

EXHIBIT E

THE

Journal

OF CALIFORNIA LAW ENFORCEMENT

TOPICS OF INTEREST

Where Have All The Children Gone?

Genetic Mapping and Crime Fighting
Go Hand and Hand

Evaluating the Quality of Law Enforcement
Investigations: Standards for Differentiating
the Excellent, Good and Reasonable From
the Unacceptable

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The following guidelines should be observed:

Articles should be submitted in Microsoft Word format for PC; either on a CD or the easiest method, by e-mail to tschomus@cpoa.org. Articles should be between 1000-2000 words in length, if longer contact the Editor, Tricia Schomus. A short biographical sketch (3-4 sentences) and photograph of the author should be submitted with the article. The photo should be in jpeg format. The article should be written in APA style as a general guideline for referencing source documents. Photographs can be in black and white or in color but will be reproduced in black and white. We strongly recommend the use of graphs, charts, tables, illustrations, or photographs, which greatly enhance the article.

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WHERE HAVE ALL THE CHILDREN GONE?

By: Captain Clarise Lew, Fremont Police Department

It is a scene most of us have witnessed at one time or another – masses of children toting their backpacks full of books, pencils, and other school supplies, taking part in the centuries-old institution of heading off to school in the morning. At midday, younger children play in the schoolyard, while older children gather to socialize with friends during lunch. The chaos recurs in the afternoon, as children pour out of school and excitedly rush home at the end of the day. Imagine instead, a world where there are no schools and there are few, if any, children in sight. What type of horrible development could cause such a catastrophic outcome? The Internet!



Education and the Internet

The Internet has been in existence for more than 50 years; in the last 20, public use and access has grown exponentially. Many industries, such as banking and communications, have improved performance and efficiency through advances in information technology. Yet, the prevailing education system in the United States for kindergarten through twelfth grade students has not significantly adapted to these advances or taken advantage of the opportunities they offer. In fact, the education system has welcomed technology only to the extent that it fits into its current structure, rather than using technology to create a new model and truly change how it operates.¹ Nevertheless, the future potential and value of online distance learning programs is widely recognized.

Advantages of online distance learning programs include customized curricula, teaching methods, and schedules; fewer geographical constraints; greater availability of subject matter experts; opportunities to use assessment data for continuous improvement; cost-effectiveness; and reduced environmental impact.^{2, 3, 4, 5} Online distance learning can reach and level the playing field for those typically underserved by, or at a disadvantage in, the conventional school environment, such

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as those in rural areas, of lower socioeconomic status, or with physical or learning disabilities, victims of bullying, or social outcasts.⁶ Although research is limited, it has shown that there is no significant difference between the effectiveness of online education compared to face-to-face learning.⁷

In light of these advantages, online distance learning programs in primary and secondary schools are increasing in popularity, and every indication is that this growth will continue into the foreseeable future.⁸ According to the Alliance for Excellent Education, the education system in the United States is facing three major crises – the growth in demand for global skills outpacing educational attainment, declining revenues for education, and a looming teacher shortage – that are poised to force the education system into even greater expansion of distance learning programs.⁹

Online distance learning and socialization

Socialization is defined as “the process by which a human being beginning at infancy acquires the habits, beliefs, and accumulated knowledge of society through education and training for adult status.”¹⁰ Traditionally, children acquire socialization skills in elementary school through interactions with teachers and peers.¹¹ Home schooling and online distance learning programs, by their nature, do not provide students with regular face-to-face contact with teachers or other students. A home-schooled or online student stays home and works alone or with a parent or caregiver, instead of leaving the home, attending school, and personally interacting with teachers and other children.

While home schooling is generally limited to personal interactions with parents and siblings within the home, online distance learning programs frequently involve remote interaction with one or more teachers and, optionally, other students. Children participating in online programs also have more frequent opportunities than conventionally educated or home-schooled children to communicate with others online and can benefit from these interactions.

