

**The Challenge of Ethics in Law Enforcement
in the Face of Advancing Technology**

Ethics in Policework in the 21st Century

by

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The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

The views and conclusions expressed in the Command College Futures Project and journal article are those of the author, and are not necessarily those of the CA Commission on Peace Officer Standards and Training (POST).

The challenge of ethics in law enforcement in the face of advancing technology

Today's police officers have at their disposal a wide variety of sophisticated investigatory tools. The miniaturization of electronics, computer processing speed, wireless technology, fiber optics and the Internet have all converged into a new array of investigative resources, which police officers were only beginning to learn about ten years ago. Technological advances propelled by military missions within the theaters of war in the Middle East, coupled with the federal government's impetus to find new and more effective ways to guard against radical Islamic terrorist attacks within our own borders, have accelerated the growth and sophistication level of surveillance capability. Certainly, police officers of the coming decade will be using surveillance technology and computer-aided investigation techniques that might appear startling if viewed today.

As the police grapple with using, and potentially misusing, these emerging technologies, it would be difficult for a reasonable person to argue against appropriate training in the ethical use of electronically-intrusive devices. For more than three decades, California police academies have incorporated specific ethics training into their curriculum where recruits are exposed to healthy blocks of instruction on a variety of ethical issues (*Orange County Sheriff's Academy* 2008). The public demands – and has a right to expect – that police officers will make ethical choices when handling sensitive and private data. Unfortunately, today's training regimen is poorly-equipped to equip tomorrow's peace officers with the necessary skills to cope with the reality of law enforcement in the coming technological age.

Continuing ethics training is a necessary part of policework

As police managers in the 21st century, shouldn't we devote serious effort to intensify training in ethics and technology? Until late in the last century, the teaching of ethical issues was

very much like it was in Plato's day 2,500 years ago. Plato walked the earth wearing sandals and a robe. Amongst other musings, he argued with his friends that they should not bribe jail guards so that he could escape and thereby save his own life (Cooper 1997). Given the state of technology at the time, he did not need to consider whether it would be wrong for his friends to use infrared cameras with telephoto lenses to surveil the guards' family quarters at night. He gave no thought to the ethical implications of using the Internet to research the warden's bank account or his debt ratio. Sadly, the dispersal of today's electronic information makes it possible for even a novice to intrude and inspect the actions and records of others. In law enforcement, it is often necessary to do so in pursuit of justice. How then do we ensure those charged with that responsibility do not extend the use of the same systems for their own purpose?

In a Canadian research paper entitled, *Privacy Outside the Castle: Surveillance Technologies and Reasonable Expectations of Privacy in Canadian Judicial Reasoning* written by Krista Boa, an analysis was done about how law enforcement's use of newer surveillance technologies and practices is qualitatively different from what was done before; or is it a matter of law enforcement having better tools to conduct surveillance as they always have done (Boa 2010)? Already we are armchair, firsthand witnesses to events in the Iraqi war, courtesy of the military's use of satellite imagery and high-resolution cameras mounted in drone aircraft flown remotely by pilots in the United States. The military is almost always at the top of the food chain when it comes to new technology, but eventually many of the federally funded technological advancements, which the armed forces first use to fight our enemies around the globe eventually trickle down to their new use of fighting crime in the mean streets of Anytown, USA.

In 2007, the Houston, Texas Police Department tested a military unmanned aerial vehicle over a rural area (Dean 2007). The event, attended by the United States Department of

Homeland Security and dozens of officers from other law enforcement agencies, was not intended to be publicized, but was discovered by local news reporters. The test raised consternation in the Houston area. South Texas College of Law Professor Rocky Rhodes commented to the reporters that “One issue is going to be law enforcement using this and when, by using these drones, are they conducting a search in which they’d need probable cause or a warrant. If the drones are being used to get into private spaces and be able to view where the government cannot otherwise go, and to collect information that would not otherwise be able to collect, that’s concerning to me” (Dean 2007).

Of course, lapses in ethical behavior are nothing new in police work. In 1980, the City of Miami, Florida mandated the hire of two hundred new minority police officers. (Delattre 2006). Background investigations revealed that many of these new recruits were unsuited to be police officers in the first place, and academy instructors also gave warnings. Although police management was forced by the City to hire new recruits whom they already believed to be undesirable, the poor training they condoned, inadequate supervision they provided, and an ineffective Internal Affairs Division caused many of the new officers to behave with contempt for the law. More than a third of them had been fired by the end of the decade (Delattre 2006). In a more recent example, LAPD officers assigned to their gang enforcement detail also displayed an ability to contravene training in what has become to be known as the Rampart Scandal (Drooyan 2000). In spite of these celebrated instances, the vast majority of peace officers adhere to agency dictates and perform their duties without incident. Although police agencies generally do a satisfactory job training their newest members in the ethical and moral conflicts they might encounter, no ethics curriculum as of yet specifically addresses how to deal

with, and limit the use of, emerging technologies. There are, though, opportunities to change the status quo.

