FBI Law Enforcement Bulletin

Features

Departments

Jump-Starting a Leadership Team
Dealing with Change and Rapid Loss
By WAYNE MCFARLIN

Law enforcement agencies often view change negatively as they struggle to stay ahead of the challenges they face in rapidly evolving communities. Today, sharp shifts in demographics, unexpected economic swings, or the impact of powerful crime trends, such as the rapid onset of methamphetamine use or

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Mr. McFarlin recently retired as the chief of the McMinnville, Oregon, Police Department.

gangs, can quickly render a law enforcement agency's management plan ineffective, although it may have worked well years ago. As the new millennium began, the McMinnville, Oregon, Police Department found itself in such a dilemma.

Although McMinnville, a city with a population of nearly 30,000, is situated near Oregon's largest urban areas of Portland and Salem, residents also find themselves in a rural county nestled among world-renowned vineyards, surrounded by an eclectic mix of businesses and attractions, and embraced by a vibrant sense of community. McMinnville consistently draws accolades as one of the most livable municipalities in the nation. However, like all growing cities, it has experienced significant transformations in the past decade. Record growth, demographic changes,

and the loss of a major employer has changed virtually every aspect of local government services.

In spite of many progressive achievements, such as becoming one of the first law enforcement agencies in Oregon to achieve accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA), the McMinnville Police Department recognized it had to adapt to stay ahead of the challenges presented by its evolving community. In 2000, the entire agency participated in a group exercise to identify the most critical issues facing the organization. Despite an outdated radio system, an undersized and ill-equipped facility, and staffing levels well below statistical norms, members of the department identified their number one concern as how they were managed.

They perceived a lack of employee accountability, felt confused about the decision-making process, and were frustrated that supervisors did not always work as a team. Additionally, after a decade of few turnovers and infrequent promotional opportunities, the McMinnville Police Department experienced a wave of retirements. With the baby boomer generation reaching retirement age, the agency found itself replacing two-thirds of its supervisory team within about 2 years.

In spite of a bright and enthusiastic group of potential supervisors, limited management experience existed in the agency. Building a skilled and cohesive team became an important challenge. Department leaders devised a plan that clarified supervisory roles, created a promotional process that inspired confidence, implemented a training strategy to shape the evolving group of managers, and reconsidered how the organization communicated as a leadership team and an organization.

Redesigning the Supervisory Structure

Despite the formidable challenge presented by such a significant loss of supervisory experience, the retirements created a unique opportunity for the department to design a

supervisory structure that best fit its changing needs. To this end, the agency sought to develop one that encouraged an open, inclusive, and collaborative organizational culture.

Clarifying roles was a struggle in the beginning. At the first-line supervision level, no clear definition existed between the positions of corporal and sergeant. Although operational supervision, such as directing tactics on crimes in progress or managing serious investigations, generally was done well regardless of whether a corporal or a sergeant was involved, administrative tasks were inconsistently completed. Likewise, at the lieutenant and deputy chief positions, the lack of well-defined roles created inefficiencies and occasional confusion that frustrated personnel. It also caused morale problems among line personnel, made collaborative decision making difficult, and, occasionally, spawned conflict among supervisors. Consequently, the department experienced difficulty coordinating training and development opportunities for personnel, providing timely and instructive performance appraisals, and administering discipline effectively.

Department leaders began updating their current supervisory structure by clarifying the role of the sergeant because they realized that once they

defined this position, they could design the other ranks to work around this critical first-line supervisor. The sergeant became the supervisor of the squad or operational unit with the responsibilities of setting the direction of the squad, evaluating personnel, and making discipline decisions. Once comfortable with this lynchpin position, agency leaders defined the corporal's job description as an assistant to the sergeant, carefully distinguishing the

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differences between the ranks. The corporal would provide operational direction in the field and act as squad leader in the sergeant's absence.

Next, leaders created a vision for lieutenants, the organization's administrators. They eliminated the deputy chief position, dividing administrative responsibilities among the lieutenants who, as commanders, coordinate the "big picture" elements, such as

developing partnerships with other agencies and community organizations, creating and managing interagency agreements, and ensuring quality control and operational effectiveness of the department's public safety mission.

After completion of the job descriptions, leaders updated performance evaluations to ensure that they assessed the key performance areas. During this process, they also revised the format to better communicate performance problem areas in all personnel, which drew significant interest from everyone. The collective bargaining agreement establishes premium pay (e.g., compensation for advanced officer certification and college degrees), which may be withdrawn if an employee fails to meet perfomance standards. Formerly, the evaluation only indicated whether the person met standards, exceeded them, or needed improvement in specific areas. Now, it clearly identifies when an employee is not meeting standards, which may result in a pay loss.

Department leaders included as many people as possible in designing these critical tools (e.g., updating job descriptions and performance evaluations). They also used the management team process, available to all who wanted to attend and provide input, to confirm them as department standards.

Selecting the Right People

The McMinnville Police Department wanted to promote not only skilled, capable leaders but those who held the trust of the organization as well. The promotion process used to fill the first leadership opening, a lieutenant position, resulted in mixed reviews from personnel. The hiring procedures consisted of applicants submitting a resume and participating in oral interviews with a group of law enforcement administrators, community leaders, several sworn and civilian line staff, and the chief. Some employees were enthused with the selection of the successful candidate. However, others did not feel that the process was impartial nor a fair test of administrative or leadership potential.

Recognizing the reality of perception, leaders knew they had to improve their selection system. Therefore, the entire management team became involved in either creating, validating, or administering it. The assistance of nonsupervisory staff helped build credibility in the process and provided an opportunity for personnel development. To decrease candidate confusion, leaders began providing an orientation and explained, in advance, the components of the promotion process, qualification standards, and grading methods. Much of the orientation procedure was devoted to questions from potential candidates, frequently allowing leaders to identify and address oversights among the myriad of details. Clarifying concerns from candidates at the beginning helped avoid controversies and strengthened the processes.

> **...they designed the process to increase communication and understanding and to be conducive to participatory management principles.**

To ensure that individuals promoted had the necessary qualifications, candidates had to pass each graded component of the process with a predesignated score, typically 70 percent, graded on a curve of the participant pool. Then, those qualified in all areas were placed on a promotion list with a predefined life, usually 6 months. The possibility of potential additional promotions encourages those who might have been hesitant about their decision to apply. This also eliminates the occasional need to conduct a second and costly process due to unexpected openings.

As each promotion process concluded and just prior to releasing the results, candidates were assembled and asked to critique the process and offer suggestions for improvements. Obtaining their thoughts about the process while it remained fresh in their minds provided useful, quick feedback and allowed candidates as a group to process the stressful ordeal they had just completed. It also eliminated the tendency for management to dismiss an important criticism as "sour grapes" from an unsuccessful applicant. Leaders documented these comments and incorporated the suggestions in the next promotion process.

Synchronizing the Plan

To focus organizational energy, leaders synchronized the department's strategic plan with the individual career development plans of supervisors and the evaluation process for all agency members. The management team (the supervisory team plus a police association executive board representative) reviews the strategic plan throughout the year and, annually, completely overhauls it in a department meeting attended by all employees. Recognizing that each supervisor has unique, personal, long-term goals, leaders knew that they could not create a cookie-cutter career development plan for

supervisors because some look forward to maintaining their duties in patrol for the rest of their careers, whereas others strive for supervisory assignments, such as detectives, outside of patrol. And, some see their current supervisory positions as only a link to the next promotion. Consequently, the mission, objectives, and organizational strategies to achieve those goals laced into each supervisor's career development plan uniquely match their own charted paths to professional success.

Not only do supervisors evaluate employee achievement by performance standards but they also credit work that makes a significant contribution to an organizational goal or strategic plan procedure. For example, leadership shown in a community policing project or the development of a new public safety program merits special recognition in annual performance appraisals. Additionally, supervisors consider extra responsibilities, such as serving as instructors or chairing the safety committee, that many assume to gain experience.

Growing Great Leaders

Developing a training program seemed the most practical way to ensure that evolving team members shared the same leadership principles. The course began as a modest program of four 1-day training sessions offered over 4 consecutive months. It initially was met with skepticism by some on the supervisory team as most felt too busy to devote an entire day to train as a team. Members, few of whom had received any recent supervisory or leadership training, changed their minds at the end of the first day after an interactive session on situational leadership presented by a management consultant.

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The session allowed the group a unique opportunity to learn as a team, and, after jointly learning critical management principles, members discussed real leadership issues that all were experiencing in the workplace. Sharing and debating various techniques to inspire support for department programs, such as traffic enforcement, that used the leadership principles learned earlier in the day became the highlight of the training for several supervisors. Through these discussions, they realized that their peers often faced the same challenges. The discussion produced a dialogue at a level they had not previously shared; it was an experience they liked. The leadership training sessions continued to slowly build understanding among the group; this evolved into trust among supervisory team members as the meetings progressed. The training increased the knowledge of the individual supervisor while developing esprit de corps in the leadership team.

