FRAUD EXPOSED

What You Don’t Know
Could Cost Your Company Millions

Joseph W. Koletar

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This book is dedicated to the memory of my parents,
John Edward Koletar, of Shamokin, Pennsylvania, and
Margaret Ruth McAbee Koletar, of Spartanburg, South Carolina.
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PREFACE

This book was begun in October 2001, as an attempt to gather and articulate thoughts that had been with me for some time. After 35 years in security, law enforcement, and forensic investigations, I began to wonder if some of the techniques that were apparently having success in the broad field of law enforcement might also be useful in addressing fraud in the workplace. Thus began this journey. During it, the initial focus grew beyond the confines of law enforcement, as my research took me into areas as disparate as neuroscience, linguistics, and game theory. I also encountered issues of defining fraud and trying to get a handle on how big it is and what causes or impedes it. Even such apparently elemental tasks proved formidable.

Then, Enron. While at this writing the full implications of Enron are still being revealed and discussed, the name alone has become a catch phrase in public discourse, much like Watergate. Its very utterance conveys substantial volumes of meaning and emotion and has become a sort of shorthand metaphor for things that may be wrong in corporate America.

While I have mentioned Enron several times in this work, and speculated on its meaning for the forensic profession, the thrust of this book remains unchanged—thoughts as to how we can become more effective in dealing with occupational fraud (that is, fraud committed by employees against their own organizations). Enron may prove, as time passes, to be a tidal wave—massive and destructive, but by definition rare. If tidal waves occurred every day they would not be tidal waves, but merely exceptionally high tides. While the tidal wave and its hugely destructive effects rightfully capture our attention, it is the rivers that concern me. The rivers—slow, steady, and unrelenting—carve out huge canyons and forever alter the landscape. Enron is, perhaps, a tidal wave. Occupational fraud is the river that is slowly carving its way through most of the organizational landscapes we call home.

Joseph W. Koletar
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It is impossible to attempt a work such as this without substantial support from others, near and far. To this group I am eternally grateful for their wisdom, generosity, assistance, and encouragement. To these same friends and colleagues I offer an apology for any weaknesses or errors in this book; should such occur, they are solely my responsibility. I also apologize to any whose contributions I may have overlooked—such oversight was not a reflection of the worth of your thoughts and observations, but merely a function of my carelessness.

First, to my friend and mentor, Joe Wells: The founder of the Association of Certified Fraud Examiners, Joe saw the possibility of answers before others even knew there were questions. To Marie Simonetti Rosen, the gifted and dedicated editor of the Law Enforcement News, who has forgotten more about policing in the United States than I will ever know. To Dr. Edwin J. Delattre, a dear friend and valued resource, whose voice, wisdom, and resolve have immeasurably advanced the state of higher education and law enforcement in the United States and abroad.

Although this work is solely mine and does not reflect the views or opinions of the partners or employees of Ernst & Young LLP, to Mike Emmert and my colleagues at that firm, for welcoming me into their midst and always encouraging the pursuit of excellence.

To all in law enforcement and the forensic profession, who labor mightily under trying conditions to ensure that the bad guys do not always win.

Others, whose generous contributions were gratefully accepted, include Don Barnes, George Campbell, Chief Steve Cherry, Carson Dunbar, Tracey Foley, Dr. Gil Geis, John Kane, Tom Pickard, Frank Purdy, Jim Roth, Brian Sanvidge, David Sawyer, Steve Seliskar, Gary Stoops, Representative John Sweeney, Alan Trosclair, Fred Verinder, Miriam Weinstein, and David Zornow.

To my beautiful and talented daughter, Lauren, who makes me prouder each day to be her Dad.

And, finally, to my lovely wife, Martha, without whose patience, support, prodding, counsel, humor, and occasional questions as to exactly when I was going to get this mess off the dining room table, this book could never have been completed.
This book will be long on questions and short on answers. It will, however, offer a few suggestions. It is about occupational fraud (that is, fraud committed against organizations by persons who are members of those organizations). It is written in an effort to stir debate, foster dialog, and encourage research. It is meant to provoke comment, both positive and negative, but all helpful to the process of discovery. It is written in a spirit of friendly ignorance, admitting that even after 35 years in the related fields of intelligence, security, investigations, and forensics, I do not pretend to know it all or, probably, even much of it. It is also written in the sure knowledge that collectively we know more than we individually realize. In short, it is an attempt to begin a process.

