

**FBI Firearms Instructor Program for Police**

# FBI LAW ENFORCEMENT BULLETIN

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### The Cover:

The FBI is changing its focus from training police officers in firearms to training police firearms instructors. See article p. 1.

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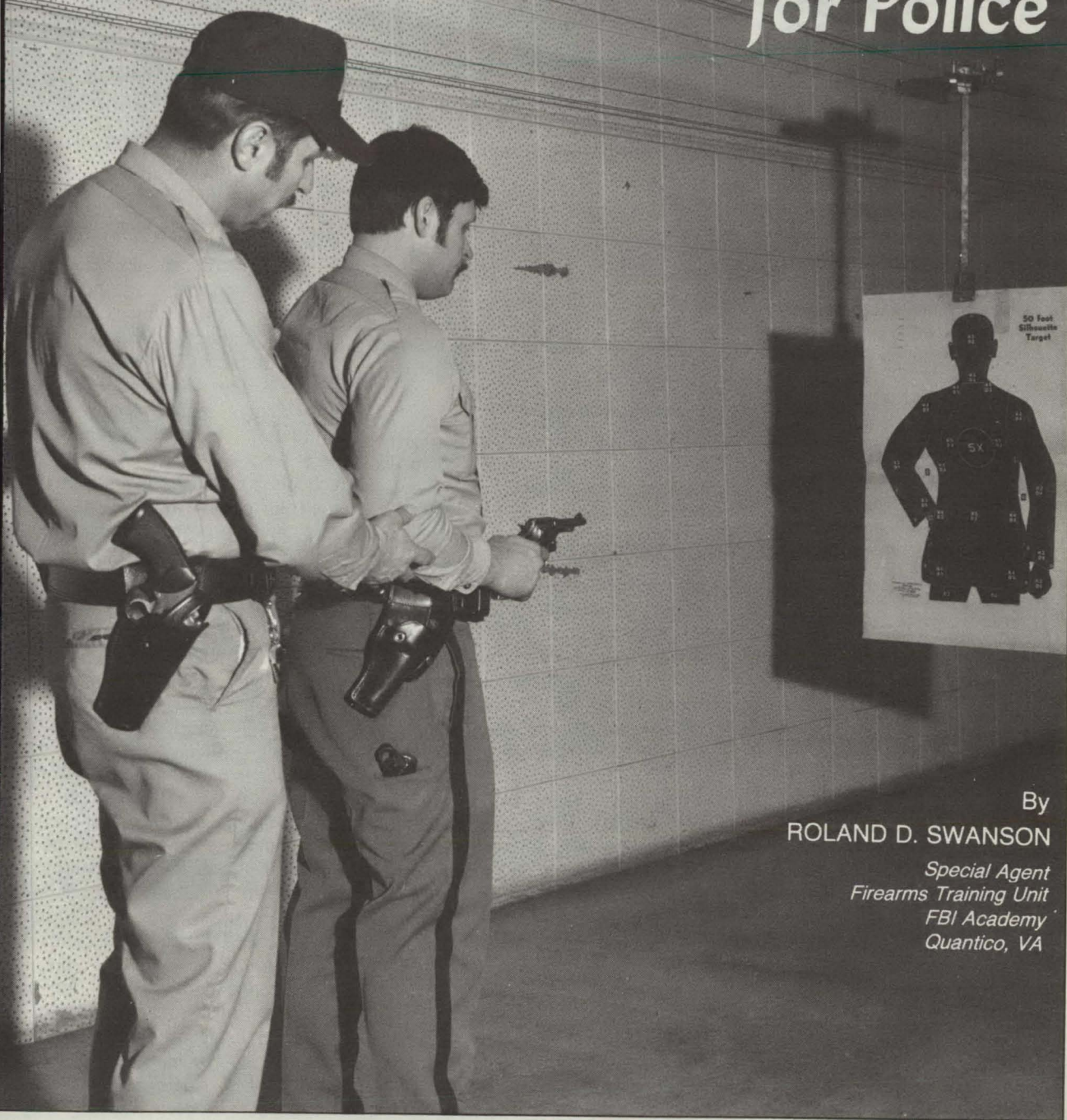


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# FBI Firearms Instructor Program for Police



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*Special Agent Swanson*

Due to changing and increased manpower commitments within the FBI, it has become necessary to curtail the basic firearms instruction previously offered to local police departments. In an effort to continue providing viable firearms instruction to the police community, the FBI is focusing its training efforts on developing police firearms instructors. Accordingly, the total time devoted to basic firearms instruction by the FBI will be reduced, and police departments will become more self-sufficient in developing their own firearms staffs. In addition, police departments will be able to tailor their training to their own individual needs.

#### **Process of Change**

The FBI has historically provided firearms instructor schools for police, but the curriculum varied from locale to locale. In an effort to develop a standardized curriculum, the principal firearms instructors (PFI's) from FBI field offices were brought to the FBI Academy in two separate groups. The PFI's provided input concerning the needs of police firearms training within their respective divisions, and those who had been conducting police firearms instructor schools related their experiences.

The first group of PFI's discussed curriculum content and requirements for certification and provided recommendations for a standardized curriculum. The second group unanimously accepted those recommendations and further refined the curriculum content.

Prior to leaving the academy, the PFI's were assigned topics on which they were to further develop lesson plans. These plans were returned to the FBI Academy for correction or modification, and ultimately, for assembly and distribution to the field.

#### **Basic Phases of Training**

The standardization of the police firearms instructor courses ensures consistency of basic instruction throughout the United States. Once the basic courses are completed, however, additional training can be tailored to the department's needs.

The instruction and qualification are divided into five phases. The first phase is the Advanced Police Firearms School, a field school consisting of 40 to 48 hours of training for officers who are not instructors. Field schools are classes taught away from the FBI Academy by academy instructors and/or Agent instructors assigned to a field office. The purpose of this first school is to acquaint the students with FBI firearms methodology and concepts, to develop firearms knowledge, and to improve performance in the firing of handguns and shoulder weapons.

To complete this course successfully, officers must receive at least 85 percent on a written examination, 70 percent on the FBI 30-round indoor revolver course, 70 percent on the FBI shotgun course #10, 80 percent on the FBI double-action course, and 80 percent on the 25-yard modified tactical revolver course.

The FBI 30-round indoor revolver course uses an Army "L" bullseye with scoring ring values of 10, 9, 8, and 7. Officers fire 10 shots in strings of 5, single action, from the 25-yard line within 4 minutes; 10 shots in strings of 5, single action, from the



5-yard line within 15 seconds; and 10 shots, fired in strings of 5, double action from the 15-yard line within 10 seconds. Scores are based on the actual value of hits scored. In order to pass, officers must score 210 out of a possible 300 points.

The FBI double-action course uses an FBI silhouette with scoring values of five, four, and two. The five and four scoring areas are used only in this course. This 50-round course is fired from the 5-, 7-, and 15-yard lines. Ten rounds (loaded with six, reloaded with four) are fired from the 5-yard line. Two rounds are fired on command, within 3 seconds, with the weapon being holstered between each two-shot sequence.

Twenty rounds are fired from the 25-yard line. Ten rounds (loaded with six, reloaded with four) are fired. Two rounds are fired on command, with the weapon being holstered between each two-shot sequence. Ten rounds (loaded with six, reloaded with four) are fired within 20 seconds.

Ten rounds are fired from the 15-yard line. Upon command, six rounds are fired in sequences of two, reholstering between each sequence. Four rounds are reloaded, all of which are fired upon command within 5 seconds.

Ten rounds are fired at the 25-yard line. Five rounds are loaded, and the shooter remains in the standing position. Upon command, the shooter drops to the kneeling position and fires all five rounds within 10 seconds.

This sequence is repeated twice, and all hits striking the target within the five and four scoring areas are valued at two points each. A score of 80 percent equals 40 hits within the scoring area and 50 hits within the scoring area constitutes 100 percent.

The FBI modified tactical revolver course uses an FBI silhouette target. This 50-round course is fired from the 25-, 15- and 10-yard lines. Eighteen rounds are fired from the 25-yard line. The weapon is loaded with six rounds, and the shooter starts from the standing position. Upon command, the shooter drops to the strong-hand kneeling position and fires six rounds. He then assumes the strong-hand barricade position and fires six rounds over the top of the barricade, and then six rounds at the weak-hand barricade position. A 2-by-4 inch or other reasonably dimensioned, 54-inch-high barricade is used throughout this phase for concealment and support. The 18 rounds are fired within 1 minute and 15 seconds.

Twelve rounds are fired from the 15-yard line. The shooter stands at the 25-yard line with the weapon loaded with six rounds. Upon command, the shooter moves to the 15-yard line and fires 12 rounds within 30 seconds.

Ten rounds are fired from the 10-yard line (loaded with six, reloaded with four). The shooter stands at the 15-yard line, and upon command, moves to the 10-yard line to fire 10 rounds within 25 seconds.

Ten rounds are fired from the 5-yard line (loaded with six, reloaded with four). The shooter stands at the 10-yard line, and upon command, moves to the 5-yard line and fires 10 rounds within 20 seconds.

All hits within the scoring area (number of five value hits, multiplied by five; number of four value hits, mul-

tiplied by four; and the number of two value hits, multiplied by two) are totaled. The total value of hits is multiplied by .4. For example, a total of 200 points multiplied by .4 equals 80 percent, and 250 possible points multiplied by .4 equals 100 percent.

The FBI shotgun course #10 uses an FBI silhouette target. This 12-round course (two 12-gauge rifled slugs and 10, 12-gauge 00 magnum buckshot rounds) is fired from the 50-, 25-, and 15-yard lines. At the 50-yard line, two rounds of rifled slug are assembled into the weapon and one round chambered with the weapon held in the ready-gun position. Upon command, the shooter fires one round standing off-hand and one round from the kneeling position within 10 seconds.

At the 25-yard line, a total of five rounds of 00 buckshot is fired. Upon command, the shooter combat loads and fires three rounds. Without further command, the shooter combat loads the remaining two rounds and fires both rounds. All five rounds are loaded and fired within 35 seconds. All shots are fired from the standing off-hand position.

At the 15-yard line phase, a total of five rounds of 00 buckshot is fired. Upon command, the shooter combat loads five rounds and fires two rounds, then places the safety on and assumes the ready-gun position. The student has the option of firing the two rounds from any area between the hip and the shoulder. The remaining three shots are fired upon command as rapidly as possible.

