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## Small Departments and Community Policing

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## Features



## Departments




***On the Cover:*** *Small police departments can successfully implement the community policing philosophy. See article p. 1. Cover photo by Orlando Mendez, courtesy of the Metro-Dade, Florida, Police Department.*

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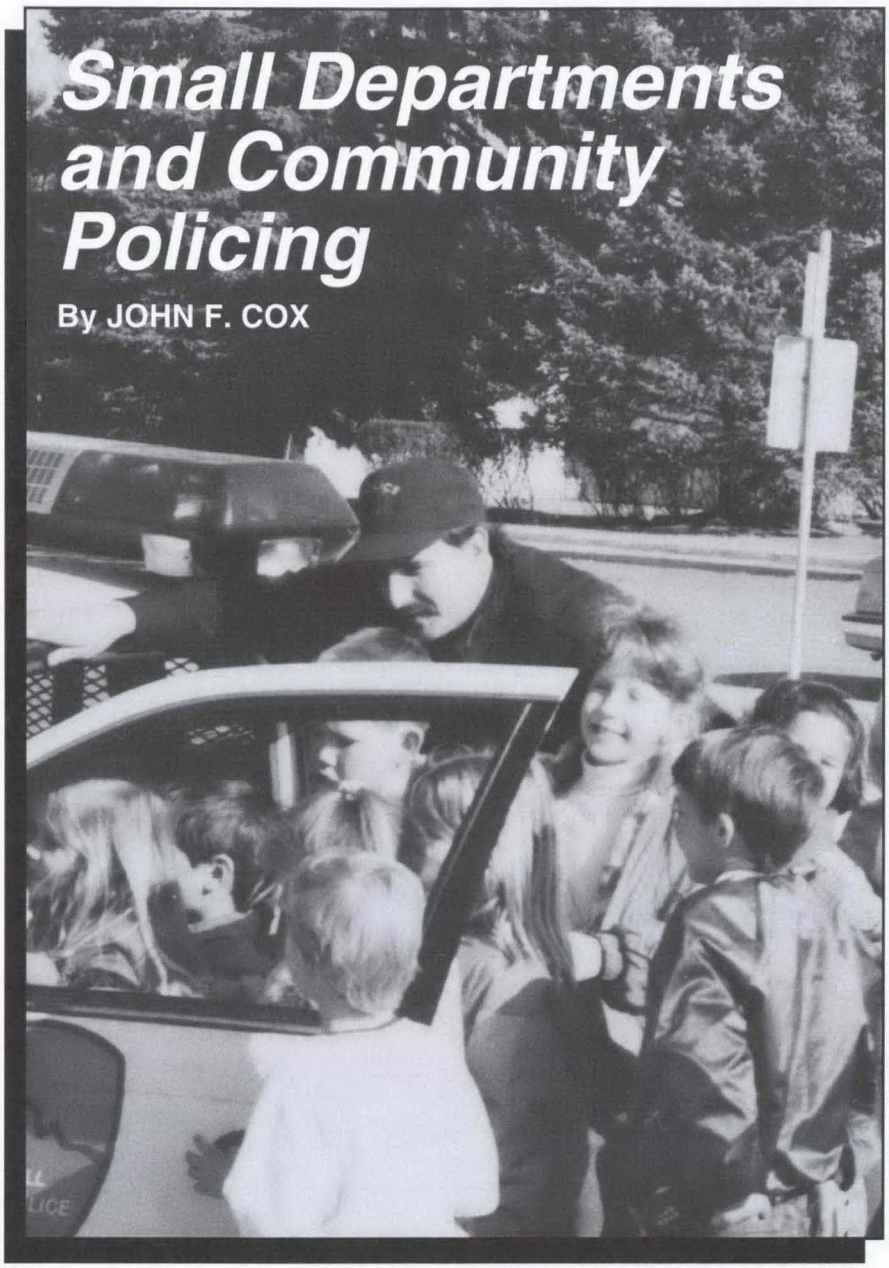
# Small Departments and Community Policing

By JOHN F. COX



During the past several years, many police executives implemented the concept of community policing within their departments.[1] By now, these police executives realize that community policing is a *philosophy* and an organizational strategy, not merely a new program. Accordingly, employees of community policing departments understand that they need to solve existing problems in an innovative way—they must involve citizens in the process of policing themselves.[2]

Many write about large- and medium-sized police departments that return the police to the communities they serve by forming partnerships with the citizens. However, according to the International Association of Chiefs of Police (IACP), 79 percent of police agencies in the United States employ 25 or fewer officers, and 60 percent of that number employ fewer than 10 sworn officers.[3] Even so, small-sized departments that implement a community policing philosophy generate little discussion.

Some suggest that most departments with fewer than 25-30 officers already subscribe, by virtue of their environment, to "community policing." This is probably true to some extent, since police officers in small towns tend to know most of the community's residents. However, small town policing and community policing are not necessarily the same, and small agencies need to consider the benefits that can be realized from a change in philosophy toward a new partnership with the community.

This article discusses the community policing philosophy and how it might impact on small departments, police administrators, and communities, as well as what internal changes need to occur when departments implement the concept. Finally, it includes a "critical issues" checklist that police administrators should carefully consider before making a

public move toward community policing.

## CHANGE CONSIDERATIONS

Community policing departments are more receptive to innovation than traditional departments with autocratic structures, which do not lend themselves to this type of concept. Therefore, departments interested in community policing must first consider changes to reshape their internal organizations.

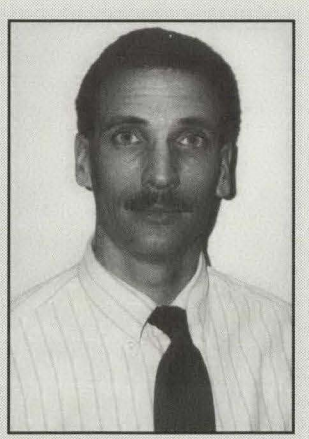
To begin, department officials should examine their approaches to internal problem solving. This sometimes necessitates that administrators make some difficult, and perhaps risky, decisions to change the way things have always been done. Because traditional organizations oftentimes do not encourage collaborative thinking between management and personnel, resentment and dissension may build. In community policing, the partnership between management and employees begins *within* the organization.

This does not mean that command and control cannot exist. Many situations occurring within a department obviously need to be handled according to procedures that require tight controls. It *does* mean that departmentwide input and problem solving can impact on day-to-day police work.

However, not all aspects of the organization must change. The Superintendent of Police in Edmonton, Alberta, Canada, suggests a "bureaucratic garage sale":

> "...the conventional police organization is like a 50-year-old house. When it was built, it was new, strong, and in vogue, but with the passage of time...parts of it rot, and it goes out of style. The answer, however, is not to bulldoze it down. What is needed is an imaginative renovation job. "Gut the rotted and anachronistic parts from the old and begin building from that solid base so that you end with a house that is once again strong, contemporary, and retains that of the old which complements the new."[4]

With this in mind, police administrators can begin the process of incorporating community policing into their departments.



***"Community policing produces a new vitality and deeper fulfillment in law enforcement's relationship with the public...."***

*Chief Cox heads the Powell, Wyoming, Police Department.*

## CONCRETE CHANGES

The community policing philosophy requires that officials make certain concrete changes within the organization. These changes provide for a smooth transition to the community policing concept.

### Redefine the Department's Role

To begin, department officials must redefine the role of the police in their communities. In some cases, this may be the first time administrators give specific thought to the role of the department within their communities. It is important, though, that community policing departments work as partners with the citizens they serve to solve problems that relate to the quality of life, as opposed to simply enforcing the law.

### Train Officers

Once officials define the role of the department in the community, they must train all officers on the principles and philosophy of community policing. Here again, small departments have an advantage in that administrators can take a hands-on approach to the training in an

atmosphere more conducive to good communication and understanding.

### Evaluate Employees Differently

Officials must evaluate community policing officers differently than those who work in more traditional police environments. For example, in addition to productivity, the evaluation should include credit for *creativity*. The officers should show a firm commitment to solve problems in innovative ways. Officials, on the other hand, should make all officers aware of how they rate certain elements of their jobs, and they need to meet with officers on a regular basis to discuss whether the officers need to improve in any particular areas.

The Powell Police Department uses an employee evaluation form that rates over 35 factors indicative of character and commitment, such as the officers' perseverance and patience and their relationships with both coworkers and the public. While virtually any officer can produce in terms of numbers, the evaluation system also takes into account the humanistic side of the employee, which more significantly affects the relationship between the department and the public.