I sincerely hope, when this work sees the light of day, to receive any number of irate communications saying, in so many words, “Koletar, you idiot, weren’t you aware of Professor “X’s” theory of “Y” fraud causation? Have you no idea that the “Z” corporation has reduced occupational fraud to less than 1 percent by using cranial obfuscation analysis?” The more of those communications I receive, the happier I will be, for part of my mission will have been achieved. I have tried, to the best of my ability, to learn what I could about occupational fraud and its dimensions and causation. I have spent 35 years in the business, conducted research, and talked to some of the leading practitioners in the field, but I am sure I could double that amount of effort and still fall short. It is simply too large an undertaking for one person in any reasonable amount of time.

The mathematician Henri Poincare once likened facts to stones. Facts, in and of themselves, prove little. Only when they are compiled into a theory do they have potential utility. As he put it: “Science is built up with facts, as a house is with stones. But a collection of facts is no more a science than a heap of stones is a house.”¹ Welcome to my house; let us see if it withstands the winds of debate, analysis, and dissent.

There are, I am sure, innovative and forward-looking control and compliance programs that have been highly effective in reducing occupational fraud. I presume they exist, but I also presume most of us in the forensic profession are unaware of them. Otherwise, why are we awash in fraud? Why do we continue to do more of the same, then bemoan our collective lack of success?

Former New York City Police Commissioner Benjamin Ward once referred to the fact that most crime committed in our country against minority citizens is committed by minority citizens as “our dirty little secret.”² We in the forensic
profession have our own dirty little secret: We are remarkably ineffective in dealing with fraud. There may be an excellent reason for this failure. Perhaps it cannot be done. Fraud, like murder and sin, has been with us throughout recorded history. It is part of the human condition. Eons ago, it is highly probable that one prehistoric man traded a club to another prehistoric man for some berries, knowing the club had a crack in it, but failing to tell his partner. A fraud was committed—perhaps two, for the berries may have been spoiled.

We can argue, successfully, that we are not ethicists, educators, lawmakers, human resource executives, or persons of the cloth. We are not in the morals business; we are in the investigations and prevention business. As far as that goes, it is true; however, I suggest that as a profession we need to do more, lest we cede the field to the others named or be relegated to the role of the people who follow the elephants in the parade with brooms and shovels. We need to become researchers, thinkers, experimenters, writers, rabble-rousers, and seekers of truth wherever we find it. We need to think deeply about what we do and why it happens in the first place.

In short, we need to devote more time to the improbable goal of putting ourselves out of business. It will never happen, but it is a worthy goal for any profession, ours included. To be free of disease, hunger, crime, and strife is the ideal of every civilized society. We will not see it in our lifetime, but that is not the point. If we have such ideals as goals, it is more likely that we will get closer to them than if we do not.

Speaking to this point, and cautioning that such activities cannot occur in an organizational vacuum, Erroll J. Yates, former chairperson and managing director of Kodak Limited, U.K., offered the following observation in Internal Auditor magazine in 1977:

The Institute of Internal Auditors has published aims for the development of internal auditing. Its plans for education and research clearly demonstrate a growth in status. . . . All professions need such a foundation of technical excellence if they are to grow. But technical excellence is in itself not sufficient to guarantee growth. Those whom the profession serves must also support it. And that support should come from the highest level.³

I am primarily directing this work to those who are auditors, investigators, and compliance professionals in organizations, and others interested in workplace fraud, for three reasons: (1) you are the majority of the professionals in the field; (2) organizations are where most of us live and spend our professional lives; and (3) the ills of society, and the acts of fraudsters preying on other individuals, are beyond my mental radar range. Would that we begin to deal with the issues that occur in our organizational homes before we extend our efforts to the society at large. We have more than enough to do at home, right now, to keep us busy for a very long time.
It is also my fervent hope that some outside the immediate field of forensics will also find this work of interest. You should. It is not only our assets that are at risk, but yours—be you employee, shareholder, taxpayer, retiree, executive officer, or member of the board. In calling our collective lack of success a dirty little secret, I seek to grab the attention of my fellow forensic professionals, but our secret is a sticky one, and it clings to all who touch it. If you have accepted, tolerated, ignored, rationalized, or chosen to remain ignorant about fraud in the workplace, then you, too, share in the secret and are part of the problem. You are also a valuable ally as we seek to move forward. Welcome aboard.