The millennial generation, or Generation Y, the generation born from 1980 onward, was brought up using digital technology and mass media.¹² “Millennials” do not feel isolated by technology; to the contrary, technology is a means of social connection through text messaging and online social networking.¹³ Children accustomed to, even more comfortable with, online social relationships as compared to face-to-face interactions, have opportunities to establish much wider social circles than the traditional student does.

Rafael Herrera, Director of Admissions and Lecturer for the School of Social Welfare at the University of California at Berkeley, suggests that online learning programs also provide opportunities for students who are less socially active. The computer provides a “shield” for them, allowing them to participate and interact more, possibly improving their self-esteem and their ability to feel counted. Existing research shows that students enrolled in online schools are at least as well socialized as equivalent students enrolled in traditional schools.¹⁴ Using digital

media, youth are able to pick up basic social and technological skills they need to fully participate in society.¹⁵

The comparison, however, may not be so simple. The socialization experience of an online distance learning program or home-schooled student depends heavily on many factors, including the characteristics of the student, the teacher, and the learning program.¹⁶ Creating an equivalent, albeit different, social experience for the student is critical to counteracting the isolating effect of online distance learning.¹⁷ Home-schooled student Rebecca Hunt believes that a home-schooled child's parents and family are the primary determinant of the child's ability to develop social skills and build relationships. Opportunities for social interaction, such as online social networks, community involvement, or sports activities, also play a vital role in the development of social skills. The research may also be misleading when speculating about the effect on children should online distance learning programs become the norm in the education system.

With traditional schooling currently being the "default" education system, it is logical to conclude that the small percentage of parents who choose to home school their children or enroll them in online distance learning programs are those who take an above-average interest in their children's education needs. These parents would also be more likely to make the effort to involve their children in community activities, sports programs, or other social opportunities to develop their social skills. If online distance learning programs become the default, however, parents who take little to no interest in their children's education will not likely take the effort to involve their children in the interactive activities needed to develop their social skills. It is possible that a generation of children will grow up with social skills deficit, a condition associated with later criminality, mental disorders, and substance abuse,^{18,19} which brings this issue squarely to the future of policing.

Significance for Law Enforcement

School age children make up a considerable proportion of the communities law enforcement agencies serve. Children under the age of 18 comprise 26% of the population of California and 24.6% of the population nationwide.²⁰ The growth of online distance learning programs is altering the education system in a way that could significantly change how police departments serve this segment of the population.

Currently, many law enforcement agencies have a contractual relationship with their local school district for on-campus School Resource Officers. Their purpose is typically to provide safety and security on campus through law enforcement, law-related counseling, and law-related education.²¹ As online distance learning programs take students away from brick-and-mortar schools, issues such as assaults and thefts between students and around schools will no longer require the services of these officers. The reduction or closure of traditional schools could allow police departments to redirect resources previously dedicated to schools toward other

crime prevention or law enforcement needs.

As noted, a preponderance of online distance learning programs could potentially lead to social skills deficits in a large percentage of children. Law enforcement could help offset these deficiencies by creating and implementing programs focused on the development of proper social skills at younger ages, similar to how Drug Abuse Resistance Education (DARE) programs target substance abuse. These programs would require an upfront outlay of financial and labor resources by police departments, but it would be an investment in the future to help keep children from falling into criminal activity later in life.

In today's technology-based environment, it is difficult for parents to deny their children access to computers or other communication devices, at home or in less controlled locations, such as schools or public libraries. Traditionally, school and neighborhood friends determined a child's peer culture, but as online distance learning programs grow, the legitimate need for children to be online unsupervised will increase, as will their risk for being influenced by the abundance of online sources that advocate criminal pursuits, such as pedophilia, drugs, and hate groups.²² This is another area in which law enforcement will have an expanding role.

Computer-based methods of committing crimes, such as cyber-bullying, identity theft, and fraud have already created a new arena to which law enforcement agencies must dedicate resources. These crimes are bound to broaden and increase as computer use further expands at all ages. Children are especially at risk for not just falling victim to, but committing these crimes. Young people today are more technologically advanced than ever before, making it possible for them to commit offenses disproportionately serious for their age. They also seem to have an "ethical deficit" related to computer crimes, somehow perceiving online crimes as being less serious than traditional crimes.²³ The Federal Bureau of Investigations, the United States Department of Justice, and the United States Department of Education have already made efforts to instill appropriate computer behavior in our youth to prevent them from gravitating into computer delinquency.²⁴ Local law enforcement can join in this effort by initiating education programs within their own school districts that focus on computer crime and ethics.

