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# **FBI** Law Enforcement

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# SAFE

# STREETS

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Louis J. Freeh  
Director

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# FBI Law Enforcement

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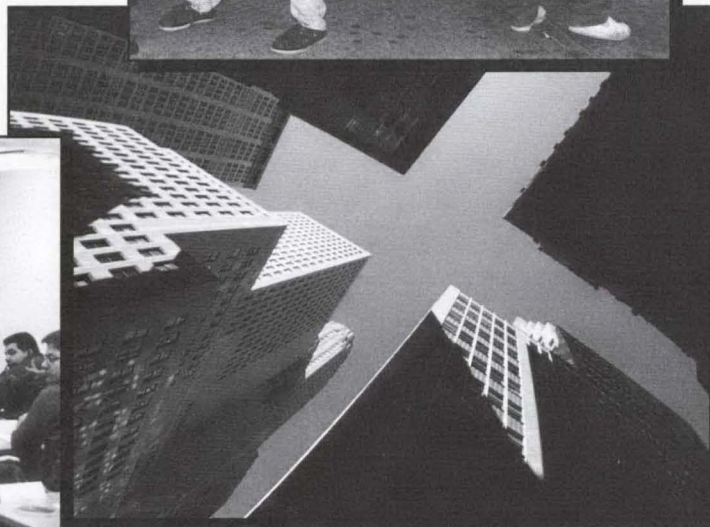
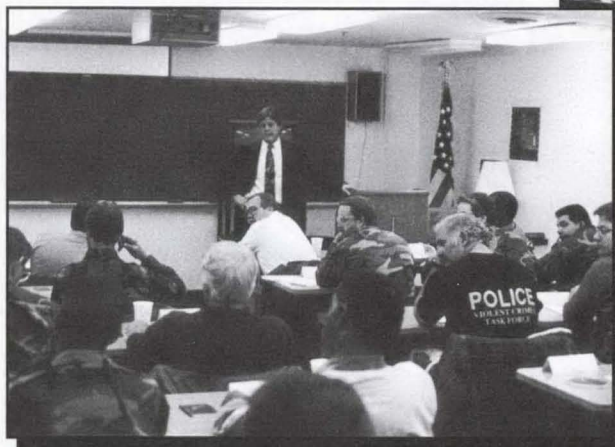
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# Safe Streets

## Combining Resources to Address Violent Crime

By  
Douglas Shur



**“M**urder!” “Drive-By Shooting!” “Fatal Carjacking!” These all-too-familiar newspaper headlines appear daily across the country. Violent crime is a harsh reality that threatens communities, large and small alike, throughout America. In his resolution of March 1, 1994, regarding the National Anti-Violent Crime Initiative, FBI Director Louis J. Freeh stressed the tremendous toll violent crime takes on society:

Random and senseless violence, combined with organized criminal enterprises engaging in violence

motivated by greed, pose a direct threat to our nation’s domestic security. The staggering dimension of this violence strikes fear in the hearts of decent people everywhere. At present, many Americans are held hostage in their homes....Unabated, our country’s epidemic of violence, which strikes at the very fabric of our society, threatens future generations of Americans.<sup>1</sup>

According to the FBI’s Uniform Crime Reports, 24,539 people were murdered in 1993; 70 of these victims were law enforcement officers.

In the same year, more than 104,800 rapes occurred, as well as nearly 659,760 robberies and over 1,135,100 aggravated assaults.<sup>2</sup>

Added to these figures is the startling fact that youths are beginning to engage in serious violent activity at a younger age. Last year, news accounts of an 11-year-old in Chicago who reportedly murdered a 14-year-old in cold blood shocked the Nation. The young offender subsequently was killed, allegedly by fellow gang members who feared that he would cooperate with detectives and implicate other gang members. The victims and perpetrators in such cases represent more than just





Lieutenant Shur of the Los Angeles, California, Police Department participated in the Safe Streets Executive Fellowship Program at FBI Headquarters.

“  
***The Safe Streets mission is to establish long-term, proactive task forces that focus on violent crimes....***  
 ”

isolated instances of brutality; they project what is fast-emerging as a bleak future for America's youth.<sup>3</sup>

With shrinking budgets, States, counties, cities, and towns must optimize limited resources in order to combat career criminals and the chaos created by their activities. Violent crimes have no boundaries, and violent criminals, no sense of sanctity. Thus, no community is immune from the effects of violent crime. State and local law enforcement agencies have recognized this encroachment of violence in their communities and have taken necessary actions, such as placing more officers on the streets, targeting troubled areas, and instituting innovative community policing programs.

Attorney General Janet Reno's introduction of the National Anti-Violent Crime Initiative has directed Federal law enforcement toward a coordinated and cooperative response to assist State and local authorities. During the past several years, the FBI has developed a

successful model to coordinate this collaboration through multijurisdictional task forces known as "Safe Streets." The combination of Federal, State, and local law enforcement agencies in a unified approach to crime successfully has placed violent criminals where they belong—in prison.

#### BACKGROUND

The end of the Cold War afforded the FBI an opportunity to enhance its response to the escalating trend of violent crime in America. In January 1992, the FBI elevated its Violent Crime and Major Offenders Program (VCMOP) to a national priority. At this time, the FBI also reassigned 300 special agents from its counter-intelligence program to the VCMOP and announced the Safe Streets initiative within the VCMOP. This initiative established the authority for each special agent-in-charge of the 56 FBI field offices to create FBI-sponsored task forces directed at the national violent

crime problem, in cooperation with State and local law enforcement.

The Safe Streets mission is to establish long-term, proactive task forces that focus on violent crimes and the apprehension of violent fugitives. Today's Safe Streets task forces (SSTFs) were modeled on the six successful prototype task forces that have operated in select FBI field offices since 1989.

Currently, 119 task forces operate in 52 field offices and involve over 350 State and local law enforcement agencies. The SSTFs have teamed 681 FBI special agents with 873 State and local law enforcement officers and 135 other Federal law enforcement personnel. These partnerships have formed 30 fugitive, 52 violent crimes, 28 violent crimes/fugitive, and 9 major offenders task forces.<sup>4</sup>

Fugitive task forces are responsible for locating and apprehending the most violent State and Federal fugitives. Violent crimes task forces target violent street gangs, drug-related organizations, and perpetrators of crimes such as murder, armed robbery, kidnaping, and extortion. Interstate theft/major offenders task forces focus on violent major theft groups, including armed truck hijackers, carjacking gangs, and jewelry theft rings. In addition to applicable State statutes, the SSTFs use the Racketeer Influenced and Corrupt Organization (RICO) statute, Interstate Transportation in Aid of Racketeering (ITAR) statutes, and Hobbs Act violations to attack the criminal element.

With the inauguration of the SSTFs, the VCMOP's accomplishments have been considerable, with more than 61,000 arrests made since



1991. In addition, the VCMOP has filed over 19,000 complaints or warrants and has returned over 20,000 indictments that led to 22,600 convictions. A significant share of these totals are directly attributable to the work of the Safe Streets task forces.<sup>5</sup>

### **TASK FORCE BENEFITS**

The task force concept mutually benefits all participants. Experienced State and local officers bring with them valuable criminal intelligence information and a familiarity with their plagued communities. These resources, combined with the FBI's expertise in conducting complex investigations and using Federal investigative tools, constitute an effective partnership to address violent crime. Deputizing State and local officers expands their jurisdictional reach to apprehend violent fugitives and to conduct expanded investigations. By avoiding wasteful duplication in areas of concurrent jurisdiction, task forces increase the effectiveness and productivity of limited personnel and logistical resources.

### **CASE STUDY: GARRET MOUNTAIN VIOLENT CRIMES/FUGITIVE SAFE STREETS TASK FORCE**

The Garret Mountain Violent Crimes/Fugitive Safe Streets Task Force (GMTF) in Northern New Jersey exemplifies the effectiveness of SSTF operations. The task force consists of 10 FBI special agents and 10 county and local law enforcement officers from 8 agencies. From May 1992 to August 1994, the GMTF apprehended 937 fugitives, cleared an additional 168 warrants

by locating the subjects in confinement, obtained 186 Federal Unlawful Flight to Avoid Prosecution (UFAP) warrants, and was credited with 62 convictions.

Because of the GMTF and other law enforcement efforts, the Clifton, New Jersey, Police Department realized a 24-percent reduction in violent crimes and a 17-percent reduction in the overall crime rate in its community.<sup>6</sup> These reductions have occurred while cities nationwide with similar populations between 50,000 and 99,000 registered a decrease of only 2 percent and 1 percent, respectively.<sup>7</sup>

***Overtime reimbursement through Safe Streets allows officers to devote their full attention to task force investigations.***

The FBI has funded \$46,985 of GMTF's operational expenses since its formation. Officer overtime costs have amounted to \$47,735, of which the FBI has reimbursed \$37,130 to participating agencies. County and local agencies have absorbed the remaining \$10,605 in officers' overtime and have contributed another \$486,000 in officers' salaries and \$54,000 in equipment.<sup>8</sup>

### **ADVANTAGES**

With the Federal partnership involved in the SSTFs, local law

enforcement agencies have been able to apply Federal statutes and guidelines to criminal investigations in their communities. For example, the Chicago Police Department is under a Federal consent decree restricting the collection of intelligence. This was a result of the department's intelligence unit known as the "Red Squad" 20 years ago. However, the SSTF in Chicago was able to obtain Federal indictments on the Black Gangster Disciples leaders by using sophisticated intelligence and investigative techniques.

Working within two separate task forces, the police departments in Hartford, Connecticut, and Bridgeport, Connecticut, indicted 22 members of the Almighty Latin Kings Nation, including all leaders throughout the State. The task forces used drug buys and court-approved electronic surveillance to indict the Latin Kings.

In California, SSTFs developed Federal indictments on 10 Shoreline Crips and 12 Schoolyard Crips. Using cooperating witnesses and undercover police officers to conduct drug transactions, the task forces targeted the gangs' leadership.

Another key advantage of Federal participation in the task forces is the incarceration of criminals in Federal prisons. Convicted criminals must serve at least 85 percent of a Federal sentence. Actual incarceration rates in many States are substantially lower because of overcrowding and other factors. Faced with longer prison terms, criminals are becoming more cooperative as witnesses for the prosecution.

Additionally, the task forces improve the lines of communication



## The Mobile Violent Crime Joint Task Force



**T**he Mobile Violent Crime Joint Task Force (MVCJTF) in Alabama is comprised of the Mobile Police Department, Prichard Police Department, Mobile County Sheriff's Department, and the FBI. MVCJTF members work off-site where daily operations are supervised by a supervisory FBI special agent and a Mobile Police Department sergeant. Special agents and officers share similar responsibilities and duties. Each officer has received a "top secret" clearance, has been deputized, and has access to sensitive information.

The U.S. attorney's office and the district attorney's office were involved with the early formation of the MVCJTF, each assigning a prosecutor. The two offices now support each other in prosecution of task force cases.

Both the FBI and the participating local agencies have had direct input in developing the mission and goals of the task force. The MVCJTF first identified gangs as the area's primary violent crime problem, but as the task force accumulated more intelligence information, its focus changed to violent fugitives.

The Mobile Police Department and the FBI's Mobile Field Office attribute a considerable reduction in serious crimes, in part, to the MVCJTF. UCR figures for Mobile reflect a significant decrease in serious crimes between 1992 and 1993. Except for the homicide rate, which matched a 3-percent increase recorded nationally, the rates of serious crimes in the Mobile area declined significantly. The number of robberies decreased 11 percent, from 1,188 to 1,053, while the national decrease was 2 percent. Forcible rapes decreased from 172 to 114, or 34 percent. Nationally, the decrease was 4 percent. Aggravated assaults decreased from 906 to 870, or 4 percent, in contrast to a 7-percent increase nationwide. Burglaries decreased from 5,056 to 4,435, or 12 percent, twice the national decrease of 6 percent. Automobile thefts decreased from 2,284 to 1,412, or 38 percent. Nationally, the decrease was 3 percent. Larcenies decreased from 11,754 to 8,991, or 24 percent, whereas the number of larcenies nationwide fell only 1 percent. Above all, the Mobile Violent Crime Joint Task Force demonstrates what an SSTF can accomplish with all involved agencies working in partnership to address the violent crime problem.

between Federal, State, and local law enforcement agencies. Intelligence-sharing not only assists regional SSTFs to identify and apprehend local criminals but also enhances individual investigations on a wider national scale.

An LAPD detective serving on a SSTF fugitive task force used the

database to search for homicide suspects. With this information, he was able to track to Alabama a suspect wanted for a 1973 homicide in Los Angeles. An Unlawful Flight to Avoid Prosecution warrant was issued for the subject's arrest.

