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Recovering the Craft of Policing: Wrongful Convictions, the War on Crime, and the Problem of Security

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# Recovering the Craft of Policing: Wrongful Convictions, the War on Crime, and the Problem of Security

Jonathan Simon 2007

In recent years there have been few more poignant examples of miscarriage of justice than the scores of prisoners exonerated by DNA tests that disprove key aspects of the prosecution's case against them (e.g., that their semen or blood was found on the victim). Illuminated by DNA evidence,<sup>1</sup> stories of devastation and tragedy have been repeatedly brought before us. Often these involve terrible crimes, frequently rape, followed by the conviction and imprisonment of the wrong person. Years (typically 10 or more) spent languishing in America's harsh and often overcrowded prisons and with expectations of spending decades more, while the real criminals remain free, perhaps committing new crimes, and the victim is subjected to a new and terrible relationship to pain and violence (now as an unintentional instrument of injustice).

These same cases have yielded insights for legal scholars, psychologists, and criminologists who have developed a broad profile of bad practices that lead to wrongful convictions. The usual litany includes eye witness identification problems caused or exacerbated by police mishandling (D. Simon forthcoming), coercion applied to vulnerable subjects (young, mentally ill, grief stricken) undergoing custodial interrogation, reliance on jail house "snitches" who either by luck or manipulation of the authorities, has been able to share a cell with suspects in a notorious case (Leo et. al. 2006; Saks & Koehler 2005).

Police practices are clearly the major factor producing wrongful convictions, but beyond this broad profile, scholars of wrongful conviction have had relatively little to say about the social or institutional dynamics that lead police (or prosecutors) to engage in investigatory tactics that can be described at best as high risk (Leo et. al. 2006; Saks & Koehler 2005). Nor have they been able say much about whether this kind of high risk conduct is more or less prevalent today than was the case in the past. Are wrongful convictions a stubborn residue of a once even more common phenomenon? Or is it possible that contemporary policing, however improved in training and background human capital characteristics, is more prone toward error than was true in the past.

No criminologist has the data to answer that question. This chapter aims in the direction of that gap by developing the thesis that in fact, police might produce more wrongful convictions today.<sup>2</sup> Sadly I cannot offer empirical evidence for this claim (I'm not even sure what would count as such that might be possible to obtain), but instead I offer an interpretation of the observed profile of the exonerations that is consistent with more well anchored scholarship about the changes in criminal justice produced by the war on crime (and especially drugs) pursued by American political leaders since the 1960s (see generally Scheingold 1991; Simon 1993; Beckett 1997; Zimring, Hawkins and Kamin, 2001; Garland 2001; Western 2006; Simon 2007).

The conventional wisdom is that police are much more professional than they were a generation or two ago, largely a result of a decline in discretion and investment in better management, training, and technology. In June of 2006, in the case of *Hudson v. Michigan* (2006), the Supreme Court declined to exclude evidence collected by the police in admitted violation of the "knock and announce" rule that has been held to be a

substantive requirement of a 4<sup>th</sup> Amendment “reasonable” search of a house. Reasoning that the additional deterrent benefit of applying the exclusionary rule in such a case would not be worth the social cost of losing probative evidence, the Court, per Justice Scalia, endorsed the view that American police had been much improved over the last half century and that the law now provides numerous avenues for discouraging police misconduct.<sup>3</sup>

Another development over the past half-century that deters civil-rights violations is the increasing professionalism of police forces, including a new emphasis on internal police discipline. Even as long ago as 1980 we felt it proper to “assume” that unlawful police behavior would “be dealt with appropriately” by the authorities, ...but we now have increasing evidence that police forces across the United States take the constitutional rights of citizens seriously. There have been “wide-ranging reforms in the education, training, and supervision of police officers.”... Numerous sources are now available to teach officers and their supervisors what is required of them under this Court’s cases, how to respect constitutional guarantees in various situations, and how to craft an effective regime for internal discipline. ...Failure to teach and enforce constitutional requirements exposes municipalities to financial liability. ...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.

Academic police experts also argue that many of the demographic features that once divided police from the communities they police (race, ethnicity, sexual orientation) have been substantially diminished by affirmative action and other efforts to recruit a more representative police force (Sklansky 2006).

For purposes of this chapter I will assume that police professionalism (screening, training, accountability), and the demographic representativeness of police forces in the United States have in the aggregate<sup>4</sup> improved, perhaps improved substantially. The thesis we will explore is that these improvements may have been to an important degree subverted by the profound effects of a long and on going war on drugs.<sup>5</sup> To state the central claim at the outset, the culture of investigation inside American policing has become reliant on forced confessions and other forms of “junk evidence”<sup>6</sup> as a by product of its long dirty war on drugs. Part I of the chapter will develop a dynamic explanation for why police investigation today might be worst than in the past, notwithstanding significant improvements.

This theory is speculative, but it allows us to acknowledge a disturbing feature of our public debate about policing during much of this period that is more grounded. In heated battles over subjects like the exclusionary rule and *Miranda* warnings, both critics and defenders of American policing from the 1960s right up until our present moment largely ignored the issue of wrongful conviction in favor of a concern with rights enforcement and crime control. What this battle between 1965 and 1995 largely replaced was an earlier discourse that did focus on reducing the risks of wrongful conviction by

improving the professionalism of police and the craft aspects of policing itself. Part II of the chapter will sketch this earlier discourse and what its implications are for today.

To refocus on what has been missed in this recent history, and what we might seek to build upon in imagining an adequate response, the chapter will end by considering a small example of the kind of policing we might have had, and might still demand, beyond the war on crime. Part III offers this utopian recovery of a forgotten moment of our past (or future).

## **I. How the War on Crime Transformed American Policing**

In the political landscape left by the War on Crime, police have come to stand for the interests of crime victims and through them, of the public generally (Simon 2007).

