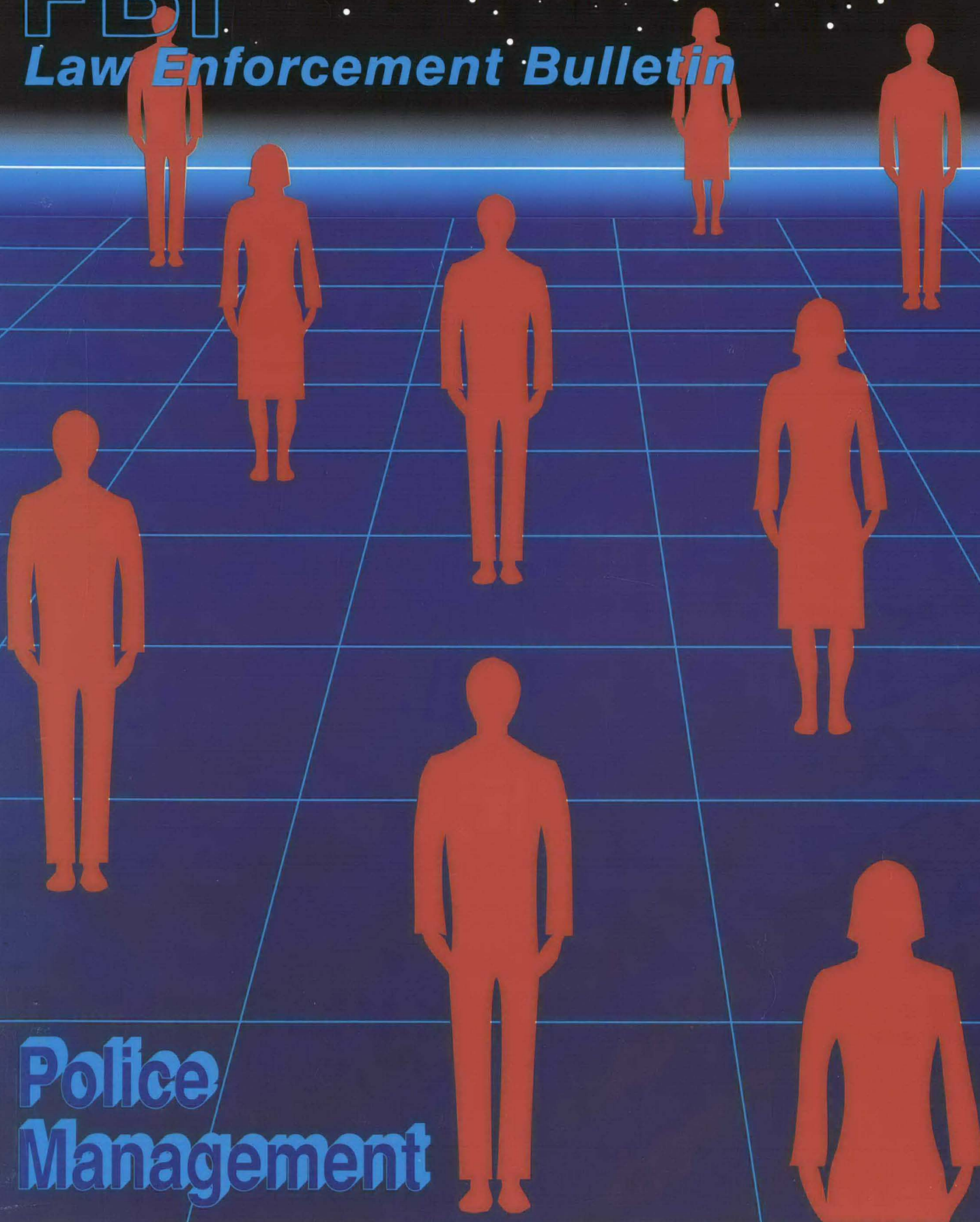




FBI

April 1992

Law Enforcement Bulletin



Police Management



Features

Focus on Management

- 1 Reducing Costs**
By Richard M. Ayres
- 6 Power Dynamics**
By John M. Turner
- 16 Rotation**
By Tom Gabor
- 22 The Law Enforcement Executive**
By James D. Sewell

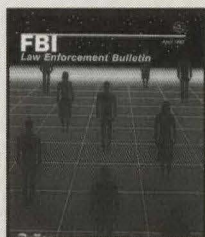
- 11 Munchausen's Syndrome in Law Enforcement**
By Peter DiVasto and Gina Sexton

- 27 The "Fighting Words" Doctrine**
By Daniel L. Schofield



Departments

- 5 DNA Technology Update**
- 20 Point of View**
By Walter M. Francis
- 14 Police Practices**
- 26 Bulletin Alert**



Cover: Effective management techniques are essential to the success of any organization, including law enforcement agencies. This issue focuses on different police management issues.

United States Department of Justice
Federal Bureau of Investigation
Washington, DC 20535

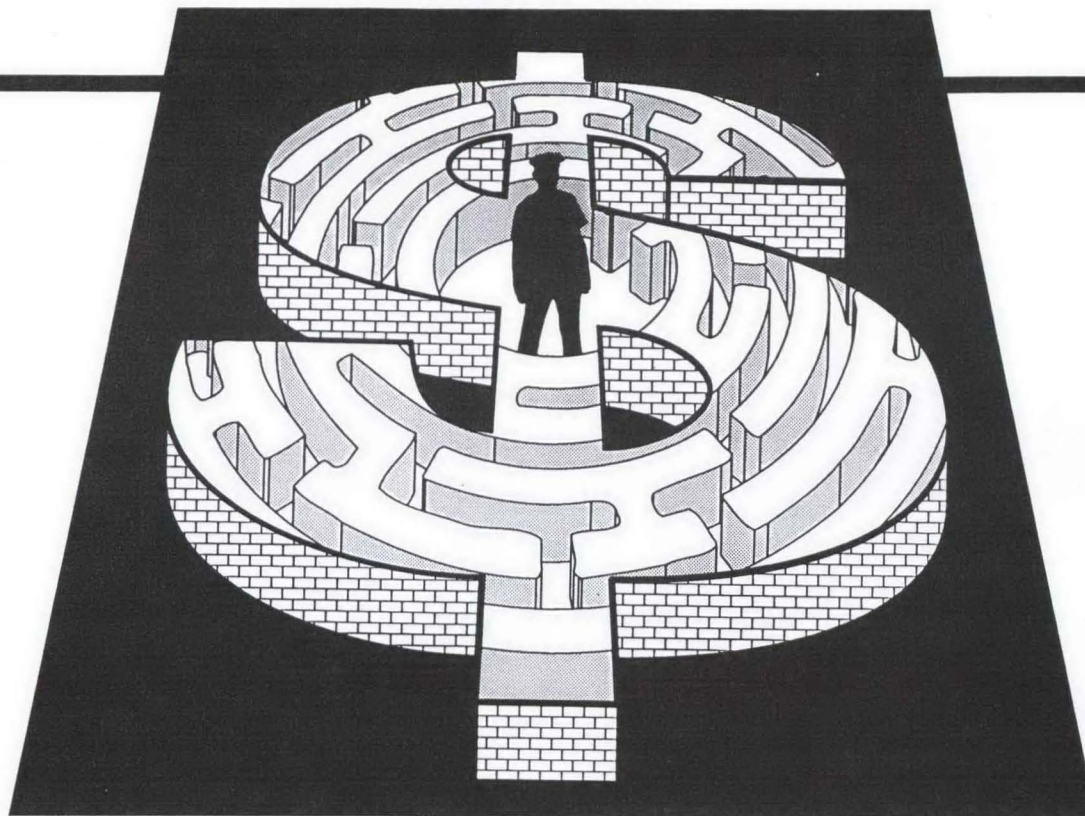
William S. Sessions, Director

Contributors' opinions and statements should not be considered as an endorsement for any policy, program, or service by the FBI.

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

Editor—Dr. Stephen D. Gladis
Managing Editor—Kathryn E. Sulewski
Art Director—John E. Ott
Assistant Editors—Alice S. Cole
Karen F. McCarron
Production Manager—Andrew DiRosa
Staff Assistant—Darlene J. Butler

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20535. Second-Class postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation, Washington, D.C. 20535.



Reducing Costs in Law Enforcement Operations

By
RICHARD M. AYRES, M.P.A.

With the United States battling a recession, unemployment, and alarming increases in violent and drug-related crimes, many cities, counties, and States face the dilemma of cutback management. Law enforcement agencies nationwide continue to examine ways to streamline their operations without laying off officers—managing with less while still fulfilling their mission of serving the community and protecting life and property.

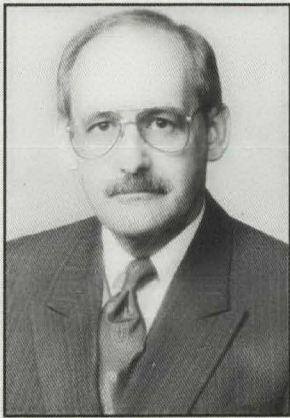
Gone are the days when the traditional response of meeting crime control problems and community service needs was to hire more of-

ficers and purchase more equipment. Gone, too, are the days when salary and benefits could be arbitrarily increased. Gone, indeed, are the ample budgets that often permitted managers to use intuition and snap judgments—even to cover up administrative mistakes without undue embarrassment or concern. Looking back, a manager's job was much easier when budgets were fat.

Effective management is vastly different in today's difficult economic times. Now, there is a critical need for law enforcement managers to promote efficiency and effectiveness. As this almost impossible responsibility of providing more serv-

ice with less funding falls upon the chief of police or sheriff, it can be easy to simply tighten the administrative screws and allow the burden to fall on the employees. However, this shortsightedness may well lead to resentment, labor/management conflict, or serious morale and job satisfaction problems.¹

To avoid these difficulties, law enforcement managers should involve their officers, employee associations, and unions to resolve the urgent management issues of the 1990s. This forces employees to accept more responsibility for shaping the future and may reduce their resistance to cost-cutting measures.



“...there is a critical need for law enforcement managers to promote efficiency and effectiveness.”

Mr. Ayres, a former Chief of the Management Science Unit at the FBI Academy, is currently a management consultant in Fredericksburg, Virginia.

Given the fact that employees frequently have firsthand knowledge of how to best cut operational costs, their involvement has never been more critical. This article discusses tactics law enforcement managers can take to come to grips with cutback management, while upholding efficient and effective police services.

Case in Point

Recently, the Michigan State Police needed to abolish numerous positions in order to meet mandated budget reductions. This required the agency to implement a contractual reduction in force or institute layoff procedures, which would result in significant numbers of members either being demoted in rank and/or relocated. The relocation factor also applied because of a seniority bumping provision in the department's collective bargaining contract.

However, in an effort to avoid significant grievance action, litigation, and the emotional trauma associated with the threat of layoff and/or demotion, the department ob-

tained the assistance and cooperation of its troopers' union. The department's management invited the union to assist in the administration of the contract and to be a partner in the actual reduction-in-force process. Union officials were asked to manage telephones, assist in verifying seniority lists, and be available to answer specific questions from bargaining unit members confronted with certain bump options.

As a result of their participation, union members developed an appreciation for the emotional trauma, the significant complexity, and the inherent difficulty in their mutual effort to interpret the contract language in a practical, efficient manner. When the contract was accomplished, few grievances were experienced, no litigation was encountered, and management received expressions of appreciation from the union.²

Cooperation and Sensitivity

As this case illustrates, both managers and employees need to cooperate and remain sensitive to the feelings and sentiments of the

work force in order to implement successfully the types of changes necessary to downsize or streamline law enforcement services. Thus, for managers, the following steps are critical:

- Ask employees for ideas about how to cut costs
- Maintain high visibility (Managers should be available for both formal and informal discussions with employees to facilitate organizational assessment, as well as to strengthen morale. Also, when employees are involved, either individually or through their organizations, their level of awareness is raised, and there is usually an increased readiness for change.)
- Determine how other departments are cutting costs (Law enforcement executives struggling with cutback measures should not hesitate to tap the rich reservoirs of experience available from other agencies faced with the same dilemma. Reinventing the wheel can be costly, and many mistakes can be avoided by learning from the successes and failures of other counties and municipalities.)

NEI Survey

As mentioned, sharing ideas on how to cut costs is critical. Therefore, to facilitate idea-sharing among agencies, the National Executive Institute (NEI) recently queried more than 100 law enforcement executives in the United States and Canada on ways their agencies either increased productivity or cut

costs effectively during the past year.

Most respondents applauded the NEI for its timely undertaking of such a study, as they were presently facing decreasing tax revenues, rising costs, and a down-turned economy—all of which placed greater demands on departmental services. Further, because nearly all departments were in the process of attempting to implement major cost-cutting measures without adversely impacting the quality of services, they were eager to share their experiences.

The ideas submitted covered the entire spectrum of law enforcement services and reflected a wide range of creativity and imagination. Many departments provided lists of ideas of cost-saving measures implemented recently, while others sent information only on their most effective method of reducing costs during the past year.

