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Too Close for Comfort ***Negotiating with Fellow Officers***

By SANDRA D. TERHUNE-BICKLER, M.S.

While driving home, your cell phone rings. You answer and hear a woman crying. You recognize her as the estranged wife of your friend and fellow officer Rob. The woman asks you to come over because Rob has been drinking and has locked himself in the bathroom with his off-duty pistol and their 3-year-old son. She said he keeps yelling that he “can’t take it anymore...can’t take it anymore....”

Though not a circumstance any member of law enforcement wants to face, personnel of all ranks need to prepare for how to

handle, supervise, or delegate this type of situation. Incidents requiring crisis negotiations often are difficult, highly emotional, embarrassing, and dangerous. When the subject in crisis is a colleague, the emotions of everyone involved are deeply affected. Though most law enforcement agencies have specialized crisis/hostage negotiation teams, members of law enforcement may attempt to resolve the issue on their own because the subject in crisis serves with their agency. Both the officer placed in the position of the sniper who deploys lethal

force when the barricaded suspect is a fellow member of the agency’s special weapons and tactical (SWAT) team and the commander who placed the officer in that sniper position face difficult predicaments.

Research

Although limited published research is available on officers negotiating with fellow officers, crisis negotiations involving law enforcement personnel do occur. According to the FBI’s Hostage and Barricaded Database System (HOBAS), 22 incidents involving either a barricaded or

suicidal officer were reported in the United States between 1995 and 2002.¹ Of these 22 reported incidents, 3 resulted in suicides. However, law enforcement suicide incidents may occur more frequently than the number actually reported. Some of the most common reasons given for suicides among law enforcement include relationship problems, legal trouble, psychological problems, and work-related stress.²

Recently, the author interviewed several crisis negotiators from the FBI and the police and sheriff's departments in both Los Angeles and San Diego, California, regarding their experiences with officer-involved incidents.³ These negotiators reported that they had experienced or knew of an incident at their agency involving a suicidal or barricaded

officer. Some of those interviewed negotiated with an in-crisis member of other departments and others negotiated with members of their own agency. One of the interviewees reported negotiating with a relative, although the officer in crisis did not know the negotiator's identity. Interview results have shown that negotiating with another police officer does not constitute a phenomenon but, rather, an issue that agencies must confront and handle.

In an attempt to protect fellow officers from embarrassment or potential disciplinary action, some members of law enforcement try to resolve the situation privately, even covertly. Law enforcement suicide, like law enforcement domestic violence, is not a topic comfortably discussed.⁴ For officers to

admit that they feel suicidal or have domestic problems is close to admitting that they have lost control. In a profession that expects its members to always be in control, law enforcement can be unforgiving or ill-prepared to handle an officer's admission of personal or interpersonal problems. This does not mean that officer-involved crisis incidents could be prevented if law enforcement culture became more accepting of vulnerabilities among its own personnel. Rather, it is important to acknowledge that these situations do occur and law enforcement agency personnel must remain mindful of how best to respond to that unexpected, dreaded phone call.

The Appropriate Response

When responding to an incident, most law enforcement personnel probably would say that they act tactically, logically, and compassionately. However, would their response be the same if the subject was a fellow officer? Perhaps, the responder would consider using the lowest level of intervention with a colleague, trying to engage him in conversation.⁵ This may prove a viable option when a low level of intervention can resolve a particular situation. For this reason, agencies should have a well-respected peer support program that encourages employees to call a coworker for mental



“...agencies should have a well-respected peer support program that encourages employees to call a coworker for mental health referrals and resources.”

Officer Terhune-Bickler serves with the Santa Monica, California, Police Department, is a crisis negotiator, and coordinates the department's peer support program.

health referrals and resources. However, when the officer in distress needs more immediate crisis intervention, well-intentioned colleagues may find themselves in an overwhelming circumstance.

When dealing with an in-crisis law enforcement officer, the responding officer should determine which agency to call first, the employing agency or the agency nearest the in-crisis officer's location. Although the right answer may seem obvious, the employing agency may respond, even if the incident did not occur in its jurisdiction. In an attempt to subdue the crisis, decision makers may place themselves in situations for which they are dangerously unprepared. Should officer safety be disregarded because the suicidal subject is a fellow member of law enforcement? Suicide-by-cop does not only apply to civilian personnel. Is protecting a fellow officer from potential embarrassment an adequate reason for not notifying the jurisdictional agency when a tactical intervention is necessary?

If the officer in distress lives in the city where he is employed, the ethical response should occur as it would in any standard critical incident. It is easy to speculate about the right way to respond, but harder to assume what actually would occur. Officers may find it difficult to respond to a crisis situation if they

have a personal stake in it (i.e., a family member, friend, or colleague is the one in crisis). Commanders from both the employing and the jurisdictional agencies should share in the decision-making process and take responsibility if lethal force is required. In this circumstance, mutual aid reinforces objectivity in tactical response and procedure. Agencies should have contingency plans, such as mutual aid agreements, in the event a tactical intervention seems likely; asking

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***...problems
sometimes occur
when the in-crisis
officer's agency
responds.***

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for assistance is not admitting an inability to handle a situation. For example, FBI agents are regular members on the San Diego, California, Police Department's crisis negotiation team. Though no officer ever should have to use lethal force against another, it remains an unfortunate possibility.

Negotiation Decisions

If the officer in distress will speak only to a particular person, should agencies put that person

on the phone? Should the crisis negotiator be someone the officer in crisis knows? Some law enforcement agencies have no other choice. One of the benefits of allowing a colleague to speak to the in-crisis officer is the rapport already established between them, which may help the distressed officer feel more comfortable and understood. If handling the negotiation in-house, information on the officer is easily accessible. Additionally, when the distressed officer's agency handles the negotiations, it may have easy access to third-party intermediaries who could communicate with that officer.⁶

However, problems sometimes occur when the in-crisis officer's agency responds. Even though many agencies have crisis negotiation teams, upper-level administrators may neglect to use them—they may attempt to solve the situation by themselves. Similar to citizens who encounter a distressed or suicidal relative, well-intentioned members of law enforcement sometimes inadvertently allow their emotions to interfere with their judgment, which can result in mistakes and tragedies. For example, if the officer in crisis sees the department as the source of the problem, he may perceive the negotiator as “one of them.” Also, the officer in crisis may be too embarrassed to speak to someone he knows. Because he understands departmental

Negotiating with Fellow Officers

Dynamics Supporting Negotiations

- Rapport already may be established; in-crisis officers are known and know the negotiator
- Easy to obtain information about in-crisis officers
- Negotiator may be able to relate common problems/themes with in-crisis officers
- Third-party intermediaries are known and easily controlled
- Keeping the problem in-house may give in-crisis officers the illusion that it is “not a big thing”

Dynamics Harming Negotiations

- In-crisis officers may see the department as the source of the problem
- In-crisis officers perceive the negotiator as “one of them”
- In-crisis officers are too embarrassed to talk to someone they know
- Negotiator may be too emotionally attached to be objective/effective
- In-crisis officers know what the department will deliver
- Suicide is a high possibility
- In-crisis officers may be armed
- Negotiator is a secondary victim if the resolution ends in death

For additional information, contact Officer Terhune-Bickler at sandy-terhune@santa-monica.org.

procedures, he may not trust supervisors' promises. Realistically, when negotiating with a member of law enforcement, responders must assume that the in-crisis officer is armed, making suicide or suicide-by-cop possible.

Conclusion

Determining and conducting an appropriate response to situations involving in-crisis law enforcement personnel can prove overwhelming even to seasoned managers. Team leaders and department commanders

should ensure that they are prepared to deal with the secondary victimization of their officers when handling a suicidal or barricaded situation involving one of their own employees.

Because crisis negotiations can prove a difficult and emotionally draining process, negotiation teams should consult with mental health professionals. When the subject in crisis is a police officer, the rules remain the same, but the losses can be more tragic, as well as everlasting. Further, agencies should take advantage of mutual aid

relationships. In addition to the combined resources of both agencies, this alliance eliminates negotiators from having to negotiate with a fellow officer from their own department.⁷ By establishing certain protocol for these tragic incidents, agencies will be better prepared if, unfortunately, negotiating with one of their own becomes necessary. ♦

Endnotes

¹ Based on statistics from the FBI's HOBAS database, 2002.

² Michael G. Aadmodt and Nicole A. Stalnaker, “Police Officer Suicide:

Frequency and Officer Profiles," in Donald C. Sheehan and Janet I. Warren, eds., U.S. Department of Justice, Federal Bureau of Investigation, *Suicide and Law Enforcement* (Washington, DC, 2001), 383-398.

³ The author interviewed several law enforcement officers from these agencies. Due to liability issues, interviewees agreed to share their experiences but requested that their names and identifying information of the in-crisis officers remain anonymous.

⁴ For additional information, see Donald C. Sheehan, ed., U.S. Department

of Justice, Federal Bureau of Investigation, *Domestic Violence by Police Officers* (Washington, DC, 2000); Ronald D. Lott, "Deadly Secrets: Violence in the Police Family," *FBI Law Enforcement Bulletin*, November 1995, 12-16; Thomas E. Baker and Jane P. Baker, "Preventing Police Suicide," *FBI Law Enforcement Bulletin*, October 1996, 24-27; and Paul Quinnett, "QPR: Police Suicide Prevention," *FBI Law Enforcement Bulletin*, July 1998, 19-24.

⁵ For clarity and illustrative purposes, the author refers to all in-crisis officers as males.

⁶ M. J. McMains and W.C. Mullins, *Crisis Negotiations: Managing Critical Incidents and Hostage Situations in Law Enforcement and Corrections*, 2d ed., (Cincinnati, OH: Anderson Publishing Co., 2001). For more information on third-party intermediaries, see Steven J. Romano, "Third-Party Intermediaries and Crisis Negotiations," *FBI Law Enforcement Bulletin*, October 1998, 20-24.

⁷ Lieutenant Jim Barker, San Diego, California, Police Department, interview by author on December 4, 2002.