Technology brings change

Increasingly sophisticated electronics technology has brought a wealth of valuable and useful tools to law enforcement in general, and no police officer would disagree that any new technology changes the way they do business. Almost all large police agencies are currently using patrol cars equipped with some sort of wireless computer, usually known as a mobile data computer or MDC. Many use patrol video systems (PVS) in their cars as well. At first, many police officers resented the intrusion of video and other recording equipment into their professional lives, which they perceived as a way for management to spy on them and catch them in bad behavior (Ma 2006). Now the PVS is regarded by most as a valuable tool for recording actual events, which can be used in court to refute allegations of wrongdoing.

New methods to access personal information by computers are spreading quickly around the world. Safeguarding private information from public access, while allowing it for legitimate police use, is already a problem in today's world. One example is the well publicized videotaping and other high tech surveillance by the New York Police Department of political protestors during the 2004 Republican National Convention. In a press conference given on September 3, 2004 in Penn Plaza, New York Police Commissioner Kelly stated, "We also employed new technology that enhanced our command and control. This included ongoing, real-time images of conditions throughout the city. In addition to strategically-placed television cameras in and around Madison Square Garden and at other key locations in the city, our new police helicopters were equipped with advanced video equipment as well. The newest innovation in this connection was the use of a blimp to establish an advanced observation

platform. It fed real-time images to startling clarity to our planners on the ground.” (Press release 2004).

Attorney Jethro Eisenstein successfully challenged the legality of the breadth of the video recording of demonstrators in court. In a 47-page decision, Judge Charles Haight stated, “there must *always* be a legitimate law enforcement purpose—having a purpose of investigating political activity exclusively for its own sake is never allowed” (Clancy 2007). As stated by Ari Schwartz, Deputy Director of the Center for Democracy and Technology, “So what’s the problem? The concern is that information collected for one purpose is used for something entirely different down the road.” It will almost certainly continue to be a problem as new technology comes into common police use in tomorrow’s world.

Robocop may seem far-fetched and far into the future, but respected members of the law enforcement community are beginning to think ahead to the possibilities. In a published FBI Bulletin article, a vision of the future is depicted wherein a police officer jumps into his ultra-efficient, hydrogen-fuel police car, carries on a conversation with his computer-generated personal assistant who advises him on crime events in his area during the previous night, and obeys his command to remotely launch an unmanned aerial vehicle to surveil and report back on possible suspects based on optical facial recognition cameras; and all the while keeping up a running notification to the officer’s field supervisor and watch commander (Reed 2008). The author identifies the following list of possible new technology, which is used by his fictional future police officer:

- Compartment detectors – handheld devices to detect density in solid objects

- Wireless interoperability systems – devices which seamlessly connect different radio frequencies so first responders from a variety of agencies can communicate with each other
- Advanced multi-purpose uniforms
- Biometric devices
- Unmanned aerial vehicles
- Exoskeleton suits – external suits which augment the human body’s capabilities
- Mind switch – neural interface between humans and computers so that the human simply thinks is command and the computer responds
- Augmented reality – overlays of computer graphics onto a human’s vision so that he has the benefit of his own eyesight plus what the computer can perceive as well

While this vision of the future might seem attractive to any police officer, there are a variety of privacy issues, which would be difficult for police management or the courts to overcome. How will the courts view officers’ testimony about what he “saw”, when his vision is overlaid with computer graphics? Will the public accept the concept of unmanned aerial vehicles with telephoto cameras looking into their backyards (or into their windows)?

Ethical challenges of the future will not be easy

During 2008, three educators from the California State Polytechnic University at San Luis Obispo were awarded a grant by the US Department of the Navy, Office of Naval Research, to study and report on ethics and emerging technologies (Lin, Bekey, Abney 2008). Specifically, the issue was the ethical considerations and risks involved in the use of autonomous military systems. There are a variety of semi-autonomous systems in use throughout the world, such as the US Navy’s MK15 Phalanx system, which is designed as a close-in, last-ditch, shipboard

weapon system for shooting down incoming enemy missiles (*MK 15 Phalanx Close-in Weapons System* 2009), and the US Air Force's MQ-1 Predator Unmanned Aircraft system (*MQ-1 Predator Unmanned Aircraft System* 2009). The CalPoly report also discussed the prospect of fully autonomous military robots on the battlefield, and the ethical considerations that should be addressed.

