



# FBI

August 1991

## ***Law Enforcement Bulletin***



### ***The Americans with Disabilities Act***





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**The Cover:** *The Americans with Disabilities Act prohibits employers from discriminating against qualified individuals who are disabled. See article p. 25.*

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William S. Sessions, Director

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# *The Will to Survive*

By  
STEPHEN R. BAND, Ph.D.  
and  
I. JOHN VASQUEZ, M.Ed.

**S**hots are fired! One subject is down, and three police officers are wounded. Another armed subject appears in the doorway, and two of the officers, stunned at the sight of their wounds, are unable to defend themselves. But, the third officer fights on, firing until the second subject is incapacitated.

This scenario could be an excerpt from a movie, but unfortunately, it is all too real. Each day, law enforcement officers across the Nation face life-and-death situations. In fact, between 1979 and 1988, 841

police officers were feloniously killed in scenarios such as this.<sup>1</sup>

Can law enforcement officers encounter a life-threatening, violent confrontation and go home at the end of the day? Do they have the will to survive and fight on when faced with death? The answers to these questions go beyond combat tactics and accuracy with a weapon. One element is still missing: Survivability—the mental preparation and personal will to survive.

The Operations Resource and Assessment Unit (ORAU) at the FBI Academy, Quantico, Virginia, con-

ducted a pilot study and sought expert opinions in order to identify the human attributes associated with survivability. This article will discuss the available background research and will review the FBI's findings.

## **BACKGROUND RESEARCH**

In the media, astronauts and pilots have often been referred to as having "the right stuff"—personality characteristics that would aid their survival in critical situations.<sup>2</sup> In fact, as part of their ongoing research, the National Aeronautics and Space Administration (NASA) and the





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University of Texas attempted to identify "right stuff" personality traits in pilot selection.<sup>3</sup> As a result, the following two prominent personality orientations were linked with successful pilot behavior under dangerous flying conditions: 1) Goal-oriented behavior, and 2) the capacity to empathize with others.

Combat psychiatry also offers insight into human performance under battle conditions.<sup>4</sup> Research in this area has examined the causes and prevention of combat stress reaction (CSR) in relation to surviving life-threatening circumstances. CSR, sometimes referred to as "battle fatigue," prevents soldiers from fighting and may be theoretically viewed as behavior that opposes survival.

Further research identified leadership, devotion to duty, decisiveness, and perseverance under stress as significant attributes.<sup>5</sup> And, in his studies into the area of survivability, S.E. Hobfoll states, "...counting your losses when pre-

serving resources is fatal...."<sup>6</sup> In essence, preoccupation with thoughts about loss may negatively affect one's capacity to survive a possibly lethal confrontation. Thus, merely avoiding thoughts associated with loss may enhance survivability.

This concept of preserving resources can be exemplified best through the comments of Gunnery Sergeant Carlos Hathcock, U.S. Marine Corps (Retired). Hathcock is credited with 93 confirmed kills as a sniper during two combat tours in South Vietnam.<sup>7</sup> A soft-spoken, unassuming man of honor, Hathcock compared his behavior just prior to and during an operation as isolating himself into an "invisible bubble." This state of mind would "block thoughts of physiological needs, home, family, etc., except the target." The amount of time in the "bubble," lasting from a few hours to several consecutive days, depended not only on the circumstances surrounding his objective but also on

adjusting to conditions where a trivial mistake could cost him his life.<sup>8</sup> As he reflected on his distinguished military career, Hathcock also mentioned a number of other attributes he considered necessary for survival. Among these were patience, discipline, and the ability to concentrate completely on a specific task.

## THEORY

Cognitive/behavioral psychological theory offers insight into the benefits of mentally rehearsing possible reactions to life-threatening situations. According to one theory, developing a plan of action could enhance one's perception of effectiveness, and therefore, affect an officer's ability to survive. In fact, as A. Bandura states:

"People who believe they can exercise control over potential threats do not conjure up apprehensive cognitions and, therefore, are not perturbed by them.... those who believe they cannot manage potential threats experience high levels of stress and anxiety arousal. They tend to dwell on their coping deficiencies and view many aspects of their environment as fraught with danger. Through some inefficacious thought they distress themselves and constrain and impair their level of functioning."<sup>9</sup>

A classic example of cognitive rehearsal in law enforcement is provided by C.R. Skillen.<sup>10</sup> According to Skillen, successful patrol officers imagine the best approach to emer-



gencies that could occur during a tour of duty. They then decide upon the best and fastest route from one location to another, should the need arise. These officers also imagine "what if" situations and develop effective responses in case a similar confrontation occurs.

This type of cognitive rehearsal activity has proven to be effective in relieving fears and in enhancing performance in stressful encounters. However, mental preparation can work against officers who believe that if shot, they will certainly die. When reinforced by appropriate training and one's value system, these attributes and behaviors may provide a law enforcement officer with the ability to survive a life-threatening situation.

#### **FBI'S RESEARCH AND PRELIMINARY FINDINGS**

Behavior identified in the background research and theoretically linked to survivability was later summarized to develop a pilot study questionnaire. The FBI then distributed this questionnaire in late 1989 and early 1990 to a broad group of Federal, State, and local law enforcement officers attending the FBI Academy in Quantico, Virginia. The questionnaire was also administered at work or training sites in Illinois and California. In all, a total of 207 questionnaires were administered and completed.

#### **Questionnaire**

The questionnaire asked respondents to rank various behaviors and traits, developed from background research. Not all the behaviors and traits are associated with law en-

forcement, but every one has been linked to survival. (See table 1.) Ranking ranged from little or no importance to extremely important. Law enforcement officers rated each factor in terms of its overall impor-

tance for effective performance in a short-term, violent law enforcement confrontation. Effective performance was defined as a violent confrontation that requires a lawful, combative response where the officer con-

**Table 1**

### **SURVIVAL BEHAVIORS AND TRAITS**

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Honor</li> <li>• Physical fitness</li> <li>• Useful training</li> <li>• Emotional stability</li> <li>• Aggressiveness</li> <li>• Hatred for adversary</li> <li>• Street savvy</li> <li>• Confidence in weapon</li> <li>• Duty</li> <li>• Fear of death</li> <li>• Decisiveness</li> <li>• Intelligence</li> <li>• Patriotism</li> <li>• Self-esteem</li> <li>• Anger</li> <li>• Religious convictions</li> <li>• Personal leadership ability</li> <li>• Anticipated reward or recognition</li> <li>• Believing oneself effective in combat</li> <li>• Loyalty (to the law enforcement agency)</li> <li>• Perseverance under stress</li> </ul> | <ul style="list-style-type: none"> <li>• Having a leader/supervisor who is trusted</li> <li>• Having a leader/supervisor who is a positive role model</li> <li>• Having a law enforcement agency that is supportive to personnel and backs up officers' decisions made on the street</li> <li>• A mutual responsibility among officers working together</li> <li>• Individual morale/supportive family and/or friends at home</li> <li>• Maintaining a winning attitude</li> <li>• Confidence in one's ability to perform in a confrontation</li> <li>• Previous combat experience</li> <li>• Weather conditions</li> <li>• Strong interpersonal bonds among a squad or shift that works together</li> <li>• Mental rehearsal of combat action prior to action</li> <li>• A belief that one's destiny is controlled by oneself and not outside forces</li> </ul> |
|--|--|



tinued to function even though the final outcome could be death for the officer or adversary.

## Findings

Analyses of the pilot study data revealed the items listed below as those perceived to be most critical to officer survival. The items appear in order of importance, except for items 3 through 5, which are of equal value.

1) *Self-confidence in performance*—The officer's belief that a critical task can be performed effectively with a high probability of success.

2) *Training*—The officer's belief that prior training has been effective, and if applied, will increase the possibility of survival in deadly confrontations.

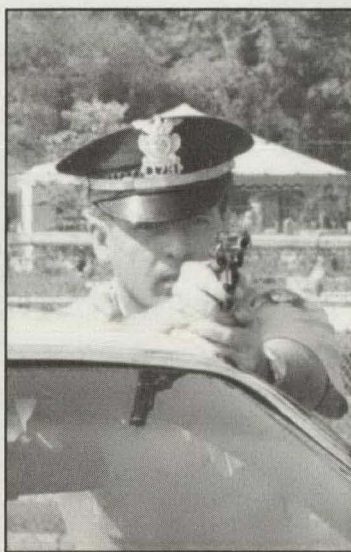
3) *Effectiveness in combat*—The officer's mental frame of reference in which the officer can visualize victory in a deadly confrontation.

4) *Decisiveness*—The officer's ability to make rapid and accurate decisions when confronted with a critical situation.

5) *Perseverance under stress*—The officer's ability to continue to perform critical tasks mentally and physically when confronted with stressful situations.

## DISCUSSION

The concept of survivability represents a dynamic set of behaviors that should be considered in



**"Only through proper training in behaviors that ensure survival can law enforcement prepare to meet the anticipated occupational challenges of the future."**

relation to certain law enforcement environments. Life-threatening events associated with undercover operations, uniformed patrol, SWAT operations, and other specific hazardous law enforcement missions require personnel who can survive the virulent stressors associated with these unique operations.<sup>11</sup>

Self-confidence in performance, training, effectiveness in combat, decisiveness, and perseverance under stress were identified in this pilot study as tantamount to law enforcement officer survival. However, these findings are preliminary and should not be considered conclusive. Further research, in the form of an enhancement/enrichment course

offered to new FBI Agents in training, is planned for 1991. The data compiled during this course will then be analyzed and will, hopefully, lead to more indepth research focusing on the five behaviors mentioned previously that are most often associated with survivability. It is hoped that law enforcement officers who have been exposed to such training opportunities will increase their potential for survival in life-or-death situations. Only through proper training in behaviors that ensure survival can law enforcement prepare to meet the anticipated occupational challenges of the future.

**LEB**

## Footnotes

<sup>1</sup> *Uniform Crime Reports—Law Officers Killed and Assaulted—1988*, U.S. Department of Justice, Federal Bureau of Investigation, 1989.

<sup>2</sup> T. Wolfe, *The Right Stuff* (New York: Bantam Books, 1983).

<sup>3</sup> R.L. Helmreich and J.A. Wilhelm, "Validating Personality Constructs for Pilot Selection: Status Report on the NASA/UT Project," NASA/UT Technical Memorandum 89-3, Department of Psychology, The University of Texas at Austin, 1989.

<sup>4</sup> G. Belenky, ed., *Contemporary Studies in Combat Psychiatry* (New York: Greenwood Press, 1987).

<sup>5</sup> R. Gal, "Courage Under Stress," in S. Breznitz, ed. *Stress in Israel* (New York: Van Nostrand Reinhold Company, 1983).

<sup>6</sup> S.E. Hobfoll, *The Ecology of Stress* (New York: Hemisphere Publishing Corporation, 1988).

<sup>7</sup> C. Henderson, *Marine Sniper* (New York: Berkley Books, 1986).

<sup>8</sup> I.J. Vasquez, "An Interview with Carlos Hathcock," unpublished interview notes, Virginia Beach, Virginia, 1989.

<sup>9</sup> A. Bandura, "Human Agency in Social Cognitive Theory," *American Psychologist*, No. 44, 1989, pp. 1175-1184.

<sup>10</sup> C.R. Skillen, *Combat Shotgun Training*, (Springfield, Illinois: Charles C. Thomas, 1982).

