

U.S. Department of Justice  
Federal Bureau of Investigation



CALAHAN

APRIL 1994

# FBI Law Enforcement

B ♦ U ♦ L ♦ L ♦ E ♦ T ♦ I ♦ N

Personnel

April 1994  
Volume 63  
Number 4

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

Louis J. Freeh  
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. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

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.

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# FBI Law Enforcement

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# ASPIRES

## *A Solution to the Midcareer Plateau*

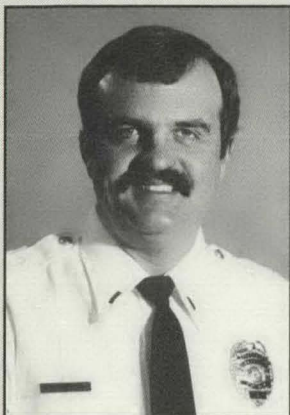
By  
SCOTT A. JOHNSON

**T**he American Dream is inherent in the Nation's workforce. Employees believe that if they work hard and are loyal to their organizations, they are almost assured ascent on the ladder of success. Police officers, who devote their careers to public service, also subscribe to this philosophy.

Unfortunately, today's economy has meant budget cuts, agency downsizing, and fewer promotions in police departments. Even officers with the appropriate knowledge, skills, and abilities fail to rise above the patrol officer rank. Often, these officers have put many years in the organization; they have families and financial obligations. Leaving the department is not an option for them.



Photo by Lawrence W. McKnight



Lieutenant Johnson serves with the Lakeville, Minnesota, Police Department.

**“ASPIRES is a proactive program that police administrators can use to slay the plateau dragon that devours many midcareer patrol officers.”**

While some patrol officers may be able to adjust and remain focused on their jobs, most feel angry, disappointed, and dissatisfied. As a result, their morale and productivity suffer, affecting the entire organization, which now falls prey to the “plateau dragon.” This monster eats initiative and leaves in its tracks the lifeless corpses of midcareer patrol officers. These officers are dead but not gone. Rather, they have “quit and stayed.”

Is slaying this plateau dragon one of the personnel challenges police administrators face? Administrators must ensure that their employees remain satisfied and committed to the agency, even without promotions.

Toward this goal, the Lakeville, Minnesota, Police Department, with 28 sworn officers, has developed ASPIRES, a career development program that specifically targets midcareer patrol officers. This article outlines ASPIRES and provides guidance to administrators who wish to use similar approaches in their own departments.

## PROGRAM OVERVIEW

ASPIRES encourages patrol officers to grow and gain experience in areas that will benefit them and their departments. It provides recognition for their accomplishments, encourages them to continue learning, and rewards them for their efforts, without removing their skills and talents from patrol work.

ASPIRES provides structure and purpose to officers’ training and gives them control over the process. It places responsibility for career growth in their hands.

ASPIRES provides personal development in seven key areas: Administrative Services, Specialization, Professional Training, Investigation, Records/Communication, Experience, and Supervision. Each area includes objectives designed to increase officers’ knowledge and understanding of their duties. Supervisors and patrol officers mutually agree upon these objectives, and then officers set their own timetables for accomplishing each so they do not neglect their primary patrol functions.

Supervisors act as coaches and mentors. They guide, assist, and monitor officers as they advance through the program. Officers maintain progress manuals, which they review and sign with supervisors following satisfactory completion of each objective.

Because departments are unique in structure, services, and needs, administrators should develop objectives and training resources appropriate for the needs of their department. Lakeville’s program, which is detailed below, could serve as a starting point for other departments wishing to institute such a program.

## PROGRAM SPECIFICS

### Administrative Services

Patrol officers are often removed from administrative functions. They may be critical of management for what they see as deficiencies; however, they may not realize the work involved in running a department. The administrative services element of the program helps officers to gain insight into the inner workings of the department.

To complete the requirements of this component, officers work closely with the chief, assisting in the preparation of two consecutive annual department budgets and attending a county chiefs of police meeting as the chief’s guest. They must also complete an indepth, written research project, under the chief’s direction, and formally present their findings and recommendations at a staff meeting. They might report on new equipment, technologies, or techniques in law enforcement or provide solutions to

a problem the department has experienced.

In addition, officers also attend, and contribute to, at least six police department staff meetings and serve on the employee recruitment and interview board for at least 1 year. They also complete a minimum of four credit hours in a Peace Officer Standards and Training (POST) Board-approved course in media relations and then assist in the preparation of at least six press releases.

Officers also construct a professional resume. This helps them to see what they have accomplished thus far in their careers and to determine where they need improvement or further development. The resume also serves to illustrate the value of ASPIRES.

### Specialization

In small police departments, patrol officers usually take on supplementary assignments because the demand and resources do not exist to assign officers to some duties full time. By incorporating these assignments into ASPIRES, departments acquire needed services while officers gain valuable knowledge and experience.

Objectives in this area require that officers hold, for a minimum of 24 months each, three supplementary assignments. The Lakeville chief of police designated 16 areas in which officers can meet specialization requirements, including K-9 patrol, SWAT team, hostage negotiation, firearms instruction, and traffic accident investigation, to name a few.

### Professional Training

The complexities of policing today require professional, highly

educated police officers. Departments across the Nation are mandating or increasing higher education requirements for their officers, and Minnesota is no exception.

Minnesota's POST Board requires not only that prospective law enforcement officers complete a 2-year degree program but also that they become licensed prior to seeking employment with a law enforcement agency in the State. Officers must earn 48 hours of continuing education credits in order to renew their license, which is valid for 3 years.

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***ASPIRES encourages patrol officers to grow and gain experience in areas that will benefit them and their departments.***

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In addition to the State's requirements, the Lakeville Police Department requires that officers hired after January 1, 1981, who participate in ASPIRES, possess a 4-year college degree. Professional training does not end with a degree, however. Officers must also:

- Complete a minimum of 100 hours of POST-approved training directly related to their supplementary assignment
- Provide a minimum of 200 hours' inservice training to other department members. (This might relate to the officer's supplementary assignment or another area

in which the officer has expertise.)

- Become a field training officer and take part in the training of at least two rookie patrol officers
- Attend Intoxilyzer/Breathalyzer school and become certified as an operator, maintaining this certification with 8 hours of training every 2 years
- Complete training in the basic core areas of hazardous materials (Hazmat), Skywarn (the National Weather Service's warning system), crime scene procedures, interview and interrogation techniques, and crime prevention programs.

### Investigation

Patrol officers usually have little experience investigating major cases. For this reason, ASPIRES requires officers to serve a minimum of 1 year in the patrol officer investigator position or on the drug task force. During this year, they develop or improve skills in interrogation and interviewing and network with investigators in other jurisdictions, thus benefiting from their peers' knowledge and experience.

In addition, officers must complete a minimum of 100 credit hours of POST-approved training in investigation and a department-approved advanced interview and interrogation course. They must also investigate at least one major felony case, personally obtaining a formal complaint and signed arrest warrant charging the suspect with the offense.

## Records/Communication

Although patrol officers frequently access department records indirectly, they often have no concept of how to retrieve the information themselves. They may not even know what data the system contains. ASPIRES' two-part training in records and communication addresses these concerns.

Officers must spend 200 hours in the records/communication division and demonstrate a working knowledge of records procedures, criminal justice information services, and radio dispatching nomenclature and procedures. They must also display proficiency in using the inhouse computer system and its programs. Finally, officers must complete a minimum of 4 credit hours of POST-approved training in data privacy laws.

## Experience

Patrol officers typically go through several stages in their careers. They spend the first 5 years learning the job and the second 5 to 10 years using the skills they have mastered in what most consider an exciting and challenging position. By the third stage, officers look forward to promotion within the department. In line with this timetable, the ASPIRES program requires officers to have served the department for a minimum of 15 years, 10 assigned to the patrol division. However, merely "going through the motions" is not enough. Officers must demonstrate initiative, good police practices, and the ability to handle ever-increasing levels of responsibility.

## Supervision

Similar to the administrative services function of the program, the supervision component aims to provide patrol officers with a perspective on issues that supervisors face daily, such as community concerns or personnel matters. To

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”**

accomplish this, officers must complete the following objectives:

- Attend a minimum of 200 hours of POST-approved management training
- Assist the supervisor in charge with the successful resolution of at least two critical incidents
- Assist in the planning and preparation of police services for the annual community celebration
- Serve a minimum of 12 months as the department's college student intern coordinator or the police reserve liaison.

## PROGRAM REWARDS

Completion of ASPIRES is a notable accomplishment that is

formally documented. In Lakeville, patrol officers who complete the program receive a promotion to the honorary rank of corporal in recognition of their efforts.

Department administrators must determine what their officers view as valuable rewards and structure the reward system accordingly. In addition to extrinsic rewards, patrol officers can feel proud of their achievement and benefit from their newly acquired, hard-earned knowledge, skills, and experience.

## CONCLUSION

Qualified officers who get passed over for promotion may interpret it as a personal rejection. Those unable to recover may react with disappointment, bitterness, and antagonism. But, instead of leaving the organization, many of these officers choose to "quit and stay."

Police administrators must be aware of the warning signs of plateaued midcareer patrol officers and take steps to reduce the frustration and resentment this can cause. Failure to do so may negatively impact the entire organization.

ASPIRES places control and responsibility for career development in the hands of the patrol officer, encouraging growth and continued commitment. It fosters a mentor relationship between the supervisor and the patrol officer and can be designed to fit the uniqueness of each individual agency. ASPIRES is a proactive program that police administrators can use to slay the plateau dragon that devours many midcareer patrol officers. ♦

## *Responding to Violent Crime in America*

By FBI Director Louis J. Freeh

**T**he people of this country are fed up with crime. The media report it. Statistics reflect it. Polls prove it. Indeed, some political analysts say that this past November's election results are, at least in part, the products of this attitude and concern.

There have been some very modest decreases in reported crime. In April 1993, however, the International Association of Chiefs of Police published a report on violent crime in America, which noted that the rate of violent crime in this country has increased 371% since 1960. That is nine times faster than the U.S. population has grown.

In the past 30 years, homicides have nearly tripled, robberies and forcible rapes each are up over 500%, and aggravated assaults have increased more than 600%. According to the most recent National Crime Victimization Survey, nearly 37 million people have been injured by criminals in this country in the past 20 years. It is estimated that crime has cost America \$19 billion since 1991.

Law enforcement does not pay lip service to the Constitution's guarantee about "insur[ing] domestic tranquility." We take that responsibility very seriously. On the other hand, Americans must be realistic about the role of Federal law enforcement agencies, especially in these times of fiscal austerity. I want to review for you my assessment of where the FBI stands today, as well as some of the problems that will confront us in the years to come.

### **FBI Jurisdiction**

When the predecessor to today's FBI was created in 1908, there were just a few Federal laws to be enforced. Agents primarily investigated violations of the laws involving national banking, bankruptcy, naturalization, antitrust, peonage, and land fraud. Over time, the FBI's jurisdiction grew to include white slavery and espionage.

That jurisdictional growth has continued unabated. For example, in the past decade alone, Congress has made the FBI responsible for investigating

## **Notable Speeches**



*Director Freeh delivered this speech at the National Press Club in Washington, DC.*

parental kidnappings, parents who travel interstate in order to default on child support payments, and carjackings. Contemplated areas of jurisdiction include drive-by shootings, interference with access to abortion clinics, stalking, and interstate travel to abuse a spouse or intimate partner.

In citing these examples, I make no value judgments about the validity of specific pieces of legislation. I merely note them, because they illustrate the continuous and rapid growth of the FBI's jurisdiction.

Rapid, unchecked federalization of criminal activity could overwhelm the limited resources of Federal law enforcement agencies, including the FBI. In addition, it could create unrealistic expectations among the American public.