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Notable Speech

The End of Community Policing Remembering the Lessons Learned

By R. Gil Kerlikowske

Community oriented policing and its dedicated employees have made a significant contribution to law enforcement. They have greatly improved the quality of police services in our country, as well as the public's understanding of this complex profession. Many people are concerned about the title and focus of my remarks, "the end of community policing." This phrase is meant to inspire debate and dialogue, illuminate a significant change in policing over the last 25 years, and to place that change into context.

Allow me to draw on some historical perspective to provide thoughts on where I think police officers have been and where we should be going. The era of community oriented policing is over. Why do I say this? Because I believe that community policing (policing for the communities we serve) is the end, the result, and *not* a never-ending journey. That does not mean that we have reached a point where continuous improvement and relevant and timely research are no longer important and should not continue in policing. Instead, it means that what we should focus on are improvements, basing and fashioning them on useful research rather than emphasizing the "next new program." And, I know that many of you believe that community policing is a philosophy and not a program.

One of the most thoughtful participants and observers of policing over the years is retired University of Washington Chief of Police Michael Shanahan. He believes that we have a 20-year learning cycle in law enforcement management, an institutional memory, that after 20 years we forget the lessons we learned, the reasons for doing some of the things we do or

did, and we move onto "the next new thing" in policing. What Bill Moyers, I believe, has called "the arrogance of a short memory." When I reflect on my past 30 years of gaining practical knowledge, participating in research, reading, and teaching in policing, I am convinced that both gentlemen are correct. This also may reflect on the narrowness of my life; I really should have found time to think about something besides law enforcement.

After World War II, two movements overlapped in policing. Military officers had been brought in to lead law enforcement agencies to remove the stigma of "politics." The politics addressed were associated with corruption, ward bosses selecting personnel and providing services, and the lack of centralized control and decision making in police departments. As it happened, the emphasis on a paramilitary model of policing fit the economic structure as well. When the war ended, a lot of GIs applied to any civil service position available, many taking tests

Chief Kerlikowske of the Seattle, Washington, Police Department delivered this speech on June 18, 2003, at the Second Annual National Community Policing Conference in Washington, D.C.



for positions with police and fire departments and entering whichever service offered a position; they sought the long-term stability that a civil service position could provide.

Later, the transforming influence of television affected the law enforcement profession. Many popular shows reflected policing in a new light. They often were based in Los Angeles, California, and portrayed the stoic and professional officer, such as those depicted on *Dragnet* and *Adam 12*, aloof and removed from the community and, thereby, “protected” from the untoward political interference of an earlier time.

Then, somewhat through the influence of the

novelist and former Los Angeles Police Department Sergeant Joseph Wambaugh, shows like *Police Story*, *Hill Street Blues*, and others portrayed a somewhat more realistic scenario. That period, often referred to as the professional era, was defined by top-down management, organizations comprised of multiple specialty units and a central focus on crime, particularly the kind of crime that

those of us in law enforcement believed was of most concern to the community—serious and violent crime. The model was neat and orderly, especially internally, and completely unprepared to deal with the social change, upheaval, and the overwhelming demographic challenge of the 1960s. The thin blue line that had won wars abroad could not win peace or even calm in the neighborhoods wracked by exploding crime rates and deep social unrest. Forgotten—there’s that memory thing—in the professional model was the familiarity that existed between officers and the community in the earlier era, when residents saw officers as neighborhood problem solvers and when their efforts attracted some level of community support. Instead, professional officers

were viewed as an occupying army. Winning hearts and minds proved as difficult on the streets of many American cities as it did in the jungles half a world away.

The extraordinary challenge of crime led to monumental responses: enter LEAA and a whole new era of experimentation in policing as government tried desperately to leverage its resources in creative and innovative ways to make the streets safe again. Remember the Safe Streets Act, Model Cities, Impact Cities, and LEEP?

By the early 1970s, some very forward-thinking administrators entered into experiments very popular back then, like team policing.

Geographical responsibility was stressed, such as what occurred in St. Petersburg, Florida, where officers responded to and handled almost any case assigned to them from the beginning to the end. Managers also worked at community relations and invested in organizing neighborhoods to prevent crime. Everyone had a community relations unit, and crime prevention or “target hardening”

programs were quite popular. Much of what I am talking about was the result of the LEAA program under President Nixon, which also resulted in the seminal publications on criminal justice, true random experiments, and a level of energy and enthusiasm about the “calling of our profession.” Those involved in policing had been influenced by the Camelot years of President John F. Kennedy and by the opportunities for higher education that LEEP provided and encouraged. They approached policing with a focus on what they could give back to their communities. And, the popular police TV shows helped.

At that time, the law enforcement profession also wanted to show that the negative effects of the Vietnam War and the cynicism that pervaded

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**It is important
to recognize
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civilian policing.**

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the country could be overcome. Of course, the kind of officer and the kind of organization required in this era was different. The buttoned-down mind and demeanor of Joe Friday did not fit this model very well. Instead, we were looking for flexibility and agility. The ability to be adept at achieving compliance, to be proactive and able to think quickly were all prized attributes now. Forgotten—there's memory again—was the value of the stoic devotion to duty, that doggedness and determination that attended to the little things, the simple things that made a difference in people's lives. We were too busy being innovative and professional to notice. Our communities, however, had become weary; weary of being social experiments of interest to researchers and police administrators, but out of touch with the problems and needs affecting the community, which brings us to one of the most fascinating times in law enforcement.

Community oriented policing, as evidenced in Newport News, Virginia, by the work piloted by the National Institute of Justice (NIJ), focused on understanding the concepts of problem solving, decision making being forced to the lowest levels of the organization, and the utilizing and leveraging of the community in, to use a vastly overused description, partnership. In many ways, community oriented policing has combined the strengths of each of the cycles that have come before: the community awareness of the old era, the attention to detail and to the mission of the professional era, and the willingness to reach out and think creatively of the innovation era. And, despite its clear development and evolution over time, we persisted in labeling it "something new." And, now, we are reflecting and discussing the "next new thing" in policing, something I was told was described by a panel member at another law enforcement conference—terrorist oriented

policing (TOP). What this term means, I am not sure. So, before we rush headlong into this, we should reflect on what we have learned in this business since World War II.

It is important to recognize the influence of the military on civilian policing. It is particularly important to realize that in many ways the military has moved further and faster than law enforcement. Many police departments are more military than the military and, with the success of the Gulf War and the Iraq War and the focus by our military on stabilization and nation building, it is apparent that we have a lot to learn while

clearly understanding and recognizing the differences between us. In my opinion, there are pros and cons of what has happened in the past in police management.

MILITARY MODEL AND POST WORLD WAR II POLICING

Pros

- leaders and police officers with more life experience, instilled with a commitment to duty and honor
- career-oriented officers
- clear organizational hierarchy

Cons

- not reflective of today's diverse and rapidly changing America
- stifling of creativity
- rigidity in structure that does not recognize ambiguity

PROFESSIONAL MODEL

Pros

- focused accountability
- embraced training and education
- attention to specialized crimes and services

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We should put to bed the era of community policing and engage, instead, in policing.

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Cons

- overly compartmentalized
- no acknowledgment of the contribution of patrol officers
- absence of flexibility

COMMUNITY ORIENTED POLICING

Pros

- recognition of depth and array of police work beyond responding to calls for service and patrol work
- training in far more than police tactics and strategies
- acknowledgment of the contribution of community members and groups

Cons

- no contribution of middle management and others
- no recognition of the complexity or ability of the community to participate in this “partnership”
- mission too often defined as “being all things to all people”

Now, law enforcement enters the post-September 11 era of policing. And, we see decreased resources and increased crime. This terrible tragedy in our nation should provide us with the chance to gain perspective and realize that rather than grasping for the next new thing, we need to cherish and nourish what we have implemented. Now, more than at anytime, the people in our cities and towns want to trust the government, and the police are the most recognizable and visible sign of all the levels of government during these tense times. What we say and how we communicate is critical, but we will be judged by our actions, not our words.

We should put to bed the era of community policing and engage, instead, in policing. We

should not make the 20-year learning mistake. Let us take the best of what we learned in this business over the last half century and call it policing. What are those things that we have learned?

1) The organization of a police department must exclude the improper influence of politics in promotion, assignment, or the quality of police services provided in the community. At the same time, however, a police organization must remember, understand, and fully accept the role of elected

officials and other bodies in setting goals and direction in oversight and review of all of their programs, policies, and actions.

2) Command and control in a hierarchal environment is essential. It must be understood that final accountability stops with the chief, sheriff, or state police director. At the same time, we must remember that the vitality of policing is

defined by the work, authority, and decision-making powers of all our personnel.

3) Critical to the success of policing is a philosophy and understanding that in every facet of our work, we inform, discuss with, and value the community. At the same time, however, we must remember that those most impacted by crime and events are busy attempting to make ends meet, and we must understand that they turn to us for our expertise and experience and to do the job that they cannot do.

4) Last, we in law enforcement must admit our mistakes and shortcomings and acknowledge what we either cannot do or do not have the training and background for. We also must recognize and support the role of other providers, those in education and public and mental health.

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In closing, I have never been more proud of the men and women of the Seattle Police Department than on September 11, 2001. They quickly responded to the various areas of the city in need of protection, but, just as important, they responded to the mosques and places of worship to protect those individuals who could be subjected to retaliation. They have continued to expand in that role and have developed a relationship with people we did not know. Watching what occurred in Seattle and learning of the

other stories of how law enforcement, at all levels, went to extraordinary lengths to protect people fills me with confidence for our profession. We do not have just the opportunity but, rather, the obligation to transition to policing in a systematic way that disdains the “next new thing.” Instead, let us embrace policing that provides a firm foundation of trust, open communication, and acceptance of role and responsibility and delivers what we promise without complaining. ♦

Book Review



Assets Forfeiture: A Study of Policy and Its Practice by Gregory M. Vecchi and Robert T. Sigler, Carolina Academic Press, Durham, North Carolina, 2001.