Upon reviewing the survey results, the NEI found the areas that provided the greatest opportunity for cutting costs involve:

- Overtime
- Vehicles
- Volunteers
- Civilian participation
- Operational streamlining/downsizing
- Automation
- Reducing false alarms
- Increased use of Federal forfeiture funds

- Service fees
- Subcontracting for services.

Specific examples on how police departments have cut costs in each of these areas are available through the FBI Academy.³ Each example contains a description of the process, the savings and benefits derived, and the point of contact for further information.

These examples provide a valuable exchange of information on cost-cutting measures currently being employed in the United States and Canada. And, as more agencies are confronted with shrinking

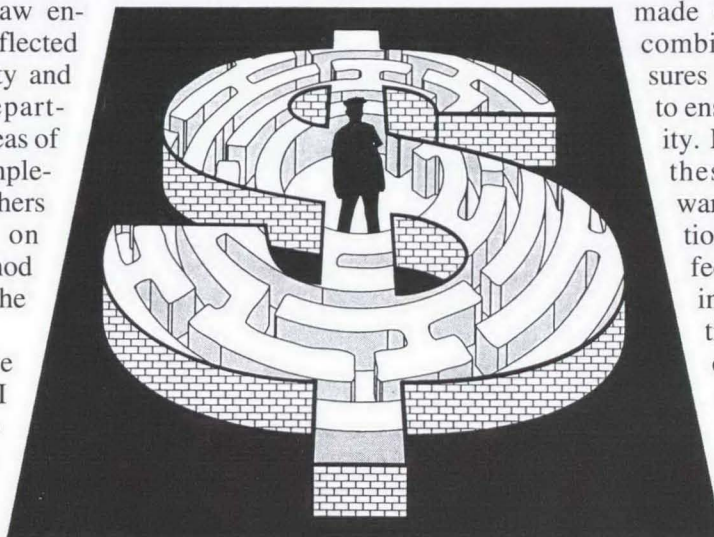
tional effectiveness. For example, the Chief of Police in Orlando, Florida, recommends developing a "Strategic Long-range Plan" (SLRP) to solidify the police department's vision and long-range strategies. For the Orlando Police Department, the SLRP not only analyzes trends and the city's future direction but also documents how the department must respond to growth and other external factors. The SLRP also ensures that every attempt is made to maintain an acceptable level of police service for the next 15 to 20 years and beyond.

Numerous departments have made other recommendations combining cost-cutting measures and community policing to ensure long-term productivity. Many of the managers in these departments also warned against the temptation to apply simple, ineffective solutions that may, in fact, be knee-jerk reactions to whatever ails the organization at the moment. Additionally, before cost-cutting programs are instituted, managers should also examine all of the interrelated aspects that

contribute to the department's problems, such as ineffective management skills, poorly functioning work groups, bureaucratic red tape, and reward systems that ignore performance.

Conclusion

Today's law enforcement leaders who tackle the problem of managing with less will be truly successful only when they recognize that



budgets and increasing demands for service, ideas will become even more vital to law enforcement managers.

Cost Cutting: One Positive Step

In focusing on cost cutting as a necessary means to efficient management, law enforcement leaders should understand that this effort, although a critical one, is only one step toward long-term organiza-

Management Suggestions

Law enforcement managers from across the United States and Canada submitted the following suggestions for cutting costs:

Automation

- Decentralize entry of police incident reports to reduce lag time and the number of mail runs to headquarters
- Install phone mail on department telephone systems to automatically direct outside callers to the proper extension
- Implement automation of tasks, where feasible

Administration

- Eliminate unnecessary business and training expenses
- Delay promotions for 45 days
- Streamline and downsize administrative positions
- Consolidate various job responsibilities
- Increase use of civilian volunteers, auxiliary police officers, and cadets
- Reduce overtime
- Use flexed work schedules for some units, where possible

Maintenance

- Use jail maintenance personnel and/or inmate labor to maintain grounds and buildings, to build K-9 pens for dogs, or to build a tactical recovery vehicle from an

old patrol car and old bullet-proof vests

- Delay or cut back renovation projects not necessary to the department's mission
- Repair radios in-house
- Subcontract for services

Training

- Use video technology for roll call training

Automobiles

- Implement an accident reduction program consisting of pursuit policy training and high performance driving techniques and sanctions against negligent drivers
- Remove roof-mounted emergency lights from a significant number of marked vehicles
- Switch from premium to regular-grade gasoline
- Install sophisticated radio equipment in operational vehicles only
- Reduce the number of take-home cars
- Defer replacing vehicles for one more fiscal year
- Change marked vehicles from traditional two colors to less expensive and more visible single white color
- Downsize investigative and administrative (unmarked and non-pursuit) vehicles to smaller, less expensive models

Other

- Institute service fees for special events and extraordinary non-emergency services
- Minimize police response to false alarms
- Implement bicycle patrol in congested areas
- Prohibit use of alcohol in park and beach areas to reduce calls for service
- Use Federal forfeiture funds to purchase computers, office equipment, and protection and enforcement-related equipment

Qualities of Commitment in a Law Enforcement Manager

- Commitment to the customer, to the community or anyone who benefits from the department's service
- Commitment to the organization—project pride in organization and instill this sense of pride in others
- Commitment to self—present a strong, positive image with a sense of humility, consistently working toward self-improvement
- Commitment to people—display a dedication to employees
- Commitment to the task—know and support the mission of the organization by emphasizing quality service, cost effectiveness, and productivity

DNA Technology Update

this issue, much like violent crime, illegal drugs, and community unrest, is one of leadership that will require long-term commitment toward planned organizational and institutional change. Excellent law enforcement leaders must believe in what they are doing and must combine these beliefs with actions. The most consistently described quality of excellent leadership can be characterized by one word—commitment. Commitment can be seen as a powerful combination of beliefs and actions.

Managers must be committed to the customer, the department, themselves, employees, and the task at hand. Separately, these commitments are extremely important to effective leadership. Together, they form the essential framework for long-term achievement of excellence.⁴

Today, there are no quick fixes. Only through genuine dedication and commitment can law enforcement managers provide effective leadership to the department and positive service to citizens. ■

Endnotes

¹ Nancy K. Austin, "No Panic Managing for Tough Times," *Working Women*, May 1991.

² Gary Maher, "Layoffs: A Sign of the Times—Making a Smooth Transition," *North American Police Labor Relations Association*, Spring 1991.

³ For specific examples on how various law enforcement agencies have cut costs, please contact Special Agent Edward J. Tully, Unit Chief of the Education and Communication Arts Unit, at the FBI Academy in Quantico, Virginia 22135.

⁴ Keilty, Goldsmith, and Boone, *Building Commitments*, 1984.

Imagine that the only evidence found at a murder scene was a few strands of hair or a cigarette butt. Or, that investigators discovered skeletal remains with all the soft body tissue deteriorated. Can a crime laboratory conduct DNA tests on the hair or bone, or for that matter, on the saliva recovered from the cigarette butt?

Soon, the answer to this question will be "yes." Currently, scientists are working to develop DNA tests to allow for the forensic examination of hair, saliva, bone, teeth, and skin, in addition to the blood and semen analyzed routinely today in DNA testing.

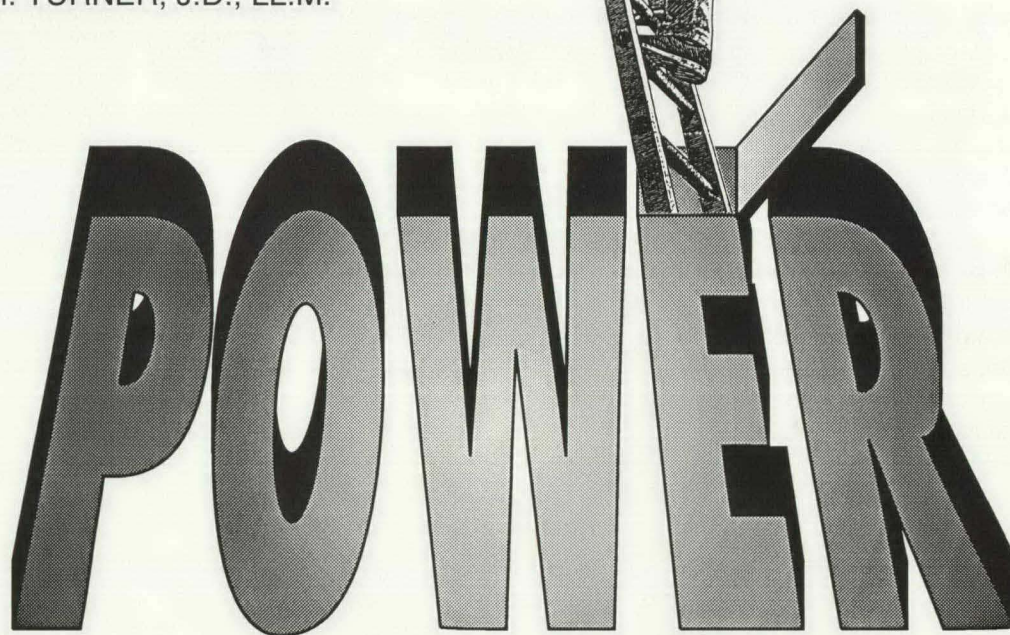
In most crime laboratories, scientists perform DNA testing through a process known as the Restriction Fragment Length Polymorphism (RFLP) method. However, the next generation of DNA tests will rely on the polymerase chain reaction (PCR), a technique used to make millions of copies of DNA material to allow for laboratory analysis of much smaller specimens than currently possible. In addition to being more sensitive than the RFLP method, PCR-based tests provide a more rapid means of characterizing biological evidence.

In 1993, scientists expect to complete validation studies on a technique called Amplified-Fragment Length Polymorphisms (AMP-FLPS). This technique combines PCR's ability to make many copies of DNA evidence with the resolving power that comes with examining fragment length polymorphisms, the principal strength of RFLP. AMP-FLPS will provide investigators with valuable identification information not obtainable with current methods.

Using AMP-FLPS, scientists can perform DNA tests in a matter of days, rather than weeks. And, there will be no loss in the ability to draw conclusions from the evidence. ■

Power Dynamics

By
JOHN M. TURNER, J.D., LL.M.



Power as a management and survival tool is finally being openly analyzed in academic and professional forums. It is now recognized that all employees—from top management to individual employees—in an organization must comprehend the need to acquire and maintain a power base in order to accomplish their goals and objectives successfully. Management consultant Marilyn Moats Kennedy concludes:

“An independent powerbase in the organization is critical to survival. Being able to build and use power is always part of getting the job done.

Depend entirely on the position that power comes with the job, and you could be out. Build your own base, and you are likely to move up or hold on. At least you will have choices.”¹

The need for police administrators to become more sophisticated about the acquisition and use of power is the result of many complex influences that exist in today's workplace. Modern police organizations tend to be rigid bureaucracies, as well as socially intricate organizations. Top police administrators need power to overcome bureaucratic infighting, resistance to

policy mandates, and political manipulations, all of which tend to destroy morale. Middle managers need to develop a powerbase in order to manage their subordinates properly and to avoid having their careers sidetracked by becoming pawns in power wars. Patrol officers and other police professionals need power in order to overcome bureaucratic obstacles and to “manage” their superiors successfully.

An additional reason for police administrators and officials to become more sophisticated about the dynamics of power is to avoid the trap of “power failure.” Power failures occur when police officials

must depend upon people over whom they have little or no explicit control to accomplish a goal or task. This is a consistent problem in police organizations, because the nature of police work requires officials to depend upon many external forces over which they have no formal control.

This article articulates the need to acquire and to maintain an individual powerbase that uses formal and informal sources in the organizational environment. Police administrators and officials who develop a powerbase can personally survive, can achieve goals, can overcome or avoid conflicts, and can gain the cooperation and support needed from superiors, peers, subordinates, and people outside the organization. Failure to do this results in personal frustration, an inability to perform work responsibilities properly, and the loss of control over career decisions.

Understanding Power Dynamics

Power dynamics in most police organizations requires that individuals develop a personal powerbase in order to perform their duties and responsibilities. However, before they can start to acquire individual power in police organizations, they must first analyze and assess the power dynamics within the structure.² This includes not only an understanding of both the formal and informal nature of power that exists within the organization but also a sensitivity to the degree of energy needed to reduce or to overcome the amount of conflict and resistance that occurs in the process of implementing decisions. By un-

“Recognizing the social complexity of an organization is the key to understand and properly evaluate the nature of power struggles....”



Mr. Turner is an Assistant District Attorney with the Atlanta Judicial Circuit, Atlanta, Georgia.

derstanding the power dynamics found within an organization, an individual can initially assess and plan for the amount of time and effort that must go into power-building activities.³

John Kotter of the Harvard Business School states that “...in complex organizations today, it is a rare decision issue or implementation issue that is devoid of at least the potential for conflict.”⁴ He theorizes that conflict in such organizations as police departments is the result of diversity and interdependence.