In beginning to think about fraud in the workplace, or occupational fraud, it is important to understand three things: what it is, what it is not; and why it is important.

Occupational fraud occurs millions of times a day in the United States. Much of it is trivial and petty, but it is cumulatively expensive nonetheless. Such acts include showing up late for work, making personal telephone calls against company policy, removing supplies for home use, taking long lunch breaks, calling in sick, and copying personal papers on the office machine. These acts are important in the aggregate, but the focus of this book will not address them in great detail. Such transgressions are important to "slippery slope" and "broken windows" theorists and, in that regard, are the essential bedrock of an organizational compliance program based on those concepts. We shall discuss in more detail how such constructs operate and why focusing on small acts may help prevent bigger ones. At the same time, we shall also explore organizational issues to be considered when crafting a compliance program around such ideas.

We will spend the majority of our time exploring issues pertaining to more egregious forms of occupational fraud—willfully crafted schemes by which dishonest members of the organization loot its assets. They may do this through kickbacks, large-scale diversion of goods and services, creation of ghost vendors and employees, or hundreds of other techniques. Certainly, some of the petty offenses may grow into major league proportions. The employee who removes a few pens each week for home use may graduate to taking out a trunkload of supplies each day and selling them on the black market. In that regard, we must pay due heed to the "slippery slope" and "broken windows" theorists.

At the same time, if the statistics available to the profession are accurate, organizations in America already have a full roster of major league players. Occupational fraud in the United States is estimated to be a $600 billion per year problem, and it is growing. According to the Association of Certified Fraud Examiners (ACFE) in its 2002 Report to the Nation, occupational fraud is fairly well distributed throughout organizational America: publicly traded companies (30%), privately held companies (31.9%), government agencies (24.7%), and not-for-profits (13.4%). When we get into an examination of the definitions used in the field, the $600 billion figure cited by the ACFE may begin to seem small.
For those not familiar with this field, a word of explanation may be useful. One will frequently encounter the term white-collar crime. Generally speaking, this refers to a category of crimes that may be defined by the nature of the crime itself—from forging a check to illegal dumping of toxic waste and hundreds of things in between. The crime can be defined by the nature of the offense (if you commit offense “A” it is by definition a white-collar crime) or by the characteristics of the offender (if a corporate executive commits most offenses they are white-collar crimes). The latter example begins to bring into play some of the nuances that bedevil the field. A corporate executive who murders his or her spouse has not committed a white-collar crime. The same executive who trades on inside information has done so. Many scholars and theorists have spent many hours debating these definitions since they first were brought into play in 1939 by Sutherland, a scholar credited with creating the term white-collar crime.

Another category of white-collar crime is usually called corporate crime. These are offenses committed by an organization or members of the organization to enrich itself. Such offenses might include actions as varied as price fixing, mislabeling of products or contents, illegal dumping of toxic waste, and failure to provide a safe work environment for employees. Again, much debate appears in the literature as to how these offenses occur, why they occur, and who is responsible—the people, the organization, or both.

Finally, we come to that category of white-collar crime this book deals with—occupational fraud. Throughout this book we refer to white-collar crime and corporate crime, but the distinctions are important. Occupational fraud is crimes committed by employees (and, I will argue, others) against their organization. Even here, simple definitions can be strained if one pushes hard enough. If a sales manager creates phony sales to qualify for an annual bonus, that is occupational fraud. If the same sales manager creates phony sales at the urging of superiors to make the company look good, that is corporate fraud. The sales manager will still get the same bonus, but the motivation is different.

Throughout this book one will encounter the term organization, and at times it may appear stilted. Company seems to roll off the page more smoothly. The choice of terminology is, however, intentional. Occupational fraud in the United States certainly occurs in the private sector in massive proportions. It also, however, is common in public sector and governmental agencies, not-for-profit organizations, and voluntary associations and groups. Thus not all persons engaging in occupational fraud are employees working for companies.

