

**HOW WILL BEHAVIOR MONITORING TECHNOLOGY IMPACT PEACE  
OFFICERS' ETHICAL DECISION MAKING BY 2020**

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).

## HOW WILL BEHAVIOR MONITORING TECHNOLOGY IMPACT PEACE OFFICERS' ETHICAL DECISION MAKING BY 2020

One of the great challenges for today's law enforcement executives is accountability. The public expects law enforcement to bear responsibility both for problems involving crime and for how police deal with those problems. Certainly, police actions have consequences and there has never been a greater demand for accountability for the consequences of those actions, especially when police actions have unsuccessful or adverse consequences. The greater demand for accountability is, in part, because the public is more aware of police tactics, whether from live news broadcasts, YouTube videos, or in-car camera recordings made public. And when officers make poor decisions or act with infirmity, the consequences of those decisions have the potential to leave a terrible mess behind.

This may be no truer than in Fullerton, California, on July 5, 2011, where the actions of officers left Kelly Thomas, a 37-year-old transient, clinging to life. When Thomas passed away five days later, the public's focus was on the Fullerton Police Officers whose seemingly bellicose actions were captured by a security camera. The conduct of the officers will be litigated for years, but it has already cost two officers their jobs. These officers are also facing charges that include second-degree murder and manslaughter.<sup>1</sup> The most interesting and important question for police executives is whether Kelly Thomas's death was preventable; and, by extension, if misconduct in their own agencies is preventable. According to the surveillance video and information available to the public in the Thomas case,<sup>2</sup> the answer seems to be yes. How could the Fullerton Police Department have prevented it? This article cannot answer that question, but it will suggest that the use of behavior monitoring technology may be the most effective means to prevent incidents such as the one involving Kelly Thomas and others that occur in police agencies throughout the nation.

### **The Problem of Misconduct**

According to a 2011 Bureau of Justice Statistics report, the percentage of contacts between the police and the public that involved the use or threat of force for 2002, 2005, and 2008 were

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<sup>1</sup> Orange County District Attorney's Office (2011) *OCDA Charges Two Fullerton Police Officers for the Beating-Death of 37-Year-Old Homeless Man*. [press release] September 21, 2011.

<sup>2</sup> Orange County District Attorney's Office (2011).

1.5%, 1.6%, and 1.4%, respectively.<sup>3</sup> The percentages may appear low, but they represent more than half a million contacts with the potential to cost police chiefs their jobs. Despite efforts from police agencies to reduce the frequency of use of force incidents, the statistics do not seem to indicate a noticeable reduction. So what can police executives do differently to prevent inappropriate uses of force or any type of misconduct likely to attract national attention or the attention of the Civil Rights Unit of the Department of Justice? Although the traditional means of providing ethics training and investigating incidents of alleged misconduct may remain integral parts of an overall prevention strategy, there are emerging means to help identify precursors to misconduct that could dramatically change how police executives affect the way officers interact with the public.

The use of technology is becoming increasingly pervasive; its use is changing nearly every aspect of modern life. For example, texting has changed the way people communicate with others and Google's intelligent cars may soon change the types of cars people drive, or perhaps more accurately, they will change who or what guides the movements of the cars. Law enforcement is not immune from the tides of change. In fact, the police have already integrated a number of technologies into the daily work of public safety. With the introduction and use of such technologies as DNA analysis, consolidated electronic databases, automated license plate readers, GPS, and less lethal weapons, technology is also changing policing. With all of these changes, however, the prevention and administration of police misconduct incidents has been largely unchanged from the historical dependence on training, supervision, and review.

Needless to say, emerging technology will not eliminate the need for supervision or training, but it may help reduce the influences of negative pressures to close the gap between knowing the right thing and doing the wrong thing. Samuel Walker, the author of *The New World of Police Accountability*, recognizes the influence of inimical pressures and admits that, "Raising educational standards ... and improving training are laudable and even necessary reforms, but in and of themselves they do not necessarily improve on-the-street police work for the simple reason that they can be undermined by more immediate countervailing pressures."<sup>4</sup> Walker does not list the countervailing pressures, but the list may include personal or professional biases, an effort to compensate for the perceived limitations of the justice system, peer pressure, the need for immediate emotional gratification, or avidness for power. Ethics training cannot be expected

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<sup>3</sup> <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2229>

<sup>4</sup> Walker (2005), 172

to help overcome these pressures or visceral reactions, as knowing the right thing is not sufficient to doing the right thing.<sup>5</sup> Police executives must accept that moral education, by itself, will not solve the problem of misconduct. This is why Brian Fitch asserts, “decades of research has failed to uncover a link between character traits and actual behavior.”<sup>6</sup> What would make ethics training more complete and effective is a system of accountability that can anticipate future problems based on current behavior.