### Assign Specific Patrol Areas

In order to give street officers some sense of personal responsibility, officials should assign them to a particular beat. Officials should strategically divide these areas so as to preserve the unique identity of individual neighborhoods. They should also avoid mixing different types of neighborhoods together in the same area of responsibility.

Assigning beats may pose a special challenge to small departments that are generally fortunate just to have enough officers to provide necessary services and to handle calls. As a possible solution to this problem, small departments should attempt to identify areas where the responsible officers could make personal contacts to identify specific problems and possible solutions, even though they must also answer calls for service throughout a larger area.

> ***"...community policing departments work as partners with the citizens they serve...."***

This method of policing develops a sense of ownership of particular geographic areas, and it allows the officers to look seriously at the problems that occur in "their" areas. It also allows small departments of one or two officers to work more closely with the community to solve problems.

### Prioritize Calls

Small departments, like their large counterparts, may have to evaluate and prioritize the calls that require a police response and ease the community into assuming more of the responsibility for resolving problems. For example, minor accidents that occur on private property might require that the drivers go to the police station to file a report, thereby freeing up officer time that could be better spent working in assigned areas. Small departments benefit greatly from this system of prioritizing calls, since they have fewer officers to respond to calls.

### Tailor Police Work to Community Needs

Community policing requires that departments tailor their police work to the particular needs of the community. Therefore, officials should assess the needs of the department in relation to the needs of the community.

In order to do this successfully, officials must seek legitimate citizen input. Line officers should work with citizens and merchants in both neighborhoods and business districts to build and revitalize working relationships, and administrators should make contact with community leaders. In this way, administrators can parallel the more accessible police/neighbor relationship with a more visible role as community leaders.

## CRITICAL ISSUES CHECKLIST

In addition to the concrete changes administrators should make, there are other possible ways to enhance the success of community policing. This "critical issues" checklist falls within the purview of how administrators of small departments, prior to making a public move, should approach incorporating the change to a new philosophy of policing.

### Ensure Strong Administrative Leadership

Administrators must lead the change toward community policing. Subordinates must see that leaders willingly take risks for the good of the whole.

Department administrators must also use their positions of leadership to promote new relationships with the communities they serve. However, police administrators must set the agenda for change. They must oversee the building of relationships with the public without allowing it to take over the relationship.[5] As time passes, change will be necessary, and police administrators who are inflexible will suffer.

### Make a Gradual Change

Administrators can quickly institute even complex programs. However, the change to a new *philosophy* of policing requires more time. It takes time for department personnel to view the community as a partner and to develop ways to act out that partnership.

One way administrators can move gradually toward a community policing policy is to first institute problem-oriented policing. "Essentially, problem-oriented policing (POP) asks officers to think independently to look for underlying dynamics behind a series of incidents, rather than focus on the individual occurrences as isolated events."[6] POP does not require the depth of police/community partnership or substantive structural changes in the department to function effectively. This gives administrators a chance to ease the department into the community policing philosophy.

### Draft a Clear Mission Statement

All community policing departments should adopt a clear mission statement that reflects the department's commitment to forming a partnership with the community. This mission statement sends the message to officers that the department is serious in its community policing effort.

The success of community policing depends greatly on the acceptance of the mission statement by the entire organization. Front-line officers who see the positive results of the program may adapt easily to the philosophy. However, some of these officers, particularly veteran officers, may believe that community policing and social work are much the same.

> ***"Administrators must lead the change toward community policing."***

In addition, community policing requires changes in long-established habits and generally requires a more emotional and cognitive commitment by officers to work *with* the community, rather than *on* the community. When a problem of acceptance exists, management should involve the officers in the change process. They should have decisionmaking power and the freedom to learn from their mistakes. They should also receive credit for good work and creativity, as well as constant encouragement.

### Assess the Community's Needs

Administrators should assess the needs of the communities they serve so that they can efficiently plan the thrust of their particular community policing strategies. One method of doing this involves the use of a community analysis worksheet that is available through the Behavioral Science Services Unit of the FBI Academy in Quantico, Virginia. This worksheet tracks general demographic, socioeconomic, and institutional characteristics of a community. It also helps administrators to examine crime-related social conditions.

## CONCLUSION

Dr. Robert Trojanowicz refers to community policing as the "ideological public-police relationship of the future."[7] Whether this philosophy dominates tomorrow's police work is not entirely predictable, but it is hard to envision either the police or the community not wishing to put the positive aspects of community policing to work.

Community policing produces a new vitality and deeper fulfillment in law enforcement's relationship with the public, emphasizing a partnership between the two. In addition, it eliminates law enforcement's adversarial relationships with law-abiding citizens.

However, administrators who look at community policing merely

as a handy program to increase their popularity with the public are not looking at the risks or the long-term commitment necessary to make community policing work. The positive feedback and improved public relations that result from the program should not be priority goals—partnerships and problem solving are the major priorities.

Community policing offers a concept that emphasizes the police as part of the community. Community policing departments respond positively to the needs of the communities they serve, and they help to restore the quality of life. Yet, they do not surrender the responsibility of criminal detection and apprehension. It is a winning combination. ✦

**Endnotes**

[1] Joseph Harpold, lecture on community policing, 166th Session of the FBI National Academy, Quantico, Virginia, 1991. (Community policing is a partnership between police and law-abiding citizens to create permanent solutions to problems and thereby enhance the quality of life in the community.)

[2] Robert Trojanowicz and Bonnie Bucqueroux, *Community Policing, A Contemporary Perspective* (Cincinnati, Ohio: Anderson Publishing Company, 1990).

[3] *Managing the Small Police Department* (Arlington, Virginia: International Association of Chiefs of Police, 1990)

[4] Chris Braiden, "Ideas on Ownership," *Footprints: The National Community Policing Newsletter*, Michigan State University, Spring/Summer 1991.

[5] Larry Monroe, lecture on community policing, 166th Session of the FBI National Academy, Quantico, Virginia, 1991.

[6] Supra note 2.

[7] Robert Trojanowicz, lecture on community policing, 166th Session of the FBI National Academy, Quantico, Virginia, 1991.

# Book Review

**Power and Restraint: The Moral Dimension of Police Work** *by Howard S. Cohen and Michael Feldberg, Praeger Publishing, New York, 1991, (212)685-5300.*

In testimony during the Independent Commission on the Los Angeles Police Department (The Christopher Commission), a UCLA psychiatrist said, "Police are now required to be diagnosticians, and indeed, gatekeepers with respect to the intoxicated, the mentally ill, the traumatized, the emotionally distraught, the bereaved, and even those in the grip of existential despair." As this observation demonstrates, modern society demands much from the police. Citizens expect officers to be assertive in time of danger, restrained in potentially explosive situations, fair in the resolution of disputes, courteous to all persons, and legally secure in their judgments.

*Power and Restraint* examines these high expectations and explores their sources and rational basis. The authors provide a compact (166 pages) and practical analysis of the moral choices that police make. They also present a persuasive case for establishing clear standards for police behavior based on five criteria: Fair access, public trust, safety and security, teamwork, and objectivity.

Within this framework, the authors set forth four realistic scenarios—working a rock concert, resolving a dispute, "calling in" a favor, and dealing with a child molester—in which to examine the standards. These cases inspire self-reflection and may even spark animated discussions among experienced officers. Most importantly, however, they can serve as blueprints for inservice ethics instruction.

*Power and Restraint* provides a welcome addition to the relatively limited resources available for ethics training in law enforcement. It represents a valuable contribution to the study of police ethics and would be a thought-provoking addition to any police manager's library.

