches to solving social problems may be nothing more than a passing fad, soon to vanish and never again to be resurrected. On the other hand, supporters of the nonlinear approaches argue that we may be witnessing the earliest stages of a paradigm shift in how science will be conducted; stated more boldly, how we analyze human and group behavior may be on the cusp of a worldview change proportional to that of the Copernican Turn. Leading the charge in criminal justice is a growing number of highly regarded criminologists who are seeking to generate conversations within the academy regarding whether or not nonlinear methodologies may become the technique of choice for predicting “tipping points” that can lead to criminal behavior and public disorder, as well as intervention strategies that may prevent or reduce them. Though in the past—even when the stakes were incredibly high—law enforcement executives were rarely asked for their input into how science and theory-building may better serve the public safety
interests of democratic governments at all levels. Now may be a propitious time to invite them to join the conversation.

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The Impact of Technology on Public Perception of Police Effectiveness

Stephen Mallory, PhD, University of Southern Mississippi

Introduction

In today’s world of rapidly developing police science and technology, the public appears to have developed greater expectations from law enforcement. From the 9/11 commission report to media coverage and the “CSI impact,” the public has developed an acute interest in how law enforcement and our government do their jobs. The 9/11 commission’s recommendations presented a 566-page book, which became a *New York Times* best seller. The popularity of television programs, such as *CSI, Law and Order,* and *Court TV* certainly indicates that the public has an incredible interest in law enforcement and may be developing a newfound knowledge of police operations, which will likely result in increased expectations and accountability of law enforcement. Between “real” TV such as *Court TV,* A&E, and History channel programs, and entertainment programs such as the *CSI* series, the public and even defense counsels are asking why something was not done or why a particular type of evidence was not discovered and analyzed.

DNA technology has given a major boost to cold case investigations, and departments have begun collecting not only body fluids from crime scenes but cigarette butts, hats, and any items that may contain skin cells or fingerprints containing DNA. As the volume of drug cases and toxicology cases along with DNA analysis bogs down labs throughout the country, law enforcement agency administrators must find the resources to meet this challenge. Almost any science has become a forensic technology that has some application to solving cases and improving police performance. Other fields (e.g., forensic art, computer science) are becoming more involved in improving police performance. With more and more victims of computer crime including identify theft, the public expects results. The impact of forensic technology advancement and media attention has resulted in an unprecedented growth in forensic programs in many colleges and universities. With a limited number of positions available and the credibility of a number of crime labs being questioned, the quality of graduates must be unquestionable. These programs will become highly competitive, and many may fail. Although the vast majority of work by criminalists is of the highest quality, mistakes are exposed to the public and result in headline stories in the media. These mistakes have resulted in both loss of court cases and public confidence.

A University Model

A program at the University of Mississippi has proven successful in assisting the Mississippi Department of Public Safety in their cold case investigations. Students who are selected based on their academic achievement and interest in homicide investigations are given internships after background checks to review unsolved homicide case files. The eager students have helped reopen a number of cases and suspects have been identified. Most of the cases are given new life based on new technology such as DNA analysis. This program has given both students and
the Department of Public Safety an asset that has been praised by investigators, students, and prosecutors.

**Advanced Technology**

The growth of advanced technology to analyze physical evidence combined with the growth of DNA and fingerprint national databases has resulted in the implementation of cold case units throughout the United States. The February 2005 issue of the *FBI Law Enforcement Bulletin* discussed the process and problems of establishing the cold cases unit (Lord, 2005). As with the University of Mississippi program, this article suggests combining volunteer resources with experienced investigators to improve success and resolve public concerns about unsolved cases. Lord lists the limitations of analysis of old evidence and discusses the need to re-examine evidence using modern technology. The article suggests that jurors are sympathetic to solving cases but have acquired high expectations due to crime programs on television. The article concludes with the statement of the family member of a victim: “As long as I know it’s not shelved and forgotten forever” (Lord, 2005).

In 2004, *Law Enforcement News* reported the development of bioforensics or microbial forensics that can possibly trace biological evidence, such as anthrax, back to the location at which the bacteria was grown or to a particular lab (Trace, 2004). This type of evidence may have distinctive signatures that allow still another tool for investigators to solve complex cases.

Advances in examination of trace evidence, such as glass and paint, have allowed for additional evidence to present to jurors. Works such as *Forensic Examination of Glass and Paint: Analysis and Interpretation* (Caddy, 2001) offer new methods for improving results for trace evidence analysis. *Blood Stain Pattern Analysis* by Tom Bevel and Ross Gardner (2002) provides practical aspects of this type of analysis, which has been described as discipline based on scientific knowledge that can be applied to cases in the field to reconstruct the crime scene.

In addition to forensic technology, intelligence and case management systems have advanced considerably over the past decade. IBIS system, global positioning, geographic profiling, and the application of statistics to processes such as Compstat have improved the managerial aspect of policing but rely upon timely and accurate intelligence. Crime mapping or conducting spatial and temporal analysis has added effectiveness and efficiency to the effort of crime reduction, which is expected by the public (Shane, 2004).

The field of forensics has expanded into areas of engineering, cybertechnology, questioned documents, footwear and tire examinations, anthropology, taphonomy, odontology and toxicology, forensic accounting, psychiatry, pathology, and psychology. The list goes on, and each year brings yet another discipline into the realm of forensics. Even the old fields (e.g., fingerprint and firearms examination) have greatly expanded their ability to produce evidence that solve cases. As late as December of 1997, however, the National Institute of Justice reported that much evidence is not retrieved, submitted to the lab, or analyzed. The report stated that crime labs are not adequately funded or supported, which allow people to get away with murder (Weedn & Hicks, 1997).
Does Forensic Science Have All the Answers?

Too often, the expectations of both the public and police are not possible by means of forensic analysis or examinations. At the same time, forensic science adds considerably to the ability to solve cases, and it must be balanced with professional investigations completed by competent, well trained, equipped, and supervised investigators. The public, police, and prosecutors often rely too heavily on forensic science to solve cases. The uncertainties in the forensic sciences must be known and expected. The examples are numerous when experts can only testify to consistencies rather than categorically positive positions. Complications such as advanced decomposition of human remains may preclude many findings that are without certainty. When a fingerprint is placed on a weapon or at a crime scene, the case cannot be resolved by forensic examination alone. The exact time of death often cannot be determined by forensic pathologists or investigators. The time a weapon was fired or a document produced is most likely unpredictable. The forensic scientist has encountered the uncertainty of time—dating to be a frequent unresolved problem. Public portrayals of forensic science must become more realistic to avoid credibility issues with jurors. The public must be educated about the misperceptions of forensic science, or cases may be lost due to unrealistic expectations. In addition, the perception of effective police work may suffer from these unrealistic expectations.

Forensics: Both Hope and Concern

Along with advances in law enforcement technology comes concerns. The problems with both state and federal forensic laboratories, including the FBI, Houston, Los Angeles, and Washington State Patrols, have been cause for concern for prosecutors. Fingerprints that have been digitized and enhanced may not always be accurate. One expert says that images can eliminate fingerprint characteristics that could exclude a suspect. The FBI suggested increasing the resolution by 500 pixels per inch. Another problem was that programs changed the print’s characteristics without recording those changes. Challenges to digital fingerprinting have been successful in some court cases. The FBI is currently examining the process of latent fingerprint examination. In another forensic area, the FBI has discontinued the practice of data chaining to match bullet fragments. The premise was that every source of lead was unique, which allowed scientists to match bullet fragments of crime scenes with bullets found at a suspect’s home or in his or her possession (Law Enforcement News, May 2005). It is now known that while bullets may have identical composition, they may come from a different box or batch of ammunition.

In the area of DNA analysis, a technique of low-copy DNA analysis has become still another concern of some experts. With a photocopy of a photocopy, some say that DNA analysis can lose accuracy. The technique allows examination of small degraded samples. The National Institute of Justice has awarded a grant to New York City to collect small samples from burglaries or break-ins from hats, saliva, cigarette butts, etc. The forensic scientists in New York do not find problems with the technique and are preceding with the construction of a high-sensitivity forensic biology building to use robots to test 800 samples per day costing $4.4 million per year. Some individuals are concerned that contamination is possible and that DNA of someone who is not involved in the case may be collected due to the super sensitivity of the test (Law Enforcement News, July 2005).
Even the reliable FBI-automated fingerprints IAFIS database has failed on occasion. *Law Enforcement News* reported that serial killer Jeremy Bryan Jones who was wanted for multiple counts of rape, sodomy, and bail-jumping was freed three times in Georgia after the system failed to identify him (Serial Killer, 2005).

In the author’s home state of Mississippi, a drug analyst was arrested for stealing and using illicit drugs. He submitted false reports, which indicated that the drugs were not a controlled substance. Corruption may yet be another concern for the validity of forensic analysis. Inaccurate or false reports surface when an unethical or corrupt scientist engages in this type of activity.

### Prosecutors’, Defense Attorneys’, and Others’ Views and Myths of Forensic Science

The “CSI effect” is real according to both defense attorneys and prosecutors from around the nation. All cases do not have physical evidence, either because of smart criminals or lack of resources and expertise to collect and preserve evidence. According to many attorneys, however, jurors are reluctant to convict without forensic evidence (Stockwell, 2005). Jack King of the National Association of Criminal Defense Lawyers relates that TV shows and DNA analysis raise jurors’ expectations. Police submit anything that could contain DNA, and many labs are overloaded with DNA material. Testing takes days or even months, creating a backlog. Results from Arkansas State Lab often takes more than 12 weeks. In Kentucky, it can take up to one year. As police rely more and more on lab tests such as DNA, crime labs’ backlogs will only worsen with pressure to produce. Forensic scientists are also people who can make mistakes (Conley, 2005). Mississippi is no exception to the backlog problem with DNA scientists leaving the state for better pay and benefits, adding to the problem of backlog.

With 50 million viewers each week, prosecutors are questioning perspective jurors about distinguishing between real-life forensics, which takes time, luck, and money, and television forensics, which solve every crime in 40 minutes. The shows depict many false technologies at the disposal of infallible scientists who are also cops. Portland area prosecutors are asking potential jurors, “Do you watch the TV show *CSI*?” Josh Marquis, Oregon director of the National District Attorney’s Association is concerned about being held to an artificial *CSI* standard. At the least, it is requiring prosecutors to spend time educating the jury pool about why certain tests are not performed; however, some attorneys believe their concerns are exaggerated. Carol Mendelsohn, producer of *CSI*, explains that many jurors have been educated by *CSI*, and their minds are open to forensics instead of being intimidated by advanced technology. Tom Dixson, Director of the Oregon State Police Crime Lab concluded that there is a much higher expectation for forensics than ever before. Juries become skeptical of cases without forensic evidence (Franzen, 2002).

Even accounting has become a tool. With the cases of Enron, World Com, and Sarbanes-Oxley, forensic accounting is in high demand. Tracing assets, discovering fraud, and uncovering questionable accounting practices amounts to billions in losses. The Association of Certified Fraud Examiners estimates that 6% of revenues are lost as a result of fraud (Wolosky, 2004).
It seems the popular success of media coverage and television exposure of forensic technology is a mixed blessing for prosecutors and police. There is unprecedented public interest and respect for forensics, but jurors may have unrealistic expectations.

Surviving family members of victims of violent crime may also have increased expectations of death investigations according to Dr. Patricia McFreeley, a pathologist at the University of New Mexico Health Sciences Center. Even dog handlers, such as Jane Servais, have noticed unrealistic expectations of the ability of dogs to achieve results. There appears to be a tendency to allow technology to obscure common sense (Bowman, 2005).

There are a number of myths that must be dispelled by police and prosecutors:

- One person can examine a wide variety of all types of evidence.
- Evidence can be examined by lab personnel as soon as it is delivered to the lab.
- There is always DNA or fingerprints at crime scenes.
- Trace evidence as well as drugs, blood, and chemicals can be tested quickly and easily.

Dr. Cyril Wecht, MD, JD, is a nationally recognized forensic pathologist who writes that a lack of funding, an insufficient number of trained personnel, and case backlogs result in demands on law enforcement, the public, and prosecutors, which are not being met as they are on the entertaining CSI series (Wecht, 2003).

The author conducted a survey of prosecutors, defense attorneys, judges, and law enforcement personnel to determine whether any impact had occurred in Mississippi regarding the “CSI effect” and unrealistic expectations by the public and/or jurors. The results were mixed. There does appear to be an increase in expectations of science and technology by both the public and potential jurors. Police are expected to apply forensic science and technology to their operations, and jurors do expect forensic evidence in Mississippi. This is consistent with the literature on this issue (see Attachment: “The Impact of Forensics Dramas on Juror Expectation”).

**Recommendations and Conclusions**

The application of science and technology has brought mixed results to law enforcement. There is a new and unprecedented public appreciation and understanding of forensic science and technology; however, public expectations of police and prosecutors can be unrealistic in regards to evidence collected and analyzed. These unrealistic expectations have also surrounded many applications of police procedure and application of advanced technology. Although science and technology have greatly expanded the success of criminal investigations, these advancements are not a panacea for solving crimes or operating an efficient and effective police operation.

Directors and chiefs need to become educated in improving their operations by application of science and technology. Advanced science and technology can allow departments to do many things. The chief or agency director must decide which objectives should be given priority including expenditure of funds for science
and technology. They do not have to be scientists but must educate themselves by means of conferences and demonstrations as to what is possible, network with other agencies, and listen to their people about what they need in order to do a better job. Administrators must support technology that improves public order and police response to the public. They must allocate resources necessary for improved performance by applying modern science and technology. Administrators should not delegate this responsibility to their technology unit or commanders. Gordon Wasserman, a consultant specializing in scientific and technological support, reaches similar conclusions and cited research that revealed that companies in which the CEO did not have personal interest in science and technology and delegated responsibility to subordinates failed to achieve competitive advantage (Wasserman, 2005). Perhaps an additional impact of public interest in science and technology will be a new emphasis by police administrators on science and technology to improve performance: training of personnel, equipment to improve crime scene processing, additional resources and support for crime labs, and implementation of processes such as Compstat and traffic control systems that employ cutting edge science and technology. The outcome of the extensive media coverage and attention to science and technology appears to have raised the bar on public expectations of police performance. This may well be an impetus to more efficient and effective law enforcement by application of modern science and technology.

References


Attachment

The Impact of Forensics Dramas on Juror Expectation

By Dr. C. Baron Irvin
For Dr. Stephen Mallory

Feedback on Survey

Questions

1. Area of practice
2. Location in the state
3. Do jurors expect more forensics today based on the level of television shows focusing on this area?
4. What impact have technology (forensics-based) dramas had on the levels of expectation on police work?

Findings

I contacted 20 defense attorneys from around the state. The response rate was 50%. Out of the ten successful responses to my telephone interview, the participants in this survey were all defense attorneys. Four of the participants were located in Jackson, Hinds County; one participant from Greenwood, Leflore County; one participant from Brandon, Rankin; and four participants from Hattiesburg, Forrest County.

The overall majority (80%) felt that the forensics shows do have measurable impact on jurors. The second majority response was that there are heightened expectations placed on police to produce more forensic evidence and solve more crimes, which places a burden on the state.

The following are some of the more detailed responses that were given by the individuals that participated in the telephone survey:

“The public has grown to demand more DNA evidence, more fingerprint evidence, and 100% accuracy when presenting this evidence at trial.” Jackson, Defense Attorney (at the time of this interview, he wished to remain anonymous; however, he did state that he was interrupted by the survey from finishing a death penalty brief that hit on some forensics issues.)

“Forensics shows create the perception that there is a substantial amount of forensic evidence that should be presented in every case; however, these shows have created unrealistic expectations for real-world jurors. It is unrealistic for the public to expect forensic evidence in every case (especially the average cases that make up the majority of the court docket). The state must begin to speak about this in their voir dire or opening.” Greenwood, Defense Attorney

“Jurors expect more all the way around (based on those shows such as Law and Order). Police are expected to produce significantly more because the public sees more.” Jackson, Defense Attorney
“All of my friends who have served on juries, talk about how the real trial is nothing like those shows and they wanted to see more forensic evidence but didn’t.” Paralegal, Rankin County

“Yes and No. Forensics shows are not the only reason jurors expect more fireworks in the courtroom. Shows such as Law and Order, coupled with high-profile trials make them want more when they serve. I do not see any effect that shows have on police expectations. I do think that with measurable increases in education and economic factors, jurors expect the state to put on a better case than before, but it is not due to shows.” Hattiesburg, Defense Attorney

“Yes. There are raised expectations, which place a high burden on the state to prove its case.” Hattiesburg, Defense Attorney
The Police/Media Relationship: Lessening the Anxiety

Terry M. Mors, PhD, Associate Professor, Department of Law Enforcement and Justice Administration, Western Illinois University

The police/media relationship is just that, a relationship. As with any relationship, success depends upon honesty, trust, and effective communication. Trust is something that is developed over time and through numerous interactions. Any relationship requires hard work, compromise, listening, and understanding. All relationships are two-way interactions, and both parties must be sensitive to the other’s needs. Anything short of that will surely breed animosity, distrust, or contempt. Successful relationships are those in which both parties are cognizant of each other’s position and needs.

Many police officers and administrators are fearful or reluctant to communicate with the media. Part of that fear may be warranted based upon past negative experiences; however, that fear is usually unjustified and unfounded. Police officers are often instructed not to speak to the media. There is an inherent distrust of the media on the part of many police, despite never having had any interaction with the media. Police fear of the media includes fear of being misquoted or taken out of context, fear of being reprimanded or disciplined for something said, or fear of being wrong. What police often fail to realize, however, is that they have control over what is said and to whom. So there should be no reason to fear the media.

With regards to control over what is said and to whom, police must realize that there is no such thing as an “off the record” comment. Anything police say is subject to appear in the media. If there is something that police do not want disseminated to the media, then they should not pass it along to the media; however, this is where trust, respect, and rapport come into play. If the police and the media have a positive and trusting relationship, then the media may respect the “off the record” request. If that request is not honored, however, police personnel should not be upset or place blame elsewhere. The rule of thumb is to never say anything that is not meant to repeated or printed.

The first thing to realize is that both sides have jobs to do. All too often, police and media are only cognizant of their own needs. Police often see the media as a barrier to an investigation. When major incidents occur, it is newsworthy, and the media will report on them. Police administrators need to realize that. If the information given to the media is erroneous, then so too will be the media report. What the media does not know, they may speculate.

As soon as possible, an authorized police spokesperson should hold a press conference to brief the media. That person should be someone who has been granted the authority to speak on behalf of the top police administrator. During that press conference, the police spokesperson should give the media all possible information without jeopardizing the investigation. There may be times when the police do not want to disseminate any information for a variety of reasons. That is perfectly acceptable, but the police spokesperson should avoid “no comment” responses.
The police spokesperson should inform the media of why the information is not being disseminated so that they understand. Even though that might not be the answer the media wanted to hear, it will be much more palatable if accompanied by an explanation.

The police spokesperson should allow time after the delivery of the press release for questions from the media. That question-and-answer period is often very traumatic for police personnel. There is often a fear that the police spokesperson will not know the answer or may be forced to answer a question that will have a negative impact on either the investigation or the spokesperson. Police personnel have been made to look foolish by a reporters’ questions. That is less likely to happen if there has been a positive relationship established prior to that point. Reporters know that if they burn their bridges with a police agency that they will likely not receive much needed information in the future. The police spokesperson should anticipate what will be asked and prepare possible responses in advance. In the even that the spokesperson does not know the answer to a question, there is no shame in saying that he or she does not know. They should, however, follow up by stating that they will try to get an answer to that question and then get back to the reporter with the appropriate response. That will go a long way towards developing trust and respect with the media.

The police and media often have different perceptions of what information can and should be released. The media is working for the readers and will most likely ask questions for which readers will want answers. The police, on the other hand, are working for victims and do not want to release information that may jeopardize the case. In fact, police should be careful about what information is released, especially in high-profile cases. Releasing too much information can also jeopardize the prosecution. Excessive pretrial publicity may make it difficult to impanel a jury and result in a change of venue.

Instead of looking at interactions with the media as a negative experience, police personnel should view them as a positive experience. Each interaction with the media is a chance for police to build rapport and trust. It is also an opportunity for the police to promote their programs. Often, the public, media included, are not aware of all of the positive programs the police offer. Each time the police engage with the media, they should try to take advantage of the opportunity by promoting their agency and their programs. The media can be a friend but only if a positive relationship exists. For example, the media is often called upon by police to broadcast a plea for help with information about crimes or hit-and-run accidents. If the relationship is positive, the media will be more likely to cooperate.

The key to a successful press conference is to be prepared. The police spokesperson should never make off-the-cuff comments about the incident. It is important to have all of the facts and as much information as possible. Many a police spokesperson has become flustered due to not being properly prepared. A well-prepared press release will alleviate that. The spokesperson should also be cognizant of local hot topics. It is likely that reporters will stray from the subject and try to engage the police officer in a conversation about some other topic. The spokesperson should keep the conversation focused and on track. If a reporter tries to take the press conference in a different direction, the spokesperson should politely remind the media of why they are present and move the conversation back to the topic at hand.
Usually the police do not have much information at the onset of an incident; therefore, they may not be able to disseminate information to the media because they quite simply may not know. In such cases, the police spokesperson should hold a press conference and explain that the case is under investigation and that police do not have more information to release at that time. Then, the spokesperson should announce that police will hold regular press conferences as more information becomes available. The spokesperson should give the media a date and time when the next press conference is to be held and then follow through on that commitment. Media members present should also be instructed to leave a business card and informed that they will be supplied with a written press update via fax or e-mail in the event that they cannot be present for the next scheduled press conference.

The media cannot be prohibited from reporting what they can observe, nor can they be stopped from taking photographs or videotaping. With advances in technology and powerful zoom lenses, the media can capture photos and video from incredible distances. As the saying goes, a picture is worth a thousand words. Photographs and video do not discriminate. They capture the good as well as the bad, so if officers are acting inappropriately, or less than professional, that may be recorded. The best practice is to always act appropriately. It is not just the media that may be taking photographs or video. Private citizens have been known to capture incidents on video. Mr. George Holliday captured the beating of Rodney King by Los Angeles Police and changed the paradigm of many police administrators.

Video and still photographs are powerful and moving media tools. Television news media use video to supplement and enhance news stories. Since the media has a right to tape from any place they have a legal right to be, building a good rapport with the media is crucial. For example, most media will tape a homicide victim being removed from the crime scene if possible. There may be times when police do not want the media to tape that, such as in the case of high-profile victims, child victims, grossly disfigured victims, and in cases in which the next of kin has not yet been notified. If the police agency has a good rapport with the media, they can ask them not to video the removal of the body. If that trust and rapport is there, the media will usually comply. Compromises can also be made in which police can ask or regulate what the media can and cannot tape. If there is a good relationship between the two, those compromises will usually be honored. If that relationship is negative, the media will most likely ignore the wishes of the police agency and film whatever they wish.

Even though the media may have a right to be at the scene, they do not have a right, or the authority, to cross a police barricade or interfere with a police investigation.

Unless specifically informed of acceptable locations, however, the media may try to go to unwanted areas. Police should establish an area where the media can stage. That serves a multitude of purposes. First, it provides a predetermined location for media vehicles to park. That may alleviate parking problems and traffic congestion. A centralized location also provides a good location for police to provide all media with regular updates. Finally, it affords the media with a base of operations from which to operate.
It is the responsibility of the top law enforcement official to establish and maintain a positive working relationship with the media. Every police agency should have a policy regarding dealing with the media. The policy should include who should speak to the media, when, what should be disseminated, and how the media should be treated in terms of logistics. The following key points should be considered when developing a media relations policy:

- Try to work with the media, not against them (establish rapport).
- Establish or identify a public information officer (i.e., department spokesperson).
- Give the media something so they can do their job. (If you do not, they may make it up.)
- Tell the media only what you can without jeopardizing the investigation.
- Do not give out victims’ names until the next of kin has been notified.
- Hold a briefing or news conference, and give regular updates.
- The media cannot be prohibited from reporting what they can observe, nor can they be stopped from video-taping. (Establishing a good rapport will help.)
- The media does not have a right to bypass police barricades or enter private property (including crime scenes) without permission.
- Tell the media where they can set up. (Set aside a place for the media to stage.)

Dealing with the media can be a stressful experience, but it does not have to be. Police testify in court and face the stress of being questioned by prosecutors and defense attorneys. The principles employed in dealing with the media are similar to those in providing courtroom testimony. The first step is to be prepared. Secondly, police spokespersons should anticipate what will be asked of them and ready a response. There is no shame in not knowing the answer to a question. The shame comes in speculating or making up a response when the answer is unknown. The media are simply doing a job. Their job is to gather information and report on incidents. Their job is not to make the police appear foolish. So there is no need to fear the media. In fact, a healthy and positive police media relationship can actually enhance the image of the police department. Police should view interactions with the media as a positive chance to promote their agency. If the relationship between the two sides is a good one, it will be a positive experience for both and a win/win situational for all.

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Understanding the Public Policy Cycle: A Review for Law Enforcement Executives

Andrew M. Peters, Patrol Sergeant, LaGrange Police Department

Municipal, county, state, and federal organizations are all impacted by public policy that is created by politicians in the best interest of the communities they represent. They are also impacted by the internal policy implemented to better manage resources and create consistency in providing effective services to those same communities. It is important for police executives not only to understand the policy cycle but to comprehend the role they play in the development, implementation, and evaluation of public policy and the impact they can make on its effectiveness.

Police executives must first realize how public policy is defined, what the overall goal of public policy is, and what types of public policy exist. Although there are many variations on the definition of public policy, all include either the idea of course setting or defining the intentions of a governmental organization. Public policy is expressed as legislation, judicial decisions, executive orders, and administrative rules and regulations. McKinney and Howard (1998) simply describe policy as a group of ideals that guide an organization’s action; these actions should always be to the advantage of the community. The goal of policy, therefore, is not to decrease liability, control employees, or quiet outraged vocal community leaders or groups but to increase the entire community’s quality of life. Several models of public policy are used to achieve this goal. The rational comprehensive model is used to determine the best solution through scientifically measured data, is value free, and assumes any and all available options for policy development. Incremental policy inherently uses small steps or changes in policy to achieve long-term change and is much more likely to gain favor of all participants in policy development. In the garbage can model, government is organized chaos and is defined by unclear technologies, problematic preferences, participants that move in and out of the process, and random influences. All models have advantages and disadvantages and often morph or become intertwined to suit the needs of the organization and the community they serve. Knowing the models and understanding the public policy cycle will help police executives to create and recognize good policy that provides the greatest efficiency and equity to all participants in the policy process.

This review of the policy cycle will include application of the theory discussed to the most significant public policy of recent years for police administrators, Public Act 93-0209, Racial Profiling. The policy cycle is generally broken up into five phases: (1) Problem Recognition, (2) Agenda Setting, (3) Decision Making, (4) Implementation, and (5) Evaluation, leading to feedback communicated to the policy developers for changes and/or improvement if needed (See Figure: Policy Cycle). The first step in policy development is problem recognition. Problems for police administrators that lead to policy cover a spectrum of issues that include, but are not limited to, improper use of the Internet, vehicle pursuits, and racial profiling. The racial profiling controversy grew out of a misuse of power involving the way in which officers/departments targeted specific ethnic groups when conducting traffic
enforcement. The incidents gained national attention and became the platform of many political figures on their way to election. With the problem defined, the process moves into the agenda setting phase. Agenda setting defines the process participants, includes alternative development, and is the most politically charged part of policy development. The obvious participants in agenda setting are politicians, interest groups, constituents, citizens, high and mid-level government managers, and the media. The media has a significant global impact in today's society. The media gives time to the politicians to espouse their agendas in both print and television. They can also prompt the public to demand action on any given topic through extensive news coverage, special interest stories, and/or editorials; this was the case with the racial profiling issue. Problems, policies, and politics are three kinds of processes that influence agenda setting and specification of alternatives (Kingdon, 2004). With the profiling scenario, the practice of using ethnicity as a determining factor for traffic stops was clearly the problem that put the issue on everyone's agenda. Solutions to the problem were discussed in the Illinois legislature, and the use of stop cards was implemented in an effort to curtail profiling on traffic stops. That leaves the political side of the agenda setting process to discuss. The effect politics have on agendas and decisions was also addressed in Deborah Stone's (2004) article, “Policy Paradox: The Art of Political Decision Making.” Stone states that the struggle over ideas is the essence of policy making in the political setting. The process includes the paradox because everyone involved has a different agenda and a different proposed solution to resolve the problem. Stone infers that even if you do not get what you want, politically you may still gain a victory.

Analysis of opposing views, theoretical approaches, and experience should be used to create a formal preparation of policy to increase its effectiveness (McKinney & Howard, 1998). Lyndon Johnson's administration first used formal “proposals” to express and define new ideas in policy development, and other presidents that followed him adopted and expanded on this process. It is an effective means of policy development at any level of government and helps create policy that achieves its goals best. According to McKinney and Howard, a proposal should include the following:

- Brief description of the idea
- Identification of the problem
- Proposal's relationship to ongoing programs and/or policy
- Suggested courses of action
- Review of the pros and cons of the alternatives
- Estimate of the ability to sustain the program or policy
- Identification of any groups that might oppose or concur with the policy that could impede or expedite the implementation process
A decision must be made after the agendas and possible solutions have been presented, and it should be based on efficiency and equality within the community and organization. Legislative decisions often require a compromise, and sometimes the compromise does not always fit with the original problem. In the profiling scenario, there were three major players in the creation of alternatives to resolve the problem: (1) state representatives, (2) law enforcement community, and (3) activist groups. Each group had a vested interest in the resolution of the problem and presented arguments to meet their constituents’ needs. The politicians either ran an election on the platform of reform or served a district heavily populated by the ethnic groups that would be significantly affected by the new policy. The law enforcement community, as represented by the Illinois Chiefs of Police Association, was more concerned with implementation and responsibility in compiling data issues. The activists, on behalf of the ethnic groups, wanted to mandate fair and equal conduct by officers and the means to review data that shows disproportionate activity toward ethnic groups. The paradox can be found in the concession on another piece of legislation regarding the use of seatbelts while operating a motor vehicle. For years, the law enforcement community had been attempting to amend seatbelt law to include it as a primary cause for a stop, changing it from a citable secondary offense. Each effort was rejected on its face value because it gave officers too broad of power to make stops, yet the legislature conceded and voted to allow seatbelt violations to be a primary stop offence during the same time the racial profiling act was developed. The paradox of course, as Stone would see it, is the fact that the power to make a traffic stop was greatly increased despite the concern over who is being stopped and why they are being stopped. The people gained legislation that provides them with a sense of security.
or protection from unfair bias with regard to being stopped for traffic offenses. The legislators look as if they have fulfilled their agendas and provided better service to the public. In essence, the legislator increased the ability of police to stop citizens just so they could record the stops and analyze the data based on race. It seems to suggest, as does Stone (2004), “that (essential political concepts) have contradictory meanings that by formal logic ought to be mutually exclusive but by political logic are not” (p. 576). Despite the common paradox with political decisionmaking, a decision has to be made and that decision must be carried out or implemented.

Implementation is a vital phase of the policy cycle and should be intertwined with goal attainment. It is also a complex step, in which the burden is generally placed on the shoulders of the managers and administrators charged with ensuring the policy’s success. Implementation is the who, what, where, and how of the public policy cycle. It defines who can benefit from the policy and provides the policy objectives, how the policy is or is not being met, and the most effective way to achieve the policy’s goals. Even when legislation policy is inadequately designed, administrators and mid-level managers must use their discretionary powers in conjunction with the effected community to shape the determining policy (McKinney & Howard, 1998). In the application of theory to the profiling scenario, the resulting piece of legislation, Illinois Public Act 93-0209, mandated the data collection on all traffic stops whether a citation was issued or not. The Act also entrusted the Department of Transportation to compile the data collected annually every July 1 until 2008 and analyze it for evidence of statistically significant aberrations. Other mandates required by the Act include the following:

- The officer will determine race without asking the driver.
- Racial sensitivity training is required for all local and state officers.
- The Illinois Vehicle Code will be enforced in a uniform, nondiscriminatory manner.
- The burden of all costs incurred shall be the responsibility of the department and not the State. Implementation in this example has been clearly defined, and little was left for mid-level managers to interpret. The goal is to prevent the improper use of ethnicity as a precursor for traffic stops, and the objective is to record the race of a person an officer stops and for what offenses, using the data to identify any significant abuse.

Implementation is frequently referred to as a process of interface between the setting of goals and procedures used achieving them (Pressman & Wildavsky, 2004, p. 341). The goals will address the problem and steps to correct the problem, and the alternative selected directs those implementing the policy on how it should be corrected. Public policy is in essence a theory that addresses a chain of events to rectify a problem, whether perceived or actual. If the objectives are not met, it is not always due to the implementation of the policy because many factors can influence the attainment of the policy objectives. The implementation process can be reviewed from the top-down, bottom-up, or throughout its evolution. Using the top-down theory of implementation is hierarchal in nature, can promote one-way communication, and can lead to minimization of the role of the lower level worker. It provides mid-level managers and administrators maximum control of policy inputs and outputs. The bottom-up theory increases communication up the chain of command but is dependent on quality street-level bureaucrats to accurately describe the effects of the policy and prescribe alternate courses of action. Street-level bureaucrats are often focused on the attainment of the objective while administrators are focused on budget
and efficiency concerns. The evolution theory of implementation recognizes that the environment, attitude, and participants can change throughout the process and accepts that the goals should change, too. Expectations and standards for efficient, quality work would be unknown or unfamiliar to front-line employees and may change at any given point during the implementation process. Such an organization could be costly and cause intense animosity in the front-line employees due to the constant revamping of the policy. Regardless of which theory applies, the most effective leaders will gain the most buy-in during the implementation of new policy. Low morale, ineffective leadership, existing subcultures, and unattainable goal setting can have a negative influence on the process of implementation at all levels of policy development. Other policy failures occur due to improper implementation, poor policy design, and unintended side effects or design outcomes. The key, of course, is to have the ability to recognize problems with policy implementation and make changes through the evaluation process.

Evaluation determines whether or not the policy and implementation process is effective and efficient and promotes equality. Evaluation is important because it increases the accountability of a policy and helps to determine whether a policy should continue, expand, or disband. It indicates efficiency; it examines the issues of cost versus quality and productivity; and it determines whether the goal or objective of the policy is being achieved. The two most common types of policy evaluation are summative and formative, which determine where in the process evaluation occurs. A summative evaluation takes place at the end of the policy cycle and produces feedback that helps determine whether the policy was successful. A formative evaluation, much like the evolution theory of implementation, is continual and occurs during the entire process of the policy cycle. It, too, determines the effectiveness but provides a means to adjust the policy if problems and/or successes indicate the need for redesign. Within these two types of evaluation, there must also be a determination of impact versus process of the policy. An impact study is a review of data that either confirms or denies the notion that the policy has met its stated objective. A process evaluation assesses whether the method of implementation, if improved, can make the policy more effective and efficient. Other elements of the evaluation process include selection, determination of the subject of study and analysis; execution; creation of research design, data collection techniques, and communication methods; and identification of who receives reports and the manner in which they are disseminated. Obstacles that administrators may encounter during the evaluation stage include conflicts in perspectives of the program data between the evaluator and program administrators, unclear purpose of the policy, lack of political knowledge of evaluator, unclear roles in measuring, and insufficient skill and motivation of the evaluator.