Regarding the importance of occupational fraud, we shall see that it dwarfs many legitimate industries several times over. The cost of occupational fraud does not simply go away. It results in higher prices to consumers, lower profits to companies and shareholders, higher cost to taxpayers, lower bonuses to managers and executives, poorer performance on Wall Street, negative impacts on pension and retirement plans, and the failure of more than a few businesses.
The forensic profession, as it deals with the detection, investigation, and prevention of occupational fraud, is built on a foundation of failure. It rests squarely on four substantial columns of support that have allowed it to develop, evolve, mature, and prosper. The first of these columns, and arguably the most important, is the moral failure of the individuals who commit frauds in an astonishing variety of manners and circumstances. The second is the failure of the organization’s internal controls to prevent these individuals’ actions or, usually, to detect them quickly. Indeed, it is not uncommon upon discovery for some perpetrators to make comments to the effect of “What took you so long?” The third failure is that of the managers, executives, boards of directors, and shareholders to recognize that fraud is a significant part of the life of most organizations and to act accordingly. The fourth failure, resting on our doorstep, is the failure of the forensic profession to be more effective in developing ways to minimize fraud in the first place.

While many in the field, myself included, have built rewarding and satisfying careers because of these interlocking failures, I believe we have a responsibility to look beyond our traditional activities and interests. Otherwise, we are doomed, personally and as a profession, to more of the same. The same in this context may be development of professional credentials and sharing of professional knowledge; development of new and improved techniques to detect, prevent, or prove fraud; the apparently never-ending quest for adequate funding and resources; and the recruitment of new and promising people into our profession.

All of these activities are good and worthy, appropriate to any profession, and they should continue; however, we are spending our time, resources, talents, and tools addressing symptoms, not causes. In this regard, we are not unlike our law enforcement counterparts who believed strongly for many decades that more cops and more arrests meant better law enforcement. In terms of professional growth and quantifiable outcomes, it was a powerful argument. More cops do generate more arrests, and more arrests were visible evidence to the public (the shareholders, if you will) that professionals were working hard on their behalf.

I have also been asked by knowledgeable reviewers if I am perhaps not being a bit too ambitious. They asked how I realistically proposed to write a book that, if I was successful, would have utility and meaning across thousands of types of organizations, great and small, public and private. Again, I can only speak from my experience and that of my professional colleagues. I have conducted forensic inquiries in retail, manufacturing, not-for-profit, health care, educational institutions, financial services, entertainment, hospitality, advertising, waste management, energy, television, and many other industries. Each has its peculiarities, but the base-level issues of occupational fraud are remarkably alike. Regardless of the business, there are only so many ways you can run a kickback scheme, a ghost vendor scam, or an inflated invoice fraud. There are a lot of ways to commit murder—shooting, stabbing, choking, beating, pushing, smothering, immolating, or poisoning—but to an experienced homicide investigator they all look pretty
much the same. So, too, with fraud in the workplace. It may take an hour or two to figure out the industry-specific twist in a given matter, but thereafter it reverts to a fairly predictable form. Thus the source of my ambition with regard to occupational fraud. I think we have huge, but generic, issues on our collective plates, and I think we can benefit from a general consideration of the reasons they occur and how we can improve our ability to prevent and detect them.

We shall start our search for better answers to the problem of occupational fraud by looking at the police, whose problems were in many ways similar to ours, and also at some of the radical steps they took to address them.
CHAPTER 1

CRIME AND THE LAW
ENFORCEMENT RESPONSE

The history of modern policing as we know it can be traced to London in 1828 when Sir Robert Peel introduced a bill to provide for a trained and uniformed police force. The force, because of Peel’s backing, quickly became known as bobbies or peelers. Encouraged by this development, New York City followed the same path in 1844, when the old Night Watch was legislated out of existence. In 1845 the first shield was introduced. The device has a rather peculiar history. Up until that time the police preferred to patrol in civilian clothes, seeing uniforms as a British custom not befitting freeborn Americans. The eight-pointed, star-shaped copper shield was worn on civilian clothes to denote the wearer as a police officer. These persons quickly became known as coppers or cops. In New York City, formal training and official uniforms would not appear until 1853.

Although there is much detailed history related to the subsequent development of policing in New York City and other locations throughout the United States, from this simple beginning the structure of modern law enforcement was laid. As it grew and evolved, it faced challenges both great and varied: draft riots during the Civil War, bandits of various ilk in the unsettled West; the fear of sedition during World War I; prohibition and the rise of organized crime; black marketeering and military preparedness during World War II; the civil unrest of the 1960s; and, of course, drugs.

