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Every year, law enforcement agencies attempt to produce a realistic operational budget and seek approval from voters and government officials; however, securing the annual budget is only the first step in maintaining the finances. Managing the budget effectively is a troubling challenge for most law enforcement executives.

In recent years, the stream of state and federal contributions to municipal budgeting has run dry. In addition, a 2006 study of the municipal financial executives reported an average annual funding decrease of nearly 4%. Yet, the public still expects municipal law enforcement agencies to deliver a full complement of high-quality community policing and security services.

Traditionally, law enforcement executives have developed cost-cutting measures in order to keep departmental spending within the budget, but radical reductions in programs, services, hiring, and training only temporarily solves financial problems and proportionally creates and elevates other critical issues of local policing. While spending cuts do not make a long-term difference in financial management results, analytical approaches and promotion of cost-efficiency can provide guidelines and effective practices that will make long-term budget management decisions fruitful.

The challenge of financial management in law enforcement gets more complicated and frustrating each year as costs rise and communities demand expanded services without additional state and federal contributions. The collection of articles in this issue of the Law Enforcement Executive Forum focuses on the choices made by law enforcement executives, agencies, and communities with regard to alternative uses of scarce resources to satisfy the need to achieve long-term cost control through improved police officer productivity. This eclectic mix of articles covers some of the most current financial concerns and different dimensions of police management and reflects the pervasive nature of administration, which influences every decision, new technology implementation, and evaluation with the limited resources available. This issue provides valuable information on this critical problem and, with articles from experienced practitioners and researchers, certainly provokes thought and encourages analysis.

Minds are like parachutes. They only function when they are open.
– Sir James Dewar, Scientist (1877-1925)

Vladimir A. Sergeevn, PhD
Editor
Law Enforcement Executive Forum
Utilizing Activity-Based Timing to Analyze Police Service Delivery

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Introduction

Over the past 30 years, demand for police services in Canada has increased at a considerably disproportionate rate to increases in population. There is also a perception among police executives that the amount of police time and resources spent responding, processing, and clearing criminal events has increased significantly. Since policing is a public service, it cannot utilize the standard business response to major increases in timing and demand by increasing prices. The police even lack the latitude of other public service agencies to respond by allowing either longer waiting periods for services or a substantial reduction in the quality of service. Some police agencies have resorted to not responding to certain types of crimes, such as minor property crimes; increasing the average response time for other minor crimes, such as mischief offences; or limiting the effort to investigate minor property and order maintenance incidents generally.

Despite the apparent increases in demand, police services in British Columbia (BC), Canada, have traditionally been staffed and funded according to a formula grounded in part on provincial population. As the province has grown over the past four decades, the numbers of sworn police officers, their civilian support staff, and policing expenditures have also increased. This fact—that both police expenditures and the number of police officers and civilian support staff has grown relative to British Columbia’s population—seems to stand in stark contrast to public concerns for the safety of both person and property in the province and to the concerns of senior police managers, who believe that there has been a substantial erosion in their capacity to respond to crime and calls for service over this same time period.

This erosion of police capacity to respond to crime is reflected in many aspects of police service delivery. Crime clearance rates have declined substantially. Police forces and detachments in Canada have become far more selective about the...
crime reports to which they physically attend and about which crimes they will fully investigate. Increasing numbers of impaired drivers are being given 24-hour suspensions rather than being charged, and more drug cases end with contraband seizures rather than charges. Moreover, private security personnel still outnumber public police in Canada and have begun to act in matters such as investigating corporate fraud, preventing computer crime, and conducting forensic analyses that have traditionally been handled by public police.

Part of the explanation for the current situation of increased police resources and declining police service can be found, in British Columbia at least, in a series of less visible changes in the relative position of police forces in relation to the crime burden and in the increasing complexity of the police job. Legislation and court rulings have resulted in increases in steps required to handle cases and associated increases in time required to complete cases. Additionally, technical advancements and additions of computer systems may have increased some administrative work. The purpose of this research is to empirically assess how demand for police services from the RCMP in British Columbia has varied over the past 30 years and whether the amount of work necessary to respond to calls for police services has increased or decreased.

This article is organized as follows. We begin by contextualizing police services in the Canadian province of British Columbia. We then review the limited research on activity-based timing and costing in police services in order to ground our chosen methodologies. The multiple methods used in this research are then described, followed by the presentation of the findings. We conclude by discussing the implications of the findings, which support the conclusion that due to a variety of operational changes and legal challenges, the costs of policing have increased, and police capacity has decreased over the past 30 years.

**Contextualizing Policing in British Columbia**

Canada is a relatively high-crime nation. Both *International Victimization Surveys* and international compilations of crimes known to the police indicate that Canada has high property crime levels and high assault levels relative to other developed nations. About 25% of the population is victimized each year by one of the 11 types of crimes tracked by the *International Victimization Survey* (van Dijk & Mayhew, 1997). Canada has traditionally also been relatively lightly policed, having fewer police per capita, in comparison to other developed nations, such as Australia, Britain, France, Ireland, the Netherlands, or the United States. For instance in 2003, Canada’s ratio of police to population was 19% lower than Australia’s, 22% lower than that of the United States, and 26% lower than that of England and Wales (Statistics Canada, 2004).

Within Canada, British Columbia is traditionally lightly policed compared to other provinces, although it has consistently had among the highest provincial crime rates since at least the 1920s. In 2004, for instance, British Columbia had more criminal code offences reported to the police than Quebec, although Quebec had almost double British Columbia’s population. British Columbia’s crime rate was more than double that of Ontario, yet Ontario and Quebec both had substantially more police per capita than British Columbia, which had lower police to population
ratios than the relatively low-crime provinces of Nova Scotia and New Brunswick (Statistics Canada, 2004).

British Columbia, like the rest of Canada, estimates the number of police it needs on the basis of population counts. Population in Canada more than doubled (2.3 times) between 1962 and 2003, but the number of police increased by only 1.7 times, falling behind what might be assumed to be needed if population were the best indicator of policing needs. The number of crimes reported to the police in Canada over this same time period increased seven fold. British Columbia’s data tells a similar story: population more than doubled (2.4 times) between 1962 and 2003, but the number of crimes reported to the police increased seven-fold (see Figure 1). This means that although the increase in police resources kept pace with population growth over this 40-year period, each British Columbia police officer was expected to handle almost three times as many crimes in 2005 as his or her 1962 peer had been expected to handle. Police resources did not keep pace with the volume of crime British Columbians suffered. All things being equal, this fact alone indicates that police effectiveness must have declined relative to police effectiveness a generation ago.

Figure 1. Increases in Population, Police, and Crime: British Columbia (1962-2003)

Over this time, police clearance rates have declined substantially. Break and enter (burglary) clearances have dropped from around 25% to around 8%; homicide clearance rates have dropped from around 90% to below 70%. British Columbia spends less per capita for police services than Quebec, Ontario, Manitoba, Saskatchewan, Alberta Yukon, Northwest Territories, and Nunavut. British Columbia has 13% of the national population and 20% of Canada’s criminal code
offences but only 10% of Canada’s spending for police services. It is important to keep this general context in mind when considering the results of this research.

**Literature Review**

There is a paucity of research assessing whether the amount of work necessary to respond to calls for police services has changed over time. Most research on police costing and timing examines cross-sectional data for the purpose of informing human resource allocation decisions (Ffrench & Budz, 1997; Formby, Williams, & Hartin, 1989; Greasley, 2000, 2001; Pearl, 1987). One of the more complete studies in this regard involved the costs of responding to and enforcing prostitution laws in 16 major cities in the United States. Based on data collected through police interviews and budgets, Pearl (1987) contended that overall police expenditures for prostitution laws were primarily associated with the amount of time it took to investigate the incidents. An Australian study by Ffrench and Budz (1997) focused on the time and cost of first response by police using calls for service data. The full per-minute cost of providing first response policing services was estimated by using a methodology based on the cost of a constable model (Shapland, Hibbert, L’Anson, Sorsby, & Wild, 1996). Total time on scene was extracted from the records management system using the time officers responded to the call and the time they alerted the dispatcher they had resumed normal duties. The length of time on scene depended heavily on the type of offence, with drug matters and domestic assaults taking up the longest period of officer involvement. Greasley (2000; 2001) conducted a simulation model in the United Kingdom using an activity-based costing (ABC) model for several crime types. This model allocates costs to activities by identifying resource drivers and activity drivers. Resource drivers determine the cost of resources, while activity drivers determine the use of those resources. This study investigated the arrest process from apprehension to custody, interviewing, and possible court appearances. Estimates of the costs associated with the 12 main arrest types were calculated by inspecting custody records from the preceding 12 months. Greasley concluded that theft offences represented a disproportionate percentage of total police arrest costs and created a correspondingly unbalanced level of work for officers. The two highest cost crime types were theft and burglary.

These studies considered the costs involved in investigating specific crimes and how to better allocate police budgets under increasing fiscal constraints. A primary limitation in each of these studies is the incomplete nature of police data pertaining to the timing associated with service delivery. Unlike the current research, none of the authors considered whether the cost of police service delivery changed over time. There are unpublished reports conducted by police departments on the changing costs of service delivery; however, these tend to be internal and confidential. They are, therefore, not available for our review. Even though the previous academic research does not have the same purpose as the research at hand, it does help to inform the methodology for this research.

**Methodology**

This research was initiated through discussion with senior police managers, non-commissioned officers (NCOs), and front line officers, which revealed a general feeling among police in British Columbia that they were working harder than they had in the past but doing so less effectively. Further discussions supplemented by
a systematic literature review suggested two likely explanations for this general sentiment: (1) police resources allocated on the basis of residential population are inadequate and (2) changes in the legal and technical context in which police must operate have made the job more complex and therefore much more time-consuming than in the past.

The implications of these two issues for understanding contemporary police resourcing needs are profound. To the extent that the first explanation is correct, too few police are available to do the job. To the extent that the second explanation is correct, those police who have been resourced have far less capacity to handle crimes and other calls for service than did police working 10, 20, or 30 years ago. We addressed these issues using a series of interconnected methodologies organized under the general framework of activity-based timing. The first issue was addressed in the previous section (contextualizing policing in British Columbia) by looking at British Columbian police resources in comparison with other Canadian, Commonwealth, and Common Law jurisdictions and further examining British Columbian police resourcing in relation to provincial population and crime over time. Addressing the second issue required examination of the evolving legal and technical requirements of the job over time and the development of police work process models describing the step-by-step handling of different crime types both at the present time and in prior decades. We borrowed many of the methodologies used in previous timing and costing studies and adapted an activity-based costing (ABC) model as our overarching research strategy; however, our study is unique in that it seeks to examine change in police service timing over the past three decades, and the development of new methodologies was also necessary.

**Activity-Based Timing**

Activity Based Timing (ABT) emanates from the accounting technique of ABC (Kaplan & Cooper, 1992). ABC gives organizations a tool to determine the timing and costing associated with each service provided, without consideration to the organization’s structure. In the 2004-2007 National Policing Plan, the Home Office mandates that all police forces in the U.K. adopt ABC models to provide detailed information on the way resources are used (Home Office, 2003). Since the purpose of our research is to examine the changes in police service delivery over time, rather than solely how the RCMP is using current resources, timing information is just as useful as costing data. We have adapted the ABC model to create the following five steps for our ABT model of police service delivery: (1) analyze activities, (2) gather timing, (3) trace timing to activities, (4) establish number of members, (5) analyze times (Integrated Product Team for Information Technology Services, 1995).

The first step in ABT involves identifying the scope of each activity. For this research, five crime types are chosen in consultation with an expert focus group. Using flow charts, each of these crime types is broken down into investigative steps for each of our time periods. The flow charts become the template for the next steps in the ABT model. In traditional ABT models, distinctions can be made between primary and secondary steps, necessary and unnecessary steps, logistic and administrative steps, and so on. This research does not make such distinctions, as such granularity adds little to the goal of capturing total activity costs. In the second step, timing is gathered for each crime in each of the time periods under study (current and 10, 20, and 30
years ago). This timing is related to administrative and investigational activities. No
 timing information related to training has been collected for this research. Multiple
 and varied data sources are used to determine the timing associated with each crime
 in each decade. These sources are described below. The third step involves bringing
 the first two steps together. The total time expended on investigating each crime
 type is split into each activity at each time period down to as much detail as the data
 allows. The varying complexity of criminal investigations and our multi-method
 approach for data collection necessitates the use of ranges of time expenditures. It
 is then necessary to identify the number (or range of numbers in this research) of
 members required to accomplish each activity. The final step involves calculating the
 total time expended for each activity multiplied by the number of members needed
 at each step, for each crime, and for each decade under study. In order to gather
 the information needed for the ABT model, a number of different data sources are
 necessary. Each of these data sources is described below.

**Focus Groups**

The objective of holding focus groups at the beginning of this research was to
 identify reliable data sources for historic timing. The focus groups also served as
 the first confirmation of the research methodology by guiding the choice of data
 sources and the five types of offences to be explored. Based on previous research in
 the area of police timing/costing and the focus group’s recommendations, the five
 crime types chosen for ABT analysis are as follows: (1) Break and Enter, (2) Spousal
 Assault, (3) Driving Under the Influence (DUI), (4) Criminal Homicide, and
 (5) Illicit Drug Trafficking. The focus group’s most important contribution was the
 development of the offence investigation flow charts for the first step of the ABT
 analysis—a step-by-step presentation of the handling of five kinds of crimes, from
 the time they come to the attention of the police until the time they are handed the
 file over to Crown Counsel. The objective of creating the flow charts is to produce
 a visual “walk through” of an investigation in order to attach a range or estimate of
 timing associated with each step. The charts also indicate the evolution of policing
 function by making it easy to see the addition or subtraction of steps over the course
 of time. These flow charts became the template for the ABT analysis. Another expert
 focus group comprised of members from each region with specific knowledge of
 technological changes in the RCMP over the past 30 years identified a number of
 important changes that influenced police service delivery.

**File Reviews**

File queries were run for each of the three geographic regions for each of the five
 offence types to develop a sampling scheme and determine how far into the past
 files were available, as the RCMP is required by law to destroy completed files after
 a specified duration of time depending on the nature and type of offence. Upon
 review, the files that were retained tended to be more complex and, therefore, the
 timing associated with these files represented overestimations of the time spent at
 each stage of the investigation.

Historical files from 10, 20, and 30 years ago did not require a sampling scheme
 because the limited number of available files necessitated an examination of all
 available files for the five offence types. For more recent offences, the readily available
 population necessitated a random sampling strategy stratified by region. The file
review coding sheet was based on the flow chart activity template for each crime. The information collected in the file review included the amount of time associated with each step, how many members were involved in the file, and the total amount of time spent on each incident in order to estimate a range of time for each major step of an investigation and a range of the total average time it takes to investigate these offences. The analysis of the files also provided a description of duties associated with the investigation to verify the flow charts. Comparisons were then made between current and historical offence investigations. While examining the files, it became apparent that determining the exact duration of events and activities associated with investigations would be difficult, as time elapsed for tasks and/or stages in investigations were not consistently recorded. Timing was, therefore, only recorded when it could be determined without conjecture or supposition.

**Police Officer Log Books**

Police officers participating in the focus groups supplied all available log books for the time periods under study. Using a coding sheet similar to the time use logs (see below), all activities during a member’s day were logged into specific categories, and the amount of time to complete the task was recorded. During log book coding, any reference to the five crime types was flagged. The five crime types were coded using the file review coding sheet to obtain historical data and timing for comparison with current investigation timing.

**Time Use Logs**

Time use logs were distributed to a disproportionate, stratified, random sample of general duty members across several jurisdictions in British Columbia. The log book participants were randomly chosen within each strata, or region. The objective for collecting logs data is to estimate what a general duty day entails at each of the time periods and obtain any timing information associated with specified tasks, duties, or investigations. If members were involved with any investigations of the five selected crime types, the timing of these and the extent of the member’s involvement was recorded and compared to the historical log books.

These results were compared to the results of the log book analysis, which utilized the same coding sheet, with the objective of exploring changes over time to duties in a general duty day. This comparison had its limitations, as the recording procedures for both types of data were different. As current members were instructed to record each duty of their day in small time increments, an extremely detailed description of each member’s general duty day was possible. In the historical log books, however, members would often record only those events that were significant enough to warrant notation and omit general tasks while on patrol or other seemingly menial tasks. At times, this resulted in the overestimation of certain activities, such as patrol, as members may have recorded that they were on patrol for a long period of time during a shift but would not elaborate on the details of events during that patrol.

**Calls for Service Data**

The RCMP in British Columbia uses both Computer Assisted Dispatch (CAD) and a Criminal Intelligence Information Data System (CIIDS) to track and analyze service data. Unfortunately, a comparison of timing over 30 years is not possible.
using RCMP CAD/CIIDS data. The calls for service records for most crimes are purged every two years as per federal privacy legislation.

**Case Law Review**

A review of relevant case law and legislation affecting the timing and costing of police services over the past 30 years was also completed. Many of these key changes were identified during the focus groups, and others were based on commonly cited Supreme Court decisions.

**Findings**

Prior to conducting the ABT analysis, which documents how timing of police investigations have changed over the past three decades, we briefly mention two of the major reasons why police service delivery has changed: (1) technology and (2) legislation/case law.

**Technological Impacts**

The RCMP in British Columbia has seen a number of technological impacts in the past three decades (see Figure 2): computer aided dispatch, records management systems, radio communications, and mobile workstations.

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**Figure 2. Four Decades of Technological Change**

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New technology provides better systems for communication, dispatch, crime analysis, case management, prosecution support, and force administration and management. New technology also increases demands on members’ time in terms of training and re-training and in terms of connecting with and waiting for technical support when problems develop and glitches occur. Improved technology often carries with it demands from others in the criminal justice system for new and increasingly time-consuming activities on the part of police officers. As Figure 2 indicates, a limited number of major technical advances in the 1970s and 1980s have been followed by an accelerating introduction of new technical hardware and systems in the 1990s to the present. The need for training and re-training in the use of technical systems is accelerating. It should be noted that the introduction of technology in policing follows a path similar to the technology changes in government in general and in business, as well. Increased technology provides the potential of increasing the availability of information but for most, has an associated increase in administrative work.

The time-consuming use of these new technical systems continues to grow. This is illustrated in the amount of time members now put into administrative duties and report writing compared to the past. In the 1970s, such tasks took a typical member about an hour and a half per day, as evidenced through the historical log book analysis. Currently, the typical member spends more than four hours a day (i.e., about 40% of his or her time) conducting administrative duties and report writing (see Figure 3). In addition, both our expert focus groups and our analysis of the daily time logs indicated that many members (23%) are putting in up to an hour of unpaid overtime at least two shifts per week to get through all the required paperwork.

Figure 3. Average Time per Day Spent on Paperwork-Related Tasks Now and in Past Decades
Analysis of the daily time logs indicates that general duty members spend more time on paperwork tasks than they spend responding to calls for service and conducting investigations combined (see Figure 4).

**Figure 4. Average Time Spent per Task Category per Day**

![Bar chart showing average time spent per task category per day](chart.png)

<table>
<thead>
<tr>
<th>Task Category</th>
<th>Mean</th>
<th>Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Duties</td>
<td>2.52</td>
<td>2.42</td>
</tr>
<tr>
<td>Report Writing</td>
<td>2.30</td>
<td>2.20</td>
</tr>
<tr>
<td>Patrolling/Unassigned</td>
<td>1.80</td>
<td>1.70</td>
</tr>
<tr>
<td>Responding to a Call</td>
<td>1.65</td>
<td>1.55</td>
</tr>
<tr>
<td>Travel</td>
<td>1.26</td>
<td>1.16</td>
</tr>
<tr>
<td>Investigation</td>
<td>0.78</td>
<td>0.68</td>
</tr>
<tr>
<td>Court</td>
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<td>0.20</td>
</tr>
<tr>
<td>Misc</td>
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<td>0.20</td>
</tr>
<tr>
<td>Meal Breaks</td>
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</tbody>
</table>

**The Impact of the Evolving Legal Context of Policing**

While a complete discussion on the legal context of policing is beyond the scope of this article, it is important to briefly discuss its impact since the patterns and requirements of police work are defined by law and are continually redefined by new judicial decisions, new legislation, and new government policy initiatives. Since the Canadian Charter of Rights and Freedoms was entrenched in 1982, the Supreme Court of Canada has moved to redefine substantive, procedural, and evidentiary law in line with its requirements. As a consequence, demands on police operations have increased dramatically without a proportional increase in budget or person-power. In turn, these demands have had a significant workload effect on police organizations and their ability to serve the public.

There was absolute agreement that the Charter has had the greatest effect on police operations and investigative practice in the history of Canadian policing. Among judicial decisions, there was similar concurrence that judicially prescribed disclosure rules (see R. v. Stinchcombe, 1991) have had the most profound effect on policing in terms of workload and economic cost.

The legal analysis identified several cases that directly impact police workload and costs. These impacts can be categorized into four themes: (1) disclosure, (2) right to counsel, (3) exclusion of evidence, and (4) investigative techniques. Even without an economic analysis, there is unanimous agreement that the issue of disclosure has had the most profound, and in some instances debilitating, effect on police resources. In Stinchcombe, the Supreme Court decided that the accused has a constitutional right to full and complete disclosure of the police investigation...
and the Crown’s case. As a result, the administrative time and cost for police to prepare copies of all information and evidence (whether relied upon or not) of all investigations has increased significantly. Police are now required to submit transcriptions (validated by the original investigator) of all audio and video tapes, notebook entries from all officers, reports, source debriefings, tips (and outcomes of tips), connected cases, affiant material, wiretap information, operational plans, surveillance notes, medical records, analyses of phone records or other documents, undercover operation information, information relating to investigative techniques considered whether used or not, and investigative team minutes of meetings or debriefings.

Changes to the right to counsel under § 10 of the Charter dramatically increased the time it takes police to investigate certain crimes. For instance, since Therens (R. v. Therens, 1985), impaired driving investigations have become more and more complex and often procedurally less certain. Notably, accused persons have the right to consult with legal counsel “without delay;” which means before providing a breath sample as required by the Criminal Code. Frequently, impaired driving investigations occur at night when lawyers’ offices are closed. As a result, there are lengthy delays while the accused attempts to contact legal counsel (keeping all police officers involved waiting and preventing them from attending to other duties).

The exclusion of evidence is an issue in almost every criminal trial. In 1987, the Supreme Court (R. v. Collins) rejected the idea that the administration of justice could be brought into disrepute by public opinion or community shock. The police must now try to avoid even the slightest and most technical Charter breach, and increase in case time handling has been significant.

Several legal cases over the past three decades have caused the police to engage in more time-consuming and expensive investigative techniques. For example, even when police have reasonable grounds to believe that a suspect is inside a specific dwelling and they have a valid warrant for arrest, absent exigent circumstances, the police must obtain a separate special warrant authorizing entry in order to arrest the suspect (R. v. Feeney, 1997). The result is that when one or two officers could make an arrest in less than 30 minutes (1 person hour), a Feeney warrant will require at least four or more person hours (4 or more times the resources), as in practice, it generally takes 3 to 5 hours to obtain the entry warrant. The inability of the police to disengage from a residence while awaiting judicial authorization to enter in order to pursue the arrest can seriously tax limited resources. A correlative effect is that when resources are not available, absent a substantial risk to public safety, police may abandon the opportunity to effect the arrest.

This and other prominent cases have changed the policing environment. Increasing the number of Charter safeguards for suspects and accused persons has the often unacknowledged effect of reducing overall policing capacity to deal with crime, as each police officer must commit more time to accomplishing policing tasks properly.
ABT Analysis

Analyze Activities

Detailed flow charts of the handling of homicides, break and enters, domestic assaults, driving under the influence cases, and drug trafficking cases 10, 20, and 30 years ago and at the present time indicate that exact flows may vary depending on the specifics of individual cases, but the general trend line for all five crime types has seen a steady increase in the number of different steps and categories that must be taken to handle them from discovery to charge recommendation.

Table 1 illustrates that the number of procedural steps and outcome categories needed to handle a case increased for all five crimes, though for break and enters the increase was about 22% and for homicide about 25% over the 30-year period. The number of steps required to handle a DUI case increased 45%. The number of steps needed to handle a domestic assault increased 61% with the big shift coming between 10 and 20 years ago. The complexity of drug trafficking cases has increased at a stunning pace, expanding 722% over the 30-year period.

<table>
<thead>
<tr>
<th></th>
<th>30 Years Ago</th>
<th>20 Years Ago</th>
<th>10 Years Ago</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>90</td>
<td>95</td>
<td>111</td>
<td>113</td>
</tr>
<tr>
<td>Break and Enter</td>
<td>37</td>
<td>39</td>
<td>44</td>
<td>45</td>
</tr>
<tr>
<td>Domestic Assault</td>
<td>36</td>
<td>37</td>
<td>56</td>
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<td>DUI</td>
<td>29</td>
<td>36</td>
<td>41</td>
<td>42</td>
</tr>
<tr>
<td>Trafficking</td>
<td>9</td>
<td>22</td>
<td>55</td>
<td>65</td>
</tr>
</tbody>
</table>

To illustrate the expansion, we include the Drug Trafficking Flow Chart from 30 years ago and the current Drug Trafficking Flow Chart (see Figures 5 and 6). Charts for intervening years and for the other offences were produced and are included in Malm et al. (2005).

Gather Timing, Trace Timing to Activities, and Establish Number of Members

The flow charts formed the basic templates for estimating the time budgets (i.e., the quantity of an officer’s work time), in minutes and hours that would be necessary to handle a typical case in each crime category 30 years ago, 20 years ago, 10 years ago, and currently. Due to data limitations, the time estimates are for members’ time only. Estimations are not included for other parts of the system or for technical or administrative support.

The different data sources were fairly consistent in their measurement of activity timing. As expected, some crime types had more complete timing records than others. Historic data was typically sparse and in some cases, completely absent for certain activities. For instance, calls for service data were not available for any historic time periods.
Choose Target

Intelligence and Evidence Gathering

- All Police Resources
- Wiretap Installed
- Evidence Gathering
- Agents and Informants

Enough for Action

Arrests

Report to Crown
Figure 6a. Current Trafficking Flow Chart

1. OPs Meeting
2. Choose Target
3. Case Management Team
   - Designate Team Leader
   - File Coordinator
   - Put the Plan Together
4. Disclosures Start from Point Zero for Arc
5. Organized by Crime Groups, People, or Location
6. Organized by Priority or Opportunity
7. OPs Plan
8. Forwarded to District OPs for Support
9. Budget fwd to Crim OPs for Approval
10. Fwd to U/C OPs to Review
11. DOO Assembles Info for Other Groups
12. IF Wire Taps
13. IF Secret Expenditures
14. Special "I" to Review, Install & Assemble Team
15. Budget to be Approved by ECROPS
16. Translators
17. Transcribers
18. Wire Tap Operators
19. APPROVED
20. NOT APPROVED
21. Back to Step 1 to Re-Prioritize
Figure 6b. Current Trafficking Flow Chart

Intelligence & Evidence Gathering

Liaison with Federal Crown

Affidavit to Support Part 6

Present to Courts for Approval

NOT APPROVED

Back to Evidence Gathering

APPROVED

WIRE TAP INSTALLED

Develop OPs Plan for Wiretap

All Police Resources

Scenario Building w/ All Teams

Agents & Informants

Evidence for Part 6

Special O Surveillance Team

U/C Group Now Active

Logistics and Support (Outside Resources)

Accommodation, Safe Houses

If others become involved, back to Evidence Gathering

Scenarios w/ U/C to Create Conversation

Warrants Generated (ongoing)

Evidence Gathering

Other Interested Agencies

Enough for Action

OPs Plan for Roundtrip

ERT

Ident

Dogs

Hydro

Trailer

SPMD

Tech Crime Unit

SUCCESSFUL

ARREST

Seizure of POC

Arrest Warrants

Interview Team

Witness Protection

De-Brief

Report to Crown

IPOC, Rev-Can. Municipalities, Interpol, Border, Customs, Canada Post
Calculate Times

We were able to estimate handling times for three of the crime types under study—break and enters, domestic assaults, and DUIs—through discussions in the focus groups and through examination of case files, historical log books, and current time-use logs. The lack of timing information in historical case files made it impossible to gather comparative timing information for criminal homicide and trafficking.

Table 2. Estimated Time to Complete All Steps Required to Handle a Case*

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>30 Years Ago</th>
<th>20 Years Ago</th>
<th>10 Years Ago</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Break &amp; Enter</td>
<td>5 to 7 hours</td>
<td>5 to 7 hours</td>
<td>6 to 10 hours</td>
<td>5 to 10 hours</td>
</tr>
<tr>
<td>Domestic Assault</td>
<td>Up to 1 hour</td>
<td>1 to 2 hours</td>
<td>3 to 4 hours</td>
<td>10 to 12 hours</td>
</tr>
<tr>
<td>DUI</td>
<td>1 to 2 hours</td>
<td>2 to 3 hours</td>
<td>3 to 4 hours</td>
<td>4 to 5 hours</td>
</tr>
</tbody>
</table>

*Rounded to the nearest hour

It is clear from the information provided in Table 2 that the amount of time it takes a police officer to handle one of these cases has expanded in all three crime types: (1) about 40% at the upper end in the case of break and enter cases, (2) five fold in the case of DUIs, and (3) between 10 and 12 fold in the case of domestic assaults.

Conclusion

Through a multi-method approach including ABT models, we are able to offer empirical support that police resources allocated on the basis of residential population are inadequate to the tasks police are expected to accomplish and changes in the legal and technical context in which police must operate have made the job more complex and much more time-consuming than in the past. This research shows that the divergence between the quantity of police resources in British Columbia and the amount of crime to be policed is exacerbated when police capacity is considered. The amount of time needed to handle a case from call for service to acceptance by Crown has increased from a low of around 60% for break and enters to a high of almost 1,000% for domestic assault. There are clear legal rulings, legislative changes, and technological advancements that are forcing much of this increase (without providing for increased resources). The general conclusion to be made through this research is that policing is at a crossroads in British Columbia. Additional resources, or at least innovative reallocation of current resources, are needed to address these issues if public expectations of police forces are to be met.

While there is a convergence of several different sources of data that support the above points, there are data limitations in this research that warrant discussion. Data were not available for all years or from all sources, which is common with any historical study. There is insufficient information in Canada concerning the task—cost—impact relationship to specific crime types. Recent RCMP research initiatives have begun to address this trend; however, much more immediate research on ABT and ABC is required. Other directions for future research include investigating the dramatic increases in police hours to prepare a case for Crown
Counsel. This time has increased substantially and is worth additional research to separate the legal, from the administrative and communication issues involved. Similarly, it would be of particular importance to explore in more detail the decrease in offences cleared by charge to directly assess whether this is tied to reduced police capacity.

Acknowledgments

The authors would like to acknowledge the Royal Canadian Mounted Police for their assistance and participation in this study. We also gratefully acknowledge the financial support of Public Works Canada (Grant # M9010-5-0869).

Endnotes

1 See Malm et al. (2005) for a full discussion on the impact of judicial decisions, legislation, and government policy on police service delivery.

2 The Charter gives the judiciary power to judicially review legislation and essentially rewrite criminal procedure.

References


**Case Law Cited**


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Funded Federal Grant Proposals in Law Enforcement: An Overview of Commonalities and Jurisdictional Issues

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This study examines common characteristics and patterns within 48 federally funded law enforcement grants from the United States Department of Homeland Security (USDHS) and the United States Department of Justice (USDOJ) through the Community-Oriented Policing Services Office (COPS). The grants chosen for review and analysis were submitted for funding by jurisdictions of varying sizes, demographics, and socioeconomics, as well as from various regions of the United States. The grants vary by purpose in that some requested funding for equipment while others addressed personnel needs. Demographics of the requesting agencies are examined in relationship to the amount requested, common word usage and frequency, use of key philosophies, and financial components of the grants analyzed.

One can argue that since September 11, 2001, grant applications and grant writing has seen the use of a new term, homeland security. The terrorist attacks of 9/11 may have significantly changed the focus of law enforcement and included in this change is a transition in the priorities made by grantors in the types of grants awarded. New grant requirements may focus more on strategic hardening of potential sites that could be attacked by terrorists. In an effort to explain the purpose of programs, many grant writers use key terms such as homeland security and community-oriented policing to explain the mission and direction of the proposed grant.

Types of Grants

Policing grants are commonly categorized by funding type, generally including personnel grants and equipment grants. While most personnel grants fund new police officer positions, some selected personnel grants can fund non-sworn positions such as 911 dispatchers, records clerks, and victim advocates. Equipment grants are for funds that are designated for the sole purpose of equipment acquisitions. These grants often request funding for upgrading technology such as computers, software, and other equipment related to law enforcement. The terminology of grants may change to reflect the purpose of the grant or recent events and priorities, and the following terms are specifically defined for the purposes of this study.

Assurances – A variety of requirements, found in different federal laws, regulations, and executive orders, which applicants agree in writing to observe as a condition of receiving federal assistance.
**COPS Office** – The Office of Community-Oriented Policing Services (COPS) is the division of the USDOJ that is the “grantor agency” for UHP grants. The COPS Office is responsible for assisting agencies with the administration and maintenance of its grant for the entire grant period.

**DUNS Number** – A nine-digit number assigned to an organization by Dun & Bradstreet. A built-in check digit helps assure the accuracy of the DUNS Number.

**Formula Grant** – Funds provided to specified grantees on the basis of a specific formula prescribed in the legislation or regulation.

**Request for Proposal (RFP)** – Announcements that specify a topic of research, methods to be used, and product(s) to be delivered. Proposals submitted in response to RFPs generally result in the award of a contract with terms and conditions, which allows the sponsor a lot of control over how the project is conducted.

**Community-Oriented Policing Studies Funded by Grants**

Community-oriented policing became a household term in 1994 when the President created the COPS office under the USDOJ. The goal was to increase police staffing by more than 114,000 officers whose primary job responsibilities would be related to community-oriented policing and crime prevention/suppression (Zhao, Lovrich, & Thurman, 1999). The increase in the number of police officers was made possible with the introduction of numerous competitive grant programs that were available to law enforcement agencies nationwide. Additionally, one might assume as the competition between agencies for limited funds increased, applicants who had the most well-written grants stood to receive more funds. Over the past 10 years, community-oriented policing has become the dominant theme of organizational change in law enforcement (Cordner, 1997; Maguire, 1997; Zhao et al., 1999). The COPS Office was created as a result of the Violent Crime Control and Law Enforcement Act of 1994 (Roth & Ryan, 2000) with the mission to advance community policing in jurisdictions of all sizes across the country. Community policing represents a shift from more traditional law enforcement in that it focuses on prevention of crime and the fear of crime on a very local basis (Zhao et al., 1999).

The COPS Office provided financial support to law enforcement through a variety of grant programs. Since the creation of the COPS Office, more than $9 billion has been dispersed, mostly through competitive grants awarded to local, county, and state law enforcement agencies, with the goal to advance community policing (Zhao et al., 1999). The COPS Office funding supported a wide range of activities, allowing law enforcement agencies to hire new officers, equip them with the tools needed to be functional, and train them in new community policing practices. COPS funded a wide variety of strategies to advance community policing through innovative techniques and technologies. In order to use this funding to advance community policing, jurisdictions had to apply for it (USDOJ, 2005). It was important for agencies to understand grants and grant writing in order to take advantage of the programs and services being offered by the COPS Office.

Accomplishments and milestones that denote the successes of the COPS Office can be observed in yearly progress of COPS funding and program implementation. In 1994, The Violent Crime Control & Law Enforcement Act passed both the House
and the Senate, authorizing an $8.8-billion expenditure over 6 years, and the COPS Office was created to distribute and monitor the funds. COPS launched three new programs: (1) Accelerated Hiring, Education, and Deployment (AHEAD), (2) Funding Accelerated for Smaller Towns (FAST), and (3) Making Officer Redeployment Effective (MORE) (USDOJ, 2005). COPS awarded $200 million to 392 agencies for 2,700 additional community policing professionals and total program funding for fiscal year 1994 of $148.4 million (USDOJ, 2005). In 1995, COPS funded 25,000 more officers and awarded grants totaling $10 million through the Youth Firearms Violence Initiative, and total program funding for fiscal year 1995 reached over $1.2 billion. In 1996, COPS funded more than 52,000 officers through the Universal Hiring Program and announced its Anti-Gang Initiative and Community Policing to Combat Domestic Violence Program, and total program funding for fiscal year 1996 was over $1.2 billion (USDOJ, 2005). Program funding decreased in 1997, increased slightly in 1998 and 1999, and dropped in 2000. It then stabilized between $500 million and $650 million per annum during 2001, 2002, and 2003, with the money appropriated primarily to personnel and equipment grants. Also, in 2003, COPS launched the Homeland Security Overtime Program (HSOP) and awarded $59.6 million to 294 law enforcement agencies throughout the United States (USDOJ, 2005).

In 2004, COPS awarded $47.2 million in grants through the Universal Hiring Program to be used by local police and sheriffs’ departments to employ additional officers. The grants were awarded to 178 law enforcement agencies and were used to hire over 900 community policing officers. Additionally, COPS allocated $4.6 million in funding for 19 jurisdictions to combat methamphetamine under the COPS Methamphetamine Training Initiative, which assisted law enforcement agencies in developing and enhancing comprehensive methamphetamine eradication strategies that emphasize training and technical assistance, and over $82 million to develop interoperable communication networks (USDOJ, 2005). The shift in law enforcement towards homeland security objectives has also changed the model of law enforcement grants and grant priorities.

**Homeland Security Initiatives**

According to the White House’s Homeland Security website, more than $18 billion has been awarded to local and state governments for homeland security (Whitehouse.gov, 2006). The USDHS includes law enforcement grants awarded by the Office of Domestic Preparedness (ODP), the Federal Emergency Management Agency (FEMA), and the Transportation Security Administration (TSA); Department of Health and Human Services’ public health preparedness grants; USDOJ grants for counter-terrorism and general-purpose law enforcement activities; and Environmental Protection Agency grants for enhancing the security of our nation’s water supplies (USDHS, 2005a). Unlike the USDOJ COPS grants primarily awarded to law enforcement agencies and the courts, Homeland Security grants are awarded to hospitals, fire departments, water districts, utility companies, and other government agencies for uses other than law enforcement.

President George W. Bush stated on January 11, 2005, “We are engaged in a daily mission to prepare effective responses to any future attack. . . . Our nation is still at war. We’re focused. We’re taking decisive actions on the home front that are critical to winning this war” (USDHS, 2005b, p. 2). One can maintain that there was a
noticeable impact at local, county, and state levels through the appropriation of numerous grants relating to homeland security and our war on terrorism.

The 9/11 terrorist attacks on New York and Washington, DC, may be seen as assaults on American cities as urban places (Eisinger, 2004). It would not be surprising in this light if Americans began to rethink the role and functions of cities in the aftermath of terror. The government certainly did. According to Eisinger (2004), the first governmental impact of the terrorist attacks on cities is that municipal governments took on new and costly security responsibilities. Many feared we would enter a state of isolationism and paranoia to the point that we would lock ourselves in our houses and sacrifice our core values and freedoms. Peter Marcuse (2002) was among the most emphatic, warning of the erosion of urban democracy, the closing of public spaces, and the emergence of the citadel city.

Within days of the collapse of the World Trade Center towers, the National League of Cities (NLC) polled 456 of its member cities to find out how they were responding to the appearance of massive terror on American soil (Poinke, 2001). Communities of all sizes and in all parts of the country had immediately set about to secure water supplies, assign guards to critical transportation facilities and government buildings, alert hospitals and public health departments to stand by, and convene officials to discuss emergency plans. The 2006 budget for the USDHS was up from 2005, but community-oriented policing programs were down significantly (“Budget Glance,” 2005). This funding is down from the more than $1 billion it once had been allocated annually (“Budget Glance,” 2005).

**Grant Funding Pre- and Post-9/11**

In September 1994, the Crime Act earmarked $30.2 billion over 6 years for programs such as the addition of 100,000 new police officers to the streets, continued implementation of community policing, and the enforcement of the Brady Bill (Ross, 2000). The act also provided funds for the building of prisons and boot camps, limitations on prisoners’ appeals, expansion of the death penalty to major federal crimes, reduction of domestic violence, and bans on assault rifles (Ross, 2000). Approximately 13,000 law enforcement agencies of the estimated 18,000 nationwide have received funding from the USDOJ COPS Office. COPS provides grants to tribal, local, and state law enforcement agencies to hire and train community policing professionals, acquire and deploy cutting-edge crime-fighting technologies, and develop and test innovative policing strategies. COPS-funded training helps advance community policing at all levels of law enforcement, from line officers to law enforcement executives, as well as others in the criminal justice field. Because community policing is by definition inclusive, COPS training also reaches local and state government leaders and the citizens they serve. At the end of fiscal year 2004, COPS had funded more than 118,768 community policing officers and deputies (USDOJ, 2006b).

The first official grant offered by the COPS Office was the Advancing Community Policing (ACP) Program. COPS designed the ACP program to assist local law enforcement agencies in their quest to develop the means to sustain community policing practices. COPS announced two categories of ACP grants in 1997: (1) Organizational Change and (2) Community Policing Demonstration Centers. Organizational Change grants assisted local law enforcement agencies
in reexamining current practices and developing and enhancing community policing philosophies. These grants helped agencies change organizational-level challenges and created an atmosphere in which community policing took root. Law enforcement applicants were required to have a proven track record in community policing successes, and the ACP grant proposals had to propose changing the culture of one major element within their organization. Applicants were required to have multi-year strategic community policing plans in place (USDOJ, 2006b).

**Personnel Grants**

Among the most popular grants with the COPS Office are the law enforcement hiring grants, such as the Funding Accelerated for Smaller Towns (FAST) grant. “The COPS FAST program was designed to provide funding directly to local, state, and tribal jurisdictions for the salaries and benefits of newly hired officers engaged in community policing” (USDOJ, 2005). COPS FAST was one of the first hiring programs that funded ways to assist local law enforcement agencies in developing partnerships with their communities and finding innovative ways to solve crime issues. COPS FAST provided funding for 75% of a newly hired entry-level officer’s salary and benefits, up to a maximum of $75,000 per officer, over the 3-year grant period. The recipient of the grant was required to match 25% or greater if the salaries were more than $75,000 (USDOJ, 2006b). Newly hired officers and/or veteran officers were then tasked with going into their communities to establish a partnership. These grants were competitive and required agencies to submit applications that were evaluated and scored. It is presumed that only those with the highest scores received funding.

The COPS Accelerated Hiring, Education, and Deployment (AHEAD) program, similar to the FAST grant, was designed to provide grant funding directly to local, tribal, and state jurisdictions for the salaries and benefits of newly hired officers engaged in community policing. The COPS Office funds were awarded to assist law enforcement agencies in developing partnerships with their communities, with the goal of addressing and solving long-standing crime problems. The AHEAD program served jurisdictions with populations greater than 50,000 (USDOJ, 2006b).

The COPS Office Universal Hiring Program (UHP) grants provide funding directly to local, tribal, and state jurisdictions for the salaries and benefits of newly hired officers engaged in community policing (USDOJ, 2006b). The COPS Office awards UHP funds to law enforcement agencies that create, or have created, partnerships in their communities in an effort to develop creative and innovative programs to combat long-standing community issues. The UHP grant provides funding to awarded communities, regardless of population/square mileage, for the hiring of police officers and sheriffs’ deputies. These newly-hired, sworn personnel then engage in community policing. As with the FAST and AHEAD programs, UHP provides federal funding for 75% of a newly hired entry-level officer’s salary and benefits, up to a maximum amount of $75,000 per officer, over the course of the 3-year grant period (USDOJ, 2006b). Departments are generally required to contribute at least 25% in local matching funds, unless the recipient agency is approved for a waiver of the local match based upon a demonstration of extraordinary fiscal hardship (USDOJ, 2006b). The COPS Office, to date, has announced 62 rounds of UHP funding since September 1995 (USDOJ, 2006b).
COPS has awarded approximately $4.76 billion under FAST, AHEAD, and UHP to hire more than 64,000 officers as of August 2004 (USDOJ, 2006b). Note that there were no open solicitations for UHP in 2004 or 2005.

The COPS In Schools (CIS) grant program is designed to assist law enforcement agencies by adding additional officers to their forces. The new officers on patrol will allow veteran officers to serve as school resource officers (SROs) and engage in community policing in and around primary and secondary schools. The CIS grants provide incentives for law enforcement agencies to develop partnerships with the schools in their community and to use community policing practices to prevent school violence (USDOJ, 2006b). The CIS program awards a maximum of $125,000 per officer position approved for salary and benefit costs over the 3-year grant period. Any remaining costs are required to be paid by the local agency (USDOJ, 2006b). All agencies that apply must also demonstrate that they have primary law enforcement authority in the jurisdictions in which the school(s) is located. Applicants must also demonstrate their inability to implement this project without federal assistance. Funding will begin when the new officers are hired (USDOJ, 2006b).

**Equipment Grants**

The COPS Making Officer Redeployment Effective (MORE) program’s goal was to increase the amount of time law enforcement officers could devote to community policing by funding technology, equipment, and support staff, including civilian personnel (USDOJ, 2006b). To accomplish this, the COPS Office introduced a series of competitive grants for law enforcement agencies. The COPS’ MORE grants covered up to 75% of the total cost of technology, equipment, or civilian salaries for one year. This required law enforcement agency grant recipients to provide a minimum local match of 25%. Waivers of the local cash match are granted only in cases of extreme local fiscal hardship.