The application of this evaluation theory to the Racial Profiling Act illustrates that those setting the agenda had some understanding of how critical the collection and interpretation of data would be. The act implies a summative evaluation that will review data on an annual basis and study the impact of race as a determining factor for traffic stops, the reason for the stop, and the result of the stop. The use of the stop card defines the execution and data collection procedure and communicates that data to the Illinois Department of Transportation for compiling purposes. The area of the Racial Profiling Act that poses the most significant problem, especially for police administrators is a conflict of perspective—more specifically, the perspective of those interested in the data and the lack of political knowledge of the data collected. Issues such as using city/village population versus county or state population data to determine a statistically significant
disproportionate number of minority stops, searches, and arrests can greatly influence the interpretation by the policy participants. The perspective conflict has created a phenomenon, encouraging police departments to interpret their own data to influence the perception of politicians and community. The Act also does very little to identify a course of action if a disparity is discovered, which places the administrator and the affected community in the position to shape and determine the policy. With the policy cycle complete, the necessary information returns to the initial role players in the agenda setting phase to begin the process again. There will always be a need for public policy and a need for police executives to be active participants in the public policy cycle.

The theories of policy, implementation, and evaluation are important to the police executives because it can help them become more qualified, active participants in public policy. Agenda and alternative setting guide the creation of policy and generally are a direct result of a problem, perceived or real, of political concern. The development of the alternatives involves the policy paradox, or a “tit for tat” element, that sometimes results in not getting the result you want but still being able to qualify the result as a victory. The implementation of policy reflects its goals and objectives and is an important factor in whether the policy is effective or not, but it is not the sole factor in the determination. After implementation occurs, evaluation of the policy’s effectiveness is completed. Through the evaluation process, an assessment of the policy’s effectiveness and efficiency needs to be completed and changes made as necessary. The creation and development of good policy is a role all police administrators should relish because a better understanding of policy, implementation, and evaluation can only result in more efficient, effective, higher quality service that will benefit the community and the constituents the policy serves.

References


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Police and Drug Courts: How Are They to Be Reconciled?

Charles G. Reynard, Circuit Judge, Eleventh Judicial Circuit of Illinois

The antagonism between law enforcement and the courts to whom they send arrested persons to be charged and prosecuted seems ingrained in the DNA of police officers, prosecutors, defenders, and judges. It is an antagonism that is sanctioned and supported by history and tradition. Sometimes it seems that the parties to these adverse relations are almost dependent on this negativity; perhaps they need someone to blame when the system breaks down. Anyone who has been involved in the criminal justice system for any length of time knows that its breakdowns are frequent, that it is often more chaotic than systematic, and that its frustrations are authentic for victims of crime and other nonprofessionals caught in its workings. The professionals, whether police, attorneys for either side, or judges, may well perceive the need to have a ready scapegoat when the critics start looking for someone to blame.

As a former prosecutor and defense attorney, I know this syndrome to be real. In either role, I have been guilty of too quickly blaming the police work in order to minimize or distract from the issue of whether I could have been more effective as an attorney. I have heard the smoldering anger of police officers, in training sessions, for example, when they bitterly blame the prosecutor, defense attorney, or the judge for the way they handled an issue. If evidence is suppressed, who is at fault? The police officer who navigated the complex terrain of constitutional law in split seconds at the scene of a traffic stop? The prosecutor who should have advised the officers better or helped them during training efforts to better prepare for such situations? The defense attorney who shouldn’t be schooling his or her client to say what needs to be said in order to invoke some technicality under the law? Or the judge who lives in an ivory tower and doesn’t understand the realities of law enforcement? The truth is that all of these individuals share responsibility for untoward outcomes in the criminal justice process, yet the blame game will continue. Perhaps it is counter-intuitive for adversaries in the adversarial system of justice to think in terms of partnership, or perhaps even partners find it easier to blame each other than to take personal responsibility.

It is similarly counter-intuitive to see police and criminals, as well as prosecutors, defenders, and judges on the same team, working for the same goal, yet that is the role and vision of drug courts. “Drug courts are one of the most significant criminal justice system initiatives in the past 20 years,” according to John Walters, Director of the Office of National Drug Control Policy (Walters, 2005). Over the past 16 years, the number of operational drug courts in the United States has grown exponentially to 1,621 in 2004, up 37% from the previous year (1,183). There was only one such court in 1989 and 1990 (Huddleston, Freeman-Wilson, Marlowe, & Roussell, 2005). There are currently six operational drug courts in Illinois, and the Eleventh Judicial Circuit of Illinois (Ford, Livingston, Logan, McLean, and Woodford Counties) is considering starting a drug court program.
There are numerous barriers to starting such a program. Probably the most significant barrier is the failure to recognize what drug courts represent. “Drug courts represent the coordinated efforts of the judiciary, prosecution, defense bar, probation, law enforcement, treatment, mental health, social services, and child protection services to actively and forcefully intervene and break the cycle of substance abuse, addiction, and crime” (Huddleston et al., 2005). One of the manifestations of failing to recognize this mission and the coordination required to achieve it is the notion that drug court is “just another boutique court.” Indeed, 10 years ago, our jurisdiction sent a team consisting of a police officer, prosecutor, defender, judge, and probation officer to a drug court planning grant conference. The team came back energized and ready to start a drug court. They were met with skepticism, principally from our judges who thought the idea was “nice” but that we didn’t have the judicial resources to place in various specialty (“boutique” was one of the terms derisively used) courts. According to one judge at the time of the proposal, “If we start a drug court, then we will have to start a DUI court, a domestic violence court, and a disorderly conduct court! Where will it end?” The idea died for want of commitment.

Many are now recognizing, however, that there is no other justice strategy that has experienced so much success, with results that rigorous scientific inquiry has validated. Researchers, over the past 15 years, have concluded that drug courts provide “closer, more comprehensive supervision and much more frequent drug testing and monitoring during the program than other forms of community supervision. More importantly, drug use and criminal behavior are substantially reduced while offenders are participating in drug court” (Belenko, 1998; 2001). Another research team said, “We know that drug courts outperform virtually all other strategies that have been attempted for drug-involved offenders . . .” (Marlow, DeMatteo, & Festinger, 2003).

Many barriers persist. They reside in misperceptions about drug court. Several of these notions are shared by police and explain why law enforcement is reluctant to embrace drug court. The familiar saying is “Perception is reality.” If someone perceives or thinks one thing, even if it is false, that view will filter or cloud how that person relates to the truth. Indeed, the false perception “becomes” the prevailing truth. What are the negative perceptions that many, including police, have about drug courts?

The perception that drug court is soft on crime may be the most significant misperception, preventing police from fully partnering with this growing movement. The notion that drug court coddles criminals and fails to measure up as real punishment is a perception based on the association of punishment with crime. “If you can’t do the time, don’t do the crime.” If real punishment is not imposed on criminals who are apprehended by the police, they won’t get this time-honored message. Law enforcement then worries that the criminals will lose their healthy fear of police and more likely regard them as jokes spinning in the revolving door of the courthouse.

As a partial solution for this misperceived reality, law enforcement executives should add drug court to the community policing curriculum and provide inservice training for established officers. “Moreover, educating new officers in the academy frequently is suggested as a highly effective way to generate interest and enthusiasm
in the drug court concept” (Freeman-Wilson, Herriott, Prather, & Weinstein, 2003). In several jurisdictions, drug liaison officers produced a videotape curriculum to explain the concept to line officers.

Related to the “soft on crime” perception is the notion that drug courts will try to turn police officers into social workers. One chief said, “We know how to put people in jail. We do that well” (Huddleston et al., 2005). In fact, social work skills are among the various skills that officers can use to build public safety values in their communities. Judges, for example, find that law enforcement makes major contributions to the functioning of a drug court. When officers’ investigation distinguishes the addicts from the dealers, they contribute to the gate-keeping function of the drug court. Courts know that police officers are the best sources because they work the streets and produce reliable information.

A third misperception is that drug court admits the wrong people and, as a consequence, puts violent criminals and drug pushers back on the streets. If the drug court program does not have clearly identified standards for eligibility, this fear could be valid; however, the effective programs generally limit eligibility to nonviolent offenders. When law enforcement is involved in the planning stages of the program and when their investigative data is systematically sought during implementation, it ensures that police have a say in who should or should not be admitted to the program.

In effective programs, officers are key members of the staffing process. The team members confer about the progress or problems concerning the offenders, share information from each discipline’s representatives, and reach a collaborative decision about how the court should respond to the particular case. This provides critical information making the efforts of the judge meaningful and effective. This information helps the judge decide whether to verbally encourage the participant due to success at remaining drug-free or whether to chastise, reward, or jail.

The idea of drug court also energizes a destructive sense of “turf consciousness,” resulting in team members arguing about whether their right to conduct business as usual is under attack. For example, undercover drug unit officers may feel threatened that they may lose their confidential informants to drug court. Treatment providers may be advising their client, the participant offender, not to reveal information to police because it might add to his or her problems. In reality, with a commitment from each agency to find a “win-win” approach to these imagined difficulties, it is my experience that police investigators wind up with more intelligence rather than less, and treatment providers are more effective with their clients because their positions become more secure in the court context. When prosecutors, police, probation, and treatment collaborate, their partnerships can also result in identifying grant resources to solidify their efforts.

A traditional perception is that drug relapse behavior is not punished in drug court programs. This notion depreciates the respect and trust that law enforcement ought to otherwise have for the drug court partnership. Once again, the key is educating everyone to the reality that drug relapse is not shocking but expected. The nature of addiction and recovery has never reflected the linear expectation that recovery from addiction can take place overnight by the simple operation of the addict’s free will. Furthermore, this reality contemplates that simply because relapse is expected,
it should not be tolerated. Relapse requires sanctions and effective programs that employ graduated sanctions, such as short-term incarceration (possibly on a work release basis), daily reporting to probation or the court, house checks, and various other consequences. In contrast to normal court response time, drug courts respond expeditiously. In some cases, the relapsing offender is presented to the judge the same day or week as the relapse event. The sanctions are imposed deliberately but swiftly. By understanding the nature of addiction and the addict’s need for swift consequences, we can demonstrate that in addition to being “tough on crime,” we can be “smart on crime” as circumstances require.

Law enforcement’s perception that treatment is often an escape from consequences has historically validated antecedents. When an offender has been sentenced to probation with a condition of treatment, too frequently the timelines for compliance with such conditions have been too relaxed and essentially unenforced. Effective drug courts turn the compliance expectations around completely. The frequency of court intervention (e.g., weekly or daily visits to the judge in high-risk cases) ensures that drug court is more difficult for offenders than incarceration. It has been my experience that savvy offenders who have no intention of changing their ways will choose to be sentenced to the penitentiary rather than sentenced to probation attended by vigorous and intense supervision. In the words of one judge, “Probation is ten times easier than drug court. If they choose drug court and fail, they’re going to be facing time because there is no judge that’s going to put them on less intense supervision” (Huddleston et al., 2005).

The key to drug court success is that barriers of distrust among the various disciplines be addressed by creative problem solving and the development of strong partnerships with the law enforcement and court communities. Motivation for this developmental process sometimes flags when the myths and misperceptions seem to prevail; however, enduring motivation to accept nothing less than success in developing an effective drug court collaboration can be found by looking into the next generation.

You don’t have to be a doctor to know that consumption of illicit drugs during pregnancy is a serious threat to a fetus. Research has shown that such consumption, particularly of cocaine and opiates, is highly associated with complications during delivery, risk of infections transmitted from mother to fetus, and constriction of blood flow and oxygen to the fetus (Lester et al., 2003). Newborns may be physically addicted to drugs and suffer withdrawal symptoms. Long-term problems are virtually certain and exceptionally costly for society, including its law enforcement resources.

Thus, it is enormously heartening to observe that in 2004, a total of 460 drug-free babies were reported to have been born to active female drug court clients. This number did not include drug-free children born to male participants or program graduates, male or female; therefore, the number of children born drug-free as a result of drug court intervention may be much larger (Huddleston et al., 2005). The generational influence of this kind of collaborative problem solving by police and courts is unmistakably hopeful.

In our county 10 years ago, we missed an opportunity to take this message and build public safety values into the fabric of our community’s future. We will not miss
that opportunity this time. By demystifying these facts, we will be able to glue our front line public safety efforts (our community policing vision) to our court system’s enlightened efforts and thereby produce enduring and positive outcomes.

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References


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TASER and Less Lethal Weapons: An Exploratory Analysis of Deployments and Effectiveness

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Introduction

Contact between citizens and law enforcement officers is the heart of policing. Numerous reasons exist for a citizen and an officer to come into contact, and in some of those cases, it may become necessary at some point for the law enforcement officer to detail, take into custody, or affect an arrest of the citizen. When that occurs, officers are sometimes required to use the training and equipment provided to them by their agencies.

In this time of community-oriented policing, the use of less-lethal technologies is clearly the most socially acceptable and humane means to maintain peace, law, and order. In the event that less lethal technology is used and an injury results, the most socially acceptable and humane type of injury would be the one that is the least severe. While being concerned with suspect and officer injuries, however, another major concern is the effectiveness of the less lethal weapons system from the perspective of the beat officer. To date, the majority of literature has offered little analysis of the various types of less lethal weapons available to law enforcement.

The overriding problem with the selection of appropriate less lethal weapons is a general lack of research examining their effectiveness. Studies examining the effectiveness of a particular less lethal weapons system are most often generated by the product’s manufacturer. Thus, law enforcement agencies are required to rely on factory data, specification sheets, and company marketing in order to make the critical decision as to which system to adopt. The manufacturers can easily manipulate this information for their own direct benefit. This article seeks to examine the extant literature on use of force as a framing reference for the sections that follow examining a number of less lethal weapons.

Literature Review

The academic community to date has not examined the effectiveness of less lethal weapons systems at the officer level where use-of-force encounters generally occur; however, the scholarly literature on police use of force is extensive. A search of the extant literature found that most researchers focus on discriminatory abuses of force, excessive force, and wrongly applied deadly force. In addition, a number of articles examined police officer misconduct and officer deviance. Of interest in this article
are distinctions between deadly and non-deadly force, or less lethal force that can exert control over but not kill or significantly injure a person.

Generally, police force can be classified into several modal categories. In the past, the general categories used to describe force have been deadly vs. non-deadly, physical vs. non-physical, reasonable vs. excessive, and extralegal vs. unnecessary. Generally, deadly force is defined as force that is likely to cause death or serious bodily harm. Conversely, non-deadly force is not likely to result in death or serious bodily harm (Pate & Fridell, 1993).

Bittner (1970) and others claim that the capacity to use non-negotiable coercive force is at the core of the police role in society (Reiss, 1971; Scharf & Binder, 1983; Sherman, 1980; Walker & Fridell, 1993). So basic is the element of force to the police, that Langworthy and Travis (1994) claim that the reason we call the police is based on the belief that force may be necessary.

More recently, Terrill (2005) has utilized a transactional approach to examine officer’s uses of force and suspect resistance during the law enforcement citizen encounter. In this study, Terrill examines the law enforcement officer encounter at the event level and attempts to decompose officer and suspect actions within the context of the use-of-force continuum. As identified by Adams et al. (1999), little is known about the effectiveness of the various types of non-lethal weapons, and in their recommendations for future research add that an evaluation of all types of police force used in street encounters is needed.

The following section briefly addresses the issue of less lethal force in the context of what is considered socially acceptable. Additional discussion of possible unintentional consequences of abuses of force is included.

### Less Lethal Force

Police use of force has tremendous implications on the law enforcement agency and its administration. Thus, uses of force may frequently impact the development of public policy and how it is administered in practice. Current public policy permits officers to use the minimum amount of force necessary to affect the arrest or quell the disturbance, and to do so, they utilize the tools available to the profession (e.g., chemical agents, impact weapons, TASERs, and defensive tactics).

Unfortunately, there is no one less lethal weapon that fits every circumstance. While some options, like the TASER, appear to offer the maximum in suspect compliance benefits and a reduction in both suspect and officer injuries (Hopkins & Beary, 2003), they are limited by their range. Accordingly, in order to use the TASER, it is necessary for officers to place themselves within a 21-foot range of the suspect, creating additional risks and tactical concerns.

Kinetic weapons (i.e., less lethal munitions like bean bag projectiles), on the other hand, respond quite well at distances over 21 feet but suffer the limitation of transferring excessive energy at close range. A number of deaths and serious injuries have been documented from these weapons at various close ranges (Hubbs & Klinger, 2004). As a result, the greatest weakness in the existing less lethal arsenal is the distance at which each tool can be safely deployed.
Less Lethal Weapons and Injuries

The injuries sustained by suspects from many less lethal devices have been examined in the literature. Chemical weapons (Chan et al., 2002; Rappert, 2001), impact weapons (Rappert, 2001), and kinetic energy projectiles (Hubbs & Klinger, 2004) have been studied. Although less lethal weapons are designed to reduce the likelihood of death or serious injury, they have been responsible for a number of documented deaths and an undetermined number of injuries.

Public perception of these weapons often influences the degree to which an agency is capable of their use. One study of the perceptions of college students toward less lethal weapons deployments given a scenario with a suspect actively attempting to injure officers found that TASER and chemical agents were more appropriate, while an empty handed strike and police dog bite were least appropriate (Hougland, Mesloh, & Henych, 2005).

TASER

The TASER weapon (Thomas A. Swift’s Electric Rifle) administers an electric charge causing muscular dysfunction and temporary incapacitation, which is substantially different from other less lethal weapons that rely solely upon pain compliance. Two darts are fired from the pistol-like weapon, and an electric current of 50,000 volts is passed into the subject’s body (British Columbia Office of the Police Complaint Commissioner, 2004). The darts fired from the TASER can reach from 15 feet (civilian model) to 21 feet (law enforcement model). While the amount of this voltage seems excessive, it is comparable to the static electricity charge one might produce by the shuffling of feet on carpet (Orange County Medical TASER Taskforce, 2005). Additionally, the amperage of the TASER weapon is remarkably small (about $\frac{1}{4000}$ of one amp) in comparison to household appliances that draw between 1 and 15 amps of current (Orange County Medical TASER Taskforce, 2005). Early studies indicated that this weapon’s effectiveness ranged from 50% to 85% (Donnelly, 2001). Significant improvements in design, however, appear to have substantially increased the effectiveness (Taser International, 2004).

Currently, several models of the TASER with varying power levels exist in the law enforcement marketplace; however, most Florida agencies have chosen the M-26 air TASER as its electrical weapon of choice. Since its deployment by the Orange County Sheriff’s Department in 2000, the use of deadly force by officers and the number of officers injured during arrest confrontations has been dramatically reduced (Hopkins & Beary, 2003). In a single year within the OCSO, eighteen TASER deployments and apprehensions took place where deadly force was justified (Hougland et al., 2005).

Impact Weapons (Baton/ASP)

The two primary baton manufacturers for law enforcement are ASP and Monadnock, and each company has a wide product offering for different types of batons ranging in size and features. The first generation expandable batons used friction to keep the baton extended, and an officer was forced to slam the tip against a hard surface in order to close it. Newer designs include the positive lock function, which allows the baton to be closed with a push of a button while still maintaining rigidity during
strikes. The tips of the baton vary from a rounded metal surface to a hard plastic “safety tip” that puts more weight at the tip of the baton and allows an officer to generate more kinetic energy in a strike.

A number of specific types and models are available, ostensibly attempting to serve a particular need or solve a problem. High-visibility nightsticks and side-handled batons seem to have gone out of style and have been replaced with smaller, collapsible straight batons, which have a more positive public perception and are easier to carry (Johnston, 1996).

With the transition to a collapsible nightstick, many of the advanced control techniques (which were possible with the PR-24 and other side-handled batons) are difficult if not impossible. Consequently, the impact weapon chosen by the Orange County Sheriff’s Office (the ASP) is little more than a metal club to be used for striking or blocking. Metal flashlights are being used as an improvised impact weapon since their dynamics are similar. Training officers for proper use of impact weapons is necessary, as they have the potential to create serious injuries, specifically to the head (Cox, Buchholz, & Wolf, 1987).

**Chemical Weapons (Oleoresin Capsicum/Tear Gas/Pepper Spray)**

Most agencies have transitioned from the use of CS/CN gas to pepper spray, an irritant spray that can disable a suspect. Most of these products are made with oleoresin capsicum oil from selected hot peppers; hence the term OC spray (Lumb & Friday, 1997). Prior literature suggests that many law enforcement agencies believe pepper spray to be the “magic bullet” to reduce officer and suspect injury; however, issues regarding cross-contamination of back-up officers and a growing number of reports that suspects were able to fight through the burning pain of the spray illustrate the weaknesses of chemical agents.

In 1973, The Federal Bureau of Investigation became the first agency to carry this tool, and since then, it has been adopted by agencies nationwide (Chan et al., 2001). The military embraced OC due to the reduction of civilian casualties in war game simulations (Magnolia, 1997), and in 1998, the U.S. Marine Corps devised a 120-hour instructor course on “Non-Lethal Individual Weapons” and included OC at a low level on the use of continuum.

OC was the cutting edge less lethal weapon of its time, as it incapacitated suspects by “causing the eyes to tear and swell shut, mucus to drain profusely from the nasal passages, bronchial passages to constrict, and breathing [to] become more labored” (Morabito & Doerner, 1997, p. 681). Studies from the early 1990s found OC spray to be effective over 90% of the time (Kingshott, 1992; Nowicki, 1993), and as a result, many agencies issue this tool.

Furthermore, Lumb and Friday (1997) found that issuing OC spray reduced officer threats of deadly force against a suspect with a weapon from 100% prior to OC issuance to 62.5% after it was issued. Major deployment issues with this weapon are the cross-contamination between the suspect sprayed and the other officers and many reports indicating that a number of suspects were able to fight through the burning pain of the spray.
As with any less lethal weapon, fatalities eventually occurred in the course of OC spray usage. In 1993, the American Civil Liberties Union (ACLU) claimed they found 30 deaths that were the direct result of OC deployment. Reviews of the ACLU’s claim revealed that OC was not a direct cause of death in 22 of the cases, but the result of cocaine intoxication, cocaine delirium, or positional asphyxiation (Granfield, Owen, & Petty, 1994).

**Defensive Tactics**

Defensive tactics are techniques employed by law enforcement officers to respond to situations and control suspects. Whereas in the past, officers were given a billy club and relied on their learned brawling skills to win a fight, officers are now trained in defensive techniques in the academy and through inservice training. The techniques often rely on pain compliance through joint manipulation and pressure points.

There is some dissent among officers as to the effectiveness of this training because it is typically taught in a formal environment against sober, compliant subjects. The techniques are often ineffective when applied to intoxicated suspects who are intent on resisting. In a study by Kaminski and Martin (2000), 30% of respondents felt that the defensive tactics techniques taught by their agency were ineffective against aggressive suspects, compared with only 37% who felt that the techniques were effective. Additionally, 51% of officers surveyed studied some form of martial arts on their own, including traditional martial arts (e.g., Tae Kwon Do, Karate), boxing, and grappling. The officers who studied grappling had the highest percentage of application of their outside study to their police work with 90% using the techniques against suspects.

**Research Design**

The Orange County Sheriff’s Office (OCSO) secondary data collected consisted of all use-of-force reports collected from 2001 to 2003 by OCSO. From a total of 1,200 incidents, a random sample of 400 cases were selected that contained information on suspect resistance, officer less lethal weapon deployment, and the outcomes of the encounter.

These reports, a regular tool used by agencies to account for uses of force, capture much data and allow a research endeavor to begin at the event level. The data includes specific information regarding the type of force used in an encounter, be it less lethal or deadly, and also the type of resultant injuries.

Agency policy requires officers to complete the form whenever force is used or a suspect injury occurs. These documents were stored separate from the offense report by the training division and utilized to monitor use-of-force trends within the agency.

While these reports are created as a stand-alone document, there were inherent risks in their analysis. The narrative section of the use-of-force report is relatively small and relies primarily upon a series of matrices to capture information regarding the confrontation. Under normal circumstances, there would not be sufficient data regarding officer and suspect demographics for quantitative analysis; however, our analysis focused upon the tools and their effectiveness, which was properly documented within these reports.
Three researchers coded the data from the report into Statistical Software for the Social Sciences (SPSS), using a team approach to review the information. Whenever an incident’s outcome was unclear to a single coder, all three coders would then assess the information to ensure reliability. Each incident was broken down into a series of actions and reactions, each with potential successes or failures. The goal was to determine under what circumstances each less lethal weapon was used and the extent to which it was effective at bringing the confrontation to resolution.

While many of the tools are available in the law enforcement market, the agency under study only deployed a relative few. Consequently, these are the only ones addressed in this study. Additionally, canine deployments were eliminated as their documentation was limited in the use-of-force report, and it was impossible to collect reliable data in this area.

Findings

Table 1 shows the distribution of suspect offense types and average force levels of both officer and suspect. Narcotics investigations were the most frequent initial offense accounting for 21% of the agency’s use-of-force incidents; traffic stops comprised 16%; and slightly less than 11% involved domestic violence cases. Violent and nonviolent crimes make up 36% and 16% respectively. As shown, average officer force levels are consistently almost a full level below the suspect’s level of resistance. The highest suspect resistance levels are found in domestic violence and violent crime investigations.

Table 1
Offense Type and Average Force Levels

<table>
<thead>
<tr>
<th>Recoded Offense</th>
<th>Resistance Level</th>
<th>Officer Force Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic</td>
<td>3.9123</td>
<td>3.0175</td>
</tr>
<tr>
<td>Narcotics</td>
<td>4.0000</td>
<td>3.0137</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>4.1622</td>
<td>3.0000</td>
</tr>
<tr>
<td>Nonviolent Crime</td>
<td>4.0787</td>
<td>3.0472</td>
</tr>
<tr>
<td>Violent Crime</td>
<td>4.1071</td>
<td>3.0179</td>
</tr>
<tr>
<td>Total (n = 350)</td>
<td>4.0486</td>
<td>3.0257</td>
</tr>
</tbody>
</table>

Table 2 shows the distribution of suspect offense types and the type of less lethal weapon deployed. TASER was the most frequently used less lethal weapon (73%), followed by chemical agent (18%), defensive tactics (6%), and impact weapons (3%). Less lethal munitions were used in a single confrontation involving the SWAT team. Additionally, none of the impact weapon applications involved the use of a traditional baton. In each case, a flashlight was utilized in this function as an improvised impact weapon. Finally, in all cases in which deadly force would have been sanctioned and a less lethal weapon was used, TASER was the only weapon selected by officers. It is unclear whether officers made a conscious decision to take a more humane approach or the TASER was already in the officer’s hand and the time required to transition weapon platforms was too great. Regardless of the
intention, it is clear that a substantial number of suspects’ lives were spared as a result of the TASER deployments.

Table 2
Offenses and Types of Less Lethal Weapons

<table>
<thead>
<tr>
<th>Type of Less Lethal Weapon</th>
<th>TASER</th>
<th>Chemical</th>
<th>Impact</th>
<th>Defensive Tactics</th>
<th>Bean Bag</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Offense</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Traffic</td>
<td>42</td>
<td>10</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>57</td>
</tr>
<tr>
<td>Narcotics</td>
<td>62</td>
<td>9</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>73</td>
</tr>
<tr>
<td>Domestic</td>
<td>25</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>37</td>
</tr>
<tr>
<td>Nonviolent</td>
<td>90</td>
<td>21</td>
<td>4</td>
<td>11</td>
<td>1</td>
<td>127</td>
</tr>
<tr>
<td>Violent</td>
<td>35</td>
<td>17</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>56</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>254</td>
<td>64</td>
<td>9</td>
<td>22</td>
<td>1</td>
<td>350</td>
</tr>
</tbody>
</table>

While the TASER was deployed more frequently than other weapons, its use was not disproportionate to the other less lethal weapon usages across most categories. In narcotics-related confrontations, TASER was deployed considerably more often. Interviews with officers related that these subjects were more likely to flee, and the TASER was the only tool available that has the ability to prevent escape. Analysis of the data validated this statement, as 63% of the narcotics suspects originally resisted by taking flight. Suspect flight was the most common type of resistance and was encountered in 33% of all cases. TASER was used to stop fleeing suspects (across the offenses) 84% of the time.

Table 3
Resistance Type and Type of Less Lethal Weapon Used

<table>
<thead>
<tr>
<th>Type of Less Lethal Weapon Used</th>
<th>TASER</th>
<th>Chemical Agent</th>
<th>Impact Weapon</th>
<th>Defensive Tactics</th>
<th>Bean Bag Round</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Resistance Type</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flight</td>
<td>109 (27.3%)</td>
<td>15 (3.8%)</td>
<td>1 (0.3%)</td>
<td>5 (1.3%)</td>
<td>0 (0.0%)</td>
<td>130 (32.6%)</td>
</tr>
<tr>
<td>Concealment</td>
<td>3 (.8%)</td>
<td>0 (.0%)</td>
<td>0 (.0%)</td>
<td>1 (.3%)</td>
<td>0 (0.0%)</td>
<td>4 (1.0%)</td>
</tr>
<tr>
<td>Verbal Threat or Posture</td>
<td>62 (15.5%)</td>
<td>19 (4.8%)</td>
<td>2 (0.5%)</td>
<td>3 (0.8%)</td>
<td>0 (0.0%)</td>
<td>86 (21.6%)</td>
</tr>
<tr>
<td>Wrestle</td>
<td>75 (18.8%)</td>
<td>23 (5.8%)</td>
<td>3 (0.8%)</td>
<td>8 (2.0%)</td>
<td>0 (0.0%)</td>
<td>109 (27.3%)</td>
</tr>
<tr>
<td>Strikes</td>
<td>27 (6.8%)</td>
<td>17 (4.3%)</td>
<td>2 (0.5%)</td>
<td>8 (2.0%)</td>
<td>0 (0.0%)</td>
<td>54 (13.5%)</td>
</tr>
<tr>
<td>Use or Threaten with Impact</td>
<td>1 (.3%)</td>
<td>2 (.5%)</td>
<td>0 (.0%)</td>
<td>0 (.0%)</td>
<td>1 (0.3%)</td>
<td>4 (1.0%)</td>
</tr>
<tr>
<td>Use or Threaten with Edged</td>
<td>3 (.8%)</td>
<td>0 (.0%)</td>
<td>0 (.0%)</td>
<td>0 (.0%)</td>
<td>0 (0.0%)</td>
<td>3 (.8%)</td>
</tr>
<tr>
<td>Used or Threatened with Firearm</td>
<td>4 (1.0%)</td>
<td>0 (.0%)</td>
<td>0 (.0%)</td>
<td>0 (.0%)</td>
<td>0 (0.0%)</td>
<td>4 (1.0%)</td>
</tr>
<tr>
<td>Other</td>
<td>3 (.8%)</td>
<td>1 (0.3%)</td>
<td>1 (0.3%)</td>
<td>0 (.0%)</td>
<td>0 (0.0%)</td>
<td>5 (1.3%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>287 (71.9%)</td>
<td>77 (19.3%)</td>
<td>9 (2.3%)</td>
<td>25 (6.3%)</td>
<td>1 (0.3%)</td>
<td>399 (100.0%)</td>
</tr>
</tbody>
</table>
Table 3 shows the resistance type and the less lethal weapon deployed. Over 50% of the less lethal weapon deployments were utilized against offenders who had not taken aggressive action against the officer. In these cases, less lethal weapons were used preemptively in an attempt to de-escalate the encounter. Resistance types of wrestling (27.3%) and striking (13.5%) made up the majority of aggressive actions against officers, while armed suspects threatening or using weapons against officers made up less than 5%. TASER was the most frequently used when confronted with a weapon and in 18 incidents in which deadly force was justified (Hougland et al., 2005).

### Table 4

**Type of Less Lethal Weapon and Level of Success**

<table>
<thead>
<tr>
<th>Less Lethal Weapon Used</th>
<th>Immediately Effective</th>
<th>Delayed Effectiveness</th>
<th>Not Effective</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>TASER</td>
<td>191 (67.7%)</td>
<td>27 (9.6%)</td>
<td>64 (22.7%)</td>
<td>282 (100%)</td>
</tr>
<tr>
<td>Chemical Agent</td>
<td>64 (83.1%)</td>
<td>4 (5.2%)</td>
<td>9 (11.7%)</td>
<td>77 (100%)</td>
</tr>
<tr>
<td>Impact Weapon</td>
<td>8 (88.9%)</td>
<td>0 (0%)</td>
<td>1 (11.1%)</td>
<td>9 (100%)</td>
</tr>
<tr>
<td>Defensive Tactics</td>
<td>13 (54.2%)</td>
<td>4 (16.7%)</td>
<td>7 (29.1%)</td>
<td>24 (100%)</td>
</tr>
<tr>
<td>Bean Bag</td>
<td>1 (100%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>1 (100%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>277 (70.5%)</td>
<td>35 (8.9%)</td>
<td>81 (20.6%)</td>
<td>393 (100%)</td>
</tr>
</tbody>
</table>

Table 4 shows the distribution of less lethal weapons deployed and the level of the weapon’s success. As a whole, less lethal weapons were ineffective in 21% of the initial applications of force. Chemical agents were ineffective in 12% of the confrontations, in comparison with impact weapons (11%) and defensive tactics (29%) Surprisingly, TASER was ineffective (in a single application) 23% of the time; however, TASER training stresses the use of multiple applications in order to bring a suspect under control. When deployed a second time, its ineffectiveness dropped to less than 3%. In these cases, either TASER was deployed a third time, the officer switched to a different less lethal option, or the suspect escaped as officers were unprepared to engage in foot pursuit. Suspect escape occurred more frequently with TASER, as officers were accustomed to immediate compliance on the part of the suspect and it is extremely difficult to run with a weapon and drag 21 feet of wire and probes.

### Table 5

**Reason for TASER Ineffectiveness**

<table>
<thead>
<tr>
<th>Reason</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missed</td>
<td>19</td>
<td>38</td>
</tr>
<tr>
<td>Baggy clothes</td>
<td>16</td>
<td>32</td>
</tr>
<tr>
<td>Probe came loose</td>
<td>11</td>
<td>22</td>
</tr>
<tr>
<td>Suspect grabbed TASER</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Malfunction</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Cartridge fell off</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>50</td>
<td>100</td>
</tr>
</tbody>
</table>
Table 5 shows the type and frequency of the causes of TASER ineffectiveness in 50 cases. Misses (38%) and baggy clothing worn by the suspect (32%) make up the majority of these failures. Factory literature explains some of these issues. TASER probes are reported to have a spread rate of approximately 12 inches for every 7 feet of distance between the weapons and suspect (TASER International, 2004). Additionally, thick or baggy clothing has been shown to disrupt the current and leave the suspect relatively unaffected (TASER International, 2004). These incidents of ineffectiveness on the part of TASER necessitated the need to create an experiment to examine this issue further.

**TASER Probe Study**

In a sample of 50 cases in which the TASER was found to be ineffective, both probes missing the target explained 38% of the cases (see Table 4). A drawback to the TASER is that while the cartridges have an advertised range on 21 feet, it is not feasible to properly deploy the weapon at that distance and expect a successful outcome.

In order to better understand why so many misses occurred with the TASER, a field experiment was created to measure the spread of the probes as the distance between the weapon and the target increased. In order to test the spread, cartridges were fired five times at each of six distances at a stationary target. An electronic rangefinder was placed parallel to the tip of the cartridge and aimed at the target in order to find the exact distance between the cartridge and the target.

TASER cartridges (cost $20 per unit) were donated by TASER International, while the actual weapon (model X26) was purchased under a Bureau of Justice Assistance grant. The field experiments were filmed as part of an ongoing media project and monitored by members of the media that had an obvious interest in the outcome of the study.