The four 1-day sessions grew to 8 days of training classes, spanning 8 months. With each new session, students discovered topics that generated interest in additional training. Three different members of the supervisory group planned and facilitated each meeting. Not only did this help spread the burden of putting the training together, it proved to be a great development tool and offered a practical opportunity to use many of the team-building techniques discussed in the sessions.

Facilitators defined goals, incorporated issues from the workplace into the agenda, and worked with the instructor to coordinate the day's training. The three-member team identified a homework assignment or reading to do prior to class. The sessions were held away from

the police department in comfortable surroundings, usually in a large, converted house used for community meetings. Meals were catered to encourage relationship building among the supervisors and interaction with the instructor.

The first year's curriculum included such topics as situational leadership, organizational culture, performance management, tactical leadership (a 2-day session), facilitation of change, and strategic planning. In addition to the supervisors' training program, the city's human resource consultant offered a number of supervisory and leadership training opportunities for all city employees. One example is the leadership book review program held several times a year. The department purchases books on

various topics related to leadership issues, recommended by the consultant, for any agency employee who intends to participate in the program. The consultant facilitates a book review session a few months after the books are distributed. In spite of the great learning opportunity, so far, only a handful of employees have taken advantage of the free books. By using the principles described in these books in management team, morning staff, and other meetings, the department hopes enough interest in this reading material will increase participation by a wider group of aspiring leaders.

The follow-up training plan for the leadership team includes participation in the management training offered by the Oregon Department of Public Safety

Standards and Training and completion of the Portland State University's Hatfield School of Government Management and Executive Leadership programs. These programs meet 2 days per month over a 9-month period (October through May) and are instructed by university professors and subject-matter experts. Nearly all sergeants have completed the management program. A lieutenant is now attending the executive leadership program, whereas two civilian managers completed the management program.

Rethinking Communication

After redesigning the supervisory structure, selecting the right people, synchronizing plans, and training new leaders, management personnel recognized that they had one

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McMinnville's Leadership Book Review Program
Suggested Readings

- Marcus Buckingham and Curt Coffman, *First, Break All the Rules* (New York, NY: Simon and Schuster, 1999)

- Daniel Goleman, Richard Boyatzis, and Annie McKee, *Primal Leadership: Realizing the Power of Emotional Intelligence* (Boston, MA: Harvard Business School Press, 2002)

- Kerry Patterson, Joseph Grenny, Ron McMillan, Al Switzler, and Stephen R. Covey, *Crucial Conversations: Tools for Talking When Stakes are High* (New York, NY: McGraw-Hill, 2002)

- Martin Linsky and Ronald A. Heifetz, *Leadership on the Line* (Boston, MA: Harvard Business School Press, 2002)

important puzzle piece to improve—communication. Their paramilitary organization relied too heavily on linear (chain-of-command) communication. Every layer of rank filtered and inadvertently altered, albeit ever so slightly, the message sent, whether it was an operational directive from administration or a plea for help from the line. The 24-hour operation inherent in nearly all police departments further challenged communication because a time and place when all of the leadership team was naturally scheduled together never occurred. In spite of the improvements in all other aspects of the leadership and management practices, communication became a problem in effectively coordinating as a leadership team.

Because department leaders wanted the management team as the centerpiece of their decision making, they designed the process to increase communication and understanding and to be conducive to participatory management principles. Nonsupervisory staff are invited to attend the monthly management team meetings mandated for supervisors. However, when few nonsupervisors accepted the invitation, managers asked the police association executive board to assign one of its members to attend the management team meeting. When an employee

develops a proposal for the team, supervisors ask them to attend the meeting to personally present it. Agency leaders strive to have at least two nonsupervisors attend these meetings, frequently asking for their input on issues under discussion and encouraging them to participate.

Supervisors learned to carefully document decisions made in management team meetings

> **"...candidates were assembled and asked to critique the process and offer suggestions for improvements."**

to ensure effective follow-through and increase the credibility of the decision-making process. Management team minutes are intentionally brief to encourage people to read them, but they also are carefully structured to include a short explanation of each topic, the team's decision (identified by a capitalized and bolded **"ACTION"** so as not to be missed) and deadline for implementation, and the person assigned responsibility for ensuring compliance. Each management team meeting begins

with a review of pending actions from previous sessions to ensure decisions are implemented.

In spite of the efforts made to document management team activity and advise all staff by e-mail, supervisors discovered that many employees did not read the notifications. Now, leaders gather their squads to discuss agenda items and get input prior to the meetings, as well as explain what occurred after them. Supervisors who consistently practice these pre- and postmeeting discussions receive positive feedback from their personnel for including them in the decision-making process. Employees report that this makes them feel valued, and they better understand decisions even if they may not agree with them. Project and committee leaders also document significant project milestones and committee work. These updates are distributed to all personnel via e-mail, and discussions supplement them at briefings and staff meetings.

Although management team meetings proved effective in addressing routine organizational decisions, supervisors wanted a forum where they could discuss sensitive personnel issues with their peers. The department chose to convene a supervisor-only meeting immediately after the management team concluded its session. The agenda

usually consists of a roundtable discussion where each person can discuss a particular personnel issue. This practice allows the supervisory team to troubleshoot problems and learn how to deal with a variety of personnel challenges without having to experience them first. It also ensures that all supervisory staff are aware of issues their peers are addressing so that they can better support those efforts. Further, these meetings often go beyond mere discussion and debate approaches. For example, supervisors frequently practice techniques or strategies by role-playing with another team member who acts as the employee. One sergeant recently said that the role-playing improved his confidence in confronting a defiant staff member, and he felt far more effective in addressing the problem employee.

In spite of years of improving written and verbal communication among supervisors, the department continued to experience difficulty making effective decisions on acute organizational problems that could not wait for a monthly management team meeting. For example, if an officer working the night shift was injured and unable to work for several weeks, staff would need to be reassigned quickly, which can impact other department operations. For these urgent

decisions, the agency designed the supervisory "huddle." Supervisors who need help can immediately pull together all available peers in a short, 5- to 10-minute huddle to troubleshoot the problem. Naming them huddles ensures that these gatherings do not turn into meetings. They occur several times a week and usually include both sworn and civilian supervisors. In addition to making a more informed decision, a larger group of supervisors knows how the decision was made and are better able to answer any questions that may arise.

> " ...management personnel recognized that they had one important puzzle piece to improve— communication. "

Critical Components

Three critical components required for success in the development effort include support from the city manager, excellent human resource technical assistance, and people with the courage and willingness to try new ideas. McMinnville's city manager supported the budgetary commitment for

the supervisors' training program and the follow-up management and executive leadership programs at Portland State University. Although the cost of an in-house training program alone reached nearly $8,500, the cost for each person per training day came to less than $100—a bargain measured by the learning that occurred. Spending a comparable amount on typical outside training opportunities for supervisors could not produce the benefits of delivering this tailored curriculum to the management team as a group. This approach resulted in leadership synergy not previously experienced by personnel.

The technical assistance that shaped a rough training concept into a comprehensive development experience came from the city's human resource consultant. For many years, she has inspired innovative training and progressive personnel practices, such as the leadership book review program and frequent updates of job descriptions, that have made the city and the police department better prepared to implement change. Employees, however, were the most critical element affecting the success of the jump-start effort. Eager to learn and become better leaders, they became the fuel that fed much of the expansion of the development efforts. Embracing change and building a new

organizational culture took courage and commitment.

Conclusion

In spite of the cost, time commitment, and demands of many other responsibilities, the McMinnville Police Department's jump-start effort has paid off. Now, supervisors have a better understanding of what is expected of them, how to fulfill their responsibilities, and how to communicate and work with each other to accomplish the agency's mission.

As individuals and as a group, the supervisory team has discovered that leadership development efforts have gone beyond a group of personnel development projects started several years ago; it has evolved into a leadership-building process. The leadership team already has begun shaping a new vision for the organization.

For example, by recommitting to the mission of service, it is focusing much more of its energy in providing service to personnel through enhanced communication and better responses to employee needs. Team members are involving their personnel in problem-solving discussions, such as designing and testing a new mobile data computer system. They also are working with staff members individually to address performance concerns or create career development plans.

Further, these changes have altered the service that the department provides to the community as personnel strive to become more connected with citizens. In the past, community outreach was assigned to one or two people, but, now, the entire leadership team and even a number of first-line staff routinely reach out to residents, identifying root causes of crime and chronic nuisances and collaborating on long-term solutions. This has resulted in

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dramatic decreases in illegal and high-risk alcohol use on the college campus, complaints of nuisance crimes, hazardous behaviors by young adults who frequent the downtown area, and daytime crime by truant youth.

With each new organizational process, the leadership team creates or improves, and, in each new system they manage, fresh, progressive

fingerprints are left on the McMinnville Police Department. Perhaps, as important as managing today's organization, these new leaders are building a positive and collaborative model for future leaders to emulate.