All rifled slug hits count the actual value of the scoring area (10 points possible). Each 00 buckshot pellet



(120) striking the five, four, or two scoring areas counts one point. A minimum qualification of 91 hits out of a possible 130 points is necessary.

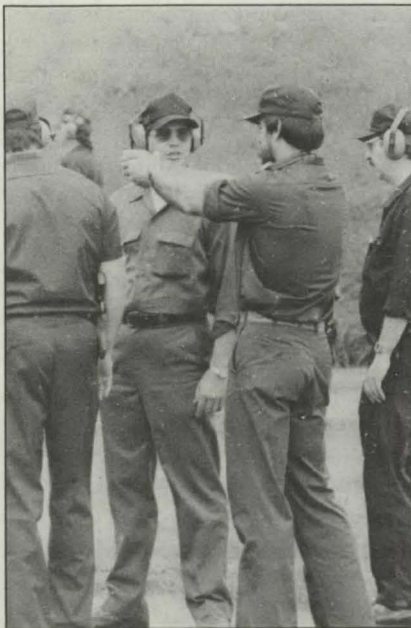
### Police Firearms Instructor School

The second phase in the basic training is the basic police firearm instructor school, taught only to firearms instructors. During the 40 to 48 hours of training, students are presented with basic instructional methodology and firearms information which enables them to conduct basic firearms training and operate a firearms range.

To complete this course successfully, officers must receive a minimum of 85 percent on a written examination, 75 percent on the FBI 30-round indoor revolver course, 70 percent on the FBI shotgun course #10, 85 percent on the FBI double-action course, and 85 percent on the 25-yard modified tactical revolver course. Student lecture performance and range operations are graded on a pass/fail basis.

### Intermediate Police Firearms Instructor School

The intermediate police firearms instructor school is a field school consisting of 40 to 48 hours of training.

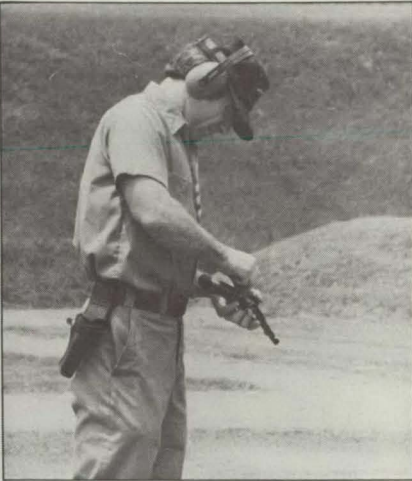


### Topics Included in Police Firearms Instructors School

- 1) Safety rules
- 2) Nomenclature
  - a. revolver
  - b. semiautomatic
- 3) Disassembly/assembly of the semiautomatic
  - a. .45 caliber, 11911A1
  - b. Smith and Wesson Model 39
  - c. Browning High Power
- 4) Preline and/or online weapons and equipment safety inspection
- 5) Target preparation and repair
- 6) Target scoring
- 7) Target analysis
- 8) Basic handgun functioning
  - a. revolver
  - b. semiautomatic
- 9) Nomenclature and function of the centerfire cartridge
- 10) Internal ballistics
- 11) External ballistics
- 12) Terminal ballistics
- 13) Sight-in
- 14) Vision
  - a. master eye (dominant)
  - b. shooting hand/eye coordination
  - c. focal point
  - d. sight alignment
  - e. sight picture
- 15) Care and cleaning
  - a. handgun
  - b. shotgun
  - c. rifle
- 16) Chemical agents
- 17) Legal liability
- 18) Night firing
- 19) Fundamentals of single-action shooting
- 20) Fundamentals of double-action shooting
- 21) Shotgun and related training
- 22) Rifle and related training







This course expands on the basic police firearms instructor school and is designed to provide the student with a higher degree of firearms



#### PREREQUISITES FOR CLASS ATTENDANCE

##### *Advanced Police Firearms School*

Sworn law enforcement officer or civilian employed by a law enforcement agency for the specific purpose of instructing in firearms and successful completion of the department's basic firearms training and any firearms.

##### *Basic Police Firearms Instructors School*

Sworn law enforcement officer or civilian employed by a law enforcement agency for the specific purpose of instructing in firearms and successful completion of the FBI Advanced Firearms School within the preceding 1-year period.

##### *Intermediate Police Firearms Instructors School*

Successful completion of the Basic Police Firearms Instructors School within the preceding 1-year period.

##### *Annual Police Firearms Instructors Seminar*

Successful completion of the Basic or Intermediate Police Firearms Instructors School

##### *Advanced Police Firearms Instructors Seminar*

Successful completion of the Basic and/or Intermediate Police Firearms Instructors School.

knowledge, instructional methodology, and firearms range management capabilities.

To complete this course successfully, officers must receive at least 85 percent on a written examination, 80 percent on the FBI 30-round indoor revolver course, 90 percent on the FBI double-action course, 90 percent on the 25-yard tactical revolver course, and 70 percent on the FBI shotgun course #10. Student lecture

performance and range operations performance are graded on a pass/fail basis.

#### **Police Firearms Instructors Seminar**

The annual police firearms instructors seminar is a field school consisting of 8 to 24 hours of training. The main goal of the seminar is to review firearms training concepts and acquaint the students with innovations in the firearms field. No tests are required for the completion of this training.



This is a building-block sequence of classes available to police departments. (See fig. 1.) As the student progresses through these various levels, the curriculum is expanded and topics are covered in greater depth.

Figure 1

These courses are limited to 20-25 students and are sponsored by local police departments, State police training commissions, or accredited colleges or universities. The FBI provides this instruction free of charge in cooperation with the hosting agency. Many States award academic credits for successful completion of the course. Credits may be applied toward the student's associate or bachelor's degree.

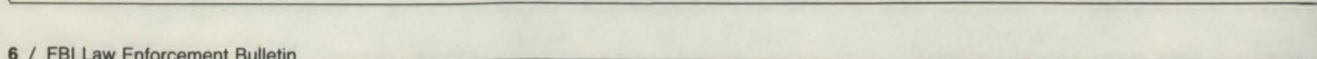
## Range facilities provi

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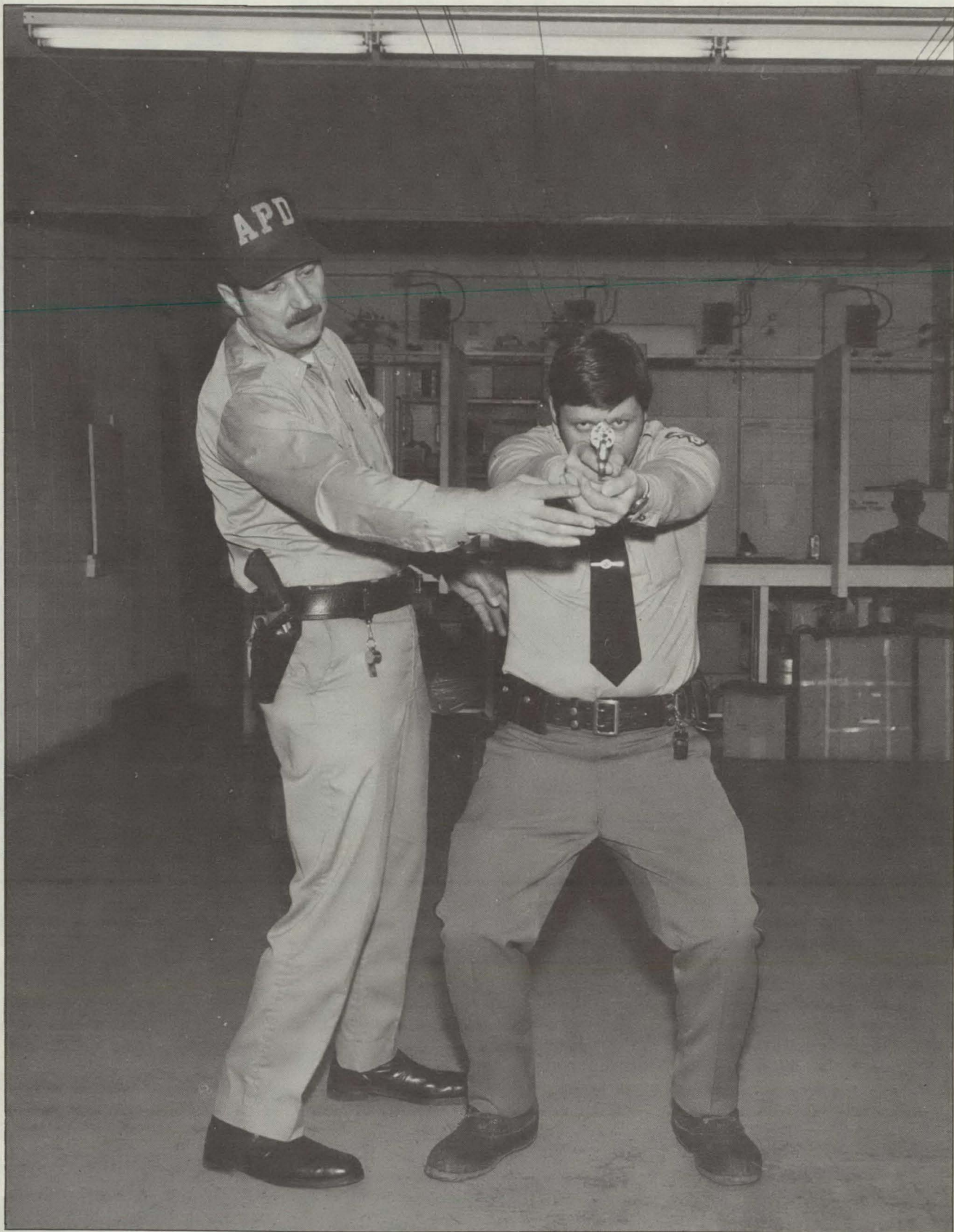
## Certification

Successful completion of a bona fide firearms instructor course by the police instructor increases the credibility of the training and could be an important factor in minimizing the risks of civil liability. Most police jurisdictions and State-governed training boards regard the FBI and NRA as the preeminent sources of this type of training.

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# Preliminary Crime Statistics 1984

board must approve the FBI lesson plans and qualifications. These have now been standardized throughout the FBI. Generally, the NRA will also certify the attendee of an FBI course as a police firearms instructor since the quality of instruction provided by the FBI in these schools and qualifications for successful completion are equal to or exceed that required by the NRA.