Asset forfeiture laws authorize enforcement authorities to seize property used or

acquired illegally. Practiced strategically, asset forfeiture can be an effective law enforcement tool. Employed by enforcement authorities without concern for its potential for abuse and overreaching, forfeiture can be seen as providing police with excessive powers that infringe upon concepts of fundamental fairness and due process of law. In response to concerns about its use, the Congress of the United States enacted reform legislation in 2000 that attempted to address the issue of fairness without unduly restricting the use of forfeiture as an effective tool in combating crime.

Assets Forfeiture: A Study of Policy and Its Practice addresses issues that the reform legislation of 2000 did not adequately consider. Authors Vecchi and Sigler have written a report of their study of forfeiture, consisting of two separate sections. The first

section reviews issues relating to the revenue-generating function of asset forfeiture, and the other analyzes a survey conducted to test a hypothesis that evolved from their review. The authors begin their review with an explanation of the historical evolution of U.S. drug policies and laws and the influence that revenue-generating mechanisms have had on that development. An important aspect of this, according to the authors, is the tension between the legislative branch of government and the executive branch. The legislative branch's interest in revenue, manifested in the form of taxes, licenses, or tariffs, competes with the executive branch's interest in prohibition; an interest motivated by the desire to enhance agency budgets and increase authorities. This competition, in turn, contradicts the legislative intent to penalize and deter drug traffickers. The authors believe that asset forfeiture plays an important role in this continuing competition. Integral to this competition is federal legislation, initially enacted in 1984, which created a fund to act as a depository for money generated from the seizure and forfeiture of property and permitted federal agencies to enhance their budgetary resources through the use of forfeited property, the reimbursement of investigative expenses, and the ability to compensate state and local enforcement agencies in return for the use of their personnel to address common crime problems.

The authors contend that the primary purpose of forfeiture is deterrence, but the economic models adopted by major traffickers, in conjunction with the inelasticity of demand for illicit drugs, make attainment of that goal unlikely. As a result, law enforcement officers

may displace that goal with others that may cause dysfunctionism, inefficient use of resources, and result in improper police conduct. The authors cite federal task forces that may attract state and local officers for the purpose of "sharing" in asset forfeiture and inappropriate police conduct, such as "asset hunting," improper use of "reverse sting" undercover operations, and pretextually "structured arrests." In the second phase of the book, the authors analyze the results of a survey they conducted with federal and local law enforcement officers. The results of the survey indicated that, generally, the respondents believed that forfeiture did not deter drug traffickers and had little overall effect in reducing drug trafficking and drug use. However, the respondents did view forfeiture as punishment. The authors convincingly concluded that forfeiture can be an effective enforcement tool, but has an inherent potential for abuse.

The U.S. Department of Justice uses its nationwide forfeiture program as part of a financial incentive system to encourage greater cooperation in addressing common crime problems. However, to the extent that the revenue-generating function of forfeiture undermines the integrity of enforcement decisions, distorts the role of law enforcement, and causes a diversion of resources to unproductive activity, further changes may be warranted. This book informs the debate on that subject and makes a compelling read.

Reviewed by
William R. Schroeder
Consultant
Woodbridge, Virginia

By JON M. SHANE

How to control crime and disorder always has been a conundrum. Through the 1970s and 1980s, many criminologists posited that “collective ‘root causes’ like social injustice, racism, poverty [and economics] caused crime. [These implications suggested that] crime could only be prevented if *society itself* were radically changed...[therefore,] when it came to *preventing* (and thus reducing crime), police did not really matter.”²

The Compstat process, pioneered by former New York City police commissioner William

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within a bureaucracy can produce significant public safety gains.

The essence of the Compstat process is to “collect, analyze, and map crime data and other essential police performance measures on a regular basis and hold police managers accountable for their performance as measured by these data.”⁶ This also reflects a larger overall paradigm: accountability and discretion at all levels of the organization. By creating a management structure that keeps everyone focused on the core mission, officers and executives alike can shed the cloak of cynicism that often comes from trying to do a job whose requirements sometimes are in irreconcilable conflict.⁷

Most of all, “Compstat is not just for the huge departments. Any size department—10-officer, 25-officer—can benefit from the Compstat process. The police *can* make a difference. The police *do* make a difference. The police *must* make a difference. Compstat is how.”⁸ To fully explore this concept, the *FBI Law Enforcement Bulletin* presents this article in three parts. The first part concentrates on four crime-reduction principles that create the framework for the Compstat process.

THE PRINCIPLES

Compstat, a strategic crime-control technique, centers around four crime-reduction

principles: accurate and timely intelligence, effective tactics, rapid deployment of personnel and resources, and relentless follow-up and assessment.⁹ As an agency reengineers to support Compstat, the chief and his executive managers must set specific objectives, driven by these four principles. “This is important because establishing specific objectives sends a powerful message to all [levels of the organization]; the message indicates what the department determines worthy of focus and attention.”¹⁰ Specific objectives could include reducing gang-related homicides, ATM robberies, and disorderly youth in and around a shopping mall, along with several others. For example, the New York City Police Department developed 10 specific objectives that drove its

crime reductions.¹¹ Once an agency sets the objectives, it can use Compstat to ensure that accountability is fixed and the desired results are achieved.¹²

Accurate and Timely Intelligence

Compstat, an information-driven managerial process, depends on accurate and timely intelligence. Without this, it would be seriously diluted, as would any other meaningful managerial process. The basic information necessary for prudent, informed decisions by department executives can come from a variety of sources, such as calls for service, field interview reports, prisoner debriefings, incident reports, and FBI Uniform Crime Reporting (UCR) records, with UCR reports and calls for service constituting the two most common.

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The Compstat model stands as a classic example of how reengineering processes within a bureaucracy can produce significant public safety gains.

”



Captain Shane is the commanding officer of the Policy and Planning Division of the Newark, New Jersey, Police Department.

Accurate intelligence reflects what actually occurred at a given time and place. Supervisory inspection and approval can authenticate accuracy. Supervisors usually review and approve all written documents before they become official records. For example, with incident reports that serve as the basis for UCR, a supervisor usually reviews and reclassifies them, when necessary, before submitting them to the FBI (e.g., reclassifying a burglary to a theft).¹³ This quality control mechanism ensures that the department possesses accurate crime reports before publishing or acting upon them.

In the case of calls for service, a field or communications supervisor compares the disposition (e.g., no cause) with the actual call classification (e.g., shots fired) and may reclassify the call if investigation determines that the initial call differs from what responding officers actually discovered (e.g., a call for shots fired reclassified to youngsters playing with fireworks). Another way to ensure that the department operates on accurate intelligence involves independent corroboration. Officers and detectives always must independently corroborate the information they receive. The personal observations of experienced, well-trained officers will confirm or dispel information gleaned from police reports and calls for service. Independent

corroboration also will confirm or dispel rumors, community rhetoric, and anecdotal information that so often become “fact” because of misunderstandings or misinterpretations of events or statements.

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***Devising effective
tactics becomes
the point in the
Compstat process
where accountability
attaches.***
”

Information tends to go stale rather quickly. *Timely*, or “real-time,” intelligence is the most current information available, being collected and acted upon as near to the occurrence of the event as possible. Real-time data generation occurs when officers in the field write reports and submit them electronically, such as via wireless mobile data computers (MDC), where they are stored immediately and become instantly retrievable. This enables decision makers (e.g., commanding officers and executive staff) to view crime data as near to the time it happened as possible and respond swiftly and certainly.¹⁴

Many departments do not have the capability to submit reports via MDC. They must rely

on information at least a few days or, in most cases, a week old. Of course, responding to week-old crime data is slightly less advantageous, particularly because the crime phenomenon is dynamic; however, agencies still can successfully deploy around such data. Crime trends and patterns rely on historical information; in fact, the more data, the better the analysis. But, for purposes of correcting daily conditions, commanders will fare well if they reflect on that week-old information because the same criminals and the same antecedents inevitably will be present when the commanders deploy their counterstrategy.

Effective Tactics

“Nobody ever got in trouble because crime numbers on their watch went up...trouble arose only if the commanders didn’t know why the numbers were up or didn’t have a plan to address the problems.”¹⁵ Once commanders receive accurate and timely intelligence, they must develop and implement a plan of action and devise effective tactics that deal with as much of the problem as possible. They cannot simply issue a directed patrol order because the likelihood of such action abating a particular problem is small. For example, when faced with drug sales emanating from a 24-hour fast-food restaurant, commanders could augment the directed patrol

strategy with undercover operations, such as buy-bust initiatives and street surveillance, as well as inspections from the code enforcement, fire, and health departments. If the problem persisted, then they could seek civil enforcement (permanently closing the establishment after identifying it as a nuisance) through the city's corporation counsel. Finally, the police department, via the municipal council, could

pursue legislation to regulate 24-hour establishments more stringently, such as mandating specific closing times.

For tactics to be effective, commanders must direct specific resources toward specific problems. An array of city, county, state, and federal resources exists to help commanders accomplish their goals (see Specific Resources for Specific Problems chart).

Whatever strategies commanders eventually devise, Compstat can provide the impetus for creative mind-mapping sessions where they can develop responses and gather and commit resources. By having commanders commit their resources, no delay arises and no excuse exists for not developing effective tactics. Compstat breeds this integrated approach, which reflects a departure from the

Specific Sources for Specific Problems

Local	County	State	Federal
Housing Authority	County Police	State Police	Coast Guard
Sanitation/Public Works Department	Prosecutor's/District Attorney's Office	Attorney General's Office	FBI, DEA, ATF, IRS, INS, EPA
Health and Human Services	County Sheriff's Office	Department of Corrections (DOC)	Marshal's Service
Code Enforcement	Traffic Engineering	National Guard	Customs Service
Parks and Recreation Department	Welfare (Public Assistance)	Probation Department	Social Security Administration
Public Utilities Company	Substance Abuse/Mental Health/AIDS	Alcoholic Beverage Control (ABC)	Postal Inspectors/Postal Service
Fire Department	Homeless Outreach	Division of Parole	Secret Service
Board of Education	Public Works Department	Department of Community Affairs	U.S. Attorney's Office
Economic Development Corp.	Division of Youth Services	Division of Motor Vehicles (DMV)	Bureau of Prisons

traditional model of policing where most elements of the department operate independently (see Traditional Model Versus Performance Model chart).