Power in Police Organizations

Police organizations represent a highly complex social and working environment with a heterogeneous workforce that includes men, women, Blacks, Spanish-speaking Americans, and other minorities. The environment is made more complex by the educational and technical skill differences among police officials and employees.

The diversity found in police organizations causes conflicts, and

resistance arises because of the different priorities, goals, values, and self-interests, as well as a lack of trust. Recognizing the social complexity of an organization is the key to understand and properly evaluate the nature of power struggles in that group.

Another aspect of understanding power dynamics within an organization, according to Kotter, concerns the management of complex interdependent relationships with superiors, subordinates, peers, and outsiders. Along with the fact that diversity exists, to some degree, within all police organizations, police officials are also very interdependent upon others to perform their duties properly.⁵ In addition to other police personnel, police officials must also work with and depend on organized citizen groups, politicians, unions, and media groups, who sometimes attempt to influence the policy and behavior of police departments.

This existing interdependence requires that police officials have a powerbase that sometimes exceeds

the formal authority granted to them through their positions in the organization. This is necessary in order to avoid a power failure and to gain a desired response from others upon whom police officials are dependent. The amount of interdependence officials encounter is directly related to their need for an individual powerbase in order to avoid power failures.

That is, top police administrators delegate certain power and responsibility to individuals who occupy positions of authority within the chain of command on a descending scale.

In addition, the formal power system is a rigid structure that depends on people knowing and accepting their places in an organizational hierarchy. And, although this

move up the ladder (that is, supervisors cannot give managers power). Therein lies the weakness that creates and sustains the informal system.”⁸

In the informal power system, all relations are fluid, are created deliberately, and are based on negotiation. As a result of these factors, things get done *across* organizational lines rather than *within* them. Ultimately, it is the informal system that makes an organization work.

However, even though those who participate in the informal power system do so as equals—despite any formal position they may occupy within an organization—the informal power system becomes harder to penetrate as individuals move up the organizational ladder. This phenomenon is caused by both the inflexibility of formal chain-of-command positions and the reluctance of subordinates to accept superiors within their system. A major test of any police administrator’s effectiveness is the ability to penetrate these barriers and use the informal system.

The linchpin of the informal power system is the office grapevine, which is an informal intelligence network that is tapped into the body of information that constantly flows within an organization.⁹ In addition to its informational use, the grapevine can also be instrumental to either consensus building or the destruction of policies before they become formalized. Participation in the informal power system is necessary before a person can develop an individual powerbase.

“

Whenever possible, a power builder should also attempt to develop a mentor-mentee relationship with a respected superior.

”

Nature and Form of Power

Power, in any context, can be used as either a sword or a shield. When used offensively, power can coerce, persuade, or influence behavior. Defensively, power allows its users to avoid compliance with the mandates of others. However, whether used offensively or defensively, power is the ability to control circumstances, events, and people in order to achieve a desired result.⁶

Every organization has two power systems—formal and informal. The formal power system in a police organization works much like a quasi-military chain of command. Under this system, ultimate power is situated at the top of a pyramid-like organizational structure and power always moves downward from the top to the bottom.

system delegates authority to those in certain positions, the power that accompanies such authority is sometimes insufficient to meet organizational requirements. Accordingly, “real power is very different from command or position power.”⁷ Therefore, in building effective powerbases, individuals must acquire power sources beyond the formal level.

Those who wish to develop an individual powerbase must first participate in an informal power system. In contrast to the formal system of power, Marilyn Moats Kennedy observed:

“The informal system is always the stronger, more inclusive and more efficient one. Formal power flows only in one direction. It does not

Power Sources

Power never exists in a vacuum. In order for power to be acquired and maintained, it must be plugged into a generating source. According to Kennedy, "Power rests on a three-legged base, the legs of which are research, relations and resources."¹⁰ Research as a power source is centered on the ability to gather and analyze organizational data and intelligence. Good research skills are a prerequisite to meaningful participation on the informal system. Kennedy also believes that "people with good research skills can plan, predict events accurately, form alliances, and trade information."¹¹

Through research, one can recognize powerful people within an organization and identify their power source, as well as their relevant personal values and goals.¹² This is important, Kennedy states, because, "if you speak and act in a manner that expresses the 'spirit' and sentiments of others, they tend to identify with you and elevate you. They will almost always bestow a greater amount of power on you than you deserve."¹³

Kennedy also notes, "Power rests on relationships with others.... This is the most important leg of your power base."¹⁴ Before relational power will be effective, however, it must be based on genuine mutual interests between the parties. By creating successful relationships with others, a cooperative spirit for present and future interaction is ensured. This good relationship with superiors, peers, subordinates, and others will effectively overcome conflict and resistance when they arise.

Power builders can create good personal relationships with others in several simple ways. They can:

- Sincerely offer compliments to others
- Ask others for their assistance
- Help others to perform tasks.

J. Robert Parkinson suggests that good personal relationships may also be maintained in the following manner:

"Send a note to everyone once in awhile, or make a phone call 'just to keep in touch.'

When there is such an ongoing series of contacts over time, a

specific request for assistance or reference is not seen as being out of the ordinary, and it will be responded to positively. It will be welcomed if it is actually just one more in a continuing series of friendly contacts. If you do this over time, you will be pleasantly surprised about how many people you can call or refer to for assistance in a wide variety of areas, businesses, and professions."¹⁵

Whenever possible, a power builder should also attempt to develop a mentor-mentee relationship

10 Commandments for Acquiring Power In a Police Organization

- 1) Develop, maintain, and increase technical competency and proficiency in work assignments
- 2) Increase personal knowledge and expertise
- 3) Develop personal influence and negotiation skills
- 4) Develop and maintain the esteem of superiors, peers, subordinates, and significant others
- 5) Accumulate relevant information about the power dynamics of the organization and its power players
- 6) Develop cooperative relationships within the organization
- 7) Gain control of organizational resources or seek progressively more important job assignments
- 8) Establish a positive track record by reinvesting power back into the organization in order to achieve an organizational benefit
- 9) Develop a plan or agenda to accomplish the objectives set forth above
- 10) Maintain continuity in the pursuit of a powerbase and do not become discouraged or give up when confronted with conflict or resistance

with a respected superior. This type of relationship is of tremendous personal and professional benefit to the individual. Most successful, powerful individuals within an organization have enjoyed a mentor relationship at some point in their careers.¹⁶

And, in order to obtain information and build relationships, personal or organizational resources are needed. Resources that may be given to administrators and employees by an organization include:

- Job title and positional power
- Information or the control of information channels
- Control of money or credit
- Control of personnel or equipment.

Personal power resources refer to characteristics and traits that are totally dependent on an individual's personality and skill level. Personality power may be based upon charisma, special knowledge or expertise, negotiating skills, influence skills, reputation, and credibility or work record.

Conclusion

Many people fear power and are uncomfortable with its use. They believe that once power is acquired, it will automatically lead to corruption. Lord Acton summarized this point of view when he wrote, "Power tends to corrupt and absolute power corrupts absolutely."¹⁷ In contrast to this point of view, George Bernard Shaw observed, "Power does not corrupt men; but fools, if they get into a position of power, corrupt power."¹⁸

However power is viewed, the acquisition of power in order to survive or perform job responsibilities adequately in today's socially complex organizations is unavoidable. According to Early, "...whatever the risks of power may be, the risks of not having power are greater."¹⁹

Police administrators and officials should seek to enhance or build a powerbase whenever possible. By doing so, they will experience professional satisfaction and fulfillment. In addition, they will benefit personally by feeling more in control of their work environment. ■

Endnotes

- ¹ Marilyn Moats Kennedy, *Powerbase: How to Build It/How to Keep It* (New York: MacMillan Publishing Company, 1984), p. 2.
- ² John P. Kotter, *Power and Influence* (New York: The Free Press, 1985), p. 17.
- ³ Supra note 1, p. xi.
- ⁴ Supra note 2, p. 29.
- ⁵ Mitchell J. Posner, *Executive Essentials* (New York: Avon Books, New York, 1982), p. 263.
- ⁶ Supra note 1, p. 4.
- ⁷ Ibid, p. 5.
- ⁸ Ibid, p. 18.
- ⁹ Ibid, p. 31.
- ¹⁰ Ibid, p. 11.
- ¹¹ Ibid, p. 12.
- ¹² Ibid, p. 11.
- ¹³ Supra note 5.
- ¹⁴ Supra note 1, p. 12.
- ¹⁵ J. Robert Parkinson, *How to Get People to Do Things Your Way* (Illinois: NTC Business Books, 1986, p. 84.
- ¹⁶ Kenneth A. Jolemore, "The Mentor: More Than a Teacher, More Than a Coach," *Military Review*, July 1986, pp. 5-17.
- ¹⁷ Lord Acton, *Essays on Freedom and Power* (Boston, Massachusetts: The Beacon Press, 1949), p. 364.
- ¹⁸ Supra note 5, p. 263.
- ¹⁹ Edward M. Early, *Foundations for World Order* (Denver, Colorado: University of Denver Press, Co., 1949), pp. 145-146.

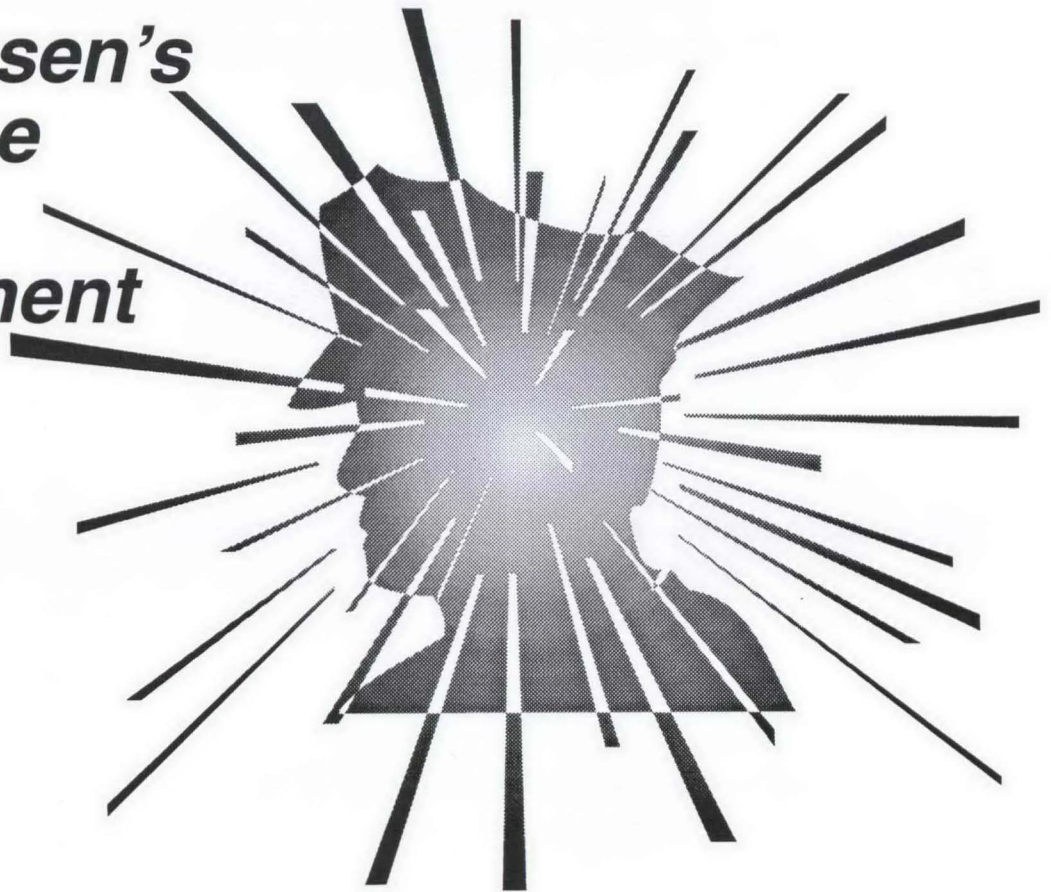
Dial-the-Bulletin



The *Bulletin* is available via a computer dial-up service offered by SEARCH Group, Inc. This service is available to those with a personal computer and a telephone modem. Users can call up current issues of the *Bulletin* by dialing (916) 392-4640. In addition, users can print any article from the *Bulletin* in their homes or offices—free of charge. Currently, the *Bulletin* is the most frequently accessed item in the SEARCH network. To access the system properly, users need the following information:

- Telephone Number: (916) 392-4640
- Communication Parameters: 8 databits, 1 stopbit, no parity
- Authorized Users: Criminal justice practitioners and related professionals ■

Munchausen's Syndrome in Law Enforcement



By
Peter DiVasto, Ph.D.
and
Gina Saxton

A passing motorist discovers a wounded deputy on a two-lane highway. The citizen frantically radios the sheriff's department and reports that the deputy has been shot and is nearly unconscious. Responding units begin an extensive search for a motorist who, according to the deputy's account, shot him after being stopped for a routine violation. The bullet lodged in the deputy's safety vest.