Reviewed by
Hillary M. Robinette (FBI, ret.)
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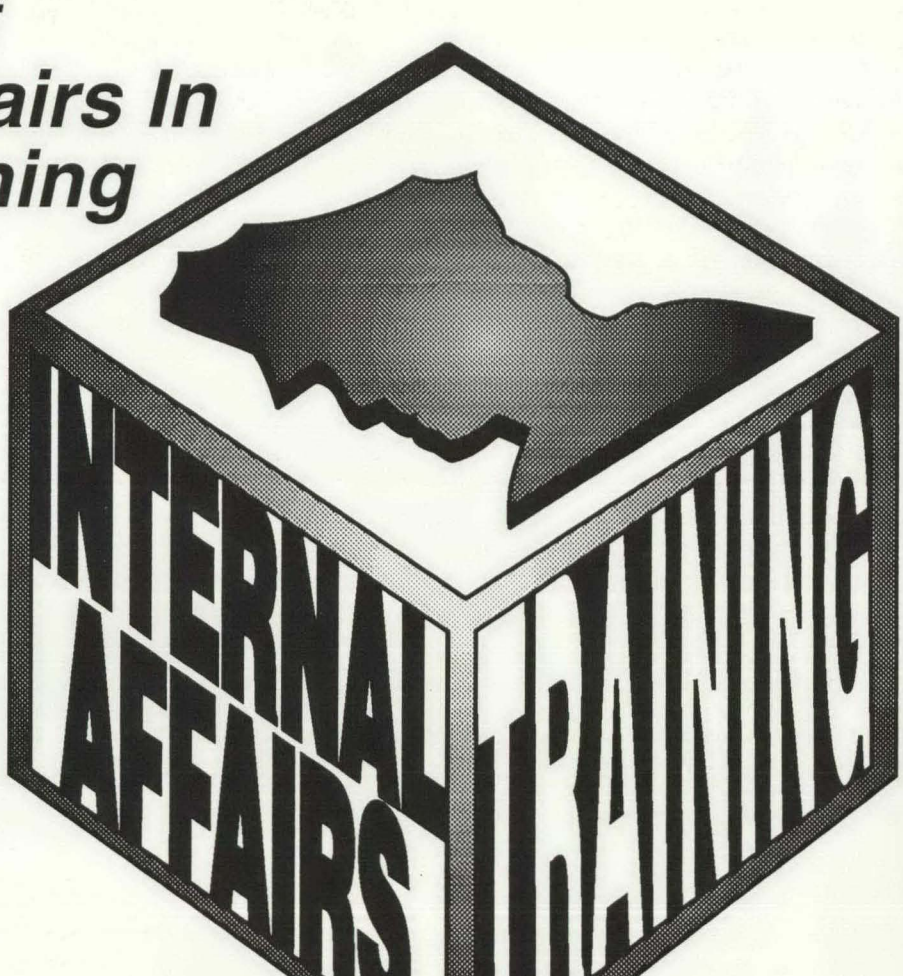
# The Role of Internal Affairs In Police Training

By
NELSON O. WEBBER, JR.




What can police departments do to prevent incidents of police misconduct that could expose them to local, or even national, media attention? Quite possibly, the answer may be found in an agency's internal affairs unit. Unfortunately, many police departments view their internal affairs units solely as administrative enforcers of departmental rules and regulations. And, even though the unit's primary function is to investigate allegations of police misconduct, many chiefs of police fail to recognize the potentially immense training value of this function.

This article discusses internal affairs investigations and explores some of the opportunities that various types of internal affairs training could provide. Because the resolution of a complaint against a police department and its employees could have a negative effect, law enforcement agencies should examine how the results of internal affairs investigations could help their employees to better serve the department and citizens.

### Internal Affairs Investigations

Properly conducted internal affairs investigations go beyond a finding of right or wrong, or one that is justified or not justified. They also include comprehensive and ongoing reviews of the affected policy to ensure that it conforms to contemporary law enforcement standards, court rulings, and current agency needs. However, a comprehensive internal affairs investigation may also include a review of the department's training procedures regarding matters under investigation. For example, officer misconduct often results from a lack of knowledge or a misunderstanding of departmental policy and/or procedure. Supplemental training could reduce or possibly eliminate further incidents among other officers in the department.

The internal affairs unit is also an important resource to identify trends in individual and group behavior and attitudes. Oftentimes, as in a puzzle, an individual case or part has little or no meaning. However, once several components are viewed together, a clearer picture appears. In this regard, internal affairs units should consider conducting an annual analysis of all citizen complaints and police use of force. Such an analysis helps to identify the common denominators in complaints and use of force reports.

In turn, with analytical findings, departments can identify training needs in such areas as policy and procedure, tactics, sensitivity/cultural awareness, and supervisory responsibility. Or, department managers can track positive trends, such as changes in employee behavior that result from training initiated after an internal affairs review.

### Internal Affairs and the Training Process

Undoubtedly, positive police/community relations require proper training. As a testament to this, the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) adopted numerous training standards as part of its comprehensive accreditation program. One standard identified the importance of departmentwide input in the development and evaluation of training needs and concerns.[1]

With this in mind, law enforcement departments should include members of their internal affairs units in the training process. Smaller departments that do not have separate internal affairs units should allow those officers who normally conduct internal affairs investigations to participate. The insights these individuals offer may help to identify future training needs.

### Recruit Training

In a model policy statement, the Police Executive Research Forum (PERF) suggested that police ethics should be a major component in the training curricula, as should an indepth examination of the rules, procedures, and outcomes of the disciplinary process.[2] As such, it seems appropriate for internal affairs personnel to participate in the recruit training program.

Police departments should allow sufficient time for investigators to instruct recruits as to their duties and responsibilities, as well as to inform them of departmental policies and procedures concerning complaints of alleged misconduct. At this time, investigators should familiarize recruits with the department's forms and procedures in processing disciplinary cases and the appropriate appeal processes regarding adverse actions.

In addition, internal affairs investigators need to clarify the relationship between the officer and the jurisdiction in defending civil suits. However, training should also emphasize ways recruits can avoid complaints and reduce the chance of becoming involved in an adverse disciplinary action. In this regard, internal affairs investigators can impress upon recruits the importance of complete honesty when reporting incidents or responding to administrative questions. Recruits must realize that false statements only complicate matters and may result in harsher administrative action.

Most new officers are very conscientious and strive to do a good job. However, these same officers must realize that at some point, they

> ***"The work of the internal affairs unit can be used to identify critical training needs."***

*Lieutenant Webber is a deputy commander, Administrative Division, Prince William County, Virginia, Police Department.*

may become the subject of a complaint. Unfortunately, the very nature of law enforcement in today's society sets the stage for emotional situations that could result in a complaint lodged against an officer. However, internal affairs investigators should advise recruits to remain objective and not to become involved personally or emotionally with the case.

> ***"...training should...emphasize ways recruits can avoid complaints and reduce the chance of becoming involved in an adverse disciplinary action."***

Furthermore, internal affairs investigators must be objective, fair, and treat people as they would like to be treated in a similar situation. This interaction between recruits and internal affairs investigators encourages increased communication and prevents mistrust and misunderstandings.

### Inservice Training

Despite the immense value of informing recruits of the internal affairs process, training should not stop there. Newly enacted legislation and court actions continually impact on a myriad of personnel issues. To inform veteran employees of these changes, many departments subscribe to publications that report the latest case law developments in the areas of constitutional law and personnel procedures. Law enforcement managers and internal affairs personnel should study this information and then disseminate it using training bulletins. This not only exposes employees to the latest rulings but also keeps them abreast of personnel issues and constitutional law.

In addition, internal affairs investigators should participate in inservice training sessions. Their firsthand knowledge of internal affairs investigations and recent court rulings could help to explain departmental changes in policy or procedure that affect the delivery of law enforcement services and how personnel matters are addressed.

### Person-to-Person Training

Despite the best efforts of department managers to deal effectively with complaints against employees, problems still arise. However, not all internal affairs investigations result in a finding of gross wrong-doing on the part of the law enforcement employee. Quite often, an employee merely exercises bad judgment or misunderstands departmental policies or procedures. These and other minor infractions are addressed more appropriately through one-on-one counseling or training.

This person-to-person contact, if properly conducted, may help to bring about a positive behavior change on the part of the employee, which will prevent similar situations from occurring in the future. This type of training not only resolves the matter in question but also fosters a better relationship between the employee and the internal affairs unit.

### Conclusion

An agency's internal affairs unit, if properly used, is an important resource. The experience of the internal affairs personnel in conducting administrative investigations and analyzing complaints and use-of-force cases detects individual and departmentwide trends that, if not corrected, could manifest themselves as major problems in the future. But, the value of the internal affairs unit does not stop there. The work of the internal affairs unit can be used to identify critical training needs. In this broadened role, internal affairs investigators serve as training instructors who can help to create better working relationships between department employees and the internal affairs unit.

Today, departments should not use internal affairs units only to enforce departmental policy and regulations. With proper planning, these units can play a positive role in effective law enforcement training.✦

**Endnotes**

[1] The Commission on Accreditation for Law Enforcement Agencies, Inc. *Standards for Law Enforcement Agencies*, Fairfax, Virginia, 1989.

[2] The U.S. Department of Justice, *Principles of Good Policing: Avoiding Violence Between Police and Citizens*, Washington, DC, 1987.