Devising effective tactics becomes the point in the Compstat process where accountability attaches. If commanders fail to act, they risk being derelict in their duties or, worse, insubordinate. Large agencies may replace them for failing to act. However, smaller ones, with a restricted number of command-rank personnel, may use alternatives to compel commanders' participation, such as—

- holding one commander to task for a longer period of time during a Compstat meeting by asking an extensive number of probing questions to accelerate the learning curve and underline the criticality of the process;
- rewarding minimal success, at first, as a positive reinforcer until the commander becomes more deeply involved in the process and energized by the satisfaction that comes with success;
- being stern and finding other ways to communicate displeasure with performance without verbally assaulting or insulting the commander;
- working with a commander's subordinates to get the job done, in the

event that the commander exhibits reluctance initially to get involved (being bypassed tends to send an urgent [and embarrassing] message);

- seeing that subordinates become invested in the process, with or without the commander, because this will motivate the commander to become involved as a way to reassert command and control;

“

The basic information necessary for prudent, informed decisions by department executives can come from a variety of sources....

”

- speaking in relatively harsh tones without demeaning the individual, addressing criticism directly to performance or behavior rather than to the personal qualities of the individual (this being the only way, for some personalities, to change the person's level of involvement); or
- demonstrating that the jurisdiction is receiving a lot of praise for its new actions

to convince a commander that if he does not participate, promotion or other desirable positions will not be an option.¹⁶

One final and important word about accountability—the essence of the Compstat process is *results*. Accountability must be affixed to achieve results; however, when the “dots on the map” disappear, the inevitable result is fewer crimes. In this respect, the true measure of success becomes the absence of crime. The results commanders derive emanate directly from their leadership. Strong-willed commitment from commanders to empower personnel with the authority and discretion to carry out a problem-solving effort and the fortitude to reward creative risk taking, even when mistakes occur, will yield positive gains. Commanders should give their subordinates the benefit of the doubt. If it turns out that some employees made a mistake, there will be time to hold them accountable. But, if commanders abandon them at the first accusation, and they later are exonerated, the commanders will never “wash away the smell of betrayal.” They will have lost the trust of those employees *and* of those who never have been accused of making a mistake. Standing behind their subordinates is critical to morale, not just for the employees but for the enterprise as well.¹⁷

Traditional Model	Versus	Performance Model
Output		Outcome
Incidents		Problems
Summary results		Feedback
Reaction		Prevention
Control of serious crime		Public safety
Accountability for rules		Accountability for problems solved
Individual attribute-based performance evaluation		Unit or agency performance management
Intuition		Data
Isolation		Integration
<i>Source: P.P. McDonald, Managing Police Operations: Implementing the New York Crime Control Model—Compstat (Belmont, CA: Wadsworth, 2002), 78-82.</i>		

Additionally, commanders should not consider their mistakes as failures per se. They should remember that “a mistake is just another way of doing things. The word failure carries with it finality, the absence of movement characteristic of a dead thing, to which the automatic human reaction is helpless discouragement. But, for the successful leader, [mistakes are] the beginning, the springboard to hope.”¹⁸

Rapid Deployment of Personnel and Resources

Once commanders identify appropriate means and develop suitable strategies, they must

rapidly deploy their personnel and resources. This may include adjusting work schedules, if permitted, to meet the demands. In some instances, restrictive labor agreements do not permit changing officers’ work schedules as quickly or as frequently as may be needed. The least attractive solution to this problem involves paying overtime to counter the crime issue. While fine for short-term strategies, overtime funds, however, usually are scarce and limited. Moreover, appropriations probably never reach a level that an agency could sustain over a long period of time.

The split-force patrol concept offers one effective solution

to restrictive labor agreements. “Under the split-force concept, one part of the patrol force is assigned to respond to calls for service, investigate crimes, and perform other assigned duties. Another part of the patrol force is held in reserve for the express purpose of conducting preventive patrol. [Instances may arise when the second portion of the patrol force must answer calls for service; however,] the primary intent is for one portion of the patrol force to be devoted exclusively to preventive patrol.”¹⁹

Generally, assigning two-thirds of the force to answer calls for service while one-third remains on proactive patrol

provides a workable solution. “The primary advantage of split-force patrol is that it allows more attention to be devoted to preventive patrol activities and that officers are assigned this function as a *primary* responsibility.”²⁰ The commander now has a sufficient number of personnel unencumbered by the constant demands of the dispatcher. The proactive personnel can focus on the commander’s obligations derived from Compstat, *and* the commander knows exactly who to hold accountable for the outcomes. The split-force patrol concept has received favorable results because it increases calls-for-service response productivity, enhances the arrest-related effectiveness of the patrol force, and results in improved police professionalism and accountability.²¹

To gain the upper hand, commanders need to set their plan in motion rapidly and decisively, for the next Compstat meeting is only 1 week away. At that time, commanders will have to provide an update on their progress toward alleviating the problem.

Relentless Follow-Up and Assessment

Many who practice Compstat consider the last crime-reduction principle, relentless follow-up and assessment, the most onerous and time-consuming—also, the most important. It is foolish for commanders to design and

implement an action plan and trust that others have carried it out without witnessing the results firsthand. Commanders cannot *expect* if they do not *inspect*. Periodic follow-up to orders acts as an early warning to detect problems that may arise, thereby enabling commanders to make adjustments.

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Most of all, commanders must discern whether the solution met the intended goals. If not, why not? Commanders should not wait until the day before the next Compstat meeting to check with the supervisors tasked with implementing the action plan. Instead, within a few days of executing the plan, commanders should know whether the treatment has achieved the intended results (output and outcome).

If applied properly, the “output” should be linked to the “outcome.” That is, if drug sales from a 24-hour fast-food restaurant are the problem, then effecting

arrests and issuing summonses (output) in and around the restaurant should solve the problem (outcome). This reveals why conducting relentless follow-up and assessment proves essential: it establishes if the treatment (output) achieved the desired result (outcome). Other outcome measures include the ratio of calls handled per officer (including the possibility that excessive individual sick time might adversely affect collective performance) and response time (taking into account that at-fault and contributory accidents might adversely affect patrol car availability, also known as the serviceability factor). “Managers need to monitor decision implementation to be sure that things are progressing as planned and that the problem that triggered the decision-making process has been resolved.”²² According to the New York City Police Department, some of the follow-up methods commanders can use include—

- touring the confines of their precinct (e.g., “management by walking around”);
- reviewing incident reports, as well as the “Unusual Incident Report,” on a daily basis;
- talking often with uniformed personnel about the issues;
- speaking frequently with the precinct detective squad supervisor and the

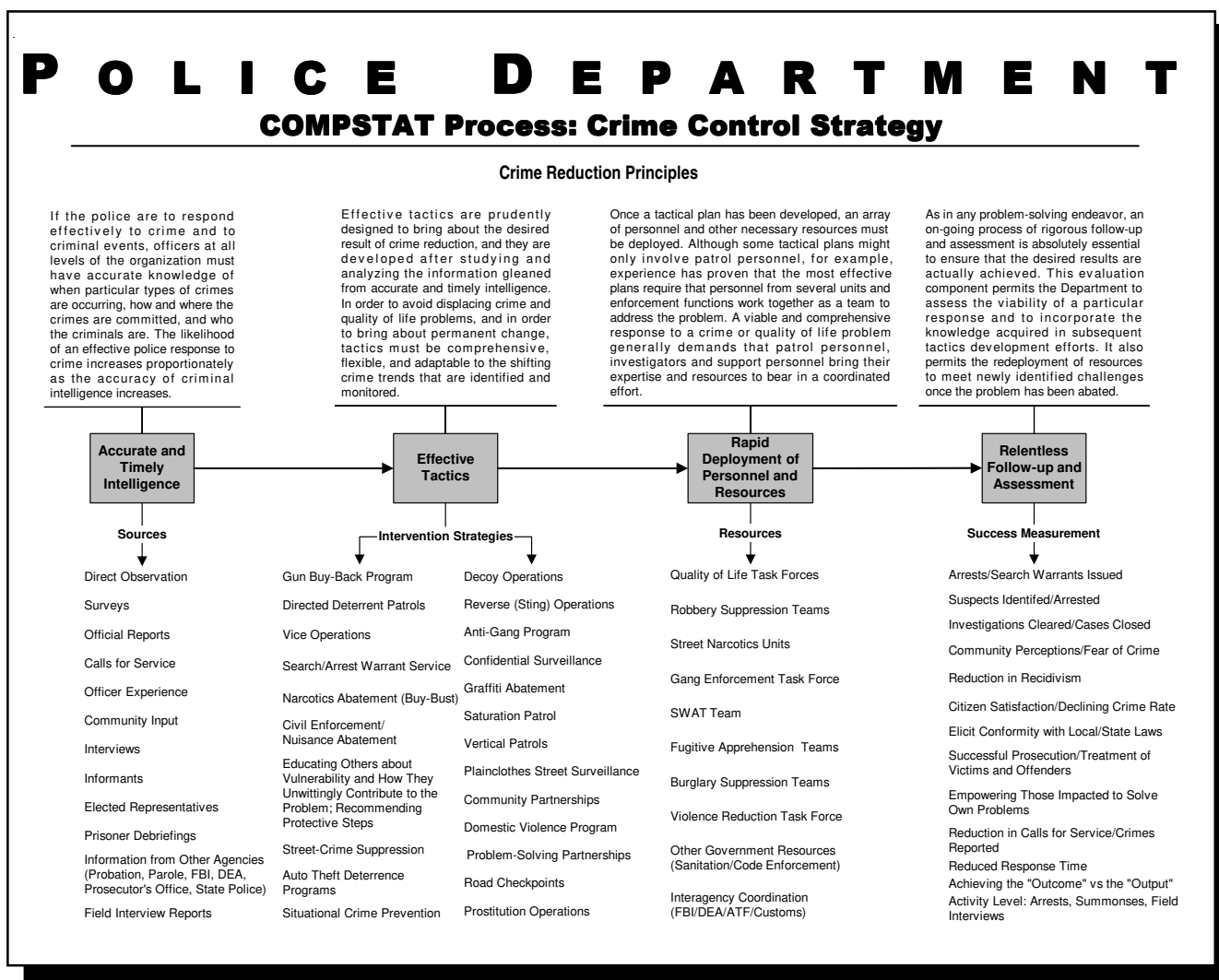
detectives about conditions and their investigations; and