However, as the deputy recuperates at a nearby trauma center, the massive manhunt fails to produce a suspect. Investigating officers soon become skeptical of the deputy's story and confront him

with their doubts. He admits that he shot himself in the vest and planned to do so for several days. The deputy attributed his behavior to stress caused by overwork and to a desire to keep his wife from leaving him.

A thorough psychological evaluation is conducted, which reveals the deputy to be somewhat depressed, nonpsychotic, and lacking in self-esteem. Treatment for these problems, as well as marital therapy, is recommended.

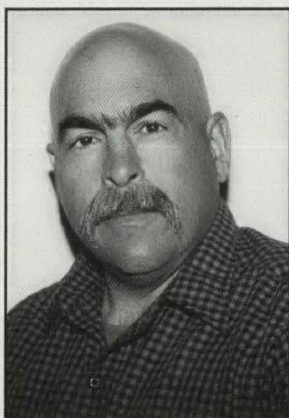
MUNCHAUSEN'S SYNDROME

Definition

This case illustrates a classic example of Munchausen's Syn-

drome—so named after the Baron Karl Friedrich Hieronymus Von Munchausen, a colorful figure who delighted the royal courts of late 18th century Europe with tales of his heroic exploits. Although his veracity was never directly questioned in polite society, it was widely believed that the baron was perhaps the greatest liar on the continent. In his eagerness to impress audiences, he routinely invented encounters in which he received seemingly life-threatening wounds, only to recover again to set out for more adventures.

Today, Munchausen's Syndrome falls into the category of mental illness known as factitious



Dr. DiVasto is a contract psychologist with the Albuquerque, New Mexico, Police Department.



Ms. Saxton is a research assistant at the University of New Mexico.

disorder, first identified in a psychiatric sense in the early 1950s.¹ In a typical scenario, an individual self-inflicts illness or injury (or complains of illness) and then defies medical treatment by remaining ill, despite the best efforts of doctors.²

While Munchausen's Syndrome is in no way limited to the law enforcement community, the unique demands of the law enforcement profession create an atmosphere in which this type of disorder may be more common than in the general population. For this reason, law enforcement managers should be aware of the specific causes and possible clues to this baffling and troubling disorder.

General Characteristics

Patients exhibiting Munchausen's Syndrome present themselves to a clinic or emergency room with acute and dramatic symptoms.³ They are usually admitted to a hospital, where their symptoms ebb and flow and cause great consternation

among the medical staff. Symptoms appear, seemingly at will, and abnormal lab studies soon fill the patient's records. If suspicion is aroused, it is often discovered that the patient actively takes steps to remain ill. When confronted with this information, the patient usually leaves the hospital, only to reappear later at another health care center.

One of the most curious features of Munchausen's Syndrome is the apparent lack of obvious reward. The motivation for the disorder is thought to lie within the patient's psyche, amid such dangerous psychological corridors as symbolic castration, masochism, the cheating of authority, or erotic desires.⁴

Munchausen's patients should be distinguished from those persons who are malingerers or those who may injure themselves for other reasons. Malingerers have a specific goal in mind, such as in worker's compensation cases. Prolonging an illness has a definite purpose, i.e., financial reward. Those who injure

themselves out of low self-esteem or poor impulse control usually do so in a direct manner and do not deny their active involvement.

Munchausen's patients, on the other hand, cling to denial, even in the face of overwhelming evidence that they have been the source of their own illness or injury. If questioned in detail, these patients often engage in "pseudologia fantastica," (uncontrolled pathological lying).⁵ Munchausen's Syndrome often persists for years and can lead to serious medical complications, and even death, as a consequence of self-induced illness.

MUNCHAUSEN'S IN LAW ENFORCEMENT

As mentioned previously, the occurrence of Munchausen's Syndrome in law enforcement may stem from specific factors in an officer's life, such as deteriorating personal relationships, job-related frustrations, or other problems. There are two general models of Munchausen's Syndrome identified within the law enforcement context. The two models, distinguished as Type A and Type B, share similar characteristics, but are induced by different factors.

Type A Dynamics

The role of the police officer in modern society is complex and often difficult. Performing duties under the scrutiny of the public, press, and courts demands competence and decisiveness. The ability to project these qualities is valued highly within the law enforcement culture. However, mastery of these skills does not come without a potential price.

Law enforcement officers, who strive to be in control at all times, may find it difficult to admit when they, their relationships, or their jobs are out of balance. However, this need for control may prove highly dysfunctional and counter-productive when it inhibits an officer from seeking needed help.

It is this uneasiness with loss of control that leads to the most common source of "Officer Munchausen" incidents. An officer, faced with overwhelming interpersonal stress or threat of loss, creates an incident in which he (very few, if any, female officers have reportedly been involved in these occurrences) is the victim, and occasionally, the hero.

The common thread that runs through Type A incidents is that of the officer who is experiencing significant stress from interpersonal issues and is unable to cope. The opening scenario depicted the typical characteristics of the Type A incident. In an attempt to manipulate the other party's behavior, the officer creates a situation in which he becomes the focus of sympathy, concern, and care. In this regard, the Type A dynamic is much like that of the suicide gesture.

Type B Dynamics

The theme that underlies the other common cause of Munchausen's Syndrome cases in law enforcement is that of affiliation. In many ways, a police organization resembles a fraternal society, in which bonding is important and there are varying degrees of status. This hierarchy is determined less by rank than by a combination of length of service and the accumula-

tion of milestones. These milestones include such events as arrests of dangerous persons, riot control, gunfights, and pursuits. It is the successful performance under pressure in these critical incidents that earns one the position of a full-fledged member of the order. The rookie officer may not be accepted as a legitimate peer until successfully involved in a critical incident.

The officer who has not been exposed to danger may feel the need to invent such an incident to achieve credibility. Thus, the dynamics of the Type B incident appear, as illustrated in the following actual case:

A deputy is assigned to an elite park patrol unit that has a history of physical encounters with various law breakers. The "esprit de corps" of the 12-member unit is very high; volunteers for assignment to the unit are many.

"The officer who has not been exposed to danger may feel the need to invent such an incident to achieve credibility."

The deputy has served in the unit for 2 years, and although he has made several arrests, he has not been involved in any major physical confrontation. While unusual for the unit, this has not been the basis for any harassment directed at the deputy by other members of the force.

During an undercover drug operation, another member of the police department covertly observes the deputy inflicting injuries on himself. Specifically, he is seen hitting his face five times against a brick wall in a secluded area of the park. After inflicting the wounds, he transmits an "officer needs assistance" call.

When the true source of his injuries is revealed, however, the deputy is indirectly castigated by the other members of the unit. He eventually requests, and is granted, a transfer to another assignment.⁶

Obviously, the pressure to achieve parity and acceptance in a law enforcement environment is strong, as evidenced by this case. An officer who feels the need to fabricate a critical incident may be manifesting perceived ego deficits or may simply be reacting to that pressure, often combined with boredom. Whether an individual will repeat this behavior again is difficult to predict, but is dependent, in part, on the department's willingness to confront the officer with the serious personal and departmental issues involved.

CONCLUSION

The demands placed upon law enforcement officers are great. Occasionally, these demands, coupled with a perceived lack of community appreciation or other more personal issues, cause officers to react in ways detrimental to both themselves and their departments.

Officers who intentionally inflict injuries to themselves generally do so for specific reasons. They

Police Practices

may be trying to alter unsatisfactory career or personal circumstances (Type A Dynamics), or they may be attempting to gain the acceptance of their peers (Type B Dynamics).

In any case, police supervisors and counselors should be aware of the causes of Munchausen's Syndrome. The specific circumstances that lead an officer to take this action should be carefully analyzed. For, as with most disorders of this type, understanding the causes will usually assist in determining the most appropriate solutions. ■

Endnotes

¹ R. Asher, "Munchausen's Syndrome," *The Lancet*, i, pp. 339-341.

² P.J. Connelly and F. Gilmour, "Munchausen Syndrome: New Causes for Concerns," *Journal of Clinical Psychiatry*, 50, p. 73; G. Baran, W.G. Vas, M. Sundaram, and C. Markivee, *Skeletal Radiology*, 18, pp. 459-461; G. Caradoc-Davies, "Feigned Alcohol Abuse," *British Journal of Psychiatry*, 152, pp. 418-420.

³ Ibid.

⁴ K. Menninger, "Polysurgery and Polysurgical Addiction," *Psychoanalytical Quarterly*, 3, pp. 173-199; H.R. Spiro, "Chronic Factitious Illness," *Archives of General Psychiatry*, 18, p. 569; H. Schoefeld, J. Margolin, and S. Baum, "Munchausen as a Suicide Equivalent: Abolition of Syndrome by Psychotherapy," *American Journal of Psychotherapy*, XLI, pp. 604-612; see also L. Puig, M. Perez, A. Llavrado, J. Esquius, A. Moreno, and J. Made Maragos, "Fictional Dermatitis of the Breast: A Possible Dermatologic Manifestation of Munchausen's Syndrome," *Cutis*, 44, pp. 292-294.

⁵ B.H. King and C.V. Ford, "Pseudologia Fantastica," *Acta Psychiatrica Scandinavica*, 77, pp. 1-6.

⁶ Based upon an eyewitness account by Lt. Michael Harpster of the Bernalillo County, New Mexico, Sheriff's Department. Additional research and accounts provided by Hugh Miller, M.A., of the Tampa, Florida, Police Department.



Mobile Precincts: Police on Wheels

Today, illegal drug distribution on street corners occurs commonly in many urban areas. Unfortunately, the City of Elizabeth, New Jersey, is no exception. In its effort to curb drug activity, the police department developed a two-pronged attack on illegal drugs. This plan follows the strategic and tactical objectives of the statewide Narcotics Action Plan. The department's plan emphasizes both law enforcement and education. On the educational side, the police department's mandate focuses on various programs, such as:

- Drug Abuse Resistance Education (DARE)—an intense antidrug resistance

curriculum aimed at 5th and 6th grade students

- The Mini-Station Precinct Program—an antidrug education program in which each ward in the city has a mini-station staffed by one patrol officer and as many civilian volunteers as possible. Under this program, the patrol officers and volunteers visit each school, grades K through 3, within their mini-station precincts, and present an antidrug program
- Scared Stiff—an educational presentation for high school students aimed at drug abuse and its relation to driving.

On the law enforcement side, the police department conducts drug raids, surveillance and snatches, and street corner sweeps. However, one of the most effective approaches to the enforcement side of the drug problem is the department's Narcotic Mobile Precinct or "Five-O." "Five-O" derives its name from a term that drug pusher lookouts yell when police enter an active drug trafficking area.

Police on Wheels

The Narcotic Mobile Precinct is a 39-foot bus with a 10-prisoner holding cell and 3 booking desks. Equipped with an identification mug shot camera and fingerprinting capabilities, the air-conditioned mobile precinct contains a restroom and a roll-down awning in case there is a need to set up tables outside. The self-contained bus can hook up to electrical outlets. In fact, in neighborhoods experiencing rampant drug activity, several electrical outlets have been installed specifically for the mobile precinct.

In practice, the mobile precinct allows the police department to establish a mini-precinct wherever drug activity flourishes. Also, its purpose is not limited specifically to drug enforcement. For instance, the mobile precinct can set up shop in any particular neighborhood that shows a rise in burglaries, purse snatches, or muggings. Local citizens may then report their complaints at the mobile precinct.

Is it Affordable?

Prior to making such a large investment, the police

department's administration conducted research into various specifics concerning mobile precincts. After the department decided to go with the concept, it then tasked a member of the Ambulance Services Bureau to design the city's mobile precinct. The end product, however, reached a cost of \$127,000. But, through a Federal grant of \$100,000, the department purchased the mobile precinct. The remaining \$27,000 came from money civilly forfeited to the police department.

The Precinct in Practice

The mobile precinct is assigned to the department's Mini-Station Unit. One officer normally drives the mobile precinct; however, the department has several qualified drivers on each shift should an emergency arise. Additionally, the precinct has six walking officers, as well as one or two K-9 officers assigned to the precinct. The mobile precinct never goes into operation without a supervising officer.

The mobile precinct responds to any location where a complaint of drug dealing has been received, either through citizen complaints and/or street intelligence. It remains in the area for as long as it takes and can stay for weeks at a time if necessary. However, when

not in use for extended periods of time, other units in the department may also use it.

Specifically, during a street sweep, a two-person team will take up a surveillance location. When they spot a drug sale, for example, they radio for a take-down team. After officers make the arrests, the officers take the prisoners to the mobile precinct for processing, thus freeing up headquarters desks. The mobile precinct can also hold as many as 15 prisoners in its lockup before transporting them to headquarters. This speeds up the process immeasurably and allows the department to conduct the operation more efficiently.