The distances tested were 1 to 6 yards, and the probes had a minimum spread of 6 inches at 1 yard and a maximum of 34 inches at 6 yards. With a total of 30 observations, the mean spread for each distance was graphed along the x-axis and the number of yards from the target along the y-axis. A linear regression of these observations produced an R$^2$ of .983 (F=787.6, df= 24) indicating an almost perfect relationship between distance and probe spread. For every foot of distance between suspect and officer, probe spread is approximately 2 inches. At 6 yards, a mean spread of 30 inches was observed, which is too great to assume that both probes will hit their target as required for the TASER to be effective. Consequently, ineffective TASER deployments are more related to distance factors than the suspect’s ability to fight through the electricity.

**Conclusion**

The data suggests that the TASER is the most frequently used less lethal weapon. This is even the case when a higher level of force may be warranted. Based on officer interviews and the data, it appears that the TASER offers police officers a “magic bullet” solution when dealing with many confrontations.

Interestingly, despite the TASER being deployed so frequently, it has relatively mixed effectiveness in its initial deployment. In 282 TASER uses, the TASER was
immediately effective in 191 (48.6%) deployments, while some deployments had delayed effectiveness 27(6.9%). In a number of cases, the TASER/officer missed its target. In other cases, the TASER probes fell out, and in some cases in which the suspect had baggy clothes, the early generation TASER cartridges were ineffective in penetrating the clothing and incapacitating the suspect. Since the collection of this data, however, substantial improvements have been made to both the TASER cartridge and weapon to resolve some of these issues.

When looking at less lethal weapons, it is interesting to note that they appear to be utilized across a wide range of confrontations, not exclusively to violent incidents. This supports the findings of MacDonald, Manz, Alpert, and Dunham (2003), who found that nonviolent property calls for service were more likely to illicit a higher level of use of force than violent calls for service. Additionally, this finding suggests that less lethal weapon deployments are based less on the threat perceived by the officer; it is more likely that officers use specific tools to facilitate the confrontation’s quick and effective resolution.

It is important to add that in routine, reactive patrol, which accounts for the majority of law enforcement activity, the officer is often forced to respond to the subject’s actions. This inherently gives suspects a timing advantage as they may have committed to an action to which the officer is unaware. In many conflicts, this places officers at a disadvantage as they are forced to react to suspect behavior oftentimes in milliseconds. Training and experience may reduce reaction times; however, due to the “act and react” nature of the law enforcement officer/suspect confrontation, experience will inherently cue officers to furtive movements and pre-assault indicators. In the OSCO, these actions are labeled as Level 3 resistance allowing officers to deploy the TASER earlier in the confrontation, thereby deescalating the encounter before it matures.

While some less lethal weapons require the suspect to be in close proximity to the officer, others, namely TASER, are effective (or can be deployed) at greater ranges allowing its use to solve a broader range of issues. Other less lethal weapons, such as chemical agents and impact weapons, are generally ineffective at stopping a fleeing suspect due to the distance between the officer and the suspect. Naturally, a trained officer will use the most appropriate less lethal weapon based on law, agency policy, and the limitations of the weapon. As improvements are made to both the TASER and its cartridges, it is likely that TASER will continue to dominate in less lethal weapon deployments; however, future less lethal weapons development will need to expand the reactionary gap between officer and suspect, consequently allowing more time for the officer to formulate the proper force option response.

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Inside the Fishbowl: The Fourth Amendment’s Application to Vehicle Searches and Seizures

Jill Joline Myers, Assistant Professor, Department of Law Enforcement & Justice Administration, Western Illinois University

There are those who would claim that the Fourth Amendment, as it relates to matters involving the automobile, has eroded away like the farmlands in the Eastern United States. It is argued that what was once a powerful presence and control over permissible police conduct has now become a mere blip in the criminal justice frontier scenery. While it is true that the current interpretation of the Fourth Amendment has broadened the police powers to conduct automobile searches and seizures without warrants, this interpretation is more of an evolution than an outright erosion of the Bill of Rights provision.¹ This article discusses the evolution of the Fourth Amendment law as it relates to searches involving vehicles and its occupants. This article traces the expansion of warrantless searches and seizures from Carroll v. United States (1925) to Illinois v. Caballes (2005). The “mobility rationale” and the “reduced privacy rationale” are explored as well as the finite shelf life limiting the legitimizing power of a traffic stop to justify a coincidental investigation. Procedures employed to avoid the dreaded “second stop” situation are scrutinized through case law review. Some investigative techniques discussed are canine usage, driver and passenger inquiries and inferences, and the scope of incident to arrest scenarios. The article concludes by noting the legal limitations imposed by the Fourth Amendment on searches and seizures of items and individuals within the fishbowl known as an automobile.

The Evolution of Car Stops Under the Fourth Amendment

Mobility Rationale

Eighty years ago, the Supreme Court of the United States espoused that privacy interests in an automobile are constitutionally protected; however, in that same breath, the Court announced that those protected privacy interests in a vehicle justify a lesser degree of Fourth Amendment protection than premises.² Since that decision, law enforcement has been struggling to determine how far they can push that lesser degree of protection envelope.

Historically, there has always been a recognized “necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant . . .”³ Hence, the Court created and announced the automobile exception to the general Fourth Amendment rule that a warrant must be secured before a search is undertaken. The original basis for justifying this exception was the ready mobility of an automobile to be quickly moved out of the locality or jurisdiction in which a warrant must be sought. To that end, the mobility factor initially justified warrantless stops and seizures of vehicles only while moving or reasonably contemporaneously

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with movement. The Court, however, quickly expanded the permissible scope of the search to a time extending beyond reasonably contemporaneously with the stop. Police who had probable cause to search an automobile at the scene could also seize it and search it later at the station house. The Court pontificated that the justification to conduct a warrantless vehicle search does not vanish once the car has been immobilized, nor does it depend upon a reviewing court’s assessment of the likelihood in each particular case that the car would have been driven away or that its contents would have been tampered with during the period required for the police to obtain a warrant. The “mobility” or exigency justification factor is determined at the time of the seizure of the automobile, not at the time of the search.

Reduced Privacy Rationale

Besides the element of mobility, the less rigorous requirement was developed because the expectation of privacy in vehicles is diminished due to the pervasive and continual governmental regulation and control over them, the public nature of automobile travel, the open configuration of the vehicle where its occupants and contents travel in plain view, and the fact that its function is transportation, seldom serving as one’s residence or as the repository of personal effects.

Automobile Inventory Searches

Using the reduced expectation of privacy rationale along with law enforcement’s community caretaking function, the Court has upheld local police departments’ routine practices of securing and inventorying legally impounded automobile contents without requiring any articulated suspicion or specified need when they conduct or administer the inventory in good faith. This type of intrusion and search is justified as a reasonable caretaking procedure to protect the owner’s property while it is in police custody, to protect the police against claims or disputes over lost or stolen property, and to protect the police from potential danger. Not all inventory searches, however, will be deemed per se reasonable or within acceptable Fourth Amendment constraints. In particular, those searches that do not strictly follow standard police inventory protocol or those inventories done as a pretext concealing an investigative police motive will violate the Fourth Amendment.

Motor Homes

By combining both the reduced expectation of privacy factor with the mobility factor, the Court has extended the automobile exception to include motor homes. Although mobile homes are used as a residence and as a place to store one’s personal effects, and although they do not have the same open configuration of a typical vehicle, they are parked in public parking lots and are licensed for vehicular travel making them readily mobile and subject to regulations and restrictions not applicable to residences.

Random Checkpoint Stops

The reduced privacy concept allows police to conduct automobile searches without warrants when they have probable cause to search a vehicle; however, the broadened power is not unlimited. It does not extend to all random stops of vehicles on public roads. Generally, the police still must have either probable cause
to stop the vehicle or at least an articulable and reasonable suspicion of a criminal, traffic, or safety violation activity. Checkpoint vehicle stops are subject to Fourth Amendment constraints and deemed reasonable when the balance falls in favor of the gravity of public concerns served by the seizure (e.g., drunk driving), the degree to which the seizure advances the public interest, and the severity of the privacy intrusion. Checkpoint stops are deemed unreasonable when police seek to employ the technique for a generalized crime control purpose or to investigate narcotics violations without a quantum of individualized suspicion. Recently, in Illinois v. Lidster, the Supreme Court clarified the distinction between an “unreasonable” generalized crime control purpose and a “reasonable” specific and known crime purpose. Therein, the Court utilized the balancing test mentioned above and held that a brief information-seeking highway stop of motorists without any individualized suspicion for the purpose of investigating a fatal hit-and-run accident was constitutionally acceptable because it targeted the perpetrator rather than the car occupants. Furthermore, the public interest in solving this particular crime outweighed the minimal delay to motorists, particularly since the detention was not designed to elicit any self-incriminatory information.

Containers

The “automobile exception” is not limited to a search of the vehicle itself. Using this diminished expectation of privacy reasoning, the Court has applied the automobile exception doctrine to include the searching of all containers found in vehicles where probable cause exists. Until 1991, the distinction between probable cause to search the vehicle and probable cause to search a container within the vehicle led to two distinctive rules that confused the courts and impeded effective law enforcement. One line of cases involving probable cause to search the vehicle held that if a vehicle was lawfully stopped based on probable cause to believe that contraband may be found in the vehicle and a closed package was uncovered during that search, then a warrantless search of the package would be constitutionally reasonable. Another branch of cases held that if a car was stopped because there was probable cause that a package within the vehicle (not the vehicle itself) contained contraband, then a warrantless search of the package would be unreasonable. The dichotomy was ultimately resolved in California v. Acevedo, wherein the Court noted that the “line between probable cause to search a vehicle and probable cause to search a package in that vehicle is not always clear, and the separate rules that govern the two objects to be searched are no longer appropriate.” Furthermore, the extent to which the Chadwick-Sanders rule (i.e., the second rule mentioned above that limited the warrantless search of containers within a vehicle) protected privacy was minimal. Thus, the Court extolled the virtue of providing a clear and unequivocally guideline to law enforcement regarding all automobile and container situations and concluded that the scope of a warrantless search of an automobile “is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.” The new rule still protects privacy rights. If the probable cause dictates that the contraband is located in the trunk of a vehicle, law enforcement may search the trunk and containers therein for the contraband without a warrant; however, they may not search the cab of the vehicle. Furthermore, if they have probable cause that the car contains stolen television sets, law enforcement may search the entire car and any container therein which would be
capable of holding a television. It would be unreasonable to conduct a search of the ashtray and cigarette containers located within the vehicle because a stolen television could not be secreted therein. One cannot look for an elephant in a matchbox and expect the automobile exception to justify this unreasonable activity.

Traffic Stops

Perhaps the most common citizen-officer encounters occur during automobile stop scenarios. To what extent the Fourth Amendment controls this situation is an area that often results in litigation before the courts. Law enforcement personnel push to extend the limits of reasonable behavior and activity, while privacy advocates seek to curtail these encounters based on Fourth Amendment principles. By way of background, it is bedrock law that the stopping of a vehicle and the detaining of its occupants constitutes a seizure within the meaning of the Fourth Amendment. This is so even though the purpose of the stop is limited and the detention may be brief. The Fourth Amendment principles apply equally to drivers and passengers. “[E]ach occupant of a car has a right to challenge the propriety of a traffic stop under the Fourth Amendment.” Thus, each traffic stop must be justified by probable cause or a reasonable suspicion based on specific and articulable facts of unlawful conduct.

The probable cause requirement is easily met as any traffic violation provides the impetus (i.e., probable cause) needed to justify the stop, and no warrant is needed to effectuate the traffic arrest even for minor offenses punishable only by a fine. Furthermore, ulterior motives do not invalidate an otherwise valid traffic stop based upon probable cause. It is entirely irrelevant what the subjective motivation or intent of the officer was as long as the objective circumstances justified the stop.

Absent probable cause, vehicles may also be lawfully stopped when a reasonable suspicion based on specific and articulable facts of unlawful conduct is noted by an officer. The justification for this Terry-type car stop requires, under a totality of the circumstances, a reasonable articulable belief that criminal activity is occurring, and the particular person stopped is engaged in that wrongdoing. The totality of the circumstances test also contains two parts that must be met for the stop to be permissible: (1) The assessment must be based on all the circumstances, various objective observations, information from police reports if available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers and (2) The assessment of the entire picture must yield a particularized suspicion that the particular individual stopped is engaged in criminal activity.

Courts have held a number of factors relevant for a reasonable suspicion to stop. The factors include the following:

- The character of the area where the stop occurred
- The temporal or spatial proximity of the stop to a crime (The demographics of the centrifugal force field could have some bearing on the probabilities which are offered as the basis of the stop.)
- The appearance or conduct of the suspect
• The particularity of the description of the offender or the vehicle in which he or she fled (The greater the level of detail, the better; race, gender, ethnicity, hair color, age, body build, or apparel of the suspect permits police to distinguish from innocent travelers. It is also helpful to know whether an offender actually or likely left the crime scene in a vehicle. For vehicle stops, the appearance and color of the car, its condition, special equipment or stickers, vintage or manufacturer, part or all of a license tag, or the number of occupants are very helpful.)

• The size of the area in which the offender might be found as indicated by the lapsed time since the crime occurred

• The number of persons located in that area

• The known or probable direction of the defendant’s flight

• Observed activity of the particular person stopped

• Knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation

If the purpose of a stop is to prevent a potentially violent crime and there is no ulterior motive, the need for articulable facts to satisfy the Terry test decreases as the severity of the investigative crime increases. Even certain very serious offenses connected with public safety, like narcotics trafficking, do not, in and of themselves, justify a stop. As yet, the Supreme Court has not held that the community caretaking function justifies an officer in stopping a vehicle to ensure the safety of the occupant without a reasonable suspicion of criminal activity.

Once a vehicular stop has occurred, the next consideration concerns the limitations imposed by the Fourth Amendment on those occupants affected by the police action. Court decisions indicate that a routine traffic stop is more analogous to an investigative detention than a custodial arrest; thus, they are analyzed under the investigative detention principles set forth in Terry. The limitations on traffic stops require a dual inquiry: (1) whether the officer’s action was justified at the inception and (2) whether it was reasonably related in scope to the circumstances that justified the interference in the first place.

As the first inquiry has already been addressed herein, the second inquiry will now be discussed in terms of traffic violations and the detention or seizure of the occupants of the vehicle. It may be useful to compartmentalize this discussion in segments: duration of the stop, manner of the stop, expansion of the stop for investigatory reasons (versus a second stop scenario), and frisks of vehicle occupants.

Duration of the Stop

The investigatory detention for a traffic violation must be temporary, lasting no longer than necessary to effectuate the purpose of the stop. In other words, the scope of the detention must be tailored or consistent with its underlying justification. That being said, the application of the rule is often difficult to discern. Although the reasonableness clause of the Fourth Amendment does not hold a stopwatch on the police, courts are often tasked with “Monday morning quarterbacking” of an officer’s
speed in terms of reasonableness in handling a traffic investigation. For example, during a traffic stop for speeding, a police officer is permitted to ask questions, examine documents, and run computer verifications as necessary and related to the operation of the motor vehicle (e.g., valid license, registration, insurance). The officer may detain the driver and the vehicle as long as is reasonable to make these operational determinations and issue a citation or warning.

The scope of the permissibility of the stop’s duration is not determined solely by comparison with the duration of an average traffic stop, nor is it exclusively determined by whether the traffic stop was completed (i.e., documents returned, citation issued). The court must assess the reasonableness of each detention’s length on a case-by-case basis—not by the running of the clock or whether a creative judge could imagine an alternative means by which the objective of the stop or the protection of the public could have been accomplished. The reasonableness of the length of a stop is determined by considering the facts of each case under a totality of the circumstances including the officers’ expertise and training and the permissible inferences and deductions from the cumulative information available to them. Furthermore, the investigative stops do not need to rule out the possibility of innocent conduct.

From a review of the case law, it appears that the reasonableness of the duration of the stop involves the following:

- Whether police were pursuing the investigative purpose that justified the initial stop with due diligence (not whether some other alternative was available)
- Whether the delay seriously interrupted the individual’s travels
- The seriousness of the offense
- The likelihood of the individual’s involvement in criminal activity

Although a reasonable citizen should expect that his or her driver’s license would be checked during a traffic stop, the investigative purpose of a routine traffic stop does not necessarily involve the need to seek criminal history documentation. A person’s criminal background is not per se relevant to his or her ability to operate a motor vehicle, and the criminal history checks may take longer to process, thereby making the duration of the stop unreasonable for Fourth Amendment purposes. By contrast, other courts believe that it is reasonable to conduct criminal history checks during routine traffic stops. It is clear, though, that in appropriate circumstances, with articulable suspicion related to officer safety, the officer may seek criminal history documentation, as the ultimate purpose of a Terry detention is to confirm or dispel suspicious behavior.

In conclusion, an extension of the duration of the stop beyond the time needed to effectuate the purpose of the traffic stop or to confirm or dispel suspicious behavior is considered a second stop, and the occupants will be considered illegally seized. Any information or evidence gleaned there from will be deemed inadmissible as fruit from the poisonous tree.
Manner of the Stop

In conducting a stop, traffic or otherwise, an officer may take such precautions as are reasonably necessary to protect his or her personal safety and maintain the status quo. Such precautions may include drawing his or her weapon when approaching a car to question a driver\(^{59}\) and, as a matter of course, ordering a person (i.e., driver\(^{60}\) or passenger\(^{61}\)) to step out of a vehicle with or without reasonable suspicion. The reasonableness of the manner of the stop depends upon a balancing of the nature and quality of the intrusion of the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. The balancing test was used in Wilson,\(^{62}\) allowing police to order passengers to exit a vehicle during a routine traffic stop pending the completion of the stop. Specifically, the Court weighed the public’s strong interest in officer safety against the \textit{de minimis} intrusion on the passenger’s privacy interests.

The police may make a forcible stop of a person when they have a reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity.\(^{63}\) Hard take downs (forcible stops) have been permitted when an officer had an objectively reasonable belief that the defendant had a gun nearby.\(^{64}\) Officers have been allowed to reach through car windows to grab an occupant’s waist when the officer believed that a gun was hidden at that location.\(^{65}\) Furthermore, it has been held Constitutionally reasonable to handcuff and detain car occupants in police cruisers during the investigation of the vehicle stop.\(^{66}\) A recent Supreme Court decision upheld an officer’s tactic of compelling the suspect to identify himself under threat of arrest as reasonable police conduct when he had a reasonable suspicion of criminality afoot in a state that had a stop and identify statute.\(^{67}\) These bold actions by police when they reasonably fear for their safety, when they threaten arrest, or when they have reasonable suspicion of criminality afoot may resemble a traditional arrest, but do not \textit{ipso facto} automatically transform a \textit{Terry} investigatory stop into an arrest.\(^{68}\) One must look at the totality of the circumstances.\(^{69}\) The reasonableness of a seizure is determined by balancing the intrusion on the individual’s interests against its promotion of legitimate governmental interests. In the recent Nevada case concerning the ability to arrest if one did not identify oneself, the Court concluded that the statute satisfied the reasonableness standard. “The request for identity has an immediate relation to the purpose, rationale, and practical demands of a \textit{Terry} stop. The threat of criminal sanction helps ensure that the request for identity does not become a nullity. On the other hand, the Nevada statute does not alter the nature of the stop itself: it does not change the duration . . . or its location. . . .”\(^{70}\) It is untenable for a simple name disclosure to be considered an invasion of Fourth Amendment privacy prohibitions, as reasonable people do not expect their identities to be withheld from others especially in \textit{Terry} situations.\(^{71}\)

Expansion of the Stop for Investigatory Purposes

The legitimizing power of a traffic stop to justify a coincidental investigation has a finite shelf life even when the traffic stop is not formally terminated. Although an officer may seize the opportunity presented by a traffic violation to make a stop that would not otherwise be permitted, the scope of what may be done even following a legitimate initial intrusion is limited by the Fourth Amendment. Traffic stops lose legitimacy if the pursuit is unreasonably attenuated, allowed to lapse into a state
of suspended animation,\textsuperscript{72} or is “prolonged beyond the time reasonably required to complete that mission.”\textsuperscript{73}

Detention of the person must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Once the purpose of the stop has been fulfilled (citation or warning) or should have been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Thus, once the initial traffic stop has concluded, the driver must be allowed to proceed on his or her way unless during the encounter, the driver consents to a continued intrusion or during the course of the encounter, the officer has acquired information presenting a reasonable articulable suspicion that criminal activity is afoot.\textsuperscript{74} If neither of these circumstances is met, any evidence derived from further questioning or searching is tainted and will be excluded on Fourth Amendment grounds.\textsuperscript{75}

**Occupant Consent Situations**

It is a well-recognized fact that the consensual questioning of citizens by law enforcement is an important law enforcement tool. This investigatory tool is essential in the context of transportation for which safety and security are vital concerns.\textsuperscript{76} The question, however, then becomes, under what circumstances does the encounter become a seizure with Fourth Amendment implications? When one searches the wealth of case law concerning police-citizen encounters, it becomes evident that there are three types of acceptable encounters between police and civilians:

1. Accosting – a consensual encounter

2. Investigative detention supported by a reasonable articulable suspicion of criminal activity

3. Arrest based upon full probable cause

It is this first category that will be addressed here. Consensual encounters or accostings do not trigger the protections of the Fourth Amendment, as they involve minimally intrusive contact.\textsuperscript{77} Accostings are considered less than seizures, and they occur when an officer approaches a citizen and asks for pedigree or elementary information (e.g., name, address, date of birth, destination, point of origin, and/or the contents of luggage in a vehicle).\textsuperscript{78} These encounters are not only constitutionally permissible but play a pivotal role in law enforcement in ferreting out criminal activity and protecting society.

Accostings are beneath the Fourth Amendment radar screen because the officer is merely having what technically amounts to a citizen-to-citizen type encounter. These encounters are minimally intrusive in terms of privacy interests and duration. Law enforcement personnel do not lose their status as humans when they pin on the badge or strap on their holsters. They do not violate the Fourth Amendment by merely approaching an individual on the street, in a public place, or by speaking to persons incidental to making lawful traffic arrests if those persons are willing to listen.\textsuperscript{79} Even if a law enforcement officer has no basis for suspecting a particular person of criminal involvement, like the passenger in a vehicle stop, on occasion, they may pose questions, ask for identification,\textsuperscript{80} and request consent to search their persons or their possessions provided that they do not induce cooperation
by coercion or a show of authority, convey a message that compliance with their request is required, or conduct themselves in a manner that would cause a reasonable person to believe he or she is not free to leave and/or go about his or her business.

Test – Was the Encounter a Consensual Non-Seizure?

The test is whether, under all of the circumstances surrounding the encounter, a reasonable person would feel free to disregard the police and go about his or her business or decline the officer’s requests and terminate the encounter. The courts have defined the scope of consensual police questioning into two categories: (1) public forum encounters and (2) confined space encounters. Automobile stop situations involve, to some degree, both.

Public Forum Encounters

When the police approach a person in a public forum (e.g., on the street, in an airport, or in a train terminal), the test involves determining whether, considering the totality of the circumstances, a reasonable person in the suspect’s position would believe that he or she was free to leave. The determinative facts hinge on the officer’s objective behavior and not the subjective belief of the defendant as to whether he or she was free to leave.

Confined Space Encounters

When the police approach individuals in a confined space (e.g., on a bus or in a home), the test determines whether, under the totality of the circumstances, a reasonable person would feel free to decline the officer’s request or to terminate the encounter. The “free to leave test” is not appropriate in such a situation because the person in his or her home or on a bus has no desire to leave and would remain even if police were not present.

The automobile stop situation does not fall squarely into either situation. Although an automobile stop occurs on a public street where the public forum encounter test would be appropriate, the occupants, be they driver or passenger, may have no desire or ability to leave; hence the enclosed space rule would control. Thus, for practical purposes, the critical test determines whether, considering the totality of the circumstances surrounding the encounter, officer conduct would have communicated to a reasonable person that he or she was not at liberty to ignore the officer and go about his or her business or refuse to cooperate.

There are no neat set of legal rules that transport an accosting situation into a Fourth Amendment “seizure” scenario. There is no bright line that distinguishes an accosting from a seizure. The process deals with probabilities, not hard certainties. Although it could be argued that all automobile stop situations are per se seizures because of police dominance and the dearth of available avoidance options to the vehicle’s occupants, there are a number of factors that determine the difference. The factors for consideration are as follows:

- Threatening presence, behavior, or physical contact by police
- Display of weapons
• Physical touching
• Use of language or tone of voice
• Approach of police to citizen versus summoning citizen to police
• Request, not demand, for information
• Location of encounter in public, not a private or enclosed area
• Time of the encounter
• Number of officers present
• Whether officers are in uniform
• Whether the police removed the suspect to a different location or isolated him or her from others (A request that a person move in some manner has consistently been regarded as persuasive evidence that a Fourth Amendment seizure has occurred.)
• Whether the suspect was informed that he or she was free to leave or to refuse to respond
• Whether police indicated that the person was suspected of a crime
• Whether the police retained the person’s property or documents
• Appearance of the person
• Criminal record of the person
• Police purpose
• Whether police back-up was called
• Whether others fled and defendant stayed (may conclude officer conduct was sufficiently threatening to dissuade defendant from leaving)
• Whether a particular person in a crowd was singled out
• Whether flashing police lights were visible
• Whether police restrained the person’s freedom to leave

Courts assess these factors in terms of voluntariness. The logic is that in accosting situations, both parties stand as equals. Mere police questioning does not constitute a seizure because the officer enjoys and possesses the same privilege as anyone else to approach a stranger and ask questions. The line crosses over to a seizure when the officer’s conduct has coerced compliance. For example, it is inconceivable that one civilian would ever approach another and ask, “Can you tell me how to get to Camden Yards, and, by the way, would you mind if I frisk you before you begin to tell me?” and “Can you, please, tell me what time it is and, by the way, would you mind sitting down there on the curb before you tell me? I don’t want you suddenly to run away.” These questions are official. The two persons do not stand as equals because the flip side would not be tolerated. Acquiescence does not equal voluntary consent. A citizen could not reasonably expect to ask to frisk an officer. Such situations are seizures, and when the police prerogative to stop and talk is no longer a voluntary interaction, the encounter carries the burden of Terry.

Newly Acquired Articulable Suspicion Situations

Although the government may not take unfettered advantage of a vehicle’s occupants’ immobility by searching, law enforcement need not become the Three Wise Monkeys from the Eighth Century either. Traffic stop situations may expand into permissible officer-citizen encounters when during the course of the encounter the officer has acquired information presenting a reasonable articulable suspicion that criminal activity is afoot.
As stated earlier, a traffic stop is analogous to a *Terry* stop, in that after the stop has been effectuated, the subsequent detention cannot be excessively intrusive and must be reasonably related to the investigation in scope and time. The continued detention of a vehicle’s occupants is authorized under the Fourth Amendment only if the officer can articulate specific and actual facts that under the totality of the circumstances, taken together with rational inferences, reasonably warrant the continued intrusion of privacy.

The Supreme Court has held that questioning at a traffic stop must relate to the purpose of the stop, and the entire detention must be temporary and unintrusive. Typically, this questioning relates to the driver as he or she is the target “seized” person during a vehicle stop by the police within the meaning of the Fourth Amendment. The more difficult issues concern the questioning or investigation of the other occupants of the vehicle and the unrelated questioning or investigation that occurs during the legitimate extent of the seizure.

To the first issue, the Supreme Court has stated that as a practical matter, any passengers are also stopped by virtue of the vehicle detention; hence, it is reasonable to conclude that these occupants are also “seized,” and the principles set forth in *Terry* will define the scope of reasonable police conduct to them as well.

To the second issue, a literal and rigid interpretation of the language used in *United States v. Brigoni-Ponce*, that the questioning at a traffic stop must relate to the purpose of the stop and the entire detention must be temporary and unintrusive, would seem to indicate that no questions unrelated to the traffic stop of any of the vehicle occupants would be permitted. Hence, nothing may be asked of passengers. Though that extreme position is not the case, restrictions on questions are common and will constitute a violation of *Terry*. For example, irrelevant questions asked of a driver and “fishing expeditions to satisfy [police] curiosity or their hunches,” while awaiting the results of the computer motor vehicle check during the appropriate seizure time have constituted a violation of *Terry*. At the spectrum’s other end, some courts have held that the Fourth Amendment is not implicated when an officer approaches a person and asks questions while the officer is legitimately waiting for the results of the license check (such questioning does nothing to further extend the duration of the initial, valid seizure) and the occupants are under no obligation to answer the questions. Additionally, a mere request for identification of a passenger during the course of a routine traffic stop is acceptable because it does not impermissibly prolong the detention, nor does it fundamentally change the nature of the stop. A request for identification was held to be facially innocuous, particularly since the occupant was under no obligation to answer.

Although there is great divergence as to the acceptable parameters of the *Terry* requirement when determining the propriety of questioning during a traffic stop and no *per se* rules dictate appropriate Fourth Amendment conduct, to date the Constitution does not forbid law enforcement officers from asking questions if there is no obligation to answer. The proper approach requires a balance between the government’s interest in effective law enforcement and the individual’s interest in being free from arbitrary governmental intrusions. Unfettered police questioning of occupants of cars will not be allowed; however, some leniency in questioning will be tolerated as the *Terry* scope requirement is a common sense limitation.
Investigative tactics that reveal no further information beyond the location of a controlled substance or contraband are also acceptable. Specifically, the use of a dog sniff, the use of a flashlight, the use of certain technology, and the moving of papers on a dashboard to reveal the VIN have all been deemed acceptable practices. In each of these instances, the balance falls in favor of the government provided these tactics are necessarily related to the purpose of the investigation and do not extend the duration of the traffic seizure.

Once the purpose of the traffic stop is concluded, the motorist and the other occupants must be allowed to continue on their way unless something has occurred during the stop that justifies a continued detention. In other words, a continued detention is allowed only if the officer has probable cause, is able to reasonably articulate his or her suspicion that criminal activity was afoot, or the person voluntarily consents to further detention or questioning.

Obviously, a traffic violation does not afford any probable cause to stop a passenger in a car; however, the traffic violation does afford the probable cause to stop the driver, and the passenger is stopped incidental to that of the car. Drivers are required to remain at the vehicle during the traffic scene investigation, but the same may not necessarily be required of passengers, at least not for the entire duration of the investigation. In fact, the Supreme Court has expressly declined to address the issue as to whether an officer may lawfully detain a passenger in a vehicle stopped pursuant to a routine traffic stop. Thus, passenger-related investigations, for the most part are limited to either consensual encounters or occasions when reasonable suspicion can be based on personal observations of an officer, a canine alert, certain technological information, or informant tips.

Reasonable suspicion is a less demanding standard than probable cause. Reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, and it can arise from information that is less reliable than that required to show probable cause. Both factors, quantity and quality, are considered in determining whether, under the totality of the circumstances, reasonable suspicion exists. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish reasonable suspicion than would be if the tip were more reliable. If a tip or informant information is completely lacking in indicia of reliability, it requires further investigation before a forcible stop is justified. Reasonable suspicion requires that a tip be reliable in its assertion of illegality, not just in the tendency to identify a determinate person. Even in a serious threat-type situation, therefore, an anonymous tip alone would require some modicum of reliability to demonstrate the informant’s basis of knowledge or veracity. The extent of the verification needed to bolster a tipster’s indicia of reliability, however, will vary from situation to situation, and usually in order to justify a Terry stop based on an anonymous tip, the tip must provide something more than facts or details that are readily visible to the public. The quality of the informant’s information must also be sufficient to demonstrate familiarity with the suspect’s itinerary.

While an officer may not conduct a Terry stop based solely upon an unverified anonymous tip, if the officer has a face-to-face conversation with a confidential informant and sufficient information is conveyed, or if a citizen comes forward personally and gives information that is immediately verifiable at the scene,
that information can justify a *Terry* stop.\textsuperscript{125} In these situations, a totality of the circumstances test is applied,\textsuperscript{126} and the reasonableness of an officer’s decision to stop someone does not necessarily require a lesser intrusive investigative technique. To require this would require courts to indulge in unrealistic second-guessing.\textsuperscript{127}

Besides informant information, a variety of other factors have been held to contribute to the newly acquired articulable suspicion of illegal activity to justify a continued detention of a vehicle. For example, factors such as no proof of ownership of the vehicle, having no proof of authority to operate the vehicle, inconsistent statements about destination or origination,\textsuperscript{128} driving with a suspended license, reluctance to stop, refusal to step out of the vehicle when requested so that movements can be observed more easily,\textsuperscript{129} or plain view\textsuperscript{130} or plain smell of contraband\textsuperscript{131} have all been held to contribute to justify a continued detention of a vehicle.

**Frisks of Vehicle Occupants**

Just as continued detention of vehicle occupants may offend the Fourth Amendment, so may certain frisks of vehicle occupants. Every frisk of a driver or a passenger requires that officers be able to articulate specific facts justifying both the stop and the frisk independently. Although a reasonable stop is a necessary predecessor to a reasonable frisk, a reasonable frisk does not inevitably follow in the wake of every reasonable stop. The stop is crime-related in that it is justified by a reasonable suspicion of criminal behavior. The frisk is concerned only with officer safety and absolutely requires that the frisking officer actually articulate the factors that led to his or her reasonable suspicion that a frisk was necessary for his or her own protection.

The legitimacy of a frisk requires its own independent justification based upon a reasonable and articulable suspicion that the subject is armed and dangerous. *Terry* held that . . .

Where a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.\textsuperscript{132}

**Test**

To conduct a valid *Terry* frisk, there must first be a valid *Terry* stop. A frisk may then be conducted if there is an objectively reasonable,\textsuperscript{133} particularized,\textsuperscript{134} articulable\textsuperscript{135} suspicion that the suspect is armed or that a particular person is committing, about to commit, or has committed a crime. The reasonable suspicion is based on a totality of the circumstances. The totality of circumstances means that the court must not parse out each individual circumstance for separate consideration. Instead, it must allow police to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available.
to them that might elude an untrained person. A frisk is valid if an officer had a substantial basis for concluding that an articulable suspicion existed.

**Purpose**

The purpose of a frisk is not to discover evidence of a crime but to allow an officer to continue with his or her investigation without fear of harm. It would be unreasonable to require police officers to take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year, many law enforcement officers are killed in the line of duty, and thousands more are wounded. Therefore, when an officer is justified in believing that the individual whose suspicious behavior he or she is investigating at close range is armed and presently dangerous, it is clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. For the same reason, it is also appropriate for officers to require passengers to exit a vehicle during a traffic stop.

**Scope of the Frisk**

Since the purpose of a Terry frisk is to protect police and citizens from harm, the scope of a frisk is narrow. The objective is to discover weapons readily available to the defendant, not to ferret out carefully concealed items that could not be accessed without some difficulty. The reasonableness of a frisk is assessed on a case-by-case basis. Balancing police interests with those of the individual sometimes requires that officers employ the least intrusive means of discovering and neutralizing any concealed weapons. For example, an officer’s action in reaching for the location where a gun was thought to be hidden constituted a limited intrusion designed to ensure his safety and was reasonable.

When an officer legally stops a car, he or she may conduct a cursory search for weapons of the driver, the passengers, and the vehicle if they have reason to believe that a weapon is in the car or the person is dangerous. Such a search must be limited to areas within the passenger compartment in which a weapon may be placed or hidden.

