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William S. Sessions,
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Lead Poisoning A Firearms Safety Hazard

By
AMELIA NEWBERRY MARTINEZ

Photo by C.R. Jackson
Missouri State Highway Patrol



The U.S. Environmental Protection Agency (EPA) classifies lead as a highly toxic heavy metal with no beneficial biological use in the body.¹ When a person inhales or ingests lead, it is absorbed into the bloodstream. Once in the body, it becomes very difficult to remove. Continual exposure results in the accumulation of

lead in the body, and measurable amounts of lead indicate cumulative exposure over a lifetime.

The EPA has determined that lead poses a serious health hazard to everyone. Unfortunately, individuals working with and around firearms often overlook the harmful effects of lead. Therefore, firearms range personnel must take precau-

tions to control all unnecessary exposure to this toxic element. For firearms range personnel, knowing the hazards of lead is a primary responsibility; taking the necessary precautions to minimize exposure is a duty.

Effects of Lead on the Body

Approximately 6 percent of all lead ingested or inhaled is deposited in the blood or soft body tissues, such as the kidneys, brain, or other vital organs. The remaining 94 percent is deposited in bone. Because the body mistakes lead for calcium, it presumes that, once deposited, the lead needs to be stored.

The body does, however, break down lead so that it can be removed. The time required for this process is measured by the term "half-life," which means the amount of time the body needs to excrete one-half of the lead dose.

Lead in the bloodstream and in soft body tissue has a half-life of approximately 30-40 days and is excreted through urine, bile, sweat, hair, and nails. However, lead deposited in bone has a half-life of approximately 20 years. That is, one-half of the lead dosage absorbed by the body through only one exposure and deposited in the bone would still be present after 20 years.

Health Concerns

For decades, the presence of lead in the environment has been widespread, beginning with smelting factories and continuing with the manufacture of glazed pottery, batteries, and leaded gasoline. Only recently has it been acknowledged as a serious threat to



Special Agent Martinez is a firearms instructor at the FBI Academy in Quantico, Virginia.

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public health that warranted government control.

In 1971, the EPA began enforcing the Lead Based Paint Poisoning Prevention Act, which restricts the amount of lead used in paints. Seven years later, the agency set the National Ambient Air Quality Standards, which served as the primary mechanism to reduce lead in gasoline. However, even with these standards and other controls, the residue of lead in food, water, and dirt can elevate the lead level in a person's blood.

Firearms and Exposure to Lead

The exposure to lead on the firing line occurs as soon as the shooter pulls the trigger and the hammer falls. This action causes the primer of the cartridge in the chamber to explode, which ignites the main powder charge. At this point, a breathable cloud of lead particles is expelled into the air, with lead dust spraying the shooter's hands.

Lead particles also shear off as the bullet travels through the barrel.

When the bullet leaves the barrel, a second cloud of contaminants, in the form of the muzzle blast, bursts into the air. Then, as the bullet strikes the impact area, another contaminated cloud rises.

When shooters inhale these clouds of contaminants, lead particles go directly into their lungs and are quickly absorbed into the bloodstream. The blood then transfers the lead to soft body tissue and bone. Heat from smoking, sweating, or physical activity accelerates this process.

Lead can also settle on the skin and hair, and in turn, be absorbed through the pores of the skin. If lead particles reach the mouth, they can be ingested into the digestive system.

Exposure increases at cleanup time, because handling empty casings can result in lead being transferred to the skin. The cleaning process also removes much of the remaining lead in the barrel and transfers it to the cleaner's hands. Oils and solvents used to clean and

lubricate weapons cause the natural oils in the skin to evaporate, leaving dry skin and open pores through which the lead can pass.

Symptoms of Lead Poisoning

The numerous symptoms of lead poisoning mimic various diseases, often making diagnosis difficult. Most commonly, individuals experience abdominal pain, fatigue, nausea, subtle mood changes, headaches, constipation, irritability, and depression. Muscle pain, muscle weakness, weight loss, impotence, convulsions, anemia, and renal failure may also occur with increased lead levels in the body.

Testing for Lead

Testing for lead can be performed in several ways. The blood lead level (BLL) test detects recent exposure to lead but does not provide information regarding long-term or past exposure. The BLL measures the quantity of lead in micrograms per deciliter of blood, written as ug/100 dL, that is, micrograms of lead per 100 deciliters of blood.²

The Occupational Safety and Health Administration (OSHA) standards state that the median blood levels for adults should be about 15 ug/100 dL; children and pregnant women should have blood levels below 10 ug/100 dL. For reproductive health, the blood level should stay below 30 ug/100 dL.³ OSHA recommends removal from the workplace of any employee whose BLL measures 40 ug/100 dL or higher.

The zinc protoporphyrin (ZPP) test can be performed in conjunction with the BLL to determine longer exposure. Lead interferes with the

absorption of iron into the blood, which is needed to transport oxygen, thereby allowing zinc to replace the iron. The ZPP measures the amount of zinc in the blood, which remains elevated longer than the BLL. The normal range for the ZPP is 0-100 ug/100 dL. An elevated ZPP indicates concentration in the bone marrow.

The only effective test used for bone lead levels is the disodium edetate (EDTA) chelating agent test. EDTA, a solution administered intravenously, bonds with the lead in bone and clears it from body compartments so that it is excreted through the urine. EDTA both tests and treats an individual, but medical personnel use it only in extreme cases of lead poisoning because of potentially harmful side effects.

Special Risks

In males, high levels of lead can decrease the sex drive and cause sterility. Lead can also alter the structure of sperm cells, thereby causing birth defects.

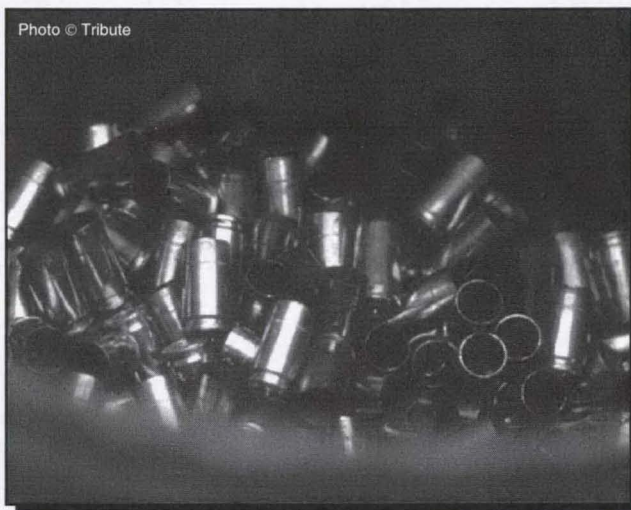
Pregnant women are vulnerable to rapid absorption of lead, along with calcium, from the blood into the bone. This mobilization occurs due to hormonal changes caused by pregnancy. In pregnant women, lead passes unimpeded through the placenta to the fetus, potentially causing miscarriages of the fetus and birth defects.

Children are more vulnerable to lead toxicity than adults. Children exposed to lead may manifest slow learning, mental drifts, slight retar-

dation in development, hypertension, and behavioral problems, while excessive blood lead levels can seriously and irreversibly damage a child's brain and nervous system. Because the symptoms mirror those of various childhood diseases, many doctors do not test for lead.

Precautions on the Range

Precautions can be taken both on and off the range to protect shooters, instructors, and their families from lead poisoning. Administrative controls and good hygiene are two necessary tools. In addition, all shooters and instructors should practice the following "do's and don'ts" of range safety.



Don't smoke on the range. Smoking any type of tobacco products on the range should be prohibited to prevent acceleration of inhaled lead into the blood stream and ingestion of lead transferred from hands to the cigarette, cigar, etc.

Don't eat on the range. Lead dust on hands and face can be ingested through contact with food.

Airborne lead expelled from the weapon can also contaminate food.

Don't collect fired brass in baseball caps. Many shooters use their baseball caps to collect spent brass; this contaminates the cap with lead particles. When the cap is placed back on the head, the lead is deposited into the hair and absorbed into the skin. Providing boxes for the brass prevents this practice.

Do be aware that face, arms, and hands are covered with lead. Shooters and instructors should wash thoroughly with cold water and plenty of soap. Cold water is preferred because warm water enhances the absorption of lead by opening the pores of the skin. If no water is available, shooters should consider carrying a box of wet handwipes or a bottle of cool water and a washcloth for this purpose.

Do be aware that hair and clothes are still contaminated. Shooters and firearms instructors should wear an outer garment, such as a jumpsuit or coveralls, or change clothes before going home. Contaminated clothes should not be cleaned by blowing, shaking, or other means that dispense lead into the

air. To prevent cross-contamination, range clothes should be washed separately from the family's regular laundry. Families with infants should be particularly careful, since infants are most vulnerable to lead contamination. Changing to clean clothing before leaving the range prevents recontamination of the hands and any contamination of the family vehicle.

Do change shoes before entering residence. Shoes can also transport lead into the home. Shoes should be left at the door to prevent tracking lead onto floors and carpets. As an alternative, disposable shoe coverlets can be used while firing and cleaning, then discarded when leaving the range. Ordinary vacuuming does not remove lead from the home, but redistributes it by blowing it into the air to be inhaled and/or resettled onto the carpet.

Do avoid physical contact with family members until after a shower, shampoo, and change of clothes. Lead can be transferred by casual contact. Family and friends should not be hugged or kissed until after a shower and a change of clothes. Any physical contact should be avoided while the shooter is still in range clothing.

Do participate in lead safety training programs. Shooters and instructors should attend all training programs provided by the department or agency to ensure awareness of the hazards of lead.

Indoor Ranges

Most indoor ranges have a greater lead dust problem than outdoor ranges. However, range personnel can institute several controls to lower the amount of lead dust in these facilities.

The choice of ammunition is one such control. Nonjacketed ammunition produces the most lead dust and fumes; jacketed ammunition, the least. Shotgun shells produce more airborne lead dust than any handgun round. Currently, many ammunition manufacturers are trying to develop lead-free ammunition.

Indoor ranges should not be carpeted, since lead dust settles and contaminates the rugs. A high-efficiency particulate (HEPA) vacuum, which has a 3-stage particulate air filter, is the best air vacuum to use for lead.

Because water cannot be treated for lead contamination, personnel should use water sparingly to remove lead when cleaning ranges. If water is used for lead removal, minimizing the amount of water used will result in less pollution. Range maintenance employees should wear disposable coveralls and air purifying masks while cleaning and/or repairing indoor ranges.

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Recommendations

Departments should conform to OSHA's lead standards, which became law in 1978. The air supply to ranges should be monitored for lead, and employees should be informed of the results. Medical monitoring, such as BLL testing of employees, should be conducted and funded by the department or agency. In addition, air purifying masks should be provided to employees who request them.

Washrooms and/or showers should be provided to ensure proper

cleanup, and eating areas must be separate from lead-contaminated areas. A lead abatement training program should be instituted for all employees who may be exposed to lead.

Departments should place warning signs on the range and weapon cleaning areas that read: *"Warning, lead work area—poison, no smoking or eating."* In the gun cleaning area, an additional sign should be placed stating: *"Wash hands with cold soapy water."*

Conclusion

During the early years of firearms training, neither eye protection nor ear protection was provided or encouraged on the range. Today, most departments now require both types of protection on the line.