The FBI will, however, continue to establish investigative priorities and follow them in a manner that will have the greatest impact on the major crime problems confronting this Nation. To do so requires a thoughtful, not knee jerk, reorganization of our resources.

### **Reorganization of Resources**

Everyone knows that the Federal Government has acquired some fat over the years—fat that needs to be trimmed. No one suggests that Federal law enforcement is the paragon of efficiency.

Since I became FBI Director, I have undertaken a review of our headquarters personnel in order to assess which of those agents can be returned to the field to fight crime. Attorney General Reno likewise

has recognized that there has been a duplication of efforts among the criminal agencies of the Department of Justice. Demonstrating great innovation, the Attorney General has created the Office of Investigative Agency Policies as a means to coordinate and consolidate Federal law enforcement efforts. Through successful coordination and the avoidance of petty infighting and squabbling, we will—on a broad basis—make more meaningful use of agents in the field, where they can best serve the Nation's interests.

Each of the Department of Justice's agencies brings a certain expertise to the fight against crime. The goal is to maximize their productivity and decrease the level of unhealthy competition that exists among and between those agencies. Areas where coordination will be examined and improved include the sharing of intelligence and the proliferation of task forces, many of which address the same or similar law enforcement targets.

In short, we recognize that Federal agents have not always been used to their fullest potential.

Understand, however, that we at the FBI, as well as the Department of Justice as a whole, are taking the steps necessary to rectify those deficiencies. That is absolutely necessary in order for the FBI and the Department to maintain the standards of excellence for which they are known.

### **Redeployment of Personnel**

We have been creative in our efforts to deploy more agents in the fight against crime. Since the end of the Cold War a couple of years ago, the FBI has been able to shift some agents from national security to criminal investigations.

America must understand, however, that intelligence agents from the countries of the former Soviet Union, as well as several other countries, still pose a threat to national security. To move all national security agents to criminal investigations would be irresponsible. If further transfers of national security agents are possible, they will be done, so long as the domestic security of the United States is not jeopardized.

Likewise, many of those national security agents are tasked to examine foreign attempts at economic espionage directed against American corporations. Some of these attempts are made by foreign countries; others are made by foreign businesses. These attempts, when successful, cause much harm to this Nation's economy.

Unfortunately, FBI agents must work without a great deal of legislative guidance, because Congress has not fully defined economic espionage. This does not mean that there is no threat. Indeed, in this time

of a new world order, it is imperative that Congress provide a clear definition, because the nature of the foreign threat facing us is constantly changing.

One area where the FBI has successfully redeployed some national security agents is in the fight against violent criminals in America. Currently, the FBI has more than 2,200 agents working on violent crime cases, which represents almost 30% of the FBI's total number of agents assigned to criminal investigations.

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**Through successful coordination...we will...make more meaningful use of agents in the field, where they can best serve the Nation's interests.**

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### **Gang Violence**

I want to talk to you for a few moments about the nature and extent of the violence facing this country. An illustration of that violence is shown by the migration of the Bloods and Crips east from California and the Gangster Disciples south from Illinois. What began a few decades ago as a problem endemic to certain neighborhoods in Los Angeles and Chicago has become a scourge throughout America's heartland.

Unfortunately, as these gangs have spread, residents of cities such as Denver, Oklahoma City, Omaha, Kansas City, and St. Louis have joined the ranks of those victimized by gang activities. Those people know the reality that as gangs muscle into new turfs, they trigger violence from existing criminal elements.

Despite their willingness to engage in random acts of violence and to swell their ranks with youthful recruits, gangs seek the cloak of legitimacy. In order to humanize their members, some gangs have been

holding summits throughout the United States this year.

Indeed, one report published in September noted that the Mexican Mafia held a summit just a short distance from the Los Angeles Police Academy. That summit's goal was very simple—to communicate to gang members that drive-by shootings are impermissible and that retribution will be taken against those who engage in them. This was not, however, a humanitarian gesture. According to that account, the purpose behind the summit was to diminish law enforcement interest in their illegal activities, which had been enhanced by the public's outcry against the rise in drive-by shootings, and to solidify drug ties among those attending the summit.

Gangs are not legitimate organizations. Americans must always remember that crime is their lifeblood, and in their wake, they spread nothing but misery, sadness, and destruction. From the junkie who has to commit crimes in order to buy more crack from a gang member, to the innocent child who is shot to death during gang warfare. From the resident of public housing who experiences violence as the gangs seek to establish a choke hold in the neighborhood, to the suburban homeowner whose property value drops merely because gangs are active in the area.

All of America suffers from gang activities. No autobiography, no movie, no song, no music video, in short, no attempt to glorify gangs can reverse the suffering and hardship that they inflict on decent people everywhere.

Americans recognize the threat that these violent criminals pose to our safety. Last November, in Memphis, President Clinton referred to this threat as "the great crisis of the spirit that is gripping America today." The President is right, and we all must confront the war that is going on in our neighborhoods with an unprecedented determination. Indeed, as the President has noted, "It is our moral duty to turn it around."

The task is formidable, because the weaponry and ammunition at the disposal of the gangs and drug

dealers is staggering. The image of teenagers patrolling the streets with assault weapons is no longer something that is confined to a news story about some distant land. In too many places in America, it has become reality.

### Assault Weapons

In a civilized society like ours, there is simply no place for assault weapons, which serve only to provide a source of strength and power to America's criminal elements. These weapons of destruction must be banned. Not just a ban on importation, but a ban on domestic manufacture and a ban on distribution of these weapons of death.

I am encouraged by the corporate responsibility one manufacturer demonstrated by ending the public sale of the Black Talon bullet, which is designed to maximize the damage inflicted upon its victim. If the Black Talon bullet had remained available, it would be tailor-made for gang warfare.

### Violent Crimes

In order to address America's epidemic of violence, the FBI has, in less than 3 years, formed more than 100 Safe Streets Task Forces with many of our State and local law enforcement partners. These task forces have proven to be very effective and should be expanded.

Through the efforts of these task forces, we are not seeking to flood Federal courts with cases involving the commission of any violent crime. Indeed, many such cases should be, and are, tried in State courts.

There is, however, an appropriate role for the Federal legal system to play. Using such existing Federal statutes as the Hobbs Act, RICO, ITAR, and narcotics laws, the FBI can focus its efforts and resources on those criminal organizations, including gangs, that are responsible for a disproportionate amount of the violence in this Nation and have proven to be beyond the reach of State and local law enforcement.

The FBI is, and must be, vigilant about the threats posed by Russian gangsters who, with the

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## Bulletin Reports

breakup of the former Soviet Union, have decided to pursue their illegal ventures in the United States, sometimes in tandem with the Mafia. Similar threats are posed by Asian drug dealers and triad members who are ready to flee Hong Kong before it devolves to the People's Republic of China in 1997. We must provide greater international assistance in order to minimize the threat posed by these criminal elements.

### Digital Telephony

One investigative technique that the FBI has used very effectively against many criminal groups is wiretapping. The continued use of this technique, however, is threatened. Telephonic digital technology has advanced in such a way that criminals will be able to avoid law enforcement detection simply by using the telephone. They will be able to conduct their illicit businesses openly and without any fear of the consequences.

In order to keep up with the criminals and to protect national security, the solution is clear. We need legislation to ensure that telephone companies and other carriers provide law enforcement with access to this new technology. Without it, one can reasonably predict that in the future, a major terrorist or criminal act will occur involving substantial loss of life, a tragedy that we could not prevent because we could not learn critical information through electronic surveillance. That will not be the time to discuss what could have been or what should have been. That time is now.

### Conclusion

The fact that Americans are fed up with crime can actually provide us with a great source of strength. It can energize this great country and enable its citizens to take back their streets, their neighborhoods, their towns, their cities.

Rest assured, the FBI will continue to play a major role in that effort. As we move forward, I am mindful of the words of Theodore Roosevelt: "This country will not be a good place for any of us to live in, unless we make it a good place for all of us to live in." ♦

### Crime Prevention

The Bureau of Justice Assistance (BJA) has published three documents that focus on community-based law enforcement strategies and system practices. A program brief titled *Family Violence: Interventions for the Justice System* (NCJ 144532) provides guideposts through all stages of intervention, from a community's recognition that it needs a program to curb domestic violence, through program implementation, to performance measures to test how well the effort is succeeding.

*Problem-Oriented Drug Enforcement: A Community-Based Approach for Effective Policing* (NCJ 143710) tells how problem-solving strategies were successfully introduced against the drug trade in a BJA demonstration project. Case studies from the demonstration sites in five cities, prepared by the officers who actually participated in the cases described, further illustrate the implementation of problem-oriented methods.

A companion monograph, *A Police Practitioner's Guide to Surveying Citizens and Their Environment* (NCJ 143711), tells police how to take the pulse of public opinion when their budgets do not allow hiring professional polltakers. It also shows how police can ascertain and map the way in which environmental factors, such as streets, landscape, and building design, can help or hamper citizen efforts against crime.

*To request copies of these publications or for more information about BJA and its programs, call the Bureau of Justice Assistance Clearinghouse at 1-800-688-4252. Be sure to give the document number of the publication when requesting copies.*

## Use of Force

The Police Foundation, with funding under a grant from the National Institute of Justice, conducted a comprehensive survey on police use of force and citizen complaints. The survey examined responses from over 1,100 law enforcement agencies nationwide to document the extent to which force is used, the policies and procedures governing use of force, and the rates and dispositions of citizen complaints. The report also covers the characteristics of officers and citizens involved in those complaints and the civil suits and criminal charges stemming from alleged excessive force. The findings are set forth in a two-volume, 380-page report entitled *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences*.

To give an accurate picture of the use of force, the researchers converted information provided by police departments to show use rates per 1,000 officers. The researchers also examined the frequency with which citizens officially complained of excessive force by police.

*The two-volume set can be purchased from the Police Foundation, 1001 22nd Street, N.W., Suite 200, Washington, DC 20037. The telephone number is 202-833-1460.*

## Juveniles and Guns

The Office of Juvenile Justice and Delinquency Prevention released a report that summarizes the results of a study concerning the number and types of firearms that juveniles possess, as well as where, how, and why juveniles acquire and carry firearms. The report, *Gun Acquisition and Possession in Selected Juvenile Samples*, provides information drawn from voluntary questionnaires completed anonymously by 835 male serious offenders incarcerated in 6 juvenile correctional facilities in 4 States and 758 male students in 10 inner-city high schools near the facilities. Both students and inmates came from environments marked by crime and violence.

The report covers such issues as the respondents' exposure to guns and violence, the decision to carry a gun, and the firearms of choice. Drug use and gun activity, drug dealing and gun activity, and gangs and guns are other topics covered in the report.

*A copy of this report, NCJ 145326, can be obtained from the National Institute of Justice/NCJRS, P.O. Box 6000, Rockville, MD 20850. Interested parties can also call the Juvenile Justice Clearinghouse at 1-800-638-8736.*

## Video—"In Crime's Wake"

"In Crime's Wake," a documentary video on police officers and victims, covers a series of topics designed to help law enforcement officers incorporate victim assistance into everyday police work. The video includes segments on domestic violence, sexual assault, elder abuse, and victimization.