The agency continues to refine its leadership development efforts as team needs constantly change. The evolving leadership team now identifies department needs and projects based on its new awareness of management principles. The guidance displayed by supervisors has energized the agency's line staff to demonstrate a greater commitment toward fulfilling the department's mission. With the organizations's rich talent pool, future management of the McMinnville Police Department is in good hands.

Many benefits have resulted from jump-starting the new leadership team. The development components introduced in the last few years have created synergy, and team members work with each other to create organizational momentum. The process is reminiscent of a perpetual motion machine—once set in motion, it creates its own energy and will continue to meet each of the requirements for maintaining all of the accolades that will ensure McMinnville remains one of the most livable cities in America. ✦
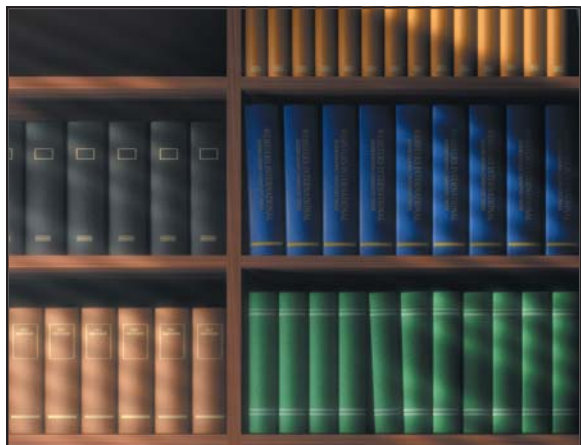
Operational Mid-Level Management for Police, third edition, *by John L. Coleman, Charles C. Thomas Publisher, Springfield, Illinois, 2002.*

Operational Mid-Level Management for Police is a book researched and written by an experienced officer. The author has provided a functional and practical, as well as theoretical, information-based approach for operational mid-level law enforcement managers to improve productive performance in themselves and their line subordinates. He has advanced the book's information and its application to law enforcement beyond the traditional performance in serving the community clientele and enhancing subordinate personnel's overall job performance.

This well-researched book entails a dynamic flow for leadership and management to expand the knowledge of its readers that will improve the mid-level manager's own daily performance behaviors. It addresses the need for mid-level managers to be proficient in analytical problem solving and decision making, concerning controls and behavior skills of their own that are inseparable from job performance.

Various sequential components of the analytical and decision-making processes are given as they relate to the productivity of mid-level law enforcement managers. This ranges from the detection and recognition of their own personal and performance problems, motivation and distribution of workloads, and managerial elements of task accomplishment in terms of followership and command execution to the assumption of an atmosphere conducive to positive subordinate performance.

The research sets forth pressures that affect logical judgments in a manager and subordinate performance, such as anger, environmental factors, and unfamiliarity of situations, all of which impact decision making. It offers goal-oriented leadership as procedures in harmonizing essential tasks in the department at the mid-level of management and identifies alternative methods of describing and establishing task obligations.

The book identifies six core responsibilities of the mid-level manager and six rules for their delegation critical to the position and the interface with upper management, including subordinate development. It also documents interesting correlations and causations in subordinate performance, such as addressing sexual harassment, work discrimination, and rights of subordinates from a mid-level management position.

A comprehensive chapter on the forms and methods of communication involves most any aspect of upward (feedback), downward (direction), lateral (peer), and diagonal (not in the chain of command) communication. Another chapter on leadership vision enhances a manager's effectiveness through creative thinking on influencing subordinates' performance to elevate their efforts to much higher levels of productivity and personal behavior.

The chapter also defines personnel usage strategies, as well as internal and external relevant factors, when preparing a flexible plan or blueprint to eliminate wasted work efforts. An example on strategy projection and charting of personnel use toward that projection supports this blueprint. The book also contains a chapter on the obstacles to effective appraisals, their common errors by mid-level managers, and the establishment of a viable appraisal process policy with an example of a 10-criteria credible evaluation.

While the book has several strong points, three stand out. First, the author provides examples of mid-level management behavioral measures from an upper-level management perspective. Second, he presents a 10-step subordinate counseling session structure. And,

third, he includes a four-step model process for managerial training.

Operational Mid-Level Management for Police is highly recommended for reading and for practical use by mid-level law enforcement managers in all types of jurisdictions. It is essential reading for those involved in management selection, assessment center operation, policy and procedures writing, civil service and promotional examination preparation, and management training and development.

Reviewed by
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Wanted: Book Reviews

The *Bulletin* invites criminal justice professionals to submit reviews of recently published nonfiction books they have read on topics relative to their field of expertise for possible inclusion in its Book Review department. The magazine publishes only positive reviews of between 350 and 500 words or $1\frac{1}{2}$ to 2 pages double-spaced. As with article submissions, the *Bulletin* staff will edit book reviews for style, length, clarity, and format.

Book reviewers should include two or three compelling points that the author makes, along with the complete title of the work; the names of the authors or editors; and the publishing company, city and state, and publication date. As a guide, the staff suggests that reviewers examine book reviews in past issues of the *Bulletin* to acquaint themselves with the magazine's requirements. Reviewers should submit their book reviews typed and double-spaced on $8\frac{1}{2}$- by 11-inch white paper with all pages numbered. Reviewers should include an electronic version of the review saved on computer disk. Send book reviews to:

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Perspective

Community Policing
Implementation Issues
By John Ellison

Community policing has become so popular that thousands of law enforcement agencies in the United States practice it in some form. Some departments require that their officers simply get out of their cars and walk around business and residential areas for a period of time, while others have their officers ride bicycles, patrol an area on foot, or interact with organized neighborhood associations. In any case, the basic concept of community policing remains: to bring the community and the police closer together and improve rapport.[1]

Community policing has become the new paradigm for the profession. Simultaneously ambitious and ambiguous, it promises to radically change the relationship between the police and the public by addressing underlying community problems and improving the living conditions of neighborhoods. One reason for its popularity is that community policing, a plastic concept, means different things to different people. Many perspectives on community policing exist, and each is built on assumptions only partially supported by empirical evidence.[2]

The promises of community policing are many. They include—

- strengthening the capacity of communities to resist and prevent crime and social disorder;

- creating a more harmonious relationship between the police and the public, including some power sharing with respect to police policy making and tactical priorities;

- restructuring police service delivery by linking it with other municipal services; and

- reforming the police organization model by creating larger and more complex roles for individual officers.

This new style of policing is said to produce more committed, empowered, and analytical police officers; to flatten the police hierarchies; and to open the process of locally administered justice to those who often are the object of justice decision making. This shift also makes crime prevention, not crime suppression, the ascendant goal of policing.[3] Additionally, community policing implies the goal of fostering a consumer orientation for law enforcement organizations much like that of most businesses, which stress customer satisfaction.[4]

Agency Issues

Problems can emerge when an agency starts to shift from traditional policing to community policing. Responses from critics within the organization often include, "We've been doing this for years." But, these individuals have not grasped the entirety of the community policing philosophy. Subtle but significant differences exist between traditional past practice and the philosophy of community policing. It is not the simple tasks of meeting with citizens, extending a friendly wave, or dealing with quality-of-life issues but the paradigm shift within the infrastructure that supports community policing that is radically different.[5]

Chief Ellison formerly served as the chief of the West Linn, Oregon, Police Department.

The successful adoption of community policing for any agency requires three fundamentals. First, the organization must integrate the community policing philosophy throughout and not view it as a new, temporary project. Second, the agency must create a working environment that allows new values to emerge in its management and tactics. Third, community policing must overcome the subculture of law enforcement, one focused on danger, authority, and efficiency (the values of traditional policing).

Implementing community policing represents an attempt to overcome the traditional approach, which usually has a narrow enforcement and crime-control, or crime-suppression, focus. Traditional policing centers on serious crime as opposed to maintenance of community social order or general service delivery. Seen as "crime fighters" under this model, police tend to shy away from any form of social work activity. The traditional model of law enforcement focuses on catching the "bad guys," operates reactively, and seeks to remain autonomous from external influence.

The philosophy of community policing has a focus that includes public safety, crime, fear of crime, and community quality of life. Communities participate in shaping police objectives and intervention, as well as evaluating them. Under this model, officers become "peacekeepers."

The absence of a strategic emphasis also has implications within police departments. Without a road map of where the agency is going, police managers will find it difficult to muster the support of officers for changes in police services or in their styles of interaction with the public. Moreover, without announced direction, those who would counter such efforts are relatively free to passively, and at times actively, resist those changes. This opposition to change represents a major obstacle to the implementation of community policing. It can come from officers who may believe that community policing is soft on crime, who do not accept a crime-prevention versus a crime-fighting role, and who cling to a union and procedures to better control their work and workplace.[6] In many respects, this clash continues even after almost 20 years of community policing. Traditional culture continues to dictate police independence and crime fighting, while modern philosophy emphasizes using open-system approaches, building partnerships, and solving problems. The implementation of community policing truly has become a battle for the hearts and minds of agency members.

