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# FBI Law Enforcement Bulletin

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# *Offender Reentry*

## *A Returning or Reformed Criminal?*

By DAVID M. ALLENDER

Perhaps the most vexing problem facing the criminal justice system in the United States today is how to deal with offenders who have “paid their debt to society” and are released from a structured correctional setting back into the community. Rarely does society lock up a person and “throw away the key.” Instead, 95 percent of all offenders sent to state prison facilities will be released and returned to the civilian population.<sup>1</sup> How to address this situation has more important consequences for society than

the ongoing debate about whether a prison sentence should be punitive or treatment oriented. While incarcerated, the offender, at the very least, is “warehoused” away for the protection of the general public. Upon release, however, the community will be confronted, based on policy decisions made and implemented, by either a returning criminal or a reformed offender.

### **American Penology**

Concern for the real purpose behind a court-imposed sentence in response to a criminal

offense is not a new feature on the American political landscape. Rather, the debate goes back to the earliest period of this country’s existence. A brief look at the history of penology in this country can confirm this observation. In 1787, Benjamin Franklin’s Philadelphia, Pennsylvania, home was the site for the first meeting of the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP). At the time of this gathering, local jails—basically holding pens that made no attempt to separate prisoners by age, sex, or offense—housed

the majority of incarcerated persons. Upon adjudication of their cases, most of those convicted received sentences that entailed some form of corporal punishment or hard labor and removal from the jail population. PSAMPP members felt that this treatment of offenders was misguided and, by design, failed to correct the unacceptable behavior on the part of the prisoner. As a solution, they lobbied the government of Pennsylvania to construct Eastern State Penitentiary, a facility that opened in 1829 as the first modern-day prison. Behind its drive to build Eastern State, PSAMPP had as its goal: "The Penitentiary would not simply punish, but move the criminal toward spiritual reflection and change. The method was a Quaker-inspired system of

isolation from other prisoners, with labor."<sup>2</sup>

To inspire their charges, Pennsylvania, at the time, built possibly the most expensive building in the United States. Equipped with central heat and running water when the White House still used wood-burning stoves and latrines, the penitentiary represented an attempt to positively affect the lives of inmates. In reality, PSAMPP's well-intentioned effort at reform led to the creation of the first "supermax" facility in the world. For 23 hours a day, inmates were confined in individual cells that had small, private exercise yards that they could or had to go into for 1 hour per day. Staff members passed food to the inmates through a slot in the cell door. Inmates had no contact with each other, and the staff

restricted conversation with them to the amount necessary to operate the prison. When prisoners had to move around inside the institution, they wore hoods over their heads and faces. Eventually, inmates could exercise in a common yard together, but, for many years, they had to wear a hood with eyeholes to limit familiarity within the inmate community. In addition, the institution restricted reading material to the Bible. All of these measures were put in place to help inmates meditate and reflect on the errors they had made. PSAMPP members felt that upon reflection on their transgressions, inmates would become enlightened, which would lead to a resolve to make positive changes in their lifestyles and behaviors. Eastern State modified these practices over the years as new theories on penology altered the beliefs of those working in the field of corrections. The facility itself served as a penitentiary for 142 years, finally closing in 1971.<sup>3</sup>

The history of Eastern State Penitentiary illustrates how American society, in over 200 years, has failed to reach an agreement on what it hopes to accomplish by sentencing offenders to prison. Given this historical background, it is time to make use of modern research methods to identify and implement strategies that show



“  
**...the general public has begun to realize that many adult offenders lack the social skills necessary to become successful, contributing members of their communities.**  
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*Captain Allender serves with the Indianapolis, Indiana, Police Department.*

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promise in successfully reintegrating offenders into society as productive members.

### **Recidivism Identified**

Recent research by the Bureau of Justice Statistics helps to demonstrate the need to develop effective measures designed to assist recently released inmates.<sup>4</sup> The study examined prisoners released from 15 states, which returned a total of 272,111 of their charges to free society in 1994. This number represented approximately two-thirds of all inmates freed from custody that year. The researchers focused on four factors that they felt identified recidivism: “rearrest, reconviction, resentence to prison, and return to prison with or without a new sentence.”<sup>5</sup> Their findings proved disturbing. Within 3 years, 67.5 percent of released inmates were charged with a new crime, 46.9 percent were found guilty of their latest charge, and 25.4 percent were sent to a correctional facility in response to their new offense. Violations of release conditions (technical violations, not new offenses) led to additional incarceration time for many inmates released in 1994. Considering all of the factors, a total of 51.8 percent of the inmates released in 1994 were back in prison by 1997. This human tragedy is felt not only by the inmates, their families,

and friends but by society as a whole. The most obvious cost of this failure to gain compliance with societies’ mores lies in the extraordinary expense of incarceration, \$49,007,000 by all levels of government in 1999.<sup>6</sup> The victims of these offenders, however, pay a price not so readily apparent. The study estimated that before returning to prison, these offenders committed approximately 744,000 crimes between 1994 and 1997.

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***Public concern has led to an acceptance of the need for drug treatment and for the increasing requirement for appropriate programs.***  
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### **Changes in Sentencing**

By the middle of the 20th century, most states had a parole board responsible for administering an early release policy. Courts generally gave out sentences for a range of years. For example, a felony conviction for a nonviolent theft might be 2 to 4 years, instead of a set time, such as 30 months. Parole board members held the power to decide whether an

inmate went free after 2 years of imprisonment or had to serve the equivalent of 4 years. The system, by its very nature, was subjective and prone to abuse. Public displeasure led to reforms and a switch to determinate sentencing, with an equally applicable formula that allowed for early release based on “good time” earned by the inmate. A deficiency for the new procedure was a loss of postrelease control formerly held by the parole boards. When the board granted release, it set terms that parole officers administered. With the advent of determinate sentencing, however, more inmates began serving their entire sentences, then were released without control or assistance. An unintended consequence of this procedure has been a dramatic reduction in funds available for parole officers with a resultant proportionate decrease in the control of ex-inmates at a time when appropriate direction could have a positive impact on their lives.

Truth-in-sentencing laws, which several states have adopted, have further complicated issues surrounding offender reentry. In many jurisdictions, violent criminals must serve at least 85 percent of their court-imposed sentences before being considered for parole or release.<sup>7</sup> Other states, such as Indiana, make use of determinate sentences where inmates



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know that if they do not commit any transgressions while incarcerated, they will be released after serving 50 percent of their original sentences. These states consider the released inmates as having served their time and do not subject them to any additional monitoring or control. But, these are individuals who, based on prior behaviors, society has a strong interest in, either for rehabilitation or close supervision. In attempting to ensure punishment and fairness, legislative bodies have made decisions that did not take into account the fact that once these individuals have served their time, they will be released into the same neighborhoods they came from to again prey upon the citizens who live there.

One researcher, addressing the topic of how to deal with reentry, said, “The answer to the question, ‘If not parole, then what?’ is typically, ‘More prison.’ Yet asking a different question—‘How should we manage the reentry of large numbers of people who have been imprisoned for a long time?’—might elicit a different answer.”<sup>8</sup> He continued with what has become a common theme in enlightened discussions on the topic of reentry, “They all come back.”<sup>9</sup> He suggested reassigning some of the functions formerly performed by parole boards.<sup>10</sup> Among the items to consider is a body

charged with controlling the actions of inmates after release, as well as monitoring their behavior prior to release to ensure that they have received the tools to become successful when they return to free society. While this approach would seem to conflict with the sentencing reforms enacted in response to complaints concerning the old parole structure, the number of former inmates being rearrested so quickly after their release confirms the need for fine-tuning the system.

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***During the structured reentry phase, programs often use police as a deterrent for offenders should they violate the terms of their release agreements.***  
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#### **Reentry by Offense Category**

Many Americans are slowly starting to realize that offenders need help to succeed and not reoffend upon their release from correctional facilities. Society long has recognized its responsibility to care for delinquent youths because they are too immature to make decisions for themselves. Due to this, special

programs exist in a number of jurisdictions to work with juvenile offenders before and after their release. Now, the general public has begun to realize that many adult offenders lack the social skills necessary to become successful, contributing members of their communities. To help these individuals, many people have recognized the need to provide training and alternatives for those being released.

Citizens have demanded that at least two widely different classes of offenders incur special attention upon their release from incarceration. Interest in both groups has drawn considerable political attention, but for different reasons. An educated electorate voicing concern to appropriate legislative bodies can lead to the establishment of reentry programs. Depending upon the type of inmate targeted and the focus of the interest group, a reentry initiative developed in this manner may or may not offer the best chance for rehabilitation.