Police executives generally know very little about the daily decisions that officers make in the field. One may be correct to say that officers carry out their duties with virtual impunity. Of course, even with assertive supervisory controls, it is difficult to discern what behaviors their officers engage in that go unnoticed and contribute to the development of bad habits and may have the potential to lead to a mess. Information about on-the-street officer conduct is primarily obtained from the public. Although the information may be helpful, it is limited, and perhaps biased in some cases. But the principal limitation is that information from the public provides a mere snapshot of the many discretionary decisions officers make in the course of their duties. The situation is not hopeless, however, especially if police executives are willing to consider the role that technology can play to supplement or help verify information obtained from public sources.

### **Use of Technology to Affect Behavior**

However challenging accountability issues may appear, police executives of the year 2020 will have a means to affect behavior in ways not available to their predecessors: namely, behavior monitoring technology will provide them with the essential information to have more effective systems of accountability--systems that not only help supervisors hold officers accountable for behavior that is unrestrained by ethical control, but also help officers develop the right dispositions--over time--so that their first responses are consistent with moral principles.

Law enforcement agencies are using increasingly more technology, but its use today is mostly limited to improving the delivery of the same service that police organizations have provided for decades. This imbalance or one-sidedness is partly because law enforcement technology implementations are generally more focused on efficiency and less on risk management. As

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<sup>5</sup> Aristotle (1995)

<sup>6</sup> Fitch (2011), 4

employee behavior monitoring technology gains more sophistication, the use of such technology should become a necessary component of future systems of accountability.

An example of the use of technology to monitor behavior is “Snapshot.” The Progressive Insurance Company offers its customers significant discounts if they are willing to install a device (Snapshot) on their cars to record and report information about the customer’s driving behavior (such as time of day, braking, acceleration, and cornering patterns). Progressive’s program relies on driving behavior information to forecast future claim costs and if the Snapshot data reveals that the driver’s behavior indicates reduced risk for future claims, Progressive will offer the driver a discount of up to 30%,<sup>7</sup> perhaps based on the idea that the best predictor of future behavior is past behavior. Wouldn’t police organizations benefit from the use of such technology? Reinforcement about the dangers of risky driving habits, for example, is necessary but law enforcement organizations would be more successful in reducing traffic related injuries if they could supplement the training with technology that helped hold accountable those officers who display risky driving behaviors--before the behavior results in a bad consequence.

In addition to monitoring driving behavior, one may conceive of technology that analyses an officer’s language, gestures, enforcement patterns, use of resources, physiological responses to particular situations, emotional responses to provocations, and gives supervisors or police executives the behavioral information necessary to intervene and prevent the development of behaviors that may have the potential to cause a mess. Behavior monitoring technology is in its infancy and there is no one software program currently that can analyze the various elements outlined above to paint a complete picture of an officer’s behavior. There are companies such as BRS Labs and Cybernet that are increasing the sophistication of gesture recognition analytics to the level where programs are beginning to recognize behaviors and may eventually be able to flag improper behaviors.<sup>8</sup>

Equivital, a British corporation, is developing technology for military and other applications that provides real-time physiological, geo location, welfare, and performance information from people in actual environments. This type of technology can be used to measure stress levels of officers during contacts with the public or when responding to in-progress calls, for example. Measured stress levels could help determine if the physiological indicators are appropriate for the situation or the environment. This information may help identify officers who may not be fit

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<sup>7</sup> [http://www.progressive.com/newsroom/images/snapshot\\_report\\_final\\_070812.pdf](http://www.progressive.com/newsroom/images/snapshot_report_final_070812.pdf)

<sup>8</sup> Cybernet is developing gesture-tracking algorithms to identify and flag suspicious human behavior (cybernet.com).

for field duty. Another company in England, SmartLife Technology, is developing smart fabrics. Smart fabrics are wearable sensors with flexible electronic components woven into the fabric that can collect and transmit information wirelessly about the wearer. These smart fabrics can be used to transmit physiological information and also alert to physical trauma.<sup>9</sup> One use for law enforcement may be to help identify officers who may be fatigued and may make poor decisions if they remain in the field. Combining the sensory information with live audio and video feeds from body-worn recorders, technology will allow watch commanders to view an officer's conduct when certain sensory parameters are triggered. The triggers may be physiological, behavioral, verbal, or a combination of all three.

Analytical software could also be used to provide long-term behavioral information to police executives, information that would be used to monitor the development of bad habits that may lead to future misconduct. Many agencies currently use software to record and track officers' involvement in critical incidents to identify "problematic" officers. Early warning systems, however, do not directly identify problematic behaviors; they merely suggest that meeting or exceeding the established thresholds may be an indication of problematic behavior. This information may be valuable but it does not identify the precursors to "problematic" behavior; it merely points to the consequences. But future systems, with greater sophistication, may be able to monitor and analyze various behavioral patterns and identify the specific behaviors, such as overdriving or questionable enforcement patterns, that involve officers in the types of incidents tracked by early warning systems. Having the behavioral information may not prevent all serious misconduct incidents. It would, though, help police executives identify officers who may be on what Brian Fitch calls the "misconduct's slippery slope"<sup>10</sup> and will give them the opportunity to intervene and reduce the likelihood of those officers engaging in future misconduct.