# Cop Killers and Their Victims

By Anthony J. Pinizzotto, Ph.D.
and Edward F. Davis, M.A.

Each year, a number of law enforcement officers lose their lives during the performance of their duties. Since 1945, the FBI's Uniform Crime Reporting (UCR) Program has gathered data on officers feloniously killed in the line of duty and has released the information in its annual publication, *Law Enforcement Officers Killed and Assaulted.* But, the detailed data did not answer one very important question, "Why?"

Recognizing the limitations of its data on officers killed, UCR initiated a research project to conduct an indepth analysis of the incidents that resulted in law enforcement officers' deaths. The report on this project, *Killed in the Line of Duty*, presents extensive information on the victim officers, the offenders, and the incidents that brought the victim officer and the offender together in what has been termed a "deadly mix."[1]

## THE STUDY

UCR staff members conducted the study over roughly a 3-year period, during which time they examined 51 distinct cases. These incidents, which resulted in the deaths of 54 law enforcement officers and involved 50 offenders, were selected using criteria based on data of all officers feloniously killed between 1975 and 1985. This ensured that the information concerning the killings was still relevant to current law enforcement practices.

Researchers retrieved pertinent information from law enforcement and correctional records. They also conducted interviews of the victim officers' peers and supervisors, as well as the investigators originally assigned to the homicides and other officers who had knowledge of the events. As a final measure, the offenders themselves were interviewed after UCR investigators collected and reviewed all of the relevant materials.[2]

## RESULTS

An incident that results in the death of a law enforcement officer involves several factors—two or more individuals (offender and victim officer), their life experiences and perceptions, and the circumstances (situations) that brought them together. The study investigated these factors individually and integratively, drawing on the psychology of the offender, the behavior of the law enforcement officer, and the circumstances that lead to the loss of life.

### Offender

A demographic description of the offenders shows that they are predominately male, young (average age 26), white, single, and high school educated. The findings of this study suggest that there is no single profile of a person who kills a law enforcement officer. Furthermore, the overall social backgrounds of the offenders generally reflect average socioeconomic status but considerable verbal and physical abuse during childhood.

A majority of offenders in this study were identified as having some personality disorder. The antisocial and dependent personality types were the most frequently diagnosed personality disorders.[3]

While a very small number of offenders had no previous criminal record, including a history of drugs or weapons offenses, researchers found larceny, burglary, or robbery to be prevalent in the majority of the offenders' self-reported

**Offenders:**
**A Demographic Description**

| | |
|---|---|
| Gender | 96% male; 4% female |
| Average Age | 26 years |
| Race | 60% white; 40% nonwhite |
| Average Height | 5 feet 9 inches |
| Average Weight | 176 pounds |
| Marital Status | 12% married; 54% single; 2% separated; 32% divorced |
| Education | 34% no diploma; 60% high school diploma; 4% some college; 2% college degree |

*Source: FBI Study*

criminal histories. In addition, nearly one-half of the offenders stated that they murdered or attempted to murder someone prior to killing the officer. Approximately 20 percent stated that they assaulted an officer or resisted arrest prior to the incident in which they killed an officer.

The study also revealed other outside factors. In particular, 74 percent of those interviewed reported that they regularly carried a handgun and that they started carrying a handgun at age 18. Of the 54 law enforcement officers killed, 72 percent were victims of handgun wounds.

Another factor involved drug and/or alcohol use. Over three-quarters of the killers stated that they were engaged in drug or alcohol activity at the time of the killings.

Interviewers also asked the offenders what, in their opinion, could have prevented the officers' deaths. Almost 50 percent of the killers admitted that there was nothing the victims could have done to prevent their deaths after the initial confrontation. Nearly 10 percent of the offenders believed that the officers could have acted more "professionally," while in three cases, the offenders stated that the deaths would not have occurred if the victims had identified themselves as law enforcement officers.

The offenders never offered race as a contributing factor in the deaths, although 15 of the 51 incidents were cross-racial. However, seven offenders, all males who killed male officers, stated that they would not have murdered had the officer been female.

### Victim Officer

In the cases examined, the victim officers worked in local, State, and Federal agencies. The demographic attributes of the victim officers in this study include young (average age 34), predominantly male, white, married, and high school educated.

While the demographic description of the victim officers is similar to the offenders' demographic description, there are also obvious differences. The victims were, on the average, 8 years older, more educated with higher percentages having completed both high school and college, and more likely to be married.

The study victims averaged 8 years of law enforcement service, and none had less than 1 year of experience. Eight of 10 officers were assigned to vehicle patrol at the time of their deaths, and 70 percent were assigned to single-officer vehicles. Slightly over 80 percent of the victims were in uniform when they were killed.

Researchers also examined the general behavioral descriptions of the victims. Since the original purpose of the study was not to analyze the victims' personalities, no systematic approach to develop a victim behavioral profile was made.

However, early in the study, it became apparent that the officers' peers and supervisors used similar behavioral characteristics to describe the victims. The most salient behavioral descriptors characterizing these officers appeared to be their good-natured demeanor and conservative use of physical force, as compared to other law enforcement officers in similar situations. They were also perceived as being well-liked by the community and the department, friendly to everyone, "laid back," and "easy going."

Work performance also arose as another factor to consider during the survey. Some evidence

from this study indicates that an officer's receiving a decrease in performance rating may be one of several early signs of the potential for a law enforcement killing.

Ten victims, who received successful or better than successful ratings over several years, received lower assessments just prior to their deaths. Researchers could not determine the specific areas of the officers' performance that resulted in the lower ratings. Some departments were reluctant to release information from personnel files, while others commented verbally on the contents of personnel records. In one case, however, the reviewing official mentioned that the slain officer declined in two areas of the evaluation—failure to maintain the department's weight guidelines and failure to wear a department-issued protective vest.[4]

### Situations

This study revealed that a preponderance of law enforcement officers' deaths occurs in the South, although researchers could not determine an adequate explanation for this phenomenon. However, researchers found that the type of assignment, the circumstances at the scene of the encounter, the weapons used, and the environment in which these events occurred all played a role in the final outcome.

Analysis of the information indicates that the officers were most often slain during arrest/crime-in-progress situations; on streets, highways, or in parking lots; at the same location where the encounter took place; and within 5 miles of the offender's residence. In addition, the fewest officers were killed between 6:01 a.m. and 12:00 p.m. when only 15 percent of the incidents occurred. Approximately 30 percent of the deaths occurred during each of the other three 6-hour time periods (12:01 a.m. to 6:00 a.m., 12:01 p.m. to 6:00 p.m., and 6:01 p.m. to 12:00 a.m.).

**"The study offers the law enforcement community information that can assist individual agencies in addressing survival training needs."**

### Integrative Perspective

Using the integrative approach to examine each of these cases, the study identified several specific areas where law enforcement training and procedures may have played a role in the eventual outcome of the incident. From this integrative approach, two major categories of procedural and training issues emerged—approach to vehicles and suspects and control of persons and/or situations—which may have had a role in the eventual outcome of the incidents.

Approach to vehicles and suspects takes into account, among other issues, off-duty performance, facing a drawn gun, and traffic stops. Control of persons and/or situations includes, among other issues, weapon retention, use of protective body armor, thorough searches, handcuff use, and team concept.

Officers' improper approaches and lack of control of both situations and individuals were found to be likely contributors to the killings. Some of the killers appear to have evaluated a series of actions or inactions of the officer before considering an assault.