Produced by the Office of Victims of Crime, U.S. Department of Justice Office of Justice Programs, the video portrays officers in real-life

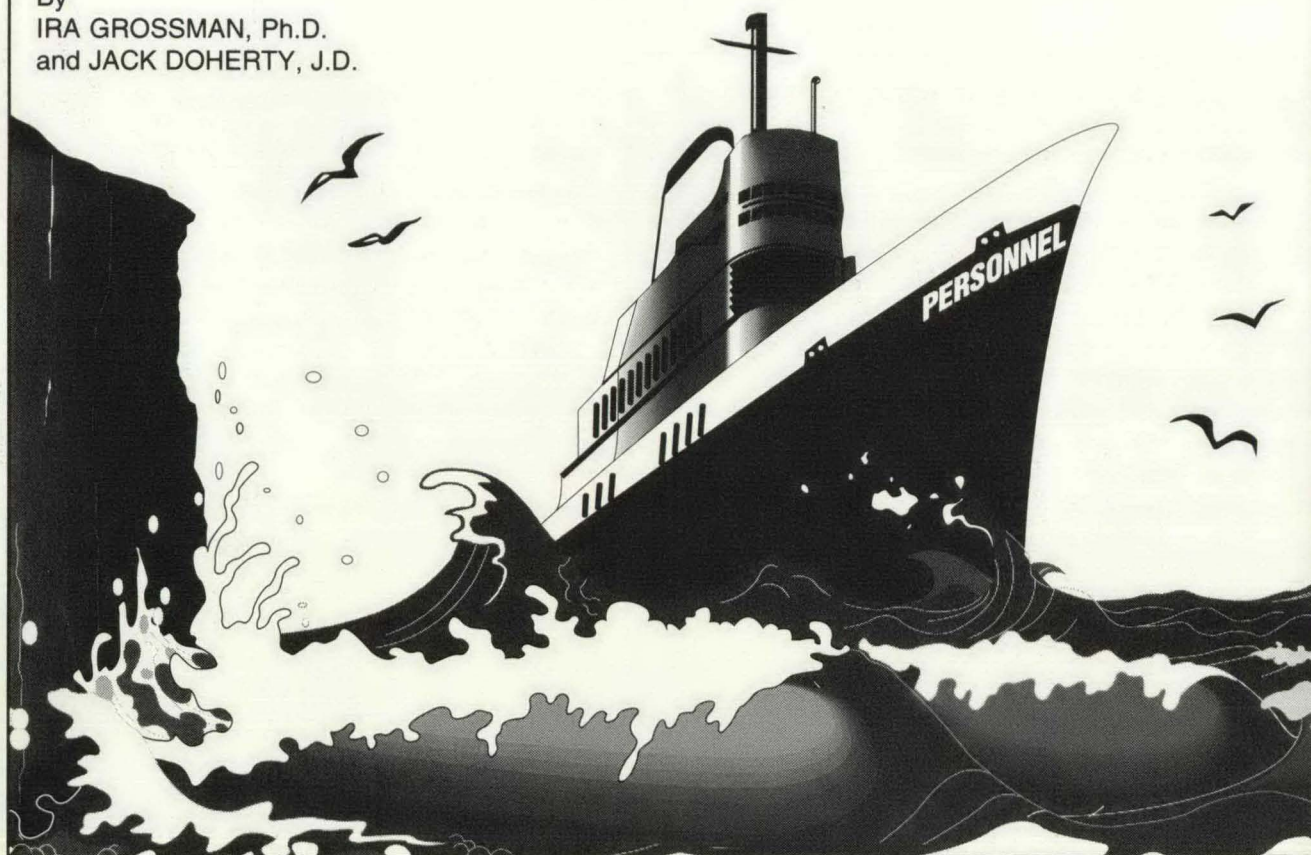
situations, actual victims dealing with the impact of crime, police responses that work, and interviewing techniques for first responders. It is designed for use at roll call or academy and inservice training.

*The videotape and accompanying training guide can be purchased from the National Victims Resource Center, 1600 Research Boulevard, Rockville, MD, 20850. It can be ordered by calling 1-800-627-6872.*

# ***On Troubled Waters***

## ***Promotion and Advancement in the 1990s***

By  
IRA GROSSMAN, Ph.D.  
and JACK DOHERTY, J.D.



**F**rom the end of World War II to the mid-1970s, America experienced extensive corporate and governmental growth. The country expanded in unprecedented ways, providing opportunities for promotion in most employment arenas, both to well-qualified and minimally qualified individuals.

The country's need for managers eventually outstripped its supply, resulting in situations where many individuals were promoted to levels beyond their capabilities. By the 1980s, Yuppies—young,

upwardly mobile professionals—epitomized aggressive young workers running in the fast lane of advancement. While the image of the Yuppies was being popularized, however, the reality in America was that the standard of living and the opportunities for promotion were declining.

The illusion of increasing wealth was due, in part, to increasing national credit and debt, as well as an increase in the number of two-career families. In the past 2 decades, the number of women contributing to the family income in

order to maintain the lifestyle of their parents has grown steadily.

### **IMPACT ON LAW ENFORCEMENT**

Within the law enforcement community, parallel trends have been observed. Only a few years ago, the opportunity for promotion and for selection to specialty assignments was high. From the time recruits entered the police academy, they expected to receive rapid promotions, as well as assignments to coveted specialty positions, such as SWAT, detectives, and motorcycle

squads. These expectations became part of the belief system of young officers.

However, in the mid-1980s, growth in law enforcement agencies began to stagnate. As with corporate America, the bulge in middle-management law enforcement positions was recognized as a drain on increasingly scarce financial revenues. The terms "flattening" and "downsizing" crept into the vocabulary of many law enforcement administrators who were forced to reduce the size of their departments.

An example of this phenomenon occurred in the San Diego Police Department, which began to flatten its ranks in 1992. Two upper-level management job classifications (commander and deputy chief) were eliminated from the organizational structure. In addition, 15 other management positions (2 captains and 13 lieutenants) were cut from the budget.

Reductions similar to those noted above produce serious repercussions for the current generation of officers. These officers are less likely to benefit from promotions, despite their well-established beliefs equating promotions with their value to the agency and to their own sense of professional competence. Even to those officers who are able to gain perspective about the demographic and economic reasons governing the stagnation of growth and mobility, the emotional impact remains devastating.

Unfortunately, the lack of upward mobility is frequently not viewed as a matter of circumstance in society. To the contrary, it is almost universally perceived as personal failure, a betrayal of a system

that has reneged on its promises, or both.

To make matters worse, the impact of not being promoted within the law enforcement community is literally "worn on the sleeve." The paramilitary structure of law enforcement, with stripes and bars on uniforms denoting rank, makes officers keenly aware, on a daily basis, of their lack of promotion.

Sadly, the opportunity for law enforcement officers to advance will be reduced through the early part of the next century. Those currently in positions of management are relatively young. Combined with the difficult economy and current population demographics, it is unlikely that many current managers will leave their positions for outside opportunities or be promoted to higher positions of authority within the department. The effect of this situation on other officers is profound, particularly because their

expectations for promotion have not, as yet, been altered.

## IMPACT ON PERSONNEL

Young police officers often revel in the exhilarating environment of patrol work for the first 2 years of their careers. During this time, they are financially well-rewarded in comparison to others with similar educational backgrounds and experience. Moreover, they are charged with enormous responsibility and authority at the outset of their young careers. Calls are answered with the knowledge and hope that life-saving or crime-stopping activity may occur.

After this initial period, however, young officers begin to search for new ways to be challenged and to recapture the thrill of the job. As soon as a department allows, most seek specialty assignments or promotion. They believe that their hard work and mastery of police skills

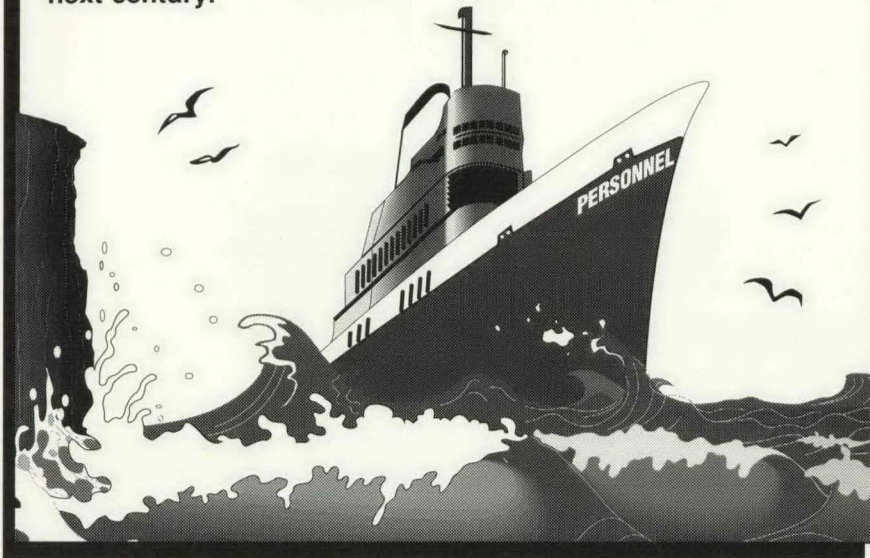


*Dr. Grossman is a police psychologist in private practice in San Diego, California.*



*Sergeant Doherty is in the Inspection and Control Unit of the San Diego Police Department.*

**"...the opportunity for law enforcement officers to advance will be reduced through the early part of the next century."**



will launch their careers in new directions.

Failure for these young officers to advance begins a pattern of repeated attempts at promotion or applications for specialty assignments, followed by disappointment. Departmental managers exacerbate the problem by continuing to encourage officers to apply for career-enhancing positions. When they still are not selected, supervisors often advise them to become more qualified candidates through hard work and additional education.

The positive side of this predicament is that officers are forced to work harder to make themselves more marketable in the workplace. This has become evident in the soaring educational levels of patrol officers. Advanced degrees are now common at supervisory and management levels. On the down side, higher education has become so common that it no longer guarantees promotion. Simply said, current economic conditions reduce the

number of opportunities for promotion, no matter how qualified the individual.

That law enforcement executives have not yet heard an outcry from the ranks of peace officers should not come as a surprise. Officers are trained to handle any physical or emotional crisis without being personally affected.<sup>1</sup>

However, the calm will not last forever. Repeated attempts at promotion and the cumulative effects of failure in this endeavor will lead to a host of personal and departmental ills. For example, individual officers are likely to begin displaying psychological dysfunction as a result of shame, guilt, anger, and a sense of being betrayed. Family dysfunction can also be expected.

Burnout or stress disability are likely endpoints for some of these officers. From an organizational perspective, administrators should anticipate poor morale, lack of creativity, and lack of commitment to management goals.

## **THE LAW ENFORCEMENT RESPONSE**

Unfortunately, the law enforcement community was not quick to respond to its limited promotional capability. When it did respond, it created specialty positions for the sole purpose of providing advancement opportunities to officers. In fact, there has been an explosion of new specialties, including bicycle squads, K-9 and gang units, and interagency task forces. One major law enforcement agency now has 60 specialty assignments. As one police chief observed, "Specialties are multiplying like rabbits."<sup>2</sup>

While specialty programs can be extremely valuable, agencies are coming to realize that these programs have limits. All such programs draw resources from the core work of the agency and sometimes survive more on their popularity than on an objective assessment of their worth. This means that agencies that previously had the luxury of holding out promotional and special assignment opportunities to young officers as a means to encourage excellent performance will have to develop other mechanisms for rewards.

## **POSSIBLE SOLUTIONS**

How, then, should law enforcement agencies proceed? First, administrators should level with their officers. Using an organizational chart, they should indicate how many job openings, whether through retirements or the creation of new positions, the agency can expect in the next 5 to 10 years. Police administrators should then calculate officers' probabilities of advancement through promotion

and describe precisely what factors, such as additional education and prior experience, will impact the possibility of promotion.

Second, agencies should be prepared not only to use but also to expand existing psychological services. Dealing with unrealistic expectations and disappointments falls squarely in the discipline of psychology. Psychologists can help younger officers to adjust their expectation levels and to redefine success for officers already affected by this difficult situation. Law enforcement executives should consult with police psychologists to develop agency-wide programs and policies to alter old and ill-fated beliefs about measures of success.