The investigation and prosecution of computer crimes are challenging because of difficulties in determining jurisdiction, obtaining electronic evidence, and tracing back to the electronic wrongdoer.^{25,26} New legislation or new technology that clarifies jurisdictional ambiguity, allows greater latitude for electronic evidence collection, and facilitates the identification of electronic sources will significantly improve law enforcement officers' ability to investigate these crimes. Law enforcement must be active in the legislative process and agencies should position themselves on the forefront of technology to take advantage of these new developments.

Until these changes come about, police departments must dedicate resources to the investigation of computer-related crimes and realize that children are the

key to combating this trend. Many agencies already make use of social media sites to disseminate information to their communities, and use these connections to solicit information. In May 2010, Facebook had more than 12 million users in the United States under the age of 18; a number growing at 3% per month.²⁷ In fact, 15% of all social network users are under 18 years of age.²⁸ Law enforcement agencies can use these outlets to establish two-way communication with young people, especially as online distance learning programs become more popular and fewer children assemble at a central location.

Finally, if online distance learning, through its customized programs and freedom from geographical constraints, can reach and successfully educate a greater number of students who would not otherwise be served by the traditional system, it can result in greater high school graduation rates. Since research shows that schooling and education significantly reduces criminal activity,²⁹ a better-educated population would likely result in a reduction in crime rates.

Conclusion

Online distance learning programs have placed the education system in the United States on the brink of major change. While the nexus to law enforcement may not be readily apparent, the downstream effect can be significant. Children make up one-quarter of the population and are the future adults in their communities. Serving their needs certainly demands the attention of local policing agencies. If police departments dedicate resources to programs geared toward children, such as assisting in developing social skills and educating on the dangers of computer interactions, they can have a positive impact on the future of crime in their communities.

As Roxanne Jablonski-Liu, Director of Assessment in Elementary Instruction at the Fremont Unified School District in California, points out, “Kids, from a very, very young age, are inundated with electronic media” and online distance learning takes advantage of the technical platform to which they are already accustomed. “Giving kids various ways to access education may actually in the long run decrease their chances of having negative interactions with the police...because they will have access to other things beyond just what we do in the K-12 system.” Online distance learning programs can provide additional options, better serve, or simply reach, children who are not ideally fit for the traditional school system, resulting in a more educated and less criminal society.

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GENETIC MAPPING AND CRIME FIGHTING GO HAND AND HAND

By: Lieutenant Joseph Micheletti, California Highway Patrol

The mapping of the human genome and related advances in genetics has opened entirely new fields and approaches to addressing complex problems with the human race. After thousands of years of fusing, melting, soldering and forging, we are now splicing, recombining, inserting, and stitching living material to decipher the human genome. Our lives are likely to be more fundamentally transformed in the next few decades than in the past, 1,000 years. In the near future, genetic changes could be made in a human fetus to correct deadly diseases and disorders, as well as enhance mood, behavior, intelligence and physical traits. Researchers are linking a large number of mental diseases to genetic disorders. Furthermore, animal and human cloning will be common place with replication replacing reproduction. Individuals will be able to obtain detailed genetic readouts of their genome, allowing them to gaze into their own biological future and plan their lives in a way never before possible. The question is which genetic engineering uses will society accept and which ones will be rejected.¹



As budgets continue to shrink and responsibilities increase, law enforcement will be challenged with forecasting the future and establishing new policies and procedures that will best utilize available technologies and personnel.