Agencies that applied for COPS MORE grants had to demonstrate that their proposed program would increase the number of current law enforcement officers deployed into community policing by an equal or greater measure than would a COPS grant for hiring new officers (USDOJ, 2006b). In addition to redeploying officers into community policing, the COPS MORE program significantly increased the ability of officers across the country to address community issues. An example is when a technology-funded agency adds mobile in-car computers to its fleet. The computers enable officers to respond more quickly and have more resources/data, so they improve their ability to fight/prevent crime. The COPS MORE grants have been awarded in 1995, 1996, 1998, 2000, 2001, and 2002. The guidelines have been similar every year, with the following exceptions: in 1995, overtime costs were allowable; in 2000, only support personnel were awarded; and only equipment and technology systems were funded in 2001 and 2002 (USDOJ, 2006b).

Through COPS MORE 1995 and 1996, over $530 million was awarded for the redeployment of more than 22,000 officers and deputies. The total amount of funding for MORE 1998 was $437.6 million, and MORE 2000 awarded in excess of $38 million to over 600 agencies (USDOJ, 2006b). Through MORE 2001, $81 million was awarded to 546 agencies across the country. The most recent MORE funding, MORE 2002, awarded an additional 297 agencies with $62 million (USDOJ, 2005).
The COPS Office also earmarks grants for special groups including tribal police departments.

### Special Program Grants

The COPS Office also funds special projects outside the scope of adding/redeploying police officers:

COPS advances community policing in a wide variety of ways. Special projects are a few of the ways COPS funding currently supports very focused activities, most of which target either a specific problem or an innovative solution. These projects develop methodologies, best practices, or responses that can be documented and replicated elsewhere. Many of these projects have developed products that are available to the law enforcement community and the general public through the COPS Office. Some special projects, such as in-car cameras and technology grants, are designed to fund wider implementation of specific tools that make law enforcement professionals safer and more effective. COPS Special Projects showcase innovative community policing strategies that can deliver surprising results. (USDOJ, 2006b)

The COPS Office (2006) supports the use of 311 call systems as a method of alleviating the cycle of reactive policing and thereby enhancing community policing efforts. 311 diverts nonemergency calls from 911 systems and allows police officers more time to engage in community policing activities and respond to citizens with true emergencies (USDOJ, 2006b). Special Program grants were not researched as part of this study, but comparable data could be analyzed by creating a similar grant instrument and thus improve and enhance grant applications for special projects.

Another program funded under Special Programs initiatives is the Promoting Cooperative Strategies to Reduce Racial Profiling. This project provides funds to local, county, and state law enforcement agencies to respond proactively to racial profiling. The Reducing Racial Profiling initiative has developed a “best practices and technical assistance guide” to assist police departments in reducing racial profiling by helping local law enforcement agencies create and strengthen their efforts to build trust between the police and its citizens. The COPS Office funds the following projects under this program: recruitment and selection, training and education of police and community members, minority community engagement initiatives, accountability and supervision, collecting and analyzing traffic stop data, and using technology to reduce racial profiling and increase officer safety. To date, the COPS Office has funded 21 sites at approximately $200,000 each (USDOJ, 2006b).

In addition, the COPS methamphetamine grants are designed to help local and state law enforcement agencies in their efforts to reduce the production, distribution, and use of methamphetamine. Approximately $300 million has been awarded since 1998 under the COPS methamphetamine grants (USDOJ, 2006b). These grants enhance community policing by encouraging its recipients to build partnerships with various community leaders, local fire departments, drug courts, prosecutors, child protective services, treatment providers, and other law enforcement agencies in an effort to create a coordinated response to the methamphetamine epidemic. COPS grants fund equipment, training, and
personnel to improve intelligence-gathering capabilities, enforcement efforts, lab clean-ups, training related to drug-endangered children, and the prosecution of those who engage in methamphetamine-related crimes. The COPS Office has also awarded $82 million to the Drug Enforcement Administration (DEA) for clandestine methamphetamine lab clean-ups, specialized enforcement training, and statewide methamphetamine summits (USDOJ, 2006b).

The COPS Office offers, or has offered, several other special grants designed to further their mission of community-oriented policing; however, after 9/11, funding for the agency and its position as the cognizant (lead funding department) agency for most law enforcement had to be re-examined. In our post-9/11 environment, it can be argued that community-oriented policing has oftentimes been passed over in furtherance of homeland security initiatives. In response, the COPS Office began to offer several grants that incorporated community-oriented policing initiatives with homeland security priorities. These grants are competitive by design and were incorporated into this study.

Homeland Security Initiatives

Among these grants is the COPS Interoperable Communications Technology Program, which provides funding to assist local cities and communities to develop effective interoperable communications systems for public safety and emergency service providers. Interoperable Communications Technology grants fund projects that use equipment and technologies to increase interoperability among government public safety providers. Grant awards to these communities are the result of thorough planning and emphasize how new technologies and procedures help communities achieve interoperability.

In FY 2003, the COPS Office awarded more than $66 million to agencies to address the growing need for interoperable communications technology. The FY 2004 COPS Interoperable Communications Technology Program targeted specific jurisdictions and had approximately $80 million to award (USDOJ, 2006b). Applications were sent to law enforcement agencies requesting proposals that are multijurisdictional and multidisciplinary. It is believed that this grant will remain a current funding source and should be slated for more rounds of awards. Another grant that incorporates community policing and homeland security is the COPS Office Homeland Security Overtime Program (HSOP) (USDOJ, 2006b). Radio-interoperability is arguably a major concern of law enforcement due to the costs associated with state-of-the-art radio equipment. The large grant awards make this grant highly competitive.

COPS HSOP was implemented to supplement awarded agencies, local or state, with funds for officer overtime, thereby increasing the amount of budgeted overtime available to support community policing and homeland security efforts for one year. HSOP grants are used to pay an officer’s overtime during homeland security training sessions and other law enforcement activities designed to help prevent acts of terrorism and other violent or drug-related crimes. HSOP funds can only be used to support the overtime efforts of nonsupervisory, sworn personnel such as intelligence officers, crime analysts, undercover officers, and others who work on homeland security or terrorism task forces. Departments receiving HSOP awards are required to contribute at least 25% in local matching funds. The first COPS HSOP announcement took place in September 2003, awarding approximately
$60 million to 294 agencies in all 50 states plus the District of Columbia (USDOJ, 2006b).

Since the tragedies of 9/11, the USDHS was created and has distributed billions of dollars in grants to not only law enforcement but also fire departments and emergency medical services (USDHS, 2006b). The COPS Office has generally limited funding to police departments. For the purpose of this review, the focus of the grants offered will be limited to those that directly affect law enforcement agencies and operations. The USDHS has offered, and continues to offer, grants with the purpose of enhancing homeland security and preventing terrorist attacks in and on Americans. One of the more popular grants is the Urban Areas Security Initiative (UASI). The objective of this grant is to enhance an agency’s local emergency, prevention, and response ability. These objectives also include being prepared for and having the ability to respond to threats or incidents of terrorism involving weapons of mass destruction (WMD). This program enhances selected mass transit authorities’ protection of critical infrastructure and emergency preparedness activities. Funds provided under this grant are designed to address the unique needs of large urban areas and mass transit authorities. Grant funds can be expended on equipment, training, exercises, and planning. While no UASI grants were reviewed, research could be conducted using a similar model found in this study.

Metropolitan areas (urban) must submit a valid jurisdictional assessment and Urban Area Homeland Security Strategy to the Office of Domestic Preparedness (ODP) and apply online using the USDOJ Office of Justice Programs (OJP) Grants Management System (GMS). According to the USDHS (2005b), . . .

. . . funding for the UASI Program is determined by a formula using a combination of current threat estimates, critical assets within the urban area, and population density. States that contain the selected cities will be notified of their eligibility to apply for this grant. At least 80% of all urban area funding provided through the UASI program must be obligated by the state to the designated urban area within 60 days after the receipt of funds. (p. 5)

The objective of the Emergency Management Performance Grant (EMPG) is to assist in the development, maintenance, and improvement of local and state emergency management capabilities. These capabilities are key components of a comprehensive national emergency management system for disasters and emergencies that are caused by nature, accidental, or man-made. The USDHS is providing states the ability to allocate funds accordingly based on risk and the need to address the most urgent local and state needs in disaster mitigation, preparedness, response, and recovery (USDHS, 2006b).

EMPG funds may be used for necessary and essential expenses involved in the development, maintenance, and improvement of local and state emergency management programs. All states are eligible to apply including the District of Columbia and territories and possessions of the United States. Local government entities are not eligible to apply directly to DHS (USDOJ, 2005).

Another grant offered by the USDHS is the Homeland Security Grant Program. The objective of this grant is to enhance the capacity of local and state emergency responders to prevent, respond to, and recover from a WMD terrorism incident
involving chemical, biological, radiological, nuclear, and explosive (CBRNE) devices and cyber attacks. The Homeland Security Grant program integrated the following programs into one project: State Homeland Security Program (SHSP), Law Enforcement Terrorism Prevention Program (LETPP), and the Citizen Corps Program (CCP) (USDHS, 2006b).

The grants offered by the USDHS appear on the surface to lack community-oriented policing practices and philosophies; however, local, county, and state law enforcement agencies can use the money to support these practices while still reaching the goals of homeland security. One grant that clearly accomplishes both goals is the Citizen Corps grant.

The mission of Citizen Corps is “to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared to respond to the threats of terrorism, crime, public health issues, and disasters of all kinds” (Citizen Corps, 2005). The Citizen Corps mission is accomplished through a national network of local, tribal, and state Citizen Corps Councils. These councils build on community strengths to implement the Citizen Corps programs and carry out a local strategy to have every American participate. This includes Community Emergency Response Team (CERT) training, establishing Citizen Corps Councils, and supporting the oversight and outreach responsibilities of the councils. The program supports and promotes efforts to involve a wide range of volunteer groups in activities that enhance individual, community, and family preparedness and contribute to the strengthening of homeland security. Seventy-five percent of all funds in this grant must be passed through to local government entities (Citizen Corps, 2005).

Individual states are eligible to apply for the assistance under this grant program. For the purposes of this program and consistent with the Stafford Act, 42 U.S.C. 5122(4), “State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.” Local governments may receive assistance as subgrantees to the states in which they are located. The term local government as used in this program has the meaning set forth in the Stafford Act, 42 U.S.C. 5122(6) and includes any county, city, village, town, district, or other political subdivision of any state, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, including any rural community, unincorporated town or village or any other public entity for which an application for assistance is made by a state or political subdivision.

Alternative Funding Sources

The USDOJ is not the only source of grant funding for departments. Generally, each state has a department that is responsible for funding law enforcement grants for a variety of projects. In Texas, the Office of the Governor, Criminal Justice Division (CJD) is responsible for this function. The CJD offers a variety of grants that can enhance both community-oriented policing and homeland security initiatives. The grant applications are similar to the federal system in that they are competitive and scored. Grants that are written or modeled after awarded grants may score better than grants that are considered outside the norm.
The Governor’s . . . CJD administers federal and state funding to local, regional, and statewide criminal justice-related projects. The [CJD’s] goals are to support programs that protect people from crime, reduce the number of crimes committed, and promote accountability, efficiency, and effectiveness for the criminal justice system. Resources are focused on projects that enhance Texas’ capacity to prevent crimes, provide service and treatment options, enforce laws, train staff and volunteers, and serve crime victims. (State of Texas, CJD, 2005)

The CJD administers grants from a variety of state and federal funding sources. Although each funding source has its unique purpose, all CJD grant programs share two core values: (1) encourage innovative solutions and (2) provide for local control. Adhering to these values allows CJD to respond to the specific needs of Texas’ communities (State of Texas, CJD, 2005). These grants are separated into five specific and unique categories: (1) Prevention & Juvenile Justice, (2) Juvenile Justice Projects, (3) Law Enforcement, (4) Texas Crime Stoppers, and (5) Victims’ Services.

The future of the COPS Office and the USDHS is not known. Grants, and the requirements associated with them, change depending on the leadership of the country or in response to national needs. It is arguable that grants will not become easier; rather every indication suggests that their competitiveness will continue to increase. Should this be the case, then the emphasis to submit the highest quality application is heightened. Using a model based on standards, content, and commonalities in awarded grants can assist writers, whether they are in law enforcement, education, or other community nonprofit or social services organizations, with the instructions necessary to successfully compete and receive the funding requested. Additionally, understanding how to conduct research, where to find what grants are available, and the goals associated with a specific grant proposal will enhance a writer’s success ratio. The data can then be analyzed to determine patterns, or lack of patterns found, similar to this study.

Methodology

The study is constructed in both a quantitative and qualitative manner. Quantitative methods include, but are not limited to, the frequency in which key philosophies are written in grants along with the number of keywords found. Additional quantitative analyses include examining the money awarded to agencies based on multiple factors. The qualitative aspects include, but are not limited to, the completeness of the grant application, the use of lobbyists, and the analysis of keywords/actions. Specifically, a content analysis on the grants reviewed was implemented.

The study focuses on 48 funded grants that were selected from a list of awarded federal grants from COPS and the USDHS. The grants were selected from a posted list of awards grants on the USDOJ website and in a manner that would provide a cross-section representation of grants based on the requesting agencies’ demographics. The grants selected are from varying size agencies from across the nation to ensure that there was no over-representation of a certain size community or dominance in one area of the country. The study focuses only on successfully awarded grants and covers five main grant programs. All grants in the study are
The grants were obtained through the Freedom of Information Act and utilized open-records requests. The USDOJ does not publish a list of nonawarded agencies. The study focused on determining the commonalities of these grants. These commonalities include key philosophies (community-oriented policing, homeland security, and terrorism), use of important keywords, frequency of particular words, financial considerations involving population and size of jurisdictions, and the use of lobbyists. When placed together, these commonalities form clearly defined patterns. The study also determined whether differences exist between personnel grants and equipment and whether the jurisdiction receiving the grant is a small community (less than 100,000 residents), a medium-sized jurisdiction (between 100,000 and 350,000 residents), or a large jurisdiction (more than 350,000 residents). The objective of the study was to determine what patterns developed among grants that were awarded.

This type of evaluation has some inherent weaknesses. One weakness in the process was evaluating only awarded grants with no consideration as to why other grants were not chosen. In addition, many score sheets utilized by federal grantor agencies are considered internal documents and are not subject to open-record request. This eliminates applicants from seeing exactly what they are being scored on, and the score sheets are not available for analysis.

To evaluate these 48 grants, an instrument was created to extract key information from each grant. The model appears to be one-of-a-kind, as no other similar models or instruments were found in existing literature. The creation of the instrument serves as a model to other grant writers and educators and can easily be adapted to extract information from most grants. See the Appendix for a blank copy of the instrument used to collect the data from each grant. The instrument was validated prior to its implementation.

The first section of the instrument focuses on factual information about the size of the agency requesting funds, the size of jurisdiction being served by the agency, and the amount of funds being requested/matched by the agency. It is important to gather demographic information early. The amount requested by the agency was analyzed to determine the average dollar provided per resident, per square mile of jurisdiction, and per authorized sworn officer. The mean is also indicated in the study. The first section also examines whether the agency lobbied for funds, whether the applicant was a multijurisdictional/regional/statewide agency or a sole entity and whether the application used current and relevant statistics.

The second section of this instrument focuses on the use of keywords. The applications were analyzed to determine what keywords were used continually. While the frequency of the words in this section was not collected, the number of applications in which the keywords were used was collected. This data was further analyzed by whether the applicant agency was considered small, medium, or large, indicating which keywords were used most often in the grants.
The third section of this instrument is the use of key philosophies. A philosophy, as defined by the American Heritage Dictionary is, “the critical analysis of fundamental assumptions or beliefs; A system of values by which one lives.” Each grant was analyzed to determine whether the applicant agencies demonstrated one of six selected law enforcement philosophies. The simple use of a keyword did not demonstrate the values by which the agency “lived.” The application had to indicate that the philosophies were embraced by the agency and were a normal part of its operating procedure. This data examined the use of philosophies to obtain grants and was analyzed by whether the applicant agency was considered small, medium, or large, indicating which key philosophies were used most often in the grants.

The last section of the instrument examined the frequency in which selected keywords or actions relating to keywords were used in the applicant’s grant application. Three major keywords or actions were selected for analysis: (1) homeland security, (2) terrorism, and (3) community-oriented policing. These words and actions were the most used terms/actions in the grants reviewed and are commonplace terms in law enforcement. This data was analyzed to determine whether there was a correlation between the common use of the terms or actions among awarded grants. The study also examined the use of philosophies to obtain grants and was analyzed by whether the applicant agency was considered small, medium, or large. Two applications did not appear to be complete and were received in that condition from the USDOJ. Only limited data could be obtained from these applications.

Table 1. Federal Grants Reviewed

<table>
<thead>
<tr>
<th>Type of Grant Program</th>
<th>Agency/City Submitting Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universal Hiring Program - 2005</td>
<td>Glendale, AZ</td>
</tr>
<tr>
<td>Universal Hiring Program - 2004</td>
<td>Lake of the Hills, IL; Beacon Falls, CT; Boise, ID; Sherwood, OR</td>
</tr>
<tr>
<td>Universal Hiring Program - 2003</td>
<td>Los Angeles, CA; Hartford, CT; Alabama Department of Public Safety; Ft. Myers, FL; Clive, IA; Omaha, NE; Socorro, TX</td>
</tr>
<tr>
<td>COPS Making Officer Redeployment Effective - 2001</td>
<td>Alaska State Police; Hope, AR; Bakersfield, CA; Denver, CO; Brevard County, FL; Londonderry, NH</td>
</tr>
<tr>
<td>COPS Making Officer Redeployment Effective - 2002</td>
<td>Pasadena, CA; DeKalb, GA; Coffeyville, KS; Kalamazoo Department of Public Safety, MI; Federal Way, WA</td>
</tr>
<tr>
<td>Secure Our Schools - 2005</td>
<td>Riverside, CA; El Paso County, CO; Pocatello, ID; Rapides Parish, LA; Raleigh, NC; Desoto, TX</td>
</tr>
<tr>
<td>Interoperability - 2005</td>
<td>Phoenix, AZ; Cheyenne, WY; New York, NY; Eugene, OR</td>
</tr>
<tr>
<td>Interoperability - 2004</td>
<td>Shreveport, LA; Warren, MI; Charlotte/Mecklenburg, NC</td>
</tr>
<tr>
<td>COPS In Schools - 2004</td>
<td>Tyler County, WV; Orange County, VT; Kennedale, TX; Tulsa, OK; San Francisco, CA; Pima County, AZ</td>
</tr>
<tr>
<td>COPS In Schools - 2005</td>
<td>Revere, MA; Independence, MO; Poteau, OK; Springettsbury, PN; Fairfax County, VA; Brandon, SD</td>
</tr>
</tbody>
</table>

Findings

The study included 48 federally funded grants, which were analyzed as a group and divided into subcategories of personnel and equipment for further analysis. The grants were divided within the subgroups by population of jurisdiction served into cities with less than 100,000 residents; cities with populations of 100,000 to 350,000, and cities of 350,000 or more residents. There were 24 grants in each of the personnel and equipment categories. The grants were also divided into small (n = 22), medium (n = 13), and large cities (n = 13). Within the personnel category,
there were 13 small, 5 medium, and 6 large agencies; within the equipment category, there were 9 small, 8 medium, and 7 large.

**Grant Analysis – All Grants**

The first finding examined the average dollar awarded by the federal government in relationship to the authorized sworn force of the applicant agency. The average of all grants was $5,020.76 per authorized sworn position, and the median was $2,438.66. The next finding determined that the average federal grant award per resident served was $5.96 with a median of $3.47. Of the 48 grants, 12 had awards of less than $1.00 per resident served; 17 had awards of between $1.01 and $5.00; 9 had awards between $5.01 and $10.00; and 10 grants were awarded with funding of more than $10.00 per resident served. The span of award was from $0.19 to more than $41.00 per resident served; however, 38 grants (79%) were funded at under $10.00 per resident served. The third finding determined the average amount of money awarded to a jurisdiction based on square mileage. The average was $12,085.02; however, unlike the average dollar amount per sworn officer and per resident, the award amount per square mile varied greatly. The highest award per square mile was more than $86,000 per square mile while the lowest was $0.18. There appears to be no correlation between the square miles a jurisdiction serves and the amount awarded to the jurisdiction. This was consistent when analyzing all of the subgroups. The large range of dollar amounts is not surprising when one considers the expansive nature of rural counties and the congestion associated with some major cities.

The study examined the amount of federal grant awards in comparison to the number of authorized sworn positions. The average federal grant awarded per sworn officer was $7,730.55 for personnel grants and $1,769.00 for equipment grants. The study also examined the amount of federal grant awards in comparison to the number of residents served in a particular jurisdiction. The average federal dollar amount awarded per resident served was $9.00 for a personnel grant and $2.93 for an equipment grant. The next section of analysis focused on the use of keywords. Each of the 48 grants was analyzed for common words and the use of keywords, and the number of grants in which they are used is shown in Table 2.

The most commonly used term was community-oriented policing. It was found in 70.8% of all grants. This indicates that regardless of the purpose of the grant (personnel or equipment), the term community-oriented policing was widely used. It is also important to note that regional/collaboration and enhanced security/lower crime are mentioned in 31 of the 48 grants or 64.6% of the grants reviewed. This also indicates that these terms were utilized regardless of type of grant or size of agency. Less frequent words, such as task force, appeared to have little correlation among awarded grants. On average, there are 6.81 keywords used per grant (6.52 for personnel grants and 7.08 for equipment grants). Of the 18 keywords reviewed, five of them were mentioned in more than 50% of the grants reviewed.
Key philosophies in the grant applications were examined next. There were six initial philosophies possible. Each grant was required to demonstrate that it had incorporated the philosophy into its operation rather than just mentioning a keyword in a narrative. Table 3 indicates the usage of these six philosophies in the grants studied.

Community-oriented policing philosophies were noted in 37 of the 48 grants (77%). Unlike the keyword section, the philosophies mentioned may be an action relating to the philosophy rather than the actual keywords listed. Community-oriented policing philosophies are found in both personnel grants and equipment grants regardless of the size of the applicant agency or the jurisdiction it serves. Homeland Security philosophies are mentioned in 21 of the 48 grants (44%). It was apparent that the philosophies researched were basically consistent between the types of grant with the exception of interoperability grants, which exclusively focus on equipment. The last section of the study examined the frequency of three major keywords and actions as they were used in the 48 grants examined. The frequency of keywords used in grants is shown in Table 4. The keywords/actions addressed the major themes prevalent in the grants examined and in law enforcement terminology and included homeland security, terrorism, and community-oriented policing. (Note: Two grants were incomplete.)
Table 4. Frequency of Terms – All Grants

<table>
<thead>
<tr>
<th>Frequency of Terms</th>
<th>All Grants</th>
<th>0</th>
<th>1-5</th>
<th>6-10</th>
<th>11-15</th>
<th>16-20</th>
<th>21-25</th>
<th>26+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homeland Security</td>
<td>23</td>
<td>14</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>46</td>
</tr>
<tr>
<td>Terrorism</td>
<td>26</td>
<td>8</td>
<td>3</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>46</td>
</tr>
<tr>
<td>Community-Oriented Policing</td>
<td>9</td>
<td>4</td>
<td>6</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>20</td>
<td>20</td>
<td>46</td>
</tr>
</tbody>
</table>

It is apparent that the most frequently used term or action is community-oriented policing. In 20 of the 48 grants, community-oriented policing or actions relating to it were mentioned more than 26 times. Community-oriented policing was not mentioned in only nine grants (18.8%). It should be noted that frequency of homeland security and terrorism (or related actions) was only mentioned in 50% or less of the total grants.

Grant Analysis – By Size of Jurisdiction

In total, there were 22 grants analyzed from smaller jurisdictions (less than 100,000 residents) and 13 each from medium jurisdictions (100,000 – 350,000 residents) and large jurisdictions (more than 350,000 residents). Table 5 illustrates the differences between the size of jurisdictions using all grants (personnel and equipment) and the differences between jurisdiction sizes when only comparing personnel grants. It also illustrates the differences between the sizes of jurisdictions of equipment-only grants. The comparisons in Table 5 examine the average federal grant amount per authorized sworn officer and per resident served in dollars by type of grant and size of jurisdiction. The table also shows the average number of keywords used and the average philosophies used.

Table 5. Average Amount of Grants by Category

<table>
<thead>
<tr>
<th>All Grants</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Dollar Awarded per Authorized Sworn</td>
<td>$7,856.62</td>
<td>$2,707.67</td>
<td>$2,130.21</td>
</tr>
<tr>
<td>Average Dollar Awarded per Resident Served</td>
<td>$8.92</td>
<td>$4.39</td>
<td>$2.53</td>
</tr>
<tr>
<td>Average of Total Keywords Used</td>
<td>6.14</td>
<td>7.00</td>
<td>7.83</td>
</tr>
<tr>
<td>Average of Total Philosophies Used</td>
<td>2.05</td>
<td>2.46</td>
<td>3.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Personnel Grants</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Dollar Awarded per Authorized Sworn</td>
<td>$11,758.83</td>
<td>$2,707.67</td>
<td>$2,992.96</td>
</tr>
<tr>
<td>Average Dollar Awarded per Resident Served</td>
<td>$12.86</td>
<td>$5.47</td>
<td>$3.57</td>
</tr>
<tr>
<td>Average of Total Keywords Used</td>
<td>5.54</td>
<td>6.80</td>
<td>8.80</td>
</tr>
<tr>
<td>Average of Total Philosophies Used</td>
<td>2.08</td>
<td>2.80</td>
<td>3.20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equipment Grants</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Dollar Awarded per Authorized Sworn</td>
<td>$1,515.53</td>
<td>$2,540.18</td>
<td>$1,094.90</td>
</tr>
<tr>
<td>Average Dollar Awarded per Resident Served</td>
<td>$3.23</td>
<td>$3.72</td>
<td>$1.64</td>
</tr>
<tr>
<td>Average of Total Keywords Used</td>
<td>7.00</td>
<td>7.13</td>
<td>7.14</td>
</tr>
<tr>
<td>Average of Total Philosophies Used</td>
<td>2.00</td>
<td>2.25</td>
<td>2.86</td>
</tr>
</tbody>
</table>

The average amount granted by the federal government per sworn officer is the highest among small size jurisdictions at $7,856.62 (see Table 5). The average dollar amount awarded per resident served is $8.92, also the highest among small, medium, and large jurisdictions. Other findings show that smaller jurisdictions have the lowest total keyword usage at 6.14 and the least average number of philosophies utilized, averaging 2.05 per grant.
When this data is broken down by grant type, personnel grants averaged $11,758.83 per sworn officer and $12.86 per resident served; smaller jurisdictions had the highest dollar amount (see Table 5). Small jurisdictions awarded personnel grants had the least number of keywords and philosophies used; whereas, large cities had the most (see Table 5). Equipment grants indicated that medium-sized jurisdictions had the highest dollar amount per sworn officer at $2,540.18, with large jurisdictions having the lowest (see Table 5). Large jurisdictions had the lowest awards per resident served at $1.64, nearly 50% less than small jurisdictions (see Table 5). The frequency of key philosophy usage by jurisdiction size is shown in Table 6.

Table 6. Frequency of Terms

<table>
<thead>
<tr>
<th></th>
<th>Small Jurisdictions</th>
<th>Medium Jurisdictions</th>
<th>Large Jurisdictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>1-5</td>
<td>6-10</td>
</tr>
<tr>
<td>Homeland Security</td>
<td>12</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Terrorism</td>
<td>14</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Community-Oriented Policing</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Medium Jurisdictions</td>
<td>0</td>
<td>1-5</td>
<td>6-10</td>
</tr>
<tr>
<td>Homeland Security</td>
<td>7</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Terrorism</td>
<td>6</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Community-Oriented Policing</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Large Jurisdictions</td>
<td>0</td>
<td>1-5</td>
<td>6-10</td>
</tr>
<tr>
<td>Homeland Security</td>
<td>4</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Terrorism</td>
<td>5</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Community-Oriented Policing</td>
<td>4</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

(Missing one application)

Grant Analysis – Additional Findings

Additional factors were considered when analyzing this data. Of the 48 grants researched, only two (4%) of the applicants indicated that they utilized lobbyists to assist in securing their grants. There appears to be no advantages to lobbying for a grant. Each grant reviewed allowed or required the applying agencies to match federal funds. In total, 16 of the 48 grants (33%) offered a larger match than required by the grant. Only three applicants applied and requested waivers of matching funds due to financial hardships. Another finding examined whether the applicant was a statewide agency, a multijurisdictional agency, or a regional agency/partnership. All interoperability grants were multijurisdictional or regional projects and accounted for 7 of the 11 grants that indicated more than one agency was involved. The CIS grant also requires partnerships with the local school district(s). The last area researched was whether the applicant agencies used relevant and current statistics such as crime rate, calls for service, arrest rates, UCR data, or other factual statistics. Of the 46 grants that were completed, 23 (50%) used current and relevant statistics.

The study showed that only two of the 48 grants reviewed had agencies that utilized lobbyists. The use of a lobbyist may help an agency receive funding, but there was little data to indicate that lobbying activities greatly improved the likelihood that a grant would receive funding. A lobbyist works to “earmark” funding for
a particular agency for a specific project. Projects may include equipment and personnel grants. Lobbyists are generally utilized only by large agencies due to the cost associated with their services. The hiring of a lobbyist does not guarantee or greatly enhance an agency’s chance for a grant award.

The trend of regional collaboration between various law enforcement agencies (e.g., a task force) or between law enforcement agencies and a community service provider (e.g., a school district, district attorney’s office, or a victim service provider) appears to be important in some grants, such as Radio Interoperability, Cops MORE, and CIS. Without establishing partnerships, these grants may not have received funding. In total, there were 31 grants that used regional/collaboration as a keyword and 20 as a philosophy. Of the 31 keywords, 17 were in personnel grants and 14 were in equipment grants. Of the 20 grants in which regional/collaboration was a philosophy, 8 were personnel grants and 12 were equipment grants. It should be noted that the personnel grants such as the CIS program must have collaboration with the school district in order to receive funding. Equipment grants such as Radio Interoperability were submitted as regional improvement plans. The partnership between law enforcement agencies in particular regions strengthens the likelihood that grants will succeed, especially with the reallocation of federal dollars in a post-9/11 era. Additionally, regionalizing grants were generally more cost-effective and had lower administrative costs associated with them. The savings can then be passed on to those being served as a lower cost per resident/or more residents being served for the same cost.

Implications and Conclusions

There appears to be no secret word, phrase, dollar amount, or system to authoring the perfect grant; however, there were some commonalities among awarded federal grants. The study of these 48 grants has provided a broad model that is designed to help law enforcement officials write more effective grants, or at least assist them by making law enforcement agencies aware of what common themes are prevalent in prior awarded grants. The study explored costs associated with federal grants in relationship to the number of residents served by the jurisdiction, the number of sworn officer positions authorized, and the average cost per square mile of jurisdiction. This study does not guarantee that any entity using the findings of this study will receive funding of a specific grant, but it does provide analysis of grants that were awarded and presented many of the commonalities in those grants.

The majority of grants used community-oriented policing terms and philosophies regardless of the purpose of the grant. The use of community-oriented policing or actions relating to community policing in USDHS grants indicated that this terminology has become intermingled with terrorism and homeland security efforts. The mention of community-oriented policing as a keyword and as a philosophy in a broad spectrum of grants indicates that the viewpoint is widely accepted across the nation. The use of keywords suggests that terms such as community-oriented policing, terrorism, and homeland security are common parts of awarded grants. There is an average of more than 6 keywords noted in the grants, and as many as 11 keywords were found in one grant. The use of keywords was seen in all awarded grants with the majority using between five and nine keywords per grant.
In addition, the findings of this study suggest that evaluators place some emphasis on the need to spend money wisely. The study showed that 38 of the 48 (79%) grants had awards of $10.00 or less per resident regardless of the type of grant or the size of jurisdiction applying for the grant. The cost per person served must be on the minds of the USDOJ, and it will benefit an applicant agency to be cognizant of this dollar amount. An applicant agency that proposes spending a higher dollar amount per resident to accomplish a goal may lessen its chances of being awarded a grant if the same project can be provided to residents for less money per resident in a different jurisdiction. This same consideration should be made per sworn authorized position; however, there should be little or no consideration of the amount of money per square mile of the jurisdiction. The study indicated that the population density varied greatly among jurisdictions. The cost per square mile formula varies greatly and should be regarded as an unreliable source of comparison.

Another area researched examined the likelihood that an agency providing funds greater than required would enhance the possibility of receiving funding. Hiring grants, such as the UHP, pro-rate the amount they fund an agency over 3 years. Other hiring grants, such as the CIS grants, fund a flat award not to exceed $125,000 for 3 years. Any additional funding must be supplemented by the applicant. Equipment grants generally have between a 25% and 50% match. While one-third (16) provided additional funds beyond what was required, it is not mandatory to do this to secure a grant. By providing additional funds, however, an agency may have a competitive edge in receiving a grant because it demonstrates a higher than required commitment to the success of the program. The addition of more funds does not guarantee success of the program or of winning the grant. The use of current and relevant statistics was also examined and was found in 23 of 46 funded grants (50%), a significant number (two grants were missing this data).

It is doubtful that any single aspect of this study will in itself be a deciding factor as to whether a grant is funded by the government; however, given the totality of the research and the many facets, the incorporation of principles proposed in the study may assist agencies in knowing keywords and factors that were present in successful grant proposals.

The commonalities and patterns among winning grants is evident. Likewise, the data also indicated information that appears to have little or no pattern. This data should not be avoided by the grant writer because it is only an indicator that no pattern existed. In a more competitive environment with fewer dollars available, it is important that grant writers use all information at their disposal in order to submit the most compelling application. By being familiar with the types of grants available, the amount of dollars they have provided in the past and have access to in the future, and the key components of successful grants such as common key words and philosophies, a writer increases the chances for success.

The readers and evaluators of a grant application have also placed emphasis on the fact that the applicant agency should use up-to-date terms and practices and demonstrate a mastery of the topic presented. Similarly, the applicant agency may be cognizant of financial expense. The study clearly shows how much money the majority of grant applications applied for per resident and per authorized sworn personnel. It will be beneficial for applicants to design their proposed grant projects to fit within the normal ranges. Some awards exceeded the normal ranges, but it was
clearly evident that this was the exception and not the standard. If applicants choose to deviate from the norm, they need to explicitly explain why.

The events of 9/11 have changed how grants are awarded and what priorities are paramount to federal government. While future grants may vary in funding different projects, the principles behind this study are fluid and easily adaptable to researching most grants. Law enforcement agencies that need grant money the most are oftentimes the most financially desperate and lack the ability to retain qualified grant writers. This study allows all law enforcement agencies access to the patterns researched. Hopefully, the data presented here will assist law enforcement agencies who have not applied for grants have been unsuccessful in their attempts to write winning grants succeed by modeling their grants after successful predecessors.

References


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Appendix: Federal Grant Instrument

Grant ________________________ Personnel ______ Equipment Only ______
Federal Dollar Amount Requested __________________ _______ %
Match Dollar Amount Required __________________ _______ %
Total Grant Project __________________ _______ %
More than Minimum Match Required? Y/N Waiver of Matching Funds? Y/N
FTE/OFC Requested __________ Authorized Sworn _____ Actual Sworn _____
Jurisdiction Served Population ___________ $ Amount per Resident ___________
Square Mileage of Jurisdiction ___________ $ Amount per Square Mile __________
Lobbying Activities Y/N Application Complete Y/N
Multi-Jurisdictional/Regional/Statewide? ______ Sole Entity _________
Uses Current/Relevant Statistics Y/N

Use of Keywords
___ Community-Oriented Policing ___ Homeland Security ___ Terrorism
___ Regional/Collaboration ___ Financially Desperate ___ Task Force
___ Quality of Service ___ Crime Rate/UCR ___ Efficiency
___ Enhance Security/Lower Crime ___ Population Growth ___ Technology
___ Decreased Police Budget ___ Sharing Crime Data ___ Narcotics Use
___ Gangs/At-Risk Youth ___ Interoperability ___ Operational Plans

Use of Key Philosophies
___ Community-Oriented Policing ___ Homeland Security ___ Terrorism
___ Regional/Collaboration ___ Gangs/At-Risk Youth ___ Interoperability

Frequency of Words/Actions Relating to . . .
Homeland Security ___ 0 ___ 1-5 ___ 6-10 ___ 11-15 ___ 16-20 ___ 21-25 ___ 26+
Terrorism ___ 0 ___ 1-5 ___ 6-10 ___ 11-15 ___ 16-20 ___ 21-25 ___ 26+
COP ___ 0 ___ 1-5 ___ 6-10 ___ 11-15 ___ 16-20 ___ 21-25 ___ 26+
Fundamental Reassessment Badly Needed: The “Service Function” of Police

Wojciech Cebulak, PhD, Associate Professor, Department of Criminal Justice, Minot State University

Even though there is extensive policing literature “out there,” I feel that certain fundamental issues are definitely worth revisiting, especially because we live in a highly modern, computerized, and technologically advanced world where unfortunately technology and technical things often take precedence over core philosophical values. After all, it is easy to get “caught up” in debates about such “technically neat” things as computerized police records, the right techniques for conducting high-speed chases, collection of evidence from crime scenes, etc. I wish some empirical data was available regarding the proportions between “technical issues” and “philosophical issues” in policing literature—unfortunately, to my knowledge, there is no such data. Even without such research, however, it is obvious that literature heavily favors technical issues over philosophical ones. Whether that is a good thing or bad, there is no question that such “overrepresentation” of technical issues in policing literature is a fact. For example, Roberg, Novak, and Cordner (2005) start their work with a very good philosophical chapter on “Policing Foundations,” which does contain a good discussion of various philosophical issues like the democracy-police conflict, for example. Even though in all fairness it cannot be said that the entire remaining part of the book focuses on “technical” issues exclusively, there is clearly a disproportion in the book between technical and philosophical issues. Similarly, an otherwise excellent source, Miller, Dawson, Dix, & Parnas (2000), is full of statements like the following:

Rule 41(c)(2) authorizes a search warrant’s issuance “upon sworn oral testimony communicated by telephone or other appropriate means” if “circumstances make it reasonable to dispense with a written affidavit.” Where application for a warrant is made by telephone, the applicant prepares a “duplicate original” warrant and reads it to the magistrate. The magistrate then signs the original warrant (which is before the magistrate) and authorizes the applicant to sign the magistrate’s name to the duplicate original. (p. 121)

Let there be no misunderstanding here. I am not saying that the book is worthless, nor am I saying that it has absolutely no discussion of philosophical values or dilemmas—it does. For example, the excellent treatment of undercover investigations beginning on p. 504 is a good example of the authors’ treatment of such issues. What I am saying is that there is a clear bias among the material towards such technical issues at the cost of philosophical issues or dilemmas, a bias which I argue is not only unjustified but also harmful both to police and society in general. In order to remedy this situation, serious discussion should be started both among law enforcement and society in general, concerning some fundamental, core philosophical values. I think a very good starting point is to
examine a fundamental philosophical issue facing law enforcement in the United States today.

**Question:** What are police supposed to do? What should police work be like, from the standpoint of the best interests of society? What is the mission for which police were created in the first place?

This may sound like a pretty superficial, strange, and unimportant question, but that is just an illusion, of course. Need I cite numerous examples in literature confirming that there is a good amount of uncertainty, if not confusion, regarding the mission of police? One can take what I call “the service function paradox” as a good starting point. In most big-city municipal police departments the service function takes up much more time than law enforcement, even if most people associate police with law enforcement in their minds, not with service functions like getting the proverbial cat down from a tree, or giving directions to strangers:

They return runaway children to their parents and remove cats from trees. *They are the frontline troops in dealing with the homeless and the mentally ill.* Research conducted in a city of 400,000 found, in fact, that social service and administrative tasks accounted for 55% of officers’ time; crime-fighting accounted for 17%. Similar analyses in other cities have likewise found that the police spend significantly more time providing service to the community and maintaining order than in fighting crime. (Adler, Mueller & Laufer, 2003, p. 143, emphasis added)

While it must be noted that the sources quoted in that text are from 1970 and 1978, please note also that the authors are not using a past tense at all (“police spend significantly more time . . .”, emphasis added). Consider also that according to some authors, the service-style model is the direction in which police departments are evolving:

Although elements of all three styles can be found in most police departments, according to Wilson, as society becomes more complex and begins to demand more of its police, police organizations tend to go through stages of evolution, moving more towards the service-style model. (Grant & Terry, 2005, p. 228)

This seems to confirm that we are likely to see more of the service function of policing in the future, or at least, it is quite unlikely to wither away in any respect. So, there is certainly a paradox here: I think most people would be shocked if they found out that most police work is about “soft” functions like service, not “hard core” law enforcement. The motto on the doors of so many municipal police department vehicles, “To serve and protect,” seems consistent with the fact that most police do mostly service; it does not really reflect what in the minds of most people should be the “core” function of police: to enforce criminal law and prevent crime.

So, what’s my point? Am I saying that the service function is bad? Or wrong? Absolutely not. First, as far as the origins of this phenomenon, historically Americans have become used to picking up the phone and calling the local police department if they had *any* question at all, even if it had nothing to do with crime. So the current situation can certainly be explained in historical terms. In addition,
one could say that still does not necessarily mean that it’s a good thing, just because it can be explained in historical terms—that kind of reasoning would make perfect sense to me. So this is where it comes to a question of opinion. I certainly respect someone who is of the view that there is nothing wrong with this future direction for police in the United States, but I have to respectfully disagree because I believe that because of the excessive emphasis on the service function, U.S. police are less effective and less focused in the areas for which they were primarily created in the first place—law enforcement and order maintenance. It almost sounds like police are such nice folks that they find it very hard to refuse a request for a service-related activity, and I am sure that this explains the phenomenon at least to some extent. Do police feel that they would “betray their mission” or perhaps “let the community down” if they were to cut down on their service activities? Even if the purpose would be to increase effectiveness in crime control/law enforcement/order maintenance? It would be interesting to do research on the issue and just ask police officers themselves. Of course, it is speculation, but my guess would be that at least a portion of officers surveyed in such research would probably respond that they find it almost impossible to decrease their service-related activities because of the “unwritten code/rule,” which states that police are not supposed to refuse citizen requests for service because they are police, and doing so would go against the essence of police in today’s society. They are supposed to “help out” people, even if the situation has nothing to do with crime and its control.

Think about it this way: Isn’t the main mission of police to perform crime control by law enforcement, order maintenance, and crime prevention? If that is what they are mainly supposed to do, doesn’t it make sense to remove or at least reduce things that distract them from fulfilling that mission, thus making them less effective in that area? Let’s face it: police are not the Red Cross, or the Salvation Army, or a church, or a travel agency, or a fire department, or a source of information on things like winning lottery numbers or the weather. Do you really think this is a healthy situation from the standpoint of society and its right to be free from crime and especially violent crime, if police are described as “…the front-line troops in dealing with the homeless and the mentally ill”? (Adler et al., 2003, p. 143). Couldn’t this be one of the reasons the United States has such high rates of violent crime—namely that police are prevented from being effective in crime control by having to spend so much time and resources on such “service” activities? Isn’t it obvious that there is a direct causal link between high rates of violent crime in the United States and the 17% of officers’ time spent on crime fighting, as cited in the excerpt from Adler et al. earlier in this article? Well, it is obvious to me.

Apart from the fact that police may not be properly “equipped” to deal with such problems, both in the logistical sense and in the psychological sense, aren’t there agencies in society whose missions, purposes, and functions are much better oriented toward dealing with such social problems? Of course, there are. Let us take the homeless as just one example of society’s problems. We have The Salvation Army; America’s Second Harvest; Corporation for Supportive Housing; Covenant House; DrawBridge; Enterprise Community Partners, Inc.; Family Shelter; Larkin Street Services; National Coalition for Homeless Veterans; Partnership for the Homeless, Inc.; National Housing; the numerous churches of all kinds of religions in the United States; and the list goes on and on. In fact, a simple Google search on “charities for the homeless” yields 1,100,000 websites! (as of April 12, 2007). There
is certainly no shortage of organizations that are much better oriented than police are toward helping disadvantaged members of society. Having said that, I want to make it very clear that I am absolutely not accusing anyone of anything; rather, I am saying that we need to initiate a serious national debate on taking some of the burden off our police departments in areas for which there are numerous other organizations especially created to deal with such problems. I realize my views may not be very popular among police, but please keep in mind, I am not saying police should abandon all service functions. It is still acceptable for police to provide some service-related activities in cases of emergencies like fires, car accidents, etc., especially if immediate help is needed before medical and/or fire personnel arrive at the scene. That is perfectly normal, and I do not have a problem with that. The whole service function of police should, however, be thoroughly reassessed and reoriented by focusing on emergency situations as described above and significantly cutting down on service-related tasks with which police should not be burdened.

In addition, consider the fact that those who are referred to as “service-style officers” are not always described in positive terms in policing literature. In fact, some literature attributes certain traits to these officers that should definitely not be encouraged, simply because they reflect bad policing:

Service-style officers do the minimum amount of work necessary to get by; that is, they are not aggressive but are selective. Only the most serious problems will result in their enforcing the law. Such officers tend to rely on informal solutions to problems rather than legalistic ones. (Roberg et al., 2005, p. 281)

Certainly there is nothing wrong with being “selective”—there is no question that selectivity is the essence of police discretion. There is also nothing wrong with relying on “informal solutions to problems.” In fact, I believe society expects police officers to be “problem solvers,” as well as “law enforcers”—after all, that is what community policing is mainly about. Doing only “the minimum amount of work necessary to get by” does not sound very good, however. In fact, it may sound to some people like such officers are just plain lazy!