As the 1960s began to meld into the 1970s, despite the best efforts of law enforcement, crime continued to be one of the leading concerns of the public. In 1968, crime was the number-one domestic issue cited in the Gallup poll, the first time that had ever occurred. Crime rates were soaring, with the FBI reporting the following increases per 100,000 persons in the U.S. population between 1969 and 1970.
Rader and McGuigan commented on these times in the following manner in 1983:

Either crime has been increasing over the last decade or clocks are ticking slower. In 1971, Americans could expect a murder every thirty minutes, a rape every thirteen minutes and a violent crime every thirty-nine seconds. In 1981, murders were occurring every twenty-three minutes, a rape every six minutes, and a violent crime every twenty-four seconds. Moreover, the average American is experiencing crime firsthand more often. A 1981 study by the Department of Justice found that 25 million American households (30% of the total) were victims of crime. Accordingly, U.S. families are more prone to have a member attacked in a serious crime (rape, robbery, or aggravated assault) than to have a residential fire or have a member injured in an automobile accident, and more likely to have a member robbed than to have a member stricken by cancer or heart disease, the nation’s leading health problems.³

Were this not bad enough, urban America—Baltimore, Chicago, Detroit, Miami, Newark, and Washington, D.C.—experienced major riots, and significant parts of some of these cities went up in flames. Police control was tested, with the National Guard and even regular Army units being called up to assist. Serious commentators were debating the proper role of the military in assisting the police in the discharge of their duties and the Constitutional issues this would raise.⁴

Thomas Repetto, the head of the New York City Crime Commission, has commented on the state of crime in that city during the era. In 1961, the NYPD reported 390 murders; by 1964, the rate was 637, an increase of two-thirds in just three years. By 1972, the rate was close to 1,700, quadrupling over a single decade. The number of robberies reported had risen from 23,000 in 1966, the first year statistics for such crimes had been kept accurately, to nearly 90,000 at the beginning of the 1970s.⁵

New York City was hardly alone in its crime problems. Meltzer observes that other cities had their issues as well:

Bad as the situation in New York was, it was worse in other cities. In 1987 New York ranked ninth in murder and manslaughter among the twenty-five
largest cities. Detroit was first (with a rate two and a half times that of New York), and New Orleans was second in rates per 100,000 people.6

The United States was also not faring well when compared to other countries, as Meltzer also notes:

The United States has a higher homicide rate than any other industrialized country. In the 1980’s about 20,000 murders a year were committed in the United States. Each year 10 Americans of every 100,000 were murdered. In West European countries the homicide rate was fewer than 2 per 100,000. Taking Australia, Canada and New Zealand together, the homicide rate was less than 3 per 100,000.7

At the same time, he advises, the overall level of violent crime in the U.S. was beginning to show signs of declining, by 21 percent in the period 1980–1984.8 Some argued that public concern about crime was merely a function of awareness and perception. To quote the old newspaper adage, “If it bleeds, it leads.” As the 1980s approached, sometimes-sensational coverage, aided by smaller and more mobile remotes and eye-cams brought crime into our living rooms. Like the Vietnam War, daily doses of near-real-time carnage had a powerful impact on the public psyche. Reality television producers realized that for the cost of a camera crew, powerful entertainment could be put forward without the need to build sets and pay actors and scriptwriters. Even the search for fugitives, one of the most basic elements of law enforcement for centuries, could be transformed into a long-running television series.

Such respect for the power of the media has not abated. At the 2002 American Bar Association meeting of its White Collar Crime Section, two entire tracts were devoted to media matters: “High Visibility White Collar Crime Cases: Will the Media Shape Your Case?” and “Inherit the Wind—Dealing with the Media in the 21st Century.” Considering that these topics were competing for scarce presentation time with items such as “International Investigations—The Expanding Extraterritorial Jurisdiction of the United States and the Bill of Rights” and “Grand Jury Reform,” it appears the criminal bar is appropriately sensitive to the influence the media can wield. Indeed, the proceedings of this meeting contained no less than 14 newspaper articles that were believed to bolster the argument for the media’s ability to shape public perceptions.9

Others saw broader societal forces at work, affecting not only street criminals but many institutions and professions as well. The Hastings Center, in an ethics report at the end of the 1970s, noted:

On the societal level, our newspapers and pundits have bemoaned symptoms of a moral vacuum... a sense of moral drift, of ethical uncertainty, and a withering away of some traditional roots and moorings. There is a concern
about juvenile delinquency, about white-collar crime, about a culture of narcissism, about the absence of fixed and firm guidelines for both personal and institutional behavior... almost all the professions are beset with criticisms concerning the moral behavior of their members... A recent Carnegie study emphasized widespread unethical practices by college students. The list of public complaints is long, and the professions have seen a comparative drop in public confidence.10

Law enforcement budget enhancements were sought, even in times of fiscal austerity elsewhere in the public domain. One writer noted: “[T]he police administrator is faced with the problem of obtaining more productivity from existing levels of resources, knowing full well that those resources will probably diminish in the future in the face of an increasing demand for the output of those resources.” The writer concludes that the answer lay, in part, through increased officer productivity measured through improved performance appraisal systems. Again, the answer offered is more arrests.11

Another writer saw promise in the developing field of futuristics, the “use and application of forecasting techniques as an aid in law enforcement decision-making.”12 He went on to note, however, “In spite of the advances that have been made in policing in the past two decades, American law enforcement continues to operate much as it did at the beginning of the century.”13 This translates, roughly, into “find the bad guys and lock them up.”

Still others sought understanding in the causal roots of criminal behavior:

[A] decline in family influence in an increasingly youthful society; a permissive attitude toward much criminal behavior; the deterioration of many of our major cities and rapid unplanned growth of suburbs; the failure of our criminal justice system to deal promptly and fairly with persons accused of crimes; the failure to rehabilitate those convicted of crimes. Overlapping most of these factors are the opportunities for crime in today’s society and the problem of drug addiction.14

Gangs, too, began to become a more significant factor in the nation’s crime problems. From being present in 54 cities prior to 1961, they had grown to inhabit more than 170 cities by 1980. By 1992 they were present in 766 American cities, including 91 with a population less than 10,000 persons.15 By 1992, 54 percent of cities with gangs had from one to five gangs present, and an astonishing 30 cities, 4 percent of the total, had over 50 gangs each.16 Gang violence had a corrosive spillover effect, not only in terms of violence gang members did to one another or rivals, but also to the uninvolved. One study conducted with data from the Los Angeles Police Department indicated that when gang homicides were compared to nongang homicides, the following characteristics emerged. Gang homicides;17
More often occurred in the street
More often involved autos
More often involved guns
More often involved injuries to other persons
More often involved victims with no prior relationship to their assailant(s)

In 1980 there were 351 gang homicides in Los Angeles County, a number that would decline slightly for the next several years, before beginning to rise substantially in the late 1980s and early 1990s.\textsuperscript{18}

Some theories of gangs and gang behavior saw a set of factors as promoting gang membership and growth. As we shall see shortly, these factors are remarkably similar to issues raised by “root cause” theorists of crime in general:\textsuperscript{19}

- Sufficient number of minority youth, that is ten to thirty
- Absence of appropriate jobs
- Absence of acceptable alternative activities
- Concentrated minority populations
- Comparatively high crime rate
- Absence of community and informal controls

Given the beginning growth spurt of gang activity in the time frame of the 1960s, it is perhaps less than coincidental that the most famous and successful gang movie of all time, \textit{West Side Story}, debuted in this era. The artistic merits of that film aside, gangs were rapidly becoming yet another problem for law enforcement to deal with.

More traditional organized crime groups were active as well, prompting the 1967 President’s Commission on Law Enforcement to comment: “If organized criminals paid income tax on every cent of their vast earnings, everybody’s tax bill would go down, but no one knows how much.”\textsuperscript{20}

As the 1970s and 1980s passed, the face of organized crime in the United States became more varied. The old group, the mafia or La Cosa Nostra, was in full flower, especially in major cities, but they were being joined and pushed by newcomers on the scene—highly organized and often-vicious gangs from Mexico, China, Cuba, Colombia, and Jamaica.\textsuperscript{21}

As a result of these pressures, more prisons were built, often bringing badly needed jobs to communities suffering economic blight. The Federal inmate population alone increased over 600 percent, from 21,266 in 1970 to 131,419 as of October 2001.\textsuperscript{22} Overall, at the midyear point of 1998, there were estimated to be 1.8 million inmates in the United States, double the number of a decade
earlier. The private sector saw opportunities and responded, with private prisons coming into being. The defense industry, impacted by the effective end of the Cold War, saw growing law enforcement needs as an alternative market for their products and technologies. Legislatures and jurists combined, somewhat uneasily at times, to produce mandatory sentences, sentencing guidelines, “three strikes, you’re out” legislation, and other remedies. The number of persons in various forms of incarceration in various jurisdictions began to put a strain on some budgets.