Linkage

The science behind linking genes to establish a cause and effect diagnoses

Lieutenant Joseph Micheletti has over 27 years of law enforcement experience. He has worked previously for the Sacramento Co. Sheriff's Department and the last twenty five years with the California Highway Patrol. He is currently assigned as the Commander of the Mount Shasta Area office in the Northern Division of the California Highway Patrol. His many contributions both in field and headquarters assignments showcase his dedication and commitment to the California Highway Patrol and the citizens of California. He has a vast amount of knowledge in policy development and has been responsible for oversight of many statewide programs. Additionally, he has made a positive impact on his community by volunteering in community events and a number of organizations, including the Boy Scouts of America.

continues to evolve. Linkage is a method that allows researchers to determine regions of chromosomes that are likely to contain a risk gene, and rule out areas where there is a low chance of finding a risk gene. Linkage works by using markers, which are well-characterized regions of DNA. Many markers have been identified by the Human Genome Project, and by other studies to map chromosome regions. Researchers are searching for markers that are consistently present in those conditions, and are not present in those cases without the condition. When a marker is found with the presence of a condition, the marker and disease causing gene are determined to be linked, and are assumed to be very close together. By looking at a large numbers of families, researchers can be very confident that there is a risk gene somewhere close to the marker.

Human genetic information is like a large phone book. In that phone book, we are interested in locating a person named Bob. If Bob's last name and address are not known the linkage allows researches to take the whole phone book, and narrow the search down to a couple of pages allowing researches to make conclusions that can change peoples lives.²

Need for Change

As technology continues to change and advancements in genetic research expand, law enforcement and society must be willing to make changes and sacrifices to improve efficiency and provide an environment conducive to a higher quality of life.

According to Alvin Toffler, there were three distinct stages in the historical evolution of technology. The first was the Agricultural Age, which lasted from the time of Adam to about 1745 in the United States. This stage was characterized by subsistence agriculture and saw few innovative changes in technology. The second stage was the industrial age, which lasted from 1745 to 1955, and witnessed progressive changes such as the steam engine, telegraph, telephone, radio and electric power. The third stage, described by Toffler as the Information Age, began in 1955, the year in which white collar employees first outnumbered blue collar workers in the United States. Perhaps the most accurate on word description for the Information Age would be change.³

Today as change permeates our society, crime and criminals who commit crimes have changed. As the new technologies have become available, criminals have become more sophisticated and in some cases more violent. That is why law enforcement and society must continue to pursue new ways to address the growing challenges that face our advancing society.

One Step Ahead

Suppose through required genetic testing law enforcement agencies could identify those individuals with a genetic disorder linked to mental illness which would make the individual more likely to be involved in criminal behavior. New studies on genetic basis of human behavior are providing a cultural acceptance of

new biotechnologies. Some scientists are even beginning to suggest that various forms of antisocial behavior, such as misanthropy and criminality, may be evidence of its findings on the power of heredity in a number of common personality traits. In determining extroversion, heredity registered at 61 percent for aggressiveness. Many social scientists go even further, contending that virtually all human activity is determined by genetic makeup. It is important to remember that from the end of the Second World War through the 1980s, social scientists argued nurture over nature. Now, plagued by a deepening social crises, industrial nations seem unable to effect significant changes through institutional and environmental reform. Social scientists and others contend overhauling the economic and social system is at best palliative, and at worst an exercise in futility. If scientists can link genetic disorders with criminal behavior, law enforcement and other social agencies would have the ability to intervene and provide social training, guidance and direction, which would assist with changing negative behavior before it impacts society. Armed with this new powerful information, law enforcement would be able to deploy personnel in a much more effective manner.⁴

Expert Guidance

An expert panel from law enforcement, politics, criminal law, and civil rights advocates was convened and provided insight to the concept of using genetic testing to enforce laws and treat individuals before they become a larger burden on society. The panel concluded there is a high probability that a new approach and the utilization of technology specific to genetic testing would be a positive for our society. The abysmal economic future has created insecurity for funding police departments, thus the need for state assistance is a viable path to ensure public safety.

The expert panel envisioned an additional state agency coordinating the testing program which would provide appropriate assistance to local municipalities throughout the state of California. Providing this service statewide would give local police departments the opportunity to return most of their personnel to patrol duties and their efforts would surely have an impact on reducing crime levels. Partnering and building relationships with communities continues to have positive results with an emphasis on reducing crime in those jurisdictions. The statewide genetic testing program would provide impartial and consistent enforcement throughout the entire State of California.