I think we have reached a point in the development and growth of U.S. society where we need a national debate on reassessing the “service function” of police, and this obviously applies especially to big-city police departments because most violent crime happens in such areas. It just makes no sense to me to continue in this state in which police departments are burdened with all kinds of service-related activities when there are hundreds of agencies that are much better positioned and equipped to deal with such issues. I also disagree with Reichel (1994) that the disappearance or substantial reduction in the public service work of police departments between 1890 and 1920 resulted in “rather isolated police officers” (p. 370). Police do not have to be “isolated” just because they focus on law enforcement and order maintenance. If they were in fact isolated in that time period, I believe it must have been for reasons that had nothing to do with the service function. Not to mention the fact that “rather isolated” is a pretty vague term, so I am not sure how serious the author was about using it in the first place. It does not sound like a strong empirical finding to me.
The three main functions of police—(1) law enforcement, (2) order maintenance, and (3) service—must be properly balanced. Police were not created to answer phone calls about the weather or lottery numbers; they were created to control and prevent crime. Situations in which police spend a majority of their time on service is not normal and need to be changed. I think there is an important implication of these issues for crime control. If police in the United States could spend more time on law enforcement and order maintenance, violent crime rates would not be as high as they are, especially when compared with the rest of the world. Service activities should be limited to emergency situations like car crashes, fires, directing traffic when traffic lights are out, etc., and the overwhelming majority of current service activities of police should be handed over to the appropriate agencies in society that are specifically designed, trained, and thus very well-positioned, to deal with such social problems as individuals who are homeless or mentally ill. I believe that ultimately it is a question of police responsibility to society in making sure that crime control is effective, and the way to get to that increased effectiveness is by going back to police’s original mission and raison d’etre. Personally, if I were, for example, on vacation in a location where I have never been before and needed directions on how to get to some specific place, I know I would not hold it against a police officer if he or she could not help me. I would, however, be upset if an officer had just let a thief steal my wallet because the officer was too busy getting a cat down from a tree. The issue is very simple: Do the things you’re best at, and leave the rest to other people who are best at those. Doesn’t that just make sense? It is also an issue of society’s right to be free from crime, which I personally believe is a human right. Don’t you think that right is denied to society because, among other reasons, police are too busy doing things they should not be doing?

References


Wojciech Cebulak, PhD, received his law degree from Copernicus University in Torun, Poland, in 1985, and his doctorate in criminal justice from Rutgers University in 1989. He has published widely both in the United States and in his native Poland on issues ranging from criminal law to law and society to comparative criminology, white-collar crime, and policing. From 2002 to 2005, he was project director of the research component of Project Safe Neighborhoods for the District of North Dakota, coauthoring eight
reports on gun violence that were submitted to the PSN Task Force at the U.S. Attorney’s Office in Fargo, North Dakota. He is currently an associate professor of criminal justice at Minot State University in North Dakota. Apart from the above mentioned issues, his research interests focus on prostitution from a cross-cultural perspective and “paper entrepreneurialism” as an issue in the area of corporate crime.

His most recent publication is a 152-page book coauthored with Professor Emil Plywaczewski titled *Prostitution in the United States and Poland: A Cross-Cultural Criminological Study from a Religious Perspective* (2007).
The Effects of Population Density on Crime Clearance in the State of Florida

Jeffrey W. Goltz, PhD, Commander, Professional Standards Division, Orlando Police Department

Introduction

Since the 1980s, governments at all levels have been focused on performance to make government more productive and responsive (Hendrick, 2003). Conversely, the performance of police service delivery has been a topic of discussion since the late 1800s, and the conscientious study of police performance measures and their impact on police organizations was a new phenomenon by the 1970s (Young, 1978). The analysis of production relationships in the police service industry dates back to the early 1970s and has burgeoned since the mid-1990s.

The activity for which the police was created is patrol (Fyfe, Greene, Walsh, Wilson, & McLaren, 1997). Patrol is the “backbone” and the center of police activity (Bartollas & Hahn, 1999; Peak, 2001; Walker & Katz, 2002). It is the largest and most visible police component and requires the most personnel, money, resources, and equipment (Bartollas & Hahn). The majority of police officers are assigned to patrol, and patrol delivers the bulk of police services (Walker & Katz). Outside of patrol, criminal investigation is another primary operational activity within a police organization (Peak).

Crime Clearance

Historically, criminal investigation has ranked second behind patrol as an important specialization activity in policing. Investigation is the police activity concerned with the apprehension of criminals by gathering evidence that leads to arrests and the collection and presentation of evidence for the purpose of obtaining convictions (Thibault, Lynch, & McBride, 2001). Except in small police departments, criminal investigation is a separate unit of the organization, and 10% to 20% of sworn personnel in medium to large police organizations are assigned to criminal investigation (Fyfe et al., 1997). Similarly, Walker and Katz (2002) report that nationally, approximately 12% of all sworn officers are assigned to investigative units.

As police agencies matured, a generally accepted accounting practice became enshrined as one of the key measures to evaluate police performance: clearance rates (Alpert & Moore, 1993). A clearance rate is a result of the process of the investigation of crime, and the FBI defines a crime as cleared when an offender is identified, there is sufficient evidence to charge the offender, and the arrest of the offender is made or there is some element beyond police control that precludes taking an offender into custody (Walker & Katz, 2002). As the trend to study police service has evolved over the past few decades, a number of studies in the police literature have assessed crime clearance. The studies listed in Table 1 used crime clearance as a performance indicator in police services research. Clearly, there is
significant agreement among researchers on the selection of crime clearance and its importance in police services analysis.

### Table 1. Police Service Studies

<table>
<thead>
<tr>
<th>Study</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Votey &amp; Phillips (1972)</td>
<td>Expenditures, <strong>crimes cleared</strong>, crime offenses, change in technology</td>
</tr>
<tr>
<td>Thanassoulis (1995)</td>
<td>Number of crimes (violent, burglary, other), number of <strong>crimes cleared</strong>, manpower</td>
</tr>
<tr>
<td>Nyhan &amp; Martin (1999)</td>
<td>Inputs – department costs, total staff (sworn and civilian)</td>
</tr>
<tr>
<td></td>
<td>Outputs – crimes, response time, <strong>crimes cleared</strong></td>
</tr>
<tr>
<td>Drake &amp; Simper (2000, 2002)</td>
<td>Inputs – employment costs, operating expenses, capital</td>
</tr>
<tr>
<td></td>
<td>Outputs - <strong>clearance rates</strong>, traffic offenses</td>
</tr>
<tr>
<td>Drake &amp; Simper (2001)</td>
<td>Inputs – employment costs, capital</td>
</tr>
<tr>
<td></td>
<td>Outputs – beat patrol time, <strong>clearance rates</strong>, calls for service, response times</td>
</tr>
<tr>
<td>Sun (2002)</td>
<td>Inputs – number of officers, recorded crimes</td>
</tr>
<tr>
<td></td>
<td>Outputs – number of <strong>crimes cleared</strong></td>
</tr>
<tr>
<td>Drake &amp; Simper (2004)</td>
<td>Inputs – staff costs per member, transport costs, capital costs</td>
</tr>
<tr>
<td></td>
<td>Outputs – <strong>crimes solved</strong>, emergency calls</td>
</tr>
<tr>
<td>Drake &amp; Simper (2005a)</td>
<td>Inputs – number of crimes, budget revenue</td>
</tr>
<tr>
<td></td>
<td>Outputs – <strong>offenses cleared</strong>, sick days lost</td>
</tr>
<tr>
<td>Drake &amp; Simper (2005b)</td>
<td>Inputs – number of crimes</td>
</tr>
<tr>
<td></td>
<td>Outputs – <strong>offenses cleared</strong></td>
</tr>
</tbody>
</table>

### Theory

Police departments operate in open systems and confront ever-shifting and changing environments. A natural open systems model suggests that an organization’s structure is based on the requirements, or “contingencies,” of its environment. In open systems, an organization’s interaction with its environment affects its performance (Wan, 1995). The greater an organization’s fit between the environment and structure, the better its performance (Hendrick, 2003). Since the mid 1960s, structural contingency theory has dominated the study of organizational design and performance (Drazin & Van de Ven, 1995). Contingency management seeks to develop a good fit between the environment encountered by the organization and the internal structure of the organization (Fyne et al., 1997). Undoubtedly, the burgeoning population presents an environmental challenge to police service delivery and performance.

The costs for police per square mile in densely populated areas are significantly higher than the costs elsewhere (Clark, 1970). Population growth, as experienced throughout the state of Florida, contributes to high population density. Large, dense jurisdictions are more complex, and the more dispersed the population, the more elaborate the requirements for formal structure. The purpose of this study is to develop and test a model for explaining the structural relationships among population density and the crime clearance of police organizations.

### Methods

The study uses a nonexperimental, cross-sectional design of local (municipal and county) police organizations in the state of Florida. Table 2 lists the characteristics of the 113 local Florida police organizations included in this study.
Table 2. Characteristics of the Study Police Organizations

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Frequency (n = 113)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Police Organizations</td>
<td>84</td>
<td>74.3</td>
</tr>
<tr>
<td>County Police Organizations</td>
<td>29</td>
<td>25.7</td>
</tr>
<tr>
<td><strong>Number of Sworn Officers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 1,000</td>
<td>5</td>
<td>4.4</td>
</tr>
<tr>
<td>500-999</td>
<td>5</td>
<td>4.4</td>
</tr>
<tr>
<td>200-499</td>
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<tr>
<td>100-199</td>
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<td>19.5</td>
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<tr>
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<tr>
<td>20-49</td>
<td>31</td>
<td>27.5</td>
</tr>
<tr>
<td>Under 20</td>
<td>4</td>
<td>3.5</td>
</tr>
<tr>
<td><strong>Geographic Region in Florida</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northwest</td>
<td>13</td>
<td>11.5</td>
</tr>
<tr>
<td>Northeast</td>
<td>7</td>
<td>6.2</td>
</tr>
<tr>
<td>West Central Coastal</td>
<td>18</td>
<td>15.9</td>
</tr>
<tr>
<td>Central</td>
<td>28</td>
<td>24.8</td>
</tr>
<tr>
<td>East Central Coastal</td>
<td>14</td>
<td>12.4</td>
</tr>
<tr>
<td>Southwest</td>
<td>6</td>
<td>5.3</td>
</tr>
<tr>
<td>Southeast</td>
<td>27</td>
<td>23.9</td>
</tr>
</tbody>
</table>

Data Sources and Variables

The model variables are conceptualized and classified in three ways: (1) exogenous environmental constraint variables, (2) endogenous design structure variables, and (3) endogenous performance variables (as illustrated in the covariance structure model Figure 1). The environmental variable of population density and the performance variable of crime clearance, however, are the foci of analysis and explanation in this study. Three data sources were used for the selection of the study variables: (1) the University of Florida’s Bureau of Economic and Business Research (BEBR), (2) the 2000 U.S. Census, and (3) the 2005 Florida Department of Law Enforcement (FDLE) Total Crime Index. BEBR posted the most up-to-date population statistics for all local and county government jurisdictions in the state of Florida in April 2005, and crime clearance data comes from the Total Crime Index for Florida by County, Jurisdiction, and Offense (2005) reported by the Florida Department of Law Enforcement. Table 3 lists the variables of interest in this study.

Table 3. Definitions of Variables and Data Sources

<table>
<thead>
<tr>
<th>Variable</th>
<th>Label</th>
<th>Description</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exogenous Variables: Environmental Constraints</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population Density</td>
<td>POPDEN</td>
<td>Persons per square mile</td>
<td>BEBR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>U.S. Census</td>
</tr>
<tr>
<td><strong>Endogenous Variables: Performance (h)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crime Clearance Rate</td>
<td>CLEAR</td>
<td>Percent of crimes cleared by the police agency as reported to the FDLE</td>
<td>FDLE</td>
</tr>
</tbody>
</table>
Statistical Analysis

To assess the basic descriptive characteristics and the relationships among the variables (see Table 4), univariate and correlation analysis was performed on the study variables. Multivariate analysis, Structural Equation Modeling (SEM), was used to analyze the covariance structure model (see Figure 1) to validate the conceptual framework. Path analysis determines the causal effects of population density on crime clearance.

Table 4. Descriptive Statistics for Study Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Label</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Density Construct</td>
<td>POPDEN</td>
<td>19.94</td>
<td>21,660</td>
<td>2,728.96</td>
<td>2,887.08</td>
</tr>
<tr>
<td>Performance Indicators</td>
<td>CLEAR</td>
<td>8.5</td>
<td>54.1</td>
<td>24.97</td>
<td>8.85</td>
</tr>
</tbody>
</table>

Structural Equation Modeling

A structural equation model is a confirmatory approach that specifies the causal relationships among latent exogenous and endogenous variables that have been identified from the observed variables through a measurement model. SEM defines the causal links among the latent variables and the effects of the exogenous variables factored in the measurement model. The computer program, *Analysis of Moment Structures* (AMOS) 5.0, was used to create the models in this study that are precisely confirmed. AMOS is a Microsoft Windows program made up of two modules: *AMOS Graphics* and *AMOS Basic*. Models are drawn, modified, and aligned using *AMOS Graphics*.
Results

The exogenous variable of population density has a medium negative effect on crime clearance (POPDEN → CLEAR: r = -.27). In other words, an increase in population density leads to a decrease in crime clearance.

Discussion

In this study, the mean crime clearance rate is 24.97%, and the mean of sworn police staffing that is assigned to criminal investigations is 13%. The study finding, population density has a negative effect on crime clearance, indicates that police organizations are not adequately staffing resources or responding to this environmental demand in many communities. As a result, crime clearance, a core police expectation and effectiveness indicator suffers.

The literature clearly indicates that criminal investigation is a primary police function, but sworn investigative staffing levels have not changed from 1997 to 2002 as reported by Fyfe et al., and Walker and Katz. Furthermore, this study confirms that investigative staffing levels have remained low up to today. As a comparison, this study discovered that 57% of sworn staffing is assigned to patrol duties while 29% of sworn staffing is assigned to specialty units.

An alternative theory may be the driving force and may explain low to moderate clearance rates and low investigative staffing levels in local policing: institutional theory and isomorphism. Government organizations are more vulnerable to institutional forces than other organizations, and new institutionalism in organizational analysis has shifted from why organizations are so heterogeneous to the explanation of why organizations are so similar (Frumkin & Galaskiewicz, 2004). Mimetic isomorphic forces drive institutionalism and results from standard responses to uncertainty. In local policing, organizations mimic or “mirror” one another, especially when allocating sworn resources and establishing specialty units.

Undoubtedly, a significant amount of local sworn resources over the last decade have been dedicated to community policing and homeland security specialty units. These specialties in policing are widespread and may be explained by coercive isomorphism. Organizations adopt structures that are either overtly or covertly mandated by organizations that they are dependent upon, and it stems from political influence and the need for legitimacy (DiMaggio & Powell, 1983; Mizruchi & Fein, 1999). When organizations are subjected to outside coercive scrutiny and evaluation, they react defensively and gravitate towards isomorphism transformation, and isomorphic mechanisms can overlap and intermingle (Frumkin & Galaskiewicz, 2004).

What does this all mean? Institutional theory and isomorphism, rather than contingency theory, may have a profound effect on investigative resources. Traditional crime clearance activities may have “taken a back seat” to other popular initiatives in policing over the past decade. At a minimum, police and government administrators should analyze several indicators together to improve performance. These indicators include the environmental stressor of population
density, staffing allocations to core policing activities such as crime clearance, and their commitment to special activities in policing.

**Conclusion**

A clear theme has emerged from this study. The study introduces and validates a multidimensional framework that explains the relationship between population density and crime clearance. Hopefully the findings encourage police administrators to use environmental indicators to improve decisionmaking when justifying resource allocation to improve organizational performance. Furthermore, academics, researchers, and practitioners have been provided with new scientific and confirmatory crime clearance evidence to improve police service delivery, especially in densely populated communities.

**References**


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Police Accountability: Strategies to Control Police Misconduct

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The pictures from the now infamous Rodney King videotape have proven to the world that police are capable of abusing their authority. Although the King incident occurred in the United States, abuse of authority is not a problem limited to U.S. law enforcement. Police misconduct exists throughout the world. Abuses by the worlds’ police have been documented in industrialized and developing countries, democratic and authoritarian countries, and countries based upon a wide variety of social and religious structures. Abuse by the police throughout the world can include acts as serious as murder, violence, torture, or corruption, although it most often occurs in the form suffered by King: excessive use of physical force to control an individual. Less physically damaging forms of police abuse of authority can also negatively affect both individuals and entire communities. These less visible acts include verbal abuse, threats, acceptance of bribes, or agreement to not enforce the law in exchange for personal benefits. Regardless of the form, abuse of authority by law enforcement officers is at the least bullying by a governmental official and in its most serious form, government-authorized crime.

Police compliance with the law is one of the most important aspects of a democratic society (Skogan & Frydl, 2004). The governmental authority granted to police to enforce the law in the United States is limited only by the requirement that police comply with those same laws. Thus, true criminal acts committed by people wearing a police uniform can never be condoned, excused, or justified; however, many of the acts of law enforcement that cause harm to the public arise out of a much greyer area: appropriate use of officer discretion. Without question, policing takes place primarily in one-on-one exchanges between officers and civilians. These exchanges are controlled by individual officers utilizing very broad personal discretion and reacting to their own perceptions of a situation.

The King case provides a good example of how individual officer perception impacts the use of officer discretion. In that case, the four most culpable officers claimed that their actions were not a violation of the law because use of appropriate force to control a subject under arrest is left to the discretion of individual officers by state law (Herman, 1994). Accordingly, when their supervisors, the district attorney, and two separate juries examined these officers’ treatment of King, they were evaluating whether the officers’ individual perception of what was happening at the time of that arrest was reasonable. Some of the officers at the scene of the arrest claimed that they perceived King to be submissive to police authority, while others claimed his every movement posed a real danger as it proved he was under the influence of an illegal stimulant. In the end, the state-level jury, asked to determine whether the evidence proved beyond a reasonable doubt that the officers abused their authority, was unable to answer in the affirmative. The federal jury, asked to determine whether the evidence proved beyond a reasonable doubt that the officers violated King’s civil rights, was able to find two officers culpable (Skogan & Frydl, 2004).
The conclusion of the King case and other such shocking incidents have not eliminated the underlying issue: how to properly train officers to utilize their lawful discretion. For example, when an officer sees several vehicles speeding together down the road, the officer may utilize his or her discretion to choose which of the vehicles to stop and which to allow to continue on their way. Once stopped, the officer has the discretion to issue the driver a citation or a warning, or even to issue a citation for a less serious offense than actually committed; however, an officer’s perception of what actually constitutes speeding may never be addressed. Some officers perceive a vehicle to be speeding when it is clocked at one mile per hour (mph) over the posted limit. Other officers may not perceive a vehicle to be speeding until it is clocked at five mph, or even ten mph over the limit. Thus, officer perception and discretion are irrevocably linked.

Admittedly, there are some limits to police officer discretion and some proposed limits to discretion. For example, while law enforcement officers have the discretion to determine how much force to use to affect an arrest or serve a warrant, the United States Supreme Court has placed restrictions upon the use of deadly force. An additional area in which police discretion may be limited involves police chases. Recently, the Supreme Court was asked to limit officers’ discretion to initiate car chases with traffic offenders who refuse to comply with a police directive to stop a vehicle (Scott v. Harris, 2007). While, it seems unlikely that the Court will agree to such a sweeping rule, it is very possible that this case will result in the development of some parameters for such chases.

Without question, monitoring officer discretion is difficult, as most officers work alone in the field. Those same officers are armed with a broad array of weaponry and have been trained to effectively fight with both their bodies and their weapons. Supervisors are heavily reliant upon reports generated by those same officers to determine whether the officers are conducting themselves in a legal and ethical manner, and those who complain about police mistreatment are often individuals marginalized by society: alcoholics, drug addicts, the homeless, juveniles, and criminals. Clearly, tracking and controlling police abuse of authority is not a simple task; however, governments provide the authority that empowers law enforcement officers to interfere in the lives of individuals, and government must find ways to monitor and address abuse-of-power issues to protect citizens from undue harm.

**Identifying Abuse of Authority**

Police misconduct cannot be restricted to unnecessarily inflicting physical harm; it also includes bribery in its various forms and lying: in reports, to supervisors, and under oath. William Hyatt (2001), a former federal prosecutor, describes a variety of activities that police officers perform as within the scope of police misconduct: free or discounted meals or service, acceptance of kickbacks, theft occurring during investigations, shakedowns, fixing cases, protection of illegal activities, internal bribery for favorable assignments, use of street justice, lying, and whistle blowing (Hyatt, 2001, p. 75).

In addition to the activities mentioned by Hyatt, Thomas Barker (1986) cites other behaviors that he considers to constitute police misconduct. According to Barker, perjury, sex on duty, sleeping on duty, and drinking on duty must be considered misconduct (p. 71). In addition to the misconduct listed by Hyatt and Barker, other authorities on the subject mention criminal acts such as use of drugs on duty, the commission of crimes on or off duty, the excessive use of physical force, and the improper use of deadly force on the list of identified police misconduct. The list of
police misconduct activities by the police could be neverending depending on the perspective of the academician, practitioner, prosecutor, and citizen; however, one thing is certain: police officers are known to overstep their legal authority.

Law enforcement has historically recognized that citizens will “not cooperate” with police “unless they have full confidence in [officers] and are sure that fair and helpful treatment will be accorded” to suspects (Kidd, 1940). Today, policing tactics continue to generate mistrust and social unrest. An excellent example of a policing tactic that may cause more harm than it prevents is racial profiling. While pretextual car stops have been accepted by the United States Supreme Court, stops on less than probable cause or reasonable suspicion have historically been held unconstitutional (Whren v. United States, 1996). Although pretextual car stops are not unlawful, American police are accused of using such tactics primarily against minority citizens in order to stop and question persons of color without real cause or justifiable reason. The dissent in a recent United States Supreme Court case involving the arrest of a woman for a mere seatbelt violation acknowledged that racial profiling is a violation of constitutional protections:

Such unbounded discretion carries with it grave potential for abuse. The majority takes comfort in the lack of evidence of “an epidemic of unnecessary minor-offense arrests.” But the relatively small number of published cases dealing with such arrests proves little and should provide little solace. Indeed, as the recent debate over racial profiling demonstrates all too clearly, a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual. After today, the arsenal available to any officer extends to a full arrest and the searches permissible concomitant to that arrest. An officer’s subjective motivations for making a traffic stop are not relevant considerations in determining the reasonableness of the stop. But it is precisely because these motivations are beyond our purview that we must vigilantly ensure that officers’ poststop actions—which are properly within our reach—comport with the 4th Amendment’s guarantee of reasonableness (citations not included) (Atwater v. City of Lago Vista, 2001).

Although the Court has set forth the parameters for interference in the liberty of individuals, minority citizens and organizations that support minority rights have accused American police officers of using racial profiling solely to harass. American politicians have rightly recognized this to be a very serious issue, regardless of whether this type of profiling is an actual practice or just a perception. For example, racial profiling was a debate issue between Bill Bradley and Al Gore when they were campaigning for the Democratic Party nomination for President in 2000. The perceived focus of racial profiling practices has shifted from African and Hispanic Americans to Arab-Americans since 2001. While the federal government has attempted to curb harassment of Arab-Americans by the general population, police misconduct aimed at persons of Middle Eastern descent, fueled by fear of such individuals’ loyalties, has been documented in the news (Wells, 2004).

**Police Accountability**

Ultimately, cities and city officials will be held accountable and pay the costs associated with police misconduct. Lawsuits alleging abuse of authority have become an epidemic and account for a large portion of municipal legal budgets as such suits involve defense
costs, settlement costs, and jury awards (Goodwin, 2003). Additionally, as acts of police misconduct become more visible to the public at large through video and Internet resources, elected officials are being held more accountable to their constituents for both the misconduct and criminal behavior of law enforcement officers, as well as attitudes that encourage or accept such behavior in law enforcement agencies. Also, lack of trust in law enforcement has been documented to result in generally more contentious exchanges between police and citizens. Such heightened citizen emotions evolving out of frustration, fear, and lack of trust are clearly more likely to result in a situation that is dangerous for both officers and the people with whom they interact. For all of these reasons, it is imperative that the police, as agents of the government, be held strictly accountable for their actions or inactions.

In a recent decision centering on the appropriate penalty for violation of the knock-and-announce rule, the United States Supreme Court spoke to the issue of police accountability. Recognizing that a variety of methods exist to effectively control police and hold them accountable for their actions, the Court stated . . .

Failure to teach and enforce constitutional requirements exposes municipalities to financial liability. See *Canton v. Harris*, . . . (1989). Moreover, modern police forces are staffed with professionals; it is not credible to assert that internal discipline, which can limit successful careers, will not have a deterrent effect. There is also evidence that the increasing use of various forms of citizen review can enhance police accountability. (*Hudson v. Michigan*, 2006)

The Court also recognized that such options have not always been so effective. In a comparison of police practices in the 1960s to those of 2006, the Court stated, “The social costs of applying the exclusionary rule to knock-and-announce violations are considerable; the incentive to such violations is minimal to begin with, and the extant deterrents against them are substantial—incomparably greater than the factors deterring warrantless entries when *Mapp* was decided” (*Hudson v. Michigan*, 2006). The Court’s analysis seems to be supported by the changes in policing manuals over the last century. Policing manuals at one time seemed to accept improper behavior in law enforcement officers. In one training manual entitled *Modern Police Work* (1939), James J. Skehan, a retired captain with the New York City Police Department, advocated concealing vices rather than changing the behavior:

> A sergeant or other patrol supervisor is fooling himself if he imagines that the patrolmen are not closely observing him and noting his vices or virtues, his police ability or lack or if, and whether or not he is performing his duties faithfully. Therefore, if he has any failings in this respect, he should endeavor to conceal them from his subordinates, particularly from those who might take advantage of their knowledge by shirking their duty. (p. 31)

Several options have been developed at the local, state, and federal level to hold police accountable for their actions on the job. These options include administrative, legal, and political responses to the inappropriate behavior (Savage, 1984, p. 49). To protect the government and the agency from possible liability, however, the best place to instigate control of officer behavior is during the employment process. By subjecting potential recruits to effective screening measures, those with personality traits or biases tending to make them unsuitable for policing can be eliminated from the pool of applicants.
Even after an applicant has been accepted into the recruit class, those recruits who prove unable to follow department policies and orders should be removed from the class. This high level of scrutiny should not end following graduation from the academy, however. Usually, when police recruits complete their academy training, they are placed under the supervision of field training officers who evaluate the recruits’ ability to respond to the needs of the community in general, and individual citizens more specifically. If the recruit does not respond to the direction of the field training officer, he or she may be released from the police department.

In addition, police departments have a probationary period, which can last from a few months to a year. During this time, a recruit can have his or her position terminated upon good cause shown and may not yet qualify for a review of the decision by an administrative review process. The most common and effective method of holding police officers accountable, however, are the department’s supervisors, sergeants, and lieutenants who have the most conduct with line officers.

Local governments, as the primary employer of police officers, are also able to actively shape the overall nature of their police departments by maintaining a level of financial control. Municipalities determine the size of their police departments, the mandatory training requirements, the types of technology utilized by the department, the number of vehicles purchased and maintained by the department, and the types of weapons approved for use by the department. By leaving these basic decisions in the hands of the governmental officials directly responsible to the public, it is more likely the methods of policing will comport to the needs and expectations of the community.

A recent approach monitoring police misconduct being adopted by police departments is the early warning (EW) system. (Walker, Alpert, & Kenney, 2000). The EW system has been emerging as an administrative tool for reducing police officer misconduct and enhancing officer accountability. EW systems are primarily intended to identify police officers who seem to have problematic behavior and to intervene with these officers to correct inappropriate behavior. Generally, the EW system will be data driven and will allow the police department to provide intervention for problematic officers, including counseling or training to correct the inappropriate conduct. The goals of EW systems are to identify police officers that have recurring problems or apparent problems in dealing with the public and to provide assistance to those officers before low-level misconduct evolves into serious misconduct or criminal behavior.

Other types of procedures have been adopted to monitor and assess officer behaviors so as to provide a means of ensuring that officers are held accountable for misconduct. Generally, when a complaint is made against an officer, three approaches may be used to respond to the complaint:

1. **Exclusively internal mechanism** – Citizens’ complaints are entirely reviewed by police administration with no external oversight.

2. **Initial internal review, followed by formal external scrutiny in specific types of cases** – All citizen complaints receive initial internal review, but complaints meeting certain criteria must also be subjected to external review by either a citizen review board or a review board designated by the municipality that generally includes the city attorney and the director of personnel.
3. **Bilateral systems** – Citizens’ complaints are simultaneously reviewed by both police departments and a formally constituted agency (West, 1988, pp. 103-104).

Police organizations also have built-in review procedures that allow officer behavior to be monitored even in the absence of citizen complaints. Administration can track crime statistics and reporting, establish reward systems to encourage ethical policing practices, work with prosecutors who are often able to recognize policing concerns when preparing cases for trial, and establish connections to the neighborhoods within each community that encourage a free flow of communication between the police and the citizens they oversee (Stone & Ward, 2000, p. 17).

Post-employment administrative controls include ongoing education of each officer. Officers are advised that they will be held accountable for all of their actions and trained on how to respond to policing situations appropriately. Additional tools utilized by police organizations include personnel manuals, as well as practice and procedure manuals. Pursuant to these manuals, the police chief, command personnel, supervisors, and fellow police officers are all expected to hold themselves and their fellow officers strictly accountable for any misconduct in the manner in which they carry out their duties. In addition, written guidelines for police personnel, including policies, procedures, and training, are adopted and implemented to assist police officers in recognizing behaviors that will be generally perceived as police misconduct.

A formal mechanism established by police departments of any size is the internal affairs unit. The internal affairs unit provides citizens with the opportunity to make complaints against police officers. The goal of the internal affairs unit is to impartially investigate every complaint regardless of the rank, position, or length of service the officer has on the department. In order to eliminate internal politics from the investigative process, the commanding officer of the internal affairs unit reports directly to the police chief. As in any formal investigation, an internal affairs investigation will require that all witnesses be interviewed, all relevant physical evidence be examined, and all information pertaining to the complaint be obtained. The process of handling an internal affairs complaint should be considered fair both by the police officer and the citizen who made the complaint. The internal affairs procedures established should serve four purposes:

1. The procedure permits citizens to seek redress of their legitimate grievance against officers when the citizens feel they have been subjected to improper treatment by an officer.

2. The procedure provides the chief of police with an opportunity to monitor employee compliance with departmental procedures and rules. When violations are established, appropriate discipline, training, and directions are applied as needed to correct the problem.

3. The procedure of investigating all citizens complaints, including anonymous complaints, helps perpetrate a positive image and ensure the integrity of the police department.

4. The procedure also helps protect the rights of departmental employees (McLaughlin, 1992, p. 96).
Internal affairs investigations are administrative investigations carried out for administrative purposes. Depending upon the findings, various forms of disciplines or sanctions could take place. The administrative investigations of police officers are guided by *Garrity v. New Jersey* (1967), as well as other court decisions. In *Garrity*, the U.S. Supreme Court allowed the states to establish standards for its employees. The Court held that the employee had to furnish pertinent information to his employer. Failure to provide the information requested could lead to the employee’s dismissal. It should be noted that information obtained by internal affairs couldn’t be used to prosecute an officer. An independent criminal investigation must be conducted to bring criminal charges if warranted against a police officer.

An internal investigation can have the following findings or conclusions:

- **Unfounded** – The incident of misconduct did not occur.
- **Not Involved** – The employee was not present or not involved at the time the incident of misconduct occurred.
- **Exonerated** – The incident occurred, but actions taken by the employee were lawful and proper.
- **Not Sustained** – There is insufficient evidence to prove or disapprove the allegations.
- **Sustained** – The allegation is supported by sufficient evidence (Trasher, 2001, p. 397).

Disciplinary policies have also been developed and even standardized so that those officers who fail to follow departmental polices and procedures through actions that constitute less-than-criminal behavior are on constant notice as to the repercussions of such behavior. Disciplinary policies generally include progressive stages beginning with an oral reprimand for a minor or first offense, followed by a written reprimand for a second or more serious offense. Written reprimands are generally placed in the officer’s personnel file. Other stages of discipline include suspension without pay and possibly, termination of employment. Police officers who commit a criminal offense are also subject to both appropriate departmental discipline and criminal prosecution.

External mechanisms are also used to hold police accountable for misconduct. One avenue of external control is outside investigative authorities. Most states have laws that give authority to state investigative agencies to investigate allegations of police misconduct by local police departments. This can include a citizen filing a complaint to the state investigative agency or the police chief requesting an investigation of a police officer or group of officers. In Kansas, the investigation of police misconduct of local police officers has been given to the Kansas Bureau of Investigation; in Georgia, it has been assigned to the Georgia Bureau of Investigation; and in New York, the New York State Police investigate local police.

Citizen complaints can also be given to the local district attorney who has the authority to investigate police misconduct and hold the local police accountable. At the state level, the attorney general can investigate police misconduct. Investigations by both district attorneys and attorneys general of states have occurred on numerous occasions. At the national level, the Federal Bureau of Investigation, U.S. Attorneys, and Attorney General of the United States can initiate investigations into allegations of misconduct by local police officers.

A second method of external control is judicial rule and oversight. The U.S. Supreme Court and higher level appellate court decisions at both the state and federal levels,
have established law enforcement procedures with which policing agencies must comply. These rules include commonly known rules like the exclusionary rule and the Miranda warning, as well as a host of other rules arising out of a myriad of cases. These decisions have established constitutionally acceptable police procedures and some of the consequences for failing to abide by these rules. Clearly, in any case in which the police violate the rules announced by the Supreme Court and upper level appellate courts, trial level courts will be required to refuse to allow the police misconduct to help the state’s case, oftentimes by dismissing the case or suppressing the evidence. Furthermore, refusing to abide by judicially announced rules could be construed as police misconduct, especially if an officer attempts to cover-up his or her misconduct through perjury and filing false reports.

A third method of external control, and possibly the strongest, is state and federal laws. Police officers like all citizens must observe the laws of their respective local and state governments, as well as the federal government. Like the officers prosecuted in the King beating, police officers have been prosecuted for theft, robbery, rape, assault, and even murder.

One law that empowers the federal government to review instances of alleged police misconduct is Title 42, United States Code, Section 1983 of the Civil Rights Act of 1871 (hereinafter “§ 1983”). § 1983 now provides the following:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 1983 is further enhanced by Title 28, United States Code, § 1343(3) (hereinafter “§ 1343(3)”), which allows the federal district courts to have jurisdiction over any civil action to . . .

> redress the deprivation, under color of any state law, statute ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the constitution of the United States or by any act of congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . . .

In combination, these two federal laws allow regular citizens to civilly sue local or state governments and their agents for alleged violations of the federal constitutional rights. The U.S. Supreme Court stated in 1972, “The very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative or judicial” (Mitchum v. Foster, 1972). To make a claim under § 1983, a plaintiff must be able to provide proof that . . .

(1) A person,
(2) Deprives or causes others to deprive another person of
(3) Some rights, privileges or immunities, secured by the Constitution and law of the United States,
(4) Under color of law or custom of any state.
A “person” may be an individual employee of a local or state government, the governmental entity itself, or a private entity that performs a public service. A deprivation must be more than negligence. It must be an actual action that was inflicted intentionally. Although many different types of rights might be violated by police officers, § 1983 actions require a showing that a constitutional right was violated, such as equal protection or due process. The requirement of “color of law” is that the action must have been established by a local or state law or an accepted custom or practice. So, when officers are found to have used excessive force to make an arrest, they may be held accountable under § 1983, but their supervisors shall only be liable if they knew that the officers had a custom of excessive force and chose to take no action. Similarly, the local government will be liable if it was aware of the custom or took some action to support the use of excessive force.

A local government may be held liable under § 1983 for failing to adequately train its officers if such lack of training showed deliberate indifference to the rights of those impacted (Canton v. Harris, 1989). A supervisor can be held liable for his or her subordinates’ violations of § 1983 if he or she either participated in the behavior or acquiesced in the behavior by failing to stop it (Rizzo v. Goode, 1976). § 1983 may be used to enjoin the behavior of the police officer(s), assess punitive damages against individuals whose actions arose out of intended behavior, and award attorney fees.

Sometimes, officers may be held accountable for their misconduct under both state and federal law. An example of this is the 1991 Rodney King incident. The Los Angeles District Attorney and the U.S. Department of Justice were both able to establish a prima facie case against the four police officers who participated in beating King. Initially, the four police officers were charged under California criminal law, alleging excessive force and battery, but the jury was unable to find any of the four guilty beyond a reasonable doubt. Subsequently, the four police officers were charged by the U.S. Government with violating the civil rights of Rodney King under § 1983. Two of the four Los Angeles police officers were eventually convicted in a federal court and sentenced to prison. Additionally, the City of Los Angeles was also sued civilly and was required to pay King $3.8 million in compensatory damages for his injuries (Herman, 1994).

A fourth method for externally controlling the behavior of police officers that can be traced to the 1930s is the use of civilian review boards. A civilian review board can be defined as “an independent tribunal of carefully selected outstanding citizens from the community at large” (Bopp & Schultz, 1972, p. 146). The implementation of civilian review boards or civilian oversight of police is historically popular with citizens. It seems that whenever the police are in turmoil with citizens, a civilian oversight board will be recommended. The civilian oversight board is viewed by those not associated with policing agencies as an effective method for holding the police accountable to the community.

In the 1960s, some critics of law enforcement perceived the police as partial enforcers of the law and practitioners of injustice who should be supervised by civilians. Many segments of American society had little faith in the ability or willingness of police administrators or internal grievance systems to hold police accountable for actions taken against those without wealth or power. Civilian review boards were strongly advocated by those with little confidence in the police to hold their own accountable and seen as a necessary step toward controlling police misconduct and gaining the trust and confidence of the community (Turner, 1968, p. 209).
The noted police scholar Samuel Walker, in his book, *Police Accountability*, provides a case for civilian oversight of the police (p. 12):

- That police misconduct is a serious problem and internal police complaint procedures fail to address this problem
- That citizen oversight will provide a more thorough and fair investigation of complaints than those conducted by the police themselves
- That citizen oversight agencies will sustain more complaints
- That oversight agencies will result in more discipline of guilty officers
- That more disciplinary actions will deter police misconduct more effectively than internal police procedures
- That complaint review by oversight agencies will be perceived as independent and will provide greater satisfaction for complaints and also improve public attitudes about the police
- That citizen oversight will help professionalize police departments and improve the quality of policing

Arguments in support of civilian oversight methods, such as those offered by Walker, have convinced many policing agencies to adopt this method of external control. In fact, civilian oversight of the police has grown substantially in the last 40 years. Only a few cities used this method for external review of police action in 1970, but by the year 2000, more than 100 cities had adopted some form of civilian oversight agency. This includes approximately 80% of America’s big cities and covers about one-third of the nation’s population (Walker, 2001, p. 6).

**Conclusion**

As agents of the government authorized to interfere in the freedoms of the citizens of the United States, the police must be held accountable for their actions. When the police are not held accountable for their behavior, they develop into a law unto themselves and undermine the constitutional basis of the United States. Citizens react to unprofessional police conduct with fear and disrespect, which further erodes the legal basis of this nation. While there are various methods used to hold the police accountable for their actions, including both internal and external means of accountability, it is incumbent upon all practitioners of criminal justice to police themselves so as to be the best representatives of the governments of this nation to its people.

**References**


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Professor Palmiotto is currently editor of *International Security*, a four-volume set encyclopedia to be published by Congressional Quarterly Press. He was also managing editor of the *World Police Encyclopedia*, a two-volume set of encyclopedias published by Routledge. Dr. Palmiotto teaches courses in criminal investigation, policing, criminal justice, and fraud investigations. He is a former Fulbright Scholar.

**Alison McKenney Brown**, MPA, JD, is a professor of criminal justice at Wichita State University, where she teaches law-related courses. In addition, she prosecutes for several small cities and occasionally serves as a municipal court judge. She has recently completed a book with Dr. Michael Palmiotto on preparing to take police officer exams.
When Good Employees Do Stupid Things

Dave Smith, President, Dave Smith & Associates
Betsy Brantner Smith, Sergeant, Patrol Supervisor, Naperville (Illinois) Police Department; Manager, Dave Smith & Associates

How much time does your department spend on internal affairs investigations?

Every agency has a few employees who are “bad news bears”—those officers who spend more time in the chief’s office than they do out on patrol. As we continually work to professionalize law enforcement, we have less and less tolerance for bad behavior, both on and off duty. Inappropriate sexual escapades; drunk driving; and other legal, moral, and policy violations that used to be “swept under the rug” are now front page news when committed by a cop.

What happens when an otherwise good employee commits an act of stupidity that lands him or her right in the middle of a serious investigation? Any and all allegations of misconduct should be handled swiftly and fairly, and bad behavior should never be tolerated or ignored, but as administrators, we often get focused on the violation and the investigation and forget some of the following important factors.

Due Process

Treat the accused employee with the same respect we’re required to treat an accused criminal. Doesn’t that sound strange? The reality, however, is that we often treat our employees worse than we treat the citizens. Remember “innocent until proven guilty”? How about “due process” and “everyone deserves the best defense”?

Don’t lose sight (or allow others to lose sight) of the fact that the person under the investigation is still “one of us” and deserving of proper, respectful treatment. This is especially true when dealing with the media.

Keep in Touch

If the employee is placed on administrative leave during the investigation, make sure someone (preferably several people) from the department keep in touch. The officer sent home on leave will probably be immeasurably grateful to hear humorous roll call stories, updates on notable criminal cases, and new policies and initiatives that may be happening in his or her absence.

Unless the officer is being investigated for a heinous criminal act, being cut off from the agency is unnecessary and inhumane and will just add to the sense of isolation he or she already feels. Above all, make sure the employee has access to the Employee Assistance Program and encourage him or her to take advantage of it.

Keep Others Informed

Obviously, confidentiality is a big requirement in any internal investigation; however, don’t use this as an excuse to “ignore the elephant in the room.”
Police departments are notorious rumor mills, and if the rank-and-file isn’t told something, they’ll probably just make it up.

Make sure someone in command, preferably the highest ranking command officer, addresses the roll calls and unit meetings as soon as humanly possible after the incident. Let your personnel know that there’s an ongoing investigation and that command is doing everything possible to make sure the accused employee is being treated fairly.

Let them ask questions, and above all, be honest and open. If you can’t answer a question, say so. Remind them that if they were subjects of an internal investigation, they would probably want the details kept under wraps, too. Acknowledge that this is a difficult time for everyone, and reassure them that the administration is working hard to handle the problem quickly but thoroughly.

Don’t forget the dispatchers, records clerks, and other civilian employees; they’re part of the agency, too, but they often get overlooked in the communication chain.

**Who Conducts the Investigation?**

Except for very large departments, most agencies do not have a full-time internal affairs unit, so often this type of investigation has to be conducted by the employee’s supervisor or other command officer. The selection of the person or persons conducting the investigation is essential not only to the success of the investigation but to the line personnel’s reaction to the eventual outcome.

Make sure the person doing the investigating doesn’t have a “checkered past” or a connection to the subject of the investigation (good or bad). Ensure that the investigator isn’t simply trying to further his or her own career by showing how tough he or she can be. In other words, make sure the person can be trusted to be objective. This may be the time to call in an outside agency, such as the state police in your area, to conduct the investigation. It is very important this is done in a credible and open fashion.

Having said that, law enforcement needs to be aware of a movement afoot to take all internal investigations away from law enforcement agencies. To quote one of the leaders of this movement, . . .

Complicating the issue is the tendency of police officers to become uncooperative when faced with an investigation, creating what has been called the “blue wall” to enforce a code of silence by intimidating any officer who shows any willingness to cooperate with investigators or point the finger at a fellow officer. Thus, many police reform advocates conclude that police organizations are insular, self-referential, and mistrustful of outsiders. Accordingly, these reformers argue, the power of law enforcement to investigate and self-police must be taken away and given to a review board.¹

Police agencies and administrators must walk a fine line that avoids damaging the agency or the public trust in these situations.
Don’t Ignore the Root Cause
Don’t neglect to investigate the cause of the bad behavior.

In *Emotional Survival for Law Enforcement*, Dr. Kevin Gilmartin, states that in dealing with the controversial behavior of an officer “the agency deals with the symptoms but doesn’t address the root causes of the problem.” In other words, if you have otherwise good employees engaged in stupid behavior, what is really going on?

Dr. Gilmartin goes on to say that often when controversial behavior erupts, the officer or a group of officers has “failed to survive emotionally.” A strong, effective administration will not only investigate the employee but will dig deeper to see why the undesirable behavior is occurring. Be open to the possibility that the investigation will lead to a systemic problem within the organization. The possibility that other behaviors and/or issues are lying just below the surface and may be discovered in the investigation and mitigated or resolved is a real possibility.

Don’t Forget the Family
When an officer is under investigation, he or she is not the only one who suffers. Police agencies are great at supporting families during a crisis in which the officer is a hero or a victim, but we generally neglect the family when the officer is the “offender.”

The family of this officer will undoubtedly suffer embarrassment, confusion, anger, or fear. They probably won’t know how to deal with their cop who may be angry or depressed; they may not understand the administrative procedures involved, and they’ll certainly be frightened about the potential financial loss.

Make sure a friendly face from the department offers the family some support, whether it’s counseling, resources, or just someone to say, “We’re here for you; we haven’t forgotten you.”

Make Sure Your Leadership Is Visible
Investigating and dealing with the fallout of a significant internal affairs situation can keep command officers running from meeting to meeting or holed up in their offices, writing memos and conducting interviews; however, this is not the time to disappear from the department’s radar screen.

Make it a point to let the rank-and-file see you; come to roll calls, unit meetings, and luncheons; stop in and say hi to the dispatchers; bring the sergeants a box of doughnuts. Organizational crisis is the true test of any leader’s effectiveness, and in crisis, leaders need to be visible. Sometimes, just your mere presence can make all the difference in how the agency will react, respond, and recover from a crisis.

