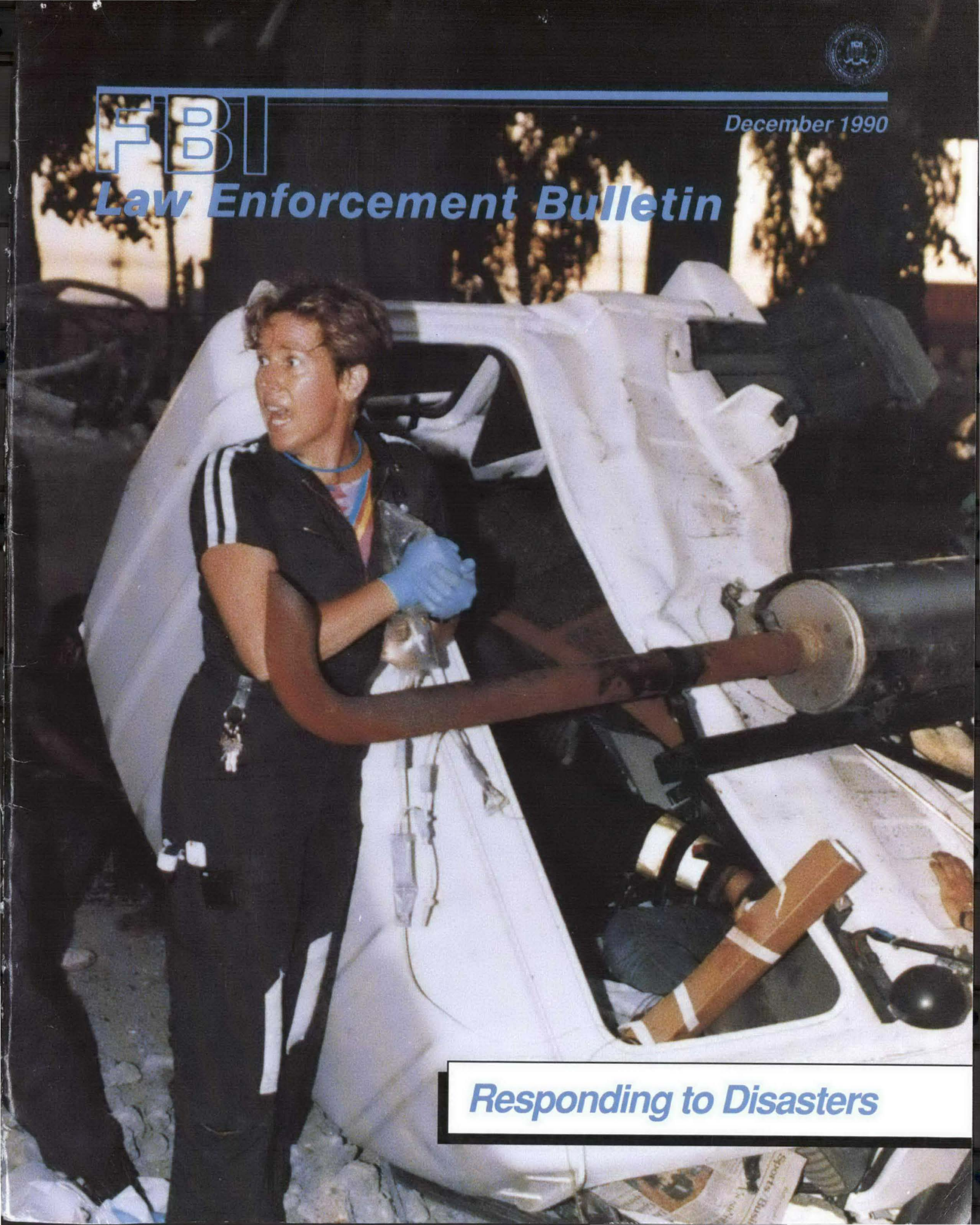




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December 1990

Law Enforcement Bulletin



Responding to Disasters



Features



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William S. Sessions, Director

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Managing Editor—Kathryn E. Sulewski
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Assistant Editor—Alice S. Cole
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Disaster Operations *Not Business As Usual*

BY
MICHAEL GUERIN



Photos courtesy of the Department of Transportation, the National Oceanic Atmospheric Administration and the California Highway Patrol

At 5:03 p.m. on October 17, 1989, law enforcement personnel throughout Northern California's Bay Area were taking crime reports, investigating traffic accidents, issuing citations, patrolling the streets, and suppressing criminal activity. By 5:05 p.m., all the rules had changed. A major earthquake shook the area, causing death, destruction, and chaos.

All too often, when disasters occur, law enforcement officials

simply comment, "It's business as usual, just more of it." Unfortunately, experience has shown that this is not the case. In fact, given any disaster situation, law enforcement agencies must alter their priorities, operations, and schedules to meet emergency demands.

This article reviews several issues related to the manner in which law enforcement agencies operate after a disaster occurs. It considers

what police have learned from past disasters so that they can prepare better for these crisis situations and provide a complete emergency response. Then, the article covers critical law enforcement priorities after a disaster occurs. These include maintaining police operations, informing the public, dispatching personnel and equipment, and light rescue and evacuation operations. Finally, it provides information on how managers can

establish disaster operations plans for their agencies, regardless of size.

LESSONS LEARNED

In order to best allocate law enforcement resources, a review of police experiences during past disasters provides key information on which to base future emergency responses. Analysis of information obtained during post-disaster interviews clears up some misconceptions police administrators may have regarding disaster operations.

First, patterns of criminal activity do not change dramatically when disaster strikes. Despite media reports to the contrary, looting is not prevalent in the hours following a disaster. For example, after the October California earthquake, only 2 law enforcement agencies out of over 100 noted any quake-related thefts during the emergency period. These were isolated, not widespread, cases. However, looting is possible in

areas where social unrest and poor economic conditions already exist. For example, much of the media coverage of looting after Hurricane Hugo devastated parts of the eastern seaboard showed footage from the U.S. Virgin Islands; yet, incidents of looting in the Carolinas were rare.

Second, there is a myth that the public is uncooperative and subject to panic after a disaster. However, past experience shows that just the opposite is true. In fact, law enforcement agencies have difficulties in handling the over-abundance of volunteers. Citizens are highly motivated to cooperate or offer assistance after a disaster, and agencies should plan ways to best use this enormous pool of volunteer energy, consistent with public safety concerns. Experience also shows that panic only occurs when there is a lack of consistent, visible leadership. Where local officials work as a team, set priorities, and

keep the public informed, the public reacts accordingly.

Another misconception involves police invulnerability. Since they often face difficult circumstances under fast-changing conditions, law enforcement personnel believe they can instantly adapt their daily operations to disaster conditions. Therefore, they give little thought to disaster training and planning. Administrators tend to overlook the safety of their own facilities and the readiness of their equipment, as well as a lack of policy and proper training for disaster situations.

Finally, experience has shown that law enforcement agencies need to better integrate their operations during emergencies. Clearly, however, there are more tasks to be performed during an emergency than just maintaining order and providing security.

DISASTER AFTERMATH

Identifying law enforcement priorities after a disaster occurs is critical. Maintaining police services, assessing overall damage, assisting in light rescue operations, and coordinating security are realistic objectives. These can be handled with a high degree of efficiency and effectiveness if proper planning and training takes place before the emergency occurs. Then, if a disaster does occur, agency personnel will be prepared to provide a complete emergency response.

Maintaining Police Operations

After any disaster occurs, law enforcement agencies must initiate steps to ensure that police opera-



“
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is critical.**
”

Mr. Guerin is the Assistant Chief of the Law Enforcement Division, Governor's Office of Emergency Services, Ontario, California.

Photos courtesy of the
Department of Transportation and
the California Highway Patrol

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tions can be maintained. Clearly, agencies may need to consider facility evacuation plans, as well as alternative arrangements for carrying on critical functions, given a building evacuation. For example, in one major suburban police department, the entire Emergency Operations Center (EOC) and the communications center had to be evacuated for an entire shift in order to assess the damage and structural integrity of the building. There were no alternative 911 routing plans, no duplicate personnel call-out rosters, and no alternate dispatching site. This serves to reinforce the concept that immediately after a disaster occurs, agencies must assess their capabilities and advise personnel accordingly. It is a good idea at this time to start an agency log to include notes on

the effects of the disaster on police facilities, operations, and assignments.

At this point, communications personnel become the lifeline for police operations. They should broadcast that a disaster has occurred and advise all units to avoid transmitting until a roll call can be taken. Units must know to stay off the radio until their identifiers are called. Dispatchers should then call each unit, in turn, to record all essential information. Only then do they report their location and status (injury, vehicle damage, access problems) and give a brief account of the extent of damage in their areas. This allows on-duty supervisors and managers to know the status of their resources, and it begins the critical process of damage assessment.

Damage Assessment

Only through a thorough assessment of the damage incurred and current police capabilities can managers best assign their resources. Agencies may choose to instruct units to respond only to emergency assignments, avoiding activities that may take them out of service for extended periods of time and prevent them from responding to more critical dispatches.

Law enforcement personnel may need to practice a skill similar to triage, which is an emergency medical system of assigning priorities to treatment of battlefield casualties on the basis of urgency and chance of survival. During disaster situations, officers face a variety of problems in a short period of time. They must make rapid decisions as to which are true life-



Photos courtesy of
The Detroit News



“
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their priorities, operations, and schedules
to meet emergency demands.”

safety emergencies, important to the concept of “the greatest good for the greatest number” of citizens. Officers and administrators alike require a clear understanding of the “big picture” of damage and priorities.

During damage assessment, patrol units check their assigned districts and report the extent of damage to the communications center. Some agencies assign each beat a list of pre-selected key sites that should be checked immediately after a disaster occurs, e.g., hospitals, schools, electrical substations, to name a few. If an Emergency Operations Center (EOC) is established, these reports should be routed there for collation with

reports from other departments and agencies.