Since the murder, the suspect changed his identity and became

an established citizen in Alabama. Accompanied by FBI personnel from the Montgomery, Alabama, Resident Agency (Mobile Division), the detective, now a special Federal deputy marshal, went to the suspect's business. When the detective placed the suspect under arrest for the Los Angeles murder, he



sagged and slowly lowered his head, then quickly denied the charges. However, the evidence told a different story, and the fugitive subsequently was convicted for the 1973 murder.

### Overtime

Several features combine to form the solid partnerships necessary to the success of the Safe Streets initiative. One of the most critical features stems from the FBI's authority to reimburse State and local agencies for the overtime worked by their officers assigned to the task forces.

This congressionally mandated authority is essential for two key reasons. First, it promotes a sense of equality among task force members; second, it provides the flexibility necessary to deploy personnel where and when they are needed for investigations. Because many law enforcement officers supplement their incomes with second jobs, they often are unavailable for duty outside of their regular shifts. Overtime reimbursement through Safe Streets allows officers to devote their full attention to task force investigations. Without such reimbursement, State and local officers may not be available for duty when the circumstances of a case requires it, leaving a diminished task force complement to conduct investigative work and face dangerous subjects.

The acute budget constraints facing many States and communities further underscore the importance of Federal reimbursement. Many agency administrators have noted that without adequate overtime reimbursement, participation in the task forces would be difficult,

if not impossible.<sup>9</sup> The sentiments expressed by the chief of the Oakland, California, Police Department represent the views of many administrators. He states that due to reduced public outlays, the department would find it difficult to participate in the highly effective task forces if it had to shoulder the responsibility for increased overtime itself.

**“  
...the task forces are  
able to eliminate  
redundant  
investigations and  
make the most of the  
resources available.  
”**

Overtime compensation not only permits State and local agencies to participate in the task forces but it also represents a cost-effective way to enhance the Federal response to community crime problems. The overtime pay provided to State and local officers allows the FBI to coordinate broad-based investigations using primarily regional personnel. This coordinated approach focuses expanded investigative resources on serious crime problems at a fraction of the cost of an exclusively Federal response.

To maximize results and ensure accountability, all parties involved exercise prudent management of overtime outlays. The onscene task force coordinator must approve each overtime request and then certify its justification in writing.

Reimbursement requests are reviewed again at FBI Headquarters to ensure that all expenditures are fully justified.

### Training

Training is an essential element for any operation, and in this regard, the Safe Streets task forces are no different. For State and local officers participating in the task forces, the FBI offers a 5-day Street Survival Course at the FBI Academy in Quantico, Virginia, that covers live-fire training on tactical courses. FBI instructors also conduct realistic tactical situational problems at Hogan's Alley on the grounds of the Academy. Officers who have attended the training give it high marks.

Survival is the theme of the training, with an emphasis on planning and teamwork. Additionally, FBI field offices have provided task force personnel with firearms and tactical training, instruction regarding Federal report writing and distribution, and other training relevant to task force needs.

### Support

The FBI contributes the majority of logistical support for the Safe Streets task forces. From fiscal year 1992 through fiscal year 1994, the FBI authorized over \$8 million for logistical support, such as office space and equipment, vehicles, and cellular phones. During that same period, approximately \$4 million was spent for overtime reimbursement.

The financial support has provided the operational foundation for these task forces, and the overtime has ensured the investigative



flexibility necessary to dismantle increasingly organized criminal groups. Police administrators view this logistical support as essential for task force operations because it provides resources they could not afford otherwise.

## **ESTABLISHING A TASK FORCE**

Safe Streets task forces have been effective in dismantling organized street gangs and apprehending violent fugitives, carjackers, and other violent offenders. Because the task forces are a cooperative effort among law enforcement agencies, the decision to start a task force eventually leads to a formal agreement between the FBI and the agencies involved.

Contacting the local FBI field office can assist agencies in determining the resources available and the feasibility of establishing a task force in a particular community. All interested agencies should analyze available information to assess the local crime problems. Sources of statistical information include the Uniform Crime Reports related to violent crimes; the National Crime Information Center searches identifying violent fugitives; the Bureau of Justice Statistics for criminal statistical analysis; the National Drug Intelligence Center for statistics and trends; and public sources of information, such as the International Association of Chiefs of Police, the National Sheriffs' Association, the National Insurance Crime Bureau, and medical facilities, for trends in violent crimes.

Another potentially valuable information source is a violent crime

advisory committee composed of civic organizations. These committees should have periodic meetings with law enforcement representatives to help prioritize the community's violent crime problems and to establish methods to review and evaluate these problems on a continuing basis.

***Safe Streets task forces have been effective in dismantling organized street gangs and apprehending violent fugitives, carjackers, and other violent offenders.***

When determining a course of action to address a violent crime problem, communities should consider carefully the availability of resources. Because any successful task force requires adequate resources, participating agencies need to assess the current resources allocated to the crime problem and what additional assets, if any, are necessary to address it. The assessment also should suggest methods to eliminate any duplication of effort. The involved agencies should keep appropriate lines of communications open for intelligence-sharing.

The development of a Safe Streets task force should include the expertise and jurisdiction of appropriate Federal agencies in addition

to the FBI. The Federal composition of each task force should be determined by the crime problem prevalent in that community. Both State and Federal prosecutors should be included as task force participants to maximize prosecutive efforts. However, overall task force coordination is the FBI's responsibility with input from all involved agencies.

Another necessary item to start an SSTF is a Memorandum of Understanding (MOU) among participants. To establish the operational framework properly and to clarify the duties and responsibilities of each participating agency, the MOU should address the following areas:

- Task force goals and objectives
- Policy and direction
- Supervisory responsibilities
- Funding and equipment considerations
- Administration
- Prosecutive guidelines
- Media procedures
- Investigative procedures
  - Conformance with the Attorney General's Guidelines for Criminal Investigations and Informants
  - Uniform reporting of investigations
- Cross-designation of personnel considerations, i.e., deputation
- Executive briefings.

A separate agreement should address Federal reimbursement of overtime for full-time State and local task force participants.



### Community Outreach

The Safe Streets initiative also fosters community outreach activities. Agencies are encouraged to establish and maintain activities such as Adopt-a-School. Law enforcement personnel, if not already

involved with community activities, should consider attending meetings with civic leaders and associations to improve cooperation, to solicit support, and to obtain feedback regarding ongoing community and law enforcement initiatives.

### CONCLUSION

Citizens from every part of the country and every walk of life express concern over the rising rates of violence. Not since the height of the "gangster era" in the 1930s has crime threatened the very fabric of

### Wichita-Sedgwick County Violent Crimes/Gangs Joint Task Force



**T**he Wichita-Sedgwick County Violent Crimes/Gangs Joint Task Force (VC/GJTF) completed its first year of operation on September 30, 1994. It consists of seven members from five agencies—two FBI special agents, one special agent from the Bureau of Alcohol, Tobacco and Firearms, two detectives from the Wichita, Kansas, Police Department (WPD), one detective from the Sedgwick County, Kansas, Sheriff's Department, and one special agent from the Kansas Bureau of Investigation.

The task force has focused on investigating armed robberies of commercial businesses and has used the Hobbs Act statute as a prosecutive vehicle. These businesses included restaurants, laundromats/cleaners, fast-food restaurants, convenience stores, and other establishments.

During Fiscal Year (FY) 1994, the task force investigated a total of 608 cases, solving 451 cases for a solution rate of 74 percent. The task force identified 129 subjects who accounted for 451 violent crimes. These cases resulted in 36 Federal indictments and 59 State indictments. The task force has 8 Federal conviction, and 24 State convictions.

In the last year, 8 groups accounted for 217 armed robberies in Wichita. Eight individuals from these groups pled guilty, with only one going to trial. This subject was found guilty on 10 counts and faces a 75-year sentence.

The number of robberies for the last 5 years has averaged 1,400 per year, with a 20-percent solution rate (approximately 280 solutions per year). The task force investigated 500 of the 1,200 robberies committed from October 1, 1993, to September 30, 1994, and obtained a solution rate of 74 percent. This caused the overall solution rate of the WPD to jump to 52 percent, 28 percent above the national average (24 percent) for robbery clearances.

An important byproduct is the overall decline in the number of robberies. By putting serial robbers behind bars, the task force evidently is causing potential criminals to reconsider their lawbreaking actions. In addition, the task force has gained the confidence of the entire law enforcement community, as evidenced by beat officers making daily or weekly visits to the task force offices to supply intelligence or to offer other forms of assistance.



Modest Federal outlays for personnel, training, equipment, and overtime are joined with the investigative abilities of State and local investigators who understand the

The singular goal of the various task forces is to put violent criminals behind bars. SSTFs will continue to do so as long as they are supported by police administrators from State and local law enforcement agencies, the Director of the FBI, and the Attorney General. ♦

<sup>1</sup> Louis J. Freeh, FBI Director, "Resolution of the National Anti-Violent Crime Initiative," March 1, 1994.

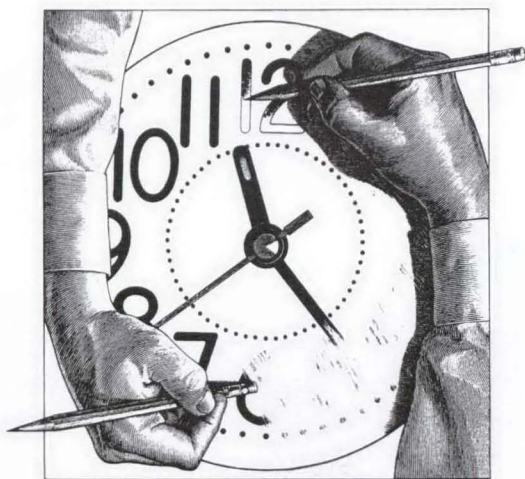
<sup>9</sup> Safe Streets Fellowship Project, *Safe Streets Initiative Questionnaire*, September, 1994.



## Case Study

### Patrol Shift Schedule

By Mark W. Moore



**D**ays—Evenings—Second Shift—Midnight—Graveyard! Police officers use different terms to describe their working hours. No single term is universally accepted, but every officer knows what it means to be assigned to patrol duties on a rotating basis. Officers also can attest to the challenges that the patrol shift schedule places on their professional and personal lives.

At the same time, police supervisors face dilemmas when scheduling patrol officers. Weekends, peak crime hours, service demands, and availability of personnel all tax supervisors who must ensure that a sufficient work force is on the streets to enforce the law and to protect citizens.

Unfortunately, no patrol shift schedule will work for every police department. A review of the literature on this issue reveals different stances taken by law enforcement professionals. However, the majority believe that the patrol schedule should be based on the needs of the agency and the community, which in this case, can be determined by calls for service and the distribution of those calls. Personnel should be deployed where they are needed, when they are needed, and in proportion to the workload.<sup>1</sup>

There are numerous indicators for effective patrol division scheduling. Some considerations include

output (productivity), overtime accrual, hidden costs for other units, officers' use of sick leave, number of accidents involving patrol cars, collective bargaining agreements with employee associations, and officer morale,<sup>2</sup> as well as the the number of hours worked each day and the number of days worked each week.

The four 10-hour-day work week receives much attention and support. In addition to enriching an officer's professional and family life,<sup>3</sup> the four 10-hour day patrol schedule has other advantages, such as maximum use of the workforce during critical service demand hours, equal distribution of the workload, efficient shift changes, and balanced use of equipment.<sup>4</sup>

As complex and demanding as scheduling patrol work may be, several departments have adopted systems that best serve their needs. This case study details the revamping of the patrol shift schedule for the Abilene, Texas, Police Department.

#### Former Schedule

In the early 1980s, the Abilene Patrol Division, which was divided into three companies with three squads each, worked rotating 8-hour shifts with fixed days off. For example, Squad 1 of each company did not work Friday and Saturday; Squad 2 of each company was off Sunday and Monday; and Tuesday and Wednesday were days off for Squad 3 of each company. Supervisors overstaffed their companies on Thursdays to accommodate inservice training. In addition, the companies rotated shifts every 4 weeks.

A captain, a lieutenant, and three sergeants were assigned to each company, which had the same number of officers. The assistant chief in charge of the Patrol Division appointed personnel to each company at his discretion.

The configuration worked for an extended period of time, despite some inherent problems. On some days, a captain supervised a company; on others, a lieutenant was in charge. This prohibited consistency in the chain of command, and lieutenants and captains exercised the same amount of control. The shift commander, regardless of rank, monitored calls and radio traffic, serving mostly in a reactive capacity.