**Limitations**

A person’s mere propinquity to others suspected of criminal activity does not automatically give rise to probable cause to search or frisk that person. Guilt by association is not allowed; however, in car scenarios, it is reasonable for an officer to infer that there is a common criminal enterprise among the occupants of a vehicle unless there is a singling out of a particular occupant. There is a distinction between a vehicle occupant and a building occupant in that a vehicle’s passenger is often engaged in a common enterprise with the driver and has the same interest in concealing the evidence of wrongdoing.

Similar to its reasoning in *Maryland v. Buie*, in which the Court proclaimed a home court advantage type of rule, occupants of vehicles are usually more familiar and comfortable in those surroundings, which conceivably may put the officers at a disadvantage. The risk of danger in the context of a vehicle roadside investigatory
encounter puts the officer at the disadvantage of being on his or her adversary’s turf.

That is not to say that police have an automatic right to pat down every person in a car during a detention when they have reasonable suspicion toward one occupant concerning their safety. Home “turf” advantage is but one factor weighed under the totality of the circumstances that might warrant a reasonably prudent officer to believe that his or her safety or that of others is in danger, thereby making that frisk proper. It is entirely reasonable and consistent under this theory that the other occupants are but containers or receptacles for weapons like the interior of a car was for weapons when given a reasonable belief that a defendant posed a danger.147

Other factors that have contributed to justified frisks include the following: an officer alone on a lonely or secluded stretch of highway,148 heavily tinted windows,149 a reasonable suspicion of illegal drug activity,150 and the observance of certain bulges in clothing.151 A frisk also may be conducted even when a suspect’s clothing shows no visible bulges. Once the officer finds an object on the person of a suspect, he or she may not palpate it more than necessary to determine whether it is a weapon.152 Once it is determined that a person is not armed, however, the officer may not squeeze, slide, or manipulate the contents of the suspect’s pocket to determine what is inside.153

**Arrests Within Vehicles**

The Fourth Amendment’s protection concerning searches of individuals arrested within or in connection to vehicles is somewhat lax. Typically upon arrest, an officer may search the defendant and the area within his or her immediate control—lunge, reach, and grasp area—to prevent concealment or destruction of evidence and for officer safety (e.g., to disarm a suspect in order to take him or her into custody).154 The lunge, reach, and grasp area within a vehicle is somewhat different and expansive than in other scenarios. Once a law enforcement officer has made a lawful custodial arrest of the occupant of a vehicle, the officer may search the person155 and the passenger compartment of the vehicle as a contemporaneous incident of that arrest.156 When a police officer has lawfully arrested a person for a crime, the officer may then search the arrestee and the area within the arrestee’s control without any basis for believing that the search will be fruitful.157 In terms of an arrest made within a vehicle, the contemporaneous search incident to arrest applies to the area located within the passenger compartment of the vehicle including spaces beyond the reach of the suspect.158 Furthermore, per the Acevedo decision,159 the officer may search the contents of any containers found within the passenger compartment. This is true even if the container belongs to another passenger within the car.160 Law enforcement officers have no need to ascertain ownership or lack thereof to containers attached to a car when they have probable cause to search the vehicle. In other words, if an arrest occurs within a car, the entire car, except the trunk, is fair game for a search.

Additionally, once a subject in a vehicle is under arrest, the search incident to arrest permits the search of the car even when the arrestee has been removed from the vehicle prior to the search.161 The timing of the vehicle’s search incident to arrest may, however, effect the validity of the search. Although it is axiomatic that a search incident to arrest cannot precede an arrest and serve as its justification,162 to delay
too long before engaging in the search may render the search non-incidental to the arrest and therefore invalid\textsuperscript{163}; however, there is precedent that holds essentially that once the automatic police prerogative of conducting a warrantless search incident to arrest is vested, it is not necessarily divested if it is not immediately utilized.\textsuperscript{164} As previously stated, the reasonableness clause of the Fourth Amendment does not hold a stopwatch on the police. If a car could be searched incident to arrest at the scene, it is no more or less of an intrusion of privacy to search it later if the car were towed to the stationhouse. It would appear that the Fourth Amendment intrusion is a \textit{fait accompli} at the time of the seizure. The arrestee’s privacy interest in the vehicle does not become proportionately greater as time continues and exigency lapses. Plus, one of the purposes of the rule is to seize contraband.

It is also permissible for the police to stop and search a car and any container therein when they have articulable basis that the car is connected with the execution of a search and seizure warrant.\textsuperscript{165} Most recently, the Court further expanded the car search incident to an arrest to situations in which the car was within the suspect’s immediate control at the beginning of the suspect’s encounter with the police but was not in his or her control at the exact time the officer initiated contact with the suspect.\textsuperscript{166}

It is impermissible for police when conducting a warrantless search of a car to extend the search to the passengers therein,\textsuperscript{167} but because passengers have no reasonable expectation of privacy in the interior area of the car, a warrantless search of the glove box and the spaces under the seats, which turned up evidence implicating the passengers, did not violate any Fourth Amendment interest of the passengers.\textsuperscript{168} In fact, mere passengers in vehicles rarely have standing to complain about the search of the car at all\textsuperscript{169} even though the results of the search may incriminate them.

\textbf{Traffic Stops and Miranda}

Although, most of the discussion thus far has concerned the Fourth Amendment’s control over vehicle situations, it would be remiss not to include a brief segment on traffic stops and \textit{Miranda}.\textsuperscript{170} Because a routine traffic stop is an extremely limited form of a seizure,\textsuperscript{171} it is more analogous to an investigative detention than a custodial arrest; thus, \textit{Terry} rules apply, and typically \textit{Miranda} warnings are not necessary.\textsuperscript{172} The \textit{Terry} standard involves whether an officer’s conduct at the time of a stop was reasonable to secure his or her personal safety. Pre-\textit{Miranda} questions about weapons and safety issues have been upheld regularly under the public safety exception.\textsuperscript{173} Also, as mentioned earlier, criminal history checks during some routine traffic stop situations have been held to be both reasonable and justifiable; thus, brief questioning without \textit{Miranda} warnings regarding criminal history should be acceptable as well.\textsuperscript{174}

\textbf{Endnotes}


2. \textit{Carroll v. United States}, 267 U.S. 132, (1925) (Moving vehicles can be searched without a warrant if there is probable cause to believe that the car contains
contraband and exigency exists that the contents of the car and contraband may disappear.)

3  *Id* at 153-154.


5  *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (When police officers have probable cause to believe contraband is secreted in an automobile that has been stopped on the road, then it is permissible to conduct a warrantless search of that vehicle even after it has been impounded and is situated in police custody.)

6  *Chambers v. Maroney*, 399 U.S. 42 (1970) (Car search may take place at station. Where the police have probable cause to justify a warrantless seizure of an automobile on a public highway, they may conduct either an immediate or a delayed search of the vehicle.); *United States v. Mitchell*, 538 F.2d 1230, 1232 (5th Cir. 1976) (en banc), *cert. denied*, 430 U.S. 945 (1977). See also *Cardwell v. Lewis*, 417 U.S. 583 (1974) (Exigence is to be determined as of the time of seizure of an automobile, not as of the time of its search and the fact that there was sufficient time to obtain a warrant did not invalidate the search either.)


8  *United States v. Knotts*, 460 U.S. 276, 281 (1983) (A person traveling on a public street has no reasonable expectation of privacy on his or her movements from place to place.)

9  *Robbins v. California*, 453 U.S. 420, 424 (1981); *United States v. Bradshaw*, 102 F.3d 204, 211 (8th Cir. 1996) *cert. denied*, 1997 U.S. Lexis 2405, citing *Horton v. California*, 496 U.S. 128, 136-37, (1990)) and holding that a motorist has no legitimate expectation of privacy shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passerby or diligent police officers. See also *Cardwell v. Lewis*, 417 U.S. 583, 584 (1974) (Scraping of paint from the exterior of respondent’s automobile upon probable cause was reasonable and invaded no right of privacy that the requirement of a search warrant is meant to protect.)


11  *Cady v. Dombrowski*, 413 U.S. 433, 448 (1973) (The caretaking and warrantless search of a vehicle by police that was neither in the custody nor on the premises of its owner, due to the owner’s intoxicated and later comatose condition, was not unreasonable since the police had exercised a form of custody of the car which constituted a hazard on the highway.)


14 Colorado v. Bertine, 479 U.S. 367, 376 (1987) (J. Blackmun’s concurring opinion underscored the importance of approving inventory searches conducted only pursuant to standardized police procedures); United States v. Wilson, 938 F.2d 785, 788 (7th Cir. 1991) (Police are allowed to search the contents of a vehicle so long as standardized criteria or established routine exist.)

15 United States v. Haro-Salcedo, 107 F.3d 769, 773 (10th Cir. 1997) (An inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence but rather an administrative procedure designed to produce an inventory.) See also Florida v. Wells, 495 U.S. 1, 4-5 (1990) (The individual police officer must not be allowed so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of crime. Since the Florida Highway Patrol had no policy whatever with respect to the opening of closed containers encountered during an inventory search, their search was not sufficiently regulated to satisfy the Fourth Amendment.)

16 California v. Carney, 471 U.S. 386 (1985) (The Carney decision did not address whether the automobile exception would apply to residential mobile homes that were not readily mobile.)

17 Delaware v. Prouse, 440 U.S. 648, 663 (1979) (Discretionary random stops of vehicles to check licenses and registration papers may constitute a Fourth Amendment violation.)

18 Michigan Department of State Police v. Sitz, 496 U.S. 444, 447 (1990) (Highway sobriety checkpoints are a reasonable furtherance of the State’s interest in preventing drunk driving and involve a minimal intrusion on a motorist’s privacy rights.)

19 United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (Fixed checkpoint stops by Border Patrol located on a major highway away from the Mexican border for brief questioning of the vehicle’s occupants without any individualized suspicion that the particular vehicle contains illegal aliens was deemed reasonable and consistent with the Fourth Amendment.)


22 Id (The stop essentially resulted in a 10- to 15-second delay wherein questions about the hit-and-run were asked and a flyer was distributed to the car’s occupants.)


28 Id at 571.

29 Id at 580 quoting Ross supra at 824.


31 United States v. Woodrum, 202 F.3d 1, 5-6 (1st Cir. 2000) (Mere passenger has a right to protest a traffic stop, but the passenger may be briefly detained even in the absence of his consent. Here, the taxi owner’s consent to TIPS (Taxi Inspection Program for Safety) authorized the police to stop the taxi in which the appellant was riding on the mere suspicion that a dangerous felon might be inside.)

32 Atwater v. City of Lago Vista, 532 U.S. 318 (2001)(Court upheld the stopping of a car and the arresting of its driver for seatbelt and other minor misdemeanor traffic offenses.)


34 Supra. In Whren, J. Scalia noted that the Supreme Court has never held, outside the context of inventory searches or administrative inspections that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment. Instead the Court has repeatedly asserted the contrary. J. Scalia therefore concluded that the constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved. Citing: United States v. Villamonte-Marquez,, 462 U.S. 579, 584, n. 3 (1983) (An otherwise valid warrantless boarding of a vessel by customs officials was not rendered invalid “because the customs officers were accompanied by a Louisiana state policeman, and were following an informant’s tip that a vessel in the ship channel was thought to be carrying marihuana.”) The Court flatly dismissed the idea that an ulterior motive might serve to strip the agents of their legal justification.; United States v. Robinson, 414 U.S. 218 (1973) (A traffic-violation arrest would not be rendered invalid by the fact that it was “a mere pretext for a narcotics search,” id., at 221, n. 1; Gustafson v. Florida, 414 U.S. 260, 266 (1973); Scott v. United States, 436 U.S. 128, 138 (1978), (Wiretap evidence was not subject to exclusion because the agents conducting the tap had failed to make any effort to comply with the statutory requirement that unauthorized acquisitions be minimized stating “[s]ubjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional.” See also United States v. Hassan, 5 F.3d 726, (4th Cir. 1993) (Search was upheld when officers stopped a car, in which the defendant was a passenger, for running a stop sign even though the officers did not have a ticket book with them. They were going to give the driver a warning. During the stop, one officer saw a bulge in the defendant’s clothing, and a gun was recovered. The defendant claimed that this was a pretextual search. The court rejected that claim, holding that, regardless of the “subjective motivations” of the officers, if they had probable cause for a stop and/or arrest (i.e., traffic violations), the stop was proper.
Delaware v. Prouse, supra. (A reasonable articulable suspicion is needed to stop a car.)


Illinois v. Wardlow, 528 U.S. 119 (2000) (A person’s presence in an area of expected criminal activity, by itself, is not enough to support a reasonable particularized suspicion that the person is committing a crime; however, an officer can consider the characteristics of the location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. The fact that the stop in this case occurred in a high crime area was a relevant consideration in a Terry analysis. Nervousness and evasive behavior of the defendant was also a permissible and contributing factor in the analysis equation. “Headlong flight—wherever it occurs—is the consummate act of evasion; it is not always indicative of wrongdoing, but it is certainly suggestive of it.”) Id at 124.


The most important consideration is whether the description is sufficiently unique to permit a reasonable degree of selectivity from the group of all potential suspects. United States v. Hensley, 469 U.S. 221, 227 (1985); Cartnail v. State, 359 Md. 272 (2000).


Knowledge of gang association is a permissible component of the articulable suspicion required for a Terry stop. United States v. Feliciano, 45 F. 3d 1070 (7th Cir. 1995).

Exceptions or less rigorous demands to the requirements of the Fourth Amendment are typically allowed in situations when “special needs,” beyond the normal need for law enforcement make those requirements impractical or unreasonable. New Jersey v. T.L.O., 469 U.S. 325, 341 and 351 (1985) (school situation); Griffin v. Wisconsin, 483 U.S. 868, 873-74 (1987) (A State’s operation of a probation system, like its operation of a school, government office, or prison, or its supervision of a regulated industry, presents “special needs” beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements.)


People v. Murray, 137 Ill.2d 382 , 387 (1990) (Community caretaking is a label used to describe consensual police-citizen encounters that typically involve the safety of the public without any coercion or detention.)

“Assuming the community care-taking function is adopted in the context of a traffic stop, a car momentarily crossing the median line of a roadway does not amount to an unsafe lane change or unsafe entry onto the roadway, particularly in the absence of oncoming or passing traffic, even when the incident occurred
at the approximate time local bars closed when drivers are frequently intoxicated or sleepy” [Rowe v. State, 363 Md. 424, (2001)].


47 Terry v. Ohio, 392 U.S. 1, (1968).

48 United States v. Hunnicutt, 135 F. 3d 1345, 1348 (10th Cir. 1998).

49 Florida v. Royer, 460 U.S. 491 (1983) (An investigative detention must be temporary and last no longer than necessary to effect the purpose of the stop. In this case, a 20-minute stop was upheld.)

50 United States v. Sharpe, 470 U.S. 675 (1985) (When police are responding to a “swiftly developing” situation, courts should not indulge in unrealistic second-guessing of the officer; thus a 20-minute detention for police to conduct an investigation of the suspected criminal activity was reasonable. The officers were not dilatory in their investigation.)

51 United States v. Arvizu, 534 U.S. 266, 273 (2002) (The reasonableness of the length of a Terry stop of a vehicle is determined by considering the facts of each case under a totality of the circumstances, including the expertise and training of the officer.)

52 Id, 534 U.S. 266 (2002) (It was reasonable for an expert border patrol officer to stop a van and seize its passengers where the van was traveling on an unpaved, remote highway used by drug smugglers, when the children inside appeared to exhibit mechanical behavior, and there were better routes more amenable to a family outing.)


54 Pryor v. State, 122 Md. App. 671 (1998) (The forcible stop of the defendant’s vehicle was justified where the defendant was speeding and there was reasonable suspicion that he was in possession of contraband. A continued detention of 20-25 minutes may be justified if problems arise in determining whether a motorist has a valid license or whether the car was reported stolen; otherwise, detention must be limited to the time it reasonably takes to issue a citation.)


56 United States v. Finke, 85 F. 3d 1275 (7th Cir. 1996) (Because criminal history checks take longer to process than license and warrant checks, to routinely do them may constitute an unreasonable detention of the traveler.) See also People v. Cox, 202 Ill. 2d 462, 468, (2002) (The Illinois Supreme Court stated, “When a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation. . . . The officer may perform some initial inquiries, check the driver’s license, and conduct a speedy warrant check. . . . If no further suspicion is aroused in the officer following these inquiries, the traffic stop should go no further. . . . The officer should issue a
warning ticket or a citation, as appropriate, and allow the driver to leave.); People v. Lomas, 349 Ill. App. 3d 462 (2004) (An officer is justified in briefly detaining the driver to investigate the violation including some initial inquiries, checking the driver’s license, and conducting a speedy warrant check. If no further suspicion is aroused in the officer following these inquiries, the traffic stop should go no further.); See People v. Harris, 207 Ill. 2d 515 (2003) (Warrant checks conducted on a passenger’s identification changed the fundamental nature of a minor traffic stop and exceeded the scope of the initial detention in violation of the Fourth Amendment.) People v. Ortiz, 317 Ill. App. 3d 212, 215-16 (2000) (Warrant checks are not part of the normal procedure in Illinois, and a continued detention of the person to run a warrant check may be improper.); See also Brown v. State, 124 Md. App. 183 (1998) (The continued detention of a defendant for 5 minutes while a police officer ran an outstanding warrant check was unreasonable under the Fourth Amendment. The rule is that once the purpose of the stop is fulfilled—in this case, after the officer determined that the defendant had no guns—there is no justification to detain him or her further unless the defendant’s actions give rise to a suspicion of other crimes. This was true even where the defendant was later found to be wanted on an outstanding homicide warrant!)

57 Some states (i.e., Ohio [State v. McFarland, 158 N.E.2d 1168 (1982)]; Florida [State v. Bell, 382 So.2d 119 (1980)]; Indiana [Clark v. State, 358 N.E.2d 761 (1977)]; and Nebraska [State v. Holman, 380 N.W.2d 304 (1986)]; and the 10th Circuit [United States v. McRae, 81 F.3d 1528 (10th Cir. 1996)]) have held that checks for outstanding warrants are part of the normal procedure for traffic offense stops.

58 United States v. Wood, 106 F3d 942, 945 -948 (10th Cir. 1997) (The court cautioned that prior criminal involvement alone was insufficient to give rise to the necessary reasonable suspicion to justify shifting the focus of an investigative detention from a traffic stop to a narcotics or weapons investigation.)

59 Foote v. Dunagon, 33 F.3d 445, 449 (4th Cir. 1994) (“An officer is authorized to take such steps as are reasonably necessary to protect his personal safety and to maintain the status quo during the course of a stop. Where, as here, an officer has been informed by a radio dispatcher that the owner of a vehicle is armed and a dangerous ‘Rambo type’ and that he should approach the vehicle with caution, it unquestionably is reasonable for the officer to draw his weapon when approaching the vehicle to question its driver.”)


62 Supra.


64 Lee and Hall v. State, 311 Md. 642 (1988) (An order for the defendant to lay on the ground was justified as objectively reasonable. Physical force may be employed to enforce a Terry stop.)
Adams v. Williams, 407 U.S. 143, 148 (1972) Officer’s action in reaching to the location where he thought a gun was hidden was minimally intrusive to ensure his safety when the defendant rolled down his window, rather than complying with the request to step out of the car so his movements could be observed.

Houston v. Clark County Sheriff Deputy John Does, 174 F. 3d 809, 814-15 (6th Cir. 1999).

Hiibel v. Sixth Judicial District Court of Nevada, 124 S. Ct. 2451, rehearing denied, 125 S. Ct. 18 (2004). “In our society, no person has a constitutional right to be an anonym.” Gibson v. State, 138 Md. App. 399 (2001) (quoting Billinger v. State, 9 Md. App. 628, 629 (1970) (There is no sanction to be applied when an illegal arrest only leads to discovery of the man’s identity. The body or identity of a defendant is never suppressible as the fruit of an unlawful arrest.)

United States v. Alvarez, 899 F.2d 833 (9th Cir. 1990); see also United States v. Hensley, 469 U.S. 221 (1985) (A “wanted flyer” that had been issued on the basis of articulable facts supporting a reasonable suspicion that the person wanted had committed an armed robbery, justified a stop to check identification, to pose questions, or to detain the person briefly while attempting to obtain further information.)

United States v. Alvarez, 899 F.2d 833 (9th Cir. 1990); see also United States v. Hensley, 469 U.S. 221 (1985) (A “wanted flyer” that had been issued on the basis of articulable facts supporting a reasonable suspicion that the person wanted had committed an armed robbery, justified a stop to check identification, to pose questions, or to detain the person briefly while attempting to obtain further information.)


Hiibel v. Sixth Judicial District Court of Nevada, 124 S. Ct. 2451, 2454, rehearing denied, 125 S. Ct. 18 (2004).

But compare, Berkemer v. McCarty, 468 U.S. 420 (1984) (An officer may ask the detainee a limited number of questions to determine his or her identity and to confirm or dispel the officer’s suspicions that led to the stop, but the detainee is not required to respond.)

Whren v. United States, 517 U.S. 806 (1996) (Continued detention unreasonable when an officer made no traffic determination until hours later at the stationhouse.)


United States v. Wood, 106 F.3d 942 (10th Cir. 1997).

United States v. Elliott, 107 F.3d 810 (10th Cir. 1997).

Traffic stops are dangerous encounters. “In 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops” quoting Maryland v. Wilson, 519 U.S. 408, 413 (1997).

United States v. Waldon, 206 F.3d 597 (6th Cir. 2000); United States v. Young, 105 F.3d 1 (1st Cir. 1997).
In the ordinary course, an officer is free to ask for identification without implicating the Fourth Amendment per Justice Kennedy in *Hiibel, Supra* at 2453.


*Bostick, supra.*


*United States v. Jerez*, 108 F.3d 684 (7th Cir. 1997).

*United States v. Rodriguez*, 69 F.3d 136 (7th Cir. 1995).


Where is one to go if one is stopped in a vehicle along an interstate?

Mere words will not constitute an arrest. An arrest requires physical force or submission to assertion of authority. The word *stop* does not make it an arrest or seizure. Use the *United States v. Mendenhall*, 446 U.S. 544 (1980) test as cited in *Michigan v. Chesternut*, 486 U.S. 567 (1988): “A person has been seized within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” The test for the show of authority is an objective one. In *Hodari D.*, the defendant apparently did not believe he was seized, as he ignored the police. Seizure occurred only after the police tackled him. *California v. Hodari D.*, 499 U.S. 621 (1991).

*United States v. Little*, 60 F. 3d 708, 712 (10th Cir. 1995) (Nonpublic location is a relevant factor but not determinative in holding that the defendant was seized.); *United States v. Ward*, 961 F 2d 1526, 1530 (10th Cir. 1992) (Nonpublic location is a substantial factor in that the room occupied by the defendant at the time of the police encounter was the smallest private compartment on the train.) See also *INS v. Delgado*, 466 U.S. 210, 218 (1984) (No seizure existed when INS placed agents at the exits of a factory to conduct a survey. The presence of the agents at the factory doors did not prevent the workers from moving about within the
factory. The positioning of agents at the doors merely ensured that all persons were questioned.)

93 Florida v. Rodriguez, 469 U.S. 1, 5 (1984) (Rodriguez was not seized at an airport when officer showed him his badge and asked to question him.)

94 Trott v. State, 138 Md. App. 89 (2001) (The failure of an officer to advise of the right to leave is not always dispositive. The focus is on the conduct of the investigating officer and not the subjective response of the person being questioned. The test is an objective one under the totality of the circumstances.)

95 Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (Knowledge of the right to refuse is not a prerequisite of voluntary consent; however, the failure of the police to inform of the right not to respond is certainly a factor.)

96 United States v. White, 890 F.2d 1413, 1416 (8th Cir. 1989) (Seizure occurred when defendant was told that he was stopped because he fit the drug courier profile); United States v. Ward, 961 F.2d 1526, 1532 (10th Cir. 1992) (Focused potentially incriminating questions were a factor to show seizure because a person would not feel free to ignore the police questioning.)

97 Green v. State, 371 Md. 613 (2003) (Consent was valid when, after a valid traffic stop and warning, the officer returned the license and registration and advised the driver that he was free to go. The officer immediately asked the driver whether he would mind answering a few questions before he left the scene, the driver consented, and, ultimately, consented to a search of car. The search took place after back-up arrived 15 to 20 minutes later.)


99 Michigan v. Chesternut, 486 U.S. 567 (1988) (The defendant ran when a police car approached. Police drove alongside the defendant for a short distance and then followed him for many blocks. The Court held this was not a Fourth Amendment seizure because a reasonable person would not have concluded that the police had restrained the defendant’s freedom to leave. Reasonable suspicion is not needed in order to pursue.)


101 The origin of the proverb “Hear No Evil, Speak No Evil, See No Evil” is unknown. The phrase usually means that a person does not want to get involved because this person chooses to see, hear, and speak nothing. Some contend that it is a proverb reminding us not to be so snoopy, so nosy, and so gossipy. Others say that it is a warning to stay away from places where immoral acts are taking place. The phrase is represented by the Three Wise Monkeys, each of which covers its ears, eyes, and mouth with its own hands. The three monkeys were carved on the door of the Sacred Stable in Nikko, Japan. The names of the three monkeys are Mizaru (See No Evil), Kikazaru (Hear No Evil), and Iwazaru (Speak No Evil), which also translate to the well-known phrase. See http://en.wikipedia.org/wiki/See_No_Evil_Hear_No_Evil_Speak_No_Evil
United States v. Brigoni-Ponce, 422 U.S. 873 (1975); United States v. Rojas-Millan, 234 F.3d 464, 469-70 (9th Cir. 2000). See also, State v. Chapman, 332 N.J. Super 452, 463 (2000) (New Jersey court held that during the course of a typical traffic stop an officer may do the following: Request the motorist’s driving credentials, advise of the reason for the stop, run a computer check of the driver’s license status, ask questions reasonably related to the reason for the traffic stop, and issue a citation or warning. In this case, since the driver had a suspended license and it appeared that he was either drunk or fatigued, it was permissible to ask the passengers for their identification and licenses and to inquire where they had been and where they were going to determine their sobriety or ability to operate the vehicle.)


United States v. Brigoni-Ponce, supra at 882 (Border Patrol officers were permitted to question the driver and passengers about their citizenship and immigration status and were entitled to ask the occupants to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause.)

United States v. Pruitt, 174 F.3d 1215 1221 (11th Cir. 1999) cert. denied, 1999 U.S. Lexis 7834 (1999) (As the stop was based on speeding, the officer’s conversation should have been limited to securing Pena’s license, registration, and insurance papers. Once such brief questioning was completed, Pena and the others should have been free to go, as the officer at that time had no reasonable suspicion of their criminal activity. In such circumstances, additional “fishing expedition” questions such as “What do you do for a living?” and “How much money did your van cost?” were simply irrelevant and constituted a violation of Terry.


United States v. Shabazz, 993 F.2d 431, 437 (5th Cir. 1993) (“[W]e have no doubt, that in a valid traffic stop, an officer can request a driver’s license, insurance papers, vehicle registration, run a computer check thereon, and issue a citation. The questioning that took place occurred while the officers were waiting for the results of the computer check; therefore, the questioning did nothing to extend the duration of the initial, valid seizure. Because the officers were still waiting for the computer check at the time that they received consent to search the car, the detention to that point continued to be supported by the facts that justified its initiation.”); Cf. United States v. Sharpe, 470 U.S. 675 (1985).


Id at 226. The request for identification of a mere passenger during a car stop for a missing license tag did not alter the nature of the stop and turn it into a general inquisition about wrongdoing. See also People v. Harris, 207 Ill. 2d 515 (2003); People v. Bunch 207 Ill. 2d 7 (2003) (Passenger identification by police is unreasonable if demanded but potentially reasonable if requested.)
111 Prouse, supra.


113 United States v. Purcell, 236 F.3d 1274 (11th Cir. 2001).

114 Dow Chemical Co. v. United States, 476 U.S. 227 (1986) (Plain view may be enhanced by technology.); See also Kyllo v. United States, 533 U.S. 27, 33 (2001) (There are limits as to how much technological enhancement of ordinary perception will be allowed, particularly in areas of heightened privacy protection expectations like a closed car trunk.


117 Maryland v. Wilson, 519 U.S. 408, 413 (1997).

118 People v. Gonzalez, 184 Ill. 2d 402 (1998) (It is reasonable for an officer to order a passenger to remain briefly at the scene of a traffic stop because the public interest in officer safety outweighs the minimal intrusion to that passenger’s liberty interest.)

119 Wilson, supra at 415 n.3.


121 Florida v. J.L., 529 U.S. 266 (2000) (Apart from an anonymous tip to police reporting that a man in a plaid shirt at a particular bus stop was carrying a gun, there was no reason to suspect any illegal conduct. An anonymous tip that a person is carrying a gun is not, without more information, sufficient to justify a stop and frisk of that person. The tip lacked sufficient indicia of reliability to provide reasonable suspicion to make a Terry stop. There is no “firearm exception” that would allow a tip alleging an illegal gun to justify a stop and frisk.) See also Allen v. State, 85 Md. App. 657 (1991) (The court held that the stop and frisk of a defendant was permissible based on an anonymous tip that the defendant was armed. A good description of the person and location were given, and the location was a high violence/homicide location. The court reasoned that the information provided by the tipster was reliable because the significant aspects of the caller’s predictions were verified before the stop was made.)

122 In Florida v. J.L., supra at 273-74, the court issued this caveat: “We do not say that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk. Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is diminished, such as airports and schools, cannot conduct protective searches on the basis of information insufficient to justify searches elsewhere.”

123 Hardy v. State, 121 Md. App. 345 (1998) (An anonymous tip informing officers that a burgundy Honda was traveling on a particular highway and that the
occupants were believed to have weapons and drugs was not sufficient to justify a Terry stop. The informant did not provide sufficient detail to justify the stop. Reasonableness is determined by balancing the intrusion on the individual’s Fourth Amendment interests against the promotion of legitimate governmental interests.)


125 Adams v. Williams, 407 U.S. 143 (1972) (Reliable informant known to officer provided sufficient information about person with a gun seated in a particular car to justify officer going to car and reaching in window to remove handgun from suspect’s waistband after suspect did not comply with command to open door.)


128 United States v. Kopp, 45 F 3d 1450 (10th Cir. 1995); See also Nathan v. State, 370 Md. 648 (2002) (The initial traffic stop was based on speeding. Nathan, the driver, was unable to produce identification, and the passenger was pretending to be asleep. Nathan and the passenger gave conflicting accounts of their itinerary; there was an overwhelming odor of air freshener; and an altered ceiling similar to those the officer had previously found to house concealed compartments for controlled substances. The court held these observations were sufficient facts to justify the continued stop and in fact provided probable cause to search the van. Of particular significance contributing to a finding of probable cause was the hidden compartments; however, that finding was only “one part of the mosaic, not the sole factor.”


130 New York v. Class, 475 U.S. 106 (1986) [Court held that in light of the efforts by the federal government pursuant to 49 C.F.R. Section 571.115 (1984) to ensure that the VIN is placed in plain view, there is no reasonable expectation of privacy in a VIN. Thus, the entry into the automobile and the moving of papers on a dash to allow the VIN to be visible did not violate the Fourth Amendment. The intrusion was limited in scope to ascertain the VIN only. Although this intrusion was justified in this case without any showing of a reasonable suspicion, the court opined that the entry may not have been permissible if the VIN was visible from outside the vehicle.]

131 United States v. Hunnicutt, 135 F. 3d 1345, 1349 (10th Cir. 1998) (A canine sniff of an already legitimately detained automobile is not a “search” within the meaning of the Fourth Amendment. Furthermore, the court reiterated that a variety of factors may contribute to the formation of an objectively reasonable suspicion of illegal activity, including no proof of ownership of the vehicle, having no proof of authority to operate the vehicle, inconsistent statements about destination,
driving with a suspended license, reluctance to stop, and the inability to offer proof of ownership or authorization to operate the vehicle.)

132 Terry, supra.

133 Adams v. Williams, 407 U.S. 143 (1972) (A protective frisk can be validated based upon an officer’s personal observations and upon the observations of an informant whose reliability has been established.)

134 Florida v. J.L., 529 U.S. 266 (2000) (Reasonable suspicion requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. There is no “firearm exception” that would allow a tip alleging an illegal gun to justify a stop and frisk.)

135 United States v. Burton, 228 F.3d 524 (4th Cir. 2000) (The Fourth Circuit Court of Appeals held that without a reasonable suspicion that the defendant had a gun, the search was not permissible. Since the officer had no suspicion that the defendant was armed and the defendant gave no indication that he had a weapon, the officer’s automatically searching the defendant’s pockets for a weapon was inappropriate. The officer’s claim that he checked the defendant’s person out of concern for officer safety was an insufficient articulation of suspicion.)


139 State v. Smith, 345 Md. 460 (1997) (An officer exceeded the permissible scope of a Terry protective frisk when, after an initial interview and pat-down of the outer clothing of the defendant, the officer attempted to verify the accuracy of the initial pat-down by lifting the defendant’s shirt to allow visibility of the waistband area).


141 United States v. Purcell, 236 F.3d 1274, 1277-78 (11th Cir. 2001).

142 Michigan v. Long, 463 U.S. 1032, 1050 (1983) (Leather pouch could have contained a weapon.)


144 Most recently, in Maryland v. Pringle, 540 U.S. 366 (2003), the court found probable cause to arrest a front seat non-owner passenger of a car where $763 was located in the closed glove box, cocaine was recovered from a back armrest, and all occupants denied ownership of drugs and money.


United States v. Sills, 120 F.3d 917, 919 (8th Cir. 1997).

United States v. Mcrea, 81 F.3d 1528 (10th Cir. 1996) (Isolated stretch of highway coupled with warning to use extreme caution when approaching that suspect); United States v. Cannon, 29 F.3d 472 (9th Cir. 1994) (secluded area, late at night in known drug trafficking area).


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Michigan v. Summers, 452 U.S. 692 (1981) (While not involving frisks, this case recognized the extraordinary dangers to police during the execution of search warrants particularly regarding controlled substance trafficking cases.) See also United States v. Sakyi, 160 F.3d 164, 169 (4th Cir. 1998).

Pennsylvania v. Mimms, 434 U.S. 106 (1977) (The Court found no Fourth Amendment violation where police made a valid traffic stop and, upon noticing a bulge in the defendant’s jacket, frisked him and recovered a loaded weapon.); See also Ransome v. State, 373 Md. 99 (2003) (Ransome was standing on a corner talking with a friend late in the evening in a high crime area when an officer who was driving by observed an unidentified bulge in his pocket and conducted a frisk. This observation was not a sufficient reason to justify a stop, let alone a frisk. Although the basis of the stop was the bulge, it was not the starting point of the frisk. The court held that a “bulge is not always a bulge.” A bulge in the waist is different from a bulge in a pocket. Guns are carried in the waist and anything can be in a pocket. A large bulge in an unusual place on a suspect may be a factor warranting reasonable suspicion; however, no facts were articulated here. Therefore this was not a valid Terry stop and frisk.)

Aguilar v. State, 88 Md. App. 276 (1991) (Ordering a suspect to lower his pants after an initial negative pat down was held to exceed permissible scope of a Terry frisk.)

The limitation is imposed by Minnesota v. Dickerson, 508 U.S. 366 (1993); United States v. Swann, 149 F.3d 271 (4th Cir. 1998).


Upon arrest, an officer may search the defendant and the area within his or her immediate control—lunge, reach, and grasp area—to prevent concealment or destruction of evidence and for officer safety (to disarm a suspect in order to take him or her into custody). Chimel v. California, 395 U.S. 752 (1969); Knowles v. Iowa, 525 U.S. 113 (1998).