Almost any criticism of the police is taken to be a betrayal of victims and potential victims. This kind of highly charged power effect is reflected in the recent decision by California governor Arnold Schwarzenegger to veto a series of bills implementing the recommendations of a commission set up by the California Senate in 2004 to investigate the causes of wrongful conviction in California.<sup>7</sup> The Governor was lobbied by state law enforcement groups who opposed the measures that would have required police to video tape confessions (at least of violent crime suspects) and established protocols for eye witness identification procedures. Both are subjects that have been firmly linked to the problem of wrongful convictions (Dwyer, Neufeld, and Scheck 2003)

*Police and Victims in the American Political Imaginary*

One of the most striking features of the current debate engendered by exonerations is the resistance of law enforcement to serious efforts, to improve the reliability and visibility of the investigatory techniques which pose serious risks to conviction of the innocent. Perhaps any profession resists outside oversight (but keep in mind this is just what Justice Scalia told us contemporary police are used to), but to understand the extremity of this resistance, we must appreciate the radical shift in public confidence that the police have come to enjoy since the middle of the 20th century.

From the 1930s through the 1960s, academic experts agreed that the public perceived police as corrupt, inefficient, and capable of brutality.<sup>8</sup> Popular culture, pulp fiction, and movies regularly portrayed the police in precisely the same terms. Consider *The Maltese Falcon* (1941), where Humphrey Bogart and everyone else knows that the whole game is to give the police somebody they can blame for the murder of Sam Spade's, partner and it does not matter whether they did or it not. As the War on Crime unfolded since the late 1960s, police were recast as the chief protagonists of citizens as potential crime victims (as David Garland 2001, 11, would suggest, the representative citizen of our time, see also, Dubber 2002),--- and as symbolic stand-ins for citizen-victims themselves--- the perception of the police has gone from cynical to reverent.

This shift is also captured in public opinion surveys. In 1977 (almost a decade into the War on Crime) 37 percent of a national sample rated the honesty and ethical standards of the police "Very High" or at least "High," by 2005, 61 percent shared that rating. Asked how much confidence they had in the police in 2005, a 64 percent of a national sample indicated "A Great Deal or Quite A Lot". In contrast, only 53 percent said that of Churches and Organized Religion, 22 percent of Congress, 44 percent of the

Presidency, and 41 percent of the Supreme Court. Criminal Justice overall, by the way, is lower even than Congress. The only institution that evokes more confidence than the police is even more steeped in symbolic identity with the body politic, i.e., the military, in whom 74 percent of respondents held such high confidence.

### *Policing Mass Incarceration*

While the powerful political linkage between police and victims has provided significant protection from legislative regulation of police, the war on drugs and crime declared by state legislatures in the name of the same victims has produced a surplus population of incarcerated and easily incarcerated people. If most of these people were incarcerated for violent victimization crimes like homicide, robbery, and rape, it would not be surprising if they also generated future arrests for these crimes. Exoneration cases suggest that the dynamic is just the opposite. It is because the war on drugs has created such a large pool of available suspects that so many are wrongfully convicted of violent crimes.

During the 1980s and 1990s, American police departments focused heavily on drug crimes. A war on drugs drove the growth of the prison and jail population in a way that no other crime agenda could have done (Caplow and Simon 1998). Unlike burglary or robbery, drug crime produces an almost limitless population of available arrestees. In most cities, the only constraint on how many drug arrests can be made is how much “over-time” police budgets can produce. Whatever other effect this practice of mass incarceration (Garland 1999) leads to, it clearly forms a ready-to-hand supply of possible criminal suspects or, in the form of “snitch” testimony,<sup>9</sup> evidence to convict other



incarcerated suspects. Even beyond the currently jailed or imprisoned population, the war on drugs has created a vast penumbra of persons on parole or probation who can be easily taken into custody and held without the burdens of proof that would normally fall upon the prosecution. In a number of documented cases this has led police to lock up a suspect who is on parole or probation based on a parole or probation violation (technical violations are never hard to find) without having to show any substantial evidence of a link to a violent crime under investigation. The police often inform the media that a suspect is in custody, allowing them to take some initial credit for solving the case while permitting considerable time for the development of the “facts”.

This ease of catching, holding, and blaming, facilitates a number of investigative pathologies that have been noted by the wrongful conviction literature. One is the problem of “tunnel vision.” Having identified a particular suspect and taken them off the streets, police often focus solely on collecting further evidence consistent with that theory of the crime while ignoring anomalies that could lead a less biased observer to follow other leads. A second is the problem of “snitch” testimony. Once a suspect is in custody they are likely to be housed with other inmates who may be motivated to provide testimony (including false testimony) against the suspect. The drug war provides additional incentives for this by producing the potential for long prison sentences that can motivate defendants to lie about another inmate in order to win prosecutorial cooperation. Indeed, few other crimes provide both long prison sentences and a type of crime that does not cause public outcry when leniency is granted.

Another potential causal vector links the drug war to the problem of false confession. False confession experts suggest that “mentally handicapped or cognitively

impaired individuals, children, juveniles, and the mentally ill are also unusually vulnerable to police interrogation pressure and are more likely to confess as a result... The drug war, by scooping up masses of youth from disadvantaged communities has almost surely increased the proportionate representation of everyone of these classes among the prison and jail population.” (Leo et. al. 2006, 518).

Beyond these specific effects, the war on drugs may have helped reduce internal normative checks on manipulating evidence against suspects by promoting a view that law enforcement is engaged in a wholesale war against a criminal underclass (framed by race, age, and gender) rather than retail struggle against individual wrongdoers. This stance in which a vast population of low level drug criminals is presumed to include the somewhat smaller core of violent repeat offenders may support cognitive-institutional logics conducive of wrongful conviction along several paths. Police may believe that regardless of their responsibility for a particular crime, a suspect who fits the profile of the criminal class is a “gang banger” whose relationship to any particular act of violence is one of chance; but who exists as a mortal risk and shares the same moral stigma with one who has actually killed or raped.