- analyzing the Compstat reports for individual performance and performance compared with other precincts, as well as trends and patterns.²³

To ensure that commanders conduct this follow-up, a scribe

takes copious notes during each Compstat meeting and, at the following session, reports on what issues required attention. The affected commanders receive these notes the day after the meeting and must follow up on the outstanding issues. During the next Compstat meeting, the facilitator opens the session by asking these commanders what they have

done to alleviate the problem or correct the condition. The commanders must show what they have done (the tactics, the deployment, and the investigative follow-up) to abate the matter and expound upon the results. Figure 1 summarizes Compstat's crime-reduction principles and how each successive principle flows from the preceding one.



CONCLUSION

The Compstat process creates a management structure that can help law enforcement agencies control crime and disorder in their communities. Next month, the *FBI Law Enforcement Bulletin* will feature the second part of this article. In it, the author will address the design of the Compstat model, including such administrative details as required attendees, facility arrangement, and, most important, data collection, analysis, and presentation. ♦

Endnotes

¹ For illustrative purposes and to maintain clarity, the author refers to the leaders of law enforcement organizations as chiefs and employs masculine pronouns for these individuals, as well as other command-level personnel, throughout the article as needed.

² G.L. Kelling and William H. Sousa, Jr., The Center for Civic Innovation at the Manhattan Institute, *Civic Report* 22, "Do Police Matter? An Analysis of the Impact of New York City's Police Reforms" (New York, NY, 2001), 1-2; retrieved on May 4, 2003, from http://www.manhattan-institute.org/html/cr_22.htm. 2003. The findings of this study concluded that 1) "broken windows" policing is linked significantly and consistently to declines in violent crime; 2) over 60,000 violent crimes were prevented in New York City from 1989 to 1998 because of "broken windows" policing; 3) changes in the number of young men of high school age were not associated with a decline in violent crime; 4) decreasing use of crack cocaine also was not associated with a decline in violence; 5) other changes in police tactics and strategy also may be responsible for some of the city's drop in

crime; and 6) as implemented by the New York City Police Department, "broken windows" policing is not the rote and mindless "zero tolerance" approach that critics often contend that it is. Case studies show that police vary their approach to quality-of-life crimes, from citation and arrest on one extreme to warnings and reminders on the other, depending on the circumstances of the offense.

³ Compstat is known by many names throughout the policing industry. The New York City Police Department coined the term *Compstat*, which stands for COMPuter STATistics. Other terms include *ComStat* (Command Status) in Newark and *FastTrack*, formerly in Los Angeles.

“Compstat, an information-driven managerial process, depends on accurate and timely intelligence.”

⁴ P.P. McDonald, *Managing Police Operations: Implementing the New York Crime Control Model—Compstat* (Belmont, CA: Wadsworth, 2002).

⁵ Michael Hammer and James Champy, *Reengineering the Corporation: A Manifesto for Business Revolution* (New York, NY: Harper Business, 1993). This work defines five ideals that characterize business reengineering. An agency introducing Compstat likely will find these principles necessary to support the process: 1) a focus on a revolutionary, rather than an evolutionary, approach, or an abandonment of "outdated" assumptions; 2) a dramatic change in the shape of the program, instead of less painful

incremental improvements; 3) a radical redesign, or disregarding existing structures and inventing new ways of accomplishing work; 4) a shift to process-oriented thinking and away from task-based policies; and 5) the use of information/technology as an enabler to allow an organization to do its work in a radically different way.

⁶ Philadelphia Police Department, *The Compstat Process* (Philadelphia, PA, 2003); retrieved on May 6, 2003, from http://www.ppdonline.org/ppd_compstat.htm.

⁷ G.L. Kelling, "How to Run a Police Department," *City Journal* 5, no. 4 (Autumn 1995).

⁸ Ed Sanow, "Compstat, the Real Cops on the Dots," *Law and Order*, August 2003, 4 (emphasis added).

⁹ New York City Police Department, "The Compstat Process" (New York, NY, 1994, unpublished document BM 754).

¹⁰ Supra note 4, 8; and John M. Bryson, *Strategic Planning for Public and Nonprofit Organizations: A Guide to Strengthening and Sustaining Organizational Achievement* (San Francisco, CA: Jossey-Bass, 1995), 30. Bryson describes how to identify strategic issues, both internally and externally, that threaten the organization.

¹¹ V.E. Henry, *The Compstat Paradigm: Management Accountability in Policing, Business and the Public Sector* (New York, NY: Looseleaf Law Publications, 2002), 227. See also <http://www.nyc.gov/html/nypd/html/chfdept/strategies.html>.

¹² One of the most effective and efficient ways to determine what the strategic objectives should be is to undergo a simple environmental assessment (i.e., SWOT analysis: strengths, weaknesses, opportunities, and threats). To learn about SWOT analysis, see supra note 10 (Bryson).

¹³ The definition of a particular crime differs between the national UCR program and an individual state's criminal code. Most police departments investigate a crime based upon the state-provided

definition offered in the criminal code. The UCR definition may differ significantly; therefore, for deployment and investigative purposes, the state's definition should supercede the administrative definition offered by UCR.

¹⁴ A wireless records-management environment provides commanders access to current data that they could not get from any other source. Real-time data contain dynamic information of events that concern the police; hard-copy Compstat reports usually are a week or more old, but, nonetheless, contain useful information for commanders. Used effectively, real-time data enable commanders to become actively involved in their crime-control efforts and to assume a leadership role while exploring trends and correlations and identifying connections.

¹⁵ Jack Maple with Chris Mitchell, *The Crime Fighter: Putting the Bad Guys Out of Business* (New York, NY: Doubleday, 1999).

¹⁶ Supra note 4, 15.

¹⁷ R.W. Guiliani, *Leadership* (New York, NY: Talk Miramax Books-Hyperion, 2002).

¹⁸ W. Bennis and Burt Nanus, *Leaders: Strategies for Taking Charge* (New York, NY: Harper Collins, 1997).

¹⁹ C.D. Hale, *Police Patrol: Operations and Management* (New York, NY: John Wiley and Sons, 1981). For further evaluation of the split-force patrol concept, see James T. Nolan and Laurie Solomon, "An Alternative Approach in Police Patrol: The Wilmington Split-Force Experiment," *The Police Chief*, November 1977, 58-64; and James M. Tien et al., Public System

Evaluation, Inc., *An Evaluation Report of an Alternative Approach in Police Patrol: The Wilmington Split-Force Experiment* (Cambridge, MA, 1977).

²⁰ Supra note 19, 122.

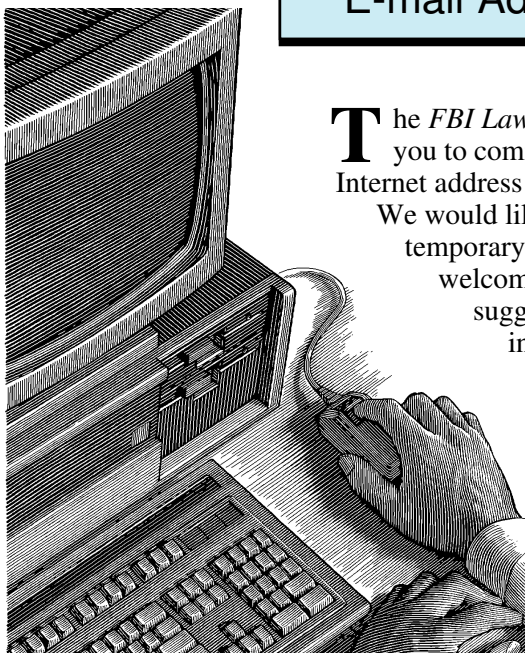
²¹ Supra note 19 (Hale), 122.

²² K.M. Bartol and David C. Martin, *Management* (New York, NY: McGraw-Hill, 1991), 272.

²³ R.W. Guiliani and Howard Safir, New York City Police Department, *Compstat: Leadership in Action* (New York, NY, 1998).

The author thanks his friend and colleague Chief Anthony F. Ambrose of the Newark, New Jersey, Police Department for his inspiration and insight concerning this article.

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Case Study

Statement Analysis Beyond the Words

By Susan H. Adams, Ph.D.

“‘**M**y story’s never changed,’ Levin said from the defense table. ‘I did not hurt that child.’”¹ Asher Levin was convicted of homicide in the death of 3-year-old Katelynn Frazier, who lived with her mother and Levin. Levin’s comments from the defense table during his sentencing hearing provide fascinating insight to law enforcement professionals. Why would Levin describe his account of Katelynn’s injuries as “my story”? What does it mean when Levin focused on the fact that his story never changed? Why did Levin refer to the brutal beating death of Katelynn with the minimizing verb “hurt”? Finally, what could it mean when Levin calls Katelynn “that child”?

The process of analyzing statements, known as statement analysis, is the examination of the verbatim words used by suspects and alleged victims to gain valuable insight for planning interview strategies.² Linguists emphasize the importance of studying the words of narratives, trusting the text, and being open to what the words may reveal. “We should not impose our ideas on it. We should accept that a large part of our linguistic behavior is subliminal, and, therefore, we may find a lot of surprises.”³ Asher Levin revealed rich information in his short quote. If investigators remain open to what words reveal, they, indeed, may discover surprises that will aid their investigations.