The case for autonomous military robots is more about saving lives than taking them, and therefore an immediate parallel can be drawn for the concept for use in civilian law enforcement. Robots would be unaffected by battlefield stress, emotions, peaks of adrenaline, and all the other factors which might cause a human soldier to overreact or deliberately violate the rules of engagement and commit war crimes (Lin, Bekey, Abney 2008). Also, robots could be unbiased reporters of unethical battlefield events. However, if a fully autonomous war fighting robot carrying lethal weapons is loose and kills an innocent woman with a child, a friendly soldier, or even an enemy soldier who is attempting to surrender, should that be an ethical concern for the battlefield commander, or is that an ethical issue which should be decided at the national policymaker level?

The study ends inconclusively and suggests further study and discussion. A quote from the study demonstrates the concern and the lack of real solutions: "To whom would we assign blame – and punishment – for improper conduct and unauthorized harms caused by an autonomous robot (whether by error or intentional); the designers, robot manufacturer, procurement officer, robot controller/supervisor, field commander, President of the United States... or the robot itself?" (Lin, Bekey, Abney 2008). The study concerned itself with military robots, but here again, it is not a stretch to imagine this sort of advanced technology will

eventually transfer into police use. Tokyo, Japan has already experimented with battery operated robot police to assist with such duties as handing out fliers (Mbeki 2005).

Even in 1995 there was concern and study about police use of computers. In the *Journal of Criminal Justice* a study was published which discusses “effectiveness of police computer use and the problems that exist with this use” (Northrop, Kraemer, King 1995). The public is watching, especially the press, and frankly speaking, many do not have a very high opinion of law enforcement’s ability to police their own ranks. In an editorial published in the Orange County Register, an editor discusses the United States government’s plan to collect DNA specimens from all non-citizens detained by the authorities for any reason and from all people arrested for federal crimes. The editor states flatly: “Such a system could be subject to abuse, and when government employees are involved, you can be sure that if abuse is possible it eventually will occur (*The Orange County Register* 2008)

Ethics and technology need to be actively institutionalized together

Ethics training as a continuing system, which acknowledges the uses and the evolution of technology must be institutionalized into the daily mainstream of the agency as a strategic plan to be effective. As new surveillance technology is introduced into mainstream police work, the capability to use the equipment or software in new and unexpected illegal or unethical ways needs to be explored by a working committee of IT professionals and sworn personnel responsible for the formulation of new policy. The challenge of the agency’s management will be to formulate an ongoing plan, which will encompass unknown future technology, which might be used in unknown ways.

As new technologies become active within the agency, the systems technology specialists, especially those civilian specialist counterparts who are engaged within the agency’s research

and development branch, need to be drawn into the day-to-day mix with field operations managers to share information and develop appropriate safeguards. Field operations management personnel are typically not trained in the use of specific equipment to the same rigorous standard as those who use it daily. While a watch commander might be knowledgeable about the general capabilities of a patrol car's newest mobile data computer for example, he is not an end user and therefore may not be aware of the potential for its misuses.

The police agency's top management team must keep this concept in mind and draw on the knowledge of their information systems representatives to overcome this issue. As new policies and procedures for new systems are written by operations managers, there should be a collaborative mix with the technology specialists who are most aware of a system's potential misuses so that safeguards are built into the policies from the beginning. The Internet itself has brought new training opportunities to law enforcement in the form of videos, tests, and briefings accessible at computer stations in local offices, and this capability can bring new meaning to the phrase "continuing training".

Conclusion

Not only must police management ensure their officers are consistently moral and ethical, they must be able to demonstrate their success through presentation of statistical review of complaint and personnel investigative data. Not only must police management ensure that their officers *are* consistently moral and ethical, police agencies as a whole must be *perceived* to be consistently moral and ethical to be successful in the prosecutorial process. The distinction between public perception and reality for any police agency is an important one, and can be driven either positively or negatively by the media with dramatic impact on the organization. Inappropriate surveillance, meaning unauthorized prying or snooping, and unnecessary access to

personal and sensitive information are two of the most inflammatory abuses the media can uncover.

Increasingly advanced search and surveillance tools will provide an awesome capability for law enforcement in the future, but with the increasing sophistication level of the tools comes an increasing level of responsibility for their use. An integrated systems approach to their training and refresher programs involving ethics, moral behavior and appropriate uses of the technology of the future is imperative.

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