## Conclusion

The FBI developed this building-block system of firearms instruction to standardize training throughout the Nation, as well as to minimize the effects of the shifting manpower commitments on the firearms training efforts. Teaching officers to conduct their own firearms training allows the knowledge to be circulated among more people and provides departments with the ability to tailor their advanced training to their specific needs.

Any requests for FBI training should be directed to the police training coordinator of the nearest FBI field office.

**FBI**

Serious crime declined 5 percent during the first 6 months of 1984, according to preliminary Uniform Crime Reporting figures. This decline follows a 7-percent decrease in the FBI's Crime Index recorded in 1983.

While violent crime decreased 2 percent and property crime was down 5 percent, the individual offenses within these categories registered varying trends.

The violent crime offenses which showed increases were forcible rape (6 percent) and aggravated assault (1 percent). Murder and robbery recorded declines of 5 and 7 percent, respectively. In the property crime category, burglary dropped 8 percent and larceny-theft decreased 5 percent, while motor vehicle theft was up 1 percent and arson increased by 2 percent.

Cities with more than 50,000 inhabitants registered a 4-percent drop, while those outside metropolitan areas reported a 6-percent decrease. The suburban and rural areas registered declines of 5 and 8 percent, respectively.

The overall Crime Index volume was down in all four regions of the country. Seven-percent declines were recorded in the Northeastern and North Central States. The Western States recorded a decrease of 4 percent and the Southern States' decline was 3 percent.

## Law Enforcement Officers Killed

During the first 6 months of 1984, 35 law enforcement officers

were feloniously killed in the United States and its territories. These preliminary Uniform Crime Reporting statistics represent a decrease from the first half of 1983 when 45 line-of-duty deaths occurred. Law enforcement agencies have cleared 30 of the 35 slayings.

Four officers were murdered while enforcing traffic laws, 4 while answering disturbance calls, and another 4 in ambush-type situations. Three were attempting to thwart robberies or were in pursuit of robbery suspects; 2 were responding to burglaries; 2 were involved in drug-related investigations; and 11 were attempting arrests for other crimes. Three victims were killed while investigating suspicious persons or circumstances and 2 while handling prisoners.

This year, 30 officers were killed with firearms—23 with handguns, 3 with rifles, and 4 with shotguns. Of the remaining victims, 2 were slain with knives or cutting instruments, 2 with personal weapons (hands, fists, feet, etc.), and the other was intentionally struck by a vehicle.

Geographically, 19 officers were killed in the Southern States, 6 in the Northeastern States, 5 in the North Central States, 4 in the Western States, and 1 in Puerto Rico. Sixteen of the victims were city policemen, 13 were county officers, 5 were employed by State law enforcement agencies, and 1 was a Federal officer.



**“... the individual police employee must be afforded continuous development opportunities to be effective and enhance job performance.”**

Every police department should implement and maintain an employee development program designed to further the on-the-job growth of employees. While most large police departments operate separate training divisions and formal training programs for personnel development, they represent only a small percentage of the number of police departments in this country.

There are approximately 18,000 law enforcement agencies in the United States. Of this number, 50 percent have less than 10 officers and 80 percent have less than 25 officers.<sup>1</sup> This indicates where the emphasis on training is needed—in small departments. Yet, small departments may often find it difficult to fulfill the responsibilities of an effective staff development program.

Numerous constraints face the police chief of the small department, one of which is the number of sworn personnel in the department. If the entire organization consists of 10 members, then sending 2 officers for advanced training would create a

manpower shortage. Another area of concern is the funds available to support staff development activities. Many smaller department's political subdivisions do not actively support the continuing education, training, and development of their police officers.<sup>2</sup> Also, while an inhouse development program may be an alternative, some police administrators do not have qualified instructors or a plan for such a program. Yet, there exists a definite need for viable staff development programs in small police departments.

Today, all States except Hawaii require minimum standards training for entry-level police officers.<sup>3</sup> Under the Alabama Minimum Standards and Training Act of 1972, all police officers or peace officers in the State are required to receive a minimum number of training hours—currently 280 hours.<sup>4</sup> These efforts have served to upgrade the quality and performance of police officers. However, it is becoming increasingly evident that the individual police employee must be afforded continuous development opportunities to be effective and en-

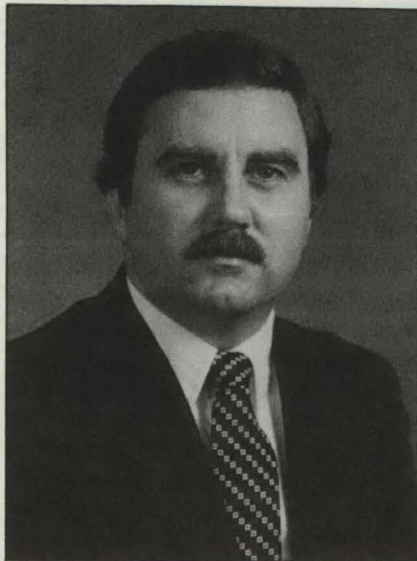
By  
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# Beyond Minimum Standards

## Staff Development for Small Police Departments





Chief Nichols

hance job performance. The influx of intelligent, inquisitive, and social-conscious young officers serves to emphasize the need for education and training. In many instances, these officers have been exposed to the college environment and desire to continue their education after entering law enforcement. The advent of college-trained/educated officers serves to emphasize the need for training.<sup>5</sup> Minimum standards aren't enough.

Society's increased awareness of crime, its subsequent demand for better services, and its misconceptions about the police require that the quality of personnel be improved.<sup>6</sup> It is imperative that police officers receive adequate training to keep pace with our fast-changing technological society. As times change, so do problems and their complexity. In order to ensure the preparedness and effectiveness of small police departments, their personnel must be involved in continuous professional development beyond minimum standards training.

The chief administrator has the main responsibility for staff development, which is closely linked to the expectations of the general public. If the general public expects a certain level of performance, then police personnel must be equipped to fulfill this expectation. In meeting these responsibilities, the chief administrator should have certain objectives in mind. The training function should be viewed as a process whereby the organization can aid its members in becoming more effective in their present or future positions. Training not only

improves and increases the skills and knowledge of individual officers but also improves the efficiency and proficiency of the organization as a whole.

Many police chiefs are faced with training personnel while staying within their budgets. Too often, administrators send officers to school arbitrarily, without any plan or purpose in mind. Consequently, they often run low or out of funds before training the expected number of personnel is completed.

Planning is essential to the operation of any organization, and when feasible, the chief administrator should appoint a training officer to lead in the planning and implementation.<sup>7</sup> A training program must be included in planning decisions as well as budget proposals. One relatively novel approach is policing by objectives (PBO), which involves every aspect of the police organization. An integral part of the PBO approach is a comprehensive staff development/training program incorporating input from all members of the organization. Subsequently, the end result should meet the needs of the organization as expressed by its members.<sup>8</sup>

Inservice training is only a part of a comprehensive staff development program; yet, it is a very significant component. There are various traditional approaches to inservice training and education, most of which can be used by the small police department. It is important to include all personnel in some training activities, i.e., dispatchers, investigators, clerical staff, and patrol officers. Regularly scheduled training sessions using films, tapes, guest speakers, and/or training officers are well-accepted methods and are particularly adaptable to the small department. The FBI provides qualified instructors to conduct training sessions for local police depart-



ments at no cost, and professional police associations, such as the International Association of Chiefs of Police, sponsor a wide range of training workshops, seminars, conferences, and programs. In addition, training bulletins, both in-house and external, are excellent to keep officers abreast of professional development, innovative techniques, and changing laws.

Coach-pupil training, if planned and done correctly, can also produce rewards for the small department. For example, a supervisor may ride with a subordinate during a shift and teach vehicle stop techniques or patrol techniques. Staff meetings or general department meetings are often convenient means to provide special training for personnel, as are seminars, conferences, and workshops. The latter may involve travel and leave time, but will prove rewarding as a motivational factor.

Many smaller departments use nearby college criminal justice departments as resources, while others pool their resources and establish joint training sessions with neighboring police departments. Campus police departments have also recently made strides in inservice training programs to complement minimum standards training. In 1980, the Alabama Association of College and University Police Administrators sponsored the first statewide training seminar for campus police/security officers.<sup>9</sup>

A relatively new training technique, which works especially well for smaller departments, is the use of the video recording system. Many educational films and materials are available through State and regional film libraries

for a nominal fee. The time spent viewing the tapes, films, etc., is minimal and can be done on duty or roll call time, thus avoiding both overtime costs, travel, lodging costs, etc. A positive feature of this approach is the ability of the small department to produce its own training programs as well as public relations materials.

The application of computer technology is constantly expanding. So why not use this medium for inservice training? This departs from the traditional teacher-learner method and offers some advantages. The courseware can be developed by the department and adapted to the specific needs of the individual. This has already proven effective in college criminal justice courses. While the initial costs may be somewhat high, they are minimized by the long-range benefits. This is also the least expensive medium when considering the cost of training personnel.<sup>10</sup>

There are certainly other innovative techniques for inservice training programs. In fact, the possibilities are as broad as the creativity of the chief administrator and the instructional staff. Many methods and techniques can be adapted or developed by the small department to meet its own needs. What is important is to maintain an effective inservice training program beyond minimum standards requirements.

In the 1970's, universities responded to the needs of the police by initiating academic programs where none existed. These universities have become more flexible in providing undergraduate and graduate programs to meet the needs of these "student" cops.

Today, numerous university programs for educating and training police officers are available. Police

training at this educational level reduces to a very marked degree the load on inservice training, but does not take its place. Both are necessary.<sup>11</sup> Since many police officers now enter the law enforcement profession with college degrees, other officers are influenced to continue their education. They recognize the importance of higher education in a society where the level of education is steadily rising.

Higher education can also develop qualities of leadership and executive potential. It will give officers a long-range perspective of the role of the police in modern society. College training is important for competitive reasons, and this is becoming increasingly true in the area of law enforcement.