Sex offenders became the first to draw extensive public attention. Fear that released offenders would again prey upon those members of society least able to protect themselves led to several measures, including the National Sex Offender Registry. Also, in *Kansas v. Hendricks*, the U.S. Supreme Court ruled that institutions may

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hold sexual offenders beyond their court-imposed sentence if they can demonstrate that inmates have displayed a mental condition that indicates their likelihood of committing new offenses upon their release.<sup>11</sup> Other efforts have occurred to ensure released inmates are tracked and given either treatment or additional punishment, whichever professionals deem as the more appropriate for their condition.

A second category of offenders warranting special consideration in the eyes of the public includes those sentenced for what some perceive as “minor” drug crimes. Based on information in the media and high-profile movies, many members of the community seem to believe that large numbers of incarcerated drug offenders have as their only *real* crime an addiction to an illegal substance. While some persons undoubtedly have been imprisoned for usage amounts of drugs, most of those serving time for simple drug possession offenses, in fact, were actively involved in some manner with the trafficking of illegal substances.<sup>12</sup> Numerous ways exist for a known drug dealer to end up charged with possession instead of dealing. The most common occurs when prosecutors, with police encouragement, allow a person to plead guilty to possession after selling

drugs to a cooperating individual or informant. In such cases, a trade-off for the law enforcement community occurs—the identity of the witness, often an undercover officer, remains unknown, thereby protecting the witness and allowing the police to use that person again. Drug couriers that risk arrest for the profit gained by moving another’s drugs from one point to

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another are among those convicted of simple possession. Others facing these charges include those caught in “whisper” stops where the informant or undercover officer arranges a drug deal and police intercept the dealer before the individual can reach the meeting spot. These few examples illustrate why the public and researchers need to become better informed about conditions in the drug enforcement field before accepting, at face value, that courts have imprisoned a large

population of offenders for drug addictions.

Public concern has led to an acceptance of the need for drug treatment and for the increasing requirement for appropriate programs. Many offenders incarcerated for crimes not related to drugs either abuse or are addicted to an illegal substance. Effective screening by correctional personnel can identify those most in need of and receptive to treatment as a step to securing them placement in proper programs. The limited funding available for treatment programs, which occurs because no one can prove that criminal activity did not happen due to a specific intervention effort, drives the rationale behind referring only the best candidates for treatment.<sup>13</sup> In contrast, by their very nature, enforcement programs generate numbers of arrests and citizen contacts. Fiscal agents endeavoring to make effective use of available funds understandably are more comfortable with efforts that produce a verifiable result, usually numbers, as opposed to a successful outcome that remains difficult to prove.

### **Project RIO**

Institutions have employed a wide variety of programs and ideas in recent times to either force ex-inmates to conform to societal norms or assist them in making the transition from

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prison to freedom. One such program is Project RIO, a state-funded and locally controlled effort in Texas.

In June 1998, the National Institute of Justice evaluated and reported on this effort.<sup>14</sup> Under the formal title of Re-Integration of Offenders, the project began in Texas during 1985 as an effort to reduce the recidivism rate for inmates released by state correctional facilities. A quick look at the number of offenders Texas must deal with can effectively illustrate the scope of the problem. In December 1996, for example, Texas correctional institutions housed more than 132,000 inmates.<sup>15</sup> Members of the Texas legislature agreed with the premise that without gainful employment and other steps to reintegrate them into society, ex-inmates likely will reoffend and a large percentage will return to prison. They approved funding for Project RIO in 1984 with implementation in 1985. Elected officials took an enlightened stance when they mandated that to receive funds, several agencies would have to collaborate on the effort. The Institutional and Parole Division of the Texas Department of Criminal Justice and the Texas Workforce Commission, the state employment agency established in 1935 that successfully serves the entire state, equally share direction of the project.

The size of the RIO agency—100 paid staff located in 62 sites serving 92 cities and towns—demonstrates the extent of the commitment. Moreover, itinerant service providers travel to towns where large numbers of parolees reside to provide service for rural areas.<sup>16</sup>

***“Changes in sentencing procedures have greatly increased the number of prisoners released unconditionally into communities across the country.”***

Inmates are introduced to RIO in a variety of ways. Upon entry into a correctional facility, each offender must complete an orientation process. During this introduction, project staff members provide new inmates with a brochure describing how Project RIO works and how it can benefit them. As an example, the school that provides vocational and technical training inside the prisons requires inmates who participate in any course to enroll in the project. Staff members from RIO make periodic attempts to recruit inmates through oral or video

presentations and by bringing potential employers to the facilities. While processing out of institutions, inmates must attend a 30-minute orientation on RIO. Even if inmates fail to take advantage of the opportunities provided by the project upon release, they still can sign up later. This late sign-up often occurs because the ex-offender's parole officer makes a referral or a current or past participant in RIO assures the parolee that the program works.

Once inmates or parolees decide to take advantage of the benefits connected with Project RIO, they receive services tailored to fit their needs. Finding a job begins with a week of life-skills and job-search training. Program specialists then attempt to match ex-offenders with available positions and make calls to appropriate employers within the network of 12,000 companies that already have hired RIO participants. Project counselors realize the need to take a holistic approach to the problems and conditions that the ex-inmates face. For this reason, they provide ex-offenders with information on and assistance in obtaining community services, housing, medical care, and other resources for handling problematic issues. An important component of the program involves ongoing monitoring of the ex-offender's work performance

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and behavior, with timely intervention by parole or Project RIO workers before a problem reaches the level that will require reincarceration of the individual.

Overall then, how successful is the effort at keeping offenders from returning to prison? As the study of offenders released around the country during 1994 showed, by 1997, 51.8 percent had returned to prison.<sup>17</sup> This represents an enormous drain on public resources and a waste of potential contributions those imprisoned might make to society. Texas A&M University evaluated RIO in 1992 and judged the program a success.<sup>18</sup> Evaluators studied 1,200 inmates released that year and found that those who chose to participate in RIO had lower rates for both arrest and reincarceration. University researchers identified a number of factors that they believed had an effect on the ex-offender's ability to assimilate back into society.<sup>19</sup> The study then grouped subjects into categories of high, average, and low risk to obtain as much information as possible on the effectiveness. As might be expected, high-risk subjects had the most chance of being rearrested. This held true regardless of status with RIO, but project subjects fared significantly better than non-RIO individuals, 48 percent as opposed to 57 percent. Although the difference in

rearrest rates for average-risk, 30 percent versus 32 percent, and low-risk, 16 percent versus 19 percent, ex-offenders did not vary widely. In both categories, RIO participants did better than their counterparts not in the program.



Texas A&M University followed new cases filed against ex-offenders to conclusion and determined that Project RIO also had influenced the rate of incarceration for ex-offenders. Those individuals in the high-risk category were rearrested at a much higher rate than the other categories and, correspondingly, were imprisoned in a much greater percentage. RIO enrollees returned to prison less often than those who chose not to enter the program. Among those considered high risk, 23 percent from RIO as opposed to 38 percent non-RIO, went back into prison. In the average-risk ranking, the tally was 8 percent

RIO versus 11 percent non-RIO. No significant difference occurred for re-imprisonment among those studied who ranked as low risk.

The Texas A&M study not only indicated the success of the RIO effort but also identified both the scope of its work and the extent of its positive influence on the lives of the participants. Between 1995 and 1998, over 100,000 released inmates voluntarily participated in RIO, which found jobs for 69 percent of those in need.<sup>20</sup> Of those who chose not to enter the project, only 36 percent obtained gainful employment. Obviously, more ex-offenders working and paying taxes as opposed to serving time in prison can result in a positive impact on society.

### **New Partnerships**

Community policing is changing the manner in which many law enforcement agencies around the nation do business. Instead of being what many authors a couple of decades ago characterized as an army of occupation stationed in America's inner cities, police in many areas are emerging as true partners for citizens and other service providers. A number of factors have influenced this change, including a better-educated police work force and a need for all parties to cooperate so they could stretch limited



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resources and achieve their goals. Operating largely under the federal government umbrella, grant providers, in actuality, have been responsible for changing the face of American policing.

A report prepared for the National Institute of Justice by the University of Maryland documented eight communities using local police as an ingredient in ongoing reentry initiatives.<sup>21</sup> The information contained in the report may usher in a new phase of law enforcement activity.

The research identified five steps in the reentry process: “1) program eligibility, 2) institutional treatment plans, 3) structured prerelease planning, 4) structured reentry, and 5) community reintegration strategies.”<sup>22</sup> The authors felt that the last three phases were equally dangerous for an offender’s successful reentry. In all of the areas, police have the knowledge and ability to make meaningful contributions. While offenders are incarcerated, police, an often overlooked intelligence resource, can supply information on their families, associates, gang affiliations, and neighborhood problems they likely will encounter. Rather than relying on a “cookie-cutter” approach, examining information of this type would prove valuable in the development of treatment

and prerelease plans most likely to aid inmates.