> **Problems can emerge when an agency starts to shift from traditional policing to community policing.**

Officer Issues

Of all of the issues associated with implementing community policing, those concerning individual officers prove the toughest to overcome. Resistance to change constitutes the inevitable byproduct of any social experiment, regardless of the setting. Employees, whether laborers or professionals, tend to oppose changes that affect their jobs, and police officers are no exception. Adding to this inherent reluctance to embrace change is the fact that police officers traditionally are conservative in nature, making them even more adverse to change. Their work heightens the intrinsic tendency toward a more moderate approach. On a daily basis, officers face a plethora of human crises, focusing almost exclusively on the results of human failure and error, not success. They must perform their duties in a climate of stress, responding to one emergency after another. Complicating the role further is the mandate to enforce the law "as it is," not always as the community thinks the law "should be."[7] These factors can lead to feelings of hostility toward a new program.

The change to community policing is not simple for officers. For example, at the academy and during field training, officers learn that the most important activity is to patrol their assigned areas. While patrolling, they must perform certain measurable functions, such as checking buildings, impounding vehicles, and writing tickets. They also learn that when dispatched to a call, they must take care of the problem quickly and "get back in service as soon as possible" to be available for the next call.[8] When an agency adopts the community policing philosophy, these same officers now must change the way they do their jobs. Their supervisors tell them to "stay out of your car longer and take your time in dealing with the concerns of citizens." But, based on these officers' socialization, such changes "don't feel right." Personnel wonder if this new policy is legitimate.

Agencies must patiently teach these changes. Officers need commitment and leadership by example. Police departments cannot achieve effective problem solving and community partnerships until the beliefs, perceptions, attitudes, and behaviors of individual officers become more compatible with the redefinition and expansion of their job assignments prescribed by the new model. Ignoring police personnel and organizational constraints placed on their activities can risk program failure due to apathy, frustration, resentment, perceived inequity, fear of change, and other factors that mitigate against the successful implementation of community policing.[9]

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Community Issues

Community policing does not work for every community. Participation appears much more likely in homogeneous, low-crime, middle-class neighborhoods. Communities in higher-income, less crime-prone neighborhoods may easily

mobilize in the face of a dramatic crime or a perceived threat to community order. Once mobilized, however, sustaining community participation may prove difficult.[10] The dynamics of community and individual participation in community policing are just now coming to light.

For the successful implementation of community policing, the department and the community first must engage in an open and straightforward discussion. This consultation needs to define the roles the police and community have in establishing order. Without this dialogue, the community often will have expectations of the police solving every issue that arises. Instead, the community must view the police as a clearinghouse for resources—not as the only resource—that ultimately addresses their crime, fear of crime, and livability concerns. The other issue to discuss should impart the understanding that community policing still enforces the laws of the state and local jurisdiction. As an example, citizens may feel that community policing means only visitors and not local citizens will receive citations for speeding and other violations.

The community, as well as the agency and other stakeholders, need to receive initial and ongoing training in community policing, preferably with members of the law enforcement agency. This gives everyone an opportunity to understand each other's points of view and to work together in a controlled environment before attempting to solve problems.

Local Government Issues

Before introducing community policing, law enforcement administrators must communicate to everyone what it is and enlist their support. Officers, citizens, and elected officials alike must understand clearly what is being done and why.

Some tend to assume that everyone knows and understands what community policing is because it has existed for over 20 years, but this is not the case. More often than not, communities charge their police executives with implementing community policing without understanding the philosophy and the "change" that ultimately will affect an organization and the community. It cannot be denied that any attempt at change carries risks; the more massive the change, the greater the risk.

Organizations, particularly those with bureaucratic managements as typically found in police agencies, do not easily accept questioning traditional paradigms. Thus, proponents of the change must understand that being on the forefront involves risk. In light of this, government officials must fully support the personnel implementing the change and vocally defend the program if problems arise.[11] They also must do their part to work toward improving the quality of life for city residents, both rich and poor. Advocacy that calls attention to the signs of neighborhood decay lies within the power of city government. Failure to maintain streets and parks, to remove abandoned cars and houses, and to enforce building codes can contribute significantly to neighborhood deterioration. Civil administrators also must maintain an equal commitment to quickly responding to citizen complaints. In short, the community policing partnership must be triangular—residents, police officers, and city administrators.[12]

> " A strong foundation of thought, planning, and vision is essential to begin the change process. "

Conclusion

American policing has undergone a transformation in the past quarter century as organizations have shifted from bureaucracies toward more organic structures and operational models, accompanied by an attempt to redefine the proper role of the police within communities. The view that officers are chiefly "crime fighters" and "crook catchers" has become supplanted, or at least supplemented, by the notion that they provide a variety of vital community and social services, not all of which relate to crime. These changes have emerged through the development and expansion of community policing.[13]

Literature on organizational change has suggested that it is only possible when employees "buy in" to a management reform.[14] Research has demonstrated that employees' commitment to community policing is linked to their subsequent behavior and their level of cynicism. Consequently, fostering positive attitudes toward community policing among law enforcement personnel is a necessary condition if it is going to work. While this model has become increasingly accepted as the future direction of policing, it remains an amorphous and fragile concept. In some locales where it had a strong start, the inertia has slowed and the movement regressed. In other locations, community policing has become institutionalized as the accepted practice, even after leadership changes in the departments. Many other agencies are just now exploring the idea, learning that understanding and communicating the philosophical nature of the concept is as difficult as grasping smoke. This inherently leads to confusion and uncertainty that retards maturation of the change process until the officers, supervisors, citizens, and politicians can clearly see their role and the direction this change will take them in. A strong foundation of thought, planning, and vision is essential to begin the change process. Without that, failure will be on the horizon.[15] What, then, is the model of policing in the future? " It is a plan in harmony with the culturally pluralistic, community-concerned, values-diverse population of the 21st-century world, where law and order can no longer be

imposed but must result from negotiation and agreement of the community. Policing in the future will include programs to detect problems early and, through partnerships of police and helping agencies, to take immediate action to resolve conflicts and dysfunctional situations."[16] It remains to be seen if society still will refer to this approach as community policing. ✦

Endnotes

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[2] Jack R. Greene, "Community Policing in America: Changing the Nature, Structure, and Function of the Police," *Policies, Processes, and Decisions of the Criminal Justice System* 3; retrieved on January 28, 2005, from *http://www.ncjrs.org/criminal_justice2000/vol_3/03g.pdf*.

[3] Ibid.

[4] Brendan Maguire and Polly F. Radosh, *The Past, Present, and Future of American Criminal Justice* (New York, NY: General Hall, Inc., 1996).

[5] David L. Carter, *Reflection on the Move to Community Policing*; retrieved on January 25, 2005, from *http://www.wsurcpi.org*.

[6] Supra note 2.

[7] Supra note 1.

[8] Supra note 5.

[9] Supra note 2.

[10] Supra note 2.

[11] Supra note 5.

[12] Supra note 1.

[13] Joseph A. Schafer, "I'm Not Against It in Theory: Global and Specific Community Policing Attitudes," *Policing: An International Journal of Police Strategies and Management* 25, no. 4 (2002).

[14] Ibid.

[15] Supra note 5.

[16] Supra note 4.

Executive Leadership Education

> *The most effective weapon against crime is cooperation—the efforts of all law enforcement agencies with the support and understanding of the American people.*
>
> —J. Edgar Hoover

An integral part of strategic leadership development in law enforcement is the fostering of cooperation and liaison among policing agencies at all levels throughout the world. The FBI provides many internationally recognized training initiatives, particularly in the field of leadership education. In addressing the importance of these efforts, it is imperative to understand the genesis of former FBI director J. Edgar Hoover's vision, which can be found in an inscription on a memorial to him at FBI Headquarters in Washington, D.C. It reads, "The most effective weapon against crime is cooperation—the efforts of all law enforcement agencies with the support and understanding of the American people."

Mr. Hoover's vision was first realized with the inception of the FBI National Academy (FBINA) in 1935. The FBINA is a 10-week residency program at the FBI Academy for U.S. and international law enforcement leaders that serves to improve the administration of justice at all levels. In addition to the FBINA, the FBI sponsors four significant leadership programs targeting chief executives of law enforcement agencies. This year marks the 30th anniversary of the FBI's first such program, the National Executive Institute (NEI), which is designed for agency heads of departments with a minimum of 500 sworn personnel and a citizen population of at least 250,000. The Law Enforcement Executive Development Seminar (LEEDS) began in 1981 and is tailored for agency heads of departments with 50 to 499 sworn officers and a community population of at least 50,000. The Regional Command College system rounds out this three-tier approach—20 regional seminars are held each year to provide professional training to executives of agencies with less than 50 sworn officers.