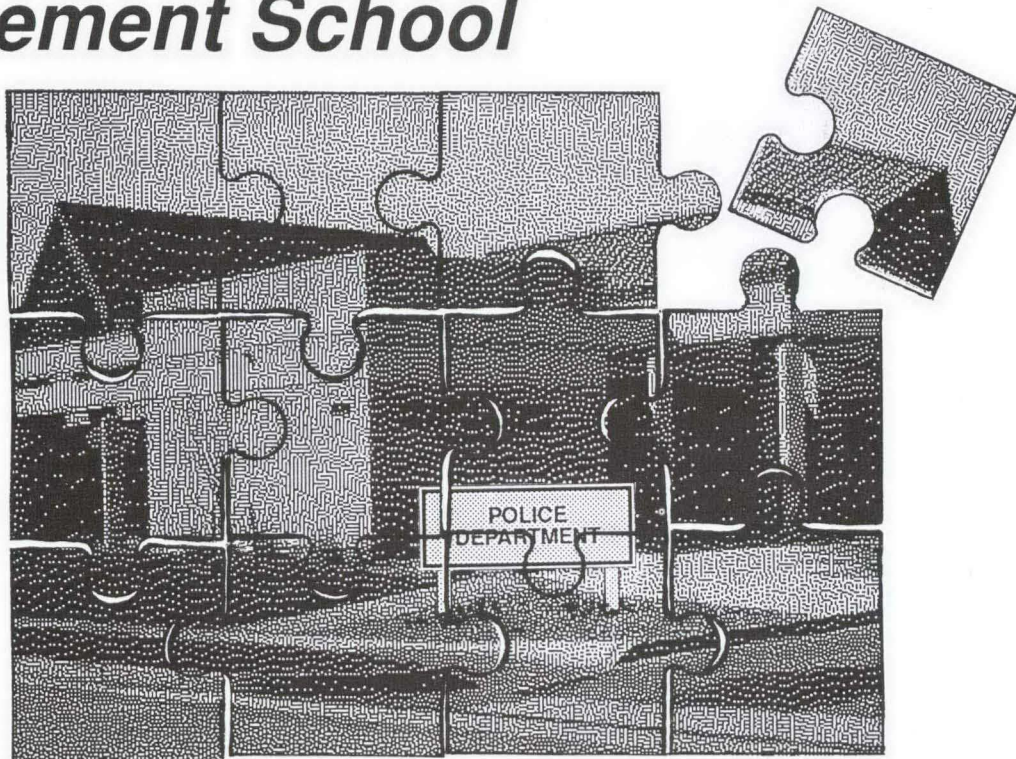
<sup>11</sup> S. R. Band and C.A. Manuele, "Stress and Police Officer Job Performance: An Examination of Effective Coping Behavior," *Police Studies*, No. 10, 1987, pp. 122-131.



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# *What They Didn't Teach in Management School*

By  
JAMES D.  
SEWELL, Ph.D.



Contemporary criminal justice management courses emphasize a number of relevant topics, such as resource management, labor relations, program evaluation, external influences on public administration and organizational change. However, in the classroom, the approach most commonly taken is on the macro level and only deals with theory and academic research. And, while classroom experience is extremely useful, applying the information learned in the classroom to the job often leaves much to be desired. Oftentimes, a newly appointed chief of police must quickly, and sometimes painfully, discover

that there are many things they did not teach in management school.

As a result, the administration of a police department, large or small, becomes a continuing education for a police chief. The lessons a recently appointed police chief learns are many and cannot be discussed in a single article. However, some of the most important lessons, specific to managing a small department, can be summarized into a few basic tenets:

- Command hurts;
- Change is difficult to implement and often not desired;

- Politics are everywhere;
- The police chief is a public figure;
- It is easy and probably a good idea to develop a "my town" attitude;
- In a small department, the workload can be especially heavy;
- The job can still be fun.

## **Command Hurts**

In the paramilitary world of law enforcement, there can ultimately be only one boss. And, in small





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police departments, where more intimate personal relationships exist between the police chief and employees, it is usually decisions regarding personnel that are the most difficult and emotionally distressing. Years of law enforcement training prepare administrators for tactical and strategic problems and operational decisions. As a result, many police chiefs find that making life-or-death decisions is easier than initiating procedures that could cost officers their rank, salary, or job.

In addition to this "people pain" that a police chief can experience, command can also hurt when a police chief's motives or values are misinterpreted. Some employees may assume that hidden agendas exist, and regardless of a chief's moral convictions, someone may assume that a chief has, at some point, compromised integrity in order to become chief. And, especially as a result of personnel-related decisions, the chief's actions may be viewed as

wrong. Some employees may believe that the discipline was either too strong or too weak, that the punishment did not fit the "crime," or that all wrongdoers were not punished equally.

### **Change is Difficult**

Most enlightened administrators believe that one of their primary roles, especially when first taking over organizations, is to act as agents of change. It must, however, be noted that change within an organization is always difficult, and in most circumstances, there will be employees who do not, or will not, adapt well. Change requires adjustment, and adjustment is stressful. As a result, individuals react in order to reduce stress. Therefore, for a police chief in this position, it may be wise to first keep in mind that:

- Adult behavior is difficult to change.
- Goals detailing change should not be set too high and should be based on employee abilities and not on an administrator's personal desires and/or motives.
- Until a police chief can assess employees, it is better to "walk softly and carry a big stick." It is far easier to soften one's management style than to tighten it at a later date. This is particularly true for law enforcement departments where sensitivity, interest, and professionalism on the part of the chief could be mistaken for personal weakness.

- It is only natural that a police chief sometimes believes that management could be wonderful if it weren't for the employees.

In addition, the difficult nature of organizational change is not limited to employee-related problems. Outside governing agencies often have an entirely different vision of if and when change is necessary. They may also lack a complete understanding of the professional needs, roles, and direction of a contemporary law enforcement agency. Consequently, it is not uncommon for a chief's desires to conflict directly with these outside agencies. For the police chief, this resulting frustration is particularly intense when the conflict centers around improved professionalization and the education of departmental personnel.

Darrell Stephens, Executive Director of the Police Executive Research Forum and a former police chief, captured the essence of this issue when he said:

"Under the best circumstances, it is a struggle for any police chief to successfully develop and sustain the kind of support needed from the community, city manager, city council, and the officers themselves. Even Herculean efforts are doomed to fail when there is a mandate for change, but no agreement among these groups about what should be done or the best way to go about it."<sup>1</sup>

A corollary to the issue of fear of change in a department is that not all employees want enlight-



ened, progressive managers. Many may prefer the status quo, and still others may want to return to the managerial style of an earlier era. In either case, such employees may act as stumbling blocks to change and may resist the personal interest and involvement required of modern law enforcement managers.

On the bright side, meaningful change can often occur more quickly in a small department. With strong leadership from the police chief, and because small departments lack an extended bureaucracy, efforts at change are distorted less. As a result, change can be achieved on a more timely basis.

### **Politics are Everywhere**

Many law enforcement leaders pride themselves on their professionalism and on the fact that politics do not interfere with their management style or their decisions. However, in reality, all decisions are political in nature. In addition, in order for police chiefs to keep their jobs, they must respect, understand, and successfully deal with the political nature of law enforcement.

In small departments, politics may often play an even stronger role. Often, residents of small cities have a more direct interest and involvement in police matters and may be more quick to provide direct feedback concerning the department to its governing council or commission. Where council members and special interest groups encourage attendance at public meetings, this feedback may become even stronger. And, in closeknit communities, direct involvement in law enforcement policy and direction may

be one of the few ways council members could possibly secure their reelection.

### **The Police Chief is a Public Figure**

In many communities, citizens are looking for public officials who care about local problems, who will take time to listen, and who fit their image of a public leader. Particularly in small cities and counties, the police chief is, indeed, a public figure. Whether an elected sheriff or an appointed chief of police, the chief law enforcement executive occupies a position of power, influence, and respect. However, with this heightened position comes added responsibility. Indeed, a police chief is often held to a higher degree of accountability than many other public officials, and certainly to a higher standard of integrity.

“  
**...a police chief is often held to a higher degree of accountability than many other public officials....**  
”

### **Developing a “My Town” Attitude**

In small communities, most police chiefs are well-known, and hopefully, well-received by the business community and citizens. As a

result, many police chiefs develop a sense of personal pride in their communities, which is often lacking in large police departments. This personal pride is often accompanied by a sense of personal ownership. With such a positive attitude and outlook on the community, policing the local citizens becomes a personal obligation.

### **Small Department/Heavy Workload**

Because small law enforcement departments may lack the budget, personnel resources, and equipment of their counterparts in large communities, it may be far more difficult to serve as a chief of police of a small agency. Large agencies allow for more management and supervisory strata, for more staff support in areas such as planning and budgeting, and for alternative development tracks for the administrative staff.

In small agencies, police chiefs are expected to fill a variety of roles. Routinely, and with limited staff, chiefs may serve as planners, budget officers, personnel administrators, equipment acquisition officers, and principal policy writer/developers. These demands require a broad base of managerial skills and a seemingly endless supply of time, effort, and energy.

### **The Job Can Still Be Fun**

It is not uncommon to hear law enforcement executives reminisce about their experiences when they served as patrol officers or detective supervisors early in their careers. This is especially true in large departments, because as officers progress through the ranks, they



# Police Practices

become further removed from the excitement and rewards of hands-on law enforcement and more preoccupied with administrative matters.

In small departments, however, managers, including police chiefs, often find themselves performing patrol and investigative functions. It is not uncommon, for example, for the chief to do double-duty during times of patrol personnel shortages or to serve as the case coordinator in major criminal cases. In such departments, chiefs can still enjoy the daily activities of a patrol officer without, as one municipal chief noted, "the pain of having to do the reports." In addition, the opportunity to perform patrol or investigative functions occasionally, even for short periods, can also serve to relieve stress and add a sense of stability.

## Conclusion

Although criminal justice management courses and administration textbooks discuss the science of management, becoming a successful law enforcement executive is a process that involves an ongoing education. And, despite difficult personnel-related decisions, the problems of initiating change, and a heavy workload, being the chief of police in a small community has numerous rewards. Most importantly, it is a valued position of public trust that continually provides police chiefs of small communities with flexibility and new experiences.

**LEB**

## Footnote

<sup>1</sup> "Subject to Debate," Police Executive Research Forum newsletter, vol. 4, No. 5, 1990, p. 3.



## *Miami's Ethnic Sharing Program*

Over the past several years, Miami, Florida, has grown very rapidly and undergone numerous changes. As a result, Miami's population has also increased and now includes numerous ethnic groups. Unfortunately, one result of this new ethnic diversity has been increasing separatism and misunderstanding. Today, with the increasing threat of crime and violence, it is imperative that people of all races work to overcome division and mistrust. This goal is especially important for law enforcement officers.

The Miami Police Department, which is comprised of

officers from various ethnic backgrounds, has attempted to represent the ethnic diversity of the Miami area fairly and accurately and to meet the needs of the community. To this end, the department has conducted several training programs for police officers.

One such program, developed by the American Jewish Committee, is called "Ethnic Sharing." The first "Ethnic Sharing" program was held December 8, 1989. And, after receiving positive feedback from the initial 31 participants, the department implemented two additional programs and scheduled future classes.



Miami's "Ethnic Sharing" program is divided into four phases. The facilitator opens the first phase by explaining the nature of prejudice and ethnic stereotyping. This phase also includes a lecture and a quick association exercise where the facilitator calls out the names of ethnic groups and asks the participants to respond. These responses serve to illustrate various ethnic stereotypes and create the framework for the program.

In the second phase, the facilitator establishes rapport with the group by sharing his/her ethnic background. The facilitator then discusses any personal experiences and difficulties encountered as a result of ethnic heritage.

During the third phase, which lasts approximately 3 hours, the facilitator questions the participants about their own ethnic backgrounds. The facilitator then divides the class into two groups, creating a panel and an audience. The facilitator also chooses a representative of each ethnic group to sit on the panel so that it reflects the area's ethnic diversity.

After this panel is formed, the facilitator poses the following three questions to each panel member:

- What do you like about your ethnic heritage?
- What do you dislike about your ethnic heritage?
- What brought you to police work?

The facilitator uses the responses to these questions to probe for further reactions. In addition, these

responses not only provide the next panel member with a basis on which to develop responses, but they also help the other panel members to become accustomed to the process.

Following the panel discussion, the facilitator encourages the audience to share any additional

**"Even though the process toward ethnic understanding will be long and difficult, understanding and respect for various ethnic groups are attainable."**

experiences and feelings. The ultimate goal in this third phase is to foster unity among the officers and to help them understand that although certain prejudices and ethnic stereotypes exist, there are numerous similarities among all people.

In the fourth phase, the facilitator gives the participants informational materials, such as excerpts from news broadcasts, newspapers, periodicals, and textbooks. Each excerpt, concerning

an ethnic group, contains statements that someone has found offensive. The participants are then asked to examine the information in each excerpt, to discuss why it caused a problem, and to decide whether they agree that the issue is offensive.

During these discussions, the participants express many intense feelings and beliefs, which the facilitator attempts to integrate into a group understanding. Participants find this discussion very thought-provoking, and they usually come away from the program realizing that whatever a person's ethnic origin, everyone shares similar feelings and beliefs.

Programs such as "Ethnic Sharing" have been of great benefit to the Miami Police Department and have helped promote unity among the officers. Today, a police department cannot serve its community effectively until all its members function as one. Even though the process toward ethnic understanding will be long and difficult, understanding and respect for various ethnic groups are attainable.