Behavior monitoring technology will be more effective in reducing serious misconduct because character is not weakened overnight; that is, technology will help track and identify the development of bad habits. When minor transgressions go unnoticed and are uncorrected, they have the potential to lead to the development of behaviors that may eventually result in some significant event, including unintended significant events (perhaps the Fullerton officers did not intend Kelly Thomas's death). One of the reasons why officers get adapted to the types of behaviors that create the potential for an undesirable significant event is that when transgressions

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<sup>9</sup> [smartlifetech.com](http://smartlifetech.com)

<sup>10</sup> Fitch (January 2011), 26

are not corrected and the behavior is repeated frequently or regularly, officers get accustomed to them through habituation<sup>11</sup>--they get metastasized over time. But if technology is used to reduce the frequency of the types of behaviors that result in the development of bad habits that form the precursors to misconduct, then there may be hope of reducing misconduct beyond what current accountability systems can achieve.

The other benefit that behavior monitoring technology-based systems will offer is to deter wrongdoing. Knowing that their behavior is being recorded and monitored in real-time, officers will be less likely to engage in behavior that results in serious misconduct. An added benefit of the use of such technology as a deterrent is the effect it will have on the development of the professional characters of new officers who will not yet have established “toxic police habits.” Obviously hiring good people is necessary, but equal effort should be placed on inhibiting the development of harmful police dispositions.

One can conceive how behavior-monitoring technology may have prevented or significantly changed the outcome of the Kelly Thomas incident. Suppose the officers were wearing devices that recognized the activation of certain physiological systems that would indicate an impending aggressive response or alerted on the reviling conduct of the officer who threatened Thomas and alerted the officer’s supervisor. In addition to alerting the supervisor, suppose the system also activated a live video feed to the watch commander, whether from nearby surveillance cameras or cameras worn by officers, and allowed the watch commander to not only see the officers’ actions but to also hear Kelly Thomas’s pleas. Considering the Kelly Thomas incident lasted for nearly 10 minutes, would such technology have allowed a supervisor or the watch commander to intervene and change the outcome? According to the information in the Orange County DA’s press release, the supervisor who arrived on scene and helped restrain Thomas was unaware that Thomas had been subjected to excessive force and that he was lawfully acting in self-defense. Had the supervisor had access to behavior monitoring technology and had he been alerted by it, the supervisor may have been able to radically change the outcome. Moreover, officers being intimately aware their actions are being constantly monitored might have refrained from their excesses in the first place, rendering the issue of supervisory intervention moot.

To be sure, police unions or laws protecting the privacy of officers may attempt to limit the use of behavior monitoring technology. But technology is becoming so integrated into our daily

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<sup>11</sup> Wise (2010)

lives that we are knowingly (and unknowingly) subordinating our privacy to it. Current events may support projections that technology will continue to erode any current expectations of privacy. In a *New York Times* article (January 29, 2012), Barry Friedman, a law professor, quotes Justice Alito ('New technology may provide increased convenience or security at the expense of privacy, and many people may find the tradeoff worthwhile.') to suggest that the public's expectations of privacy may change as technology changes. Even if expectations of privacy do not change, the analytics programmed into the monitoring software may be sophisticated enough to distinguish normal behavior from behavior that may need to be monitored by a supervisor. The technology could be programmed to discern problematic patterns and alert only on those patterns. In essence, although the technology may be monitoring everything an officer says or does, it may be configured to report only those behaviors that are outside the limits of normative or lawful conduct. Privacy concerns are legitimate but technology may help mitigate some of the concerns. Nevertheless, police executives should be prepared for the possibility that once the public becomes aware of the potential of behavior monitoring technology to limit acts of misconduct, they may demand it.

### **Conclusion**

Based on a survey of emerging technology, one can envision that by 2020, the technology will exist to allow police executives to know nearly everything about an officer's on-the-job behavior short of the officer's intentions. Although motive is important, it is important only when evaluating the moral worth of actions (which may never be a necessary criterion for evaluating behavior). As employee-monitoring technology becomes more ubiquitous in the workplace, police executives will undoubtedly have the type and quality of information to establish more effective systems of accountability. Needless to say, the ideal organization may be one in which there is no need to monitor employee behavior, but we may never have ideal organizations. The leaders of today who have the foresight and who recognize that moral development occurs before a candidate takes the Oath of Office will be better prepared to adopt innovative technology to manage risk and will begin to shape the organizational cultures necessary to accept and endorse such use of technology.

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