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# *Survivors' Weekend*

## *Supporting Those Left Behind*

By KENNETH J. DOKA, Ph.D., ABE DONEY, DONALD GLEASON, and RACHAEL MINCHER



**A** state trooper is killed when his motorcycle spins out of control during a high-speed chase. An officer is fatally shot while attempting to foil a robbery. A deputy dies of a stab wound during a tense encounter as he investigates a heated family dispute.

These are examples of line-of-duty deaths that serve as constant reminders of the risks sworn law enforcement personnel face every day.<sup>1</sup> Employee assistance program (EAP) representatives will attest that these fatalities often prove inherently complicated and

affect a wide range of survivors, including family members, friends, and colleagues.

To this end, a unique cooperative relationship between the New York State Police (NYSP) EAP and the New York State Trooper Foundation (NYSTF) has resulted in an innovative

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program for survivors of New York state troopers killed in the line of duty—the annual Survivors’ Weekend held in Albany, which supplements and supports other EAP activities pertaining to line-of-duty deaths. This program provides a model for both offering services to bereaved individuals and creating a self-help network among survivors.

### **A DANGEROUS PROFESSION**

Those who choose law enforcement as a profession enter a stressful and dangerous lifestyle. These brave individuals knowingly face the reality that they could be killed before they retire.

And, when police deaths occur, they can be complicated by nature. For instance, they generally happen suddenly and “out of order,” meaning that

they involve relatively young victims who, perhaps, die before their parents. In addition, these deaths can be violent and disfiguring. Moreover, they can result in a sense of preventability that often troubles survivors who may agonize over possible ways the victim could have escaped death. All of these factors contribute to complex grief reactions.<sup>2</sup>

To further complicate matters, families of these victims may not receive the same level of support as other survivors because of an unfair judgment that the officer recognized the danger of police work before entering the field.<sup>3</sup> To this end, one study found that family members of slain officers reported higher levels of distress over a longer period of time than other mourners and often were reluctant to seek help.<sup>4</sup>

Generally, surviving spouses find the most support within the law enforcement community—from people who share the same occupational culture.<sup>5</sup> In fact, survivors of police deaths deemed it necessary to create the support group Concerns of Police Survivors (COPS).<sup>6</sup>

Family members are not the only ones to experience grief resulting from police fatalities. Colleagues also are affected. Often, these traumatic deaths challenge the assumptive order, reminding officers about the dangerous nature of their work and showing that careful actions do not always reduce risks.<sup>7</sup> Research has indicated that deaths among police officers and grief reactions by their colleagues can affect entire departments, leading to decreased morale, absenteeism, deteriorating work performance, alcohol abuse,



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*Investigator Gleason serves with the New York State Police.*



*Ms. Mincher is the president of the New York State Trooper Foundation.*

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marital difficulties, on-the-job accidents, depression, and suicide.<sup>8</sup>

## **AN EFFECTIVE RESPONSE**

The NYSP was created in 1917 and experienced its first line-of-duty death within 3 years.<sup>9</sup> While these fatalities continued to occur, no formal departmental response or program existed that could help family members or coworkers cope with these deaths. Rather, the NYSP offered such support informally until its EAP began in 1986. During the past 2 decades, the EAP has expanded dramatically in size and scope. Now, it has personnel trained in bereavement counseling and critical incident stress management. Moreover, it has close ties with bereavement specialists throughout the state. The EAP now coordinates responses to troopers' deaths and provides extensive services without a time limit to family members and colleagues. However, its most innovative extension of support services is Survivors' Weekend.

### **An Innovative Weekend**

#### *History*

The concept for Survivors' Weekend arose when the EAP director and a chaplain planned to create a mechanism to honor troopers who died in the line of duty and offer group support

for surviving family members. The EAP director secured the support of the NYSP superintendent and obtained financial and logistical backing from the NYSTF.

The first Survivors' Weekend occurred in 1995.<sup>10</sup> Parents, spouses, and children of deceased troopers received letters of invitation, and 63 survivors, who ranged widely in age and relationship, participated in the first meeting. At the time, organizers had not determined

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***...when police deaths occur, they can be complicated....***

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the frequency of the event, but the extraordinary evaluations from the participants resulted in the establishment of Survivors' Weekend as an annual occurrence.

#### *Operation and Goals*

The NYSTF pays all of the costs, including the program, hotel, transportation, and meals, of the participating survivors, primarily with the proceeds of a charity golf tournament and other fundraising events. The budget for Survivors' Weekend has grown from the original

amount of approximately \$15,000 to around \$75,000.

The structure of the weekend has remained relatively stable. On Friday evening, attendees participate in a dinner, a lecture, and, as they return to the hotel, informal fellowship. Saturday activities include a series of workshops, special activities for children and adolescents, an afternoon ritual at the Police Officers Memorial in Albany, a formal dinner with entertainment, and additional opportunities for fellowship on the return to the hotel. On Sunday, participants gather for a final presentation and closing ceremony. Throughout the weekend, the superintendent of police maintains a prominent presence, often speaking at varied events and the closing. This participation by the superintendent symbolizes the importance that the state police place on supporting the families of officers who died in the line of duty.

The program's structure supports three major goals. First, it provides ongoing grief education and assistance. To this end, the lecture usually involves a presentation that incorporates and applies some of the newest insights and understandings of grief. Workshops allow adult children, spouses and other partners, siblings, fathers, and mothers to meet in their own groups to explore

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aspects of loss unique to their roles within the family system. Another session incorporating other relatives not only considers and validates their own losses but also discusses the challenges of dealing with their own grief while supporting other survivors.

As a second goal, the weekend provides and models the ways that rituals and memorials can both honor the deceased and offer therapeutic benefits to survivors. The program includes two significant ceremonies—one at the Police Officers Memorial and the other at the New York State Police Wall of Honor at the academy. Each presentation incorporates some didactic information that emphasizes the salutary value of rituals and memorials.

A final goal is to create a sense of shared support and camaraderie among the survivors. Having participants share a hotel, meals, and activities helps facilitate this, as do the formal events and informal fellowships on Friday and Saturday nights. Over the years, evaluations and observations have recognized the support that survivors offer to one another. Further, previous participants often make contact with newly bereaved families at funerals, and some even serve as peer counselors during Survivors' Weekend. Research has indicated that such help provides considerable

value and comfort, not only to the person receiving support but also to the individual offering such assistance. Providing help to another bereaved person can give meaning to an otherwise incomprehensible death and, thus, facilitate the grief of the helper.<sup>11</sup>



Representatives from both the NYSTF and the NYSP staff the weekend. EAP personnel have another opportunity to assess survivors and provide additional information and support, and they draw on other resources. From the program's beginnings, the EAP has recruited a cadre of nationally recognized grief therapists who return each year to offer presentations, run workshops, and meet privately with individual survivors at their request, as well as to mingle informally with participants during different events. This, too, adds to the

sense of support. In addition, other speakers and performers may be scheduled to offer keynote presentations or provide entertainment during social events.

### *The Future*

Since the program's inception, evaluations by participants have led to both fine-tuning of the program and valuable discussion between EAP and NYSTF representatives about the direction that Survivors' Weekend should take as it continues into its second decade. For instance, the Sunday memorial service, once led by a police chaplain, has become more nondenominational and serves primarily as a grief memorial. Also, meetings now exist for distinct survivor groups of mothers, fathers, spouses and partners, siblings, children, and other family members.

The EAP and the NYSTF continue to discuss several issues. For example, Survivors' Weekend always has been a highly inclusive event, allowing even nonmarried, cohabitating partners to participate. In addition, attendees can invite any relatives they believe should attend. In some cases, this has led to extended family coming together during these weekends. While the NYSTF can pose limits on who and how many persons can attend, it hesitates to do so because of the potential

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conflicts and bad feelings such as a restriction could cause among future program participants, particularly in view of the open policy in effect up to the present time. Staff remains ambivalent because the number of attendees does increase the logistical difficulties and cost of the event. On the other hand, having extended family present proves valuable as this often increases the level of support and validation available to immediate family members. In addition, self-selection of participants allows staff to avoid the inherent issue of how each culture defines family. For example, some cultures may have “fictive kin,” or friends or neighbors grafted into the family; although they have no family ties, they may be addressed, perhaps, as aunt or uncle. In other cultures, godparents and godchildren may represent especially valued relationships. Finally, organizers consider the role that union delegates and peer counselors often have in assisting families at the time of the death and wonder if such personnel also should be incorporated within the weekend structure.