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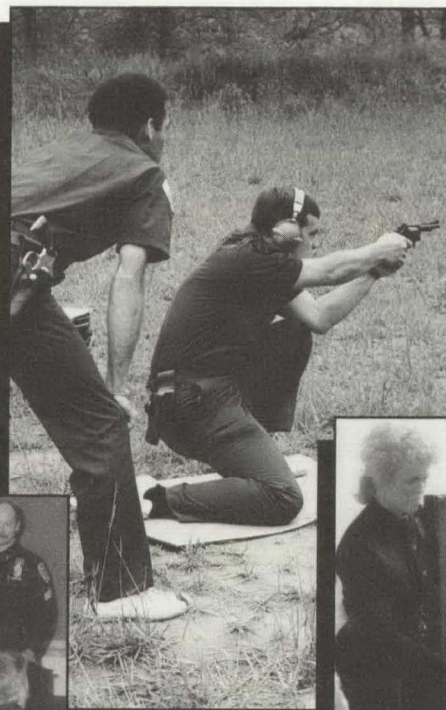
Information for this column was submitted by Officer Doreen Nash, Media Relations Unit, Miami Police Department, Miami, Florida.

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



# Citizen Police Academies

By  
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**D**uring the past 2 decades, law enforcement has expanded the involvement of private citizens in community-based crime prevention efforts. The nature of the public's involvement depends on the individual department. Usually, local police departments center their efforts on one or two programs and invite the public to participate. One such program for citizens is the citizen police academy.

Basically, citizen police academies provide a mechanism for educating the public about the criminal justice system and the ways to resist crime. The overall goals are to gain support for police work, explain

the operations of police agencies, and encourage private citizens to undertake appropriate security measures. Typically, police personnel conduct the classes, which are coordinated by community relations units.

This article gives an overview of citizen police academies and describes their inherent advantages and disadvantages. It then addresses ways to expand the scope of such academies.

## Overview

In 1977, the Devon and Cornwall Constabulary designed a program to familiarize private citi-

zens with the nature of police work and the organization of the police system in the United Kingdom. The course, known as the "Police Night School," met for 10 consecutive Wednesday evenings and was conducted by police personnel on a volunteer basis. The success of this program prompted other British police departments to imitate it.<sup>1</sup>

Eight years later, in 1985, the Orlando, Florida, Police Department organized the first citizen police academy in the United States. Modeled after the British Police Night School, the academy convened 1 evening a week for 10 weeks. Also, participants were given an option to



complete a short course on the use of police sidearms and to ride as observers with officers on patrol.<sup>2</sup> Graduates of the citizen police academy received a departmental cap, certificate of completion, and a commemorative paperweight.<sup>3</sup>

Other U.S. communities followed Orlando's lead. The Missouri City, Texas, Police Department introduced its first citizen police academy in 1986. Media announcements attracted academy participants, who were screened through background checks. This program's success resulted in the expansion of the academy to 11 evening sessions and the incorporation of firearms practice and safety training as a regular part of the curriculum. Several followup activities implemented by the police department, such as a quarterly newsletter and special invitations to police public relations activities, kept interest in the program alive.

In Commerce City, Colorado, the police department recruited participants for its first citizen police academy through personal contacts. The curriculum, initially based on the regular police academy schedule, was condensed into 11 nightly sessions and some weekend activities. The extra sessions were devoted to firearms practice and safety training, ride-alongs, and the use of department vehicles on the department's driving course. From the outset, departmental officials, personnel from other criminal justice services, and community members (e.g., news media representatives) served as instructors or special guest lecturers. Police department instructors also volunteered, but were

given compensatory time off for their participation.

### **Advantages of Current Programs**

The public's involvement in a citizen police academy expands community-based crime prevention efforts. Academy participants become better prepared to cope with criminal incidents, are more willing to report crime, and realize the need to testify when they observe a crime. They also gain an understanding of police procedures that is more reflective of everyday police work than what is portrayed by the media. This helps to reduce complaints about routine police matters.

Participants in academy classes also learn how they can help to make their communities crime-free. They become sources for new ideas or provide ways to better educate the public. For example, a bank executive, who participated in a citizen

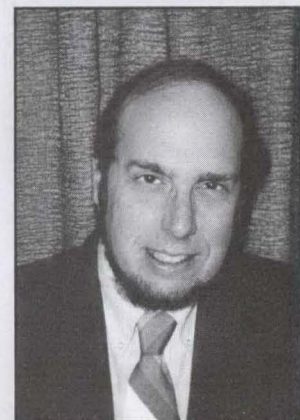
police academy, offered to include crime prevention messages in the monthly statements mailed to depositors.<sup>4</sup>

For police departments, citizen police academies provide an avenue to learn about the concerns of community members. These academies encourage police interaction with the public, which can augment police job satisfaction and provide a measure of accountability to the community.

At the same time, police departments can use a citizen police academy to recruit individuals into the profession. They can also emphasize specific problems in the course of instruction, that is, types of crime that are specific to the locale.

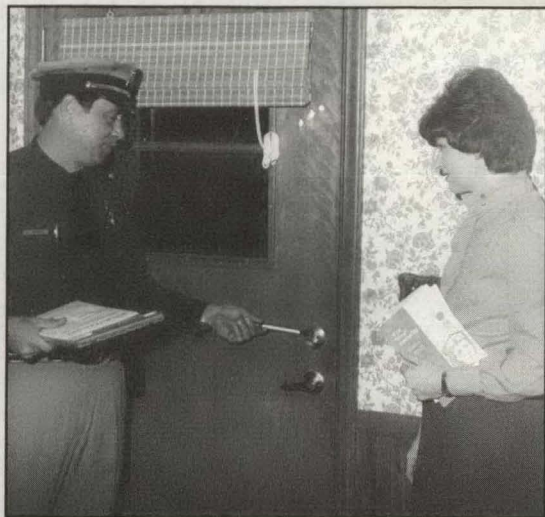
The use of guest instructors from other agencies furthers inter-agency cooperation. In addition, these academies are a means to increase morale within a department as a result of the internal cooperation neces-

**“...citizen police academies provide a mechanism for educating the public about the criminal justice system....”**



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**"The public's involvement in a citizen police academy expands community-based crime prevention efforts."**

sary for organizing the academy program.

### **Disadvantages**

While citizen police academies offer several avenues to police departments to encourage community support, they also have their disadvantages. First, two of the existing programs have been designed for suburban communities with relatively low populations. Consequently, the programs reach only a small number of residents and probably are not suited to urban areas.

Inherently, some academy instructors could lose sight of the goal of citizen police academies. They might overplay the public relations aspects and curtail the delivery of more useful information about the realities of policing and the ability of the criminal justice system to contend with crime.

At the same time, planning activities for the academy, such as preparing curriculum and screening applicants, may detract from the time

and resources needed for routine police work. In addition, local liability considerations may limit or eliminate high-interest activities, such as firearms instruction and ride-alongs. And while the expenditures needed to maintain a citizen police academy are supposedly minimal, instruction may be costly if volunteer instructors are unavailable. For example, in Commerce City, Colorado, firearms training was preceded by a 3-hour orientation class, and individual instructors were provided for each student while on the firing range.

Police departments need to maintain citizen interest when the academy ends. This is difficult unless followup activities are planned. A few months after completing the academy, some participants may be disappointed if all they have to show for their efforts are a cap or T-shirt, a certificate, and memories.

Academies could also turn into victims of their own success. Participants could become so overzealous in their concern for justice that

they engage in conduct that undermines departmental policies and programs, e.g., establishing a vigilante-type neighborhood patrol organization.

Another area of concern is the number of requests for crime prevention speakers and home and business security surveys that academy participation may generate. While this is not a disadvantage, per se, such requests could overburden officers by increasing their workload.

### **Recommendations**

The existing citizen police academies demonstrate a willingness on the part of local police departments to share information with the general public. However, their efforts should merely be considered as a beginning, especially if large metropolitan areas adopt this initiative.

Obviously, achieving the support and cooperation of diverse segments of a metropolitan population will require more than an annual course for a few hand-picked participants. A better approach would be for urban police departments to use their resources to train and certify classes of citizen volunteer instructors who would then be qualified to offer a series of continuous free courses to the public. This would allow for all age groups, sooner or later, to learn a variety of self-help skills.

Moreover, since graduates of the certification program are expected to become future teachers of citizen police academies, concern about followup activities diminishes signifi-



cantly. And if departments want to maintain close supervision of citizen instructors, they could include the program as part of a new or existing auxiliary or reserve police unit.

Another recommendation is to apply a much broader term to these academies, such as "neighborhood police academy." This term emphasizes the importance of people working together for the betterment of the community and works to broaden the format of the academies. Future participants might be drawn from occupations holding peace officer status, such as correctional personnel and reserve officers.

### Increased Scope

By expanding the role of these police academies, most of the current disadvantages would be reduced. For example, newly certified citizen instructors would be more motivated to concentrate on crime prevention topics and less likely to overemphasize public relations. Their services can be used to develop new curriculum guides or to expand and revise current materials for diverse populations. They could also serve to augment the department's personnel resources as crime prevention speakers and home security inspectors.

If made part of a police auxiliary or reserve unit, the department maintains the interest of volunteer instructors. In turn, upon completion of a certification class, highly qualified reservists could increase the availability of firearms instructors for one-on-one safety instruction and practice. Also, in the event regular patrol officers are unavail-

able to accommodate a citizens' ride-along program, auxiliary or reserve officers could be used. Finally, the existence of a volunteer police unit that has been thoroughly trained, closely guided, and given meaningful assignments would reduce the possibility that overzealous course participants might establish their own independent vigilante-type patrols.

### Conclusion

As FBI Director William S. Sessions stated, "We need citizen involvement more than ever today."<sup>5</sup> Therefore, police agencies should not hesitate to enlist the services of their law-abiding community members. Without the cooperation of victims and witnesses in reporting crime and testifying about what they saw, criminals would be virtually held unaccountable for their actions.

Moreover, additional human resources are urgently needed to provide educational programs in urban areas (e.g., family abuse prevention, etc.). By expanding the current model of citizen police academies, departments take one step forward in resolving many of the crime problems facing their communities.

**LEB**

### Footnotes

<sup>1</sup> R. Ferguson, "The Citizen Police Academy," *FBI Law Enforcement Bulletin*, vol. 54, No. 9, September 1985, p. 6.

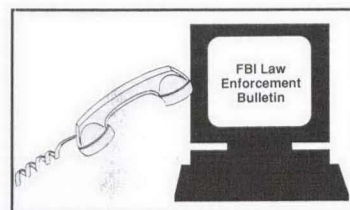
<sup>2</sup> Ibid.

<sup>3</sup> Ibid., p. 7.

<sup>4</sup> J. Seelmeyer, "A Citizen's Police Academy," *Law and Order*, vol. 35, No. 12, p. 28.

<sup>5</sup> W. Sessions, "Director's Message," *FBI Law Enforcement Bulletin*, vol. 57, No. 10, October 1988, p. 1.

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# Civil Rights Cases and Police Misconduct

## DA Pursues Racial Violence Accusations

The U.S. Attorney General, Richard D. Thornburgh, announced today that he has filed a civil rights suit against the San Bernardino County Sheriff's Office, charging it with a pattern of racial violence and discrimination against the Hispanic community.

## Deputy Arrested for Civil Rights Violations

A deputy sheriff of the San Bernardino County Sheriff's Office was arrested today on charges of violating civil rights laws. The deputy, whose name has not been released, is accused of using force against a Hispanic man.

## Officers Indicted in Beating

Two police officers from the San Bernardino County Sheriff's Office have been indicted on charges of beating a man. The man, who is Hispanic, was taken into custody by the officers and beaten while in their custody.

## Cop's Weapon Linked to Victim's Death

A police officer's weapon has been linked to the death of a man. The man was shot in the back of the head by a police officer who was on duty at the time of the shooting.

## Officer Charged with Homicide

A police officer has been charged with homicide. The officer is accused of shooting a man who was in the back of a police car. The man was later found dead.

## Sheriff Prosecuted for Rape

A sheriff has been prosecuted for rape. The sheriff is accused of raping a woman who was in his custody. The woman was later found to be pregnant.

## Patrolman Accused of Taking Bribe

A patrolman has been accused of taking a bribe. The patrolman is accused of accepting money from a man in exchange for looking the other way when the man was committing a crime.



By  
JOHN EPKE, M.A.  
and  
LINDA DAVIS, J.D.

**O**n January 11, 1982, a 24-year-old female was found shot to death just off an interstate highway near Barstow, California. A California Highway patrolman reported the discovery of her body. Based on evidence observed at the crime scene, homicide investigators from the San Bernardino County Sheriff's Office concluded that the victim had been stopped either by a law enforcement officer or someone impersonating an officer.

The homicide investigators decided to examine all duty weapons of officers who had been in the area around the time of the shooting.