Staff development in small police departments often focuses on training, educating, and improving the rank-and-file patrol officers, while overlooking the continuous improvement of the police manager. The challenges of managing police departments can be met only by dedicated professionals who possess the knowledge and experience to participate in the broad issues of the day. Because police managers are now held to a higher degree of accountability, they must improve their command of management skills and techniques. Police managers must be given adequate tools if they are to perform properly, and the inclusion of executive education in developing managerial resources can make a special contribution to the management capacity of police executives and their sponsoring



## **"It is essential that police administrators recognize the significance of a continuous, comprehensive staff development program for their department. . . ."**

agencies. "Police schools" will not be enough to prepare a police manager to meet the challenges of the 1980's. Subsequently, it is important to give police managers and potential police managers the opportunity to grow professionally by taking advantage of professional courses in management.<sup>12</sup>

Staff development for the small police department should be viewed as a comprehensive approach which goes beyond inservice training and college police education programs. The development of the officers in other areas will enhance their total effectiveness. Often, training and education do not provide the job satisfaction and motivation all employees need. There are other approaches which can improve personnel.

Personnel rotation is an effective means of employee development. In smaller departments, rotation may be limited to geographic areas of varying crime incidence and major functional assignments. This offers employees new and valuable perspectives on work and responsibility. Lateral transfers to other job assignments may also be an incentive, as well as a method for further developing the employee's experience, knowledge, skills, and perspective. Promotion is an ideal method of developing an employee as they grow professionally and become proficient at each level.<sup>13</sup>

Special assignments and/or extra responsibility are often good methods for improving and developing an employee. This shows the employee the administrator's confidence in him/her and affords the employee the opportunity to demonstrate skills and abilities. This is particularly feasible in a small department where responsibilities can be shared among rank-and-file employees due to the lack of organizational specialization.

Another area which merits attention is personal counseling for police personnel. Stress is a proven factor relating to performance among police officers. Special sessions could be held, collectively or individually, to address such issues as conflict resolution, marital difficulties, anxiety, stress, etc.

### **Summary**

Minimum standards requirements represent only the tip of the iceberg. It is essential that police administrators recognize the significance of a continuous, comprehensive staff development program for their department no matter how large or how small. To fail to recognize this and respond effectively will result in a stagnant, ineffective police organization full of disgruntled, nonproductive individuals. Surely, a well-trained force will be more motivated than an ill-trained one. To be committed to quality training and staff development will yield bountiful fruits of a motivated and productive department.<sup>14</sup> Above all, the organization will gain public support because citizens will recognize the results in terms of improved performance, motivated officers, and a more professional posture.

**FBI**

### **Footnotes**

<sup>1</sup> J.V. Cotter, Commission on Accreditation for Law Enforcement Agencies. Presentation at the Alabama Association of Chiefs of Police Conference, February 13, 1984.

<sup>2</sup> J.H. Auten, *Training in the Small Department* (Springfield, Ill: Charles C. Thomas, 1973), pp. 5-6.

<sup>3</sup> Supra note 1.

<sup>4</sup> D. Nichols, "Campus Police: The New Professionals," *American School and University*, vol. 52, 1979, p. 72.

<sup>5</sup> Supra note 2, pp. 7-8.

<sup>6</sup> C.B. Saunders, *Upgrading the American Police* (Washington, D.C.: The Brookings Institute, 1970), p. 33.

<sup>7</sup> G.R. Bandicks, "Department Training Officers and the Training Process," *FBI Law Enforcement Bulletin*, vol. 50, No. 4, April 1981, pp. 12-15.

<sup>8</sup> V.A. Lubans and J.M. Edgar, *Policing By Objectives* (Hartford, Conn.: Social Development Corp., 1978), p. 178.

<sup>9</sup> D. Nichols, "Public Safety on Campus," *FBI Law Enforcement Bulletin*, vol. 51, No. 10, October 1982, pp. 19-23.

<sup>10</sup> R.O. Walker, "Training: A Rationale Supporting Computer Based Instruction," *The Police Chief*, vol. 49, 1982, pp. 60-64.

<sup>11</sup> V.A. Leonard and H.W. More, *Police Organization and Management* (Mineola, N.Y.: The Foundation Press, 1978), p. 351.

<sup>12</sup> A.J. Schembri, "Educating Police Managers," *The Police Chief*, vol. 50, 1983, pp. 36-38.

<sup>13</sup> P.B. Weston and P.K. Fraley, *Police Personnel Management* (Englewood Cliff, N.J.: Prentice-Hall, Inc., 1980), pp. 116-117.

<sup>14</sup> G.P. Gallagher, "Productivity and Motivation in Training: It is up to you, boss," *The Police Chief*, vol. 50, 1983, pp. 101-102.



# Recruit Selection in the Surrey Constabulary

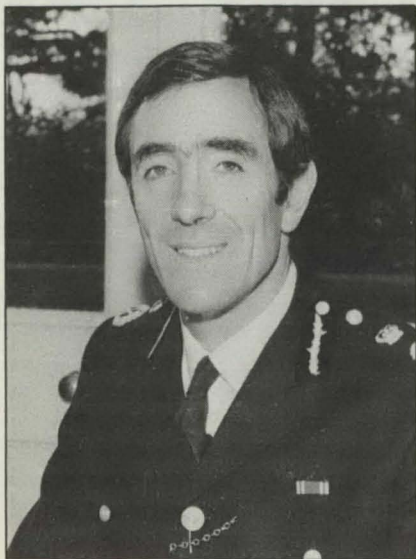
By  
BRIAN HAYES  
*Chief Constable  
Surrey Constabulary  
Surrey, England*



*The Surrey, England, Constabulary implemented a new recruit selection process in 1983. The new system, featuring a 2-day testing and interview process with officers serving as initial assessors, shows promise in reducing premature attrition.*

Although a number of police forces have embarked upon extended interviews for recruit selection, the system in use by the Surrey Constabulary is thought, at present, to be unique in that a major part of the selection process is performed by constables already serving on the force.





Chief Constable Hayes

In 1982, a working party was established to look at recruiting procedures. Consideration was given to the recommendations of the Scarman inquiry<sup>1</sup> and to the financial loss incurred by the premature attrition of personnel during the very early stages of service. The Scarman report made it clear that there was considerable room for improvement in the procedures leading to the appointment of constables, particularly with regard to qualities needed by beat officers in policing a complex multiracial society. Social attitudes and prejudices were among the characteristics recommended for investigation during the selection process. Clearly, such characteristics were not being tested by the somewhat cursory selection procedures in use by many forces at that time.

The problem of attrition among newly appointed constables was no greater in Surrey than elsewhere, but nevertheless, represented an unacceptable financial loss. Analysis of the reasons given by officers resigning early in service (frequently during initial training) included such things as discipline, study, unsocial hours, paperwork, etc., all of which are, or should be, well-known aspects of a probationer's life. These results pointed directly to bad selection. In a service where each appointment represents a major financial commitment, it is incumbent upon the employer to insure that each recruit is fully aware of the nature of the job, thereby keeping the chance of early disillusionment to a minimum.

Prior to 1983, the Surrey Constabulary, in common with most other forces in the country, was appointing constables on the basis of an initial selection test, a brief home interview, background inquiries, and a 20- to 30-minute formal interview. None of these procedures went very far toward determining an applicant's real personality, ability to mix or relate to others, social attitudes and prejudices, or genuine suitability for appointment as a constable. On arriving at these conclusions, the Surrey working party recommended the use of a 2-day extended interview system for recruit assessment.

The principal reason for the 2-day interview is to give applicants sufficient time to relax and hopefully display a truer personality than would be apparent during a half-hour interview. Equally important, it is very difficult to maintain an artificial front over such an extended period, whether during testing, assessment, or "off-duty" time.

A number of exercises were devised for the 2 days, in addition to the medical examination and formal interview which are still considered to be significant parts of the assessment. The exercises are intended primarily to test powers of communication (both verbal and written) and personal confidence; however, since the system went into operation in April 1983, a number of different formats have been tried both in the content of the 2 days and the timing.

The exercises presently used in the 2-day program include:

- 1) **Autobiography**—Candidates are required to write their autobiographies. This gives a good indication of literary ability, as well as insight into the applicant's background and a self-portrait.



- 2) **Physical Fitness**—An hour after arrival, applicants undergo a number of basic gym exercises and a timed run, each identical to those used at training centers. Applicants are advised prior to arrival that the tests will take place. Fitness testing at such an early stage in the program is intentional as it has a leveling effect, breaks down barriers, and helps to promote a group spirit among the applicants.
- 3) **General Knowledge**—A test of general education is a guide to literacy and breadth of knowledge.
- 4) **Drafting Test**—Candidates are required to write a letter in response to a given set of circumstances. It indicates the level of comprehension, judgment, and tact.
- 5) **Lecturette**—Candidates are given time to prepare notes to enable them to give a 3-minute presentation on a given subject—usually one chosen from the hobbies or interests mentioned in the application or autobiography. This tests personal confidence, voice level, and verbal ability.
- 6) **Autobiography (Verbal)**—The verbal presentation of a candidate's autobiography further tests those areas mentioned above.
- 7) **Group Discussion**—Candidates are required to participate in a discussion on a number of topics ranging from current affairs to subjects of a "police" nature. This further tests verbal ability and confidence in a group situation, in addition to powers of reasoning and knowledge of current affairs.

### **Constable Assessors**

The elements of the extended interview outlined above follow a pattern similar to those in use in a number of other forces. The additional feature of the Surrey 2-day interview which has aroused a great deal of interest is the use of constable assessors.

In the past, many recruits entering the service did so with considerable ignorance of the full implications of a career in law enforcement, subsequently resulting in disillusionment and early resignation. Clearly, there was a need to acquaint applicants with a comprehensive picture of a police career, including the less glamorous aspects. For this reason, constable assessors were introduced to give an informed, one-on-one explanation of police duties. Those selected and trained as constable assessors had to meet certain criteria. They had to be well-motivated and able, early to mid-service (3 to 10 years), interested, and willing to participate. The training involved a 1-day briefing on the selection process, which included instruction on assessing attitudes and prejudices.

Assessors are matched with their candidates as much as possible and are briefed on aspects of the applicant which need to be explored, such as domestic or financial matters. The constables are introduced to their applicants in the afternoon of the first day and attend the autobiography and lecturette presentations.

The assessor and applicant then spend the evening together, being entirely free to do as they wish. Informality is the key word because it is essential that a relaxed relationship be established as soon as possible. Some assessors take candidates to their home station or social club to meet colleagues; others even take candidates home to meet their families. This is of particular value to married applicants who need to know the full implications of police work on family life.