Informing the Public

Keeping citizens informed is not just a convenience, but a necessity. Often, when citizens are unaware of a situation, they contact the police department to determine what has happened. To accommodate such calls, police departments can respond in one of two ways. First, agencies can designate a public information officer who works closely with the local news media to disseminate accurate information on the extent of the damage and the action citizens should take. Or, consideration might be given to a recorded information tape. This

diverts callers from emergency telephone lines to a source of recorded information that gives the status of the situation and what actions are appropriate.

Dispatching Personnel and Equipment

Following any disaster, personnel mobilization occurs as necessary. This involves either a general re-call of all off-duty personnel or only those in selected assignments. With a general re-call policy, all off-duty employees report for duty when they become aware of a potential disaster situation or one that has already occurred. Many departments institute this policy since it is easier to send excess staff home than to try to call them to report for duty. Another option is to have an organized system whereby adjacent local police departments or the State police force provide personnel and equipment to assist those in the stricken area. Above all, it is critical that a rapid coordinated response follows an emergency.

Equipment mobilization must also accompany an increase in on-duty personnel. This includes vehicles for added staff, re-distribution of communications equipment, and issuance of emergency supplies, such as batteries and flares. Sleeping accommodations and other special arrangements, such as meals and showers, may also be necessary with extended shift assignments.

Light Rescue and Evacuation

After the October 1989, California earthquake, many Bay Area police agencies started to carry specialized equipment in their

vehicles. Pry bars for lifting debris, wrenches for turning off natural gas meters, and better-equipped first aid kits are now standard items in patrol vehicles. Clearly, law enforcement personnel do not need to be trained in large-scale rescue efforts, but they should know how to perform light rescue operations and the capabilities of local fire agencies, search and rescue teams, and available military units.

Law enforcement personnel may also be responsible for coordinating evacuations. A review of actual cases indicates that when there have been difficulties handling evacuations, the problems can be traced to several deficiencies in emergency assistance plans. These include failing to adequately warn citizens of the dangers and the reason for evacuation, difficulties in communicating information in other languages, failing to recommend proper routing for evacuations, and failure to prepare a site to house and feed those evacuated. In some areas, evacuees may even need transportation, and prior arrangements should be made with the local school or transit systems, as necessary.

Security

Alternatives exist so that security in the stricken area can be maintained with minimal personnel commitments. In areas suffering from weather or earthquake damage, erecting chain-link fencing around the perimeters of the damaged areas is an option. In some communities, contract private security companies monitor access to areas after the initial danger is over. Some jurisdictions enact special laws or ordinances as part of a

declaration of a local emergency, including curfew restrictions, travel and access prohibitions, or special business regulations.

Special Law Enforcement Operations

Sometimes, local law enforcement officers have medical examiner/coroner responsibilities. Reviews conducted of past emergency situations indicate a need for such an operation to augment local capabilities in this specialized activity. Agreements with funeral homes, military units, or State health organizations are usually necessary.

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In many instances after the initial disaster, law enforcement personnel assist with official visitors, such as State legislators, ranking Federal Government officials, and perhaps even the President of the United States, who come to survey the stricken areas. Such visits require coordination with local law enforcement so that access, transportation, re-routing, and security arrangements can be integrated. These activities may require additional staffing. Therefore, mutual aid assistance agreements with other agencies might be necessary to provide adequate security or to handle the necessary arrangements for dignitary visits.

Another concern during the extended disaster period is the potential for fraud. Accounts of bogus contractors approaching disaster victims to inspect homes and businesses are not uncommon. In many cases, phony repairmen take advance payments for work never performed. Law enforcement can stop such fraud by disseminating warnings through local shelters and public service announcements, as well as by thoroughly investigating fraud cases brought to their attention.

As personnel begin to return to more routine operations, consideration should be given to a critical incident stress debriefing program. Either individual or group sessions with specially trained professionals can help law enforcement personnel cope with the death and destruction that they witnessed. Although some officers initially resist participating in such discussions, most eventually derive great benefit from the opportunity.

PLANNING

Given an understanding of the issues related to disaster response, how does an agency adequately plan for such operations? First, it is important that the law enforcement disaster plan be consistent with, or complement, existing city, county, and State disaster planning documents in force. The best approach involves assessing various disaster scenarios that could lead to special law enforcement operations. Next, agencies should conduct a capability assessment to determine the facilities, personnel, equipment, and training available to handle the hazards identified.

Many agencies find that action checklists provide the best format to use for disaster plans. Such checklists allow personnel with little training to begin functioning effectively under emergency conditions, even if it is their "first look" at the plan.

Another accepted means of command and control during the emergency period is an incident

command system. This system, which was originally developed for fire services, includes such components as a consistent organization chart, common terminology, effective span of control, and efficient operations planning formats.

However, even before a disaster occurs, agencies should consider common upgrades to facilities and equipment, such as emergency

generator capabilities and stocking adequate reserves of radio and car batteries, road flares, portable stop signs, and flashlights and batteries. Consideration should also be given to keeping vehicle gas tanks filled, stocking spare tires, and making provisions for hand cranking gasoline in the event of a power failure.

COST RECOVERY

When and if a disaster affects a law enforcement agency, documentation becomes critical. The State and Federal Government repay most of the costs incurred in response to an emergency if adequate documentation exists to support such a claim. Therefore, agencies should keep detailed records to include personnel shifts, assignments, and hours. Logs for vehicle use and repairs and copies of receipts for any emergency purchases or equipment procurement will also be necessary. Logs prepared since the beginning of an emergency situation prove their value in the end.

CONCLUSION

When a disaster occurs, law enforcement operations do, in fact, change. Effective law enforcement administrators begin well ahead of the emergency to prepare their agencies to face demands. Assessment and planning are the best defenses against problems related to disaster response. It is in the public's best interest to make these preparations a constant priority. They should be accepted as part of the overall public safety challenge that each administrator must face.

LEB

"...it is important that the law enforcement disaster plan be consistent with, or complement, existing city, county, and State disaster planning documents in force."



Photos courtesy of the San Bernardino Sheriff's Office

School Crime Stoppers

By
BOB CHANCE



Of all the crime prevention programs developed by citizen action organizations and law enforcement agencies across the country, few address the crimes that take place within schools. Yet, nationwide statistics indicate that 24 percent of all violent crimes involving teens, ages 12-19, occur in the schools.¹ And, this age group registers the highest incidence of crimes committed against them.²

The Tulsa, Oklahoma, Police Department became acutely aware of this problem when it experienced a significant increase in both calls for service and the need for directed

patrol assignments at the city's East Central High School. Unfortunately, the crimes occurring at East Central were representative of the problems encountered at the other 12 city high schools, where students witnessed assaults, drug dealings, vandalism, violent behavior against other students and teachers, or larcenies almost on a daily basis.

Recognizing the need for directed action against such crimes, several officers and police supervisors met with the director of Tulsa's Citizens Crime Commission to look for ways to reduce, and hopefully eliminate, these criminal activities. After much discussion on

the various options available, they decided that a Crime Stoppers Program in the schools could provide the answer. Their next step, however, was to sell the program to school administrators and high school students.

Selling the Program

In November 1989, the police department invited principals from schools within the targeted area and the Citizens Crime Commission director to attend a meeting at a police substation. The purpose was to discuss the feasibility of instituting crime prevention programs within area high schools. At this meeting, the police discovered that school administrators were just as frustrated as they were by the crime problem. When the possibility of a Crime Stoppers Program was mentioned, school administrators from East Central High School received this idea so enthusiastically that they agreed to participate in the pilot program. The next step was to sell the idea to the student body.

To do this, police officials and school administrators spoke to journalism students at East Central High School who published the school's newspaper. They hoped that through "the power of the written word," they could get students to support a crime prevention program in the school. Once officers presented the concept of the pro-

gram, the students agreed that this could be the answer to decreasing crime within their school and volunteered to work on such a project. After the East Central Student Council and the staff at the Education Service Center agreed to back the program, the journalism students set out to develop and implement a program that would meet the needs of their school.

“
***The students...
are making an
investment in their
school and their
community by
initiating a Crime
Stoppers Program.***
”



Major Chance is the Commander of the Uniform Division Southwest, Tulsa, Oklahoma, Police Department.

Developing and Implementing the Program

School administrators, the Citizens Crime Commission, and the Tulsa Police Department made themselves available to serve as advisors. In addition, the Citizens Crime Commission provided the funds needed to start up this pilot project. But, it was the journalism class that put the project into motion.

To begin, the journalism students conducted a survey of the student body to determine if other students believed crime to be a major issue in the school and to what extent. A total of 608 students of the 1371 enrolled were surveyed. Responses showed that 60 percent of those surveyed had been crime victims, 39 percent agreed that crime in the school was a major issue, and 49 percent stated they would report a crime committed by someone they knew. With the survey results and other statistical data on teenage crime, the journalism class began to put together the framework for a Crime Stoppers Program. This would include an avenue for reporting crimes, as well as providing information leading to the arrest and prosecution of the offenders.

First, they devoted six pages in one edition of the school newspaper to crime-related information and the Crime Stoppers Program. This particular edition was given free of charge to each member of the student body. In this edition, they emphasized that crime prevention produces a better learning environment and stressed the need for student involvement.

Then, the journalism students and their teacher came up with the idea to design and produce a “credit card” for each student. Not only would the credit card be used to gain support from the rest of the student body for the program, but it would give students access to basic crime prevention information, such as the Crime Stoppers number and how to report crimes. This information also included the fact that the students did not have to reveal their identity and that rewards of up to \$1,000 could be obtained in cases of arrest and prosecution of felons. Fifteen hundred of these credit cards were to be distributed at a school assembly. The Citizens Crime Commission paid for the free newspapers distributed and for printing the credit cards.