Conclusion

Not only has the mobile precinct disrupted drug trafficking in particular, but it has also given the City of Elizabeth, New Jersey, a rallying point where its citizens can come to register complaints or submit reports. It allows citizens to begin reclaiming their neighborhoods and ultimately brings the police closer to the public it serves. ■

Deputy Chief William M. Kelly of the Elizabeth, New Jersey, Police Department provided the information for this column.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.



Rotation

Is It Organizationally Sound?

By TOM GABOR

In 1976, the Culver City, California, Police Department lacked organization and supervision because of poorly trained managers, low morale, and no career development system. However, with the inception of an officer rotation system, a transformation took place. A once mediocre police department became a model department recognized for strong leadership, quick response times, and a superior ability to solve crimes. The

rotation system allows officers to rotate positions to strengthen their leadership skills and enhance their overall knowledge of the department through assignments in various bureaus and sections of the department.

This article discusses the rotation process implemented by the police department and how it improves organizational efficiency. It also explains how the system impacts on the ability of the Culver City Police Department to enforce laws and protect lives and property.

DEPARTMENTS WITHOUT ROTATION SYSTEMS

Departments without an organizationally sound rotation system may encounter two specific problems. One is that these departments traditionally perceive certain employees as indispensable. This view fosters the belief that if particular employees do not remain in their specialized fields, the overall operation of the agency will suffer. At the same time, another problem exists in that other employees may feel stagnated by remaining in the same position over a number of years.

Indispensable Employees

Most police officers hope to serve in specialized assignments, such as on detective squads or in personnel, training, or budget departments. However, while assignments to these specialized units allow the officers to gain valuable expertise, a strange organizational phenomenon seems to occur if they stay in the same position over a number of years. After a period of

time, supervisors begin to view these employees as indispensable employees—experts who always have the correct answer. And, when these employees ultimately depart, they leave a noticeable void that remains until the next “indispensable” person can be trained.

When the indispensable employee philosophy exists at the supervisory levels—sergeant, lieutenant, captain—an even greater potential for stagnation and elitism exists. Supervisors lack appreciation for how policies, personnel matters, and budgetary concerns of one bureau impact other bureaus of the department. Power struggles may develop among these supervisors, and unproductive posturing for limited resources often pits unit against unit. This may result in empire building, wherein the goals of

the department, as a whole, are often in conflict with individual agendas.

Stagnating Employees

While most employees develop useful expertise after working the same assignment for an extended period of time, they often also develop a variety of undesirable traits because they are locked into one assignment for many years. These undesirable traits include laziness, due to lack of interest or variety, or tunnel vision (believing that one detail is the most important).

Leaving employees in the same assignment for extended periods of time also promotes elitism or cliques within specialized groups, such as drug squads, homicide squads, or patrol squads. Many of these employees develop the attitude that fresh ideas are rarely as

“**The rotation system...adds vigor and vitality to the organization, and it promotes high morale and fresh ideas.**”



Lieutenant Gabor serves as personnel officer for the Culver City, California, Police Department.

good or valid as the old tried-and-true methods. However, rotating personnel on a regular basis gives employees a well-rounded view of the department's overall operation and limits the organizational problems caused by leaving employees in one position for long periods of time.

The administration of the Culver City Police Department does not adhere to the belief that any employee is indispensable, irreplaceable, or so valuable that the organization would have great difficulty functioning effectively without that person. Instead, management believes that rotating personnel eliminates stagnation, elitism, and undesirable cliques, all of which limit the effectiveness of the department, as well as the ability of the department to respond to change.

“

Leaving employees in the same assignment for extended periods of time...promotes elitism or cliques within specialized groups.

”

THE ROTATION SYSTEM

Rotation of Managers

The rotation system is a simple process that administrators can implement with minimal interruption to the overall operation of the department. In the Culver City Police Department, captains rotate every 18 months to serve as the commander of one of four bureaus—administration, traffic,

detectives, and operations. This allows them to manage all four sections of the police department, giving them important insights into the problems experienced by the individual bureaus.

The department also requires that lieutenants and sergeants rotate assignments every 18 months. Approximately 1 month before the rotation takes effect, lieutenants may submit their top three choices of assignments. Although the chief and bureau commanders decide where the lieutenants will be assigned, every effort is made to accommodate particular requests. Eventually, however, all lieutenants work each assignment.

Rotating supervisors increases their knowledge of how the department functions overall and allows upper-level managers to gain

greater experience by commanding all areas of the department. This important experience prepares them to deal more effectively with any problems that may arise.

Rotation of Patrol Officers

While captains, lieutenants, and sergeants rotate automatically, patrol officers may also opt to rotate by submitting their requests for particular assignments to the appropri-

ate bureau commanders as positions become available. However, due to the nature of the assignments at the officer level, supervisors mete out rotations within a different timeframe. For example, officers rotate from multijurisdictional drug task forces after 24 months, from the crime impact team after 12 months, from the motor squads after 36 months, and from the canine squad after 36 months.

When patrol officers complete specialized assignments, they return to the patrol pool to fill the vacancies created by additional rotations. Rotating patrol officers in this manner allows the department to build continually a more mature and experienced patrol force that better understands the department's overall mission. This minimizes the number of errors that are made which, in turn, minimizes lawsuits in one of the most potentially volatile areas of law enforcement—patrol operations.

BENEFITS

The rotation system benefits both the department and its personnel. It adds vigor and vitality to the organization, and it promotes high morale and fresh ideas. Above all, it enhances the employees' understanding of the overall operation of the department. This, in turn, gives officers a greater sense of confidence and knowledge about law enforcement management and related issues when attending meetings or training classes with other police departments.

As an added benefit, the rotation system creates an environment

of give and take among department supervisors. With every rotation, incoming supervisors review section and bureau policies to ensure that applications to the law are correct.

And finally, the experience that supervisors gain through rotating positions contributes to individual growth and administrative insight. This better enables them to make knowledgeable decisions that benefit the department as a whole, rather than just a small part of it.

RESULTS

The Culver City Police Department measures its effectiveness in four major areas:

- Response times
- Case clearance rate
- Traffic index
- Employee morale

Since the inception of the rotation system, the department has experienced some interesting changes in these areas.

For example, the department now realizes one of the quickest response times in Los Angeles County and one of the highest case clearance rates in the State. In addition, from 1980 to 1990, violent crime dropped 44 percent and repressible crime dropped 37 percent. Interestingly, during this same period, surrounding jurisdictions experienced an increase in crime.

The traffic index—the number of citations written for every accident with injuries—also measures the effectiveness of police departments. The traffic index at the Culver City Department is nearly three

times higher than the State recommendation, and this helps reduce the number of traffic accidents with injuries by nearly one-half.

The final measure of effectiveness—morale—is difficult to measure. However, employees with high morale are usually productive employees. The department's success in reducing response times and the number of traffic accidents with injuries and in increasing the number of cases cleared, in large part, can be attributed to involved and productive employees who are satisfied with their jobs. The rotation system contributes significantly to job satisfaction, and therefore, promotes high morale among the officers.

CONCLUSION

Law enforcement officials should not underestimate the value of the rotation system. The experience gained by officers who rotate

positions prepares them to deal effectively with any problems that may arise, and it prepares them for a position of leadership, whether inside or outside the department. For example, six Culver City supervisors—out of a department of 117 sworn officers—have been selected for the position of chief of other departments. This allows room for greater upward mobility within the department, which helps to boost morale significantly.

Clearly, the rotation system as a management tool can change the complexion of police departments. High morale, a clear understanding of the common mission, efficiency, harmony between bureaus and sections, fresh ideas, and a stronger team are but a few of the benefits that departments can experience from the program. Police chiefs nationwide would do well to consider an organizationally sound rotation system. ■

One Officer's Rotation Path

- Patrol officer—2 years
- Training officer—2 years
- Promoted to sergeant
- Patrol sergeant—2 years
- Crime impact team supervisor—2 years
- Training officer (administration)—2 years
- Promoted to Lieutenant
- Watch commander—2 years
- Budget officer—2 years
- Personnel officer (current position)

Point of View

Changing Police Management with Business Concepts

By
Walter M. Francis, Ph.D.

"The mind of the bureaucrat is not a wasteland...It does, however, work far differently from the minds of the rest of us... Bureaucrats have a different vision of reality which arises from the way bureaucracy operates...In business, the primary goal is to transform risk into profit. The fundamental assumption...is that progress can only result from taking a chance. In government, the primary goals are to assure stability for the system and for one's self. The bureaucrat avoids risk generally. When forced into action, bureaucrats will take what they think is the safest course. While the business man views the dynamic world as an opportunity, the bureaucrat views it as a threat to the system and to personal well being. While the businessman seeks success, the bureaucrat fears failure...This performance pressure turns otherwise sane and intelligent people into analytic paralytics."¹

Undoubtedly, after reading such a barrage of value judgments about bureaucrats, government administrators are likely to become

very defensive. Yet, after some reflection, it is easy to admit that the points made are not as hollow as they initially appear to be, but are a very perceptive and accurate account of what is. In fact, what the author of the above quote implies is particularly applicable to the world of policing, especially since police administrators are often seen as being even more conservative in the management of their organizations than other government managers.

In light of this, police administrators must adjust themselves and their organizations to the heavy demands placed on them by society. They must discontinue their conservative style of failing to take risks when managing their agencies.

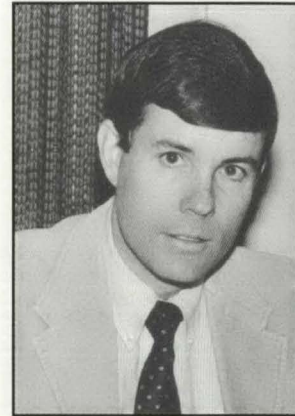
Progress results when managers deviate from the safest course of action available to them. Granted, change doesn't guarantee improvement, but there can be no improvement without change. And, change involves taking risks.

Changing Management Philosophy

Perhaps the most direct method of changing the management philosophy of American police agencies is to bring successful business management techniques to top-level police administrators. This means transferring proven modern business management methods directly to police management.

Strategic Planning

One way to do this is by strategic planning. Strategies



Dr. Francis is an associate professor of criminal justice at Central Wyoming College in Riverton, Wyoming.

evolve when planning efforts focus on cutting back marginal operations, increasing volume in certain areas to create economies of scale, and creating incentive programs for department employees. In simple terms, strategic planning allows police agencies to meet realistic objectives in the most effective and efficient manner possible. In addition, constant monitoring of a department's efforts to meet its stated objectives allows the dynamic process of change to be built into the management system.

Strategic planning tells the police manager where a department stands in terms of its goals and objectives, where it is headed, and what is the best way to get where it should be going. However, since risk-taking is inherent in this type of management

approach, the police manager may find strategic planning hard to accept, even though transferring such proven management techniques to a police agency is not that difficult. What police managers need to do is to readjust their thinking to include a positive attitude toward taking risks or chances.

The Work Environment

Police departments, not unlike their business counterparts, must also adjust to the environment in which they currently operate. This must be an integral part of the management philosophy of all police executives. It must be a way of thinking that occurs on an automatic, ongoing basis. Just as a business entity uses its "cash cows" (highly profitable programs) to develop its stars of the future, police departments must also take chances. Police agencies must "dump its dogs" (do away with nonproductive programs), but only if this can be done without damage to the agency.

The business sector has always operated in an environment requiring the use of productivity-oriented management. Governments in general, and police departments in particular, have not been required to do so to any degree until the past few years.

The poor economy of the Nation, coupled with the decreasing tax bases of cities across the country, forced governmental agencies to take a new look at the programs they offer. In turn, they needed to adjust their operations according to the cost involved, compared to the needs of the

community. In essence, this meant locating and keeping the "cash cows," while at the same time "dumping its dogs."

This does not infer that risk-taking is to be promoted at all cost. Police administrators can implement proven methods used by business organizations to calculate the inherent risks when adjusting the organization to its operating environment.

"...strategic planning allows police agencies to meet realistic objectives in the most effective and efficient manner possible."

Conclusion

Use of management methods and concepts from the private business sector requires a change in attitudes toward risk-taking measures. However, once this Nation's police administrators realize that progress results from taking chances, and that risk-taking can be directed by planned change and strategic planning, they will eventually adopt proven systems of operation from the business world. As a result, the

dynamic environment of policing will be seen as an opportunity instead of a threat.

Change will then come from within the organization, instead of responding to outside pressures, as is now the case the majority of the time. Police executives will no longer be forced to adjust reactively to their environments. Instead, positive adjustments will become commonplace and will allow police administrators to anticipate problems better and to prepare adequate solutions.

Until such attitudinal and value changes occur, police managers must continue to chip away at the prevailing values of the current system. Future managers must take the lead now, in order to bring about this value change in the bureaucratic system of policing. Only when a new value system promoting change and risk-taking is in place will police managers be able to adjust to their environments on an ongoing basis to meet the demands placed on them by citizens. Under such a system, police agencies will dump their dogs and capitalize on their cash cows to develop future stars. ■

Endnote

¹ "A Walk Through the Mind of a Bureaucrat," *ABA Banking Journal*, August 1982, p.6.