Third, agencies can experiment with new ways to acknowledge officers and provide them with a sense of growth and accomplishment. This is especially important in paramilitary organizations, such as law enforcement, where officers typically have little control over their futures and little say in how their agencies are run. In paramilitary agencies, when ample opportunity for promotion exists, officers' sense of ownership stems from the possibility of being promoted to a position where their ideas and goals might be implemented. Fewer prospects for promotion, however, are likely to breed a cadre of officers who feel alienated within their own departments.

One way to alleviate these feelings of alienation is to create programs that allow officers at all levels to participate in the decisionmaking, growth, development, and operation of their agencies. This, in turn, produces a sense of

ownership, loyalty, and commitment to the agency. It gives officers more authority, more autonomy, and a greater influence in the communities they serve.

### **POSSIBLE PROGRAMS**

There are several programs that positively influence officers' self-worth in this era of declining promotional opportunities. These programs include community-based policing, problem-oriented policing (POP), self-managing work teams, progressive salary schedules, officer-selected assignments, take-home patrol cars, and career counseling.

“

***Career counseling programs help officers to understand better their abilities and opportunities....***

”

### **Community-Based Policing**

Community-based policing involves police officers working in partnership with the community and other governmental agencies to reduce crime and improve community safety. Agencies using this approach have found officers gain tremendous satisfaction from this type of interaction with community members.

This should come as no surprise to those involved in law

enforcement. Individuals are often drawn to law enforcement careers because of their desire to interact with various kinds of people. In community-based policing, officers have the opportunity to interact with citizens who both appreciate and value their efforts. Recognition for their efforts and successes is realized directly.

### **Problem-Oriented Policing**

Problem-oriented policing—often used in conjunction with other community-based approaches—allows officers to focus on identified community problems and to use a variety of resources to reach solutions. By using POP strategies, patrol officers can become managers and facilitators of community action. They can develop and use a range of skills infrequently employed in conventional police situations.

The POP approach appeals to another personality trait frequently seen in peace officers—solving problems efficiently and witnessing firsthand the results of their efforts. Police officers value the opportunity to use skills and personal attributes that are congruent with their personality styles. Ongoing challenges and opportunities to solve problems serve as energizers and provide a sense of challenge and accomplishment to officers. Levels of personal satisfaction, which is so critical to job satisfaction, are high in these situations.

### **Self-Managing Work Teams**

The concept of self-managing work teams acknowledges officers as professionals capable of managing their own work. “Over the

shoulder" supervision is reduced in this type of work environment, with supervisors more often acting as coaches and advisors rather than as evaluators and disciplinarians. It gives officers much more latitude in their daily work tasks.

### **Progressive Salary Schedules**

In most law enforcement agencies, patrol officers hit their top pay level after 3 to 5 years. The only way to increase their salaries is to be promoted.

Progressive salary schedules acknowledge that highly capable workers are not intrinsically worth less than supervisors. Salary ranges overlap, allowing the pay of certain employees to equal or exceed the pay of some supervisors.

### **Officer-Selected Assignments**

In traditional police settings, calls for service are assigned first by urgency, then by order of receipt. In larger communities, this often results in officers continually responding to radio calls throughout the jurisdiction, rather than spending time on their beats.

An officer-selected assignment program allows officers with computerized dispatching and display terminals in their patrol vehicles to select the radio calls to which they would like to respond. While urgent calls can still be dispatched, the ability of officers to choose their non-urgent assignments enhances their sense of control over work and allows them to continue strengthening their ties with the citizens living in their beat areas.

### **Take-Home Patrol Cars**

Patrol vehicles are notorious for getting hard use and poor treatment. However, agencies that allow officers to take patrol cars home see a remarkable transformation. Because officers take great pride in the vehicles, the vehicles are cleaner and better maintained.

Cars represent a status symbol for officers. Allowing patrol officers with more than 5 years' field experience to take the vehicles home results in an immediate upswing in employee morale.

**“  
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### **Career Counseling**

Career counseling is designed to help officers focus realistically on their careers. Recruits should receive information about the counseling program at the police academy, and they should have a one-on-one session with a career counselor after they complete field training. All subsequent visits should be voluntary.

Career counseling programs help officers to understand better their abilities and opportunities, as well as what steps they might take to

move their careers in a positive direction. These programs are also helpful in developing a talent inventory for the agency. Most important, career counseling programs can send a message to the officers that they are valued as unique individuals, not just as bodies that walk a beat or answer radio calls.

### **CONCLUSION**

It is incumbent upon law enforcement executives and others who influence both short- and long-term organizational goals to recognize the growing frustration of officers in terms of their inability to be recognized through the promotional process for their skills and hard work. Furthermore, it is critical that law enforcement administrators value the professionalism of their officers. In this context, pride, sense of growth, and feelings of achievement are factors that must be considered.

Officers must not perceive that only promotions equate to success. Rather, they should equate success with meeting challenges, continuing to learn their craft, and making positive contributions to their departments, communities, and families. These values, when fostered by the organization, promote satisfied officers and a sense of well-being in the workforce. ♦

### **Endnotes**

<sup>1</sup> F. Stillman, "The Invisible Victims: Myths and Realities," *Psychological Services for Law Enforcement* (Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, 1986), 143-146.

<sup>2</sup> N. Stamper, *Organizational Audit and Agenda for Reform* (San Diego, California: San Diego Police Department, 1991).

## *The 1990s: The Time for Aggressive Police Officers*

By Tom Gabor

**I**n the wake of the Rodney King incident and other similar occurrences throughout the Nation, some police administrators have been hurrying to weed out their more aggressive field police officers. These administrators fear that the trend to video tape police activity on the streets may reveal some unpleasant realities in their respective departments. Consequently, self-motivated, eager street officers find themselves being “promoted” to desk jobs, administrative duty, property and identification sections, and other “off-street” assignments, where concerned administrators believe they will be less likely to harm their department’s reputation.

In their place, administrators assign police officers with average talent and abilities to patrol duties—those who are low-key and who handle little more than routine calls for service. Administrators believe that these steady, stable officers will still handle their responsibilities, but will less likely involve themselves in controversy or self-initiated action, thereby diminishing the probability of a confrontation and the glare of subsequent media attention. Unfortunately, this philosophy is both flawed and tragic.

The 1990s is *not* the time to place “average” police officers on the streets. Rather, administrators should field their most talented and most experienced police officers, even if they are the most aggressive. The complexity of police work and the sheer volume of crime today require “go-getters” with sound judgment.

### **What is an Aggressive Police Officer?**

Perhaps this discussion should begin by describing what aggressive police officers are *not*. These officers are not quick-tempered or power-hungry. They do not use their badge as a means to flaunt their authority or as a shield to justify unacceptable behavior.

On the contrary, aggressive police officers are compassionate and respectful, even to lawbreakers. They understand current search and seizure case law and the concept of probable cause. They are well-versed in interview and interrogation techniques and can recognize someone under the influence of drugs almost instantly. Most important, they enjoy their work and clearly demonstrate the desire to get criminals off the street.

Aggressive police officers are curious, even suspicious, but remain keenly sensitive to even the most subtle detail of every situation they confront. They possess intuition, or a sixth sense, that other officers recognize and appreciate. They do their jobs, whatever the assignment, without violating anyone’s civil rights, because they always work within the parameters of the law. Above all, they exhibit extraordinary judgment and utmost respect for the community.

Aggressive police officers are sometimes called “super cops,” and they are desperately needed on today’s crime-ridden streets. They are a blessing to law-abiding citizens of all races, creeds, colors, religions, and nationalities who are tired of living in fear.

Knowing what constitutes aggressive officers raises two important questions. First, are aggressive police officers—those possessing the attributes listed above—self-made or are they groomed by others? And, second, if a need exists to field this type of police officer, and I believe crime statistics



*Lieutenant Gabor serves with the Culver City, California, Police Department.*

prove this need, then why are police administrators transferring, or in other ways limiting, their most valuable assets? The answers may lie within the supervisors and leaders of the organization and their ability to do their jobs.

### **Supervision or the Lack Thereof**

Any military aficionado knows that sergeants represent the backbone of the military and generals, the brains. All intervening ranks serve as communicators and implementors of policy from the top. Those in the ranks below sergeants get the job done; they actually *do* what the generals command.

The fact that sergeants are the leaders and/or supervisors of line personnel makes their jobs critical to the success of any tactical operation. If they possess no supervisory ability or their supervisory ability is disjointed, weak, or misguided, the most brilliant battle plans devised by generals are doomed to failure.

The same holds true in the law enforcement profession. The sergeant and the chief are the two most critical positions in a police department. They ultimately determine the quality of the field police officer.

A strong sergeant, one who motivates, trains, and leads, plays an integral role in the development of police personnel. Those who do not tolerate excessive force, racism, or *mediocrity* from subordinates, but expect nothing short of hard, aggressive police work, are truly a community's best friend.

These field supervisors teach aggressive officers that the only way not to fear video cameras, the media, or anyone or anything is just "to do the right thing." Simply put, officers must be taught to work within the law and to give due respect to the people they serve, including those arrested and cited.

Sergeants should continually remind officers to understand the job, to enjoy it, not to take their roles too seriously, and above all, not to let individual egos get in the way of doing the job right. Field

supervisors who convey these messages to hard-working patrol officers instill confidence during times of public police bashing.

This is not the time for sergeants to caution, retard, or hamper good, aggressive police work. Rather, the time has come to recognize and reward such work and to turn the spotlight on those officers who make an impact on the crime and violence that is so commonplace and out of control in America today.

This, then, answers the first question. Good, aggressive street officers are seldom self-made. They require guidance, direction, training, and education. In other words, they need to be molded by a strong sergeant who, in my opinion, is the second most critical factor in an organization to ensure a desired patrol force. The other factor, and the one I consider the most critical, is the leader of the organization—the chief or sheriff.

### **Leader or Political Player**

Field supervisors, or sergeants, work under an "umbrella of policies" issued by leaders of organizations, or to return to the military analogy, the generals. Unfortunately, there are few Norman Schwartzkopfs—that is, bold individuals who know how to lead—in law enforcement. Instead, too often, some members of the commanding ranks are politically fearful generals who have difficulty making hard operational decisions. These generals rarely make waves, but they also fail to get the job done.

Law enforcement today desperately needs leaders who are not afraid to empower, as well as to train properly, their supervisors and officers. Political chess players at the level of police chief or sheriff are counterproductive to achieve the desired levels of community safety and to enhance the quality of life.

A leader must insist on strong supervision and aggressive police officers, but not tolerate unprofessional conduct. This is what citizens demand and

**“  
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## Conclusion

This is not the time for caution. Rather, the time has come to train, educate, motivate, support, and effectively lead the aggressive street police officer. To accept less is to invite more turbulent times ahead. ♦

**Sound Off** provides a forum for criminal justice professionals to express alternative views on accepted practices or to address emerging, and perhaps controversial, issues. *Law Enforcement* provides this platform to stimulate thought within the law enforcement community and to encourage administrators to consider new ways of addressing such issues. However, ideas expressed in **Sound Off** are strictly those of the author; their appearance in *Law Enforcement* should not be considered an endorsement by the FBI.

# Performance Appraisal

## A Different Approach

By  
DENNIS B. ANDERSON, M.P. A.

**W**hat two words strike fear in supervisors and subordinates alike? Performance appraisal. The performance appraisal process often makes everyone tense, perhaps because many supervisors have little training in the objectives,

foundations, and delivery of performance appraisals. They use the "rearview mirror" approach, which focuses on past performance.<sup>1</sup> This puts employees on the defensive and wastes valuable time.