Workings of the Program

The program allows students to report crimes by placing the information in the school’s crime report box. To aid in reporting a crime or to give information about a crime committed, including any suspects, the students developed their own simple report form. The form provides for student anonymity.

Informants wishing to remain anonymous can also call the Metro Crime Stoppers number. These informants are issued an in-house code number or Crime Stoppers ID number that guarantees the confidentiality of the informant’s identity.

The program also calls for an administrative liaison who is responsible for administering the program at the school. This in-

dividual collects reports from the school's crime report box and also talks directly to students having any information on crimes occurring within the school.

Informants who are not concerned if they are identified may go directly to the administrative liaison and give the information. If the information goes beyond school jurisdiction, the administrative liaison advises the informant to contact the Metro Crime Stoppers Program. Crime Stoppers then turns over the information to the officer assigned to work the case.

Once a crime is reported, the administrative liaison presents the information obtained to the Student Crime Review Board. This board meets once a week and is composed of volunteer students, who may choose to remain anonymous. The board's function is to advertise and to promote the program, to raise funds, and to make decisions on rewards to be paid. The board can recommend an appropriate reward for the informant if the crime is solved. However, the final say on rewards rests with the Metro Crime Stoppers Board, since all rewards come from the Tulsa Metro Crime Stoppers Program.

Under no circumstances does any student board member receive information or become involved with the investigation of a case. They are not given any information on victims or suspects.

Cases are assigned for investigation according to jurisdiction. Felony crimes will be investigated by the Tulsa Police Department. Misdemeanor crimes are either handled administratively through the school or turned over to the police for investigation, depending on the circumstances. The school handles all administrative problems reported.



"...every student is working...to reap the rewards of attending a school where the learning environment has been improved through crime prevention."

The school newspaper notifies students of crimes reported and the reward offered for information on each crime. Such notices are also placed on the Crime Stoppers bulletin board in the main lobby, the daily school bulletin, or the electronic bulletin board. Notices of each crime remain on the Crime Stoppers bulletin board for the entire school year. If it is solved, it is marked accordingly, but left posted.

Students in Action

February 2, 1990, marked the official kickoff of the school's Crime Stoppers Program at a special assembly. Each student received a copy of the school newspaper and a

Crime Stoppers "master card." In addition, school administrators, representatives from the Citizens Crime Commission, and officers from the Tulsa Police Department spoke to the students about the program and the importance of student involvement. And, the Mayor of Tulsa issued a proclamation declaring that day to be "East Central High School Crime Stoppers Day."

During the first month of operation, students reported five crimes through the school's Crime Stoppers Program. Subsequent information provided by East Central High School students resulted in two of the crimes being solved.

Conclusion

The students of East Central High School are making an investment in their school and their community by initiating a Crime Stoppers Program. With the help of school administrators and police officials, every student is working to alleviate the crime problems they face and to reap the rewards of attending a school where the learning environment has been improved through crime prevention.

LEB

Footnotes

¹ Bureau of Justice Statistics, "Teenage Victims: A National Crime Survey Report," November 1986.

² "Teenagers: Crime's Most Frequent Target," National Crime Prevention Council Resource Center, Washington, DC, 1983.

Police Practices

Operation Hotel-Motel



Photo courtesy of the Paducah Sun Times

The transient nature of drug dealers compounds law enforcement's efforts to curb drug trafficking. Those involved in this illegal activity travel to cities and towns throughout the United States to sell drugs. In many instances, dealers use hotels and motels as their base of operations until they move on to other areas.

In an effort to curtail this practice, the Narcotics Unit of the Omaha Police Department initiated Operation Hotel-Motel. This is a program designed to inform local hotel and motel employees of common characteristics and activities of drug dealers. In turn, employees are asked to report to the police when they observe an individual exhibiting any of the designated traits.

Initial Efforts

To begin, drug investigators compiled a list of characteristics

common to persons involved in illegal drug activity. (See figure 1.) Then, they canvassed local hotels and motels to enlist their participation in the program. To promote cooperation in this effort, investigators advised the managements that every effort would be made to keep the name of the establishment out of the news media. Over 50 establishments agreed to participate.

Training

The next step in the program was training. Drug investigators instructed hotel and motel managers, front desk personnel, and cleaning staffs in the profile characteristics and activities often exhibited by drug traffickers. Also, employees were told that scales, small plastic bags containing residue, white powder residue on table tops or bathroom counters, and packaging materials

usually indicate involvement with drugs, particularly trafficking.

During the training, the investigators simply asked the employees to be observant of certain activity and items as they carried out their assigned duties. They also cautioned employees not to take any action if they see something suspicious, except to report immediately what they saw to the police.

Establishing Probable Cause

Obviously, information on individuals displaying some of the profile traits and suspicious activities does not establish probable cause to obtain a search warrant. However, such information does provide a basis for opening an investigation and starting surveillance on the subject and the room involved.

In two specific instances, information provided by an alert motel employee subsequently led to the arrests of two drug dealers. While the information given by the motel employee did not provide probable cause initially, the surveillance conducted as a result of this information established sufficient probable cause for a search warrant each time.

For example, during the surveillance conducted for one particular investigation, officers observed the suspect carrying a triple-beam balance scale, commonly used to measure drugs, into a motel room. On another occasion, a Los Angeles gang member was observed crawling onto the roof above his room and taking a sack

from the roof inside. In both of these instances, information initially provided by astute hotel-motel workers led to the subsequent arrest of drug dealers.

Benefits of the Program

The Narcotics Unit offers a reward for information that leads to an arrest. But, there is more to be realized through a program such as Operation Hotel-Motel than monetary gains for hotel and motel employees.

For example, the program establishes a good working relationship between the police department and the business community. Investigators contact each participating hotel and motel regularly, at least every 2 or 3 months. Also, uniform beat officers, all of whom have been made aware of the program, are encouraged to contact hotel and motel employees in their assigned districts to promote cooperation in Operation Hotel-Motel.

This close working relationship also extends to other areas of police operations. Oftentimes, investigators need rooms from which to conduct undercover buys and reverse stings. For the most part, businesses involved in Operation Hotel-Motel provide their facilities without hesitation.

Results

Operation Hotel-Motel began in 1988. During the first year of operation, the Narcotics Unit made over 50 drug-related arrests at motels and hotels and seized more than 6 pounds of cocaine and over 40 pounds of marijuana. The investigators confiscated approx-

Figure 1
Characteristics Common To Drug Traffickers

Hotel-Motel employees were alerted to guests who:

1. Arrive from source cities for cocaine, such as Los Angeles, Miami, Denver, and Kansas City
2. Flash large amounts of cash
3. Pay for their rooms in cash
4. Extend their stay from day to day
5. Wear fancy clothes and expensive jewelry
6. Wear beepers
7. Possess cellular phones
8. Communicate extensively with occupants of another room
9. Have frequent visitors who remain for a short period of time
10. Receive a large number of incoming calls at all hours
11. Make an excessive number of outgoing calls at all hours or long distance calls, especially to source cities
12. Refuse maid service
13. Display drug paraphernalia in the room
14. Possess firearms
15. Use false names and addresses at the time of check-in and who do not have proper identification

imately \$50,000 in cash. Recently, during a 2-week period in April 1990, information obtained from two different hotel employees resulted in five felony drug arrests and the confiscation of several ounces of methamphetamine and cocaine, hallucinogenic mushrooms, LSD, two vehicles, two handguns, and over \$16,000 in cash. Obviously, the productivity of Operation Hotel-Motel continues.

Conclusion

Operation Hotel-Motel enlists the cooperation and participation of the local businesses, and its success is well-documented. On more than 15 occasions, personnel

from Omaha's Narcotics Unit have made presentations on the program to law enforcement agencies throughout the Midwest. Several of these agencies implemented identical or similar programs.

Programs such as Operation Hotel-Motel build good relations between the police and the community it serves. They are also an extremely effective method to combat the drug problem that plagues this country.

LEB

Information for this column was provided by Sgt. Mark T. Langan, Narcotics Unit, Omaha, Nebraska, Police Department.

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

Criminal Informants

An Administrator's Dream or Nightmare



By
**HARRY A.
MOUNT, JR.**

Informants expose crimes that otherwise may go undetected. When properly used and controlled, they provide information that improves police efficiency, assists in the apprehension and prosecution of criminals, and sometimes even prevents crimes from taking place.

However, to use informants effectively, agencies must establish and maintain strict, written departmental policies on handling

informants. Even when operating under tight controls, informants can go bad quickly. When they do, they create significant legal and public relations problems.

Law enforcement agencies that intend to use informants extensively must also be willing to defend publicly this decision. Fortunately, this is not difficult because the use of informants to solve or prevent crime is on solid legal ground. Judge Learned Hand, one

of America's most famous jurists, observed:

“Courts have countenanced the use of informants from time immemorial; in cases of conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely on them or upon accomplices because the criminals will almost certainly proceed covertly.”¹

As early as 1650, British Chief Justice Hale encouraged criminals to cooperate with the law by rewarding them for giving evidence against their accomplices. Hale established an arrangement that he called a "Plea of Approvement," which offered arrested criminals immunity from prosecution, or at least a reduced sentence, if they provided information on crimes that they knew about.²

More than 300 years later, law enforcement's use of informants is accepted by Americans, who have become familiar with the practice. The media constantly run stories about sting operations, protected witnesses, and paid sources. They know that the mystery associated with these individuals ensures audience interest and widespread attention.

In fact, Americans are sensitized to informant use by the entertainment media. Covert meeting sites, the danger, and the air of anonymity portrayed on television and in movies all add an element of suspense that engenders public understanding and acceptance of informant use by both fictional and real detectives.