The future vision and the implementation of a genetic testing program monitored and facilitated by a California State is a concept that can become a reality. Government officials, at all levels, need to be receptive to the joint efforts of state and local police departments to impact crime within California. This concept continues to gain support as technologies improve and more is discovered about the human genetic combinations that result in violent behaviors. Identifying violent behavior and other criminal traits would result in significant cost savings and improve quality of life for the people of California.

Conclusion

The future vision and implementation of a genetic testing program monitored and facilitated by a state agency is a concept that can become a reality. The goal of this futures project was to present a technology driven alternative to how law enforcement could be implemented in California. There is a need to identify alternative solutions to address the increasing problems and difficulties facing law enforcement.

Regardless of the current fiscal restraints, providing law enforcement services effectively and efficiently should be the measure for a law enforcement agency. Given all of the prior information, it is apparent that California law enforcement at all levels could improve their operations while maintaining the basic mission of safety, service, and security.

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EVALUATING THE QUALITY OF LAW ENFORCEMENT INVESTIGATIONS: STANDARDS FOR DIFFERENTIATING THE EXCELLENT, GOOD AND REASONABLE FROM THE UNACCEPTABLE

By: Deputy Chief Jeffrey J. Noble, Irvine Police Department and
Professor Geoffrey P. Alpert, University of South Carolina

Introduction

Police departments vary in terms of services and quality. Research has informed us that different agencies have policies and practices that differ and that police strategies and tactics can change from one agency to another (Langworthy, 2002; Alpert, Dunham and Stroshine, 2006). While many aspects of policing should be different depending on a wide variety of situations and circumstances, the quality of a criminal or administrative investigation should minimally be at a reasonable level and in many cases organizations should strive to exceed these basic standards. While the goal of conducting high-level investigations is straight forward, implementing the high standards is at best problematic. Gottschalk (2007) informs us of the complexities and difficulties of evaluating police investigations. He explains that in some countries, the ultimate measure of an investigation may be determined by the final decision of a court, but in most nations, a more complex evaluation matrix is necessary. Creating a performance measure in policing is a difficult task and often includes



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Geoffrey P. Alpert is professor in the department of criminology and criminal justice at the University of South Carolina. Dr. Alpert has been conducting research on high-risk police activities for more than 25 years. His is currently working with Cal POST on their Vehicle Operations Training Advisory Council, and the Queensland Police Service and Griffith University in Brisbane, Australia. He is a member of the International Association of Chiefs of Police Research Advisory Committee.

several levels of measurement. For example, one measure of police investigative performance may be a conviction, but many times, the police may do everything correctly and the suspect may be found not guilty, may plea bargain to a lesser charge, or the case may fail due to a myriad of other reasons that do not relate to the competency of the investigation like the lack of cooperation by a witness. Although the investigative process is a critical aspect of police work, evaluating the police investigation has not received sufficient attention (see Kenney et al., 2010).

The Importance of a Reasonable Investigation

The quality of a law enforcement investigation reflects an organization's commitment to the community it serves. The primary purpose of determining whether an investigation is conducted properly serves as a method to identify or evaluate the quality of work conducted by a unit of the agency or a specific investigator or workgroup, and can serve to improve the overall quality of investigations. Additionally, the quality of an administrative investigation serves to protect community and organizational trust as it evidences the efforts that the organization undertakes to identify, root out and resolve both criminal allegations and allegations of officer misconduct. Conversely, evidence of a pattern or systematic practice of unreasonable investigations reflects an intentional indifference to the rights of community members who may be harmed by criminal misconduct or the misbehavior of officers. Evaluations of investigations are designed to provide an accurate analysis of successes and shortcomings, which in turn provide management with knowledge about strengths and competencies, as well as areas that need improvement through training and supervision. As in any area of policing, investigations need to be audited, assessed and improved.