New York v. Belton, 453 U.S. 454 (1981) (When an officer makes a lawful custodial arrest of an occupant of a car, he or she may, as a contemporaneous incident
Initially, the rhetoric given for the search incident to arrest exception to the Fourth Amendment warrant requirement was for officer safety and to preserve evidence; however, the scope of the doctrine quickly expanded from the need for actual physical control of the detainee, to the potential for harm, and then to anyone who was arrested without any further justification. See, *Illinois v. Lafayette*, 462 U.S. 640 (1983) (When an arrest is made, it is reasonable for the officer to search the arrestee in order to remove any weapons that could be used to resist arrest or effect an escape. To hold otherwise would put officers in danger and frustrate the arrest process. It is also reasonable to seize any evidence on the arrestee’s person in order to prevent its concealment or destruction, including any area in which an arrestee might reach in order to grab a weapon or evidentiary items. A gun on a table or in a drawer in front of an arrestee can be just as dangerous to the arresting officer as one concealed in the arrestee’s clothing. There is ample justification, therefore, for a search of the arrestee’s person and the area in which he or she might gain possession of a weapon or destructible evidence.); *Gustafson v. Florida*, 414 U.S. 260 (1973) (It is the fact of the custodial arrest that gives rise to the authority to search. An officer need not indicate any subjective fear of the arrestee or suspect that the arrestee is armed. Police are entitled to make a full search of the defendant’s person incident to a lawful arrest.; *United States v. Robinson*, 414 U.S. 218, 225-26 (1973) (The authority to search the arrestee incident to a lawful custodial arrest does not depend upon what a court may later determine was the probability in a particular situation that weapons or evidence would be found. A search incident to arrest requires no additional justification. The probability of harm to the arresting officer is not a relevant inquiry.)

*Id; Carroll v. United States*, 267 U.S. 132 (1925) (Warrantless searches of integral parts of the automobile are reasonable, including contraband whiskey hidden within the upholstery of the seats.; *United States v. Thompson*, 906 F.2d 1292, 1298 (8th Cir. 1990) (The term passenger compartment is interpreted broadly.); *United States v. Russell*, 670 F.2d 323, 327 (D.C. Cir. 1982) (Hatchback area in a 1979 Mustang is a part of the passenger compartment.); *United States v. Chapman*, 954 F.2d 1352, 1358 (7th Cir. 1992) (A truck bed functions as a passenger compartment.); *United States v. Veras*, 51 F.3d 1365, 1371 (7th Cir. 1995) (Secret compartment in back seat is part of the passenger compartment.)

*Wyoming v. Houghton*, 526 U.S. 295 (1999) (Usually a person’s mere propinquity to others suspected of criminal activity does not automatically give rise to probable cause to search or reasonable suspicion to frisk a person; however, in car scenarios, it is reasonable for an officer to infer that there is a common criminal enterprise among the occupants of a vehicle unless there is a singling out of a particular occupant.)

*The validity of a search does not depend on the probability that weapons or evidence would, in fact, be found. The fact that a defendant is in handcuffs and placed in a police cruiser does not negate the right to search the containers. State v. Fernon*, 133 Md. App. 41 (2000) (A warrantless search of the defendant’s car,
including a locked center console, which occurred within 9 minutes of his arrest, was a lawful search incident to arrest for a DWI, even though the defendant was handcuffed and seated in a police car with his seat belt fastened at time of the search. When a container is within the immediate control of a suspect at the beginning of the encounter with police and the container is searched at the scene of the arrest, the Fourth Amendment does not prohibit a reasonable delay between the elimination of the danger and the search).

162 *Sibron v. New York*, 392 U.S. 40 (1968) (A frisk for weapons that led to the recovery of CDS was not justified as a search incident to arrest).

163 Searches are essentially contemporaneous with an arrest when made within a few minutes after the arrest, even if the suspect at the time of the search has been handcuffed or placed in a police cruiser. In *Preston v. United States*, 376 U.S. 364 (1964), the Court held that once an accused is under arrest and in custody, then a search made at another place without a warrant is not incident to arrest. (The search of a car conducted after suspects were at the stationhouse and the car had been towed to a garage was impermissible. A 2- to 3-hour post-arrest delay cannot essentially be said to be contemporaneous.); Also see *United States v. Edwards*, 415 U.S. 800 (1974) (Court held that it was immaterial whether the defendant’s property was immediately searched and seized at the time of his initial arrest at a hotel or thereafter at place of detention. Both the person and the property in his immediate possession may be searched at the stationhouse after the arrest has occurred at another place. If evidence is discovered, it may be seized and is admissible. There is no doubt that clothing or other belongings seized upon the arrival of the accused at the place of detention and later subjected to laboratory analysis are admissible at trial. No more of an imposition was made upon Edwards on the day after his arrest, than would have been imposed at the time and place of the arrest or immediately upon arrival at the place of detention. A delayed “search incident” does not intrude any more on a protected right than a more immediate “search incident” would. When the police, on the street or at the stationhouse, lawfully take an arrestee into custody, the twin exigencies of that custodial situation concerning possible weapons and possible evidence justify the warrantless search incident at its inception. For example, when, hours or days later, a crime lab technician picks up a gun from a storage locker to conduct a ballistics test, that is not a fresh Fourth Amendment intrusion requiring either new exigency or a warrant for its justification.)

164 *United States v. Edwards*, supra. The property subjected to the delayed search was already in the lawful custody of the police; therefore it was not immune from examination by them.

165 *Michigan v. Summers*, 452 U.S. 692 (1981); See also *Fromm v. State*, 96 Md. App. 411 (1993) (The Court relying on *Michigan v. Summers*, stated that a warrant for the search of an apartment implicitly gave the officers who were about to execute it the authority to detain the apartment dweller when they saw him walk out of a different but nearby apartment building and head toward the parking lot. The detention serves the purpose of preventing the defendant from fleeing and facilitating the orderly completion of the search. Foreseeably this would have allowed the officers to stop him if he had gotten into his car.) See also *Stanford v. State*, 353 Md. 527 (1999) (The Court found the detention of nonresident/suspect
in conjunction with the execution of a search and arrest warrant unlawful where the suspect did not match the description of suspects named and described in the warrant.)

166 Thorton v. United States, 000 U.S. 03-5165 (2004) [expanding New York v. Belton and incorporating dicta from Michigan v. Long, 463 U.S. 1032 (1983)] (Incident to a lawful arrest, an officer may search a vehicle, even if the officer has not initiated contact with the suspect while the suspect was still in the car).

167 United States v. Di Re, 332 U.S. 581 (1948); Ybarra v. Illinois, 444 U.S. 85, 94-96 (1979); See also People v. Staple, 345 Ill. App. 3d 217 (2004) (Police may not extend the search incident to arrest of the driver of a vehicle to authorize the search of the person of passengers found in a stopped vehicle either.)

168 Rakas v. Illinois, 439 U.S. 128 (1978); Maryland v. Pringle, supra (The Supreme Court found probable cause to arrest and search a non-owner passenger of a car where contraband was found therein and all occupants denied ownership.); People v. Morales, 343 Ill. App. 3d 987 (2003).

169 People v. Juarbe and Soto, 318 Ill. App. 3d 1040, 1050 (2001) (Soto had no possessory interest in the vehicle; there was no evidence that he had a right to exclude others from the vehicle; he was present when Juarbe gave permission to search the car, and he did not object even though he was legitimately in the car; and there was no evidence as to any precautions he took. Therefore, Soto had no reasonable expectation of privacy in the vehicle. Consequently, Soto lacks standing to challenge the search.); Rakas v. Illinois, 439 U.S. 128, (1978) (Generally, a passenger lacks standing to challenge the search of another’s vehicle unless the passenger has a legitimate expectation of privacy in the place searched.)


171 McAvoy v. State, 314 Md. 509 (1989) (The questions asked in a public parking lot resulted in only a brief detention; therefore, it was no more coercive than asking a motorist whether he or she had been drinking or is in possession of weapons or drugs.)


173 United States v. Purcell, 236 F.3d 1274 (11th Cir. 2001) (It was reasonable in an Interstate 95 traffic stop for an officer to ask whether the defendants had guns, firearms, or narcotics in their car where they were driving a rental car and the driver admitted prior CDS convictions); See also United States v. Shea, 150 F.3d 44 (1st Cir. 1998); United States v. Young, 58 Fed Appx. 980 (4th Cir. 2003); United States v. Webster, 162 F.3d 308 (5th Cir. 1998); United States v. Edwards, 885 F.2d 377 (7th Cir. 1989); and United States v. Carrillo, 16 F.3d 1046 (9th Cir. 1994).

174 United States v. Crain, 33 F.3d 480, (5th Cir. 1994); United States v. Finke, 85 F.3d 1275 (7th Cir. 1996); United States v. McManus, 70 F.3d 990 (8th Cir. 1995); United States v. Wood, 106 F.3d 942 (10th Cir. 1997).
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Club Drugs: They’re All the Rave: A Review of Use and Abuse: Effects of MDMA, Methamphetamine, and Gamma-Hydroxy-Butyrate (GHB) on Memory

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The Amphetamine Epidemic

In 2005, the National Center on Addiction and Substance Abuse (NCASA) reported an alarming increase (212%) in the abuse of controlled prescribed drugs among the 12- to 17-year-old age group from 1993-2003. Among these abused drugs are the amphetamines, specifically the illicit drugs methamphetamine (meth) and structurally related 3,4-methylenedioxy methamphetamine (MDMA). Meth and MDMA drug abuse is a growing epidemic worldwide. According to one study, 6.2% of high school seniors used meth in 2004 (National Institute on Drug Abuse). An estimated 35 million people regularly use amphetamines, compared to 15 million users of cocaine (Rassool, Gonzales, & Bretten, 2002; Rawson et al. 2002; Thompson, Hayashi, & Simon, 2004). An 87% increase in meth-related arrests was observed over the past 3 years at 500 law enforcement agencies across 45 states; law enforcers consider meth to be the most significant drug problem in America as printed recently in the New York Times (Zernike, 2005). The United Nations International Drug Control (UNIDC) estimated that there are 250 million abusers of psychoactive
drugs worldwide posing a significant public health problem (Rawson et al., 2002). The statistics described above demonstrate the widespread effects that such abused drugs can impose on our country, community, and society. Along the same line, recent publications have discussed the role of meth and MDMA in causing different psychobiological effects leading to memory deficits and cognitive impairments, which will be discussed later (Roques & Noble, 2003).

**Methamphetamine as a Club Drug**

Meth (also known as *ice*, *crank*, *speed*, *crystal meth*) is an addictive psychostimulant belonging to the amphetamine family, which was originally introduced as an appetite suppressant and a treatment for attention deficit disorder (Robbins & Everitt, 1999; Sulzer, Sonders, Poulsen, & Galli, 2005; Tellier, 2002). Meth was used during WWII by Japanese kamikaze pilots for energy and bravery (Taylor, 2005). Meth can also be useful in treating narcolepsy due to the energy boost it provides (Goetz, 2003). It is the most widely spread illicit drug because it is easy to prepare and cheap to obtain. Meth can be smoked, inhaled, or injected leading to a variety of social behaviors with a feeling of euphoria and increased self-esteem, with the effects lasting up to 15 hours. Amphetamines are sympathomimetics that act by increasing the amount of dopamine, norepinephrine, and epinephrine neurotransmitters available in the brain. As a result, the user may experience a heightened sense of awareness and paranoia. The average meth dose may cause the user to experience mydriasis (dilated pupils), hypertension, tachycardia (increased heart rate), and hyperthermia (Moore & Jefferson, 1996). Other indicators of meth use include auditory hallucination, visual hallucinations often involving bugs, agitation, insomnia, anxiety, nausea, and vomiting. Upon meth overdose, psychosis, myocardial infarction, seizures, and even death may occur.

**Methamphetamine Neurotoxicity**

Meth is a psychostimulant that is known to mediate addictive behavior by acting on the monoaminergic system leading to an increase in the dopamine (DA) and serotonin (5-HT) levels in certain brain regions (Fleckenstein, Gibb, & Hanson, 2000; Robbins & Everitt, 1999). Several human and non-human primate studies have indicated that the meth monoaminergic effect can lead to neurotoxic effects, which are associated with neurocognitive impairments involving memory deficits (nonspatial and working memory) (Gonzalez et al., 2004; Schroder, O’Dell, & Marshall, 2003). Long-term meth use induces dopaminergic and serotonergic axonal terminal damage that is coupled with neuronal degeneration of specific population of neocortical neurons (Schroder et al., 2003), and is attributed to the lipophilic nature of meth, which facilitates crossing of the blood brain barrier (BBB) and access to different brain regions (Nordahl, Salo, & Leamon, 2003). Upon entering the monoaminergic system, meth binds to the plasmalemmal dopamine transporter (DAT) and alters its function by blocking the re-uptake of DA and overloading the synapse (Baucum, Rau, Riddle, Hanson, & Fleckenstein, 2004; Robbins & Everitt, 1999). Meth also diffuses via the DAT into the neuronal terminal where it acts as a substrate for a number of neuronal structures, including the dopamine vesicular transporter (VMAT) that contributes to increased cytosolic DA. Afterward, neuronal function is altered leading to a reduction in DAT activity and the dysfunction of tyrosine hydroxylase (TH) and dopamine vesicular transporter (Nordahl et al., 2003). Furthermore, the oxidizing environment of the cytosol can lead to DA oxidation.
leading to the generation of nitrogen, oxygen, and metabolic reactive species that trigger dopaminergic terminal degeneration and subsequently cause necrotic cell death (Baucum et al., 2004; Davidson, Gow, Lee, & Ellinwood, 2001). In addition, it has been shown that meth can diffuse into other neuronal organelles, such as the mitochondria where it causes perturbation in the mitochondrial electron gradient leading to mitochondrial mediated apoptotic cell death. Oxidative stress mediated injury is exacerbated by increased glutamate levels, which in turn can activate NMDA receptors producing more reactive oxygen species leading toward excitotoxicity.

Neuronal degeneration is not confined to the monoaminergic system but can include other neocortical cells in a dopamine independent pathway. In a study by Cadet, Ordonez, and Ordonez (1997), it was demonstrated that an immortalized neuronal cell line when treated with meth exhibited an apoptotic cell death phenotype. These results were strengthened by other findings showing that neocortical cells were killed by meth treatment and showed increased expression of apoptotic markers and apoptotic family proteins (Stumm et al., 1999). Newly published work from our research has shown that an acute meth neurotoxic regimen (4x10 mg/kg) in rats causes neuronal injury in both the cortex and the hippocampus mediated by calpain and caspase activation that is suggestive of neuronal cell death (Warren et al., in press).

Neuropsychobiological Effect of Methamphetamine on Memory Deficits and Cognition

Coupled to meth-related toxicity observed in DA neurons, it has been shown using positron emission test (PET) imaging that DA reduction is correlated with memory deficits observed in heavy meth users (Fleckenstein et al., 2000; Hanson, Rau, & Fleckenstein, 2004). Daberkow, Kesner, and Keefe (2005) further evaluated meth-induced memory deficits in rats. Meth was administered at 2-hour intervals for 8 hours; then 10 days later, the rats were tested using a radial arm maze with free access for 5 days. Three weeks after exposure to meth, the rats were trained in the maze for 5 days using food rewards. Afterward, the maze pattern was changed. Meth exposed rats took longer to complete the maze and spent more time in its center. These rats also made fewer direct moves on the last day. This shows a likely decrease in procedural memory in meth-exposed rats. The meth-exposed rats had decreased DA and 5HT in the striatum, an area of the brain involved with cognition. The more the DA was depleted, the fewer direct moves were made by the rats, indicating that DA in the striatum may be at least partially responsible for procedural learning.

To further explain meth-mediated memory impairment, Schroder et al. (2003) demonstrated a novel approach to evaluate the neurotoxic effects of meth, in which treated rats were evaluated in nonspatial memory (i.e., object recognition) and spatial memory (i.e., Morris water maze) hippocampal associated tasks. Rats were exposed to meth for one day and presented with a novel and a familiar object. The amount of time spent investigating the new object compared with the time spent on the familiar object is indicative of the rats’ memory of the old object. Meth-treated rats consistently had poorer memory of the old object at 90 minutes, 24 hours, one week, and three weeks post meth exposure. In contrast, the results of the Morris water maze spatial memory test showed that at one week post-treatment, there was
no difference between the meth-exposed and control groups; however, after sacrifice it was found that there was a significant decrease in DAT and serotonin transporter (SERT) in the striatum and hippocampus, respectively. One major finding of this research is that a single meth treatment can cause long lasting selective hippocampal dependent memory deficits attributed to damage of the hippocampus monoaminergic terminals (Schroder et al., 2003).

Some research on meth has been performed in humans. Thompson et al. (2004) utilized magnetic resonance imaging (MRI) to evaluate different brain alterations associated with chronic meth abuse in human subjects. In brief, 22 human subjects with a chronic history of meth abuse were subjected to MRI and compared to healthy subjects.

Interestingly, this study revealed three important findings related to chronic meth abuse: (1) Cortical maps revealed severe gray matter deficits in three separate cortical areas in the meth abusers compared to the control group, (2) Meth subjects showed significant hippocampal volume reduction (7.8% decrease) compared to the control subjects, and (3) Hippocampal mapping was correlated with memory performance evaluated via word recall test. It was shown that chronic meth abusers caused selective cerebral damage contributing to the memory deficits observed (Blakeslee, 2004; Thompson et al., 2004).

MDMA

MDMA, also known as ecstasy, XTC, E, and X, is one of the most commonly used and abused club drugs. Ecstasy, as the name suggests, is taken to induce euphoria, a sense of well-being, and a good mood, with its effects lasting for 4 to 6 hours (DEA, 2001). At $20 to $30 dollars per dose, MDMA is a profitable industry, with 4% of American high school seniors reported to have used the drug in 2004, down from an all-time high of 9.2% in 2001 (National Institute on Drug Abuse, 2004).

Signs of MDMA Intoxication

Like other club drugs, MDMA has physiological consequences other than those for which the drug is taken. MDMA can cause tachycardia, hypertension, and hyperthermia, which can lead to heat stroke (DEA, 2001; Moore & Jefferson, 1996; National Institute on Drug Abuse, 2005). Deaths have occurred due to body temperatures reaching 109° F while under the influence of MDMA. As a result, many clubs have cool down rooms or spray patrons with cool water (DEA, 2001). Bruxism, clenching of teeth, may occur, which is why it is common for ravers to chew gum or use pacifiers (DEA, 2001; Moore & Jefferson, 1996). MDMA also produces increased energy levels, which allows users to attend extended parties.

MDMA and Memory

Research has provided insight into the neurotoxicity caused by MDMA especially in regards to the serotonergic system (Obrocki et al., 2002). A significant amount of research has been done to study the long-term effects of MDMA on cognition. A pilot study of MDMA users found 5-HT injury in the occipital cortex. It also found a relationship between memory deficits and the amount of neuronal injury (Reneman, Booij, Schmand, Van Der Brink, & Gunning, 2000). In order to evaluate
the effects of long-term intermittent use as is common among MDMA users, one
study administered MDMA in this fashion to rats and then tested their working
memory and anxiety-like behavior one week later. This study found that there was
a significant decrease in working memory as seen in novel object recognition tests
in MDMA-exposed rats. The study also found that there was a decreased anxiety-
like behavior as evident by increased open arm exploration in an elevated maze
test, which should induce natural anxiety. They also noted a reduction in serotonin
transporters in the hippocampus, an area of the brain involved in memory. Decreased
SERT density was related to decreased anxiety-like behaviors (Piper & Meyer, 2004).
An additional study compared cognition in heavy MDMA users with moderate
MDMA users and non-users. There was increased reaction time with more MDMA
use. Also, memory span was larger in non-users than users (Verkes et al., 2001).

Gamma-Hydroxy-Butyrate (GHB)

Gamma-hydroxy-butyrate (GHB) is often termed a date rape drug due to its
sedative and amnestic qualities; however, it has become an increasingly popular
drug of abuse among American teenagers. It is classified as a club drug due to its
popularity at raves. The annual prevalence of GHB use in 2004 was estimated to
be 2% among high school seniors (National Institute on Drug Abuse, 2004). GHB,
whose pseudonyms include G, liquid ecstasy, Georgia Home Boy, and fantasy, just to
name a few, is a naturally occurring short chain fatty acid in human brains (Snead
& Gibson, 2005). GHB’s popularity may relate to its motto “euphoria without
the hangover” (Ford, 2001). GHB is intentionally taken due to its effects of “mild
euphoria, disinhibition, and increased libido” (Jacobson & Jacobson, 2001). GHB
is also marketed as a supplement for body builders (Cecil, Goldman, & Ausiello,
2004).

Signs of GHB Intoxication

GHB intoxication may present in a variety of behaviors. The complexity of diagnosis
of GHB intoxication is magnified due to the frequency of co-intoxication, especially
with alcohol (Zvosec & Smith, 2005). Some indications of GHB intoxication may
include ataxia (impaired gait) (Cecil et al., 2004), impaired judgment, and nystagmus
(a rapid, jerking movement of the eyeball) (Jacobson & Jacobson, 2001). Although
GHB is often thought of as sedating, Žvosec and Smith (2005) found that 64% of GHB
emergency department visits presented with agitation and sometimes aggression.
They witnessed bizarre behavior such as “summersaults,” “snapping lips,” “hugging
trees,” self-injurious behavior as well as “Zombie-like” behavior (Žvosec & Smith,
2005). GHB is a central nervous system depressant, and as a result, it can produce
respiratory depression, somnolence, and coma (Cecil et al., 2004). One clinical finding
that can help in forming suspicion of GHB intoxication is coma that lasts only 2 to
3 hours with rapid recovery (Ford, 2001). GHB intoxication can cause clonus (rapid
contractions of a muscle) and seizure activity, though the mechanism is not fully
understood (Ford, 2001).

GHB and Its Effects on Cognition

The amount of literature available regarding the effects of GHB on cognition is
limited (an online search of the National Institutes of Health Pub-Med for “GHB
and Memory” yielded only six results, while the search for “MDMA and Memory”
yielded 112 results). In one study by Sircar and Basak (2004), rats were injected with three doses of GHB for 5 consecutive days, after which their spatial learning and memory was tested with a water maze test, and the number of NMDA GABA receptors were counted. The study showed that the rats treated with GHB had significant difficulty with spatial learning and memory, and the difficulty with spatial memory was correlated with the down-regulation of NMDA receptors in the frontal cortex (Sircar & Basak, 2004).

Counterintuitively, some studies have found that GHB can act as a neuro protectant when administered after an ischemic insult by diminishing cognitive impairment (Ottani et al., 2004; Stumm et al., 1999). Clearly further research regarding the long term cognitive effects of GHB abuse is needed.

**Conclusion**

As evident from the rise of club drug usage, meth, MDMA, and GHB are a considerable problem among American teenagers. These drugs increase the likelihood of neurotoxic events, which may be discernible or quite subtle. Brain science tells us that cells are lost, but the young person may appear normal. Age-related memory decline may occur earlier and be more severe in people with pre-existing club drug use as a result of hippocampal and other cell loss. Similarly, patients may have cognitive and behavioral effects years later when they are under stress or when aging, which become manifest because of the lost cell reserve. While this is conjecture, we know that cells, once lost, are lost forever. It is unlikely, that the brain could be prepared by a higher being or evolution for club drugs and cell loss to the extent we see in laboratory animals given doses of club drugs used by college students and even high school students whose brains are not yet developed. No one suggests that these drugs are memory medications or good for memory.

The main question is how much function is lost and how much of a decrement from baseline is seen. The search for euphoria, free love, and heightened energy levels comes with risky side effects including neuronal loss and even death. Because of ethical standards, it is unrealistic to study the effects of repeated or large doses of drugs on the human brain. We also cannot study the effects of multiple drugs taken at the same time. While this is the typical pattern of use among the young, we have limited ability to prospectively study them and rather, retrospectively report of the effects of experimentation, poisoning, or predators. In many instances, what we have learned comes from emergencies, addiction treatment referrals, and case reports of self-intoxication. Clearly, all mediations must be used safely and under physicians’ instructions. Drugs of abuse are manufactured by amateur chemists or brought from foreign countries, and use patterns are lost to the current users. If one dose does not work with the desired effect, another and another are taken. Club drugs have been linked to traffic accidents, increased chance of medical emergency, or death as well as other morbidities.

The diversity of meth and MDMA research supports their role in neurotoxicity and cognitive impairment; GHB has only limited evidence for involvement in neurotoxicity and long-term cognitive deficits, but it can clearly cause dependence and abstinence including a fatal syndrome that looks like alcoholic delirium tremens. More research is necessary to determine the extent of its effects and safe window for therapeutics. Perhaps as more basic research is conducted and reported and
information regarding the extensive risks of club drugs becomes available in popular media, their use among America’s youth will decline.

Acknowledgement

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To What Extent Can Public Law Enforcement Employers Inquire into an Employee’s Medical Information After Hiring?

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Summary of Laws and Related Information

There are many state and federal statutes that limit an employer’s ability to obtain an employee’s medical information. Whether or not an employer can request such information or require a medical examination depends on the phase of employment, the reason for the inquiry, and whether the employee is protected by employment-related rights.

Statutes related to acceptable medical inquiries or examinations after employment include provisions in the Americans with Disabilities Act (ADA), the Fair Employment and Housing Act (FEHA), and other related state laws.

Under the ADA and the FEHA, an employer can make medical inquiries of existing employees only when they are “job-related and consistent with business necessity.” Examples of medical or disability-related inquiries include questions about a specific type of disability, prescription drugs being taken, and results of genetic testing.

In addition, privacy issues are raised when dealing with medical information and inquiries. Under both state and federal law, medical information is confidential.

According to the ADA, employers must treat any medical information received through a disability-related inquiry or medical examination (including medical information from voluntary health or wellness programs as well as any medical information voluntarily disclosed by an employee) as a confidential medical record. Employers may share medical information only in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials investigating compliance with the ADA.

In California, the state constitution, as well as the California Medical Information Act (CMIA), imposes limits on the disclosure of medical information. Under the CMIA, employers are required to establish “appropriate procedures” for guaranteeing the confidentiality of any information obtained about the employee’s medical history or mental or physical condition. At a minimum, medical information protected under the CMIA must not be kept in employees’ personnel files.
Analysis

Medical inquiries and examinations of employees are permitted as long as they are job-related and consistent with business necessity. After hiring, an employer cannot require an examination or request medical information without individualized, objective evidence leading to a reasonable belief that the employee in question may be unable to perform an essential job function or may be considered a direct threat due to some medical condition. A direct threat is defined as “a significant risk to the health and safety of others that cannot be eliminated by reasonable accommodation.”

This general standard of “individualized, objective evidence” is lowered in cases related to “safety-sensitive jobs.” Safety-sensitive jobs include airline pilots, police officers, and firefighters. For jobs categorized as safety-sensitive, this “objective evidence” is not required as long as the medical inquiry or examination is specifically tailored to obtain information to be used to determine whether an employee is unable to perform essential job functions or is a direct threat to health or safety.

For example, a law enforcement agency may be able to show that employees should be required to respond to medical inquiries regarding prescription medications that could affect their ability to use a firearm or some other essential function of the job. In this situation, the agency would not need to prove that an employee was having problems or failed to perform some essential function, such that it is reasonable to believe that such medications could have an adverse affect on his or her ability to perform an essential function of the job. In non-safety sensitive jobs, management would be required to produce evidence that there is an objective reason for this belief.

Although the objective standard is relaxed, management must still prove that the inquiry is specifically directed at getting information to determine whether employees’ ability to do the job is impaired. For instance, it is unlikely that a police department would be allowed to require that employees be periodically tested to determine whether they are HIV-positive since such a diagnosis is not likely to impair ability or prevent employees from performing the essential functions.

In Conroy v. New York State Department of Corrections, 333 F.3d 88 (2003), a federal appeals court overturned the summary judgment granted to a corrections officer who sued to prevent management from getting a medical opinion on her fitness for duty. The corrections agency has a policy of requiring that employees notify management of medical progress before returning to work. The court remanded on the basis that although the ADA ordinarily prohibits generalized medical inquiries, management is allowed to offer a valid business reason to justify the intrusion.

In addition, in most situations, an employer cannot request an employee’s complete medical records because they are likely to contain information unrelated to whether the employee can perform his/her essential functions or work without posing a direct threat to health or safety. Employers can, however, obtain such detailed information through voluntary wellness programs, insurance forms, and the employee.
Conclusion

While most employers are required to show “objective evidence” of an employee’s “inability to perform essential job functions” or “direct threat,” for law enforcement officials, “objective evidence” is not necessary. In these cases, a medical information request can meet the “job-related and consistent with business necessity” standard without an individualized, objective basis for believing that there is some sort of medical problem interfering with employees’ ability to do their jobs.

In addition, when an employer discovers or an employee volunteers information regarding a specific disability, one that it can legally test for as part of a periodic medical examination, the employer can make additional necessary inquiries or require additional medical examinations to determine whether the employee is able to perform his or her essential job functions or poses a direct threat due to the condition\(^\text{11}\); however, employers may not require employees to pay any fee or costs related to medical or physical examinations required by any law or regulation of federal, state, or local governments or agencies thereof (See Cal. Labor Code §222.5).

Based on the statutes and cases reviewed here, law enforcement employers have greater rights than ordinary employers to obtain employee medical information, but medical privacy for law enforcement officers is still protected to the extent that the protection does not jeopardize public safety.

Endnotes

1 42 USC §12112(d)(4)(A).
2 EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act, July 2000, question 1
3 Cal. Constitution Art. 1, §1; Cal. Civil Code § 56.10(a), (c)(8)(b).
4 Cal Civ. Code §56.20(a).
5 29 CFR 1630.2 [r]
6 EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act, July 2000, question 8
7 Id at question 18.
9 Id at 88.
10 EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act, July 2000, question 12
11 Id at 18.
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Female Law Enforcement Officer Motivations Regarding Entering, Continuing, and Leaving Law Enforcement: Findings from Nationwide Research

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Introduction

Over the last 20 years or so, law enforcement administrators in America have gradually accepted women into policing to the degree that they are now being recruited in significant numbers. While the entry of women into a formerly all-male profession has both political relevance and legal compliance concerns, the law enforcement benefit females bring to policing is well-documented. There is an abundance of literature attesting to several advantages that female officers have over their male peers, dispelling many early beliefs of their general unsuitability for law enforcement. By having established a record of professional competency, more city and county administrators have directed their law enforcement agencies to expand the number of females in their units. Numerous departments have been very successful in their attempts to increase the number of female officers to over 20% of their total manpower. This is a significant accomplishment considering that in 2001 women only composed 12.7% of all sworn officers in large agencies, which is a slow but continuous increase from 9.0% in 1990 (large agencies according to the National Center for Women in Policing are considered those of 100 or more sworn personnel). This figure has been rising steadily over the past 15 years; however, it has declined from 14.3% in 1999, which suggests that some factor or condition has halted their former steady advancement and may indicate a genuine trend of continuous decline (Lonsway, 2001, p. 2). This potential problem may be far more significant when considering that the greatest numerical and promotional advancements for women have been predominately in the larger departments. In the United States, however, approximately 85% of municipal law enforcement agencies have fewer than 50 officers (Bartol, Bergen, Volckens & Knoras, 1992). It is within such agencies that women have, for the most part, made the least advances. It may also be quite likely that the female officers already employed within these smaller agencies are those who have the highest potential for resigning or suffering promotional and career stagnation.

Recruitment and retention of women into policing is also a controversial issue. On one side of the argument, some individuals maintain (to varying degrees) that women should certainly not be intentionally excluded, nor should they been given special consideration throughout the hiring and employment process (Whetstone & Wilson, 1999). Their rationale is that legal mandates such as Title VII of the 1964
Civil Rights Act and the Equal Opportunity Act of 1972 have served to provide the foundation for everyone who wishes to compete for employment. Additional court decisions have also served to ensure fairness in the hiring process, such as those directing law enforcement agencies to revise entry-level physical strength and agility tests to more accurately represent the actual requirements of the job. Height and weight restrictions that formerly excluded many women from law enforcement were altered, thus allowing greater access than ever. Civil service laws and supervision provide more formal oversight of the hiring procedure, thus ensuring unquestioned fairness.

The opposing view is that special consideration in recruiting and hiring women is justified by citing the great predominance of males in the profession. Furthermore, there is a dramatic numerical disparity between the actual percentage of women currently employed in law enforcement and the perceived fair and equitable representation they deserve—women compose 51% of the national population. Feminist-based organizations such as the National Center for Women in Policing consider a fair percentage of female officers to be closer to the actual population representation of women in society. The same differences of opinion also apply to the issues of female police officer promotion and retention.

Past literature has suggested several explanations regarding motivations and working conditions of women in law enforcement. In 2003, Richard Seklecki and Rebecca Allen of Minot State University conducted a national survey of female police officers. The goal of the survey was to both update and compare the current attitudes, motivations, perceptions, and experiences of female officers with what is commonly believed about the working conditions of these women. Over 2,000 surveys were mailed to randomly selected agencies across the United States, and 531 responses were received. The data suggests that there are indeed some problems that are unique to female officers that could be resolved through changes in organizational atmosphere and mindset.

**Literature Review**

The reader should keep in mind that the following is not an exhaustive discussion of all literature on women in policing but rather a sample of available information that is particularly appropriate for this study, even if indirectly. A lot of literature on policewomen deals with their effectiveness compared to that of males as well as harassment on the job. It is hard to find literature that directly addresses our relatively narrow focus—female officer motivation regarding entering, continuing, and leaving police work and how number of children impacts some of those variables. That does not necessarily mean that there is nothing written on these issues but that it is limited.

Several limited surveys of female officers have been conducted since women began to join law enforcement in any significant numbers. Almost all of these studies focused on single metropolitan police departments, regional agencies, or the rare few that were statewide. The majority of these studies utilized small sample sizes primarily due to either a relatively limited study population or difficulty in locating enough female officers to provide a sufficient sample. Most of the early research focused on myths and popular rhetoric surrounding the belief that women were ill-suited for the physical and emotional rigors of law enforcement. By the time
women had established a work record significant enough to provide reasonable research samples, the attention had shifted from establishing women’s competence to studying their slow progress. Early on, we learned that women were not only doing an adequate job, but they also have desirable attributes that rivaled their male colleagues. The works of Horne (1980), Martin (1980), and Sherman (1975) are especially significant on this subject. They established that female officers were less likely to use unnecessary force, were less threatening to citizens, had far fewer citizen complaints, and were equally effective as male officers in completing routine patrol enforcement duties. It is interesting to note that women were originally considered far too emotional and soft for the demands of policing; however, the early research found that it was precisely women’s proclivity to nurture and connect with people that enhanced their reputation as effective and efficient officers.

From the beginning of women’s employment in policing through the present, male officers have generally resisted and disapproved of females’ entry into the field. The essence of this rejection is found primarily in cultural and (police) subcultural values (Balkin, 1988). Law enforcement officers perceive themselves as the defenders of the inner walls of our society. This suggests the need for such masculine qualities as physical strength, determined resolve, and fearlessness. Our culture had previously defined these as manly traits. This is the primary reason male officers do not consider women qualified for policing.