JUSTIFYING AN INFORMANT PROGRAM

Yet, how does a law enforcement agency justify paying for information? Don't taxpayers already pay for police protection?

Legislators and ordinary citizens frequently pose these questions, and there is but one answer. Simply stated, using informants is cost-effective. Informants provide intelligence, insight, and informa-

tion that lead to arrests and convictions. Informants allow a law enforcement agency to expend its personnel on activities that have a high likelihood of success.

For example, because of information provided by informants, arrest teams can determine where suspects can be found, how heavily armed they are, and who they are with. Some informants help investigators to obtain evidence of criminal wrongdoing, or through the use of informants, investigators can record actual criminal conspiracies on tape through court-ordered electronic surveillance.

Good informants keep people from being harmed, evidence from being destroyed, and potentially explosive and dangerous crimes from taking place. As an important byproduct, proactive investigations often increase the efficiency and morale of sworn investigative personnel.

ESTABLISHING AN INFORMANT PROGRAM

A law enforcement agency that wants to have an effective, controlled informant program must encourage its sworn personnel to develop and maintain a professional attitude toward informants. One of the first steps that an agency must take in establishing a professional informant program is to convince its investigators that informants are not of questionable character, unworthy of respect. In reality, many informants who provide assistance to law enforcement are not criminals. Many hold responsible positions in public agencies and private businesses. Many are citizens motivated by personal antipathy to criminal conduct that they see around them. A few cooperate because they enjoy the cops-and-robbers excitement that goes along with solving crimes. Some are seeking revenge for professional or personal affronts,

**“
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”**

*Special Agent Mount is currently assigned to
the FBI's Newark, New Jersey, Field Office.*



while others just trade information for money.

Citizens have an obligation to report crime. However, no officer seriously expects citizens to live up to that obligation on a routine basis.³ Fear of being killed, embarrassed, badgered, losing time from work, or of being inconvenienced work against citizens volunteering information about a crime. Therefore, law enforcement agencies must use informants to take the place of ordinary citizens who refuse to get involved.

In fiction, as in real life, investigators often refer to informants in less than polite terms. Officers must understand that the attitude behind such terminology stands in the way of a healthy relationship between an investigator and a source. These personal feelings alienate people who could provide positive information that would solve crimes. Use of derogatory terms even turns off the "professional" paid informant. Consequently, departments should consciously discourage the practice of using derogatory terms, both on and off the job.

A professional attitude toward informants does not just evolve. Law enforcement officers must be trained to cultivate a nonjudgmental frame of mind. Agencies must design both basic and advanced schooling that helps each officer to overcome the simple, but deeply ingrained, prejudice that is associated with informing.

There is no doubt that Americans believe that telling tales on others is wrong. From childhood, they are taught not to tattle on brothers and sisters, classmates, or friends. Parents, teachers and cler-

gymen constantly reenforce the concept. Even some law enforcement professionals believe that it is wrong to "tell on" another person, although they realize they need the information provided by informants to develop cases and apprehend criminals. Frequently, they even admire those who refuse to talk.

Consequently, when law enforcement personnel work to develop informants, they are going against ingrained habits. The only way around the conflict is to train personnel, formally and informally, to view the use of informants as a critically important law enforcement technique.

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Informants provide intelligence, insight, and information that lead to arrests and convictions.
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Once investigators overcome their reluctance to nurture this kind of confidential alliance, they find that developing informants is not too difficult and soon realize that using informants means controlling informants. However, the alert agency must recognize that administrative controls are necessary to run an effective informant program.

ADMINISTRATIVE PROCEDURES

Law enforcement administrators must establish and maintain

several areas of strict control. Generally, they must:

- 1) Protect an informant's identity
- 2) Ensure information is recorded in files
- 3) Disseminate information to appropriate personnel, while simultaneously guarding the information from general perusal
- 4) Involve mid-level managers as overseers of informant operations
- 5) Employ alternate informant handlers
- 6) Develop a payment system that calls for accurate accounting of all monies paid to informants.

Protect the Informant's Identity

Only those with a need to know should be advised of an informant's identity. In practical terms, this means investigators and their alternates who work closely with the source. The squad supervisor or first-line manager should be encouraged to meet the informant so that the source knows that there are people in authority who support the program and so that the manager has a general "feel" for the informant. The person who controls the informant file room must also know the identity of an informant in order to handle the filing and other paperwork. These employees should be the only people who routinely handle informant information and who need to know the informant's identity.

To ensure secrecy, informants should have code numbers and code names assigned to them. These take the place of the source's real name

on all documents and reports, and also in personal conversations. Any information provided by the source must be documented and recorded using code numbers and code names.

The files created must be maintained in secure rooms and access to them must be strictly controlled by an employee specifically assigned to control access. Only the informant's handler or alternate handler and the immediate supervisor should be allowed to examine those files routinely. Top management should have access to them, but only when necessary. A daily record that lists everyone who enters the secure file room should also be maintained. This control is not implemented to create a bureaucratic roadblock, but to protect sources by limiting the number of people who know their identities. Institutionally, it also reinforces the importance of protecting informants' identities.

Record Information

Ultimately, the intent of every investigation is prosecution, which requires maintaining records and files. Information may be the informant's stock-in-trade, but that is only the starting point for law enforcement officers. Paperwork allows prosecutors to obtain warrants or to put together cases that will be tried in court.

Refusing to identify sources except by their code names frequently causes resentment, both inside and outside the department. Regardless, unless sources are scheduled to testify in open court, there is no reason for anyone to know informant identities.⁴ Agen-



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...administrative controls are necessary to run an effective informant program.

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cies should try to establish how reliable its sources are, while at the same time legally resisting any exposure of their identities.

Disseminate Information

Dissemination is the key to making informant operations successful. Files full of facts are worthless unless someone uses them to focus an investigation on specific people, obtain search and arrest warrants, or support an affidavit for electronic surveillance. Informant handlers must be taught to believe that information without action is worthless. Too often, informant handlers believe that they have done their jobs by developing knowledgeable sources who keep them individually abreast of the latest inside criminal information. Unfortunately, handlers may become afraid of revealing their sources, and

so, they keep the information to themselves.

Computers with megabytes of criminal data sit in many squad rooms. However, these computer systems are equally useless unless someone takes the information and uses it, drawing the equations that link person to person, incident to incident, and crime to crime. Facts must be shared and opinions solicited. Only then does an informant program pay off.

Therefore, the agency that uses informants productively develops standard report forms and disseminates information to those authorized to use it. Specific paperwork and dissemination procedures must be adopted, and officers must understand that information cannot be shared outside standard channels. The department must depend on the code names of the sources to shield

informant identities from the casual or uninitiated reader. A good informant handler uses judgment and discretion to disseminate only those facts that will advance an investigation without identifying the source.

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Each department or agency should have mid-level managers directly overseeing informant operations.

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Involve Mid-Level Managers

Each department or agency should have mid-level managers directly overseeing informant operations. This is necessary because all too often, a close, symbiotic relationship develops between an informant and informant handler. This type of relationship leads to a corresponding loss of objectivity on the part of the informant handler. A mid-level manager who has no immediate personal stake in the operation can step in to enforce departmental procedures impartially, when necessary.

Employ Alternate Informant Handlers

To assist in maintaining objectivity, each department or agency also should assign two investigators to each informant. One is the primary informant handler, while the second acts as an alternate. The alternate handler should witness every payment for services and expenses, attend most debriefing sessions, and contact the source any time the primary contact is unavailable.

Often, there is resistance to this policy because investigators object to another person being involved. Many believe the alternate causes friction and depersonalizes the affiliation. However, the alter-

nate can both sympathize with the informant and remain objective and slightly detached. This relationship helps to maintain a balance and perspective that fosters control.

Develop Strict Payment Procedures

In the past, investigators paid informants nominal amounts of money. This is no longer the case. Many police agencies disburse substantial amounts of money to sources, and consequently, expect to be able to direct their activities. This requires accountability. Payments must be witnessed, receipts obtained, and cumulative records maintained.

Generally, informants should be paid on a C.O.D. basis, not on a regular schedule. Also, only when informants provide valuable information should they be paid. There should be no standard pay scale for information. The informant handler must consider the value of each item and then recommend a specific payment.

Many factors affect the amount of a payment. What kind of

information is provided? Is the source placed in any real danger? What is the status of the case? How long has the source provided information? How reliable is the source? Normally, the informant's handler should suggest an appropriate payment and an immediate supervisor should authorize it.

CONCLUSION

Working informants is fulfilling. Investigators who use informants effectively can be reasonably sure that they are going to develop cases against key criminals. Having someone report on the daily successes and frustrations of criminals helps investigators to gather and maintain evidence that leads to apprehensions and prosecutions.

U.S. District Court Judge Stephen Trott once addressed U.S. Government prosecutors on using informants to try cases. In a supplement to that lecture, he noted, "Notwithstanding all the problems that accompany using criminals as witnesses...the fact of the matter is that police and prosecutors cannot do without them—period."

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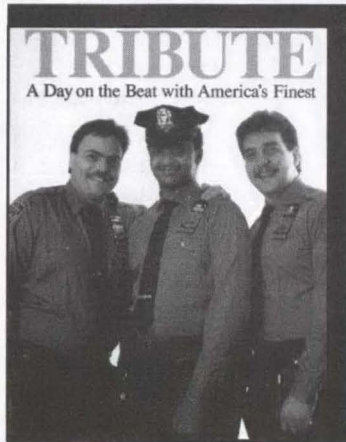
Footnotes

¹ *United States v. Dennis*, 183 F.2d 201 (2d Cir. 1950).

² E. Cherry and C. Molton, "Police and the Criminal Informant," unpublished dissertation for the Advanced Course 3/80 Project, Metropolitan Police Detective Training School.