Point of View is a forum for law enforcement professionals to suggest recommendations to improve police work. Submissions for this feature should be typed, double-spaced, and forwarded to Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th and Pennsylvania Ave., NW, Washington, DC 20535.

The Law Enforcement Executive

A Formula for Success



By
JAMES D. SEWELL, Ph.D.

During the past 20 years, significant changes in the theory and practice of law enforcement took place. These changes included major technological advances, especially in computers and communications, improvement in management techniques and a greater administrative sensitivity for personnel and the communities they serve. They also involved an increased level of education among newly hired officers and improved training for recruits and inservice personnel. In addition, there has been a marked recognition of the professional nature and requirements of the job, and with that, an increased public

awareness of police needs, especially in the area of salary and benefits.

Even in light of the changes that have already occurred, greater changes than have ever been experienced in law enforcement can be anticipated. Futurists project that:

- By 1995, political terrorism is expected to emerge as a major problem in the United States
- By 1997, state-of-the-art high technology will be used routinely in combating crime
- By 1999, urban unrest and civil disorder characteristic of the 1960s and 1970s will take place throughout the United

States, but with increased intensity

- By 2000, lawsuits will successfully demonstrate inadequacies of and inaccuracies in police computerized files
- By 2000, crimes committed through the use of high technology will become so sophisticated that police will be unable to do more than take initial reports.¹

Weathering these and other unanticipated changes in society and criminal justice, as well as directing law enforcement to greater heights of accomplishment and professionalism, will place strong demands on

the leadership and management of law enforcement agencies. Therefore, as they approach the complexity and change of the future, law enforcement professionals need to move from the dichotomy artificially separating the concepts of leadership and management and into a new concept—the law enforcement executive.

THE SUCCESSFUL EXECUTIVE

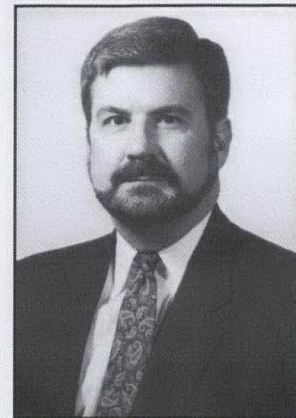
In their classic work on leaders, Warren Bennis and Burt Nanus indicated that “managers are people who do things right and leaders are people who do the right thing. The difference may be summarized as activities of vision and judgment—effectiveness—versus activities of mastering routine—efficiency.”² Similarly, Kotter advised that “management is about coping with complexity...Leadership by contrast is about coping with change.”³ Considering this, one might conceptualize the law enforcement *executive* as an individual who does right things right and who possesses “the mind of a manager, the soul of a leader.”⁴

The model of a successful executive is best defined by a blend of abilities, characteristics, and traits acquired through education, training, and real-world experience. This includes leadership, management, recognition and understanding of the community, a well-rounded understanding of the profession, and allegiance and loyalty to the organization.

Leadership

What makes a leader? This question has haunted the history of

“
...success...depends on
the executive's
knowledge and
understanding of, and
responsiveness to,
community ethics,
mores, direction, and
economy.”



Dr. Sewell is the Director of the Florida Criminal Justice Executive Institute, Florida Department of Law Enforcement, Tallahassee, Florida.

public administration. As early as 1951, a number of traits emerged as important indicators of leadership. These traits, identified through research, included mental ability, interests and aptitudes, the ability to speak and write fluently, maturity, personal motivation, social orientation and skills, and administrative skills.⁵

Further research⁶ identified four types of human-handling skills embodied by the leaders studied:

- 1) Attention through vision, i.e., creating focus (an agenda) within an organization
- 2) Meaning through communication—“the capacity to influence and organize meaning for members of the organization”⁷
- 3) Trust through positioning, which involves the ability of subordinates to rely on their leader and which results from “the set of actions necessary to implement the vision of the leader”⁸

- 4) The deployment of self through positive self-regard.

This last human-handling skill relates to several key concepts. Leaders must demonstrate the ability to accept people as they are and have the capacity to approach relationships and problems in terms of the present rather than the past. They must also treat those who are close to them with the same courteous attention extended to strangers and casual acquaintances and trust others, even if the risk seems great, without needing or looking for constant approval and recognition from others.⁹

The leadership element necessary for a successful law enforcement executive, and supported by research, consists of a number of components—vision, creativity, energy, credibility, values, integrity, and mentoring. Vision is the mental image of the possible and desirable future state of the police organization. It is the ability to inspire everyone in the organization toward the same image and to empower them

to act in its fulfillment. Robert Kennedy captured the essence of vision with the following quote by George Bernard Shaw, "Some men see things as they are and ask 'why?' I dream things that never were and ask 'why not?'"

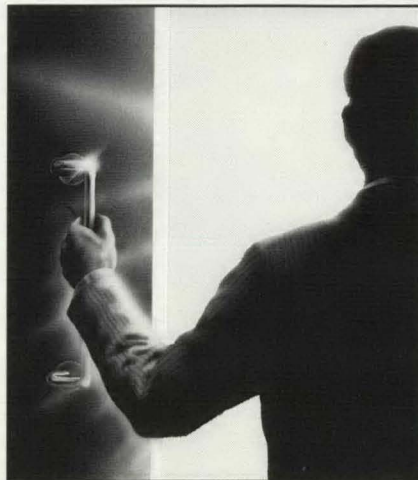
Using creativity, the leader "draws outside the dots" to implement that vision. It is the willingness and the courage to be innovative, to try new approaches to old problems, and to attack new issues and problems, even before they have been identified by one's peers. As Miller noted, "Flexibility, challenge, the free and frank flow of ideas and information, are necessary to promote creativity."¹⁰

The energy of the leader is the driving force that keeps the espoused ideas in motion. Energy is also the willingness, desire, and need to put the strength of one's vision and personality on display through long hours and extreme conditions. It is a vigor that is self-perpetuating, self-replenishing, and to the leader, self-rewarding.

Credibility entails the art of telling the truth and the skill of being believed. It is based on strongly held personal and professional values, beliefs, and principles and is demonstrated by the integrity to exemplify those traits as an individual and as a leader of an organization.

Finally, mentoring is another essential leadership characteristic of a successful law enforcement executive. Mentoring centers on the ability to recognize, develop, and nurture leadership skills and abilities in one's subordinates. It is a willingness to empower and to allow emerging leaders to exercise

their often newly discovered abilities and roles. Through mentoring, future leaders have the opportunity to "actually try to lead, to take a risk, and to learn from both triumphs and failures."¹¹



Management

Theodore Levitt, who is quoted by Zaleznik, describes several essential features of the managerial culture. Essentially, he states, "Management consists of the rational assessment of a situation and the systematic selection of goals and purposes; the systematic development of strategies to achieve these goals, the marshalling of the required resources; the rational design, organization, direction, and control of the activities required to attain the selected purposes; and, finally, the motivating and rewarding of people to do the work."¹²

However, the exercise of leadership, i.e., the movement of an agency from vision to reality, is difficult if one cannot survive current

management issues. Consequently, the leader's vision for the future must have its foundation in an understanding and successful management of issues of the present.

To be successful, police executives must demonstrate the traditional management skills necessary to deal with day-to-day organizational and operational problems and activities. For the most part, administrators learn these traditional management skills—planning, organizing, staffing, directing, coordinating, reporting, and budgeting¹³—while preparing to be managers. These skills encompass communication abilities, both verbal and written, which the executive uses to educate, persuade, and innovate. In addition, they include decisionmaking skills exercised in a timely fashion, but even more importantly, the willingness to stand firmly behind those decisions.

Recognition and Understanding of the Community

The activities of law enforcement executives occur within a framework larger than the individual organization. To be successful, these individuals must recognize the reciprocal relationship between the community and the law enforcement agency's philosophy, mission, and operations. At the same time, executives must not underestimate the economic conditions of the community, as well as the impact on the resources available to the agency.

For the most part, success—and ultimately survival—depends on the executive's knowledge and understanding of, and responsiveness

to, community ethics, mores, directions, and economy. In particular, executives must be sensitive to changing trends and issues. Ultimately, their effectiveness will be gauged by their ability to balance community, political, and departmental values, needs, and demands.

That balance necessitates an understanding of the complexities of the political environment within a community. Law enforcement executives must be able to "play the political game." And in doing so, they must recognize the limits of the playing field; the static, yet demanding, nature of the unwritten rules; and the identities and skills of other players.

For most, it means making the transition from often-simplistic and straightforward departmental politics to the more complex and changing community politics, with its wide range of issues, rules, and players. Throughout it all, executives must face the reality that their choice is often between political effectiveness and moral "rightness," and making the correct choice among alternatives, is often the most demanding and dangerous part of their professional lives.

Finally, current law enforcement administration appears to be going through an era of "vagabond" chiefs, those who have neither grown up in the community nor developed through the ranks of the department. Especially for these executives, the highest degree of success depends on their willingness to become involved in community activities and organizations, to display active commitment to the community, and to be viewed as a commu-

nity force, not just a law enforcement official.

Understanding the Profession

Too often, efforts to define leadership abilities and management skills fail to include the need for understanding the profession. Yet, knowledge of contemporary methods, techniques, and trends within the profession is critical for the successful law enforcement executive.

“

...leadership...consists of a number of components—vision, creativity, energy, credibility, values, integrity, and mentoring.

”

That knowledge should invite an active participation in professional organizations, and even more necessary, continuing professional education and growth.

Equally critical to success is well-rounded preparation for the executive position. No longer can the law enforcement executive afford to be a "top cop" or a long-tenured bureaucrat. Instead, proper professional development requires an understanding of the future without a narrow law enforcement focus. This translates into a knowledge and understanding of trends, styles, and innovations in other professions and technical fields, as well as society at large. It also implies an ability to analyze and synthesize nonlaw en-

forcement approaches into what are traditionally perceived as law enforcement problems.

As part of this preparation, law enforcement executives need to understand the unique nature of law enforcement as a community function. Unlike most other public "servants," the responsibilities of this profession include both service and protection. The successful definition and delivery of these complex and often-competing expectations are major distinctions between the law enforcement executive and other public and private sector colleagues.

Allegiance and Loyalty

The Police Chief's Survival Guide advises that to be a successful leader, a police chief should:

"Be supportive of your department....Never criticize your department publicly. Acknowledge mistakes the department has made and take action to correct them, but don't make sweeping indictments of your officers. Be willing to defend your department publicly when it is right. You weaken your support internally if you can never find an occasion to be a champion for your department to its critics."¹⁴

The issue of organizational loyalty is rarely addressed in literature related to either leadership or management. Yet, especially in the police subculture, the perception of loyalty to the department and its personnel is important to an executive's success. Inherent in this loyalty are an understanding of the

unique nature of the organization and a recognition of the critical role the chief executive plays, both internally and externally, as the embodiment of the agency, its values, and its direction. Loyalty also encompasses an ability to balance the often opposing roles of change agent and innovator with that of organizational representative.

CONCLUSION

Contemporary management literature identifies a variety of characteristics that are present in the successful leader or manager. Too often, however, such literature fosters an almost artificial distinction between the two types of individuals and leads readers to believe that leadership and management are almost mutually exclusive.

The demands of the law enforcement agency of today and the complexity of society and law enforcement in the future require individuals who can merge and expand the concept of both leader and manager. It is the law enforcement *executive* who will successfully combine the best characteristics of the leader and the manager with a real-world understanding of and ability to deal effectively with the community, profession, and the individual organization. ■

Endnotes

¹ William L. Tafoya, *A Delphi Forecast of the Future of Law Enforcement* (Washington, DC: U.S. Department of Justice, 1986), pp. 37-375.

² Warren Bennis and Burt Nanus, *Leaders* (New York: Harper & Row, 1985), p. 21.

³ John P. Kotter, "What Leaders Really Do," *Harvard Business Review*, 1990, p. 104.

⁴ Craig R. Hickman, *Mind of a Manager, Soul of a Leader* (New York: John Wiley & Son, 1990).

⁵ Cecil E. Goode, "Significant Research on Leadership," *Personnel*, 1951, pp. 344-348.

⁶ Supra note 2, p. 46.

⁷ Ibid. p. 39.

⁸ Ibid. p. 46.

⁹ Ibid. pp. 66-67.

¹⁰ Lawrence M. Miller, *Barbarians to Bureaucrats* (New York: Clarkson N. Potter, 1989), p. 176.