The most recent initiative by the FBI is the Law Enforcement in a Counterterrorism Environment (LinCT) program. With the events of September 11, 2001, the context for much of the FBI's instruction and liaison necessarily changed. This endeavor led to the creation of the LinCT program, which is a collaborative effort with the Police Service of Northern Ireland and the Scottish Police College with the assistance of Harvard University and St. Andrews University. Presently, a Pacific Rim LinCT course is in the developmental stages and will include law enforcement leaders from the United States, Canada, Australia, and New Zealand.

For more information about any of these programs, please contact the training coordinator in your local FBI field office. Addresses and contact numbers for each field office can be found at *http://www.fbi.gov/contact/fo/fo.htm*. ✦

Dr. Larry "Nick" Nicholson, program manager in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Deaths During Police Intervention

By RICHARD PARENT, Ph.D.

A 35-year-old male with a history of bipolar disorder fatally stabbed his 9-year-old son on the front lawn of the family residence. After shouting that he had "killed Satan," he began removing most of his clothing. Summoned to the scene, six officers approached the irrational subject. They employed pepper spray to gain control of the combative male, handcuffed him, and "hog-tied" his legs to restrain him while they placed him in the rear of a police vehicle. As this occurred, the man suffered a massive heart attack and died. A subsequent coroner's inquest determined that his death resulted from excited delirium.

Two police officers responded to a report of a "male acting crazy and taking his clothes off." When they arrived at the scene, they saw the man, wearing only his underwear, standing in the street. When the two officers tried to reason with him, a fight ensued. Several people in the area came to the aid of the officers in their attempt to arrest the violent, combative individual. Upon achieving control of him, the officers handcuffed the man who suddenly went into coronary arrest. The officers administered CPR but to no avail. A subsequent coroner's investigation determined the cause of death as a cocaine overdose.

The author presents these two cases as examples of the more than 800 he examined in

his recent study of police shootings in the United States and Canada.[1] During this research, he found that on several occasions, official government data and coroner inquest reports erroneously included deaths that occurred during police intervention with fatalities pertaining to police firearm discharges. Examples of the causes of deaths occurring during police intervention included excited delirium, positional asphyxia, and cardiac arrest.

Unfortunately, the nature of police work limits the options and time available to officers to effect successful intervention strategies when dealing with violent and combative individuals. Sometimes, deaths result regardless of the good intentions and sound techniques used by officers on the scene. The author shares his research findings to aid the law enforcement profession in determining ways to reduce such tragedies.

Excited Delirium

Excited delirium refers to individuals in a state of temporary mental confusion and clouded consciousness who display unusual, bizarre behavior and may be emotionally charged, under the influence of a drug, mentally ill, or affected by a combination of these factors. In many instances, such people come to the attention of police personnel as a consequence of extreme behavior, including violence, recklessness, and inappropriate removal of their clothing.

Upon intervention, officers typically deploy less lethal force techniques in an attempt to control and restrain these individuals. Once they subdue them, police personnel handcuff and may need to restrain them further by hog-tying their legs together or by strapping them to a stretcher or board. This additional restraint depends upon an individual's continued violent and combative behavior, as well as issues surrounding transportation to either a police lockup or a medical facility.

For example, handcuffed subjects attempting to kick out the rear window of police vehicles during transport to jail generally will have the additional restraint of having their legs hog-tied. The rationales for this procedure include protecting officers from assaultive behavior, reducing or eliminating prisoners' self-inflicted injuries, decreasing damage to police transport vehicles, and minimizing the potential for escape.

In some instances, a violent and combative individual must be transported to a medical facility for treatment. In these cases, the person usually is strapped to a stretcher and transported in an ambulance to the appropriate facility. Unfortunately, it is during the restraining and transporting process that some subjects suddenly experience respiratory

" **Examples of the causes of deaths occurring during police intervention included excited delirium, positional asphyxia, and cardiac arrest.** "

Dr. Parent, a sergeant with the Delta Police Department, is the manager of Research and Academic Development at the Justice Institute of British Columbia, Canada, Police Academy.

Symptoms of Excited Delirium

- Overt demonstration of violent, agitated, and combative behavior
- Exhibiting psychosis, such as hallucinations and delusions of grandeur or persecution
- Possibly under the influence of stimulant drugs that include cocaine
- Hyperthermia (extremely high temperature)
- Great strength and nonpain compliance
- Talking incoherently and failing to respond to simple commands
- Sudden collapse and death, which may result during the application of physical restraint

arrest resulting in death. In other instances, people may suddenly lapse into respiratory arrest and linger in a comatose state for a prolonged period of time causing medical complications, which ultimately lead to death. In all of these situations, the resulting death or extensive hospitalization is attributed to the police intervention by way of the application of less lethal force techniques, including methods of physical restraint.

Positional Asphyxia and Cardiac Arrest

In addition to excited delirium deaths occurring during police intervention, frontline police personnel face the additional challenge of preventing deaths resulting from positional asphyxia and cardiac arrest. In these instances, death results when the positioning of an individual's body interferes with the ability to breathe or when someone suddenly suffers cardiac arrest due to the exertion associated with a foot chase or physical confrontation.

In the case of positional asphyxia, the arrest or restraint of a violent and combative

> " *In some instances, a violent and combative individual must be transported to a medical facility for treatment.* "

individual may inadvertently result in the compression of the trunk area of the person's body. This will serve to limit chest movement and may restrict the diaphragm area, preventing effective breathing. In some instances, subjects being arrested may die of asphyxiation.

As for cardiac arrest, an offender avoiding apprehension or struggling with officers may unexpectedly suffer a heart attack. The high level of exertion associated with a foot chase and subsequent struggle may cause respiratory strain and a dangerous heart-rhythm disturbance, ultimately resulting in cardiac arrest. This situation occurs more often when individuals have preexisting heart or respiratory disease or are under the influence of illicit drugs.

An additional factor that may compound this "flight and fight" situation involves the application of less lethal weaponry by police, such as Tasers, chemical agents, or empty-hand compliance techniques. The use

of less lethal weapons upon noncompliant fleeing felons may have a precarious impact upon vital organs, including the heart and lungs.

Intervention Techniques to Minimize Risk

Police personnel intervening during an incident of excited delirium should follow certain precautionary measures during the arrest and restraining process. In this regard, officers should remain cognizant of such issues as—

- the amount of time during which the restraint is applied;
- the method of restraint; and
- the body position of the restrained individual during transport.

Continued struggling, as well as prolonged restraint, likely will cause a violent individual to suffer severe exhaustion that may result in sudden death. To reduce such an outcome, officers should employ the following intervention techniques when confronting individuals displaying characteristics associated with excited delirium:

- Officers should summon an ambulance to the scene of all incidents involving individuals displaying signs of excited delirium in the event that they lapse into sudden cardiac arrest.

- If the situation permits, responding law enforcement personnel should contain the irrational individual until additional officers and emergency medical workers arrive.
- The deployment of pepper spray often has little effect on such people and may only aggravate the situation facing the officers.
- Officers should consider restraining methods, such as hog-tying, as a last resort.
- Officers should avoid placing subjects in the prone position if at all possible. If they must use it as a means

of taking down an armed individual, they should minimize its duration. Importantly, the prone position may aggravate a person's anxiety level, as well as prevent the observation and monitoring of vital signs that include the level of consciousness.

- Upon achieving control and restraint, officers should transport the subject in an ambulance directly to a medical facility for diagnosis and treatment.
- Officers should use police vehicles to transport such people only after they have

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Case Study

An individual attempted to cash an obviously stolen check at a local bar. When staff at the bar refused to cash the check, the subject pushed an employee, grabbed her purse, and fled on foot. Three off-duty officers, as well as other bar patrons, witnessed the event and gave chase. Upon being confronted, the offender reached into his jacket as if he had a weapon, advising the individuals to back off. Eventually, they cornered the subject, and a physical altercation developed during which officers restrained and handcuffed him. However, within 2 minutes, the subject began to lose consciousness. Officers summoned emergency medical personnel who pronounced him dead at the scene and attributed his death to a cocaine overdose.

Case Study

Three officers responded to a complaint of a male running in and out of traffic. As they arrived at the scene, an ambulance crew was dealing with an individual, wearing only a pair of jeans, lying on his back in the middle of an intersection. The man was screaming and slapping his fists against the roadway. As the emergency medical workers retrieved a stretcher from the ambulance, the male abruptly removed his pants, stood up, and ran naked down the street. With the officers in foot pursuit, he ran to another intersection and, once again, laid down. As one officer approached the irrational subject, a physical altercation ensued. The officers were having difficulty controlling the male until additional police personnel arrived at the scene to assist in physically restraining him. To do so, officers placed the man face down on a stretcher, strapped him into place, and put him in the ambulance. As this occurred, the subject continued to struggle against the straps. While being transported to a nearby hospital, he lapsed into respiratory arrest. Ambulance personnel administered CPR and briefly stabilized the man. However, at the hospital, he lapsed into a coma and died 2 days later.

been stabilized and released from a medical center.