The old principle of “management by wandering around” may never be more pertinent than when an agency is going through in internal investigation, especially when an informal and well-liked leader of the department is the focus of complaint. Letting the messenger give you positive and negative feedback is
essential during a time of internal stress. Managers have a chance to truly make a difference by simply taking time to be present and listen to the troops in how they feel and what they think.

Let Life Go On

Once its over, let it go, and move on (i.e., don’t hold a grudge).

Just like a criminal who has served his sentence, if the officer has “paid his or her dues to society” via suspension, demotion, or other disciplinary procedure and is being allowed to return to duty, he or she should be allowed to do so with dignity. After all, unlike said criminal, this is a person who risks his or her life to protect your community and is probably deeply bonded to many of the people that form your agency.

Poorly handled internal investigations and the aftermath that inevitably follows can negatively affect a police agency for years to come. If the officer, the department, and the leadership can find common ground that justice has been done and the lesson has been learned, the probability of a quick healing within an agency is very high.

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Endnotes

1 Merrick Bobb, Police Assessment Resource Center, see www.parc.info


Dave Smith, former lieutenant, is an internationally known speaker, writer, and law enforcement trainer. While a police officer, he developed the popular “Buck Savage” survival series videos and was the lead instructor for the original Calibre Press “Street Survival” seminar from 1983 to 1985, helping to develop the popular Tactical Edge book. He served as the director of education for the Enforcement Television Network, general manager of Calibre Press, and is now president of Dave Smith & Associates, a law enforcement training and consulting company. He is the lead instructor of the “Street Survival” seminar.

Betsy Branter Smith, sergeant, is a 27-year veteran of law enforcement, currently serving as a patrol supervisor in the Naperville, Illinois, Police Department. Betsy hosted various programs for the Law Enforcement Television Network and served as a content expert until joining Calibre Press in 2002. A graduate of the Northwestern University Center for Public Safety’s School of Staff and Command, Betsy is a police trainer, author, and instructor for the Calibre Press “Street Survival” seminar. Betsy is the lead instructor for “Street Survival for Women” and manages Dave Smith & Associates.
Consequences of Mandatory Arrest Policies: Comments, Questions, and Concerns

Lee E. Ross, PhD, Associate Professor of Criminal Justice, University of Central Florida

Introduction

Despite the decline in overall violence over the last 20 years, domestic violence remains a problem in American households. For the purposes of this article, domestic violence is operationally defined as violence between intimates living together or who have previously cohabitated.1 It includes homicides, rapes, robberies, and assaults committed by intimates, and it involves current or former spouses, boyfriends, or girlfriends including same sex relationships. Estimates range from 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend per year to three million women who are physically abused by their husband or boyfriend per year (USDOJ, 1998).

The prevalence and severity of domestic violence is further characterized in a recent Bureau of Justice Statistics (2007) report in which gender differences in victimization rates are noticeably different. For instance, females are more likely to be victimized by intimates than males. In 2005, of those offenders victimizing females, 18% were described as intimates and 34% as strangers. By contrast, of those offenders victimizing males, 3% were described as intimates and 54% as strangers. On a more positive note, the rate of nonfatal intimate violence against females declined by nearly half between 1993 and 2001.2 Gender victimization is important to consider, as it represents a bone of contention concerning the propensity for violence, as well as the precipitation of violence. Some studies have found that women precipitate violence at rates equal to men (Straus, 1999).

As the problem of domestic violence has not abated entirely (and perhaps never will), there is a need to continually monitor and evaluate the effectiveness of criminal justice responses to this most challenging and complex social problem. In an ideal world, it would entail a thorough examination of all components of the criminal justice processes and civil processes, as well. Realistically, it is not possible to simultaneously examine the role of victims, offenders, third parties, police, prosecutors, public defenders, judges, probation, parole, and community organizations that service domestic violence victims and offenders in one study. While an examination of each would prove useful, it is beyond the scope of this article. Rather, this article attempts to summarize the research on police behavioral responses to mandatory and pro-arrest policies while raising questions concerning the potential for violations of civil rights of those charged with domestic battery and related offenses.
Pro-Arrest and Mandatory Arrest Policies

Since the landmark Minneapolis Domestic Violence Experiment, various jurisdictions have responded to the problems of family violence by mandating that law enforcement officers arrest, or at least, begin with the presumption in favor of arrest, when answering misdemeanor domestic assault calls (Sherman & Cohn, 1986). Prior to the experiment, 10% of police departments in major metropolitan areas employed pro-arrest or presumptive arrest policies. Although various authors have commented on a number of methodological flaws in these studies (see Buzawa & Buzawa, 1996; Gelles, 1993), more than one-third of all police agencies had adopted such policies by 1986 (Sherman & Cohn, 1986). Mandatory arrest policies appear to have resulted from numerous efforts to alter traditional police responses to domestic violence. In the late 1970s, most states first began by allowing warrantless arrest in domestic violence incidents, but arrest rates did not increase. Then, pro-arrest policies were enacted to encourage police to arrest in most cases, but these too, did not increase arrest rates (Bourg & Stock, 1994). As a last resort, mandatory arrest policies were enacted to force the police to arrest. Mandatory and pro-arrest policy proponents argued that this would result in greater fairness due to uniform treatment and greater effectiveness as the result of specific and general deterrence (Martin, 1997, p. 140). Mandatory arrest policies were seen as “the solution to many of the problems found under systems in which arrest is discretionary” (Buel, 1988, p. 140).

Hirschel and Buzawa (2002) examined the number of domestic violence arrests as a percentage of all incidents reported to police in a number of jurisdictions. Before the pro-arrest laws and policies, domestic violence arrests represented 7% to 15% of all arrests; afterwards they rose to over 30% of all such incidents. The research suggests that the raw numbers for domestic violence arrests increased in many police departments after the implementation of mandatory or pro-arrest laws and policies (Wanless, 1996; Zorza & Woods, 1994).

Some scholars have questioned whether victims were ignored by previous research. For instance, the question originally explored by Sherman and Berk (1984)—“Does arrest deter batterers and future violence when compared to other actions?”—focused on the reaction of the batterer in response to police action and ignored the reaction of the victim. Barata and Senn (2003) further noted that this research question [was] consistent with laws focusing on punishing criminals rather than helping victims. Thus, the research question is consistent with the goals of deterrence. “This question, however, is unlikely to uncover the best police response from the victim’s point of view because it does not take the victim into consideration” (p. 13). When the arrests were complete and the money was spent, there was no clear evidence or indication as to whether mandatory arrest was the best deterrent of domestic violence. Moreover, nothing was learned about the effect mandatory arrest had on victims, despite the widespread use of the policy. In the views of Barata and Senn (2003), “had they [the victim] been sought and an effort made to incorporate their views, the follow-up studies might have looked very different. As research subjects, victims also remained in the background because once charges had or had not been laid, they were not of interest to the legal system except as potential witnesses” (p. 15).
Other criticisms relate the problematic aspects of the research design in that it “uses a test-tube attitude toward solving a social problem” (Lerman, 1992, p. 219). In addition, some claim that it was unethical to release the results (trumpeting the merits of arrest) before completion of the study. For example, Binder and Meeker (1988) found it more responsible to wait until final research was available before publicizing preliminary findings. Not surprisingly, the replication studies produced mixed results. Despite the limitations of the study question and design, however, the results were readily accepted as fact and embraced by the criminal justice system, the media, and many academics.

**Influential Research**

Mandatory arrest policies also represent the culmination of various research studies that helped to change the traditional police response of noninvolvement in “family matters.” Academic interest in family violence first emerged with concerns about child abuse and research related to the “Battered Child Syndrome” (Kemp, Silverman, Steele, Droege, & Silver, 1962). These researchers focused on the need for physicians and other primary caregivers to recognize and intervene in such cases. *Battered Child Syndrome* and subsequent publications focused less on criminal law implications and more on etiology of the problem and treatment for victim and offender (Buzawa & Buzawa, 2003, p. 91). Other studies concerning crisis intervention projects and the police response to domestic violence played prominent roles, as well (See Bard, 1967; Parnas, 1967). One study in particular, *Domestic Violence and the Police*, by Wilt and Bannon (1977) demonstrated that domestic violence was directly related to homicide; in 85% of incidents, the police had been called at least once before. Moreover, in 50% of the incidents, police had been called five or more times (Buzawa & Buzawa, 2003). Clearly, the confluence of these findings tended to suggest that police responses to domestic violence were less than desirable and ineffective in protecting potential victims from further violence.

Concurrently, policies to expand police powers to arrest were put into place largely because of activist pressure and lawsuits (Dobash & Dobash, 1992, p. 13). The National Organization of Women (NOW), for instance, joined forces with feminist groups and other politically powerful coalitions to create a perfect storm for change. Additionally, the landmark case of *Tracy Thurman v. City of Torrington, Connecticut* made real the prospects of civil liability that help to explain the gradual evolution of pro-arrest and mandatory arrest policies.

**State Policies**

Since 1984, at least eight states have adopted a pro-arrest policy, and 22 states have adopted a mandatory arrest policy. In addition, 33 states make provisions for mandatory arrest for violation of a restraining order, and at least 24 states have legislation pertaining to primary physical aggressors. To appreciate the growth and distribution of policies nationwide, Table 1 represents a state-by-state comparison of pro-arrest and mandatory arrest provisions that govern domestic violence incidents.
Table 1. A State-by-State Comparison of Pro-Arrest and Mandatory Arrest Provisions that Govern Domestic Violence Incidents*

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**TOTAL**: 8  22  33  24
It is important to note that these provisions are not mutually exclusive. For example, most states that have mandatory arrest policies also have mandatory arrest for violations of restraining orders in addition to primary aggressor clauses (e.g., the state of Wisconsin, among others).

**Violence Against Women's Act**

In 1994, the Violence Against Women's Act (VAWA) was passed, which included language that actually encouraged arrest. Offender advocate groups, such as Respecting Accuracy in Domestic Abuse Reporting (RADAR), claimed that VAWA represented a “complete departure from the traditional legal assumption of “innocent until proven guilty” (RADAR, 2007). In order to qualify for funds, states began to pass mandatory and pro-arrest laws. Mandatory arrest requires a police officer to detain a person based on a probable cause determination that an offense occurred and that the accused person committed the offense. This standard, normally reserved for felonies, began to be applied to misdemeanors. Closely related are pro-arrest policies (or presumptive arrests) that consider arrest the preferred, but not required, action. An officer who fails to make the arrest must then file a written incident report justifying why no arrest was made. Quite often, offenders leave the scene of the incident prior to police arrival, and an arrest cannot be made.

**Issues and Concerns**

Prior examinations have uncovered a unique constellation of issues and concerns related to the enforcement of pro-arrest and mandatory arrest policies. Chief among these concerns is whether mandatory arrest policies change police attitudes as well as behavior. Implementing rigid pro-arrest policies, according to Buzawa and Buzawa (2003), tries to force change in behavior without necessarily changing officer attitudes. Attitudinal change, although considered less important, may then occur at some later point (if at all) through training officers on the rationale of the policy and conversion due to their immersion into the procedure. Few researchers have attempted to measure officer attitudes toward pro-arrest policies, but anytime an officer’s discretion is reduced or circumvented by policy, there might be an expected degree of resistance, though not among all ranks of law enforcement. Most high-level police officials now willingly embrace pro-arrest policies. There has been greater resistance, however, from lower-level supervisors and line personnel. This is not surprising, as police administrators are often elected and/or promoted because of their tendency to be more progressive than line personnel or at least somewhat more responsive to political pressure (Buzawa & Buzawa, 1990, p. 570).

As noted by Hirschel and Buzawa (2002), researchers have failed to adequately address the potential negative consequences of statutes and policies that limit or remove police discretion and mandate arrest (Henning & Feder, 2004, p. 1468). Research has consistently shown that most police officers, regardless of individual or department characteristics, historically (and to a lesser extent, currently) expressed strong dislike for intervention in domestic violence cases (Buzawa & Buzawa, 1990; Radford, 1989; Stanko, 1990). Several reasons explain this widespread reluctance: organizational impediments to adequate performance, lack of sufficient/sophisticated training, cynicism as to efficacy, the belief that such calls are not “real” police work, and, finally, excessive worries over personal safety (Buzawa & Buzawa, 1990, p. 561).
Consequently, mandatory and pro-arrest policies have produced an unexpected increase in female arrests and the supposition that it reflects the actions of police that disregard new laws. Alternatively, this could also reflect the increased involvement of women in these offenses. Supporters of pro-arrest policies have voiced growing concerns, however, that police may be showing their disapproval of such legislation by thwarting its intent and instead arresting the female victim or both parties in domestic violence cases (Martin, 1997). This is typically referred to as a dual arrest.

Problems of Dual Arrests

The practice of dual arrests highlights moral and ethical dilemmas of police conduct as well as practical problems, which may nullify the purpose of the domestic violence protective legislation. As the literature suggests, one of the immediate consequences of pro-arrest and mandatory arrest policies is the increase in arrests of women whose arrest rates are, at times, equal to those of men. After the state of Washington enacted its mandatory arrest law in 1984, dual arrests increased to constitute one-third of all arrests made for domestic violence offenses (Victim Services Agency, 1988). The implication is that, among heterosexual couples, at least one-third more women were arrested than in the previous year. Some questioned whether the increase reflected some type of opposition to mandatory arrest policies from police who did not believe arrests were appropriate in domestic violence cases and from those who did not want their discretion taken away (Buzawa & Buzawa, 1996; Barata & Senn, 2003). More importantly, there are legitimate concerns as to whether the practice of dual arrest serves as an actual deterrent to women seeking assistance of the police (Martin, 1997, p. 145). In making a dual arrest, most legislation contains language related to probable cause. Moreover, “arrests for a breach of the criminal law requires that a police officer satisfy the required evidentiary criterion—probable cause—that at a particular time, a particular suspect committed a particular act (usually physical harm or threat of physical harm in domestic violence cases) for which he or she may be held responsible” (Hirschel & Buzawa, 2002, p. 1456). There is considerable confusion surrounding the notion of probable cause.

Whether initiating violence or defending against violence, most women are subject to an officer’s determination of “a physical aggressor,” one of several elements that help responding officers satisfy basic probable cause requirements. The question, however, is what exactly is probable cause, and how does a police officer responding to a call determine who is the primary physical aggressor? According to RADAR (2007), the Alabama Coalition Against Domestic Violence offers the following criteria: (1) likelihood of future injury, (2) whether either of the persons acted in self-defense, (3) prior complaints of domestic violence, (4) relative severity of injuries to each person, and (5) physical strength of the parties. Clearly, the language of these criteria raises real concerns, as these considerations are riddled with legal and practical flaws (RADAR, 2007). For instance, some question whether officers can determine the likelihood of future injuries. Others question whether officers can determine who acted in self-defense in the absence of objectionable witnesses to the event. In some violent relationships, different partners are violent—as well as victimized by violence—at various points in their lives (See Johnson, 1995; Straus, 1999).

In the instance of a dual arrest, however, aside from the first set of criteria, the remainder appear advantageous to women victims, as they are more likely to claim “self-defense,” have previously called police, receive more severe injuries, and
possess less physical strength than men. One would not, therefore, expect women to be perceived as the primary physical aggressor. In fact, Henning and Feder (2004) found that female arrestees were significantly less likely than males to have histories that warrant concern regarding potential violence. Moreover, “many of the women in [their] studies did not have a background consistent with premeditated or instrumentally aggressive behavior” (p. 77). As suspected, it appears that many of these women were arrested after defending themselves. Police, however, could justify their decision based on an inability to distinguish among (sometimes equally bruised and battered) aggressors.

The same criteria, however, is oftentimes used against men without any apparent justification for doing so. To illustrate, the following actual case provides a point of origin, a genesis of issues that contextualize some of the mixed reactions, and consequences of mandated police intervention to domestic violence incidents:

Susan Finkelstein and her boyfriend got into a heated argument while riding in the car. The argument escalated, so he pulled over to get out and walk home. She scratched him, and he pushed her. The police spotted the incident and began to arrest the man. Finkelstein told the officer that she was as much the aggressor as her boyfriend in the altercation. The officer responded that policy required arresting the larger of the two parties. (RADAR, 2007)

Ostensibly, a dual arrest policy presents a double-edged sword for police, as they are “damned if they do and somewhat damned if they do not [arrest the deserving party].” For many, probable cause is a vague and subjective assessment. In the absence of visible evidence (of injury), law enforcement personnel are often advised to error on the side of caution (and make an arrest). Clearly, policy changes will not always have the desired outcome and might do more harm than good. For these reasons, some suggest that policy related to domestic violence should not be implemented until there is a reasonable understanding of how it might affect victims and what victims think about the proposed policy (Barata & Senn, 2003, p. 17).

Primary Aggressors

Some argue that the VAWA tells police to decide who is a primary physical aggressor. In Virginia, for example, the dominant aggressor is determined by the height/weight of parties and the “need for protection.” In effect, these laws become part of gender profiling (RADAR, 2006a). Hirschel and Buzawa (2002) note that “same-sex relationships are particularly vulnerable to dual arrest because the police may have increased difficulty determining a primary aggressor due to similar physical strength” (p. 1450). Moreover, lesbian, gay, bi-sexual, and transgender victims of battering may be adversely affected to an unfair degree by dual arrests. Furthermore, when a domestic violence case involves a same-sex couple, it is possible that the police are more likely to make a dual arrest because they cannot use gender to help determine the roles of victim and aggressor and are therefore more likely to inappropriately decide that there is mutual battering (West, 1998, p. 170).

Consequently, the fear of an arrest could have a dampening effect, as women (and some men) might be less willing to turn to the criminal justice system for assistance during future episodes of domestic violence. From a legal perspective, “if dual arrest does deter a woman from using police resources for fear of her own
arrest, might police also be legitimately charged with violation of women's civil rights, similar to the claims made in the *Thurman* case?“ (Martin, 1997, p. 155).

Another criticism of mandatory arrest law is that it does not distinguish between one-time versus chronic or minor versus severe violence. In some jurisdictions, this has led to a huge increase in cases. To handle the increased volume, some jurisdictions have established fast-tract prosecutions and adjudication procedures and implemented the primary (physical) aggressor concept. Not only has this led to increased arrests for domestic violence by 33%, but far more women are also arrested due to the dual arrest provisions (Ciraco, 2001).

Overall, domestic violence intervention may also have reinforced cynicism and social class stereotyping. When confronting members of the lower economic classes and minorities, it is known that police often tend to act in a bureaucractic, impersonal fashion, being quite authoritarian and unlikely to show compassion toward the citizen (Black, 1980). According to Buzawa and Buzawa (1993), this may be due to global racists and classist assumptions about the lives of the citizenry. When officers view violence as a normal part of the lives of the lower class, they are less willing to legally intervene in a cycle of violence and more inclined to “manage” the dispute to avoid a public breach of the peace (Buzawa & Buzawa, 1990, p. 563).

**Restraining Orders**

A more critical observation suggests that state laws have been broadened to the point that now, almost any action can be considered to be “domestic violence.” As such, judges issue restraining orders without asking for any hard evidence. Each year, 2-3 million temporary restraining orders are issued (RADAR, 2006b). These orders could require the respondent to immediately vacate his or her house and restrict contact with his or her own children. As shown in Table 1, there are 33 states where a technical violation of a restraining order can result in an arrest. This reality is portrayed in the following case:

Henry Stewart, a lay minister in Weymouth, Massachusetts, opened the door of his ex-wife’s apartment building to help his 5-year-old son get inside. That was considered a technical violation of the restraining order. Stewart was forced to serve a 6-month jail sentence. (RADAR, 2006a)

Some violations are technical, as suggested in the above example, while others are more blatant and obvious. Some jurisdictions fail to distinguish between which party initiated contact. If, for instance, a respondent returns a call from an irate petitioner, he or she can be held in violation. If the respondent is serving probation, it could constitute a technical violation that could also result in revocation. Such cases represent a significant number of all domestic violence cases. One study found that 15% of all domestic violence cases that went to criminal court involved criminal contempt, typically arising from restraining order violations (Peterson, 2001).

This reality highlights another concern: those pro-arrest and mandatory arrest policies have a disparate impact on African Americans. According to the FBI, blacks represent 23% of all spouses and 35% of all boyfriends or girlfriends arrested for partner aggression (Durose, 2005). This translates into 300,000 African Americans arrested each year for allegations of domestic violence. The Congressional
Black Caucus notes that while African-American men represent 6% of the total population, they represent 44% of all males in state and federal prisons and jails (as cited in RADAR, 2006a). They suspect that part of the reason, as depicted in Table 1, is that many states have passed laws that mandate (22 states) or encourage (8 states) arrest for domestic abuse. The Ms. Foundation for Women (2003) asserts that the “criminalization of social problems has led to mass incarceration of men, especially young men of color, decimating marginalized communities” (p. 17). Even worse, they contend that women who have called for help and see mandatory arrest at work also become dissatisfied with the system and are far less likely to call the police to get help in the event of future abuse. If this is true, then it places these same women at further risk for victimization. In a similar vein, the National Institute of Justice suggests that mandatory arrest is not a good use of our limited resources. Moreover, “arrests for all suspects may unnecessarily take a community’s resources away from identifying and responding to the worst offenders and victims most at risk” (Maxwell, Garner, & Fagan, 2001, p. 13).

Summary and Conclusion

Given the uncertain nature of pro- and mandatory-arrest policies, Schmidt and Sherman (1993), in a major reversal of past positions, suggest that the role of arrest as a deterrent to domestic violence is deeply flawed. Their critique of the 1981 Minneapolis experiment and their tentative analysis of the “replication” studies prove to be informative as well as provocative. Adding fuel to the fire, it appears that the overall effect of pro-arrest and mandatory arrest policies is one that denigrates the traditional role of officer discretion and, to an extent, the primacy of victim preferences. Whereas the legislative intent may be to remove police discretion, and thereby to provide responsiveness to victim needs, a collateral consequence may be the concurrent removal of victim discretion” (Buzawa & Austin, 1993, p. 621). What is needed, therefore, is a more balanced approach to handling domestic disputes. This might entail more presumptive arrest policy with guided discretion. As police operations become more and more sophisticated with technological advances, we would expect that officers are better trained and more educated on the complexities of domestic violence. If officers neglected victims in previous decades, in which some viewed domestic violence as little more than social work, there is hope that the newer generations have greater incentive to protect victims. Yet, officers must be trusted to discharge their duties in a dignified and respectful manner, one that respects the judicious exercise of discretion in handling domestic batteries. In instances in which individual line officers prove unwilling or unable to protect victims and their families from further harm, accountability for enforcement should rest squarely on the shoulders of police management and administration.

Endnotes

1 Johnson (1995), for example, has constructed a typology of domestic violence based on the dimensions of physical aggression and coercive control. “Intimate terrorism is perpetrated by a partner who is both violent and generally controlling” (p. 284). Common couple violence is committed by partners either or both of whom may be violent, but neither of whom is controlling. Mutual violent control refers to violence committed by partners both of whom are violent and controlling.
According to the Bureau of Justice Statistics (2007), there has been a decline in homicide of intimates, especially male victims. Moreover, the number of men murdered by intimates dropped by 71% since 1976. The number of women killed by intimates was stable for two decades. After 1993, the number declined reaching the lowest recorded level in 2004. Between 1976 and 2004, the number of white females killed by intimates rose in the mid-1980s, then declined after 1993 reaching the lowest recorded level in 2002. The number increased slightly after 2002.

The well-known case of Tracy Thurman v. City of Torrington, Connecticut (1984) further influenced policy changes. Tracy Thurman of Torrington several times sought but did not obtain police protection against the violent attacks of her estranged husband. Eventually in June 1983, Tracy was critically assaulted in the presence of the police who stood by and did nothing (Hampton, Jenkins, Vandergriff-Avery, & Hampton, 1999, p. 186). She subsequently won a civil suit against the police for $1.9 million. As an outcome, a policy was made for mandatory arrests in cases of family violence.

The information on pro-arrest and mandatory arrest (columns 1 and 2) was obtained from a compilation by Miller (2005). The information on mandatory arrest for violation of a restraining order (column 3) and primary aggressor laws (column 4) comes from Hirschel and Buzawa (2002). A similar format is adopted by RADAR (2007) to suggest that many states violate the civil rights of defendants in domestic violence incidents.

References


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The Legality of Converting Information into Actionable Intelligence by Law Enforcement

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Introduction

Since 1982 when *Time* magazine dedicated its annual “Man of the Year Issue” to the development of the personal computer, millions of Americans have embraced its use in their daily routine. Today, computers are used to perform a variety of activities: students research homework assignments; business persons make travel arrangements; friends and family members purchase gifts and products; bills are paid; bank transfers are made; messages are texted, faxed, or e-mailed; and pictures, news clips, or web cams are viewed. Together with this explosion in computer usage by private individuals is the burgeoning “accumulation of vast amounts of personal information [stored] in computerized data banks or other massive government files.” The Supreme Court anticipated and acknowledged this fact and forewarned the other branches of government as to the potential threat to privacy implicit in the collection and use of personal information by the government for public purposes. The Court asserted that the right to collect or use such data should be “accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures.” The technological developments that make the personal computer an essential component of modern life should afford some degree of protection to the privacy of individuals. The disclosure and use of such information should come with some means of judicial process.

What information about oneself is collected; how that information is used, stored, and disseminated; and the extent to which statutes, public policy, and judicial decisions regulate the collection or disclosure of this information is the thrust of this research. Initially, this article describes some recent technological innovations (i.e., smart cards, black boxes, and keyloggers) that capture or disseminate stored computer-generated private information. Next, the article focuses on the data-mining giants in information technology and how these data broker service providers (data marts) enhance governmental programs such as MATRIX, Secure Flight, US-VISIT, Carnivore, and Magic Lantern, by providing the tools, raw data, and scientific know-how to reveal vast amounts of personal information about U.S. citizens. Finally, the article concludes with a discussion of the legislative enactments, judicial decisions, and executive strategies that ultimately define and impact the collection, disclosure, storage, and use of private information in the United States today by the executive branch.

Discussion

Much of the information transitioning through a computer or a computer processing provider is stored. It is stored in the computer itself; in the computer’s network; and in many instances, in a government or private databank often without the knowledge or express consent of the individual involved. Because of the massive
amount of information stored on computers and the popularity in usage by individuals, computers are of significant interest to the government. Computers contain information concerning criminal investigations (e.g., emergency responses, methamphetamine laboratory locations, gunshot cases, insurance fraud), general public safety matters (e.g., epidemics, bio-terrorism threats), research (e.g., crime trends, or correlations between drug trafficking and abuse and government programs), funding (e.g., criminal justice prevention programs), education (e.g., civil rights law enforcement), monitoring (e.g., political dissidents, satellite surveillance programs for sexual offenders), and employment (e.g., security screening and background checks). Law enforcement personnel recognize the potential treasure trove of information created, collected, stored, and available through the rapidly growing network of computing and communication technologies and routinely and readily dip into these online or stored data dossiers to assist in their work.

Historically, the government has proactively embraced the use of computers and computer technology to assist in accomplishing its executive branch functions. In fact, the Department of Defense through its Advanced Research Projects Agency (ARPA) developed the Internet in 1969. Specifically, the Internet was created to facilitate normal communications between researchers like those at UCLA or Stanford; however, because the ARPANET technology, Interface Message Processors (IMPs), relied so heavily on a system known as packet-switching with a high level of redundancy, it was believed that ARPANET could survive a nuclear attack. Thus, the government believed that the creation of Internet computer technology could address national security needs allowing the government computers to exchange information during wartime without interruption. After ARPANET was developed, other computer networks, like Hawaii’s ALOHANET and the satellite linked network SATNET, were created; however, these systems could not communicate with one another because they used different protocols, or standards for transmitting data. In 1974, Vint Cerf, the “father of the Internet,” and Bob Kahn, designed a Transmission Control Protocol (TCP), which became the accepted standard allowing the various networks to communicate and connect with each other and thereby establishing the true “Internet.”

In addition to the Internet, other technological developments involving computers have been developed that assist the executive branch in tackling or resolving national security and criminal investigative issues and needs. Some of the most notable ones include smart cards, black boxes, keyloggers, and data mining. In the following pages, each technological development is briefly explained and described as to its frequency of use and its capability to surveil. In addition, legislative controls and judicial decisions restricting or limiting the technology’s use for law enforcement purposes are explained.

Identity Cards: National Identifiers

In the United States, the creation of a national identifier system has been debated between law enforcement security advocates and civil libertarians for many years. Advocates suggest that a national identification system is a means “to enhance national security, unmask potential terrorists, and guard against illegal immigrants.” Critics cite that a national identifier will seriously undermine privacy rights. Historically, individual autonomy supporters have won.
The primary privacy concern is that access to the information will be sought and gained by nonauthorized individuals. In addition, there is the fear that the technology will be used in inappropriate ways to monitor citizens’ movements and to harass and discriminate against minorities or certain “suspect” categories of people. In short, a national ID system would create a single, unified mega database (one-stop shopping) on all citizens. This allows the viewer access to all information (relevant, personal, criminal, biographical, intimate, etc.) about a person. The privacy implications are profound. The simple fact that data on a person is stored in unrelated databases is, in and of itself, an important protection to privacy. A law-abiding citizen can compartmentalize his or her life. One can keep his or her personal life separate from his or her business affairs. Furthermore, the individual can keep both personal and professional affairs separate from financial matters. The consolidation of all information databases into one receptacle creates the potential for major problems if errors occur. An error on one’s financial records would affect far more than one’s credit rating. With the existence of a national ID system, an individual’s entire world would be disrupted until the inaccuracy was corrected.

One’s Social Security Number (SSN) is not a national identifier. Although it is a unique nine-digit number assigned to each United States citizen, the Privacy Act of 1974 provides strict legal constraints on the government’s ability to acquire, maintain, or disclose one’s SSN. For the most part, its use by the government is limited to the Social Security program, as a taxpayer identification code by the Internal Revenue Service (IRS), and as an identifier for drivers’ licenses or motor vehicle registrations. In fact, extension of the SSN to the status of a universal identifier card has been rejected continuously since its inception in 1936. Both the Reagan Administration and the Clinton Administration have supported opposition to a national identifier despite its extensive use as a unique identifier. The Bush administration, however, supports the national identifier concept.

The lack of an official national ID system did not stop Congress from passing the Real ID Act of 2005, which established federal requirements for state drivers’ licenses and identification cards for those who live or work within the United States. While approved in May 2005, the Act does not take effect until May 2008. Critics suggest that the Real ID Act would convert one’s driver’s license into a de facto national ID. As it appears now, the Act requires that the new IDs must contain all of the information on current state-issued licenses and identification cards, including a digital photo for the purpose of inputting the information into multi-state databases. To obtain the new IDs, several types of documentation must be produced proving one’s name, date of birth, SSN, principal residence, and citizenship status in the United States. Only street addresses can be used; the use of post office boxes as one’s address is prohibited. Thus, the law precludes homeless persons and persons who for safety reasons currently withhold their addresses (e.g., domestic violence victims, police, judges, etc.). Furthermore, the ID cards must include a “common machine-readable technology” that meets the requirements set forth by the Department of Homeland Security (DHS) so that the information contained therein can be linked with all other states’ motor vehicle departments and can be easily incorporated in other various federal databases. Additionally, the bill allows DHS to add extra requirements in the future, including perhaps biometric identifiers. Critics fear that radio frequency identification (RFID) tags or enhanced bar codes will be included in the new IDs. These tags could give the government the means to track the cardholder’s movements.
Opting out of the Real ID Act is not really an option. The state identification card will be required to obtain a valid driver’s license, gain access to federal government services, collect social security or other health benefits, visit federal buildings, or utilize banking or airline services. Although the state will confirm the data and issue the cards, there is no guarantee that the information included on the cards will not be sold to commercial entities. It is common knowledge that some states have allowed their license data to be disseminated or sold to third parties. Furthermore, the Act does not include safeguard provisions such as encryption or methods to prevent the data from being remotely scanned.

If RFID technology were integrated into the identity cards created under the Real ID Act of 2005, the extent of surveillance capabilities becomes mind-boggling. Already, the State Department has embedded all United States passports issued after October 2006 with RFID chips, and retail giants like Wal-Mart currently endorse and utilize this technology as does Delta Airlines in tracking passenger luggage. The technology is used in the EZ-Pass system, the medical arena, and for gas payments and security engineering. A national identifier combined with RFID technology would provide an enhanced means of tracking products and profiling consumers by conveying information about key areas where consumers live and work into data processing systems. With RFID technology developments yielding systems with larger memory capacities, wider reading ranges, and faster processing, this raises huge privacy implication issues. EPIC already asserts that when RFID technology is used to track people, it breaches basic human dignity boundaries and treats people like livestock or shipment pallets. If one combines the information currently available through RFID technology with information mandated through the Real ID Act’s provisions, there would be little, if any “private information.”

As the merging of RFID technology into the Real ID Act has not yet been sanctioned and because the national identifier imposed under the Act is not yet operational, one can only speculate as to what, if any, governmental constraint or judicial process will be required before surveillance may begin. To date, however, there is little legislation controlling the usage, placement, or monitoring made possible by RFID technology. As of November 2005, only 12 states had proposed legislation dealing with some aspect of the emerging uses of RFID technology. For example, California has proposed legislation to restrict state governments’ use of RFID tags; South Dakota wants to prohibit the implanting of the device in people; Rhode Island is seeking restraint from the government’s use of RFID tags to track movement or identity of a person (i.e., employee, student, or client) as a condition of obtaining a benefit or service; and Maryland and Missouri want the RFID tags to at least be labeled so an individual is aware of their existence.

Although no federal RFID specific legislation exists, the FCC already regulates the use of electromagnetic spectrum in RFID applications. In other words, the FCC places limits on the power and spectrum allocation of RFID readers that in turn will limit the read range of a particular tag. The FCC’s limitation power or control, however, has already been reduced for DHS so that it could improve the effectiveness of scanning shipping containers when they reach U.S. ports.
Smart Cards

Smart cards are another type of identifier. Smart cards are plastic cards typically the size of a standard credit card that are embedded with a micro-module containing a single silicon-integrated circuit chip with a memory and micro-processor. A familiar example is a magnetic strip card. Other examples include optical cards, memory cards, and micro-processor cards. Memory and microprocessor cards are truly the smart cards in that they contain an integrated circuit chip that stores data, performs local processing, and completes complex calculations. In other words, smart cards do more than act as static data repositories. Smart cards have the capability to exchange data with other systems and process information. These integrated circuit cards use radio frequency chips to operate; whereas, optical cards require a laser to read the card. The benefits of smart cards are their size, their cost, and their protection against fraud. Another benefit is that smart cards can be tailored to meet the varying needs of the provider.

The federal government promotes the implementation of smart cards as a technology to enhance security over access to buildings, facilities, computer systems, and networks and as a means of conducting financial and non-financial transactions more accurately and efficiently. Since 1998, the federal government has launched several large-scale, agency-wide projects involving the technology. The Department of Veterans Affairs (VA), the Department of Defense, and DHS are three of the largest agencies currently undertaking projects to implement smart cards; moreover as of June 2004, a total of 15 federal agencies reported 34 ongoing smart card projects. DHS Presidential Directive 12 (DHS) should further encourage and facilitate smart card usage by the federal government. This directive instructs the Departments of Commerce, State, Defense, Justice, and Homeland Security to work with the Office of Management and Budget (OMB) and the Office of Science and Technology Policy to establish policies and institute a new common identification standard for federal employees and contractors to protect against threats, including terrorism and identity theft.

Security was the motivation behind the adoption of smart card technology by the federal government; but even smart card systems are not foolproof or totally secure. Smart card systems are, however, more unassailable than traditional ID cards or password-protected systems. Maintaining system security is still a significant concern, but the more overwhelming concern with smart card technology involves protecting the privacy of personal information contained on the card itself or capable of being processed via the card.

The smart card system designed to control access to facilities and computing systems could be used to track the movements and day-to-day activities of the card holder, potentially compromising the individual’s privacy. Furthermore, the system could be used to aggregate sensitive information about an individual for purposes other than security, which again could compromise an individual’s privacy. Smart cards enable intrusive profiling of individuals by integrating different databases and biometric identifiers within the card. Smart cards have the potential to become the equivalent of a human bar code. Scan a can of soup, and one discovers the price, the date of purchase, location produced, manufacturer, and in which lot it was shipped. A smart card will provide the same type of data on individuals in even greater detail.

Legal restraints on the government’s ability to disclose personally identifiable records or information maintained by federal agencies is provided by the Privacy
Act of 1974 and the E-Government Act of 2002. The Privacy Act of 1974 restricts the federal government from disclosing personally identifiable records maintained by federal agencies but permits individuals access to their own records and the right to seek amendment of government records that are inaccurate, irrelevant, untimely, or incomplete. The E-Government Act of 2002 requires federal agencies to conduct privacy impact assessments before developing or procuring information technology that collects, maintains, or disseminates personally identifiable information. Thus, before the federal agencies implement their comprehensive smart card systems, each agency needs to assess and plan for appropriate privacy measures that ensure that privacy impact assessments are conducted when required.

Black Boxes

Installing black boxes on Internet Service Provider (ISP) networks to monitor user traffic is a powerful technique used to combat online crimes and illicit computer hackers. Since the black box chews all data on a network and swallows only the information authorized by a court order, the FBI originally dubbed the use of a black box as “Carnivore.” Now the FBI refers to them by the less beastly moniker, DCS 1000, drawn from its performance as a digital collection system.

Basically, a black box is a combination of hardware and software connected directly to an ISP’s network. Once joined, the black box functions like a standard packet sniffer (e.g., a software program capable of seeing or logging traffic passing over a network or part of a network). The black box has the potential to keep tabs on all of the communications (e.g., e-mail, instant-messaging systems, visits to websites and Internet relay chat sessions) flowing out of and into any system on the network. Black boxes can monitor entire data streams (including scanning millions of e-mails per second), searching for key words or phrases. Once the word or phrase is detected, the black box relays, via high-speed connections, the data to the government for further review.

The black box can be configured to store all traffic to or from a particular Internet IP address in order to track a particular user. The technology is capable of capturing all information including content information (e.g., wiretap and electronic surveillance) and non-content information (e.g., pen register). In wiretap mode, the tool collects all e-mail messages to and from a specific user’s account and all the network traffic to and from a specific user or IP address. In pen register mode, the tool captures all the e-mail headers (including e-mail addresses) going to and from an e-mail account but not the actual contents or subject line. Additionally, black boxes capture all the servers that a user accesses (but not the content of communication), everyone who accesses a specific web page or file, and all web pages or files that a user accesses.

Claims by privacy interest groups alleging that the black boxes (carnivores) were devouring privacy rights by invading online privacy caused the Justice Department to commission the Illinois Institute of Technology (IIT) Chicago Kent College of Law to review the Carnivore system and make recommendations. IIT concluded that Carnivore . . .

- When used in accordance with a wiretap order, provided only information permissible pursuant to the court order.
- When used pursuant to a pen register order, provided information possibly exceeding court permitted collection.
• Reduced, but did not eliminate, the potential to acquire unauthorized private information.
• Did not provide audit function protections commensurate with the level of risks so that the lawfully collected information could be lost or corrupted by physical attacks, software bugs, or power failures.
• Did not introduce a security or operational risk to the ISP network through which it was installed.\(^{48}\)

Black boxes are useful tools in combating computer hackers; however, in light of the significant potential for abuse, the FBI officially abandoned the project after about 25 uses between 1998 and 2000.\(^{49}\) The de facto concept of a digital collection system still thrives under the guise of “unspecified commercial software.” The FBI continues to monitor computer traffic during investigations.\(^{50}\)

### Keyloggers

Perhaps an even more insidious device than the “black box” is the keylogger. A keylogger or a keystroke logger is a small device that monitors each keystroke a user types on his or her keyboard. The FBI refers to the device as a “Magic Lantern.”\(^{51}\) The keylogger program records each keystroke the user types and uploads the information over the Internet periodically to whoever installed the program. A keylogger program can be intentionally installed by someone who wants to monitor activity on a particular computer (e.g., parents who want to monitor their children’s activities on the Internet). It can also be downloaded unwittingly as virus spyware through a remote Trojan horse.\(^{52}\)

Privacy advocates are primarily concerned by the ease of installation of the device and its capability to circumvent encryption by reading the keystroke logs.\(^{53}\) The device may be installed by a person opening an e-mail attachment or by landing in the recipient user’s e-mail box.\(^{54}\) The second major concern relates to its ability to capture content by recording the secret keys that a person uses to encrypt messages or computer files without sufficient judicial oversight. The equipment, which captures potentially content-based information, may be installed under the authority of a traditional search warrant as opposed to a wiretap order because the keylogger device does not capture or intercept the communication as it is being transmitted over a telephone or cable line while the modem is in operation.\(^{55}\)

Although legally the device requires at least a warrant for surreptitious use, any overzealous detective or disgruntled person with hacking capability could use this device to conduct surveillance. Since the program is practically impossible to detect, it is difficult to protect unauthorized information from being disclosed and potentially leaked or used in illicit manners; however, anti-keylogger programs have been developed that claim to prohibit operation of any keylogger.\(^{56}\) On the positive side, keyloggers are user specific as opposed to black boxes, which gather regional communication activities. Furthermore, keyloggers reveal a target’s key and key-related information so that access to indecipherable documents can be revealed. Timely information of this sort is crucial to law enforcement in investigating and preventing serious terrorist plots and criminal acts. Hence, this surveillance tool was created and has been touted as necessary to combat terrorism. Magic Lantern would reveal a target’s key and key-related information so that the access to indecipherable documents could be revealed. Yet, the first case
Privacy Concerns

The technology described above (Internet, smart cards, black boxes, and keyloggers) has been applied in a variety of circumstances by the government to ensure security. The usefulness of the technology cannot be denied. These devices allow law enforcement to collect otherwise unavailable information passively with little or no physical intrusion and, for the most part, without the suspect’s knowledge that the equipment has been used. Because of the ease and secrecy with which private information now can be acquired, privacy advocates are concerned that without adequate control, this technology could allow the government to search and surveil inviolate of the right to privacy in areas in which privacy may or should be expected and protected like within a residence.

The issue regarding the use of new technology to acquire information previously thought to be private was somewhat resolved by the 2001 Supreme Court decision in *Kyllo v. United States*. In *Kyllo*, the litigants debated whether the information as to heat emissions from a dwelling retrieved by using a thermal imager was a search. If the retrieval of the emissions was a search, was the emission retrieved through the wall or was it abandoned property, discovered in view from the exterior of the home’s walls. The Court, however, sidestepped that abandonment, plain view debate and focused its decision instead on how the thermal imager was used under the *Katz* two-pronged test: (1) Did the person have an actual subjective expectation of privacy? and (2) Was that expectation one that society was prepared to recognize as reasonable? The Court concluded that Kyllo did have a subjective expectation of privacy in the heat emissions within his home since the technology had the potential of revealing more than the contraband hydroponics marijuana growing operation. Protected information, such as when the lady of the house was bathing, could also be revealed. Furthermore, the subjective privacy expectation was one that society would be willing to recognize. This latter conclusion was reached on the basis that thermal imagers are not devices commonly available to the general public. Hence, the interiors of houses are off limits to any technology, no matter how unobtrusive the technology may be, provided that the technology is not in general use. This decision offers minimal or temporary protection to privacy advocates, as new technology is a continuing phenomenon and more and more of the technology is being made available to the general public. Keyloggers are readily available to the general public. The government must get a warrant prior to use; however, because of their ready availability and their inconspicuous presence, how will one know whether compliance with the 4th Amendment has occurred?

Data Mining

Data mining has been defined as sorting through data to identify patterns and establish relationships. It is the science of extracting implicit, previously unknown, and potentially useful information from a large database and then analyzing the information for useful patterns. Data is contained in either government databases or private databases. The amount of information (data) that the government holds about people’s transactions and activities is enormous. Federal agencies and departments maintain almost 2,000 databases, including records pertaining to
immigration; housing; finance; bankruptcy; Social Security; military personnel; births; education; criminal proceedings; marriages; voter registration; income; professional associations like lawyers, accountants, doctors, insurance agents, police, teachers, etc. Private companies also hold tremendous amounts of personal data on individuals, some gathered from government records and some collected from consumer data, medical information, and financial information.

The government collects and uses the wealth of information in the databases for law enforcement and anti-terrorism purposes. In order to do so, the data must be first mined and then analyzed. How this information is collected or mined, analyzed, and later disclosed is a matter of great import and a subject of some legislative and judicial action. Data mining is not a new concept. In fact, more than three decades ago, the Supreme Court commented about this concern when it stated that it was “not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files,” and the Court suggested that there may be a constitutional duty to avoid unwarranted disclosure to prevent potential abuse.

The mining of information is a simple process. The government either takes what it already has stored within its own databases or buys the information from some of the giants in data aggregation. Occasionally, particularly after catastrophic events, some of the giants just share their enormous databanks with the government. In addition to the actual data stored within their databases, private industry has developed some of the best, fastest, and most advanced software programs to cull, sort, and package data on individuals from a multitude of incompatible sources. The company, i2, is one of the leading technology companies available to, as they so eloquently state, “convert massive amounts of information into actionable intelligence,” or assist in creating the one-stop shopping super data warehouse.