Assessors and candidates are encouraged to terminate the evening in the headquarter's social club, and all are accommodated at headquarters overnight. In this way, all assessors can see the candidates and make a judgment of them in a relaxed environment.

Following the group discussion period on the second day, candidates are shown a film on life at the regional training center. Meanwhile, the assessors meet with the chief assessor, who is the superintendent in charge of the Training Department, and the recruiting sergeant (both of whom have been present throughout the whole procedure). Each applicant is fully discussed, and the assessor's views on an applicant's suitability is a principal factor in deciding whether to recommend the applicant appear before the formal interview board. Those considered not suitable to progress further are discussed with the chairman of the interview board.

Each constable assessor completes a written report, to which the chief assessor adds his comments. It is this report which goes with the applicant to a final interview conducted



## **“... the most unusual element in the Surrey Constabulary selection process is the use of constables as assessors.”**

by an assistant chief constable and a divisional chief superintendent. The chief assessor attends as an observer, and during the discussion of the candidate, is asked to elaborate on his performance during the past 2 days. The final interview is, of course, most important; however, the candidate's interview is set in context with his work over the whole 2 days. Following a successful final interview, the applicant is given a medical examination.

Clearly, the most unusual element in the Surrey Constabulary selection process is the use of constables as assessors. If the system is to have any value, then the assessor's credibility is vital. And if the assessors are to have credibility, their views must play a prominent role in determining whether an applicant appears for a final selection interview. On occasion, there are differences of opinion between assessors regarding a candidate's suitability, or between the views of the assessors and chief assessor. In such cases, the conflicting viewpoints are included in the report to the final selection board.

Since this selection process has been in operation for only a year, it is too soon to declare unqualified success, particularly with regard to long term suitability. However, the early signs are very encouraging, and so far, none of the 57 recruits selected and appointed under this system has been lost. (See fig 1.) In the year prior to the introduction of this selection process, 9 probationers with less than 6 months' service resigned.

*Figure 1*

Candidates for selection.....	100
Accepted and serving .....	57
Accepted (yet to join).....	7
Not recommended for selection board .....	24
Rejected by selection board..	2
Deferred by selection board..	4
Rejected (medical).....	1
Withdraw following acceptance .....	2
Withdraw during 2-day assessment.....	2
Transfer applicant rejected by board.....	1

A very low percentage of applicants appearing before the selection board were unsuccessful—only six—and of these four were deferred rather than rejected absolutely. It is believed such results lend credibility to the role of constable assessors. Apart from the function performed by the assessors in recommending rejection of unsuitable applicants, there is a secondary but equally important function.

On the basis of their observations over a lengthy period of time, the assessors compile a profile of applicants which is invaluable to the selection board. The reports of the assessors indicate a shrewd assessment of character, and they often highlight important points which justify more in-depth exploration by the selection board.

One disadvantage of this selection system is that it takes longer, and consequently, only a fairly small number can be assessed at each session without placing an undue burden on the stations supplying constable assessors. In Surrey only, six candidates are assessed at a time, which is convenient for a force that is almost

up to establishment with only a small number of recruits required. Forces with a larger manpower deficit might find the system less workable.

### **Conclusion**

There seems to be little doubt that many of the problems that have, and still do, beset the service arise from inadequate selection processes. When the caliber of recruits can be maintained at the high level sought, many of these problems will disappear as the level of professionalism improves. The expertise which police constables develop in assessing people is an invaluable asset not generally used in the selection process. The success of the Surrey scheme relies upon the quality of that judgment, and it has not been found to be wanting.

**FBI**

### **Footnote**

The Scarman inquiry examined the riots which occurred in London in April 1981. As a result of this inquiry, a number of recommendations regarding the recruitment and training of police officers were made.



# Freedom of Speech and Law Enforcement

## An Analysis of *Connick v. Myers* (Conclusion)

**“Law enforcement organizations can mitigate the likelihood of unnecessarily disruptive employee speech by establishing reasonable internal communication and grievance procedures.”**

### POST-CONNICK DECISIONS INVOLVING LAW ENFORCEMENT EMPLOYEES

Part I of this article reviewed Supreme Court decisions setting forth the general principles that determine whether the speech activity of public employees is constitutionally protected by the first amendment. To summarize those decisions, public employees enjoy constitutional protection to speak on matters of public concern, but not for work-related speech that concerns only the personal interests or grievances of the speaker. Where employee speech concerns a matter of public concern, it is constitutionally protected only if its value to the public outweighs any disruption to governmental interests caused by that speech. This part examines the impact of *Connick v. Myers* on various speech-related claims that have been made by law enforcement employees. The discussion focuses on lower court decisions where law enforcement employees have asserted a first amendment speech right as justification for failing to accept transfers, follow a superior's directive, or adhere to chain of command requirements, and cases involving interpretations of *Connick's* “matters of public concern” requirement in the context of employee criticism of management decisions

and employee expression of personal feelings. Several concluding recommendations are offered for the development and implementation of policy relating to employee speech activity.

### Transfers and Reassignments Due to a Loss of Effectiveness

An employee's first amendment rights can be violated by a punitive transfer or reassignment which is based on protected speech activity. However, several post-*Connick* lower court decisions reflect a judicial reluctance to interfere with the internal operation of law enforcement organizations. In those cases, the courts assumed a deferential posture toward the reasonable belief of law enforcement managers that an employee's speech-related activity disrupted the organization and necessitated a transfer or reassignment of the speaker. Those cases are distinguishable from other first amendment cases where employees are actually discharged or reduced in rank or pay for engaging in protected speech activity.

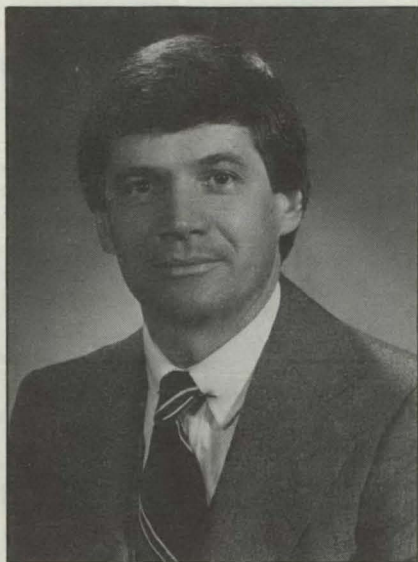
In *Hughes v. Whitmer*,<sup>62</sup> the U.S. Court of Appeals for the Eighth Circuit ruled that the transfer of a member of the Missouri State Highway Patrol was not a violation of the trooper's first amendment rights. The complicated factual background leading to the

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*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed 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.*





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transfer can be briefly summarized. A trooper who had been assigned to Troop G in Willow Springs, MO, for 10 years was transferred at State expense with no loss of pay to Troop C located 200 miles away near the city of St. Louis. The transfer was ordered to resolve a debilitating troop morale problem that resulted from an intense personality dispute between the trooper and a lieutenant. The major source of friction was the trooper's investigation of the lieutenant's 24-year-old son who was suspected by the trooper of being involved in illicit drug trafficking. The trooper also made accusations of corruption in Troop G.

Following his transfer, the trooper filed suit claiming his transfer was an unconstitutional reprisal against him for his whistle-blowing activities concerning alleged corruption in Troop G.

Viewing the transfer as a reasonable nonpunitive means of maintaining necessary discipline and harmony, the court said it is generally inappropriate for the judiciary to interfere with or attempt to influence executive branch decisions regarding the transfer of personnel.<sup>63</sup> Nevertheless, the court did examine the constitutionality of the transfer under the guidance of *Pickering* and *Connick*. Beginning with the assertion that the patrol is a paramilitary organization and "... should be accorded much wider latitude than the normal government employer in dealing with dissension within its ranks,"<sup>64</sup> the court identified three reasons for concluding that the *Pickering* balance is so heavily in favor of the patrol's interest that the trooper's first amendment claim borders on the frivolous."<sup>65</sup>

First, even though the trooper's transfer is arguably traceable to his speech-related accusations, his superiors reasonably concluded that the disruptive effects of that speech at Troop G contributed to a serious morale problem.<sup>66</sup> Observing that both the trooper and lieutenant were transferred out of Troop G as an impartial solution to the morale problem, the court concluded in rather deferential fashion that the *reasonable possibility of adverse harm* requires judicial solicitude for a law enforcement organization's internal discipline.<sup>67</sup> Second, the court did not consider the trooper's dissension-causing speech to be of sufficient public importance to override the substantial interests of the patrol in maintaining troop morale. Citing *Connick's* manner, time, and

place analysis, the court said the trooper's speech had diminished value because of the highly antagonistic manner in which he conducted his investigations and expressed his accusations.<sup>68</sup> Third, the court discredited evidence offered to prove that the trooper was transferred in retaliation for legitimate whistle-blowing activities, and instead, found that his transfer was based on unprotected dissension-causing conduct.<sup>69</sup> The following quotation from the *Hughes* opinion underscores the court's heightened sensitivity to the special demands associated with law enforcement employment:

"In striking the *Pickering* balance in this case, we are compelled to emphasize that free speech claims are not to be considered in a vacuum but must be viewed in light of the circumstances and in the context of all relevant conditions existing at the time of the asserted free speech activities. Nor should free speech rights be utilized to provide immunity to other actions that merit condemnation, discipline or sanctions assessed in the public interest. The public weal demands that public officials carry out their duties and responsibilities so that their offices are run efficiently, harmoniously and responsive to the administration of the public service they are employed to perform. In particular, paramilitary units have a need to uphold morale, and *esprit de corps* and an affirmative public image."<sup>70</sup>

The court did point out that an employee's first amendment interest is entitled to *considerably more weight* where he is legitimately acting as a whistle-blower exposing government corruption.<sup>71</sup>

A similar result was reached in



the case of *Egger v. Phillips*,<sup>72</sup> where the U.S. Court of Appeals for the Seventh Circuit ruled against a former FBI Agent who alleged that his transfer and subsequent discharge for failing to report to a new duty station were retaliation against him for his constitutionally protected allegations of corruption. The extensive factual record in the case disclosed that the Agent made a series of allegations of misconduct directed primarily at another Agent in the Indianapolis Office of the FBI. Subsequent investigation of the charges by FBI and Department of Justice officials either failed to confirm them or proved them groundless. Because of serious disruption caused by those allegations and the belief by FBI officials that both Agents had lost their effectiveness in the Indianapolis Division, they were subsequently transferred to other offices. Egger was dismissed for his failure to report to the Chicago Office as ordered.