To prevent incidents of positional asphyxia, police personnel should try to avoid pressing down on the trunk portion of the body during restraint. A safer method of achieving control of a combative individual involves restraining the subject's limbs. Upon restricting the movement of the person's arms and legs, it becomes possible to bind and restrain the ankles and wrists. This method of restraint proves considerably safer than alternatives that include kneeling on someone's back.

Conclusion

The author's research points out to officers the importance of recognizing that some methods of less lethal force and body restraint may increase the risk of death. These findings also illustrate the complexities that surround police intervention of people in a state of temporary mental confusion and clouded consciousness. These individuals may be emotionally charged, physically unfit, under the influence of a drug, or mentally ill. In some instances, they may experience a combination of these factors.

Unfortunately, law enforcement officers are placed in the precarious situation of having few options and little time to affect successful intervention strategies. As society's protectors, they must control violent, combative people who may not understand officers' good intentions in attempting to keep them from hurting themselves and others. This sometimes results in tragedies that law enforcement professionals sadly must endure in their efforts to safeguard the communities they serve. ✦

Endnotes

[1] Richard Parent, "Aspects of Police Use of Deadly Force in North America: The Phenomenon Of Victim-Precipitated Homicide" (Ph.D. diss., Simon Fraser University, Burnaby, BC, 2004); and William A. Geller and Michael S. Scott, *Deadly Force: What We Know— A Practitioners Desk Reference on Police-Involved Shootings* (Washington, DC: Police Executive Research Forum, 1992).

Domestic Violence

Family Violence Statistics: Including Statistics on Strangers and Acquaintances compares family and nonfamily violence statistics from victimization through the different stages of the justice system. Family violence is defined as all types of violent crime committed by an offender who is related to the victim and includes spousal abuse, parental violence against a child, and violence among other family members. Nonfamily relationships used for comparison include boyfriends and girlfriends, friends and acquaintances, and strangers. Data are drawn from victimization surveys, official police statistics, state and federal court statistics, and surveys of inmates in state prisons and local jails. Highlights include the following: family violence accounted for 11 percent of all reported and unreported violence between 1998 and 2002; about 22 percent of murders in 2002 were by family members; and of the nearly 500,000 men and women in state prisons for a violent crime in 1997, 15 percent were there for an act committed against a family member. This report is available online at *http://www.ojp.usdoj.gov/bjs/abstract/fvs.htm* or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Indian Matters

The National Institute of Justice (NIJ) presents *Public Law 280 and Law Enforcement in Indian Country - Research Priorities*. Passed in 1953, Public Law 280 (PL 280) gave jurisdiction over criminal offenses involving Native Americans in Indian Country to certain states and allowed other states to assume jurisdiction. Subsequent legislation allowed states to retrocede jurisdiction, which has occurred in some areas. Some PL 280 reservations have experienced jurisdictional confusion, tribal discontent, and litigation, compounded by the lack of data on crime rates and law enforcement responses. This NIJ report summarizes the current status of PL 280 jurisdiction, identifies the key issues, and lists areas for further research and action. This publication is available online at *http://www.ojp.usdoj.gov/nij/pubs-sum/209839.htm*.

*Unidentified
Homicide Victim*

On October 24, 2003, deer hunters found the body of a woman lying face down in a wooded area off Devil Dog Road about 1 mile south of Interstate 40 and 6 miles west of Williams, Arizona. This area is a popular entrance into the Grand Canyon National Park. The victim died from a single blow to her head and likely was killed someplace other than where her body was discovered. All attempts to identify this female have been unsuccessful.

The victim is described as a white female, 60 years of age or older, 5'4" tall, 150 pounds, with blondish-gray hair in a bob style. The victim had brown eyes and no ear piercings or tattoos. Moles are present on the left side of the forehead, on the tip of the right shoulder, over the left clavicle, on the front of the right lower leg, and on the right ankle. Old scars are noted on the back of the left hand, below the right knee, and on the back of the right forearm. There was evidence of heart disease and also a skin condition (senile ecchymosis), likely requiring dermatological intervention.

An examination of the dental records revealed extensive dental work worth $20,000. These restorations included porcelain fused to metal crowns, four root canals, a full-gold crown, and two three-unit fixed partial dentures (bridges).

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all homicide, missing persons, special victims, and crime analysis units. Any agency with information on this case may contact Investigator Chuck Jones of Coconino County, Arizona, Sheriff's Office at 928-226-5033 or *cjones@coconino.az.gov*; Lt. Rex Gilliland of the Coconino County Sheriff's Office at 928-226-5025 or *rgilliland@coconino.az.gov*; or FBI Violent Criminal Apprehension Program (ViCAP) Crime Analyst Jayne Stairs at 703-632-4168 or *jstairs@leo.gov*. ✦

Law Enforcement Response at a Crisis Scene
Protecting Lives and Preserving the Admissibility of Evidence

By LUCY ANN HOOVER, J.D., LL.M.

© Brand X Pictures

In today's world and the war on terrorism, law enforcement officers must be ever mindful of the fact that, as some predict, a suicide bombing on American soil may be simply a matter of time. Imagine a familiar scene, a young college student carrying a backpack while walking on campus and stopping to sit on a bench within 500 feet of a football stadium packed with over 84,000 people. What

happens next transforms this common occurrence on any campus in the nation into a terrible nightmare. Moments before halftime, the chemicals being carried by this young man detonate, causing an explosion heard almost 5 miles away. The detonation instantly kills the young student. Law enforcement officers sworn to protect the public will rush to the scene, ever ready to render aid and protect the innocent. Then, they

will direct attention to determining the identity of the bomber, the type of device used, where it was assembled, and whether the bomber received assistance in its assembly. In the aftermath of such an incident, officers cannot allow their emotions and good intentions to overshadow the restraints placed upon them by the Fourth Amendment of the U.S. Constitution.

This article discusses the U.S. Supreme Court's decisions

> **...officers cannot allow their emotions and good intentions to overshadow the restraints placed upon them by the Fourth Amendment....**

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

addressing the parameters placed on the government by the Fourth Amendment in emergency situations and crime scene searches in general. It also addresses the pitfalls with which law enforcement officers wrestle based on motives ranging from a desire to solve the crime as quickly as possible to a lack of understanding as to how far the emergency exception to the warrant requirement of the Fourth Amendment extends.

REASONABLENESS REQUIREMENT

For almost 40 years, the Supreme Court has held steadfast to its ruling in *Katz v. United States*[1] in which it created the presumption that all searches conducted without a warrant are unreasonable. In *Katz*, the government argued that it had, with good intentions, policed itself. That is, it proceeded with the search in such a way as to ensure that the evidence collected was limited in scope and pertained only to the activities of Katz, the subject of the investigation. Irrespective of its intentions, the Supreme Court found that "although the surveillance was so narrowly circumscribed that it could constitutionally have been authorized in advance, it was not in fact conducted pursuant to the warrant procedure which is a constitutional precondition" and, therefore, deemed to be illegal.[2]

In subsequent rulings, the Supreme Court has made it clear time and time again that the phrasing afforded by America's founding fathers to the Fourth Amendment of the U.S. Constitution is more than a mere litany of words:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[3]

PRESUMED UNREASONABLENESS

In *Katz*, the Supreme Court redefined the concept of what constitutes a search, focusing on privacy expectations rather than the physical intrusions by the government. The Court concluded that where such expectations exist, law enforcement officers are mandated to obtain a valid search warrant prior to proceeding with a search or the presumption that their actions were illegal will prevent them from introducing the fruits of their work.[4] To obtain a valid search warrant pursuant to the requirements set forth in the Fourth Amendment, officers must establish probable cause to believe that the location to be searched contains evidence of a crime and the evidence sought must be particularly described.

In traditional law enforcement, the Fourth Amendment is interpreted as requiring a warrant prior to infringing upon a person's reasonable expectation of privacy. Of course, there are recognized exceptions to the warrant requirement, such as

searches based on consent, those conducted pursuant to a lawful arrest or consistent with the motor vehicle exception, the need to inventory property, or an emergency necessitating a warrantless search.

Of the exceptions, the one that may be the most problematic for law enforcement is the emergency exception. That is, when responding to an emergency situation that turns out to be a crime scene, not only must officers be concerned about whether they may search without a warrant but also how far they can proceed before the Fourth Amendment requirements for a search warrant apply and all investigative activity must come to a halt until they obtain a warrant.

With a basic understanding of the rule of law and the guidelines provided by the Supreme Court, the law enforcement officer will be in a much better position to respond and process a crime scene, accomplishing the important goals of eliminating the emergency and preserving the integrity of the investigation and, ultimately, the prosecution. Indeed, the strictures of acceptable parameters of investigative activity at a crime scene may prove to frustrate the zealous investigator but failing to understand them may result in the exclusion of valuable evidence necessary to prove the case on

which one's zeal and passion was focused.