The length of time survivors should be allowed to attend also remains an issue. Some have suggested that Survivors’ Weekend should focus on more immediate survivors—those who have suffered the loss, perhaps, within the previous

10 years. Another event, such as an annual picnic, might help the other survivors stay connected within a less intense and therapeutic setting. Presently, there are no limits on how long survivors may attend. While this serves as another burden on logistical issues and costs, it stays consistent with current grief theory in that it acknowledges the continuing bond that exists with the deceased and reaffirms that there is no set timetable to

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***This valuable approach to helping survivors has been well received.***

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grief.<sup>12</sup> Interestingly, over the years, some surviving adult children had little or no contact with their father prior to his line-of-duty death, yet they still experienced the absence of that presence and mourned his loss. The weekend provides a unique opportunity to reaffirm that bond. In addition, it offers a cadre of support with varied perspectives and places within the grief process. Also, it allows the EAP coordinator to assess the longer-term functioning of surviving families and offer

additional counseling or referrals if merited. However, other agencies with more limited sources of funding that wish to replicate the program may have to scrutinize these policy issues.

Tensions within the varied stakeholders in the event—survivor families, EAP staff, and the NYSTF—occasionally may exist. While each group shares the broad goals of the role of the weekend, they may differ in the weight they place on concerns related to, for example, finances and ultimate ownership of the program.

Continuing support for coworkers of slain officers also remains a concern. The success of Survivors’ Weekend has highlighted the fact that there should be some sort of an ongoing program that allows appropriate follow-up activities with the police colleagues of officers killed in the line of duty.

Finally, questions exist as to whether the weekend should be limited to line-of-duty deaths or also incorporate all troopers who died under tragic circumstances, such as nonduty-related vehicular accidents or suicides. This matter remains under consideration.

### **Positive Feedback**

This valuable approach to helping survivors has been well received. One participant stated, “I would like to thank everyone involved for a very moving and

intense weekend. My children and I didn't know what to expect, but I know on some level, we became even closer than we were. It was a wonderful tribute to the families and our loved ones." Another survivor noted in her evaluation, "This was the first time in 13 years that I was able to discuss issues with people who really knew where I was coming from—other survivors." Positive comments like these affirm for the organizers of Survivors' Weekend that the event is fulfilling its important goal of providing valuable help for these families.

## CONCLUSION

Survivors' Weekend offers an innovative model of a way

to provide ongoing peer and professional support to family members of officers killed in the line of duty. Not only has the program continued to be highly evaluated but it has led to the development of peer networks and strengthened ties between survivors, their EAP coordinators, and support groups, such as COPS. Moreover, it has helped the EAP develop an extensive network of bereavement professionals they can use for consultation and referral even as they educate professionals on the unique dimensions of line-of-duty deaths within law enforcement.

Unfortunately, line-of-duty deaths are a professional hazard faced by law enforcement officers. Hopefully, other agencies will want to replicate this model. If so, they can investigate creative partnerships that can help make the program a reality. The success in Albany, New

York, testifies to the valuable help it provides to survivors. ♦

## Endnotes

<sup>1</sup> For additional information, access <http://www.fbi.gov/ucr/ucr.htm#leoka>.

<sup>2</sup> T.A. Rando, *The Treatment of Complicated Mourning* (Champaign, IL: Research Press, 1993).

<sup>3</sup> K. Doka, E. Schwarz, and C. Schwarz, "Risky Business: Observations on the Nature of Death in Hazardous Sports," *Omega: The Journal of Death and Dying* 21 (1990): 215-223; and K. Doka, *Disenfranchised Grief: New Directions, Challenges and Strategies for Practice* (Champaign, IL: Research Press, 2002).

<sup>4</sup> F. Stillman, U.S. Department of Justice, National Institute of Justice, *Line-of-Duty Deaths: Survivor and Departmental Responses* (Rockville, MD, 1987).

<sup>5</sup> J. Violanti, "Survivors' Trauma and Departmental Response Following Deaths of Police Officers," *Psychological Reports* 77 (1995): 611-615.

<sup>6</sup> For additional information, access <http://www.nationalcops.org>.

<sup>7</sup> Doka, Schwarz, and Schwarz, "Risky Business."

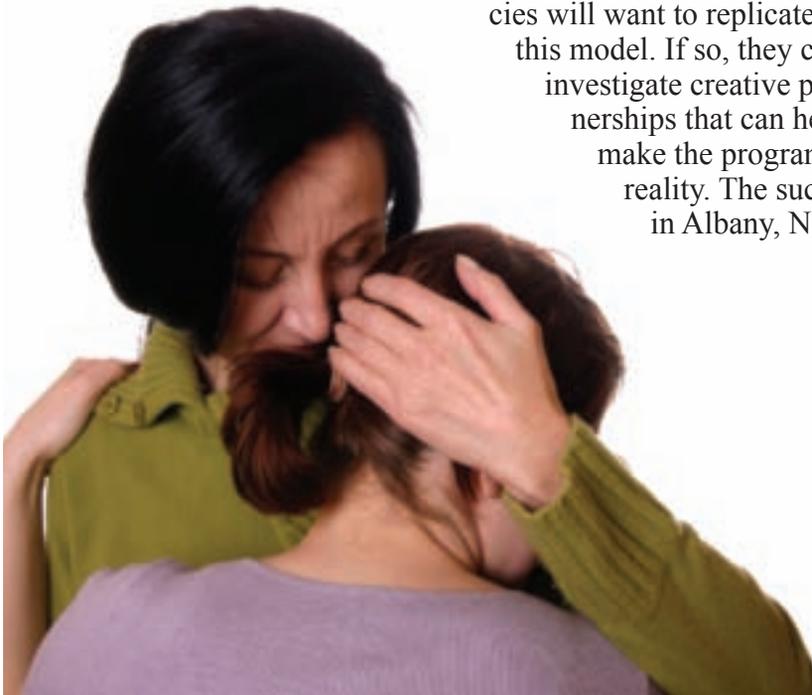
<sup>8</sup> M. Kirby, "Grief in the Law Enforcement Workplace: The Police Experience," in *Living with Grief at Work, at School, at Worship*, ed. K. Doka and J. Davidson (Philadelphia, PA: Taylor and Francis, 1999).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> D. Lund, "Giving and Receiving Help During Later Life Spousal Bereavement," in *Living with Grief at Work, at School, at Worship*, ed. K. Doka and J. Davidson (Philadelphia, PA: Taylor and Francis, 1999); and L. Calhoun and R. Tedeschi, "The Foundations of Posttraumatic Growth: New Considerations," *Psychological Inquiry* 15 (2004): 93-102.

<sup>12</sup> D. Klass, P. Silverman, and S. Nickman, eds., *Continuing Bonds: New Understandings of Grief* (Washington, DC: Taylor and Francis, 1996).



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## Using Technology to Help Solve Crimes

By Art Wimmer



**T**he techniques of developing evidence from the records of cellular phones, using mapping programs that plot information in a logical format, and mining data from a variety of sources can prove instrumental in solving difficult and complex cases. Although law enforcement organizations throughout the country may use other methods, the Violent Crime Task Force in Detroit, Michigan, has fine-tuned this three-pronged approach over the years, which has resulted in a successful conviction rate.<sup>1</sup> To illustrate how other agencies can employ this system, the author presents a recent kidnapping, extortion, and murder case.<sup>2</sup>

### The Plot

David Prince was a contract killer for anyone who offered him money. A local thug, he robbed citizens and then boasted about it by driving past them the next day with a smug look on his face. He also dabbled in the narcotics trade but preferred the easier life of a robber.

Prince had a following of misfits and used his violent outrages to control them, paying them little for their parts in the robberies. After celebrating and splitting up the profits from one of their latest

escapades, they concocted a plan that would bring in the mother lode of all robberies. They targeted Michael Lincoln, a 65-year-old recently “retired” narcotics dealer.

Lincoln frequented his old neighborhood several times a week to visit family and friends, so Prince and a crew of three others waited for him. They kidnapped him and took him to a vacant house a few miles away where they tied him up, tortured him, and then forced him to make phone calls to elicit a ransom.

tortured him, and then forced him to make phone calls to elicit a ransom.

### The Investigation

Among many other tasks, the Violent Crime Task Force responds to kidnappings in the Detroit area. A close-knit team, it consists of representatives from federal, state, local, and county agencies working hand in hand according to a memorandum of understanding. After being notified of Lincoln’s kidnapping, the task force began its investigation.

Through interviews in the neighborhood, investigators identified Prince as a suspect and developed a cell phone number for him. They obtained a state court order asking for subscriber information, call detail, cellular tower locations, and signal sector. The phone company provided the records in an electronic format that investigators uploaded into mapping software. After plotting the locations of the cell towers—specifically those when incoming and outgoing calls were made—and the crime scene site, investigators determined that Prince was in the area of the kidnapping and discovered his whereabouts afterwards.

At the same time, investigators, via another state court order, obtained records from Lincoln’s phone to see if it was active and who he had been

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calling. They learned that Lincoln had called an old friend who could tell from the background noise that he was getting beaten up. In addition, they discovered that another friend had left the ransom, per a deal made with Prince, near the abduction location. A review of Prince's cell records revealed that he was in the area of the drop site and returned to where Lincoln was being held.

Investigators also followed up on other leads, such as contacting Lincoln's doctor who informed them that he was a diabetic and needed medicine several times a day. They also visited his home and, by checking with the alarm company, determined that no one had been there for a couple of days. They found a cell phone bill in the home and learned that Lincoln carried a second phone.