Police may likewise believe that the only effective way to prevent future violence is to seek the most comprehensively eliminationist punishment available (including the death penalty) against members of the criminal class so as to obtain the maximum overall extent of incapacitation over the group as a group (Feeley and Simon 1992). To this extent the “guilt phase” of determining whether any particular suspect is guilty of any particular crime is logically subordinated to a “penalty phase” in which those who can most reliably be tagged with the most extensive punishment are “it.”

Finally, the experience of drug policing itself, the petty humiliations of “stop and frisks,” the revolving door of frequent arrests and releases, and the extensive violence associated with the drug business, tend to support a battle field ethics in which police may view themselves as engaged in a war with criminal gang members and in which ordinary values of due process need to be set aside to assure victory (essentially the logic of the war on terror).

## **II. The Craft: A Lost Possibility in American Policing**

Justice Scalia’s quote above locates the improved professionalism of American policing in the expanded discipline, training, and supervision. Like other disciplinary exercises of power (Foucault 1977), this top down model of improvement focuses on reducing misconduct and error by making deviation visible and applying corrective coercion. Indeed, one way of looking at the Warren Court’s criminal procedure jurisprudence is as a judicially led imposition of a “panoptic” regime visibility and accountability on police, long one of the most hidden and discretionary forms of legal authority. Through provision of counsel to indigent criminal defendants,<sup>10</sup> the availability of the exclusionary remedy for 4<sup>th</sup> Amendment violations,<sup>11</sup> and Miranda warnings,<sup>12</sup> the Court sought to extend the judicial power to review (literally to see again). Indeed, despite Justice Scalia’s confidence that this discipline is working, many experts on wrongful conviction

today see improvement of this visibility approach as crucial to making such miscarriages of justice less common, e.g., by video-recording all custodial interrogations.

The emphasis on discipline and sanction that has been the focus of police reform since the early 1960s, stands in contrast to an alternative approach, promoted by criminology and police sociology that has long emphasized the reform potential of a “craft” conception of policing. As used by police scholars, the phrase “craft of policing”, is most often used to contrast the practical and experienced based knowledge of the police to the rule based imperatives of either law or scientific models of policing (see, e.g., [Bayley and Bittner 1984](#)).

While he never used the craft of policing language, no figure in modern police expertise was a more forceful advocate of this view than Fred Inbau, (1909-1998). Professor of law at Northwestern University, co-author of the leading textbook on police interrogation, director of the leading forensic crime laboratory of the period and the editor and chief of the *Journal of Criminal Law, Criminology and Police Science* (as it was pertinently called in his period). Inbau became the chief advocate of the view that greater police training and skill rather than judicial limitations were the best way to eliminate abuse and miscarriages of justice.

The only real, practically attainable protection we can set up for ourselves against police interrogation abuses (just as with respect to arrest and detention abuses) is to see to it that our police are selected and promoted on a merit basis, that they are properly trained, adequately compensated, and that they are permitted to remain substantially free from politically inspired interference. ... And once again I suggest that the real

interest that should be exhibited by the legislatures and the courts is with reference to the protection of the innocent from the hazards of tactics and techniques that are apt to produce confessions of guilt or other false information (Inbau 1961, 26).

In retrospect, we can see how Inbau's interest in the true value of confessions got lost in the increasingly bitter debate on the Warren Court's criminal procedure jurisprudence.<sup>13</sup> In that context, talk about truth seemed a way of rationalizing the admission of evidence collected in violation of the constitution (although Inbau did not deny the power of courts to reject such evidence even if probative). Both the Warren Court and its critics increasingly ignored the problem of wrongful conviction. By the time the more conservative Burger Court began to roll back many of the doctrines viewed as hampering police in the war on crime, they did so with no apparent consideration as to whether the underlying police practices were in fact "means which risk the conviction of the innocent."

The craft conception had a natural fit with the dominance of labor and occupational ideas of governance in the mid-20th century. Professionalizing police through raising hiring standards and training viewed policing as body of knowledge and practice best rationalized through the evolution of internal substantively rational reflection, rather than external judicially imposed rules.

But whatever potential might have existed in the 1960s to reduce abuse and miscarriages of justice through improved training and fostering of the craft of policing was washed out by the war on crime and the transformations of policing it led to. From the skilled worker, the idealized figure of the police officer was reconfigured in two

directions. One was as a symbolic stand in for the citizen crime victim, the official vigilante (think [Die Hard](#)), the target of armed assailants facilitated by defense lawyers and liberal judges. The other was as a highly militarized and technologically enhanced cyborg ---[RoboCop](#)<sup>14</sup>-- who could confront armed and violent criminals in a battle field like setting using special weapons and tactics (Kraska 2001). In neither the vigilante nor SWAT mode does the contemporary police officer draw on the kind of craft conception that Inbau championed with its emphasis on the protection of the innocent from wrongful conviction. Ironically, the proponents of a craft approach today are scholars and advocates like Richard Leo, [Gary Wells](#), and [Barry Scheck](#) who are precisely the ones calling for taping of all police interrogations. Were Fred Inbau alive today, I suspect he'd be on their side.<sup>15</sup>

### **III. X-Rays: A Past that Might Have Been, a Future that Could Be**

In the late 20<sup>th</sup> century police experts were divided between those who looked to judicially imposed external norms, and those who looked to an internal process of craft elaboration. In fact, both were probably necessary for either to have had a chance of succeeding. But the “war on crime” and the massive transformation of governance it produced, has led to a security paradox. The police have enough power to resist accountability in most respects, but not enough knowledge to effectively deal with violence, community disorder, and now terrorism.

In the hope of going beyond critique and diagnosis to identifying the resources from which a remedy might be fashioned we must have recourse to history. The success of a particular movement or project often has the effect of burying all memory of possible

options that existed in the problematizations of the recent past ([Foucault](#) has made this into a key methodological imperative). Without bowdlerizing the past, we need to remain open to imagining possibilities for reconstructing our modern public institutions that have been lost.