NO CRIME SCENE EXCEPTION

The seminal case to rely upon for guidance regarding searches conducted at crime scenes is *Mincey v. Arizona.*[5] In *Mincey*, an undercover narcotics police officer was killed during a drug buy bust in Tucson, Arizona. On October 28, 1974, Officer Barry Headricks arranged to purchase a quantity of heroin from Rufus Mincey.

> " ...a warrantless entry in response to an emergency situation is valid only as long as the emergency exists. "

The purchase was to take place in the apartment in which Mincey resided. Officer Headricks arrived with backup officers, but, once he was inside the apartment, Mincey's associates slammed the door on them. As the backup officers forced their way into the apartment, a volley of gunfire ensued. Officer Headricks was shot and, though rushed to the hospital, died a few hours later.

Immediately after the shooting, the undercover officers conducted a sweep of the apartment for anyone else in need of medical attention. They found five gun-shot victims: a young woman in the bedroom closet, three of Mincey's acquaintances, and Mincey himself. Emergency assistance was requested, and Mincey was taken to the hospital where he was treated for his injuries. Mincey survived and was charged with murder, assault, and three counts of narcotics offenses.

Once the backup narcotics officers found the five additional victims in the apartment, they halted their investigative activity. Their actions were in accordance with a Tucson Police Department directive that police officers should not investigate incidents in which they are involved, a policy driven by concerns about conflicts of interest as opposed to the Fourth Amendment. They did not seize any evidence or conduct any searches; they simply guarded the suspects and secured the premises. Within a matter of minutes, homicide detectives who heard about the shooting over the radio arrived and took charge. The detectives began an exhaustive search for evidence that lasted 4 days. Though this search could not be characterized as anything less than intrusive and the emergency situation clearly had

dissipated once all victims were accounted for and attended to, a search warrant never was obtained.

The defendant sought to have evidence suppressed, arguing it was seized in violation of his Fourth Amendment rights. The lower court agreed with the government's argument that the search should stand as the failure to secure a warrant for the exhaustive, intrusive, protracted 4-day search was to retrieve evidence to establish the circumstances of Officer Headrick's death.[6] The Supreme Court, however, could not agree with the Arizona court's rationale. As in *Katz*, the law enforcement officers in *Mincey* argued that due to the exceptional situation there was justification for a new exception to the warrant requirement. The Court rejected that argument. It is important to remember Justice Brandeis' concern when, in 1925, he stated, "Experience should teach us to be most on guard to protect liberty when the Government's purposes are beneficent.... The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."[7]

In *Mincey*, the Supreme Court made it clear that the Fourth Amendment does not bar law enforcement officers from making warrantless entries and

searches when they have a reasonable belief that someone is in immediate need of aid or a killer is still on the premises. "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."[8] Regardless of the circumstances, including the murder

> "**Once the scene is secured, searches conducted without a warrant are presumed unreasonable....**"

of a fellow law enforcement officer, the Supreme Court refused to recognize a murder scene exception justifying a warrantless search.

Years later, in 1984 and again in 1999, the Supreme Court underscored their holding in *Mincey*. In *Thompson v. Louisiana*,[9] a despondent woman decided that the best way to resolve her unhappy existence was to murder her husband and then take her own life. While her husband lay dead, she took an overdose of sleeping pills. As she began to grow weary, she came to the realization that she did not want

to die after all and telephoned her daughter for help. Her daughter telephoned the sheriff's office and rushed to her parents' home. When the deputies arrived, the daughter admitted them into her parents' house where they discovered her father's body and had her mother transported to the hospital for immediate medical attention. After conducting a search for other victims or suspects, the deputies secured the house. As in the *Mincey* case, once the emergency situation was under control, the deputies secured the premises, yet failed to get a search warrant prior to returning inside to look for evidence as part of their criminal investigation. Though the state of Louisiana couched the purpose of the reentry into the secured crime scene as an exploratory search,[10] the U.S. Supreme Court wasted no words in declaring it as a clear violation of the Fourth Amendment leading to suppression of the evidence seized.

In 1999, *Flippo v. West Virginia*[11] came before the U.S. Supreme Court and, once again, the Court took the opportunity to remind law enforcement that a warrantless entry in response to an emergency situation is valid only as long as the emergency exists. Once the scene is secured, searches conducted without a warrant are presumed unreasonable and, therefore, in

violation of the Fourth Amendment. In *Flippo,* the defendant and his wife were renting a vacation cabin in the mountains of West Virginia. The defendant placed a 911 call to report that he and his wife had been attacked. Law enforcement responded to find that the wife had succumbed to fatal head wounds and the defendant was suffering from injuries to his head and legs. "The officers closed off the area, took [the defendant] to the hospital, and searched the exterior and environs of the cabin for footprints or signs of a forced entry."[12]

When the police photographer arrived at the cabin, the law enforcement officers, who had yet to secure a search warrant, reentered the crime scene. The Supreme Court concluded that this was in violation of the Fourth Amendment. The cost of this constitutional violation was the exclusion of the evidence found during their thoroughly intrusive, 16-plus hour search of the cabin. During the search, they found a closed, though unlocked, briefcase, which they opened and found an envelope containing photographs and negatives. The photographs, which "included several taken of a man who appears to be taking off his jeans,"[13] were later used during the prosecution of the defendant on charges that he murdered his wife.
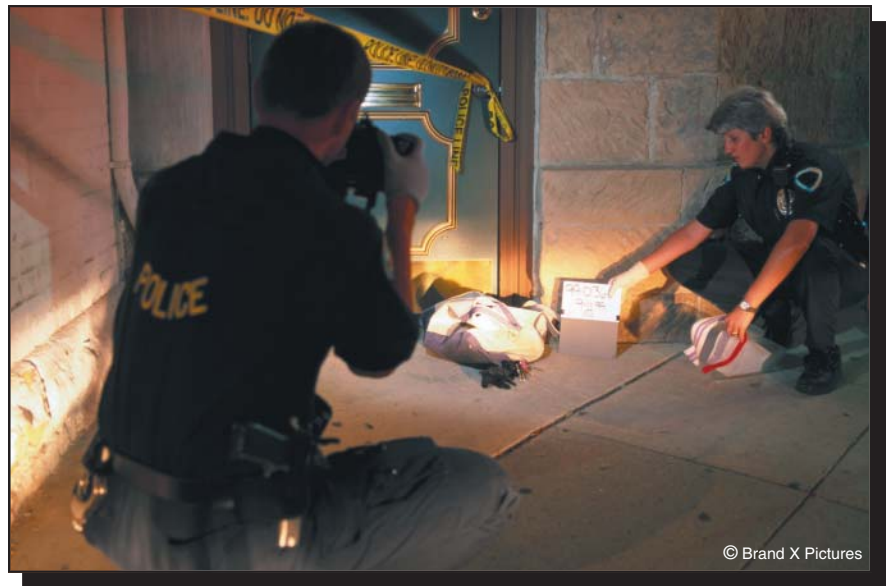
The West Virginia courts denied the defendants' motion to suppress the photographs seized in the warrantless search on the grounds that the police are entitled to thoroughly search a homicide crime scene and the objects found there. The U.S. Supreme Court again reminded law enforcement that "*Mincey* controls here."[14] In so doing, the Court made clear that it continues to reject any general crime scene exception, to include a murder scene, as being inconsistent with the requirements of the Fourth Amendment.

The government's response to critical incidents, such as that described in the beginning of this article, will include not just law enforcement but also other public safety personnel, such as those from fire departments. While it is true that regardless of the nature of the incident the Supreme Court rejects the notion that there must be a crime scene exception, there are special circumstances surrounding fire scenes and arson investigations that have been recognized by the Court.

In both *Michigan v. Tyler*[15] and *Michigan v. Clifford,*[16] the Court was called on to address the admissibility of evidence discovered during a search of a fire scene following reentry by the government after the fire had been extinguished. In *Tyler*, the Court upheld a warrantless search of a furniture store after the fire was extinguished, designating it as a continuation of a valid search "begun as the last flames were being doused, but could not be completed because of smoke and darkness. The search was resumed promptly after the smoke cleared and daylight dawned. Because the post-fire search was interrupted for reasons that were evident,

[the Court] held that the early morning search was no more than an actual continuation of the first, and the lack of a warrant thus did not invalidate the resulting seizure of evidence."[17]

In *Clifford*, the Court recognized that "in many cases, there will be no bright line separating the firefighters' investigation into the cause of a fire from a search for evidence of arson."[18] In arson cases, the scope of the initial warrantless search is limited to that reasonably necessary to determine its cause and origin and to guard against rekindling. In recognition consistent with *Mincey* and its progeny, the Court stated that the initial investigative search—the primary purpose of which is to ascertain the cause of the fire and, therefore, deemed necessary to ensure that the emergency is under control—is not a "license to roam freely"[19] throughout the premises. "There is no diminution in a person's reasonable expectation of privacy or in the protection of the Fourth Amendment simply because the official conducting the search is a firefighter rather than a policeman.…"[20] Whether a warrant is required is determined by the purpose of the search—"whether the object of the search is to determine the cause and origin of the fire or to gather evidence of criminal activity."[21] Once the exigent

circumstances have been extinguished and the purpose of the scene's examination has evolved into one in which evidence to be used in a criminal proceeding is being sought, the warrant requirement of the Fourth Amendment is reestablished and must be scrupulously honored.