Currently, another health hazard—lead poisoning—threatens the physical well-being of shooters and instructors in firearms ranges. However, through administrative controls and education, departments can reduce the on-the-job exposure of employees and their families to lead.

Firearms training helps to keep officers safe while performing their duties. Now the time has come for departments to ensure officer safety from a serious health hazard during this training! ♦

Endnotes

¹ U. S. Environmental Protection Agency, Strategy for Reducing Lead Exposures, February 21, 1991.

² One microgram is one millionth of a gram, and one deciliter equals 100 milliliters.

³ Occupational Safety and Health Administration Standards: Occupational exposure to lead. chap. XVII, title 29, U. S. Department of Labor, sect. 1910.1025.

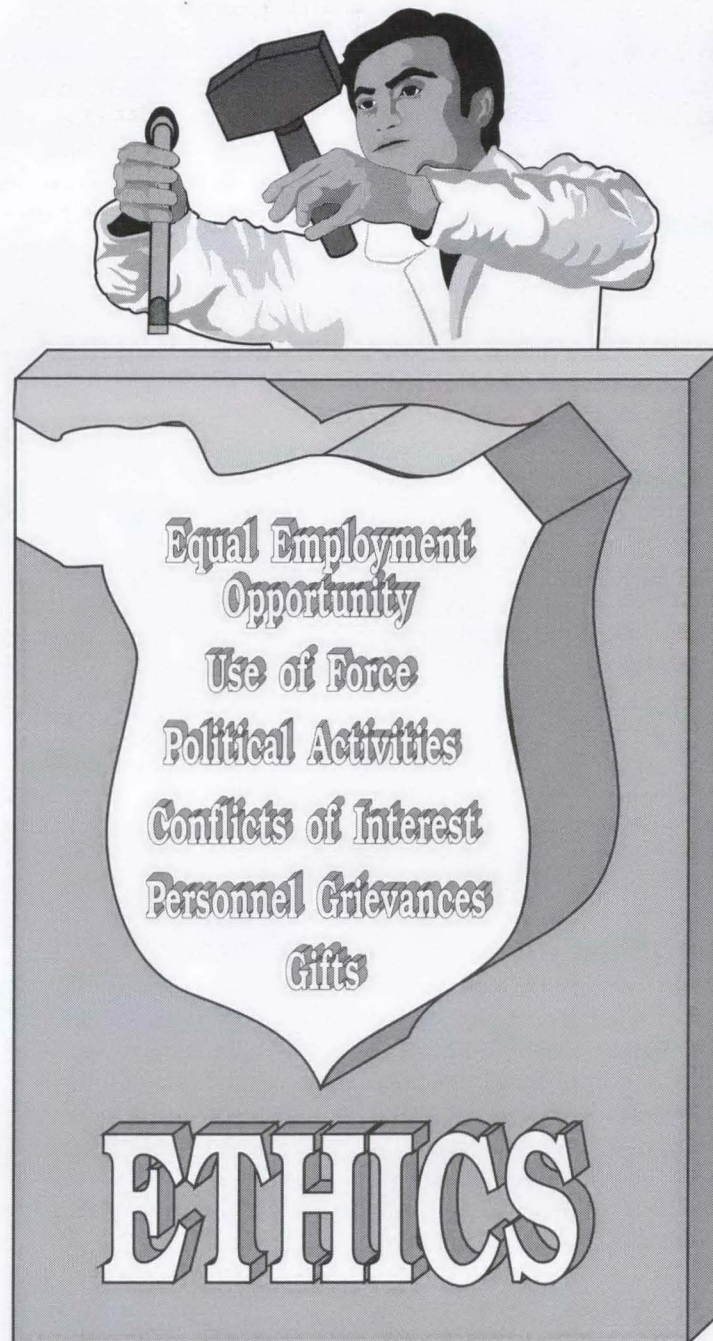
Ethics in Police Decisionmaking Modeling the Corporate Method

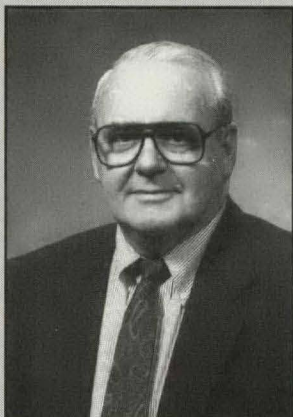
By
DENNIS M. PAYNE, Ph.D.

In the business community, when an unethical corporation hurts consumers, the government steps in and implements controls on the public's behalf. Private industry must practice self-regulation or risk government regulation. Many professions, such as physicians, bankers, and engineers, use codes of ethics as a means of self-regulation. Interestingly, in "Institutionalizing Ethics into the Corporation," noted ethicist James Weber does not mention police departments as an example of those entities having codes of ethics.¹

Yet, many police departments do have ethics codes. Unfortunately, without a means to institutionalize such codes, they have little operational significance. Indeed, a statement of moral standards or department values is one thing, and a workable code of ethics is quite another.

Thus, like corporate executives, police managers must practice self-regulation or suffer the consequences. They must ensure that their officers make ethical decisions at every level of the department, in the day-to-day business of policing, or risk losing the public's trust. When citizens mistrust the police, whether this mistrust is real or perceived, they will eventually react and exert control by lodging complaints, filing lawsuits, or





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“Police managers must make ethics a top priority and establish a strong code that reflects the needs of the department.”

demanding external police review boards or new legislation.

Granted, ethical behavior has been implicit in policing for many years. However, the complexities of a pluralistic society with fluctuating values dictate more than ethical codes. They require that ethical behavior and decisionmaking be explicit. This article focuses on how police managers, like business leaders, can institutionalize ethics into their departments.

INSTITUTIONALIZING ETHICS

With the current emphasis on community and problem-oriented policing, police executives should seriously consider institutionalizing ethics. Though the term “institutionalization” may sound academic, it means, simply, getting ethics formally and explicitly into the daily business of the agency. It means making ethics a regular, normal part of policing. It requires putting ethics into department policymaking at the

top management levels and through formal codes.

Institutionalizing ethics also means integrating ethics into daily decisionmaking and work practices for all employees. Weber recommends three ways to accomplish this task: Develop and implement a code of ethics, establish a formally designated ethics committee, and offer a management development program that incorporates ethics into the curriculum.²

Develop a Code of Ethics

A code of ethics has three distinct advantages. It provides a stable, permanent guide to acceptable and unacceptable conduct; offers guidance to resolve ethically ambiguous situations and conflict-of-interest issues; and acts as a partial check on the autocratic powers of employers.

Police managers must make ethics a top priority and establish a strong code that reflects the needs of the department. While the code

should not supersede existing department regulations, managers can emphasize important regulations by including them in the code. For example, possible areas of concern include labor disputes, community relations, political activities, conflicts of interest, equal employment opportunity, gifts, use of force, and personnel grievances.

Once they establish the code, managers should make it available to the rest of the staff. They should also review it periodically, making revisions as needed.

Most importantly, managers must enforce the code. They may consider using incentives, such as recognition, commendations, and monetary awards, to encourage compliance. Conversely, they should investigate all cases of alleged unethical behavior. When unethical behavior occurs, managers should correct the situation and punish those officers involved. Punishment must conform to existing laws, collective bargaining agreements, and department disciplinary procedures. Management should also change the department’s current disciplinary process where it fails to adequately address any issue.

Establish an Ethics Committee

In order to deal with ethics infractions, police managers should form an ethics committee. This committee would, among other duties, enforce the ethics code.

The size of the committee would depend on the size of the police department. A large department might have a 15-member committee, while a small department’s committee might consist of only 3

members. Manageability of the group should take precedence over size.

A top department command team or a special committee appointed by the chief should choose the members of the ethics committee. Members should be open-minded, and of course, ethical. The chief would also sit on the committee but would not vote.

An ethics committee requires balance. To accomplish this, private industry uses both internal and external directors (i.e., members) on their committees. External members bring fresh ideas and objective opinions to the group. A police department can also choose external members from other law enforcement agencies, the business community, or the general public.

Corporations that use external directors have also found favor with the courts. For example, in *Fogel v. Chestnut*,³ a Federal appeals court upheld a decision of liability against the internal corporate directors of an investment firm. The court noted that it would have overturned the decision if the corporation had secured approval from external directors in advance.

The responsibilities of the ethics committee include attending meetings, at least semiannually, to discuss ethical issues, clarify grey areas of the ethics code, and communicate the code to all ranks of the agency. The committee also investigates possible ethical violations for the department, enforces the code through sanctions, rewards or disciplines code compliance or violation, and reviews and revises the code annually based on societal changes.

Above all, it is the committee's duty to keep the chief informed of all committee actions.⁴

The staff of the department can also assist the ethics committee in communicating, investigating, and enforcing the code of ethics. In addition, the ethics committee should work closely with the staff of department units related to the code, such as the affirmative action unit, the legal unit, and the training unit.

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Offer Ethics Training

To institutionalize ethics further, the department should establish an ethics training program for management. The ethics committee should determine the framework for the program, and a training coordinator should then organize the program. Management might consider recruiting a coordinator from outside the agency to enhance the program's objectivity and insight. In any case, the coordinator should be well-versed in ethical theory and ethical values pertinent to the daily business of the agency.

The participants, selected from lower and middle management, should delineate ethical dilemmas they face on the job. Next, the training coordinator should review and evaluate their concerns. Finally, the group should meet to discuss the issues and to develop ethical guidelines other officers may consider when confronted with similar issues. Participants in the ethics training program may also evaluate the training sessions and make recommendations for revisions in the code.

In short, ethics training programs assist managers by reviewing the ethical content of their daily decisions and discovering new or better ways to deal with those decisions. They also benefit the ethics committee by noting areas of the code that need revision.

OTHER CONSIDERATIONS

When attempting to institutionalize ethics, police managers should avoid certain pitfalls. They should not view the integration of ethics into the department as short-term or as the sole criterion for agency decisionmaking. Managers should also consider such criteria as agency size, structure, budget, mission, labor relations, legal constraints, and the community's political environment. Today's police leaders may wish to think about adopting an industry-wide code, enforced by an interdepartment ethics board.

In addition, police departments must measure the results of their ethics programs by tasking the ethics committee to assess the moral health of the police community.⁵ Basically, this involves reviewing

past disciplinary cases and their dispositions. An effective ethics program would begin to eliminate unethical conduct cases, while meting out consistent punishment in all cases. A successful program should also create better community relations; consequently, a department could request feedback from the public to gauge the effectiveness of the program.

CONCLUSION

Institutionalizing ethics requires more than developing and adopting a code of ethics. Such codes need continuous review and revision. An ethics committee, with the authority to enforce the code, can succeed in accomplishing these tasks.

Above all, police managers must not expect immediate results. The integration of ethics into a department's decisionmaking is a slow and often subtle process. The chief and the ethics committee should stand by their convictions and allow the institutionalization to take place.