Investigators obtained a state court order for records for his second phone, as well as the one he used for the ransom calls. By adding this information into the mapping software, they clearly saw that Lincoln and Prince were in the same area. They uploaded all known addresses for Prince and plotted them together with Lincoln's background data, the cell tower sites, and other relative information to get an overall view of where these were located.

After determining that Prince's phone was hitting off the same three towers continuously, investigators connected these towers via the mapping software and developed a triangle. They also plotted Lincoln's data and it fell within the triangle as well. They knew that Lincoln was somewhere within the triangle, which they referred to as the triangle of death.

While obtaining an arrest warrant on Prince for kidnapping Lincoln and stealing his truck, investigators began following Prince in the hope that he would lead them to the other perpetrators and to

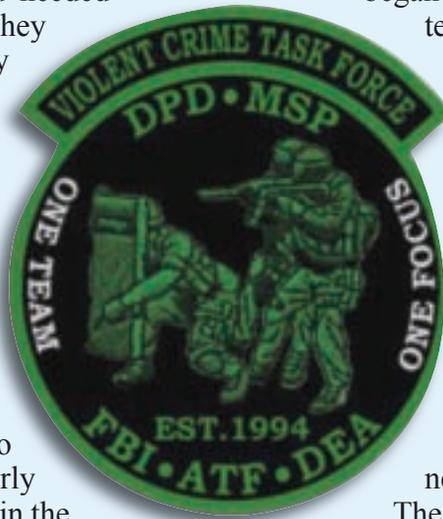
Lincoln. During the surveillance, Prince returned several times to the neighborhood where the kidnapping had occurred. He also visited a girlfriend who had a car that matched the description of the one used during the kidnapping. Two important factors evolved during the surveillance: 1) Prince never returned to the triangle of death, and 2) he never called any of the people he had contacted before the kidnapping.

After Prince detected the surveillance team, he began to drive erratically. As the arrest teams moved in, he drove down a dead-end street, abandoned his car and phone, and fled on foot. Officers captured him about 10 minutes later.

From the beginning of this case, investigators encountered a major problem: witnesses were afraid to talk because they knew that Prince was dangerous. He had been charged 3 years earlier for a murder but was released because a key witness failed to show up for the trial.

The witness had been killed weeks before as he was walking down a street. With this in mind, investigators knew that they needed to identify the other perpetrators and locate Lincoln. They felt that they could find the answers in the cell phones belonging to Lincoln and Prince.

By taking the records to Michigan's High Intensity Drug Trafficking Area (HIDTA) Program,<sup>3</sup> investigators obtained a call-frequency report of Prince's top 12 callers, which allowed them to establish a time line of his phone activity. They combined this information with what they knew, such as the times of the kidnapping, the ransom calls, and the retrieval of the money, along with other factors relevant to the cell towers. They obtained a state search warrant and examined phone records and subscriber information for the people Prince had called, as well as names stored in his



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electronic phone book. Prince was bound over for trial, and witnesses began talking more and gaining confidence in the investigators. One provided the nickname of a suspect who may have abducted Lincoln.

As volumes of paper and records flowed in from the phone companies, investigators conducted background checks and interviews and plotted these new addresses into the mapping software. By using a data-mining company's comprehensive search functions, they discovered old addresses. After an agonizing 4 months of analyzing records, they finally uncovered a vital link. One of the people Prince called, named Tage, had a former address in the triangle of death. This was the best lead to date.

### The Resolution

After making all necessary preparations, including obtaining search warrants, placing two polygraph examiners on standby, ensuring availability of cadaver dogs, and coordinating with the prosecutor's office, arrest teams went to a house in the triangle of death looking for Tage. Investigators had learned that in an arrest record, Tage had given a girlfriend's address as an emergency contact. A case management program developed by a member of the Violent Crime Task Force indexed a majority of the Detroit Police Department's databases and linked Tage to the girlfriend. The arrest teams found him hiding in the rear bedroom with his girlfriend.

During the subsequent interview, Tage indicated that he had no knowledge of the kidnapping. However, as examiners started to conduct the polygraph, he began to cry and told investigators what happened. He said that Prince and two others, Too Sweet and Rocky, had kidnapped Lincoln because they heard he had come into a lot of money. They

took him to an abandoned house that his sister used to live in, shot him in the legs, and then buried him. Tage advised that the body was located under a dog house in the backyard of the house across the street from where police had arrested him earlier that day.<sup>4</sup>

Tage also provided information that assisted in identifying Too Sweet. Investigators obtained a cell phone number for him and began to track his phone using the mapping software they had been uploading all along. After about an hour of chasing him through the neighborhoods, the surveillance and arrest teams cornered him in a local liquor store and took him into custody.

Lincoln's body was located under the dog house as Tage had described. He had been shot in the legs and had bled to death within hours, according to the medical examiner.

About a month later, the third offender was apprehended while making a drug drop in a nearby state. Officers detected inconsistencies in his identity, took him to the station to be fingerprinted, and found the warrant for his arrest in NCIC.

The trial lasted 3 weeks. Afterwards, the judge, the defense attorneys, and the jurors all said that the cell phone records (over 2,000 pages) and the analysis of the phone data ultimately led to the closure of the case.

### Conclusion

The Violent Crime Task Force in Detroit, Michigan, has successfully resolved several challenging cases by incorporating cell phone records, mapping software, and data-mining techniques into its investigations. This three-pronged approach works hand in hand with solid police work and dedicated perseverance. Other law enforcement agencies

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## Bulletin Reports

### *Identity Theft*

The Bureau of Justice Statistics (BJS) special report *Identity Theft, 2005* contains data from the National Crime Victimization Survey (NCVS) on identity theft victimization and its consequences. This document presents the first full year of data available after new questions about identity theft were added to the survey in July 2004. The NCVS defined identity theft as credit card thefts, thefts from existing accounts, misuse of personal information, and multiple types of identity theft during the same episode. Based on interviews with a nationally representative sample of 40,000 household residents, the report describes the age, race, and ethnicity of the household head; household income and composition; and location of the household. Characteristics of the theft include economic loss, how the theft was discovered, whether misuse is ongoing, and problems experienced as a result of the identity theft. Specifically, about 1.6 million households experienced theft of existing accounts other than a credit card, such as a banking account, and 1.1 million households discovered misuse of personal information, such as a social security number. Ten percent of the households with incomes of \$75,000 or higher experienced identity theft, which represented about twice the percentage of households earning less than \$50,000. And, across all types of identity theft, the average amount lost per household was \$1,620. The complete report (NCJ 219411) can be obtained by accessing the BJS Web site at <http://www.ojp.usdoj.gov/bjs/abstract/it05.htm>.

### *SANE Programs*

With Office for Victims of Crime funding, the West Virginia Foundation for Rape Information and Services (FRIS) developed *Implementing SANE Programs in Rural Communities: The West Virginia Regional Mobile SANE Project* to offer a blueprint for replication so that other communities can establish a successful sexual assault nurse examiner program of their own. This guide, available in both print and online formats, documents the processes involved in planning, developing, implementing, and sustaining the West Virginia project; discusses lessons learned; and contains a checklist and information on available resources for those who serve victims of sexual assault. The complete report (NCJ 221749) can be accessed at [http://www.ovc.gov/publications/infores/WVA\\_Mobile\\_SANE\\_guide/pfv.html](http://www.ovc.gov/publications/infores/WVA_Mobile_SANE_guide/pfv.html). Much of the information was drawn from the FRIS "Mobile SANE Project Final Report," available on the FRIS Web site, <http://www.fris.org>.

# *Law Enforcement Training Factors in the Spanish-Speaking Community*

By ARTHUR NATELLA, Jr., Ph.D. and  
PABLO PAUL MADERA, M.C.J.A.



**S**panish-speaking Americans constitute the fastest growing minority in the United States. The federal government estimates that the number of Spanish speakers will increase to over 102 million by the year 2050.<sup>1</sup> In addition, they no longer live predominantly in border states but in every area of the country. The resulting implications for

law enforcement training are dramatic. A basic knowledge of Spanish is quickly becoming the standard for communities with large Spanish-speaking populations. Although Spanish-speaking officials work in many local, state, and federal law enforcement agencies, they may not always be available, including in emergency situations.<sup>2</sup>

Demographic changes are occurring so rapidly in the United States that many cities and towns may be unprepared for the challenges that such change can create. Social and cultural factors can pose as much of a dilemma to law enforcement personnel as linguistic issues. Many officers graduate from training academies with limited preparation to deal with

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concerns relating to Spanish-speaking communities. Trainees must understand the importance of dealing with citizens on an individual basis, rather than as a generic population, and how assimilation into the U.S. culture varies according to immigrant generations. Subsequently, those who train recruits should examine some basic elements of cultural differences that can assume great importance in the everyday life of those who enforce the law.