The purpose of this paper is to set forth an analytical plan to evaluate police investigations. The evaluation process should be a planned and systematic approach similar to audits that are conducted at a regular interval. The quality of an investigation is best determined by the use of standardized criteria which includes a diagnostic process that measures core competencies to provide meaningful insight into the quality of an investigation. Additionally, there should be a system to identify individual investigations that need to be reviewed, through missing elements or concerns reported by supervisors. Regular, ongoing evaluations demonstrate that the organization places a high value on the quality of their investigations, which for a police agency is a core business function and a fundamental service provided to the community.

The Use of Statistics to Determine Quality

It is tempting to evaluate investigations through the use of statistics. Modern technology has made data collection uncomplicated and it is not difficult to track the raw number cases prepared by a specific investigator and compare those numbers with whether there was a criminal conviction or whether an administrative case was sustained and a disciplinary action was imposed. Using these ratios, one could presumably compare the investigator with other investigators to determine

if the investigator was performing his or her investigations in a competent manner or from one agency to another to create a level of community confidence that the agency is being managed appropriately. Such data comparisons are not new in the criminal justice system. Prosecutors have a long history of parading their office's conviction rate in an attempt to persuade the public that the prosecutor is both competent and tough on crime. Unfortunately, these statistics are only meaningful if they are based on meaningful data and if the data is interpreted appropriately. Data can be manipulated in a number of ways and conviction rates are no exception. In order to achieve high conviction rates, prosecutors may cherry pick easy cases where they are assured a conviction, they may refuse to file complicated or close cases, or they may offer unjust plea bargains to assure the conviction status while avoiding the filing of cases where there is even a slight a risk that a conviction will not be obtained.

The use of conviction rates lacks merit as a tool to determine quality of criminal investigations. The purpose of a criminal investigation is to present the facts of the case, not to obtain a conviction. Many investigations result in proving that a suspect was not responsible for the crime; indeed, a central tenet of the American system of justice places as much emphasis on clearing the innocent as it does on prosecuting those reasonably suspected of committing crimes. Rating investigators on conviction rates alone creates an unintended and improper consequence on officers who may try to charge or convict a suspect to avoid a low rating regardless of the evidence. While a statistical analysis may be fast and inexpensive such a shortcut approach simply cannot produce reliable conclusions. The only method to determine if a specific criminal investigation is reasonable is to conduct a review of each specific investigation to determine if it was thorough, fair, accurate, timely and complete.

Administrative investigations have many of the same types of data concerns as criminal cases when they are assessed by statistics. Some experts have tried to use statistics in administrative investigations to demonstrate that police agencies have a pattern or practice of ignoring complaints of misconduct by performing unreasonable investigations designed to protect misbehaving officers and thereby creating an atmosphere where officers believe that they can act with impunity and engage in bad conduct without concern of meaningful consequences. These experts review the total number of complaints and compare that number with the number of sustained cases in an effort to determine the quality of the investigations (Futterman 2008). Invariably, these statistics reveal a low sustained rate that serves to support their arguments.

Although the application of a sustained rate may appear to be a effective indicator of quality, a sustained rate in and of itself does not provide a valid measure of the overall integrity, efficiency and quality of administrative investigations. There are many reasons that police departments have low sustained rates in administrative investigations and there are valid reasons why most complaints of officer misconduct are not sustained. Sometimes complainants retract their complaint,

they may refuse to cooperate in the investigations, they may lack credibility (due to some level of chemical or mental impairment, internally conflicting statements or conflicting evidence), or the complainant may not be able to identify the officer. Some complaints cannot be sustained because the statement of the officer and the complainant conflict and there is no independent witness or evidence. Some complaints are false and are designed to impeach the officer's credibility and lessen a criminal's culpability in a crime.

Not only are there reasons for a low numerator, but there may be legitimate reasons for a wide disparity among police departments in the denominator as well. The method that complaints are accepted by different departments and even the definition of a complaint can vary widely depending on the policies of each individual department. Some departments accept all complaints from any source. These departments would have a very high complaint rate. A high complaint rate may mean that there are a larger proportion of officers engaging in misconduct, or it may mean that the department has an open and responsive system for accepting complaints and that there is a high level of citizen confidence that the department will take their complaints seriously (Pate 1993). Conversely, low numbers of complaints may indicate that the department's officers are behaving appropriately or it may mean that the department discourages complainants by placing obstacles such as requirements that all complaints be made in-person at a police facility, a department that does not accept anonymous complaints or where the community lacks trust with the police and believes that the department will not effectively investigate or resolve their concerns.