When the officer who had discovered the body was contacted, he advised that his home had been burglarized and that his service revolver was missing. A subsequent search located the service revolver, which was missing its barrel and cylinder, in his locked pick-up truck. On January 18, 1982, formal charges were filed in San Bernardino Superior Court, charging the officer with homicide. Two efforts by the State of California to prosecute the officer resulted in hung juries.

At the conclusion of the second trial, the FBI initiated a civil rights investigation of the officer. He was subsequently indicted by a

Federal grand jury, and on May 10, 1984, he was found guilty for violation of Title 18, U.S. Code, Section 242, Deprivation of Rights Under Color of Law. The officer was later sentenced to 90 years in prison, with a minimum of 30 years to be served before he would be considered for parole.

This particular civil rights case raises many questions. For example, why was this case, and similar cases, not immediately investigated by the FBI and prosecuted federally? Why are some cases of this nature never prosecuted federally? These questions and others concerning civil rights investigations will be examined.



This article explains the general steps taken to investigate the three priority areas of civil rights cases. However, it places particular attention to the investigation and prosecution of violations involving police misconduct.

## INVESTIGATION OF CIVIL RIGHTS CASES

The two major entities involved in civil rights cases are the Civil Rights Division (CRD) of the U.S. Department of Justice (DOJ) and the FBI's Civil Rights Unit (CRU). The Civil Rights Division's mission within the Department of Justice is to enforce Federal criminal civil rights statutes and to make prosecutive decisions about civil rights cases. The FBI's mission in civil rights is to investigate these cases and to present them to the Department of Justice for review.

In late 1988, working in concert with the Department of Justice, the FBI established three civil rights program priorities—racial violence, misconduct of law enforcement officers, and involuntary servitude and slavery. While all three areas are deemed priorities, it should be noted that approximately 85% of the complaints received and reviewed by DOJ concern police misconduct allegations.

### Civil Rights Complaints

The criminal section of the CRD reviews a large volume of criminal civil rights complaints received by DOJ each year. In fact, DOJ records indicate that there are as many as 8,000 complaints and inquiries annually in the form of citizen correspondence, phone calls, or personal visits to DOJ, the local U.S. Attor-

ney's Office, or most commonly, to the FBI. However, only about one-third of these complaints are of sufficient substance to warrant investigation. These investigations are conducted by the FBI.

After FBI Agents gather relevant information, they present the facts for review to a CRD attorney and a local Assistant U.S. Attorney, who decide either to close the investigation or to recommend a grand jury presentation. There are at least two levels of review—first by the Deputy Chief of the Criminal Section and then by the Section Chief—before any particular case is approved for grand jury presentation. The Department of Justice is very selective about the cases it pursues. Of the approximately 3,000 investigations conducted each year, it authorizes only about 50 cases for grand jury presentation and possible indictment.



Special Agent Epke



Ms. Davis

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### Grand Jury Presentation

There are several reasons why the Department of Justice insists on grand jury presentation. Because criminal civil rights prosecutions are generally so sensitive, it is important to establish the credibility of each witness under oath. To test the believability of the alleged victim's allegations before the grand jury is, thus, important to assess the strength of the evidence.

In addition, it is much preferred to have members of the community assess the government's evidence before the accused stands trial. This provides the Justice Department with a better understanding of community attitudes that so frequently play a significant role in the ultimate resolution of such cases. Indeed, grand jury presentations are not merely one-sided summaries of the incident at issue. Not only the victim, but all other signifi-



cant witnesses, are subpoenaed to testify. The subject of the investigation is also invited to appear.

At the conclusion of the grand jury proceedings, the Justice Department decides whether to request an indictment. Here again, the Department proceeds with caution. While a criminal indictment can be returned on a showing of probable cause, requests for indictments by a grand jury are not made unless there is sufficient evidence to establish the defendant's guilt beyond a reasonable doubt.

### **POLICE MISCONDUCT STATUTE**

As mentioned, most of the complaints received and reviewed by the DOJ's Civil Rights Division and the FBI's Civil Rights Unit involve allegations of police misconduct, generally allegations of physical abuse. Title 18, U.S.C., Section 242 makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive any inhabitant of those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

Section 242 of Title 18 of the U.S.C. dates from the post-Civil War era; the rights protected, as amplified by court decisions in the ensuing years, have been held to include, among others, the right to be free from unwarranted assaults, to be free from illegal arrests and illegal searches, and to be free from deprivation of property without due process of law. This statute applies to persons regardless of their race, color, or national origin.

Section 242 can also apply to the misconduct of public officials other than police officers. For example, prosecutions of judges, bail bondsmen, public defenders, and even prosecutors are possible under the statute and have occurred.

**“...the aggressive investigation and prosecution of civil rights matters is absolutely necessary....”**

### **Police Misconduct Prosecutive Decisions**

Criminal civil rights prosecutions for police misconduct are among the most difficult under Federal law. Community biases understandably tend to credit (rather than discredit) the law enforcement representative. Therefore, the Justice Department proceeds whenever possible against police misconduct that is clearly offensive and unmistakably violates the rights of the individual victim. Thus, on occasion, after a full and complete grand jury presentation, the Department has decided not to present any indictment to the grand jury.

Prosecutive decisions are also strongly influenced by how local authorities have responded to the alleged misconduct of the subject officers. Local actions can include administrative proceedings by the law enforcement agency, as well as

State prosecutions. The Justice Department often monitors the local response before deciding on a final course of action. What might fall short of “adequate” local action will depend, obviously, on the facts of each particular case. To illustrate, a suspension of a few days for a brutal beating could well be considered insufficient to vindicate the Federal interest under the criminal civil rights laws.

At the other extreme, where it appears that the local law enforcement agency is moving quickly and decisively to punish misconduct, the Justice Department generally defers to that process and does not seek to impose duplicate Federal measures. Experience teaches that swift and commensurate discipline, imposed on aberrant police officers by their supervisors, is generally a more effective deterrent to misconduct than Federal prosecution.

### **Misconduct Case Factors**

In addition to considering the local administrative and prosecutive response to a particular allegation of misconduct, great weight is attached to the willfulness of the misconduct. The Supreme Court has ruled that in any prosecution under Title 18, U.S.C., Section 242, the Government must prove the defendant's *specific intent* to engage in misconduct that violates the victim's constitutional rights; thus, the willfulness of the officer's action is critically important in such cases.

When the misconduct is deliberate and willful—for example, a suspect is beaten to coerce a confession, or an arrestee who initially resisted police efforts to be appre-



hended is subsequently beaten in retaliation—the Justice Department will not hesitate to prosecute. Another factor that can influence a decision to prosecute is the severity of injuries.

Finally, prosecutorial decisions are necessarily guided by the evidentiary strength of the case. The extent of independent corroboration significantly influences the victim's claim. The department does not undertake to prosecute police officers on the strength of the victim's statement alone. Corroboration may consist of physical evidence, but more likely than not, witnesses provide corroboration by their testimony. However, the testimony of all witnesses is not equal, and the Department places greater weight on corroboration provided by the testimony of a fellow officer than on testimony provided by the victim's mother or friends.

### False Misconduct Charges

An issue frequently raised in police misconduct cases is the past inability to prosecute persons who make false complaints to the FBI. Until a few years ago, such prosecutions were extremely difficult from a legal standpoint, because there was conflict in the Federal Circuit Courts of Appeals as to whether Section 1001 of Title 18 applied to false statements made to FBI Agents. In *United States v. Rodgers*, decided on April 30, 1984, the Supreme Court held that Title 18, U.S.C., Section 1001 does cover false statements to FBI Agents, thus paving the way to prosecute such statements.

There is, however, difficulty in prosecuting these cases—they are

hard to prove beyond a reasonable doubt. Frequently, the evidence in these cases constitutes a disagreement between the declarant and the FBI Agent taking the statement, with the declarant insisting the false statement was not made, or if made, was the result of having been misunderstood by the Agent. Nonetheless, where compelling corroboration exists that a false statement was intentionally made, criminal prosecution has been authorized by the Department of Justice.

One such case was tried in 1986 in the Western District of Louisiana. A jail inmate was convicted of a Section 1001 violation when he falsely reported to the FBI that he had been

assaulted and kicked by a deputy sheriff, when in fact, he had received his injuries during a fight with another inmate. In this case, there was clear and convincing evidence that his report to the FBI was false, and accordingly, authorization for the Section 1001 prosecution was provided. He was convicted and sentenced to 3 years' additional imprisonment. Because of the difficulty and sensitivity of these prosecutions, the Department of Justice's Civil Rights Division must review and authorize each prosecution.

### SUMMARY

As seen in this review of investigative and prosecutive steps,

### Case Overview

A significant civil rights violation involving the murder of a money courier from the Dominican Republic by two former U.S. Customs Service Agents occurred in 1982 while the agents were assigned to the San Juan International Airport. The investigation discovered that the victim flew to Puerto Rico in September 1982, for the purpose of depositing approximately \$700,000 in checks and currency into his employer's account. He was last seen being interviewed by two U.S. Customs Service agents in the San Juan airport. Ten days later, the victim's body was discovered in a Puerto Rican National Rain Forest.

The U.S. Customs Service cooperated fully with the FBI and assisted in an extensive investiga-

tion that revealed that the U.S. Customs agents had lured the victim away from the airport and murdered him for the money. The U.S. agents were convicted in U.S. District Court in San Juan for violation of Title 18 U.S.C., Section 242, Color of Law Resulting in Death and other related Federal violations. Both subjects were sentenced to prison terms of 120 years, with a minimum of 35 years to be served before being eligible for parole.\*

\* On appeal, the Title 18, U.S.C., Section 242 conviction was vacated based on the ruling that the victim was not an inhabitant of Puerto Rico. On resentencing, which took place on January 29, 1991, both subjects were sentenced to 50 years in prison. The other Federal crimes for which the subjects were sentenced include Title 18, U.S.C., Sections 1001, 1503, 1623, 1951, 2314, and 2315.



civil rights cases are taken seriously. Throughout its 56 field divisions, the FBI has a total of 117 Agents dedicated to investigating civil rights complaints. Moreover, a complement of 27 Department of Justice attorneys prosecute such civil rights cases. Despite the minimal amount of investigative and prosecutorial resources used in these investigations, a steady increase in civil rights convictions has occurred in the last 3 years. In 1987, 69 convictions were obtained; in 1988, 101 convictions; and in 1989, 128 convictions.

While the statistical accomplishments appear to be low when

compared to the number of cases opened, as discussed earlier, the aggressive investigation and prosecution of civil rights matters is absolutely necessary, regardless of cost. Residents of the United States must have access to competent Federal investigative and prosecutive agencies to redress U.S. Constitutional grievances when local mechanisms do not provide adequate relief. The obligations of the FBI and DOJ in this regard cannot be ignored or delegated if public confidence in this Nation's system of government by law is to be maintained.

Emerging from this aggressive presence is a deterrent factor far more

effective than merely discouraging individual violators. While deterrence is admittedly very difficult to measure, a strong Federal presence provides the proper impetus for local and State agencies and courts to address civil rights complaints effectively. It encourages these agencies to maintain an institutional environment in which civil rights violations are not tolerated. Law enforcement agencies must remain committed to the vigorous upholding of the Federal civil rights statutes and remain proud of the responsibility of ensuring the constitutional rights of *all* people in the United States.

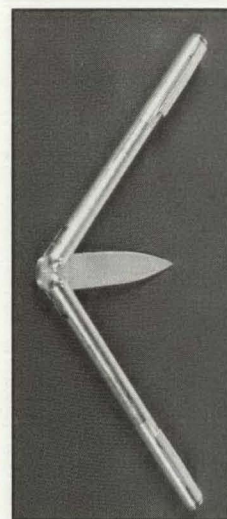
**LEB**

## Unusual Weapon

### Butterfly Knife

Personnel of the Harbor Police, San Diego, California, Unified Port District confiscated this unusual weapon during a traffic stop of an individual suspected of driving while intoxicated. The knife, measuring approximately 8 inches in length, has a blade almost 3 inches long. When worn in a shirt or jacket pocket, it has the appearance of a set of fountain pens.

In addition, during a test conducted at a local airport security checkpoint, the knife failed to activate metal detectors. It is sold commercially in the United States, and security personnel should be aware of its potential threat.