In upholding the actions of the FBI, the court rejected the premise that FBI Agents are members of a paramilitary organization and can therefore be subjected to restrictions on their constitutional rights similar to that which would be appropriate in a military environment.<sup>73</sup> Nonetheless, the court held that the Agent's speech was not protected under *Pickering*. The court examined the substance, time, place, and manner of the Agent's communications and balanced those factors against the interests of the FBI.<sup>74</sup>

The court first examined the substance of the Agent's communications to determine whether they touched upon matters of public concern or only related to personal internal matters within the workplace. Recognizing that the content of an employee's speech naturally affects his superior's

assessments of his performance, the court concluded that employee speech implicating broad societal interests is deserving of greater protection than speech of essentially institutional or personal concern to the speaker.<sup>75</sup> But the court cautions against equating the public's *curiosity* about the matter with a matter having legitimate societal ramifications:

"People may be interested in any number of aspects of the lives of public officials and employees, but that does not mean that such matters have societal ramifications. Conversely, the public may be extremely apathetic about certain matters of public concern, but the unpopularity of the issue surely does not mean that a voice crying out in the wilderness is entitled to less protection than a voice with a large, receptive audience."<sup>76</sup>

Observing that the Agent had been successful in getting considerable media coverage of his allegations, the court stated that the scope of speech protection should not turn on an employee's ability to attract media or public interest.<sup>77</sup>

The court acknowledged that the professional integrity of another law enforcement official is a matter of legitimate public concern. However, two factors tended to diminish the legal significance of that finding in *Egger*. First, the *personal nature* of the Agent's criticism created more serious employment relations problems for the FBI than would an impersonal criticism of the FBI as an institution.<sup>78</sup> Second, allegations of corruption coming from a trained investigator must be considered in a different light from similar allegations offered by other public employees. A supervisor is "... entirely justified in evaluating the soundness of ... [the Agent's]

investigative technique, the inferences he drew from certain informant statements, and the overall soundness of his conclusion that certain leads were worth pursuing."<sup>79</sup> A law enforcement manager must routinely assess the quality of a subordinate's investigative efforts, and such assessments implicate internal agency concerns more than matters of public concern.<sup>80</sup>

The analysis of the time, place, and manner of the Agent's communications yielded other relevant factors. First, the Agent inundated his superiors with a series of largely redundant allegations that were, at most, variations on the same theme. The time it took to prepare and respond to those repetitive communications weighed against the Agent's claim. Second, the Agent did not discreetly report the allegations to his superior. Instead, he "... was improvident at best in making a personal accusation ..."<sup>81</sup> to a fellow Agent. The manner in which the Agent made his allegations determined in large measure the nature and extent of the disruption caused the FBI office.

Finally, the court examined the special interests of the FBI in regulating the speech of its employees. "While the employer has a general interest in maintaining a work environment conducive to effectuating the agency mission, under the *Pickering* calculus certain aspects of the particular employment milieu are especially germane."<sup>82</sup> In that regard, the court determined that mutual trust and respect among FBI Agents and supervisory personnel is essential to safely and efficiently meet the challenges of law enforcement.<sup>83</sup> The need for teamwork and confidentiality in situations where life and death decisions are made is beyond dispute. The risks of serious disharmony in a law en-



**“ . . . a department's chain of command policy should not  
' . . . always take precedence over the interest of a  
public employee in open communication.' ”**

forcement organization can be grave to employees and the public.

The final point made by the court relates to the inherent risks an employee faces when making accusations against another employee: “The first amendment protects the right of a government employee to make good faith accusations of malfeasance in office against fellow workers, but the first amendment does not guarantee the employee a cost-free exercise of that right.”<sup>84</sup> The major risk is the reaction of fellow employees who learn of the accusation and the inevitable mutual distrust that follows. In that regard, the mutual distrust between the Agent and many of his colleagues was undisputed, and the need for such trust is vitally important to the FBI. Thus, the FBI prevailed under a balancing of interests analysis.

Another decision reflects a similar judicial reluctance to interfere with reassignment decisions. In *Altman v. Hurst*,<sup>85</sup> a police officer in Hickory Hills, IL, was suspected by his chief of encouraging another officer to appeal her suspension and was accordingly reassigned to less desirable duty. When the officer filed a complaint objecting to that reassignment, he was subjected to further reassignments and the rescheduling of his vacation time. The U.S. Court of Appeals for the Seventh Circuit ruled against the officer's claim that those actions were in retaliation for protected first amendment activity. The court ruled that the officer's conduct did not involve matters of public interest and only concerned a private personnel dispute.<sup>86</sup> The court distinguished *Connick* by noting that the officer was not fired or suspended and did not experience a loss of income as a result of the discipline.<sup>87</sup>

#### **Failure to Follow Orders or Adhere to Chain of Command Requirements**

Law enforcement organizations have a legitimate interest in requiring employees to obey a superior's order to perform a lawful task and to adhere to reasonable chain of command rules when communicating work-related information. A good case illustrating employee insubordination for failing to follow a superior's order is *Berry v. Bailey*,<sup>88</sup> where the U.S. Court of Appeals for the 11th Circuit ruled that a deputy sheriff's refusal to heed the sheriff's direction to dismiss charges against certain arrestees was not constitutionally protected speech. Three separate but related instances set the stage for the deputy's ultimate termination. First, the deputy was admonished by the sheriff to back off from an undercover investigation that produced evidence of illegal gambling payoffs to a judge, who supported the sheriff. Later, the deputy refused to participate in a particular grand jury investigation after becoming convinced that it was convened to conduct a political hatchet job for the judge. Finally, the deputy refused to obey the sheriff's request to drop charges against the judge's daughter and several others who had been previously arrested by the deputy.

The court rejected the deputy's claim that he was dismissed for having engaged in constitutionally protected conduct. Relying on a footnote in *Connick*, the court ruled that the deputy's on-the-job refusal to follow the sheriff's wishes in performing his official duties constituted insubordination and may serve as a basis for dismissal.<sup>89</sup> The court observed that even if the deputy's objectives were more moral and efficient than the

sheriff's, corruption in a sheriff's office is not so vital a matter of public interest that it should protect an employee's flagrant defiance of his direct supervisor.<sup>90</sup> The court expressed concern that a contrary result would “. . . encourage employees to defy their employers and refuse to perform their duties every time they think that the employer is running the office improperly.”<sup>91</sup> The court did suggest that the deputy might have received constitutionally based protection if he had performed his duties according to the sheriff's wishes and then offered public criticism regarding the department's inadequate enforcement of the law.<sup>92</sup>

Chain of command-type rules which purport to restrict employee criticism or work-related speech to designated individuals are constitutional only if they are reasonable and narrowly tailored to meet legitimate organizational objectives.<sup>93</sup> Rules that prohibit all employee work-related criticism without the prior permission of a particular individual are unconstitutional prior restraints on the exercise of first amendment rights.<sup>94</sup> However, law enforcement organizations may constitutionally require employees to obtain prior permission for public appearances that convey the impression an employee is representing or speaking for the organization.<sup>95</sup> Chain of command rules that mandate *prior channeling* rather than *prior communication* are facially constitutional because they only operate to channel employee criticism in a limited and appropriate manner consistent with legitimate law enforcement interests.

Employee speech activity in violation of an otherwise valid chain of command rule will not always tip the *Pickering* scales in the government's favor and justify disciplinary action.<sup>96</sup>



For example, in *Brockell v. Norton*,<sup>97</sup> the U.S. Court of Appeals for the Eighth Circuit ordered the reinstatement of an officer who had been discharged from his job as a radio operator-dispatcher for the Marvell, AR, Police Department. In February of 1980, the officer learned a part-time officer possessed a copy of the certification test to be given by the Arkansas State Law Enforcement Standards Commission. The officer reported this information to the Marvell chief of police. Approximately 10 days after his report to the chief, the officer reported this information in an anonymous phone call to a captain in the Pine Bluff Police Department, who was in charge of administering the test. The officer was subsequently discharged for violating the police department's chain of command policy which required department business to be brought first to the chief of police and then, if not properly resolved, to the mayor.

The court ruled as a matter of law that the officer's report to the captain was protected conduct under *Pickering* and that a department's chain of command policy should not "... always take precedence over the interest of a public employee in open communication."<sup>98</sup> The court recognized the importance of several factors, including:

- 1) The public importance of the report; 2) the mode of communication; 3) the prior attempt to resolve the matter; 4) the period of time between the report to the chief and the call to the captain; and 5) the unlikelihood of proper resolution of the matter if kept in the chain of command.<sup>99</sup>

The court also relied on the following facts: 1) The department was run very informally and the chain of command

policy was not written in any manual or handbook; 2) the officer suspected of possessing the test had previously been afforded preferential treatment by the mayor, making it reasonable to maintain a legitimate doubt whether reports to the mayor regarding the officer's alleged misconduct would be properly resolved; and 3) the officer had a reasonable concern for reprisals from the mayor which motivated him to make the anonymous call.

The court concluded that the officer's situation resembled that of a whistle-blower who wishes to report the misconduct of an immediate supervisor and concluded that "[A]n employee's First Amendment interest is entitled to more weight where he is acting as a whistle-blower exposing government corruption."<sup>100</sup> The court also noted that the officer provided his information to the person in the best position to investigate and resolve the alleged improprieties.<sup>101</sup> It should be emphasized, however, that the balancing approach in *Brockell* which was resolved in favor of the employee would likely have yielded a contrary result if the officer had provided his information to the public instead of channeling it to an appropriate official.

The orderly operation of a law enforcement organization does not require servility of thought or expression, but may necessitate the setting of reasonable limits on the manner in which employees express their work-related criticisms and complaints. The systematic disregard of reasonable chain of command requirements tends to exacerbate organizational problems and tensions by depriving management of the opportunity for the internal resolution of employee complaints and the avoidance of disruption and trauma frequently associated with

publicly expressed criticism. Reasonable chain of command rules reflect a legitimate managerial desire for the orderly resolution of employee complaints and are valid even though the employee expression would be otherwise protected under *Pickering*. However, courts will likely disapprove the enforcement of any chain of command rule that is either selectively enforced or traditionally ignored in favor of more informal methods of communication. The selective enforcement of chain of command rules smacks of viewpoint discrimination, places unpopular views at a distinct disadvantage, and unnecessarily chills employee expression.