In the private arena, major corporations are beginning to view ethical issues as a recognized part of doing business. Some are incorporating ethics into the decision-making structure. Should the public safety community do any less? ♦

Endnotes

¹ James Weber, "Institutionalizing Ethics into the Corporation," in *Ethical Theory and Business*, eds. Tom L. Beachamp and Norman E. Bowie (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1983), 526-538.

² Ibid.

³ *Fogel v. Chestnut*, 533 F. 2d 731 (2d Cir. 1975), cert. denied, 997 S. Ct. (1976).

⁴ Supra note 2.

⁵ Ibid.

Project EARS

By Michael D. Giacoppo

In the early-morning hours, a mother and her children sleep in their apartment. The woman's husband was removed from the home because of violent, intoxicated behavior, and a restraining order was issued against him. Unfortunately, the restraining order means nothing to the husband, who returns at will. Subsequently, he forces entry and holds his family hostage in an attempt to see his children or force himself physically on his wife. The family, which lives at the poverty level, does not have a telephone to call for police assistance, leaving them totally helpless as the abuse escalates.

A phone call to the police may have prevented this assault. Even more tragic is that many such incidents end in homicides that the law enforcement community could have possibly prevented by providing their at-risk citizens with an alarm device that they can carry with them.

The Problem

When the Cambridge, Massachusetts, Police Department experienced a high number of assault cases involving citizens with no telephone service, department administrators looked for ways to combat the problem. They recognized that many of these assaults occurred between estranged husbands and wives. In addition, officers occasionally worked assaults involving individuals who were experiencing obsessive relationships.

Because many of these victims were in low-income brackets, they could not afford to have phones in their apartments. This allowed abusive individuals to stalk their victims without fear of police intervention.

To combat this problem, officials implemented Project EARS (Emergency Abuse Response System). This program addresses those high-risk abuse situations where victims cannot easily contact the police.

The Solution

The Emergency Abuse Response System involves the use of easily installed portable alarm devices that send silent emergency alarm signals to the police. When an alarm unit is installed, usually in homes

where the residents continually experiences domestic violence, detectives brief police dispatchers on the specific case. This way, when the dispatchers receive the alarm, they know immediately what problem may exist and can advise responding officers.

In order to identify high-risk situations, detectives use a domestic abuse offender profile checklist of standardized questions. If they determine that the situation is dangerous, they recommend that the victim allow the installation of an EARS unit. If the individual agrees, a detective installs the alarm, performs range tests on the portable unit, and provides the victim with operating instructions.

When possible, the alarm system ties into the victim's telephone lines. However, because many of the victims do not have telephones, the system can be activated by "piggybacking" into the telephone line of the nearest consenting neighbor. In cases where there is no phone capability, detectives install a self-contained telephone alarm that requires no phone line hookup.

All alarm units have a 24-hour backup battery capability in case of power loss. In addition, a signaling feature alerts the police when phone lines are severed.

After detectives install the alarm, victims of repeated threats or physical abuse can carry a small, pendant-type panic button that, when depressed, instantly activates the alarm. The device has a range of several hundred feet, allowing victims to feel safe as long as they remain close to their homes. This is critical to victims who live in apartments and must go to other areas of the building, such as the management office or the laundry room.

Results

The Cambridge police have installed 16 EARS alarms for at-risk citizens. Fortunately, only one victim needed to sound the alarm. A surprising result of this program is that the mere availability of the



system acts as a deterrent. For example, a woman being stalked confronted her stalker at a court hearing. As the man entered the courtroom, he threw a crumpled newspaper article concerning the alarms at the victim and suggested that she should avail herself of this service. The woman quickly responded that detectives had already equipped her apartment with an alarm. After this

confrontation, the stalker was never again a problem to the victim. As a result, she was able to resume a normal lifestyle.

Expanding the Program

The department recently received a 1-year grant from the State Commission on Criminal Justice to expand the EARS Program. This grant allows for the purchase of three more alarm systems, as well as a database that allows detectives to track stalkers and other abusive offenders.

In addition, department officials plan to offer seminars to battered women. These seminars provide an opportunity to educate these women on the options available to them, including the installation of an alarm.

Finally, department officials plan to provide seminars to men who batter. Simply making these men aware of such a program may serve as a deterrent to further abuse.

Conclusion

The Emergency Abuse Response System meets a major goal for the Cambridge Police Department. It reduces the sense of danger among citizens who would otherwise live in the shadow of fear. Now, no matter what the financial situation of the individuals is, they can receive what all American citizens deserve—police protection. ♦

Deputy Superintendent Giacoppo serves with the Cambridge, Massachusetts, Police Department.



The Cash Flow Analysis Method Following the Paper Trail in Ponzi Schemes

By
THOMAS L. KITCHENS



Among criminals, Charles Ponzi—a diminutive swindler who emigrated from Italy to the United States in the early 1900s—was afforded a rare distinction. A specific category of financial scam was named in his honor.

Today, Ponzi schemes continue to flourish throughout the United States. In a typical scam, an offender lures unsuspecting investors with claims of unusually high yields on their investments. While the offender provides contributors with vague background information on the firm or venture to be backed, no such entity actually exists. Instead,

the offender attracts more and more investors, using their new money to make interest payments to previous investors—in other words, “robbing Peter to pay Paul.” In reality, the offender uses the bulk of the immense cash reserves to finance an expensive lifestyle and pay personal bills.

For a number of reasons, these types of “pyramid schemes” have traditionally been among the most difficult cases for law enforcement agencies to detect. The investigations invariably involve multiple victims and witnesses—often from numerous jurisdictions—as well as thousands of documents and court

exhibits. In the past, these cases generally took several years to investigate and prosecute. However, the Ventura County, California, District Attorney’s Office now employs an investigative technique that, when appropriately applied, significantly reduces the time required to investigate Ponzi cases.

Accountants and auditors have long used cash flow analysis to trace the flow of funds into and out of particular bank accounts. The overall objective of the cash flow analysis method with regard to Ponzi scheme investigations is to establish how offenders illegally received and spent their victims’ money, the total

amount of money stolen, and the number of victims involved. Each of these considerations becomes an important issue when courts render punishment to convicted offenders.

A TYPICAL PONZI SCHEME

Using the cash flow analysis method, the Ventura County District Attorney's Office has successfully prosecuted a number of complex pyramid scams. The following case demonstrates many of the characteristics of a typical Ponzi scheme.

Charles Stephen Hodson presented himself as an investment banker. In reality, he stole nearly \$10 million from victims—many of whom were family members and acquaintances—over a 6-year period.

Hodson told his victims that through connections with several "Fortune 500" companies, he could offer investment opportunities guaranteeing 18- to 25-percent interest returns on privately borrowed funds. He went on to inform some investors that he also had connections in Switzerland, where he could deposit their money in major banks that paid high interest rates. Hodson further informed investors that the terms of their investments would generally be from 60 to 90 days.

While these types of arrangements—known as commercial paper transactions—can be legitimate, Hodson possessed none of the "connections" he claimed. In fact, he never intended to invest his victims' money. Hodson simply used the funds to support his own lavish lifestyle.

Still, once the victims invested, most received timely interest pay-

ments, as Hodson had promised. However, these payments did not come from dividends on investments; they came from funds drawn against Hodson's own business checking account.

Hodson's scheme began to crumble when he stopped making monthly interest payments to his victims. Several filed reports with the local police agency, prompting an investigation into Hodson's business dealings. A cash flow analysis of relevant bank account records clearly revealed that Hodson did not invest any of his victims' money into major corporations or Swiss banks.

Hodson was convicted of several counts of grand theft and income tax evasion and is currently serving a 7-year sentence in a California State prison. Many of his victims suffered financial devastation.¹

CASH FLOW ANALYSIS METHOD

The cash flow analysis method is a two-step process. The first step

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for investigators is to obtain all relevant records—such as checks, deposit slips, and monthly bank statements—from the financial institution(s) in which the suspect placed the victims' money. The second step involves turning over these financial records to a forensic accountant for the cash flow analysis.

Step One

Since most victims make their investments by personal or cashier's check, the Ponzi artist usually deposits these funds (if only temporarily) into a bank account. This makes each investment a traceable transaction. After investigators become confident that they have amassed sufficient probable cause, they can obtain a search warrant and secure the relevant records.

Generally, in an investment fraud case, courts base the probable cause necessary to obtain a search warrant on multiple factors. Several individuals must have given money to a suspect for purposes of making an investment; these investors relied

Charles Ponzi

Born in Parma, Italy, in the late 1800s, Charles Ponzi immigrated to the United States in 1903. Destitute, he eventually settled in Boston, Massachusetts, where, in 1919, he founded the Securities and Exchange Company. From his location in the heart of the financial district, Ponzi sold 45- and 90-day promissory note investments to the unsuspecting public, to whom he guaranteed 50- to 100-percent interest rates. He informed investors that he was purchasing International Postal Reply Coupons from Spain and could sell them in the United States at a substantial profit due to the excessive differences in exchange rates following the First World War.

The investment opportunity became popular instantly. Crowds lined up daily outside Ponzi's office. The money came in so fast that Ponzi's office clerks began hiding it in desk drawers, wastebaskets, and file cabinets. In just 7 months of operation, it was estimated that Ponzi accumulated over \$9 million from more than 30,000 investors. His reputation for paying exorbitant interest rates made this an even more attractive investment. At the same time, Ponzi enjoyed a lavish lifestyle at the expense of his investors.

In July 1920, a local newspaper reporter began investigating Ponzi's claims. The newspaper published an article exposing the investments as a scam. Soon after, the district attorney

in Boston initiated an audit of the Securities and Exchange Company's financial records. While the audit proceeded, Ponzi agreed to cease accepting new investors, but he continued to pay interest payments on the existing investments.

Meanwhile, the audit revealed that Ponzi had merely taken new investor funds to pay off previous investors. His "magic" had been to amass large numbers of "Peters" to pay off the "Pauls." In reality, the audit showed Ponzi to be insolvent from the first day of the swindle. In the end, he owed investors nearly \$14,375,000. At the conclusion of the audit, he admitted that it was all a scam. Ponzi was prosecuted and convicted in both Federal and State courts for the fraud.

While on appellate bond, Ponzi fled to Florida, where he orchestrated a real estate swindle. After serving a 1-year sentence in county jail for this scheme—which involved selling underwater plots to unsuspecting customers—he was returned to Massachusetts to serve lengthy Federal and State sentences. Upon his release, Charles Ponzi was deported from the United States. He died in 1949, a patient in the charity ward of a South American hospital.

This information was drawn from Francis Russell, "Bubble, Bubble—No Toil, No Trouble," *The Boston Post*, August 12, 1920, 74-80, 86; J. Nash, *Bloodletters and Badmen*, (1973), 448-451.

on the suspect's promise that their funds would be invested for a specific purpose and for a limited period of time; and the time period has since expired without repayment to the investors or a reasonable explanation from the suspect.

Investigators should be aware that because grand juries possess the authority to subpoena all information relevant to matters under their

investigation, financial records may also be obtained through a grand jury subpoena duces tecum.² However, for a cash flow analysis, securing a search warrant is generally preferable.