## CONCLUSION

The study offers the law enforcement community information that can assist individual agencies in addressing survival training needs. Hopefully, the information gleaned can be used to assist officers in protecting themselves as they battle the criminal elements who show no respect for the law. ✦

**Endnotes**

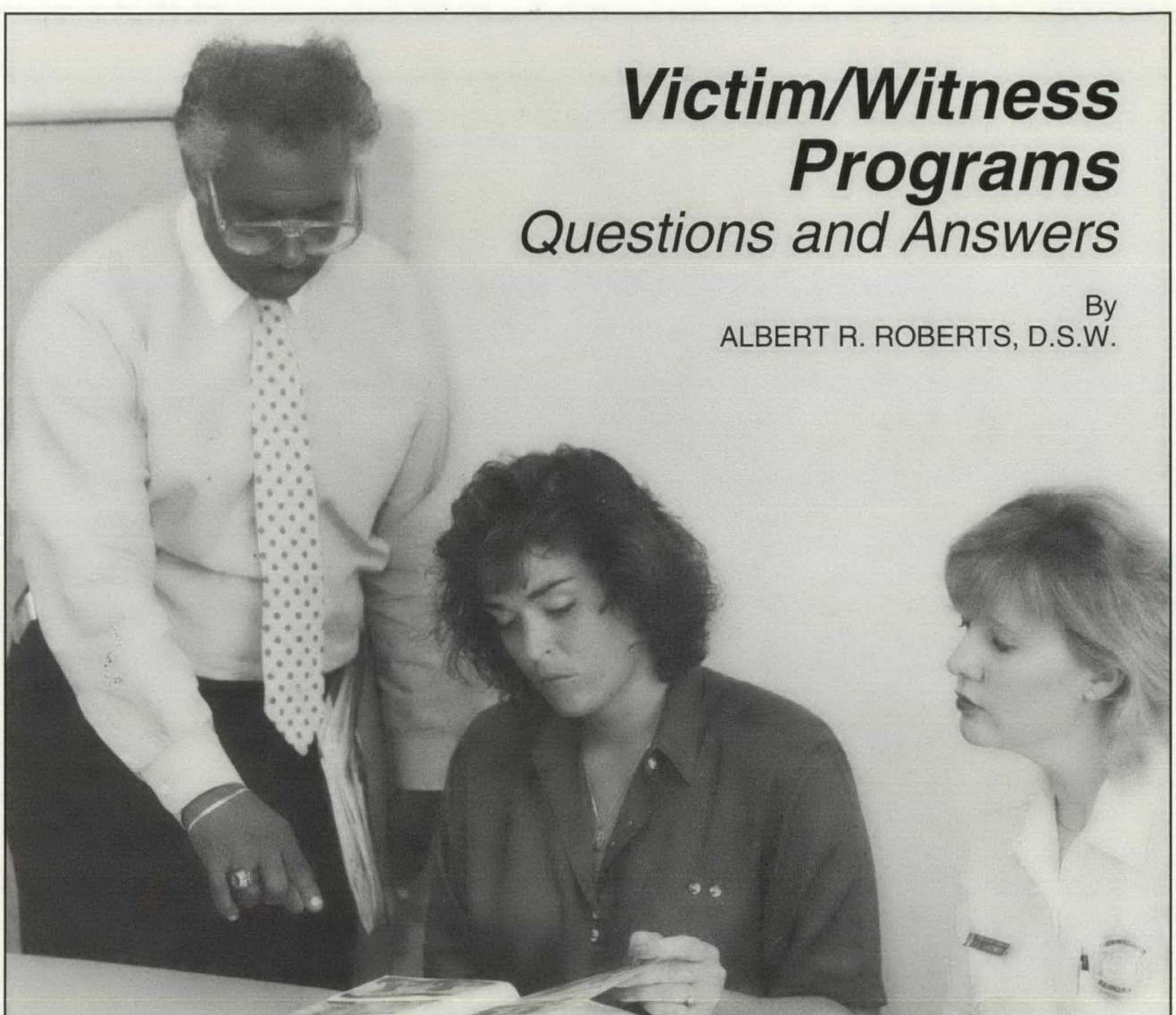
[1] *Killed in the Line of Duty*, September 1992, published by the Uniform Crime Reporting Program, Criminal Justice Information Services Division, Federal Bureau of Investigation, Washington, DC. Those interested in obtaining the published report should write to the FBI's Uniform Crime Reporting Program, Washington, DC 20535.

[2] To accommodate offender interviews, researchers limited the incidents selected for the study to those whose offenders had exhausted all appeal processes.

[3] A chapter in the published report presents several psychological approaches to questioning and interrogating the antisocial and dependent personality types.

[4] UCR Program staff members are currently conducting another study to examine cases in which law enforcement officers survived serious assaults that involved a firearm or cutting instrument.

*Dr. Pinizzotto and Mr. Davis are assigned to the Uniform Crime Reporting Program, Criminal Justice Information Services Division, Federal Bureau of Investigation, Washington, DC.*



# Victim/Witness Programs
## Questions and Answers

By
ALBERT R. ROBERTS, D.S.W.

During the past several decades, there has been a growing awareness among police administrators and prosecutors alike of the alarming prevalence of violent crimes and the rights of crime victims—and for good reason. Each year, criminals kill more than 21,000 victims and seriously injure more than 800,000 others. In addition, the National Crime Survey (NCS) reported that in 1989, a total of 135,410 attempted or actual rapes occurred.[1] In that same year, the NCS estimated that over 4.6 million assaults occurred, costing victims approximately $1.5 billion. This includes losses from medical expenses, lost wages, cash losses, and property theft and damage.[2] This figure, however, does not take into consideration the costs incurred by the criminal justice system.

In the aftermath of violent crime, victims must often cope with physical pain, psychological trauma, financial loss, and court proceedings that all too frequently seem impersonal and confusing. Indeed, many victims and witnesses have their first contact with the criminal justice system as a result of being victimized or witnessing crimes.

However, during the past 2 decades, a growing number of counties and cities developed victim/witness assistance programs, rape crisis centers, and specialized do-

mestic violence programs to reduce the impact that crime has upon the lives of victims and witnesses. This article briefly traces the evolution of these services and answers some fundamental questions about victim/witness programs.

> ***"...victim/witness assistance programs encourage witness cooperation in the filing of criminal charges, as well as in testifying in court."***

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**Background**

In the past 20 years, there has been a fundamental shift in the programs offered by the criminal justice system. During the 1950s and 1960s, the system clearly emphasized offender rehabilitation, giving little attention to the suffering of crime victims. However, by the mid-1970s, when jurisdictions initiated the first victim/witness assistance projects, the pendulum shifted gradually toward providing fewer rehabilitation services to convicted felons and more services to innocent crime victims and witnesses.

This shift in focus changed how the criminal justice system treated crime victims, from their initial contact with law enforcement officers to testifying in court. Historically, many crime victims were victimized twice: First, during the actual crime, and then, again, when insensitive police and court personnel ignored their calls for help or subjected them to harsh and repeated questioning.

However, the victims' movement did much to change this situation. In 1974, criminal justice professionals began to recognize that insensitive, curt, and apathetic treatment of victims and witnesses caused criminal prosecutions to fail because of "witness noncooperation." This eventually led to Federal funding, through the Law Enforcement Assistance Administration (LEAA), of 10 prosecutor-based witness assistance programs. By 1975, administrators across the country developed four other types of victim assistance programs: A nonprofit victim service agency in New York City; a county office-based victim/witness program in Palm Beach County, Florida; a victim assistance program sponsored and staffed by the Fresno County, California, Probation Department; and a police-based crisis intervention program at both the Indianapolis, Indiana, and the Rochester, New York, Police Departments.

With the demise of LEAA in the early 1980s, Federal grants to victim/witness assistance programs declined. Existing programs tried to recover from the loss of LEAA funding by requesting county or city revenue funding. At first, some local government sources were reluctant to allocate sufficient funds. However, between 1981 and 1985, because of persistent and successful lobbying by victim/witness groups, 28 States enacted legislation to fund both established and new programs.

Often, State legislatures raise the funds for these programs and services by earmarking a percentage of penalty assessments and/or fines levied on criminal offenders. Nineteen States fund victim services through penalty assessments and fines, while the remaining nine fund victim services through general State revenues.

Even with the increased attention given to victim/witness concerns, many criminal justice professionals still do not fully appreciate the wide range of issues involved. The following answers to some common questions concerning assistance programs should help to foster a better understanding.

**What is a victim/witness assistance program?**

Usually housed in a local county prosecutor's office, victim/witness assistance programs encourage witness cooperation in the filing of criminal charges, as well as in testifying in court. In general, these programs include a witness notification and case monitoring system in which staff members keep witnesses advised of indictments, continuances, postponements, specific trial and hearing dates, negotiated pleas, and trial outcomes.

Many of these programs provide secure and comfortable reception areas for witnesses waiting to testify in court, transportation services, and a court escort who accompanies witnesses to court and remains with them to explain and interpret the court proceedings. Typically, these programs also prepare and distribute court orientation pamphlets about the adjudication process.

### What are the primary objectives of victim/witness assistance programs?

These programs help victims to overcome the emotional anxiety and trauma associated with testifying in court, while encouraging witness cooperation in the prosecution of criminal cases. Staff members in these programs:

- Explain to victims and witnesses that their cooperation is essential to crime control efforts and successful criminal prosecution
- Inform victims and witnesses of their rights to receive dignified and compassionate treatment from criminal justice professionals
- Furnish information to witnesses on the court process, the scheduling of the case, the trial, and the final disposition
- Provide orientation to court proceedings and tips on how best to accurately recall the crime scene and testify.