The public’s fears also spilled over into other areas, again funding private-sector growth. The Security Industry Association, a trade group, reported that U.S. businesses spent $82.3 billion on security systems and products in 1996. Personal safety products and services sprouted; guard and alarm companies prospered; professional associations thrived; and near-endless meetings, symposia, roundtables, and conferences were held.

Former New York Police Commissioner William Bratton captured the tenor of these times when discussing the earlier stages of his law enforcement career. He noted that in the 1970s the guiding principles of much of law enforcement were the three R’s: rapid response, random patrols, and reactive investigation. In many ways, these precepts make perfect sense. Rapid response to a call for service can be vitally important; the sick or injured are tended to sooner, a fleeing perpetrator may be caught close to the scene of a crime, and valuable witnesses and evidence may be secured before they are lost. Much was made of measuring average response times down to the fraction of a second on a city-wide basis. Random patrols were meant to discourage criminal behavior by making the criminals unsure when or where a cop would appear. Reactive investigation was designed to place detectives and investigators at the scene of serious incidents. In theory, it made sense; however, structural issues soon came into play.

Many police departments operate on a clearance system. A call for service, measured for speed of response, can be cleared in a number of ways. A criminal can be arrested in the case of a robbery, an ambulance can be called in the event of a heart attack, a tow truck can be called in the event of an accident, and an unruly group can be dispersed in the event of a noise or nuisance compliant. Clearance rates are also tracked as an indicator of the responsiveness and effectiveness of police services. The widespread adoption of the 911 system in most major cities, designed to speed the rate of response, only operated to exacerbate already existing problems with how the public and police interacted. Calls for service flooded the systems, the vast majority of them for nonemergency matters, and the incentive within police departments was to move them through the system as quickly as possible. Little thought was given to what the net impact of all this activity produced.

Bratton recounts one extreme example that highlights the flaws in this system. During his career in Boston, there was one corner where a gang of local
juveniles liked to hang out at all hours. An older man lived above the corner and called to complain about the kids and the disturbance they were creating. A car with two police officers would be dispatched, arrive quickly (response time), and disperse the kids (matter cleared). Within minutes, the kids would return and the scenario would repeat itself. In one year there were 1,300 calls for service at this one corner! Each one was cleared and the situation never changed.29

The important element to appreciate in thinking about response time is that it is the junk that clouds over the truly important issues. In my 25-year career in the FBI, I have been on both sides of the response time issue; many times I responded, and a few times I was responded to. In both situations, time is critical.

Bratton comments on the effects of this mentality when he took over as the Commissioner of the NYPD some years later:

The police department has always thrown numbers at the community. “Look at all of our arrests, look at our activity.” But the department only measured activity, it didn’t measure results. Civilians who complained about the squeegee men were in the same situation as the guy at I Street and East Seventh in Southie who placed 1,300 calls to 911 and never got satisfaction. The cops were a powerful group who could walk into community meetings and say, “It’s the criminal-justice system that doesn’t take this seriously; it’s the judges who let these squeegee guys go; it’s the society who created them in the first place. Don’t blame us.” People would back off because the numbers don’t lie, and so nothing ever got done.

But it was a lie. The strategies the NYPD was using were not effective, and the department knew it. They’d go after squeegee people and for a month show substantial arrests and summonses, but there was no urgency. They’d go after them for an hour, once a week. It was the same as working with prostitutes; if you tell them “Friday is sweep day, I’m going to arrest you; the rest of the week you can make all the money you want,” you are inviting failure. Success comes with constant attention.30