The beach-front city of Fort Lauderdale, Florida, is known to many contemporary Americans as the liberal bastion which gave Al Gore hundreds of thousands of votes in 2000. In the 1960s, however, it was still largely a segregated southern city whose police force treated black residents primarily as a source of crime and a target for abuse and violence. In the early 1960s, under pressure from the local NAACP, the Fort Lauderdale Police Department hired two African American college graduates from the city's segregated northwest side, Doug Evans and Ozzie Davenport. Both had been star athletes and strong students at Dillard High School in the neighborhood. In the 1966 or 1967, "the riot years" as Evans recalled them in a recent interview, Chief Robert Johnson, brought together Evans and Davenport, by then detectives, together with several of the best white detectives to form a new unit with the goals of reducing the increasingly violent drug trade in the city and avoiding a major racial conflagration of the sort that had swept major cities in the North. Named the "X-Rays" because of their reputation for "sharp vision," these detectives specialized in deep knowledge of their local communities. Each summer the unit would reform to share street knowledge from both the black and white sides of town and to identify conflicts or crimes that might lead to racial violence.

The operation was not a perfect success. In 1969, Fort Lauderdale did suffer a riot along its major black commercial street, albeit a smaller and less violent one than

others. Evans and Davenport, were able to intervene in many early stage conflicts that might have led to other and possibly more violent eruptions. The cooperation with white officers and the imprimatur of the Chief, probably aided them. What is especially striking to me about the tactics of the X-Rays is that they form alternatives to two of the major practices of investigation influenced by the war on drugs, and which have contributed to miscarriages of justice, i.e., the use of informants and interrogation. The war on drugs has promoted the recruitment of professional informants who often have powerful monetary or legal incentives to lie. In contrast, the X-Rays cultivated informants more along the model of anthropological informants, local figures in a position to observe what is going on in a community that have a relationship of trust and friendship with the detectives. The war on drugs has also made available a large pool of suspects who form a ready supply of suspects in other cases and encouraged practices of deceptive interrogation aimed pressuring the most dysfunctional of these suspects to cooperate in convicting themselves. In contrast, the X-Rays sought to obtain confessions by winning the trust of suspects and confronting them with the results of their prior investigations.

For me, the X-Ray's represent a model of the craft tradition in a positive confrontation with problems of equality and inclusion posed by the civil rights movements in the 1960s. The story is not one of unblemished progress. Both Evans and Davenport struggled against the continuing racism of the city's (and the police force's) white power structure. Davenport left the force in the early 1970s to become a private detective. Evans had a remarkable career of investigatory triumphs, but he was never promoted to the leadership position he had so richly earned. His health compromised by



frustrations at a law enforcement apparatus that overall placed minimal priority on the security of people from Evan's own neighborhood of northwest Fort Lauderdale. Evans retired in the late 1980s.



Detective Douglas Evans, Circa 1970s<sup>16</sup>

Evan's most famous case involved his capture of a serial killer and later a series of wrongful convictions produced by flawed police practices. Both aspects can illuminate the disciplinary and craft approaches to policing we have discussed. Eddie Lee Mosely was one of the most prolific serial killers in US history. For a decade and half during the 1970s and 1980s, a neighborhood in the northwest section of Fort Lauderdale, little more than a mile square in area, became a literal killing field for women and girls. Over 20 female victims were killed after being raped and at least 100 women were raped in similar circumstances. Americans all over the United States in these years, developed an obsession with violent crime, especially sexual attacks and murders (despite stable or declining violence rates for many). This small part of Fort Lauderdale actually experienced something many times more terrifying than even the exaggerated urban crime scene portrayed in popular culture.

In some ways it was simply unimaginable. In some periods, a body was found every week. Then, just as suddenly, the killings would stop altogether for years at a time. Then the violence would start again. One family actually lost two daughters, not in the same assault, but in parallel assaults, one in 1984 and one three years later in 1987. The bodies were found all over the neighborhood. Most were left outside where the hot Florida sun and abundant animal life often made swift work of decomposition. But they were often left lying in their beds. Many times the bodies were found in or around the dozens of small churches that dot the blocks of the intensely religious African-American neighborhood.

While Americans were obsessed with violent crime in these years they could also be amazingly blind to its presence. These years saw Fort Lauderdale soar as a vacation and relocation magnet. Thousands of tourists flocked to the hotels along Fort Lauderdale's beach front and riverside, while a murderous rapist or rapists preyed relentlessly a few miles from the yachts and restaurants.

For many Americans it was enough to know that it was an African American neighborhood, indeed, the heart of "old" Fort Lauderdale's segregated northwest side. Such neighborhoods are often coded high crime centers to whites who often see such communities only in television news coverage of violence or crime. Perhaps because this extraordinary orgy of violence was concentrated in an African-American neighborhood in a city still below the national radar in many respects, it did not draw the fascination that America had in those years for murder streaks in Los Angeles, New York, and Atlanta. Other Florida towns had become famous as the targets of serial killers Ted Bundy and

Danny Rawlings, but they preyed on pretty white college girls in the kind of photogenic college towns that slasher movies are always set in.

In this context it is easy to ignore the fact that northwest Fort Lauderdale was a relatively quiet neighborhood in the 1970s and 1980s. Like many traditionally segregated neighborhoods, it contained a wide range of residents, from laborers to professionals. The slow decline of Fort Lauderdale's traditional industries has taken a visible toll with closed up business and stores scarring many commercial streets and residential areas marked by many abandoned houses or empty lots. But the area was bolstered by its strong multi-generational families, many of them with roots in the Bahamas, ubiquitous churches, and dozens of small businesses, and remains full of signs of vitality thirty years later.