### How are victim/witness assistance programs funded?

Beginning in the mid-1970s, the first victim/witness assistance programs in large metropolitan areas received 90 percent of their funds from the LEAA and the remaining 10 percent of their funds from county prosecutors' budgets. With the passage of the Victims of Crime Act of 1984 (VOCA), the three major sources of funding for the period 1985-1990 became Federal grants, State criminal penalty assessments/fines, and county general revenue grants.

Today, many programs have more than one source of funding. The most significant funding for victim assistance and victim compensation has been awarded to the States through the U.S. Department of Justice's Office for Victims of Crime. Since 1984, over $620 million has been allocated from various sources to aid crime victims. During fiscal year 1985, these sources allocated $68.3 million to aid victims of State and Federal offenses. The annual amount increased to $93 million in 1988, $144 million in 1990, and $150 million in 1991. These Federal funds came from fines and offender penalty assessments on convicted Federal criminals.

### What is a victim service or crisis intervention program?

Victim service and crisis intervention programs are not as common as witness assistance programs. Often housed in a police department, sheriff's office, hospital, or nonprofit social service agency, these programs generally attempt to intervene immediately after victimization. They provide a comprehensive range of services for crime victims, including responding to the crime scene; crisis counseling; emergency money; transportation to court, the local battered women's shelter, the hospital, or the victim assistance program office; assistance in replacing lost documents or in completing victim compensation applications; and referrals to community mental health centers and social service agencies for extended counseling.

### What types of individuals are served by victim service and crisis intervention programs?

Typically, these programs provide services to all victims of violent and property-related crimes. Certain types of victims have special needs, and as a result, many of these victim-oriented programs have also begun to provide outreach services to particularly vulnerable crime victims, such as the elderly, minorities, battered women, and sexually assaulted children.

For example, elderly crime victims often have no bank accounts (or limited savings) from which they can withdraw funds in an emer-

gency. Unless they receive emergency funds or food vouchers from a local victim assistance program, they often have to wait for their next social security or pension checks. In addition, physical conditions associated with aging, such as osteoporosis, can mean that elderly victims who receive even slight injuries more likely will require hospital care.[3]

Cultural mores make Hispanic and Asian women especially reluctant to report domestic violence and sexual assault offenses or to ask for victim assistance, because reporting male offenders breaches long-held cultural standards.[4] These female victims also seem to have a more intense fear of retaliation than other victims. A study of 102 battered women in New Jersey, for example, found that the overwhelming majority of Hispanic batterers used knives on their victims. Many of these men slashed their victims' face and threatened to kill them if they were not totally obedient.[5]

Battered women who do file charges against their abusers frequently require crisis intervention and emergency shelter. These crime victims often turn to local city or county law enforcement agencies when confronted with the life-threatening danger posed by domestic violence. In fact, police-based crisis intervention units report that battered women make up a large number of their crisis callers.

Generally, a crisis team (ideally working in pairs) responds to the crime scene and provides crisis counseling, transportation to and from medical centers and shelters, and referrals to mental health and social service agencies. The increasing plight of battered women in American society is evidenced by the dramatic growth in these emergency shelters—from 7 in 1974 to over 1,200 by 1990.[6]

**How are victim service and crisis intervention programs funded?**

In contrast to the prosecutor-based witness assistance programs, victim-oriented programs receive almost all of their funding from State and county general revenue grants. Only a small number of these programs receive Federal funding, and these programs usually focus on providing rape crisis services and domestic violence intervention. The bulk of funding for victim service programs comes from local mayors' offices, city councils, police departments, county sheriffs' offices, or the board of trustees of area medical centers.

> ***"The victims' movement has grown remarkably during the past 20 years."***

**What types of staff are employed by victim/witness assistance units?**

Prosecutor-based programs employ victim/witness assistance specialists. These individuals usually possess a degree in criminal justice, criminology, sociology, counseling, or jurisprudence. In general, these programs or units operate with a relatively small staff of four to five individuals. A typical staff includes a deputy prosecutor or chief victim/witness assistance specialist, a secretary, a data entry clerk or receptionist, and two victim/witness assistance specialists or advocates.

**What types of staff are employed by victim service programs?**

The staff of victim service programs view themselves as victim advocates who work to alleviate the stress and trauma related to victimization. Staff members are often professional social workers or counselors with degrees in social work, counseling, psychology, or guidance and counseling. Though civilians, they generally work closely with police officers and deputy sheriffs.

These victim advocates/crisis intervenors also conduct training sessions at county police academies on victims' rights, as well as roll call briefings related to victim assistance and domestic violence intervention. Often, they receive notification of a traumatized victim via the police radio.

Victim service workers usually provide direct services to victims, such as crisis intervention at the crime scene, making home and hospital visits, and placing outreach calls on criminal case status. They also compile information on filing victim compensation applications, assist victims with property release, provide community education, and serve as a liaison between the victim and social service agencies.

**Conclusion**

The victims' movement has grown remarkably during the past

20 years. In fact, the evolution of victim/witness assistance programs in communities across the country is gradually becoming institutionalized into a network of established city and county human service agencies.

The programs discussed in this article document the concern and commitment of the many leaders who have developed these programs for crime victims and witnesses during the past 2 decades. Despite negative publicity in the news media about the apathy existing in many bureaucracies, concerned prosecutors, police administrators, advocacy coalitions, and crisis intervention specialists demonstrate a dedication to addressing the special needs of crime victims and witnesses.✦

**Endnotes**

[1] Caroline Wolf Harlow, *Female Victims of Violent Crime,* Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, 1991.

[2] Bureau of Justice Statistics, *Violent Crime in the United States,* U.S. Department of Justice, Washington, D.C., 1991; *Criminal Victimization in the United States, 1989: A National Crime Survey Report,* U.S. Department of Justice, Washington, DC, June 1991.

[3] Albert R. Roberts (ed.), *Helping Crime Victims: Research, Policy and Practice* (Newbury Park, California: Sage Publications, 1990.)

[4] Elaine P. Congress, "Crisis Intervention with Hispanic Clients in an Urban Mental Health Clinic," in *Crisis Intervention Handbook,* A.R. Roberts (ed.) (Belmont, California: Wadsworth Publishing), 1990.

[5] Albert R. Roberts and Gloria Bonilla-Santiago, *Exploratory Study of 102 Incarcerated Battered Women in New Jersey*, Rutgers University School of Social Work, 1992.

[6] Supra note 3.

# Case Study

## *Conviction Through Enhanced Fingerprint Identification*

In March 1990, an unknown assailant sexually molested and fatally stabbed a young woman. At the crime scene, an investigator discovered few leads. The only evidence was a pillowcase, found adjacent to the victim's body, that exhibited several bloodstains. One stain showed some faint fingerprint ridge detail, barely visible even to the trained eye.

### Preliminary Investigation

An investigator took the pillowcase to the department's forensic unit for bloodstain pattern analysis. Technicians photographed and studied the stains, slowly extracting information. They discovered two things. First, they confirmed that several stains were consistent with blood transfer from a knife blade, although no knife was found at the crime scene. Second, and more importantly, analysts determined that the fingerprint presented enough ridge detail to conduct a more extensive investigation.

Analysts then sent the evidence to another forensic study center where scientists treated the fingerprint with DFO, a relatively new chemical (similar to Ninhydrin) that becomes fluorescent when exposed to a light source. Once processed, the DFO provided an improved ridge detail photo. However, the ridge detail still remained blurred, displaying poor general continuity and visible fabric weave in the background. All traditional photographic techniques failed to erase the distortion. Analysts subsequently concluded that the latent was unidentifiable.

### Image Enhancement

A short time later, investigators assigned to the case witnessed a demonstration of fingerprint image enhancement at a forensic conference. Faced with a dead-end murder investigation, they decided to try the technique on the unidentifiable pillowcase fingerprint from the crime scene.

Investigators took the best DFO photograph and shipped it to a facility with the capability to perform image enhancement. Throughout the enhancement process, the accuracy of the print was documented through photographic records of each stage. Within 4 hours, the enhancement yielded an identifiable print.

### Supporting Evidence

In the interim, the lead case investigator developed several likely suspects. The primary suspect (the victim's next door neighbor) surfaced early in the investigation. However, the prints on record from a previous arrest did not contain sufficient ridge detail for comparison.