The differences in upper body strength, motor skills, physical agility, and aggressiveness are well recognized (DeSantis, 1991; Homant & Kennedy, 1985). These qualities are all related to both the ability and willingness to engage in an “all out fight” to save oneself or a fellow officer, reducing it to a safety issue of women not being able to protect themselves or others. Likewise, this concern is directly related to another reason male officers do not want women in law enforcement: having a woman doing the same duties as their male peers diminishes the status of the profession. If women can effectively carry out the duties of policing, then the job cannot be very challenging or dangerous. Consequently, this makes the male officer feel less manly. For some male officers, this elevated status may be precisely why they entered the profession, and the loss or reduction of this status is intolerable. This leads to another reason why male officers may disapprove of female officers: a lack of trust. Within the law enforcement subculture, mutual trust is crucial. Whether this condition is a shared element of masculinity or a necessary state of acceptance between those in a stressful environment is subject to interpretation; however, some male officers clearly question female courage and competence (Balkin, 1988).

Balkin contends that male officers also believe that women cannot handle the stress that is endemic to policing. Stress in law enforcement has been widely studied and is acknowledged to be very destructive if not controlled and managed (Bartol et al., 1992; Davis, 1984; He, Zhao, & Archbold, 2002; Johnson, 1991; Martin, 1983). For female officers, these concerns and the atmosphere within which they work are actually predominant sources of their stress. Stress in law enforcement is most often classified into distinct categories: organizational, external, task-related, and personal (Bartol et al., 1992). All law enforcement officers are exposed to stress; however, female officers have additional stressors that stem from conditions caused by their marginalization in their own agency. While all stress has the potential to affect an officer, it is the “organizational” and “personal” varieties that clearly impact some females to the degree that they leave policing or decline advancement.
(Bartol et al.) It is these unique stressors that may erode their willingness to continue with their law enforcement careers or the desire to pursue promotion. Male officers who do not approve of working with females will be inclined to avoid the routine interactions that are customary within the police subculture. This includes welcoming new members into the organization; offering to assist them; engaging them in friendly banter and conversation; and inviting them to join in informal, after-work gatherings. Such informal networking and associations are important in creating a feeling of acceptance, and the exclusion of women sends a very distinct message that they are unwelcome and separate from the organization (Daum & Johns, 1994; He et al., 2002). Informal associations are not only important in rendering a feeling of acceptance but also in providing essential support and the empowerment to carry out their duties, produce a belief in their own competence, and enhance professional growth. The absence of such access causes female officers to constantly feel a need to prove themselves, and it gives them a feeling of being less competent than male officers (Davis, 1984; Johnson, 1991). The lack of support from informal associations generates negative feelings about oneself, has an actual impact on job performance, and hampers the ability to prepare and compete for promotion (Bartol et al., 1992; Johnson, 1991). Through informal associations and network access, new officers learn a great deal more about the intricacies of the agency, such as policies and procedures, valuable information regarding preparation for promotions, and supportive managerial relations (Poole & Pogrebin, 1988). In larger law enforcement agencies, the impact of exclusion from male networks is not believed to be as significant due to a greater number of female officers with whom they may relate; however, the smaller the agency, the far more acute this condition may become, meaning that female officers in rural departments may be at an increased risk of isolation and possible disillusionment (Bartol et al., 1992). The potential for disillusionment and burnout for female officers increases when they feel denied the respect of their male peers, especially when they feel that respect is earned and deserved (Poole & Pogrebin, 1988).

While one of the primary sources of stress for female officers is found outside the work environment, the environment is still influenced by it. Even though a woman is a part of the workforce, she still may have family obligations that can be difficult to balance, particularly when having to contend with fluctuating shift assignments or being a single parent. It has long been understood that the female police officer has more family demands placed upon her than her male counterparts. The unique demands of police work do not exempt female officers from their domestic responsibilities but rather exacerbate the strain that accompanies it (He et al., 2002). Parental and family relationships may possibly have an impact on female longevity by forcing married female officers to curtail their careers in favor of devoting full attention to their homes. Whetstone and Wilson (1999) suggest that many female officers have far different priorities than male officers, and most prominent among them are long-term family aspirations.

A 2002 study of female officers (He et al., 2002) revealed that the combined stress from all sources is significantly higher for female officers. As previously stated, the level of stress for female officers in small agencies may be even more acute for several reasons. In a study by Bartol et al. conducted in a small town (population under 50,000), the female officer has far greater exposure to both citizens and colleagues alike. Her actions and visibility open her to more review and criticism as if to be on a stage for all to assess; whereas, her male colleagues tend to blend
and be more nondescript. Her vulnerability is further heightened because she can become the target of rumors both internal to the department and external among the general community. A female officer in such an agency is also isolated and excluded from the informal networks, which provide much needed access to professional growth and stress reduction. It is during such informal gatherings that officers have an opportunity to discuss issues, compare ideas, and simply “vent” feelings of frustration and concern. The emotional-health benefit of these opportunities can be considerable, as exclusion from them can be equally harmful. In addition, we must acknowledge that in small towns, the pay scale may well be comparatively lower than in larger cities, creating the potential of another stressor in the form of financial hardships. Naturally any hardship will be magnified if the officer is a single parent. Lastly, in small departments, the agency structure is very likely to be “flatter” than in larger departments, meaning that the mid-level and upper-level positions will be far limited and few. Consequently, the opportunity for promotion and increased salary are also minimal.

In a 1998 national survey of police administrators conducted by the International Association of Chiefs of Police, 37% said it was very difficult to retain female officers. They also said that female officers typically resigned after serving 5 years in patrol. It should be noted that 60% to 80% of agency personnel are assigned to the patrol division in most agencies. Patrol is also considered one of the most stressful assignments because it is usually patrol officers who make the first contact with citizens in crisis. Additionally, the stress of shift assignments is taxing on family life. Patrol is routinely the starting place where most new officers are placed; although, it is not uncommon for some officers to spend an entire career in patrol. This is significant because the lack of seniority of the female officer (recruits) invariably places them in patrol. This condition of both patrol duty stress and a lack of retention may help explain the absence of women in more senior positions when coupled with the added burden of domestic demands and hardships. In another survey of female officers in a metropolitan police agency, Daum and Johns (1994) found that 29% of the respondents indicated that they wished they had pursued another career, and only 56% said that they intended to work toward promotion. Seventy-three percent of the respondents were assigned to patrol with 57% indicating that they saw no differences in the morale of male and female officers. Forty-two percent of the respondents did not feel accepted by their male peers, and 55% did not feel accepted by male supervisors. In another study of female officers in the United Kingdom, respondents indicated that they believed they had equal access to promotions, but surprisingly few wished to pursue advancement (Martin, 1996). A previous study indicated that approximately 50% of male officers harbored unfavorable opinions of female officers (Vega & Silverman, 1982).

In a 1992 Canadian study, Seagram and Stark-Ademac confirmed that several police departments have identified higher rates of attrition among female officers at a time when the percentage of women in the labor force has increased dramatically to 41%. Police stress was a prime area of concern and one focus of their study. The attrition rate for females in one agency was nearly twice that of males (16% as opposed to 8.7%). Eighteen percent of the female survey respondents cited gender-specific problems as being particularly significant, including having children. The study also found that 77% of the females reported that they were responsible for the greater share of domestic tasks in their homes. When asked for reasons why they left law enforcement, women cited family-related concerns; whereas, men spoke about
frustration with certain aspects of the job. The study concluded that police forces need to adapt to the needs of individual families, which could result in officers becoming more committed to the organization and thus, increasing longevity.

The impact of stress on female officers generated from within the agency by the male subculture in tandem with those of domestic obligations is clearly a powerful combination of forces. The literature suggests a more radical approach to personnel management, one that both bans the subtle forms of harassment and creates policies that are family-centered. This includes shift preferences for officers with families. Such actions, however, raise questions over such issues as seniority and fairness as well as defensibility under existing civil service laws, not to mention freedom of association. Simply stated, is it fair and legally defensible to assign a less senior officer to a shift that a far more senior officer is entitled to? In the course of trying to accommodate some, are agencies prepared to sacrifice fairness, or should new recruits simply be made aware of the difficulties, sacrifices, and demands of the profession before entering?

**Research Method**

The study utilized a systematic random selection design and was conducted in cooperation with the National Center of Women in Policing. Participants were located by systematically selecting agencies from the National Directory of Law Enforcement Agencies and Correctional Institutions. The randomly selected number was chosen, and every 30th agency was contacted until slightly more than 2,000 female officers were located. It was hoped that from approximately 2,000 mailings, a suitable representative sample would be acquired. Upon determining that an agency had female officers, a distributor for the survey was secured within the agency, and the appropriate number of surveys was mailed with color-coded return envelopes. The envelopes were returned to the Criminal Justice Department at Minot State University in North Dakota.

**The Sample**

Of the 2,013 surveys distributed, 531 or approximately 26% of the surveys were returned and used for analysis. The color-coded envelopes allowed for regionalizing the data as indicated in Table 1.

<table>
<thead>
<tr>
<th>Region of Country</th>
<th>Frequency</th>
<th>Percent*</th>
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<tbody>
<tr>
<td>Northeast</td>
<td>42</td>
<td>7.9</td>
</tr>
<tr>
<td>North Central</td>
<td>89</td>
<td>16.8</td>
</tr>
<tr>
<td>South</td>
<td>336</td>
<td>63.3</td>
</tr>
<tr>
<td>West</td>
<td>64</td>
<td>12.1</td>
</tr>
<tr>
<td>Total</td>
<td>531</td>
<td>100.01</td>
</tr>
</tbody>
</table>

*Note: The total percentage does not equal 100 due to missing data as a result of some respondents skipping some questions.
The study also gathered important demographic data as shown in Table 2.

### Table 2
**Ethnic/Racial Identity**

<table>
<thead>
<tr>
<th>Ethnic/Racial Group</th>
<th>Frequency</th>
<th>Percent*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian</td>
<td>398</td>
<td>75.0</td>
</tr>
<tr>
<td>African American</td>
<td>78</td>
<td>14.3</td>
</tr>
<tr>
<td>Hispanic</td>
<td>34</td>
<td>6.4</td>
</tr>
<tr>
<td>Native American</td>
<td>3</td>
<td>.6</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td>1.7</td>
</tr>
<tr>
<td>Missing</td>
<td>11</td>
<td>2.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>533</strong></td>
<td><strong>100.1</strong></td>
</tr>
</tbody>
</table>

*Note: The total percentage does not equal 100 due to missing data as a result of some respondents skipping some questions.

### The Variables

The survey asked questions, many of which had multiple parts, including both quantitative and qualitative responses. For the purposes of this article, the following pertinent questions are addressed:

1. Motivations (both primary and secondary) for entering a law enforcement career
2. Primary and secondary reasons for continuing a law enforcement career
3. Primary and secondary reasons for leaving their law enforcement career
4. The respondent’s number of children

### The Research Questions

Keeping the literature in mind, the main purpose of this research was to obtain answers to the following research questions (RQ):

**RQ 1:** What are the primary and secondary motivations of female police officers for entering a law enforcement career?

**RQ 2:** What are the primary and secondary motivations of female police officers for continuing a law enforcement career?

**RQ 3:** What are the primary and secondary motivations of female police officers for leaving a law enforcement career?

**RQ 4:** How many officers have children? How many children do they have? What is the relationship between having children/the number of children and decisions to leave police work? We hypothesized that the number of children statistically correlates with, and perhaps even has a causal impact on, some reasons for leaving law enforcement, especially low pay and too much danger associated with the job. It makes sense to say that policewomen who have children are more likely to think that they do not get paid enough and more likely to think that stress on the job is a
big problem, compared with those officers who do not have children. Simply put, for women without children, money is not as important as it is for those who do have children. Officers with children should also be concerned about danger more than those without children because they must think of what will happen to their families if they get injured or killed on the job.

Results

RQ1a: Primary Motivation for Entering Law Enforcement Career. The biggest primary motivation was the desire to help people (29.8%), followed by “everyday the job is different” (17%), excitement of the job (12.7%), and job security (10.9%).

RQ1b: Secondary Motivation for Entering Law Enforcement Career. The biggest secondary motivation was “everyday the job is different” (19.5%), followed by desire to help people, and excitement of the job (both at 17.4%), job security (12.7%), and desire to stop those who would harm others (10.5%).

RQ2a: Primary Motivation for Continuing Law Enforcement Career. The biggest primary motivation was job security (24.5%), followed by desire to help people (18.7%), “everyday the job is different” (13.1%), and good pay (10.9%).

RQ2b: Secondary Motivation for Continuing Law Enforcement Career. The biggest secondary motivation was job security (17.4%), followed by “everyday the job is different” (14.8%), good benefits (14.0%), and desire to help people (12.0%).

RQ3a: Primary Motivation for Leaving Law Enforcement Career. (We should indicate that 58.4% of respondents said that they are not leaving law enforcement.)

From among those who are considering leaving law enforcement, the biggest primary motivation (apart from “other” at 10.5%) was personal or political reasons (8.4%), followed by interested in another field within criminal justice (8.1%), low pay (4.7%), and interested in another field outside criminal justice (3.4%).

RQ3b: Secondary Motivation for Leaving Law Enforcement Career. (We should indicate that 52.1% of respondents said that they are not leaving law enforcement.)

From among those who are considering leaving law enforcement (apart from “other” at 7.9%), the biggest secondary motivation was personal or political reasons (13.1%), followed by interested in another field outside criminal justice (6.7%), low pay (5.6%), and interested in another field within criminal justice (4.7%).

RQ4: Number of Children. See Tables 3 and 4 for results in this category.
Table 3
How Many Children Do You Have?

<table>
<thead>
<tr>
<th>Number of Children</th>
<th>Number of Officers</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>218</td>
<td>41.6</td>
</tr>
<tr>
<td>1</td>
<td>114</td>
<td>21.8</td>
</tr>
<tr>
<td>2</td>
<td>122</td>
<td>23.3</td>
</tr>
<tr>
<td>3</td>
<td>45</td>
<td>8.6</td>
</tr>
<tr>
<td>4 or more</td>
<td>25</td>
<td>4.9</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>524</strong></td>
<td><strong>100.2</strong></td>
</tr>
<tr>
<td>Missing</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>534</strong></td>
<td><strong>100.2</strong></td>
</tr>
</tbody>
</table>

Table 4
How Many Children Currently Live with You?

<table>
<thead>
<tr>
<th>Number of children</th>
<th>Number of officers</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>263</td>
<td>50.5</td>
</tr>
<tr>
<td>1</td>
<td>127</td>
<td>24.4</td>
</tr>
<tr>
<td>2</td>
<td>96</td>
<td>18.4</td>
</tr>
<tr>
<td>3</td>
<td>25</td>
<td>4.8</td>
</tr>
<tr>
<td>4 or more</td>
<td>10</td>
<td>1.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>521</strong></td>
<td><strong>100.0</strong></td>
</tr>
<tr>
<td>Missing</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>534</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

Discussion

We believe that the picture of female police officers in the United States that emerges from this study indicates positive outcomes for the future. Many policewomen are driven first of all by the desire to help people, at least at the point of entry into their careers. It is true that the desire to help people is not as significant later in the career, but it still occupies a second place among primary motivations for continuing a career in law enforcement.

Regarding the issue of children, even though the percentage of officers with no children does not command a majority of our respondents, it is the response with the highest percentage. What this tells us is that the nature of police work (e.g., danger and stress) are related to having no children. This does not have to mean that there is causality, but there is certainly a relationship. The issue is complex, and many different variables could be involved (e.g., age or personality types). Unfortunately, Chi-square tests between the number of children and primary or secondary motivation for leaving law enforcement showed no statistical significance; therefore, we have to reject our hypothesis that as the number of children increases, so does the respondents’ likelihood of leaving in general or the likelihood of leaving for specific reasons like low pay or too much danger on the job.
Having said this, we nevertheless want to point out an unexpected outcome in the data: if the police officers with no children comprise the largest category, one would expect that as the number of children increases, the number of officers should decrease. That is not the case. The data shows very clearly that there are more officers with two children (23.3%) than with one child (21.8%). We are not quite sure how to explain this finding except to say that the relationship between the number of children and being a female police officer is clearly a more complex phenomenon than one would think.

The data also reveals that approximately 60% of all female respondents have at least one child living with them. While our analysis does not indicate that this figure is statistically significant, we must acknowledge that child and family obligations are nonetheless a factor to be addressed for the majority of female officers. The impact of this condition is more acute for the 42.3% of the responding officers who indicated that they were divorced, separated, or single. For law enforcement administrators who are intent on bringing more women into their agency, the burden of childcare may be crucial in retaining those officers. The answer may lie in giving assignment and shift preferences. Doing so would not only be a bold move but also a clear signal that the agency is determined to retain females. Such an effort would likely face serious opposition from male officers, many of whom have higher seniority and/or could possibly point out that established department policies regarding assignments are being violated. Even the most determined administrators will have difficulty obtaining and retaining female officers. Nevertheless, the challenge must be undertaken for the cause of making police agencies more accessible and friendly to women.

Bibliography


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Police Hiring Standards: A Comparative Analysis of Police Applicant Attrition Rates

Frank A. Colaprete, EdD, Adjunct Professor, Criminal Justice Department, State University of New York College at Brockport; Institute Partner, Institute for Public Safety Policies

Introduction

The issue of police applicant attrition is an ominous one. A historical problem has existed in the police hiring practices of screening and selection of qualified applicants since standards were enacted in the field. As such, police agencies face an increasingly difficult dilemma in replacing vacancies that are created through attrition such as retirement, promotion, termination, department upsizing, and others. Not only is the issue of the quantity or numbers of personnel at stake, but more importantly, the quality and culture of the organization face a similar dilemma. DeCicco (2000) states, “The selection of entry-level officers greatly affects the future leadership of a department” (p. 3). Concerns have also been expressed over a dwindling candidate pool and lowering standards to fill vacancies (Oliver, 2002; Paynter, 2002; Tate, 2000). This article examines the rate of attrition of police applicants through exclusionary variables of civil service standards in a midsized police department. The entire research population is examined, and a stratified analysis of majority and minority applicants within the research population is also presented. The article concludes with recommendations based on the culmination of the research concerning recruiting and selection practices for agencies facing these particular issues.

The article is divided into four major components or sections: (1) Department specific issues such as the location of the study; civil service standards at the local/municipal and state levels; legal standards of the hiring process with respect to statutory and case law; and the concept of adverse impact, the logistics of the pre-screening process of the Department, and the research population; (2) contemporary literature in the field; (3) methodology, measures, and results of the research; and (4) discussion, conclusions, and recommendations based on the culmination of the research.

Location of the Study

The location of the study was a midsized municipal police agency that desired to remain anonymous. In respecting the agency’s wishes, the organization will be referred to hereinafter as “the Department” for the purposes of this research. The Department is a police agency servicing an urban population. While many similarities existed when comparing the Department to other police organizations, only minor variations existed in categories such as violent crime and the like. Officer-to-citizen ratio is at par with other like agencies. Employee turnover equates to a mean (average) of 5% per year based upon a 5-year analysis.
Civil Service Standards

The civil service process has existed for many decades. Civil service testing began to emerge as a national standard during the 1940s. Civil service standards are designed to identify qualified applicants for municipal employment and eliminate the practice of nepotism. As such, testing was designed around cognitive behaviors in order to identify the interested applicants who had the highest intellectual capacity to fill a vacant position based upon a validated set of job requirements or task analyses. To identify an applicant, postings are designed to set forth the specific tasks of the vacant position. One functional definition of an applicant is cited as “A person who submits a complete application for a vacant position or an authorized vacancy pool” (University of Kansas Medical Center, n.d.). Unique to the police position are numerous requirements that are of a business necessity in restrictive hiring standards. Such requirements involve minimum and maximum age, criminal record, driving record, alcohol and drug use, and many other elements. These standards are unique to the role of a police officer, and in many other positions, such standards cannot even be explored, let alone considered in the hiring decision.

With respect to hiring practices, the Department has a civil service structure in place, which is mandated and regulated by a statewide standard; however, the municipality exercises its right to utilize a local civil service commission. The statewide standard consists of the following minimum qualifications for police applicants:

- The applicant must not be less than 20 years of age or over 35 years of age at the time of appointment.
- The applicant must be a United States citizen.
- The applicant must be a resident of the United States.
- The applicant must possess a high school diploma or general equivalency diploma (GED).
- The applicant must have no felony convictions.
- The applicant must meet restrictive requirements concerning drug and/or alcohol use.

In addition, the civil service law also provides standards for automatic disqualification of police applicants as follows:

- The applicant lacks the minimum requirements for admission to the examination or appointment to the position.
- The applicant’s physical or mental disability renders him or her unfit for the necessary functions of the position.
- The applicant has been found guilty of a crime (i.e., misdemeanor or felony).
- The applicant has been dismissed (or resigned) from a permanent position in public service based upon written charges of misconduct.
- The applicant has intentionally made a false statement of any material fact in his or her application.
- The applicant has practiced or attempted to practice any deception or fraud in his or her application or examination or in securing eligibility for appointment.
- The applicant has been dismissed from private employment due to habitually poor performance.
The local civil service commission has set a hiring standard that is consistent with the needs of the statewide standard. The local standard consists of a statement of the following minimum qualifications for police applicants: “Standards of responsible behavior for police officer applicants include, among other things, patterns of truthfulness; obedience to laws, rules, and regulations; appropriate control of emotions; appropriate reactions to stressful situations; and meeting employment, contractual, and legal obligations.” The study compared all strata of the applicant population against this set of exclusionary standards. As such, the subsequent tables and figures refer specifically to these deselection parameters.

**Legal Standards: Statutory Law**

With respect to the legal standards of hiring practices, requirements exist from both statutory and case law. The Americans with Disabilities Act (ADA), Human Rights Law, Labor Law, Civil Rights Act of 1964, EEOC, and others are all bodies of law that have unique requirements for hiring practices. The complexity of individual requirements is immense, let alone the gamut of regulatory requirements under which the process is mandated to operate.

Legal standards have also been relaxed over the evolution of hiring standards with respect to the levels of evidence a plaintiff must produce in order to prove an allegation of discrimination in the hiring process. For example, such requirements are included in the federal law, which includes Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972. This act “gives the courts wide discretion in compensating individuals for unlawful and discriminatory employment practices” (International City Management Association, 1982, p. 243). Police agencies are held to an even higher standard than their private sector counterparts because of the doctrine of “color of law.” Rostow and Davis (2002) state . . .

In general, Section 1983 lawsuits call for penalties against members of state and municipal agencies that violate the constitutionally guaranteed rights of any person, “under color of law.” Although at first limited to the misbehaving individual, Section 1983 has been expanded by the courts to include penalties against any police executive who promotes a “policy of deliberate indifference” to the well-being of the public, usually through negligent selection, training, or supervision. (p. 101)

In addition, Fuss, McSheehy, and Snowden (1998) reported, “Unfortunately, today there is a greater possibility than ever that a law enforcement administrator may have his hiring decision be the focus of litigation—either for failure to properly screen applicants or for discrimination in the hiring process” (p. 169). This was evident in the Bureau of Justice Statistics report on job bias and discrimination suits that soared during the 1990s. In 1990, 6,936 lawsuits were filed in comparison to 1998 in which 21,540 lawsuits were filed (“Job Discrimination,” 2000).

**Legal Standards: Case Law**

The case of the *City of Canton v. Harris* [489 US 378, 390 (1989)] is perhaps the most profound case to impact police hiring standards and practices. Addressing the issue of negligent hiring and retention, *Canton* specifically identifies problematic categories
to be considered by a police agency when making a hiring decision. The United States Supreme Court forced police agencies to develop consistent standards in the hiring process and delineated the responsibility incurred by the agency when either failing to conduct a proper background investigation or when the agency was indifferent to the applicant’s failure to meet minimum standards. In essence, the Court asked whether the appointing authority made a hiring or retention determination with deliberate indifference to the rights of persons with whom the police have contact (Sullivan, 1999). The Court also specifically described the following standards that would be considered in a negligent hiring claim:

• Untruthfulness
• Drug sales and/or usage
• Prior criminal record
• Assaultive behavior
• Driving record

The language in correlate cases for Canton are consistent with the needs of the hiring process for police officers. A contemporary ruling in this case in the failure to train in the law enforcement venue was offered by Spector (2001) who states with respect to the Canton case . . .

The Court held that the inadequacy of police training may serve as the basis for Section 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come in contact. The Court went on to explain that “this will occur when the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been indifferent to the need.” (p. 74)

Failing to train law enforcement personnel in emerging legal issues has often led to both civil and criminal liability on behalf of the officer and the department. Cases are heard and decided upon on a consistent basis. Risher (2001) states with respect to the United States Supreme Court findings in Brown v. Bryan County decided on April 30, 2001, . . .

The Fifth Circuit held that the county was liable because a reasonable jury could conclude (1) that it should have been obvious to the sheriff that not training the deputy would result in his applying force that would jeopardize citizens’ Fourth Amendment rights and (2) that this failure was the “moving force” that caused the constitutional injury. The court concluded that the failure to train one officer adequately, and evidence of a causal connection between that lack of training and the injury, may create municipal liability under Section 1983. (p. 10)

Although many other federal court decisions related to Canton and Brown, the premise of gross negligence and deliberate indifference were common themes among state court decisions also. Application of the law transcended not only negligent hiring and retention but also the inadequacy of training in accepted law enforcement policy and procedure in addressing operational tactics. This absence of adhering to clearly codified rules is a complex issue facing all contemporary police administrators. Slowik (2002) adds, “If departments do not follow rules in the
process of evaluating applicants and a post-hire problem occurs, the departments could be liable” (p. 112).

The Concept of Adverse Impact

As a matter of course, many police departments have worked towards diversity in hiring practices for the past 40 years. Since the 1960s, police departments across the country have gradually raised the bar for minorities and women in the ranks. This move has been under the auspices of the affirmative action movement. The following is a functional definition of affirmative action:

Good faith efforts to ensure equal employment opportunity and correct the effects of past discrimination against affected groups. Where appropriate, affirmative action includes goals to correct underutilization and development of results-oriented programs to address problem areas. (University of Kansas Medical Center, n.d.)

There are several reasons for the implementation of affirmative action programs. Reasons cited include local, state, or federal regulation; involuntary implementation based upon a court order; voluntary implementation based on a consent decree; and voluntary implementation based on a desire to be a good employer (Aamodt, 1997a). Unfortunately, the process is slow, laborious, and costly. In working towards the ultimate goal of racial and gender-based parity within communities policed, agencies have broadened recruiting efforts in order to meet legal and community-based needs. At times, the process itself results in a failure to meet these identified needs. Adverse impact is one such problem created by the loss of minority candidates in the application process. A functional definition of adverse impact is cited as follows:

A form of illegal discrimination which occurs when a neutral policy or practice that is applied uniformly to all applicants or employees (e.g., word of mouth recruiting, diploma requirements, intelligence tests, minimum height requirements) has the effect of denying employment or advancement to members of protected classes. Business necessity is the only justifiable reason for adverse impact. (University of Kansas Medical Center, n.d.)

Business necessity in the policing field is determined by the unique requirements of the position as weighed against the legal and procedural requirements. Criminal record, integrity issues, and the like are all salient issues when examining the history of a police applicant, no matter what race or gender the applicant may be. Also of significance is that the process is constructively abrogated dependent upon the applicant’s history. Many discrepancies discovered in an applicant’s past cannot be overcome because of the job requirements. The process then becomes one of deselection and not selection, and even if the applicant meets all minimum requirements for the position, he or she has to be equally qualified for a position to invoke the requirements of affirmative action (Aamodt, 1997a). Rafilson (1999) succinctly states, “Instead of being concerned with hiring individuals who have the abilities to do the job, employers have to also ensure that their hiring process is not discriminatory. This is a difficult task given the wide racial gap that exists in job-related cognitive skills” (p. 83).
The Civil Rights Act of 1991 reversed several previous Supreme Court decisions. One such decision involved “mixed motives.” In this incidence, the law makes clear that intentional discrimination occurs when race, color, sex, religion, or national origin is a motivating factor in an employment decision, even if there are other, nondiscriminatory reasons for the decision. The complexities and requirements of police applicant processing are problematic at the very least in developing and maintaining the levels of women and minorities in police organizations that reflect the needs of their respective communities. As such, Horne (1999) suggests that . . .

Agencies must examine their screening, testing, and selection process to ensure that it is in no way discriminatory. If any stage of the process screens out women in larger numbers than men, the department should ascertain the reason for this. An agency should review all testing instruments and screening variables for gender bias and any other adverse impact on women. (p. 54)

The Department currently operates under a federal consent decree for hiring minority applicants. The ratio of majority to minority new hires is 3 to 1. While the consent decree is in its third decade of application, minority levels have not risen to parity in this particular jurisdiction. Since inception, the loss of minority representation is reflected not only in hiring but also in veteran employee attrition as of the last decade to present time due to retirements.

The Pre-Screening Process

The Department uses a multi-level pre-screening process. While organizational considerations with respect to agency size, demographics, etc. are consistent with other agencies of comparative size, the pre-screening process is remarkably thorough given the same circumstances. The Department process consists of the following steps:

1. The civil service written examination
2. The physical agility test as mandated by state standard
3. Preliminary background investigation that includes a preliminary or early exclusion clause for candidates who do not meet the minimum qualifications
4. The medical examination based upon state standards
5. The psychological examination consisting of battery testing techniques and a clinical interview (The clinical interview is augmented by a group of licensed psychologists who review the results of the test and clinical interview and vote on applicant acceptability.)
6. A polygraph examination consistent with state, federal, and labor law
7. The complete background investigation that examines all historical applicant information as measured against the local Civil Service Commission standards
8. A completed case review by the case investigator
9. A completed case review by the background investigation coordinator
10. A completed case review by the background investigation commanding officer
11. A completed case review by ascending Departmental command
12. A completed case review by a panel of experts (Review Committee) who have an equal vote in applicant eligibility, including the commander of the Background Investigation Unit, a member of the municipality’s Corporation Counsel, and the affirmative action officer of the municipality.

13. A completed case review and recommendations of the Review Committee by a panel of five civil service commissioners appointed by the chief executive of the municipality.

Applicants who are deemed eligible for appointment are placed on the active civil service list for appointment based upon the hiring needs of the Department. Applicants who are deemed unacceptable are excluded from further consideration; however, they have a right to appeal and can do so through the Civil Service Commission.

Research Population

The research population was culled from an entry-level examination process. This population completed a civil service examination that was based in both cognitive measures and personality testing. Applicants sat for a series of paper and pencil examinations that were weighted differently. For this particular examination process, 3,500 applicants completed the examination. Of this figure, 2,900 passed the examination with a score of 70% or higher. An applicant pool of approximately 900 was processed over the subsequent 2-year period. Of the 900 processed, only 103 applicants were identified as eligible to enter the background investigation process.

Literature Review

While the work towards gender and racial parity in contemporary police agencies is of paramount concern to police administrators, the hiring and retention of unqualified and unethical applicants who prey upon unsuspecting communities is of greater concern. The following subsection reviews several high-profile incidents of police corruption as well as the issues facing police organizations in the hiring process.

The “River Cops” Scandal

Miami, Florida, experienced an intensive hiring campaign in the 1980s. The police force doubled in size in order to address the emerging crime issues in the city. As a result, the “River Cops” scandal emerged from the hiring of substandard and unethical applicants for police officer positions. Newly hired officers formed their own drug rings and made millions selling confiscated cocaine. At the time, one tenth of the Miami Police Department was either accused or convicted of felony charges (Bradford, 1998).

The New Orleans Police Department

During the mid-1990s, New Orleans faced some of the most egregious allegations of police misconduct ever reported. A series of robberies and homicides committed by police officers netted the arrests of 34 of its officers (Hustmyre, 2002).
Washington, DC Hiring Practices

The nation’s capital did not go unscathed during these times. According to Bradford (1998), “More than half of the 1,500 police officers hired between 1989 and 1990 were brought up on charges and arrested” (p. 424). In addition, Bradford also reported that “the U.S. Attorney described these officers as so tainted that they could not be put on the witness stand because of their lack of credibility” (p. 424).

The LAPD Rampart Scandal

The LAPD Rampart Division scandal involved numerous officers participating in illegal activity. During the subsequent investigation and independent commission report issued, the investigative committee attacked the hiring standards as well as rapid hiring practices of the LAPD (Parks, 2000).

The New York State Civil Service Consortium

The New York State Civil Service Consortium holds three conferences annually. These conferences are designed to address contemporary issues in municipal hiring practices. The Consortium held a conference in 1999 that was entitled “What Standards Are Left for Police Hiring?”

The NYPD Hiring Standards

Agencies have made difficult decisions in raising the requirements for application to police departments. The Chicago Police Department, in response to officers indicted in a federal corruption case raised their hiring standards, increasing the minimum age from 21 to 23 years old and requiring 2 years of college (Macko, 1997). The New York City Police Department also engaged in a bold move to raise the bar for applicants in order to infuse quality in the hiring process. Such moves do not come without a price. Prior to 1996, the minimum requirements to apply to the NYPD indicated that the applicant needed to be at least 20 years of age and meet the minimum New York State Civil Service Commission requirements. In June of 1993, a civil service test drew 57,744 applicants. Since 1996, standards were raised to 22 years of age at the time of appointment and either 60 college credits or 2 years of military service. An examination held in October of 1998 only netted 3,948 applicants (Farrell, 1998). Even with a renewed interest in policing after the events of 9/11 and a waning private sector job market, qualified applicants are still in short supply.

Background Investigation

The background investigation process has been likened to the most critical investigation conducted during the normal course of police operations. Applicants for the position of police officer must be screened with the keenest eye in order to prevent many of the situations that have come to light in organizations around the globe. This next section discusses the various components and requirements for pre-employment screening methodologies for police applicants.
The Background Process

Many, if not the majority of police agencies, do not place enough emphasis on the pre-employment screening process. This is due to many reasons that are both legitimate and illegitimate. Most police organizations are comprised of 10 officers or less. As such, resource commitments are scarce. A secondary need to replace vacancies with the greatest of expediency also exists. Necessity then becomes the mother of invention when organizations accept less than thorough background investigations because of a lack of resources. Organizations will also informally lower hiring standards for a variety of political reasons. In addition, dependent upon the nature of the relationship the background investigator develops with the applicant, the motivation of the background investigator in completing a thorough case and organizational policy barriers such as maximum time limits to complete a case, present problematic situations that can result in litigation and embarrassment for the police agency. Ironically, agencies place much emphasis on the background investigation process despite these problems. This stems from cost control methods of limiting investigator efforts while other costs are not within the direct control of the organization (e.g., psychological and medical examinations). According to DeCicco (2000), . . . 

Research has shown that all departments use background investigations and medical examinations. Generally, departments place emphasis on the background investigation because an intensive background investigation can help to ensure agencies recruit only the most qualified individuals and also can indicate an applicant’s competency, motivation, and personal ethics. (p. 2)

A critical component of screening rests in identifying the exceptional qualities of applicants and the knowledge, skills, abilities, and most importantly, the attitude and dedication that they can bring to the profession. A thorough background investigation must explore, in the most objective manner, both the positive and negative characteristics of the applicant. This is supported by Wilson and McLaren (1977) who affirmed that “the background investigation should obviously pay attention to factors which would disqualify a candidate; however, there should be equal stress on characteristics which are positive in nature” (p. 266).