Although statement analysis encompasses numerous linguistic and structural elements, this case study is limited to the three elements evident in Asher Levin’s brief quote—nouns, verbs, and adjectives. Individuals choose their own words to describe their accounts of events. These words already exist in their minds. What can the choice of words reveal?

Choice of Nouns

Asher Levin used two interesting nouns in his quote: *story* and *child*. Nouns name persons, places, and things. Examination of the choice of nouns used can reveal insight to assist investigators.

The noun *story* is worth scrutinizing because the word may describe a created tale. Investigators need to know the context of the communication, particularly the question that prompted the response. If an investigator asks an innocent individual, “Did your story ever change?” the person might respond, “My story’s never changed.” Due to the influence of the interviewer, a respondent might repeat words heard.⁴ In Levin’s case, however, he responded to a judge asking if he had anything to say at the sentencing hearing. Levin chose the word *story*, with no contaminating influence from a questioner.

“My story’s never changed” is a very different statement from “I told you what happened.” Investigators would not expect truthful defendants to focus on the lack of change in their stories as truthful accounts do not change. Re-counting the truth consists of a straightforward and simple process because it draws directly from memory. Conversely, a deceptive account must be retold carefully to avoid any discrepancies with information previously provided. For example, in another case, a young man reported that an assailant stole money from him as he attempted to make a deposit in a bank night deposit drawer. In his written statement, the alleged victim wrote that he already had told “our story” to the responding officer. The examination of the words in this case revealed not only that the account was fictitious but also that a second individual was involved in orchestrating the fictitious robbery.

A second interesting choice of nouns in Asher Levin’s quote is the word *child*. Levin could have used the girl’s name, Katelynn, but chose not to. It would be important to explore what the less

personal word *child* means to Levin. Does it indicate a relationship that lacks personal warmth and caring?

Choice of Verbs

Verbs are action words, such as *hurt*. Levin chose the word *hurt* to describe beating injuries to a 3-year-old girl so severe that she died. This represents an example of minimizing, by lessening the severity of the crime. Minimizing words can indicate increased separation from an individual's actions.⁵ When minimizing verbs occur in parts of a statement that should be of greatest intensity, they deserve further exploration during follow-up interviews with suspects and alleged victims. In the case of Katelynn, repeated bruising was evident. Katelynn's mother, who pleaded guilty for failing to protect Katelynn from Levin's continued abuse, was sentenced to 10 years in prison.⁶ Levin was sentenced to 18 years in prison and an additional 8 years of state supervision.⁷

Choice of Adjectives

Adjectives modify nouns and pronouns, thus providing additional information for investigators. Asher Levin described Katelynn as "that child." Linguists designate the adjectives *that* and *those* as spatial variations, which reveal space placed between the narrator and the referenced person or object.⁸ Investigators recognize this technique as an example of distancing. Levin's quote provides insight that he figuratively placed Katelynn at a distance, rather than in the immediate area closer to him. Investigators could use such insight during the interview of Levin to

explore his relationship with Katelynn. Subsequent investigation in this case revealed that Levin was not close to Katelynn as he continually neglected and abused her.

Conclusion

Scrutiny of spoken and written words can reveal valuable insight toward an understanding of the narrator. The insight gained from examining the choice of words in suspects' and alleged victims' statements can help investigators prepare effective interviewing strategies to lead them to the truth. ♦

Endnotes

¹ Patricia Davis, "Man Gets 18 Years for Killing Katelynn: Va. Child Abused and Neglected by Mother's Boyfriend," *The Washington Post*, December 7, 2001, sec. B, p.1.

² Susan H. Adams, "Statement Analysis: What Do Words Really Reveal?" *FBI Law Enforcement Bulletin*, October 1996, 12-20.

³ John M. Sinclair, "Trust the Text," in *Advances in Written Test Analysis*, ed. M. Coulthard (London, UK: Routledge, 1994).

⁴ For additional information, see Vincent A. Sandoval, "Strategies to Avoid Interview Contamination," *FBI Law Enforcement Bulletin*, October 2003, 1-12.

⁵ Morton Wiener and Albert Mehrabian, *Language Within Language: Immediacy, a Channel in Verbal Communication* (New York, NY: Appleton-Century-Crofts, 1968).

⁶ Supra note 1.

⁷ Supra note 1.

⁸ Supra note 5.

Special Agent Adams teaches a graduate course in statement analysis at the FBI Academy.

The author welcomes correspondence from other investigators that might provide additional insight concerning words, such as story, and whether these words referred to fabricated or factual accounts. The author can be contacted at sadams@fbiaacademy.edu.

Reference and Statistics

The Bureau of Justice Statistics (BJS) presents *Key Crime and Justice Facts at a Glance*, a section of its Web site that presents trends in crime and justice in 35 charts that are updated as new data becomes available. Small versions of the charts (thumbnails) and brief statements of findings are presented. A click on each thumbnail will retrieve a page that contains a full-sized version of the chart and additional information about the data and findings. A click on the full-sized version of the chart will access a table with the data used in the chart. Also, spreadsheets with the chart data can be saved to the user's hard drive and imported into most spreadsheet, charting, and word processing programs. In addition, full-sized color versions of selected charts, suitable for overheads or handouts, are available.

Covered topics include trends in crime (violent and property crime, victim characteristics, and arrests); federal investigations and prosecutions; felony convictions in state courts; correction (including capital punishment); demographics in correction populations, by gender and race; demographics in jail populations, by age, gender, and race; and expenditures. This site can be accessed at <http://www.ojp.usdoj.gov/bjs/glance.htm>; paper versions of these charts are available from the National Criminal Justice Reference Service at 800-851-3420

Drugs

The Office of Community Oriented Policing Services (COPS) offers *Methamphetamine Initiative: Final Environmental Assessment*. This report examines the strategies taken to clean up after law enforcement actions are completed at a clandestine drug laboratory site, which generally contains hazardous materials used in the production of illegal drugs, articles and fixtures contaminated with drug residues or hazardous materials, or drugs and drug precursors. Availability and ordering information are available through the U.S. Department of Justice Response Center at 800-421-6770.

Juvenile Justice

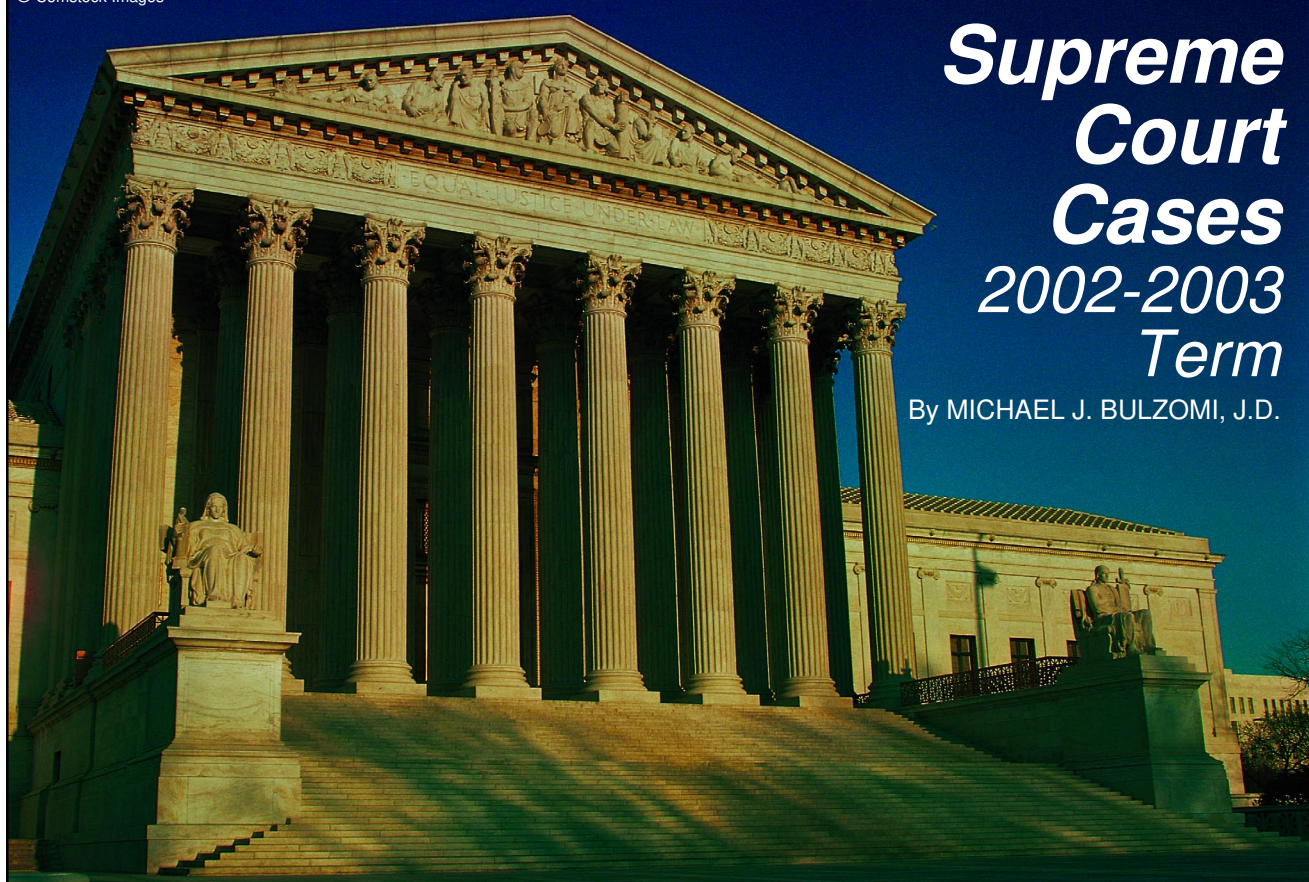
The National Youth Violence Prevention Resource Center (NYVPRC) serves as a central source of information on prevention and intervention programs, publications, research, and statistics pertaining to violence committed by and against children and teens. The resource center is a collaboration among the Centers for Disease Control and Prevention and other federal agencies. The NYVPRC Web site, <http://www.safeyouth.org/home.htm>, and call center, 1-866-SAFEYOUTH (723-3968), provide user-friendly access points to federal information on youth violence prevention and suicide. The Web site also has separate links for content geared toward teens, parents and guardians, and professionals.