The investigator then concentrated on the serology report, which noted that examin-

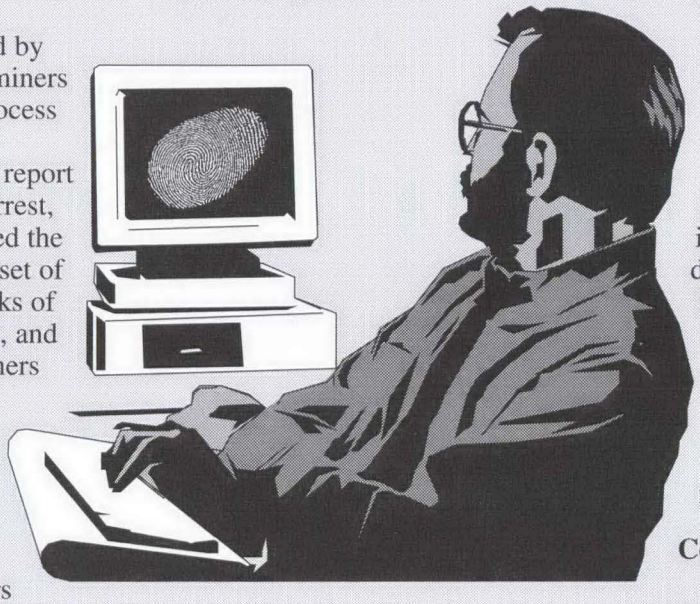
ers recovered seminal fluid from the victim during the postmortem examination. This preliminary serological report proved the seminal fluid matched that of the prime suspect, placing him in less than 5% of the general population. Encouraged by this breakthrough, examiners initiated the lengthy process of DNA analysis.

Using the serology report as probable cause for arrest, the investigators arrested the suspect and obtained a set of inked prints. After weeks of evaluation, comparison, and verification, the examiners achieved a positive identification comparison of the bloody pillow print with the left thumb of the suspect. Less than a week later, investigators received the DNA results, which further incriminated the suspect by matching his DNA code with that found in the stain on the pillowcase. This, in effect, placed the suspect as only 1 in 30 million people in the population with this particular DNA code.

## Court Proceedings

During the suppression hearing, defense attorneys launched an attack on what they believed to be the most potentially vulnerable piece of evidence, the scientific acceptance of fingerprint image processing. To counter, an analyst took the court step by step through the entire procedure using a full complement of image enhancement equipment. An expert in the field of image processing then offered supporting testimony to the court.

Ultimately, the court ruled the enhanced print admissible, stating that the process did not alter the actual pattern of the print; it only made it more visible. The evidence passed the test, resulting in the first documented case where image enhancement technology withstood the challenges of a *Frye* hearing.[1]



## Trial Results

One last piece of evidence emerged during final trial preparation. Maintenance men working in the defendant's vacant apartment discovered a military survival knife hidden in a pipe chase. Serological examination revealed traces of human blood, but no typing was possible. However, the shape and size of the sawtooth blade matched several of the blood stains on the pillowcase. Police personnel prepared a large transparent overlay for courtroom display to illustrate how the knife and the stain conformed to a single image.

Faced with overwhelming physical evidence, such as the image enhanced fingerprint match, the DNA test results, the match between the body fluid found on the victim's body and that of the suspect, and the knife found in the suspect's apartment, defense attorneys entered four guilty pleas, one of which was for capital murder. On June 18, 1991, the court sentenced the accused to four life sentences for murder and related offenses.[2]

## Conclusion

Five years ago, a suspect committing these types of crimes would most likely go free, due to a lack of substantial forensic evidence. However, through persistence and by applying such modern technologies as fingerprint image enhancement, today's police investigators can use evidence invisible to their predecessors. ✦

**Endnotes**

[1] *Frye* v. *United States*, 293F. 1013,1014 (D.C. Cir. 1923).

[2] *Commonwealth of Virginia* v. *Knight*, CR-90-1353-02-F.

*Information for this case study was submitted by Norman Tiller, a latent print examiner, and Thomas Tiller, a crime scene investigator, both with the Henrico County Division of Police, Richmond, Virginia.*

# Firearms Training and Liability
## (Part 1)

By JOHN C. HALL, J.D.

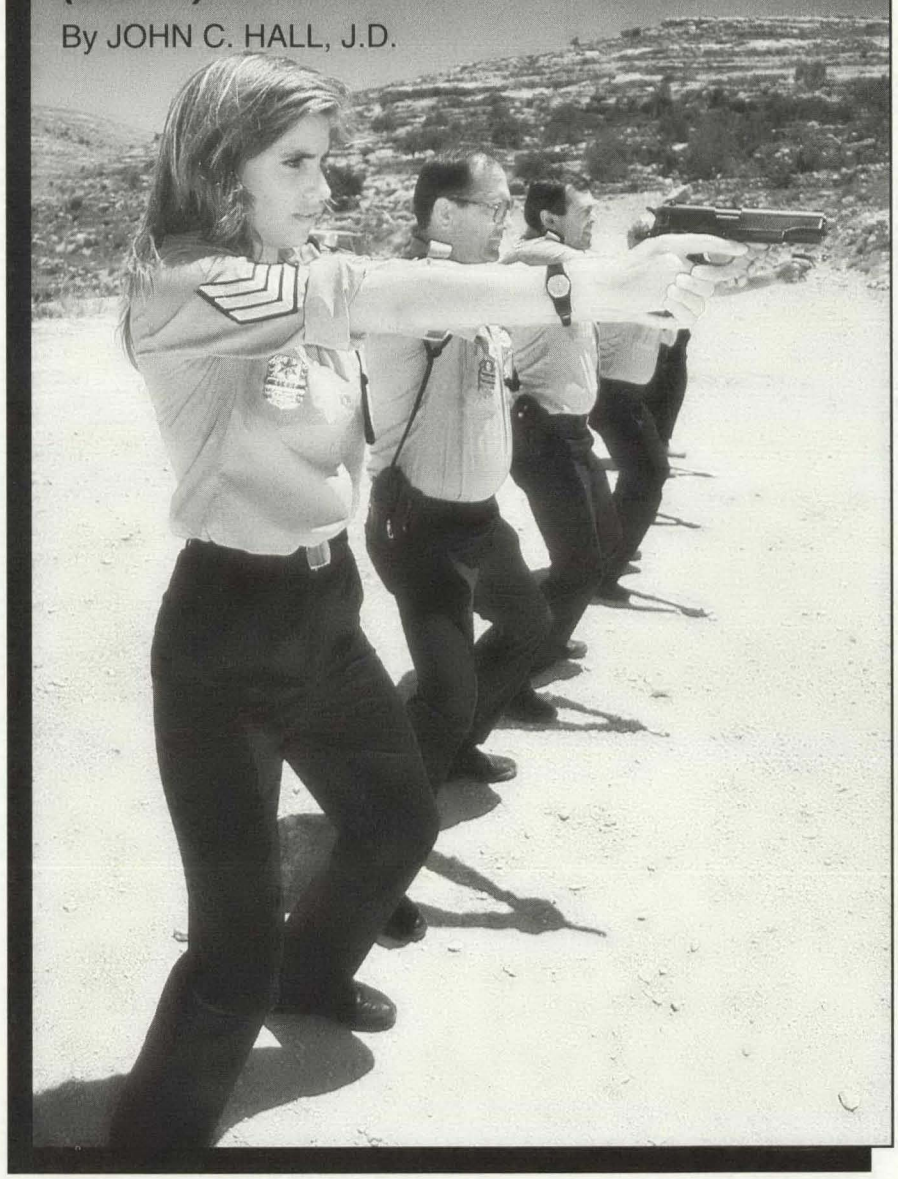


Photo by Eran Israel

This article focuses on one aspect of potential law enforcement liability—lawsuits that allege violations of federally protected rights as the result of inadequate firearms training. Although the principles apply to training in general, firearms training was chosen as the focal point for two reasons. First, the authority of law enforcement officers to use force in effecting arrests or other fourth amendment seizures of persons is a recurring source of challenge and litigation, and the use of firearms—i.e., deadly force—in that context represents the ultimate in the exercise of that authority. Second, the current trend of American law enforcement agencies making the transition from revolvers to semiautomatic pistols has generated questions about the kind and quantity of training necessary to accomplish that transition effectively.

Part I of this article provides a frame of reference by briefly reviewing the manner in which lawsuits can be brought against government agencies and employees and then analyzing the Supreme Court's decision in *City of Canton* v. *Harris*,[1] in which the general principles of "failure to train" lawsuits were established. Part II will discuss the manner in which those general principles apply to firearms training.