Police Officer Terminations

According to Narramore and Stephen (1998), “It is increasingly difficult to find, hire, and keep capable officers at every level” (p. 53). This is born from applicant quality, desire for the profession, and behaviors that would predispose an applicant to engaging in misconduct such as alcohol and drug abuse, criminal activity, and the like. A study by Inwald, Kaufman, and Roberts (1989) found that 33% of officer terminations were due to the use, abuse or sale of drugs or alcohol; 33% of officer terminations were due to sexual impropriety; and 33% of officer terminations were due to excessive use of force or a variety of other charges. A background investigator should pay close attention to these three primary disqualifying characteristics based upon the empirical evidence to support it.
Behavioral Predictors

Recommendations for police psychological screening began during the 1960s. Osofsky, Dralle, Greenleaf, and Pennington (2001) reported the following:

In 1967, the President’s Commission on Law Enforcement and the Administration of Justice concluded, “Psychological tests . . . to determine emotional stability should be conducted in all departments.” The National Advisory Committee on Criminal Justice Standards and Goals concluded, “Police officers are subject to great emotional stress, and they are placed in positions of trust. For these reasons, they should be very carefully screened to preclude the employment of those who are emotionally unstable, brutal, or who suffer from any form of emotional illness.” (p. 38)

DeCicco (2000) also states with respect to psychological screening that, . . .

Departments use these screens to determine that a police officer candidate is mature, emotionally stable, independent, sociable, and capable of functioning in stressful situations. A certified psychologist, with experience in psychological assessment for law enforcement, should direct this screening process. (p. 4)

Much attention has since been paid to the use of psychological examinations in critical employment fields such as policing. While cognitive ability has been determined to be the single best indicator of performance in the police academy and on the job (Aamodt, 1997b), many arguments are made from a psychological standpoint that the background investigation is the best indicator to determine future behaviors (Amendola, Weber, & Mercer, 1998). This is also supported by Sanow (2001) who also states, “The best indication of future performance from an applicant is not current knowledge, skills, and abilities, but past performance” (p. 4).

The need for medical screening as a method to determine an applicant’s capacity to perform the physical tasks of a police officer pales in comparison to the need for applicants who have a sound psychological foundation in a position that is demanding, highly stress-oriented, and ethically challenging on a daily basis. Recommended psychological screening should encompass psychopathology, substance abuse, self-management skills, team functioning, impact of prior experience, social influences, and intellectual abilities (Holzman & Kirschner, 2003). Thibault (2001) states with respect to police background investigations, “The objective is to obtain information relating to the candidate’s suitability (or nonsuitability) for police employment” (p. 290). Nelson (2000) also states, “A background investigation is not merely a tool to determine if an applicant is honest but also a tool to measure the applicant’s judgment and suitability to be a police officer” (p. 87).

This is a critical stage of a background investigation wherein numerous applicants are lost due to their lack of suitability for the position of police officer. While the science of psychology in many instances is not an absolute, there are chances that a police department should not take when selecting applicants who will have the ability to deprive another individual of his or her civil rights. Curran (1998) supports this:
The selection of law enforcement personnel who exhibit stable emotional and behavioral functioning has become critical to law enforcement agencies. Excessive-force complaints, community policing initiatives and allegations of negligent hiring have demonstrated to personnel managers that hiring decisions must take into account the psychological characteristics of an applicant. (p. 88)

**Negligent Hiring and Retention**

The specter of negligent hiring and retention is at the core of this examination. Negligence suits result from an agency’s deliberate indifference to the rights of others when engaging in hiring and retention practices. Several factors impact an agency’s ability to not only hire the most qualified applicants but also to ultimately determine the closest version of an applicant’s history with limited resources. The agency must also work to defend its hiring and retention practices when these types of lawsuits are filed.

Bradford (1998) offers some insight into this issue as he states, “The first area generally examined by a plaintiff’s attorney in a negligent hiring suit to determine the thoroughness of a background investigation is previous employer contact” (p. 430). While an immense pool of information can be developed in interviewing previous employers, coworkers, and workplace contacts, developing information in a litigious environment is yet another problem. Most employers from fear of being sued, refuse to divulge information on a previous employee’s work history. Most take a purported safer route and offer only dates of employment to the prospective employer. Only a few states have enacted legislation to hold a previous employer harmless for presenting factual information to the prospective employer. Agencies that refuse information are subject to a doctrine of **negligent referral** in cases in which information would have led the prospective employer to deny employment.

In addition, applicants will demonstrate a tendency to present themselves in the best possible light. In doing so, they will often fail to offer information that is believed to exclude them from a police officer position. This leads to a far more serious situation of untruthfulness and questionable integrity on behalf of the applicant. Fuss, McSheehy, and Snowden (1998) reported that “more than 65% of all job applicants are deceptive at some point during interviews and the hiring process” (p. 169). Honesty and integrity are the most important characteristics needed of our contemporary police officers.

In essence, a police agency must not only understand the rules but follow them in order to defend themselves in litigation of this nature. A thorough background investigation leads not only to the proper hiring decision but also defense of the hiring decision should it be needed at a later time. According to Rostow, Davis, Levy, and Brecknock (2001), . . .

The courts have ruled that defendants can be held liable for negligent hiring if they reasonably should have known at the time of hiring that the employee represented a foreseeable risk of injury; they were, in other words deliberately indifferent to the risk. (p. 38)
Beyond the legal requirements are moral requirements. Police administrators are tasked with the immense responsibility of ensuring community order and safety. It is imperative that a police administrator recognizes that each new hire is an ambassador, a direct representative, and a direct reflection on the agency and the chief administrator. Rafilson (1999) supports this:

With the trend toward a community-oriented approach to law enforcement, it is vital that police officers be both smarter and able to work with a diverse and demanding community. Indeed, effective community-oriented policing is predicated on hiring intelligent officers. However, it also entails hiring individuals who possess the personality characteristics that are essential to community policing. (p. 84)

**Summary**

Police agencies face many barriers in the recruitment, hiring, and retention of applicants. The use of a background investigation process affords police agencies the ability to make informed hiring decisions on an applicant’s history and subsequent suitability for the position of police officer. This makes the background investigation paramount to the hiring process. According to Bradford (1998), “The pre-employment background investigation is an important tool to ensure the most qualified candidate is hired. This process will and should be the most important investigation conducted by the agency” (p. 426). Thomas H. Wright also states . . .

If a proper and thorough investigation is conducted, an agency can eliminate undesirable applicants from consideration and hire qualified, dedicated employees. If, however, a thorough, pre-employment investigation is not conducted, the agency exposes itself to a vast array of libelous situations, occupational problems, or at the very least, nonproductive employees. (As cited in Bradford, 1998, p. 426)

**Methodology and Measures**

At the outset of the study, the researcher identified the need to develop a consistent set of criteria and review procedures that could be replicated in future police applicant attrition studies. As such, the researcher utilized a base set of criteria as the local civil service standards used in the Department. Those standards are listed in the left column of Table 1 and identified as “Category.” Ten standards are listed as well as categorical analysis of applicants who failed to meet minimum qualifications and those who withdrew, which resulted in automatic disqualification.

The variable identified as race classification was used because the Department is working under a federal consent decree to raise racial parity in the organization. As such, race categories were added to the top horizontal axis so a comparison could be made to the entire group processed in addition to intra-group analysis. The figures depicted are derived from an analysis of the entire population and the percentage of applicants in each race classification who violated each civil service standard. For example, since multiple violations existed on the part of each applicant, in the *All Applicants* category, 52.43% of all applicants violated the provision for Laws, Rules, and Regulations, while 40.77% of all applicants were untruthful during the application process.
The criteria that were excluded from the data analysis included gender classification as applicants are processed in rank order from the civil service examination, and no control is demonstrated by the agency to either favor or exclude female applicants for any other reason than presence on the certified list. Applicant age was also excluded from consideration as the same set of standards applies as with gender. In addition, while age discrimination requirements exist in the law, in policing, certain minimum and maximum ages can be placed on applicants. If an applicant meets the minimum qualifications and is certified, the applicant must be appointed if positions exist irrespective of age and gender. These factors, therefore, would not be considered germane or having an impact on hiring rates.

Additional criteria and information that were excluded involved the violations of civil service standards that were committed by the acceptable group of applicants, or 33.98% of the entire population. This group was excluded because they were already found acceptable by the commission standards; the point was moot. The focus of this examination was to identify exclusionary issues and offer recommendations on their resolution.

The data collection instrument used in this research was a standard Microsoft Excel spreadsheet that depicted the entire research population of 103 applicants. Each applicant was listed by an alphanumeric code to protect identity. The researcher examined each applicant’s history directly from the completed background investigation package after the review process and final Civil Service Commission determination and then entered the data from the consistent and replicable standards as identified in the categorical analysis depicted in Table 1. Figure 1 is a representation of applicants who violated one or more exclusionary categories.

<table>
<thead>
<tr>
<th>Category</th>
<th>All Applicants N=103</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unacceptable by Entire Research Population</strong></td>
<td></td>
</tr>
<tr>
<td>Acceptable</td>
<td>33.98%</td>
</tr>
<tr>
<td><strong>Unacceptable</strong></td>
<td>59.22%</td>
</tr>
<tr>
<td>Other (Withdrawn/Minimum Qualifications)</td>
<td>6.80%</td>
</tr>
<tr>
<td><strong>Unacceptable by Percent in Category (All applicants)</strong></td>
<td></td>
</tr>
<tr>
<td>Laws, Rules, Regulations</td>
<td>52.43%</td>
</tr>
<tr>
<td>Untruthfulness</td>
<td>40.77%</td>
</tr>
<tr>
<td>Financial</td>
<td>28.16%</td>
</tr>
<tr>
<td>Employment</td>
<td>23.30%</td>
</tr>
<tr>
<td>At Fault MVA’s</td>
<td>21.36%</td>
</tr>
<tr>
<td>Psych Exam</td>
<td>5.83%</td>
</tr>
<tr>
<td>Drug Policy</td>
<td>5.83%</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>4.85%</td>
</tr>
<tr>
<td>Withdrew</td>
<td>4.85%</td>
</tr>
<tr>
<td>Medical</td>
<td>2.91%</td>
</tr>
<tr>
<td>Control Issues</td>
<td>1.94%</td>
</tr>
<tr>
<td>Minimum Qualifications</td>
<td>0.97%</td>
</tr>
</tbody>
</table>

Table 1
Data Collection Instrument Results and Analysis by Population and Exclusionary Category
in the hiring process. This figure lends perspective to Table 1, which depicts the percentage of applicants in a category (e.g., All Applicants, Majority, etc.) who committed multiple violations of the civil service standards. Figures 2 and 3 provide the number (N) of applicants in each category who committed multiple violations of the civil service standards. All of the analyses were conducted from the single data collection instrument source and not multiple sources in order to maintain consistency and confidence levels of the data.

**Figure 1**
Count Analysis of Cumulative Research Population Results Concerning Number (N) of Violations of Civil Service Standards

![Bar chart showing the number of violations of civil service standards by category.](chart1)

**Figure 2**
Count Analysis of Entire Research Population Results Concerning Number (N) of Applicants by Violations of Civil Service Standards by Category

![Line graph showing the distribution of applicants by violations of civil service standards.](chart2)
Results

From the data analysis, the first comparison involved an entire group analysis and trends of applicant attrition. The following is a summary of the collective findings:

- Over 88% had violated an average of five or more laws, rules, and regulations.
- Over 68% had been untruthful on an average of four or more occasions regarding a material fact of background history.
- Over 47% had a poor financial history averaging four or more delinquent accounts.
- Over 39% had poor employment histories amounting to two or more poor employment references.
- Over 36% had on average two or more at-fault motor vehicle accidents.
- Over 9% had violated the drug policy.
- Over 8% had been involved in a domestic violence offense averaging two or more incidents.
- Over 3% had issues of inappropriate control of emotions on five or more occasions.
- Over 76% of all applicants had violated three or more Civil Service Commission standards.

This ultimately resulted in 61 individuals (59.22% of all applicants) who were found to be unacceptable for the position of police officer.

The second analysis involved the identification of correlates in applicant attrition by the entire group (All Applicants) and race classifications. A review of the inter-group population revealed that the highest three categories of exclusionary factors (i.e., Laws, Rules, and Regulations; Untruthfulness; and Poor Financial History) transcended all race classifications. These issues existed consistently in majority and minority applicants alike.

The third analysis involved an examination of the process with respect to racial bias. In this analysis, several factors favored the Department’s practices as aligned with the needs to promote organizational diversity while maintaining the edicts set by municipal, state,
and federal standards. Hispanic candidates had the highest certification rate at 70%, while African American applicants had the lowest certification rate at 9.52%. A majority of applicants demonstrated an unacceptable rate of 56.52% of their group, which was nominally below the unacceptable rate of the entire applicant pool at 59.22%. While the Asian and Native American groups’ representation was lower and subsequent statistics would result in lower confidence levels, these groups presented some remarkable statistics. One Native American applicant was processed and found to be acceptable by Civil Service standards equating to 100% of this group. With respect to the Asian applicants, 50% were found unacceptable, which was within an acceptable deviation from the entire group rate of loss at 59.22%.

The totality of these circumstances led the researcher to determine that based upon the available literature, statistical analysis, legal and administrative standards, and concept of business necessity, racial bias was nonexistent in this organization’s hiring practices.

Discussion

Key Findings in the Literature

The literature revealed support for a comprehensive and thorough background investigation process for police applicants. Society’s need for qualified and honest police applicants needs to be balanced with those of diversity in the ranks of the police. In creating this balance, the interests of all groups—those who are hired as police, and those who are policed—are served.

Key Findings in the Data Analysis and Results

The data analysis revealed that no issues of adverse impact exist in this particular pre-employment screening process. For all intents and purposes, the results of the entire analysis revealed that hiring issues transcend all race categories. A majority of applicants have significantly high rates of attrition in comparison to their minority counterparts in the police hiring process. In Figure 2, an analysis of the number (N) of the entire applicant population was tracked against civil service standards. In Figure 3, an additional analysis was conducted with the number (N) of each race classification concerning violations of civil service standards. In this figure, a definite correlation can be observed in applicant attrition regardless of race. A veritable mirror image exists in patterns of attrition and across all race categories. This empirical evidence supports the hypothesis that problems exist in all race classifications within a police applicant pool.

Conclusion

The findings of this study reflect the salient issues of police applicant attrition. Police organizations need to expand their methods and approach the issues of applicant attrition from a problem-solving mindset. Police applicant pools have been consistent throughout history. Even as the problem has remained in existence, recruitment and hiring methodologies have remained static. The problem requires innovation and strategy in order to improve upon the dismal failures of the past. The future will prove to be a crucial time for the police given local, national, and global events. Nelson (1999) supports the need for qualified police officers as he states:
Law enforcement is not just another job to be filled by placing a want ad in the local newspaper. Today’s professionals face a complex society that demands competence in problem solving, diplomacy, consensus building as well as traditional qualities of courage and the ability to make sound decisions affecting its citizens. (p. 42)

Recommendations

The findings of this study revealed significant concerns with the rate of police applicant attrition and severely limited resources for filling vacancies in police organizations with qualified and ethical replacements. The following is a set of recommendations for police organizations to consider when implementing a recruiting and pre-employment screening effort.

Early Intervention Techniques

Police organizations have an extremely limited focus on the future. Most operate from budget year to budget year, miserably attempting to keep the proverbial ship afloat. As such, long-term strategic planning is a misnomer. Values, initiative, and desire need to be inculcated at a young age in order to develop potential police applicants of the future. This is a monumental commitment from not only a resource perspective but, more importantly, a mindset. If application and employment is predicated on an ethical lifestyle, police organizations need to reach out to schools in K-12 populations in order to develop those future prospects. This is much more than implementing a DARE program, or a School Resource Officer Program; it is consistent contact in career development at the youngest levels. Awareness of ethical standards, physical agility requirements, and cognitive skills is included in this developmental process. This would also provide organizations with the opportunity to develop and recruit applicants on a local level as opposed to testing regionally because of severely limited applicant pools. Most applicants processed apply a retrospective that if they had only known what was needed, they would have lived a different lifestyle that would have made them viable candidates for the position of police officer.

Pay, Benefits, and Working Conditions

One of the most pressing concerns in policing has been the lack of pay and parity with private sector norms. While police agencies struggle with waning expenditure funds, it affects recruiting budgets, pay, incentives, and professional development opportunities, which all become extremely limited. This does not provide for an attractive environment for applicants who are otherwise qualified but seek employment in more amenable and lucrative organizations. A commitment from municipal administrators as well as the communities protected is necessary to raise these levels in order to provide incentives for qualified applicants.

Applicant Awareness of Standards

Applicant awareness of standards should also be a priority. Applicants should be advised early in a testing process of the unique and demanding ethical, physical, and cognitive requirements of the police profession. Orientation classes regarding testing and requirements should be offered to applicants so they can navigate the process and make
early decisions as to their viability based upon their personal history. This should save valuable time for the applicant and the limited resources of the police organization.

Examination of Testing Process

Organizations also must examine their civil service processes. Process issues preclude otherwise qualified applicants because of length of processing time, unnecessary barriers, and the like. Testing should also include cognitive and personality type components. While the process must be weighted heavily in cognitive testing, personality type components can identify those who have the ethical requirements as well as the temperament and personality to effectively provide community policing. Early integrity and psychological testing can also weed out applicants at the outset of the process and keep them from lingering in a no-win scenario.

A Return to the Nobility of Policing

One final point is a return to the nobility of policing. Often described as a calling, a vocation, and the like, policing has turned from a core mission and belief system to simply a job. Much is attributed to media portrayals of rampant unethical behaviors, which statistically are limited to an insignificant portion of the quality of service provided by police officers on a daily basis throughout the world. A renewed effort to capture the spirit of policing for current and future police applicants is a trend that is worth the effort.

Rafilson (1999) succinctly states, “Law enforcement has much more at stake than typical corporate-type jobs. Only the most qualified police officer candidates should be considered for a position of such importance; anything less is unacceptable” (p. 84). Policing is unique and demanding. Recruitment, selection techniques, and retention strategies should all rise to meet the challenge.

Bibliography


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Student Perception and Understanding of Identity Theft: “We’re Just Dancing in the Dark”

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Introduction

“I know who I am, I know who I am!” Existential concerns aside, the lament of Harry Angel in the film Angel Heart rings true for victims of the fast-growing problem of identity theft. Victims do know who they are, but institutions, ranging from banks to schools, rely on a variety of indicators to support identity.

Currently, waves of potential identity theft opportunities are sweeping the United States. For example, there have been recent data breaches at Choicepoint, Bank of America, Lexis Nexis, and DSW Stores (Mayer, 2005; Menn, 2005; O’Harrow, 2005; Zeller, 2005). While these instances are alarming in their own right, the true number of information breaches in the private sector is unknown. One survey found that only 30% of companies that experienced security breaches notified law enforcement of the event (Krim, 2004).

Information dealers are put in the interesting position of having to protect personal information while also operating a business model that requires the sale of this information in bulk (Hendricks, 2005a). These recent developments have stoked the interest of federal legislatures and fostered calls for new measures to enhance information security (e.g., tougher legislation regarding the security of information, increased penalties for information brokers who do not properly care for data, enhanced hiring protocols, and binding rule for those who enter into contractual agreements with the federal government) (Hendricks, 2005b; Peterson, 2005; Yeager, 2005).

The purpose of the present study is to provide a greater understanding of identity theft. Specifically, we seek to examine identity theft issues for one potentially vulnerable group—college students. This population may be vulnerable to identity theft because they tend to be technologically savvy and are heavily courted by financial institutions. Furthermore, the risk of identity theft may be increased because college students usually lack knowledge about complex financial transactions. It is hoped that an understanding of college students’ knowledge and self-protective behaviors may enhance policies that will help to reduce theft and fraud.
This article contains five sections:

1. The basic notions of identity, documentation, and identity theft are discussed.
2. Some of the methods of identity theft and established countermeasures are explored.
3. The methodology employed in the research is detailed.
4. The results from the analysis of the data collected is listed and discussed.
5. Policy recommendations is listed and explained in an effort to aid in the reduction of identity theft.

Identity Theft

A Department of Justice report labeled identity theft “the crime of the new millennium” (Hoar, 2001). Estimates regarding the cost of identity theft vary, but they range from $53 to $73.8 billion in 2003 (Mihm, 2003; Weingart, 2003). Similarly, estimates of identity victims are astounding. It has been estimated that 27 million Americans were victimized between 1998 and 2003 (Gores, 2004). The estimates of victimization per year in the United States vary, ranging from 500,000 to 750,000 per year in 2003 to an estimated 7 to 10 million in 2004 (Jean, 2005; Masters & Mayer, 2002; O’Harrow, 2003; Shanley, 2004). Thus, the data indicates that identity theft victimizations are increasing each year at a substantial pace (Hoar, 2001; Masters & Mayer, 2002).

Dealing with identity theft incidents is often difficult because victims often do not learn of their victimization until a substantial period of time has passed, nor do they know how their information was obtained (Hoar, 2001; Masters & Mayer, 2002). Moreover, behaviors that are becoming commonplace often expose persons to the many incarnations that identity fraud may take. For example, it is estimated that 73% of households use credit cards on a regular basis (Identity Theft, 2004a). Similarly, substantial pools of identity-related information in corporate databases expose most citizens to the risk of victimization. One corporate agent may have access to hundreds of thousands of consumer accounts containing information useful to identity thieves. It has been estimated that 80% of corporate computer crime is perpetrated by employees (Mill & Cain, 2004). In this electronic commercial age, individuals can be victimized from persons near or far. Indeed, cottage industries in identity theft and financial fraud have been established in Russia, Romania, and West Africa (O’Brien, 2004). The reality of this cross-national nature presents complex jurisdictional and law enforcement issues to those who seek to address this crime (Gaudin, 2005).

Anecdotal evidence suggests that all types of individuals are potential targets. Reports indicate that infants, the deceased, and corporations have all been victims of identity theft. Two commonly targeted groups are the elderly and teenagers. The elderly may be vulnerable for a host of reasons. Some elderly people are lonely and may seek contact and interactions that could lead to victimization, and they may not have the background to understand complex financial transactions, leaving them open to misinformation. In addition, older persons may be more trusting than other segments of the population. Once duped, the elderly may also be too embarrassed to report their victimization (Sylvester, 2004).
Sadly, both the elderly and young adults are frequently victimized by family members or other intimates with access to personal information (Shamlian, 2005). The frequency of solicitation of the young by financial institutions provides enhanced exposure to identity theft and fraud. The young may not engage in behaviors that reduce exposure to identity theft (e.g., the shredding of credit card applications and sensitive documents) and often refrain from behaviors that could alert them to evidence of their victimization (e.g., checking credit reports and financial statements). Additionally, the young, like the elderly, may lack substantial experience with complex transactions and may be more trusting of others. All of these attributes may provide an increased likelihood of identity theft and fraud.

Identity theft may also be used to foster and support other forms of criminality. Motivations for those who perpetrate identity theft vary. Low-level criminals may trade identity information for both legal and illegal goods (Hoar, 2001). It has been averred that 90% of those who engage in identity theft use, deal or manufacture illegal drugs (Sullivan, 2004). Larger organized crime rings appear to be using identity theft as well (Gaudin, 2005). It also appears that terrorists have adapted identity theft as a source of funding for terror operations (Dart, 2005; O’Brien, 2004; O’Harrow, 2003).

While businesses and consumers are becoming more cognizant of identity theft and fraud, this form of victimization is likely to continue and perhaps get worse. In a general sense, the pooling of personal information fosters both the establishment and use of consumer credit. Moreover, data repositories make credit and people more mobile. This use of consumer credit fuels our massive economic engine (Hendricks, 2005b). Thus, absent significant economic changes, the structural economic forces will continue to provide fertile ground for criminality involving identity.

The ease of modern consumption would also seem to promote the behaviors associated with the risk of identity theft. The use of credit and the convenience of purchasing by phone or the Internet will likely only expand in the future. Additionally, consumers, while concerned about identity theft, appear to have a low frustration threshold for inconvenient practices that aid in securing personal information. For example, consumers generally favor biometric devices for identification when using technology but do not favor forced password changes or lockouts after a series of failed attempted entries (Identity Theft, 2004b). The proliferation of wireless systems may also afford new opportunities for exploiting consumers’ desires for convenience in order to perpetrate identity theft or fraud (Kirkpatrick, 2005).

Forms and Methods of Identity Theft

The terms identity theft and identity fraud often mean different things to different people. “Identity theft involves financial or other personal information stolen with the intent of establishing another person’s identity as the thief’s own . . . . Identity fraud involves financial or other private information stolen, or totally invented, to make purchases or gain access to financial accounts” (Identity Theft, 2004c). The majority of current victims experience some form of identity fraud (Identity Theft, 2004c).

In general, criminality involving identity can be one of several distinct types of action. First, a person may take another’s identification information and use it if he or she is stopped by law enforcement. In effect, this type of fraud is a “true” misrepresentation
regarding the stopped person’s real identity. One would expect such persons to engage in this behavior to avoid the impact of prior criminality when dealing with the police and/or the criminal justice system. Another general form of identity theft concerns using another’s identity information to create or open new accounts in that person’s name. The perpetrator thus may obtain goods and services that are billed to the victim. Another form of identity criminality focuses upon the takeover or highjacking of the existing account of another person. In this criminal endeavor, the perpetrator impersonates a person with an existing account and manipulates that account to obtain things of value. Yet another general form of identity fraud involves creating a fictitious identity. In such cases, the offender entirely creates a false identity rather than using the identity or information of another (Towle, 2004).

Data regarding the prevalence of these specific types of identity fraud and theft are conflicted. Some evidence suggests that most identity fraud targets existing accounts, while other information suggests that criminals focus on new accounts. It should also be noted that victims may experience more than one form of identity theft victimization. It appears that nonfinancial identity theft/fraud also comprises a significant but small percentage of victimizations. For example, a perpetrator may use another’s information to obtain medical care, secure a lease, receive government documents, or engage in criminality (Towle, 2004).

The complex nature of our society provides several ways for a criminal to obtain the information necessary for identity fraud or theft. Information may be obtained by both high-tech and low-tech methods. For example, computer literate offenders may hack into databases containing vast amounts of personal information. This danger was recently highlighted when a hacker breached the database of the University of California, San Diego, and obtained the personal information for 3,500 students and alumni (Yang, 2005). In a related example, the data warehouse Choicepoint sold information regarding 145,000 consumers to those involved in identity theft activities (Mayer, 2005). Criminals may also trick the unsuspecting into revealing personal information or passwords with counterfeit e-mail solicitations (“phishing”) (Fisher, 2005). Furthermore, they may intercept unencrypted wireless fidelity (“WiFi”) signals that contain personal and account information. Low-tech methods are also prolific. Offenders may take bills left at a residential mailbox for pickup. These bills will likely contain personal information as well as account and financial information. Similarly, an offender can intercept incoming mail solicitations for credit cards addressed to another or file a change of address form for another person and obtain information from the forwarded mail. Identity thieves may also steal some form of personal property containing a substantial amount of identifying information. The theft of a wallet, purse, lap top, or PDA will often provide a wide array of personal and account information (Sodders, 2004). The criminally minded may also sift through garbage to find discarded items containing important personal information (“dumpster diving”). Discarded credit card bills, bank statements, and insurance forms can provide an offender with a wealth of identifying information (Gores, 2004; Singletary, 2005; Sodders, 2004; Towle, 2004).

The increase in identity theft and fraud has resulted in several countermeasures being deployed in the commercial sector. One growing area is the use of biometric data as a form of authentication for business transactions. While account numbers and passwords may be falsified, data contained within or on an individual is harder to falsely present. A number of biometric techniques have been or are being
developed. For example, finger-, thumb-, or handprints have long been used. Human eyes (e.g., retina and iris) have also provided biometric verifiers. Other potential biometric indicators include facial recognition, keyboard dynamics, style of walking, and sweat pores (Kennedy, 2004). The use of “tokens” is another countermeasure innovation used to provide protection from fraudulent identity transactions. Some financial institutions are providing these “tokens” to their customers in an effort to ensure identity of the user. The tokens display randomly generated six-digit codes that a customer must enter along with user identification information and passwords to gain access to accounts (Jean, 2005). The proliferation of identity theft and fraud has also spawned business opportunities. There has been increased demand for commercial shredding companies, check verification services, and identity theft insurance (Fetterman, 2005; Jett, 2004). There has also been an increase in private services to provide “target hardening” for those who fear identity theft victimization and to aid victims with the restoration of their identities (Lamb, 2005).

Laws Relating to Identity Theft and Fraud

The proliferation and impact of identity theft and fraud have not escaped the attention of both state and federal legislatures. States have enacted a variety of measures to deal with the issues.* Federal law has focused on criminal penalties for those who engage in identity theft, as well as statutes that aid consumers in detecting and mitigating victimizations.

Perhaps the best known federal statute is the Identity Theft and Assumption Deterrence Act. This act, passed in 1998 and codified as 18 USCS § 1028 (2005), allows the federal government, via its law enforcement agencies, to respond to identity theft. The original act also established the Federal Trade Commission (FTC) as a national clearinghouse for issues related to identity theft. The FTC acts to compile information regarding identity theft complaints as well as educate the public about tactics that prevent future victimizations.

In general, the act covers identification documents, authentication methods/symbols, and false identification documents. Those who wrongfully possess such information or who seek to use it in crime are covered by the act. Section 1028 provides both imprisonment and fines for those who wrongfully use, possess, or transfer these identification proxies. Property used by the offender or intended to be used by the offender in violating this statute may be subject to forfeiture proceedings, and conspiratorial agreements to use, possess, or transfer the identification proxies are prohibited. With regard to victims, the act allows both credit providers as well as individual victims to claim victim status. Victims may also seek restitution in cases in which a defendant is convicted under the statute.

Another important act is § 1028A, which deals with Aggravated Identity Theft. This section adds extra penalties for those who use identity theft in the commission of certain enumerated felonies. Specifically, the act states, “Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment

* See [www.consumer.gov/idtheft/federallaws.html#criminalstat](http://www.consumer.gov/idtheft/federallaws.html#criminalstat) for a description of many state statutes in this area.
of 2 years.” The act also provides an additional penalty of 5 years for persons using false identities in the commission of certain terrorist activities.

The last major federal law regarding identity theft and fraud is the Fair and Accurate Credit Transactions Act, codified as 15 USCS § 1681c-1 (FACT Act) (2004). This act focuses on a variety of issues. The FACT Act first focuses upon consumer credit reporting agencies and seeks to structure the procedures surrounding the use of consumer credit reports and scores. The legislation creates higher standards regarding the accuracy of credit reports and requires credit agencies to provide free annual credit reports to consumers. Credit reporting agencies must, for a reasonable fee, also provide consumers with their credit score. The act requires institutions engaged in commerce to establish procedures for dealing with reports of identity theft. Businesses are also restricted in how they may sell debt involving identity theft, as well as in certain point-of-contact procedures with the consumer (e.g., what may appear on a credit receipt and change of address for credit card holders).

The FACT Act places limitations on the use and sharing of certain medical information. This act also has substantial implications for law enforcement, as it requires complaintants to obtain a police report concerning their identity theft. This documentation affords the victim certain rights under the act. Thus, law enforcement can expect the requests for reports to increase initially due to the act, as well as in future if identity theft continues to grow. Police agencies must ensure that they have trained staff to deal with this new mandate, both currently and in the future. Moreover, law enforcement agencies may be wise to attempt to train the populations they serve in protective measures that limit identity victimization and thus reduce victimization and the demand for police services (Dadisho, 2005). While the above issues are important, they do not provide direct insight into the actions of one highly susceptible target for identity theft and fraud—college students.

**College Student Perception Studies in Criminal Justice**

Many studies have examined college student views toward correctional policies (Bohm, 1990; Hensley, Miller, Tewksbury, & Koscheski, 2003; Lane, 1997; Mackey & Courtright, 2000; Payne & Coogle, 1998), drug use policies (Perkins, Meilman, Leichliter, Cushin, & Presley, 1999), and juvenile justice policies (Benekos, Merlo, Cook, & Bagley, 2002). To date, a gap in the literature exists regarding the perception that college students have about identity theft. Moreover, the behaviors, the vulnerabilities of the students, and the targeting of the students’ financial institutions suggest that an understanding of students’ perception of identity theft would provide important information about identity crimes.

**Present Study**

The purpose of the present study is to gain a greater understanding of student perceptions about identity theft. Specifically, we seek to explore college students’ understanding of identity theft, as well as their knowledge about a variety of fraudulent behaviors (e.g., credit card fraud, telecommunications fraud, utility fraud, bank fraud, and fraudulent loans). In addition, we examine different self-protective and risk behaviors that students perform in their daily lives. As mentioned above, this article follows a growing line of research that has investigated college student perceptions about criminal justice issues.
This study has particular import for college students, administrators, parents, and financial institutions. The information the study provides to these parties may aid in developing policies and procedures to raise the awareness of college students with respect to identity theft and fraud. If these policies are effectively drafted and implemented, instances of identity theft may be reduced.

**Methods**

This section presents a discussion of the methodological procedures used in the study by exploring the data collection method and sample selection. Following this discussion, the measures used in this study are described in detail.

**Sampling**

Data for this study was collected during the spring 2005 semester. The researchers drafted a survey concerning student perceptions and behaviors related to identity theft and fraud. The survey and attending procedures for administration were presented to the Institutional Review Board (IRB) for review, and approval was received for survey administration. Four faculty members from a liberal arts college of a metropolitan university agreed to allow the researcher to distribute self-administered questionnaires in their classes. These classes were chosen because of convenience and faculty willingness to participate.

After procuring IRB approval, the researcher asked students to respond voluntarily to the survey. The researcher also advised the students that their responses were anonymous and confidential. Survey participants were not offered extra credit for participating in the survey.

The sample contained 65% \(n=152\) females and 35% \(n=82\) males. The students in the sample were an average of 21 years old and mostly white (77.4%). The total sample size for this study was 243 respondents. Overall, the sample was younger than the university community from which it was drawn.

**Measures**

The students were asked to indicate how much they knew about five different forms of identity theft: (1) credit card fraud, (2) telecommunications fraud, (3) utility fraud, (4) bank fraud, and (5) fraudulent loans. The students were asked to mark their level of knowledge using a five-point scale that ranged from “very little” to “a great deal.”

We further asked the students to estimate the age of the typical victim and the percentage of the population of the United States that experiences the following forms of victimization: credit card issues (i.e., making fraudulent charges to an existing account and opening a new account), establishing new cellular phones and land-line phone services, establishing a new utility service, opening a new bank account, and obtaining a loan or employment. The students were informed that 100% means that everyone experienced this crime, and 0% means that no one experiences this crime. The students indicated these percentages using a blank line adjacent to the forms of victimization.
In addition, we asked the students to report on nine behaviors that potentially impact identity theft and fraud. That is, we asked the students to report how often they performed certain tasks that may protect their identities. The students were asked to report on the following questions: “How often do you review your bank statements; review your credit statements; make purchases over the Internet; give out personal information over the Internet; make purchases over the phone; give out personal information over the phone; limit the amount of your personal information given; contact organizations that you deal with to limit the security risks; and give out your social security number?” The students indicated how often they did these things using five answer categories as follows: “never,” “a few times a year,” “once or twice a month,” “at least once a week,” “almost every day.”

The data was analyzed to determine how well the students were able to judge the percentage of victimizations associated with identity theft and how often they stated they engaged in behaviors that may affect their personal identity security.

Results

Table 1 presents the descriptive statistics for the overall student sample. In this analysis, 5.1% reported that they knew very little about credit card fraud. The largest percentage of students (46.2%) reported that they knew something about credit card fraud. When asked about telecommunications and utility fraud, over one-third of the students (35.9%) reported that they knew very little about telecommunications fraud, and 54.3% knew very little about utility fraud. One-third of the students (37.6%) reported that they knew something about bank fraud. A little over 40% (42.7%) knew very little or little about bank fraud. Finally, 48.7% of the students reported that they knew very little or little about fraudulent loans.