### Criticism of Management Decisions

Employee criticism of management decisions during working hours is afforded less first amendment protection than similar criticism directed to the public while an employee is in an off-duty status. Moreover, *Connick* held that on-duty criticism of management decisions is not even subjected to the *Pickering* balancing process if it relates only to a personal grievance of the speaker. For example, in *Murray v. Gardner*,<sup>102</sup> the U.S. Court of Appeals for the District of Columbia ruled against the first amendment claim of a Special Agent in the FBI who had voiced his objection to the use of a lottery-based employee furlough plan which he thought adversely affected him. The Agent criticized the plan at an "all Agents conference" and also leveled accusations of coercion at another Agent. Finding that *Connick* precludes first amendment protection for a discontented employee's personal expressions of dissatisfaction, the court characterized the furlough plan as a labor relations matter and the Agent's criticism an



## **"Courts assess the importance of the message conveyed in determining whether employee expressions of personal feelings constitute a matter of public concern. . . ."**

example of the quintessential employee beef. The court concluded that the Agent's remarks were not even remotely connected to the matters of public concern requirement envisioned by *Connick*. Other courts have similarly held that complaints about working conditions<sup>103</sup> and the filing of a formal grievance<sup>104</sup> are not matters of public concern under *Connick*.

But *Connick* does not preclude constitutional protection for an employee's off-duty publicly expressed criticism of management decisions. For example, in *McKinley v. City of Eloy*,<sup>105</sup> the U.S. Court of Appeals for the Ninth Circuit ruled in favor of a probationary police officer who was discharged for publicly criticizing a decision not to give police officers an annual raise. The officer joined a labor organization and began to act as the representative of the police union. City officials who strongly disapproved of the officer's union activities were particularly upset over his criticism at a city council meeting of the council's decision not to give police officers their annual raise and his interview with a television station regarding the dispute between the city and its police officers.

The court held that the officer's subsequent termination was precluded by the first amendment and offered the following four reasons for concluding that his speech was a matter of public concern under *Connick*: 1) Compensation levels affect the ability of government to attract and retain qualified police personnel; 2) the interrelationship between management and employees is closely connected with discipline and morale; 3) the manner in which public officials deal with diverse and sometimes opposing viewpoints from within government is an important attribute of

public service about which the members of society are entitled to know; and 4) the officer's speech was specifically and purposefully directed to the public both through city council meetings and a television interview.<sup>106</sup> Noting that imagined disruption to governmental interests cannot serve as a pretext for stifling unpopular views, the court observed that the officer was a rank-and-file officer and did not disrupt by his criticism a close working relationship with a high-level official.<sup>107</sup> Management-level employees have a higher duty of loyalty to support organizational policy than nonmanagerial employees because of the need for a cohesive management approach in dealing with nonmanagerial employees. Courts also afford employees a greater measure of protection to criticize management decisions than specific individuals.

### **Employee Expression of Personal Feelings**

Courts assess the importance of the message conveyed in determining whether employee expressions of personal feelings constitute a matter of public concern under *Connick*. For example, in *Wilson v. City of Littleton*,<sup>108</sup> a police officer of the city of Littleton, CO, was fired as a result of his refusal to obey an order to remove a black shroud from his badge. The officer had placed the black shroud on his badge to express his grief, mourning, and sense of loss over the death of a policewoman from another town. The U.S. Court of Appeals for the 10th Circuit rejected the officer's first amendment claim and held that the wearing of the shroud was not speech related to a matter of public concern under *Connick*.<sup>109</sup> Characterizing the wearing of the shroud as a symbolic expression of grief, the court reached

the following conclusion of law:

"While the death of a police officer could conceivably be a topic of general interest to the public under other circumstances, Wilson's personal feeling of grief is not a matter of public concern within the meaning of *Connick*."<sup>110</sup>

A similar expression of grief over the shooting of a police officer during an ongoing public controversy over the expenditure of public funds to purchase bulletproof vests might be a matter of general public interest under *Connick*.<sup>111</sup>

The importance of the message conveyed in a law enforcement officer's expression of personal feelings produced a different result in *Leonard v. City of Columbus*,<sup>112</sup> where the U.S. Court of Appeals for the 11th Circuit upheld the speech claims of former policemen who were dismissed for deliberately removing an American flag emblem from the sleeve of their uniform to protest alleged racial discrimination in the city of Columbus, GA, Police Department. The court concluded the officers' conduct was closely akin to pure speech because they sought to emphasize a widely held perception of racially discriminatory practices in the police department.<sup>113</sup> The court suggested the officers' conduct concerned both internal police matters and the community at large and is entitled to a high level of protection simply because it "... goes to the heart of our democratic process. . . ." <sup>114</sup> The court also relied on the fact the officers acted in a peaceful and respectful manner and were off-duty when they removed the emblems. The court probably would have reached a contrary result if the officers had removed the emblems to protest a departmental grooming standard instead of al-



leged racial discrimination because of the significant difference to the public in the importance of the message conveyed.

## CONCLUSION

Lower court decisions interpreting *Pickering* and *Connick* reveal the fact specific nature of the balancing of interests standard of judicial review. Once employees meet their causation burden under *Mt. Healthy*, a reviewing court must first decide pursuant to *Connick* whether the employee's speech relates to a matter of legitimate public concern. If it does, the court must address two questions in the balancing process: 1) To what extent did the speech disrupt legitimate governmental interests; and 2) how valuable in qualitative terms is the speech to the public debate about governmental affairs? The extent of disruption is weighed against the value of the speech to determine whether the speech is protected under *Pickering*. In order to tip the *Pickering* scales in its favor, the government must demonstrate that the extent of disruption outweighs the value of the employee speech. In quantitative terms, the government's burden is proportionately tied to speech value and becomes most onerous where employee speech actually exposes official corruption or serious criminality.

Courts agree that law enforcement organizations may impose reasonable restrictions on the work-related speech of employees. Because the degree of constitutionally based speech protection in a particular situation depends on the interaction of many variables, it is advisable for law enforcement managers to particularize in a formal policy statement the speech rights and obligations of em-

ployees. Employees and management should be guided by written policy that affirmatively encourages reasonable employee criticism and also protects legitimate law enforcement interests. Speech restrictions must be carefully tailored to accommodate law enforcement needs, such as the protection of confidential information from improper disclosure and the maintenance of on-duty discipline.

Law enforcement organizations can mitigate the likelihood of unnecessarily disruptive employee speech by establishing reasonable internal communication and grievance procedures. Organizations with an employee speech policy that encourages responsible debate will benefit from *Connick*, which precludes insubordinate employees from successfully constitutionalizing internal grievances. Good internal communication improves morale and employee job satisfaction and assists management in identifying organizational problems. A law enforcement organization's policy should be consistent with the fundamental values that underlie constitutional protection for employee speech.

**FBI**

### Footnotes

<sup>62</sup> 714 F.2d 1407 (8th Cir. 1983).

<sup>63</sup> The court did acknowledge that a transfer traceable to an employee's speech-related activity is properly the subject of a first amendment challenge, even though the transfer results in no loss of pay, seniority, or other benefit. *Id.* at 1421.

<sup>64</sup> *Id.* at 1419. The court said that judicial deference is required on the following two levels: 1) The patrol's determination that an officer's speech-related conduct has contributed to dissension within the ranks, and 2) the patrol's discretionary decision to reassign or discipline an officer whose speech-related conduct has contributed to that dissension.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 1420-21.

<sup>67</sup> *Id.* at 1421.

<sup>68</sup> *Id.* at 1422.

<sup>69</sup> *Id.* at 1425.

<sup>70</sup> *Id.* (citations omitted).

<sup>71</sup> *Id.* at 1423.

<sup>72</sup> 710 F.2d 292 (7th Cir. 1983), cert. denied, 104 S.Ct. 284.

<sup>73</sup> *Id.* at 312.

<sup>74</sup> While the *Egger* opinion was written before *Connick* was decided by the Supreme Court, *Connick* serves to provide additional support for the result reached by the court in *Egger*.

<sup>75</sup> *Id.* at 316.

<sup>76</sup> *Id.* at 316-17 (emphasis added).

<sup>77</sup> *Id.* at 317.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 318.

<sup>81</sup> *Id.* at 318-19.

<sup>82</sup> *Id.* at 319.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 322.

<sup>85</sup> 734 F.2d 1240 (7th Cir. 1984).

<sup>86</sup> *Id.* at 1244.

<sup>87</sup> *Id.*

<sup>88</sup> 726 F.2d 670 (11th Cir. 1984).

<sup>89</sup> The footnote from Justice Brennan's dissenting opinion indicated that an employee's answer of "No" to a request to perform a lawful task was insubordination and not protected speech under *Pickering*. *Id.* at 675-76.

<sup>90</sup> *Id.* at 676.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Meehan v. Macy*, 425 F.2d 472 (D.C. Cir. 1969).

<sup>94</sup> In *Haurilak v. Kelley*, 425 F.Supp. 626 (D. Conn. 1977), a rule in the Shelton, CT, Police Department was declared unconstitutional on overbreadth grounds, because it prohibited all critical speech regarding the department except through channels. A police officer was suspended for violating that rule after he had written letters to town aldermen critical of the way in which the merit system was being operated in the department. Also, in *McNea v. Carey*, 434 F.Supp. 95 (N.D. Ohio 1976), a Federal district court held unconstitutional on vagueness grounds a rule in the Cleveland Police Department which required permission of the chief before a policeman could visit or initiate business with the office of the mayor or any other public official.

<sup>95</sup> *Micilcavage v. Connelie*, 570 F.Supp. 975, 980 (N.D. N.Y. 1983).

<sup>96</sup> Despite theoretical agreement that the violation of a reasonable chain of command rule can tip the *Pickering* scales in the government's favor, courts seem reluctant to permit rigid enforcement of such rules. *Key v. Rutherford*, 645 F.2d 880 (10th Cir. 1981) involved a rule that prohibited employees of the Stroud, OK, Police Department from discussing grievances with city council members. The 10th circuit stopped short of ruling that employees (in this case the chief) could be disciplined simply for communicating with the mayor in violation of that rule. Instead, the case was remanded to the district court to evaluate the rule under the *Pickering* balancing test.

<sup>97</sup> 732 F.2d 664 (8th Cir. 1984).

<sup>98</sup> *Id.* at 667.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 668.

<sup>101</sup> *Id.* at 668-69.