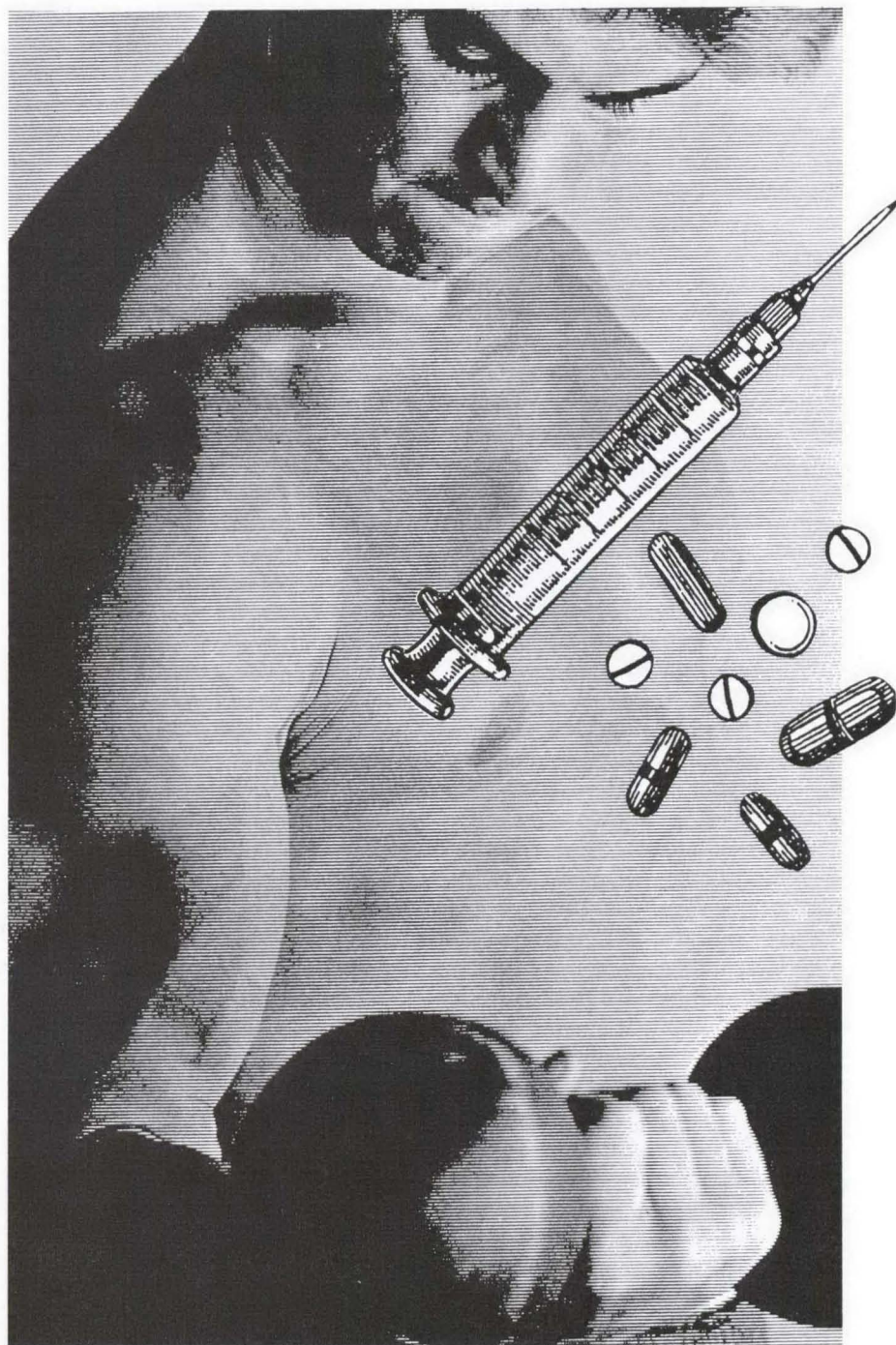
# Abuse of Anabolic Steroids

By  
CHARLES SWANSON, Ph.D.,  
LARRY GAINES, Ph.D.,  
and  
BARBARA GORE, M.S.

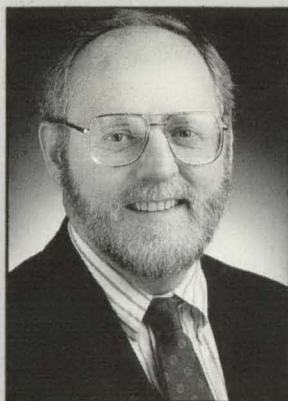
**S**ubstance abuse among police officers is not new. Alcohol abuse has long been recognized as a problem in police work. In fact, a study conducted in 1984 by the National Institute of Occupational Safety and Health revealed that 23 percent of officer respondents had serious drinking problems.<sup>1</sup>

Intensifying this problem is the increased use of illegal drugs by police officers. In recent years, drug abuse in law enforcement has garnered a great deal of attention.<sup>2</sup> Numerous individual cases of police officers using or dealing drugs have received nationwide publicity, and police officers in various ranks and assignments have been involved. However, one area of substance abuse that has been ignored, for the most part, is police officer use of steroids.

Anabolic steroid abuse by police officers is a serious problem that merits greater awareness by departments across the country. The adverse health conditions, both physical and psychological, that such abuse carries need to be dealt with in an informed manner. Because steroid use was originally tied to athletics and fitness conditioning, the abuse of these drugs can be overlooked by the law enforcement profession,







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which has always maintained physical fitness as a top priority. By becoming educated about the consequences of steroid abuse, police managers should be better able to prevent the damage steroids can inflict on their officers.

### Background

The use of anabolic steroids by amateur and professional athletes to increase performance is well-documented.<sup>3</sup> But, when it was determined that more than one-half of the track and field competitors used steroids to prepare for the 1972 Olympic Games, the International Olympic Committee took steps to ban the use of anabolic drugs in Olympic competition.<sup>4</sup> Now, the top six performers in each Olympic event are tested for non-therapeutic drugs of all types. However, despite such developments, steroid use by athletes at all levels is still widespread.

Unfortunately, it is becoming more apparent that the law enforcement community is not exempt from this form of drug abuse. For example, in 1989, while the U.S. Bureau of Customs was investigating the smuggling of anabolic steroids into this country, their investigation led to certain health clubs in North Carolina, where State patrol officers were illegally using anabolic steroids.<sup>5</sup> The North Carolina State Patrol joined the investigation, and subsequently three troopers were terminated.

In another case, a physical training sergeant in the Miami Beach, Florida, Police Department noticed that one of his charges was "bulking up" too fast. This female officer also

displayed street behavior that led a department supervisor to recommend that she be assigned to administrative duties at the station. It was subsequently established that she had been using anabolic steroids. And, in New York, officers have been convicted of selling anabolic steroids.<sup>6</sup>

### Physical Health Risks

While there are recognized medical uses of anabolic steroids that are appropriate only under qualified medical supervision, the abuse of anabolic steroids impacts adversely on an individual's health. (See table 1.) These risks are even greater when anabolic steroids are taken under the direction of non-health professionals or when individuals begin self-dosing. This is because the typical usage under these and related circumstances is 10 to 100 times greater than a proper medical dosage.<sup>7</sup>

Steroids manufactured outside the United States pose even greater risks. Not only are these preparations illegal, but it is difficult to estimate their dosage equivalency.<sup>8</sup> Conditions like this virtually ensure dosages will be well beyond those recognized as medically appropriate.

### Psychological Effects

Unknown, or less well-known, to anabolic steroid abusers than the noted health risks listed in table 1 are certain detrimental emotional and psychological symptoms. Indeed, it is maintained that "aggressive behavior is almost universal among anabolic steroid users."<sup>9</sup> There are documented case histories of severe



depression, visual and auditory hallucinations, sleep disorders, thoughts of suicide, outbursts of anger, anorexia, psychomotor retardation, and irritability.<sup>10</sup>

There have also been significant instances of unusual and/or violent police behavior associated with anabolic steroid use, which have the potential to cause serious public relations and other problems for police administrators. For example, the CBS news program "60 Minutes" aired a segment detailing episodes of police violent behavior and abuse of citizens that were attributed to steroid use. The segment highlighted a particular incident where an off-duty police officer got into an argument with a female employee at a business establishment and later returned to abduct her. He subsequently shot her and threw her from his vehicle. The investigation that followed revealed no propensities toward this type of behavior. However, the officer had been using anabolic steroids, and his testosterone level was 50 times higher than normal.<sup>11</sup>

### Dependence on Steroids

Although steroids are not physically addicting, abusers can develop a psychological dependence on the drug. After initial success with the drug, subjects become psychologically dependent on their improved physique, increased strength, or sexual appeal and continue to use steroids. Exercise becomes easier with steroids, and pain or a lack of strength develops when the drugs are not used. This process may continue until the subject is faced with some diffi-

Table1	
ADVERSE EFFECTS OF ANABOLIC STEROIDS	
MEN	WOMEN
<ul style="list-style-type: none"> <li>• Breast enlargement</li> <li>• Testicular atrophy with consequent sterility or decreased sperm count</li> <li>• Impotence</li> <li>• Enlarged prostate</li> </ul>	<ul style="list-style-type: none"> <li>• Breast diminution</li> <li>• Clitoral enlargement</li> <li>• Facial hair growth</li> <li>• Deepened voice</li> <li>• Menstrual irregularities</li> <li>• Excessive body hair</li> <li>• Baldness</li> </ul>
BOTH SEXES	
<ul style="list-style-type: none"> <li>• Increased aggression known as "roid rage"</li> <li>• Increased risk of heart disease, stroke, or obstructed blood vessels</li> <li>• Acne</li> <li>• Liver tumors, jaundice, and peliosis hepatitis (blood-filled cysts)</li> <li>• Pre-teens and teenagers—accelerated bone maturation leading to permanent short stature</li> </ul>	
<i>(Information presented in FDA Drug Bulletin, vol. 17, No. 3, October 1987, p. 27, with modification.)</i>	

culty as a result of the drug dependency. Cessation of usage will come only when the subject becomes disinterested or is confronted with the various problems stemming from abuse of the drug.

### The Legal Environment

As the harmful physical and psychological effects of steroid

abuse became known, there emerged a need for legal regulation of the drugs. It is the responsibility of the Drug Enforcement Administration (DEA) to enforce the Controlled Substances Act (CSA), which is intended to minimize the quantity of drugs available for illegal use. The CSA places substances into one of five schedules based on such factors



as potential for abuse and whether there is a recognized medical use of the substance. Historically, most over-the-counter (OTC) and prescription drugs, including anabolic steroids, have not fallen within one of the CSA schedules, and responsibility for enforcement efforts relating to them has rested with the Food and Drug Administration (FDA) and State agencies.

The FDA determines whether a substance falls within the OTC or prescription category; each State then has the legal power to determine who can legally prescribe and dispense OTC and prescription substances. Signed into law on November 18, 1988, the Federal Anti-Drug Act of 1988—also referred to as the Omnibus Drug Abuse Initiative—placed a special category of anabo-

ted an illegal act.<sup>14</sup> By November 1, 1989, at least 28 bills focusing on anabolic steroids had been introduced in State legislatures.<sup>15</sup> In general, these proposed laws would make prosecution of anabolic steroid-related crimes easier and would call for more severe penalties.

More recently, Congress passed the Anabolic Steroids Control Act of 1990.<sup>16</sup> This act, which placed anabolic steroids into the CSA's Schedule III, gave enforcement power to DEA and created stiffer penalties. For example, simple illegal possession of anabolic steroids without any Federal or State drug conviction is punishable by 1 year in prison and/or a fine of \$1,000 to \$5,000. If there is an existing drug conviction, illegal possession will result in not less than 15 days and no more than 2

of administrators at 30 police departments across the country, concerns about steroid abuse were expressed. Members of internal affairs and public information offices were interviewed, as were staff psychologists and command position officers.

Initially, with few exceptions, the responses were that steroid abuse had never been a problem in the department. Yet, those who claimed that anabolic steroid use in the department was not a problem often later admitted that some officers had become muscular very quickly. The interviews revealed that steroid use was indeed overlooked and that the abuse of these drugs was beginning to manifest itself.

Unfortunately, police administrators are not yet fully aware of the seriousness of steroid abuse and often fail to recognize this problem among their officers. Current information about police officer use of anabolic steroids is fragmented and impressionistic.

In addition, general drug tests do not detect the presence of anabolic steroids; a separate test is required. This, combined with the difficulties in implementing drug testing programs and the costs involved, make it questionable as to the extent of organizational attention that will be given to police officer use of steroids in the near future.

### **Response to Anabolic Steroids**

Though departments may find steroid abuse issues difficult to deal with now, they must become aware that developments in the legal envi-

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***Departments must...educate their officers about steroids and design effective policies concerning steroid abuse.***

”

lic steroids within the prescription class, and all violations involving the sale or possession with intent to distribute anabolic steroids became felonies.<sup>12</sup>

However, even before the passage of the Anti-Drug Act, it was illegal to possess anabolic steroids without a prescription in all 50 States.<sup>13</sup> Thus, any officer in this country using anabolic steroids without a prescription has commit-

ted an illegal act, years and/or a fine of no less than \$2,500, but not to exceed \$10,000.