Web-Based Resources

The Bureau of Justice Statistics (BJS) presents *Reentry Trends in the United States*, a section of its Web site that summarizes the latest national data concerning inmates returning to the community after serving time in state or federal prison. Sources include information from 12 statistical publications covering six different BJS data collections. Features include information on subjects ranging from growth in prison and parole populations to success rates for parolees. This site can be accessed at <http://www.ojp.usdoj.gov/bjs/reentry.htm>.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 209, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

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Supreme Court Cases 2002-2003 Term

By MICHAEL J. BULZOMI, J.D.

Each year the United States Supreme Court is asked to review a multitude of cases covering a variety of legal topics. The 2002-2003 Supreme Court session was no different. The justices decided several cases of interest to law enforcement officers and management. The Court decided two cases involving confessions. Three Americans with disabilities cases were decided: one dealing with the definition of a major life function; one concerning reasonable accommodation; and one dealing with a direct

threat to a disabled person's own health. A First Amendment speech case was decided, as well as a Title VII case involving the required proof in a mixed-motive sexual discrimination case.

***Chavez v. Martinez,* 123 S. Ct. 1994 (May 27, 2003)**

The U.S. Supreme Court decided that a police officer's failure to give *Miranda* warnings, coupled with coercive questioning of a defendant, did not violate the defendant's privilege against self-incrimination under the Fifth Amendment. The Court

stated that the privilege is not violated until the government tries to use the offending statement against a defendant in a criminal case. However, the Court did not decide whether the officer's actions in this case violated the due process clause of the Fourteenth Amendment.

Martinez was questioned by Sergeant Chavez while in an emergency room, suffering from gunshot wounds inflicted by another police officer. Martinez was in severe pain and believed he was about to die when he admitted using heroin and stealing

a police officer's gun. Chavez never advised Martinez of his *Miranda* rights. Martinez was never charged with any crime.

Martinez later filed a Title 42, Section 1983, U.S. Code lawsuit against Chavez for violating his Fifth Amendment privilege against self-incrimination and his Fourteenth Amendment substantive due process right to be free from coercive questioning. The district court and the U.S. Circuit Court of Appeals for the Ninth Circuit held that Chavez was not entitled to qualified immunity because he obtained the statements coercively. The fact that the government never tried to use the statements in a criminal trial was irrelevant to these courts. The Supreme Court reversed.

The Supreme Court held that compulsive questioning alone, unrelated to a criminal case, does not violate the Fifth Amendment self-incrimination clause. The phrase "criminal case" in the self-incrimination clause, at the very least requires initiation of legal proceedings and does not encompass the entire criminal investigatory process, including police interrogations. Statements compelled by police interrogation may not be used against a defendant in a criminal case. Martinez was never made to be a "witness" against himself because his statements never were admitted as testimony against him in a criminal case.

The Court also concluded that Chavez's failure to read *Miranda* warnings to Martinez did not violate Martinez's constitutional rights. The majority agreed that a simple *Miranda* violation was not a violation of a "core" Fifth Amendment right and, therefore, could not support a Section 1983 civil action, requiring an actual violation of a constitutional right.

The Court did not resolve the question of whether or not Chavez's questioning violated Martinez's substantive due process rights under the Fourteenth Amendment. That issue was remanded to the Ninth Circuit for additional proceedings. In an opinion dated July 30, 2003, the Ninth Circuit ruled that Chavez's coercive interrogation of Martinez violated his clearly established due process rights under the Fourteenth Amendment.

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Special Agent Bulzomi is a legal instructor at the FBI Academy.

***Kaupp v. Texas*, 123 S. Ct. 1843 (May 5, 2003) (per curiam)**

In this case, a 17-year-old murder suspect was awakened by at least three officers at 3 a.m. One officer told the boy, "we need to go and talk," to which the boy responded, "Okay." The boy was led away in handcuffs, wearing only his underwear, taken to the scene of the crime where the victim's body had just been recovered, and then taken to the police station. All parties agree that the police, at this point, did not have probable cause to arrest the young man. At the station, the youth was given his *Miranda* rights. After a brief interrogation, he confessed to some involvement in the murder. He unsuccessfully challenged the use of his confession, alleging that his unlawful arrest tainted his subsequent confession. The boy was given a 55-year sentence.

On appeal, Texas courts affirmed the conviction. They reasoned that the boy's response of "Okay" indicated consent, that his failure to protest was a waiver of rights, and that his transport to the station in handcuffs was simply routine.

The Court vacated the conviction. It concluded that a 17-year-old boy being awakened late at night, taken to the police station in handcuffs in his underwear, and interrogated, is indistinguishable from a traditional arrest. Because the boy was arrested without probable cause, his subsequent confession must be suppressed absent evidence of intervening events sufficient to purge the taint of the unlawful seizure. In the Court's view, the fact that *Miranda* rights were given was not sufficient to purge the taint in this circumstance.



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***Toyota Motor Mfg. v. Williams*,
122 S. Ct. 681 (January 8, 2002)**

Williams, a former Toyota employee, suffered from carpal tunnel syndrome, preventing her from performing tasks associated with certain types of manual jobs that require gripping tools and repetitive work with her hands and arms extended at or above shoulder level for extended periods of time. After

several attempts to find jobs she could do, Toyota eventually fired her, citing her poor attendance record. She sued Toyota under the Americans With Disabilities Act (ADA), alleging that Toyota failed to accommodate her disability.

The trial court ruled that she was not disabled under the ADA. The U.S. Circuit Court of Appeals for the Sixth Circuit reversed, finding that Williams' impairments substantially limited her major life activity of performing manual tasks, even though it was determined that she could perform household chores and personal hygiene.

The U.S. Supreme Court reversed, holding that the circuit court did not apply the proper standard to determine whether Williams was disabled under the ADA because it analyzed only a limited class of manual tasks. In the Supreme Court's view, the Sixth Circuit failed to consider whether Williams's impairments prevented or restricted her from performing tasks that are of central importance to most people's daily lives.

The Court stated that to qualify as disabled under the ADA, a plaintiff must prove not only a physical or mental impairment, but also that the impairment limits, in a substantial way, a major life activity: walking, seeing, hearing, or, in this case, performing manual tasks. The Court noted that Equal Employment Opportunity



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Commission (EEOC) regulations define “substantially limited” as an inability to perform a major life activity that the average person in the general population can perform or a significant restriction on the condition, manner, or duration of the performance of the activity, as compared to the general population. Williams’ inability to do repetitive work with her hands and arms extended at or above shoulder level did not substantially limit her major life activity of performing manual tasks. She still could do such common tasks as brushing her teeth, washing her face, bathing, tending her garden, and doing laundry. Consequently, Williams’ impairment, while real, was not substantial enough to qualify as a disability under the ADA.



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Chevron USA, Inc. v. Echazabal,
122 S. Ct. 2045 (June 6, 2002)

In this case, the Court unanimously upheld an EEOC regulation that permits an employer to

refuse to hire a disabled worker if that worker’s disability poses a direct threat to his own health, even though it poses no threat to the health or safety of others.

Echazabal worked for an independent contractor doing work at a Chevron plant. Twice Chevron offered Echazabal a job if he could pass the company’s physical examination. Each time, the exam showed that he suffered from a liver abnormality or damage caused by hepatitis C. Doctors advised that the condition would worsen through continued exposure to toxins at the job site. Each time, Chevron withdrew its employment offer and, finally, asked the contractor employing him to reassign him to a job without exposure to the toxins or to remove him from the job site altogether. The contractor laid off Echazabal. Echazabal filed suit, alleging that Chevron violated the ADA by refusing to hire him and barring him from the job site because of a disability.

The U.S. Circuit Court of Appeals for the Ninth Circuit ruled in favor of the worker. The Ninth Circuit stated that the statutory language of the ADA permits an employer to deny employment to anyone whose disability would jeopardize others in the workplace, but forbids an employer from denying employment to individuals whose disability threatens only themselves. The U.S. Supreme Court reversed.

The Court stated that the ADA’s purpose is to prevent employers from making employment decisions regarding disabled individuals based upon untested or pretextual stereotypes. Employers’ concern regarding lawsuits by workers harmed on the job site is real, not the result of stereotypical thinking. Consequently, refusal to hire a worker whose disability could cause that worker harm is permissible.

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US Airways v. Barnett,
122 S. Ct. 1516 (April 29, 2002)

In this ADA case, an employer refused to accommodate a disabled employee by reassigning him to another job because another nondisabled employee had seniority rights to that job. The Supreme Court held that an accommodation that conflicts with a legitimate seniority system is ordinarily not reasonable. However, the employee remains free to present evidence of

special circumstances that makes a seniority rule exception reasonable in the particular case.

Barnett, a US Airways employee, injured his back while working as a cargo handler. He invoked seniority rights and was transferred to a less physically demanding job in the mailroom. This position opened again to seniority-based employee bidding, and nondisabled employees senior to Barnett planned to bid for his position. US Airways refused to accommodate his disability by allowing him to remain in the mailroom, and he lost his job. He then filed suit under the ADA, claiming that US Airways discriminated against him on the basis of his disability by not accommodating him. The district court granted the company summary judgment, ruling that making an exception to the seniority rules would work a hardship on both US Airways and its employees who relied on the system. The U.S. Circuit Court of Appeals for the Ninth Circuit reversed, holding that the seniority system was merely a factor in the undue hardship analysis and that a case-by-case analysis is required to determine whether any particular assignment would constitute an undue hardship.