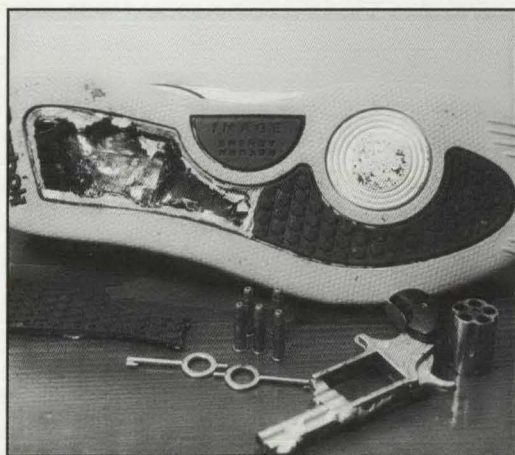
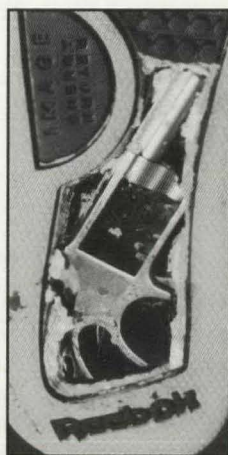
¹¹ John P. Kotter, *A Force for Change* (New York: The Free Press, 1990), p. 109.

¹² Abraham Zaleznik, "Managers and Leaders: Are They Different?" *Harvard Business Review*, 1977, p. 68.

¹³ Charles R. Swanson, Leonard Territo, and Robert W. Taylor, *Police Administration: Structures, Processes, and Behavior* (New York: MacMillan, 1988), p. 61.

¹⁴ Michael S. Scott, *Managing for Success: A Police Chief's Survival Guide* (Washington, DC: Police Executive Research Forum, 1986), p. 57.

Bulletin Alert

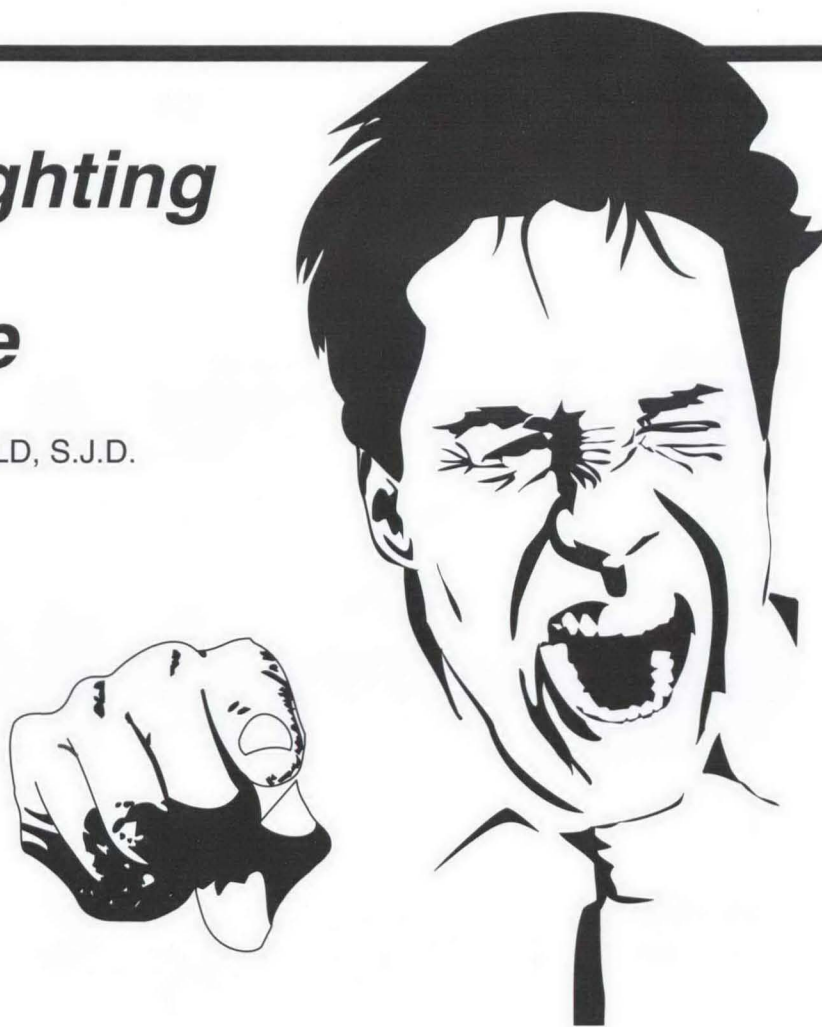


Loaded Shoes

Deputies in the Davidson County Sheriff's Office in Nashville, Tennessee, found this handgun concealed in a pair of tennis shoes. They confiscated the weapon from a suspect being processed into a corrections facility. The suspect hollowed out a section of both soles. In one shoe, he concealed the frame of a dismantled .22-caliber handgun. The other shoe contained the loaded cylinder housing. The suspect then resealed the tread of both shoes to avoid detection. ■

The "Fighting Words" Doctrine

By
DANIEL L. SCHOFIELD, S.J.D.



EDITOR'S NOTE: The use of profanity in this article documents the language of suspects that led to their arrests and to subsequent court decisions.

Fifty years ago, the U.S. Supreme Court in *Chaplinsky v. New Hampshire*¹ defined "fighting words" as "...those words which by their very utterance inflict injury or tend to incite an immediate breach of the peace." The Court held that such words are not protected by the first amendment and can be the basis for criminal prosecution.²

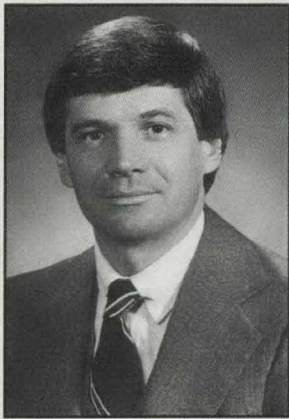
While the "fighting words" doctrine recently became an issue in prosecutions for hate crimes and

flag burning, this article focuses specifically on the scope of the "fighting words" doctrine in the context of speech directed to law enforcement officers. The article reviews recent court decisions that delineate the parameters of the "fighting words" exception to first amendment protection and offers practical guidance to officers regarding their constitutional authority to arrest for words addressed to them.

The "Fighting Words" Exception Narrowly Defined

In *Houston v. Hill*,³ Raymond Hill observed his friend Charles Hill

intentionally stopping traffic on a busy street, evidently to enable a vehicle to enter traffic. Two Houston police officers approached Charles Hill and began speaking with him. Raymond Hill, in an admitted attempt to divert the officers' attention from his friend Charles, began shouting at the officers, "Why don't you pick on somebody your own size?" After one of the officers responded, "Are you interrupting me in my official capacity as a Houston police officer?" Hill shouted, "Yes, why don't you pick on somebody my size?" Raymond Hill was then arrested and convicted under a city ordinance for "wilfully



“
The ‘fighting words’ doctrine requires an analysis of both the content of the words spoken and the context in which they are used....
 ”

Special Agent Schofield is the Chief of the Legal Instruction Unit at the FBI Academy.

or intentionally interrupting a city policeman...by verbal challenge during an investigation.” The Supreme Court ruled Hill’s conviction violated the first amendment.

The Court noted that “...the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers” and that an ordinance punishing spoken words directed to a police officer is constitutional only if “...limited in scope to fighting words that by their very utterance inflict injury or tend to incite an immediate breach of the peace.”⁴ The Court also suggested the “fighting words” exception to first amendment protection requires “...a narrower application in cases involving words addressed to a police officer, because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to “fighting words.”⁵

The Court emphasized that while the freedom to challenge police action verbally without risking

arrest is one of the principal characteristics by which a free nation is distinguished from a police state, that freedom is not without its limits.⁶ For example, the first amendment permits narrowly tailored ordinances prohibiting disorderly conduct or “fighting words” if they do not provide police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them.⁷ The Houston ordinance unconstitutionally criminalized speech directed to an officer because it broadly authorized police to arrest a person who in *any* manner verbally interrupts an officer.⁸

Principles to Guide Officer Decisionmaking

The “fighting words” doctrine requires an analysis of both the content of the words spoken and the context in which they are used to determine if words addressed to law enforcement officers are protected by the first amendment. Recent Federal and State court decisions reviewed in this article reveal four

generally accepted principles that can assist officers in deciding whether to arrest for speech directed to them.

First, direct threats to officer safety generally constitute “fighting words” unprotected by the first amendment. Second, speech that clearly disrupts or hinders officers in the performance of their duty is not constitutionally protected. Third, the “fighting words” exception to first amendment protection requires a higher standard for communications directed to police because professional law enforcement officers are expected to exercise greater restraint in their response to such words than the average citizen. Fourth, profanity, name calling, and obscene gestures directed at officers do not, standing alone, constitute “fighting words.”

Direct Threats to Officer Safety

The Supreme Court of North Dakota recently held that direct threats to officers were unprotected “fighting words.” In *City of Bismarck v. Nassif*,⁹ three police officers were sent to Nassif’s residence after he called police to complain they were not doing anything about his earlier complaint regarding vandalism to his car. He also threatened to take the law into his own hands and told police he had a gun.

When officers arrived, Nassif exited his house appearing upset, shouting loudly, and acting aggressively. After attempting to reason with him, one officer told Nassif they were leaving. Nassif then said, “You fucking son of a bitch, I’m going to go back into the house and

get my shotgun and blow you bastards away." Based on this threat to their safety, the officers arrested Nassif for disorderly conduct.

The court concluded that Nassif's statement, along with the circumstances of this encounter with police, constituted language that falls within the meaning of "fighting words" unprotected by the first amendment.¹⁰ The court relied on language from a Supreme Court opinion in which Justice Douglas wrote that the first amendment protects a significant amount of verbal criticism and challenge directed at police officers unless that language is "...shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."¹¹ The court found Nassif's threat to get his shotgun and shoot the officers sufficient to produce a clear and present danger of a serious substantive evil.

An Indiana appellate court reached a similar result in *Brown v. State*,¹² where an arrestee became loud and abusive and threatened to kill one of the arresting officers. After being told to quiet down, the defendant told one of the officers to take off the handcuffs so he could fight and then threatened to give the officer a "Sicilian necktie," which involves slitting the throat and pulling the victim's tongue out through the neck. The court upheld the defendant's disorderly conduct conviction finding that such threats, insults, and provocations directed solely at the arresting officers clearly fall within the "fighting words" category of unprotected

speech because they "...were stated as a personal insult to the hearer in language inherently likely to provoke a violent reaction."¹³

As a general rule, provocative speech that falls short of a direct threat to officer safety is protected by the first amendment. For example, in *State v. Fratzke*,¹⁴ the Supreme Court of Iowa reversed the defendant's conviction of harassment for writing a nasty letter to a State highway patrolman to protest a speeding ticket.

The letter, which accompanied payment of the fine, characterized the speeding arrest as a case of "legalized highway robbery" and a product of highway safety priorities gone askew. Because the trooper had allegedly refused to show him the radar equipment at the scene, the defendant accused the trooper of being a liar, as well as a "thief disguised as a protector." The letter revealed the defendant's contempt

The court applied three general principles to the specific facts of this case to conclude that the defendant's use of profane and otherwise objectionable language in the letter did not rise to the level of "fighting words" so as to permit conviction. First, States cannot assume that every expression of a provocative idea will incite violence; instead, the actual circumstances surrounding such expression should be carefully considered to determine whether the expression "is directed to inciting or producing imminent lawless action."¹⁵ Second, "[t]he constitutionality of a state statute that attempts to criminalize the use of opprobrious words or abusive language...must, by its own terms or as construed by the state's courts, be limited in its application to 'fighting words' and must not be susceptible of application to speech that is protected...."¹⁶ Third, "...the 'fighting words' doctrine logically deserves a

“

...speech that clearly disrupts or hinders officers in the performance of their duty is not constitutionally protected.

”

for the trooper in vulgar terms and closed with the expressed wish—"not to be interpreted as anything whatsoever in the way of a threat"—that the trooper "have an early and particularly painful death hopefully at the side of a road somewhere where he's robbing someone else."

more narrow application in the case of communications addressed to police officers, who—assuming they are properly trained—are expected to exercise greater restraint in their response."¹⁷

The court concluded the defendant's message did not lend

itself to application of the "fighting words" doctrine. In so doing, the court noted the following reasons:

- 1) The threat was contained in a letter—a mode of expression far removed from a heated face-to-face exchange;
- 2) The letter was not mailed to the trooper's home but to the clerk of court, a neutral intermediary; and
- 3) The defendant "...was exercising his uniquely American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."¹⁸

Speech that Disrupts Performance

The Supreme Court in *Houston v. Hill* suggested that speech directed to officers that actually disrupts or obstructs them in the performance of their duty is unprotected by the first amendment and can be constitutionally proscribed by a narrowly tailored criminal statute.¹⁹ Following that precedent, a Florida appellate court upheld the prosecution of an individual whose speech disrupted an officer's performance of duty.

In *Wilkerson v. State*,²⁰ the defendant started yelling at and cursing officers who had just arrested some drug dealers. An officer told her, at least two times, to leave the area because she was interfering with their efforts to make the arrests, but she refused to leave and continued cursing and yelling at them. After other bystanders began yelling at and cursing the officers and the defendant again refused to leave

the area, she was arrested on a charge of obstructing an officer in the performance of his duties.