By securing a search warrant, investigators receive the relevant bank records directly, which can then be given to the forensic accountant. If the financial records

are obtained through a grand jury subpoena duces tecum, auditors must complete the cash flow analysis while the grand jury hears the case. This may prolong the time required for an indictment.

Step Two

The second step for investigators in this process is to turn over all of the financial records obtained

through the search warrant or subpoena to a forensic accountant for the cash flow analysis. The forensic accountant then analyzes the bank account records and prepares cash flow compilations of these records in financial statement form. This statement shows all of the known receipts of a particular bank account during a specified period of time. Accordingly, this report demonstrates the flow of funds into and out of a Ponzi artist's account.

When completed, the compilation also assists investigators to determine whether the suspect accurately represented the investments to contributors. If investigators determine that a crime may have been committed, the compilation can then be introduced at subsequent court proceedings as demonstrative evidence of theft. The cash flow analysis compilation allows prosecutors to provide juries with a tangible record of how the suspect committed the crime and spent the victims' money.

USE OF FORENSIC ACCOUNTANTS

Investigators traditionally underuse forensic accountants in white-collar crime cases. This is an unfortunate and potentially damaging oversight.

In other types of major crime cases, investigators employ such specialists as pathologists, serologists, psychiatrists, fingerprint and document examiners, and criminalists to aid in analyzing evidence. Similarly, in many major white-collar fraud cases, forensic accountants should be called on to apply their training and expertise to

legal matters and to testify in court as expert witnesses.

OBSTACLES TO INVESTIGATION

In a Ponzi scheme, investigators face the arduous task of determining the validity of suspects' claims to victims regarding their investments. In addition, prosecutors must then demonstrate *how* offenders spent the victims' money. These two elements make Ponzi schemes especially difficult to investigate and prosecute, since Ponzi artists generally "cover their bases" well.

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Often, in order to limit victims' inquiries, offenders represent investment opportunities as being highly technical and sophisticated in nature. Further, many white-collar crime victims hesitate to cooperate with investigators, fearing that when the offender becomes aware of an investigation, investors will never be repaid. Or, victims may

simply be embarrassed because they made a foolish investment.

While victim reluctance to cooperate hampers many white-collar crime investigative techniques, it has little effect on the cash flow analysis method. Because this approach traces suspected illegal activity through financial records, it relieves investigators and prosecutors from basing cases predominantly on the testimony of victims.

CONCLUSION

Ponzi artists operate in nearly every jurisdiction throughout the United States. They often rob unsuspecting victims of their life savings and lead them to financial ruin.

The cash flow analysis method allows investigators in Ventura County to address this crime by reducing the number of workhours required to investigate Ponzi schemes. It does so by providing an easy-to-follow approach to what is traditionally a time-consuming and research-intensive process.

The cash flow analysis method also uses forensic accountants to audit suspects' financial records so that prosecutors can call upon these expert witnesses to trace the trail of the stolen funds. Perhaps most important, by using this approach, investigators can aggressively combat a type of crime that prosecutors once had difficulty proving beyond a reasonable doubt. ♦

Endnotes

¹ *People v. Hodson* (Superior Court, Ventura County, 1987, No. CR-22899).

² This is a writ that requires a party summoned to appear in court to bring along a document or other piece of evidence for examination by the court.

Focus on Technology



Video Teleconferencing *The Future of Law Enforcement Communications*

By Gerald P. Bellew

As law enforcement prepares to enter the 21st century, it faces unprecedented emerging technology. While such developments as automated fingerprint identification systems, computer-aided dispatch systems, DNA typing, advanced surveillance capabilities, and computer-enhanced techniques assist today's police officers, the future holds even more promise for advancing technologies.

For example, imagine having the capability to see, hear, and converse with a peer in a police department across the country, or being able to interview a protected witness safely with no travel involved. Indeed, improvements in telecommunications make these and other scenarios a reality. In fact, telecommunications provides police officers with high quality, two-way audio and video teleconferencing, from both near and far distances, at the speed of light and at a fraction of the cost of travel.

Background

Although the means for simultaneously transmitting both audio and video have long existed, the use

of high-capacity, digital telephone lines has expanded the applications of two-way teleconferencing, while keeping costs relatively low. This new technology, called signal compression, provides exceptionally high-quality sound and pictures and can easily involve many participants at each site.

Compressed digital video works like this. First, a video camera shoots a scene. Then, special digital signal processing chips convert up to 15 frames per second into millions of individual pixels, or picture elements. Other chips select key pixels, such as the features of the speaker's face and clothing, while ignoring static background and redundant pixels, which do not change. Finally, the compressed image and sound are sent over a telephone line to the receiving videophone, which reassembles the pixels.

When using two-way teleconferencing equipment, a digital telephone line service must send the data. Although several types of digital service are available, the most popular is dial-up, public-switched service, because of its cost-effectiveness and growing availability.

System Features

Two-way videoconferencing systems come with a variety of features. The most basic system consists of a video camera, a monitor, and a keypad. Monitors range in size from 10 to 53 inches. Keypads dial the call, adjust the audio volume, select video sources—such as a camera, slide, or document—and position the camera.

One of the most practical teleconferencing units is completely mobile and compact and can be rolled from room to room like an audio/video cart. This particular system has a single microphone that can pick up anyone speaking in a standard conference-sized room. A built-in filtering system removes distortions, providing high-quality audio.

Perhaps teleconferencing's best feature is its versatility. It allows several participants to move freely within their conference sites and still be seen and heard by everyone. Because participants in one room can control the camera in the other room, they can focus on or even zoom in for a closeup of any individual. In addition, a "smart" window on the monitor allows callers to determine how their image

appears to the receiver. Furthermore, the camera can be set to focus on predetermined locations, such as flip charts or white boards, during the conference. Thus, the meeting flows almost as if all the participants were in the same conference room.

Another capability of video teleconferencing is its adaptability to much of the equipment already in wide use, such as FAX machines, VCRs, computers, and instant video disk cameras. In addition, many teleconferencing systems have encryption accessibility, making them secure for both domestic and international communications.

Applications for Law Enforcement

Compressed digital teleconferencing offers many applications for law enforcement, and some were demonstrated at the FBI National Academy in Quantico, Virginia.¹ The demonstration took place in two conference rooms, each equipped with a videoconferencing system, on separate floors. For all practical purposes, these rooms could have been thousands of miles apart.

The first application involved the use of the overhead camera. In one room, a photograph of the skeletal remains of a murder victim was placed on a table below the camera. Meanwhile, in the other room, the monitor screen displayed a crisp, clear picture of the photograph.

Not only can the receiving room pick up a projected photograph for immediate examination, but the picture can also be frozen and stored in the system for future use. A photo video printer can then turn it into a hard copy.

While the video teleconferencing system can transmit the image from a hard copy of a photograph, it can also broadcast a photograph from film. The instant video disk camera, also demonstrated at the FBI Academy, can hold up to 50 undeveloped photo-

graphs and send them to any other system to be shown on screen, printed, and/or stored for future use.

Additional applications of teleconferencing seem virtually limitless. A few examples are:

- Wanted posters or identification photographs transmitted quickly to a jurisdiction where a suspect is likely to have fled
- Training sessions between groups or an instructor and a group separated by great distances, with immediate question-and-answer capability
- Multijurisdictional task force agencies coordinated to investigate such diverse crimes as bank robbery, serial murders, or supremacist group activities
- Multijurisdictional raid planning, allowing officers from different departments to "meet" before the raid to discuss strategy and to see the officers with whom they will be working
- Remote depositions or court testimony that would allow questioning and cross-examination of witnesses or victims that may be out of State or out of the country, including individuals in the witness protection program

**“
...the price of
teleconferencing is
minimal when
compared to the time
and expense of the
travel it replaces.
”**

- Out-of-State lineup or fugitive identification
- Access to district attorneys' offices for assistance with applications for arrest and search warrants
- Remote demonstration of new equipment prior to purchase.

Many of the above uses were demonstrated at the FBI Academy training session. Afterward, participants came up with still more ideas for using the technology in their own departments.

Costs

What does high-level conferencing cost? With dial-up, public-switched service, teleconferencing within the United States costs \$15.00 per hour, while

Just as compressed digital teleconferencing has reduced hourly transmission rates, so too has this technology dramatically reduced equipment costs. Not so long ago, videoconferencing required expensive, specially equipped rooms and dedicated transmission links. Today, an excellent system that meets

Many of today's criminals use sophisticated methods to commit crimes and avoid apprehension. To remain effective, police departments need to stay at least one step ahead. Two-way teleconferencing may be just the type of tool law enforcement needs to maintain that extra edge. ♦

¹ As a member of the 169th graduating class of the FBI National Academy, Captain Bellew introduced this technology to law enforcement as a directed study project in conjunction with the Education and Communication Arts Unit, FBI Academy, Quantico, Virginia.

Captain Bellew heads the Research and Development Division of the Peabody, Massachusetts, Police Department.

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The Ad Hoc Task Force

Change Made Simple

By

JEFFREY S. BROWN, M.A.



While some people seem to thrive on change, others oppose even the slightest alteration of their daily lives. Most people fall somewhere in between. Often, people resist change simply because they have it thrust upon them. For example, in business, management may implement a major change in policy or procedure without consulting lower-level employees. In turn, the employees may not comply with the new directive or may do so grudgingly, because they did not have the opportunity to provide input during the decisionmaking process.

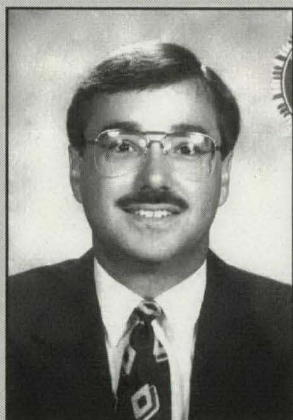
Similarly, police managers, by the nature of their department's organization, may find their officers resistant to change. Most police departments have a defined hierarchy, consisting of the chief at the top and field officers at the bottom. Communications and decisions flow from the top administrator down, with little or no input from the lower levels, thereby increasing the likelihood of officer resistance to change.

Police managers can, however, reduce their staffs' opposition to change by involving employees in the decisionmaking process through the use of an ad hoc task force.

This article discusses how the Covington, Virginia, Police Department successfully created an ad hoc task force to implement a major change in its police officers' work schedules.

THE AD HOC TASK FORCE

The ad hoc task force consists of a group of employees who, on a temporary basis, examine a specific problem and recommend solutions. By involving employees at all levels of the organization in the change process, the task force reduces employees' fears and suspicions regarding change, builds trust



Chief Brown heads the Covington, Virginia, Police Department.

“Police managers can...reduce their staffs’ opposition to change by involving employees in the decisionmaking process....”

between employees and management, and helps employees to understand, accept, and cooperate in the change.

THE COVINGTON PROGRAM

Background

The Covington Police Department has an authorized staff of 15 sworn police officers and 8 civilian support positions. The department operates within a hierarchy typical of most police agencies, where communications flow from the top down.

Covington management planned to develop a more efficient and effective officer work schedule, because research indicated that the existing work schedule did not adequately meet the needs of the agency or the community. They also realized that a successful change in this area required the cooperation and input of the employees.