### **Administrative Concerns**

As health, behavioral, and other problems have been linked to steroid abuse, police departments have been faced with a need for awareness, education, and departmental policies concerning steroid use among their officers. In the fall of 1989, during personal interviews



ronment<sup>17</sup> signal strong social apprehension about the use of anabolic steroids. Administrators should share this concern, given the consequences that may result from police anabolic steroid abuse. Increased citizen complaints against officers, unprovoked off- and on-duty violence, a negative impact on abusers' bodies, increased damage to police-community relations, officer involvement in illegal activity, civil litigation, and adverse media coverage are problems that may likely arise from officer abuse of steroids.

The first step toward confronting steroid abuse must be a desire on the police department's part to know more about police anabolic steroid use. The reasons why officers become involved in taking steroids and to what extent they use them is unclear. Is it a matter of ignorance or lack of information that officers simply don't know the risks they are taking? Is it because they believe that not only are they "out-gunned," but also "out-muscled" by criminals? Does it have little to do with work and more to do with a narcissistic involvement with one's own body? These questions and many others must be addressed as departments cope with steroid issues.

### Measures to Take

Most police departments do not have a blanket policy of anabolic steroid screening for recruits. Also, the extent of anabolic steroid use by police officers is presently unclear. However, departments should begin to train supervisors, background investigators, and internal affairs personnel on how to identify the physi-

cal and behavioral signs associated with anabolic steroid abuse.

In addition to the physical and psychological symptoms previously noted, other possible indicators to

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begin looking for are sleep disorders, marked increases in irritability, depression, unusual nervous tension, trouble in concentrating on cognitive tasks, increased officer-to-officer conflicts, and complaints from the officer about the department, its policies and procedures, or working conditions. If members of police departments are made aware of these symptoms, they will be more readily equipped to confront a possible abuse situation.

### Conclusion

There are sufficient independent indicators to warrant attention from police administrators about officer use of anabolic steroids. The risks to officers' physical and mental health are real and significant, and officer anabolic steroid abuse places the public they are sworn to protect at risk. Because of such abuse, police families are exposed to additional stresses, potential liabilities may be created, and important inter-departmental relationships can become endangered.

It is a time for thoughtful, measured assessment and prudent action concerning all of the harmful effects steroid abuse creates. Departments must become aware of this very real problem, educate their officers about steroids, and design effective policies concerning steroid abuse.

**LEB**

### Footnotes

<sup>1</sup> J.J. Hurrell and R. Kliesmet, *Stress Among Police Officers* (Cincinnati: National Institute of Occupational Safety and Health, 1984).

<sup>2</sup> See, Mary Niederberger, "Random Drug Test for Police Opposed," *Pittsburgh Press*, April 6, 1989; Rob Zeiger, "14 Fired Officers Returned to Duty," *Detroit News*, July 22, 1988; Shelly Murphy "Court Upholds Drug Tests for Hub Cops," *Boston Herald*, May 13, 1989; Marilyn Robinson, "Drug Use Cuts Police Recruits by Nearly 50%," *Denver Post*, July 15, 1983; David Schwab, "Supreme Court Backs Drug Tests for South Jersey Police Officers," *Newark Star-Ledger*, April 4, 1989.

<sup>3</sup> *Wilson and Gisvold's Textbook of Organic Medicinal and Pharmaceutical Chemistry*, ed. R.F. Doerge (Philadelphia: J.B. Lippincott Co., 1982).

<sup>4</sup> *Ibid.*

<sup>5</sup> Telephone conversation with the Director of Administrative Services of the North Carolina State Police, August 30, 1989.

<sup>6</sup> CBS, "60 Minutes," segment aired November 5, 1989.

<sup>7</sup> Harrison G. Pope and David L. Katz, "Affective and Psychotic Symptoms Associated with Anabolic Steroid Use," *American Journal of Psychiatry*, April 1988, vol. 145, No. 4.

<sup>8</sup> *Ibid.*

<sup>9</sup> Marj Charlier, "For Teens, Steroids may be Bigger Issues than Cocaine Use," *Wall Street Journal*, October 4, 1988.

<sup>10</sup> *Supra* note 7.

<sup>11</sup> *Supra* note 6.

<sup>12</sup> 29 U.S.C. 333(e).

<sup>13</sup> Food, Drug and Cosmetic Act of 1938, as amended 21 U.S.C. 301 et. seq. This is true whether the steroids were intended for use by humans or animals.

<sup>14</sup> 21 U.S.C. 333a, 2403.

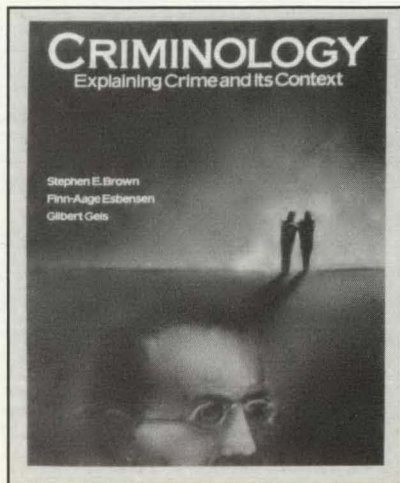
<sup>15</sup> The States are Alaska, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, and Washington.

<sup>16</sup> Anabolic Steroids Control Act of 1990, Pub. L. 101, sec. 647.

<sup>17</sup> *Ibid.*



# Book Review



**Criminology: Explaining Crime and Its Context** by Stephen E. Brown, Finn-Aage Esbensen, and Gilbert Geis, Anderson Publishing Company, Cincinnati, Ohio, 1991.

Today, there is a wide array of good criminology texts available. Few, however, are as interesting, precise, or comprehensive as *Criminology: Explaining Crime and Its Context*. Although the presentation is lengthy, this text provides a very detailed explanation of criminology, as well as its primary scholars and issues. As the authors state, the book provides a comprehensive introduction to the theories that have played major roles in criminology.

The book consists of 17 chapters divided into 3 parts. The style is engaging, and while the book contains nearly 700 pages of text, it is easy to read and interesting. The authors state that the orientation of the book is sociological, but the presentation is very well-balanced, providing a broad explanation of crime and its context.

Part One discusses the definitions of crime and criminology, as well as criminal law, and

presents an overview of current crime rates and statistics. The first five chapters provide an introduction to the basic issues and perspectives of criminology, criminal law, the criminal justice system, crime statistics, and the distribution of crime.

Part Two discusses the theories of crime from the preclassical to modern integrationist perspectives. The authors present a comprehensive analysis of biogenic, psychogenic, structural, social process, social reaction, and neo-classical theories, as well. A definition of criminology, describing it as a science comprised of both empirical and theoretical components, is provided, as is a detailed discussion of current criminology. In addition, coverage of the current deterrence debate and the interactionist models is quite unique and useful.

Part Three presents a discussion of several specific types of crime. While the list is not comprehensive, the grouping provides a convenient organizational framework for discussing the major aspects of contemporary crime. The last several chapters discuss female crime, violent crime, economic crime, victimless crimes, delinquency, and political crime.

*Criminology: Explaining Crime and Its Context* presents a very precise and comprehensive discussion of criminology. The text not only explains the theories involved but also provides details about the theorists themselves. The authors also offer a very helpful discussion and interesting illustration of the currently debated work on deterrence. The book succeeds in presenting an integrated and detailed overview of a very diverse field.

Reviewed by  
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*The July 26, 1990, signing of the Americans with Disabilities Act.*

# ***The Americans with Disabilities Act***

By  
JEFFREY HIGGINBOTHAM, J.D.



**O**n July 26, 1990, President Bush signed the Americans With Disabilities Act (ADA), which poses new challenges for law enforcement administrators. The ADA, which was enacted to eliminate discrimination against individuals with disabilities, provides protection against employment discrimination to individuals who are disabled but nonetheless able to work.<sup>1</sup> Though the ADA is not yet in effect, it will become effective for employers with at least 25 employees on July 26, 1992, and for employers with at least 15 employees on July 26, 1994.<sup>2</sup> There-

fore, law enforcement administrators should begin planning now to ensure compliance with the act when it does become effective.

The purpose of this article is to discuss the requirements of the ADA. The article also brings to the attention of administrators certain problem areas involving important policy decisions that should be considered before the effective date of the act.<sup>3</sup>

## **PROHIBITION OF DISCRIMINATION**

The ADA prohibits employers from discriminating "...against a

qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment."<sup>4</sup> The ADA also prohibits an employer from conducting a medical examination or making inquiries of a job applicant concerning the nature or severity of a disability, unless a conditional offer of employment has been made.<sup>5</sup>

However, these general prohibitions of discrimination against the



disabled have two important thresholds that must be met before a particular person is protected by the ADA. First, an applicant or employee must be *disabled* under the terms of the act. Second, in addition to that disability, the person must be *qualified* to perform the job, with or without reasonable accommodation by the employer. More importantly, the ADA does not automatically require that disabled persons be hired; rather, it demands equal employment opportunities, but only if those persons are capable of performing the essential functions of the job.

#### WHAT CONSTITUTES A DISABILITY UNDER THE ADA?

A person is defined by the ADA as disabled if that person has a physical or mental impairment that substantially limits one or more major life activities, has a record

of such impairment, or is regarded as having such an impairment.<sup>6</sup> Generally, a person is disabled if that person has any physiological disorder, condition, disfigurement, anatomical loss, or mental or psychological disorder that makes that individual unable to perform such functions as caring for himself or herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working to the same extent as an average person.<sup>7</sup>

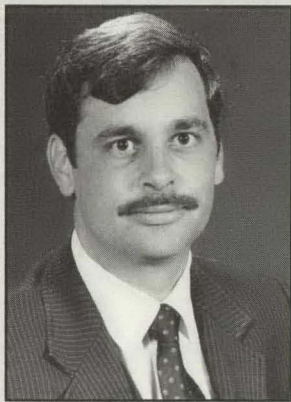
However, the exclusion of a person from a particular job or position because of a physical or mental impairment is not necessarily illegal discrimination under the ADA if that individual is not "substantially limited" in a major life activity. "[A]n individual is not substantially limited in working just because he or she is unable to perform a particular job for one employer, or because he or she is unable to per-

form a specialized job or profession requiring extraordinary skill, prowess or talent."<sup>8</sup>

In deciding whether a particular person is substantially limited in the major life activity of working, it is instructive to examine court decisions interpreting the Federal Rehabilitation Act of 1973.<sup>9</sup> Courts have held that the protections against handicap discrimination in that act do not "...include working at the specific job of one's choice....Being declared unsuitable for the particular position of police officer is not a substantial limitation of a major life activity."<sup>10</sup> For example, some disabilities may be disqualifying for some jobs or professions. However, if these disabilities do not act as a complete bar to other employment opportunities, and the person is reasonably able to obtain employment despite the disability, then under the ADA there is no substantial limitation on the major life activity of working.

There are also certain conditions that the ADA expressly excludes from protection. These include current illegal drug use, homosexuality, bisexuality, transvestism, exhibitionism, voyeurism, gender identity disorder, sexual behavior disorder, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.<sup>11</sup> Persons with these conditions are excluded from the act's definition of disabled persons.

The ADA's exclusion of *current* illegal drug users as protected disabled persons raises a potential concern for law enforcement employers. While current illegal drug



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***The ADA...provides protection against employment discrimination to individuals who are disabled but nonetheless able to work.***  
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users do not fall within the definition of a qualified disabled individual,<sup>12</sup> former drug users are arguably protected by a provision in the ADA, which provides that a protected disability includes a person who:

"...1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; [or] 2) is participating in a supervised rehabilitation program and is no longer engaging in such use."<sup>13</sup>

While there is no caselaw directly on point, it might be argued that despite the above-cited ADA provision, law enforcement employment can be denied to a former illegal drug user because that person's prior conduct evinces unacceptable character traits, lack of judgment, or failure to abide by the law, all of which are relevant to the hiring and employment of police officers.<sup>14</sup>

#### **WHAT CONSTITUTES A "QUALIFIED" INDIVIDUAL UNDER THE ADA?**

The determination that a physical or mental impairment substantially limits a major life activity and renders a person disabled under the ADA only completes the first threshold requirement for protection. The ADA also requires that disabled persons be nonetheless qualified to perform the work required.