### **Names**

In countries with Spanish as a native language, such as Spain and most of Latin America, each person has two last names. In contrast to the tradition in the English-speaking world, the next to the last name, not the last one, comprises the name of record. For example, Pablo Escobar Santiago would have Escobar as his last name of record, rather than Santiago. In the United States, this often causes confusion, especially when police officers conduct checks of such individuals. Some Spanish speakers try to confuse authorities by telling them that the second of the two is the name of record. In addition, some courts have wrongly accused these individuals of having an alias. For example, Jose Escobar Santiago could be accused of being Jose Escobar, alias Santiago, when

Jose Escobar Santiago is simply the correct form of that person's name.

Married women traditionally add their husband's last name to their maiden last name with the word *de*, which means "of," before it. Thus, Maria Santiago marries Pablo Escobar and becomes Maria Santiago de Escobar.

Spanish speakers are especially fond of nicknames. Although this may seem of little relevance to police work, such names are so common that even family members who use them for many years may forget that they do not form a person's real name. While investigating missing persons cases, for example,

even close relatives who call a female Marucha may forget that her real name, the name of record, is Maria. Officers should make sure that the information they receive pertains to the correct name of record.

### **View of Law Enforcement**

When Americans experience an emergency or fall victim to a crime, they normally call the local police. Most believe that citizens in other countries react the same way, which is not always the case. Views of the police and governmental authorities in general can vary greatly from one part of the world to another. In Latin America, many citizens have lived in



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repressive societies/dictatorships where police and security forces are arms of repression. Accordingly, a person's view of a federal government and those who carry out policies can differ significantly from the prevailing concepts in the United States. Therefore, law enforcement officers should realize that many Spanish speakers may not report some crimes simply because of their fear of officials. As a result, academy instructors should prepare recruits for possible difficulties in obtaining information and cooperation from people in Spanish-speaking communities because their views of police presence may include fear and hostility, rather than a realization that officers are there to help. Such feelings may be more prevalent than many trainees suspect and can vary depending on individuals, families, and communities. Consequently, these attitudes will be greater among those who recently have come to this country than among second- and third-generation members.

### **Pride in National Identity**

Americans tend to lump Spanish speakers together with such terms as *Latins*, *Latinos*, or *Hispanics*. Although such terms are valid, many group all Spanish speakers as though they were indistinguishable. They often refer to people of Hispanic origin as comprising

the Hispanic vote or making up the Hispanic market, displaying the assumption that all Spanish speakers have the same political views and buying habits. In reality, they do not all share the same identity, whether cultural or national. On the contrary, they often feel great pride in their local, provincial, or national identities to the point that they may resent being grouped with those from other parts of the Spanish-speaking world.

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***Views of the police and governmental authorities in general can vary greatly from one part of the world to another.***

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Spanish speakers may take offense if law enforcement officials describe them as a Latino or Hispanic or categorize them with citizens from countries other than their own. Border disputes have occurred between countries in Latin America, such as the traditional rivalry between neighboring nations Chile and Peru that fought against each other in the War of the Pacific (1879-1884). Social, cultural, political, and economic

differences may divide adjacent countries. In addition, individuals may not completely understand such identifiers as Hispanic, Latin, or Latino. Officers should take the time to ascertain a person's actual nationality, rather than use generic terms.<sup>3</sup>

### **Expressivity and Body Language**

Psychological studies show that people from Latin America, Spain, and other countries in southern Europe, such as Portugal, France, and Italy, who speak native languages that evolved from Latin are extremely expressive in their body language and facial expressions. The range of expressivity can be more dramatic than what appears common in the English-speaking world. In addition, Spanish speakers traditionally tend to converse in close proximity to others. Therefore, officers should not immediately nor necessarily believe that particularly expressive gestures with the hands and arms constitute the prelude to a personal attack. Further, they should not assume that individuals with highly expressive facial gestures are not in control of their mental faculties.<sup>4</sup> Additionally, many people believe that anyone who limits or avoids eye contact while speaking may be lying or being evasive, all of which alerts law enforcement to the possibility of guilt. Actually, many Spanish

speakers believe that making eye contact with authority figures directly expresses a lack of respect, a cultural characteristic that often can affect communication between citizens and law enforcement officials.

### Concept of Time

Traditionally, many social observers claim that the Spanish-speaking world views time in a more relative manner.<sup>5</sup> Law enforcement personnel should be aware that such differences can impact the reporting of crimes, as well as court testimony. Such variability in the estimation can negatively affect setting up a time for a possible sting operation when an informant says that a criminal act will take place, yet the participants may actually show up much later than expected.

### Machismo

The term *machismo* comes from the Spanish word *macho* and refers to a strong sense of masculine pride or exaggerated sense of power or strength<sup>6</sup>—a combination of attitudes basic to the Spanish-speaking world. Such an observation may seem irrelevant to police work. However, it applies to on-the-job law enforcement, especially in cases of domestic violence. Officials often find that some

Spanish-speaking males may be imbued with this trait to the point that they actually believe they control every activity within their own home. They often do not realize that physical violence is a matter for civil control or that such activities no longer concern only them and their families because they constitute criminal offenses. As a result, academies should prepare trainees for the possibility of encountering an extra degree



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of resistance to their presence in such situations. They must realize the importance of making additional efforts to explain the legal ramifications of violence and the penalties that exist for those who violate the human rights of others, including close family members.

### Conclusion

Today, rapidly changing demographics in the United States have created new challenges

for the law enforcement profession. As the Spanish-speaking population continues to grow in this country, agencies should ensure that recruits bear in mind the fundamental elements of cultural differences. Training in such matters invests in the future because these and other related issues will increasingly become more important to the law enforcement community. In spite of any generalizations, officers ultimately deal with individuals, not a generic population. Sensitivity to each situation and every person must prevail at all times. ♦

### Endnotes

<sup>1</sup> <http://www.census.gov/population/www/socdemo/hispanic/hispanic.html>

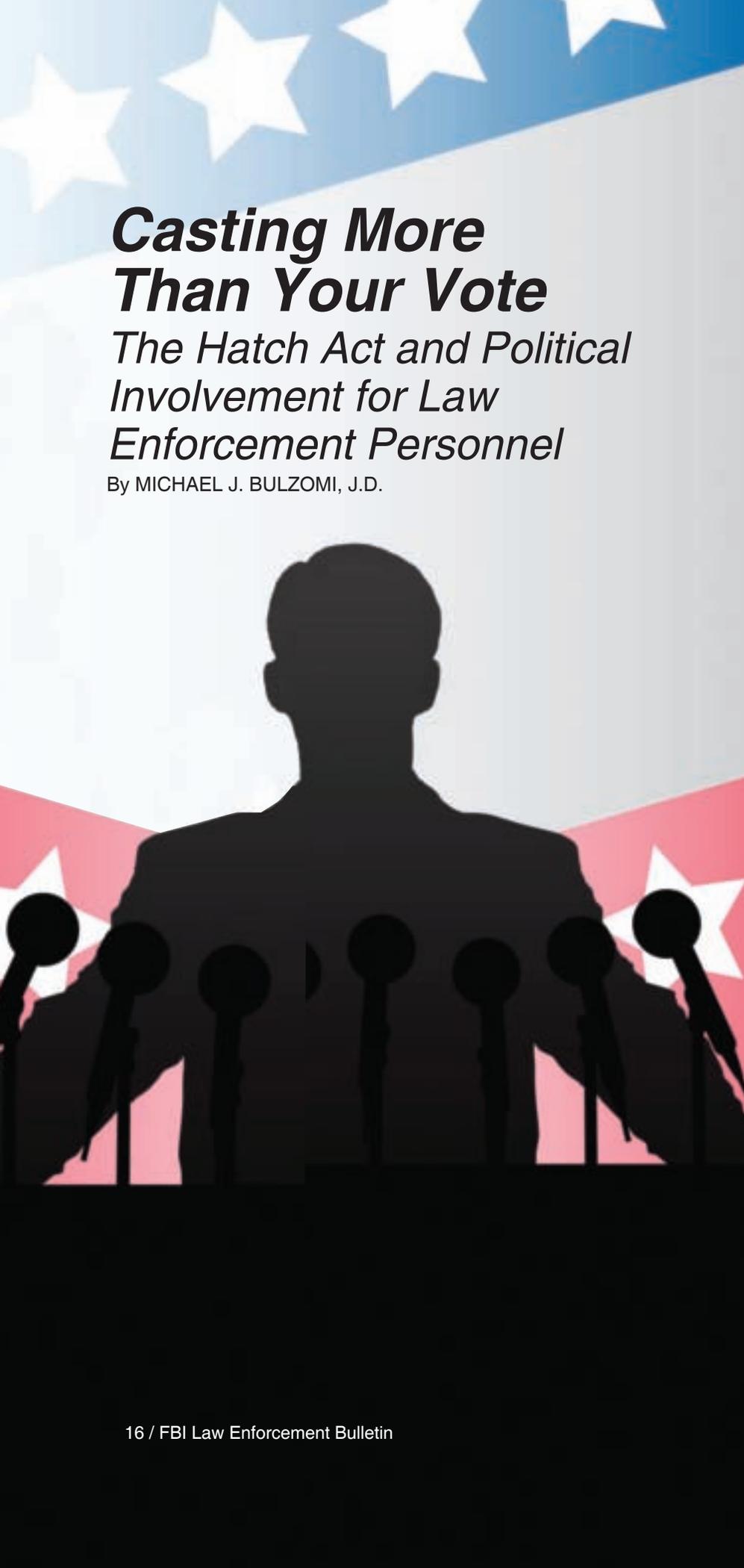
<sup>2</sup> For additional information, see Pablo P. Madera and Arthur Natella, *Community Spanish for Law Enforcement Field Guide* (Sudbury, MA: Jones and Bartlett, Inc., 2006).