<sup>102</sup> Civil No. 83-1750 (D.C. Cir. Aug. 14, 1984).

<sup>103</sup> *Jones v. State of Georgia*, 725 F.2d 622 (11th Cir. 1984).

<sup>104</sup> *Rentroe v. Kirpatrick*, 722 F.2d 715 (11th Cir. 1984).

<sup>105</sup> 705 F.2d 1110 (9th Cir. 1983).

<sup>106</sup> *Id.* at 1114-15.

<sup>107</sup> *Id.* at 1115.

<sup>108</sup> 732 F.2d 765 (10th Cir. 1984).

<sup>109</sup> *Id.* at 769.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at n. 2.

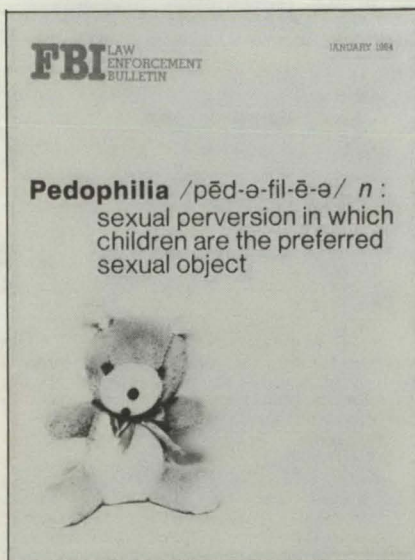
<sup>112</sup> 705 F.2d 1299 (11th Cir. 1983).

<sup>113</sup> *Id.* at 1305.

<sup>114</sup> *Id.* at 1304.



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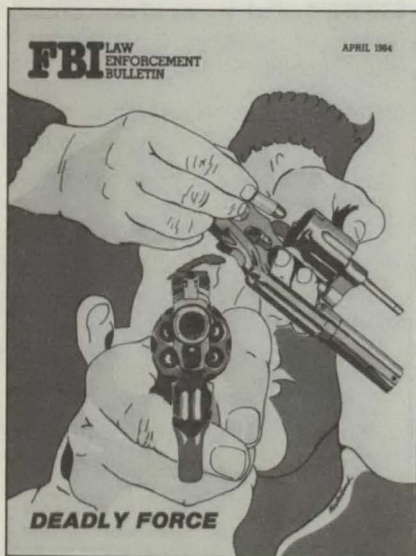
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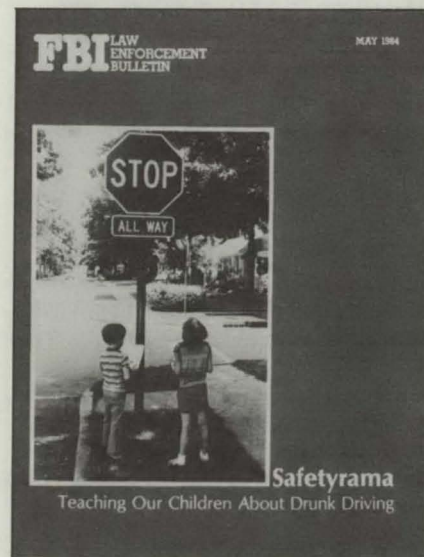
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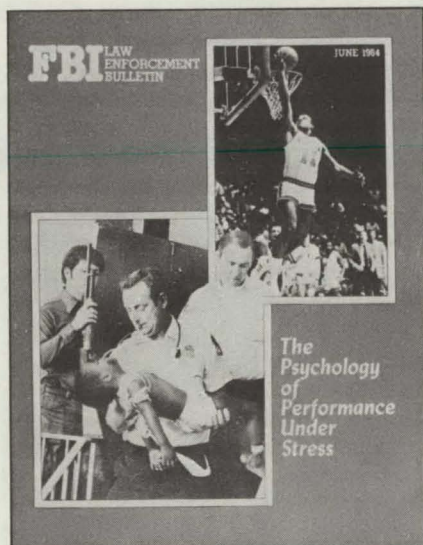
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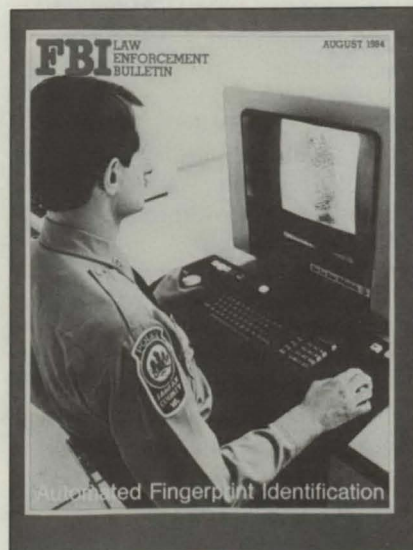
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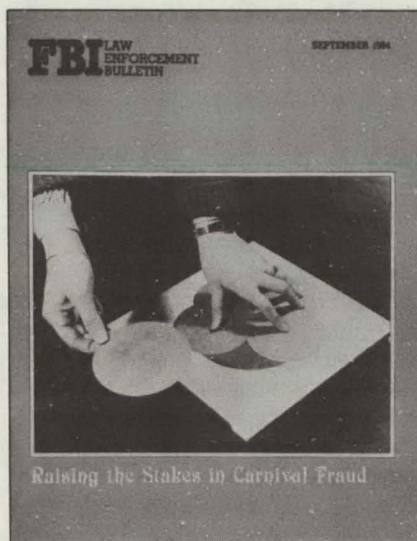
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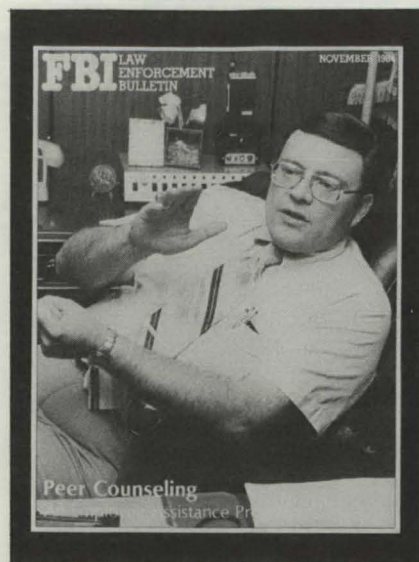
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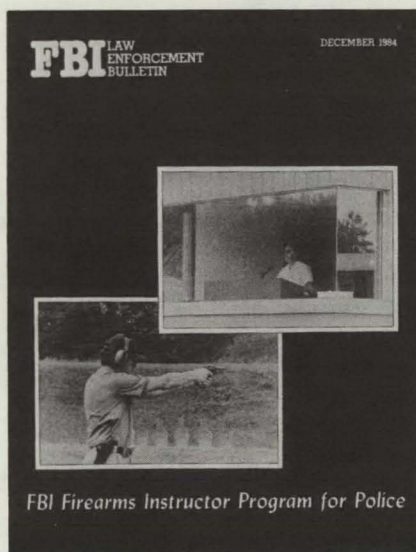
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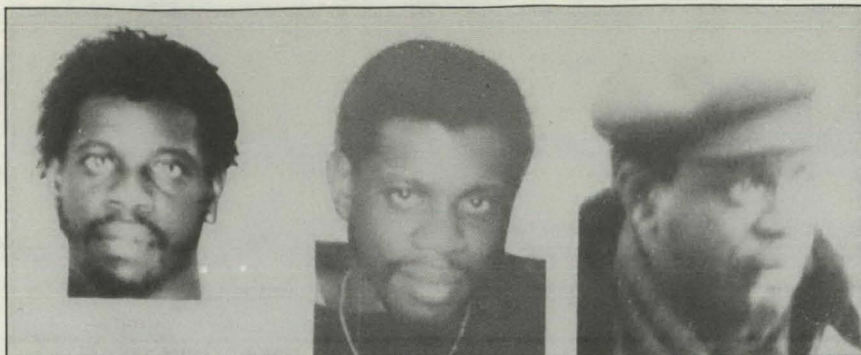
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# WANTED BY THE FBI



Photograph taken date unknown

Photograph taken 1981

Photograph taken 1982

## Mutulu Shakur

Mutulu Shakur also known as Jeral Wayne Williams (true name), O. Shakur, Okwame Skakur, Gerel Wayne Williams, Jeral W. Williams

## Wanted For:

Bank Robbery: Conspiracy to Commit Bank Robbery

## The Crime

Shakur is being sought in connection with the armed robbery of an armored truck in Nanuet, NY, in which one guard was killed and two others wounded. During their escape from the robbery scene, Shakur and five others reportedly opened fire on Nyack, NY, police officers, killing two and injuring one.

A Federal warrant was issued on April 21, 1982, in New York City.

## Description

Age ..... 34, born August 8, 1950, Baltimore, MD.  
 Height ..... 5'8".  
 Weight ..... 150 pounds.  
 Build ..... Medium.  
 Hair ..... Black.  
 Eyes ..... Brown.  
 Complexion ..... Dark.  
 Race ..... Black.  
 Nationality ..... American.  
 Occupations ..... Practices acupuncture, census taker, and laborer.  
 Scars and Marks .... Pierced left ear.  
 Remarks ..... May wear ear pin or earring in left ear; has gap between top front teeth; has tendency to get heavy around the waist; smokes a pipe; uses cocaine.  
 Social Security Number Used ..... 083-40-7447.  
 FBI No. .... 337 630 H.

## Caution

Shakur, one of the FBI's "Ten Most Wanted Fugitives," is the major subject charged in the aborted robbery attempt, and is known to associate with revolutionary organizations that have an extensive history of criminal activity and a great propensity for violence aimed at law enforcement. Consider Shakur armed and extremely dangerous.

## Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, DC 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

## Classification Data:

NCIC Classification:  
 0805TT020307AAAATT03  
 Fingerprint Classification:  
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 S 1 Aat T

I.O. 4910



Left thumb print



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## Questionable Pattern

The unusual aspect of this pattern is the appearance of a face-like formation appearing in the center. It is classified as a central pocket loop-type whorl with an inner tracing and referenced to a loop.





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**The Bulletin Notes** that Sgt. Norris Edgar Yoder of the Catawba County Sheriff's Office, NC, rescued a woman whose car ran off a bridge on October 13, 1983. With assistance from two citizens, he administered CPR to restore her breathing. The Bulletin joins Sgt. Yoder's superiors in praise of the lifesaving response.



Sergeant Yoder

693-28