The underlying data has such an impact on sustained rates to ignore the questionable validity of the data would be improper. Even if a sustained rate could be determined that accurately reflects sustained rates among different agencies no one has developed a standard for an acceptable sustained rate for allegations of officer misconduct (Walker 2005), just as no one has developed a standard for an acceptable number of arrests based on the number of reported crimes for a particular jurisdiction. The sustained rate is simply not an appropriate performance measure to determine the quality of an administrative investigation (Walker 2001). Administrative investigations are consistent with criminal investigations in that the only proper method to determine the reasonableness of an administrative investigation is to review each individual investigation to determine if it was thorough, fair, accurate, timely and complete.

Evaluating Investigations

Evaluations of investigations should not be conducted in isolation; rather there must be identified standards for comparison to allow management to draw appropriate and fair conclusions. The standards apply to criminal, administrative and special investigations that are conducted by law enforcement agencies. These standards are not intended to provide an investigator with a roadmap to conduct an investigation, but rather as criteria that should be assessed when judging

whether or not the investigator's efforts were reasonable as it applies to the specific matter under investigation. From the outset, it is important to understand that no investigation is "perfect" and that there can always be "better" methods that may produce "better" results. To suggest a standard of "perfect" or even "best practices" for every investigation is unreasonable. The only appropriate standard that may be applied is one of reasonableness based on the totality of the investigation while encouraging investigators and organizations to strive for continued improvement.

Developing the Standard

Although one may assume that the goal of all investigations is to achieve the highest possible rating, the efforts required to reach that mark in all cases may be counterproductive to the goals of the organization and the community. Indeed, there are circumstances where a reasonable investigation is preferable when one considers the allocation of resources necessary and the diminished value of an investigation that would achieve a higher evaluation but is not necessary to accomplish the goal of the investigation. Simply stated, there is no need for an obsessively thorough investigation on a frivolous complaint (MacDonald 2011). An investigation may be acceptable as long as the investigation is of a sufficient quality to achieve the goals of an effective prosecution, the ability for management to make a fair and reasoned administrative finding, or the goal of a special investigation that is most often accountability.

There are unique circumstances where a reasonable investigation is not sufficient. An excellent investigation is required when it is necessary to fulfill legal or community demands. These investigations require substantial investigative efforts and the outcome and trustworthiness is often fully dependent on the whether the investigator took all investigative steps in an appropriate manner and that their efforts are thoroughly and accurately documented. Consider special investigations like the Warren Commission and the 9/11 Commission reports. Those investigations were not only important to determine if wrongdoers needed to be brought to justice, but also because the need to address the interests of the nation by providing transparency into the events, and to achieve the trust and support of the citizens. Although those reports confront national issues, there may be unique local issues that similarly require an excellent investigation and where a good or reasonable investigation would be inappropriate. Examples may include a complex or serial homicide investigation, serious allegations of misconduct that rise to the level of widespread police corruption or where there is a substantial community interest. Over the years, we have seen examples of alleged police misconduct that have led to riots and community unrest (see Alpert, Smith and Watters, 1992) and have demanded a thorough investigation. While these events were investigated completely because of community pressures, most police and civilian activities do not receive that level of investigative prowess.

When there is a need and resources and time allow investigators should

strive to complete good investigations. A good investigation lies between the reasonable and excellent. This type of investigation would demonstrate the skills of the investigator and would reveal a greater level of depth than a reasonable investigation. While good investigations are not the standard for achievement of most investigations they create the opportunity to develop an investigator's skills and may be the goal for organizations that have sufficient resources, time and a community need.