This aggregation and organization of already collected information is known as “cognition enhancement” and includes within the term itself, the additional concept of the “knowing exposure doctrine.” The two concepts, “cognition enhancement” and the “knowing exposure doctrine” are also of great import to privacy advocates and the judiciary. In fact, both have been debated by scholars, the legislature, and justices. The gist of the debates focuses on the fact that the data, although already existing in quantity and quality, could not be analyzed without the assistance of computers and special software. Because the information is already available (knowingly exposed and cognitively enhanced), may law enforcement seize and use it? Regardless of whether the information related to a criminal activity or an ongoing investigation when it was exposed, the information (even cognitively enhanced information) may be utilized by law enforcement. If the information revealed apparent evidence of a criminal event, then under such circumstances, the law enforcement officials need not “impotently stand aside and refrain from seizing such contraband material.”

Individuals have no expectation of privacy as to incriminating information discovered by police who are looking in a place where they have a legal right to observe.

Notwithstanding the edicts of the Supreme Court in *Harris v. United States*, the cognition enhancement process involved in data mining may be more intrusive than most of the passive sensory-enhancing technology of old, like mapping cameras, K-9 sniffs, and flashlights. Data mining may be more akin to the use of thermal imagers to search inside of homes. The Supreme Court found that the use of a thermal imager to
measure the heat emanating from a home was a search, not only because it allowed access to a constitutionally protected place, the home, but also because the device or the technology was not the type of technology within the general public’s use. This raises the question as to whether the cognition enhancement process falls into the category of technology not within the general public’s use. The same rationale and conclusion applied to thermal imaging could be applied to data mining searches. The data itself would not be visible in its totality to any select group; rather, would be visible only in small bits and pieces for examination purposes. Plus, it takes the application of sophisticated software to cull, sort, analyze, and add meaning to the information. Without the technology, law enforcement would not be able to observe within the confines of the data warehouse. The accumulation of all of the data in a centralized bank, along with the data aggregation software, may be the de facto equivalent of a physical intrusion into a home (private place) without a warrant via the use of sophisticated technology, not generally available to the public. Just as the home owner did not knowingly expose the heat emanating from his home, the individual whose data is mined does not necessarily knowingly expose his or her private laundry to the world. Hence, a warrant may be required.

The amount of laundry (i.e., personal information) nonconsensually exposed to the world is staggering. Information has been accumulated to the extreme such that an extensive dossier exists on almost every adult. In addition to the government, some of the giant data aggregation brokers are ChoicePoint®, Lexis Nexis, Experian, Trans Union, Equifax, Acxiom, and Catalina Marketing. A scan of each of their websites reveals some startling facts.

**ChoicePoint®**

ChoicePoint® claims to be in the front lines of the information revolution by providing access to billions of public records on individuals and businesses that can be used for tasks like background checks, verifications, asset location, and missing witness searches, as well as pre-employment screening of job candidates. ChoicePoint® is infamous for its “role” in providing information used to disqualify voters in Florida from the 2000 Presidential election. The claims were that the voter background information was grossly inaccurate and potentially prevented thousands of predominantly African-American Florida residents from voting. ChoicePoint® defends itself by stating that ChoicePoint® is not responsible because it acquired the company, Database Technologies (DBT), after DBT conducted the controversial review of Florida voter rolls. The question now becomes what happened to the data (potentially inaccurate and racially motivated) after ChoicePoint® acquired DBT?

**Lexis Nexis**

Lexis Nexis is truly one of the most noted data brokers in the world. The company maintains two data centers in the United States: one in Miamisburg, Ohio, and a second remote data center and development facility in Springfield, Ohio. Their online service is available to 2.6 million subscribers. When a customer submits a search request, their systems search 5 billion documents of internal source information and massive amounts of externally hosted data (e.g., Dun & Bradstreet Business Reports, Delaware Secretary of State, Real-Time Quote, and Historical Quote) and return an answer set, usually within 6 to 10 seconds. Lexis Nexis processors are networked and, cumulatively, they have access to more than...
198 terabytes (or trillion characters) of data-storage capacity. Lexis Nexis reports that it conducts more than 800 million customer searches annually.75

**Accurint**

Accurint, now a subsidy of Lexis Nexis, was the backbone of the Bush administration’s now defunct, terrorism identification program known as MATRIX.74 Accurint claims to be the most widely accepted locate-and-research tool available to government, law enforcement, and commercial customers. Accurint focuses on search tasks to locate neighbors, associates, and possible relatives, as well as vehicles and addresses. It also claims to link more than 132 million individuals to businesses and includes information such as business addresses, phone numbers, and possible dates of employment. Furthermore, it claims that its searches may be conducted when only fragmented information is available.75

**Credit Reporting Agencies: Experian, Trans Union, and Equifax**

Experian’s website provides a series of astonishing statistics that illustrate the magnitude and scope of its database. Some of their most revealing statistics are as follows:

- Experian’s North America databases contain more than 65 terabytes (65 trillion bytes) of data.
- Experian maintains credit information on approximately 215 million U.S. consumers and more than 15 million U.S. businesses.
- Experian maintains demographic information on approximately 215 million consumers in 110 million living units across the United States.
- Experian’s North America’s annual sales are more than $1.3 billion.
- Experian provides address information for more than 20 billion promotional mail pieces to more than 100 million households every year.76

Trans Union, another data broker mega power, boasts over 30 years of business and financial intelligence covering all 50 states, 30 countries, and 5 continents. They claim to have information on virtually every American consumer (200 million consumers total) and process billions of updates every month.77

Equifax is a credit reporting company that announced that it ranked third overall in 2005 as an innovative provider of information technology. Equifax boasts that it “is committed to delivering rich information, powerful analytics and enabling technologies that help our clients acquire new customers, better manage risk, and grow their businesses.” Equifax’s mantra is “Information that Empowers.”78

**Acxiom**

Acxiom focuses primarily on consumer data and to a lesser, but still extraordinary, extent, business data (especially small, recently established businesses). The company tracks more than 100 million households and 170 million individuals according to geography, demographics, purchase behavior, lifestyle information, and auto and home information.79
Catalina Marketing

Catalina Marketing also collects shopping data and per their website claims to be a “global leader in providing behavior-based communications on a mass scale, targeted to individuals as individuals.” Additionally, the company claims to log over 250 million transactions per week across more than 21,000 supermarkets worldwide. Specifically, they track the purchase history of over 100 million household IDs in the United States and deliver more than 4.5 billion customized promotional messages each year. In their pharmaceutical area, Patient Links T, the company delivers one out of every two prescriptions to almost 100 million patients each year.⁸⁰

Some legislation has been developed to regulate the access to personal information by the government in light of the data mining landscape and the advent of the Internet. The Electronic Communications Privacy Act of 1986, the USA Patriot Act, and the Children’s Online Privacy Protection Act of 1998 (COPPA)⁸¹ are the most notable examples. Neither the legislation nor the judicial requirements resolve the conflict. Recently, a Connecticut library, through the ACLU, filed a lawsuit against the FBI to stop the FBI from demanding records related to library patrons, reading materials, and patrons’ use of the Internet as part of an intelligence investigation pursuant to a national security letter. The library asserts that it should not be forced to disclose such records without a showing of compelling need and approval by a judge.⁸²

In United States v. Morton Salt Company,⁸³ the Court set forth the requirements for judicial enforcement of an administrative subpoena.⁸⁴ As a constitutional matter, the 4th Amendment only demands that administrative subpoenas be reasonable. In the Morton Salt case, the Court elaborated on what constitutes “reasonable.” Specifically, “(1) the inquiry must be within the authority of the agency, (2) the demand for production must not be too indefinite, and (3) the information sought must be reasonably relevant to the authorized inquiry.”⁸⁵ In United States v. Westinghouse Electric Corporation,⁸⁶ seven factors were established to weigh the competing interests in order to determine whether the privacy invasion is justified: “the type of record requested; the information it does or might contain; the potential for harm in any subsequent nonconsensual disclosure; the injury from disclosure to the relationship in which the record was generated; the adequacy of safeguards to prevent unauthorized disclosure; the degree of need for access; and whether there is an express statutory mandate, articulated public policy, or other recognizable public interest mitigating toward access.”⁸⁷

Much of the data mined today is collected through the giant data aggregation brokers discussed above. These private data collection entities are not accountable to the public and thus, individuals may be both unaware that the data was collected, of how it is being used, and to whom it is being given. Furthermore, some of the information collected is privileged or confidential communications made within the scope of employment (patient/doctor, lawyer/client), and much of the information is personal and private. The government vehemently asserts that it has no interest in investigating the personal or private information of U.S. citizens⁸⁸ and rarely seeks such information through administrative subpoenas or national security letters from private data banks; however, the American Library Association released a survey of its members in June 2004 showing that law enforcement officials had contacted libraries at least 200 times since 2001 with formal and informal inquiries about their internal records.⁸⁹ The extent to which the government reconciles its need for the information to investigate matters with the privacy interests of individuals is a constant source of contention.
Policies

The right to be secluded from the observation or company of others—the “right to be let alone”—seems abandoned in light of the information captured, gleaned, analyzed, and disseminated by either the data mining giants or through the use of the technological breakthroughs mentioned above. The government believes that these domestic surveillance activities or techniques are justified under the guise of national security (protection of citizens from crime, cyber or otherwise; street punks and dealers; and terrorism). To that end, the government has made significant use of the data mining resources and technology available. Some of the most publicized government uses of data mining resources and technology include the following: Total Information Awareness (TIA) or, as it was later renamed, Terrorist Information Awareness; the Multi-State Anti-Terrorism Information Exchange (MATRIX) program; the Computer-Assisted Passenger Prescreening System (CAPPs II) or as it was renamed, Secure Flight; and the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Project. Privacy advocates vehemently opposed these programs fearing that exploitation into civilian populations would occur; hence, all but US-VISIT are now defunct.

MATRIX

The MATRIX program was an attempt by state government to use data mining to fight crime and terrorism on a local and national level after September 11, 2001. MATRIX was a consortium of law enforcement and state agencies that joined law enforcement records with other government and private-sector databases to find valid patterns, relationships, and links among people. The MATRIX project was administered by the Institute for Intergovernmental Research, funded under the DHS Office of Domestic Preparedness and the Department of Justice’s Bureau of Justice Assistance, and managed by the Florida Department of Law Enforcement.

Despite the failure of a similar project, TIA, this project was encouraged in part by the mandates set forth in the 2002 Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations and the United States Department of Justice, Office of Justice Programs, National Criminal Intelligence Sharing Plan of 2003. The Attorney General’s Guidelines empowered the “FBI to carry out general topical research, including conducting online searches and assessing online sites and forums” to the same extent as the general public as long as the research was relevant for the purpose of facilitating or supporting the discharge of investigative responsibilities. MATRIX’s concept was further encouraged by President Bush’s proclamation of March 15, 2002, “We want every terrorist to be made to live like an international fugitive, on the road, with no place to settle, no place to organize, no place to hide.”

The MATRIX program primarily utilized the data-aggregation company Seisint, Inc. and its locate-and-research tool called Accurint. The system digitally identified and tagged over 3.9 billion public and state-owned records containing information and data on almost everyone within the United States. The program applied a Factual Analysis Criminal Threat Solution (FACTS), which gave law enforcement the ability to query available public records even with incomplete information like partial license plate numbers or incomplete names. This massive data reservoir...
was then analyzed and scored to generate leads and expedite investigations. The resulting information was then shared with law enforcement.

The computer-generated scores created by the MATRIX program were referred to as a terrorism quotient or a high factor score for terrorism. Their purpose was to profile individuals to prevent terrorist attacks. The accuracy and potential impact of MATRIX’s identification system was significant. The program claimed to have successfully identified five of the 9/11 hijackers and assisted the independent agency, National Center for Missing and Exploited Children, to help track missing and abducted children.94

Immediately after 9/11, the project was encouraged by the mandates set forth in the 2002 Attorney General’s Guidelines. The guidelines, mentioned previously, empowered the FBI to carry out general topical research, including conducting online searches and assessing online sites and forums, to the same extent as the general public as long as the research was relevant for the purpose of facilitating or supporting the discharge of investigative responsibilities.95 Initially 16 states joined the project. State participation diminished when they learned state-owned data had to be transferred over to private MATRIX system administrators. The transfer of this information violated state privacy laws. Eventually the system was altered so that the information was stored in a remote, state-maintained, and secured database as opposed to the MATRIX central data repository.

The MATRIX program was heavily criticized. Challenges were made to the quality of the data and the difficulty for individuals to correct faulty data. Critics complained of vast amounts of easily accessed potentially private information. Other concerns included the characteristics chosen to profile individuals and the possibility that the government could conduct electronic searches of people who they had no reason to suspect of criminal or illegal behavior with the assistance of analytical software.96 MATRIX supporters believed that the program served as an investigative tool with sufficient regulatory control to guard against indiscriminate surveillance on individuals or inappropriate or unauthorized use. In 2003, however, the program was terminated and condemned as a state-level version of TIA, which queried both public and private records including mailing lists and credit histories.97

**Computer-Assisted Passenger Prescreening System (CAPPS II)/ Secure Flight**

CAPPS II was developed by the DHS Transportation Security Administration (TSA) to compare airline passenger names with private and public-sector databases to assess the level of risk a passenger might pose. The program’s goals bore a strong resemblance to TIA and MATRIX but for the limited mission of airline security. When privacy and effectiveness issues were brought to surface, former DHS Secretary Tom Ridge, announced his intention to dismantle the program in July 2004.98 The concept was dismantled, reinvented, revised, and reintroduced as Secure Flight in September 2004.

The Secure Flight program exemplifies the layered strategy employed by DHS to secure air traffic safety by using several layers of security to protect air passengers. The Secure Flight program includes use of Federal Air Marshals, Federal Flight Deck Officers,
and a streamlined version of the CAPPS II database comparison methodology. The CAPPS II component of the program requires TSA to conduct preflight comparisons of airline passenger information to federal government watch lists.

Basically passenger name records from domestic flights are compared to names maintained under the Terrorist Screening Database in the Office of Transportation Vetting and Credentialing. This database includes the “No-Fly and Selectee lists of persons known or suspected to be engaged in terrorist activity. Secure Flight compares these two lists for the exclusive purpose of identifying suspected terrorists. Information on passengers is disseminated on a strict “need to know” basis. A redress mechanism for alleged abuse is included within the program. Furthermore, no Privacy Act exemptions are invoked under the revamped Secure Flight program and passenger name records will be released to individuals who request them. DHS affirmed these precautions and changes would address the privacy concerns that befell the CAPPS II and MATRIX programs. It did not, and the Secure Flight program was scrapped in 2006.

**United States Visitor and Immigrant Status Indicator Technology (US-VISIT)**

US-VISIT is the DHS system to “enhance the security of our citizens and visitors, to facilitate legitimate travel and trade, to ensure the integrity of our immigration system, and to protect the privacy of our visitors.” The system requires visitors to the United States to submit a biometric (fingerprint and photograph) identifier to the government. The biographic and biometric information is then checked against 20 interfacing government databases to match the identity of the visitor against the data captured by the State Department at the time the visa was issued to ensure that the individual is the same person who received the visa originally. Furthermore, the information is used to determine the likelihood that the visitor is a criminal or terrorist. Currently, US-VISIT biometric entry procedures are operating at 116 airports, 15 seaports, and 154 secondary ports of entry and 12 airport and 2 seaports as exit procedures. The system planned to be fully functional at every entry point by December 31, 2005, and DHS intended to link Secure Flight with US-VISIT.

The system uses RFID technology and as of September 2005, the program processed 30 million visitors and stopped 700 potential entrants who were either arrested or deported. EPIC’s report of January 2005 complains that US-VISIT, like MATRIX and Secure Flight, engages in indiscriminate and overreaching surveillance on individuals. Of the more than 16.9 million visitors to the United States that have been processed by US-VISIT screening, 372 individuals have been identified for crimes or immigration violations. None have been caught pursuant to the program’s paramount purpose of identifying wanted terrorists. The government asserts that US-VISIT’s mission is not so limited.

Another complaint from privacy groups is that US-VISIT did not substantially comply with the E-Government Act of 2002, which requires federal agencies to conduct privacy impact assessments before developing and purchasing new technologies that will collect personal information electronically. The purpose of the Act is to ensure that privacy considerations are built into the technology in the planning stages. DHS did release a privacy impact assessment for the program’s
biometric technology, but they did so just days before the technology was deployed at the airports and ports, thereby providing insufficient time to review the privacy impact before implementation.

Checks and Balances: Legislative Controls

As a result of the significant privacy concerns generated by TIA, MATRIX, CAPPS II, US-VISIT, and other governmental programs, the Department of Defense formed a Technology and Privacy Advisory Committee (TAPAC) to address data mining as a tool to fight terrorism. TAPAC’s 2004 report\textsuperscript{108} concluded that statutory and regulatory frameworks were needed for data mining endeavors involving data on individuals. Currently, the Privacy Act of 1974 and, to a certain extent, the E Government Act of 2002 provide the primary limitations on the collection and disclosure of this type of information. Other legislative enactments such as the ECPA,\textsuperscript{109} the Patriot Act,\textsuperscript{110} CALEA,\textsuperscript{111} and FISA\textsuperscript{112} touch on some of the surveillance issues discussed herein as they relate to exposing potentially private information on United States citizens, but all of them are woefully outdated or fundamentally inadequate when it comes to the new technology or the massive amounts of information available in the data marts.

Legislative Measures

As technology continues to develop, law enforcement officials will be burdened to convince courts that the new device or the electronic software program does not threaten individual privacy and that its use complies with basic 4th Amendment principles and existing statutory mandates. As evidenced by many of the examples discussed herein, today’s technology is evolving faster than either the legislature or the courts can predict; thus, it is imperative that the executive branch, including law enforcement, utilize the new technology in a manner that respects an individual’s right to privacy. The collapse of many of the executive branch’s recent data mining programs and technological deployments suggests that the government’s executive branch is not policing itself sufficiently.

4th Amendment

The 4th Amendment is the original bastion of privacy protection. It provides, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

James Madison, the author of the 4th Amendment captured the heart of this issue when he wrote . . .

But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself. Who will watch the watchers?”\textsuperscript{113}
Madison’s solution to controlling government power was to separate the power of the government into different branches so they could check each other. In recent times, however, the speed with which technology is advancing and the immediate application of new devices and new software by law enforcement (the executive branch) has tilted the checks and balance system.

**Electronic Surveillance Privacy Act**

As society moved into an electronic age and the computer became part of the décor both at home and at work, the legislature enacted a number of statutes to fill the void left by the 4th Amendment regarding privacy. The primary statute affording such privacy protection is the Electronic Surveillance Privacy Act (ECPA) of 1986. Most audio and electronic surveillance, including Internet surveillance, is governed by this statute.

The ECPA is subdivided into three subtitles and covers three specific types of communications: (1) wire, (2) oral, and (3) electronic. The three subtitles are as follows: (1) Title I, the Wiretap Act, which deals with the interception of communications that are in transmission; (2) Title II, the Stored Communications Act, which covers the accessing of stored electronic communications and records; and (3) Title III, the Pen Register Act, which applies to pen registers and trap and trace devices, which record phone numbers or addressing information (such as the “to” and “from” information in e-mail).

The types of communications covered by the ECPA are wire, oral, and electronic. A wire communication involves aural transfers, which are communications containing the human voice, that travel through a wire or cable device at some point during their transmission. A landline or mobile telephone conversation that is intercepted in real time is an example of this type of communication. An oral communication is a communication uttered by a person under circumstances such that the person has a reasonable expectation that the communication will not be overheard. In other words, the communicator must have a reasonable expectation of privacy in his or her conversation, and it must be one that society is willing to protect. This definition applies to communications intercepted through bugs or other recording devices like tape recorders that do not involve a wire transmission. Finally, electronic communications are all non-wire and non-oral communications (i.e., signals, images, and data that are transmitted through a medium such as wire, radio, electromagnetic and photo-electronic). The prime examples of electronic communications are e-mail messages, faxes, pages, or text messages.

**Wiretap Act**

Historically, wiretap laws required the consent of all parties before a communication could be intercepted. An example of a situation in which all parties consent involves a telephone answering machine. The machine owner has given his or her consent by attaching the machine to his or her phone and asking the caller to leave a message after the beep. The caller gives his or her consent to be intercepted when, after the signal, he or she records a message. Thus, both parties to the communication gave prior consent before the content of the interception was captured. Now, federal law and 35 states allow for the interception of wire communications if only one of
the parties to the communication has given prior consent; however, even then, the situations for interception vary significantly from jurisdiction to jurisdiction.\(^{118}\)

The ECPA requires law enforcement to obtain a court order with an accompanying affidavit based on an extensive laundry list of legal requirements before capturing the content of a communication. The list is extensive because wiretap surveillance poses greater threats to privacy than the physical searches and seizures covered by the 4th Amendment. Interception of communications inherently captures some communications of non-targets regardless of whether the communication is relevant to the investigation. Not every communication of a criminal suspect is criminal in nature. Furthermore, unlike the typical search warrant in which officers announce, enter, search, and exit, electronic surveillance is conducted surreptitiously and continues in an ongoing fashion until the goals and objectives of the investigation are met. At times, the monitoring continues for months and involves thousands of communications.

The list of legal requirements includes such things as proper authorization from the appropriate official; identifying the investigators, the crimes, and the parties to be intercepted with specificity; tri-partite probable cause;\(^{119}\) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that the order should be issued; the goals and objectives of the interception, as well as the length of time for the interception including when it will begin and end, the actual hours of interception per day, and the days of the week of interception; exhaustion and necessity; minimization; and the equipment and technology to be employed. The standard for review of tripartite probable cause is exactly the same as that required by the 4th Amendment for a search warrant; therefore, courts are bound to consider only the facts contained within the four corners of the affidavit.\(^{120}\)

All electronic surveillance statutes require the issuing judge to review the affidavit to determine whether normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or are too dangerous. To satisfy this requirement (commonly referred to as the exhaustion/necessity requirement), the affidavit cannot be merely a boilerplate recitation of the difficulties of gathering usable evidence.\(^{121}\) The affidavit must include a “full and complete” statement, providing detailed information about all prior interceptions on the named interceptees and the facility or device to be intercepted. It also must include all pertinent information relevant to the investigation, including possibly exculpatory information; however, there is some discretion to disclose the evidence in less than entirety to establish probable cause provided there is no effort to mislead the court in approving a warrant that might otherwise not have been issued.\(^{122}\) For example, it has been held acceptable for the government to withhold information to protect the confidentiality of informants.

In evaluating the good faith efforts to use alternative methods of investigation, a reviewing court is guided by reasonableness.\(^{123}\) The police need not exhaust every conceivable technique.\(^{124}\) Before granting the wiretap application, however, the issuing judge must determine that normal investigative techniques employing a normal amount of resources have failed to make the case within a reasonable period of time.\(^{125}\) Essentially, all that is required is that the investigators give serious consideration to the non-wiretap techniques prior to applying for wiretap authority and that the court be informed of the reasons for the investigators’ belief that such
non-wiretap techniques have been or will likely be inadequate. In other words, the government must make a reasonable good faith effort to pause and run the gamut of normal investigative procedures before employing an electronic surveillance technique.

The ECPA also requires that the interception of oral communications through wiretapping must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception. Interception is proper only as long as is necessary to achieve the goals of the authorization. This does not require that all innocent or nonrelated communications remain unmonitored. Rather, the statute requires that unnecessary intrusions upon the privacy of the individuals being lawfully monitored should be minimized to the greatest extent possible. Compliance is determined on a case-by-case reasonableness standard. Specifically, a minimization inquiry is not to be made in a fragmented manner considering each interception alone. Instead, it requires an examination of the totality of the monitoring agent’s conduct during the duration of the authorized interception. Minimization is satisfied if, on the whole, the agents have shown a high regard for the rights of privacy and have done all they reasonably could to avoid unnecessary intrusion.

The wiretap statute contains its own exclusionary rule that provides no intercepted communications, wire or oral, can be received in evidence if the communications were unlawfully intercepted, if the Order was insufficient, or if the interception was not made in conformity with the Order. Due to this clear legislative intent to limit surveillance to protect privacy issues and to control law enforcement surveillance, a substantial compliance standard is mandated by most courts for each provision of the statute that is deemed to be a central or functional safeguard factor. In short, only surveillances that are narrowly focused with constitutionally acceptable preapproved judicial blessings based on special showings of need are permissible.

**Stored Communications Act**

The Stored Communications Act (SCA) governs law enforcement’s access to stored, or temporarily stored, wire and electronic communications. This includes any backup copies of files in temporary electronic storage as well. Accordingly, it governs access to subscriber records of various communications service providers including Internet service providers (ISPs). If a communication is being transmitted from its origin to a destination, the Wiretap Act applies. If it is stored electronically in a computer of a provider of an electronic communication service (ECS) or a provider of remote computing service (RCS), the Stored Communications Act (SCA) governs. The SCA is much less protective than the Wiretap Act. It contains no exclusionary provision, no minimization requirement, and little judicial supervision. The degree of privacy protection afforded customers and subscribers to stored communications depends on whether it is considered content or non-content information and whether it is housed by ECS or RCS providers. In determining whether the information sought is content or non-content, experts usually analogize it to postal mail. The content is the actual letter and the non-content is the envelope. An ECS is defined as “any service which provides to users thereof the ability to send or receive wire or electronic communications”; whereas, an RCS is defined as, “the provision to the public of computer storage or processing services by means of an electronic communications system.” Telephone companies and electronic mail
companies generally act as providers of ECS and a company’s or university’s server act as a remote computing service RCS.

The SCA is not a catch-all statute designed to protect the privacy of all stored communications. It does not cover information stored on home computers, as that information is protected by the 4th Amendment. The SCA only protects information held by third-party providers. It is essentially a 4th Amendment type protection for computer networks. Acting as a protector, the statute limits the government’s ability to compel providers to disclose information in ECS’s and RCS’s possession about their customers and subscribers. Specifically, the statute restricts the ability of service providers, including ISPs, to voluntarily disclose information about their customers and subscribers to the government. (The 4th Amendment is inapplicable here because it would allow private providers to make such disclosures under the knowing exposure doctrine to third parties.) The SCA is the legislative attempt to protect an individual’s privacy in content information electronically stored by third parties. The Act mandates that some “official” action must be taken before the disclosure can occur unless it falls within one of the eight specifically designated exceptions listed in 18 U.S.C. 2702 (b), including disclosure to the recipient of the communication; to the National Center for Missing and Exploited Children in connection with a report; and to a consenting originator. The type of official action required for disclosure depends on whether the information is content or non-content, in storage for less or more than 180 days, and whether the information is held by ECS or RCS providers. A warrant is required to compel a provider of an ECS to disclose the contents of communications held in storage for 180 days or less. To force a provider of an ECS to disclose contents held in electronic storage for more than 180 days or to compel a provider of an RCS to disclose contents at any time, the government has several options:

• A search warrant with no notification to the subscriber or customer
• A court order combined with prior notice to the subscriber or customer (which can be delayed in some circumstances)
• An administrative, a grand jury, or trial subpoena with prior notice to the subscriber or customer

The court order requires that the government provide specific and articulable facts showing that there are reasonable (not probable) grounds to believe that the information sought is “relevant and material to an ongoing criminal investigation.” The subpoena only requires that the government is seeking relevant information and that the request is not overly broad. Non-content information, the “envelope-type” information, may be disclosed more readily through a mere subpoena, as it is deemed less private than content information. Although, many argue that non-content information does reveal private information. From the mail covers delivered to a home, one can learn doctors, interests, associates’ names, political affiliation, and perhaps sexual preferences. Nevertheless, a subpoena is all that is required. Non-content information is basic subscriber information of the sort included in pen register data. This information includes name; address; local and long distance telephone connection records, or records of session times and durations; length of service (including start date)
and types of service utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and the means and source of payment for such service (including any credit card or bank account number).  

**Pen Register Act**

The Pen Register Act regulates the government’s use of pen registers and trap and trace devices and processes. Pen registers provide real-time information as to the date and time the phone is off the hook; the numbers dialed from a phone; the date and time a call is terminated; the duration of the call; and if it is an incoming call, whether it was answered. Trap and trace processes capture in real time the telephone number of the device calling the target phone (Caller ID). Trap and trace devices are geographically limited.

Pen registers are not protected by the 4th Amendment. A person has no reasonable expectation of privacy in this information because the information is available and accessible to a third party, such as the telephone company. Furthermore, pen registers presumably capture only non-content information. Although the installation and use of a pen register is not a search for 4th Amendment purposes requiring a warrant, most jurisdictions, including federal jurisdictions, require a court order before installation. The Order required is of the type described under the SCA, certifying that the information sought is “relevant and material to an ongoing criminal investigation.” Certification by the government means only that the information likely to be obtained is relevant to the investigation. Thus, the court orders should include the following: the identity of the law enforcement officer making the application, the identity of the agency conducting the investigation, and a statement under oath by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the agency.

The Patriot Act expanded the definition of pen registers and trap and trace devices to include addressing information on e-mails (e-mail headers) and to Internet Protocol (IP) addresses. Previously, pen registers recorded only the numbers dialed on the telephone line. The definition now includes all forms of transmission (i.e., “dialing, routing, addressing, or signaling information”). The effect of this change is that e-mail headers (the address information on e-mail messages), IP addresses, and Uniform Resource Locators (URLs) fall under this definition. The concern now becomes that the information revealed on IP addresses and URL’s is more content-like than non-content-like. IP addresses and URLs reveal significant information about users, including what their interests are, where they shop, etc. To date, that concern has not been addressed.

In summary, a court order certifying that “the information likely to be obtained by such installation and use is relevant to an ongoing investigation” is all that is required to release pen register information. The Orders themselves can last up to 60 days and are not reviewed. This differs greatly from a warrant in which a return is required. Neither the SCA, nor the Pen Register Act, contains an exclusionary rule. Thus, there is no recourse when the government illegally collects information.
Foreign Intelligence Surveillance Act (FISA)

In 1978, the Foreign Intelligence Surveillance Act (FISA) was passed. Its purpose was to provide a statutory structure to govern electronic and physical surveillance (e.g., wiretapping, pen registers, and physical searches) in national security cases when foreign intelligence information is sought. This act authorizes the government to carry out electronic surveillance in the United States upon obtaining a judicial order from a special panel of judges designated by the Chief Justice based upon a probable cause finding that the target is a foreign power or an agent of a foreign power. FISA was intended to be used primarily in foreign intelligence and counter-intelligence cases in which threats to national security were of prime importance; therefore, the Act does not have the same lengthy laundry list of requirements and restrictions as does the EPCA.

FISA does not contain the EPCA provision requiring notification to each target or aggrieved person (interceptee) within 90 days after the electronic surveillance has been terminated. Under FISA, notice need only be given if criminal charges are filed and, if after an emergency search is authorized and subsequently the order is denied, the United States person subject to the search is entitled to notice of the fact of the application, the period of the search, and whether information was or was not obtained during that period. There are provisions for relief if abuse does occur.

FISA does not require probable cause because it deals with “special needs,” such as terrorism and espionage threats directed by foreign powers. Thus, the heart of the Act was to deal with extraordinary crimes as distinguished from ordinary crime control. In fact, for individuals who are not U.S. citizens or permanent resident aliens, the statute does not even require probable cause to believe that the target is engaged in criminal conduct. It is enough that the target is an agent of a foreign power. For U.S. citizens, the statute allows surveillance when there is probable cause to believe that the person is engaged in clandestine intelligence activities on behalf of a foreign power, “which activities involve or may involve a violation of the criminal statutes of the United States.”

FISA surveillance results are required to be submitted annually to the United States Department of Justice, Office of Legislative Affairs. An analysis of the reported results shows a significant current upward trend in utilizing this intensive and intrusive law enforcement technique particularly since 2001. From 1990 until 2001, there were approximately 600 FISA approvals per year. In 2002, the number jumped to slightly more than 1,200. In 2003 and 2004, the number continued to rise to approximately 1,750. Then, during calendar year 2005, 2,072 applications for authority to conduct electronic surveillance and physical search were approved by the Foreign Intelligence Surveillance Court (FISC).

One of the primary concerns of critics is that virtually all FISA applications are approved, and the numbers are steadily increasing at an alarming rate. Furthermore, although little is specifically known about these investigations, the complaint is that FISA has been used increasingly in criminal cases for which it was not designed. The government does this by claiming that it is conducting parallel intelligence and criminal investigations and proceeds under the new FISA standards that the person is engaged in clandestine intelligence activities on
behalf of a foreign power, “which activities involve or may involve a violation of the criminal statutes of the United States.”

The Privacy Act of 1974

The Privacy Act of 1974 is the original comprehensive privacy legislation enacted to regulate the federal government’s collection, use, storage, and dissemination of personal information. The Act gave individuals the right to know and correct the information that the government was maintaining, collecting, using, or disseminating about them. Individuals have the right to review all information collected on oneself, request corrections, and be informed of any disclosures. The Freedom of Information Act facilitates these processes. Additionally, the law restricted the government from building databases unless the information (as to education, financial transactions, medical history, criminal or employment history, name or identifying number or symbol including finger or voice print or photograph, etc.) about the person was directly relevant and necessary to an agency’s mission. The Act also requires the government, to the extent practical and possible, to collect the information directly from the subject and inform the subject of the principal purpose for which the information will be used and the routine uses that may be made of the information, and advise the individual of the effects of not providing the requested information. Both civil and criminal penalties are included for violations of the Act.

A huge limitation of the Privacy Act is that it controls only the government’s collection of records not private industries’ collection. As reported earlier, the government is now outsourcing massive amounts of information from private data marts like Lexis Nexis, ChoicePoint®, and others. By using nongovernmental sources, the government sidesteps the Privacy Act. The government does not have to correct the information, go to the source, or meet some of the other privacy protection limitations concerning disclosure practices provided within the Act. Private industry is performing the dirty work for the government without the governmental mandated restraints.

The Federal Trade Commission (FTC) encourages private industry to voluntarily protect consumer privacy; however, in its 2000 report to Congress, the FTC found that most commercial online companies that collect, store, transfer, and analyze vast amounts of data from and about the consumers who visit their websites do not adequately practice the four fair information practice principles of notice, choice, access, and security. In fact, the report noted that 92% of all websites sampled were collecting personal information from consumers, yet only 14% disclosed anything at all about their information practices. Obviously, voluntary self-regulation is insufficient, and a need to legislate for privacy protection exists. Similar legislation has been developed in other commercial areas when similar privacy disclosures have been exposed. For example, in the banking industry, the Bank Secrecy Act was enacted, and in the financial industry, the Fair Credit Reporting Act was developed. Other commercial entity areas now are controlled by privacy protection regulations like, the Electronic Communications Privacy Act discussed previously, the Video Privacy Protection Act (VPPA), and the Family Educational Rights and Privacy Act (FERPA).

Checks and Balances: Judicial Review

So far, the research has discussed new technologies and data mining usage pursuant to governmental policies and practices and legislative control. It is now time to
review the judiciary’s spin (check and balance) on the executive’s deployment of data mining techniques and computer-related search decisions within the confines of legislative mandates.

As the judiciary needs a real case in controversy to act, the judicial reviewing process is by design, mostly reactionary and tends to be somewhat piecemeal. There are, however, certain basic principles that act as guidance concerning the constitutionality and legality of the use of new technology by the government. The concepts of knowing disclosure and cognition enhancement are two such principles.

The landmark decision discussing technological invasions into areas in which a reasonable expectation of privacy exists is *Katz v. United States*. In *Katz*, law enforcement agents obtained evidence of a gambling operation by bugging and recording conversations of a bookie from outside of a public phone booth. The Court rejected the long standing rule that a trespass to a traditional zone of privacy (like the home or the person) was needed to violate expectations of privacy that society was willing to recognize as reasonable. The technologically savvy Court held that “the fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance.”

The new expectation of privacy requires first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as “reasonable.”

The impact of *Katz* has been largely limited to content versus non-content material like the bookie’s conversation therein. Envelope or non-content materials do not get the same extension to the zone of privacy protections. Likewise, the *Katz* decision did not afford 4th Amendment protection from the government’s recovery of information from third parties. Account information in banks, telephone companies, and Western Union has been declared by the Courts to be unprotected material because the customer voluntarily conveyed the information to the company and “exposed” that information to its equipment in the ordinary course of business. In so doing, (the customer) assumed the risk that the company would reveal the information to police or others.

The burgeoning acceptance of this “knowing exposure to third parties” practice exception to 4th Amendment protection has been promoted wholeheartedly by the Bush administration. Under the Patriot Act, the FBI can and does issue national security letters, which allow for the disclosure of personal records about ordinary Americans without getting approval from a prosecutor, grand jury, or judge. Simply by issuing the letter, the FBI can direct communication companies, libraries, banking institutions, financial entities, Internet service providers, universities, and other institutions to turn over customer records. Once disclosed to the government, the records are then scrutinized and deposited into government data banks allowing access for “state, local, and tribal governments and for appropriate private sector entities.” These national security letters are used routinely to seek information that is “relevant to an investigation to protect against international terrorism or clandestine intelligence activities.” No longer are specific and articulable reasons needed to justify the gathering of the information. In fact, the FBI now issues more than 30,000 national security letters per year without any check or balance from an impartial authority. The dramatic increase in the usage of such letters is a direct result of the USDOJ new guidelines, which provide that the FBI should consider (not
require) less intrusive means and should not hesitate to use any lawful techniques, even if intrusive, when investigators believe them to be more timely, particularly in investigations relating to terrorist activities."  

A few organizations have challenged the constitutionality of a national security letter, and the outcome is currently up on appeal in the United States Court of Appeals for the Second Circuit; however, the lower court did find the letters violative of the 1st and 4th Amendments under the theory that “democracy abhors undue secrecy.”

ISPs are considered to be third parties that hold and process a user’s information on the user’s behalf; thus, the 4th Amendment provides no protection of information revealed to ISPs. Internet surveillance restrictions must, therefore, come from statutes. The ECPA’s Wiretap Act protects if a communication is being transmitted from its origin to a destination; the SCA applies if the communication is stored electronically with a computer service provider. Only the Wiretap Act with its inclusive exclusionary rule offers real privacy protection to third parties. The SCA subjects the information to disclosure upon showing merely that the information will be relevant to a law enforcement investigation.

To invoke the Wiretap Act and thereby obtain its exclusionary protection, the information sought must fit precisely within the definition. For example, when the Secret Service seized a computer from a company that produced role-playing games and collected e-mail information held within the computer, the Wiretap Act did not apply. Since the e-mails were temporarily housed or stored within the computer, the e-mails were not intercepted “in transit.” The same holding applied to the use of keylogger devices. When the FBI used its keylogger system to record the defendant’s keystrokes on his computer to figure out Scarfo’s password, there was no interception because the key logger did not record keystrokes while Scarfo’s modem was operating. Thus, the keystrokes were not intercepted in transit, and the Wiretap Act did not apply.

The government’s key stroke capturing device, Carnivore, later known as Magic Lantern, did not fit within the language of the ECPA for another reason, as well. The technology behind Magic Lantern did not fit within the statute’s definition of electronic storage. The device is installed on a target’s hard drive on a personal computer, not on “a facility through which an electronic communication service is provided,” such as an ISP. Cookies software, which is similar to the Magic Lantern technology, has been determined not to fit within the ECPA definition of electronic storage because the cookies are implanted on the user’s hard drive and the section defining “electronic storage” “is specifically targeted at communications temporarily stored by electronic communications services incident to their transmission,” which infers the statute’s intent to control ISP communications not private person’s communications.

**Data Mining**

Critics of the “knowing exposure” doctrine believe “there is a dramatic difference, in privacy terms, between revealing bits and pieces of information sporadically to a small and often select group for a limited purpose and a focused police examination of the totality of that information regarding a particular individual.” There is also a dramatic difference between exposing the bits and pieces of information and the aggregation and organization of these already collected bits of information to reveal previously unseen or unknown patterns. This “new exposure” is commonly referred to as cognition enhancement. The Supreme Court has acknowledged this concept and expressed...
concern for its potential abuse. In *Whalen v. Roe*, the Court first acknowledged “the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files.” In *United States v. Miller*, the Court made the same declaration. Although the Miller Court allowed the bank records to be disclosed under the third party knowing exposure rule, the Court noted that the situation presented to them was not a situation in which the government, through “un-reviewed executive discretion,” has made a wide-ranging inquiry that unnecessarily encroaches upon intimate areas of an individual’s personal affairs.

The Total Information Awareness Program; MATRIX; and to a certain extent, CAPPS II met their demise under this premise. Their concept of merely collecting what was voluntarily provided to third parties met with an overwhelming amount of political attack. In light of the everincreasing data mining potential of public information, the mere fact that things or information have been exposed to others does not automatically mean that the 4th Amendment becomes irrelevant. Computers have made it possible and easy to analyze vast amounts of information but not without certain limitations. The theory behind the argument that the knowing exposure rule should not apply is that the bytes do not expose the whole. The individual bytes of information are almost meaningless in themselves. It is only when analytical software is employed that data becomes meaningful and useful relationships among the people, places, things, and events become known. The patterns are the private “effects” of today’s society.

This reasoning is supported by the Supreme Court in its plain view cases and its container search cases. When the detective located a turntable suspected of being stolen during his search for drugs, the court found that the moving of the turntable to read the serial number was a separate search for which its own probable cause was needed. It is bedrock law that just because an officer sees a person carrying a container, probable cause is needed before that container may be searched. Data mining should not be used to expand police snooping. The issue then is to what degree is the technology of data mining permitted to sift through information and records publicly maintained to discover connections that indicate illegal activity. Detectives always have been allowed to search through stacks of information within their knowledge in their quest to solve crimes. The data mining technology merely allows the detective to search a greater quantity of information with greater ease and increased speed.

Data mining has been likened to scientific testing that exposes information that is not readily apparent from a physical inspection. One does not know by its appearance alone, without scientific testing, that a white powder is heroin or the blood type of someone from viewing DNA samples. Probable cause is required to conduct those scientific analyses. Data mining that discovers information (e.g., patterns, facts, associations) that is not readily apparent (in plain view) should be considered a search and be protected by the 4th Amendment.

The 4th Amendment contains the limitation to data mining searches in its particularity requirement. Searches are allowed upon a showing of probable cause that a particular place or person contains contraband. No general warrants are allowed. The purpose of the particularity requirement is not limited to the prevention of general searches. “A particular warrant also assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search,” which “greatly reduces
the perception of unlawful or intrusive police conduct." The warrant requirement fills Madison’s desire for a check and balance on the executive branch’s activities.

The Supreme Court first highlighted this particularity requirement with regard to electronic searches in 1967 when Justice Clark stated, “[t]he need for particularity and evidence of reliability in the showing required when judicial authorization of a search is sought is especially great in the case of eavesdropping,” which “[b]y its very nature . . . involves an intrusion on privacy that is broad in scope.” The demise of many of the government data mining programs (Secure Flight, CAPPS II, TIA, and MATRIX) was a direct result of the executive branch’s failure to recognize this limitation. Under the TIA and MATRIX programs, information was collected on huge numbers of the population to determine who had a high terrorist quotient score. In the Secure Flight program, the searches were done on all passengers who had arranged travel plans. Thus, a more particularized searching of databank materials was needed. Likewise, the Carnivore device developed by the FBI to scan through all of the e-mail traffic of an ISP suffered the same particularity deficiency issue.

Although the 4th Amendment generally bars officials from undertaking a search or seizure absent individualized suspicion, there are certain circumstances in which “special needs” require searches based on less than probable cause. Situations in which the risk to public safety is substantial like in schools, airports, and at entrances to courts and other official buildings may justify the exception to the rule. Whether general counterterrorism investigations fits this “special needs” category will be the question of the day. Open-ended warrants have been disallowed, anticipatory warrants are frowned upon in some jurisdictions, and searches based on an individual’s mere propinquity to others independently suspected of criminal activity does not alleviate the particularity component to the probable cause rule. The probable cause requirement has not been discarded simply because coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be. Running general data mining queries would seem to violate this particularity restriction of the 4th Amendment.

Conclusion

As electronic and computer technology and usage continues to expand, develop, and improve and as society demands more and more protection from the executive branch, the concepts of privacy will most certainly be redefined. The right to be left alone will be difficult to maintain with the increasing ability to capture and save personal data, preferences, and activities of individuals. Even with strict legislative controls, ever-watchful privacy groups and a demanding judiciary, the executive branch will push the envelope to use the information gleaned through new technology. It will be the task of the legislative and judicial branches to keep the executive branch in check so that the right to privacy will remain a meaningful American value.

Acknowledgments

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Endnotes


3. *Id* at 605. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our armed forces, and the enforcement of the criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed.

4. Many commercial websites utilize “cookies” to gather personal information from visitors. This collected information is then distributed or sold to third parties (e.g., companies, the government) for marketing or profiling purposes. Seisint sells its proprietary repository of billions of public records to the government. Seisint delivers advanced investigative tools for law enforcement (See www.accurint.com/news/news_5_18_2004.html). The government also sells its databases to private companies. The state-operated MATRIX program was sold to Lexis/Nexis for $775 million in July 2004 (See www.billingsgazette.com/index.php?id=1&display=rednews/2004/07/16/build/business/54-lexis-nexis.inc).


6. On September 1, 1969, ARPANET connected large mainframe computers at UCLA together via smaller gateway computers, or routers, known as Interface Message Processors (IMPs). Stanford, University of California–Santa Barbara, and the University of Utah installed IMPs soon thereafter.


9. Supra.


11. Images of the movie, *Enemy of the State*, come to mind when information is deleted erroneously or incorrectly submitted.

12. Even without a national identification system, some errors are almost impossible to correct. In most instances when identity theft occurs, the Social Security
Administration will not issue a new SSN unless all possible other options have been explored and attempted. A new Social Security card will not be issued if the person filed for bankruptcy; if the person intends to avoid the law or legal responsibility; or if the card was merely lost or stolen, but there is no evidence that someone has used the number (See www.ssa.gov/pubs/10064.html).