The vast majority of the victims were African American. Some were white but were victimized in a neighborhood easily defined as "dangerous." Perhaps fooled by the stereotypes associated with both race and space, most law enforcement officials who even bothered to notice the stunning violence rate against northwest Fort Lauderdale women attributed the killings and rapes to an unknown number of assailants. Indeed twice in the 1980s, African American men from the community with somewhat similar profiles, including marginal intelligence and criminal records, were convicted for rape murders of women in the neighborhood. The killings of women continued, suggesting, perhaps, that the streets still teemed with murderous rapists.

Used to declaring "victories " in a war on crime they never win, few in law enforcement contemplated another, truly shocking possibility, that one person, a serial rapist and killer of extraordinary strength, guile, and ruthlessness, was responsible for

most and perhaps all of these rapes and deaths. Perhaps the deepest horror of these nightmare years is the sense that a criminal justice culture in Fort Lauderdale and elsewhere, imbued with a “tough” but deeply fatalistic view failed. To pursue the traditional investigatory virtues that in this case were more than ample to lead them to a single man whose insane drives would keep killing women, and in whose absence a community with its share of imperfections could truly live without horror.

As a resident of the neighborhood Detective Evans was not ignorant of the growing number of rapes being reported in the area. But when he took over the rape squad of the investigation department in the summer of 1973 he was outraged to find a list of nearly 150 rapes that had occurred in the last couple of years and which had been allowed to languish unsolved. With partner and friend, Officer McKinley Smith, and another colleague, Charlie Tolin, Evans pledged to get out of the office and meet the only people who could solve these crimes, innocent citizens and victims of the bleeding northwest. The three officers met with rape victims and other neighborhood witnesses they had interviewed who agreed to accompany the detective as they trolled around the bars and empty lots of the neighborhood that night looking for the suspect.

That afternoon Evans drove over to consult with a detective at the Broward Sheriff’s Office, the sometimes rival police agency responsible for unincorporated portions of Broward County, and whose jurisdiction abuts that of the Fort Lauderdale Police Department in the complex ways of municipal boundaries. As he was leaving he spotted two women who had been the crows that gathered around the Naomi Gamble crime scene. One of them, Linda Haygood, a 17 year old, reported that she was on her way to learn what she could about the rape suspect who she believed was the man who

had raped her. Haywood told Evans that she got a good look at the rapist and moreover had seen him twice since. The first time was Thursday night back at the Embassy Club when police had called after a man who looked like the rapist had been spotted and fled, and a second time walking on N.W. 27th Ave. about 11th St.

That night, an informal and perhaps unauthorized operation in what a later day would call community policing, took place. Three officers, Dets. Evans, Smith, and Officer Charlie Tolin, accompanied by three women victim witnesses, and one male resident of the community who had seen the rapist at the Embassy Club, divided into two cars a marked patrol car and Officer Smith's personal vehicle. Smith with the three women began to drive around the neighborhood while Evans and Tolin drove the other volunteer to the Embassy where he would keep a look out in case of the rapist reappearing there. Evans and Tolin checked out the Embassy and went on to the Club Down Beat. Smith and three women continued their own driving tour of the neighborhood.

At around 1:15 am Smith and the women were east bound on 8th Place in the 2600 block when Linda Haygood began to shout to Smith that figure walking up the street about three blocks ahead had the rapist gait. As the car approached the figure Haygood began to shout "that's the mutherfucker, that's the mutherfucker". According to Evans' arrest report, he was notified about this sighting and advised Smith twice to wait for his arrival before attempting to approach the suspect.

According to Smith's supplemental report, as he passed, the suspect who was south bound on the 900 block of N.W. 25th Ave., made a U turn in the road and disappeared between two houses. Smith then left the vehicle in the hands of one of the

women witnesses and ran after the suspect south along 25th Ave. In the following confrontation Officer Smith would fire his weapon at least twice. In his report Smith stated that he saw a silver weapon-like object pointed toward him that he took to be a cane gun or a “cane sword.” Smith identified himself as a police officer again and demanded that the subject drop the weapon. When it continued to be pointed he fired his weapon in the air once. He identified himself again and the subject kept pointing the weapon although repeating “it's cool man”, "it's cool man”. Smith fired again and this time the subject dropped the weapon and was help spread-eagled on the ground until Evans drove up.

The suspect was a 6’2” 170 pound black male, 23 years old with a date of birth of 3/31/48. He reported his name as Jesse Jerome Smith, nickname “Skeeter “who claimed to have been born in Kingston, Jamaica. He seemed pleasant but kept repeating the same slang words, "Be cool man, that ain’t cool man”. Smith/Skeeter was dressed strangely? in a “green and white zebra like design shirt, brown print trousers that had the fly open,” and "brown and grey shoes with 1” crepe soles. Clutched in his hand were a bunch of rags that turned out to be underwear, and upon his head was a pair of ladies panties stretched tight over his mid-length Afro-style hair cut. With a beard and mustache, Jesse Smith looked demonic.

By the afternoon following the arrest, the zebra striped suspect had been identified by three witnesses who had each independently picked him out of a line –up. Two days later Evans and Smith learned that the rapist real name was Eddie Lee Mosley, the third of 10 children, who in his early twenties, was still living at home with his parents in the northwest section.

With the identification of Jessie Lee Smith, as Eddie Lee Mosley, his finger prints had been checked by police aide. Robert Knapp where Mosley had applied on a application for a handy man job at a hotel on the beach. Further checking of records on Mosley at this time revealed that he had been arrested in 1963 by officer Jack McFadden on city charge (DOC) for kissing a white woman. Based on the line-up identifications Evans had evidence to charge Mosley for the rapes of the victims who identified him, but not for the murdered Naomi Gamble. After the arrest, a master header H20024 that included all the names of the rape victims, was taken to the State Attorney's Office. Detective Evans conferred with Michael Satz, head of the homicide unit, and advised him that additional charges of rape and kidnapping could be added. Satz stated that he would go with what he had because he did not want people to think they were just piling the charges on Mosley. ASA Joe Hand filed three charges on Mosley and went to trial on two of them. But Mosley was incompetent to stand trial and was sent to Florida State Hospital for the criminally insane in Chattahoochee, Florida.