Increasing call loads and decreasing budgets marked the mid-1980s. In an effort to service these calls with fewer resources, the chief of police appointed a committee to develop a new scheduling



configuration for the Patrol Division. This committee devised a plan that called for a five-company system with a four 10-hour-day work week, rotating shifts, and rotating days off. Unfortunately, the new system failed to address the disparity of heavier call loads during evening and weekend shifts. And, while the system allowed for 3 days off each week, it also led to many personal problems, particularly with the scheduling of family events.

This system also eliminated the day in the previous patrol schedule that supervisors overstaffed to allow for inservice training. Supervisors now had to place officers on special assignment duty to attend training sessions, which further decreased availability. This schedule, which quickly became unpopular with most officers, still did not meet the needs of the department.

### A New Approach

In October 1988, the department took a different approach to patrol scheduling. The new schedule retained the four 10-hour-day work week, with fixed shifts and fixed days off. What changed were the configuration of the Patrol Division—from five to six companies—and supervisory responsibility for the companies and squads.

With the new schedule, a lieutenant supervises each company, which consists of either two or three squads. Each sergeant, in turn, supervises a squad made up of six or seven patrol officers who work the same days and hours.

Regular patrol duty consists of four 10-hour days per week. Patrol companies (designated A through F) work a fixed shift with fixed days off. All companies, however, work on Wednesday. In other words, an officer works either Sunday through Wednesday or Wednesday through Saturday and works the same hours each week, with the exception of the hours worked on Wednesdays.

Each Wednesday, supervisors alternate one-half of the division for special assignments and inservice

training. Actual duty hours and number of officers vary by company and squad and depend on workload. Occasionally, supervisors can alter the hours worked by officers to address the workload or to provide security for special events.

The workload required a major overlap in patrol hours from 8 p.m. to 2 a.m. As shown in the table, Company D works 1 hour later than Company C to accommodate the busy weekend periods, and a third

squad was added to Company D because of the high call load on the days that company works. Also, the Traffic Division now supplements the patrol force during daylight hours by responding to calls involving traffic accidents, abandoned vehicles, and traffic direction.

Currently, the Patrol Division consists of 10 patrol districts and 1 desk position staffed by each patrol company. Computer-aided dispatch supports all patrol districts and call assignments.

Once each year, the assistant chief in charge of the Patrol

Division reorganizes the division to adjust for workload, vacancies, and new employees. This gives supervisors and veteran officers the opportunity to choose their assignments, which are governed by seniority.

### Benefits

The Abilene Police Department's new patrol schedule provides many advantages to both the department and its officers. For the department, the plan maintains clear lines of authority and unity of command. It also allows for inservice training and special assignments, because all companies work on Wednesdays. Instructors can teach an inservice course to the entire division in 4 weeks, and officers are available to assist investigative units, conduct community-oriented policing projects, serve warrants, and provide selected traffic enforcement.

Other benefits also accrued. First, the amount spent by the department for overtime pay was

**“  
...the time and effort  
expended to devise a  
workable and accepted  
patrol schedule will go  
a long way toward  
maintaining  
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”**



reduced. The department realized a 32-percent reduction in overtime pay when figures from fiscal year 1985 were compared to those of fiscal year 1994. In addition, there were fewer hours of sick leave taken by officers. And, it has been determined that this scheduling was a contributing factor in the reduction of employee turnover.

Officers, however, receive the real benefits. They like having 3 days off each week and maintaining a regular schedule. They also can take advantage of extra duty, overtime assignments, and department-approved security jobs precluded by previous schedules. Furthermore, senior officers have the opportunity to select the shift that they want to work.

Both the department and the officers benefit from regular inservice training and officer availability for special assignments, which promotes career development. This not only improves the department's efficiency but also increases officer morale.

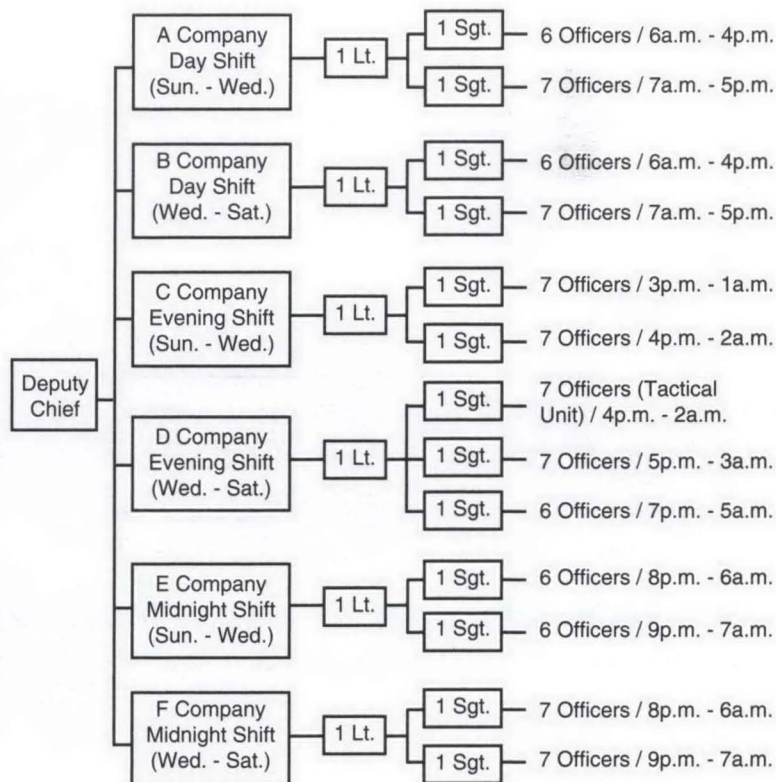
The community also wins with this patrol schedule. With the overlap in shifts, more officers are available to answer calls for service when they are most needed.

## Conclusion

Several other departments similar in size to the Abilene Police Department have studied and implemented its current patrol schedule, some with limited success. The most important consideration, however, is to develop a system that works best for the department and the community.

Customizing a schedule involves research and analysis. It requires patrol officer input to ensure a workable patrol schedule that is acceptable to administrators and a schedule that meets the needs and expectations of the officers. Often, the attitudes of those most affected control the success of any new approach. But, in the end, the time and effort expended to devise a workable and accepted patrol

## Abilene Police Department Uniform Services Bureau (Patrol Division)



schedule will go a long way toward maintaining departmental efficiency and improving officer morale. ♦

## Endnotes

<sup>1</sup> Raymond J. Rose, "Enhancing Organizational Efficiency Through Alternative Scheduling," *The Police Chief*, August 1979, 60-63.

<sup>2</sup> R. Michael Buren and William W. Stenzel, "Indicators of Effective Patrol Division Work Scheduling," *The Police Chief*, April 1985, 34-38.

<sup>3</sup> Robert Gavney, John Calderwood, and Lyle Knowles, "Attitude of Patrol Officers and Wives Toward a Four-day Workweek," *The Police Chief*, February 1979, 33-35.

<sup>4</sup> Francis D. Hand, R.T. Burgess, and J.S. Wilson, "A Four-Ten Plan for Moderate and Large Police Patrol Operations," *Law and Order*, November 1975, 9-13.

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**I**n the early 1980s, the country witnessed a rise in the number of long-term hostage and barricade incidents. For example, members of the Aryan Nation created a barricade situation on Whidbey Island, Washington, in December 1984. Earlier, a small, right-wing survivalist group known as the Covenant, the Sword and the Arm of the Lord was involved in a similar incident in Arkansas. FBI hostage negotiators successfully resolved these situations and others like them, but the incidents challenged the crisis negotiation capacity of the FBI and pointed to

the need for a special response mechanism.

As a result, the Crisis Management Unit (CMU)<sup>1</sup> at the FBI Academy developed a new approach. In 1985, the CMU formed the Critical Incident Negotiation Team (CINT), a small, highly trained and mobile group of experienced FBI crisis negotiators. This team became the nucleus of an organized response to complex and potentially lengthy hostage and barricade incidents nationwide.

The FBI typically negotiates approximately 45 bank robbery and hijacking hostage incidents

annually. The wealth of knowledge developed from these experiences, coupled with lessons learned from other law enforcement agencies, prepare CINT members to handle high-risk incidents. In addition to handling situations arising under FBI jurisdiction, the CINT provides around-the-clock consultation to State and local law enforcement agencies.

## **Selection of Team Members**

The original CINT members were drawn from a pool of more than 350 FBI negotiators nationwide based on resume reviews,



personal interviews, psychological testing, and negotiation experience. This group of 25 negotiators was multiracial and multilingual, with one member being fluent in five languages. Most had been hostage negotiators for 10-15 years and had extensive operational, investigative, and training experience. Their diverse investigative experience included foreign counterintelligence, counterterrorism, organized crime, and general criminal investigation.

### **Training**

Because most of those selected for CINT had been police instructors in the field, they possessed an excellent working knowledge of negotiation strategies, hostage and barricade techniques, and crisis management principles, in addition to actual negotiation experience. Nevertheless, CMU arranged and coordinated semiannual training seminars conducted either at the FBI Academy or at other field locations

that could accommodate the team's special instructional needs. For example, the team conducted joint training with the Department of Energy's Nuclear Emergency Search Team (NEST) and participated in numerous long-term national training exercises conducted in Albuquerque, New Mexico; Camp Pendleton, California; and Indianapolis, Indiana. Criminal profilers and mental health professionals experienced in personality assessment also provided instruction for the team.

### **Preparation for Negotiations Overseas**

The International Hostage Taking Act of 1984 tasked the FBI with deploying agents overseas to conduct hijacking and kidnaping investigations. This responsibility requires CINT members to interact regularly with Department of State personnel and to receive overseas operations training. Training in this

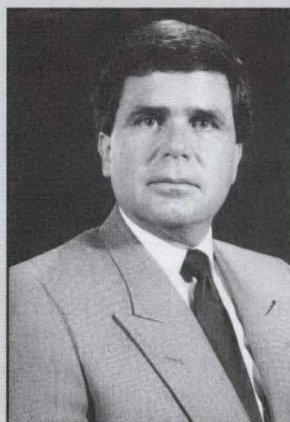
area focuses on developing meaningful threat assessments, devising strategies for responding to ransom demands, and coordinating the efforts of the U.S. Embassy staff, host country police, and intelligence agencies, as well as employers and families of the victims.

Team members familiarize themselves with diplomatic procedures, receive numerous inoculations for protection against disease, study cultural variables, review overseas jurisdiction, and generally prepare for rapid deployment abroad. CINT members also attend a 2-week negotiation course offered by the Metropolitan Police Department in London, England, for supplementary training.

In addition to general training, CINT also has focused on preparing for specific threats. Immediately prior to the Gulf War in 1991, a special session was held at the FBI Academy to prepare CINT negotiators to deal with the potential threats



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*Mr. Lanceley, a retired FBI special agent, formerly worked in the Crisis Management Unit.*



*Special Agent Noesner is assigned to the Crisis Management Unit of the FBI's Critical Incident Response Group.*



### Obtaining CINT Assistance



**C**INT negotiators provide telephonic consultation to law enforcement agencies 24 hours a day, 7 days a week, in response to hostage or barricade incidents.

- During business hours, call the Crisis Management Unit (703) 640-1130
- After hours, on weekends, and during holidays, call the FBI Academy Switchboard (703) 640-6131

Requests for deployment of CINT members should be made through the local FBI field office, which will coordinate with FBI Headquarters and the Crisis Management Unit.

posed by international terrorists. The team reviewed past terrorist incidents in the Middle East and examined the impact that culture, history, politics, and religion had on violence in the region.

Today, training for CINT members continues on a regular basis to address pertinent and current challenges and to maintain the team's state-of-the-art readiness. Refresher training focuses on such areas as nuclear, chemical, and biological extortion; cult ideology; international terrorism; abnormal psychology; and crisis/suicide intervention.

#### Deployment

The FBI deploys CINT negotiators for one of two reasons. First, when the FBI's Hostage Rescue Team responds to a hostage or barricade incident, a negotiation pro-

gram manager from the CMU accompanies the team's advance group. Upon arrival at the scene, the program manager confers with local field office negotiators to assess the situation, the need for language or other specialty skills, the projected time span of the situation, the availability of local FBI field office negotiators, and the number of additional negotiators who may be needed. The program manager then contacts appropriate CINT members and instructs them to report to the scene, if warranted.

Since 1985, CINT members have negotiated domestic incidents such as the Cuban prisoner uprisings in Oakdale, Louisiana; Atlanta, Georgia; and Talladega, Alabama, as well as standoffs with religious zealots in Marion, Utah; Ruby Creek, Idaho; and Waco, Texas.

Other situations where the team provided assistance include the Lucasville, Ohio, prison riot and a week-long barricaded siege in Missoula, Montana.