³ James Reese, "Motivations of Criminal Informants," *FBI Law Enforcement Bulletin*, May 1980, p. 24.

⁴ There may be occasional exceptions to this rule. For example, a judge may require an "ex parte, in camera" hearing to determine the source's reliability and accuracy of the information provided. Prosecutors may want to talk to a source before they seek warrants or subpoenas.



Tribute: A Day on the Beat With America's Finest, by Neil Lawrence, Paul McIver, John Henderson, and Norm Croker, Tribute Books, New South Wales, Australia. Published Through the Police Executive Research Forum, (202) 466-7820.

This book offers a unique and compelling look at policing in contemporary America. The authors present a broad and realistic overview of police work in communities around the country.

Tribute begins with roll call in a New York City precinct and proceeds on a 24-city tour of police departments in the United States, ending with a look at Honolulu, Hawaii's Specialized Services Division. Each chapter introduces a different city and examines a different aspect of police work, from homicide investigations in Long Beach, California, to intercepting illegal aliens in El Paso, Texas.

Much of the text is drawn from interviews with officers in the different departments. These officers express the drawbacks and rewards, as well as the emotional highs and lows, of the profession. Many offer insights that are rarely heard outside the precinct locker room.

What emerges is a frank depiction of police work as told by those who battle

crime—and boredom and frustration—everyday. The officers discuss the criminals, the crimes, and the methods they employ to solve cases and to prevent criminal activity.

The book is a tribute to today's police in the best sense of the word. It presents them as they really are, largely in their own words. The text reveals several truths about policing that should be heeded by policymakers and community leaders. Regardless of how effective departments may be, today's crime problems are too complex, and in some cases, too deeply rooted to be solved by law enforcement alone. Communities must be willing to provide new levels of assistance, if real progress is to be made in combatting crime. The officers relate from experience that the roots, not just the consequences, of crime must be addressed.

Tribute also uses pictures to tell the story. There are many captivating photographs that depict different aspects of law enforcement, from the light hearted to the serious. They provide a good complement to the text.

While *Tribute* can be loosely categorized as a "coffee table" book, the insightful and revealing text makes it much more. It is a rare look at policing from the inside, told by officers who might not sit down and write an entire textbook. The experiences presented, though, will help those in and outside law enforcement to more fully understand and appreciate the different aspects of modern policing and the men and women who serve in today's police departments across the United States.

Proceeds from the sale of this book benefit the National Law Enforcement Officers Memorial Fund.

Reviewed by
Andrew DiRosa
Office of Public Affairs
Federal Bureau of Investigation
Washington, DC

Cellmate Informants

A Constitutional Guide to Their Use

By
KIMBERLY KINGSTON CRAWFORD, J.D.



In recent years, legal scholars have debated the legality and propriety of using cellmate informants. While some scholars find the practice a “mere strategic deception [that takes] advantage of a suspect’s misplaced trust in one he supposes to be a fellow prisoner,”¹ others view the use of cellmate informants as being “so offensive to a civilized system of justice that [the practice] must be condemned.”² Despite this debate, law enforcement officers appear to have a unanimous opinion regarding the use of cellmate informants—it is a technique that works. Fortunately, the U.S. Supreme Court recently decided *Illinois v. Perkins*,³ which is a case that while not putting an end to the debate, answers some questions regarding the constitutionality of using cellmate informants and paves the way for law enforcement officers to take advantage of this most effective technique.

This article focuses on the decision in *Perkins* and examines similar cases that deal with the constitutional issues involved in using cellmate informants. More specifically, this article addresses the fifth and sixth amendment considerations that must be taken into account when placing an informant in a suspect’s cell.

FIFTH AMENDMENT— SELF-INCRIMINATION CLAUSE

While serving a 6-year sentence for burglary at the Graham Correctional Facility in Hillsboro, Illinois, Donald Charlton met and befriended fellow inmate Lloyd Perkins. In the course of their

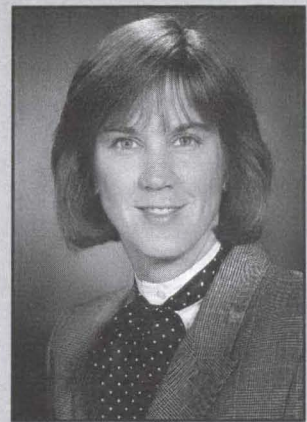
friendship, Perkins confided in Charlton the details of a murder he had committed in East St. Louis. Believing that "people should not kill people,"⁴ Charlton eventually relayed this information to law enforcement officials. Because the information provided by Charlton tracked very closely the facts of an unsolved case under investigation in East St. Louis, officers found Charlton's story to be credible and decided to pursue the matter further. Accordingly, it was decided that undercover agent John Parisi, assuming the alias "Vito Bianco," would accompany Charlton to the Montgomery County Jail, where Perkins was incarcerated on an unrelated charge of aggravated assault.

After being booked and photographed, Parisi and Charlton were placed in a cellblock with Perkins. Charlton introduced Parisi to Perkins as a fellow inmate from the Graham Correctional Facility. Parisi and Charlton led Perkins to believe that they had escaped from a work release program at Graham and had gotten as far as Montgomery County when their money and their luck ran out. During the conversation that ensued, Parisi advised Perkins that he "wasn't going to do any more time,"⁵ and suggested that they attempt another escape. Perkins readily agreed and volunteered his girlfriend to smuggle in a pistol. When asked if he had ever "done" anyone, Perkins described at length the details of the East St. Louis killing. The following day, Perkins was charged with murder.

Prior to trial, Perkins moved to suppress the statements made to

"...law enforcement officers should instruct cellmate informants to avoid making any statements that may be construed as threats or promises of leniency."

Special Agent Crawford is a legal instructor at the FBI Academy, Quantico, Virginia.



Charlton and Parisi while in the Montgomery County Jail. Because no *Miranda* ⁶ warnings had been given to Perkins prior to his conversation with Parisi and Charlton, the trial court granted Perkins' motion to suppress. The Appellate Court of Illinois, holding that all undercover contacts with prisoners that are reasonably likely to elicit incriminating responses violate the rule in *Miranda*, affirmed the suppression order.⁷ The U.S. Supreme Court reviewed the decision of the Appellate Court of Illinois and reversed. In doing so, the Court focused on the fifth amendment protection against self-incrimination, which is the linchpin of the *Miranda* rule.

The fifth amendment to the U.S. Constitution provides in part that "no person...shall be compelled in any criminal case to be a witness against himself...."⁸ Over 2 decades ago, the Supreme Court in *Miranda v. Arizona* ⁹ held that custodial interrogation of an individual creates

a psychologically compelling atmosphere that works against this fifth amendment protection.¹⁰ In other words, the Court in *Miranda* believed that an individual in custody undergoing police interrogation would feel compelled to respond to police questioning. This compulsion, which is a byproduct of most custodial interrogation, directly conflicts with every individual's fifth amendment protection against self-incrimination. Accordingly, the Court developed the now-familiar *Miranda* warnings as a means of reducing the compulsion attendant in custodial interrogation. The *Miranda* rule requires that these warnings be given to individuals in custody prior to the initiation of interrogation. This rule, however, is not absolute.¹¹

In *Perkins*, the Supreme Court recognized that there are limitations to the rule announced in *Miranda*. The Court expressly rejected the argument that "*Miranda* warnings are required whenever a suspect is

in custody in a technical sense and converses with someone who happens to be a government agent.”¹² Rather, the Court concluded that not every custodial interrogation creates the psychologically compelling atmosphere that *Miranda* was designed to protect against. When the compulsion is lacking, so is the need for *Miranda* warnings.

The Court in *Perkins* found the facts at issue to be a clear example of a custodial interrogation that created no compulsion. Pointing out that compulsion is “determined from the perspective of the suspect,”¹³ the Court noted that Perkins had no reason to believe that either Parisi or Charlton had any official power over him, and therefore, he had no reason to feel any compulsion. On the contrary, Perkins bragged about his role in the murder in an effort to impress those he believed to be his fellow inmates. *Miranda* was not designed to protect individuals from themselves. Consequently, the Court held there was no need to advise Perkins of his rights prior to his conversation with Parisi and Charlton.

The controlling facts present in *Perkins* would most likely exist in any case where statements are obtained by a cellmate informant or an officer operating undercover in a prison. Although there is custodial interrogation in the technical sense, there is no compulsion if the suspect is unaware of the officer’s or informant’s true identity or purpose. Therefore, there is no need to advise jailed suspects of their *Miranda* rights prior to using a cellmate informant.¹⁴ There are, however, other fifth and sixth amendment rights that can limit the use of

cellmate informants as an investigative technique.

FIFTH AMENDMENT—DUE PROCESS CLAUSE

In addition to the self-incrimination clause, the fifth amendment to the U.S. Constitution also provides that “no person shall be...deprived of life, liberty, or

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...a cellmate
informant may
gather information
about an
unrelated crime
because the sixth
amendment is
crime specific.”

property, without the due process of law.”¹⁵ This due process clause has been interpreted by the Supreme Court as requiring that all defendants in criminal prosecutions be treated with fundamental fairness.¹⁶ With respect to confessions, the Court has held that to be fair, a confession must be voluntary.¹⁷ To coerce a suspect into making an involuntary statement or confession would be unfair, and thus, the use of that statement against the suspect would constitute a violation of due process.

On the other hand, no unfairness or due process violation would result from the use of an uncoerced statement voluntarily made by the

suspect. To avoid due process problems, a law enforcement officer contemplating the use of a cellmate informant must take steps to ensure that an informant does nothing to coerce the suspect into making an involuntary statement. The case of *State v. Fulminate*¹⁸ is illustrative of this point.