<sup>3</sup> Sheryl Lindsley, "U.S. Americans and Mexicans Working Together: Five Core Mexican Concepts," in *Intercultural Communications: A Reader*, ed. Larry A. Samovar and Richard E. Porter (Belmont, CA: Wadsworth Publishing Co., 2000), 265-266.

<sup>4</sup> *Ibid.*

<sup>5</sup> Michael Hecht, Michael V. Sedano, and Sidney R. Ribeau, "Understanding Culture, Communication, and Research: Applications to Chicanos and Mexican Americans," *International Journal of Intercultural Relations* 17, no. 2 (Spring 1993): 157-166.

<sup>6</sup> Merriam-Webster's Collegiate Dictionary, 11th ed., s.v. "machismo."



# ***Casting More Than Your Vote***

## ***The Hatch Act and Political Involvement for Law Enforcement Personnel***

By MICHAEL J. BULZOMI, J.D.

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*“The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.”*

—John F. Kennedy

**E**very election year brings more than simply the ability of exercising an individual’s democratic right to vote. Elections also generate questions from legions of government workers concerning the impact of the federal statute governing partisan political activity, often referred to as the Hatch Act. Most federal employees know that the act applies to them in some way but they may not know how or why. More baffled yet are the unsuspecting state and local employees who find that the act may apply to them as well. This article explores the history and rationale behind the Hatch Act as well as to whom it applies and the scope of its reach.

### **HISTORICAL BACKGROUND**

In 1800, President Thomas Jefferson, in response to last-minute presidential appointments of key government

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positions by his predecessor designed to hamper his term, issued an Executive Order that said federal workers should neither “influence the votes of others nor take part in the business of electioneering.”<sup>2</sup> He saw such activities as being “inconsistent with the spirit of the Constitution.”<sup>3</sup> In issuing this Executive Order, President Jefferson began what would become a long and arduous attempt to neutralize politics in federal employment.

In 1882, Senator George H. Pendleton, perhaps in response to the 1881 assassination of President Garfield by a disappointed patronage seeker, argued that “the spoils system needs to be killed or it will kill the republic.”<sup>4</sup> His argument led to the passage of the Pendleton Act of 1883.<sup>5</sup> The law, in addition to creating the Civil Service Commission, sought to eliminate patronage by insulating federal employees from coercion. It provided that they could not be fired for refusing to work on behalf of a candidate or for choosing not to make campaign contributions.

In 1907, President Theodore Roosevelt instituted additional measures to neutralize politics in federal employment through Executive Order 642.<sup>6</sup> The order forbid executive civil service employees from using their authority to interfere

in elections and barred federal civil servants from taking part in political management or campaigning. This order marked the first time that federal employees had limits placed on their First Amendment right to engage in political speech.

Finally, in 1939, led by the efforts of Senator Carl Hatch, Congress enacted “An Act to Prevent Pernicious Political Activity,” which became known as the Hatch Act, out of concern that the administration, through the increase in the number of federal workers, sought to influence congressional elections.<sup>7</sup> Congress hoped that the act would curtail the president from meddling with elections while perpetuating his hold on the White House. The act combined the prohibitions of earlier Executive Orders and the Pendleton Act. It went further

than previous attempts to end patronage by including restrictions on political activity for the entire federal bureaucracy.

Congress further extended the scope of the Hatch Act in 1940 by including state and local government employees who work in connection with federal funds in the form of aid or grants.<sup>8</sup> Initially, state employees were not included in the act to enable states to function independent of the federal government. However, Congress quickly changed its mind and extended the act’s ethical standards to state employees whose positions are tied to federal funds. The Hatch Act was amended in 1974 to allow for greater political activity by state and local employees.<sup>9</sup> This liberalization was given to most federal employees in a 1993 amendment to the act.<sup>10</sup>

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***The intent of the Hatch Act is to preserve and to protect the rights of government employees, as well as the public’s right to an impartial bureaucracy....***  
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*Special Agent Bulzomi is a legal instructor at the FBI Academy.*

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## JUDICIAL REVIEW

Freedom of speech is one of the “Four Cornerstones” of freedom listed in the First Amendment of the Constitution.<sup>11</sup> The most protected type of speech is political speech. The crux of the argument is whether government employees whose political activities are constrained by the Hatch Act are subjected to a watered-down version of constitutional rights. The U.S. Supreme Court has addressed whether the restrictions of the Hatch Act can be reconciled with the First Amendment’s right to engage in political speech in a number of cases.

The Supreme Court first addressed the constitutionality of the Hatch Act in *United Public Workers v. Mitchell*.<sup>12</sup> The Court sustained its constitutionality despite its infringement on speech, citing the significant government interests advanced by the act. In this case, the Civil Service Commission charged a government employee with off-duty political activity that violated the Hatch Act, and the employee faced dismissal for his conduct. The Court accepted the employee’s contention that the Hatch Act creates a measure of interference with the nature of political rights reserved to the people by the Constitution. The Court did not accept the argument that such expression is not subject to regulation if done

while not on the job, although admittedly could be regulated during work hours. The Court reasoned “the influence of political activity by government employees, if evil in its effects on...the employees or people dealing with them, is hardly less so because that activity takes place after hours.”<sup>13</sup>

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***Public confidence is paramount to efficient government and even the appearance of unethical partisan activity erodes that confidence to a disastrous extent.***

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The Supreme Court recognized the sanctity of the rights protected by the First Amendment but reaffirmed constitutional doctrine that such rights are not absolute. The Court stated that the “essential rights of the First Amendment in some circumstances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery.”<sup>14</sup> Thus, the Court must balance the extent of the guarantees of freedom against a congressional enactment to

protect a democratic society from the supposed evil of political partisanship by classified employees of the government.

The Court stated that the Hatch Act leaves untouched full participation by employees in political decisions at the ballot box and forbids only the partisan activity of federal personnel deemed offensive to efficiency. With that limitation only, employees may make their contributions to public affairs as they did prior to the Hatch Act. The Court reasoned that Congress and the president are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, no constitutional objection could be made.

The Supreme Court upheld the Hatch Act ban on partisan political activities of federal employees. The Court concluded that the employee’s first amendment right to engage in political speech and activity was subject to regulation within reasonable limits to protect the competency and integrity of the public service and to maintain authority over its discipline and efficiency.

In 1947, the Court considered a state challenge to the Hatch Act in *Oklahoma v. Civil Service Commission*.<sup>15</sup> In this case, the state of Oklahoma

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appealed a Civil Service Commission determination that a member of the Oklahoma Highway Commission be suspended or federal funds be withheld from the state for refusing to suspend the state employee. The Supreme Court affirmed the district court decision sustaining the order of the Civil Service Commission.

The commission determined that a state employee whose job was essentially financed through federal funds violated the Hatch Act by participating in improper political activity. A violation of this kind warranted removal from the office of Highway Commissioner of Oklahoma pursuant to the Hatch Act. If the employee was not removed, then highway grants to Oklahoma would be withheld in an amount equal to 2 years of the employee's wages.

The Court concluded that the Tenth Amendment, which protects the sovereignty of the states, did not deprive the federal government of the authority to exercise a granted power and apply it to an acceptable end. The end sought by Congress was better public service achieved through the Hatch Act by requiring state employees whose positions are tied to federal funds to abstain from active partisan

participation. The Court did not see any violation of the state's sovereignty in the commission's hearing or order. The Court concluded that the state employee's partisan position clearly violated the Hatch Act and that the determination of the commission in ordering his removal was not an abuse of its discretion. Oklahoma decided not to yield to what it considered to be federal coercion and chose not to remove the employee. As an alterna-



tive enforcement measure in extending the Hatch Act to state employees, Congress settled on withholding federal funds as a remedy for violations if a state refused to remove an employee pursuant to a commission order. This enforcement mechanism allowed Congress to leave the ultimate employment decision to the states and to extend federal authority no further than federal money. This decision

preserves the sovereignty of the states pursuant to the Tenth Amendment.

The Supreme Court rejected another challenge to the Hatch Act in 1973 in *U.S. Civil Service Commission v. National Ass'n of Letter Carriers*.<sup>16</sup> A three-judge district court decision recognized the government's interest in restricting political activities by federal employees yet held that the statutory definition of political activity was too vague and overbroad and, thus, unconstitutional. In this case, the Supreme Court disagreed, concluding that the Hatch Act prohibitions were neither unconstitutionally vague nor fatally overbroad.