During the structured reentry phase, programs often use police as a deterrent for offenders should they violate the terms of their release agreements. This approach differs in a significant way from older methods of policing. First, law enforcement officers meet face-to-face with offenders and tell them frankly what the community expects

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***During the community reintegration phase, officers work to lessen the friction that always accompanies change.***

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and what the consequences will be if they fail to meet expectations. Second, officers serve as a resource to help offenders who may have problems achieving what authorities expect.<sup>23</sup> In some jurisdictions, police work closely with probation and parole agencies, even participating in home visits and curfew checks, to ensure that offenders meet the requirements of their release agreements. Last, police in some jurisdictions sit on boards that determine whether offenders have achieved a

successful outcome. This probably represents the most controversial use of police in the reentry process because of the appearance, real or imagined, that the law enforcement community is not really an impartial voice in the decision-making process.

In years past, inmates normally were released under the supervision of either a parole or probation department. Changes in sentencing procedures have greatly increased the number of prisoners released unconditionally into communities across the country. Police are the only enforcement agents for those released unconditionally. Where the goal of incarceration is simply to punish criminal behavior, traditional policing methods (if ex-inmates reoffend, they are rearrested and suffer new consequences) would be an acceptable governmental response. The information now available, however, shows that the recently released most likely will fail without help. The law enforcement community may be forced to expand its range of services to assist ex-offenders unless some other group comes forward to fill the void.

During the community reintegration phase, officers work to lessen the friction that always accompanies change. When offenders return to their neighborhoods, they form only

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part of the equation. Family members often must rearrange their lives to accommodate another person in the household. Victims still may be a part of the community and require reassurance that they will not be victimized anew. Community groups need to know that any future transgressions will be dealt with quickly. Police often are the focal point for all of these entities. If offenders make a successful transition, the involvement of the police will be limited to positive interactions with both the offenders and the community.

### Conclusion

Offender reentry is a pressing issue for society. Governmental resources have been severely taxed as legislatures have criminalized more and more behaviors. Determinate sentencing, coupled with mandatory minimum time requirements, has resulted in longer stays for offenders. Many treatment and educational programs have not been able to keep pace with the demand. Unconditional release, for those having completed a determinate sentence, has resulted in many offenders being returned to the environments that initially contributed to their abhorrent behavior. Without new tools to assist them in avoiding pitfalls, ex-offenders are likely to repeat previous negative actions,

which could lead to their reincarceration. This, in turn, causes multiple injuries to society, including the cost of the crime itself, the need for appropriate housing for the offender, the loss of productivity that could be expected had the person not reoffended, and the harm to the family structures of victim and offender. The magnitude of the problem defies a quick-fix answer.

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New ways of thinking are a necessary step to reducing the recidivism rate. Project RIO is a shining example of what can be done when effective partnerships are formed and conditions allow them to function in the proper manner. Moreover, finding the role for law enforcement to work with other team members in reentry would benefit everyone concerned. With its emphasis on problem solving, community policing is changing the face of law enforcement

around the country. Not everyone, however, agrees with using police officers in this way, and some agencies may be reluctant to incorporate them for fear of having their own work overshadowed. But, by establishing guidelines for law enforcement involvement, cooperating partners could ensure that their needs are met and police officers would better understand what is expected of them. Using law enforcement personnel could reduce costs and lessen the workload of some over-worked agencies. Officers would benefit from working in these programs because they would be placed in close contact with those who, statistically, are the most likely to commit new crimes. Although it is heartening to see that steps are being taken to improve programs available for those leaving correctional facilities, more work still needs to be done to help offenders reform, rather than return to their criminal ways. ♦

### Endnotes

<sup>1</sup> T. Hughes and D. Wilson, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Reentry Trends in the United States, 2002*; retrieved on May 20, 2004, from <http://www.ojp.usdoj.gov/bjs/reentry/reentry.htm>.

<sup>2</sup> Eastern State Penitentiary Web site; retrieved on May 20, 2004, from <http://www.easternstate.com/history/sixpage.html>.

<sup>3</sup> The structure remains and is being renovated as a historical monument. To help pay for the renovation, the site is open to the public and has been rented to filmmakers.

<sup>4</sup> P.A. Langan and D.J. Levin, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, NCJ 193427 (Washington, DC, 2002).

<sup>5</sup> Ibid., 1.

<sup>6</sup> Sidra Lea Gifford, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 1999*, February 2002, NCJ 191746; retrieved on May 24, 2004, from <http://www.ojp.usdoj.gov/bjs/pub/pdf/jeeus99.pdf>.

<sup>7</sup> Jeremy Travis, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, "But They All Come Back: Rethinking Prisoner Reentry," *Sentencing & Corrections: Issues for the 21st Century*, NCJ 181413 (Washington, DC, May 2000).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> By the end of 2000, 16 states had abolished discretionary release from prison by a parole board for all offenders; supra note 1.

<sup>11</sup> 117 S.Ct. 2072.

<sup>12</sup> The author based this observation on his 30 years of law enforcement experience.

<sup>13</sup> The author learned this concept from Olgen Williams, director of the Indianapolis Christamore House Community Center. The two have worked together on a number of projects, including Weed and Seed and gang prevention programs, since 1995.

<sup>14</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Texas' Project RIO*, NCJ 168637 (Washington, DC, June 1998).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Supra note 4.

<sup>18</sup> R. Menon, C. Blakely, D. Carmichael, and L. Silver, Texas A&M University, Public Policy Resources

Laboratory, *An Evaluation of Project RIO Outcomes: An Evaluative Report* (College Station, TX, 1992).

<sup>19</sup> The researchers identified a total of 23 factors, including substance abuse history, living arrangements, academic level, vocational skills, employment history, and the correctional officer's impression of risk.

<sup>20</sup> Supra note 14.

<sup>21</sup> J.M. Byrne, F.S. Taxman, and D. Young, University of Maryland, Bureau of Governmental Research, *Emerging Roles and Responsibilities in the Reentry Partnership Initiative: New Ways of Doing Business* (College Park, MD, 2002).

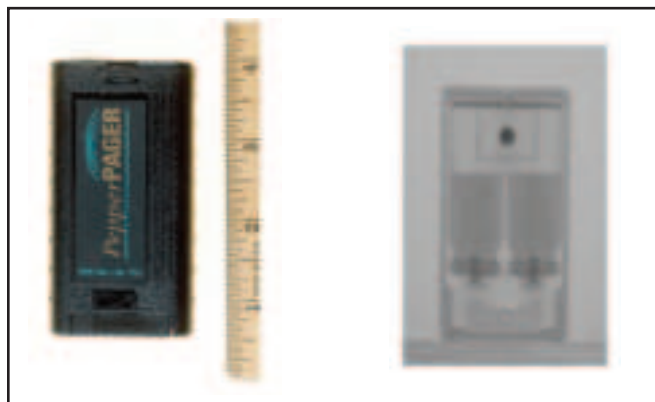
<sup>22</sup> Ibid., 5.

<sup>23</sup> Indianapolis has made limited use of this by working with the Indianapolis Violence Reduction Partnership to hold "lever-pulling" sessions for parolees and probationers. Some success has been demonstrated in that the number of violations among those persons targeted for this program has significantly decreased from the start of the effort until the present time.

## Unusual Weapon

### Pepper Pager

This object has a plastic body and is designed to look like an actual pager. Offenders may use this device to dispense pepper spray.



### Media Relations

The National Institute of Justice and the Office of Community Oriented Policing Services present *Marketing Community Policing in the News: A Missed Opportunity?* that investigates the relationship between police departments and the media and how it affects coverage of community policing in newspapers and on television. This report found that, in general, media reporting of community policing is favorable, access to police agencies is not a problem, and relations with departments are good. It identifies barriers to better media handling of community policing (e.g., the monopoly that crime stories hold over other types) and discusses their implications for police public information officers. The publication concludes that to develop a winning approach, departments could

explore the possibility of using the news media as one—but not the sole—component of a broad outreach strategy. This report is available electronically at <http://www.ojp.usdoj.gov/nij/pubs-sum/200473.htm> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

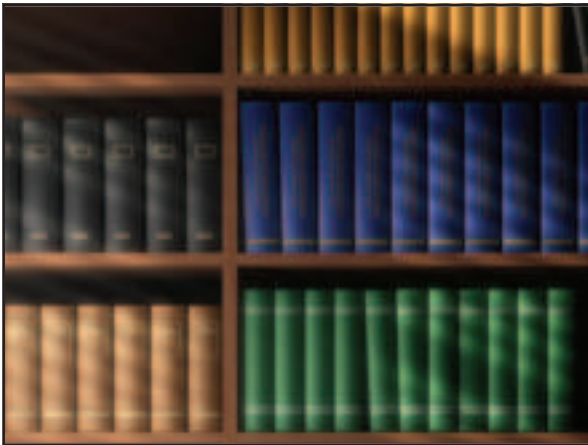
### Web-Based Resources

The International Association of Chiefs of Police (IACP) is the world's oldest and largest nonprofit membership organization of police executives, with more than 19,000 members in more than 90 countries. IACP supports law enforcement professionals with services that include management and operational studies, state-of-the-art training programs and materials, law enforcement policies and procedures, a professional monthly magazine and special reports, and extensive law enforcement research. Its Web site, <http://www.theiacp.org>, includes information on these services as well as legislative activities; upcoming conferences, professional assistance; and IACP's divisions, sections, and committees.