CINT negotiators also respond to situations in other countries at the request of a U.S. Ambassador, usually to assist in negotiating the release of Americans held hostage or kidnapped by terrorists or other criminal groups. In these international incidents, the CMU dispatches selected negotiators either to the country where the hostages are being held or to an adjacent country more receptive to the presence of Americans. CINT members deployed overseas generally respond in teams of two.

Since 1985, CINT negotiators have assisted in the release of American hostages held in Ecuador, Chile, El Salvador, Bolivia, Colombia, Panama, Costa Rica, Guatemala, Zaire, Cambodia, and the Philippines. These delicate international incidents require team members to work closely with U.S. Embassy personnel, the families and employers of the victims, and the law enforcement agencies of the host countries. As a result of the team's successful record, requests for assistance continue to increase. To date, team members have been deployed overseas 22 times.

#### International Assistance

Recently, the team acquired an additional mission—international police training and consulting. As a result, CINT negotiators have met with police forces around the globe to provide training in crisis



management as it pertains to kidnapping and hostage incidents.

### Case Study

On October 25, 1993, deputy sheriffs in Missoula, Montana, attempted to arrest a subject on an assault warrant. The subject fired a rifle shot that shattered the windshield of the deputy's cruiser and slightly wounded the officer. The subject subsequently barricaded himself inside his home with his wife and three of his nine children. The subject, who emigrated from the Ukraine 3 years earlier, had limited English-speaking ability and a history of mental instability.

The Missoula County Sheriff's Department and Missoula Police Department set up a perimeter and opened negotiations with the subject in an attempt to resolve the standoff peacefully. However, the subject's mental state and his insistence on speaking only in Russian complicated the negotiations. Commanders at the scene called the CMU, which set up telephonic support from CINT negotiators for the sheriff's and police department's negotiators in Missoula. The FBI also dispatched Russian-speaking agents to the scene to provide language support. While these agents contributed valuable linguistic assistance, they were not trained crisis negotiators.

Missoula County authorities subsequently requested the assistance of a Russian-speaking negotiator. CMU identified two CINT members, one a native Russian

speaker and the other, an experienced Soviet counterintelligence investigator, and immediately dispatched them from Washington, DC, to Missoula.

To resolve the situation, the Russian-speaking CINT member directed and coached the subject's wife as she spoke with her husband. By closely following the guidance provided by the negotiators, she ultimately convinced her husband to surrender. The direct involvement of CINT members and the professional effort of the Missoula law enforcement community peacefully resolved the week-long standoff without further incident.

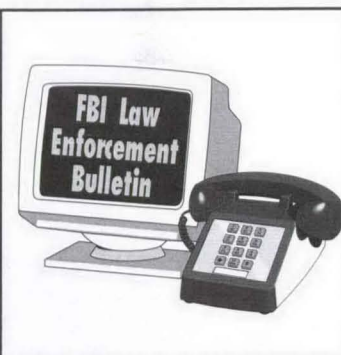
### Conclusion

Protracted hostage and barricade situations present a special challenge to law enforcement. By learning from past incidents and tapping into the experiences of other law enforcement agencies worldwide, the FBI Crisis Management Unit developed the Critical Incident Negotiation Team. Through its training and consultation services, the team of highly trained and experienced negotiators is available to assist law enforcement agencies around the world to resolve peacefully complex, high-risk incidents at any time, day or night. ♦

### Endnote

Formerly the Special Operations and Research Unit, the CMU is now part of the Critical Incident Response Group (CIRG).

## Law Enforcement on the Internet



To take advantage of the many resources available on the Internet, the *FBI Law Enforcement Bulletin* has driven onto the information superhighway. We invite you to ride along by communicating with us via e-mail. Our Internet address is:

**[fbileb@justice.usdoj.gov](mailto:fbileb@justice.usdoj.gov)**

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions. Please include your name, title, and agency on all e-mail messages. Remember, **[fbileb@justice.usdoj.gov](mailto:fbileb@justice.usdoj.gov)** is our e-mail address.



## Point of View

### *In Pursuit of Honest Leadership*

By Larry C. Plummer, M.S.

**A**ll too often, when community leaders search for executives to fill top vacancies in police agencies, they overlook the basic core values and principles that define the candidates' integrity. Instead, the selection process focuses mainly on the secondary characteristics of applicants, such as their community-oriented philosophies, command presence, professionalism, and progressiveness.

Certainly, such secondary characteristics are essential for anyone seeking an executive position in policing, and the selection process should take them into account. However, absent the more urgent examination of integrity, focusing on such secondary traits is premature, superficial, and often can become a recipe for disappointment.

Secondary traits easily can be displayed for show during the selection process, even though applicants do not possess the requisite core values and principles. A close, careful examination of candidates' backgrounds and experience will reveal these deficiencies. Leaders of true integrity demonstrate it through their everyday actions and can withstand the close scrutiny. Public officials who appoint police executives must take precautions to avoid choosing the wrong candidates for what seems like the right reasons.

Today, more than at any other time in our history, policing requires the leadership of men and women whose characters are marked more by their substance than by their style. Longstanding issues such as affirmative action, diversity, use of force, corruption, escalating violence, sexism, and the need for stronger community orientation often vex police leaders and seem to defy solution. Addressing these and other problems demands more than mere platitudes or trendy new programs; it requires the leadership of those who possess the strength and ability to redefine the ways we as law enforcement officers think, act, and organize.

Will it be enough for selected leaders to have merely a surface commitment to these intangible

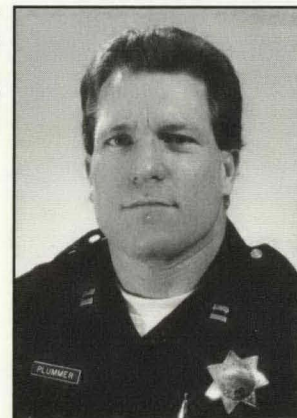
dimensions? Will it be sufficient for them to provide their departments only with rote examples of excellence and professionalism or with deceptively colorful descriptions of their experiences and accomplishments? The answer to each is an emphatic, No! The leaders of tomorrow must possess the depth of character, the integrity, and the beliefs to back up their glowing resumes.

In the executive search process, it has become far too easy and, sadly, too acceptable to unfurl the banners of fashionable or politically correct programs or concepts. Candidates first should be exposed to much closer scrutiny to determine the nature, quality, and depth of their characters and the strength of their convictions. An assessment of what the candidates really believe and how those beliefs have been manifested throughout their careers is paramount. Only then should other qualities be analyzed.

#### **Honest vs. Hollow Leadership**

Many principles work together to build integrity. A strong belief in the worth of diverse opinions and the power of diverse people, a commitment to doing the right thing, the courage to face adversity, a strong service ethic, and a natural disposition toward openness, as well as loyalty to the organization and the community, are just some of the valued traits that build integrity.

*Captain Plummer  
serves in the  
Mountain View,  
California, Police  
Department.*





In turn, integrity supplies the foundation on which an individual, with experience, builds other, secondary characteristics and qualities that form the framework of honest leadership. Such leadership transcends time and, most important, circumstance. It enables police executives to respond to crises, to rapidly changing times, and to the day-to-day business of policing with strategies custom-designed to fit the nature of the problem and the community. Because they are firmly grounded in strong beliefs and values, these leaders' programs receive better support from the community, are usually more effective, and exhibit the promise of greater longevity.

Conversely, leaders lacking integrity tend to drift with the flow and approach problems with cookie-cutter approaches designed merely to appease or to please. Characterized further as avoiding responsibility, blaming others, and exhibiting ever-changing loyalties, these so-called leaders lack acceptance by the rank-and-file and by the community and have no true effect or staying power. Worse still, this hollow leadership eventually leads to neglect, mismanagement, escalation of crises, and perpetuation of unacceptable behaviors, responses, and relationships throughout the organization.

One need not look far for examples of the exorbitant prices paid by communities for the mistakes made by such unprincipled leaders. The landscape of law enforcement is littered with the remnants of failed or failing programs and agencies in trouble with the public. These serious problems stem more directly from poor leadership than from any other cause. To avoid these pitfalls, law enforcement vigorously must recruit and hire honest, not hollow, leaders.

### Selecting the Right Candidate

Identifying and selecting candidates who display honest leadership will require more tedious and time-consuming selection processes than those used in the

past. Selecting officials must re-evaluate the environment, assess the needs of the agency and the community, and define the criteria for choosing the best leader.

The heart of this selection process involves initiating personal contacts with police professionals and reputable private sources to gather nominations for the initial candidate pool. Merely relying on informal networking, advertising fliers, or other standard practices will not suffice. Such impersonal processes offer no opportunity to screen for integrity and may perpetuate situations where candidates are recommended based on the wrong criteria.

Potential candidates identified by this deliberate, early screening then should be invited to submit applications. The application must include a resume, as well as written responses to several questions.

Comprehensive interviews must be conducted to confirm the character of candidates and the validity of endorsements. Assessors on the selection panel should carefully construct the questions to evaluate the candidates' honest leadership qualifications. While candidates must understand important

issues, concepts, and philosophies and be able to offer opinions and conclusions, it is much more important for them to be defined first in terms of their integrity. Clearly, values and ethics associated with integrity interact with ability, experience, and other acquired traits to determine how candidates behave and how they can be expected to perform in the future. Answers to application questions should show the nexus between the two.

Next, the panel should conduct interviews spanning at least 2 days. Assessors must be committed to the selection criteria and the process, fully be prepared in advance, and closely be directed in their activities. Candidates should be assessed on their written responses, experience, technical abilities, and other dimensions of importance that will confirm the secondary qualities rounding out the package of the

**“  
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honest leader. The process comes full circle when assessors ask individuals who provide references for candidates the same type of indepth questions about the candidates' values, ethics, and abilities.

### Conclusion

Community leaders responsible for appointing police executives must pay close attention to designing and implementing a selection process capable of finding the best candidates. They must make a commitment to spend the additional time, effort, and

money necessary to locate honest leaders. The process will be well worth the effort, for there is much at stake.

Today's police leaders will be charged with reshaping parts of our world. Their leadership will be unparalleled in defining the future of policing and of our communities. It is essential that men and women holding such influential positions view the world and its possibilities from an honest and trustworthy perspective. ♦

## ***FaxBack Response***

### November 1994 Question: *Aside from budget, what are the five most critical issues facing your department?*

If the answers to our November 1994 FaxBack question are any indication, law enforcement agencies nationwide face a wide range of challenges with too few resources to deal effectively with them. The responses also indicate the degree to which social issues outside the traditional domain of law enforcement impact police agencies. The majority of respondents cited issues such as "the proliferation of guns" and "the vulnerability of police to frivolous lawsuits" as pressing concerns. One respondent saw the need to "...balance the public's perception of rising crime and demand for action with the reality that crime rates are static."

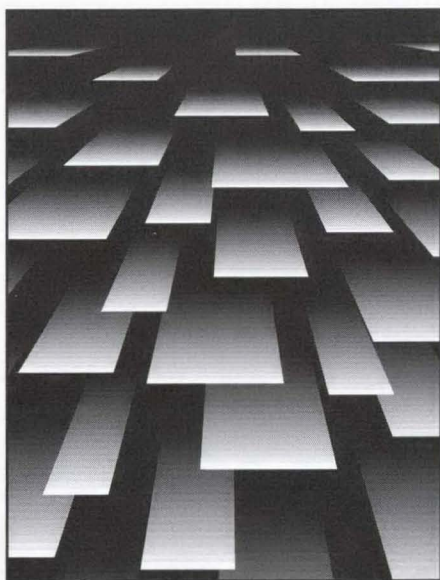
A police department serving a small suburban township that borders a large metropolitan city cited the overflow of serious crime from its

large neighbor as the most critical issue facing the agency. The community consistently finds itself combating urban crime "spill over" with suburban resources. This same agency cited the reduction in patrol time due to State-mandated increases in inservice training requirements as a critical issue.

Personnel issues also were well-represented. One respondent pointed to "...openings for career development and mobility within the department..." as a primary concern. Others cited the importance of addressing burnout and reducing stress within agencies. Overall, most personnel-related concerns involved maintaining officer morale while demands for services increase and resources remain constant or decline.



## ***FaxBack Question***



### ***What is FaxBack?***

FaxBack is an interactive forum for readers of *Law Enforcement* to comment on current issues facing the criminal justice system. Each FaxBack will introduce a question and invite readers to respond. Responses will be compiled and summarized in a subsequent FaxBack column. Answers should be drafted on agency letterhead; however, all responses will remain anonymous when published.

### ***FaxBack Question***

**Does your department provide foreign language training to its officers?**

- If so, is this training mandatory?
- If your department provides no instruction in this area, do you see a need for such training?