In *Fulminate*, defendant was serving a 2-year sentence on a weapons violation when he met and became friends with fellow inmate Anthony Sarivola, an FBI informant masquerading as an organized crime figure. Following the inception of their friendship, Sarivola heard a rumor that defendant was responsible for the murder of a young girl in Arizona. Although defendant denied the rumor, Sarivola relayed the information to his contact in the FBI and was instructed to find out more. Knowing that defendant was receiving “rough treatment” from other inmates because of the rumor, Sarivola offered defendant his protection in exchange for the truth. In response, defendant confessed to shooting his 11-year-old stepdaughter in the head after first raping her and making her beg for her life. At the defendant’s trial for first-degree murder, Sarivola was permitted, over defense objections, to repeat to the jury the confession defendant had previously made.¹⁹ The jury subsequently found defendant guilty of murder in the first degree and sentenced him to death.

On appeal, defendant argued, among other things,²⁰ that his confession to Sarivola was involuntary, and therefore, the use of that confession against him was a violation of due process. In support of this argu-

ment, defendant reminded the court that his reputation in the prison as a child murderer subjected him to a very serious threat of physical abuse at the hands of the other inmates. Sarivola, it was argued, recognized defendant's vulnerability and used it as a tool to extract the confession. After reviewing the facts, the Arizona Supreme Court agreed with defendant's due process argument and concluded as follows:

"To be deemed free and voluntary within the meaning of the fifth amendment, a confession must not have been obtained by 'any direct or implied promises, however slight, *nor by the exertion of any improper influence.*'"²¹

Believing Sarivola's offer of protection to be "an exertion of improper influence," the court found the resulting confession to be involuntary and its use at trial a violation of due process. Defendant's conviction was, therefore, reversed.

The U.S. Supreme Court has agreed to review the *Fulminate* case.²² While it is possible that the decision of the Arizona Supreme Court will be reversed after review, the State court's opinion still serves as a poignant reminder to law enforcement officers of the need to keep a close rein on cellmate informants.

As is evident in *Fulminate*, even the most innocuous of statements can be made to appear threatening or coercive when dissected by the courts. To avoid fifth amendment due process problems, careful planning must occur prior to any contact between a cellmate informant and a suspect. In particular, law enforcement officers should in-

struct cellmate informants to avoid making any statements that may be construed as threats or promises of leniency.

SIXTH AMENDMENT— RIGHT TO COUNSEL

The final constitutional concern confronting a law enforcement officer contemplating the placement of a cellmate informant is whether the use of the informant will violate the suspect's sixth amendment right to counsel. The sixth amendment to the U.S. Constitution guarantees that "[i]n all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defense."²³ The U.S. Supreme Court has interpreted the sixth amendment as

"...simply placing an informant in a cell of a suspect who has been formally charged does not... constitute a sixth amendment violation."

guaranteeing not merely the right to counsel but, more importantly, the right to the *effective assistance* of counsel.²⁴ To be effective, an attorney must be permitted to form a relationship with the accused some time prior to trial,²⁵ and the government cannot needlessly interfere with that relationship.²⁶ Thus, to resolve all sixth amendment con-

cerns, a law enforcement officer contemplating the use of a cellmate informant must determine two things: 1) Did the suspect's right to counsel attach? and 2) if so, what can a cellmate informant do without interfering with that right?

Right to Counsel Attaches at Critical Stage

Determining whether a suspect's right to counsel has attached simply requires the law enforcement officer to discover whether the suspect has reached a critical stage in the prosecution. As previously mentioned, the sixth amendment right to counsel would be meaningless if the suspect and attorney were not permitted to form a relationship some time prior to trial. However, the Supreme Court has held that it is not necessary to allow this relationship to form simply because an individual becomes a suspect in a case.²⁷ Instead, the Court has found that the sixth amendment guarantee of the effective assistance of counsel is satisfied if the attorney and suspect are permitted to form their relationship once the prosecution has reached a critical stage.²⁸

The Court has defined the critical stage as the filing of formal charges (i.e. an indictment or an information) or the initiation of adversarial judicial proceedings.²⁹ Thus, if no formal charges have been filed against the suspect and no initial appearance before the court has been conducted, then no critical stage in the prosecution has been reached, and a cellmate informant can be placed without concern for the suspect's sixth amendment right to counsel. If, on the other hand, a criti-

cal stage has been reached, then the suspect's sixth amendment right to counsel has attached and extreme caution must be used to ensure that the cellmate informant does not interfere with that right.

Post-Critical Stage Uses for Cellmate Informants

Once it is determined that a suspect's sixth amendment rights have attached, the law enforcement officer must realize that there are only two functions a cellmate informant can lawfully perform without interfering with that suspect's right to counsel. These two functions are: 1) Gathering information regarding an unrelated crime,³⁰ or 2) acting as a listening post.³¹

Unrelated crimes

Even though the suspect's right to counsel has attached, a cellmate informant may gather information about an unrelated crime because the sixth amendment is crime specific.³² Under the sixth amendment, a suspect only has the right to the assistance of counsel with respect to the crimes formally charged against him.³³ If, then, a cellmate informant is used to elicit information from a suspect that pertains to some unrelated, uncharged crime, there is no unlawful interference with the suspect's right to counsel. The facts in *Perkins* demonstrate this point well.

As noted earlier, Perkins was in the Montgomery County Jail pending trial on a charge of aggravated assault when Charlton and Parisi were placed in his cellblock to gather information about an unrelated murder. Because Perkins had

been formally charged with aggravated assault, he had a right to counsel with respect to that particular crime and the informants could do nothing to interfere with that right.³⁴ Perkins had not, however, been formally charged with, or even arrested for, the murder that occurred in East St. Louis. Thus, the actions of the informants that resulted in the acquisition of information about the murder neither interfered with nor violated Perkins' sixth amendment right to counsel.³⁵

Listening post

Unlike the situation present in *Perkins*, if a cellmate informant is placed with the intent of gathering information about a crime that is the

“...there is no compulsion if the suspect is unaware of the officer's or informant's true identity or purpose.”

subject of formal charges against the suspect, the only role the cellmate informant may play is that of a listening post. The Supreme Court has determined that simply placing an informant in the cell of a suspect who has been formally charged does not, in and of itself, constitute a sixth amendment violation.³⁶ Rather, there must be some deliberate attempt on the part of the informant to elicit information

regarding those charges from the suspect.³⁷ It is the act of deliberate elicitation that creates the sixth amendment violation. Consequently, a law enforcement officer who places an informant in the cell of a formally charged suspect in an attempt to obtain information relating to those charges should be prepared to demonstrate that there was no deliberate elicitation on the part of the informant.³⁸ While not impossible, demonstrating the lack of deliberate elicitation may be very difficult indeed. *United States v. Henry*,³⁹ which was decided in 1980, is a case in point.

After being indicted on charges of bank robbery, the defendant in *Henry* was fortuitously placed in a cellblock with Nichols, a long-time FBI informant. Upon discovering this fact, FBI Agents instructed Nichols to refrain from questioning Henry about the bank robbery but, if by chance the robbery was mentioned, Nichols was told to pay close attention to what was said. Eventually, Henry revealed his part in the bank robbery to Nichols, who was thereafter called as a witness against him at trial. On the basis of Nichols' testimony, Henry was convicted and sentenced to 25 years in prison. Henry subsequently appealed his conviction on the grounds that the use of the cellmate informant's testimony against him violated his sixth amendment right to counsel. Ultimately, Henry's case was reviewed by the Supreme Court and his conviction was reversed.

The reversal of Henry's conviction was based on the Supreme Court finding that the cellmate informant deliberately elicited the

information about the bank robbery from Henry. Despite the fact that an FBI Agent testified that he directed the informant to neither question nor initiate any conversation with Henry regarding the bank robbery, the Court found deliberate elicitation on the part of the informant. This finding was a result of the Court's belief that an informant, who is paid on a contingent-fee basis, would naturally be inclined to take affirmative steps to secure information. Moreover, the Court held that the government should have realized the likelihood of such actions on the part of the informant, and merely instructing him to the contrary was insufficient to negate the presumption of deliberate elicitation.

In the wake of *Henry*, it appeared virtually impossible for a law enforcement officer to convince the Court that there was no deliberate elicitation on the part of a cellmate informant. After all, every cellmate informant that is either paid or promised special consideration works on a "contingent-fee" basis and would be subject to the natural inclination to deliberately elicit information referred to by the Court in *Henry*. However, 6 years after the decision in *Henry*, the Supreme Court gave law enforcement officers new hope when it decided *Kuhlmann v. Wilson*,⁴⁰ and shifted the burden of proving deliberate elicitation clearly to the defendant.

The facts in *Kuhlmann* are substantially similar to those in *Henry* in that a cellmate informant was used to gather incriminating information from an indicted suspect who was subsequently convicted on

the strength of that informant's testimony. Unlike *Henry*, however, the Supreme Court in *Kuhlmann* found no deliberate elicitation on the part

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It is the act of
deliberate elicitation
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sixth amendment
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of the informant and upheld the defendant's conviction. In doing so, the Court made the following statement:

“ ‘Since the Sixth Amendment is not violated whenever—by luck or happenstance—the State obtains incriminating statements from the accused after the right to counsel has attached,’ a defendant does not make out a violation of that right simply by showing that an informant, either through prior arrangement or voluntarily, reported his incriminating statements to the police. Rather, the *defendant must demonstrate* that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks.’ ”⁴¹ (emphasis added)

Even though the Court in *Kuhlmann* clearly placed the burden of proving deliberate elicitation on the defense, lower courts are undoubtedly going to look very close-

ly at the actions and motivations of the informant.⁴² Obviously, many cellmate informants are going to be less than completely credible on the witness stand. Consequently, the law enforcement officer should, if possible, be prepared to meet the defense claim of deliberate elicitation with evidence other than the informant's own testimony to the contrary. In *Perkins*, for example, the case did not rest solely on the word of the informant because an undercover agent was also placed in the cellblock with the suspect. Other strategies could include using more than one informant so there is corroborating testimony or planting a listening device in the suspect's cell. If none of these options are viable in a particular case, the law enforcement officer has no other choice than to carefully select and instruct the informant to ensure compliance with sixth amendment requirements.