**Bulletin Reports** is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 201, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)



## Book Review



**A Law Enforcement Officer's Guide to Testifying in Court** by James M. Vukelic, Carolina Academic Press, Durham, North Carolina, 2003.

Without a doubt, this book will help the veteran, as well as the inexperienced, law enforcement officer testify in court more effectively. *A Law Enforcement Officer's Guide to Testifying in Court* provides significant information and advice to members of the law enforcement community to improve their persuasive manner of performance at trials while testifying as witnesses. The author identifies various methods used by attorneys on witnesses testifying and couples these with suggestions on how to deal with such tactics. He uses examples to emphasize key points that will greatly assist the patrol officer and other witnesses and bases the information presented on actual testifying situations in criminal and civil trials.

Six chapters make up the book, with the addition of two appendices. Appendix A deals with the cross-examination of a DUI arresting officer and field sobriety tests, whereas Appendix B covers the cross-examination of a psychiatrist in a murder case.

The first chapter, "What You Need to Understand Before Trial," is designed to help set the mental stage for officers preparing to testify by building their confidence. It focuses on the fact that officers must acknowledge the battleground of the court as a technique to reduce testifying anxiety and maintain their professional credibility.

Loaded with critical and necessary information, chapter 2 contains tips for testifying officers, including nonverbal persuasion, whether to wear jewelry, how to properly take the witness stand, and the indicators of witness deception, as seen by courtroom attorneys and jury members. This chapter covers the "dos and don'ts" that testifying officers must adhere to during the trial proceedings. All of the information is included to enhance and maintain an officer's credibility.

A chapter on surviving both direct and cross-examinations contains further important information to help testifying officers and others as to what they must expect during the two types of examinations in terms of the style of the interrogation and their responses to such questions. The author addresses how officers and other witnesses are discredited; how the identification of prejudice or bias on the part of a witness surfaces; and what constitutes poor memory situations by a witness. Information is presented as to a lack of perception, inconsistent statements, and attacks on the character of a witness that gives the officer an idea of what to be prepared to encounter. All of the information is supported with sound, tried tips.

In the chapter on expert testimony, the author addresses the officer as an expert witness and provides advice and examples on how and when an officer may give opinion testimony. The author also presents a comprehensive chapter on deposing witnesses and how

depositions are used at trials. Overall, two strong points of the book emerge: 1) a total of 37 excellent tips with examples spread throughout the book involving officers in court and 2) two appendices on cross-examinations that provide insight to officers and other witnesses as to what they may expect at a trial.

*A Law Enforcement Officer's Guide to Testifying in Court* applies to all personnel in the criminal justice system. It is of value to law enforcement academies and in-service training programs, as well as officers studying for the

civil service test and those individuals who write the examination. It is an essential book for prosecutors and defense attorneys to read and should be considered as part of the required reading list at higher academic institutions.

Reviewed by  
Major Larry R. Moore (Ret.), CPP  
Certified Emergency Manager  
International Association  
of Emergency Managers  
Knoxville, Tennessee

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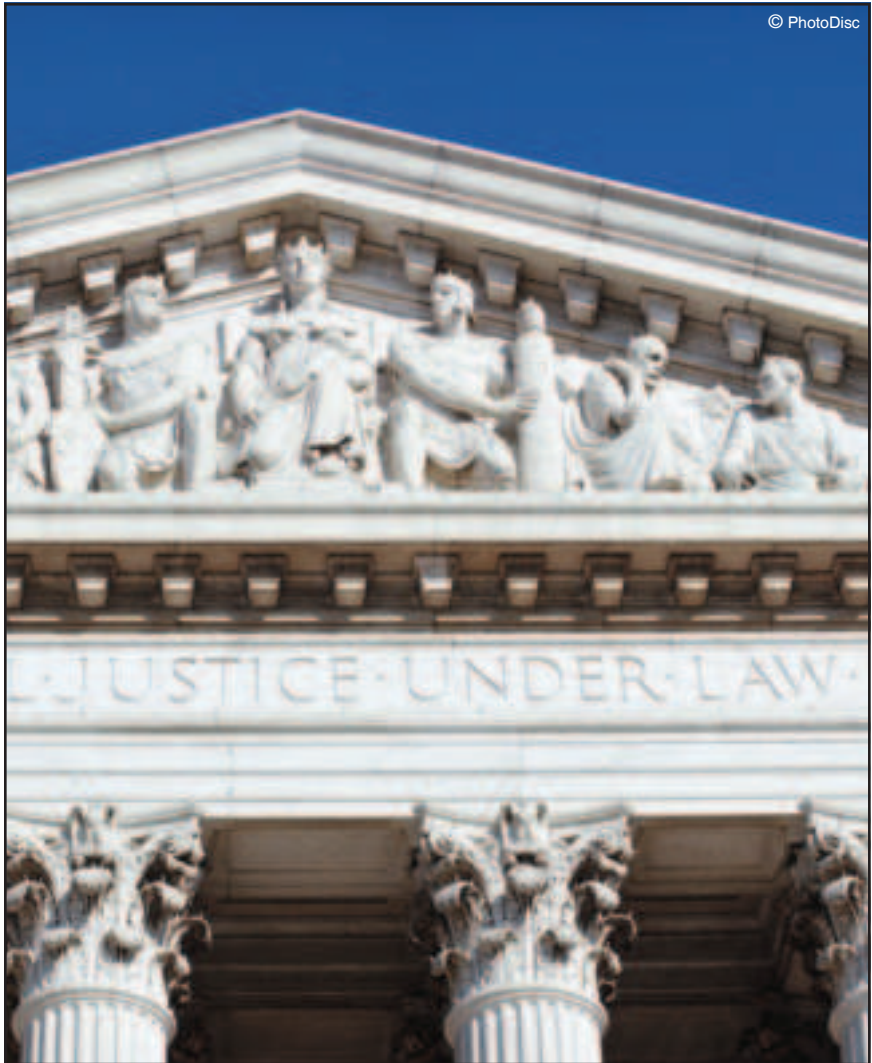


# Supreme Court Cases

## 2003-2004 Term

By the FBI ACADEMY  
LEGAL INSTRUCTION UNIT

The 2003-2004 U.S. Supreme Court term included several cases addressing a variety of constitutional criminal procedural issues, some dealing with the most fundamental of law enforcement activities. One case resolved the constitutionality of a state's identify yourself statute, requiring individuals to identify themselves during an investigation detention. The Court also rejected a rigid approach to determining whether a reasonable period of time has lapsed prior to making a forcible entry. A few vehicle cases were reviewed, including one addressing the scope of the search incident to arrest when the individual already was out of the vehicle when the law enforcement encounter began and the other relating to highway checkpoints. The Court addressed the constitutionality of arresting several companions when information suggests at



least one may be involved in criminal activity. Custodial interrogation matters also went before the Court, including the constitutionality of an interrogation technique described as the ask now, warn later approach and the admissibility of physical evidence derived from a confession obtained in violation of *Miranda*. Additionally, the

concept of deliberate elicitation within the meaning of the Sixth Amendment was clarified. The following is a brief synopsis of these cases. As always, state and local law enforcement agencies must ensure that their own state laws and constitutions have not provided greater protections than the U.S. constitutional standards.

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***United States v. Banks,*  
124 S. Ct. 521 (2003)**

This case afforded the U.S. Supreme Court the opportunity to provide guidance to law enforcement officers in assessing how much time to wait prior to making a forcible entry after knocking and announcing their presence and demanding entry. Officers obtained a search warrant based on information that cocaine was being sold from an apartment. Officers at the front door of the apartment knocked and announced loud enough to be heard by officers located at the back. After waiting 15 to 20 seconds with no response, officers forcibly entered with a battering ram. They encountered the defendant walking out of the shower after he heard them enter. Evidence of drug dealing was found during the search, which the defendant sought to suppress,

arguing that the officers failed to wait a reasonable time prior to the forcible entry.