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### ***How to Respond***

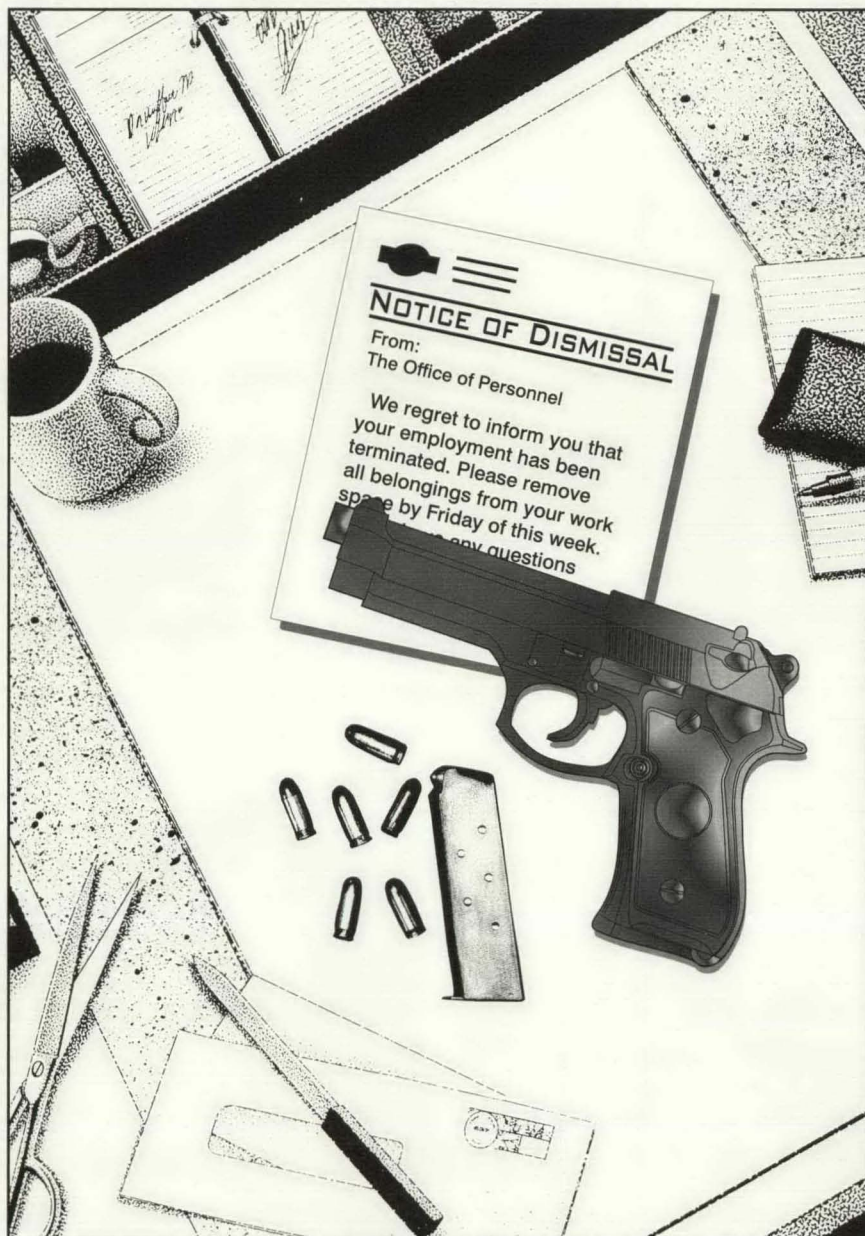
Fax responses to FaxBack at (703) 640-1474. Responses also may be mailed to the Law Enforcement Communication Unit, FBI Academy, Madison Building, Room 209, Quantico, Virginia 22135.





# Death In The Office Workplace Homicides

By  
T. STANLEY DUNCAN, M.S.



**“T**his is what you get for firing me.” These were the last words that three former coworkers of Paul Calden would ever hear. Fired 9 months earlier from an insurance company in Tampa, Florida, Calden returned to the cafeteria of his former employer and began shooting. Within minutes, five people were wounded, three of whom died.<sup>1</sup>

Calden fled in a rental car, only to commit suicide in a park where he used to play frisbee. In many ways, Calden was a classic, violence-prone ex-employee, and in many ways, he was not. But the type of crime he committed is on the rise and is one of the newest and most threatening dangers in the workplace.

This article focuses on workplace homicides committed by known assailants. It highlights common offender characteristics to help law enforcement apprehend suspects. Finally, it identifies the causes of such crimes, which may prevent them from occurring in the first place.

## BACKGROUND

According to the National Institute for Occupational Safety and Health (NIOSH), homicide was the third leading cause of occupational death from 1980 to 1985, accounting for 13 percent of all workplace deaths.<sup>2</sup> For women, homicide is the leading cause of death in the workplace. A 1993 study conducted by an insurance company found that strangers made only 16 percent of threats in the workplace; customers or clients made 36 percent; current or former employees accounted for the majority—43 percent.<sup>3</sup>



In these nonstranger workplace homicides, two categories of victims emerge—supervisors and domestic partners. Although no organized central effort currently exists to collect data on the characteristics of these cases, many media reports cite the initial intended victim as a former or current supervisor. While at one time employers could fire employees with no fear of repercussions, they now must contend not only with avoiding employee-filed lawsuits but also with avoiding violence. Obviously, employers should handle terminations with concern for the well-being of the person being fired and for the safety of those who remain employed.

According to the NIOSH study, domestic cases also can spill over into the workplace. The cause for the victimization of women in the workplace by domestic partners is easy to understand. While a woman may change her residence, her work address remains the same.

This presents a special problem for employers. Do victims of domestic threats deserve special protection in the workplace? Because the courts consistently have held employers liable for protecting employees from known hazards and for the peace and efficiency of the workplace,<sup>4</sup> employers should enact special security measures when their employees bring problems to their attention.

## CASE STUDIES

Like many of the assailants in workplace homicides, Patrick Sherrill had a history of work problems, and he knew that he faced dismissal. On August 20, 1986, he walked into the post office in

Edmond, Oklahoma, and before he finally took his own life, he killed 14 other postal employees.<sup>5</sup>

Robert Farley's fruitless obsession with a female coworker led to his eventual dismissal in 1986, but it was almost 2 years later, on the day that he missed a hearing for violating a restraining order from the same woman, that he returned to his former workplace in Silicon Valley. Farley was prepared; he brought along a shotgun, a rifle, two handguns, bandoliers of extra ammunition, and gasoline. When he finally surrendered, seven people were dead and four (including his imagined girlfriend) were wounded.<sup>6</sup>

Patrick Sherrill, Robert Farley, and Paul Calden had different jobs in different places at different times, but they did have some things in common, as do many workplace assailants. The cases reviewed for this article were selected from 89 incidents of nonstranger workplace homicide reported by the media between May 1988 and May 1994. Thirty-nine reports had adequate

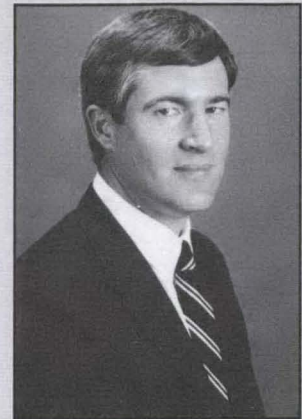
detail to study the following criteria: Sex of the offender, means of attack, age of the offender, relationship of the victim and offender, type of workplace, number of victims, and resolution of the act. The cases studied were chosen mainly because they were reported in the most detail; however, thousands of workplace crimes occur every year.

## Man With a Gun

Review of media accounts produced two glaring results: 97 percent of the assailants were male, and a firearm was used in all cases studied. This may be because, in addition to having experience with firearms, men often strongly identify with the traditional role of the "breadwinner." The loss of a job can mean a loss of identity for many men, even if they have a family or support system.

At the same time, society has been breeding what has been called a "culture of excuse,"<sup>7</sup> where individuals claim to be "victims" who

***"In...workplace homicides, two categories of victims emerge—supervisors and domestic partners."***



*Sergeant Duncan serves in the Patrol Division of the Department of Public Safety, Sarasota, Florida.*



are not responsible for their own behavior. These factors certainly are at work in these cases, and their recent emergence coincides with the growth of this type of crime.

The use of firearms in these crimes reflects extensive planning by the offender. The assailants usually have plenty of time to prepare. Their crimes are not spur-of-the-moment, temporary insanity cases. Their mission is to go to the workplace for one purpose—to kill—and the most effective way to do that is with a firearm. Moreover, these assailants sometimes carry extra firearms, ammunition, and even a list of their intended victims.

#### **Mid-Life Crisis**

While murder suspects in general are under 30 years of age,<sup>8</sup> the nonstranger workplace killers examined here averaged 38.2 years of age. In fact, only 2 of the 39 assailants were under age 25.

Several studies have shown that these assailants often have a history of frustrating life experiences.<sup>9</sup> Older individuals have more of a chance to build up a series of these frustrations. Thus, the growing number of

middle-aged workplace assailants may reflect the increasing age of the general population.

#### **Disgruntled Employees**

The relationship of the assailants to the workplace was split almost evenly between current and former employees, 41 percent and 46 percent, respectively. Many of the employees had grievances or disciplinary actions pending at the time of the attacks. In several instances, the employee/assailant was seeking retribution for being passed over for promotion. The remaining 13 percent of the cases consisted of domestic partners, clients or customers, and others.

#### **Civil Servants**

The employer most likely to be victimized by workplace homicide is the government—local, State, or Federal—accounting for 38 percent of the cases. The Federal Government is still the largest employer in the United States, but with only 15 percent of the country's workforce,<sup>10</sup> Federal employees are involved disproportionately in workplace violence.

Post offices have had the worst experiences; 38 postal employees have been murdered since 1986.<sup>11</sup> In nongovernmental occupations, factories and production facilities accounted for 18 percent of the incidents, which may be due to a disproportionate number of male workers, as in the postal service.<sup>12</sup>

#### **The Body Count**

While the media tend to accentuate the cases with the greatest number of victims, the average number of deaths per incident (including offender suicides) was 2.5. In 39 percent of the cases, the assailant killed one person.

#### **The Final Act**

Thirty-six percent of the assailants committed suicide, reflecting the finality of their intentions. This represents a real danger to responding officers. If offenders do not care about getting hurt—or worse, if they expect to get hurt—they may react recklessly aggressive, which gives them a tremendous tactical advantage over police officers.

#### **PREVENTION AND MANAGEMENT**

As with any crime, prevention remains the best way to approach nonstranger violence in the workplace. Unfortunately, intimidated by hundreds of laws pertaining to the selection of applicants and employee rights, many employers believe that they can do nothing to screen job applicants. In reality, many methods exist that enable employers to judge applicants.

In all cases, a good background investigation is essential. While law enforcement agencies have

#### **Possible Warning Signs Exhibited by Problem Employees**

- Chronically poor work performance
- Conflicts with supervisors and/or other employees
- Unfounded grievances and complaints
- Abuse of sick leave
- View of self as a "victim."



experience conducting background investigations, private employers may be reluctant to venture into this area, so they may wish to hire outside contractors. Some companies have found that only 10 percent of the applicants with criminal records actually admitted this fact when applying for employment. Further, up to one-third of all job applications contain a major falsification.<sup>13</sup>

In addition, employers often lack experience in dealing with problem employees and have no procedures in place to guide them. Problem management depends on recognizing the various warning signs that these employees usually exhibit. Some of the classic warning signs are chronically poor work performance, conflicts with supervisors and/or other employees, unfounded grievances and complaints, abuse of sick leave, and view of self as a "victim."

Any threat of violence, subtle or direct, should be taken seriously, then documented and investigated by the local police if appropriate. While none of the above factors guarantees future violence, workplace murderers sometimes do make their plans very clear, if anyone is paying attention. Early recognition and intervention with a problem employee give the best opportunity to manage the problem. Then, if the employee does not respond and must be terminated, the properly documented case history provides an easily defensible action in court.

Termination implies an ending, but it may be only the beginning of a series of problems for an employer. Harassment, stalking, vandalism, and assaults by ex-employees

should be prosecuted to the fullest extent. Employers should increase all security measures, which even may mean issuing bulletins to current employees identifying ex-employees who are causing problems. Current employees near termination most likely should be placed on administrative leave to prevent them from using their access to the workplace to commit crimes or to stage false injuries, harassment complaints, or similar incidents that portray them as victims.

**“**  
**Termination-related workplace homicides have occurred as soon as 5 minutes and as long as 3 years after the termination of the assailant.**  
**”**

## STRATEGIES FOR LAW ENFORCEMENT

### Answering Calls for Service

For the uniformed patrol officer, disputes, trespassers, and reports of unknown problems in the workplace now take on a new meaning and require a heightened sense of caution. Officers should respond to a dispute at a law office, bank, or factory at 11 a.m. using the same caution as they would for a domestic disturbance at 3 a.m. in a housing project.