CONCLUSION

Apparently, confined suspects often have an overwhelming desire to talk about their criminal activities with those they consider their peers. Clearly, in light of the Supreme Court's decision in *Perkins*, a law enforcement officer can take advantage of this phenomenon by placing an informant in the prison population. When doing so, however, the officer must be ever mindful of the boundaries set by the fifth and sixth amendments. Through thoughtful selection, careful planning, and detailed instruction, the officer can ensure that an informant operates within those boundaries and conforms to fifth and sixth amendment standards.

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Footnotes

- ¹ *Illinois v. Perkins*, 110 S.Ct. 2394, 2397 (1990) [hereinafter cited as *Perkins*].
- ² *Perkins*, *supra* note 1, at 2400 (Brennan, J., concurring).
- ³ *Perkins*, *supra* note 1.
- ⁴ *People v. Perkins*, 531 N.E.2d 141, 142 (Ill. App. 1988). Charlton received no compensation for his cooperation with the police.
- ⁵ *Perkins*, *supra* note 1, at 2396.
- ⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).
- ⁷ *People v. Perkins*, *supra* note 4.
- ⁸ U.S. Const. amend. V.
- ⁹ 384 U.S. 436 (1966).
- ¹⁰ *Id.* at 467.
- ¹¹ See, e.g., *Berkemer v. McCarthy*, 468 U.S. 420 (1984) wherein the Supreme Court held *Miranda* inapplicable to traffic stops. See also, *New York v. Quarles*, 467 U.S. 649 (1984) recognizing a public safety exception to *Miranda*.
- ¹² *Perkins*, *supra* note 1, at 2397.
- ¹³ *Id.* In *Perkins*, the Supreme Court used the words "coercion" and "compulsion" interchangeably.
- ¹⁴ In his concurring opinion, Justice Brennan suggested that the use of a cellmate informant would violate *Miranda*, if the suspect had previously invoked his fifth amendment right to silence or right to counsel. *Id.*, at 2399 n. ** (Brennan, J., concurring). It should be noted that no other members of the Court voiced agreement with Justice Brennan on this point. In fact, the reasoning of the majority in *Perkins* appears to contradict Justice Brennan's statement. If the use of a cellmate informant does not constitute custodial interrogation, then it should not matter, for purposes of *Miranda*,

whether incarcerated suspects have previously invoked their rights or not. The *Miranda* standard does not change when individuals invoke their rights—only custodial interrogation is prohibited.

- ¹⁵ U.S. Const. amend. V, *supra* note 8.
- ¹⁶ *Brown v. Mississippi*, 297 U.S. 278 (1938).
- ¹⁷ *Id.*
- ¹⁸ 778 P.2d 602 (Ariz. 1988), *cert. denied*, 110 S.Ct. 1522 (1990) [hereinafter cited as *Fulminate*].
- ¹⁹ The informant was also permitted to repeat a statement defendant made almost a year after his initial confession. The second statement was made when the informant, already released from prison, and his girlfriend picked defendant up at a bus station following defendant's release. The Arizona Supreme Court suppressed the second statement, finding it a fruit of the earlier due process violation.
- ²⁰ Defendant also raised a *Miranda* objection. However, the Arizona Supreme Court rejected that argument.
- ²¹ *Fulminate*, *supra* note 18, at 609.
- ²² 110 S.Ct. 1522 (1990).
- ²³ U.S. Const. amend. VI.
- ²⁴ *Cuyler v. Sullivan*, 100 S. Ct. 1708 (1980).
- ²⁵ *United States v. Wade*, 338 U.S. 218 (1967).
- ²⁶ In *Weatherford v. Bursey*, 429 U.S. 545 (1977), the Supreme Court held that some interference with the right to counsel may be justified.
- ²⁷ *United States v. Gouveia*, 104 S.Ct. 2292 (1984).
- ²⁸ *Massiah v. United States*, 377 U.S. 201 (1964).

²⁹ *Id.*

³⁰ *Hoffa v. United States*, 385 U.S. 293 (1966) [hereinafter cited as *Hoffa*].

³¹ *Kuhlmann v. Wilson*, 106 S.Ct. 2616 (1986) [hereinafter cited as *Kuhlmann*].

³² *Hoffa*, *supra* note 30.

³³ *Id.*

³⁴ In *Maine v. Moulton*, 106 S.Ct. 477 (1985), the Supreme Court held that the government could not use statements made by a defendant to an informant about pending charges, even if acquired during investigation of separate offenses.

³⁵ *Perkins*, *supra* note 1.

³⁶ *Kuhlmann*, *supra* note 31.

³⁷ *Id.*

³⁸ Although the burden of proof rests with the defendant on this issue, the government should be prepared to counteract claims of deliberate elicitation.

³⁹ 447 U.S. 264 (1980).

⁴⁰ *Kuhlmann*, *supra* note 36.

⁴¹ *Id.* at 2630.

⁴² See, e.g., *United States v. Watson*, 894 F.2d 1345 (D.C. App. 1990); *Endress v. Dugger*, 880 F.2d 1244 (11th Cir. 1989); *State v. Fain*, 774 P.2d 252 (Idaho 1989); *State v. Robinson*, 448 N.W.2d 386 (Neb. 1989); *State v. Bruneau*, 552 A.2d 585 (N.H. 1988); and *State v. Mastrofine*, 551 A.2d 1174 (R.I. 1988).

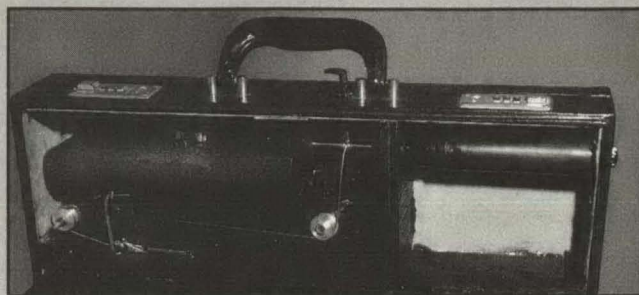
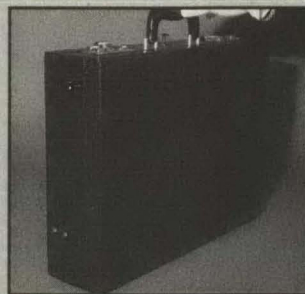
Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Unusual Weapon

Deadly Briefcase

During joint inquiries by the New South Wales Police and agents of the Australian Federal Police, several briefcases with deadly modifications have been seized. Concealed within this hard-sided briefcase is a .22-caliber, seven-shot rifle, fitted with a silencer. The inside of the case is divided into two sections, one of which conceals the rifle. The weapon is fired by raising an "L" shaped metal fitting located under the carrying handle of the case.