Furthermore, supervisors often fail to realize that the performance appraisal process is just that—a *process*. They need to view appraisals not as a once-a-year chore but as a productive procedure that continues throughout the year. Evaluation interviews, although considered by many employees to be the entire

appraisal, are just one part of an overall strategy.

### THE APPRAISAL PROCESS

#### Attitude Is Important

Supervisors must remember that the primary goal of performance appraisal is to improve performance. To assist in achieving this objective, supervisors must first create an atmosphere in which employees will be motivated to perform.

"Management by walking around" can be a useful technique in developing a good working relationship with employees. Supervisors who take a few minutes to visit with employees in their work areas show an interest in their employees

and a confidence to engage in discussion on the employees' own "turf." This can be an opportunity to inquire about their performance, compliment them, and to listen to them, thereby encouraging feedback.

Supervisors must not only be managers by doing things right but they also must be



leaders. Leadership means "doing the right things," such as being a coach, a facilitator, and even a cheerleader. Leaders should also "walk the way they talk." In other words, they must set the tone for change and become role models for employees. Employees cannot be motivated toward a work attitude or ethic if it is not exhibited by the supervisor.

Equally important, supervisors must realize that employees deserve respect. They should not be so concerned with the organization's bottom line that they forget to treat employees like human beings.

In that regard, supervisors often use evaluations to target their employees' weaknesses. Instead, they should emphasize strengths on which the employee can build. To accomplish this, the appraisal process should follow a performance management cycle.<sup>2</sup>

### **The Performance Management Cycle**

The cycle begins with the supervisor defining the roles and responsibilities of subordinates. Employees cannot perform adequately if they do not know what their supervisors expect of them. Expectations should be clearly defined, with input from employees. This important step shows employees how they contribute to the overall strategy of the organization.

Next, the supervisor and the employee, together, set specific goals for the employee to achieve, depending on the employee's duties, responsibilities, and work assignments. While objectives should

be specific, they should not be so narrowly defined that supervisors fail to account for extenuating circumstances that might cause employees not to meet the standard. For example, requiring employees to complete a specific number of assignments each month does not take into consideration the complexity and difficulty of each assignment, which might limit progress. Supervisors and employees should also develop strategies for attaining these goals and decide which method the supervisor will use to monitor employee progress.

The supervisor then coaches the employee. This means monitoring performance and providing corrective feedback or revising expectations, when necessary.

Finally, the supervisor reviews performance with the employee. This means frequent, regularly scheduled meetings, not a yearly

evaluation. Monthly reviews are one way to check employees' progress on a continual basis.

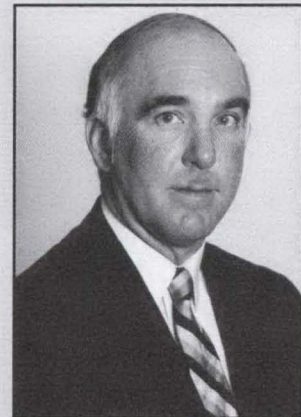
The success of the performance management cycle depends on supervisors and employees working together. This way, they establish realistic goals, and employees are more likely to use their strengths, while recognizing and overcoming their weaknesses. Supervisors must also remember that they are evaluating performance, not their employees' personality characteristics.

Inherent in the performance management cycle, feedback is the key element in a successful performance evaluation. With feedback, employees can better gauge their performance, and supervisors learn the most effective ways to motivate them. As a result, supervisors can approach the appraisal process in a positive manner, feeling more like helpers than judges.<sup>3</sup>

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***...the primary goal of performance appraisal is to improve performance.***

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*Special Agent Anderson is the Supervisory Senior Resident Agent for the FBI's Lansing, Michigan, Resident Agency, Detroit Division.*

### The Evaluation Interview

Because supervisors should view the evaluation interview as the beginning, not the end, of the appraisal process, they should use the interview to plan for the future, rather than to dwell on the past. Accordingly, they should devote approximately 60 percent of the appraisal to planning the future, 30 percent to analyzing the present, and a mere 10 percent to reviewing the past.

During the interview, interaction between the supervisor and the employee should reinforce present behavior if the employee is performing well, suggest behavior changes if the employee needs to improve performance, or develop a new behavior if the employee receives new tasks or assignments.<sup>4</sup> To do this, supervisors should:

- Provide a clear reason for the performance evaluation

- Present positive and negative feedback in a fostering, nonthreatening atmosphere
- Resolve conflicts and problems through participative dialogue
- Set specific goals to improve job performance
- Provide support and encouragement to the employee.<sup>5</sup>

Simply put, a viable performance evaluation interview that

### Performance Appraisal Evaluation Old vs. New Method

#### Performance Appraisal (Old)

#### Focus on Achievement (New)

Goal	Evaluation	Achievement
Supervisor	Controls Program	Partnership
Employee	Passive	Initiator
View	Rearview Mirror	Prospective
Timing	Once a year	Ongoing
Theme	Control	Sharing
Criteria	Manager Determines	Mutually Determined
Individual Vision	Not Discussed	Basis for Plan
Atmosphere	Confrontational	Supportive

Source: Ronald W. Clement, "Performance Appraisal: Nonverbal Influences on the Rating Process," *Public Personnel Administration*, Spring 1987, 14-27.

encompasses the critical aspects of the appraisal process is **Meaningful, Enjoyable, Educational, and Traceable (MEET)**.<sup>6</sup> In other words, the interview should be a results-oriented, developmental process, with supervisors presenting verifiable, fact-based information in a positive, relaxed atmosphere. The interview should also cover opportunities for growth within the current job assignment but should be limited to a few important items that are both evident and achievable. For example, employees might receive responsibility for important projects or attend seminars in their areas of expertise.

#### Followup

Often, supervisors find performance evaluations difficult because they do not discuss performance with their employees between evaluations. Understandably, then, the annual performance evaluation becomes a tense experience for all.

To avoid this, effective supervisors follow up on the performance evaluation and ensure that efforts to improve performance continue throughout the year. They evaluate what they have learned about employees, identifying what employees did well, what they did poorly, and what they should do differently in the future. Followup also helps supervisors to see how they can best interact with and motivate employees.

Experienced supervisors recognize the importance of followup in the evaluation process. In fact, when municipal executives were asked in a survey to identify factors

that contribute to the effectiveness of performance evaluations, they named regular performance reviews as one of the top three.<sup>7</sup>

#### CAVEATS

While this method of evaluation means actively involving employees in the process, supervisors must be careful not to place too much of a burden on employees. Supervisors are still ultimately responsible for ensuring that employees are performing to their full potential.

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***The new approach to successful performance appraisal...provides for a plan of achievement, not merely a judgment.***

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In this regard, the acronym **ACHIEVE** provides a list of important factors for supervisors to use in evaluating employee performance.<sup>8</sup> **ACHIEVE** stands for:

- **Ability:** Has the supervisor ensured that employees possess the skills required to perform assignments?
- **Clarity:** Has the supervisor clearly explained the goals and objectives of performance to employees?
- **Help:** Has the supervisor offered assistance to

employees in the performance of their duties?

- **Incentive:** Has the supervisor provided employees with a reason (challenge, praise, recognition, etc.) to perform?
- **Evaluation:** Does the supervisor provide employees with regular feedback on their performance?
- **Validity:** Has the supervisor used proper techniques to judge and evaluate employees' performance?
- **Environment:** Does something beyond employees' control affect their performance?

By considering these factors, supervisors look to themselves for answers before holding employees accountable for their lack of performance.

#### CONCLUSION

In surveys, 25 percent of workers believe they are not working to full potential; 75 percent say they could be more effective, and 60 percent say they are not working as hard as they have in the past.<sup>9</sup> An effective appraisal process can help supervisors to tap into their employees' potential.

Supervisors need to view performance appraisals as a participative process and to approach them with a positive attitude. Skilled supervisors feel more like coaches and counselors than judges.

Counseling assists those employees who are not performing to their full potential, whereas coaching helps all employees to achieve their highest possible levels of

performance. The degree to which supervisors accept these relationships determines whether employees and the organization achieve established goals and objectives.

The new approach to successful performance appraisal, in comparison to old methods, provides for a plan of achievement, not merely a judgment. Supervisors should view performance appraisals as an ongoing and developmental process. This process is based on a relationship of trust and confidence between supervisors and employees. For those supervisors who make the effort to challenge employees in a positive atmosphere, the rewards can be very fulfilling for the employee, the supervisor, and the organization. ♦

#### Endnotes

<sup>1</sup> Joseph P. McCarthy, "A New Focus on Achievement," *Personnel Journal*, February 1991, 74-78.

<sup>2</sup> Craig E. Schneier, Arthur Geis, and Joseph A. Wert, "Performance Appraisals: No Appointment Needed," *Personnel Journal*, November 1991, 80-87.

<sup>3</sup> Ronald W. Clement, "Performance Appraisal: Nonverbal Influences on the Rating Process," *Public Personnel Administration*, Spring 1987, 14-27.

<sup>4</sup> Mike Deblieux, "Performance Reviews Support the Quest for Quality," *H.R. Focus*, November 1991, 3-4.

<sup>5</sup> Bernard P. Maroney and M.R. Buckely, "Does Research in Performance Appraisal Influence the Practice of Performance Appraisal?" *Public Personnel Management*, Summer 1992, 185-195.

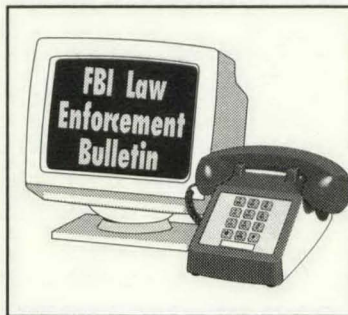
<sup>6</sup> Jerry Conrad, *Performance Evaluations—Who's Really in Charge?* Custom Training, Inc., 1991.

<sup>7</sup> David N. Ammons, "Executive Satisfaction with Managerial Performance Appraisal in City Government," *Public Personnel Administration*, December 1987, 33-48.

<sup>8</sup> Supra note 6.

<sup>9</sup> Ibid.

## Dial Law Enforcement



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# ***Police Pension and Retirement System A Deferred Option Plan***

By  
TED G. CARLTON, M.C.J.A.

**M**ike—a 20-year veteran of an Oklahoma police department—retired last week at the rank of captain. However, for the next 5 years, he will continue to go to the same building, perform the same work tasks, and receive the same salary, *plus* his monthly retirement benefit. How can this be? Mike just joined the Police Deferred Option Plan of the Oklahoma Police Pension and Retirement System.

This article discusses how a deferred option retirement plan works. It also examines the advantages and possible disadvantages of the plan, both for the retiring officers and the agencies in which they serve.

Deferred option plans, such as the one Mike joined, work best in States with statewide retirement systems. For example, in Oklahoma, police officers who have 20 years of service may retire with no age requirement. The officers immediately begin to receive a month-



ly retirement benefit equal to 50 percent of their final salary. For each year of service beyond 20 years, the benefit increases at the rate of 2.5 percent per year, with a maximum retirement benefit of 75 percent after 30 years. Officers may continue to work beyond 30 years, but they receive no additional retirement benefits.

## **THE PLAN**

Officers who have 20 years' service may join the deferred option plan. However, once they submit the paperwork for this move, their decision is irrevocable. After exercising this option, the officers' contributions into the retirement system cease, immediately increasing their net (take-home) pay. The officers

then continue to work in the same capacity and receive departmental raises, promotions, etc., although their retirement annuities remain frozen at the level at which they existed when the officers exercised the deferred option. The officers may maintain this status for up to 5 years after entering the deferred option plan.