Like domestic disputes, the emotional extremes and high degree

of lethality demonstrated by workplace assailants mean that warnings, counseling, or any leniency often prove ineffective. Officers should encourage victims to pursue arrest, prosecution, and followup security to prevent future, possibly fatal, incidents.

### Investigating Unknown Assailants

Although workplace assailants often make little attempt to conceal their identities while the crime is in progress, officers and detectives will respond oftentimes to cases involving an unknown perpetrator. In such cases, officers should look for indications that the crime was committed by someone who had some kind of working relationship with the victim, whether an individual employee or place of business.

As in domestic crimes, workplace crimes by nonstrangers routinely share a unique characteristic that differs from most other types of crimes—the lack of a profit motive. Personal crimes, sabotage, and vandalism are classic crimes of revenge committed only to victimize the target and emotionally appease the perpetrator. Also, as in domestic incidents, these crimes always focus on a specific victim. While the perpetrator may enter a workplace and *then* start shooting apparently indiscriminately, the victim is the entire institution, not a particular employee.

Another factor appearing in workplace homicides is the occurrence of overkill. One incident not included in the 39 case studies provides insight. The manager of a



## Assailants' Last Words

"I'll prosecute this myself."

—Last comment assailant made about a complaint he had lodged before he killed two employees at a retail store. Source: "Gunman Shoots Two to Death," *The Sarasota Herald-Tribune*, December 18, 1993, 3(A).

"Check out the local news tonight for a public service message."

—Part of a suicide note from an ex-teacher to his girlfriend before he killed a school superintendent. Source: "Ex-Teacher Kills Lee County School Chief," *The Sarasota Herald-Tribune*, February 8, 1994, 1(A).

"Nothing matters. I'll be dead in 6 months and I'll take a few people with me."

—Comment made to a neighbor during a dispute, 6 months before assailant returned to his former workplace and killed three people. Source: "Methodical Killer Plotted His Revenge," *The Tampa Tribune*, February 1, 1993, 1(B).

muffler shop was stabbed 28 times and had his throat cut. This evidence, coupled with the fact that the murder had occurred soon after the manager had opened the shop for the day's business, with no sign of forced entry and nothing taken from the victim or the business, eventually led investigators to arrest a recently fired employee.<sup>14</sup>

With the rare exception of union-related violence, crimes by nonstrangers in the workplace almost always are committed by single perpetrators. Terminations, disciplinary actions, and promotions within an institution rarely affect groups of people.

Although the current downsizing trend has led some companies to institute massive layoffs, none of the

nonstranger workplace homicides studied here had any relationship to corporate restructuring. Possible factors to consider in such cases include the assistance—job placement, severance packages, etc.—that corporations often give to laid-off employees and the fact that these employees do not perceive themselves as being singled out.

One final factor to explore in unsolved workplace crimes is the recent history of employee problems within the institution. Employers may be reluctant to share information on terminations, disciplinary actions, and internal grievances, but investigating officers must emphasize the importance of solving the current crime to prevent others. In cases of violent crime, the list of

terminated employees may have to be reviewed for the past several years. Termination-related workplace homicides have occurred as soon as 5 minutes and as long as 3 years after the termination of the assailant.

If officers do not find leads when looking at terminations, they should look at internal grievances, complaints, and disciplinary actions. In almost all cases of workplace assailants, there are indications of substandard work performance. For example, Paul Calden had a lengthy history of conflicts with management and other employees over events that he often exaggerated. In one instance, he filed a formal complaint of harassment against a female coworker because of a joking bumper sticker on her personal vehicle that made fun of his alma mater.

## Advising Employers/Victims

Few institutions have any prepared policies or training related to workplace violence. As a result, when the time comes for action, they often find themselves, at least initially, completely dependent on local law enforcement agencies. These victims expect the police to do a complete threat assessment on the case and predict what will happen next. In such cases, perhaps the only advice that police can give is that no one can predict what one person likely will do under any circumstances, let alone in stressful situations.

Explaining the seriousness of these offenses to potential victims remains difficult because most



institutions, when dealing with crime prevention, have grown accustomed to facing perpetrators who want to steal something and then leave. In addition to present and former employees' knowing the institution's physical plant and security procedures (or lack thereof), these perpetrators often do not care if they are identified because as the data show, for over one-third of them, this crime will be the last act of their lives.

Potential victims must realize that they should take every physical and procedural security precaution available. Employers should change security codes each time they terminate an employee and warn all remaining employees that the dismissed employee no longer should be admitted on the premises.

When corporations fail to take these measures, the results can be fatal. When Pacific Southwest Airlines terminated David Burke in 1987, security employees still admitted him without a pass because he was "a familiar face." Burke boarded a plane carrying his former supervisor, and while in flight, shot him and the pilots. Inevitably, the plane crashed, killing everyone on board.<sup>15</sup>

Potential victims also must be advised strongly to report all criminal activity to the police and to document every instance of malfeasance by current or former employees. A successful prosecution for a crime such as stalking may depend on an accurate record of all of the problems the perpetrator caused during and/or after employment.

### Looking in the Mirror

Violence by employees is, unfortunately, not foreign to law enforcement agencies. The presence of firearms and the predominantly male composition of the profession, combined at times with a strict disciplinary system, expose law enforcement agencies to the major factors involved in workplace violence.

Each agency should review its own internal policies and make sure they are adequate. Each agency also must appraise honestly how well it documents performance problems. Agencies that do not maintain accurate personnel files may send an employee with serious problems to wreak havoc at another agency.

“

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”

### CONCLUSION

Violent crime by nonstrangers in the workplace has been on the rise recently, and there is no reason to expect it to decrease. While these crimes are as unique as their perpetrators, warning signs oftentimes identify employees who may be prone to acts of violence.

Officers in the field should approach workplace disputes with a heightened sense of caution and be

able to spot characteristics of these crimes while conducting investigations. Finally, law enforcement agencies also are victimized by these crimes, and like all other employers, they should review their own preparedness and make improvements where needed. The lives they save may be their own. ♦

### Endnotes

<sup>1</sup> "Former Employee Kills Three in Cafeteria," *The Tampa Tribune*, January 28, 1993, 5(A).

<sup>2</sup> "Homicide in U.S. Workplaces," National Institute for Occupational Safety and Health, Morgantown, West Virginia, September 1992.

<sup>3</sup> "Fear and Violence in the Workplace," Northwestern National Life Insurance Company, Minneapolis, Minnesota, 1993.

<sup>4</sup> D.G. Sarvadi, *Environmental Law Handbook* (Rockville, MD: Government Institutes, Inc., 1993), 513.

<sup>5</sup> "2 Killed, 4 Injured in Shootings at Post Offices," *The Sarasota Herald-Tribune*, May 6, 1993, 4(A).

<sup>6</sup> "Gunman Says Love Led to Massacre," *The Sarasota Herald-Tribune*, February 18, 1988, 3(A).

<sup>7</sup> "Sympathy Factor Dominates Courtroom of the 90's," *The Sarasota Herald-Tribune*, February 18, 1988, 3(A).

<sup>8</sup> *1990 Sourcebook of Criminal Justice Statistics* (Washington, D.C.: U.S. Department of Justice), 420-421.

<sup>9</sup> James Fox and Jack Levin, *Mass Murder—America's Growing Menace*, cited in "Worker's Despair May Fuel Killings," *Sarasota Herald-Tribune*, February 20, 1994, 10(A).

<sup>10</sup> *The 1993 Information Please Almanac* (Boston: Houghton Mifflin Company, 1993), 63.

<sup>11</sup> *Supra* note 4.

<sup>12</sup> "Post Office Shootings," *The ABC Evening News*, 3 April 1993.

<sup>13</sup> "Mistakes in Hiring Are Painful and Expensive," *The Sarasota Herald-Tribune*, November 1, 1993, 6(D).

<sup>14</sup> "Workplace Violence," *The Oprah Winfrey Show*, CBS Television, December 16, 1993.

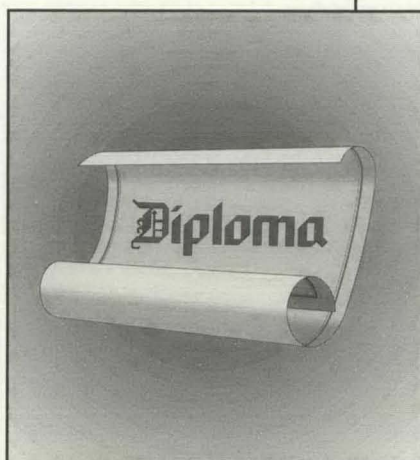
<sup>15</sup> "Settling a Score," *Newsweek*, December 21, 1987, 43.



# Proving Business Necessity

## The Disparate Impact Challenge

By JOHN GALES SAULS



**A** law enforcement manager is reviewing a requirement that all of the department's police officers be U.S. citizens, as well as high school graduates. Another manager is deciding whether to adopt a written promotional exam. A third is evaluating a physical fitness test that is part of the department's hiring process for officers. Because the standards under review may place

certain segments of the public at a disadvantage, each manager should be concerned about the legal consequences of using the standards.

This article discusses the legal defensibility of employment standards that, although neutral on their face, have an unequal impact on candidates depending on race, color, sex, national origin, or religion. It also offers strategies for assessing the usefulness of such standards.

### DISPARATE IMPACT

#### The Griggs Decision

In 1971, a unanimous Supreme Court issued its opinion in the case of *Griggs v. Duke Power Co.*,<sup>1</sup> holding that for purposes of hiring and assignment to laborer positions, an employer's use of a high school diploma requirement and two standardized written tests, each of which disqualified a higher percentage of blacks than whites, violated Title VII of the Civil Rights Act of 1964.<sup>2</sup> The Court stated that it was the intent of Congress to prohibit "...artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification."<sup>3</sup>

Announcing "business necessity" as the legal yardstick for assessing the legality of such standards, the Court held that if an employment practice that operated to exclude blacks could not be shown to be related to job performance, the practice was prohibited. Other than later stating that "any given requirement must have a manifest relationship to the employment in question,"<sup>4</sup> the Court did not provide additional guidance regarding the meaning of the phrase "business necessity."

In the 24 years since the *Griggs* decision, employers and courts have attempted to define business necessity and use it to evaluate a wide range of employment practices. Although the body of law that resulted is complex and difficult for law enforcement managers to apply, certain factors have emerged as keys to assessing the legality of



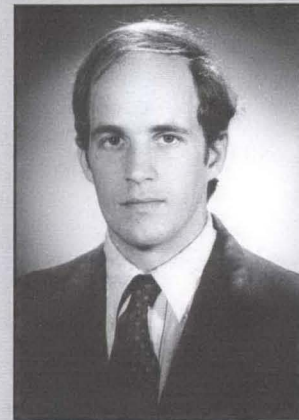
employment practices that create disparity.<sup>5</sup> The factors include:

- 1) The degree of disparity created by use of the standard
- 2) The demonstrated factual relationship between achieving the employment standard and successful performance of the job in question
- 3) Whether achievement of the employment standard is determined by a "neutral" entity external to the employer
- 4) Whether the employment standard focuses on innate, unalterable characteristics of candidates
- 5) Whether the job in question has a direct impact on public safety, and
- 6) The availability of effective alternative standards that create a lesser disparity.

Law enforcement managers have a wide range of employment standards from which to choose. Their departments will benefit if managers choose standards that, in addition to being effective, are on the "good" side of as many of the factors discussed as possible.

For example, because policing involves both decisionmaking and effective interpersonal communication, frequently with persons of differing cultures, mental development and emotional maturity are essential qualities in police officers. In selecting a standard to identify candidates who possess these qualities, a manager might weigh the creation of written tests on one hand versus the use of structured educational requirements on the other. If the effectiveness of the two standards and the

***"The existence of a legally significant disparity creates the employer's burden of establishing the business necessity of the standard."***



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disparity created by their use are equal, the factors would favor using the educational requirements because educational achievement is determined by "neutral" entities external to the police department.

## **DEGREE OF DISPARITY**

### **Existence of Prima Facie Case**

A person claiming that an employment standard has a disparate impact based on race, color, sex, national origin, or religion must demonstrate factually a disparity of legal consequence before the law will require an employer to demonstrate business necessity.<sup>6</sup> A person who has established such a disparity is said to have established a prima facie case of discrimination.

In evaluating whether an employment standard has a disparate impact, a mathematical comparison must be made of a particular group's success rate in regard to the standard versus the success rate of other groups. Where the standard creates no disparity, no demonstration of business necessity is required.