Reasonableness is the standard to judge most investigations. A reasonable investigation takes the basic steps necessary to gain understanding of the issues and to come to an appropriate finding. The investigative efforts will be less than a good or excellent investigation, but the investigations reveals sufficient facts to allow a fact-finder to determine a fair and appropriate finding. In reasonable investigations, appropriate investigative steps are undertaken and documented and while additional efforts may clarify or provide greater weight to the findings, the investigative outcome is reasonable. There is no evidence in a reasonable investigation that the investigator or organization turned a blind eye to the matter under investigation or that the outcome was intentionally undermined due to some bad purpose.

While an investigation rated as excellent or reasonable may achieve the organization's goals and responsibility to the community, an unreasonable investigation is deemed a failure and mandates immediate remedial action to correct and identify steps to prevent similar failures in the future. In a criminal investigation an unreasonable investigation will prevent the effective prosecution of a suspect and may impact the investigation through the loss, contamination or destruction of evidence that cannot be rehabilitated by subsequent investigative efforts. An unreasonable investigation will omit critical interviews or other investigatory steps of such a magnitude that no reasonable conclusions may be drawn from the investigation. An unreasonable investigation in personnel matters or other investigative efforts that are aimed to determine appropriate findings will prevent reliable decision-making based on the investigation. Unreasonable investigations are in effect a sham designed either intentionally or through incompetence to fail to make any meaningful efforts to answer the underlying questions presented.

There is a marked difference between a reasonable investigation and an unreasonable investigation. A reasonable investigation will reveal a number of investigative steps that were taken to address the concerns presented and allow reasonable decisions to be made based on the reports generated. Reasonable investigations can be easily be criticized because "better" techniques could have been used, "better" questions could have been asked, the documentation could have been "better" and there may have been additional investigative steps that if taken would have made the investigation "better." However, the standard for most investigations is that they are reasonable, not excellent or even good. There is no requirement that an investigation be perfect or even that it could be "better,"

but that reasonable steps were taken in a good faith effort to determine the facts of the issues presented. Unreasonable investigations on the other hand are best identified as shams where either no meaningful investigation was conducted or where the allegations were ignored. An example of an unreasonable pattern of investigations is a practice of the Memphis Police Department in conducting administrative investigations. That department would accept citizen complaints of officer misconduct and then without conducting any investigation a determination would be made that the complaint was not valid, identify the complaint as a “no complaint,” and the intake officer would file a short report that only listing a brief synopsis of the complainant’s statement. Included in these “no complaint” files were complaints of domestic violence, allegations of officers who possessed “drop guns,” and allegations of officers who threatened to implicate citizens for crimes that they did not commit (Adcock v. Memphis, 2011). Such complaints that are not patently frivolous but are of serious crimes deserve and demand something more than an intake supervisor deciding without any investigative efforts whatsoever that the complaint is unfounded.

Application of the Standard

All investigations can be divided into a number of components that when considered together reveal the true quality of the investigation. These components include: thoroughness; interviews and interrogations; evidence identification and collection; timeliness; documentation; fairness; and supervisory oversight. Once the appropriate standard has been determined, the assessor should use their training, education, experience and professional judgment to determine if the proper components were completed satisfactorily by the investigation. The factors are not designed to be an inclusive list, or should the absence of a single factor be reason to classify an investigation as a failure. Rather, the assessors should use their considerable expertise and judgment to draw reasonable conclusions based on the totality of the circumstances.

Conclusion

The application of a standard of reasonableness to determine the quality of investigations is an appropriate measure to ensure that police departments are achieving the goals of their organization and providing a the level of service that they have been entrusted to provide for the community the they serve. Routine audits of investigations allow supervisors to provide training and develop investigators’ skills and at the same time preventing unreasonable investigations from being approved.

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CPOA'S 2012 STATEWIDE EVENTS

Law Enforcement Legislative Day

DATE: Wednesday, March 28, 2012
LOCATION: Sacramento Sheraton Grand Hotel
HOTEL: Sheraton Grand

Annual Leadership Summit

DATES: May 22 - 24, 2012
LOCATION: Hyatt Regency in Monterey

Annual Leadership Training Day

DATES: Monday, October 15, 2012
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