The Ninth Circuit Court of Appeals agreed with the defendant and spelled out a detailed list of factors law enforcement must consider when deciding whether a reasonable period of time has lapsed prior to making a forcible entry. The factors included the location of the officers in relation to the main living or sleeping area of the residence, time of day, and the object of the search.<sup>1</sup> Additionally, the court of appeals divided the types of entries into categories, each supporting a different type of delay. For example, the court described the entry in this case as involving the destruction of property but with no exigent circumstances, therefore, requiring an even longer period of time before making entry.<sup>2</sup> The U.S. Supreme Court agreed to hear this case and ultimately rejected this approach.

The Court rejected the idea that the concept of reasonableness required law enforcement officers to consider a list of predetermined factors to justify their actions. Instead, reasonableness should be viewed under the totality of the circumstances confronting officers at the moment they decide to make forcible entry. The Court viewed the delay of 15 to 20 seconds in *Banks* as sufficient

given that a reasonably objective law enforcement officer could conclude that the danger of disposal of the drugs had ripened.

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***Thornton v. United States,*  
124 S. Ct. 2127 (2004)**

In 1981 in *New York v. Belton*,<sup>3</sup> the U.S. Supreme Court described the scope of the search incident to arrest of an occupant in a vehicle as anywhere within the passenger compartment, including containers the officer discovers. The Court described containers as including “closed or open glove compartments, consoles or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing and the like.”<sup>4</sup> Recognizing the grave risk such encounters pose to officers, the Supreme Court was not concerned that the arrestee was removed from the vehicle and under control of law





as the arrest of an individual when inside the vehicle. Considering whether someone is a recent occupant may turn on his temporal or spatial relationship to the vehicle at the time of the arrest and search; it certainly does not turn on whether he was inside or outside the car at the moment that the officer first initiated contact with him.<sup>6</sup>

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enforcement at the time of the search. In *Thornton*, the Supreme Court took this a step further. The Court held that police can search the passenger compartment of a vehicle incident to arrest when the arrestee was a recent occupant of the vehicle.

In this case, an officer became suspicious of how Thornton was driving. He appeared nervous and attempted to avoid contact with the officer. The officer checked the license plate and discovered that it belonged to a different vehicle. Before the officer could pull over the car, Thornton turned into a parking lot, parked his vehicle, and began walking away. The officer confronted him and asked whether he had any weapons or drugs on him or in his car, which he denied. Thornton consented to a limited search of his person, which

revealed a suspicious item that he admitted to contain drugs. He then was arrested and placed in the back of the patrol car. The officer then searched the vehicle incident to arrest and found a handgun.

The defendant argued that the handgun should be suppressed as the search went beyond what can be done incident to arrest given he was not in the vehicle at the time the officer initially encountered him. The district court rejected this argument, and the defendant appealed. The Fourth Circuit Court of Appeals affirmed.<sup>5</sup> The U.S. Supreme Court reviewed the case and held for the government, agreeing with the Fourth Circuit.

The Court viewed the arrest of a recent occupant of a vehicle as presenting the identical concerns regarding officer safety and destruction of evidence

***Groh v. Ramirez*,  
124 S. Ct. 1284 (2004)**

In *Groh v. Ramirez*, the U.S. Supreme Court was presented with an opportunity to send a message to law enforcement on the importance of paying attention to detail. In this case, a warrant was obtained to search a residence. The application and affidavit contained a particular description of the items to be seized. However, the warrant itself did not contain such a description as required by the

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Fourth Amendment. The section in the warrant that was to contain a list of items to be seized instead described the place to be searched. The warrant was reviewed, signed by a judge, and executed.

A civil action alleging a Fourth Amendment violation was brought against the affiant. The lower court agreed that a constitutional violation occurred and held that the affiant was not entitled to qualified immunity as any reasonable officer would have concluded from just a cursory look at the warrant that it was invalid. The U.S. Supreme Court agreed.



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***Maryland v. Pringle,*  
124 S. Ct. 795 (2003)**

In *Maryland v. Pringle*, the U.S. Supreme Court addressed the constitutionality of arresting a group of companions when the officer has reason to believe

that at least one or more is involved in criminal activity but does not have information to identify with certainty who may be the culprit. In this case, an officer stopped a car occupied by three men for speeding. The officer requested and was provided consent to search the vehicle. During the search, he found over \$700 of rolled-up cash and five plastic bags of cocaine. After the three occupants denied any knowledge of the money and drugs, the officer arrested all three, including Pringle.

Pringle later confessed that the cocaine belonged to him and the others were not aware that drugs were in the car. At trial, Pringle challenged the use of his confession, arguing that his arrest was not supported by probable cause. The Maryland state court agreed, holding that absent specific facts establishing Pringle's dominion and control over the drugs, the officer's mere finding that it was a car occupied by Pringle is insufficient to justify probable cause to arrest.<sup>7</sup>

On appeal, the U.S. Supreme Court reversed, concluding that the officer had sufficient probable cause to arrest Pringle based on the information known to the officer at the time of arrest and the reasonable inferences the officer could draw therefrom. The officer could reasonably infer that one

or all three of the individuals had knowledge of, and exercised dominion and control over, the cocaine as all three were riding together in a relatively small vehicle and appeared to be engaged in a common enterprise.<sup>8</sup> The Court noted that a standard higher than probable cause is to be applied later in the criminal justice process and does not belong in the decision to arrest someone.<sup>9</sup>

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***Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County,*  
124 S. Ct. 2451 (2004)**

A state statute requiring individuals to identify themselves as part of an investigative detention does not violate the Fourth or Fifth Amendment. In this case, a deputy sheriff responding to a call reporting an assault lawfully detained a man that later turned out to be Hiibel

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based on reasonable suspicion of his involvement in the crime. After numerous attempts to determine the man's identity, the deputy arrested him for failing to identify himself during an investigative detention pursuant to Nevada's stop and identify statute.<sup>10</sup> Hiibel was convicted and appealed, challenging the constitutionality of the stop and identify statute. The Nevada Supreme Court ultimately rejected Hiibel's efforts to overturn his conviction, and he petitioned to the U.S. Supreme Court.<sup>11</sup>

The Court rejected Hiibel's claim that the statute violated the Fourth Amendment prohibition against unreasonable seizures. Provided the stop is justified at its inception—in other words, based on reasonable suspicion—and the request for identity is reasonably related to the purpose of the stop, the minimal intrusion into privacy by requiring the individual to identify him or herself is outweighed by important governmental interests in securing such information.<sup>12</sup> The Court noted that this would provide the officer critical information, such as whether the individual is wanted or has a prior criminal history involving violence.<sup>13</sup> Such information also could serve to remove the cloud of suspicion hovering over the individual and bring an end to the encounter.<sup>14</sup>

The requirement to provide identity further was challenged on the grounds that it violated the Fifth Amendment privilege against compelled self-incrimination. The Court rejected this challenge, but refused to resolve this issue on the grounds argued by the government. The government argued that the statements the "stop and identify" statute requires are nontestimonial and, therefore, do not implicate the Fifth Amendment.<sup>15</sup> While recognizing it would be the rare case, the Court refused to hold as a broad principle that the statement of one's name could never be incriminating. The Court left open the possibility that with different facts, identifying oneself may implicate the privilege against self-incrimination. However, in this case, Hiibel's refusal to provide his name was not out of concern that it would be used against him, rather he refused merely because he was not cooperative.



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### ***Illinois v. Lidster*, 124 S. Ct. 885 (2004)**

This case brought the issue of highway checkpoints once again to the U.S. Supreme Court. In 1990, the Court held that brief, suspicionless seizures at highway checkpoints for the purpose of combating drunk driving are constitutional.<sup>16</sup> In 2000, in *City of Indianapolis v. Edmond*,<sup>17</sup> the Court ruled that a highway checkpoint designed primarily to locate narcotics is an unconstitutional seizure. In *Lidster*, the Supreme Court clarified that *Edmond* should not be read to condemn all highway checkpoints.

In *Lidster*, the police were investigating the hit-and-run death of a bicyclist. About a week after the fatal accident, police set up a highway checkpoint to locate witnesses at about the same time and place as where the accident occurred. Police stopped all vehicles approaching the checkpoint and asked the occupants whether they knew anything about the accident. As Lidster approached the checkpoint, his vehicle nearly struck an officer. The officer approached the vehicle and smelled alcohol on Lidster's breath. Lidster subsequently failed a field sobriety test and was arrested and eventually convicted for driving under the influence.