For example, in *Drake v. City of Fort Collins*,<sup>7</sup> an unsuccessful police officer candidate challenged the legality of the department's requirement of 2 years of college credits, alleging that the standard had a disparate impact on blacks. Assessment of the department's statistics revealed that the standard eliminated only 12.5 percent of black candidates, compared to the elimination of 16 percent of non-black candidates. The court held that no assessment of the business necessity of the educational requirement was required in the absence of a showing of statistical disadvantage.

If some statistical disparity is detected, a determination as to whether the disparity is legally significant is required. Because some degree of disparity probably is inherent in almost any standard, the "rule of four-fifths" has become a rule of thumb for measuring the legal significance of detected disparities. This rule provides that when the success rate of a group is less than 80 percent of that of the most successful group, then the less successful



group is disadvantaged to a legally significant extent.<sup>8</sup>

### **Quantum of Business Necessity Proof Required**

The existence of a legally significant disparity creates the employer's burden of establishing the business necessity of the standard.<sup>9</sup> However, the importance of the numerical result continues, because as a general rule, the greater the disparity, the more extreme the judicial scrutiny to which the employer's business necessity proof is subjected. One court stated, "As a general principle, the greater the test's adverse impact, the higher the correlation [between test performance and job performance] which will be required."<sup>10</sup> Extremely high statistical disparities require compelling justification.<sup>11</sup>

### **RELATIONSHIP BETWEEN EMPLOYMENT STANDARD AND SUCCESSFUL JOB PERFORMANCE**

#### **Direct and Obvious Relationship**

An employer using a selection standard with a legally significant disparate impact usually can demonstrate successfully the business necessity of the standard when it has a direct and obvious relationship to successful performance of the job in question. For example, judges quickly grasp the relationship between a sound lower back and the performance of heavy manual labor<sup>12</sup> or between a requirement of either 2 years of truckdriving experience or completion of truckdriving school for persons who drive large trucks as part of their job.<sup>13</sup>

Particularly instructive are two recent cases involving employers' requiring employees to be clean-shaven. In each, black employees alleged that the requirement had a disparate impact because of pseudofolliculitis barbae, a bacterial disorder that causes men's faces to become infected if they shave and that disproportionately afflicts black men.

**"...courts do not approve employment standards in the abstract, but only in relation to the requirements of a particular job."**

In the first case, firefighters were required to be clean-shaven because facial hair interfered with the use of positive-pressure, self-contained breathing apparatuses by preventing the face mask from successfully sealing against the face. The potential consequence of an imperfect seal includes the inhalation of noxious fumes produced by fires, resulting in disorientation, unconsciousness, and death. The court ruled the requirement was required by business necessity.<sup>14</sup>

In the second case, a pizza sales and delivery company required its employees to be clean-shaven based on its "common sense" determination that "the better our people look, the better our sales will be" and the

results of a public opinion survey indicating that up to 20 percent of customers would "have a negative reaction" to a delivery person wearing a beard.<sup>15</sup> Noting that the "existence of a beard on the face of a delivery man does not affect in any manner [the employer's] ability to make or deliver pizzas to their customers," the court held the requirement was not a product of business necessity.<sup>16</sup>

An important lesson from the contrasting results in these cases is that courts do not approve employment standards in the abstract, but only in relation to the requirements of a particular job. A fire department using a different type of breathing apparatus not requiring a facial seal probably would be unsuccessful defending a similar "no beard" policy. As will be noted later, other key factors also were involved in the fire department's success. In regard to the adverse ruling against the pizza delivery firm, the relationship between a clean-shaven personal appearance and sales was not as obvious and direct as the relationship between firefighting and the successful use of breathing apparatus.

Law enforcement and fire departments attempting to enforce physical fitness requirements similarly have been able to prove business necessity when using a test to evaluate physical performance that closely replicates physical tasks actually performed on the job. For example, in *Zamlen v. City of Cleveland*,<sup>17</sup> one event challenged was a preemployment test for firefighter candidates requiring that "...while wearing a custom-tailored self-contained breathing apparatus, candidates must drag two lengths of



standard 2 1/2" hose 180 feet (90 feet one way, drop coupling, run to the other end of the hose, pick up and return 90 feet, drop coupling in designated area), run 75 feet to pumper, remove a one-person ladder (approximately 35 lbs.) from the side of the pumper, carry the ladder into the fire tower, place it against the back rail of the first landing and continue up the inside stairwell to the fifth floor where a monitor observes the candidate's arrival. Then candidates return to the first landing, retrieve the ladder and place it on the pumper."<sup>18</sup>

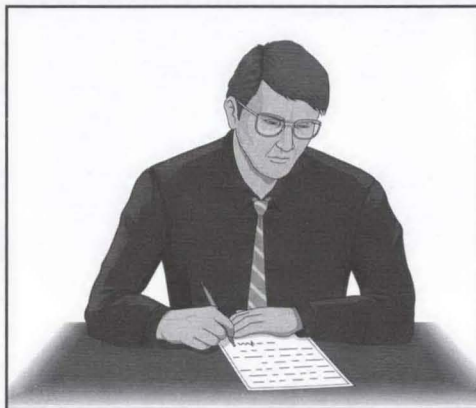
Despite the fact that Cleveland's firefighter test eliminated, for practical purposes, every female candidate, it was held to be lawful based on its direct and obvious relationship to successful firefighting. Abstract measures of fitness, such as push-ups, which do not obviously replicate on-the-job tasks, are generally found by courts not to be a product of business necessity.<sup>19</sup>

Unfortunately for law enforcement managers, the physical tasks of a police officer are not as obvious as those of a firefighter and neither are they as broadly related to successful job performance. Nonetheless, creative approaches to replicating the physical demands of policing have been discovered.<sup>20</sup>

### Scientific Proof of the Relationship (Validation)

An employer's using a selection standard that measures candidate ability in the abstract, such as a written aptitude test, will be required, if the standard produces a legally significant disparate impact,

to present specialized scientific proof of business necessity due to the standard's less direct or obvious relationship to successful job performance.<sup>21</sup> The process by which this is done is known as formal validation.<sup>22</sup> The U.S. Supreme Court has described the requirement by stating, "...discriminatory tests are impermissible unless shown, by professionally accepted methods, to be 'predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.'"<sup>23</sup>



Validation studies should be performed in accord with the Equal Employment Opportunity Commission Uniform Guidelines on Employee Selection Procedures.<sup>24</sup> Such studies generally require the performance of a job-task analysis to identify and quantify important job behaviors, a professional assessment to determine what knowledge, skills, and abilities (KSAs) are required to perform successfully the important job behaviors, a selection of appropriate measurement devices to determine the degree to which candidates possess the requisite

KSAs, and a statistical study to establish the relationship between scores on the proposed selection instruments and successful job performance. Because most employers do not have a staff of industrial/organizational psychologists and statisticians, compliance with the Uniform Guidelines usually requires the assistance of a consulting firm specializing in employment testing to devise and evaluate testing instruments and give expert testimony in court regarding the results of their work.

The formal validation process is complicated and usually expensive. In most instances, it comes with no guarantee of success. Consequently, it is to the advantage of law enforcement managers to consider carefully available alternatives to employment standards involving abstract measurement of candidate abilities, because such standards likely will require formal validation.

### IS SUCCESS ON THE STANDARD DETERMINED BY "NEUTRAL" ENTITY?

Primarily due to a judicial concern that employers might use selection devices to practice covert discrimination, the burden of proving business necessity varies based on the determination of whether a candidate's success is made by the employer or by an entity external to the employer. External determinations are subjected to less extreme scrutiny.

For example, in *Aguilera v. Cook County Police and Corrections Merit Board*,<sup>25</sup> a law enforcement employer required that corrections officers be high school



graduates. In upholding this requirement as lawful based upon its business necessity, the court noted, "[t]ests are made and scored by the employer, hence easily misused; degrees are awarded by schools that are independent of the employers who use the degrees as job qualifications."<sup>26</sup>

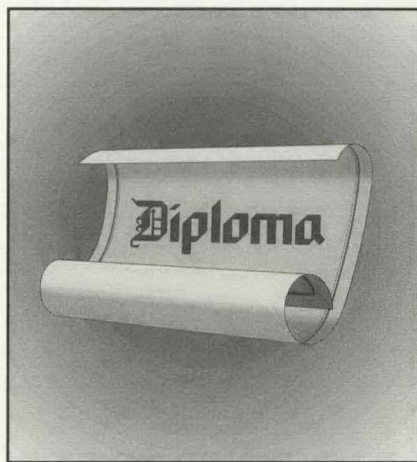
In *Aguilera*, the court held that the job of corrections officer was sufficiently complex and demanding that a high school diploma requirement was a product of business necessity. In addition to educational accomplishments, licensing and certification usually are performed by entities external to an employer. On the disqualifier side of the ledger, criminal convictions are imposed by courts, not employers.<sup>27</sup>

Certain types of licensing and certification have an apparent relationship to policing. Officers obviously need a driver's license. Because officers are often the first officials to arrive at scenes where persons require medical assistance, a department lawfully might prefer to hire persons certified as emergency medical technicians. Careful scrutiny of policing responsibilities may identify other useful, job-related standards.

#### **INNATE QUALITIES VERSUS THOSE THAT MAY BE ACQUIRED/ACHIEVED**

Judicial scrutiny of standards also varies based on whether a standard is one that can be achieved by a candidate, contrasted to a standard that focuses on a candidate's innate, unalterable characteristics. Standards that may be achieved by most are defended more easily than those that focus on characteristics

that are determined by birth or circumstance. For example, it is much easier to defend a high school diploma requirement for a job than a requirement that demands applicants to be at least 6 feet tall.<sup>28</sup> The high school diploma is accessible to vast multitudes if they put forth the required effort, but 6-foot stature is not a matter of desire, ability, and effort. A person can have little, if any, impact on adult stature.



Law enforcement managers should scrutinize standards to identify those that focus on candidates' innate, unalterable characteristics and use them only where absolutely necessary. This process requires considerable thought and perception. For example, it probably was no more obvious to managers of a fire department that a "no beard" policy focused on an innate characteristic than that it would have a disparate impact based on race or color. Nonetheless, the innate character of pseudofolliculitis barbae resulted in heightened judicial scrutiny of the "no beard" policy for both the fire department and the pizza delivery company.

#### **STANDARD'S IMPACT ON PUBLIC SAFETY**

Courts have recognized that employers who make personnel decisions that have an impact on public safety need greater latitude in establishing business necessity. Consequently, courts require less of a showing of business necessity where public safety hangs in the balance. In this regard, one court stated:

When a job requires a small amount of skill and training and the consequences of hiring an unqualified applicant are insignificant, the courts should examine closely any pre-employment standard or criteria which discriminated against minorities. In such a case, the employer should have a heavy burden to demonstrate to the court's satisfaction that his employment criteria are job-related. On the other hand, when the job clearly requires a high degree of skill and the economic and human risks involved in hiring an unqualified applicant are great, the employer bears a correspondingly lighter burden to show that his employment criteria are job-related.<sup>29</sup>

Thus, a law enforcement employer would enjoy greater latitude when hiring police officers than when hiring clerical employees because police officers have a more direct role in preserving public safety. In this regard, one court observed: "Unlike other work positions this court or the Supreme Court has considered, the position of officer on the Dallas police force



combines aspects of both professionalism and significant public risk and responsibility. We regard this distinction as crucial...."<sup>30</sup>

### **AVAILABILITY OF NON-DISCRIMINATORY ALTERNATIVE MEANS**

Employers always should seek out employment standards that will create as little disparity as possible, while still accomplishing the employer's legitimate employment needs. Nonetheless, Congress has chosen to place the burden of proof on the issue of the existence of non-discriminatory alternative means on the employee.<sup>31</sup>

### **CONCLUSION**

Under Title VII of the Civil Rights Act of 1964, an employer is required to demonstrate the business necessity of employment standards that have a legally significant disparate impact based on race, color, national origin, sex, and/or religion. Consequently, each employment standard must be scrutinized to determine whether it has a potential disparate impact, and if so, whether the standard is a product of business necessity.

As has been noted, business necessity is not a single, fixed standard. Instead, it is a judicial determination based on numerous factors. The severity of judicial scrutiny may vary from mild, for a procedure or standard that has a minor disparate impact and the satisfaction of which is under control of an entity external to the employer, to severe, where the procedure or standard has an extreme disparate impact and relates to innate characteristics of candidates. In selecting standards,

managers should seek effective ones with the least disparate impact and that are defended most easily based on the factors discussed.