Therefore, management initiated employee participation through

an ad hoc task force. They believed that the task force would allow them to solicit the best information regarding implementation of the change, while helping the employees to understand, accept, and cooperate with the change.

Because the chief traditionally issued all directives, orders, and other communications, department personnel had never been exposed to the ad hoc task force concept. Therefore, no policy on the development or use of this type of process existed.

Covington’s chief determined that the first step in implementing the task force was to educate police personnel on the inadequacies of the original schedule and the changing needs of the community and department. To do this, college interns compiled information from complaint reports and radio logs. This data indicated that the patrol workload was inadequately distributed. In addition, the chief conducted an analysis of the crime rate

and calls for service, which showed increases of 39 percent and 52 percent, respectively.

Next, the chief presented the data to supervisors, reiterating the results—an increasing crime rate, an increasing demand for service, an inadequate distribution of workload, and consequently, the need for a new work schedule. The chief also asked the supervisors to discuss this information with the officers on their shifts to determine methods that would address the issues.

Then, all agency personnel met to discuss the need for a new work schedule. This meeting helped reduce officer resistance to the impending change in two ways. First, the meeting provided a forum for the chief to present a factual justification for the new work schedule systematically to all affected employees. Second, the meeting afforded an opportunity for direct employee contact with the chief.

Participation at this phase was intended to elicit constructive contributions and reduce anticipated fears associated with the change. Assuring officers that management would consider all of their concerns in the development of a new schedule, the chief gave officers and supervisors the opportunity to participate in an ad hoc task force to study and design a work schedule for the department.

The officers responded enthusiastically, with several submitting requests to participate in the task force. Consequently, the chief impaneled a committee of four to begin developing a new work schedule. The chief appointed only four members because he realized that

too many members might make the work of the task force cumbersome and present logistical problems. In addition, the chief selected officers who would represent a cross-section of attitudes and feelings of the department.

In the next phase, members of the task force met with the chief to develop a complete list of requirements for the new schedule. The task force prioritized the list and selected four management needs: To provide proper supervisory control, to deploy staff based on workload, to maintain adequate staffing levels, and to reduce overtime. In addition, the task force selected four employee needs: To provide compatibility with personal life, to provide schedule equity, to provide adequate rest periods between shift changes, and to provide as many weekends off as possible. To assist the task force in developing a schedule that would meet these objectives, the chief provided members with references and resources, including information from Federal authorities on scheduling and labor laws.

After 10 weeks of study, research, and meetings, the task force presented the completed work schedule to the chief. The new schedule achieved all of the management and employee objectives established at the beginning of the process. It also complied with the Fair Labor Standards Act (FLSA)¹ and the 1985 ruling in *Garcia v. San Antonio Metropolitan Transit Authority*,² which applied the FLSA to State and local governments.

In addition, the new schedule was familiar to all employees, as

task force members consulted regularly with other members of the department. Due to this unanticipated but welcome involvement of additional employees, the schedule received widespread support, and implementation proceeded without incident.

Results

In order to evaluate the success of the task force process, the Covington Police Department compared productivity levels from 4 months before and 4 months after implementation of the revised schedule. The new work schedule provided additional police protection during peak service times, Wednesday through Saturday, 9 p.m. to 3 a.m. Overall officer

“The officers’ job performance demonstrated the success of the new schedule.”

productivity, defined as the number of traffic summons, felony arrests, misdemeanor arrests, parking tickets, and arrests for driving under the influence of alcohol, increased 41 percent.

The most significant increase was in the area of officer-initiated activity. Arrests of drunk drivers increased 288 percent and the officers’ enforcement of the motor vehicle code increased 147 percent.

During the same time period, the department also experienced a 10-percent reduction in the use of sick leave by employees. The officers’ job performance demonstrated the success of the new schedule.

The task force process was effective for the organization, employees, management, and community. In addition, because the procedure proved so successful for implementing the new work schedule for Covington’s police officers, the department also used the process to implement a new work schedule for its supervisors and to select new uniforms.

ADVANTAGES OF THE AD HOC TASK FORCE

Agencies that employ task forces reap a myriad of benefits. First, a task force introduces an upward flow of information into the communication process. In other words, after the chief sends a directive to officers, the officers provide feedback—creating valuable upward communication.

Upward communication provides the leader with an indicator of the level of morale and understanding in the organization. It also keeps management aware of the needs of employees.

Because the ad hoc task force provides a forum for two-way communication, it reduces, to some extent, employee resistance to the implementation of change in the organization and increases the probability that the change will succeed. The task force also generates ideas from the employees, who know their jobs well and can offer the best solutions for improvement.

Therefore, police managers receive a greater number of alternatives to consider in the decisionmaking process.

The ad hoc task force also benefits the employees. Agencies that allow employees an opportunity to examine a problem and develop solutions provide the employees with a sense of ownership. Employees participating in the process have a personal and professional interest in the success of the program or any decision that affects them.

Employees also benefit because the upward communication process implicit in the task force concept makes police executives more accountable to the organization. Downward communication forces compliance; employees resent and resist what they believe are arbitrary decisions. Conversely, upward communication reduces the employees' resentment of the leader and increases trust between the leader and the employees.

The community profits from the task force as well. First, because officers who interact daily with the public participate in the decisionmaking process, the chief can "check the pulse" of the community and make decisions that benefit citizens. Also, because trust exists between the employees and management, and because the employees have a vested interest in the department's success, the community becomes the recipient of a higher caliber of police service.

ANTICIPATED CONCERNS OF THE TASK FORCE

Several concerns emerge in the use of an ad hoc task force process. First, a task force requires consider-

able time to achieve its mandate. It not only takes a significant amount of time to establish and assemble a task force but also to coordinate convenient meeting times for all members. In addition, providing members with the resources they need to accomplish their goal may make the process expensive. On the other hand, if members must share materials, they will spend more time completing their task. In short, the task force process cannot be used in situations that warrant immediate decisions.

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The second concern pertains to the usefulness of the task force in certain situations. The task force process should provide the executive officer with a solution to a problem. However, the executive may find the solution developed by the task force unacceptable. The entire process could lose a great amount of credibility if the executive regularly rejects task force recommendations.

To prevent this, the manager must consider the types of issues that are not appropriate for a task force. For example, the manager

should not present budget issues to the task force without setting guidelines. Because budget constraints might prohibit the use of certain solutions, the task force must know the limits of the department's resources.

Along the same lines, the manager should not present issues in which the resolution already has an established legal precedent. The task force must understand the legal parameters or standards within which it must work.

CONCLUSION

Clearly, the ad hoc task force process provides management with an excellent method to implement change. By allowing employees to participate in the decisionmaking process, management receives a variety of possible solutions to the problem at hand, while gaining the trust and cooperation of the employees involved. In turn, the employees have a personal and professional interest in the success of the program—they truly want it to work.

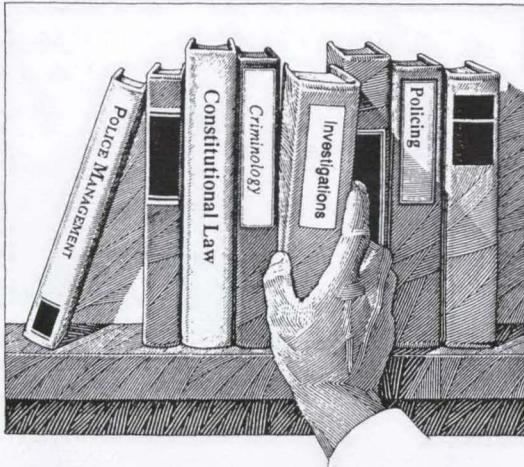
Advances in technology, diversity in the workforce, and increased scrutiny from the public put pressure on contemporary police departments to change the way they do business. Employee involvement through ad hoc task forces provides a legitimate and functional process to manage the necessary changes. ♦

Endnotes

¹ *Fair Labor Standards Act*, 29 U.S.C. sec. 201, et seq. (1938). The FLSA, also known as the "Wages and Hours Law," defines minimum regular workweek hours and overtime compensation. As applied to police officers, the FLSA mandates a maximum of 171 hours per each 28-day work cycle.

² *Garcia v. San Antonio Metropolitan Transit Authority*, et al., 469 U.S. 528 (1985).

Book Review



The Detection, Investigation and Prosecution of Financial Crimes, 2d ed. by Richard A. Nossen and Joan W. Norvelle, Thoth Books, Richmond, Virginia, 1993, (804) 741-4441.

This book promotes the net worth analysis technique pioneered by one of the authors, Richard Nossen. A widely acclaimed author and lecturer on the subject of financial crime investigations, Mr. Nossen is particularly adept at developing inferential, or circumstantial, proof using financial records.

The book has two primary thrusts. First, it advocates a broader use of the net worth analysis technique in financial crime investigations. Second, the authors provide a helpful general review of effective evidence-gathering strategies for these types of cases.

The basic premise of the net worth analysis technique calls for proving that subjects acquire assets and make personal expenditures at a rate far in excess of what could be funded by legitimate (declared) income. This, thereby, creates the strong implication—admissible in court as circumstantial evidence—that the incremental “income” is derived from illegal sources. The authors submit that this technique, used successfully in tax evasion investigations, also offers a viable approach in non-tax financial crime investigations.

Although the net worth analysis method represents a viable investigative tool in certain circumstances, several limitations to its use exist. First, for the technique to be truly effective, the disparity between reported income and expenditures must be significant. Second, the net worth analysis method is built around the *assumption* that investigators can identify all applicable financial records that impact on a case. The increasingly multinational nature of white-collar crimes makes this unlikely in some cases. Finally, the technique presumes that all reported income is legitimate. Illegal proceeds that have been successfully laundered could, in fact, be considered legitimate for purposes of the analysis.

These limitations notwithstanding, net worth analysis remains an effective tool—one that should be understood by all investigators of financial crimes. In cases where net worth analysis reveals little during the investigation, it may still prove beneficial for presenting circumstantial evidence to juries. The book’s suggested format for accomplishing this task is excellent.

In the broader sense, the authors’ treatment of financial evidence presentation in general is also superb. Suggested schedules are clear and can be easily understood by those not trained in accounting. This may be the book’s greatest contribution—showing how to synthesize financial records from a myriad of sources into an easily comprehensible graphic presentation.