Once on the plan, the officers' monthly retirement annuities are paid into an annuity account that is administered by the Oklahoma Pension and Retirement System. The monthly retirement benefits, plus investment earnings on these benefits, are held for the officers until their actual retirement.

Here is how the plan might work for Mike, who was mentioned at the beginning of this article, if his final salary (annualized salary over the last 30 months of employment) is \$50,000 and there is a modest rate

of return on the retirement system's investment portfolio of 6 percent per year. Mike's retirement benefit after 20 years would be 50 percent of his final salary, or \$25,000. Twenty-five thousand dollars per year placed into his deferred option account, plus 6 percent interest would yield an account value of over \$149,000 in 5 years.

Because Mike's retirement benefit is frozen at the time he joins the deferred option plan, his retirement annuity would freeze at \$25,000 per year—it would not increase during his final 5 years. Of course, the \$149,000, properly managed, could augment his yearly pension considerably.

However, the officer who benefits most from this plan is the one who has reached the maximum annuity level of 75 percent. If, for example, Mike had entered the plan after 30 years rather than 20 years of

service, he would, at the end of 5 years, have an account balance of over \$224,000. In essence, the deferred option plan allows Mike to receive 150 percent of his salary for 5 years (including the funds that go into savings), while his colleagues in the plan with 30 years' service receive 175 percent of their final salary.

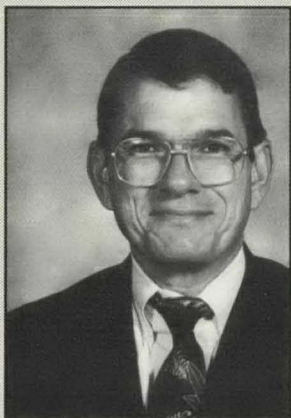
### ASSESSING THE PLAN

Clearly, advantages and disadvantages exist for both the agencies that offer this type of plan and the personnel who choose to enter the plan. Agencies must decide whether such an arrangement is feasible for their particular needs, and personnel must decide whether it fits their long-term financial and career needs.

### Agency Advantages and Disadvantages

Law enforcement agencies benefit from this type of retirement plan in two fundamental ways. First, they retain experienced officers and executives for a longer period of time; second, managers can identify and plan for future vacancies.

The U.S. Census Bureau estimates that by the year 2025, more than one-quarter of the U.S. population will be age 60 or older.<sup>1</sup> This means that the American workforce, including those in law enforcement, is aging. Bearing this in mind, it is to the agency's advantage to keep experienced officers who wish to continue working in a profession they find rewarding.



*Captain Carlton commands the Sex Crimes and Assaults Unit of the Oklahoma City, Oklahoma, Police Department.*

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A deferred option  
retirement  
plan...defines a 5-  
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which retired  
officers may leave.  
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The second benefit law enforcement agencies derive from this type of retirement plan is the ability to identify and plan for future vacancies. The inability to predict upcoming staff vacancies greatly thwarts the planning process in police agencies. Administrators who incorrectly predict staff vacancies may be forced to simply select the next name on the list of managers—an ineffective way of selecting managers.<sup>2</sup>

A deferred option retirement plan assists police executives because it defines a 5-year window in which retired officers may leave. Fortunately, most who opt for the plan tend to complete the full 5 years, resulting in greater predictability of staff vacancies.

On the downside, every agency has some marginal employees in its ranks. Therefore, to the extent that the deferred option plan encourages some nonperformers to stay in their jobs solely for financial reasons, the agency is not well-served by such a retirement plan.

In addition, the plan can significantly alter the internal demographics of agencies, at least in terms of age. This, in turn, requires that police administrators change leadership styles, because when demographics change, existing philosophies and operational policies of law enforcement agencies often become less effective.

### **Advantages and Disadvantages to Officers**

Officers enrolled in this type of retirement plan receive obvious

financial benefits. Prior to the availability of the plan, officers who were near retirement age would seek employment in a position that paid half of their preretirement salaries in order to equal their previous salary. However, the deferred option plan allows officers to earn 150 percent of their current salaries for 5 years,

“

***Deferred option plans...work best in States with statewide retirement systems.***

”

although 50 percent of this salary remains unavailable for immediate use. In order to match such a financial arrangement, officers eligible for the plan would need to secure a retirement position that pays 100 percent of their final salary in order for the position to be as economically attractive. In most cases, this would not be easy to do.

In addition, officers who enter the program enjoy the immediate benefit of a larger paycheck. This is because they stop contributing to the larger retirement system.

A significant disadvantage to officers who exercise their option to join this type of plan is that their retirement annuity is frozen when the option is exercised. This means

that they do not benefit from the additional 2.5 percent a year for additional years of service, and any substantial increases in salary during the 5 years of participation in the plan would not increase their retirement benefits.

Additionally, the benefits of this plan may encourage officers to remain in law enforcement, even though they may be suffering from burnout or may believe that they have plateaued. Staying in a profession for financial reasons places both psychological and emotional strains on employees. In these cases, a disservice is done to both the employees and the agencies they serve.

### **CONCLUSION**

The Oklahoma Deferred Option Plan provides an attractive method to stay in law enforcement while providing additional financial security for retiring employees. It also allows law enforcement agencies to retain experienced police officers longer than they could if this type of plan were not offered. However, potential disadvantages also exist for both the agencies and the officers.

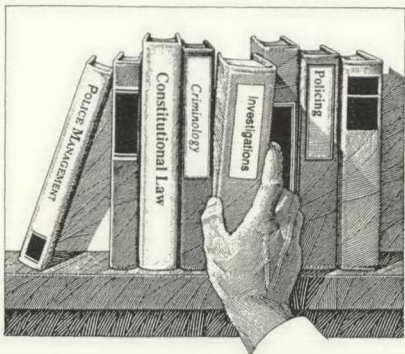
Clearly, a deferred option plan is not appropriate for every officer or agency. Where appropriate, however, it is a worthwhile option for law enforcement agencies to pursue. ♦

### **Endnotes**

<sup>1</sup> G. Bennett, *Crimewarps: The Future of Crime in America* (Garden City, New York: Anchor Press/Doubleday, 1987).

<sup>2</sup> R. Hough, "How Deep is Your Bench?" *The Police Chief*, November 1991, 30-36.

# Book Reviews



***Policing in America*** by Larry K. Gaines, Victor E. Kappeler, and Joseph B. Vaughn, Anderson Publishing Co., Cincinnati, Ohio, 1994, (513) 421-4142.

A sentiment that has become a virtual cliché in many criminal justice textbooks also appears in the preface of this book—"Police work is becoming increasingly complex." While this is one of the few statements upon which *everyone* in the field agrees, the subsequent failure of many texts to address this complexity adequately is exasperating to scholars and practitioners alike. Far too many texts of this type dwell on the obvious, give only a passing glance to the truly "hot" topics and controversial issues of the day, and perhaps worst of all, fail to give more than cursory attention to trends and future concerns.

The authors of *Policing in America* do not repeat these mistakes. This splendid overview text neither rehashes yesterday's problems nor trivializes today's issues. And, unlike many texts of its genre, this book does more than provide lip service to the issues that may shape policing in the future.

While the topics—as delineated by chapter headings—are not unlike those of other books,

the treatment they receive distinguishes *Policing in America* from other resources. Throughout the text, the authors discuss such issues as "police discretion," "ethics," and "civil liability," without succumbing to an inordinate reliance on either legal terminology or pretentious moralizing. Instead, the authors present these topics directly rather than obliquely, using very current examples. This not only enhances the relevance of the subject matter but also places the discussion on a firm foundation of objectivity.

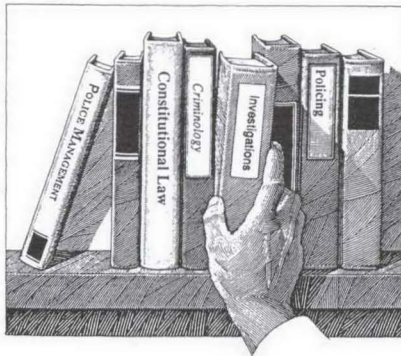
The authors explore other areas, including personnel systems, operations, and policing in modern communities, with the same objectivity. Two little discussed or understood topics—police culture and police behavior—receive especially thorough and cogent treatment.

The citations and references used throughout are complete, accurate, and clear, as is the index. Such attention to detail not only underscores the quality of the editing process but also the care given to the content.

While readers may challenge some of the authors' points—I question the value of what they label as "predictions" in their "Future of Policing" chapter—the treatment must still be seen as thorough and balanced. The future concerns presented are relevant to the problems of the day.

*Policing in America* is a book that students will judge satisfying, scholars will deem valid, and police practitioners will find reliable. In fact, police training administrators may want to consider making it required reading for promotional examinations.

Reviewed by  
SA William L. Tafoya, Ph.D.  
Federal Bureau of Investigation  
San Francisco, California



**WriteType: Personality Types and Writing Styles** by Stephen D. Gladis, *Human Resources Development Press, Inc., Amherst, Massachusetts, 1993, 1-800-822-2801 (in Massachusetts 413-253-3488).*

Effective law enforcement depends in no small part on clear, complete writing. Yet, police administrators have not experienced much success in improving the writing skills of their personnel or even in determining the causes of their writing problems. Moreover, most supervisors recognize that a dozen officers could write a dozen different reports on the same situation—some more detailed, some more opinionated, some more objective, some more mechanically correct, and some more creative in laying out information.

Why people write so differently has perplexed everyone from police sergeants to scholars. In *WriteType*, the author explores the effect that personality type has on individual writing styles. In an innovative approach to explain the differences among writers, this book not only helps readers diagnose their writing problems (and identify their strengths) but also shows supervisors how to use the various writing personalities to their agency's advantage.

From the eight dimensions of personality typing originated by Jung and Myers and Briggs, the author identifies four basic writing types. While stressing that personality type does not explain *all* the reasons that cause people to write the way they do, the author suggests that understanding individual writing personalities and the various *WriteTypes* in an agency can improve overall writing quality and, perhaps, even enhance interaction among workers.

The book begins with a description of four pairs of the eight personality dimensions: Extrovert vs. Introvert, Sensing vs. iNtuition, Thinking vs. Feeling, and Judgment vs. Perception. A thumbnail personality sketch allows readers to quickly determine their own personality type.

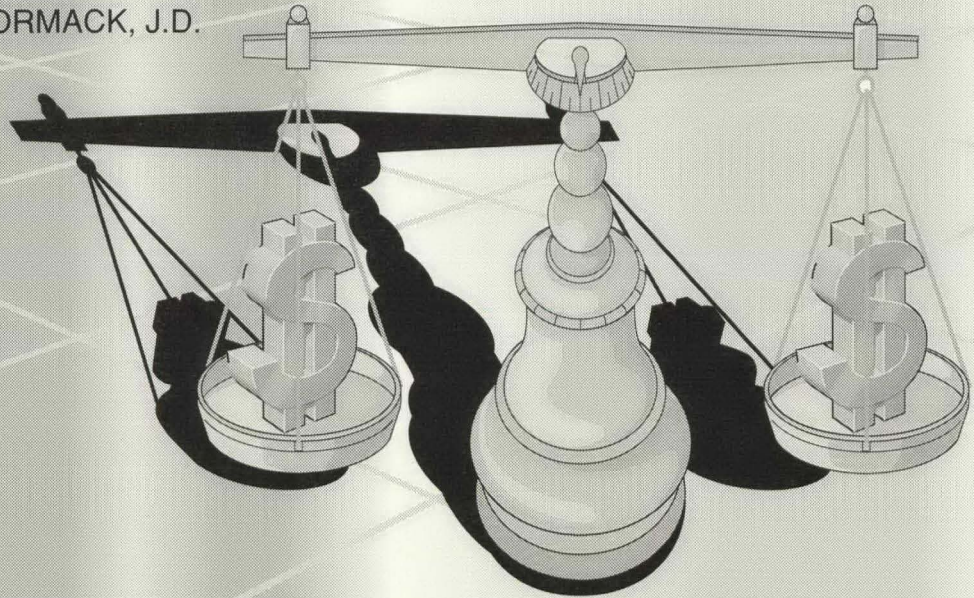
Readers can then determine to which of the four basic writing types (*WriteTypes*) they belong: Correspondents (Sensor/Feelers), Technical Writers (Sensor/Thinkers), Creative Writers (Intuitior/Feelers), and Analytical Writers (Intuitior/Thinkers). The book then thoroughly explains each type, discussing strengths and weaknesses and giving examples of how each type would approach a specific writing task.