The prosecution was halted at the outset, however, by question of Mosley's competence to stand trial. Mosley was examined by several experts who concurred that he had limited intelligence but differed as to the question of mental illness and competence. Arnold H. Eichert, M.D. found him to be a borderline mental defective person, but capable of forming basic, simple judgments. He also exhibited some wit and understanding of the role of an attorney during trial.

But in January 1974, Mosley was moved to the Florida State Hospital for the criminally insane in Chattahoochee, Florida. To Evans, Smith, and hundreds of families in the northwest section, who felt personally threatened, the news was mixed. A few

months after taking over the moribund rape unit of the Fort Lauderdale police Department, Evans and his partner Smith had arrested the man more than likely responsible for most of the perhaps 100 rapes reported in the neighborhood since 1971. For the next five years no woman was murdered by a stranger in the northwest side neighborhood and rapes dropped to a handful per year.

It was in the summer of 1979 that the bodies started showing up again. Ernestine German, June 30, Catherine Moore, July 20, Sonia Marion, July 29, Terry Jean Cummings, August 7th. The nightmare was back. How did Mosley get out? Not with notice to Doug Evans or the people of the northwest side, his doctors determined that years of confinement and anti-psychotic drugs had rendered him a suitable risk for release. The charges against him had been dropped by the state when it seemed he would be detained indefinitely.

Mosley was back but not unchanged by his years of confinement and treatment. Before he had raped with an occasional death, perhaps caused when overcoming resistance in his simple but relentless way. Now, death was his modus operandi. There would be no more witnesses.

The four killings in four weeks of July and August 1979 produced a peak of panic in the northwest side. Hope in the police had been dashed. A mob chased and beat a man suspected of being a rapist.<sup>1</sup> Evans continued to press for the arrest and prosecution of Mosley. In the meantime he wanted a 24 hour surveillance. His supervisors seemed to feel that Evans was over reacting. Perhaps it was the proximity of so many rapes and murders to the streets where he lived, and where his own daughters walked to school and

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<sup>1</sup> Jonathon King, The Fifteen Year Hunt for Serial Killer, Sun Sentinel, October 30, 1988



work. Perhaps it was the February 1980 rape and murder of Arlene Tukes, the daughter of Doug's cousin. The leadership of the Fort Lauderdale Police Department began to feel that Detective Douglas Evans had a "fetish" for Eddie Lee Mosley.

Besides, after the terrible frenzy of violence in July and August of 1979, in September of 1979, the Broward Sheriff's Office announced the arrest of a suspect in the murders and in other rapes and murders going back to 1972. It was Jerry Frank Townsend, another African-American man from the neighborhood with a marginal level of mental ability and criminal record. Evans vehemently tried to persuade prosecutors that Mosley, not Townsend, was the killer, but to no avail. Casting doubt on whether his loyalties were with the law enforcement or with the people of the northwest section, Evans then went a step further and testified for the defense in the Townsend case.

Although Townsend was in custody beginning in September 1979, murder rape victims began appearing again as early as Christmas Eve 1979, when Susan Boynton never made it home. Jeanette Rogers was found on January 21, 1980, Brenda Carter, February 14, Arnette Tukes, February 21, Gloria Irving, March 16. Nonetheless he was convicted that July of killing Naomi Gamble and another victim.

Later in 1980, Mosley was charged with another rape murder and this time is convicted and sentenced to fifteen years. His conviction was appealed; in part on the ground that his attorney should have pled him not guilty by reason of insanity. Mosley's mental state again became an issue and he was held in jail until November 1983, when he is again released after he pleads guilty in exchange for the time he has already served.

Another break occurred in May of 1984 when one of his victims escaped. Mosley approached a woman in Bass Park and asked her if she wanted to smoke some marijuana.

She followed him to a remote corner of the park to smoke. He demanded sex and began to choke her. This time Mosley is found competent to stand trial. The defense claims consent and accuses the woman of being a prostitute, and on October 25, Mosley is acquitted and released.

The bodies come again: Loretta Young Brown, November 10, 1984; Theresa Giles, December 19, 1984; Shandra Whitehead, April 14, 1985. In 1985, Frank Lee Smith, a paroled two time killer who wanders the neighborhood selling junk and ? is convicted of murdering Shandra Whitehead and sentenced to death. The Broward Sheriff's Office handles the investigation and early on dismissed Mosley as a suspect on the ground that he is a cousin of the nine-year-old victim's mother and because he does not do victims indoors (a false belief). Later, Detective Richard Scheff swore before a Broward circuit judge that he showed a picture of Mosley to a witness in a photo-line up.

By February 1987 when another woman, Santrail Lowe, was raped and murdered after a three year hiatus, Detective Evans was preparing to retire. His pioneering career as one of the first African-American police officers hired by Fort Lauderdale, ended early by his repeated frustrations in winning support from his superiors in combating Mosley and defining an adequate standard of investigation. Rookie Detective Kevin Allen, assigned the Lowe case, and running out of leads came to discuss the case with Evans who was well known in the department for his crusade against rape murders in the northwest. Without prompting and never having seen the crime file, Evans described to Allen how the body was found partially nude, panties pulled down, and bra left pushed up exposing the victim's breasts. Evans had convinced another detective, a white one,

that Eddie Lee Mosley remained the most dangerous threat faced by the Fort Lauderdale Police Department.

Allen's break came several months later when Mosley was arrested pushing a shopping cart loaded with plants that appeared to come from a nearby store that had been broken and entered. Interrogated by Allen? Evans? about the rapes and murders that had occurred in 1983 and 1984, for the first and only time, Mosley confessed saying simply, "you got me." He went on to state "I had sex with someone and they died while I was having sex with them."