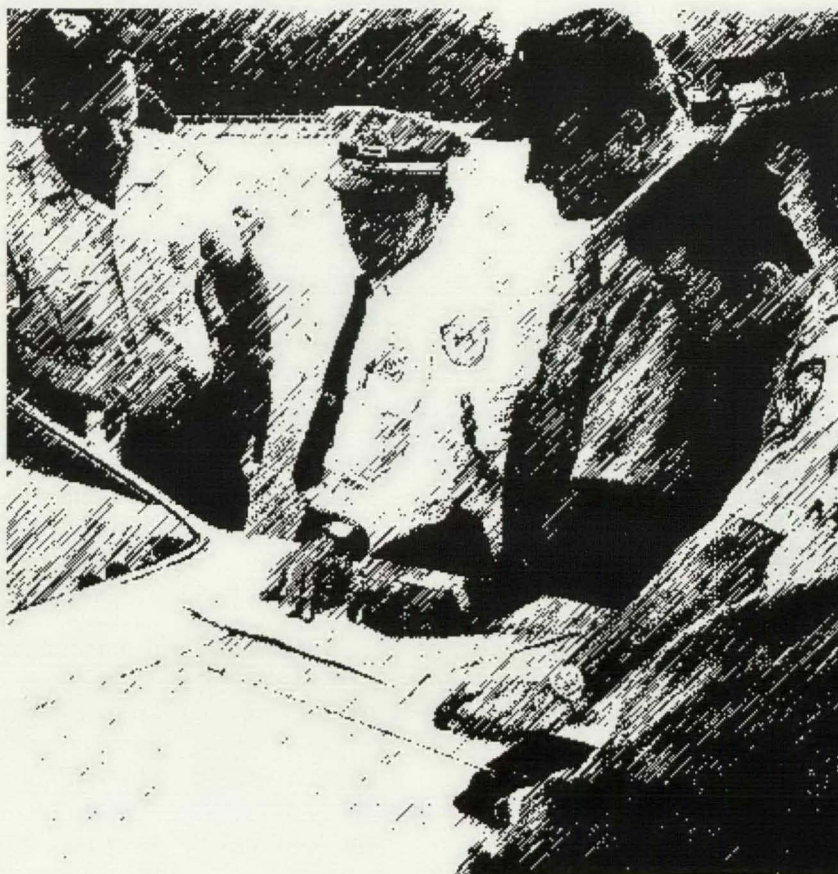
This second edition of *Financial Crimes* presents an excellent primer for financial crime investigators. While it hardly represents an “evolution” in the techniques originally presented in Mr. Nossen’s previous texts, this book provides readers with a very clear and concise discussion of sound financial record analysis.

Reviewed by
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Economic Crimes Unit
White-Collar Crimes Section
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Leaders vs. Managers

The Law Enforcement Formula

By
CARL DOBBS
and
MARK W. FIELD, M.A.



Scholars continue to debate the true origin of leadership qualities. Whereas some scholars believe many individuals are born with the ability to lead, others argue that people can learn to lead. The truth, however, may lie somewhere in the middle. While a leader must possess certain inherent leadership qualities, raw charisma alone does not ensure success. This holds true for law enforcement leaders as well.

Born or bred, law enforcement leaders must not only successfully manage the day-to-day operations of their departments but they must also determine the long-term goals of the agency and enlist the whole-

hearted cooperation of their subordinates to accomplish these goals. In this way, police leaders differ from police managers.

This article underscores the necessity for police administrators to be more than just competent managers—they must also be effective leaders. To become effective leaders, law enforcement administrators must be aware of the tasks facing them and the importance of consistency to gain the trust and respect of the people they lead.

LEADERSHIP TASKS

The main tasks of leaders fall into three distinct categories. Leaders must envision the future, gain

the cooperation of others, and alter the way others think about things.

In law enforcement, leaders must begin by forming an organizational vision and making a commitment to it. Their passion for excellence and their visions for themselves and their officers greatly test their abilities as leaders. Committing to a vision also calls on a leader's capacity to take risks—literally, to suffer change.

After developing a vision for the department, police leaders must gain the cooperation of their officers to work toward that vision. Effective law enforcement leaders' achieve cooperation through motivation. President Harry S. Truman

said that leadership is "...that quality which can make other men do what they do not want to do and like it."¹ A leader's officers take pride in every task they perform—from investigating a major crime to directing traffic in subzero temperatures.

Finally, all employees must have the same values and goals. Therefore, police leaders must develop high standards and instill these ideals in their staff members.

How do police leaders accomplish these goals? The formula is simple—by knowing their business, knowing themselves, and knowing their people.²

Occupational Knowledge

Effective law enforcement leaders must first develop occupational expertise. This can come from advanced education, training, or job experience. Strong professional knowledge, whether in handling a crisis management situation, supervising a major case investigation, or completing an indepth staff study, helps leaders to earn the respect and admiration of their subordinates. Indeed, those who have faith in their superiors' knowledge and abilities follow those individuals with greater confidence. In addition, skilled and knowledgeable individuals usually receive first consideration for leadership positions. However, the most tactically proficient person may not make the best leader. Rather, a combination of proven expertise and strong personality traits enables leaders to convince followers of their ability to succeed.

Self-Knowledge

While law enforcement leaders may find it relatively easy to know

their business, they may find it difficult to know themselves. Nevertheless, in order to develop an effective leadership style that emphasizes their strengths and deemphasizes their weaknesses, police leaders must first know themselves.

In fact, police leaders who *know* themselves adopt a leadership style that fits their personality. For example, although many individuals consider a good sense of humor a desired trait, those who go against their nature in an attempt to be humorous appear awkward and unnatural and cannot lead effectively. On the other hand, leaders who know themselves can gain power by enhancing their strengths, while they strive to overcome weaknesses.

Leaders with self-knowledge exhibit self-confidence. Former U.S. Secretary of State Dean Acheson once described General George Marshall by saying, "Everyone felt his presence. It was a striking and communicated force. His figure conveyed intensity, which his voice, low, staccato, and incisive,

reinforced. It compelled respect. It spread a sense of authority and calm."³

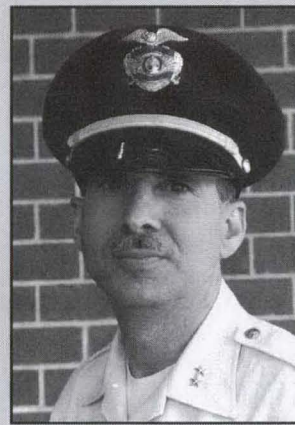
General Marshall, U.S. Army Chief of Staff throughout World War II, was the driving force behind Europe's reconstruction under the Marshall plan. Tested many times, under stressful and arduous conditions, Marshall continued to triumph. Because he believed in himself, he possessed an inner strength others could sense. Potential law enforcement leaders must determine their own strengths and weaknesses so that in times of crisis, they, too, can react with "authority and calm."

Knowledge of Subordinates

Law enforcement leaders must also know their subordinates in order to motivate them—a key component in leadership. They must take an active role in the lives of their employees—to offer a kind word to the employee with a parent in the hospital or congratulations to the officer with a child graduating



Chief Dobbs



Deputy Chief Field

Chief Dobbs and Deputy Chief Field serve with the Wheaton, Illinois, Police Department.

from high school. Police leaders with an awareness of the give-and-take involved in any leader-follower relationship take cues from their employees as to the best way to motivate them in both individual and team situations.

Although they realize the importance of establishing a reciprocal relationship with employees, some police leaders may find this difficult to achieve because they must lead people who may or may not share their ideals. Therefore, they must work to understand and develop an alliance with all of their employees, no matter what their ideals.

Reciprocal relationships rely heavily on mutual trust. Delegating work to one's subordinates that challenges their abilities and their intellects demonstrates mutual trust. Law enforcement leaders should allow senior patrol officers to draft evaluations, give budding officers an opportunity to assume the duties of a patrol supervisor for a day, and ensure that firstline supervisors delegate responsibility to and improve the training of new officers.

Further, stimulated employees increase morale in the organization. Because many facets of law enforcement require great personal sacrifice, morale can easily plummet. Therefore, police leaders must be sensitive to their employees' level of job satisfaction and to what motivates them to do their jobs well. For example, small, seemingly insignificant acts can motivate officers—group recognition in roll call of an extraordinary arrest, "Officer of the Year" awards, and verbal praise, to name a few. Police leaders must

strive to discover other creative practices to motivate their people.

CONSISTENCY

Effective leadership requires congruence between ideals and actions—establishing a standard, then setting a credible example. For instance, police leaders who admonish subordinates for shoddy uniforms when their own uniforms do not conform to department standards have not attained congruence between ideals and actions and have little chance of earning the respect of subordinates.

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... a combination of proven expertise and strong personality traits enables leaders to convince followers of their ability to succeed.

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In short, law enforcement leaders must first demand of themselves what they expect from their officers. They must exemplify those ideals and principles that they wish to instill in their employees. If leaders' actions support their personal ideals, their subordinates will likely follow their lead.

When police leaders show consistency, their subordinates trust them. True leaders do not make impulsive decisions, waver or agonize over political outcomes, or depart from convention merely for the sake

of personal convenience. They possess character and a spirit of fairness that dictate each decision.

LEADERSHIP VERSUS MANAGEMENT

Many police leaders are effective managers, in that their subordinates produce bottom-line results—the supervisor whose team has the greatest number of arrests per month, the team leader who logs more citizen contacts than any other officer, or the division commander who always meets budget. These results are unquestionably desirable, but leaders with a bottom-line attitude may lose sight of the bigger picture—the ideals that maintain department cohesiveness during more stressful times.

Furthermore, management that pays undue attention to the bottom line can create tension between labor and management. To avoid this, law enforcement must encourage its administrators to be leaders, not managers. Administrators must realize that some day, they will need to lead their people in a critical situation. Therefore, they must inspire a sense of ownership, pride, and commitment that makes all subordinates eager to fulfill their duties. Instilling such ideals is the job of a leader, not merely a manager.

When analyzing the dichotomy between leadership and management, management could be simply termed as “doing the thing right,” whereas leadership could be described as “doing the right thing.”⁴ Management entails completing the technical, more mechanical, aspects of the every day tasks, while conforming closely to department

policy, procedure, rules, and regulations. Leadership, in sharp contrast, encompasses the spirit, vision, and ethical considerations that accompany the decisionmaking process.

Leaders find doing the right thing very satisfying. They determine and implement the right course of action, do what they say they will do, and set standards for themselves that go beyond normal job requirements. They exercise objectivity to control biases and see persons and events with minimized prejudice.

In contrast, how often do managers consider the importance of "doing the right thing"? Do they apply ethical standards to everything they do? These standards must not only apply to tactical, operational, and policy decisionmaking but must also permeate every organizational decision involving matters of public policy, personnel, and community interaction.

Leaders clearly delineate acceptable and unacceptable behavior by rewarding positive behavior and punishing negative behavior. They recognize their perpetual obligation to the community and the government not to dismiss borderline behavior. They also realize that this type of behavior, if left unchecked, will permeate the organization and subtly establish a lower level of acceptable performance as the norm.

During times of crisis, officers need high principles and ideals to help them rise above seemingly insurmountable obstacles. They must believe that they serve the community for a noble and just cause. If law enforcement leaders can impart a sense of duty and a feeling

of honor in their subordinates, they will have a team prepared to meet every challenge.

CONCLUSION

It is impossible to tell how any individual will react in a leadership role, but the quality and intensity of training in law enforcement today will determine whether future leaders can meet the challenges of tomorrow. Training that simulates actual supervision better prepares people to lead.



In the field, leaders must show courage or risk losing the respect of their subordinates. Therefore, law enforcement must focus on developing leaders, not managers. Leadership development must begin during recruitment and selection, with each candidate acknowledged as a potential leader who may chart future courses for the organization, as well as for the law enforcement profession.