The Supreme Court took a middle-of-the-road position on this issue. It ruled that seniority systems normally prevail against a reasonable accommodation argument because such systems

allow for consistent, uniform treatment of employees by employers. The disabled employee, however, is free to show that special circumstances warrant the requested accommodation because circumstances might alter the important expectations of a seniority system. The court of appeals judgment was vacated and the case remanded for further proceedings.



Nevada Department of Human Resources v. Hibbs,
123 S. Ct. 1972 (May 27, 2003)

A state employee sought leave to care for his ailing wife under the Family Medical Leave Act (FMLA), which entitles an eligible employee to take up to 12 weeks of unpaid leave annually to care for “serious health conditions” of an employee’s spouse, child, or parent. Twelve weeks of intermittent leave was granted, but when informed that

the leave was exhausted and told to report back to work, the employee failed to return and was terminated. Section 2617(a)(2) of the FMLA allows an individual to seek both equitable relief and monetary damages “against any employer (including a public agency),” that “interfered with, restrained, or denied the exercise of ” FMLA rights. The employee sued the department and two of its officers, alleging a violation of the act.

The district court summarily dismissed the suit, finding that the suit was barred by the Eleventh Amendment and that the plaintiff’s Fourteenth Amendment rights were not violated. The U.S. Circuit Court of Appeals for the Ninth Circuit reversed, and the U.S. Supreme Court agreed to hear the case.

The Court held that Congress acted within its power under Section 5 of the Fourteenth Amendment in abrogating states’ Eleventh Amendment immunity to suits alleging violations of Title 29, Section 2612(a)(1)(c), U.S. Code of the FMLA. State employees may recover monetary damages in federal court for a state’s failure to comply with the family-care provision of the FMLA.

The Court ruled that the Constitution generally does not provide for federal jurisdiction over suits against nonconsenting states. Congress, however, may abrogate Eleventh Amendment

immunity in federal court if it makes its intention to do so unmistakably clear in the language of the statute and acts pursuant to a valid exercise of its power under section 5 of the Fourteenth Amendment. The Court found that in this case, Congress clearly abrogated states' immunity under the FMLA. Congress was trying to deal with past state gender discrimination in implementing the FMLA. Congress' chosen remedy, the family leave provision of the FMLA is "congruent and proportional to the targeted violation and can be understood as responsive to, or designed to prevent, unconstitutional behavior."



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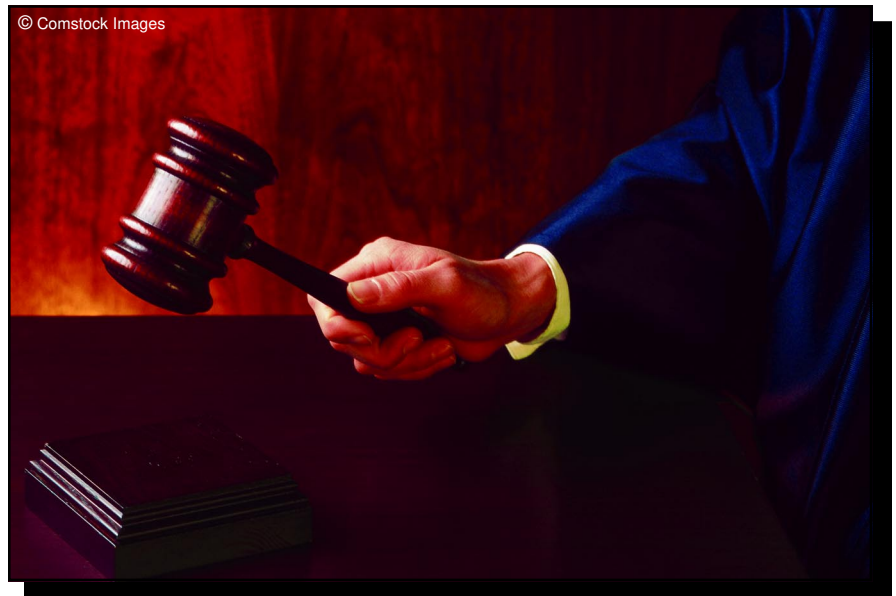
notice on any person lacking a "legitimate business or social purpose" for being on the premises and to arrest for trespassing any person who remains or returns after having been so notified was an unconstitutionally overbroad First Amendment violation. In this case, the defendant was convicted of trespassing on the premises of a low-income housing development owned and operated by the Richmond Redevelopment and Housing Authority (RRHA). This conviction was based on the defendant's violation of written notice barring his return to RRHA property due to prior trespass convictions.

The Court held that the state housing agency's trespass policy did not violate the First Amendment's over breadth doctrine

because neither the basis for the barment sanction, a prior trespass, nor its purpose, preventing future trespasses, implicates the First Amendment. The Court explained that the regulation did not prohibit a substantial amount of protected speech in relation to its many legitimate applications. Both the notice barment rule and the legitimate business or social purpose rule apply to all persons, not just to those seeking to engage in expression. The Court explained that an over breadth challenge rarely succeeds against a law that is not specifically directed at speech or conduct associated with speech. In this instance, any application of the RRHA's policy that violates the First Amendment can be remedied through as-applied litigation.

Virginia v. Hicks
123 S. Ct. 2191 (June 16, 2003)

In a unanimous decision, the Court reversed a ruling by the Virginia Supreme Court that a state housing agency's policy of authorizing the police to serve



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***Desert Palace v. Costa,*
123 S. Ct. 2148 (June 9, 2003)**

A former female warehouse worker and heavy equipment operator sued her former employer for gender discrimination and sexual harassment under Title VII. The worker, the only female on the job site, had problems

with company management and coworkers, all of which were male, which led to escalating disciplinary sanctions and to her ultimate termination. The U.S. District Court for the District of Nevada dismissed the harassment claim and entered judgment on the jury verdict in favor of the employee on the discrimination claim.

A U.S. Circuit Court of Appeals for the Ninth Circuit panel agreed with the employer's argument that the worker had not provided "direct evidence" that sex was a motivating factor in the employer's decision. The en banc court reinstated the judgment. The court concluded that Title VII does not impose any special evidentiary requirement. It decided that if a worker proves by a preponderance of evidence

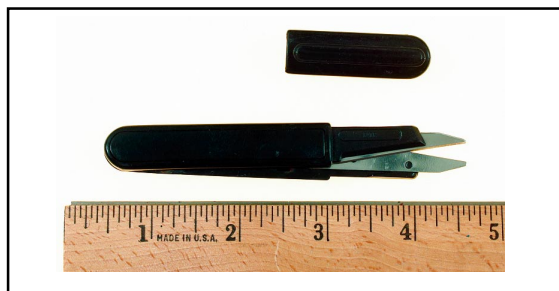
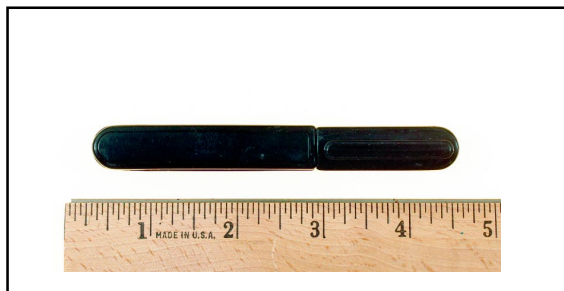
that sex was a motivating factor in the employer's decision or action, the worker is entitled to damages, even when the employer also is motivated by lawful reasons, unless the employer can demonstrate that it would have treated the worker similarly had gender played no role.

The U.S. Supreme Court affirmed the Ninth Circuit, holding that direct evidence of discrimination is not required for a worker to obtain a mixed-motive jury instruction under Title VII. Title VII of the 1964 Civil Rights Act does not require that a plaintiff make a heightened showing through direct evidence. If Congress intended to require heightened proof requirements in mixed-motive cases, it would have included language to that effect in the act. ♦

Unusual Weapon

Scissors-Pen

This object appears to be a pen, but it is actually a plastic body containing sharp metal blades. Law enforcement officers should be aware of the possible threat of this object.



The Bulletin Notes

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



Officer Gray

While on patrol, Officer John Gray of the Sussex County, New Jersey, Sheriff's Office was flagged down by a restaurant employee who advised him of a man choking inside. Officer Gray immediately entered the restaurant and located the individual. After an unsuccessful attempt at the Heimlich maneuver, Officer Gray laid the now unconscious man on the floor and continued abdominal thrusts until the object became dislodged. The individual then regained partial consciousness and began to breathe on his own. After treatment at a local hospital, the victim later was released. Officer Gray's efficient response to this situation resulted in a saved life.



Trooper Wheeler

Trooper Craig R. Wheeler of the Michigan State Police responded to the scene of a house fire; an elderly woman, disabled with a broken hip, was trapped inside. Upon arrival at the home, Trooper Wheeler found flames shooting out of the windows. Without regard for his own safety, he immediately entered through a bedroom window and began to crawl through the house searching each room for the trapped woman. The smoke was extremely thick and the flames continued to consume more of the home. Trooper Wheeler was forced to breathe through his uniform shirt sleeve during the search but then found it necessary to retreat from the burning house. After his partner spotted the victim through a sliding glass door on the other side of the home, Trooper Wheeler broke the glass, rushed inside, and helped the woman to safety. She immediately was transported to the hospital for medical treatment, and Trooper Wheeler continued his selfless service by providing traffic control for the fire department. Trooper Wheeler was instrumental in saving this woman's life and demonstrated bravery and professionalism throughout this incident.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

Official Business

Penalty for Private Use \$300

Patch Call



The patch of the Lynchburg, Virginia, Police Department features the scales of justice and the horn of plenty along with a vase, representing plentiful water, and a train, signifying one of the many transportation crossroads in the city. The Blue Ridge Mountains lie in the background.



The patch of the Fergus Falls, Minnesota, Police Department features the falls of the Otter Trail River, which flows through the city. The river served the city's early settlers who used its power to run saw and flour mills.