The ADA defines a "qualified individual with a disability" as "...an

individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or

review each job classification within their agency thoroughly, paying particular attention to tasks that require special skills, talents, or abilities to perform the job's essential

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***...discrimination on the basis of a disability that affects only marginal or peripheral functions...is illegal.***

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desires.”<sup>15</sup> A law enforcement administrator's judgment as to what functions are essential to a job and any written job description used during the application or hiring process are considered under the ADA to be evidence of a position's essential functions.<sup>16</sup>

Also relevant to these essential functions determinations are the amount of time expended during the workday performing certain functions, the consequences if those tasks are not performed, and the work experience of current and past incumbents of the position.<sup>17</sup> Law enforcement administrators should carefully identify the essential functions of each particular job in their department, since the clear import of the ADA is that discrimination on the basis of a disability that affects only marginal or peripheral functions and not the performance of essential functions is illegal.<sup>18</sup>

Police administrators preparing for the full implementation of the ADA would be well-served to

functions. The essential functions should be isolated so that informed judgments can be made as to the capability of disabled applicants or employees to hold those jobs successfully.

#### **WHEN DO MEDICAL EXAMINATIONS AND INQUIRIES VIOLATE THE ADA?**

The ADA contains specific prohibitions and requirements concerning medical examinations and inquiries about disabilities. The ADA provides that an employer can only “...conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability...after an offer of employment has been made to a job applicant....”<sup>19</sup>

The employer may, however, condition an offer of employment on the results of such an examination.<sup>20</sup> Where a medical examination is



required after a conditional offer of employment is made, the following three additional restrictions are contained in the statute:

- 1) All new employees must be subject to the medical examination;
- 2) The information obtained during the medical examination and the medical history of the applicant collected must be maintained "...on separate forms and in separate files and...treated as a confidential medical record...";<sup>21</sup> and
- 3) The results of the examination may be used only in accordance with the act.<sup>22</sup>

#### EFFECTS ON HIRING PRACTICES

The ADA's limitations on medical examinations and inquiries concerning disabilities may require several significant changes in police hiring practices. First, those law enforcement agencies that require applicants to undergo a complete medical examination early in the application process may be required to shift the medical examination to the later stages of the application process. This is because law enforcement agencies covered by the ADA will have to first determine that an applicant is eligible to be hired and make a conditional offer of employment before subjecting the applicant to a medical examination. Second, law enforcement executives will have to ensure the medical standards tested during the examination, which might be disqualifying, are related to the essential functions

of the job before the offer of employment can be withdrawn.

A third likely change in police hiring practices concerns psychological testing. The use of psychological testing as an employment screening device appears to be a growing practice,<sup>23</sup> with some States requiring it as matter of law.<sup>24</sup> While

**"...the ADA is designed to ensure that qualified disabled persons are given the same consideration for employment as non-disabled persons...."**

the ADA does not ban the use of psychological testing, it may require such testing be postponed until after a conditional offer of employment is made because: 1) Psychological testing may be construed to be a form of medical examination; and 2) the ADA defines a disability to include a mental disorder or impairment that substantially limits a major life activity. To the extent that psychological testing for personnel screening identifies such conditions, the test would be subject to the ADA requirement that such medical examinations and inquiries about disabilities be done only after offers of employment are made.

A fourth possible change to hiring practices concerns application forms that currently contain a section for medical information that requires applicants to list potentially disabling impairments. Because the ADA provides that such inquiries can only be made after an offer of employment, application forms provided to applicants as an initial step in the hiring process may have to be altered to remove medical and disability inquiries. Moreover, the ADA's prohibition on inquiries as to the nature or severity of disabilities may also affect interviews of police applicants by requiring that interviewers be familiar with the ADA and refrain from making any prohibited inquiries about an applicant's disability.

Finally, the ADA may require law enforcement agencies to rethink their physical ability hiring standards. Tests that measure overall levels of fitness or specific physical abilities as a condition of employment can now be challenged under the ADA as not being job-related or consistent with a business necessity. Law enforcement physical ability and agility tests have already spawned considerable litigation under Title VII of the Civil Rights Act, and the ADA provides an additional basis on which to raise legal challenges.<sup>25</sup>

#### PERMITTED EXAMINATIONS AND INQUIRIES

There are four instances where the ADA permits medical examinations or inquiries. First, employers can question applicants about their ability to perform job-related func-



tions,<sup>26</sup> but such questions should not be phrased in terms of the disability.<sup>27</sup> For example, police applicants could be asked about their ability to drive a car or run a given distance within an established time period as a job-related function, but should not be asked if there are physical limitations that prevent the applicant from driving or running.

Similarly, an employer is permitted to require fitness for duty examinations of current employees if required by State law or when there is a need to determine whether the employee is still able to perform the essential functions of the job. However, employers cannot require the fitness for duty examination if the employee's condition was not related to job performance.<sup>28</sup>

Second, it is permissible to conduct voluntary medical examinations and collect voluntary medical histories as part of an employee health program available to all employees at the work site.<sup>29</sup> Third, medical examinations of employees or inquiries about the nature or severity of a disability are permissible if shown to be "job-related and consistent with business necessity."<sup>30</sup> Fourth, the ADA specifically exempts drug testing from the medical examination prohibitions. Though it does not appear Congress intended to encourage drug testing by employers, those that choose to do so are not constrained by the ADA.<sup>31</sup>

#### **DEFENSES TO CHARGES OF UNLAWFUL DISCRIMINATION**

While the ADA is designed to ensure that qualified disabled persons are given the same considera-

tion for employment as non-disabled persons, it also provides the following three defenses that can be raised by employers charged with unlawful discrimination:

- 1) The qualification standards, tests, or selection criteria are job-related and consistent with business necessity;
- 2) The disabled individual, if hired, would pose a direct threat to the health or safety of the individual or others; and
- 3) The employer is unable to reasonably accommodate the disability of the individual.<sup>32</sup>

#### **The Job-related and Consistent with Business Necessity Defense**

The concepts of job-relatedness and business necessity require

elements.<sup>33</sup> If this is done properly, employment decisions may be made, even if they adversely affect disabled persons.

This defense is also important where an employer withdraws an offer of employment based on the results of a medical examination. The job-relatedness and consistency with business necessity must be shown if the exclusionary criteria of a medical examination screens out disabled persons.<sup>34</sup>

#### **The Direct Threat to Health or Safety Defense**

Employers can lawfully refuse to hire a disabled person where the individual, if hired, would pose a direct threat to the health or safety of others in the workplace.<sup>35</sup> A direct threat is defined by the ADA as "...a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation."<sup>36</sup>

**“  
...the ADA...demands equal employment opportunities, but only if those persons are capable of performing the essential functions of the job.  
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that law enforcement administrators preparing for the implementation of the ADA conduct an analysis of jobs and tasks for the purpose of identifying the essential functions of each position. Then, administrators must devise standards and criteria that accurately reflect and measure those

Such determinations should be made on a case-by-case basis, and employers should carefully base their decisions on sound medical knowledge and other objective factors, including the duration of the risk, the nature and severity of the potential harm, and the likelihood



that the potential harm would occur.<sup>37</sup> For example, a physical or mental condition that prevents an individual from safely operating a patrol car or discharging a firearm

that a disabled person, who otherwise possesses the qualifications required for a particular position, is able to function as a productive employee.

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***The ADA's limitations on medical examinations and inquiries concerning disabilities may require several significant changes in police hiring practices.***  
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could constitute a lawful basis for terminating or refusing employment as a patrol officer, even though that person would be an otherwise “qualified disabled person” under the ADA.

Police administrators should be circumspect in invoking this defense since generalized fears, remote possibilities, or only slightly enhanced threats to safety or health are insufficient reasons for denying employment to a qualified disabled person.<sup>38</sup> Employment decisions must be based on articulable and objective evidence.

#### **The Inability to Reasonably Accommodate Defense**

A third defense available to employers is an inability to reasonably accommodate the disability of an employee or applicant. The notion underlying the term “reasonable accommodation” is that an employer may be able to make certain adjustments to the workplace or to the conditions of employment so

The ADA expressly embodies the requirement for reasonable accommodation in its definition of a qualified individual with a disability.<sup>39</sup> An employer’s failure to make reasonable accommodations to the known physical or mental limitations of otherwise qualified applicants or employees is proscribed by the act.<sup>40</sup>

While the duty to accommodate the disability of an employee or applicant reasonably is clear, the degree to which an employer is required to alter the conditions of employment is less clear. Some of the express requirements of reasonable accommodation include: 1) Making existing facilities readily accessible to and usable by disabled individuals; 2) job restructuring; 3) part-time or modified work schedules; 4) reassignment to a vacant position; 5) acquisition or modification of equipment; 6) modification of examinations, training and policies; and 7) the provision of qualified readers or interpreters.<sup>41</sup>

However, the ADA does not require that employers make all possible modifications to working conditions under the obligation of reasonable accommodation. For example, alterations that are primarily for the personal benefit of the individual or are not job-related do not fall within the obligation of reasonable accommodation.<sup>42</sup> The accommodation need not be the employee’s or applicant’s preference or even the “best” accommodation, so long as it is sufficient to meet the job-related needs of the disabled person.<sup>43</sup> Similarly, an employer is not required to restructure the essential functions of a position to fit the skills of the disabled person or create a new job that the disabled person can perform.<sup>44</sup>

In addition, an employer is not required to accommodate a disabled employee or applicant reasonably if it would create an undue hardship on the operation of the employer’s business.<sup>45</sup> The ADA lists the following factors that should be considered in determining whether a particular act or modification would create an undue hardship: 1) The nature and cost of the accommodation; 2) the overall financial resources of the employer and the particular facility where the accommodation is needed; 3) the number of persons employed at such facilities and by the employer in general; and 4) the impact of the accommodation upon the operation of the facility.<sup>46</sup>

The Supreme Court has interpreted a similar reasonable accommodation requirement under the Federal Rehabilitation Act.<sup>47</sup> In *School Board of Nassau County v.*



*Arline*,<sup>48</sup> a school teacher with tuberculosis was removed from his classroom assignment. In addressing the school district's obligation to reasonably accommodate the handicapped employee, the Supreme Court stated:

"Although [employers] are not required to find another job for an employee who is qualified for the job he or she was doing, they cannot deny an employee alternative employment opportunities reasonably available under the employer's existing policies."<sup>49</sup>

Similarly, in *Southeastern Community College v. Davis*,<sup>50</sup> the Court ruled that accommodation of an employee's handicap is not reasonable when it requires a fundamental change in the nature of an employer's program.

There is no indication that Congress intended the ADA's reference to job restructuring as a form of reasonable accommodation to undercut the Supreme Court's decisions in *Arline* and *Davis*. The ADA does not obligate employers to create new jobs or remove essential functions from the requirements of a particular position. However, where a vacant job exists which a disabled person could successfully perform, reassignment may be required as a form of reasonable accommodation. But, permanent assignment to light duty positions would not be required, unless permanent light duty positions are normally available.<sup>51</sup>

## CONCLUSION

The ADA will require law enforcement administrators to ana-

lyze their personnel and hiring practices and to determine the essential functions of each position in the department. A department's application process may have to be restructured to ensure that medical and psychological tests are used only after a conditional offer of employment has been made, unless such tests can be shown to be job-related and consistent with business necessity. Law enforcement administrators should also determine whether changes in the workplace or conditions of employment or other reasonable accommodation can be

**"The ADA does not obligate employers to create new jobs or remove essential functions from the requirements of a particular position."**

made to permit an otherwise qualified disabled person to perform jobs successfully within the police agency.

The ADA will pose new challenges for law enforcement administrators. However, with careful pre-planning and appropriate consultation with the Equal Employment Opportunity Commission,

administrators can meet these challenges and ensure that their departmental policies and practices are legally defensible when the ADA becomes effective.

**LEB**

## Footnotes

<sup>1</sup> 42 U.S.C. 12101 (1990).

<sup>2</sup> The ADA becomes effective 24 months after the date of enactment. In addition, 42 U.S.C. 12111(5)(A) provides that employers with 25 or more employees are subject to the act as of that date, and that employers with 15 or more employees will be subject to the act 2 years after that date. Those employers with fewer than 15 employees are not subject to the ADA. The ADA is not applicable to the Executive Branch of the U.S. Government. However, a closely parallel statute, the Federal Rehabilitation Act, 29 U.S.C. 794, already imposes many of the same requirements on the Federal Government.

<sup>3</sup> In addition to other requirements discussed in this article, the ADA imposes an obligation on employers to "post notices in an accessible format to applicants, employees and members describing the applicable provisions of the Act." 42 U.S.C. 12115. It is recommended that in planning for implementation of the ADA, law enforcement administrators contact their local Equal Employment Opportunity Commission (EEOC) office to consult on the appropriate language to be contained in these notices and for guidance as to the number and location of the required notices.

<sup>4</sup> 42 U.S.C. 12112(a).