Perhaps law enforcement leaders can learn a valuable lesson from a Marine master gunnery sergeant, who has continuously challenged future naval aviators and officers

through the years to seek the blend of expertise, sense of self, and knowledge of subordinates that characterize effective leadership. This sergeant, stationed at the U.S. Navy Aviation Officer Candidate School, believes that naval officers can be divided into two classes—contenders and pretenders. Contenders demand the most from themselves. They grasp the essence of leadership because they believe in total dedication and complete personal sacrifice. In contrast, the words "dedication" and "sacrifice" mean nothing to pretenders.⁵

Every day, contenders refine their expertise, challenge their personal ideals, and master new techniques to motivate their people. Contenders are true leaders, for they reach the high ideals of leadership and integrate them into the realities of day-to-day existence.

The law enforcement profession cannot afford to fill its leadership ranks with pretenders. It needs leaders who are contenders. Therefore, law enforcement administrators must ask themselves which they would rather be—pretenders or contenders? Managers or leaders? ♦

Endnotes

¹ Karel Montor, et al., *Naval Leadership: Voices of Experience* (Annapolis, Maryland: U.S. Naval Institute Press, 1987), 1.

² Malcolm E. Wolfe, *Fundamentals of Naval Leadership*, 3d ed. (Annapolis, Maryland: U.S. Naval Institute Press, 1984), 13.

³ Walter Isaacson and Evan Thomas, *The Wise Men* (New York: Simon and Schuster, 1986), 390.

⁴ William Westfall, *Institute for Liability Management: Police Supervisory and Liability Management Seminar*, 5 February 1992.

⁵ D.W. Bearup, discussion with Mark W. Field, 15 March 1986, U.S. Navy Aviation Officer Candidate School, Pensacola, Florida.

Bulletin Reports

National Report on Drugs and Crime

"Drugs, Crime, and the Criminal Justice System," a 224-page publication prepared by the Bureau of Justice Statistics (BJS), provides a comprehensive statistical description of drugs, crime, and drug control efforts. It discusses the drug-crime link, the extent of drug use, illicit drug trafficking, the history of domestic drug control, and other aspects of the Nation's drug problems.

The nontechnical report goes beyond enforcement and corrections by examining the justice system's role as an integral part of education, prevention, and treatment. It contains numerous statistics and research findings from Federal, State, and private sources and is designed to inform the general public, policymakers, the news media, criminal justice practitioners, drug treatment providers, and educators.

Single copies of this BJS report (NCJ-133652) can be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850. The telephone number is 1-800-732-3277.

Police Use of Video Technology

In a *Research in Brief*, the National Institute of Justice (NIJ) reports on the use of video technology in criminal interrogations and confessions. For the most part, research on the use and cost of video technology, as well as the ethical and legal issues, in the criminal justice community has been minimal.

This monograph reports on a study that examined where and how videotaping is being used to document stationhouse interrogations and confessions of suspects. It analyzes the extent of the practice, the procedures in place, and police views on videotaping. Although this is a preliminary study, it does provide insight into this increasingly popular investigative tool.

This monograph is available through the National Institute of Justice/NCJRS, Box 6000, Rockville, Maryland. 20850, or call 1-800-851-3420. Requestors should ask for publication NCJ 139962.

Information Technology

The Bureau of Justice Assistance (BJA) has designed a guidebook to assist small- and mid-sized criminal justice agencies to plan and select computer system software and equipment. The 120-page book entitled *A Guide To Selecting Criminal Justice Microcomputers* offers a step-by-step approach to purchasing information technology.

The book describes the basic components of a microcomputer, suggests a planning strategy and

needs assessment, and helps to define user requirements. It also examines, compares, and scores alternative software packages and hardware components and discusses contracts, optional costs, and installation requirements.

The book can be ordered from the BJA Clearinghouse by calling toll free at 1-800-688-4252.

Deadly Force in Defense of Life

By
JOHN C. HALL, J.D.



"Whoever makes the regulations doesn't row a boat."

—Sixteenth-century English boatman's response when asked why the fees were the same whether rowing up or downstream.

This article addresses the use of deadly force by law enforcement officers to protect themselves and others from "immediate" threats of death or serious physical injury. The purpose in focusing on the immediate defense of life is two-fold. First, Federal and State jurisdictions permit the use of deadly force when "immediate" threats to life exist; but, second, universal recognition of the legal principle has not led to universal attention to the practical realities that are essential to realistic and uniform application. The resulting inconsistencies and confusion only serve to

increase the dangers that already attend law enforcement.

The number of officers slain or seriously injured while performing their duties graphically illustrates the inherent risks associated with law enforcement. For example, during the period 1981-1990, 762 State and local law enforcement officers were slain as the result of adversarial action; an additional 617,969 officers were assaulted, of whom 210,109 (34%) suffered significant injury. The activities in which the officers were engaged at the time they were killed ranged from investigating disturbances

(130) or suspicious persons (109) to making arrests for various serious and nonserious offenses (307), from enforcing traffic laws (96) to handling prisoners (35) or mentally deranged persons (12). One officer was killed during a civil disturbance, and 72 officers were ambushed.²

Society recognizes these risks and grants law enforcement officers the authority to protect themselves as they perform their duties. Obviously, the exercise of that authority must be constantly and carefully monitored to discourage abuse, and officers know that any use of force, particularly deadly force, will certainly be subjected to administrative, and probably judicial, review.

Balancing these two values—protecting the lives of law enforcement officers and deterring the abuse of authority—is critical to a society committed to the rule of law. Unchecked power leads to tyranny, but unenforced law leads to anarchy. To avoid either extreme, the

review of a law enforcement officer's use of deadly force must be informed and realistic. Accordingly, the legal rules must be seen in the context of the practical circumstances confronting those who must apply them.

LEGAL RULES & PRACTICAL CIRCUMSTANCES

As a general principle, the use of deadly force by law enforcement officers in the United States is limited to circumstances where such force is reasonably believed to be necessary to protect life—whether to counter immediate threats of serious physical injury or to prevent the flight of a dangerous person whose escape would presumably pose continuing threats to the safety of the community.³ The fourth amendment to the U.S. Constitution sets the outer limits for the use of force by American law enforcement officers engaged in effecting arrests or other seizures of persons.

In *Graham v. Connor*,⁴ the Supreme Court described the appropriate standard as “objective reasonableness” and explained its application in these terms:

“[T]he question is whether the officers’ actions are ‘objective-ly reasonable’ in light of *the facts and circumstances confronting them*...The reasonableness of a particular use of force must be judged from the perspective of *a reasonable officer on the scene*, rather than with the 20/20 vision of hindsight...*the ‘reasonableness’ inquiry...is an objective one*...”⁵ (emphasis added)

The highlighted words in the three phrases provide a rational scheme for analyzing the reasonableness of an officer's use of force. They define the scope of relevant information, the perspective from which that information should be viewed, and the standard against which an officer's action is to be measured. The components of this rational scheme, which are discussed below, are also relevant and useful for formulating department policy.

Scope of Inquiry: Facts & Circumstances

Only those facts and circumstances known to officers “at the moment” the decision to use force was made are relevant.⁶ This relatively narrow focus precludes reference to matters that could not have been known to officers until later and avoids the temptation to judge the correctness of an action by its outcome. It is also consistent with the Supreme Court's admonition in *Graham v. Connor* that review of an officer's judgment should not rely



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

upon "the 20/20 vision of hindsight."⁷

In *Reese v. Anderson*, during a traffic stop, an officer shot and killed a suspect who repeatedly lowered his hands in defiance of the officer's command to keep them raised. The court considered the officer's action to be reasonable in light of the following facts:

"[T]he vehicle had just come to an abrupt stop after a high speed chase during which apparently stolen objects had been tossed from the car. [The officer] had his gun drawn...and ordered the vehicle's occupants to raise their hands...the vehicle occupants clearly understood [the officer's] commands and initially complied. [The suspect] repeatedly reached down in defiance of [the officer's] orders....Under these circumstances, a reasonable officer could well fear for his safety and that of others nearby. The fact that the vehicle was 'totally surrounded' by police does not change matters...also irrelevant is the fact that [the suspect] was actually unarmed."⁸ (emphasis added)

Just as facts unknown to officers at the time are irrelevant to the legality of their decision to use deadly force, so are allegations that the officers violated departmental policies or "standard police procedures." In *Greenridge v. Ruffin*,⁹ a police officer approached a vehicle at night, based on the belief that an illegal act of prostitution was occurring. Displaying her badge, the officer opened the car door, identified

herself as a police officer, and ordered the two passengers to place their hands in view. When neither complied, the officer pointed her drawn handgun into the car and repeated the command. When she saw the male suspect reach for what she believed to be a shotgun, she fired one shot that struck him in the

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jaw. The bullet lodged near the spinal cord and caused permanent injury. The officer subsequently discovered that the object was, in fact, a wooden nightstick.

In a civil suit against the officer, the trial court excluded evidence that the officer violated police procedures by not using a flashlight during a nighttime prostitution arrest and by not employing proper backup. The U.S. Court of Appeals for the Fourth Circuit upheld that ruling, observing that the Supreme Court in *Graham v. Connor* "relied upon the 'split-second judgments' that were required to be made and focused on the reasonableness of the conduct 'at the moment' when the decision to use certain force was made." Applying that principle to the facts of the case, the court stated:

"...the *Graham* decision contradicts [the] argument

that, in determining reasonableness, the chain of events ought to be traced backwards to the officer's misconduct of failing to comply with the standard police procedures... we are persuaded that events which occurred before [the officer] opened the car door and identified herself to the passengers are not probative of the reasonableness of [her] decision to fire the shot. Thus, the events are not relevant, and are inadmissible."¹⁰

A contrary position by the courts would permit plaintiffs to shift the focus of the inquiry from a suspect's actions that prompted an officer's belief that a threat existed to factors that have no bearing on that issue. In *Smith v. Freland*,¹¹ the U.S. Court of Appeals for the Sixth Circuit addressed this point squarely when an officer's use of deadly force was alleged to be in violation of the department's policy:

"[T]he issue is whether [the officer] violated the Constitution, not whether he should be disciplined by the local police force."

The Supreme Court's definition of the relevant scope of the inquiry as the facts and circumstances confronting officers "at the moment" the decision to use force was made is further qualified by the Court's observation that an officer's judgment must often be made in circumstances that are "tense, uncertain, and rapidly-evolving."¹² In other words, an officer's capacity to acquire and evaluate the available "facts" is directly affected by the "circumstances" that must be taken into account, even though they

cannot be adequately re-created in the courtroom.

Perspective of the Inquiry: Reasonable Officer on the Scene

The Supreme Court in *Graham* ruled that "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene...." In that regard, the Court has long recognized that law enforcement training and experience provide a unique perspective:

"...when used by trained law enforcement officers, objective facts, meaningless to the untrained... [may permit] inferences and deductions that might well elude an untrained person."¹³

*Smith v. Freland*¹⁴ serves as an instructive case on the issue of an officer's perspective. A high-speed chase followed an officer's attempt to stop a motorist for speeding and running a stop sign. The officer made several attempts to block the suspect's car but had to swerve out of the way to avoid collision when the suspect tried to ram the police car. The suspect then turned down a dead-end street, turned around, and came to a stop, facing the police car. When the officer got out of the police car, the suspect suddenly sped forward, crashed into the police car, and drove around it to escape. The officer fired one shot, which entered the passenger window, passed through the seat, and struck the suspect, killing him.