The Court stated that its decision merely confirmed the judgment of history made over the last century by Congress and by the president that federal service should

depend upon meritorious performance, rather than political service. The Court reasoned that the government's interest in regulating First Amendment activities of its employees differs greatly from those implicated with regulation of speech of general citizens with more deference afforded the government as employer.<sup>17</sup>

The Court said that Congress, in the Hatch Act, had

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struck a balance sustainable by the obviously important interests sought to be served by the limitations on partisan political activities contained in the act. While restraining First Amendment activities of government employees, the Hatch Act furthers the promotion of impartiality and fairness and protects the public by minimizing partisan enforcement of laws.<sup>18</sup>

Opponents of the Hatch Act have continued to attack the act throughout the subsequent years without success.<sup>19</sup> Although it may appear to some as a restraint of First Amendment speech, the act is “aimed to protect employees’ rights, notably their right to free expression, rather than to restrict those rights.”<sup>20</sup> Public confidence is paramount to efficient government and even the appearance of unethical partisan activity erodes that confidence to a disastrous extent. To ensure the rights of all citizens, Congress has balanced the rights of the people against the rights of individual government employees, providing protection for all from even the appearance of unethical partisan activities.

## **RESTRICTION COVERAGE AND SCOPE**

### **Federal Executive Employees**

All federal executive branch and civil service employees except the president and vice president are subject to the

Hatch Act. Congress amended the act in 1993 permitting most federal employees to participate in some off-duty partisan political activities.<sup>21</sup> However, under the 1993 amendment, federal employees are placed into two categories, less restricted and further restricted employees.<sup>22</sup> Less restricted employees enjoy the looser restrictions of the 1993 amendment, permitting

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***All violations of the Hatch Act, whether by federal employees or by covered state and local employees, are subject to OSC investigation.***

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more partisan political activity than further restricted employees who generally work for agencies involved in law enforcement or national security issues. This would include, for example, personnel with the U.S. Department of Justice and the Central Intelligence Agency, along with some Treasury Department employees, to name a few.

### **Prohibited Activities**

Regardless of an individual’s status as either less

restricted or further restricted, the act enumerates a number of political activities prohibited for all employees that it covers. Note that an *employee* of the government is still an *employee* even if on leave of any kind.<sup>23</sup> Prohibited activities include running for office in a partisan election, soliciting political contributions, soliciting or encouraging political activity of those with business before your agency, or using your official authority to affect the outcome of an election.<sup>24</sup> In addition, political contributions may not be received from subordinates,<sup>25</sup> and covered employees also may not participate in fundraising for political purposes.<sup>26</sup> Political activity on duty, as well as in government offices or vehicles or while wearing government uniforms, also is restricted.<sup>27</sup> On-duty political activity would include, for example, using government e-mail for political purposes, i.e., soliciting large numbers of employees as opposed to commenting in regard to political issues to a small number of associates similar to “water cooler” talk.<sup>28</sup> Another example would be participating in partisan voter registration drives during office hours.<sup>29</sup>

Further restricted employees may not “take an active part in political management or political campaigns.”<sup>30</sup> This means that further restricted employees may not manage a partisan

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political campaign,<sup>31</sup> canvass for votes, or endorse or oppose a candidate in political literature in concert with a partisan group or person.<sup>32</sup> Political activity is restricted in regard to political groups by forbidding service as an officer of a political party or group; serving as a delegate, alternate, or proxy at a party convention; and making speeches for or against a candidate in connection with a political group.<sup>33</sup>

Further restricted employees, of course, may vote in all partisan elections and express opinions on political subjects.<sup>34</sup> They also may work in nonpartisan campaigns; attend political meetings; donate money to political parties and candidates; and sign, but not distribute, nominating petitions.<sup>35</sup>

### State and Local Employees

Employees of state or local executive agencies are covered by the Hatch Act if, incident to their primary position, they perform duties connected to programs financed wholly or in part by federal funds.<sup>36</sup> If executive branch state or local employees as a normal incident of their job perform duties even in part financed by federal funds, they are bound by the Hatch Act limitations.<sup>37</sup> This does not mean that such employees must have discretionary authority over the funds.<sup>38</sup> Federal grant and loan programs typically

triggering the Hatch Act include programs funding training, employment, overtime, community and regional development, emergency preparedness, and homeland security.

Select employees are specifically exempt from the restriction against running for office in partisan elections. These would include publicly elected officials, such as sheriffs, mayors, and governors.<sup>39</sup> However, the other Hatch Act restrictions covering these officials still apply.

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### Prohibited Activities

The provisions of the Hatch Act that apply to state and local employees employed in positions with duties connected to federal funds are not as restrictive as those relating to federal employees. Generally, covered state and local employees are restricted from 1) running for partisan political office, 2) coercing donations from subordinate employees, or

3) using their official authority to influence the results of an election.<sup>40</sup> For covered employees, the prohibition against candidacy includes not only running as a candidate but also preliminary activities to “test the water” for possible candidacy.<sup>41</sup> In addition, the prohibition against coercing donations refers not only to money but to time as well.<sup>42</sup>

### Permitted Activities

There are a number of things that covered state and local employees may do even if they are considered *covered employees* under the Hatch Act. They may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, and actively campaign for candidates for public office in partisan and nonpartisan elections to include engaging in activities, such as drafting speeches, writing letters, contributing money to political organizations, and attending political fundraisers.<sup>43</sup>

### VIOLATIONS AND PENALTIES

The Office of Special Counsel (OSC), established by the Civil Service Reform Act of 1978, is tasked with investigating Hatch Act violations.<sup>44</sup> All violations of the Hatch Act, whether by federal employees or by covered state and local

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employees, are subject to OSC investigation. Federal agencies involved in loaning or granting funds must report to OSC any activity of state and local officers that the agency has reason to believe violates the Hatch Act.<sup>45</sup> Private individuals also may submit complaints about Hatch Act violations.

If an OSC investigation uncovers evidence of a violation of the Hatch Act warranting prosecution, OSC files a written complaint before the Merit Systems Protection Board, which is responsible for adjudicating these complaints. A copy of the complaint is served on the employee. The employee has the right to contest the charges, including the right to a hearing before the board.<sup>46</sup>

Based on an investigation conducted by the OSC, the U.S. Merit Systems Protection Board determines if a Hatch Act violation has occurred and whether removal from employment is warranted.<sup>47</sup> For federal employees, those who violate the Hatch Act may lose their job or receive time off without pay.<sup>48</sup> Factors considered in the severity of discipline include 1) the nature of the offense and the extent of participation, 2) motive and intent, 3) whether legal advice was received concerning the act, 4) whether the activities ceased, 5) past employment history, and 6) the political coloring of the activities.<sup>49</sup>

With respect to state and local employees found to violate the Hatch Act, the federal government may recommend forfeiting the job; however, as the federal government lacks the ability to remove the state or local employee from employment, it is up to the state or local government to do so. If the decision is made by the state or local entity involved not to dismiss the employee, the entity may be directed to forfeit a portion of its federal funding equal to 2 years' salary of the employee.<sup>50</sup>

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***The act fights corruption and political machines while trying to preserve the appearance of nonpartisanship....***

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OSC can bring an enforcement action whether or not the employee is aware of the restrictions. If a violation is not severe and the employee was unaware of the provisions, OSC can issue a letter to allow the employee to come into compliance. If an employee disregards the letter, OSC can bring an

enforcement action before the board.<sup>51</sup>

The best way to ensure that your actions conform to the Hatch Act is to confirm compliance with the Office of Special Counsel. The Office of Special Counsel issues advisory opinions on the application of the Hatch Act to a given employee, as well as the extent of the restrictions at issue and interpretation of applicable regulations. An advisory opinion can be obtained by contacting the Office of Special Counsel at 1-800-85-HATCH; or by e-mail at [hatchact@osc.gov](mailto:hatchact@osc.gov); by fax at 202-853-5151; or by mail at Office of Special Counsel, Hatch Act Unit, 1730 M Street NW, Suite 218, Washington, DC 20036-4505. The Office of Special Counsel also has an informative Web site at [www.osc.gov](http://www.osc.gov).

## CONCLUSION

The Federalist Papers discussed the fact that unchecked partisanship within the government will endanger the public's rights.<sup>52</sup> Given that Congress may not unduly make a law abridging freedom of speech, the press, or the right of the people to peaceably assemble, it cannot maintain a bureaucracy that works the same infringement. The Hatch Act was in response to scandals involving misuse of position and coercion of subordinates for partisan gain

during a period of great expansion of federal power and political dominance by one party. The intent of the Hatch Act is to preserve and to protect the rights of government employees, as well as the public's right to an impartial bureaucracy that does not chill its right to free expression. The act fights corruption and political machines while trying to preserve the appearance of nonpartisanship, gain respect for the government, and ensure a professional civil service that protects the rights of the people. ♦

#### Endnotes

<sup>1</sup> President John F. Kennedy, April 27, 1961, (special message to the Congress on the Conflict of Interest Legislation and on problems of ethics in government).