<sup>5</sup> 42 U.S.C. 12112(c). The ADA is patterned largely after Title VII of the Civil Rights Act of 1964, the statute that prohibits employment discrimination based on sex, race, religion, color, or national origin. The remedies available to an aggrieved qualified disabled person mirror the relief available under Title VII. See, 42 U.S.C. 12117. An employer who illegally discriminates against qualified disabled persons may be liable for lost wages, attorneys' fees, costs, and equitable relief.

<sup>6</sup> 42 U.S.C. 12102(2).

<sup>7</sup> See, proposed EEOC regulations, Sections 1630.2(h) and (i), 56 Fed. Reg. 8578 (1991) (to be codified at 29 C.F.R. 1630) (proposed February 28, 1991).

<sup>8</sup> See, proposed EEOC Interpretive Guidance on Title I of the Americans With Disabilities Act, Part 1630.2(j), 50 Fed. Reg. 8591 (1991) (proposed February 28, 1991).

<sup>9</sup> 29 U.S.C. 790. Cases decided under the Federal Rehabilitation Act are precedentially significant in interpreting the ADA because "Congress intended that the relevant caselaw developed under the Rehabilitation Act be generally applicable to the term 'disability' as used in the ADA." See, proposed EEOC Interpretive Guidance on Title I of the ADA, Part 1630.2(g), *supra*, note 8 and 42 U.S.C. 12201(a).



<sup>10</sup> *Daley v. Koch*, 892 F.2d 212, 215 (2d Cir. 1989). See also, *Forrissi v. Bowen*, 794 F.2d 931 (4th Cir. 1986) and *Padilla v. City of Topeka*, 708 P.2d 543 (Kan. 1985).

<sup>11</sup> 42 U.S.C. 12208 and 12211.

<sup>12</sup> 42 U.S.C. 12210(a).

<sup>13</sup> 42 U.S.C. 12210(b).

<sup>14</sup> See, *Johnson v. Smith*, 39 F.E.P. Cases 1106 (D. Minn. 1985). An analogous argument was successful in *Huff v. Israel*, 573 F.Supp. 107 (M.D. Ga. 1983), where a law enforcement employee was dismissed following three off-duty convictions for driving under the influence of alcohol. The employee sued, claiming

*State by Cooper v. Hennepin County*, 425 N.W.2d 278 (Minn. App. 1988), *aff'd*, 441 N.W.2d 106 (Minn. 1989). **Back or Shoulder Injury**—*Dancy v. Kline*, 44 F.E.P. Cases 380 (N.D. Ill. 1987); *Mullen v. Princess Anne Volunteer Fire Co., Inc.*, 853 F.2d 1130 (4th Cir. 1988); *Daniels v. Barry*, 659 F.Supp. 999 (D.D.C. 1987); *Mahoney v. Ortiz*, 645 F.Supp. 22 (S.D.N.Y. 1986). **Hypertension**—*Jurgella v. Danielson*, 764 P.2d 27 (Ariz. App. 1988). **Heart Condition**—*Cook v. Department of Labor*, 688 F.2d 669 (9th Cir. 1982), *cert. denied*, 464 U.S. 832 (1983); *Walker v. Attorney General of the United States*, 570 F.Supp. 100

disclosure to government officials investigating compliance with the ADA.

<sup>23</sup> 36 Law and Order 66 (Feb. 1988) (55% of law enforcement agencies nationwide now use psychological testing for personnel screening).

<sup>24</sup> See, e.g., Young, "Reviewing the Pre-Employment Psychological Test," *Journal of California Law Enforcement*, vol. 22, No. 47, 1988.

<sup>25</sup> For a discussion of some of these legal issues, see, Daniel L. Schofield, "Establishing Health and Fitness Standards: Legal Considerations," *FBI Law Enforcement Bulletin*, vol. 58, No. 6, June 1989.

<sup>26</sup> 42 U.S.C. 12112(c)(2)(B) and 12112(c)(4).

<sup>27</sup> See, proposed EEOC Interpretive Guidance of Title I of the ADA, Part 1630.13(b), *supra*, note 8.

<sup>28</sup> *Id.*

<sup>29</sup> 42 U.S.C. 12112(c)(4)(B).

<sup>30</sup> 42 U.S.C. 12112(c)(4)(A).

<sup>31</sup> 42 U.S.C. 12114(d).

<sup>32</sup> 42 U.S.C. 12113.

<sup>33</sup> Neither the ADA nor the proposed regulations provide a definition of "job-related" or "business necessity." However, both terms have been used in connection with Title VII litigation and caselaw under that statute would be instructive on their meaning in the ADA.

<sup>34</sup> See, proposed EEOC Interpretive Guidance on Title I of the Americans With Disabilities Act, Part 1630.14(b), *supra*, note 8.

<sup>35</sup> 42 U.S.C. 12113(b).

<sup>36</sup> 42 U.S.C. 12111(3). However, the proposed regulations and guidelines issued by the EEOC expand this to include direct threats to the health or safety of the applicant or employee personally, as well as to other persons. See, proposed EEOC regulations, Section 1630.2(r), *supra*, note 7; EEOC Interpretive Guidance on Title I of the Americans With Disabilities Act, Section 1630.2(r), *supra*, note 8.

<sup>37</sup> See, proposed EEOC regulations, Section 1630.2(r), *supra*, note 7.

<sup>38</sup> See, proposed EEOC Interpretive Guidance on Title I of the Americans with Disabilities Act, Section 1630.2(r), *supra*, note 8.

<sup>39</sup> 42 U.S.C. 12111(8).

<sup>40</sup> 42 U.S.C. 12112(b)(5)(A).

<sup>41</sup> 42 U.S.C. 12111(9).

<sup>42</sup> See, proposed EEOC Interpretive Guidance on Title I of the Americans With Disabilities Act, Part 1630.2(o), *supra*, note 8.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 42 U.S.C. 12112(b)(5)(A).

<sup>46</sup> 42 U.S.C. 12111(10).

<sup>47</sup> 29 U.S.C. 794.

<sup>48</sup> 107 S.Ct. 1123 (1987).

<sup>49</sup> *Id.* at 1131, n.16.

<sup>50</sup> 442 U.S. 397 (1979).

<sup>51</sup> See, *Simon v. St. Louis County*, 735 F.2d 1082 (8th Cir. 1984); *Dancy v. Kline*, 44 F.E.P. Cases 380 (N.D. Ill. 1987); *Pineiro v. Lehman*, 653 F.Supp. 483 (D.P.R. 1987).

“  
Employers can lawfully refuse to hire a disabled person where the individual, if hired, would pose a direct threat to the health and safety of others....  
”

protection of the Rehabilitation Act. The court ruled that the employee was not being dismissed because of his handicap (alcoholism), but because of his criminal convictions, which demonstrated his inability to carry out the duties of law enforcement when he personally could not comply with the law. See also, *Copeland v. Philadelphia Police Department*, 840 F.2d 1139 (3d Cir. 1988), *cert. denied*, 109 S.Ct. 1636 (1989) (termination of officer who used marijuana did not violate the Rehabilitation Act, since the officer was not otherwise qualified to perform the job). Accord, *AFGE v. Skinner*, 885 F.2d 884 (D.C. Cir. 1988), *cert. denied*, 110 S.Ct. 1960 (1990); *Herron v. McGuire*, 803 F.2d 67 (2d Cir. 1986); *Burka v. N.Y. Transit Authority*, 680 F.Supp. 590 (S.D.N.Y. 1988).

<sup>15</sup> 42 U.S.C. 12111(8).

<sup>16</sup> *Id.*

<sup>17</sup> See, proposed EEOC regulations, Sections 1630.2(n), *supra*, note 7.

<sup>18</sup> The following cases discuss various physical and mental conditions that have been litigated under the Federal Rehabilitation Act, see, *infra*, note 9, and may have precedential significance in interpreting the ADA: **Vision**—*Trembczynski v. City of Calumet City*, No. 87C 0961 (N.D. Ill. 1987) (not reported, text in *Westlaw*); *Padilla v. City of Topeka*, 708 P.2d 543 (Kansas 1985); *City of Belleville Police and Fire Commissioners v. Human Rights Commission*, 522 N.E.2d 268 (Ill. App. 5 Dist. 1988); *City of Columbus v. Ohio Civil Rights Commission*, 492 N.E.2d 482 (Ohio App. 1985);

(D.D.C. 1983). **Disease**—*School Board of Nassau County v. Arline*, 107 S.Ct. 1123 (1987); *Local 1812, AFGE v. Department of State*, 662 F.Supp. 50 (D.D.C. 1987); *Shelby Township Fire Dept. v. Shields*, 320 N.W.2d 306 (Mich. App. 1982). **Epilepsy**—*Pineiro v. Lehman*, 653 F.Supp. 483 (D.P.R. 1987); *Costner v. United States*, 720 F.2d 539 (8th Cir. 1983); *Duran v. City of Tampa*, 430 F.Supp. 75 (M.D. Fla. 1977). **Psychological Ailment**—*Desper v. Montgomery County*, 727 F.Supp. 959 (E.D. Pa. 1990); *Pickut v. Dept. of Air Force*, 24 MSPR 433 (M.S.P.B. 1984); *Daley v. Koch*, 892 F.2d 212 (2d Cir. 1989). **Hearing Loss**—*Packard v. Gordon*, 537 A.2d 140 (Vt. 1987). **Alcohol**—*Huff v. Israel*, 573 F.Supp. 107 (M.D. Ga. 1983). **Allergies**—*Commonwealth of Pennsylvania v. Pennsylvania Human Relations Commission*, 457 A.2d 584 (Pa. Cmwlth. 1983). **Missing Organ**—*Pennsylvania State Police v. Commonwealth*, 483 A.2d 1039 (Pa. Cmwlth. 1984), *rev'd on other grounds*, 517 A.2d 1253 (Pa. 1985). **Weight**—*Tudyman v. United Airlines*, 608 F.Supp. 739 (C.D. Cal. 1984); *United Paramedics of Los Angeles v. City of Los Angeles*, No. 89-1182-R, C.D. Cal. 3/8/89; *Smith v. Folmar*, 534 So.2d 309 (Ala. Civ. App. 1988).

<sup>19</sup> 42 U.S.C. 12112(c)(2)-(3).

<sup>20</sup> *Id.*

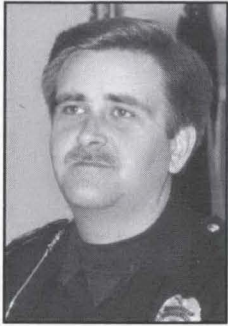
<sup>21</sup> *Id.*

<sup>22</sup> *Id.* The permitted uses of medical information include notification to supervisors and managers of duty or work restriction; notice to first aid, safety, or emergency personnel; and



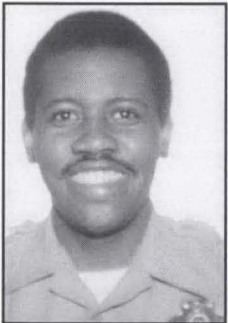
## *The Bulletin Notes*

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



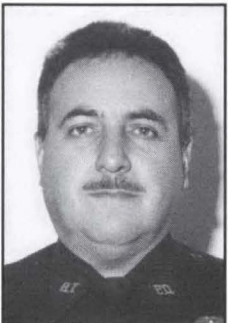
*Lieutenant Tinlin*

Lt. Michael G. Tinlin of the Hudson Township, Ohio, Police Department responded to a report of a child who had stopped breathing. Upon arriving at the scene, he immediately initiated CPR to revive the child and continued providing life support until emergency units arrived.



*Sergeant Adams*

While walking to his car after completing his shift, Sgt. Virgil Adams of the San Bernardino County, California, Marshall's Office noticed a suspicious vehicle parked in an isolated corner of the parking lot. When he saw the interior light come on and observed movement inside, he approached the vehicle and discovered a young female kidnap victim being sexually assaulted. Sergeant Adams was able to remove the girl from the vehicle before the offender began to drive away. He then fired a round, striking the suspect in the arm and causing him to crash. After a brief struggle, the suspect, on parole for rape and armed robbery, was subdued and placed into custody.



*Officer Paliani*



*Officer Burke*

While enroute to investigate a suspicious person report, Officers James Paliani and Christopher Burke of the Bridgewater, New Jersey, Police Department detected a natural gas leak. The officers called for gas emergency and fire company assistance. As a fire truck approached the area, it stalled and then burst into flames. The explosion threw the firefighters from the truck. One firefighter, who had been seated directly above the blast, became engulfed in flames. Officers Paliani and Burke immediately ran to the firefighter, knocked him down, and smothered the flames. They then assisted rescue personnel in moving the critically injured man to a safe zone and administering first aid.



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