Lidster challenged his arrest and conviction, arguing that the

information leading to his arrest was derived from an unlawful seizure, asserting that the checkpoint violated the Fourth Amendment. The Illinois Supreme Court held that *Edmond* controls and, therefore, the evidence against Lidster must be suppressed.<sup>18</sup> The government appealed to the U.S. Supreme Court which reversed, concluding that the use of the checkpoint in *Lidster* differed greatly from that in *Edmond*. The Court noted that the purpose of the checkpoint in *Lidster* was not to determine whether the occupants were engaged in criminal activity but, rather, to solicit information about a fatal accident.<sup>19</sup> In *Edmond*, the Court concluded that the purpose of the checkpoint was general crime control, requiring law enforcement to have individualized suspicion to seize an individual. The information-seeking purpose in *Lidster* furthered the significant public interest of attempting to identify the driver who fled the scene of a fatal hit-and-run.

Once it determined there was sufficient public interest at stake, the Court then considered whether the government's actions during the stop were reasonable. The Court noted that the stop was brief, typically no longer than 15 to 20 seconds; the officers engaged in voluntary questioning focused on the accident; and all vehicles were

stopped, eliminating subjectivity on the part of the officers.<sup>20</sup> The purpose and scope of the checkpoint satisfied the Fourth Amendment.

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***Missouri v. Seibert*,  
124 S. Ct. 2601 (2004)**

This case provided the U.S. Supreme Court with an opportunity to address a controversial interrogation technique involving the intentional deprivation of *Miranda* rights in a custodial interrogation. This technique, sometimes referred to as “beachheading,” took advantage of the 1985 U.S. Supreme Court holding in *Oregon v. Elstad*<sup>21</sup> allowing the use of statements obtained in a follow-up interrogation despite an earlier violation of *Miranda*, provided there was compliance in the follow-up interrogation. While the initial statements could not be used, those made in response to

questioning after *Miranda* was provided and a waiver was obtained could be used in the criminal proceeding. This technique was a way to “work around” *Miranda*.

In *Seibert*, the defendant's young son, afflicted with cerebral palsy, died in his sleep. The defendant feared that she would be charged with neglect. In her presence, two of her other sons and their friends concocted a scheme to conceal the true cause of death by setting the trailer they lived in on fire with the boy's body inside. The fire was set with teenager, who was mentally ill, inside in the trailer so it would appear that the deceased had not been left alone.

Ultimately, Seibert was arrested for the crime. At the station, the officer who was to interview her was instructed to begin talking with her without regard to *Miranda*. She made several admissions during the conversation. Following a 20-minute break, the officer returned, turned on the tape recorder, administered *Miranda* warnings, and obtained a waiver. During this interview, the officer reminded Seibert of her earlier admissions. She confessed and was charged with first-degree murder. Seibert sought to suppress her pre- and postwarning statements.<sup>22</sup> At the suppression hearing, the officer testified that the initial failure to



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provide *Miranda* warnings was intentional and based on an interrogation technique he was taught. The lower courts suppressed the pre-warning statements but allowed the post-warning statements to be used against her. A jury convicted Seibert, and, on appeal, the Missouri Court of Appeals affirmed.<sup>23</sup> On appeal, the Missouri Supreme Court reversed, ruling that both the pre- and postwarning statements should be suppressed due to the initial failure to provide *Miranda* warnings.<sup>24</sup> The U.S. Supreme Court agreed to hear the case.

The Court determined that when interrogators question first and warn later, the warnings and waiver do not function as *Miranda* requires. The Court pointed out that “telling a suspect that ‘anything you say can and will be used against you,’ without expressly excepting [a] statement just given, could lead to an entirely reasonable inference that what he has just said will be used, with subsequent silence being of no further avail.”<sup>25</sup> The Court expressed concern that inserting the warnings and waiver in the midst of an ongoing interview, as opposed to at the start, would likely deprive the subject of the ability to understand the nature of the rights and the impact of waiving those rights.<sup>26</sup>

The Court’s emphasis on the timing of the advice of rights relative to the interview is worth noting. The fact that the interview in *Seibert* was continuous and conducted by the same officer led the Court to conclude that it would be difficult for the defendant to understand the nature of the protections afforded by the *Miranda* rights and the consequences of waiving those rights. The Court distinguished this case from its previous ruling in *Oregon v. Elstad*<sup>27</sup> where the Court allowed the use of statements obtained during a lawful custodial interrogation despite an earlier interview of the defendant in which the officers unintentionally deprived the defendant of his *Miranda* rights. In *Elstad*, statements were obtained at the defendant’s house that were determined to be in violation of *Miranda*. Officers transported the defendant to the office and interviewed him later in compliance with *Miranda*. The Court viewed the problem with the statements obtained initially as a good faith mistake, correctable by complying with the dictates of *Miranda*. The *Seibert* ruling should prompt departments to evaluate their interrogation tactics and assess the continued viability of so-called “beachheading” tactics.



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### ***United States v. Patane*, 124 S. Ct. 2620 (2004)**

In this case, the U.S. Supreme Court held that the failure to provide *Miranda* warnings prior to engaging in custodial interrogation does not require suppression of physical evidence discovered as a result of the person’s unwarned but voluntary statements. The Court recognized, however, that the unwarned statement itself was inadmissible. After the arrest of Patane, officers sought to question him about his alleged possession of a handgun and began reading him his *Miranda* rights.<sup>28</sup> Patane interrupted right after he was advised he had the right to remain silent and told the officers they did not need to go any further; he understood his rights.<sup>29</sup> In response to the questioning, Patane told the officers where the gun was located and gave them

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permission to retrieve it. He was charged with being a felon in possession.

Patane sought to have the firearm suppressed. The Tenth Circuit Court of Appeals upheld the U.S. District Court's ruling suppressing the firearm, concluding it was the fruit of the unwarned statement.<sup>30</sup> The U.S. Supreme Court agreed to hear the case to resolve the conflict that existed on this issue among several circuit courts.<sup>31</sup>

The Court concluded that suppression of the physical evidence derived from a statement is not required as the statement, albeit unwarned, was voluntary. It is worth noting that while the physical evidence is admissible, the response to the questions are not. Also, establishing voluntariness may be difficult in the absence of the complete set of *Miranda* rights and a waiver.

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### ***Fellers v. United States*, 124 S. Ct. 1019 (2004)**

The U.S. Supreme Court reiterated that the concept of deliberate elicitation of incriminating information within the meaning of the Sixth Amendment right to counsel encompasses more than interrogation. The accused, John Fellers, was formally charged by a grand jury for distribution of narcotics and conspiracy. Officers went to

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his residence and advised him that he had been indicted and a warrant was issued for his arrest. They explained that the indictment referred to his involvement with others. Fellers admitted to knowing the individuals and using narcotics with them.<sup>32</sup> Fellers was taken into custody and transported to jail. Once at the jail, he was advised of his *Miranda* rights for the

first time. He waived them and provided additional inculpatory details. Fellers later sought to have all of his statements suppressed.

The Eighth Circuit Court of Appeals affirmed the lower court's decision to allow the use of the postwarning jailhouse statement, concluding that there was no interrogation at Fellers' residence. Accordingly, the statements obtained later at the jailhouse are admissible under the reasoning of *Oregon v. Elstad*.<sup>33</sup> The case was appealed to the U.S. Supreme Court.

The Court took issue with the circuit court's reasoning because it rested on the "erroneous determination that [Fellers] was not *questioned* in violation of Sixth Amendment standards...."<sup>34</sup> The Court pointed out that it has long held that the Sixth Amendment right to counsel attaches after judicial proceedings have commenced against an individual and applies during deliberate elicitation of information about the crime for which the person has been charged. The Supreme Court remanded this case to the circuit court to determine whether the Sixth Amendment requires the suppression of the statements made at the jailhouse after *Miranda* was complied with on the ground that they were the fruit of the earlier elicitation of information in violation of the Sixth Amendment.