Returning to the issues addressed in the opening of this article, the first manager recognizes that his department's requirement that officers be U.S. citizens will impact disproportionately based on national origin. A careful assessment of the relationship between U.S. citizenship and successful performance as a police officer may reveal that the standard is not necessary or that it may be replaced with a similarly effective standard, such as a requirement that a person have lived in the United States long enough to acquire necessary cultural knowledge and to indicate a permanent allegiance.

**“  
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”**

Certain factors favor the defensibility of a citizenship requirement. The determination of whether one is a citizen is made by an entity external to the police department and the requirement is one that may be achieved. Thus, the level of judicial scrutiny the standard will receive if challenged will be relatively light. Nonetheless, the relationship between citizenship and success as a

police officer may be hard to establish. Defense of the high school diploma requirement likely will be successful, because courts have almost taken judicial notice of the business necessity of this educational requirement for police.

The second manager is considering the adoption of a written promotional exam. Written tests frequently result in substantial disparate impact on minority groups. Because the relationship between scores on written tests and successful performance in particular jobs is rarely direct and obvious, formal validation of the proposed test almost certainly will be required.

Judicial scrutiny of this internally created and scored test is likely to be intense, particularly if its use results in a substantial disparate impact. This manager needs to make sure that a formal validation study has been done scientifically to establish a clear relationship between success on the test and success in the position for which the test is used to select.

The last manager is evaluating a physical fitness test for officer candidates. Physical fitness tests frequently have a disparate impact on women. This manager will most likely demonstrate the business necessity of a physical test if it results only in a mild disparity and the events included closely replicate important physical tasks performed by police officers.

Almost any employment instrument or standard may result in a disparate impact based upon race, color, national origin, sex, and/or religion. It is essential that law enforcement managers, with



professional assistance when necessary, scrutinize their departmental standards for potential disparate impact and review the business necessity support for those identified as potential causes of disparity. ♦

#### Endnotes

- <sup>1</sup> 401 U.S. 424 (1971).
- <sup>2</sup> 42, United States Code (U.S.C.), Section 2000e-1 *et seq.* (1991).
- <sup>3</sup> 401 U.S. at 431.
- <sup>4</sup> 401 U.S. at 432.
- <sup>5</sup> Some of the lack of clarity regarding business necessity has been a consequence of controversy regarding the allocation of the burden of proof on the issue. Congress resolved the issue by amendment of Title VII in the Civil Rights Act of 1991. 42, U.S.C., Section 2000e-2(k)(1)(A)(i) (1991).
- <sup>6</sup> 42, U.S.C., Section 2000e-2(k)(1)(A)(i) (1991).
- <sup>7</sup> 927 F.2d 1156 (10th Cir. 1991).
- <sup>8</sup> EEOC "Uniform Guidelines on Employee Selection Procedures," 29, Code of Federal Regulations (C.F.R.), 1607.4(D) (1988).
- <sup>9</sup> Under Title VII, once an employee demonstrates that a particular employment standard has a legally significant disparate impact, the employer must prove that its use is required by "business necessity." 42, U.S.C., Section 2000e-2(k)(1)(A)(i) (1991).
- <sup>10</sup> *Clady v. County of Los Angeles*, 770 F.2d 1421, 1432 (9th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986).
- <sup>11</sup> See, e.g., *Zamlen v. City of Cleveland*, 906 F.2d 209 (6th Cir. 1990), *cert. denied*, 111 S.Ct. 1388 (1991). (City's selection system for firefighters eliminated essentially 100% of female candidates. Due to very substantial demonstration of job-relatedness of each component of selection system, it was held to be justified by "business necessity."); *Newark Branch, NAACP v. Harrison*, 940 F.2d 792 (3d Cir. 1991) (Harrison, a Newark, New Jersey, suburb, which had a black population of .2 percent, required that town employees be residents of the town. As a consequence, the town had no black employees, despite the fact that the private workforce in the town was more than 20 percent black. The residency requirement was held not to be a product of business necessity.)
- <sup>12</sup> See *Smith v. Olin Chemical Corp.*, 555 F.2d 1283 (5th Cir. 1977).
- <sup>13</sup> See *Chrisner v. Complete Auto Trans., Inc.* 645 F.2d 1251 (6th Cir. 1981). See also, *New York City Transit Authority v. Beazer*, 440

U.S. 568 (1979) (Transit authority's exclusion from workforce of users of illegal drugs, as well as those on methadone maintenance, supported by business necessity.)

<sup>14</sup> *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993). A similar direct, obvious relationship between a job requirement and employment standard was found in *Chambers v. Omaha Girls Club, Inc.*, 834 F.2d 697 (8th Cir. 1987). In that case the Omaha Girls Club, a private, nonprofit corporation that offered programs to assist young girls between the ages of 8 and 18 to maximize their life opportunities required that its counselors, if unmarried, were not to become pregnant. Recognizing the importance of the counselors as role models for the girls the organization served, the court held that the rule against out-of-wedlock pregnancies was a product of "business necessity," despite its unequal impact based upon race and color.

<sup>15</sup> *Bradley v. Pizzaco of Nebraska, Inc.*, 7 F.3d 795 (8th Cir. 1993).

<sup>16</sup> 7 F.3d at 799.

<sup>17</sup> 906 F.2d 209 (6th Cir. 1990), *cert. denied*, 111 S.Ct. 1388 (1991).

<sup>18</sup> 906 F.2d at 213. Similarly, in *Evans v. City of Evanston*, 881 F.2d 382 (7th Cir. 1989), *cert. denied*, 112 S.Ct. 3028 (1992), the Evanston Fire Department used a physical agility test that consisted of "a group of tasks which were to be performed consecutively by each applicant without a break, while wearing a firefighter's uniform. The tasks were: climbing to the top of a 70-foot ladder; climbing an extension ladder twice while carrying a hose pack; removing a ladder from a firetruck, carrying the ladder to a wall, leaning it up against the wall, and then removing it and returning it to the truck; connecting a hose to a fire hydrant, turning the hydrant on and off, and disconnecting the hose; and dragging a section of hose filled with water fifty feet, dragging a tarpaulin to the top of a hill, carrying the tarp through ten tires, and again dragging a section of hose filled with water fifty feet." 881 F.2d at 383, 384.

<sup>19</sup> See, e.g., *Harless v. Duck*, 619 F.2d 611 (6th Cir. 1980), *cert. denied*, 446 U.S. 928 (1980). In this case, the Toledo Police Department used a physical ability test in its selection of patrol officers. The test had four parts, of which applicants were required to complete three in order to pass. The parts were: 15 push-ups; 25 sit-ups; 6-foot standing broad jump; and a 25-second obstacle course. After finding that the physical ability test had a disparate impact on women, the court noted that no justification had been shown for the "types of exercises chosen or the passing marks for each exercise." 619 F.2d at 616.

<sup>20</sup> See Schofield, "Hiring Standards: Ensuring Fitness for Duty," *FBI Law Enforcement Bulletin*, November, 1993, pp. 27-32; *United States v. Wichita Falls*, 704 F. Supp. 709 (N.D. Tex. 1988) (obstacle course simulating foot pursuit).

<sup>21</sup> A detailed discussion of validation evidence is found in *Bernard v. Gulf Oil Corp.*, 841 F.2d 547 (5th Cir. 1988) (*Bernard IV.*); 890 F.2d 735 (5th Cir. 1989), *cert. denied*, 110 S.Ct. 3237 (1990) (*Bernard V.*).

<sup>22</sup> A detailed discussion of the various types and methods of validation is beyond the scope of this article.

<sup>23</sup> *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975) (quoting 29, C.F.R., Section 1607.4(c)). See also, *Contreras v. City of Los Angeles*, 656 F.2d 1267, 1280 (9th Cir. 1981), *cert. denied*, 455 U.S. 1021 (1982).

<sup>24</sup> 29, C.F.R., Section 1607 *et seq.*

<sup>25</sup> 760 F.2d 844 (7th Cir. 1985), *cert. denied*, 106 S.Ct. 237 (1985).

<sup>26</sup> 760 F.2d at 847.

<sup>27</sup> See Schofield, "Hiring Standards: Ensuring Fitness for Duty," *FBI Law Enforcement Bulletin*, November, 1993, pp. 27-32.

<sup>28</sup> *Compare Aguilera v. Cook County Police and Corrections Merit Board*, 760 F.2d 844 (7th Cir. 1985), *cert. denied*, 106 S.Ct. 237 (1985), with *Blake v. Los Angeles*, 595 F.2d 1367 (9th Cir. 1979), *cert. denied*, 100 S.Ct. 1865 (1980).

<sup>29</sup> *Spurlock v. United Airlines*, 475 F.2d 216, 219 (10th Cir. 1972) (approving requirement of 500 hours of previous pilot experience, and that of a college degree for airline pilot trainees). It is this "public safety" doctrine, coupled with the skilled nature of the police officer job, that has resulted in the approval of high school diploma requirements for police, in contrast to the rejection of such a requirement for unskilled jobs in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

<sup>30</sup> *Davis v. City of Dallas*, 777 F.2d 205, 211 (5th Cir. 1985), *cert. denied*, 476 U.S. 1116 (1985) (approving requirement of at least 45 college credits with at least a C average, no recent marijuana use, and no recent hazardous driving convictions for consideration in hiring police officers).

<sup>31</sup> 42, U.S.C., Section 2000e-2(k)(1)(A)(ii) (1991).

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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.



*Deputy Phillips*

Deputy C.W. Phillips of the Alachua County, Florida, Sheriff's Office observed a vehicle that fit the description of an automobile used by three suspects in a recent double homicide. A 7-mile chase ensued, during which the suspects fired repeatedly at Deputy Phillips' vehicle, shattering the rear passenger window. They also attempted unsuccessfully to force him from the road. The subjects eventually came to a stop, exited their vehicle, and began firing at Deputy Phillips with semi-automatic weapons. He returned fire, mortally wounding one suspect. Another suspect immediately fled the area. The third subject, wounded four times, ran a short distance from the scene. Both surviving suspects were captured a short time later and placed into custody. Deputy Phillips was not injured in the exchange.



*Officer O'Brien*

Officer Kreg O'Brien of the Glastonbury, Connecticut, Police Department responded to the report of a structural fire at an area condominium development. Upon his arrival, a group of residents informed him that an elderly female resident remained inside the burning unit. Officer O'Brien ran into the burning building and located the woman standing at the top of the stairs. Her hair had caught fire as burning debris fell all around her. Officer O'Brien put out the fire in the victim's hair with his bare hands. He then carried her down the stairs to safety. During the rescue, Officer O'Brien singed his hair and suffered from exposure to carbon monoxide. The victim received treatment at an area hospital for external and inhalation burns and was released.



*Investigator Beverly*

Supervisory Special Investigator Derek Beverly of the California Department of Motor Vehicles, Division of Investigations and Occupational Licensing, observed an individual face down in the water of an area lake. Investigator Beverly quickly swam out, and with the assistance of two bystanders, brought the unconscious victim to shore. Investigator Beverly then initiated CPR, keeping the victim alive until emergency medical units arrived. The victim was treated at an area hospital and released several days later.



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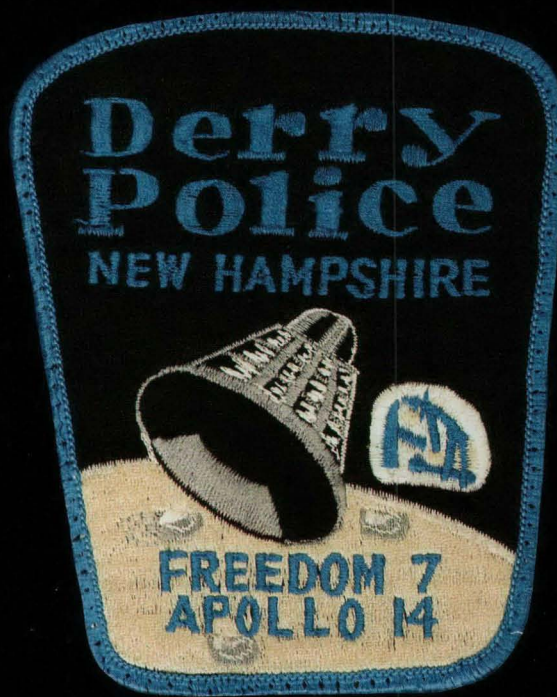
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## Patch Call



The patch of the Hand County, South Dakota, Sheriff's Office features the State's seal inside a star. Located between the points of the star are a set of scales, a cowboy riding a horse, a cow, a deer, and a farm house. These images symbolize justice, education, ranching, hunting, and agriculture, respectively.



The Derry, New Hampshire, Police Department patch depicts a space capsule to honor the accomplishments of the town's native son, Commander Alan B. Shepard. Commander Shepard was the first American in space and the fifth astronaut to walk on the moon.