

## **Criminal Justice: An Unraveling of Trust?**

**By Henry C. Lee and Carll Ladd**

Beginning in the 1960s, crime rates in the United States jumped dramatically (see p. 9). As a result, during the ensuing three decades we have seen a significant evolution of public attitudes toward crime/punishment issues and the law enforcement community. The public now lists "crime and lawlessness" along with our court system's performance at the top of the list of national problems (see p. 10). It also cites a general failure of the criminal justice system as one of the prime causes of the high crime rate in the US (pp. 14-16). The courts have increasingly been seen as too lenient on criminals and insufficiently attentive of the needs of crime victims and society (p. 18).

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Reflecting their lack of confidence in the legal system, Americans have espoused a number of "get tougher" stances regarding criminals such as stronger support for the death penalty, community notification, mandatory sentencing, and greater emphasis on jail as a punishment rather than as a vehicle for rehabilitation (pp. 19-26).

Public censure of law enforcement falls into a second distinct category. Rather than systematic or institutional flaws, this dissatisfaction stems from an evaluation of individual job performance and competency. In short, appropriate standards may be in place, but they're not always met. Press accounts of a number of high profile cases during the past few years have been especially problematic for the American criminal justice effort. No sector has emerged unscathed. The Rodney King incident and the O.J. Simpson trial painted unflattering pictures of the police, forensic laboratories, medical examiners, and the courts. The FBI's handling of Ruby Ridge, Waco, and the Olympic Park bombing have been hotly debated. More recently, the FBI has been rigorously criticized in the media on several fronts following the release of a report issued by the Justice Department's Office of the Inspector General (OIG) and other developments.

In light of the publicity, it's hardly surprising that public confidence in the entire criminal justice effort has suffered. In an April 1997 survey for Fox News, 56% of those interviewed stated that they were losing confidence in the work of the FBI. Two Gallup surveys after the Simpson trial (June and October 1995) demonstrated significant doubt (33-43%) that police perform their duties in a professional manner. One CBS survey (September 1995) even found that half of those polled thought the police or prosecutors lie (either very often or sometimes) to obtain convictions, while only 7% held that they never lie.

Do these and other survey results indicate a true public crisis of confidence regarding our criminal justice system? Probably not. The results appear "soft" with significant fluctuations and apparently contradictory findings. Some of this confusion regarding survey data is the result of an interesting tension in public attitudes. Americans are deeply concerned with crime and demand answers. In many ways, law enforcement officials are seen as the "good guys". Indeed, favorable ratings for the police remain very high (81%, Pew Research, May 1997). While 20 points lower than before the missteps of the past two years, FBI favorable ratings are still pretty solid. At the same time, however, the public is genuinely troubled by aspects of the criminal justice system. These mixed signals may seem muddled, but there is little doubt that the public intends a clear message—perform better!

The negative press accounts and their public resonance have largely obscured an important, albeit less sensational fact: The vast majority of work by law enforcement agencies—by the police, the FBI, and forensic laboratories—is solid, the few black eyes not withstanding. But as we have seen on many occasions, public perception can be very different. This can be particularly damaging since one of the primary assets of law enforcement agencies is their credibility. Once public confidence weakens, the prosecution of cases may be jeopardized regardless of the strength of the evidence. Indeed, we often may disagree with these assessments, but it is imperative that we understand public opinion to learn and improve the system.

As director and DNA supervisor of the Connecticut State Police Forensic Science Laboratory, our primary concern is how public attitudes impact our role as forensic scientists. This issue is somewhat nebulous since the public really has little specific opinion on the performance of forensic laboratories relative to other law enforcement agencies. Nonetheless, some of

the criticism is clearly directed our way, and it's in our interest to respond positively.

A related issue is how the performance of law enforcement agencies affects elite opinion. Elite opinion clearly both shapes and is shaped by public opinion, but there are more immediate concerns. We must present our findings to the courts—to judges, counsel, and juries. In addition, we are evaluated by the press and by politicians who authorize expenditures. There is reason to believe that damage has been done. The OIG's review of three FBI laboratory sections is illustrative. Though it rejects the most serious allegations, the OIG report is still hard hitting, and it may seriously undermine FBI lab credibility. It uncovered "significant instances of testimonial errors [inaccurate and incomplete statements], substandard analytical work, and deficient practices." The report also highlights inadequate supervision, unauthorized alterations of reports, and "errors all tilted in such a way as to incriminate the defendants." The implications of OIG recommendations may be even more damaging. Inspector General Michael Bromwich suggested that the FBI lab undertake "cultural change," eradicate some of its "insular and parochial views," and ensure that "examiners possess requisite scientific qualifications."

Even so, the OIG report was immediately attacked in the media. Rep. Robert Wexler, D-Fla., was quoted as rhetorically asking, "What is improperly supplementing reports, what are omissions, what are alterations if they do not amount to fabricating evidence?" He further stated that, "I don't think the Inspector General was as forthright with the American people as he should have been...The FBI has to follow the law and when they don't, we need to recognize that, not cover it up." Subsequently, Mr. Bromwich requested expanded authority to investigate allegations of FBI misconduct, citing the need for prompt external review. It's doubtful, however, that most critics will be satisfied. For example, Jack King, spokesman for the National Association of Criminal Defense Lawyers, complained that Bromwich is "still within the Justice Department....If that is external review then who will guard the guards?"

Swift corrective action is clearly warranted, and many significant measures have been detailed in the OIG report.

Each year, the FBI lab provides services in thousands of cases across the country. It's imperative that the public has complete confidence in the impartiality of this nation's most important law enforcement agency.

The problems in forensic science are manageable, but there are no panaceas. Efforts to impose laboratory accreditation and analyst certification are misguided on two fronts. First, critics will not be satisfied. Similar to the response to the OIG report from defense lawyers and others, accrediting and certifying bodies are seen as little more than superficial instruments of self-policing. Second, even though Inspector General Bromwich identified a need to improve technical expertise, most of the problems in law enforcement at large involve ethics and attitude; they will not be solved by either certification or accreditation.

More effective strategies to improve the process and reclaim public trust begin with the often trivialized notion of leadership. First, forensic laboratories, along with other law enforcement agencies, must stress dispassionate and professional testimony. They must avoid the traps of emotion and advocacy. Second, thorough quality control programs, built around *independent*, external testing where mock evidence is processed by each analyst, are the best vehicle for monitoring technical competency of laboratory personnel. They should be expanded in some areas. Third, the present system regarding expert witnesses can elicit good scientific testimony and should not be overlooked. The process of discovery and cross examination can be very effective provided that prosecution and defense counsel do their homework.

Despite its misgivings, the public continues to support large expenditures for crime prevention and crime solving initiatives—this at a time when people are less likely to look to government for answers. Law enforcement agencies cannot afford to squander opportunities. More resources are required to fully implement important new technologies such as the DNA, fingerprint, and firearms databases. It's hard to expand capabilities in an era of relative fiscal austerity. How law enforcement agencies handle their errors is pivotal. Anything that could be perceived as a whitewashing is the worst thing that the law enforcement community could do.



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