## Case Granted Next Term for Review

The U.S. Supreme Court carried over a case of particular interest to law enforcement. During the 2004-2005 term, the Court will consider *Illinois v. Caballes*, 802 N.E.2d 202 (2003), *cert. granted*, 124 S. Ct. 1875 (2004). In this case, the Supreme Court will consider whether specific and articulable reasonable suspicion is needed to conduct a canine sniff of a vehicle stopped for a traffic violation. ♦

### Endnotes

- <sup>1</sup> 282 F.3d 699, 704 (9th Cir. 2002).
- <sup>2</sup> *Id.*
- <sup>3</sup> 453 U.S. 454 (1981).
- <sup>4</sup> *Id.* at 460, n.4.
- <sup>5</sup> 325 F.3d 189 (4th Cir. 2003).
- <sup>6</sup> *Thornton* at 2131-2132.
- <sup>7</sup> 805 A.2d 1016 (2002).
- <sup>8</sup> The Supreme Court also disagreed with the lower court's view that the cash should not be considered when determining whether probable cause existed as possessing money, without more, is not criminal. The Supreme Court stated "[t]he court's consideration of the money in isolation, rather than as a factor in the totality of the circumstances, is mistaken in light of our precedents." See 124 S. Ct. at 800, fn 2.
- <sup>9</sup> 124 S. Ct. at 800.
- <sup>10</sup> NRS §171.123 (2003), defining the rights and duties of a police officer during an investigative detention.
- <sup>11</sup> 59 P.3d 1201 (2002).
- <sup>12</sup> *Hiibel* at 2458.
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.*
- <sup>15</sup> *Id.* at 2460.

- <sup>16</sup> *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990).
- <sup>17</sup> 121 S. Ct. 447 (2000).
- <sup>18</sup> 779 N.E.2d 855 (2002).
- <sup>19</sup> *Lidster* at 885.
- <sup>20</sup> *Id.* at 891.
- <sup>21</sup> 470 U.S. 298 (1985).
- <sup>22</sup> *Id.* at 2605-2611.
- <sup>23</sup> *Id.* at 2606. The appellate court found the case undistinguishable from *Oregon v. Elstad*.
- <sup>24</sup> *Id.* The Missouri Supreme Court distinguished this case with *Elstad* as that case involved the unintentional withholding of *Miranda* warnings. See *State v. Seibert*, 93 S.W.2d 700 (Mo. 2002).
- <sup>25</sup> *Id.* at 2611.
- <sup>26</sup> *Id.*
- <sup>27</sup> 470 U.S. 298 (1985).
- <sup>28</sup> 124 S. Ct. 2620, 2625 (2004).
- <sup>29</sup> *Id.* at 2625.
- <sup>30</sup> 304 F.3d 1013 (10th Cir. 2002). The lower court suppressed the firearm after concluding that the officers did not have probable cause to arrest Patane initially. The circuit court of appeals decided to base its ruling on the *Miranda* violation. It was the *Miranda* issue that went to the Supreme Court.
- <sup>31</sup> See *United States v. Sterling*, 283 F.3d 216 (4th Cir. 2002) and *United States v. DeSumma*, 272 F.3d 176 (3rd Cir. 2001) (fruit of the poisonous tree doctrine does not apply to *Miranda* violations).
- <sup>32</sup> *Fellers* at 1021.
- <sup>33</sup> 470 U.S. 298 (1985). See *United States v. Fellers*, 285 F.3d 721 (8th Cir. 2002).
- <sup>34</sup> *Fellers* at 1023 (emphasis added).

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

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## Wanted: Notable Speeches

The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

Editor, *FBI Law Enforcement Bulletin*  
FBI Academy  
Madison Building,  
Room 201  
Quantico, VA 22135  
telephone: 703-632-1952,  
e-mail: leb@fbiacademy.edu

### **Qualities and Traits of the Professional Law Enforcement Officer**

By Edward L. Guthrie, Ed.D.

**W**elcome graduates, families, POST staff, colleagues, and guests. It is a privilege to stand before you today as you complete one of the first milestones in your careers. The past weeks have been difficult, but they have prepared you for your chosen profession. It is one that is honorable, rewarding, and the most stressful you ever will experience. It is the only occupation on domestic soil that has the authority to take a human life not based on fact but perception (e.g., a toy gun) and to restrict the most fundamental of civil rights—the right to freedom.

I also want to talk about heroes and ethics. A hero has been defined as having “strength, courage, and daring.” But who are our heroes? We know what our soldiers are doing in Iraq and the courage and sacrifices they are making for our freedom. We have heard about the unfortunate death of Pat Tillman, the professional football player while in service to his country. Now, your friends and neighbors in the Idaho National Guard have been called to serve.

Crime does not distinguish one person from another, as demonstrated in a recent case where Supreme Court Justice David Souter was assaulted while jogging in Washington, D.C. There are approximately 957,500 sworn law enforcement officers now serving in the United States, one of the highest figures ever. In 2002, there were more than 1.4 million violent crimes committed in the United States. The annual number of violent crimes has declined since a peak in 1993; however, it has taken its toll. A total of 1,658 law enforcement officers have died in the line of duty during the last 10 years. Who are our heroes? They are you—the men and women of the 142nd class of the POST

Basic Patrol Academy. You have volunteered to serve your community and country. Never take your training, or anything, for granted, and always remember that complacency has no room in this job. Your actions that occur within a few seconds will be judged by many who have several months to review what you did. I often think of a quote by Theodore Roosevelt on this issue:

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better.... There is little use for the being whose soul knows nothing of the great pride or the stern belief of the men who quell the storm and ride the thunder.

Do not dwell on what you may have done, but did not, as long as you did your best. Stay focused on your goals in life.

The good news is that I have been in law enforcement for over 29 years and still love going to work everyday. There is not a more rewarding occupation than ours. Remember, no one calls the

*Chief Guthrie heads the Pocatello, Idaho, Police Department. He delivered this speech to the 142nd graduating class of the Peace Officer Standards and Training (POST) Basic Academy on June 11, 2004.*





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police department because they are having a nice day, and always remember why you raised your right hand. Your job is to protect and serve—never forget that. This is emphasized even more with the events of September 11, 2001. This was the greatest loss of life experienced in our country in modern times. Over 50 police officers and 300 firefighters were lost. This unfortunate terrorist act has shed new light on the dangers of law enforcement and public service. There is renewed honor, pride, and recognition of the job you do. Take your oath seriously, and do not let those who have served and sacrificed to have done so in vain.

This leads into another area of concern and a discussion of values. You will not be entering this job for the money. Your reward will be public service, which is founded in integrity and character—the two most important traits you can have in your personal and professional lives. They take a lifetime to build, but, once compromised, they cannot be restored.

- Integrity: derived from the Latin word *integritas*, means “wholeness.” It is further defined as “the group of values an organization or individual uses to achieve their goals.”
- Character: the qualities that distinguish an individual. It is a set of dispositions to behave systematically in one way or another. It is developed and ingrained; solidified by practice or habit; a lifelong process; and a sense of duty to our departments and profession.

There are two other things to remember. First, public trust: a charge of duty imposed in faith. You are trusted to uphold the law without prejudice or partiality. Second, accountability: you and you alone are answerable to withstand unethical pressure, fear, or danger; we are responsible for our

own actions and conduct. What are the qualities the public expects in law enforcement officers?

- Higher education and training (Today is only the beginning; continue the journey of your education and professional training.)
- The ability to cope with a myriad of problems and apply discretion
- Serving and protecting
- Impartiality
- Honesty

These are only a few, but law enforcement is a way of life, not something that you can turn on and off. You may be walking through the local shopping mall and somewhere there is someone saying, “There’s Officer Harris, he handled our accident....” You won’t even know they saw you.

Finally, I would like to close with a couple of quotes. In 1919, Woodrow Wilson said, “In my judgment, the obligation of a police officer is as sacred as the obligation of a soldier. He is a public servant, not a private employee, and the whole honor of the community is in his hands. He has no right to prefer any private advantage to public safety.”

In his book, *Character and Cops*, Edwin J. Delattre wrote, “...bad cops do not fear detection by other bad cops, but they are afraid of good cops.” He further stated that at an academy graduation such as yours, where he was speaking, their motto stayed with him—“Integrity is *not* negotiable.”