With clear, concise, and complete writing so vital to law enforcement, department administrators must understand how to diagnose and correct officers' writing problems. *WriteType* offers a creative, yet functional, method of doing just that. It would make a valuable and practical resource for individuals interested in improving their own writing or the writing of employees in their departments.

Reviewed by  
Ginny Field, M.A.  
Education and Communication Arts Unit  
FBI Academy  
Quantico, Virginia

# Attorney's Fees in Civil Litigation *Controlling the Costs*

By  
WILLIAM U. McCORMACK, J.D.



One of the most significant aspects of many civil suits filed against law enforcement defendants for alleged violations of constitutional rights<sup>1</sup> is the associated attorney's fees in the case. Often, the prospect of incurring high attorney's fees determines whether a law enforcement officer or a government entity vigorously defends a civil suit by asserting all possible defenses and immunities or instead settles the suit. This article examines recent developments concerning the important issue of attorney's fees in civil litigation and suggests strategies for law enforcement defendants to better control potential civil liability.

## Methods of Compensation

To understand the impact of attorney's fees on civil liability, it is first necessary to understand the ways in which an attorney receives compensation for representing a plaintiff and whether the plaintiff is reimbursed for those fees. In a common law tort suit, such as a car accident, in which the claim is negligence, courts follow the so-called "American Rule," where each side bears the costs for its own attorney's fees.<sup>2</sup> Thus, if the plaintiff prevails, the plaintiff is not reimbursed by the defendant for the plaintiff's attorney fees, which are typically calculated on either an hourly rate or a contingency fee basis. With a contingency

fee, the plaintiff's attorney takes a certain percentage of the damage award, usually 30 to 50 percent, but receives no monetary compensation if the plaintiff loses.

After concluding the "American Rule" insufficiently encouraged civil suits alleging constitutional violations, Congress enacted the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988.<sup>3</sup> This act authorizes Federal district courts to award reasonable attorney's fees to prevailing parties in civil rights litigation brought under 42 U.S.C. §1983.<sup>4</sup>

Under §1988, a person who sues under §1983 and prevails in the lawsuit is entitled not only to

damages but also to an award for attorney's fees.<sup>5</sup> These fees are typically calculated by multiplying the reasonable number of hours the attorney expended by a reasonable hourly rate.<sup>6</sup> Thus, the attorney's fees that law enforcement defendants may have to pay to the plaintiff continually increase as a §1983 lawsuit progresses through the normal stages of pretrial motions, discovery, trial, and appeals.

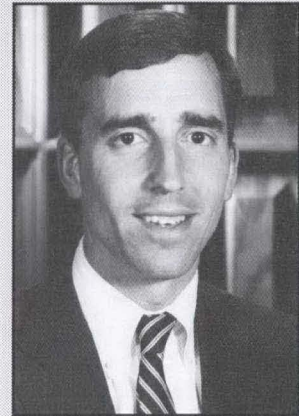
This threat of an ever-escalating award of attorney's fees presumably causes many law enforcement defendants to settle suits before trial, even when the validity of the suit is questionable because of viable defenses or immunities. The concern over the cost to a law enforcement defendant or agency for attorney's fees is further heightened by the need to pay the lawyers who are defending the suit. As a result, it is not uncommon for the attorney's fees to be the most significant monetary aspect in civil litigation. In many instances, the attorney's fees of the plaintiff awarded under §1988 exceed the damages awarded to the plaintiff.<sup>7</sup>

### Settlement Considerations

Quickly settling a lawsuit that a plaintiff is likely to win can be an extremely advantageous tactic for a law enforcement defendant. By using Rule 68 of the Federal Rules of Civil Procedure (FRCP) to settle a case, a law enforcement defendant may limit attorney's fees and other costs of litigation, such as expert witness fees.

Rule 68 provides that a defendant in a lawsuit may offer to allow judgment to be taken against him or

**“  
...law enforcement  
defendants sued under  
§1983 often face tough  
choices in deciding  
whether to settle or  
litigate.  
”**



*Special Agent McCormack is a legal instructor at the FBI Academy.*

her “with costs then accrued.” If the offer of judgment is rejected by the plaintiff and the judgment finally obtained by the plaintiff is less favorable than the offer, the plaintiff “must pay the costs incurred after the making of the offer.”

In *Marek v. Chesney*,<sup>8</sup> the Supreme Court determined that Rule 68 “costs” include §1988 attorney's fees. *Marek* is a good example of how a quick Rule 68 offer of judgment can limit attorney's fees and costs.

In *Marek*, three police officers, in answering a domestic disturbance call, shot and killed the plaintiff's son. Prior to trial, the defendant officers made a Rule 68 settlement offer of \$100,000, including attorney's fees, which the plaintiff rejected. The case went to trial, and the plaintiff was awarded \$60,000 in damages. Thereafter, the plaintiff's attorney filed a request for attorney's fees and costs under §1988 for \$171,692. The parties agreed that \$32,000 fairly represented the costs, including attorneys fees,

accrued prior to the defendants' offer under Rule 68.

Because the \$32,000 in attorney's fees and costs, when added to the \$60,000 damage award, was less than the \$100,000 offer of judgment, the plaintiff's attorney's fees and costs were properly limited to \$32,000 rather than \$171,692. The Court noted that the application of Rule 68 to §1983 cases will require plaintiffs to think very hard about whether continued litigation is worthwhile and that the purpose behind the rule is to encourage early settlements.<sup>9</sup> In addition, the Supreme Court, in *Evans v. Jeff D.*,<sup>10</sup> held that a defendant sued under §1983 may properly request the plaintiff to waive all attorney's fees as part of a settlement offer.<sup>11</sup>

Courts have unanimously held that the award of attorney's fees under §1988 is to the plaintiff and not the plaintiff's attorney.<sup>12</sup> Therefore, it is the plaintiff's prerogative to negotiate the amount of attorney's fees as part of a settlement agreement.

As one court noted, the right to settle a civil suit under §1983, including the amount of attorney's fees, rightfully belongs to the plaintiff. If the attorney's fees and the right to settle belonged to the attorney, the attorney would have a clear interest in refusing to settle in order to increase the attorney's fees under §1988.<sup>13</sup>

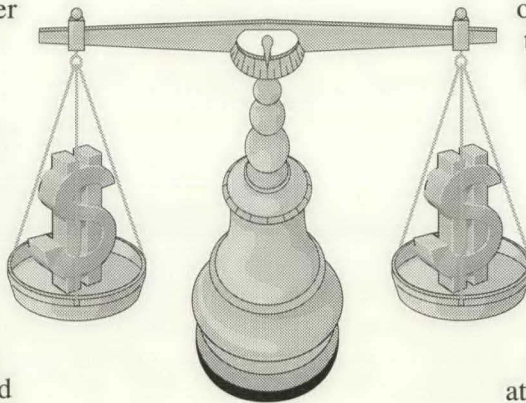
### Prevailing Parties and Monetary Damages

The Supreme Court recently decided two important cases that may significantly lessen the impact of attorney's fees under §1988, even when the plaintiff prevails in the lawsuit. In *Farrar v. Hobby*,<sup>14</sup> the Supreme Court ruled that a plaintiff who received only nominal damages of \$1 in a §1983 lawsuit was entitled to no attorney's fees under §1988.

In *Farrar*, the plaintiff owned a school for delinquent and disabled teens, and one of the students died. When a State grand jury returned a murder indictment against the plaintiff, the State temporarily closed the school. After criminal charges were dismissed, the plaintiff filed a §1983 suit seeking \$17 million from the government officials involved in the criminal investigation. The civil case was tried before a jury, which determined that the plaintiff's constitutional rights had been violated, but only \$1 in nominal damages were eventually awarded. The plaintiff then petitioned for attorney's fees, and the district court awarded \$280,000.

The Supreme Court held that no attorney's fees should be awarded when only nominal damages are obtained in a §1983 lawsuit. Even

though the plaintiff was found by the Court to be technically a prevailing party in the litigation, the Court stated that the most critical factor in determining the reasonableness of a fee award is the degree of success obtained.<sup>15</sup>



*Farrar* is an important case for law enforcement defendants when deciding whether to go to trial or to settle a case before trial. The Court in *Farrar* stated that where recovery of private damages is the purpose of civil rights litigation, a court in awarding attorney's fees is obligated to give primary consideration to the amount of damages awarded, as compared to the amount sought, and that fee awards under §1988 were never intended to produce windfalls to attorneys.<sup>16</sup> One predictable consequence of the *Farrar* decision is that attorneys will be deterred from filing cases where they can anticipate that the amount of attorney's fees incurred will be larger than the monetary damage award.<sup>17</sup>

The significant impact of *Farrar* can be seen in two recent Seventh Circuit Court of Appeals cases. In *Cartwright v. Stamper*,<sup>18</sup> a law enforcement

officer was successfully sued for an unconstitutional entry into the plaintiff's home, but the jury awarded only nominal damages. The plaintiff then petitioned for \$111,851 in attorney's fees and was awarded \$79,312 by the district court. The Seventh Circuit overturned the fee award and held that the plaintiff was entitled to no fees at all.<sup>19</sup>

Similarly, in *Willis v. City of Chicago*,<sup>20</sup> the plaintiff prevailed in his lawsuit alleging that he was unconstitutionally detained for over 48 hours without a judicial probable cause hearing, but the jury awarded him only nominal damages. The district court awarded the plaintiff \$139,350 in attorney's fees, which the Seventh Circuit Court of Appeals reduced to zero based on *Farrar*.<sup>21</sup>

### Contingency Fee Arrangements and §1988

A second attorney's fees issue that the Supreme Court has recently resolved concerns the effect of a contingency fee arrangement on the amount of attorney's fees awarded under §1988. In *City of Burlington v. Dague*,<sup>22</sup> the Court ruled that a contingency fee arrangement between plaintiffs and their attorneys cannot be used to increase the amount of attorney's fees awarded under §1988.<sup>23</sup>

The effect of the *Dague* case can be seen in *Gates v. Deukmejian*,<sup>24</sup> where prisoners in California brought a large class action lawsuit challenging the conditions of their confinement. After the prisoners prevailed, the district court awarded over \$6 million in §1988 attorney's fees. However, the U.S. Court of

Appeals for the Ninth Circuit, citing *Dague*, reduced that figure by one-half, because the district court had doubled the fee awarded to compensate for a contingency fee risk factor.

### Severability of Claims

Another strategy successfully used to reduce the amount of attorney's fees in §1983 litigation is to demonstrate that a plaintiff has alleged several separate claims based on different facts and legal theories. When a plaintiff does not prevail on one or more of these separate claims, the plaintiff's attorney is not entitled to a fee award for work on such unsuccessful claims.<sup>25</sup> In addition, if a plaintiff achieves only partial or limited success, even with interrelated claims, the degree of success may be properly considered in the overall attorney's fees award.<sup>26</sup>

An example of the severability of claims strategy can be seen in *Lenard v. Argento*,<sup>27</sup> in which the plaintiff sued the police under §1983 alleging an unconstitutional use of excessive force, an equal protection violation, and malicious prosecution. The plaintiff prevailed only on the equal protection claim and was awarded \$267,000 in damages and \$377,000 in attorney's fees under §1988.