In a civil suit against the officer, the trial court granted summary

judgment to the defendant officer. The appellant court affirmed with this explanation:

"...we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world or our imagination to replace the dangerous and complex world that policemen face every day."¹⁵



Photo © Tribune

Among the practical aspects that make up "the dangerous and complex world" of the law enforcement officer, the most significant is captured in the Supreme Court's observation that the circumstances in which life-and-death judgments must be made are often "tense, uncertain, and rapidly-evolving." To comprehend fully the impact of time constraints on the deadly force issue, it is necessary to understand that "the perspective of a reasonable officer" incorporates knowledge of specific limitations on the ability to

achieve a timely halt to a deadly threat that may not be known to those outside of law enforcement. When taken into account, these limitations give appropriate meaning to the Supreme Court's observation.

"Reactive role" of law enforcement

The law does not permit officers to make "pre-emptive strikes" on the possibility that a person will prove dangerous, for that potential exists in every case. Instead, they must await facts that justify a reasonable belief in the probability of a threat.

Some relevant facts, such as a suspect's prior actions, may already be known to an officer. However, because the critical information must be gleaned from a person's actions on the scene, the initiative rests with the potential assailant, and the officer must assume the role of one reacting to an action that is well underway before it can be detected.

Modern law enforcement training programs advise trainees of the edge that "action" has over "reaction." The resulting disadvantage to the officer may sometimes be partially offset through vigilance, planning, tactics, and the use of protective equipment, but it cannot be completely canceled. The effect is to reduce the time in which an officer can safely wait before initiating a response.

Limited means available to terminate a threat

When deadly force is deemed necessary to terminate an immediate threat to life, a reasonable officer

could be expected to recognize the limited means available to accomplish that purpose and to understand that the limitations directly impact on time constraints. Even firearms, the most likely instruments to be used, offer no guarantee of a timely result. The evidence of medical science, confirmed by the experience of law enforcement, attests to the ability of the human body to continue deliberate actions even after sustaining grievous—even fatal—injury.

The reality is that most gunshot wounds are not fatal, and even fatal wounds do not necessarily cause instantaneous physiological incapacitation. A random review of the shooting deaths of 56 police officers during 1990 disclosed that 16 of those officers continued to perform some deliberate function *after* sustaining fatal wounds. Two of the officers called for assistance and 15 officers returned fire, killing 5 assailants and wounding 5 others. Four officers received fatal wounds to the head.

To reliably deprive an assailant of the ability to carry out voluntary actions requires neutralization of the central nervous system, either directly by injury to the brain or upper spinal column or indirectly by depriving the brain of oxygen through massive blood loss. The time necessary to achieve the result may be seconds or minutes—depending on the location, number, and severity of the wounds—but it may suffice for the assailant to carry out life-threatening actions.

Taken together, the effects of these practical factors on the time available to an officer to counter a deadly threat place appropriate emphasis on the Supreme Court's ref-

erence to the need for "split-second judgments." The cases already discussed illustrate the need to act quickly and reject the notion that officers can wait until they are certain before using deadly force. In *Greenridge v. Ruffin*,¹⁶ the officer mistakenly believed the suspect was reaching for a shotgun, when he was

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reaching for a wooden nightstick; in *Reese v. Anderson*,¹⁷ the officer believed the suspect was reaching for a gun, when there was no weapon at all.

The following brief scenarios illustrate other typical circumstances where "the perspective of a reasonable officer" may detect the presence of immediate threats unseen by those operating from a different vantage point:

Facts

Shortly after receiving a report of a nearby armed robbery, an officer sees a suspect running from the direction of the crime and carrying a pistol in his hand. The officer draws his own handgun, confronts the suspect at a range of about 10 yards, and orders him to drop his pistol and raise his hands.

The suspect raises his hands but does not drop the pistol.

Analysis

Although the suspect is not pointing his pistol at the officer at that moment, he nevertheless poses an immediate, deadly threat to the officer. If the suspect decides to fire at the officer, it is highly unlikely that the officer can respond quickly enough to prevent it.

Facts

Two officers attempt to arrest an armed suspect. The suspect resists by firing shots at the officers and then running away.

Analysis

The constitutional standards announced by the Supreme Court in *Tennessee v. Garner*¹⁸ permit the use of deadly force *to prevent the escape* of this demonstrably dangerous suspect. But apart from the presumption that the suspect's escape will continue to pose a danger to the community, it must also be recognized that his ability to gain cover, or simply turn and fire, poses an immediate threat to officers who try to chase and catch him.

A "reasonable officer" may be presumed to know of the practical limitations on the ability to respond effectively to immediate threats. Since these factors provide the context in which judgments to use deadly force are made, they also provide the context in which those

judgments need to be assessed. Without them, an officer's "objectively reasonable" use of deadly force may be misjudged as precipitate or excessive.

Goal of the Inquiry: Objective Reasonableness

The fourth amendment does not require that law enforcement officers be "right"; it requires only that they be "reasonable." Although the U.S. Constitution does not preclude the imposition of stricter standards by State courts interpreting State law, the concept of "objective reasonableness" provides a logical means of fairly assessing an officer's actions, whether in the context of the fourth amendment, State law, or department policy.

The Supreme Court has observed that the standard is not capable of "precise definition or mechanical application."¹⁹ Likewise, the issues raised during encounters between law enforcement officers and criminal suspects are not conducive to precise or mechanical solutions. Thus, the fourth amendment is "not violated by an arrest based on probable cause, even though the wrong person is arrested...nor by the mistaken execution of a valid search warrant on the wrong premises....With respect to a claim of excessive force, *the same standard of reasonableness at the moment applies....*"²⁰(emphasis added)

CONCLUSION

The Supreme Court recognized in *Graham v. Connor* that officers frequently have to make "split-second judgments" concerning the use of force under "circumstances that are tense, uncertain and rapidly evolving...." The constraints thus

imposed on an officer's ability to acquire and evaluate information, the legal obligation to wait and "react" to the actions of suspects, and the limited means available to reliably achieve a timely end to the threat emphasize that point.

The concerns that officers be discouraged from using excessive force are legitimate. But those concerns must be balanced against the equally legitimate interest in permitting law enforcement officers to protect themselves and others during the performance of concededly hazardous duties.

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Society does not intend that those dedicated to enforcing the law should sacrifice their lives in the process. Unfortunately, the authority granted to officers to protect themselves can be effectually nullified by inadequate attention to the practical context in which life-and-death decisions are necessarily made. To pursue the theme of the English boatman whose words opened this article, even if "whoever makes the regulations doesn't row a boat," perhaps it is not too much to expect that they will make allowances for the difference between rowing upstream and rowing downstream. ♦

Endnotes

¹ Robert Bolt, *A Man For All Seasons*, Vintage Books, 1962, 17.

² Uniform Crime Reports, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted*, 1990.

³ Prior to the Supreme Court's 1985 decision in *Tennessee v. Garner*, 471 U.S. 1, over 20 States permitted the use of deadly force to prevent the escape of any "fleeing felon." In *Garner*, the Court limited the constitutional authority to use deadly force for prevention of escape to those instances where there is "...probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others...."

⁴ 490 U.S. 386 (1989).

⁵ *Id.* at 396-399.

⁶ *Id.*

⁷ *Id.*

⁸ 926 F.2d 494, 500-501 (5th Cir. 1991); see also, *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988)("knowledge of facts and circumstances gained after the fact [that the suspect was unarmed] has no place in the trial court's or jury's *post hoc* analysis of the reasonableness of the actor's judgment.")

⁹ 927 F.2d 789 (4th Cir. 1991).

¹⁰ *Id.* at 796.

¹¹ 954 F.2d 343, 347 (6th Cir. 1992).

¹² *Graham v. Connor*, 490 U.S., at 396-397.

¹³ *United States v. Cortez*, 449 U.S. 411, 418 (1980).

¹⁴ 954 F.2d 343 (6th Cir. 1992).

¹⁵ *Id.* at 347.

¹⁶ 927 F.2d 789 (6th Cir. 1991).

¹⁷ 926 F.2d 494 (5th Cir. 1991).

¹⁸ 471 U.S. 1 (1985). The Court offered two criteria to assess whether a fleeing suspect is dangerous: (1) "...if the suspect threatens the officer with a weapon..." or (2) "...there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm...." Satisfying either of these criteria effectively establishes the presumption that the suspect's escape will continue to endanger the community.

¹⁹ *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

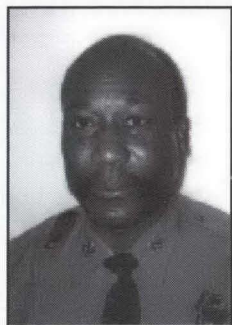
²⁰ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

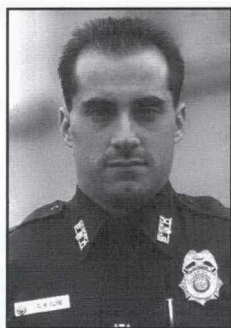
The Bulletin Notes

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.

Officers from three law enforcement agencies assisted in the apprehension of a violent offender. While off duty, Officer Thomas J. Fenwick of the Baltimore City, Maryland, Housing Authority Police Force interrupted an armed vehicle theft in the parking lot of his apartment complex. A gun battle ensued, during which the victim was able to escape unharmed. However, the suspect fled in the stolen vehicle. Several hours later, Officer Gary W. Cline of the Brunswick, Maryland, Police Department attempted to stop the stolen vehicle, which resulted in a high-speed chase that concluded in West Virginia. When the chase ended, Officer Cline approached the automobile, only to see the offender point a handgun at him and begin firing. Chief Charles Wyndham of the Harpers Ferry, West Virginia, Police Department joined Officer Cline in suppressing the subject with gunfire until additional units arrived to assist in the arrest.



Officer Fenwick



Officer Cline



Chief Wyndham

While on patrol during the late evening hours, Officer Douglas A. Schlueter of the Quincy, Illinois, Police Department observed smoke coming from a residence. After notifying emergency services, Officer Schlueter proceeded to the home to determine whether anyone remained inside. Through a window, he observed a disoriented woman in a smoke-filled room. When the woman failed to respond to his verbal directions, Officer Schlueter kicked in a door, located the occupant, and led her to safety.



Officer Schlueter

Washington, D.C. 20535

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Patch Call

The Escalon, California, Police Department patch features two rows of trees and a river leading toward a mountain range. The green trees represent walnut and almond orchards and the pink trees represent blossoming peach orchards, all of which are abundant in and around the small farming community of Escalon. The river dividing the trees is filled with stones, because Escalon means "stepping stone" in Spanish, and the town has historically been referred to as the stepping stone to the Sierra Nevada Mountains.