As you leave today to return to your agencies and communities, remember the lessons you have learned. And, always remember the men and women who have passed before you and carry on the tradition of the most honorable and trusted profession—a law enforcement officer. ♦

“

**Your reward will be  
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which is founded  
in integrity and  
character....**

”

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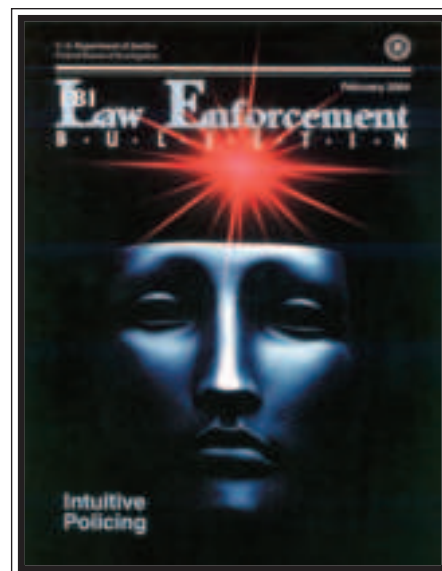
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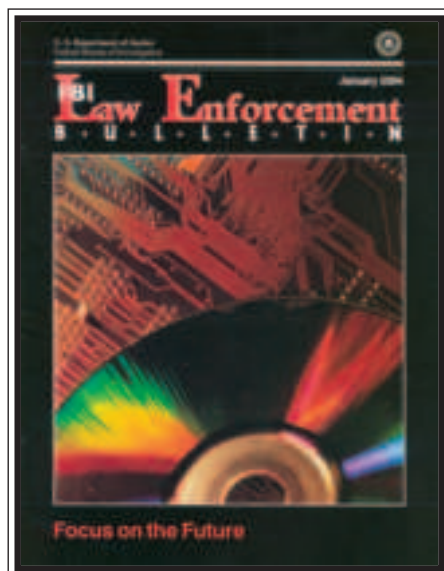
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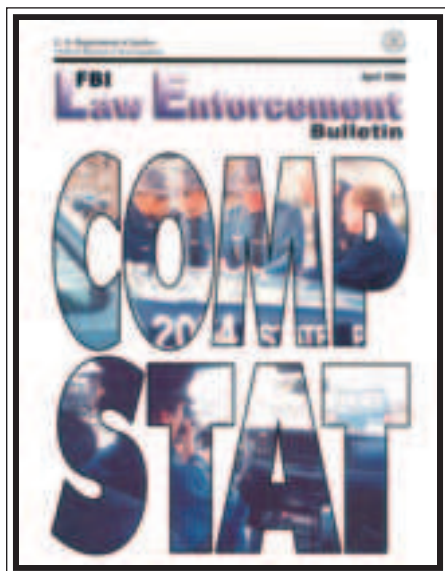
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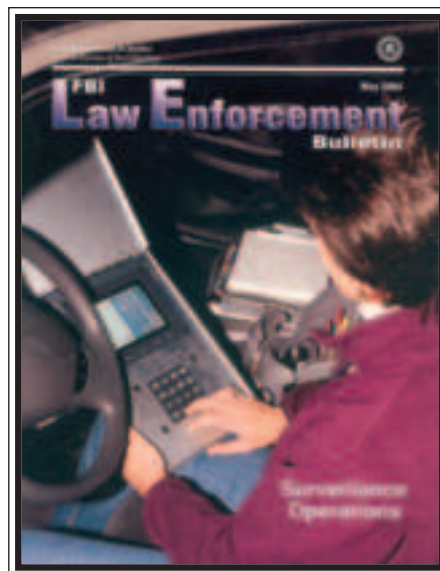
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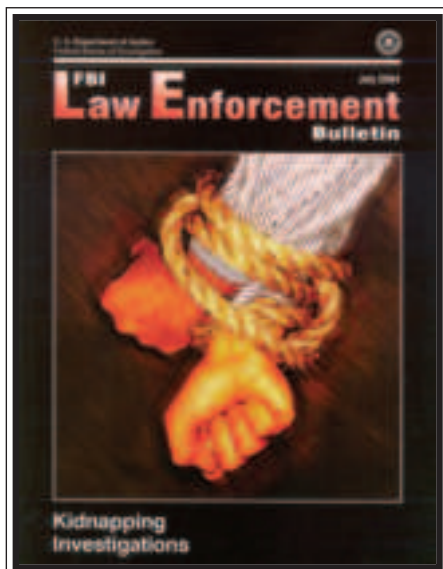
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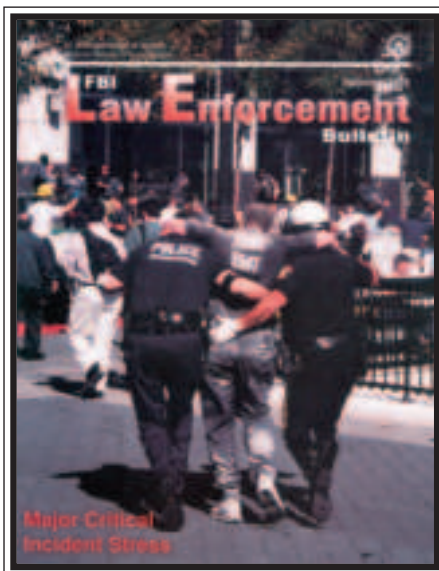
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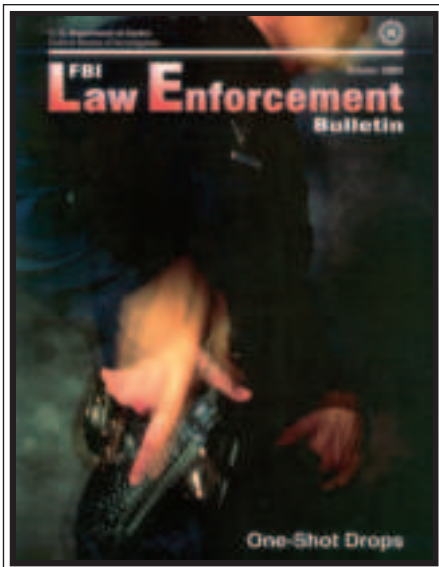
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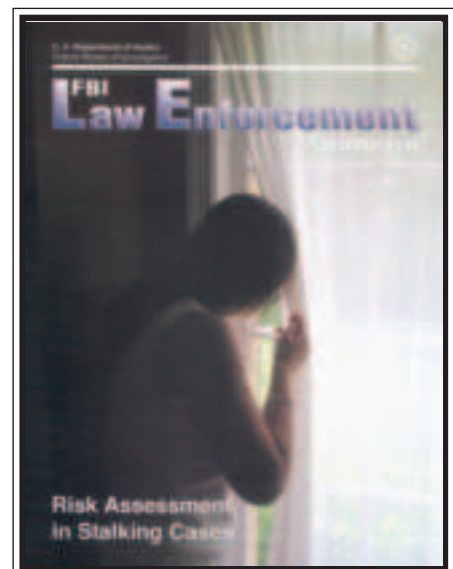
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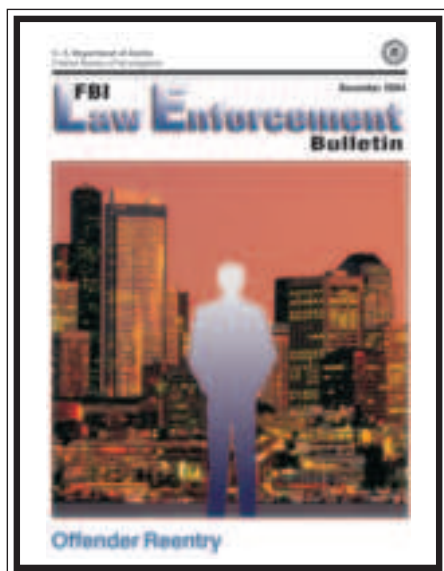
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## Wanted: Photographs



**T**he *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). We will give appropriate credit to photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

Art Director  
*FBI Law Enforcement Bulletin*, FBI Academy,  
 Madison Building,  
 Room 201, Quantico,  
 VA 22135.

## The Bulletin Notes

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



Officer Albani



Officer Canica

While directing traffic at an intersection, Officer Patrick Albani of the Franklin Township, New Jersey, Police Department overheard a radio call of a house fire. He quickly responded to the scene; upon his arrival, he determined that children were trapped inside the residence. Officer Albani immediately entered the smoke-filled home and found four young children and their great-grandmother; the victims were disoriented and unable to locate the exit. Now aided by off-duty North Plainfield Police Department Officer David Canica, Officer Albani carried the children

outside to safety and returned to rescue the elderly woman. The teamwork and heroism displayed by these two officers helped avert a tragedy.



Officer Dailey

Officer John Dailey of the Boston, Massachusetts, Police Department responded to a residential fire. Upon his arrival, he proceeded up the stairs to the second floor of the building, where he determined that the elderly male homeowner refused to leave. Despite the fire and smoke all around him, Officer Dailey located the confused and disoriented man and attempted to lead him to safety, but the individual became anxious and combative and retreated back into the apartment. Officer Dailey then hoisted the man over his shoulder and fought through searing flames and thick black smoke to make his way through the house and reach the backyard. Suffering from burns and smoke inhalation, Officer Dailey carried the individual through a narrow corridor between a chain-link fence

and the burning building, reaching the safety of the street. Officer Dailey's heroic actions saved the life of the elderly man.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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## Patch Call



The patch of the Fenwick Island, Delaware, Police Department features the island's lighthouse. Built in 1858, the structure stands 89 feet tall and is visible 20 miles from shore.



The Fort Gibson, Oklahoma, Police Department serves the oldest town in the state. The agency's patch features a Civil War fort and a Native American shield.