<sup>2</sup> James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, at 98-99 (1899).

<sup>3</sup> *Id.*

<sup>4</sup> 14 Cong. Rec. 206 (1882).

<sup>5</sup> 22 Stat. 403.

<sup>6</sup> *Reprinted in* 1 Presidential Executive Orders 61 (1944).

<sup>7</sup> An Act to Prevent Pernicious Political Activity (Hatch Act), 5 U.S.C. §§1501-1508, 7321-7326 (1939).

<sup>8</sup> See 5 U.S.C. §1502(a)(3).

<sup>9</sup> Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1290 (1974) (codified at 5 U.S.C. §§1501-1503).

<sup>10</sup> Hatch Act Reform Amendments of 1993, Pub. L. No. 103-94, 107 Stat. 1001 (1993) (codified at 5 U.S.C. §§7321-7326).

<sup>11</sup> U.S. CONST. amend. I.

<sup>12</sup> 67 S. Ct. 556 (1947).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 67 S. Ct. 544 (1947).

<sup>16</sup> 93 S. Ct. 2880 (1973).

<sup>17</sup> *Id.* at, citing *Pickering v. Board of Education*, 88 S. Ct. 1731, at 1734 (1968).

<sup>18</sup> 93 S. Ct. at \_.

<sup>19</sup> See *Alexander v. U.S. Merit Sys. Prot. Bd.*, 165 F.3d 474 (6th Cir. 1999) (Hatch Act imposition of different punishments on state and federal employees does not violate the Equal Protection Clause as this was a rational response to diminish federal power regarding state and local employees by Congress.); *Merle v. United States*, 351 F.3d 92 (3d Cir. 2003) (noted that covered state employees could not run for office



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under the Hatch Act but could quit their jobs and do so finding no violation of the Qualifications Clause of the Constitution.); and, *Burrus v. Vegliante*, 336 F.3d 82 (2d Cir. 2003) (held that reasonable regulation was appropriate for a union bulletin board in an interior nonpublic forum.).

<sup>20</sup> *United States v. Nat'l Treasury Employees Union*, 513 U.S. 454, at 471 (1995).

<sup>21</sup> Hatch Act Reform Amendments of 1993, Pub. L. No. 103-94, 107 Stat. 1001 (1993) (codified at 5 U.S.C. §§7321-7326).

<sup>22</sup> 5 U.S.C. §7323(b)(2)(B) (2000) lists the agencies whose employees are subject to the additional restrictions; some of these are the Federal Bureau of Investigation,

the Secret Service, the Central Intelligence Agency, the National Security Council, the National Security Agency, the Defense Intelligence Agency, the Office of Special Counsel, the Office of Criminal Investigation of the Internal Revenue Service, the Office of Investigative Programs of the U.S. Customs Service, and the Office of Enforcement Programs and Services of the Bureau of Alcohol, Tobacco, and Firearms. (Some of the names have changed, but they are still considered under the restrictions).

<sup>23</sup> See *Alexander v. United States Merit Sys. Prot. Bd.*, 165 F.3d 474 (6th Cir. 1999).

<sup>24</sup> 5 U.S.C. §7323(a) (2000).

<sup>25</sup> *Id.* at §7323(a)(2)(B).

<sup>26</sup> 5 C.F.R. 734.303(a) (2004).

<sup>27</sup> *Ibid.*, 10 at §7324(a) see also 5 C.F.R. 734.306 ex. 11 (2000).

<sup>28</sup> Letter by William E. Reukauf, Associate Special Counsel for Investigation and Prosecution, U.S. Office of Special Counsel (May 30, 2002), available at <http://www.osc.gov/documents/hatchact/federal/fha-29.htm>.

<sup>29</sup> See *Am. Fed'n of Gov't Employees v. O'Connor*, 589 F. Supp. 1551 (D.D.C. 1984), vacated on other grounds, 747 F.2d 748 (D.C. Cir. 1984); see also Letter from K. William O'Connor, Special Counsel, U.S. Office of Special Counsel (Apr. 6, 1984) (on file with U.S. Office of Special Counsel); Letter from Scott J. Bloch, Special Counsel, Office of Special Counsel (Apr. 14, 2004) [hereinafter Voter Registration Drive Advisory I], available at <http://www.osc.gov/documents/hatchact/federal/fha-31.htm> ("In determining whether a voter registration drive is partisan, OSC considers all of the circumstances surrounding the drive. Some of the factors relevant to this inquiry, as discussed in our 1984 opinion, include: 1) the political activities of the sponsoring organization; 2) the degree to which that organization has become identified with the success or failure of a partisan political candidate, issue, or party (e.g., whether it has endorsed a candidate); 3) the nexus, if

any, between the decision to undertake a voter registration drive and the other political objectives of the sponsor; 4) whether particular groups are targeted for registration on the basis of their perceived political preference; and 5) the nature of publicity circulated to targets of the drive immediately prior to or during the drive.”)

<sup>30</sup> *Ibid.*, 10 at §7323(b)(1).

<sup>31</sup> 5 C.F.R. 734.403.

<sup>32</sup> *Id.* at 734.404(a)(3) and (4).

<sup>33</sup> *Id.* at 734.409(a) and (d).

<sup>34</sup> *Id.* at 734.203(a).

<sup>35</sup> *Id.* at 734.402-405.

<sup>36</sup> 5 U.S.C. §1501(4)

<sup>37</sup> 5 U.S.C. §1501 (2000); *see also Special Counsel v. Gallagher*, 44 M.S.P.B. 57 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (1944).

<sup>38</sup> *See* 5 U.S.C. §1501; *see also Williams*, 55 F.3d at 920-21; *Gallagher*, 44 M.S.P.B. at 57.

<sup>39</sup> 5 U.S.C. §1502(a).

<sup>40</sup> 5 U.S.C. §1502(a).

<sup>41</sup> *See In re Lukasik*, 3 P.A.R. 34, 35 (1969).

<sup>42</sup> *See Special Counsel v. Gallagher*, 44 M.S.P.B. 57 (1990).

<sup>43</sup> 5 U.S.C. 1502.

<sup>44</sup> 5 U.S.C. §1101.

<sup>45</sup> 5 U.S.C. §1504 (2000).

<sup>46</sup> 5 U.S.C. §1505 (2000).

<sup>47</sup> 5 U.S.C. §1505 (2000).

<sup>48</sup> *Id.*

<sup>49</sup> *See Special Counsel v. Purnell*, 37 M.S.P.B. 184, 200 (1988), *aff'd sub nom. Fela v. U.S. Merit Sys. Prot. Bd.*, 730 F. Supp. 779 (N.D. Ohio 1989); *see also Alexander v. Merit Sys. Prot. Bd.*, 165 F.3d

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<sup>50</sup> 5 U.S.C. §1506(a) (2000).

<sup>51</sup> *Ibid.*, 46.

<sup>52</sup> The Federalist No. 76 (Clinton Rosister ed., 1961).

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*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

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## The Bulletin's E-mail Address