> "Before crossing the threshold, officers must consider the implications and the application of the Fourth Amendment."

POLICY CONSIDERATIONS

Initial Response

Given the potential ramifications of continuing to take action in response to an emergency after it has been dealt with, policy should be reviewed to assess whether it provides adequate guidance. Guidance should be provided to officers on what constitutes an emergency or exigent circumstances. While courts have concluded that "emergency situations involving endangerment to life fall squarely within the exigent circumstances exception,"[22]

there is "no absolute test for determining whether exigent circumstances are present because such a determination ultimately depends on the unique facts of each case."[23] Consideration of the specific facts of each case, which are "so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in a given instance, and without inflating marginal ones."[24]

On January 6, 2006, the Supreme Court agreed to hear *Brigham City v. Stuart,*[25] a case involving a warrantless entry into a home based upon what the responding law enforcement officers claimed were exigent circumstances.[26] In this case, four police officers responded to a 3 a.m. complaint of loud noises at a residence where a party was being held. Upon arrival, the officers walked to the back of the house to investigate the noise and saw two underage males drinking alcohol. The officers entered the backyard and, from their vantage point, had a clear view into the back of the house where they saw four adults restraining a juvenile. The juvenile broke free and struck one of the adults in the face. At this point, the officers entered the house,

identified themselves, and arrested the adults for contributing to the delinquency of a minor, disorderly conduct, and intoxication. The Utah Supreme Court held that the police officers' warrantless entry into the private residence was not justified as the facts known to the officers would not lead a reasonable officer to believe that immediate entry was necessary to prevent physical harm.[27] The question now before the U.S. Supreme Court is whether the intrusion by law enforcement was necessary based on a need, as described by the Court in *Mincey,* "so compelling that the warrantless search is objectively reasonable under the Fourth Amendment."[28]

Address and Eliminate the Emergency

The authority of officers without a warrant to take action that may interfere with an individual's expectation of privacy to address and eliminate a threat to life or safety should be clearly stated. Equally important is to stress the need to keep the response within the scope of that necessary to address the emergency.

Secure the Location

Regardless of the type of incident encountered by investigators, maintaining a presence at a secured crime scene while making application for a search

warrant is an exercise that law enforcement officers routinely practice. While it involves patience, time, and effort, constitutional guarantees must prevail over mere convenience to increase the likelihood of producing admissible evidence at trial.[29]

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The opening scenario of the young college student blowing himself up within 500 feet of a packed football stadium actually happened just a few months ago on October 1, 2005, at the University of Oklahoma.[30] First responders to the crime scene included state and federal investigators and bomb technicians. As investigators approached the bench on which lay the remains of the bomber, they noticed a black backpack still on the ground. Fearing that the backpack contained a second improvised explosive device, responding bomb technicians neutralized the package. After bomb technicians had made the

scene safe for the investigators, the bomber's name and address was determined through identifying information found in his wallet.

Fourth Amendment implications were certainly under consideration as the investigators approached the young bomber's residence. Consent to search the common areas of the apartment that the bomber shared was provided by his roommate. The roommate also gave the investigators and the bomb technicians consent to search his own bedroom and his personal computer.[31]

As the bomb technicians peered through the open door of the bomber's bedroom, it was evident that he had utilized his private space as a laboratory for the manufacture of explosives. Investigators and experts in the handling of explosive devices and their chemical components discussed a range of possibilities with respect to the volatility of the situation and whether exigent circumstances would justify the government engaging in a warrantless search. Ultimately, they decided to wait for judicial authority to search by applying for and obtaining a search warrant before entering the bomber's bedroom.

Steps taken to control the situation, such as evacuating the apartment building, aided in their decision to downgrade the situation from one that could

have been characterized as an emergency to one that in their judgment, was under sufficient control, allowing them to seek judicial authority.

CONCLUSION

The lessons learned from the University of Oklahoma bombing and the constraints on warrantless crime scene searches clearly articulated by the U.S. Supreme Court should serve as a constant reminder to law enforcement officers that the Fourth Amendment does apply in crime scenes. Clearly, there are exceptions, such as consent, emergency, search incident to arrest, motor vehicle, and inventory, as there are special circumstances in fire cause and origin investigations. However, law enforcement officers must not allow themselves to be overcome by the nature of the crime, whether a fellow officer is the victim, whether it was the result of a terrorist attack, or whether officers argue that immediate entry is necessary to prevent physical harm. Before crossing the threshold, officers must consider the implications and the application of the Fourth Amendment. The next conviction could depend upon the decision made at that moment in time. ✦

Endnotes

[1] *U.S. v. Katz*, 389 U.S. 347 (1967).

[2] *Katz*, 389 U.S., at 354-359.

[3] U.S. Const. amend. IV.

[4] *Katz*, 389 U.S. at 358.

[5] *Mincey v. Arizona*, 437 U.S. 385 (1978).

[6] *Mincey*, 437 U.S. at 390.

[7] *Olmstead v. U.S.*, 277 U.S. 438 at 479 (1925).

[8] *Mincey*, 437 U.S. at 393.

[9] *Thompson v. Louisiana*, 469 U.S. 17 (1984).

[10] *Thompson*, 469 U.S. at 18.

[11] *Flippo v. West Virginia*, 528 U.S. 11 (1999); *State of West Virginia v. Flippo*, 212 W. VA 560, 575 S.E.2d 170 (2002). The Supreme Court of Appeals of West Virginia held that the state failed to meet the burden of showing that photographs were seized either during the implied consent search or during the limited express consent search.

[12] *Flippo*, 528 U.S. at 12.

[13] *Id.*

[14] *Flippo*, 528 U.S. at 14.

[15] *Michigan v. Tyler*, 436 U.S. 499 (1978).

[16] *Michigan v. Clifford*, 464 U.S. 287 (1984).

[17] *Tyler*, 436 U.S. at 511.

[18] *Clifford*, 464 U.S. at 299.

[19] *Id.*

[20] *Tyler*, 436 U.S. at 501.

[21] *Clifford*, 464 U.S. at 291.

[22] *U.S. v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002).

[23] *U.S. v. Gray*, 71 F.Supp2d 1081, 1084 (D. Kan. 1999).

[24] *U.S. v. Banks*, 540 U.S. 31, 36 (2003).

[25] *Brigham City v. Stuart*, 122 P.3d 506, cert. granted, 126 S. Ct. 979 (2006).

[26] *Id.*

[27] *Id*. at 516.

[28] *Mincey*, 437 U.S. at 394.

[29] 35A AmJur 2d, Section 8, page 17.

[30] U.S. District Court, Western District of Oklahoma, search warrant (M-05-159-CH).

[31] *Id*.

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 Markowski

Officers from the Melbourne, Florida, Police Department responded to a call of a young child wandering alone on a 5-lane roadway, dangerously close to both automobile traffic and railroad tracks. Quickly, the officers wrapped him in a blanket and placed him in a warm police vehicle but could not determine where he lived. Officer Gary Markowski and police canine Arko arrived and backtracked the child's route for about one-half mile until they came to a residence where the door was standing open. Officer Markowski located a babysitter who was unaware that the child had left. Then, he safely returned the boy home. Officer Markowski demonstrated the utmost professionalism during this incident. Sadly, he since has passed away after a battle with cancer.

Detective Byers

One evening, when the area was experiencing severe flooding because of a recent hurricane, Detective Richard Byers of the Township of Shaler, Pennsylvania, Police Department was instrumental in the rescue of several residents. With the assistance of a local boat owner, Detective Byers evacuated two elderly women from the second floor of one house and three additional people from the upper levels of other homes in that vicinity. He then arrived at another residence where a man and his mother and father were trapped. The fast-moving water already was approximately 10 feet deep. During the rescue of the three individuals, the woman dropped from the roof to the boat and fell backwards into the turbulent water. Immediately, Detective Byers dove in and located her several feet under the surface, about to be swept away by the treacherous current. Despite injuries to his chest and shoulder, he grabbed the woman and held onto her until they were safely back in the boat. Detective Byers demonstrated bravery, selflessness, and professionalism throughout this crisis situation.

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 201, Quantico, VA 22135.

Patch Call

The Brush, Colorado, Police Department patch commemorates the spirit of this high-plains town by featuring the earliest recorded rodeo held in 1884. Today, the annual Brush Rodeo, billed as the World's Largest Amateur Rodeo, takes place every July 1 through 4 and includes an Independence Day parade and several other special events.

Redesigned in 1991 by a department member, the Tifton, Georgia, Police Department patch includes the handshake logo and the words *Friendly City* from the originial patch. The brown building depicts the first general store, city hall, and courthouse in this agricultural community. The stars honor the only two officers killed in the line of duty.