The Seventh Circuit Court of Appeals reversed the attorney's fee award, finding that the equal protection claim and the malicious prosecution claim were not related. Because the fee award was based on the total number of hours the attorney expended on the litigation, the Seventh Circuit remanded the case for a lowering of the attorney's fees.

### Requests for Excessive and Unsubstantiated Fees

Law enforcement defendants should also be prepared to challenge any fee claim by a plaintiff's attorney that is either poorly documented or extremely excessive. If the plaintiff does not submit reliable and detailed documentation to support the hours allegedly spent on the case by the attorney, it is within the district court's discretion to deny a fee award.<sup>28</sup>

For example, in *Pontarelli v. Stone*,<sup>29</sup> five State troopers sued the State police and various government officials alleging, among other claims, sex discrimination. Eventually, after lengthy litigation, one of the plaintiffs prevailed and was awarded \$15,000 in damages.

**“...it is not uncommon for the attorney's fees to be the most significant monetary aspect in civil litigation.”**

The plaintiff then requested \$511,951 in attorney's fees and \$203,268 in costs pursuant to §1988. The plaintiff was, however, delinquent in filing supporting documentation which, when filed, was characterized by the district court as “questionable.” For instance, the court noted that the plaintiff's attorney submitted a claim for 25.7 hours work for one day and 26.6 hours for

the following day. The court remarked that it may be possible to work around the clock for 2 consecutive days, but it is clearly impossible to do so for more than 24 hours in any one day.

Because of the excessive and unsubstantiated fee claim, the court determined that the plaintiff was entitled to no attorney's fees or costs. In addition, the court ordered the plaintiff to pay one of the defendant's \$54,168 to cover the defendant's attorney's fees, because the court determined the claim against this defendant was frivolous and was brought to harass and embarrass.

### Conclusion

When Congress determined that individuals should be encouraged to vindicate violations of their constitutional rights, 42 U.S.C. §1988 was passed, which provided for the awarding of attorney's fees to a prevailing party in §1983 litigation. As a result, law enforcement defendants sued under §1983 often face tough choices in deciding whether to settle or litigate.

To aid in their decision, law enforcement defendants should carefully consider the following litigation strategies discussed in this article:

- 1) Assess quickly the validity of the plaintiff's claim and use Rule 68, FRCP, to settle when the claim appears valid
- 2) Recognize that courts are less likely after the *Farrar* and *Dague* decisions to award attorney's fees under §1988 that exceed potential monetary damages

3) Make certain that plaintiffs do not receive an attorney's fee award for separate unsuccessful §1983 claims, even when the plaintiff prevails on another claim, and

4) Scrutinize an attorney's fee claim to determine if it is excessive or unsubstantiated and consider a request for denial of the fee claim when the claim appears inflated.

With guidance from these strategies, law enforcement defendants will be better able to control the costs of litigation and to make informed decisions about potential civil liability exposure. ♦

#### Endnotes

<sup>1</sup> Although this article explores the awarding of attorney's fees in civil suits alleging constitutional violations, the same principles apply to a wide variety of lawsuits in which Congress has provided for attorney's fees, including suits alleging illegal discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(K).

<sup>2</sup> The "American Rule" is distinguished from the rule in Great Britain, where the losing party normally assumes the burden of paying the attorney's fees of the winning party. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975). Many people interested in tort reform in the United States have advocated legislation mandating the "British Rule," believing it will discourage meritless or frivolous lawsuits from being instituted.

<sup>3</sup> *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

<sup>4</sup> This fee-shifting scheme does not apply to lawsuits alleging constitutional violations brought against Federal law enforcement officers pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). However, if a Federal agent is considered to be a conspirator with State officers under 42 U.S.C. §1985(3), or acting as a State or local law enforcement officer, the provisions of §1988 may apply.

<sup>5</sup> A prevailing law enforcement defendant or agency may recover attorney's fees only where the suit was vexatious, frivolous, or brought to

harass or embarrass the defendant. See *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978), and *Hughes v. Rowe*, 449 U.S. 5 (1980). A similar standard applies when sanctions against a plaintiff's attorney under Rule 11 of the Federal Rules of Civil Procedure are sought. Under Rule 11, a civil suit must be "well grounded in fact" and warranted by existing law. See, e.g., *In Re Kunstler*, 914 F.2d 505 (4th Cir. 1991), cert. denied, 111 S.Ct. 1607 (1991) (Rule 11 sanctions imposed on attorneys representing plaintiffs in a suit against law enforcement officials).

<sup>6</sup> *Hensley* at 433.

<sup>7</sup> See, e.g., *Riverside v. Rivera*, 477 U.S. 561 (1986) (\$33,350 in damages and \$245,456.25 in attorney's fees); *Gomez v. Gates*, 804 F.Supp. 69 (C.D. Cal. 1992) (\$44,000 in damages and \$378,175 in attorney's fees); *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980) (\$33,000 damages and \$160,000 in attorney's fees).

<sup>8</sup> 473 U.S. 1 (1985).

<sup>9</sup> *Id.* at 11.

<sup>10</sup> 475 U.S. 717 (1986).

<sup>11</sup> See also, *Willard v. City of Los Angeles*, 803 F.2d 526 (9th Cir. 1986) and *Phillips v. Allegheny County, Pa.*, 869 F.2d 234 (3d Cir. 1989). Note, however, that in both *Phillips* and *Willard*, the courts cautioned against using this tactic consistently in a vindictive effort to deter attorneys from representing civil rights plaintiffs.

<sup>12</sup> *Benitez v. Collazo-Collazo*, 888 F.2d 930, 933 (1st Cir. 1989) and *Turner v. Secretary of the Air Force*, 944 F.2d 804, 807 (11th Cir. 1991).

<sup>13</sup> *Darby v. City of Torrance*, 810 F.Supp. 271, 274 (C.D. Cal. 1992)

<sup>14</sup> 113 S.Ct. 566 (1992).

<sup>15</sup> *Id.* at 575.

<sup>16</sup> *Id.* at 575. Note, however, that *Farrar* does not affect the award of attorney's fees where the plaintiff only seeks or obtains equitable relief in the form of an injunction or a court order, such as a consent decree. When equitable relief is obtained or the plaintiff's suit acts as a "catalyst" causing a law enforcement defendant to change policy or procedures, the plaintiff may be entitled to §1988 attorney's fees, even though no monetary damages are awarded. See, e.g., *Craig v. Gregg County Tex.*, 988 F.2d 18 (5th Cir. 1993) and *Dawson v. Scurr*, 986 F.2d 257 (8th Cir. 1993).

<sup>17</sup> See, e.g., *Romberg v. Nichols*, 970 F.2d 512 (9th Cir. 1992) (in a police misconduct case, the plaintiff prevailed but was awarded only nominal damages. The attorney's fee award of \$29,137 was vacated and remanded in

light of *Farrar*, 993 F.2d 1453 (9th Cir. 1993) and *Domegon v. Ponte*, 972 F.2d 401 (1st Cir. 1992) (award of \$41,441 in attorney's fees when plaintiff received \$1 nominal damages vacated in light of *Farrar*, 113 S.Ct. 1378 [1993]).

<sup>18</sup> 7 F.3d 106 (7th Cir. 1993).

<sup>19</sup> *Id.* at 110.

<sup>20</sup> 999 F.2d 284 (7th Cir. 1993), cert. denied, S.Ct. (1994).

<sup>21</sup> See also *Wilkes v. Reyes*, 5 F.3d 412 (9th Cir. 1993) (plaintiff appealed a jury award of zero damages because the jury found that a police officer defendant had used excessive force. The Ninth Circuit noted that even though the plaintiff is entitled to \$1 nominal damages because of the constitutional injury, this may not entitle the plaintiff to attorney's fees under *Farrar*).

<sup>22</sup> 112 S.Ct. 2638 (1992).

<sup>23</sup> See also, *Blanchard v. Bergeron*, 489 U.S. 87 (1989), in which the Court held that a contingency fee contract did not limit the amount of attorney's fees under §1988 and *Venegas v. Mitchell*, 110 S.Ct. 1679 (1990), in which the Court ruled that a contingency fee arrangement between plaintiffs and their attorneys is a private contract between the parties and may be enforceable, even when the §1988 award is less than the contingency fee.

<sup>24</sup> 987 F.2d 1392 (9th Cir. 1992).

<sup>25</sup> *Hensley* at 435. See also, *Loranger v. Stierham*, 10 F.3d 776 (11th Cir. 1994).

<sup>26</sup> *Hensley* at 436.

<sup>27</sup> 808 F.2d 1242 (7th Cir. 1987).

<sup>28</sup> See, e.g., *Fair Housing Council v. Landow*, 999 F.2d 92 (4th Cir. 1993) (prevailing party in suit to prevent discrimination in housing opportunities sought \$537,113 in attorney's fees but was given zero due to the outrageously excessive fee claim) and *Lewis v. Kendrick*, 944 F.2d 949 (1st Cir. 1991) (plaintiff prevailed in an excessive force lawsuit and was awarded \$5,608 in damages. The plaintiff then sought \$137,000 in attorney's fees, which the court denied in total, stating, "To turn a single wrongful arrest into a half year's work...is to use a benign word, inexcusable.")

<sup>29</sup> 978 F.2d 773 (1st Cir. 1992).

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*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.*

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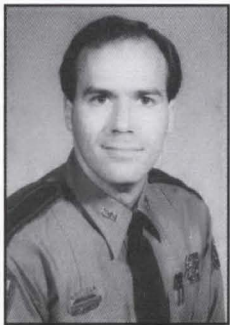
## The Bulletin Notes

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



*Patrolman Itri*

Patrolman Lawrence Itri of the McCandless, Pennsylvania, Police Department responded to a fire alarm at an area nursing home. He found flames spreading through a ward housing bedridden patients. Without donning breathing apparatus or protective equipment, Officer Itri braved the flames and heavy smoke, entered the ward, and pulled the patients' beds to a safe area.



*Trooper Fullerton*

When a citizen notified Trooper Roy Fullerton of the Mississippi Highway Patrol, who was at home, of an accident nearby, he responded immediately to the scene. Trooper Fullerton, a certified medical technician, was rendering medical assistance to the victims, when another officer responding to the accident lost control of his police cruiser. As the cruiser skidded toward the accident scene, Trooper Fullerton jumped over one of the wrecked vehicles to push a young girl out of the cruiser's path. His quick response prevented another tragedy.



*Officer Chambers*



*Officer Dawson*

When Officer Billy Ray Chambers of the Mount Olive, North Carolina, Police Department responded to an assault call at a house trailer, he discovered the door kicked in and bloodstains on the ground. Officer Chambers then searched the trailer, where he found a female lying in a large pool of blood. He was administering first aid to stop the bleeding when Officer Joseph Brian Dawson of the same department arrived to offer assistance until emergency medical units arrived. The two officers then conducted a search of the area. After following a trail of blood to another trailer, Officer Dawson came face to face with the assailant and saw the knife used in the attack lying near the attacker. He was able to move the knife from the attacker's reach and to place him under arrest.

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## **Patch Call**



The patch of the Thunder Bay, Ontario, Canada, Police Department depicts the sun rising over Lake Superior and Fort William, the gateway to the West. Shown above the fort are the French Voyageurs who settled the area.



The Keota, Iowa, Police Department's patch features an ear of corn surrounded by a belt and the legend, "The Golden Buckle on the Corn Belt," taken from the official city seal.