Table 1
Knowledge of Different Forms of Identity Theft

<table>
<thead>
<tr>
<th>Measure</th>
<th>Very Little</th>
<th>A Little</th>
<th>Some</th>
<th>A Lot</th>
<th>A Great Deal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit Card Fraud</td>
<td>5.1%</td>
<td>20.5%</td>
<td>46.2%</td>
<td>20.5%</td>
<td>7.7%</td>
</tr>
<tr>
<td>(N=12)</td>
<td>(N=48)</td>
<td>(N=108)</td>
<td>(N=48)</td>
<td>(N=18)</td>
<td></td>
</tr>
<tr>
<td>Telecommunications</td>
<td>35.9%</td>
<td>24.4%</td>
<td>33.3%</td>
<td>4.7%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Fraud</td>
<td>(N=84)</td>
<td>(N=57)</td>
<td>(N=78)</td>
<td>(N=11)</td>
<td></td>
</tr>
<tr>
<td>Utility Fraud</td>
<td>54.3%</td>
<td>23.9%</td>
<td>17.5%</td>
<td>3.0%</td>
<td>1.3%</td>
</tr>
<tr>
<td>(N=127)</td>
<td>(N=56)</td>
<td>(N=41)</td>
<td>(N=7)</td>
<td>(N=3)</td>
<td></td>
</tr>
<tr>
<td>Bank Fraud</td>
<td>15.8%</td>
<td>26.9%</td>
<td>37.6%</td>
<td>13.7%</td>
<td>5.6%</td>
</tr>
<tr>
<td>(N=37)</td>
<td>(N=63)</td>
<td>(N=88)</td>
<td>(N=32)</td>
<td>(N=13)</td>
<td></td>
</tr>
<tr>
<td>Fraudulent Loans</td>
<td>48.7%</td>
<td>21.4%</td>
<td>21.4%</td>
<td>5.6%</td>
<td>2.6%</td>
</tr>
<tr>
<td>(N=114)</td>
<td>(N=50)</td>
<td>(N=51)</td>
<td>(N=13)</td>
<td>(N=6)</td>
<td></td>
</tr>
</tbody>
</table>

Table 2 shows the percentage of students that underestimated fraudulent behavior of identity theft by 25%, that estimated within 25%, and that overestimated by 25%. In the most general sense, the data shows that students have a rather poor grasp of the uses of identity theft.
### Table 2
Identity Theft Percentage Estimates by University Students

<table>
<thead>
<tr>
<th>Measure</th>
<th>Percentage</th>
<th>Actual Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Credit Card Charges</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>4.7</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>4.3</td>
<td>12.0</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>91.0</td>
<td></td>
</tr>
<tr>
<td><strong>New Credit Card Opened</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>17.1</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>16.2</td>
<td>19.2</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>66.7</td>
<td></td>
</tr>
<tr>
<td><strong>New Telephone Service</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>7.7</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>9.4</td>
<td>5.6</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>82.0</td>
<td></td>
</tr>
<tr>
<td><strong>New Cellular Phone Service</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>17.1</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>8.9</td>
<td>10.4</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>74.0</td>
<td></td>
</tr>
<tr>
<td><strong>New Utility Service</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>8.1</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>14.9</td>
<td>3.8</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>77.0</td>
<td></td>
</tr>
<tr>
<td><strong>New Bank Account</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>6.8</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>11.5</td>
<td>3.8</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>81.7</td>
<td></td>
</tr>
<tr>
<td><strong>Obtaining Loan</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>19.0</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>1.3</td>
<td>6</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>79.7</td>
<td></td>
</tr>
<tr>
<td><strong>Obtaining Employment</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>30.9</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>20.1</td>
<td>11.1</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>49.0</td>
<td></td>
</tr>
<tr>
<td><strong>Typical Age of Identity Theft Victim</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underestimated &gt; 25%</td>
<td>11.6</td>
<td></td>
</tr>
<tr>
<td>Estimated Accurately +/- 25%</td>
<td>55.5</td>
<td>28</td>
</tr>
<tr>
<td>Overestimated &gt; 25%</td>
<td>32.9</td>
<td>(18-29 yrs)</td>
</tr>
</tbody>
</table>

Ninety-one percent of the students overestimated the reporting of unauthorized credit card charges. Sixty-six percent of the students overestimated the percentage of individuals that reported the opening of new credit card accounts. Eighty-two percent of the students overestimated the percentage of new land-line telephones that had been opened fraudulently. Seventy-four percent of the students overestimated the percentage of fraudulently opened cellular phone services. Seventy-seven percent of the students overestimated the percentage of new fraudulent utility accounts. Eighty-one percent of the students overestimated the percentage of newly opened fraudulent bank accounts. Eighty percent of the students overestimated the percentage of new loans that were obtained fraudulently. Forty-nine percent of the
students overestimated the percentage of personal information that had been used for new employment. Importantly, 55% of the students estimated within 25% the average age of the typical identity theft victim.

Table 3 shows that almost half of the students reviewed their bank statements once or twice a month (45.3%). Furthermore, 23.5% of the students never reviewed their credit card statements. A quarter of the sample made purchases over the Internet. Forty-four percent of the students gave out personal information over the phone a few times a year. Interestingly, 59% of the students never made purchases over the phone, and 49.6% of the students did not give out personal information over the phone. Twenty-five percent of the students limited the amount of personal information that was given out a few times a year, but 32.1% of the sample limited the amount of personal information that was given out in general on a daily basis. Fifty-eight percent of the students did not contact organizations that dealt with limiting security risks. Thirty-seven percent of the students did not give out their social security number, but 52% reported that they did this a few times a year.

Table 3
Self-Protective Behaviors of Students

<table>
<thead>
<tr>
<th>Measure</th>
<th>Never</th>
<th>A Few Times A Year</th>
<th>Once or Twice a Month</th>
<th>At Least Once a Week</th>
<th>Almost Every Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review Bank Statements</td>
<td>3.4%</td>
<td>12.0%</td>
<td>45.3%</td>
<td>25.2%</td>
<td>13.2%</td>
</tr>
<tr>
<td>Review Credit Card Statements</td>
<td>23.5%</td>
<td>6.8%</td>
<td>46.6%</td>
<td>11.5%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Purchases over Internet</td>
<td>33.8%</td>
<td>34.6%</td>
<td>25.6%</td>
<td>3.0%</td>
<td>.9%</td>
</tr>
<tr>
<td>Give Out Personal Information over Internet</td>
<td>29.5%</td>
<td>44.0%</td>
<td>18.8%</td>
<td>4.7%</td>
<td>.4%</td>
</tr>
<tr>
<td>Make Purchases over the Phone</td>
<td>59.0%</td>
<td>33.3%</td>
<td>0.0%</td>
<td>5.1%</td>
<td>.4%</td>
</tr>
<tr>
<td>Give out Personal Information over the Phone</td>
<td>49.6%</td>
<td>38.0%</td>
<td>9.8%</td>
<td>.9%</td>
<td>.9%</td>
</tr>
<tr>
<td>Limit Personal Information Given Out</td>
<td>7.7%</td>
<td>25.6%</td>
<td>18.4%</td>
<td>12.4%</td>
<td>32.1%</td>
</tr>
<tr>
<td>Contact Organizations to Limit Security Risks</td>
<td>58.5%</td>
<td>26.9%</td>
<td>9.8%</td>
<td>2.2%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Give Out Social Security Number</td>
<td>37.2%</td>
<td>52.1%</td>
<td>7.7%</td>
<td>1.3%</td>
<td>.4%</td>
</tr>
</tbody>
</table>

Discussion

The present study provides information from college students—the group that falls within the most often victimized age range of identity theft and identity fraud. Specifically, the present study attempts to discern the levels of understanding that
students have about identity fraud. Furthermore, the present study focuses on the self-protective behaviors that college students perform.

The results from this study show that college students do not have a solid grasp of identity fraud. In almost all categories of identity fraud, college students overestimated the percentage of identity fraud incidences. One exception to this is the presumed age of the typical identity theft victim. College students were able to estimate within 25% the proper age of the typical identity theft victim. We are, therefore, able to conclude that college students do not seem to have a solid grasp of identity fraud. These findings, while original to the identity theft literature, are similar to other college student studies concerning criminal justice issues (Giacopassi & Vandiver, 1999; Hensley et al., 2003).

The results from the present study also showed that college students were somewhat vigilant in protecting their identity and personal information. We were encouraged that college students generally did not make purchases or give out their personal information over the phone. Also, the responding college students did not frequently give out their social security number. We were further encouraged by the finding that college students limited the amount of personal information that they gave out in various formats and that students indicated that they reviewed their bank and credit card statements once or twice a month. We do feel, however, that college students should contact organizations that deal with security risks more often. While we see these as encouraging findings, we also see a substantial room for improvement in the protective behaviors practiced by the respondents.

**Policy Considerations**

The results from this study suggest several avenues for policy consideration. First, we note that our sample predominantly consisted of justice administration majors. This population may be more attuned to criminal issues and trends, and thus, the findings may overestimate the use of protective measures in the larger college student population. In an effort to enhance the use of identity theft protective measures, we aver that colleges and universities provide specific education and training about identity theft. Moreover, this educational module should be focused and specific. For example, as our results indicate, the pedagogical information should be concerned with different forms of identity fraud (i.e., credit card fraud, telecommunications fraud, utility fraud, bank fraud, and obtaining fraudulent loans). Any programs concerning identity theft and fraud should provide a detailed explanation of the multiple avenues for victimization, as well as detailing protective measures and practices that should be adopted. Moreover, this program should be provided to all faculty and staff and reinforced in both university practices as well as in relevant curriculum. Training that is not integrated, reinforced, and observed will likely be discounted by all.

Second, we believe that college administrators should take an active role in providing an orientation on the protection of identities early in the students’ academic career. Specifically, an orientation for parents and students is important so that these individuals learn to perform self-protective behaviors more consistently. For instance, we believe that if students know the ease and simplicity involved in obtaining another individual’s identity, then the students may be more likely to contact organizations to limit security risks. Parental involvement may also mutually
reinforce the use of protective actions among family members. Early detailed education regarding the matter may cultivate a long-term defensive posture for both the student and his or her family.

College police and security officials should also develop a detailed understanding of identity theft and fraud, as well as an ability to investigate and respond to such cases. These organizations will likely have to engage in substantial partnerships with a wide variety of college and university departments to be effective in this endeavor. For example, the Department of Human Resources will likely control electronic and paper files that contain a great deal of personal information. Similarly, the Department of Housing will have a great deal of influence over building and room access as well as mail and garbage removal. It may behoove campus police organizations to create “in-house” expertise regarding identity theft/fraud investigations, computer forensics, and privacy law to deal with these issues.

Future Research

While the present study provides some indication as to the students’ knowledge of identity fraud and their self-protective and risk behaviors, the study has limits that researchers should consider when replicating and extending our findings. Specifically, the present study used one university in the south. While we do not think that this is a fatal flaw, future studies should include several institutions. Also, the study used a nonrandom sample of students, which may hinder the generalizability of the findings. In our view, however, the findings are relevant and important because so little is known about identity theft and identity fraud from the most victimized age group—college students (Federal Trade Commission, 2004). Furthermore, the present study does not examine factors that may explain why students do not have a good grasp of identity theft and identity fraud.

Conclusion

Despite the limits, the present study provides evidence that college students may not have a solid grasp of identity theft and identity fraud (Federal Trade Commission, 2004). In particular, the findings suggest that college students overestimated the percentage of reported incidences of identity fraud in almost all examined categories except for age of typical victim. The results from the present study also showed, however, that college students were somewhat vigilant in protecting their identity and personal information. Future studies that build on these findings through the use of additional universities, random samples, and predictors that may influence the poor grasp of these issues will be particularly useful. For now, college students appear to be “dancing in the dark” about issues concerning identity theft and identity fraud.

References


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Melissa L. Ricketts is a visiting professor in the Department of Justice Administration at the University of Louisville. She is completing her PhD at Indiana University of Pennsylvania. Her current research focuses on issues relating to fear of crime, school violence, and media and crime.

Brian D. Fell is a graduate student and teaching assistant at the University of Louisville; his area of interest is identity theft.
Training Meta-Policies for Law Enforcement Administrators

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Continuing professional education (CPE) has long been recognized as a means of updating and maintaining professional competence; however, there is not sufficient bottom-up information to construct authentic meta-policies regarding law enforcement CPE. New policies are necessary to fit temporal contextual problems. The persons in the best position to provide the necessary information to change policy are the police officers themselves. In 2000, the author conducted research to identify police officers’ contextual issues as they relate to law enforcement CPE. The purpose of the study was to examine the content and processes of law enforcement CPE and the role that police administrators play in the facilitation of CPE and criminal justice training. It also focused on the learner and the entire process from the way police officers are selected for training to who delivers that training and the evaluation of training programs.

A major problem of law enforcement is its inability to move the profession forward because it does not lend itself well to the principles of CPE or human resource development (HRD). Law enforcement has been mired in tradition and isolation and has no friends outside of law enforcement. It is an anomaly that refuses to let the outside world in, and it refuses to go to the outside for help.

The current approach to law enforcement CPE is ineffective. For nearly a century, the field of law enforcement has not changed in terms of educating its officers. Only since the social unrest of the 1960s has law enforcement made any real impact on the way in which police perform their job. More money is being spent on law enforcement education today than at any other point in history (Ramirez, 1996). Yet, even in the new century, police education and training remains ineffective. Despite all of the training available to police, law enforcement personnel continue to conduct business as usual. The author’s research was designed to serve as an exposé and identify deficiencies in law enforcement CPE that prohibit learning from taking place.

Education has been an important topic in law enforcement during the last decade. More and more police officers are returning to school. New recruits entering the field are better educated than their veteran counterparts (Stevens, 1999). Police agencies are adopting a prescribed level of education as an entry-level requirement. The one area of law enforcement training that seems to be most inadequate is inservice training.

Continuing professional education has moved away from the instructor-directed mode to a collaborative mode of instruction. The emphasis has shifted from a pedagogical approach to an andragogical approach to learning, shifting the focus from the instructor’s expertise to the incorporation of the learner’s life experiences (Mott & Daley, 2000).
Killacky (1991) conducted research into law enforcement inservice training to determine why learning was not occurring. Although Killacky identified a number of barriers to learning, he concluded that method of instruction was the key to the assimilation of new knowledge and transformation of new learning. Killacky’s research did not examine staff development from the perspective of CPE. He focused on classroom instructional delivery methods.

The public expects and demands a certain level of service from the police. Additionally, never in history have police been held more accountable. Policing is dynamic. It has changed over the years as society has changed. There are many social changes that affect police service. For example, there is a population shift occurring in which minority populations are increasing, the population as a whole is aging, and dealing with the elderly is of paramount concern for police. Family values have also changed. There are more single family parents now than at any other point in history. Latchkey children now pose a unique problem for police. Finally, the disparity between the “haves” and the “have nots” has increased, and the middle class is shrinking (Hess & Wrobleski, 1997). The solution for police in effectively dealing with change is education.

Continuing professional education is one means for achieving the goal of keeping pace with change. In fact, many “true” professions require continuing education and relicensing (Cervero, 1988). That raises the following question: Is law enforcement a profession?

There seems to be a great deal of conflict when it comes to defining a profession. Cervero (1988) cites the “static approach” as a definition of a profession. This view holds that a profession has to possess certain characteristics. The characteristics include a minimum body of knowledge, certification, self-organization, code of ethics, professional associations, and altruism. This standard is called the static approach because objective criteria discriminate between those occupations that are “inherently” an occupation and those that are not (Cervero, 1988).

The author believes that most people would agree that law enforcement is a profession, yet when objective criteria are applied, law enforcement falls short. For example, there is no minimum body of knowledge, other than a high school diploma in most states. For example, a lawyer must have a juris doctor to practice, just as a physician must have a medical degree to practice. By those criteria, law enforcement is not a profession.

Law enforcement, however, does contribute greatly to the welfare of society. When labels are placed on occupations, their usefulness is limited. The author believes that any field or occupation could be classified as a profession. Too much time and effort is placed on gate-keeping (who gets in and who does not) and protecting the status of certain professions. Professionalism is a relative term that is defined by the profession itself. If an occupation chooses to call itself a profession, then so be it. By quibbling over definitions, the point is missed. Continuing professional education is key to professionalizing occupations. If a goal of society is to truly benefit its members, then the focus needs to be on end results and not status. To that end, the author favors Houle’s (1980) “process approach” to defining a profession. Houle claimed that any occupation can turn itself into a profession and that occupations
exist on a continuum of professionalization. Furthermore, an occupation can move up or down on the continuum of professionalization.

The question then evolves from “is this occupation a profession?” to “how professional is this occupation?” This context provides a rationale for continuous improvement. The focus should not be on what is a profession but how to improve the profession. Adult continuing education is a critical vehicle for improving practice, and training is paramount to continuous improvement. Any total quality management program involves training (Drucker, 1994). Whether an organization utilizes in-house training or outsources training, education is still the vital link. For learning to take place, educators must identify the needs and learning styles of their audience (Merriam & Cunningham, 1989). Education fosters personal growth and development. The author posits that much of whether learning actually takes place is up to the actual learner; however, learning is such a complex process that there cannot possibly be only one reason why learning does or does not occur. There are multiple realities for whether or not learning occurs.

The purpose of the author’s research was to go beyond staff development, which is top-down, and focus on the bottom up aspects of CPE whether initiated by the individual or the organization. The research examined the police trainers and learners who have changed somewhat since Killacky’s research. Police officers today are coming into the field with more education and cultural diversity than at the time of Killacky’s study. Although today’s police officers may not leave the field, they do move from department to department in search of individual career enhancement. Professional development may be more highly valued now by officers in terms of career development than at the time of Killacky’s study. Continuing professional education has traditionally referred to individual growth and development, and training has been more closely aligned with organizational development. Since much of CPE is currently being delivered in the workplace (Cervero, 1988), the organization is taking over CPE, which may lead to organizational development. The distinctions between training and CPE are blurred in many professions; this is especially true in law enforcement. Law enforcement training can, and often is, a means of career development. Today, training could be CPE for one officer and skill development for another in the same class. Officers coming into the profession who have completed an associate’s or bachelor’s degree may press for more educational opportunities in the workplace. These learners often have higher expectations of classroom-based CPE than has been true in the past, and they are often disappointed in the quality of courses offered. The author asserts that continuing education in law enforcement falls far short of its promise. Hence, the problem the researcher sought to examine and illuminate was the many complex factors contributing to this unfortunate situation. The research was intended to be a holistic investigation into the process of police inservice training.

When the purpose of a study is to gain meaning of the phenomena rather than generalization, qualitative methodology should be selected as opposed to quantitative methodology (Denzin & Lincoln, 1994). Qualitative research is multi-methodical in focus, and it involves an interpretive and naturalistic approach to its subject matter. Simply put, qualitative researchers study things in their natural setting. They attempt to interpret phenomena in terms of the meanings people bring to them. Qualitative research involves collection of data through case studies, personal observations, interviews, historical texts, and introspection (Denzin & Lincoln, 1994).
The case study creates a space for the voice of those studied. Through the use of semi-structured interviews, the researcher is able to capture the authentic voices and experiences of those studied in the field setting.

The case study methodology was selected for this research analysis for a variety of reasons. First, the case study allows the use of descriptive data to develop contextual categories (Merriam, 1988). Merriam claimed that the case study is a useful tool for studies in which the information has not been adequately explored or conceptualized in the literature. The intent of the case study is to gather as much information as possible in order to interpret the phenomenon being studied, and because there is such limited information about CPE in law enforcement, the case study approach was appropriate.

Secondly, a case study allows the researcher to explore the subject from a variety of perspectives. Student police officers, inservice trainers, college professors, and education administrators are all part of the law enforcement CPE process. By interviewing all parties involved, a more complete picture of the phenomenon emerges.

Finally, the case study was selected based upon six essential properties as identified by Merriam and Simpson (1995):

1. The case study is particularistic.
2. The case study is descriptive.
3. The case study is heuristic.
4. The case study is inductive.
5. The case study design can accommodate a variety of disciplinary perspectives.
6. The case study uses a wide range of techniques.

Subjects were chosen for study from the northeastern counties of Illinois. Lake, Cook, and DuPage Counties are within the Illinois ASSIST Mobile Team’s area three. Area three is the region in which the Northeast Multi-Regional Training (NEMRT) is located. The researcher is most familiar with policing in the northeastern Illinois and, hence, selected subjects from this area.

Subjects from northeastern Illinois who have attended the Southern Police Institute (SPI) and the Northwestern University Center for Public Safety were also selected. These subjects had also attended numerous NEMRT inservice training classes and were able to address the similarities and differences among the various inservice training programs. Former administrators of the Center for Public Safety and instructors from SPI and the Center for Public Safety were selected because of their experience with training from the university perspective.

Finally, students and instructors from the Criminal Justice Institute of Lake County were interviewed. The Criminal Justice Institute offers yet another perspective on law enforcement inservice training in the region being studied. The research participants consisted of 41 subjects. Three subjects were administrators for major public learning institutions. Two subjects were teachers for those same learning institutions. They were also police officers. They served as both law enforcement trainers and students during their tenure. Five subjects were law enforcement practitioners who have participated in a variety of law enforcement learning
environments. The five officers were a combination of municipal and federal law enforcement agents. The final 31 subjects interviewed were students enrolled in law enforcement classes at the Criminal Justice Institute of Lake County. The researcher attended the training classes with the 31 students, acting as a participant/observer. The interviews of the aforementioned students took place before class, during breaks, and after class. The students talked openly about issues important to them.

From the interviews, certain principles emerged. From those principles, recommendations for the improvement of law enforcement training and education can be made. The author has proposed eight meta-policies designed to assist policymakers with improving law enforcement continuing professional education. Meta-policies are nothing more than policies for creating policies. The proposed meta-policies were formulated through critical reflection of the themes that emerged from the research. The eight proposed meta-policies are as follows:

1. The principle of learning effectiveness
2. The principle of learning alliances
3. The principle of outcome generation
4. The principle of transcendence
5. The principle of training the trainer
6. The principle of education merit
7. The principle of assessment
8. The principle of organizational security

**Learning Effectiveness**

The first meta-policy, learning effectiveness, requires that education be interesting, meaningful, and purposeful for learning to take place. On the surface, this may appear rather obvious. As one training administrator interviewed stated, “Police officers are like high school kids. They excel in classes they like, and they struggle in classes they dislike.” Police officers are like everyone else. If they see no benefit to the training or no direct correlation to their job, they will soon lose interest. Once they lose interest, they merely become a body in a seat taking up space. Learning does not occur at an acceptable rate when interest is lacking.

A proper needs assessment is the first step in determining department and officer needs. Unfortunately, many officers are arbitrarily sent to training. There is no valid reason behind such training. It is not target specific and therefore, it benefits neither the officer nor the department. A good needs assessment will marry the needs of the individual and the department. A proper needs assessment also has an added benefit. It forces training officers and supervisors to communicate with subordinates to determine individual needs. It also forces supervisors to keep better records to judge the needs of their subordinates.

Coupled with a proper needs assessment, police training officers and administrators must cease using training as punishment and reward. This practice does not benefit the department. In fact, it breeds poor morale. Training must have a purpose. That purpose should be personal growth and development. The purpose of training should not be résumé building. Conversely, training that is used as punishment rarely results in learning and is most often rejected out of hand.
The bottom line is simply that law enforcement must become more humanistic and less behavioristic. Behaviorism may breed compliance, but it does not breed free thinkers. Unfortunately, some police administrators do not want free thinkers working for them. They regard free thinkers as loose cannons or problem employees. That is because they are a challenge to the status quo; however, police officers are problem solvers. As such, they must think critically and challenge assumptions. Law enforcement is hypocritical at times. Police administrators preach higher education and officer development. The reality is that officer development is not occurring for a host of reasons. Administrators participating in this research stated that they feared that freethinking police officers would become uncontrollable in the field. They compared law enforcement to the military, claiming that they need blind obedience from their subordinates, yet even the training in the military is more progressive than the training afforded by most law enforcement. The result is that all too often administrators’ call for advanced training is little more than self-serving rhetoric designed for political gain.

Training can be made more humanistic by allowing police officers more control over their own learning. Allowing officers a say in the training they receive should also make that training more interesting to that officer. It only stands to reason that officers will be more interested in attending training they requested than attending training they are forced to attend against their will.

Learning Alliances

The second meta-policy involves learning alliances. The community largely defines the role of the police. Citizens and civic groups have certain expectations of the police. With the advent of community policing, the community now has more involvement with the police than in past years. Most police administrators, however, want a stranglehold on the decision-making process. The needs of the community should help guide or direct police operations and subsequently police training.

If the police are to become a part of the community, as opposed to apart from the community, they must form a partnership with that community. One of the students interviewed spoke of how his department responded to citizens’ concerns of motorists illegally passing stopped school buses:

We had several citizens complaining about cars passing stopped school buses. They were afraid someone was going to get hurt. So, we listened to what they had to say. The chief came out with a program called “Operation Safe Arm.” The program calls for aggressive enforcement action against violators. We had to train everyone in the department as to why we were doing this. If we didn’t have that training, some of the guys wouldn’t have bought into the program. For things to work, everyone has to believe in it. This was a classic case of the community and the police working together. They educated us to a possible problem. We took action on it and in turn educated our officers. After all, there should be a partnership between the police and the community. That’s what community-oriented policing is all about.

The alliance between the police and the community, however, is just one aspect of learning alliances. The world has become a much smaller place, and criminals have become more mobile. Police agencies need to communicate with other law
enforcement agencies. Today, that need is greater than ever. The spread of terrorism is but one reason why. Police officers are not adequately trained to deal with global issues, and many global issues eventually become local issues. Crime is at least a multi-jurisdictional problem. Drug trafficking is just one example. Federal agencies have been relegated to dealing with the drug problem, due to its national and international extent. The trouble is that local street officers probably come into more contact with drugs and drug dealers than federal agents without ever knowing it.

Law enforcement is no longer a local issue, and law enforcement agencies should be collaborating with each other on training issues. A recent trend in law enforcement is the use of multi-agency tasks forces to deal with a variety of law enforcement issues. Agencies dedicate a person to the respective taskforce. Officers in the taskforces train together, but the agencies remain autonomous. Training officers and administrators must change paradigms and begin thinking on a larger scale.

Training in law enforcement has lagged behind that of the private industry. Redding (2000) of the Institute for Strategic Learning once said, “If law enforcement was a private business, they’d have gone out of business long ago.” Redding was referring specifically to the way in which law enforcement agencies have traditionally ignored the demands of the communities they serve and the way in which they educate their officers. Even with the influx of private security firms, local law enforcement has a monopoly on policing. They are the only game in town, so unfortunately they can turn a blind eye to the community.

That paradigm is changing. The community is more demanding than ever. Recent incidents of alleged police brutality and corruption have resulted in the police being held more accountable for their actions and to the citizens they serve. Additionally, newer college-educated police officers are more challenging and demanding. They expect more from themselves and their employers. The lynchpin between theory and practice is learning. Law enforcement inservice training offers the greatest opportunity for change in policing. Policing will only change and keep pace with the world around it when police training changes. The key to success for law enforcement in the future is the improvement of law enforcement inservice training.

Outcome Generation

The third meta-policy is outcome generation. It is not enough to simply go through the motions when it comes to training. If police officers and their departments are not going to benefit from training, then sending officers to training is a waste of time and money. Police administrators should be concerned with the outcomes as well as the process.

Interviewees stated that law enforcement inservice training must be standardized. There are too many providers of training, all teaching different material on the same topic. The training classes in this study that appeared to be most successful were those that were governed by the State Training Board. The obvious answer then is to make all inservice training susceptible to law enforcement CPE standards.

Regulated training would provide consistency and add credibility, and guidelines would ensure that content and processes are content-valid and target specific. The
goal of inservice training should be to develop police officers, not line the pockets of private vendors. If private vendors wished to enter the law enforcement in-service training arena, they would be held to the same standards as all other providers of police training. Standardization is a key element of linking content and process.

Recertification for police should also be considered. Cervero (1988) argues in favor of continuing professional education for professionals. Laws, procedures, and technology are constantly changing, and it only makes sense that police officers stay current of the changes in their field. The best way to stay current is through continuing professional education. Recertification would ensure that all police officers receive adequate training to stay abreast of changes.

Transcendence

The fourth meta-policy is that of transcendence. Police officers must be able to transcend beyond their own wants and needs and accept that there will be times in their careers when they must do things that they do not necessarily like in order to become better officers. Police officers must attend training during their career that is not interesting. Learning is important, and officers must learn. Just because officers do not like certain training does mean that learning is not important. Some boring training may be necessary to develop basic skills and job knowledge, and it is up to the training officers to motivate their officers to learn. Learning contracts and dual career ladders are two tools used to motivate officers. The dual career ladder works as follows. A police officer expresses a certain interest (e.g., accident investigation, evidence technician, detective), and the department then sends the officer to a mixture of basic necessary training and specialized training in the area of specialization. That way, the department and the officer work toward the same goals. Officers know in advance that they will be required to attend certain training that they may deem undesirable, but in turn, they will be sent to premium training of their choice. That makes the uninteresting training more palatable to the officer.

Training the Trainer

The fifth meta-policy involves training people to be good instructors. A major criticism of police training customers is that instructors are not taught how to be good teachers. Law enforcement trainers must be taught the principles of andragogy in order to better understand the needs of the adult learner. Since adults learn differently from that of children, the traditional teacher-centered pedagogical approach to teaching will not work with most police officers. Even some of the law enforcement training institutions considered to be among the best admittedly do not provide instructor training and development. One training administrator interviewed stated that their instructors must show proficiency in lesson plan development but admitted his organization does nothing beyond teaching instructors how to develop lesson plans.

The community college and the university may be in the best position to provide law enforcement inservice training. Having instructors who are taught how to be effective teachers makes a difference (Killacky, 1991). The community college and the 4-year university require certain entry-level criteria of all instructors, and they provide continuous faculty development. In addition, greater trust between student police officers and instructors is more likely to occur if the same instructors are used.
repeatedly. Police officers will come to trust instructors more if they have continuous interaction with them. That does not necessarily occur in the current state of law enforcement inservice training. There are so many providers of police inservice training that police officers rarely see the same instructors more than once.

Finally, instructors must teach their students to become critically reflective. Much of what is taught today is done in the pedagogical fashion of banking education. Students need to be taught to critically reflect on the past and challenge existing ideas. Currently, that is not being done. In fact, many instructors will not allow a student to challenge the instructor or the material. They teach from a position of authority.

**Educational Merit**

The sixth meta-policy is that of educational merit. Some professions, such as education, have a structured pay scale based upon educational merit. Teachers with master’s degrees make more money than teachers with baccalaureate degrees. The same should be true for police. Outside of self-actualization, the only incentive for police officers to return to college is tuition reimbursement. There was no incentive for officers to return to the classroom because often neither pay nor promotions were based upon educational merit.

Since the President’s Commission on Law Enforcement in the 1960s, the call has been for college education for police. Law Enforcement Agency Assistance funds did have a major positive impact upon officers returning to college; however, once the funding was gone, many officers stopped seeking degrees. Until the entry-level and promotional requirements are changed to address educational merit, other motivators must be found. A diverse pay structure based upon educational merit may be incentive enough for many officers to return to school.

**Assessment**

The seventh meta-policy involves assessment. The evaluations handed out to attendees at the end of each training class are not a fair representation of training classes. Many students are in a hurry to leave and arbitrarily answer questions. Some answer questions with positive responses when that may in fact not be their true beliefs. The attitudes towards training were born out during the interviews. There is a vast amount of training that is ineffective for a variety of reasons. An accurate and authentic evaluation tool must be developed to refine training and make it target specific to individual and department needs. Training should be goal-oriented. Without set goals, it can never be clear whether training is meeting expectations.

Over 80% of police officers’ time is spent on nonenforcement actions. Those actions are community service and peacekeeping functions. Less than 20% of officers’ time is actually spent on enforcing laws (Hess & Wrobleski, 1997), yet a disproportionate amount of time is spent on actual law enforcement training. More attention should be given to community and proactive training that centers on officers’ activities other than enforcement issues. Community-oriented policing is one such area that deserves more training attention, yet, without a proper assessment tool, training deficiencies cannot be identified.
Organizational Security

The last meta-policy deals with organizational security. From the research, many police administrators and command personnel fear that better educated officers may take their positions within the department. In law enforcement, there is a great deal of insecurity up and down the chain of command. The training of police officers and supervisors should not threaten the administration. Keeping police officers ignorant helps no one. This research showed that most police training is not about teaching police. It is often about lessening civil liability. Superiority begins with superior training.

Law enforcement is not unlike the private sector when it comes to cutting the training budget. At a time when law enforcement education and training is in need of improvement, some departments are actually doing just that. All too often, cuts are made in the areas of training and college tuition reimbursement.

Ignoring the fact that law enforcement inservice training is in need of help only exacerbates the problem. Improvement of law enforcement education and training should be everyone’s responsibility. Training officers must take responsibility for their jobs. They must use all of the tools available to them including a proper needs assessment, allowing officers’ input into their training and utilizing credible and effective training vendors. It should be the training officer’s responsibility to research credible providers of training for use by their departments.

By virtue of the structure of modern police departments, they are not conducive to employee development. Most police agencies are too militaristic and behavioristic in structure. They do not involve the employee enough in terms of employee development, and police officers are not allowed enough input into their training. College tuition assistance is the exception in law enforcement and not the norm. When police administrators make education a partnership with the employee, instead of an adversarial process, the employee development will take place.

Training must be a partnership between management and the rank and file. In addition, training must take into account the needs of the community. Times have changed, and law enforcement is more global than ever. The “community” now includes areas beyond just the agency’s own city or county. Partnerships are no longer an anomaly; they are the norm. Police inservice training is a critical component of law enforcement. It is only through a total commitment on all levels that change will occur.

The purpose of this research was to identify deficiencies in law enforcement CPE and inservice training. Many deficiencies were identified. Problem posing incites critical reflection and meta-cognition. Police administrators need to critically reflect on education and training. Law enforcement administrators must break from a long tradition of misusing education. This research has only scratched the surface in terms of identifying possible suggestions for improvement in regards to law enforcement education and training.

As a recommendation for further research, the author suggests studying the link between liberal arts and law enforcement. In many countries, police officers must possess a liberal arts degree in order to be a police officer. Those countries value
decision-making skills that are enhanced by liberal arts education through problem-posing and problem-solving. Police need more than just technical rationality. Judgment values should be more important than technical skills when it comes to policing. In addition, further research into law enforcement CPE must be done in regards to temporal issues. The war on terrorism has changed the way in which police operate. The time is right for training reform. Times are changing, and so too, must law enforcement training change. Law enforcement and the military have become closer during the recent terrorist attacks. A new paradigm of policing has been established that will require a new training paradigm.

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Terry Mors, PhD, is an associate professor with the Department of Law Enforcement and Justice Administration at Western Illinois University. Dr. Mors received his baccalaureate degree from Roosevelt University, his MA in law enforcement and justice administration from Western Illinois University, and his EdD degree from Northern Illinois University. Having worked for the Gurnee, Illinois, Police Department in numerous positions ranging from patrol officer to commander, Mors possesses over 17 years of law enforcement experience. Professor Mors teaches criminal justice courses at the collegiate level and serves as a law enforcement and public safety consultant. He has made numerous presentations worldwide on various topics in law enforcement.
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