The court concluded her arrest did not unconstitutionally interfere with her free speech rights because the underlying statute could be narrowly construed "...to proscribe only acts or conduct that operate to physically oppose an officer in the

“...direct threats to officer safety generally constitute ‘fighting words’ unprotected by the first amendment.”

performance of lawful duties.”²¹ The court found that Wilkerson was not arrested for merely yelling at and cursing the officers, but rather for refusing to leave the area where the officers were attempting to make arrests because her physical presence was obstructing their performance of duty. In that regard, the court noted that "...officers may lawfully demand that citizens move on and away from the area of a crime without impermissibly infringing upon the citizen's First Amendment rights.”²²

A Higher Standard Applied to Police

When courts decide whether particular words constitute "fighting words," a significant factor in the contextual analysis is whether the words were directed to a law enforcement officer. Courts generally agree with the view expressed

by Justice Powell in *Lewis v. City of New Orleans* that "a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to 'fighting words.'"²³

In *Buffkins v. City of Omaha*,²⁴ the U.S. Court of Appeals for the Eighth Circuit found as a matter of law that officers could not have reasonably concluded they had probable cause to arrest Buffkins for disorderly conduct for using "fighting words" when she called the officers "asshole." Buffkins was suspected by the officers of being a drug courier and was detained at the airport. She protested that the officers' conduct was racist and unconstitutional and she became increasingly loud during the period of detention and questioning. The officers eventually informed Buffkins that she was free to go and told her to "have a nice day" to which she replied "asshole system" or "I will have a nice day, asshole." The officers then decided to arrest Buffkins for disorderly conduct. Buffkins subsequently filed a civil lawsuit against the officers claiming her arrest for disorderly conduct was unconstitutional.

The court described "fighting words" as words "...likely to cause an average addressee to fight." It concluded for the following reasons that Buffkins' speech was not an incitement to immediate lawless action:

- 1) Neither arresting officer contended that Buffkins became violent or threatened violence;
- 2) Both officers admitted that nobody outside the interview

room heard Buffkins' comments; and

3) Buffkins' use of the expletive in referring to the officers could not reasonably have prompted a violent response from trained officers who are expected to exercise greater restraint in their response than the average citizen.²⁵

Profanity, Name Calling, and Obscene Gestures

Recent court decisions have held that profanity, name calling, and obscene gestures directed at an officer do not constitute "fighting words." In *Duran v. City of Douglas*,²⁶ the U.S. Court of Appeals for the Ninth Circuit ruled that the first amendment protected profanities and an obscene gesture directed toward a police officer and that the officer's subsequent detention and arrest of Duran for disorderly conduct was unconstitutional.

After arriving at a downtown hotel in response to a bartender's complaints about an unruly patron, officers found Duran intoxicated and threatening the bartender. One officer and Duran exchanged a few heated words, after which Duran was escorted out of the bar by the officer. Duran then left in an automobile driven by his wife.

Soon thereafter, while on patrol, the officer observed Duran directing an obscene gesture toward him through an open window, and the officer began following the car. As the officer followed the car down a rural highway, Duran began yelling profanities in Spanish and continued to make obscene gestures.

The officer followed the car to Duran's residence in a mobile home park, at which time he initiated a traffic stop by turning on his emergency lights. The officer ordered Duran to step away from the car, to which Duran replied, "I don't have to." The officer told Duran that the reason for the traffic stop was to find out why he had yelled profanities and made an obscene gesture toward him. Duran responded with further profanities in both Spanish and English and was then arrested for disorderly conduct.

The court ruled there was no legitimate, articulate reason for the officer to have detained Duran, since there was no evidence of a danger to public safety or that Duran was engaged in any illegal activities.²⁷ The court recognized that Duran's conduct toward the officer "...was boorish, crass and, initially at least, unjustified...[and

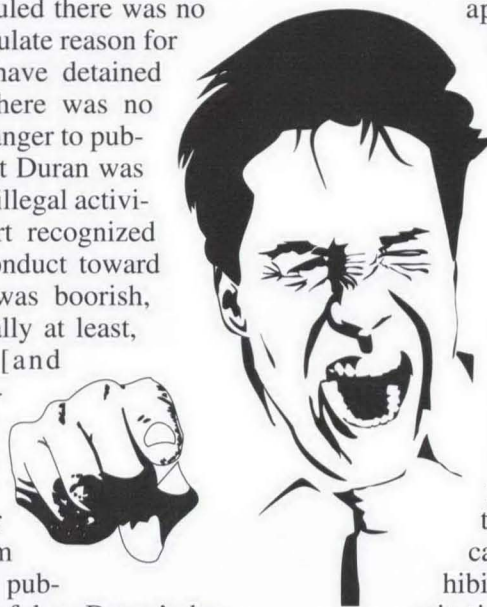
that]...hard-working law enforcement officers surely deserve better treatment from members of the public. But disgraceful as Duran's behavior may have been, it was not illegal; criticism of the police is not a crime."²⁸ The court also noted there was no evidence that Duran's conduct constituted a disturbing of the peace, since the car was traveling late at night on a deserted road on the outskirts of town.

The court cautioned that the officer's stopping of the car "...at least partly in retaliation for the in-

sult he received from Duran...would constitute a serious First Amendment violation."²⁹ The court acknowledged that while police officers may understandably "...resent having obscene words and gestures directed at them, they may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment."³⁰ The court concluded that even though Duran's conduct was crude, it represented

an expression of disapproval toward an officer with whom he had just had a run-in and "...fell squarely within the protective umbrella of the First Amendment and any action to punish or deter such speech—such as stopping or hassling the speaker—is categorically prohibited by the Constitution."³¹

A similar result was reached by the Supreme Court of North Dakota in *City of Bismarck v. Schoppert*,³² where the defendant walked past a police car, gestured at the officers with his middle finger, and said, "Fucking, bitching cop." One of the officers asked the defendant what was the matter, and three times, he replied with the obscene epithet, "Fuck you."



The officer then got out of the car and stopped the defendant by grabbing his left arm. She asked him to identify himself, and he again replied with the same obscene epithet. The defendant who allegedly smelled of alcohol told the officers, "You don't know who you're [expletive] with. You just bought yourself a Federal lawsuit." The defendant then took one step toward the officer and was arrested for disorderly conduct.

The court ruled the disorderly conduct arrest unconstitutional on the grounds that a finding that "...words are vulgar or offensive is not sufficient to remove them from the protection of the first amendment and into the arena in which the state can make conduct criminal...It is thus not a crime in this country to be a boor, absent resort to fighting words."³³ The court said there was no evidence that the defendant's language or conduct tended to incite an immediate breach of the peace since officer testimony "...unequivocally rejected any suggestion that any anger Schoppert may have provoked in them would or could have incited them to a breach of the peace, immediate or otherwise."³⁴ Since Schoppert's words were not a clear invitation to fight, and the testimony did not demonstrate that these words, spoken to this audience, had any tendency to cause an immediate breach of the peace, the court concluded that Schoppert had been convicted for injuring the feelings of the officers, which is unconstitutional.

Conclusion

The first amendment protects a significant amount of speech di-

rected to law enforcement officers, including some distasteful name calling and profanity. The "fighting words" exception to first amendment protection has a narrower application for words addressed to law enforcement officers because courts expect professional and well-trained officers to exercise a higher degree of restraint than the average citizen and to "...divorce themselves from any anger the words might have engendered."³⁵

Words addressed to officers are not protected by the first amendment if they constitute either direct threats to officer safety or actually

**“
The first
amendment
protects a
significant amount
of speech directed
to law enforcement
officers....
”**

obstruct officers in the performance of their duty. To ensure the constitutionality of arrests, legal training for law enforcement officers should include a review of first amendment principles and the "fighting words" doctrine. ■

Endnotes

¹ 315 U.S. 568 (1942).

² *Id.* at 572. One author notes that *Chaplinsky* is the only Supreme Court decision upholding a "fighting words" conviction. See, "Constitutional Law—First Amendment—North Dakota's Disorderly Conduct Statute: Is it Limited to Fighting Words, or Unconstitutionally Overbroad and Vague?" 67 N. Dakota L. Rev. 123 (1991).

³ 482 U.S. 451 (1987).

⁴ *Id.* at 461-462.

⁵ *Id.* at 462.

⁶ *Id.* at 464, n. 12.

⁷ *Id.* at 465.

⁸ *Id.* at 463, n.11.

⁹ 449 N.W.2d 789 (N.D. 1989).

¹⁰ *Id.* at 795.

¹¹ See *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

¹² 576 N.E.2d 605 (Ind. App. 3 Dist. 1991).

¹³ *Id.* at 607.

¹⁴ 446 N.W.2d 781 (Iowa 1989).

¹⁵ *Id.* at 784.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 785.

¹⁹ The Court offered as an example a prosecution for disorderly conduct of an individual who chooses to stand near a police officer, after being ordered to disperse, and persistently attempts to engage the officer in conversation while the officer is directing traffic at a busy intersection. 482 U.S. at 463, n. 11.

²⁰ 556 So.2d 453 (Fla. App. 1 Dist. 1990).

²¹ *Id.* at 456.

²² *Id.*

²³ 415 U.S. 130, 135 (1974).

²⁴ 922 F.2d 465 (8th Cir. 1990), cert. denied, 112 S.Ct. 273 (1991).

²⁵ *Id.* at 472.

²⁶ 904 F.2d 1372 (9th Cir. 1990).

²⁷ *Id.* at 1377.

²⁸ *Id.*

²⁹ *Id.* at 1378.

³⁰ *Id.*

³¹ *Id.*

³² 469 N.W.2d 808 (N.D. 1991).

³³ *Id.* at 811.

³⁴ *Id.* at 813.

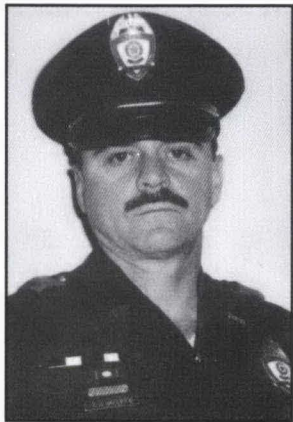
³⁵ *Id.* In *Elbrader v. Blevins*, 757 F.Supp. 1174 (D.Kan. 1991), a civil suit was filed against police officers by an arrestee claiming he did not engage in "fighting words" when he allegedly called a police officer a "son of a bitch" prior to his arrest. The court held that there is a clearly established right against retaliation for constitutionally protected speech and that even if the officer thought the plaintiff did call him a "son of a bitch" "...not every epithet directed at a police officer constitutes disorderly conduct." *Id.* at 1182.

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

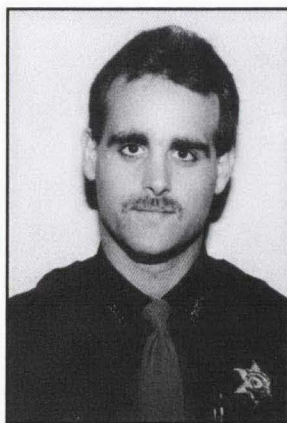
The Bulletin Notes

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 their exemplary service to the law enforcement profession.

Field Training Officer B. H. McDuffie of the Garland, Texas, Police Department responded to a call of an apartment complex fire. When panic-stricken residents reported that an infant remained inside the burning structure, Officer McDuffie and his trainee entered the building. Using a wet cloth to shield his face from the intense heat and flames, Officer McDuffie made repeated attempts before reaching the second floor, where he searched on his hands and knees in the darkness until he located the 12-month-old infant. Then, Officer McDuffie carried the infant to another officer, who assisted both of them out of the burning building. Officer McDuffie was later transported to a hospital and treated for smoke inhalation.

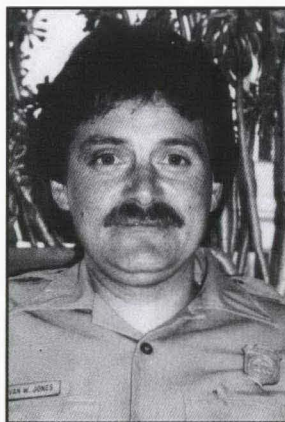


Officer McDuffie



Deputy Lucas

Deputy Steve Lucas of the Richland County, South Carolina, Sheriff's Office responded to a traffic accident in which a vehicle overturned and began burning, trapping four occupants inside. Deputy Lucas rescued the four victims just moments before the vehicle exploded into flames. He then administered first aid to the driver, who sustained a life-threatening laceration to an artery in his arm. Deputy Lucas continued to care for the victim until rescue units arrived.



Ranger Jones-Toscano

Ranger Evan W. Jones-Toscano of the National Park Service in Redwood National Park, California, monitored the police report of a man falling overboard from a boat. Responding in his wet suit, Ranger Jones-Toscano swam 75 yards through choppy and cold sea water to rescue the victim, who was quickly succumbing to the chill of the water. Emergency care units then transported the victim to a nearby hospital, where he received treatment for hypothermia and exhaustion.

Second Class Mail
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use \$300
Address Correction Requested

Order Processing Code:



12/8

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325