That this system was ineffective is beyond the point. Measures define success and measures drive systems, to include police departments. By the measures used at the time, this was successful police work. There were other problems as well—a major disconnect between what the police thought was important to the public and what the public actually wanted. The police took the common-sense view that since serious crime was by definition, serious, it was high on the public’s list of expectations. Resources were budgeted and deployed accordingly. The public, meanwhile, actually had much more mundane issues they wanted the police to do something about.31 The police thought as long as they focused on the big things, the public would tolerate and accept the smaller ones as less important in the great scheme of things. The public, meanwhile, fully expected the police to handle the big issues and do something about the small ones as well.
Recognizing the apparent disconnect between public expectations and law enforcement objectives and strategies was not an act of obstinacy or stupidity. Rather, as Peter Manning points out, it was in many ways a logical consequence of the basic societal foundations of the policing function. Manning has devoted a considerable amount of time to the study of the police, mainly in the United Kingdom but also the United States, and has speculated on the nature of the social contract they hold with society, the implications of it, and how their efforts to fulfill that contract and survive as an institution have shaped their mission, organization, and self-perception. He notes that early pressures to regulate the possibility of violent intervention to effect their responsibilities relied on a system of strict accountability, a military rank structure, rigid control over communications, and constant supervision. As a result of these factors, the police came to be what he calls a “symbolic bureaucracy.”

Manning also describes eight attributes he believes characterize the nature and limits of police power. From our perspective, it is useful to think of these attributes in two lights. The first, which we examine in this chapter, is the set of elements that tended to work to produce the types of responses that characterized the law enforcement mission for the first seven decades of this century in the United States. The second, which we shall examine in the next chapter, is how these same elements figured into the rethinking necessary to effect improvement in the police function:

1. The police symbolize the state, both in the sense of representing its political unity and also in being the arbitrators of adherence with its dictates.
2. They characterize their activities as being based on political consensus and serving society as a moral whole.
3. Although they are charged with enforcement of the law, they frequently encounter situations where the law is a weak resource.
4. They must do their work with few procedural guidelines while observing various constraints designed to protect individual rights.
5. From prior experience with criminals they often believe they should, or must, decide guilt or innocence before an arrest.
6. The police are highly dependent on the gathering, receiving, processing, and use of information.
7. In theory the police are apolitical.
8. Although the police often claim active control over issues of crime and public order, they are in reality highly dependent on information from others to even begin to approach the discharge of their duties.

Because of these factors, Manning theorizes that the law enforcement function often displays highly representative characteristics. First, while the police
typically characterize themselves as crime fighters, they more often are involved in helping or order-maintenance roles. Second, they are, by the nature of their mission, often put into roles wherein the demands being made on them are contradictory or incapable of logical resolution. Manning notes:

The demands made on the police lead them to pursue both contradictory and unattainable ends. Further, the nature of their problems does not permit them to devise anything approaching a “solution.” They lack a practically relevant theoretical understanding of the causes of crime, and even possession of that knowledge might not yield satisfactory crime control. Rather than educating the public about their limits, the police have manipulated public opinion and have sought an uncritical public acceptance. To accomplish these goals, they adopt a vocabulary describing their conduct and aims as “professions.”

The result of these pressures, objectives, and mandates, Manning finds, is a movement toward bureaucracy, with the prototypical police organization being one that is rational, efficient, scientific, and technologically sophisticated. Also, as one might expect, one that is oriented toward the maintenance and use of statistics. By and large, these statistics are the result of what gets reported to the police and are easily characterized by them as crime, and not necessarily the primary issues present in the social environment in which the public understands and lives.

In trying to understand the logic of these divergent perceptions of police activity and public expectations, Bratton is instructive. He notes that when he took over the New York Transit Police in New York City in 1990, more than 3.5 million people used the subways every day. For many, it was their only way to get to work and move around the city. Robberies had jumped by 48 percent in the past two years, and with other problems, like aggressive panhandlers and sleeping drunks, the subways had become an issue in the eyes of many New Yorkers. Bratton recounts that even after this increase in robberies, with a peak of about 55 per day, the total number of crimes that occurred in the subways was only about 2 percent of all crime in New York City. Fifty-five robberies a day is a small percentage when viewed from the perspective of 3.5 million daily users, yet these and other crimes made subway use problematic, especially at night, and especially for women.

When Bratton involved the Transit Authority’s (TA) director of corporate communications, John Linder, in the effort to better understand the public’s perception of crime on the subways, the results were telling. Bratton recounts them as follows:

Linder’s focus groups told him that despite the fact that the TA had virtually wiped out graffiti on the trains, about 20 percent of the respondents said it was still there. Things had gotten so bad, people didn’t even believe what they