The Privacy Act of 1974 requires government workers to complete a disclosure notice whenever the individual’s SSN is requested. Specifically, the Act mandates that whenever the government requests an individual’s SSN, it must inform the individual of the statute permitting the solicitation, the voluntary or mandatory nature of compliance with the request, the intended purpose of the request and how the disclosed information will be used, and the consequence for noncompliance. There is no legal constraint, however, when private companies require, use, or disclose one’s SSN.

SSN was designated as the taxpayer identifier in 1961 per the Internal Revenue Service (IRS) Code (See www.irs.gov/businesses/small/international/article/0,,id=96696,00.html).

The Tax Reform Act of 1976 gave authority to local or state tax, welfare, driver’s license, or motor vehicle registration authorities to use the number in order to establish identities (See www.cpsr.org/prevsite/cpsr/privacy/ssn/SSN-History.html).

Private companies, banks, brokerage firms, universities, medical institutions, and security companies often treat the SSN as the identity authentication indicator. The presentation of an SSN is all that is needed to obtain information within their databanks. Privacy International. (1996, August 24). Identity cards: Frequently asked questions, #13. Available online at www.privacy.org/pi/activities/idcard/idcard_faq.html#13

Real ID Act of 2005, United States Public Law 109-13 (H.R. 1268)

Six hundred entities currently voice strong opposition to the implementation of the Real ID Act of 2005, and recently Senators Daniel Akaka (D-HI) and John Sununu (R-NH) have introduced legislation to repeal the Act (S. 717). Their Act, the “Identification Security Enhancement Act of 2007,” seeks to fix the many problems created by the Real ID national ID scheme and contains strong security and privacy protections. In the House, Congressman Tom Allen (D-ME) has introduced similar legislation. H.R. 1117. The Real ID Repeal and Identification Security Enhancement Act of 2007. (2007, February 28). Available online at www.epic.org/privacy/id_cards


RFID is a technology that allows companies and governments to implant tiny and virtually undetectable microchips or “tags” with antennas into almost any item. RFID tags are commonly used to track inventory in a fast, efficient, and cost-
effective manner. The basic design consists of two main elements: (1) the RFID tag itself and (2) a scanner. The tag is a microchip with a data storage capability wired to an antenna coil that uses radio transmitted codes to uniquely identify itself. Most RFID tags do not require any external power source and can transmit information via radio waves when the tag enters the reception field of the nearest scanner. Thus, RFID tags, once installed, are omnipresent. They are merely dormant until a scanner awakens them. The RFID scanner is a transmitter that interacts with the microchip’s writings to modify the information on the chip. Even the most basic RFID tags enable the real-time tracking of an object and the individuals that carry them. Additionally, with the use of wireless technology linked to existing Global Positioning Satellite (GPS) networks, RFID tags could be used to track any item, anywhere, and at any time. Cisco Systems has already designed a system that can track RFID tags to a few meters and display the location on a central map. While the current range of the scanners is limited to two to five feet on passive tags, this range could be greatly increased by developing more powerful and sophisticated scanners (See www.aimglobal.org/technologies/rfid/what_is_rfid.asp and www.ftc.gov/bcp/workshops/rfid). RFID technology is predicted by MIT researchers to become the most pervasive computer technology in history. Optical bar-code technology is currently used in five billion scans a day. RFID technology may replace and surpass this limited technology (See www.rfida.com/apps/pricetag.htm). The market for RFID tags is growing explosively and is projected to reach $10 billion annually within the decade (See www.epic.org/privacy/rfid and www.washingtontechnology.com/news/1_1/daily_news/27294-1.html). Gardner, W. D. (2004, July 15). RFID chips implanted in Mexican law-enforcement workers. (2004, July). Available online at www.techweb.com/wire/story/TWB20040715S0001 (See also, www.pdcorp.com/company/archives/2003/092003.html) (Tucson, Arizona, jail uses Smart Band® RFID wristbands for prisoner identification and officer access.)

22 Driver’s Privacy Protection Act (DPPA). 18 U.S.C. § 2721 (Public Law 103-322). The Act was enacted to protect private information from being released to organizations and individuals by the Department of Motor Vehicles. The Act imposes criminal fines and allows for civil liability suits against those states that fail to enforce the provisions (See www.accessreports.com/statutes/DPPA1.htm). The Shelby Amendment requires DMV’s to get written permission before they can release or sell a driver’s personal record to a third party. Specifically, the amendment requires states to offer notices and opt-in procedures before a state can make its driver’s license and motor vehicle license lists available to direct marketers (See www.the-dma.org/government/drivers.shtml).


24 The State Department will require Radio Frequency Identification chips on all American passports issued after October 2006 (See www.washingtontechnology.com/news/1_1/daily_news/27294-1.html).

26 See www.pdcorp.com/company/archives/2003/092003.html (Tucson, Arizona, jail uses Smart Band® RFID wristbands for prisoner identification and officer access.)

27 See www.epic.org/privacy/rfid

28 See www.epic.org/privacy/rfid/children.html

29 See www.contactlessnews.com/library/2005/11/01/a-number-of-state-legislatures-consider-rfidrelated-issues

30 A California bill introduced in February (SB 682) would prohibit public entities from issuing RFID identity documents, such as library cards, that can broadcast personal information. Identity Information Protection Act of 2005.


32 An in-depth look by the RAND Corporation (Santa Monica, California; 310-451-7002; www.rand.org) at six corporate uses of RFID found that records from RFID access control systems typically link with personnel records, often integrate with CCTV systems, and occasionally link to medical records; 9 to 5: Do you know if your boss knows where you are? Case studies of radio frequency identification usage in the workplace. (2005, January).


37 Electronic government: Smart card usage is advancing among federal agencies, including the Department of Veterans Affairs. (2004, October 6). Available online at www.gao.gov/new.items/d0584t.pdf


39 5 U.S.C., § 552a
Electronic government: Smart card usage is advancing among federal agencies, including the Department of Veterans Affairs. (2004, October 6). Available online at www.gao.gov/new.items/d0584t.pdf


The FBI explains the origin of the codename: “Carnivore chews all the data on the network, but it only actually eats the information authorized by a court order.” Graham, R. (2001). Carnivore FAQ (Frequently asked questions). Available online at http://corz.org/public/docs/privacy/carnivore-faq.html

Packet sniffers are software programs that can see and/or log traffic passing over a network or part of a network. For example, packet sniffers can be used by parents as a network traffic logger and to monitor and control a child’s traffic or use on a particular network (See http://en.wikipedia.org/wiki/Packet_sniffer).

Security Focus. Poulsen, K. (2000, October 4). Carnivore details emerge. Available online at www.securityfocus.com/news/97. Carnivore only stores data as raw packets, and another application called “Packeteer” is later used to process those packets. A third program called “CoolMiner” uses Packeteer’s output to display and organize the intercepted data. Collectively, the three applications, Carnivore, Packeteer, and CoolMiner, are referred to by the FBI lab as the “DragonWare suite” (See www.securityfocus.com/news/97).

Critics complained that the FBI’s Carnivore data sniffer equipment was “like a mile-long drift net that snatches up dolphins, corpses, and 55-gallon drums of toxic waste along with tuna. . . . Carnivore doesn’t care whose e-mail it snags and scrutinizes.” Mamatas, N. (2000, October 18). Carnivore: FBI launches e-mail drift net. Available online at www.disinfo.com/archive/pages/dossier/id408/pg1; EPIC attorney, David Sobel has commented, “If it’s that easy for the FBI to accidentally collect too much data, imagine how simple it would be for the agents to do so intentionally” (See http://news.com.com/2100-1023-248954.html).

Final report of the Illinois Institute of Technology (IIT) Research Institute, p. xii. (2000, December 8).


See www.foxnews.com/story/0,2933,144809,00.html


53 The FBI believes that Magic Lantern’s use, as part of a project called “Cyber Knight,” would enable them to record the secret keys that a person uses to encrypt messages or computer files. The FBI stated that “encryption can pose potentially insurmountable challenges to law enforcement when used in conjunction with communication or plans for executing serious terrorist and criminal acts” (See www.cbsnews.com/stories/2001/11/21/tech/main318869.shtml).

54 The device can be installed by a person unwittingly opening an e-mail attachment or just by landing in the recipient user’s e-mail box, as it employs basically the same technology as the Trojan horse software used by run-of-the-mill hackers (See www.cbsnews.com/stories/2001/11/21/tech/main318869.shtml).


56 See www.anti-keylogger.net


60 See http://searchcrm.techtarget.com/sDefinition/0,,sid11_gci211901,00.html


63 Id. at 605.


65 Recently, after Hurricane Katrina, ChoicePoint® donated its services to the Red Cross to use its expertise in background screening and fraud reduction to help the Red Cross verify the identities of people who had lost all personal identification and to ensure that the people affected by Hurricane Katrina
received the assistance they needed as quickly as possible (See www.choicepoint.net/85256B350053E646/0/11B953A16CD22E04852570880051F717?Open).

66 See www.i2.co.uk/Company/Press/01062004.asp


68 Harris v. United States, Id.; See also, California v. Ciraolo, 476 U.S. 207 (1986).


70 The dissent in Kyllo accused the majority of effectively treating the mental process of analyzing data obtained from external sources as the equivalent of a physical intrusion into the home. Id at 49.

71 See www.choicepointonline.com; www.choicepoint.com/about/ju_1.html


73 See www.lexisnexis.com/presscenter/mediakit/datacenter.asp

74 The Multi-State Anti-Terrorism Information Exchange (MATRIX) program was an attempt by state government to use data mining to fight crime and terrorism on a national and local level after September 11, 2001. The MATRIX program will be discussed in greater detail later in this article.

75 See www.accurint.com/index.html

76 See www.experian.com/corporate/factsheet.html

77 See www.transunion.com/content/page.jsp?id=/transunion/general/data/about/CapabilitiesMarkets.xml

78 See www.equifax.com

79 See www.dnb.com/US/alliances/acxiom/analyst.asp

80 See www.catalinamarketing.com/about_us/index.html

81 COPPA requires commercial websites to obtain consent from parents or legal guardians before collecting personal information from children under the age of 13. 15 U.S.C. Chapter 91, § 6501 et seq.


84 An administrative subpoena, including the closely related national security letter authority, is the power vested in various administrative agencies to

85 Id. at 652.

86 United States v. Westinghouse Electric Corporation, 638 F.2d 570 (3d Cir. 1980)

87 Id. at 578.


91 TIA’s stated mission was to collect as much information as possible about everyone in America, from doctor’s records to bank deposits, e-mail, education, taxes, car rentals, consumer purchases, travel tickets, phone conversations, and magazine subscriptions with the aim of identifying patterns of terrorist activities based on electronic data trails. The potential for creating a big brother surveillance state was perceived so highly likely that the project was eventually scrapped in 2003.


93 Accurint claims to have a unique digital identity system, which tags everyone in the United States (See www.accurint.com and www.accurint.com/law enforcement.htm).


Department of Homeland Security, Transportation Security Administration, Secure Flight Test Records system (DHS/TSA 017), September 24, 2004 (69 FR 57345); (See www.tsa.gov).

Although the Secure Flight Program is officially dead, privacy groups believe it will be reincarnated perhaps under the moniker of “Money Flight” or “Flight of Fancy” because the government has invested about $150 million into the program. The death of Secure Flight? (2006, February 11). Available online at www.concurringopinions.com/archives/2006/02/the_death_of_se_1.html

EPIC also asserts that the RFID tag contains more biometric information than is necessary or required by the program. The government’s response is that the passive RFID tags used for the program only have a read range of about 3 inches; however, RFID technology is currently evolving and the range of the passive reading will improve (See www.toptechnews.com).


For example, jurisdictions may define the term party as anyone to a conversation or as law enforcement personnel only. Jurisdictions may limit the offenses for which interception is permissible to certain select crimes. Some jurisdictions limit the ability to record the intercepted communications. Some jurisdictions may allow interception for officer safety but for no other purpose including use as evidence in criminal or civil matters. Some jurisdictions may allow the communications to be intercepted as part of a videotaped car stop.

All electronic surveillance statutes require tri-partite probable cause demonstrating a link between the interceptee, the device intercepted, and the offense. Specifically, before an ex parte order approving a wiretap may be issued, the judge must determine that: (a) there is probable cause for belief that an individual is committing, has committed, or is about to commit certain enumerated offenses; (b) there is probable cause to believe that communications relevant to that particular offense(s) will be intercepted; and (c) there is probable cause for belief that the facilities (device) from which the communications will be intercepted are being, or are about to be used, in connection with the commission of the offense(s) or that they are commonly used, leased, or listed under the name of a person in connection with the alleged offense(s).

United States v. Milton, 153 F.3d 891 (8th Cir. 1998).


See United States v. Ippolito, 774 F.2d 1482 (9th Cir. 1985).

See United States v. Ippolito, 774 F.2d 1482, 1486 (9th Cir. 1985). See also Vandergrift v. Maryland, 82 Md. App 617, 627-28, 573 A.2d 56, 60, cert. denied, 320 Md. 801 (Md. 1990). Necessity was shown when it appeared normal investigation would be unsuccessful in identifying sources of supply and “higher ups” and, if continued, would be unlikely to yield evidence sought. In United States v. Torres, 908 F.2d 1417, 1422 (9th Cir.), cert. denied, 111 S.Ct. 366 (1990), the court held that “we have consistently upheld findings of necessity where traditional investigative techniques lead only to the apprehension and prosecution of main co-conspirators, but not to the apprehension and prosecution of suppliers, major buyers, or other satellite conspirators.”


Other investigatory techniques typically employed are DNR/Trap and Trace analysis; surveillance, mobile and stationary; trash or garbage runs; use of informants; criminal history checks; execution of search warrants; use of a grand jury investigation; use of CCTVs; mobile tracking devices; pole cameras; toll record analysis; undercover investigations; and clone pagers.

United States v. Clerkley, 556 F.2d 709, 716 (4th Cir. 1977), cert. denied sub nom. London v. United States, 436 U.S. 930 (1978). See also, Scott v. United States, 436 U.S. 128 (1978). The burden of proof for minimization is initially on the government to make a prima facie showing of compliance, and then the burden switches to the defense for production and persuasion. United States v. Rizzo, 491 F.2d 215, 217-18 (2d. Cir.) cert. denied, 416 U.S. 990 (1974). The standard for compliance for minimization is the overall reasonableness of the totality of the conduct of the monitoring agents in light of the purpose of the wiretap and the information available to the agents at the time of the interception. The more complex and widespread the investigation, the wider latitude of eavesdropping is allowed. United States v. Hoffman, 832 F.2d 1299 (1st Cir. 1987); United States v. Dumes, 313 F.3d 372 (7th Cir. 2002); United States v. Lopez, 300 F.3d 46 (1st Cir. 2002); United States v. Merton, 274 F.Supp. 1156 (D. Col. 2003); United States v. Hernadez-Sandejas, 268 F. Supp. 2d 1295 (D. Kansas 2003). Factors involved in this reasonableness determination include the sophistication of the suspects and counter-surveillance methods, whether coded conversations are used; the location and operation of the target telephone or device; the extent of judicial supervision; the duration of the wiretap; the purpose of the wiretap; the length of the calls monitored; two minutes is “too brief a period for an eavesdropper even with experience to identify the caller and characterize the conversation.” United States v. Capra, 501 F.2d 267 (2d Cir. 1974) cert. denied, 420 U.S. 990 (1975); United States v. Malekzadeh, 855 F.2d 1492 (11th Cir. 1988); United States v. Apodaca, 820 F.2d 348 (10th Cir. 1989); United States v. Dumes, 313 F.3d 372 (7th Cir. 2002); United States v. Wright, 121 F. Supp. 2d 1344 (Kansas, 2000). The existence, or lack thereof, of a pattern of pertinent calls; the absence of privileged interceptions; and the proper handling of interception of windfall, or “other” offenses. Clerkley supra, 556 F.2d at 716; Salzman; Spease and Ross v. State, 275 Md. 88 (1975); United States v. Hyde, 574 F.2d 856 (5th Cir. 1978).

United States v. Bianco, 998 F.2d 1112 (2nd Cir. 1993).
There are three states where a strict compliance approach is applied and directs that any violation of the regulatory scheme would result in the complete suppression of all surveillance evidence. State v. Siegal, 266 Md. 256 (1972); State v. Bailey, 289 Md. 143 (1980) (The omission from the order that the intercept would terminate upon attainment of the objectives rendered the order invalid *ab initio*, and all evidence was suppressed despite the fact that the police complied with the missing provision by terminating surveillance early); State v. Pottle, 677 P.2d 1 (Ore. 1984). Because of the inherent dangers of abuse and an inherently more intrusive process than a traditional search and seizure, strict compliance with all statutory requirements is necessary. Substantial compliance is inadequate; State v. Sitko, 460 A.2d 1 (R.I. 1983); State v. Luther, 116 R.I. 28 (1976).

The statute defines *electronic storage* as “any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof,” plus any backup copies of files in temporary storage.

A provider can disclose content information voluntarily in the following circumstances: (1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient; (2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title; (3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service; (4) to a person employed or authorized or whose facilities are used to forward such communication to its destination; (5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; (6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); (7) to a law enforcement agency (A) if the contents (i) were inadvertently obtained by the service provider; and (ii) appear to pertain to the commission of a crime; or (8) to a federal, state, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency. 18 U.S.C. 2702(b).
In re Subpoena Duces Tecum, 228 F.3d 341, 348-49 (4th Cir. 2000) (requiring probable cause for initial investigative steps would result in an “unacceptable paradox”: it would result in “the virtual end” to investigations “because the object of such investigations—to determine whether probable cause exists to prosecute a violation—would become a condition precedent for undertaking the investigation.”); Newfield v. Ryan, 91 F.2d 700, 702-03 (5th Cir. 1937) (permissible to obtain patron’s telegraph records from telegraph company via subpoena); United States v. Barr, 605 F. Supp. 114, 116-19 (S.D.N.Y. 1985) (subpoena deemed proper mechanism for obtaining undelivered mail from private mail service.)

Mail covers provide a significant source of information recovered in garbage seizures and surveillances.

In re Pharmatrak, Inc. Privacy Litig., 329 F.3d 9, 18 (1st Cir. 2003).

18 U.S.C. 2703(c)(2).


An Internet user does not retain a reasonable expectation of privacy in non-content information disclosed to an ISP. When Internet users communicate with their ISPs, the users have consensually revealed information to their ISPs and have relinquished their 4th Amendment rights in that information. See Guest v. Leis, 255 F.3d 325, 335-36 (6th Cir. 2001) (finding no expectation of privacy in non-content information disclosed to ISP).

United States v. Fregoso, 60 F.3d 1314, 1320 (8th Cir. 1995 n224.)

50 U.S.C. § 1801et seq.


See www.fas.org/irp/agency/doj/fisa/2005rept.html


5 U.S.C. § 552a; www.usdoj.gov/04foia/privstat.htm


18 U.S.C. § 2710. After Robert Bork’s video rentals were revealed during his failed confirmation proceedings for a Supreme Court position, Congress enacted the VPPA to prohibit videotape providers from disclosing consumer rental or purchase records (See http://privacy.med.miami.edu/glossary/xd_vppa.htm).

20 U.S.C. § 1232g. FERPA affords parents the right to access, inspect, and review their children’s education records. At age 18, the rights transfer to the student (See www.ed.gov/policy/gen/guid/fpco/ferpa/index.html).


Id. at 353.

See e.g., Couch v. United States, 409 U.S. 322, 335 (1973). A restaurateur who has given bank statements, payroll records, and reports of sales and expenditures to her accountant for the purpose of preparing her income tax returns may not invoke her 5th Amendment privilege or claim a 4th Amendment privacy interest. Hoffa v. United States, 385 U.S. 293, 302 (1966). “Neither this Court nor any member of it has ever expressed the view that the 4th Amendment protects a wrongdoer’s misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it.”

United States v. Miller, 425 U.S. 435, 442-43 (1976). An individual has no legitimate 4th Amendment expectation of privacy in original checks and deposit slips, financial statements, and monthly statements maintained, pursuant to the record-keeping requirements of the Bank Secrecy Act of 1970 (12 USCS 1829b(d)), by banks with which the individual had accounts. Federal agents may, by means of subpoenas duces tecum, acquire this information since the checks were not confidential communications but negotiable instruments to be used in commercial transactions, and all of the documents obtained, including financial statements and deposit slips, contained only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business.


In re Grand Jury Proceedings, 827 F.2d 301, 305 (8th Cir. 1987). (Western Union customers have no privacy interest in Western Union records, as they are not the customers’ property.)

Smith v. Maryland 442 U.S. 735, 744 (1979) citing, United States v. Miller, supra.

Executive Order 13388, October 2005.
Gellman, B. (2005). The FBI secret scrutiny. Available online at www.washingtonpost.com/wp-dyn/content/article/2005/11/05/AR2005110501366_pf.html; “During calendar year 2005, the Government made requests for certain information concerning 3,501 different United States persons pursuant to National Security Letters (NSLs). During this time frame, the total number of NSL requests (excluding NSLs for subscriber information) for information concerning U.S. persons totaled 9,254. In other words, there were 3,501 different U.S. persons involved in the total of 9,254 NSLs that related to U.S. persons” (See www.fas.org/irp/agency/doj/fisa/2005rept.html).


Steve Jackson Games, Inc. v. U.S. Secret Serv., 36 F.3d 457 (5th Cir. 1994).


TOLLS is a system created by the DEA that electronically loads pen register data into a mainframe system for matching and analysis (See www.cdt.org/digi_tele/9706rpt.html).


See State v. Von Bulow, 475 A.2d 995, 1018 (R.I. 1984). In this murder case, the warrantless toxicological testing that exceeded scope of private search and “positively identified the unknown composition of the pills” “by employing chemical or mechanical means to reveal the hidden nature” violated the 4th Amendment. The state may not significantly expand the scope of a private search unless it obtains a warrant. The state’s toxicological examination of the contents of the black bag did exceed the scope of the private tests performed by Bio-Science Laboratories at the request of Dr. Stock. In addition to the chemical analysis of both the blue liquid and the white powder performed by Dr. Stock, the state toxicologist chemically analyzed five samples of pills, including three capsules and two tablets, and two samples of ampules that were never tested by Dr. Stock. Citing, Walter v. United States, 447 U.S. 649, 654(1980); United States v. Jacobsen, 466 U.S. 109 (1984). In cases in which (1) a field test “could disclose only one fact previously unknown to the agent—whether or not a suspicious
white powder was cocaine,” (2) there was “no other arguably ‘private’ fact,” and (3) it was virtually certain that the powder could have been nothing but contraband, the 4th Amendment did not require the agent to obtain a warrant before conducting the field test.


181 Exceptions or less rigorous demands to the requirements of the 4th 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.


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Does Racism Predict Psychological Harm or Injury? Mental Health and Legal Implications

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Since the Civil Rights movement, legal scholars, psychiatrists, social workers, psychologists, and other mental health professionals have argued for more consideration of the psychological impact of racism on people of color, in part, so that legal claims can be better substantiated and so that mental health treatment can be more effective (Griffith & Griffith, 1986; Scurfield & Mackey, 2001). Despite 40 years of legal prohibition against discrimination, racism remains common among members of many racial groups (Goto, Gee, & Takeuchi, 2002; Harrell, 2000; Pak, Dion, & Dion, 1991; Sanders Thompson, 1996; Schneider, Hitlan, & Radhakrishnan, 2000; Utsey, Chae, Brown, & Kelly, 2002), and studies examining experiences of discrimination consistently report prevalence rates between 40% and 98% among people of color (i.e., Black/African, Asian, Native, and Latino Americans) (Fischer, & Shaw, 1999; Gary, 1995; Kessler, Mickelson, & Williams, 1999; Martin, Tuck, & Roman, 2003; Nazroo, 2003; Noh & Kaspar, 2003; Sanders Thompson, 1996; Sellers & Shelton, 2003; Williams, Neighbors, & Jackson, 2003).

Over the last two decades, many scholars and researchers have written about the social, economic, health, and political effects of racism (e.g., Jones, 1997; Marger, 2003; Mays, Cochran, & Barnes, 2006; Williams & Williams-Morris, 2000). A number of researchers in the psychiatry, psychology, social work, sociology, and public health fields have begun to document the mental health impact of racism and have shown that people of color who experience acts of racism have high levels of psychological distress and lower levels of life satisfaction and well-being (e.g., Feagin & Sikes, 1994; Feagin, Vera, & Batur 2001; Nazroo, 2003; Noh & Kaspar, 2003; Williams et al., 2003). This research tends to use general and global definitions of racism (e.g., institutional, cultural, individual discrimination), as well as general measures of mental health (e.g., life satisfaction, well-being, distress). Although the existing research contributes evidence supporting the general conceptualization of racism as a stressor in the lives of people of color, few studies link specific types of racism to particular emotional, psychological, and mental health outcomes like anxiety, depression, or trauma. The lack of clear links between racism and a person’s emotional and psychological reactions makes it difficult to develop clear treatment strategies and for legal claims to prevail in courts, which require the provision of evidence of emotional distress that has resulted directly from a specific incident(s) (Griffith & Griffith, 1986; Scurfield & Mackey, 2001). In addition, and
perhaps more importantly, Carter (2007) argues that the lack of conceptual clarity around the definition of racial discrimination in both the law and in mental health and the failure to delineate specific nonpathological emotional and psychological reactions to racist incidents not only creates problems in treatment and attempts at redress, it can also lead to re-traumatizing of targets.

Given the detrimental impact of current limitations, Carter proposes that in order to make direct connections between racism and specific mental health effects, it may be necessary to deconstruct the term *racism* by disconnecting it from current legal definitions and everyday use and by providing greater clarity about what these experiences are. He suggests that defining *racism* in terms of distinct classes of events, which are characterized by either avoidance or hostility, would make it possible to directly link specific personal experiences to particular types of emotional and psychological reactions or symptoms. He also posits that the stress associated with racist events may produce trauma or result in emotional and psychological harm or injury and that the reliance on diagnosable psychological disorders as evidence of emotional distress may cause clinicians to underestimate the true psychological impact of racist experiences. Finally, he argues that the different classes of racism he suggests could be associated with different emotional and psychological reactions, which may or may not reflect psychological harm or injury.

The primary purpose of the present investigation is to examine whether Carter’s (2007) conceptualization of both racist experiences and mental health outcomes has potential utility in the application of psychological research and practice to the law. In other words, we seek to determine whether the more specific types of racist experiences identified by Carter are related to particular emotional reactions and whether these types of racism are differentially related to emotional and psychological harm or injury. In line with this purpose, we present Carter’s definitions of the two types of racism, as well as his distinction between disorder and injury, and contend that these distinctions could provide greater accuracy in future research, assessment, intervention, and legal claims, while minimizing the re-traumatizing of targets. We integrate research on the mental health impact of race-related stress and racial discrimination and use this literature to illustrate that racism should be understood as an experience that can produce stress, and that in some cases, the stress incurred can rise to the level of a traumatic stress reaction. Finally, we present the results of an empirical test of the contention that different types of racism have differential emotional and psychological effects.

**Unpacking Racism**

Carter (2007) has argued that the use of generic terms (e.g., *discrimination*) to denote racist experiences in both research and the clinical context do not aid targets in specifying the nature of the particular event(s) that contribute to their psychological and emotional reaction(s) or possible harm or injury. When racism is used to refer to a broad set of circumstances (macro), it is not possible to link that oppression to a particular person’s mental health status or potential harm (micro) even though the set of circumstances may actually describe various forms of or experiences with racial oppression. This is not to say that systemic and structural forms of racism or having limited access to social or political power do not produce harm or trauma; we believe they do. In order for mental health research to aid clinicians
in treating and assisting targets to file claims of racial discrimination, however, it is necessary to identify the particular aspects of structural and individual racism that are responsible for psychological and emotional harm and cause people to be affected in this way.

Current research on racism as a stressor primarily takes a macro approach wherein the frequency of many different experiences of racism or discrimination over time is summed and then statistically related to a measure of mental health. Many of the studies that find positive associations between discrimination and psychological distress in a variety of populations of color assess discrimination using a single general question (e.g., Amaro, Russo, & Johnson, 1987; Dion, Dion, & Pack, 1992; Noh, Beiser, Kaspar, Hou, & Rummens, 1999; Noh & Kaspar, 2003; Williams, 2000). Studies that use more complex measures to assess specific types of discriminatory experiences, nonetheless tend to rely on global scores that reflect the sum of many undifferentiated racist experiences in making connections between racism and mental health (e.g., Kessler et al., 1999; Klonoff, Landrine, & Ullman, 1999; Landrine & Klonoff, 1996; Sanders Thompson, 1996; Williams, Yu, Jackson, & Anderson, 1997). These studies are successful in finding an association between exposure to discrimination and more specific psychological symptoms and, in some cases, provide evidence of differences in the mental health outcomes related to acute versus chronic experiences. Nonetheless, their use of a generic category of racist experiences fails to provide a clear and specific framework that mental health professionals can apply to treatment and social action (e.g., legal redress) for the benefit of targets.

We argue that a more micro approach might help targets of racism to distinguish types or classes of racist acts that can be connected to specific and related psychological and emotional reactions. Currently, clear definitions of racial discrimination do not exist in the law or in organizational policies. This means that the identification of racial discrimination depends almost exclusively upon targets’, clinicians’, and lawyers’ personal understandings of what constitutes a racist act. Like all Americans, lawyers, psychiatrists, social workers, psychologists, and mental health professionals are subject to an often-subtle process of racial socialization, which encourages them to accept assumptions and stereotypes about various racial groups. These often subtle attitudes and biases will undoubtedly influence their perceptions of when racism plays a role in an event. Through greater specificity of terms, targets and their clinicians and lawyers will be able to clearly identify what happened to them, and they will be better able to recognize and label race-based encounter(s). In order to create a new way to connect racism to mental health symptoms, we propose using the definitions of discrimination as distinguished from harassment presented by Carter (2007).

Carter (2007) proposes that racism should be deconstructed into specific types of experiences defined as forms of racial discrimination and racial harassment that have application to clinical practice and legal remedy. **Racial discrimination** is a class of experiences with racism that reflect *avoidance* or *aversive racism*, wherein behaviors, actions, policies, and strategies have the intended or unintended effect of maintaining distance or minimizing contact between members of the dominant racial group and members of nondominant racial groups (Feagin & McKinney, 2003). As argued by Carter (2007), discrimination tends to be fairly subtle, allowing members of the dominant group to engage in racist practices through behaviors
that might otherwise be perceived as neutral. Examples of racial discrimination include being denied access to or receiving inadequate services in a public setting, being excluded from social networks that offer opportunities for advancement, or having one’s achievements dismissed or denied.

*Racial harassment* is a class of experiences that reflect *hostile or dominative racism* wherein actions, strategies, behaviors, and policies are intended to communicate or make salient to targets their subordinate status due to membership in a nondominant racial group (Carter & Helms, 2002; Jones, 1997; Kovel, 1970). The hostility associated with racial harassment includes the commission of, or implied or actual institutional permission to commit, flagrant acts of racism. It might also occur as a form of pressure from superiors and peers to “fall-in-line” with institutional racial policies as a condition of continued employment, education, or social participation (e.g., “quid pro quo” racial harassment). Racial harassment tends to be more overt and often includes an element of threat either to one’s safety, well-being, or livelihood. Examples of racial harassment include being followed in a store by a security guard, being stopped and hassled by police officers, and being subjected to verbal or physical assaults.

Each type or class of racism described above is associated with the use of social, economic, or political power to impose one’s or one’s groups’ expectations and preferences. These new definitions encompass acts that occur on the individual, institutional, and cultural levels. In addition, both overt and covert, intentional and unintentional racist incidents that have been examined in previous research on the mental health impact of racism (e.g., daily hassles, institutional, cultural, and individual racism) can all be categorized as either racial discrimination or racial harassment.

These definitions are reminiscent of the distinctions that have been applied with success in sexual harassment and discrimination cases for decades but which as of yet have not been applied to cases of racial discrimination. According to current legal statutes, racial harassment and racial discrimination are not treated as distinct types of experiences. Because racial harassment and racial discrimination are combined in the law (i.e., treated using theories of disparate treatment and disparate impact), when a complaint is filed, the plaintiff must show that the defendant intended to discriminate specifically on the basis of race and that the defendant harbored racial animus (Green, 2003; Wang, 2006). In contrast, sexual discrimination and sexual harassment are treated in the law and in organizations as distinct events. This distinction allows claims of sexual harassment to be established without providing evidence that the defendant acted with intent.

In a qualitative investigation using the distinction between discrimination and harassment, Carter, Forsyth, Mazzula, and Williams (2005) found that among the types of racist incidents people described, 54% could be considered hostile acts and categorized as racial harassment, and 23% were more aversive or avoidant and were often indirect or subtle acts that better fit the notion of racial discrimination. Carter et al. (2005) also reported that of the participants who indicated they had lasting psychological effects, the psychological effects associated with harassment appeared to be more severe than those associated with acts of discrimination. Although the analysis used in this study was largely descriptive and qualitative, the results provide some preliminary indication that racial harassment could result
in more severe psychological and emotional effects than racial discrimination. Therefore, further investigation of the relative impact of the two types of experiences is needed.

The distinction between racial discrimination and harassment could potentially be a useful tool to further psychiatrists’, mental health professionals’, and law officials’ understanding of the emotional impact of racism. Specifically, it is posited that deconstructing racism into the specific forms of racial harassment and discrimination can . . .

• Facilitate recognition by targets, clinicians, and legal professionals of the more systematic, covert, subtle, and unconscious forms of racism.
• Chart new clinical and legal strategies.
• Help to establish a more accurate assessment of targets’ emotional reactions to racism in order to more effectively treat them and assist those who wish to pursue legal complaints or seek emotional relief.

Unpacking the Mental Health Outcomes of Racism

Over the last two decades, researchers have documented a variety of mental health reactions to racism including symptoms that range from distress to more severe reactions associated with adjustment disorders, mood disorders, and anxiety disorders (Butts, 2002). Studies of Black, Asian, Latino, and American Indian populations have found significant associations between perceived discrimination and depressive symptoms (Finch, Kolody, & Vega, 2000; Landrine & Klonoff, 1996; Mossakowski, 2003; Noh et al., 1999; Noh & Kaspar, 2003; Romero & Roberts, 2003; Whitbeck, McMorris, Hoyt, Stubben, & LaFramboise, 2000). Other studies have found links between discrimination and psychiatric symptoms such as somatization, depression, anxiety, and obsessive compulsion among Black Americans (Landrine & Klonoff, 1996; Klonoff, Landrine, & Ullman, 1999). In addition, a number of studies have revealed that racial stressors cause high blood pressure, risk for heart disease, and increased susceptibility to an array of negative health outcomes (Bennett, Merritt, Edwards, & Sollers, 2004; Harrell, Hall, & Taliaferro, 2003; Mays et al., 2006).

Despite the compelling evidence that discrimination is experienced as extremely distressful by many people, only a few studies (e.g., Kessler et al., 1999; Utsey et al., 2002) have been able to assert that the symptoms experienced rise to the level of a diagnosable disorder such as generalized anxiety or major depression. A number of scholars argue that reactions to race-related incidents may rise to the level of traumatic stress (e.g., Bryant-Davis & Ocampo, 2005; Butts, 2002; Carter, 2004, 2005, 2007; Carter et al., 2005; Carter & Helms, 2002; Comas-Diaz & Jacobsen, 2001; Rollock & Gordon, 2000; Scurfield & Mackey, 2001), but researchers have yet to consider trauma as a possible reaction to racial discrimination.

Although trauma and stressful life-event investigators (e.g., Breslau, 2001; Kulka et al., 1990; Loo et al., 2001; McNeil, Porter, Zvolensky, Chaney, & Marvin, 2000; Norris, 1990; 1992; Perilla, Norris, & Lavizzio, 2002) have studied racially diverse populations, they typically have not focused on racism as a factor in the development of Post Traumatic Stress Disorder (PTSD) after exposure to a potentially severe stressful event (e.g., disasters and combat). They have found, however, that people
of color, both as veterans and members of the general population, have elevated levels of PTSD (15% to 45%) not fully explained by the event or other factors when compared to Whites (5% to 15%). To date, the only study that has explicitly investigated race-related stressors in the development of PTSD, found that race-related stressors were stronger predictors of PTSD over and above exposure to combat for Asian American Vietnam veterans, thereby showing that personal experiences of racism were contributing factors in the development of PTSD (Loo et al., 2001). Still, no study has directly examined the link between discrimination and PTSD, and it has been difficult for researchers to provide empirical evidence to substantiate the claim that discrimination can cause acute stress reactions or other diagnosable disorders.

A number of factors in the research methodologies employed in previous studies may account for some of the difficulty in substantiating the severe emotional and psychological impact of racism for people of color. First, these studies tend to use global scores on measures of mental health. In those cases in which more subscale scores are used, statistical analyses compare the group mean score on the subscale to the group mean on the general score for discrimination. The results, therefore, provide a general picture of a relationship between racism and mental health but offer little sense of what specific sorts of incidents are associated with more severe mental health outcomes or what characteristics of these incidents may lead to more intense psychological and emotional reactions. Furthermore, none of the cited studies ask participants to specifically identify symptoms that they feel are the direct result of their experiences of racial discrimination. Instead, general experiences of discrimination are correlated with general symptom scores, providing a measure of the general relationship between two constructs on a group level. Given that the results of these investigations indicate significant relationships despite these limitations, it is possible and perhaps even likely that the psychological and emotional reactions to racial discrimination and harassment in the population may be significantly more severe than those detected thus far in research samples.

Carter (2007) argues that the use of universal mental health standards, which are assumed to be racially neutral further obstruct efforts to recognize the psychological and emotional impact of racism. Currently, the diagnostic criteria used by mental health professionals (APA, 2000) makes it difficult to link the mental health effects of racism to specific types of experiences. Some scholars argue that the failure to include racism among the 16 environmental stressors considered to cause adjustment disorders or the 36 environmental stressors considered to cause PTSD or acute stress reactions reflects denial within the mental health profession that racism can cause stress and trauma (Carter, 2007; Scurfield & Mackey, 2001). While counterarguments emphasize the subjectivity of experiences of racial discrimination, research on both generic and racial stressors clearly indicates that it is the individual’s perception of an event as stressful, rather than an “objective” measure of the inherent stressfulness of events that influences its impact on mental health.

Carter (2007) proposes that a broader definition of traumatic stress, such as that presented in Carlson’s (1997) model of traumatic stress, should be used in the conceptualization of psychological injury resulting from racism. Carlson’s model does not rely on physical danger or threats to one’s life as its core criteria as is the
case with PTSD. According to Carlson, traumatic stress results from experiences that are extremely negative (emotionally painful), sudden, and uncontrollable. For an encounter to be traumatic, the person must have symptoms of intrusion, avoidance, and arousal consistent with those associated with a PTSD diagnosis, but one may express these reactions emotionally, physiologically, cognitively, and behaviorally or in combination. She also argues that trauma may be exhibited through anxiety, anger, rage, depression, shame, or guilt. In contrast to Carlson’s conceptualization, the diagnosis of PTSD is limited by the fact that the person’s subjective perceptions are not part of the criteria, and the event that triggers the reactions can only be a physical threat to life. Furthermore, the use of PTSD or other stress-related diagnoses implies that the target of racism is judged to be mentally disordered; whereas, it is probable that the target of racism is distressed and made ill by racial encounters and incidents.

Furthermore, Carter (2007) argues that the notion of disorder in and of itself may be limited for assessing race-related psychological outcomes. He posits that it might be more effective to consider the effects of racism as psychological injury or harm rather than as a mental disorder, as the effects of racism arise from environmental stressors rather than from an abnormality that resides within the individual. Currently, when a person who has been affected by racism makes a legal claim, files an organizational complaint, or presents for mental health treatment, her or his case is substantiated through the diagnosis of a psychiatric disorder. This is a situation that many people of color would not welcome because it establishes a stigma and could compromise any claim for redress by implying a history of mental instability or vulnerability, both of which might therefore make healing and treatment difficult. In treating targets of racism, it may be more important that the person understand how his or her experience may have caused psychiatrically significant emotional and psychological harm.

The use of injury as opposed to disorder requires consideration of the target’s personal history as well as the power of racism to produce stress and trauma. It could also serve to change how a person’s experience is discussed clinically and how all parties understand it. Most people of color would not welcome being told that they were suffering from a mental disorder arising from an encounter with racism. From their perspective, they were treated in an aversive or hostile and unfair way, and that treatment caused tremendous hardship, emotional pain, and personal humiliation. The use of injury recognizes that a person had or is having a racial experience(s) that has produced psychiatric impairment, that his or her rights were violated unfairly, and that there is an option to seek redress. This conceptualization could make it easier for members of racial groups that have historically been pathologized by the mental health fields to accept impairment, work towards healing, and establish a claim for legal or administrative redress. These elements are not considered when PTSD or other DSM diagnoses are used. As a result, general psychiatric diagnoses have limited value in capturing the full scope of the target’s phenomenological experience and may hamper efforts for legal redress and healing.

The Intersection of the Law and Mental Health

A target of racism can live with the pain of his or her experience, retain legal counsel, file a complaint, or seek the services of a mental health professional for
If a lawyer is consulted, he or she may want a mental health professional to be involved, particularly if the case will include claims of psychological or emotional distress. Thus, the avenues for relief and redress clearly involve psychiatry, social work, psychology, or other mental health professionals. It is imperative that mental health professionals understand that the law and related avenues of redress today can also be another source of emotional and psychological distress for a person of color because of the burden of proof placed on plaintiffs who claim they have been the target of racism or racial discrimination (legally defined) and have suffered emotional distress as a result. Thus, in the majority of cases mental health professionals may be the only source of relief if legal redress is blocked or burdensome.

Psychiatrists, mental health professionals, and lawyers face significant barriers and obstacles as they try to address, litigate, understand, or assess experiences of race-related stress or race-based traumatic stress that may arise from exposure to racism (Butts, 2002; Feagin & McKinney, 2003). The landscape of legal relief and redress has been an important pathway in efforts to reduce the effects of different forms of discrimination directed at various protected groups. At the same time, however, the law has been and is a barrier of its own that is an additional source of stress, distress, and psychological harm for people of color who seek administrative recourse, legal remedy, and emotional relief.

The laws and legislative acts (three constitutional amendments and seven federal Civil Rights Acts) that have been directed at race and racism in the United States, pre-date laws that focus on other protected groups (i.e., women or the disabled), yet today more progress has been made with respect to, for example, sexual discrimination and harassment than with racial discrimination (Bell, 2000). Racially hostile environments were first recognized by the courts in 1972, and sexually hostile environments were not recognized until 1982 (Buff, 1995). Progress with respect to sexual discrimination and harassment is evidenced by the large volume of and widely distributed research and information, both in the law and social sciences, about what constitutes sexual harassment (Simon, 1996). Most organizations have policies that distinguish between sexual harassment and discrimination, as well as specific procedures for filing complaints. In contrast, few organizations have explicit policies and procedures for filing complaints of racial harassment or racial discrimination, and these types of experiences are neither well-defined nor treated as distinct events by the law. More importantly, claims and complaints regarding the impact and effects of racism, as currently structured in laws and administrative organizational procedures, do not consider systematic or structural impacts or outcomes of racism, nor is there a way to assess emotional distress that can be effectively used by mental health professionals (Green, 2003).

It is even more difficult to establish that one was psychologically harmed or experienced emotional distress in racial discrimination cases because there are not well-defined ways to connect emotional distress reactions of targets to specific types of acts associated with racial discrimination as defined in the law. In order to receive compensatory damages for acts of discrimination, one must generally link severe and pervasive emotional responses (i.e., emotional distress) to the incident (Griffith & Griffith, 1986). According to tort law and civil law, emotional distress “includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment,
worry, and nausea. . . . so severe that no reasonable man (or women) could be expected to endure it,” and both “the intensity and the duration of the distress can be considered in determining its severity” (Restatement, 1965, comment j). The law provides no indication of what sort of evidence a psychologist, psychiatrist, or mental health professional could provide to show that the emotional distress experienced was severe. Although virtually no published articles in the mental health literature provide guidance for establishing a legal claim of severe emotional distress in cases of racial discrimination, forensic psychologists have noted that in sexual harassment litigation, diagnosable psychiatric disorders are preferred (Simon, 1996).

The tort of infliction of emotional distress demands further that the incident fulfill four requirements: (1) that the act was outrageous, (2) that it was carried out intentionally, and that it (3) is the cause, (4) of extreme or severe emotional distress [Restatement (Second) of Tort § 46]. The burden of proving intent and meeting other conditions remains so difficult that few can partake of this remedy unless the racism is overt and physical or unless there is a way to connect the experience of racism with specific symptoms that reflect a traumatic stress reaction. We contend that the use of mental disorders to assess the impact of racism does not capture all aspects of the encounter with racism and that through its primary focus on the target, it fails to address the power of the experience to produce emotional harm. Efforts to establish claims for emotional distress are further complicated by the fact that little is written in the legal or mental health assessment literature that is specifically focused on describing the direct and specific psychological effects of racism (Butts, 2002; Green, 2003; Johnson, 1993) and that the assessment criteria used by mental health professionals are not specific to the racial aspect of the experience. These difficulties are exemplified by the fact that in 2005, of the 26,740 claims of discrimination filed, 68% were dismissed by the Equal Employment Opportunity Commission because investigation found that they did not meet the requirements necessary to seek legal remedy.