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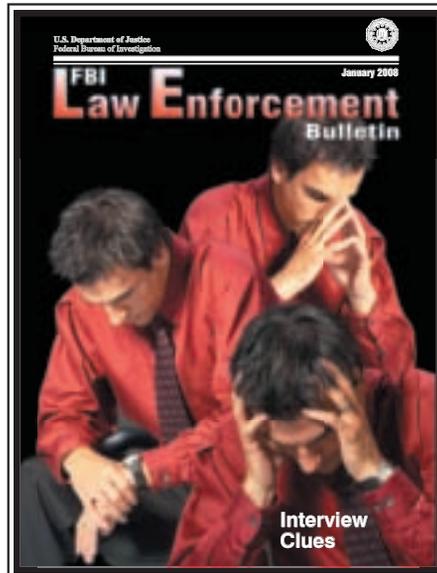
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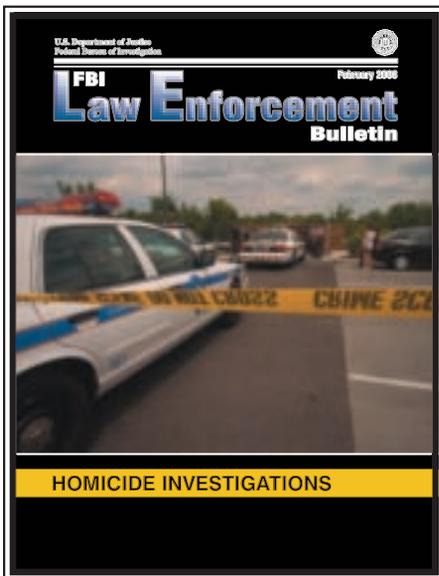
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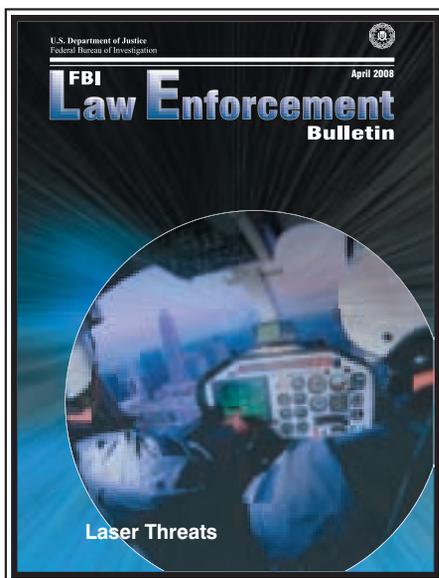
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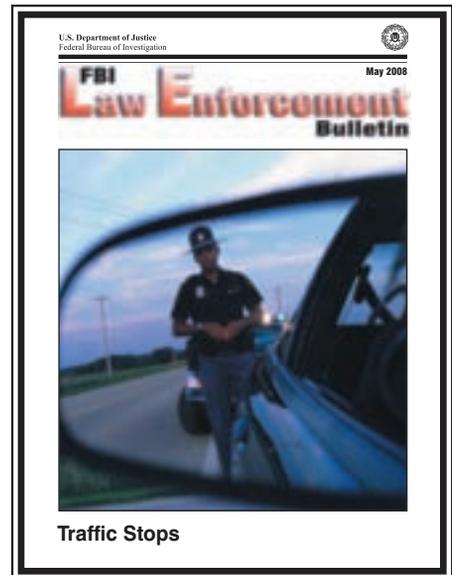
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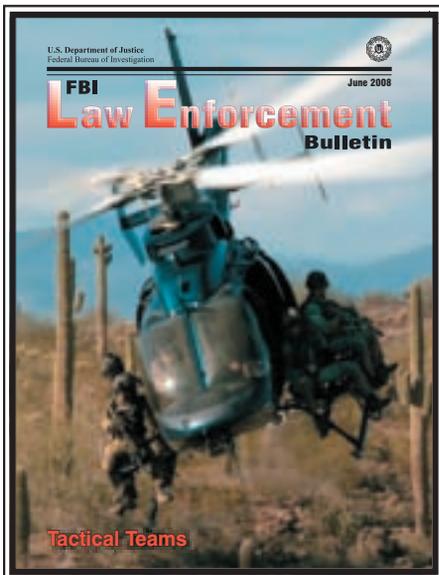
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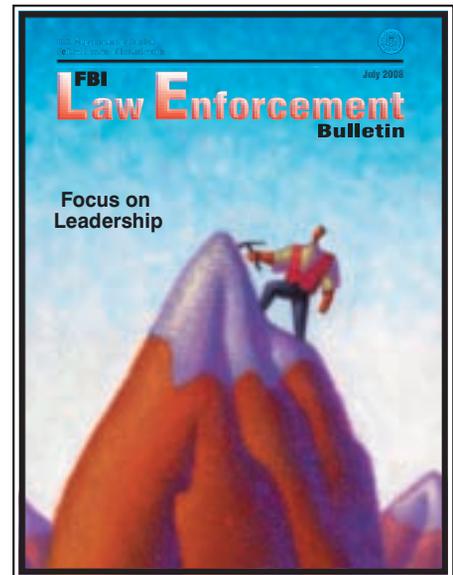
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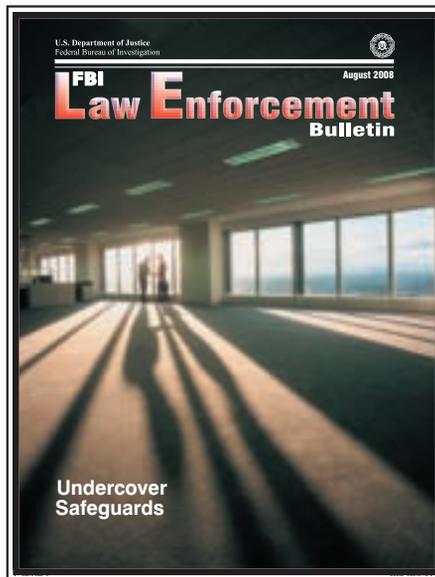
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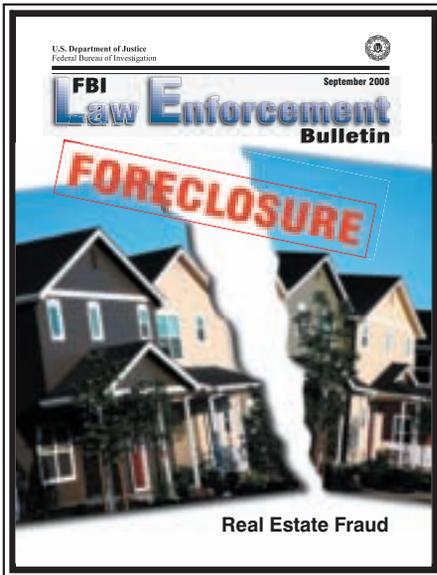
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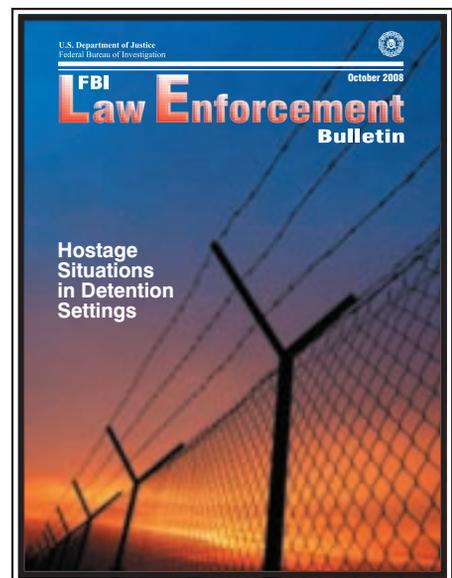
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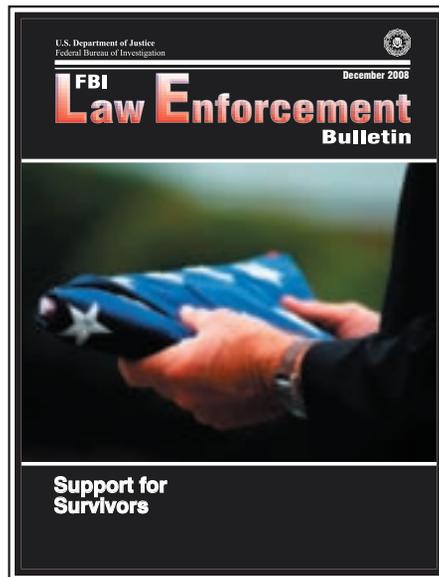
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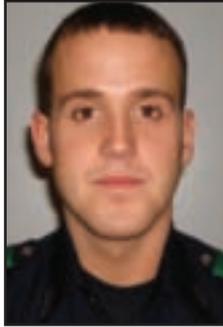
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## The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



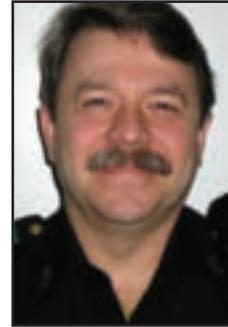
Corporal Ell



Officer Griffith



Officer Scott



Sergeant McGuire

One morning, Senior Corporal Jeff Ell and Officer Stephen Griffith of the Dallas, Texas, Police Department noticed smoke rising from an apartment building. As Officers Ell and Griffith tried to determine the origin of the fire, Officer Billy Scott arrived at the scene. After the officers located the burning apartment, Officers Ell and Griffith pulled the security bars from the door and forced entry into the smoke- and flame-filled residence. A woman called for help from a second-floor bedroom, directly above a large fire downstairs. Unable to see and forced back outside twice by intense heat and smoke, Officers Ell and Griffith entered a third time and found the now-unconscious female. Newly arrived Sergeant John McGuire helped carry the victim to safety and began chest compressions as the other officers provided first aid. Officers Ell, Scott, and Griffith then went back to evacuate other residents from nearby apartments. Thanks to the actions of these four brave officers, there was no loss of human life.

### Wanted: Bulletin Notes

The *FBI Law Enforcement Bulletin* seeks nominations for the **Bulletin Notes**. They should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.

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## Patch Call



The Grand Forks, North Dakota, Police Department's patch, shaped like a shield, features a black background in memory of fallen officers and gold lettering representing the mission and core values of the department. Blue water along the bottom depicts the Red and Red Lake Rivers, and the green riverbanks stand for life and future growth. The red feather recognizes the region's Native American heritage, and the yellow stalk represents the area's reliance on agriculture.



The center of the Chandler, Arizona, Police Department's patch displays the state seal, which depicts Arizona's agricultural and mining background. The words *ditat deus* mean "God enriches." A large copper star representing statehood for Arizona and incorporation for the city of Chandler, both of which occurred in 1912, surrounds the seal and is superimposed over the state flag.