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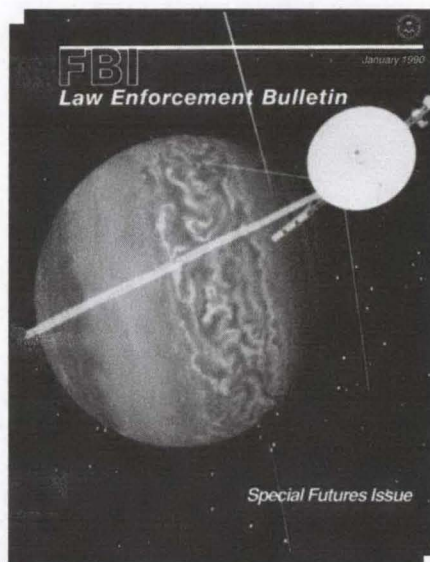
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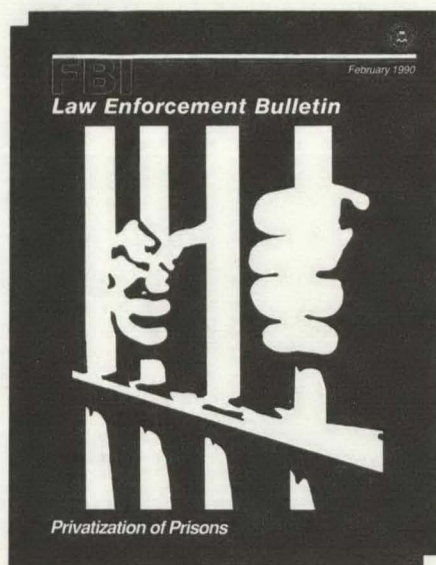
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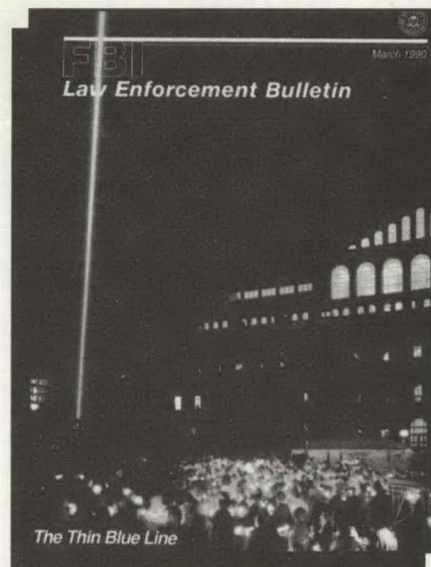
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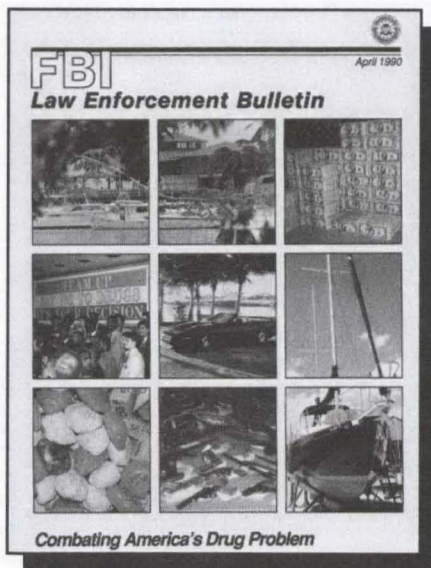
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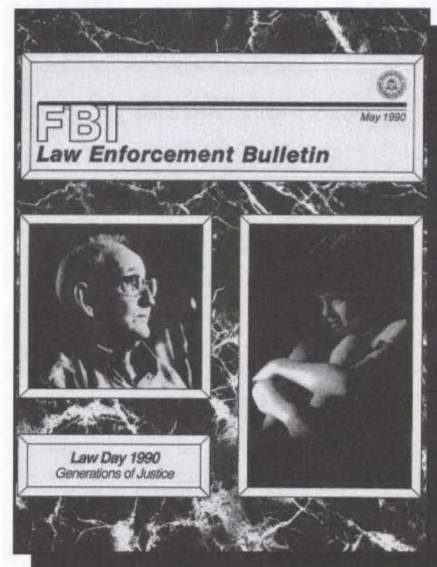
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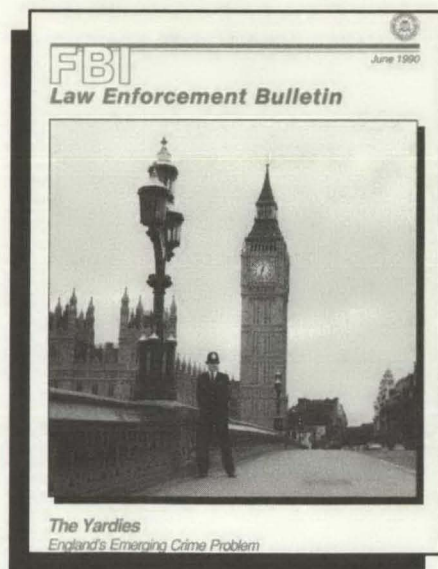
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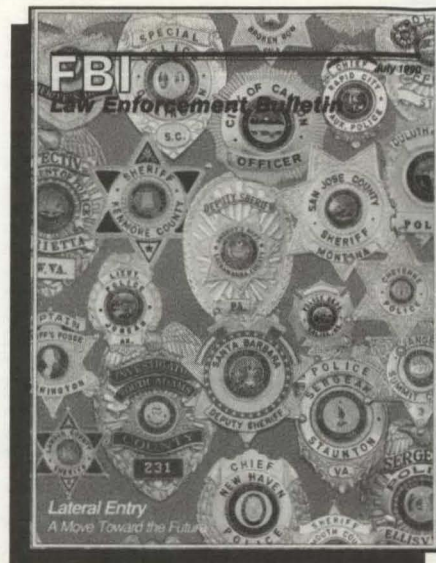


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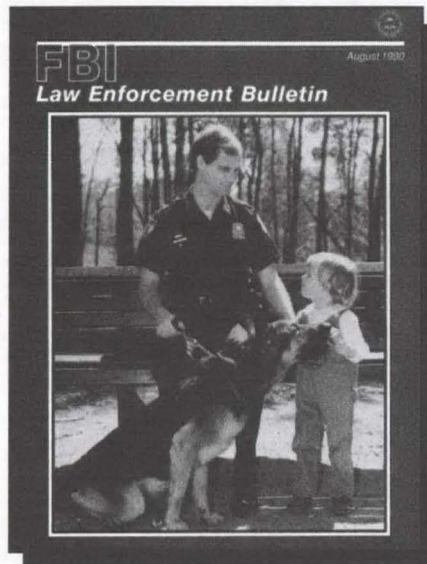
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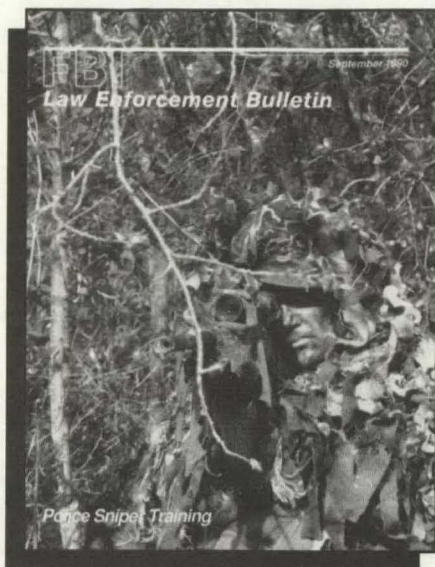
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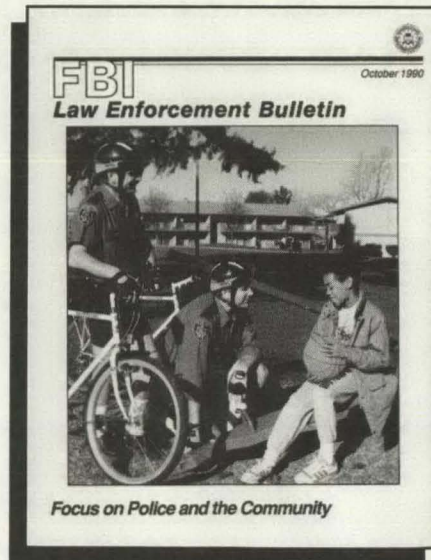
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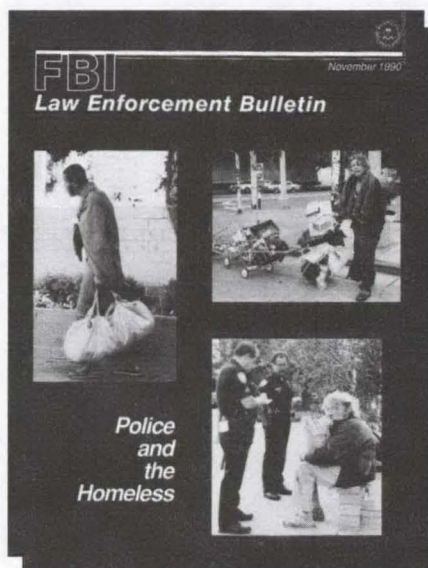
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Submission Guidelines

Manuscript Specifications

Length: 1,000 to 3,000 words or 5 to 12 pages double-spaced.

Format: All manuscripts should be double-spaced and typed on 8½" by 11" white paper. All pages should be numbered and three copies should be submitted for review purposes. Where possible, floppy disks using WordPerfect should be submitted with typed manuscript.

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of reading, structure and logical flow, length, relevance to audience, and analysis of information. Favorable consideration will generally not be given to an article that has been published previously or which is being considered by another magazine. Articles which are used to advertise a product or a service will be rejected.

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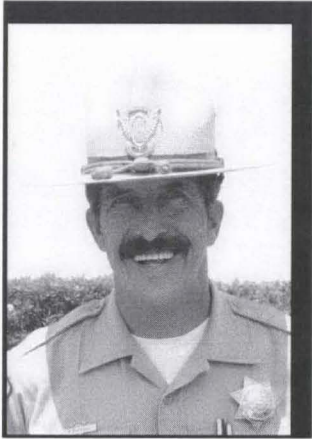
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The Bulletin Notes

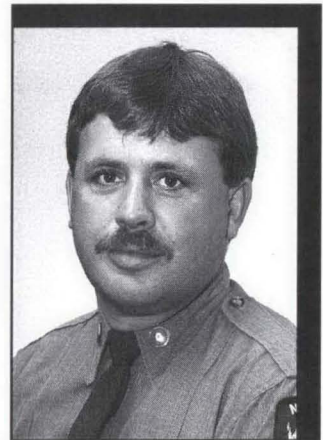
Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their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



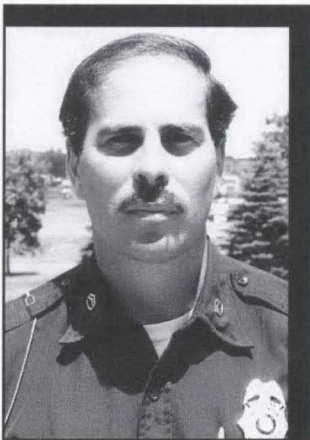
Officer Wondzell

Officer Terry Wondzell of the California Highway Patrol, Victorville Area, was directing traffic around a stalled tractor-trailer, when a motorist approaching the scene in a pickup truck lost control, causing the vehicle to overturn. The truck immediately caught fire, trapping the driver and passenger inside. Officer Wondzell pried open a portion of the windshield, and before the vehicle became engulfed in flames, carried both occupants to safety.

Trooper Steven A. Nutting of the New York State Police responded to a high school where a youth brandishing a shotgun was terrorizing students and teachers. After being escorted to the assailant by school officials, Trooper Nutting attempted to calm and reassure the youth, as he walked closer to him. When he was within 5 feet, the youth pointed the weapon point blank at the trooper's chest. When the young man was momentarily distracted, Trooper Nutting wrestled away control of the gun, and with the assistance of other troopers now on the scene, subdued the assailant without incident.



Trooper Nutting



Trooper De Stefano

Trooper Anthony De Stefano of the Wisconsin State Patrol was approached by the grandmother of a child who had stopped breathing. He immediately called for an ambulance and then began CPR on the infant. Trooper De Stefano repeatedly resuscitated the child, only to have him stop breathing again. Eventually, the child was transported to a local hospital where he was treated and released.

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