Although the bodies of research on race-related stress, discrimination, and PTSD provide evidence that racism impacts peoples’ mental health, it is hard to know what specific aspects of racism impact people and whether the stress of such experiences can produce a traumatic reaction. The varied terminology used in research and in the law makes it difficult to connect particular types of racist experiences to specific mental health effects; therefore, the purpose of the present study is to determine whether it would be possible to connect experiences of discrimination and harassment, as defined by Carter (2007), to particular emotional and psychological reactions or symptoms. Additionally, the study seeks to determine whether one type of experience was associated with more severe psychological harm or injury than the other. The present study used the distinction between harassment and discrimination to capture the types of critical racial incidents that people of color reported. It also used the notion of psychological injury, which reflects the more intense emotional reactions specified in the legal definition of emotional distress, or no-injury, which reflects less severe reactions, to analyze any possible differences between the two types of racism.
Method

Participants

A total of 352 people visited the survey’s website, out of which 228 completed the survey. Of the 228 participants, 11% (n = 29) reported that they had not experienced racial discrimination, and 89% (n = 228) indicated that they had experienced racial discrimination. The remaining demographic information will be presented only for those participants who indicated they had an experience of discrimination because they were the focus of the analysis. Of the 228 participants, 72.6% (n = 164) were female, 26.5% (n = 60) were male, and 0.9% (n = 2) did not identify their gender or provide other demographic information leaving a sample of 226 with detailed information. The participants ranged in age from 17 to 63 (M = 35.4).

The socioeconomic status of the participants was as follows: 2.2% lower class (n = 5), 19.7% working class (n = 45), 57.5% middle class (n = 131), 18.4% upper middle class (n = 42), 1.3% upper class (n = 3), and < 1% did not respond (n = 2). The racial composition of the sample was 51.3% Black (n = 117), 18.4% Hispanic/Latino (n = 42), 14.5% Asian (n = 33), and 9.6% Biracial (n = 22), 0.4% Native American (n = 1), and 5.3% didn’t identify their race (n = 12). In general, the participants were well-educated: 49% held a graduate degree (n = 111); 18% had some graduate education (n = 41); 18.6% held a college degree (n = 42); 11.9% had some college education (n = 27); and 2.9% held a high school diploma or some high school education (n = 5).

Instruments

Personal Data Form. The Personal Data Form asked participants to indicate their age, gender, race, ethnicity, place of birth, religion, socioeconomic status, occupation, years in job, and education level.

Racial Discrimination Experiences Questionnaire. The Racial Discrimination Experiences Questionnaire (Carter et al., 2005) employed a qualitative approach to investigate participants’ experiences with racism. It consisted of two yes-or-no, and five open-ended questions about experiences with racism: (1) Have you ever had an experience of racial discrimination?; (2) If yes, please indicate whether the experience was a single episode or a recurring event; (3) When did the experience occur?; (4) Where did the experience occur (e.g., work, shopping, social event, etc.)?; (5) What happened? Please describe; be specific; (6) Were there any lasting effects associated with this experience (e.g., emotional reactions, dreams, etc.)? (yes or no); and (7) If yes, what were those effects? Please describe; be specific.

Procedure

Recruiting Participants

Participants were solicited through e-mail announcements to listserves of various organizations throughout the country and through attendance at conferences where they received a flyer. The announcement provided potential participants with a web address at which they could access the study and asked participants to forward information about the study to others in order to create a “snowball
effect.” The first page included a consent form informing the participants of their right to withdraw from the study at any time should they deem it necessary. Once the subjects agreed to participate in the study, they were directed to the survey, which was comprised of the Personal Data Form; the Racial Discrimination Experiences Questionnaire; and a debriefing form, which included resources for those participants who wanted more information about ways to address their experiences.

**Development of Themes**

Using a phenomenological content-based coding procedure (Creswell, 2003), the primary investigator developed descriptive categories from the participants’ critical incident narrative responses to the open-ended questions that described their experiences with racism and its effects. This method of coding is inductive as opposed to deductive in that a theoretical position was not imposed on the narrative responses; rather, the categories were developed directly from the participants’ descriptions of their experiences. Because preconceived categories were not imposed on the data, some of the responses were idiosyncratic and did not fit within any of the categories—these were coded as Other. From the responses describing incidents of discrimination, ten initial categories were derived. For the types of lasting psychological and emotional effects, nine initial categories were created.

The ten initial categories for types of critical incidents were as follows:

1. Verbal Assault (called names or racial slurs, subjected to racial jokes)
2. Denied Access or Service (ignored, made to wait, refused access to opportunity because assumed to have less ability)
3. Profiled (followed in a store, accused or suspected of theft, stopped by the police)
4. Treated on the Basis of Stereotype (assumed to have or lack particular qualities or qualifications as a result of racial group membership)
5. Violated Racial Rules (admonished through direct or indirect means for violating stereotypes about one’s racial group or crossing racial boundaries)
6. Physical Assaults (beaten or otherwise physically threatened)
7. Own Group Discrimination (mistreated due to physical appearance by members of one’s own racial group)
8. Hostile Work Environment (any type of racist incident in the work environment)
9. Multiple Experiences (combination of more than one event)
10. Other

An 11th category, Vicarious Experiences (participant witnessed or was told about the experience of a relative or friend), was added during inter-rater coding. It is important to note that although profiling generally occurs as the result of being stereotyped, the category of Profiled captured only specific acts that implied suspicion of wrongdoing. Similarly, while stereotyping plays a role in Violated Racial Rules, the category includes only those events in which a message was conveyed to the participant that his or her behavior fell outside of a racial norm. In contrast, the Treated on the Basis of Stereotype category captures general and often more subtle behaviors and attitudes.
The nine initial categories that were generated for psychological or emotional effects were as follows:

1. Extreme Emotional Distress (intense or complex single emotions, or combination of more than one emotion)
2. Hyper-Vigilance or Arousal (exaggerated self-consciousness, hypersensitivity, or awareness)
3. Mild Emotional Distress (single mild emotion)
4. Avoidance (behavioral or emotional withdrawal)
5. Intrusion (recurring memories, thoughts, dreams)
6. Distrust (difficulty trusting others)
7. Lower Self-Worth (doubt about choices, loss of faith in ability)
8. Positive Outcome (positive emotions, adaptive coping)
9. Other

A 10th category, Physiological Effects (physical symptoms), was added during the inter-rater coding process.

Coding Procedure

Three trained raters independently coded the participants’ responses utilizing the categories initially derived by the primary investigator to ensure that they were valid and verifiable. Cohen’s Kappa was used to calculate inter-rater reliability (Fleiss, 1971). Prior to coding, a baseline level of agreement for both critical incidents and psychological and emotional effects was reached on two subsets of the participants’ responses. The Kappa for the first baseline round of coding was .72 for critical incidents and .73 for psychological effects (see Fleiss, 1971 for Kappa calculations). After discussing areas of disagreement, the coding manual was refined, and a second set of sample responses was coded. The baseline Kappa for the second round was .89 for both critical incidents and psychological and emotional effects.

The entire sample of open-ended and descriptive responses of critical incidents was then divided into three subsets, and the descriptive responses of the psychological and emotional effects were divided into two subsets. After each subset was independently coded, the raters calculated Kappa, discussed discrepancies, and came to consensus regarding the appropriate final category for each item. The mean Kappa coefficient for the coding was .79 for critical incidents and .85 for psychological and emotional effects.

Discrimination v. Harassment and Psychological Injury v. No Psychological Injury

Once the critical incidents had been coded, they were grouped as either aversive or hostile acts using Carter’s (2007) definitions of discrimination and harassment. As noted earlier, the essence of racial harassment involves acts of hostility communicated in various ways and includes an element of threat either to one’s safety, well-being, or livelihood. The following types of critical incidents were, therefore, categorized as harassment: Verbal Assault, Hostile Work Environment, Profiled, Violated Racial Rules, and Physical Assault. As noted previously, racial discrimination pertains to experiences that involve avoidance of nondominant racial group members. Avoidance can take on both overt and covert forms, so the
following types of critical incidents were classified as discrimination: Denied Access or Service, Treated on the Basis of a Stereotype, and Own Group Discrimination (see Table 1). We excluded from this group some critical incidents in the category of Multiple Experiences, which could not be categorized as either discrimination or harassment (n = 3). The Multiple Experiences that involved multiple incidents of only discrimination or harassment were categorized accordingly. We also excluded Vicarious Experiences (n = 1) and Other Events (n = 6 or 9).

The participants’ coded descriptive reports of their emotional effects were grouped as either constituting psychological injury or no psychological injury. Our conceptualization of injury was based on the definition of emotional distress used in legal cases and Carlson’s (1997) model of traumatic stress, which involves the reactions of intrusion (recurring memories, dreams, inability to concentrate); avoidance (withdrawal from situations that provoke memories); and arousal (hyper-vigilance, anxiety, inability to sleep, or physiological reactions). Using these reactions as guides, we grouped the emotional effects categories that might reflect psychological injury as follows: Extreme Emotional Distress, Hyper-vigilance/Arousal, Avoidance, Intrusion, and Physiological Effects (See Table 2). The categories of emotional effects that reflected no psychological injury included the following: Moderate Emotional Distress, Distrust, Positive Outcome, and Lower Self Worth (See Table 2). Participants who indicated that they did not experience any lasting effects as a result of their experience with racism were also placed in the No Injury group. Moderate Emotional Distress was not considered to be injurious because it involved only one mild emotion and seemed to reflect a less intense emotional reaction, and Lower Self-Worth was included in the No Injury group because it was not clear what the extent of the harm might have been. The Other category was excluded from both groups.

Table 1. Categories of Discrimination and Harassment (n = 183)

<table>
<thead>
<tr>
<th>Racial Discrimination (n = 58)</th>
<th>Racial Harassment (n = 127)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denied Access or Service (n = 27)</td>
<td>Verbal Assault (n = 25)</td>
</tr>
<tr>
<td>Treated on Basis of Stereotype (n = 15)</td>
<td>Hostile Work Environment (n = 40)</td>
</tr>
<tr>
<td>Own Group Discrimination (n = 2)</td>
<td>Profiled (n = 19)</td>
</tr>
<tr>
<td>Multiple Experiences (n = 14)</td>
<td>Physical Assault (n = 9)</td>
</tr>
<tr>
<td></td>
<td>Violated Racial Rules (n = 13)</td>
</tr>
<tr>
<td></td>
<td>Multiple Experiences (n = 21)</td>
</tr>
</tbody>
</table>

Note: Vicarious Experiences (n = 1), Other Events (n = 6), and a portion of Multiple Experiences (n = 3) could not be coded as constituting either racial discrimination or racial harassment.

Table 2. Categories of Injury and No Injury (n = 185)

<table>
<thead>
<tr>
<th>Injury (n = 108)</th>
<th>No Injury (n = 77)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extreme Emotional Distress (n = 69)</td>
<td>Moderate Emotional Distress (n = 5)</td>
</tr>
<tr>
<td>Hyper-Vigilance/Arousal (n = 21)</td>
<td>Distrust (n = 10)</td>
</tr>
<tr>
<td>Avoidance (n = 11)</td>
<td>Positive Outcome (n = 5)</td>
</tr>
<tr>
<td>Intrusion (n = 6)</td>
<td>Lower Self-Worth (n = 8)</td>
</tr>
<tr>
<td>Physiological Effects (n = 1)</td>
<td>No Effect (n = 49)</td>
</tr>
</tbody>
</table>

Note: Psychological and Emotional Effects coded as Other (n = 20) were excluded from this analysis.
From the total number of participants (n = 228), 42 responses could not be grouped as either discrimination or harassment or as psychological injury vs. no psychological injury, thus leaving a subtotal of (185) respondents’ reports that could be included in the analysis. The frequencies of racial discrimination and harassment for the 188 participants were discrimination (n = 58) and harassment (n = 127). The frequencies for the participants grouped as psychological injury or no injury were injury (n = 108) and no injury (n = 77).

**Results**

The following statistical analyses were conducted only with the participants (n = 188) whose experiences were grouped as constituting racial discrimination or racial harassment and whose emotional and psychological effects were grouped as reflecting either psychological injury or no psychological injury.

To determine whether there were racial differences in experiences of racial discrimination or harassment and psychological injury or no psychological injury, we conducted a Chi Square analysis. Chi Square analysis was used because all four of the variables being tested are categorical. The results were not significant and were as follows: race by discrimination and harassment (n = 185, $X^2 = 5.29$, df = 3, $p = .15$) (see Table 3); and race by psychological injury vs. no psychological injury (n = 185, $X^2 = 3.35$, df = 3, $p = .34$) (see Table 4). These findings indicate that for this sample, the participants who identified as Black, Asian, Latino, and Biracial did not experience incidents of racial discrimination and harassment with different rates of frequency.

| Table 3. Race by Racial Discrimination and Harassment (n = 185) |
|---------------|------------|----------|------------|
| Race          | Discrimination | Harassment | Total      |
| Black         | 33          | 68        | 101        |
| Latino        | 16          | 22        | 38         |
| Asian         | 5           | 24        | 29         |
| Biracial      | 13          | 17        | 17         |
| Total         | 58          | 127       | 185        |

| Table 4. Race by Psychological Injury vs. No Psychological Injury (n = 185) |
|---------------|------------|----------|------------|
| Race          | Injury     | No Injury | Total      |
| Black         | 55         | 46        | 101        |
| Latino        | 27         | 11        | 38         |
| Asian         | 17         | 12        | 29         |
| Biracial      | 9          | 8         | 17         |
| Total         | 108        | 77        | 185        |

To determine whether there were differences by gender and socioeconomic status in experiences of racial harassment or discrimination and injury or no injury, a series of four Chi Square analyses were performed. Note that in these analyses, some participants could not be included due to missing data. The results of these analyses were not significant and were as follows: gender by discrimination vs. harassment (n = 183, $X^2 = 2.26$, df = 1, $p = .78$) (see Table 5); gender by psychological injury vs. no
psychological injury (n = 183, $X^2 = 2.26, df = 1, p = .13$) (see Table 6); socioeconomic status by discrimination vs. harassment (n = 185, $X^2 = .276, df = 2, p = .87$) (see Table 7); and socioeconomic status by psychological injury vs. no psychological injury (n = 185, $X^2 = .55, df = 2, p = .76$) (see Table 8). These findings indicate that for this sample, participants from different genders and socioeconomic status did not experience incidents of racial discrimination vs. harassment nor psychological injury vs. no psychological injury with different rates of frequency.

### Table 5. Gender by Racial Discrimination vs. Harassment (n = 185)

<table>
<thead>
<tr>
<th>Gender</th>
<th>Discrimination</th>
<th>Harassment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>16</td>
<td>38</td>
<td>54</td>
</tr>
<tr>
<td>Female</td>
<td>41</td>
<td>88</td>
<td>129</td>
</tr>
<tr>
<td>Total</td>
<td>57</td>
<td>126</td>
<td>183</td>
</tr>
</tbody>
</table>

### Table 6. Gender by Psychological Injury vs. No Psychological Injury (n = 185)

<table>
<thead>
<tr>
<th>Gender</th>
<th>Injury</th>
<th>No Injury</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>27</td>
<td>27</td>
<td>54</td>
</tr>
<tr>
<td>Female</td>
<td>80</td>
<td>49</td>
<td>129</td>
</tr>
<tr>
<td>Total</td>
<td>107</td>
<td>74</td>
<td>183</td>
</tr>
</tbody>
</table>

### Table 7. SES by Discrimination vs. Harassment (n = 185)

<table>
<thead>
<tr>
<th>SES</th>
<th>Discrimination</th>
<th>Harassment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower/Working Class</td>
<td>14</td>
<td>27</td>
<td>41</td>
</tr>
<tr>
<td>Middle Class</td>
<td>34</td>
<td>75</td>
<td>109</td>
</tr>
<tr>
<td>Upper Middle/Upper Class</td>
<td>10</td>
<td>25</td>
<td>35</td>
</tr>
<tr>
<td>Total</td>
<td>58</td>
<td>127</td>
<td>185</td>
</tr>
</tbody>
</table>

### Table 8. SES by Injury vs. No Injury (n = 185)

<table>
<thead>
<tr>
<th>SES</th>
<th>Injury</th>
<th>No Injury</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower/Working Class</td>
<td>26</td>
<td>15</td>
<td>41</td>
</tr>
<tr>
<td>Middle Class</td>
<td>62</td>
<td>47</td>
<td>109</td>
</tr>
<tr>
<td>Upper Middle/Upper Class</td>
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<td>15</td>
<td>35</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
<td>77</td>
<td>185</td>
</tr>
</tbody>
</table>

It should be noted that because the analyses with gender involved 2 x 2 contingency tables, Yate’s correction was applied to the significance test. According to Field (2005), Yate’s correction provides a more stringent level of significance for Chi square analyses involving 2 x 2 contingency tables, thus guarding against Type 1 error. Also, for the analyses involving socioeconomic status, the previously stated levels listed in the participant section (Lower Class, Working Class, Middle Class, Upper Middle Class, and Upper Class) were collapsed into the following three categories to increase the frequencies of some of the cell sizes: (1) Lower/Working Class, (2) Middle Class, and (3) Upper Middle/Upper Class. Because no significant differences were found on discrimination vs. harassment and psychological injury...
To determine whether an experience of racial harassment was more likely than racial discrimination to result in psychological injury vs. no psychological injury, a logistic regression was performed (see Table 9). Powers and Xie (2000) recommend the use of logistic regression to determine whether a categorical independent variable is a significant predictor of a categorical dependent variable. In this analysis, psychological injury vs. no psychological injury was entered as the dependent variable and discrimination vs. harassment was entered as the categorical covariate or independent variable. The results were significant \( (n = 185, \text{df} = 1, \text{Wald} = 6.87, p = .01) \), meaning that discrimination, as a set of acts that reflect avoidance vs. harassment as a set of acts that reflect hostility, was a significant predictor of psychological injury vs. no psychological injury. To understand the meaning of this relationship, the Exp (B) statistic or odds ratio of 2.41 was interpreted (see Field, 2005). This means that the participants who were racially harassed were 2.24 times more likely to experience psychological and emotional effects that constituted psychological injury than were the participants who experienced racial discrimination.

Table 9. Racial Discrimination vs. Harassment by Psychological Injury and No Psychological Injury (n = 185)

<table>
<thead>
<tr>
<th></th>
<th>Injury</th>
<th>No Injury</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination</td>
<td>26</td>
<td>32</td>
<td>58</td>
</tr>
<tr>
<td>Harassment</td>
<td>82</td>
<td>45</td>
<td>127</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
<td>77</td>
<td>185</td>
</tr>
</tbody>
</table>

Discussion

There were several objectives for the present study. We wanted to know whether participants reported any lasting psychological effects or emotional harm or injury as a result of specific reported critical incidents of racism. We also wanted to determine whether the classes of types of racism defined as racial harassment and racial discrimination would differentially predict psychological harm or injury. In general, we found that the majority (89%) of the participants reported having an encounter with racism and that the frequency of experiences was consistent with other studies that have reported prevalence rates of between 60% and 90% (Klonoff & Landrine, 1999; Landrine & Klonoff, 1996; Pak et al., 1991; Sanders Thompson, 2002; Schneider et al., 2000; Utsey et al., 2002). We also found that participants who reported a critical incident of racism and indicated that they had lasting emotional effects did not differ by race, gender, or socioeconomic status.

The high frequency of encounters with racial discrimination or racism could be due to the fact that people who completed the survey did so because they had such experiences and were therefore self-selected. It should be noted, however, that over 90 people logged on but did not complete the survey. This could indicate that some of the people who visited the web-survey were perhaps not willing to complete a study survey, did not have an experience, were not willing to revisit any encounters they may have had, or did not complete the survey for other reasons. We have no way to know.
Although close to 90% who did complete the survey reported critical incidents of racism, over 25% were not emotionally affected by their experience. This data suggests that perhaps there was sufficient variation in the participant group that captured a good range of experiences. Moreover, in many previous research studies, participants were mostly Black Americans; our study included a wider range of racial group members such as Biracial, Black, Latino, and Asian Americans, and we did not find significant differences between racial groups in the types of incidents of racism they reported or in the emotional impact of racism that we studied.

We tested, through statistical analyses, the psychological impact or effect of specific types of racism as proposed by Carter (2007). We found that for the participants in this study, racial harassment was more likely to contribute to or predict psychological injury. The types of emotional experiences captured by the conceptualization of psychological injury used in this investigation (i.e., extreme emotional distress, hyper-vigilance, intrusion, and avoidance) were similar to the symptoms associated with the traumatic stress reactions presented by Carlson’s (1997) and reflect the notions of race-based traumatic stress as presented by Carter (2007). Thus, it is possible that different types of acts of racism result in more or less severe reactions. Our results indicated that it is possible that acts of hostility leave more lasting effects and mental health outcomes than acts of racism that are associated with avoidance. These findings are preliminary at best and provide some evidence that might support the value of the conceptual approach for which we advocate. At the same time, it is possible that people reported critical incidents that were related to strong reactions, and as such, we confirmed that reality. Further investigations are needed to explore these relationships and to provide additional support for the conceptualizations of racism and psychological harm tested in this study.

Implications for Psychiatry, Psychology, and the Law

In light of the results reported above, we believe that the distinction between racial discrimination and harassment proposed by Carter (2007) has the potential to help targets and professionals to clarify race-based experiences, and could assist in reducing the ambiguity associated with some aspects of experiences with racism. Moreover, recognition that race-related actions (e.g., profiling) are hostile rather than hate-based, biased, or unintentional might serve to aid in the process of connecting the racial incident to the resulting affective impact. This is especially important considering that in order for individuals to receive compensatory damages for claims of discrimination in general, psychiatrists, social workers, other mental health professionals, and lawyers must be able to link the emotional response to the incident (Green, 2003; Griffith & Griffith, 1986). Mental health professionals and lawyers who can establish this connection could help substantiate legal cases involving racial harassment or racial discrimination and emotional distress.

We contend that the conceptualization of psychological harm as an act that violates one’s rights, may serve as a mechanism to further efforts to seek relief both in terms of one’s mental health and through the legal channels. The impact of racism has been difficult to establish, particularly in the courts, because the DSM-IV-TR, (APA, 2000), which continues to be the primary diagnostic tool does not include the impact of race-related stress or racism as a stressor that can, in interaction with one’s personality organization and cognitive appraisal, lead to psychological symptoms or traumatic stress reactions.
Even if an individual’s experience of racism and the resulting effects are congruent with the etiology and symptom manifestation of PTSD, we do not believe that this diagnosis is necessarily appropriate given the fact that it locates the problem as a disposition of the individual. The notion of a mental disorder encourages clinicians to make dispositional attributions, which in the case of the effects of racism, is essentially labeling it as a “Black person’s or person’s of color problem.” Like all Americans, mental health professionals and lawyers are subject to racial socialization, which encourages them to accept negative assumptions about various groups in the racial hierarchy of the United States. In this way, mental health professionals and lawyers will continue to face significant barriers and obstacles in addressing, litigating, or understanding the experiences of race-based traumatic stress that arise from exposure to racism (Butts, 2002; Feagin & McKinney, 2003).

Many may assume that all people of color have been or are exposed to some form of racism by virtue of living in this country; however, 11% of the participants in our study reported that they did not have an experience of discrimination, and 24% had no lasting emotional effects. Considerable variation within the group is apparent. One way to understand the within-group variation is to consider historical factors and the influence of racial identity (e.g., an individual’s psychological orientation to his or her racial group membership) on one’s perception and experience of racism (Carter & Gesmer, 1997; Thompson & Carter, 1997).

In studies examining perceptions of racial discrimination, institutional racism, and endorsement of racism, researchers have found that people’s perception of discrimination and institutional racism varied as a function of their racial identity (e.g., Carter, 1995; Carter, Helms, & Juby, 2004; Sellers & Shelton, 2003; Watts & Carter, 1991). Thus, targets’ racial identity status (i.e., psychological orientation to their group membership) would be an important consideration in the assessment of racial trauma or race-based traumatic stress. Similarly, researchers have found that both the ability of White therapists and therapists of color to recognize and assess racial encounters may also be associated with their racial identity status. For instance, Carter, Helms, and Juby (2004) found that Whites’ endorsement of racist attitudes varied as a function of their distinct racial identity profiles. Thus, the racial identity status of Whites and people of color who work in the legal and psychological professions will undoubtedly impact their perceptions of and ability to effectively assess and make decisions regarding legal and psychological remedy involving claims and treatment related to racial discrimination and harassment.

The current investigation is intended to provide mental health professionals with strategies and conceptual models that can be used to identify the specific types of racism that a person may encounter and to assess the persons’ emotional and psychological reactions, harm, or injury to that event. This investigation, as well as continued research using this conceptualization, may begin to provide clinicians and legal professionals with a taxonomy of the types of psychological and emotional responses that are commonly associated with specific types of racist or racial experiences. Such a taxonomy might further assist in developing an etiology of specific race-related mental health outcomes, which would assist in the creation of effective clinical interventions that are informed by research and which might provide a more specific base of research to back up legal claims of racial discrimination. In so doing, we hope to facilitate professionals’ ability to accurately assess, treat, and report in court or administrative hearings how targets of racism may have been affected by their experiences.
Study Limitations

Our study has limitations that should be considered. We used a mixed methods design, and because our data was categorical, we were not able to employ more elaborate statistical procedures; thus, our results should be understood in relation to these limits. We relied on self-report and retrospective accounts of encounters with racism, and these are subject to possible personal biases and distortions. Also for some racial groups (e.g., Biracial and Asians), the number of participants was small, so caution is needed when generalizing the findings for those groups. Our sample was highly educated, so the results may not generalize to people with more varied educational backgrounds. The study was web-based, and therefore, we did not have control over participation or over the quality of the information provided by participants.

Nevertheless, there are indications that our findings, with the limitations noted, may reveal important information about the respondents' encounters with racism and the effects of those experiences. First, our findings seem to be consistent with previously published investigations examining the impact of racial discrimination. Second, a study comparing web-based research with traditional data collection found that several concerns regarding the effectiveness of web-based studies were not always supported (Gosling, Vazire, Srivastava, & John, 2004). According to Azar (2000), one of the main criticisms of online experiments is that participants are self-selected and thus lack control and random assignment. For example, in our study, we had no control over who participated, whether they were honest, or even the people to whom participants forwarded the survey. According to Krantz and Dalal (2000), however, while online studies lack experimental control, true random samples are also rarely achieved in traditional experiments, and online studies have the potential to have more diverse samples compared to the more common sample of college sophomores. Moreover, Krantz and Dalal state that the results obtained by online samples compared to traditional results gathered from college students are equally valid. Lastly, we believe the web-based approach may have given our participants more comfort to share their experiences than they would have experienced with traditional data collection methods. We think that the web-based approach to data collection allows for a certain degree of anonymity not available in direct data collection that might provide a level of privacy and ease important for participants who are reflecting upon and sharing experiences of racial discrimination and harassment.

In light of these possible strengths and limitations, we recommend that the study be replicated with more diverse samples using direct data collection procedures and perhaps survey methods. Furthermore, we recommend that future researchers address the indirect psychological and emotional effects of racism. For example, in our study, we discussed how perceptions of discrimination may result in psychological effects, but we did not explore how racial discrimination may be impacted by the targets’ social, educational, or home environments, which may in turn indirectly result in psychological effects. Therefore, future researchers should extend our investigation perhaps by looking at how environments created through racial disparities and bias may produce psychological effects on individuals and groups. Scholars and researchers should also seek to develop instruments that are specifically designed to assess race-based traumatic stress as well as the specific types of racism we presented. It would be of value to discover the utility of the
proposed distinctions in court cases or administrative hearings, particularly when mental health professionals are involved.

Conclusion

This article has discussed the significant barriers that mental health professionals and lawyers encounter when trying to understand experiences of race-based traumatic stress or race-based stress based on the fact that little is written in the existing legal and psychological literature (Butts, 2002; Feagin & McKinney, 2003). Thus, due to the gap in the literature, this investigation attempted to incorporate both direct and indirect evidence about the relationship between racism and its mental health effects. While the connection is complex, we delineated empirical support that directly links exposure to racism to stress reactions. Furthermore, we discussed the importance of using a broader definition of traumatic stress that incorporates events that include emotional pain resulting from racism. Since we found that racial hostility or racial harassment may have a more powerful or harmful mental health effect than racial discrimination or acts of avoidance, we contend that our conceptualization will be potentially more useful where legal redress and mental health relief is sought.

Note: The authors presented portions of this article in a symposium at the annual convention of the American Psychological Association in Honolulu, Hawaii, in August of 2004.

References


Restatement of Torts (2nd) § 46 (1965).


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Risk and Protective Factors for Recidivism Among Drug-Involved Female Offenders

Hilary L. Surratt, PhD, Scientist, Center for Drug and Alcohol Studies, University of Delaware

Introduction

The number of women under correctional supervision has increased substantially in recent years. At year-end 2005, for example, 107,518 women were incarcerated in state or federal prisons nationwide, and over 950,000 female offenders were on probation (Glaze & Bonczar, 2006; Harrison & Beck, 2006). Over the past several years, the annual rate of incarceration for women has outpaced that of men, and in 2005, the number of women serving state or federal prison sentences increased 2.6%; whereas, the number of male prisoners increased 1.9% (Harrison & Beck, 2006). Consequently, the proportion of women in state and federal correctional institutions increased to an all-time high of 7% in 2005 (Harrison & Beck, 2006). Furthermore, between 1985 and 1996, the per capita rate of women offenders on probation nearly doubled; the per capita rate in jail tripled; and the per capita rate on parole and in prison nearly quadrupled (Bureau of Justice Statistics, 2000). Taken together, these statistics clearly indicate that women constitute the fastest growing segment of the criminal justice population across the United States.

The growing number of women involved with the criminal justice system is in many ways a reflection of tougher drug laws and mandatory sentencing policies (Inciardi, 2002). In fact, a recent nationwide survey found that nearly 45% of women inmates were serving time for drug or drug-related charges, up from 15% in 1979 (Bureau of Justice Statistics, 2000). Incarcerated women are more likely than men to serve sentences for drug-related offenses, report committing their offense under the influence of drugs, and have serious drug abuse problems (Bureau of Justice Statistics, 2000; Conly, 1998; Henderson, 1998). In specialized studies of female offenders, levels of drug-involvement far exceed those reported in national surveys. Peugh and Belenko (1999) documented that 81% of female prisoners in New York State had substance abuse involved in their present convictions. Similarly, Staton, Leukefeld, and Webster (2003) found that 85% of female inmates interviewed in Kentucky prisons had used multiple substances in the 30 days prior to their incarceration.

Compared with men, drug-involved women tend to differ in terms of precursors and pathways to addiction, the addictive process itself, and patterns of related comorbid conditions (CASA, 2006; McMahon, Winkel, Suchman, & Luthar, 2002). Overall, research has documented consistent gender differences in biological responses to drugs of abuse, with women typically showing greater increases in brain and metabolic activity after exposure, as well as greater and longer-lasting feelings of physical and mental well-being associated with substance use (Fallon, Keator, Mbogori, Taylor, & Potkin, 2005; McCance-Katz, Hart, Boyarsky, Kosten, & Jatlow, 2005). As a result, women tend to progress to addiction more quickly than
men, have higher severities of negative consequences related to substance abuse, and often have more difficulties achieving abstinence from drugs than their male counterparts (CASA, 2006; Zilberman & Blume, 2005).

Women offenders often face a host of complicating factors that are intertwined with their substance abuse problems. Rates of victimization and mental health problems are often elevated, affecting more than half of all women in prison (Bureau of Justice Statistics, 1999; Mullings, Marquart, & Brewer, 2000; Peugh & Belenko, 1999; Sanders & McNeill, 1997). In this regard, several recent studies indicate that substantial proportions of incarcerated women were physically and/or sexually abused as children (Mullings, Pollock, & Crouch, 2002; Tyagi, 2006) and that a majority suffer from clinically significant levels of psychological distress. Specific study estimates suggest that between 60% and 70% of female offenders show current symptoms of at least one mental health disorder (Dyer, 2003; Tyagi, 2006), and recent data from a nationwide survey of prison inmates found that females had significantly higher rates of mental health problems than male inmates (73% and 55%, respectively) (James & Glaze, 2006). In addition, other gender-specific issues facing women offenders include pregnancy and childcare responsibilities, partner violence and abuse, stigma associated with women's alcohol and drug use, low social support, poor employment histories, and economic need (Bureau of Justice Statistics, 1999; Grella, 1996; Pottieger & Tressell, 2000).

Although incarcerated women commonly report elevated drug use, poor physical health, and mental health problems, in-custody services are often limited (Staton et al., 2003). In this regard, James and Glaze (2006) estimated that just 34% of inmates in state prison who need mental health services receive any treatment. In addition, while an estimated 70% to 80% of prison inmates have substance-abuse-related problems, only about 13% receive treatment while incarcerated (Blanchard, 1999; Sheridan, 1996). Because women represent a small proportion of the offender population overall, they are typically even more underserved with respect to institutional treatment than are male offenders (Clement, 1997, Mosher & Phillips, 2006; Mullings et al., 2002; Prendergast, Wellisch, & Falkin, 1995, Tunis, Austin, Morris, Hardyman, & Bolyard, 1996; Wellisch, Prendergast, & Anglin, 1994). As a result, little is known about the effectiveness of criminal-justice-based substance abuse and/or mental health treatment for women or the impact of untreated mental health and substance abuse problems on women offenders' likelihood of criminal recidivism upon release.

Overall, the success of offenders released from prison has generally been poor (Steiner, 2004). For example, nearly 68% of inmates released in 1994 were re-arrested within three years, and 47% were convicted of a new crime (Langan & Levin, 2002). Although this national survey found that women were substantially less likely than men to be re-arrested and re-convicted, the recidivism rate for women nevertheless reached 57.6%.

The reasons behind the elevated rates of recidivism for female offenders are poorly understood, due to a lack of longitudinal studies with women inmates re-entering the community. This study attempts to address this gap in the literature by examining the predictors of criminal recidivism and relapse to drug use among women offenders in work release facilities. Upon release from prison, the vast majority of offenders remain under some form of correctional supervision (Glaze,
2002; Steiner, 2004), and work release has become a widespread correctional practice for felony offenders in many jurisdictions (Inciardi, 2007). Graduated release of this sort carries the potential for easing an inmate’s process of community reintegration (Inciardi, 2007); however, little is known about women offenders’ success after participation in work release programs.

Methods

The data for this article was drawn from a large treatment evaluation study designed to examine the relative effectiveness of alternative criminal-justice-based treatment conditions for drug-involved offenders in Delaware. Eligible participants were offenders ages 18 and over who had histories of substance abuse and who were mandated to residential work release programs. Delaware work release programs average 6 months in length, and clients generally come from three sources: (1) flowdowns from prison-based treatment programs, (2) flowdowns from general population prison inmates, and (3) direct commitments from the courts for probation violations and for those with sentences of less than one year.

Because comparatively little is known about women under criminal justice supervision, this analysis examines the predictors of relapse to drug use and criminal recidivism among female offenders who participated in Delaware’s work release programs. Offenders were recruited from each of the state’s three residential work release facilities by research staff from the University of Delaware. Project staff explained the nature and procedures of the study and scheduled interview appointments for those interested in participating. Informed consent was obtained prior to interview. The interview process took approximately 60 to 90 minutes to complete. All study procedures were reviewed and approved by the University of Delaware’s Institutional Review Board.

Interviews were conducted using a standardized data collection instrument based primarily on the National Institute on Drug Abuse (NIDA) Risk Behavior Assessment (Dowling-Guyer et al., 1994; Needle et al., 1995; Weatherby et al., 1994) and the Addiction Severity Index (McLellan, Luborsky, O’Brien, & Woody, 1980). This instrument captures demographic information, family background, physical and mental health status, sexual risk behaviors, criminal and drug use histories, and substance abuse treatment history. Because clients were in residential work release at the time of the baseline interview, questions regarding drug use and criminal activity were collected for the 90-day time period prior to the arrest that led to work release supervision. The following key measures of mental health and trauma were also utilized.

The Childhood Trauma Questionnaire (short form) (CTQ-SF) assesses the prevalence and extent of childhood physical, sexual, and emotional abuse, as well physical and emotional neglect (Bernstein et al., 1994). The CTQ-SF is a 28-item instrument that uses a 5-item Likert scale ranging from 1 (Never True) to 5 (Very Often True). Sexual abuse requires a score of 6 or higher and physical and emotional abuse require scores of 8 and 9, respectively. Only abuse subscales are reported in this article.

Psychological symptoms over the preceding one-week period were measured at baseline using the Symptom Checklist 90-R (SCL-90-R) (Derogatis, 1994). Six of the
nine domains evaluated by the SCL-90-R were included in the baseline assessment instrument: (1) depression, (2) anxiety, (3) hostility, (4) obsessive/compulsiveness, (5) paranoid ideation, and (6) interpersonal sensitivity. Scores were calculated by summing the individual four-point rating endorsed for each subscale item and dividing by the total number of items comprising the subscale. For analytic purposes, the scores on each of these subscales were then divided into two groups using a median split procedure. For all six SCL-90-R subscales utilized, the median cut-point for the sample of women offenders placed them above the 80th percentile established for adult females in the general population (Derogatis, 1994).

Study recruitment began in June 2000, and through June, 2002, 749 eligible work release clients were recruited and interviewed. Women offenders comprised 21.2% (n = 159) of the work release clients enrolled in the study. Follow-up interviews occurred 12 and 24 months post-baseline and were completed in May, 2004. One hundred and thirty three women (83.6%) were located for at least one follow-up interview, and these women are the focus of this analysis.

Among this sample of 133 women offenders, 63 (47.4%) were under work release supervision at baseline as a result of probation violations. Forty-eight (36.1%) were originally sentenced for drug offenses, 33 (24.8%) for larceny or theft, 24 (18.0%) for violent offenses, 7 (5.3%) for public order offenses, and 21 (15.8%) did not report their original offense.

The primary outcomes examined at follow-up were relapse to illegal drug use, as well as re-arrest for a new crime. In this study, relapse is a conservative measure that includes even one occasion of illegal drug use as identified through self-report and/or urine testing during the follow-up period. Analyses were structured to examine the factors that predicted return to drug use versus abstention and recidivism versus nonrecidivism. Descriptive statistics were compiled on demographic and family characteristics, drug use, treatment history, experiences of childhood victimization, as well as symptoms of psychological distress. Chi-square tests were then conducted to examine the association between each of these factors and the primary outcomes. All analyses were conducted using the Statistical Package for the Social Sciences (SPSS) v.14.0.1 for Windows®.

**Results**

Overall, 21 (15.8%) participants were re-arrested for new crimes, and 92 (69.2%) relapsed to illegal drug use during the follow-up period. Table 1 reports data on the background characteristics of this sample of women offenders and their associations with relapse and re-arrest. No age or race/ethnic differences were associated with either relapse to drug use or re-arrest. Similarly, the number of prior incarcerations was unrelated to either outcome variable of interest. In this sample of women offenders, those who relapsed to illegal drug use were less likely to report having children under the age of 18 than were abstainers (69.6% and 85.4%, respectively), and those re-arrested were also less likely to report coresidence with their minor children prior to incarceration (4.8% versus 23.2%).
Table 1. Selected Characteristics of Women Offenders (n = 133)

<table>
<thead>
<tr>
<th></th>
<th>Re-Arrested&lt;sup&gt;1&lt;/sup&gt; (n = 21)</th>
<th>Not Re-Arrested (n = 112)</th>
<th>Used Illegal Drugs&lt;sup&gt;2&lt;/sup&gt; (n = 92)</th>
<th>Non-User (n = 41)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>18-29</td>
<td>7</td>
<td>33.3</td>
<td>28</td>
<td>25.0</td>
</tr>
<tr>
<td>30-39</td>
<td>9</td>
<td>42.9</td>
<td>55</td>
<td>49.1</td>
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<td>40+</td>
<td>5</td>
<td>23.8</td>
<td>29</td>
<td>25.9</td>
</tr>
<tr>
<td>Mean Age</td>
<td>32.7</td>
<td>33.7</td>
<td>33.0</td>
<td>34.9</td>
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<tr>
<td>Race</td>
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<td></td>
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<tr>
<td>White</td>
<td>7</td>
<td>33.3</td>
<td>38</td>
<td>33.9</td>
</tr>
<tr>
<td>Black</td>
<td>12</td>
<td>57.1</td>
<td>68</td>
<td>60.7</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>9.5</td>
<td>6</td>
<td>5.4</td>
</tr>
<tr>
<td># Prior Incarcerations</td>
<td>3.6</td>
<td>3.9</td>
<td>4.1</td>
<td>3.3</td>
</tr>
<tr>
<td>(mean)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children &lt; 18 yrs.</td>
<td>15</td>
<td>71.4</td>
<td>84</td>
<td>75.0</td>
</tr>
<tr>
<td>Reside with Children</td>
<td>1</td>
<td>4.8</td>
<td>26</td>
<td>23.2*</td>
</tr>
</tbody>
</table>

<sup>1</sup>Includes those re-arrested for any new crime at 12- and/or 24-month follow-up.
<sup>2</sup>Includes those self-reporting any illegal drug use at 12- and/or 24-month follow-up.
<sup>*</sup>Significant at p ≤ .05.

Table 2 displays the substance use and treatment histories of this sample of women offenders. At baseline, the sample reported substantial levels of drug involvement in the last 90 days prior to incarceration: 89.5% used alcohol or other drugs, 79.7% used any illegal drug, and 67.7% used an illegal drug other than marijuana (data not shown). Use of an illegal drug (other than marijuana) at baseline was a strong predictor of illegal drug use at follow-up and a highly significant predictor of re-arrest, as well. In fact, 90.5% of those re-arrested for new crimes at follow-up were users of cocaine, crack, and/or heroin at baseline, compared to 63.4% of those who were not re-arrested. Similarly, prior drug emergencies (e.g., overdoses, emergency room visits), previous admissions to drug treatment, and relapse to illegal drugs at follow-up were associated with higher likelihood of re-arrest at follow-up, indicating that severity of drug abuse is highly predictive of recidivism among female offenders.

Mental health problems and abuse histories were also examined for association with relapse to drug use and re-arrest. Substantial proportions of this sample experienced victimization during childhood and/or adolescence: 55.3% reported emotional abuse; 42.1% reported sexual abuse; and 41.5% reported physical abuse (data not shown). Not unexpectedly, reports of serious mental health symptoms at baseline were also elevated. In fact, the median scores on four indices (depression, paranoid ideation, obsessive-compulsiveness, and interpersonal sensitivity) were at or above the 93rd percentile established for adult females in the general population (data not shown). In the majority of instances, the prevalence of baseline psychological symptoms tended to be higher among those who relapsed to illegal drug use at follow-up, compared with those who abstained. Specifically, women who returned to drug use were significantly more likely to report serious symptoms on at least one of the six psychological distress domains measured at baseline (depression, anxiety, hostility, obsessive/compulsiveness, paranoid ideation, interpersonal...
sensitivity). Mental health symptoms showed a similar relationship to criminal recidivism, with a significantly higher proportion of follow-up arrestees reporting elevated psychological distress at baseline compared to non-arrestees.

Table 2. Substance Use Histories of Women Offenders (n = 133)

<table>
<thead>
<tr>
<th></th>
<th>Re-Arrested(^1) (n = 21)</th>
<th>Not Re-Arrested (n = 112)</th>
<th>Used Illegal Drugs(^2) (n = 92)</th>
<th>Non-User (n = 41)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substance Use</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alcohol</td>
<td>14</td>
<td>66.7</td>
<td>71</td>
<td>63.4</td>
</tr>
<tr>
<td>Marijuana</td>
<td>10</td>
<td>47.6</td>
<td>45</td>
<td>40.2</td>
</tr>
<tr>
<td>Cocaine</td>
<td>3</td>
<td>14.3</td>
<td>21</td>
<td>18.8</td>
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<tr>
<td>Crack</td>
<td>17</td>
<td>81.0</td>
<td>64</td>
<td>57.1*</td>
</tr>
<tr>
<td>Heroin</td>
<td>6</td>
<td>28.6</td>
<td>6</td>
<td>5.4**</td>
</tr>
<tr>
<td>Any Illegal Drug (ex. Marijuana)</td>
<td>19</td>
<td>90.5</td>
<td>71</td>
<td>63.4**</td>
</tr>
<tr>
<td>Prior Drug Emergency</td>
<td>7</td>
<td>33.3</td>
<td>22</td>
<td>19.6*</td>
</tr>
<tr>
<td># Prior Treatment Admissions (mean)</td>
<td>2.3</td>
<td>1.2*</td>
<td>1.4</td>
<td>1.2</td>
</tr>
<tr>
<td>Illegal Drug Use at Follow-up</td>
<td>19</td>
<td>90.5</td>
<td>73</td>
<td>65.2*</td>
</tr>
</tbody>
</table>

\(^{1}\)Includes those re-arrested for any new crime at 12- and/or 24-month follow-up.  
\(^{2}\)Includes those self-reporting any illegal drug use at 12- and/or 24-month follow-up.  
\(^{+}\)Significant at p < .10; ** Significant at p < .01.