Finally confronted with what they had for so long denied, the top leadership were torn between wanting to take credit for arresting one of the worst killers in U.S. history, and admit that Doug Evans had been right?, or keep things quieter. Instead, they tried to compromise. Mosley was charged with the murders of Emma Cook and Theresa Giles, but cases already blamed on prisoners Jerry Frank Townsend and Frank Lee Smith, were kept out of the public accounting of Mosley's crime.

The 1990s were different years for Fort Lauderdale and much of the rest of south Florida. Like the nation as a whole, the area enjoyed a historic reduction of crime, including homicides. Development in large parts of the area (not so much the northwest section) surged as the national economy and the stock market hit all time highs. During the nation's confusing end of the 2000 presidential race, Fort Lauderdale and Broward County along with many other parts of Florida became the center of national attention, but over dangling chads, not the bodies of murdered young women.

Then just as the presidential race was moving to its finale, the first of two echoes of the nightmare years returned, to reveal a new and deeper dimension of the horror. Few

noticed at first because of the presidential race, the news that Frank Lee Smith, a three time convicted killer who had died the previous January of pancreatic cancer while on Florida's death row, had been cleared by FBI DNA tests of being the man who deposited sperm on and presumably raped and murdered 13 year old Shandra Whitehead, whose April 1985 murder sent Smith to death row.

Smith had spent 14 years asserting his innocence to little avail. His initial defense lawyer provided a vigorous defense but he was apparently not fully aware of the larger string of northwest side rape murders, nor of Doug Evans' already 12 year long quest to bring Eddie Lee Mosley to justice. Like many Florida death row inmates in the 1980s, Smith did not get a new defense lawyer until weeks before his execution date.

Investigators for the defense immediately focused on Mosley and received a major breakthrough when the major prosecution witness, northwest side resident Chaquita Lowe was shown a photograph of Mosley and immediately identified him as the man she had seen outside of the house where Shandra Whitehead was raped and murdered.

The evidence against Smith was actually quite limited. In addition to Lowe, Dorothy McGriff, the victim's mother, had also identified Smith, but on the basis of an admittedly poor glance at the perpetrator climbing out a window to escape the house as she pulled up in her car. McGriff was also a cousin of Eric Mosley, whose family proved tenacious in protecting him. In addition, Broward Sheriff's Office detective Richard Scheff who had led the investigation of the Whitehead murder, took the stand and testified that Smith had fallen for an old interrogation trick. When the investigator deceptively told Smith that the victim's brother had been awake and seen the killer, Smith blurted out that he could not have been seen because the house was dark.

Notwithstanding the weak evidence and the recantation of Lowe's testimony, the battle over Smith's conviction dragged on for nearly a decade. When he died, painfully of pancreatic cancer on death row, the Broward State Attorney's Office was still successfully fighting demands by his lawyers that the biological evidence from the Whitehead case be tested with new DNA technologies unavailable in 1985. After Smith's death the DNA finally was tested, clearing Frank Lee Smith and identifying Eddie Mosley as the rapist and killer.

Spurred by the Smith revelation, Fort Lauderdale and Broward investigators began to test all available materials from cases in which Mosley was a suspect, including the string of rape murders attributed to Jerry Frank Townsend. When the tests were completed on two of the Townsend murders, Eddie Mosley was once again identified as the source of the DNA. What Detective Doug Evans had learned through careful investigation, that Mosley alone was responsible for the whole series of murders in the northwest that had been blamed on others including Townsend and Smith, was being proven in the new science of DNA. Evans had put himself in conflict with the law enforcement culture of Broward County when he took the stand to defend Jerry Frank Townsend. Now the newspapers and the top prosecutors and police officials in the area had to admit what was painfully obvious, that Doug was right.

Yet the real horror of the nightmare years may lie here. After Townsend was arrested in September 1979, twelve women were raped and murdered very likely by Eddie Lee Mosley, up to and including young Shandra Whitehead. After Frank Smith was arrested for Whitehead's murder in 1985, at least one other woman, Santrail Lowe was probably murdered by Mosley. These thirteen victims may have suffered no more

horrendously than the dozen or more other women who probably died at Mosley's hands, but they did die unnecessarily and through the self interested connivance of police officers and officials, primarily in the Broward Sheriff's Office, but also including those in the Fort Lauderdale Police Department that undermined Evan's investigation.

### **Conclusion: Technology and Mass Surveillance vs Old Fashioned Policing in the War on Terror**

Doug Evans and the X-Ray's were sadly not the modal police officers, let alone *Southern* police officers of the 1970s. Still, they offer a precedent for a reflexive craft policing approach that might serve as a model of a different kind to post-war on drugs policing strategy, one aimed at preventing violence in specific communities from all kinds of sources (including terrorism and reactive hate crimes), by vigorous local investigation coupled with self conscious efforts to guard against racial stereo atyping and its analogs.

Two other men were sent to prison, one to death row, for Moseley's crimes. These miscarriages of justice exemplify the high risk investigatory strategies that contemporary police have come to rely on. Doug Evans solved the crimes using his deep local knowledge of his community and his willingness to interview dozens of witnesses, but Mosely was released through the indifference of state officials, and his later crimes were pinned on men who were more attractive to prosecute.<sup>17</sup>

As we reflect on the terror attacks of September 11, 2001 it is important that the debate over security versus liberty (and privacy) not obscure the debate over how security

is to be obtained. Let us start with the blunt fact that from a policing perspective, the 9/11 plot was highly vulnerable to traditional suspicion based surveillance. As documented by the 9/11 Commission, American officials were aware of the presence within the United States of all of the terrorists. Some of these individuals were known by other American officials to be involved in militant Islamist politics in Europe. Famously, our government agencies "failed to connect the dots" but that should not satisfy us. Any close surveillance of these individuals would have raised many deeper reasons for suspicion. Why were they in flight schools? How were they being financed? Even had prior knowledge of the terrorists not identified them as persons worthy of suspicion, their behavior alone, especially their highly irregular conduct in Miami, when Mohammed Atta and one of his associates flew a small private aircraft from their flight school to the very busy Miami International Airport, and then left the aircraft on the tarmac after abandoning their take off.