Table 3. Mental Health and Abuse Histories of Women Offenders (n = 133)

<table>
<thead>
<tr>
<th></th>
<th>Re-Arrested(^1) (n = 21)</th>
<th>Not Re-Arrested (n = 112)</th>
<th>Used Illegal Drugs(^2) (n = 92)</th>
<th>Non-User (n = 41)</th>
</tr>
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<tr>
<td>Childhood Trauma</td>
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<tr>
<td>Sexual Abuse</td>
<td>12</td>
<td>57.1</td>
<td>43</td>
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<tr>
<td>Physical Abuse</td>
<td>11</td>
<td>52.4</td>
<td>45</td>
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<tr>
<td>Emotional Abuse</td>
<td>14</td>
<td>66.7</td>
<td>61</td>
<td>54.5</td>
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<tr>
<td>Mental Health Symptoms (% above median)</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Depression</td>
<td>10</td>
<td>47.6</td>
<td>55</td>
<td>49.1</td>
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<tr>
<td>Anxiety</td>
<td>8</td>
<td>38.1</td>
<td>51</td>
<td>45.5</td>
</tr>
<tr>
<td>Hostility</td>
<td>7</td>
<td>33.3</td>
<td>45</td>
<td>40.2</td>
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<tr>
<td>Obsessive/Compulsive</td>
<td>11</td>
<td>52.4</td>
<td>46</td>
<td>41.1</td>
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<tr>
<td>Paranoid Ideation</td>
<td>15</td>
<td>71.4</td>
<td>46</td>
<td>41.1*</td>
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<td>Interpersonal Sensitivity</td>
<td>11</td>
<td>52.4</td>
<td>57</td>
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<tr>
<td>Any Mental Health Symptom</td>
<td>19</td>
<td>90.5</td>
<td>84</td>
<td>75.0+</td>
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<tr>
<td>Prior Mental Health Treatment</td>
<td>8</td>
<td>38.1</td>
<td>35</td>
<td>31.3</td>
</tr>
</tbody>
</table>

\(^{1}\)Includes those re-arrested for any new crime at 12- and/or 24-month follow-up.  
\(^{2}\)Includes those self-reporting any illegal drug use at 12- and/or 24-month follow-up.  
\(^{+}\)Significant at p < .10; ** Significant at p < .01.
Discussion

This study examined the predictors of criminal recidivism and relapse to drug use among women offenders in work release. Overall, 15.8% of the women were re-arrested for new crimes, and 69.2% relapsed to illegal drug use during the 2-year follow-up period.

Clear and consistent connections between substance abuse, mental health problems, and criminal recidivism were evident among women offenders in this study. In fact, relapse to illegal drug use emerged as one of the strongest predictors of re-arrest. Although this is not particularly surprising given the well-established link between drug use and criminal behavior (Anglin & Hser, 1987; Inciardi, 1986; Mullings et al., 2002), the elevated proportion relapsing to illegal drug use is troubling. This is cause for particular concern, as more than three-quarters of the sample reported participating in substance abuse treatment programming in the year prior to the initial interview. It is likely, however, that the conservative relapse measure utilized in this study (at least one occasion of illegal drug use) overestimates the number of women who experienced severe or ongoing relapses to drug use, thereby obscuring the benefits of treatment exposure to some degree. In fact, the small proportion of women re-arrested in this study (15.8%) is substantially lower than the 57.6% recidivism rate reported for female offenders released in 1994 (Langan & Levin, 2002) and suggests that the widespread availability of criminal-justice-based drug abuse treatment programs in the Delaware system is reducing criminal recidivism among female offenders. Nevertheless, the clear association between relapse to illegal drugs and re-arrest warrants the provision of ongoing supportive treatment services after work release completion.

The elevated prevalence of clinically significant psychological symptoms documented in this sample, combined with reports of damaging childhood abuse histories, indicates that substance abusing women offenders suffer from significant psychological comorbidity as well. Unfortunately, these traumatic childhood events and mental health sequelae are not unique to this Delaware sample of women offenders but have been documented in a variety of studies targeting female inmates (Bureau of Justice Statistics, 1999; Mullings et al., 2000; Peugh & Belenko, 1999; Sanders & McNeill, 1997). The negative effects of such intense childhood abuse histories often include anger, depression, hostility, and emotional volatility, as well as low self esteem, post-traumatic stress, alienation, substance abuse, and sexual difficulties (Mullings et al., 2002; Richie & Johnsen, 1996). Regardless of etiology, in the present study, more severe mental health symptoms at baseline were associated with relapse and re-arrest during the 2-year follow-up period. Although work release facilities in Delaware typically offer at least some mental health services to women in custody, transitional psychological services and follow-up care in the community appear to be lacking. This is the case in most jurisdictions, as few criminal justice agencies report linking mentally ill offenders to services in the community upon release (Travis, 2005). Because of their unique mental health needs and histories of trauma, women offenders require continued psychological intervention and treatment for successful reintegration to be achieved.

An interesting aspect of the findings was the protective effect of children on women offenders’ likelihood of relapse and recidivism. In this regard, women who
reported having minor children were less likely to report relapse to drug use, and those who resided with their children prior to incarceration were significantly less likely to report re-arrest during the follow-up period. These findings resonate with other scientific literature highlighting parenting and childcare concerns among women drug abusers. Drug-dependent women are far more likely to be parents and to be living with their children than are their male counterparts (CASA, 2006; McMahon et al., 2002), and concern about the effects of drug use on their children is often one of the primary motivations for women to seek treatment or abstain from drug use (Kissin, Svikis, Moylan, Haug, & Stitzer, 2004; Klee, Jackson, & Lewis, 2002; Murphy & Rosenbaum, 1999; Surratt, in press). In this regard, correctional programs designed to promote parenting and family reunification are likely to show benefits for reducing relapse and re-offending among women inmates.

A few limitations must be kept in mind when interpreting the study results. First, recruitment procedures did not produce a random sample of women offenders. Although recruitment efforts were broad-based and included each of the state’s three residential work release centers, the sample includes only 133 individuals who voluntarily consented to participate in the research initiative and who were able to be located for at least one follow-up interview over a 2-year period. As a result, this relatively small sample of incarcerated women substance abusers may suffer from selection bias and temper our ability to generalize the findings of this study to all communities of women offenders.

A second limitation was related to the use of self-report measures of data collection. Although the primary outcome of re-arrest was confirmed through record checks with the Department of Correction and illegal drug use was validated to the extent possible by urine testing, objective measures were not available to corroborate other self-reports. Although reliance on self-report behavioral measures is somewhat controversial, a variety of controlled studies have documented that when questioned about drug use and illegal activities in a nonthreatening environment, drug users provide reliable information and are truthful to the best of their recollection (Needle et al., 1995; Sobell & Sobell, 1990; Stephens, 1972). These findings, combined with assurances of confidentiality and the use of specially trained staff in the present study, likely served to mitigate the potential deficiencies in reliance on self-report data.

Overall, this study underscores the extensive need for gender-responsive mental health and substance abuse treatment services for women offenders. It should be noted that in recent years, the number of specialized treatment programs for drug-abusing women has begun to increase. Within the criminal justice system, for example, a recent survey reported that 49 state departments of correction had initiatives designed specifically for women, primarily in the areas of parenting, drug abuse treatment, victimization, and life skills (National Institute of Corrections, 1998). Although the nature and duration of services provided by these types of programs is unclear, the recognition of women offenders’ unique needs is nevertheless a step in the right direction. Given the data on relapse and recidivism presented in this study, the expansion and extension of such programs to include transitional and aftercare services would appear to be particularly important in improving long-term outcomes for substance-abusing women offenders. The benefits of aftercare include ongoing therapeutic interactions, social support, and links to resources, as well as the ability to detect minor relapse episodes before
they progress to a complete breakdown of recovery (Inciardi, Surratt, Martin, & Hooper, 2002). These services appear most critical for substance abusing women offenders as they transition to the community (Staton, Leukefeld, & Logan, 2002).

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References


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Introduction

Patriarchal attitudes have pervaded society by allowing men to dominate the institutional structures and, therefore, control women. This domination has manifested itself in the exclusion of women in “male spheres,” including prisons. According to Beirne and Messerschmidt (2006), as more women have emerged into the workforce, they have been segregated into the “feminine” occupations such as service, retail, and clerical jobs. These jobs are among the lowest paid in the marketplace and offer little opportunity for advancement. Women’s position in the unequal gendered marketplace helps to explain their patterns of crime.

Historically, women who have deviated from their expected feminine roles were considered to be morally corrupt, diseased, manipulative, and devious (Simpson, 1989). Criminologists commonly believed that although women could be deceptive, it was not in a woman’s nature to elicit criminal tendencies (Curran & Renzetti, 2001). In fact, Lombroso is noted for saying that female criminality is “of less typical aspect than the male because she is less essentially criminal” (as cited in Mears, Ploeger, & Warr, 1998, p. 143).

Criminologists attempt to explain the disparate treatment between men and women in the justice system through power relationships. According to Curran and Renzetti (2001), males and females commit crime for different reasons. It was not until the 1960s and 1970s that criminology began addressing the issue of gender in criminal offending, arrest, processing, and sentencing, and it became an area of interest to researchers. The greater attention to female criminality during the mid-1970s led to the belief that female crime was severely impacting society. This so-called crime wave was blamed on the women’s liberation movement (Barkan, 2001). Curran and Renzetti (2001) explained that the female crime rate was increasing at a faster rate than their male counterparts’ crime rate. Especially disconcerting was that these increases in female crime were occurring in the traditionally masculine categories of serious types of crime, such as fraud, embezzlement, and other occupational crimes. Criminologists attributed the increase in female criminality to the increased opportunities—both legitimate as well as illegitimate—created for women outside of the home by the women’s movement (Curran & Renzetti, 2001).

The newfound attention given to female criminality highlighted the fact that women were no more different than men in terms of criminal misconduct. The backlash against women during this time period was a reflex reaction to the
increased liberation of women in a society that was not embracing this liberation. In fact, Barkan (2001) describes the phenomenon as similar to the hostility women experienced a century earlier in the post-Civil War women’s movement. The negative reaction toward liberation in the 1970s was based on misused statistics that women’s arrest rates were increasing. To put it into perspective, men’s arrest rates were increasing also, although not as fast as women’s because the base numbers for female arrests were so small (Curran & Renzetti, 2001). It is important to emphasize not only the similarities but also the differences between male and female criminality in order to develop a more holistic understanding of crime.

Drug Offending, Arrests, and Sentencing

According to the Bureau of Justice Statistics (2005b), violent crimes have decreased since 1994 and reached their lowest levels ever recorded in 2004. Prior to 1994, the crime rate had been relatively stable at between 40 and 50 per 100,000, and it dropped to approximately 20 per 100,000 in 1994. While violent crime has decreased, there has been a dramatic increase in drug abuse violations in the last two decades. The number of drug offenders has tripled, according to the Bureau of Justice Statistics (2005a), resulting in an increase in the number of inmates in U.S. prisons and offenders on parole and probation. In fact, nearly 7 million people in 2004 were under some form of correctional supervision.

President Nixon’s declaration in 1972 that drugs were “public enemy number one” led the United States to launch its “war on drugs.” President Reagan reiterated the issue a decade later following the passage of the Anti-Drug Abuse Acts of 1986 and 1988 (Covington, 2001). Although the Anti-Drug Abuse Act of 1986 provided for the mandatory minimum sentences of drug traffickers to be based on the amount of drugs involved, the 1988 version of the law singled out crack as the most dangerous drug and mandated a 5-year prison sentence for simple possession of more than 5 grams and doubled the sentence for drug traffickers (Bush-Baskette, 2000).

The U.S. drug war is primarily fought in the streets. The drug dealers, as well as the drug users, are targeted by law enforcement officers (Bush-Baskette, 2000). Although the mandatory drug sentencing laws were meant to remove drug dealers and king pins from the streets, the U.S. drug war has resulted in more than 60% of incarcerated women serving time for drug offenses (Covington, 2001). A large proportion of these convictions (35.9%) are the result of mere possession. In other words, it is the low-level offenders rather than the drug pushers that are serving time under this harsh law. The United States’ anti-drug acts have also disproportionately impacted more females than males, leading to greater gender inequity throughout the criminal court process.

Gender Disparities

While females represent a higher proportion of the total U.S. population, they are arrested proportionately less often than males (Straus, 2002). Female offenders differ from male offenders in a number of ways. First, females are less likely than men to have committed a violent offense and are more likely to have been convicted of crimes involving alcohol, drugs, or property. According to Covington (2001),
these crimes are economically driven or motivated by drug addiction. Bartol (as quoted in Beirne and Messerschmidt, 2006) explain that . . .

although women and men do share motives, women are more likely than men to commit their crimes to improve their family’s economic status, fulfill a care-taking role, or maintain a love relationship. They are less likely than men to commit their crimes to advance a career or obtain some long-desired status symbol. (p. 74)

Females are also more responsive to rehabilitation programs than men although there are fewer opportunities to participate in such programs due to the lack of funding. Most female inmates are poor, uneducated, single mothers. According to Covington (2001), . . .

of those who had been employed before incarceration, many were on the lower rungs of the economic ladder, with only 37% working at legitimate jobs. Twenty-two percent were on some kind of public support, 16% made money from drug-dealing, and 15% were involved in prostitution, shoplifting, or other illegal activities. (p. 86)

In addition, approximately two-thirds of females in prison have children under the age of 18; nearly one-quarter are known to have a mental illness; and almost 80% report a history of physical or sexual abuse. Female prisoners who are also mothers suffer from emotional distress, requiring psychological counseling that greatly exceeds the demands of male prisoners. Additionally, women in prison suffer continual harassment in the form of verbal abuse, sexual assault, unwarranted invasion of privacy, and threat of violence.

**Female Drug Arrests**

Differential handling of female drug offenders can be identified from initial treatment by law enforcement officials to the corrections stage. First, police officers have a great deal of discretion to arrest an offender, and the decision to arrest or not is influenced by extralegal factors including, but not limited to, the demeanor of the suspect and the offender’s race, sex, and socioeconomic status (Simpson, 1989). Visher (as cited in Simpson, 1989) found that gender in combination with race was a key factor in the decision to apprehend an offender. When legal factors (e.g., seriousness of the offense, prior record, presence of a weapon, and harm to the victim) were controlled, police chivalry toward Caucasian females was obvious. The same held true for Caucasian female victims (Simpson, 1989).

Since the 1980s, more females have been arrested for various offenses. In 1980, women composed 15.7% (1,044,420/6,652,448) of all people arrested; in 1989, 18.1% (1,544,336/8,495,179); in 1995, 20.4% (2,332,213/11,416,346); and in 1998, 21.8% (2,245,800/10,295,129) of all arrestees were female. Grana (2002) attributed these increasing arrest rates for women on the new “get tough” drug laws and the new welfare reform laws.

Fagan’s (1994) study of women’s participation in the cocaine economy in the late 1980s found that it was the result of economic pressures. The concurrent social and economic changes of the time encouraged women’s involvement in this
potentially lucrative trade. The increased participation of females in the drug economy was partially due to the increased availability of inexpensive cocaine, especially the smokable version, widely used in order to avoid injections, sharing of needles, and the possibility of contracting HIV/AIDS. Another important draw of women into the illicit business was the structural shift of inner cities. Millions of manufacturing jobs were lost causing a dramatically increasing number of female-headed households to remain—most of which fell below the poverty line. Many women were relegated to participate in the black market or informal economy to survive.

Sentencing Female Offenders

Studies have shown that although women receive a more lenient reception in the bail determination process, they are treated more harshly when charged with a nontraditional female crime, such as assault or sexual offense rather than prostitution (Simpson, 1989). Judges are not inclined to give female drug offenders a less severe sentence because judges perceive females as being just as likely to reoffend as males (Curran & Renzetti, 2001). Nagel and Johnson (1994), though, explain that female drug offenders are considerably more likely to receive a downward departure in their sentences as compared to their male counterparts. In 1992, for example, 44.8% of female drug offenders received downward departures for assisting authorities in the prosecution of other offenders. Only 28.1% of male drug offenders, however, received a downward departure for the mitigating circumstance. Bush-Baskette (2000) points out that even though the assistance provided to the authorities can mitigate the sentence, the mandatory sentencing law prohibits the defendant’s family situation, such as being primary caretaker of minor children, to be taken into consideration.

Available statistics show gender disparity in imprisonment. Approximately 94% of all U.S. state and federal prisoners are men compared to 6% of women (Beck & Mumola, 1999). In 1970, only 5,635 women were incarcerated; in 1985, this number increased to 21,296, and in 1996, there were 74,730 women in state and federal prisons. Today, there are more than 90,000 women in prison across the country (Ruiz, 2002). Ruiz (2002) explains that this is a 256% increase in female incarcerations with an 11.2% growth rate per year. Women, then, have become the hidden victims of the government’s quest for incarceration.

Studies conducted by Daly (1994) and Steffensmeier, Kramer, and Streifel (1993) have found that women are generally 10% to 25% less likely than men with similar offenses and prior records to be incarcerated. Daly (1994) argues that the difference results from agents within the criminal justice system, namely, prosecutors and judges. Prosecutors and judges alike believe that women are less of a threat to society and that their family and children will suffer if they are incarcerated. Furthermore, female offenders are less responsible for their actions, and they have more ties with the community.

Theoretical Perspectives

There have been various theoretical explanations as to why women commit fewer crimes than men beginning with a biological perspective. Barkan (2001) explains the trek from whence current views of female criminality have developed. Some,
like Lombroso, viewed women as being incapable of committing crime due to their natural passivity. Others, including Cohen (1955), believed females commit crime only out of frustration of not having a boyfriend, resulting in their sexual deviancy. Freud is popularly remembered for his theory of female “penis envy,” enticing women to be more similar to their male counterpart even if that meant committing deviant acts. Still others, namely, Otto Pollak, would insist that the reason women were not showing up in the criminal statistics was due to their deceitful nature (as cited in Chesney-Lind, 1989). For Pollak, it was easy for women to hide their criminal tendencies unlike their male counterparts.

Although these early theories have been discarded, it took a revolution for women to enter the field of criminology and challenge these notions for themselves. The new breed of studies has found that females commit the same types of crimes as men do albeit to a lesser degree (Barkan, 2001). The question then becomes, what accounts for the difference in criminality between the sexes?

**Hagan’s Power-Control Theory**

Hagan’s power-control theory is premised on the notion of differential gender socialization. Gender socialization is those aspects of socialization that contain specific messages and practices concerning the nature of being male or female in a specific group or society. According to Hagan, the difference in the socialization process between males and females accounts for the differential criminal and delinquency rates (as cited in Williams & McShane, 2004). This theory combines conflict-oriented theories with social control theories, ergo power-control. Hagan argues that power relationships in society, especially the workplace, are mimicked in the home. Williams and McShane (2004) explain that the relationship between men and women in the work environment, particularly the degree of authority over others, is adopted at home, as well. This power-control relationship is dependent not only upon gender roles but also the social class of the family. Hagan (as quoted in Williams & McShane, 2004) states . . .

The social reproduction of gender relations refers to the activities, institutions, and relationships that are involved in the maintenance and renewal of gender roles, in the family and elsewhere. These activities include the parenting involved in caring for, protecting and socializing children for the roles they will occupy as adults. According to power-control theory, family class structure shapes the social reproduction of gender relations, and in turn the social distribution of delinquency. (p. 258)

Hagan (as cited in Curran & Renzetti, 2001) differentiated the application of the power-control theory among the matriarchal, patriarchal, and egalitarian structured families. In the matriarchal family structure, the mother has more power within the family due to her enhanced authority in the workforce compared to the husband/father. In the egalitarian or balanced family structure, both spouses/parents work outside the home and are privy to similar levels of power. This translates into daughters and sons being treated similarly and with fewer restrictions on behavior; however, both daughters and sons are prone to be more adventurous and therefore delinquent (Hagan, as cited in Curran & Renzetti, 2001).
The patriarchal family structure is more common in society, as it is a structure in which the father/husband has more authority at work compared to the wife/mother and mimics that level of dominance at home. Hence, since males are controlled less in the work environment than females, the control over females is reproduced in the family. Not only does the wife/mother accept such a gendered division of power at home, but Hagan (as cited in Williams & McShane, 2004) also argues that she reinforces it through the socialization of the children through the tighter control over the daughter(s) and more relaxed parenting of the son(s). Sons are permitted greater freedom in both pleasure-seeking activities and in parental control, so they have more freedom to experiment in antisocial acts. Due to the restrictions placed on daughters, they tend to refrain from taking risks and are therefore less delinquent.

Grasmick, Hagan, Blackwell, and Arneklev (1996) studied the power-control theory on adults and found that among adults who were raised in a patriarchal family, females were significantly less inclined than males to engage in criminal behaviors. In line with the power-control theory, however, such a gender difference did not emerge in adults raised in less patriarchal families. The importance of this study is to understand that as more women enter the workforce, families become less patriarchal, resulting in an increase in female delinquency rates, as well as the number of females who commit criminal acts as adults later in life.

In summary, Hagan’s power-control theory attempts to explain individual delinquency rates as a product of two levels of distribution of power: (1) power relations in society (the workplace) and (2) power relations in the family (Vold, Bernard, & Snipes, 1998, p. 248).

**Feminist Theory**

Women were the first oppressed group, and male dominance remains the most widespread form of subjugation existing in virtually every known society today (Beirne & Messerschmidt, 2006). In the advent of reported increases in female criminality, a hypothesis was created to draw a link between female liberation and crime, as if to counteract the freedoms women were demanding; however, research to support the contention of the link was absent (Williams & McShane, 2004). Instead, various typologies of feminist theory emerged. These typologies include liberal feminism in which the unequal treatment women face is a result of gender discrimination, Marxist feminism in which women are dominated by capital and only secondarily by men, or radical feminism in which patriarchy and dominance of female sexuality is the mode of domination.

Regardless of the type of feminism, gender relations create social order within social institutions in such a way that men are deemed superior. Many feminists agree that it is the patriarchal, capitalist society that exploits women for their labor, as well as their sexuality (Williams & McShane, 2004). Furthermore, feminists argue that social power and patriarchal control are the predominant tools used to apply a gendered justice. For example, the severity of punishment women receive can be correlated to the degree of control to which they are subject in their everyday lives. The marital status or family status of a female suspect was found by Daly and Eaton (as cited in Simpson, 1989) to be indicative of the treatment she received but was irrelevant for the treatment of male suspects. The treatment received by
suspects throughout the criminal court process is, therefore, based on gendered considerations. Simpson (1989) explains this discrepancy by stating . . .

Men and women without family responsibilities are treated similarly, but more harshly than familied men and women. Women with families, however, are treated with the greatest degree of leniency due to “the differing social costs arising from separating them from their families.” The economic role played by familied men can, more easily, be covered by state entitlement programs, but it is putatively more difficult to replace the functional role of familied women. (p. 393)

This phenomenon may be interpreted in two ways. The treatment received by female offenders can be viewed as not the result of overt discrimination for or against women but the result of concern for keeping families together. Secondly, this “familied justice” is an outward manifestation of patriarchy in which inequality is reproduced by favoring women to remain in the family where gender relations originated (Simpson, 1989).

Criminologists Freda Adler and Rita James Simon have also addressed the issue of female liberation and crime in their seminal works. According to Freda Adler, in her work, Sisters in Crime: The Rise of the New Female Criminal (1975), females are becoming more aggressive and competitive as they move out of the traditional home-bound social roles and into the previously largely male world of the competitive marketplace. In other words, according to Adler, women were taking on what had been masculine qualities as they fought the same battles that men had always fought (as cited in Vold et al., 1998). Rita James Simon’s seminal work, Women and Crime (1975), argued that the increase in female commission of crimes was not due to females taking on formerly masculine characteristics but rather the fact that they moved out of the traditional home-bound roles. As they moved out of this traditional home-bound sphere, females encountered more and newer opportunities to commit economic and white-collar crimes, which required access to other people’s money in positions of trust (as cited in Vold et al., 1998).

**Correlation of Drug Offense Rates Between Males and Females**

Gender is one of the strongest correlates of delinquent behavior. Mears et al. (1998) contend that males commit more offenses than females at every age level regardless of the racial or ethnic group except for a small number of offenses that are distinctly feminine. Statistical evidence demonstrates that sex differences in delinquency are consistent among self-reports, victimization, and official data across time. According to Stuart and Brice-Baker (2004), only about 22% of all individuals arrested and 17% of all incarcerated persons are female compared to male arrests (78%) and incarcerations (83%). Still the number of women in correctional facilities has doubled in a 10-year span, while the male prison population has tripled. The increase in the female prison population is the result of the 90% increase in arrests of women for drug offenses.

According to the National Youth Survey Wave VII data, 68.8% of women did not use marijuana in the past year compared to 57.7% of men who said they did. Only 31.2% of women used marijuana at least once in the previous year; whereas, 42.3% of men admitted to having used the drug. There is a moderate relationship
(Phi .115), and the results are significant (.00 Sig.) (Crutchfield, Bridges, Weis, & Kubrin, 2000). The Federal Bureau of Investigation (FBI) (1997) has tracked the changes in arrest rates between 1987 and 1996. For drug abuse violations, the arrest rate for females increased by 74.1% compared to 54.5% for males. According to Covington (2001), the number of women in state prison for drug-related offenses increased by 95% between 1995 and 1996 while the increase for men during the same period was 55%. The incarceration rate for females between 1986 and 1996 was largely due to drug-related offenses rising an astounding 888%.

According to Bush-Baskette (2000), the 20th century was conducive to drug addictions. Beginning with opiates that were common in over-the-counter medicines to prescription sedatives and tranquilizers, women have been using drugs at a much greater rate than men. In fact, women outnumber men in treatment for overdoses of prescription drugs. This gendered differential in drug use can also be observed in the drug prescription plan under the Medicaid program (Bush-Baskette, 2000). Women have traditionally been the primary consumers of not only legal but also illegal drugs. It is believed that women’s use of illegal substances, whether prescription drugs, alcohol, or illegal narcotics, are for similar reasons. Bush-Baskette (2000) identifies the following conditions leading to drug use among women to include depression, low self-esteem, personal trauma such as sexual abuse, and economic pressures. Unfortunately, these conditions tend to be exacerbated by the drug abuse. Women’s reliance on drugs to combat emotional frustrations can be seen not only in the emergency rooms but also in jails.

Female drug offenders in state prisons report a higher drug usage rate regardless of whether they regularly use or whether they ever used drugs as compared to men (Stuart & Brice-Baker, 2004). Curran and Renzetti (2001) have argued that the most accurate measurement of changes in male and female criminal drug activity is to calculate sex-specific arrest rates. The Department of Health and Human Services has found that, “women who used illicit drugs were six times more likely to be arrested than women who did not, while male illicit drug users were only three times as likely as males who did use drugs to have been arrested” (Stuart & Brice-Baker, 2004, p. 32). Drug offenses are one of the few crimes in which there is a significant widening in the gender gap.

**Societal Impact of Female Incarceration for Drug Offenses**

Although the societal harms associated with the disproportionate imprisonment of minority males for drug offenses are of great concern, the negative effects of the increased incarceration of women will likely have long-term consequences. Women constitute the fastest growing segment of the prison population. The incarceration rate of females has tripled in the last decade due to the dramatic increase in drug-related convictions and mandatory sentences (Covington, 2001). The category with the largest percentage of convictions for women is drug-related offense. Roughly 35% of women in prison are serving time for a drug offense while the remainder of convictions is equally distributed among property and violent offenses (Bloom, Owen, & Covington, 2004).

Bloom et al. (2004) explain the serious repercussions for these women convicted of drug offenses. First, the 1996 Welfare Reform Act prohibits anyone convicted of a state or federal felony offense involving the use or sale of drugs to receive
cash assistance or food stamps through the Temporary Assistance for Needy Families (TANF) provision. In addition, the government implemented a “one strike initiative” permitting the Public Housing Authority in 1996 to deny housing to anyone convicted or suspected of a drug offense. Educational opportunities are also denied to persons with drug convictions. A drug conviction constitutes ineligibility for the Pell Grant, as well as other financial assistance under the Higher Education Act of 1998. The Adoption and Safe Families Act, which was passed in 1997 also mandates termination of parental rights after a child has been in foster care for 15 or more of the past 22 months. The average sentence of incarcerated mothers for drug offenses is 18 months.

Currently, there are more than 180,000 women in prison and jails nationwide (Comey, 2006). Approximately 70% of these women have dependent children; whereas only 50% of men in prison are fathers. Upon the incarceration of a female offender, approximately 25% of the children live with the other parent; 50% live with the maternal grandparent(s); 20% live with a relative; and the rest are taken in by friends, the foster care system, or seek some other arrangement (Grana, 2002). In about 50% of the cases, the mothers lose legal custody of the child(ren) since all states and the federal government have laws permitting the termination of prisoner’s parental rights (Amnesty International, 1999).

Schulke’s study of incarcerated women with dependent children demonstrated that motherhood was a factor not only contributing to but also decreasing the likelihood of recidivism (as cited in Stuart & Brice-Baker, 2004). One-third of recidivist women with children identified the desire to provide for their children as a reason for their subsequent criminal behavior. On the other hand, all of the nonrecidivist women with children credited the fear of losing their children as the motivation for avoiding later criminal activity.

Children of incarcerated women suffer from the stresses of separation from their mothers. These youths are psychologically, physically, emotionally, and academically strained. Grana (2002) explains that such childhood distress manifests in bed wetting, poor academic achievement, depression, promiscuity, poverty, and substance abuse, to name a few. Bush-Baskette (2000) adds that children oftentimes grieve the separation from their mother as if she has died. This experience for the children of inmates affects the life chances for these youths and oftentimes leads to involvement in the juvenile justice system themselves.

In addition to the strain placed on the children of female inmates, a great burden is also put on the grandmothers. Ruiz (2002) explains the dramatic shift of parental responsibility to grandmothers in the last 30 years as a result of the new drug policies. Children under the age of 18 living with a grandparent went from 3.2%, or 2.2 million, in 1970 to 6%, or 4 million, in 1998. Approximately 32,000 women have become the primary caregiver to their grandchildren. These grandmothers face a huge financial burden, as many are living on fixed incomes, as well as an emotional struggle in dealing with not only the incarceration of their child but also the life changing circumstances in caring for their grandchildren. As a result, female incarcerations place three generations in turmoil.
Recommendations for Equal Gender Treatment Within the Criminal Justice System

The dilemma for feminist theorists is whether to advocate legal equality between men and women or to support special treatment based on gender differences. Nagel and Johnson (1994) argue that advancing equality between the sexes is problematic since many laws meant to protect women have only oppressed them; whereas, the special treatment model emphasizes the biological differences between men and women. The advocates of the special treatment model argue that women’s interests require enhanced protections and therefore could not be equal to those of men.

Many who work in corrections facilities, including wardens, believe that three quarters of the inmates would be better served if they were rehabilitated in community centers rather than taking up space in the crowded prisons (Covington, 2001). Comey (2006) argues that women have distinct needs, and a female corrections facility must offer programs that address those needs rather than merely copying the male prison model. For example, women prisoners would benefit the most from educational programs that would promote healthy relationships due to the fact that many incarcerated women have had physically, sexually, or emotionally abusive relationships.

To reduce future criminality, these women need to be permitted and have the opportunities to nurture the mother-child relationship. Moses (1995) describes a mother-child visitation program used in Maryland, Florida, Ohio, and Arizona. This program is called Girl Scouts Beyond Bars. The daughters of female inmates meet with their mothers twice a month on Saturdays to work on projects just as they would if the mothers were taking them to the troop meetings themselves. During the 2-hour sessions, the female inmates spend supervised time with their daughters on structured projects. Topics have ranged from arts and crafts to science and even puppet shows on violence prevention, teen pregnancy, and drug abuse. On the other two Saturdays of the month, the daughters of female inmates meet with volunteers and bond as a groups with the commonality of an incarcerated mother. The mothers benefit by not only having more time with their daughters but also assuming responsibilities and developing organizational skills. If this program could be improved, it would be developing better parental techniques in the mothers. Since most of these mothers are the primary caregivers of their children and they will be released from prison in the future, education on parental skills would be advantageous for their self-esteem and would provide an opportunity for greater involvement in their children’s lives while behind bars.

Staying true to the gender-based arguments of unequal treatment, however, reform should begin with society purging itself of the patriarchal domination. According to Williams and McShane (2004), a number of societal components must be addressed. For example, the economic structure for women including equal pay and better child support enforcement needs improvement; access to child care must be expanded, perhaps through socialization; intervention programs to prevent teen pregnancies would have to be offered; and laws such as those pertaining to marriage, divorce, and child custody would require gender equalization. By increasing the opportunities for women to fully participate in all
spheres of life, Williams and McShane (2004) believe that not only would greater equality be achieved but that the crime rate would also be reduced.

Bloom et al. (2004) have developed a blueprint for gender-responsive policies within the corrections facilities. There are six considerations essential for changing the inherently faulty programs currently in use:

1. Parity in treatment must be created. Female offenders must receive equivalent services as those offered to male inmates, recognizing the unique needs of the population. Incarcerated women will have different needs than their male counterparts; therefore, equality is not what is requested.

2. Corrections administrators down to the front line officers must be educated about female offenders so that women’s issues become a priority in providing resources, staffing, and training appropriate for each gender.

3. Operating procedures that address female inmate needs, such as clothing, hygiene, and visitation, with children are required.

4. Programs and services are needed to respond to the issues common to women that lead them to criminal behavior. These services should include skills for accountability, self-reliance, maintenance of the family, life skills training, and reintegration into society to name only a few.

5. A policy pertaining to the actual level of risk these women pose to the community is needed. Since most of these women have not committed a violent offence, such a policy will enable receptive community partnerships, such as housing, education, and employment, in order to reduce the likelihood of recidivism.

6. The maintenance and strengthening of family connections, especially with children, should be encouraged as a rehabilitative incentive for treatment and responsibility.

**Conclusion**

One of the best predictors of criminality is being male. As a result, much of the research has focused on the male perspective in criminal offending. Although male incarceration for drug-related offenses has risen due to the stricter drug laws, females have been disproportionately affected. The complex and even paradoxical nature of female drug offending makes it imperative to understand the impact of the criminal justice policies on females. Only through gender-conscious policies will the justice system be successful in addressing the causes of crime, thereby reducing crime.

**References**


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Preventing Terrorist Suicide Attacks

Michael Aman, Detective, Cold Case Homicide Squad, El Paso Police Department

It is becoming clear that Radical Muslims have embarked on global jihad as their strategy for confronting the Western democracies and indeed the rest of the world. Radical Islam has its sights on world domination, not unlike the Nazis in the 1930s and 1940s. Al Qaeda is one of the principal proponents of Radical Islam and the perpetrator of a significant number of terrorist attacks in the name of Islam. Until the U.S. invasion of Afghanistan in 2001, Al Qaeda was a terror organization structured along traditional lines; it operated from a sanctuary (Afghanistan) in a fashion similar to a military organization (i.e., based on a command hierarchy) with centralized decisionmaking and formal training.

The successful U.S. invasion of Afghanistan and the removal of the Taliban regime clearly demonstrated the vulnerability of that concept in the face of overwhelming conventional military power. Al Qaeda has since transformed itself into a worldwide virtual network of Islamist terror cells. These cells are not bound by a formal chain of command but rather by the common ideology of Radical Islam. In Western countries, such cells frequently crystallize around a radical mosque or a charismatic Islamic preacher. Cell membership ranges from recent immigrants to native-born citizens of Western countries. The attacks on the London Underground in July 2005 have clearly demonstrated this new concept of Al Qaeda. The terrorists who committed these attacks were only loosely tied to the Al Qaeda leadership in Pakistan/Afghanistan, and they planned, prepared, and financed the attacks independently. The cell was completely self-sustaining and carried out all the necessary functions of the attack—planning/scheduling, training, financing, acquiring bomb materials, and executing the attack. With the completion of the suicide attack, the cell ceased to exist, and with it, any chance of interrogating the terrorists and gaining first-hand information on the attack. These cells typically operate completely independently of one another, and the members only know the fellow terrorists within their own cell.

Al Qaeda is a Sunni terror organization, and at this time, it is heavily engaged in the Iraq war, battling U.S. forces as well as Shiite forces of the post-Saddam Iraqi regime. The old Sunni-Shiite schism had erupted with full force in the Iraq war and is one of the reasons that there is currently no united Islamist front against the West. Shiite Islamists have their own terror organizations, the most important one being Hezbollah, which is sponsored and directed by the Radical Shiite regime in Iran. Hezbollah has a strong, documented presence in the United States. The eventual and inevitable U.S. withdrawal from Iraq will possibly lead to a Shiite-run state under Iranian domination or a breakup of Iraq into Shiite, Sunni, and Kurdish sections. Whatever the outcome, it will free up significant numbers of Sunni as well as Shiite terrorists who have gained their battlefield training, motivation, and baptism of fire in the current Iraqi civil war. They will then fan out into the world, looking for a new war against the “infidels.” They will form the core of the new Islamist terror cadres, similar to what occurred in the aftermath of the anti-Soviet insurrection of Afghanistan in the 1980s. Since the first Gulf War of 1990/1991, the United States has clearly emerged as the principal target of all Islamist terrorists.
Future attacks against the United States are therefore inevitable. While global jihad has become the strategy of the Islamists, “martyrdom operations” (i.e., terrorist suicide attacks), have become their favorite tactic.

Al Qaeda currently seems incapable or unwilling to launch a spectacular operation like the 9/11 attacks in the United States. Several reasons may account for this:

• Al Qaeda will certainly attempt to outdo itself in the next “spectacular.” In order to top the damage done on 9/11, an attack with weapons of mass destruction must be expected. 9/11 took several years to prepare, and the next large attack will take at least as long.

• Al Qaeda’s sanctuary in Afghanistan was destroyed by the U.S. invasion, which Al Qaeda had not expected. The current dispersed and concealed state of its core leadership does not favor the preparation of a large-scale attack.

• The new virtual network character of Al Qaeda favors a sustained campaign of small- and medium-scale terror attacks. Such a campaign is currently being waged in Iraq.

• The radical Muslims are currently preoccupied with the “near enemy” (i.e., the U.S. forces in Iraq).

A campaign of terrorist suicide attacks within the United States is not out of question and is, in fact, likely to occur once the Islamist forces currently tied down in Iraq have been freed up and become available for worldwide jihad operations.

In response to this coming threat of suicide bombings against civilian targets within the United States, I have developed the book and training course Preventing Terrorist Suicide Attacks. The program is a practical tool for law enforcement officers on the streets of America and gives them the knowledge and skills necessary to defeat terrorist suicide attacks during the planning and preparation, as well as the execution phases. Local law enforcement officers know their communities, and they come into contact with lots of people in the course of their daily duties; therefore, these officers have the best, but also last, chance to encounter and stop Radical Muslim terrorists who have slipped through the intelligence network of specialized federal agencies and are hiding in American communities to plot their attacks. Historical experience in many countries has shown that terrorists were observed, stopped, or even temporarily apprehended by law enforcement officers during the actual preparation of attacks. Since these officers lacked the training and knowledge to recognize the threat, the terrorists were turned loose or left alone to execute their attacks.

Preventing Terrorist Suicide Attacks will give American law officers the chance to stop terrorist suicide attacks before they are even launched. As an American police officer, I wrote the book and training course for fellow officers. The work is concise, practical, and to-the-point. My familiarity with U.S. law enforcement practices, operations, law, and training is reflected in the book, and it contains only the necessary amount of historical, psychological, and other background information on Islamic suicide terrorists so that the reader will understand the nature of the threat. The main focus of Preventing Terrorist Suicide Attacks is on
stopping the threat. Recommended practices in the book and course build on practices with which law enforcement officers are already familiar and techniques on which they have already been trained (e.g., school shooters). Preventing Terrorist Suicide Attacks takes the realities of U.S. society into account, especially the fact that potential Islamic suicide operatives may already be present in the country and may even be “homegrown.” The work does not shy away from the issue of what an officer should do if he or she encounters a live suicide bomber on a mission. If all prevention efforts fail, some American law enforcement officers will end up in such a confrontation in the not too distant future. The book clearly discusses the options an officer has in such an encounter and frankly spells out criteria and recommended procedures for the use of deadly force against a suicide terrorist without regard to the fallacies of political correctness and religious over-sensitivity. These criteria and procedures are rooted in recognized deadly force procedures that are already in place for law enforcement.

The book begins with a brief introduction on the emergence of religious terrorism, the tactical shift to suicide tactics, and several watershed events that led to today’s preeminence of Islamic suicide missions: the take-over of the U.S. embassy in Teheran in 1979, the bombing of the U.S. Marine barracks in Beirut in 1983, and the defeat of the Soviet Union by the hands of mujahideen.

The specific objectives of suicide tactics are then addressed:

- The infliction of mass casualties and excessive media attention
- Economic disruption
- Undermining the public sense of security

Suicide attacks offer several advantages over conventional terrorist attacks:

- Precise timing and targeting of the attack are possible.
- An escape plan is not necessary.
- Capture and interrogation of the terrorists are avoided.
- There is a high probability of success.

Suicide bombers are defined as the ultimate short-range smart weapon. The subsection on the profile of the suicide terrorist consists of two parts. Under “Motivating Factors,” religious fanaticism, rewards, and life experiences of suicide bombers are covered. Religious fanaticism may not always be the dominant factor for every radical Muslim suicide bomber; however, it appears to provide at least some motivation for each of them. The unique distinction between self-motivated and fear-induced fanaticism is also covered, which is important to understand when it comes to recognizing and confronting suicide bombers.

While suicide bombers typically expect some material rewards for their surviving family, expected spiritual rewards to be received in the afterlife are more important. Each suicide terrorist is also motivated by his or her personal, unique life experiences. Suicide bombers come from diverse backgrounds. They may have grown up in a destitute, hopeless situation, such as in refugee camp. This would be the stereotypical suicide terrorist (e.g., Palestinian terrorists who are primarily driven by nationalist motives). There are others who have led successful lives in their native countries but become fanaticized after being transplanted to the
West, like the pilots of the 9/11 attacks. These suicide terrorists typically need little outside guidance or indoctrination, and frequently, they are the leaders of suicide terrorist cells. A recent development is the Muslim immigrant suicide terrorist who may have grown up in or is even citizen of a Western target country, like the terrorists of the attacks on the London Underground in July 2005. The suicide terrorist’s life experience may be one of isolation in a foreign culture. These different life experiences of potential suicide terrorists are associated with different behaviors and require different detection strategies.

The second subsection covers the weapons of the suicide terrorists. Even though weapons of mass destruction are becoming more available to terrorists, at this time, the weapons of choice are still conventional explosives. The book examines body-worn bombs, suicide bombs concealed in a carry-on container, and vehicle bombs, focusing on recognition and components, such as the improvised explosive TATP. For vehicle bombs, a detailed discussion of pre-attack indicators is provided, as they are most pronounced and offer the best chances for stopping an attack.

The second section is titled “Prevention Guidelines.” It is divided into four subsections based on the typical chronological order of events in a terrorist suicide mission. The first subsection covers the recruitment of suicide terrorists—overseas, as well as in the United States. Even though law enforcement officers can do nothing about foreign recruitment, a brief discussion is provided, recognizing that such terrorists will bring their attitudes to the United States. A detailed discussion and prevention guidelines are provided on how to detect recruitment efforts within the United States by soliciting the assistance of legitimate Muslim communities. The recruitment of the 9/11 pilots in Germany is used as an example of how Islamic terrorists could be recruited in the United States in the absence of a conscious effort to detect and prevent such activities.

Preventing Terrorist Suicide Attacks recognizes that terrorist suicide attacks are best prevented during the planning phase. The book presents a unique graphic model of how terrorists select their targets. This model can be used by leaders of local communities to gauge the attractiveness of potential targets within their jurisdictions for Islamist suicide terrorists. Under the “Tactics” subsection, different attack modes are discussed, highlighting the most dangerous kind (i.e., the primary/secondary) of attack tactics. Suicide bombers do not act alone but rather are part of a team or cell that combines multiple specialized functions. The text shows how the mental preparation and indoctrination of suicide terrorists during the planning phase affects and changes their behavior. These changes are noticeable and can be detected by officers with the necessary observation skills. Training during the planning phase is broken down into the spiritual and the basic tactical phases, which were frequently conducted overseas in the past. For a future suicide terrorism campaign within the United States, the training might very well be conducted there, and again, alert officers will be able to detect such activities. The text presents a discussion of the acquisition of bomb materials by potential terrorists, including a detailed description of the improvised explosives TATP and HMTD. These are the most likely candidates for use by independent terrorist cells, as all the ingredients are commercially available and these improvised explosives are easy to ignite. Interview and interrogation are also briefly discussed as important issues that have to be considered when interviewing persons of Muslim background—witnesses, as well as suspects.
The preparation phase immediately precedes the actual attack. The text discusses activities and behavior changes of the terrorists that will be observable at this stage. The cell will now be engaged in preparatory activities in the vicinity of the target. Target-specific training and reconnaissance activities will become increasingly frequent and prominent. The text stresses that this is the last chance to disrupt an attack before its actual commission and provides concise, straight-forward information on how to recognize the indicators for the preparation of a suicide attack.

The most innovative and unique part of Preventing Terrorist Suicide Attacks covers proper law enforcement reaction to an actual suicide bombing in-progress. Officers might be dispatched to such an incident or by chance encounter a suicide bomber on his or her mission. The subsection starts with a detailed and all-encompassing discussion of the likely physical appearance of an Islamic suicide terrorist, including issues such as clothing, gender, and facial expression. The book provides scenarios on the tactical engagement of suicide terrorists based on the familiar concept of the active shooter, with necessary modifications to account for explosives as the primary weapon of the terrorist and his or her suicidal/homicidal intent. The text advises responding officers to split up into engagement teams and evacuation teams with the intent to simultaneously engage the terrorist and evacuate civilians to safety. The book offers detailed guidelines for the use of deadly force against suicide bombers, including decision criteria for the use of deadly force and tactical procedures for the quick and effective elimination of the threat the suicide terrorist poses.

The text closes with a concise discussion of measures to be taken in the aftermath of a suicide bombing; the primary focus here is officer safety and the safeguarding of evidence.

Preventing Terrorist Suicide Attacks includes photos and tables, as well as multiple case studies to better illustrate the concepts presented to the reader. Numerous specific prevention tips are provided for officers, and a section wrap-up with self-evaluation questions concludes both of the two sections. Finally, there is an appendix that offers a brief exploration of the Islamic faith. Preventing Terrorist Suicide Attacks is available from Jones & Bartlett Publishers (ISBN 0763741094).

Michael Aman is a detective in the Cold Case Homicide Squad of the El Paso Police Department. He has also served in the Gang and Dignitary Protection Units, as well as in the Criminal Investigation and Patrol Divisions.

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