Instead of an effort to improve our law enforcement's ability to identify and follow suspicious persons, the Bush administration's war on terror has consisted of intimidating orders to appear for questioning to thousands of Muslim immigrants in the United States, imprisoning for five years hundreds of apparently "low value" suspects in Guantamo, torturing (or close to it) higher value suspects in secret prisons around the world, overthrowing governments in Afghanistan and Iraq and replacing them with apparently more democratic governments which continue to survive only with US military (or NATO) life support, and high technology surveillance of international phone calls.

This is a broader pattern of global security that has fed on the bad example of the American war on crime. While the rhetoric of the war on crime celebrated police, the tactics emphasized rounding up low value suspects through relatively easy low grade surveillance and seizure. For more serious crime, coercive interrogation, jail house informants, and if necessary, police perjury, became all too common approaches as DNA exonerations in recent years, and the exposure of police fabrication in the conviction of over forty mostly black residents of Tulia Texas cases has documented. The minimal concern with the seriousness or even guilt of arrestees reflected a belief that incarcerating large numbers of potentially dangerous criminals would repress crime, so careful, investigations were superfluous.

We see it reflected in an international anti-doping effort in sport that is largely dependent on drug testing rather than police investigation. (See, Brian Alexander, *Tour de Farce*).

We see it reflected in the preference of many contemporary mayors spending money on high technology license plate readers and road side video surveillance cameras over money for community policing. The reliance on technology and mass surveillance over close police investigation of suspicious individuals is promising only if you like the logic of the war on drugs. We need a new paradigm across a whole set of security problems (from terror, to urban crime, to white collar crime, and to sports). But fortunately it's an old paradigm, i.e., investigation that relies on knowing a community and its residents rather than on broad dragnets or coercive tactics. A community policing approach, to say, doping in sports, would not require harsh prison terms for those found doping, or even formal criminalization. Police can seek to discover the source of



nuisances that endanger the health and well being of the community and seek civil measures to restrain the abusive behavior.

What would a "community policing" approach to homeland security look like? First it would involve direct contacts between law enforcement and Muslim immigrant communities to assure them that they are part of the community being protected. Political scientist David Thacher (Thacher 2001) has described this kind of approach by the police in Dearborn Michigan, a city with the highest concentration of Middle-Eastern immigrants and their off spring in the United States. Second, it would involve expanding police staffing to permit permanent site appropriate surveillance of vulnerable terrorism targets (police departments today are doing this on a limited basis, but at a cost of stretching existing resources). Third, it would require upgrading the communication and command integration of police and other first responding organizations to assure that rescuers would have the best possible chance of saving lives (including their own).

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<sup>1</sup> Scheck Neufeld and Dyer use the apt metaphor of a flashlight beam for the way DNA evidence shines a focused beam on a case that then suggests broader patterns of misconduct, patterns that extend to potentially many more cases where no relevant biological evidence is available for testing.

<sup>2</sup> This is a small contribution toward what Richard Leo has called for, i.e., a “criminology of wrongful conviction” (Leo 2005).

<sup>3</sup> One of the sources that Scalia relied upon was the Samuel Walker’s influential study of the increasing rationalization, or bureaucratic control of discretion, within the criminal justice system (see, Walker 1993, 51). Walker, however, had other thoughts, publishing an op-ed piece in the LA Times noting that police reform remains an incomplete project.

<sup>4</sup> Aggregates may be especially misleading because American policing is overwhelmingly locally controlled.

<sup>5</sup> For a parallel that may prove fruitful, consider the discussion in Israel over whether the long involvement of the Israeli Defense Force in the suppression of Palestinian resistance to occupation on the West Bank and Gaza created internal changes the vulnerabilities of which were on display in the recent and disastrous (from Israel’s perspective) Lebanese war.

<sup>6</sup> The analogy to junk food is almost irresistible, see Pollan 2006

<sup>7</sup> Bob Egelko, “Governor Vetoes Bills on Wrongful Convictions, Measure to Record Interrogations called too Vague,” The San Francisco Chronicle, October 3, 2006. ([read the SF Chronicle story](#))

<sup>8</sup> In the preface to his pioneering book on police, sociologist William Westley had this to say about police in the 1950s when he made his observations. “In 1950, when this study was made, some rookie policemen were so conscious of public disapproval of the police that they refused to wear their uniforms going to and from work.” (Westley 1970, xiii).

<sup>9</sup> Especially those in jail who can get access to a suspect detained and awaiting trial.

<sup>10</sup> Gideon v. Wainright, 372 US 335 (1963)

<sup>11</sup> Mapp v. Ohio, 367 US 643 (1961)

<sup>12</sup> Miranda v. Arizona, 348 US 436 (1966)

<sup>13</sup> Inbau’s manual on police interrogation was the very target of the Chief Justice’s ire in the Miranda opinion.

<sup>14</sup> Robo-cop, ironically, turns out to be a Warren Court proceduralist, citing his legal mandates, placed in his root program, as preventing him from carrying out the violent acts of repression planned by his corporate masters.

<sup>15</sup> Video-recording, as I noted above, is an extension of the disciplinary model of police reform, and many of the other wrongful conviction reforms have disciplinary as well as craft aspects. Rather than seeing these as opposites, it might be better to see them as alternatives that can be combined. The craft conception, combines discipline with forms of self fashioning.

<sup>16</sup> <http://www.fortlauderdale.gov/police/imagehistory/book5/50161.jpg>

<sup>17</sup> Doug’s role in the case is profiled in this excerpt from the Frontline (PBS) documentary, [Requiem for Frank Lee Smith](#) (2002)