## SUITS AGAINST EMPLOYEES AND AGENCIES

### State and Local Officers

The personal liability of State and local officers under State law for their law enforcement actions is determined by differing State laws and is beyond the scope of this article. However, one factor that has contributed significantly to the growth of lawsuits against State and local law enforcement officers over the past 3 decades has been the expanded interpretation of 42 U.S.C. 1983.

This post-Civil War statute prohibits the deprivation of federally protected rights by any "person" acting under color of State law. The language clearly encompasses State and local law enforcement officers and creates the potential for lawsuits against them in either State or Federal court, independent of any liabil-

ity that may exist under State law. Importantly, officers sued under sec. 1983 may assert the defense of qualified immunity, in addition to any other defenses available.[2]

### Local Government Agencies

State and local governmental entities can generally be sued in State court for violations of State law to the extent that sovereign immunity has been waived by that State. While the 11th amendment[3] to the U.S. Constitution precludes some suits against a State for money damages, the amendment does not shield local government entities (i.e., counties and municipalities) from such suits.[4]

Prior to a Supreme Court decision in 1978, local government entities were generally not liable under sec. 1983 because that statute explicitly applies to "persons"—a term that the Supreme Court historically interpreted to mean a "natural" person distinct from a corporate body, such as a governmental entity.[5] However, in *Monell* v. *Department of Social Services*,[6] the Court reversed that holding and concluded that local government entities can be sued under sec. 1983 when a policy or practice of the agency causes the constitutional violation.

Thus, while the local entity is not "vicariously" liable for the wrongdoing of its employees, it may be liable for its own acts or omissions that *cause* the employees to commit constitutional violations. Such suits are generally framed in terms of "failure to properly train or supervise" or "negligent hiring or retention." Local government entities, unlike their employees, are not entitled to the qualified immunity defense.[7]

> ***"...a 'failure to train' lawsuit...may be described as a chain composed of three essential links—a constitutional violation, a policy of inadequate training, and a causal connection between the two."***

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### Federal Agents

By its express terms, sec. 1983 applies only to those acting under the color of *State* law. It has no applicability to persons acting under the color of *Federal* law, and there is no comparable statute to impose liability on those acting under the color of Federal law.

However, as a result of the Supreme Court's 1971 decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*,[8] Federal employees can be sued, independent of any statutory authority, for alleged violations of Federal constitutional rights. Consequently, though the mechanisms may differ, Federal, State, and local law enforcement officers may be sued in Federal court for alleged deprivations of Federal constitutional rights. Federal officers, like their State and local counterparts, are also entitled to the defense of qualified immunity.

### Federal Agencies

There is a significant distinction between the liability of Federal Government agencies and local government entities. Just as with State governments, the Federal Government cannot be sued without a waiver of sovereign immunity. The Federal Tort Claims Act (FTCA)[9] constitutes the Federal Government's limited waiver and permits lawsuits against the Federal Government for certain negligent or other wrongful acts of its employees.

This application of the doctrine of *respondeat superior*—the employer is "vicariously" liable for the acts of the employee—does not require the plaintiff to establish that a constitutional violation occurred. Nor does it require a causal connection between the act of a Federal employee and some policy, custom, or practice of the agency. For that reason, it is not necessary to prove a failure or deficiency in training to establish the liability of the Federal Government under the FTCA.

In light of these differences in State and Federal liability, most lawsuits alleging inadequate training arise from State or local law

enforcement activities. It is very difficult to establish personal liability against an individual officer based on alleged inadequacies in a training program unless that officer is a high-ranking official, such as a sheriff or chief of police, with policymaking authority. For example, personal liability against an individual instructor would require proof that the alleged deficiency in instruction was of constitutional dimensions[10] and that it was attributable to the instructor. Therefore, within the general framework described above, how is a lawsuit alleging inadequacy of a training program most likely to arise?

## THE FAILURE TO TRAIN LAWSUIT

In a typical scenario, someone sues a police officer under sec. 1983 for allegedly depriving that person of a Federal constitutional right, e.g., use of excessive force, unreasonable search, etc. Because defendants with "deeper pockets" and less formidable defenses make more attractive targets, the plaintiff may name the local governmental entity as a defendant for allegedly causing the constitutional violation through "inadequate training."

In *City of Canton* v. *Harris*,[11] the Supreme Court considered whether a municipality can ever be liable under 42 U.S.C. sec. 1983 for constitutional violations resulting from its failure to train municipal employees. The Court concluded:

> "...that there are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under [Section] 1983."[12]

But those "limited circumstances" are present "*only* where the failure to train amounts to *deliberate indifference* to the rights of persons with whom the police come into contact" and when the identified deficiency is "closely related to the ultimate injury." [13] Thus, a "failure to train" lawsuit under sec. 1983 may be described as a chain composed of three essential links—a constitutional violation, a policy of inadequate training, and a causal connection between the two.

### The First Link—A Constitutional Violation

Before a claim against a department's training program can be established, there must first be a constitutional violation. It is not sufficient to establish that some harm resulted from an officer's improper performance of duties; there must be a clearly defined constitutional right that was allegedly infringed.

For example, in the course of making an arrest, an officer, untrained and unskilled in the use of a firearm, may unintentionally discharge the weapon, causing death or injury. Or, he may intentionally fire the weapon, miss the intended target, and strike an innocent person.

Obviously, harm resulted from the officer's actions, but it is unclear whether either of these events would provide the requisite constitutional violation. The obvious allegation would be that the officer used excessive force in attempting to effect the arrest. However, to establish that point, either plaintiff—the intended arrestee or the unintended bystander—may first have to establish that a "seizure" occurred.

In *Brower* v. *County of Inyo*,[14] the Supreme Court defined a fourth amendment "seizure" of a person as "an *intentional* acquisition of physical control...[i.e.] when there is a governmental termination of freedom of movement *through means intentionally applied.*"[15] The emphasis on the intentional aspect of both the objective and the means suggests that an accidental or negligent act by an officer may not suffice to establish a constitutional violation.

One Federal appellate court also took this view in *Landol-Rivera* v. *Cruz Cosme*,[16] in which a police bullet, meant for the hostage taker, struck and wounded a hostage. The hostage sued the police officer and won a jury verdict. On appeal, the court cited *Brower* and stated:

> "It is clear...that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement, nor even whenever there is a governmentally caused and governmentally desired termination of an individual's

freedom of movement, but only when there is a governmental termination of freedom of movement through means intentionally applied."[17]

Neither the Supreme Court's relatively narrow definition of "seizure" nor the lower court's equally narrow application in this case necessarily establishes that an officer's ineptitude or lack of skill in using a firearm can never result in a fourth amendment seizure. It is possible that an officer may terminate the freedom of movement of the intended person, and with the intended instrumentality, but in an unintended manner.

For example, an officer may unintentionally discharge a weapon into a person whom he only meant to threaten with the gun. In such an instance, there is an intentional acquisition of control, through the intended means, albeit not necessarily in the intended manner. The Supreme Court recognized this possibility in *Brower*:

> "In determining whether the means that terminates the freedom of movement is the very means intended we cannot draw too fine a line, or we will be driven to saying that one is not seized who has been stopped by the accidental discharge of a gun with which he was meant only to be bludgeoned, or by a bullet in the heart that was meant only for the leg. We think it enough for a seizure that a person be stopped by the *very instrumentality set in motion* or put in place in order *to achieve that result*."[18]

This illustrates how a fourth amendment seizure may occur of an intended person through the intended means, but not necessarily in the intended manner. But, it is questionable whether the unintentional shooting of a person would ever constitute a fourth amendment seizure, unless it could be shown that the officer's actions were so reckless under the circumstances that the tragic consequences should have been foreseen. In any case, a constitutional right must exist before it can be violated, and the plaintiff has the burden of asserting and proving the violation.

> ***"Unless the plaintiff succeeds in establishing the threshold constitutional violation, no constitutional basis exists for challenging a department's training program."***

Once it has been determined that a fourth amendment seizure did occur, the next issue is whether it occurred in an "unreasonable" manner. The Supreme Court has described this inquiry as "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them..." and has mandated that the assessment be made from the "perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight...."[19]

To put it in a somewhat simplified fashion, the Constitution does not require officers to be *right*—it requires them to be *reasonable*. Unless the plaintiff succeeds in establishing the threshold constitutional violation, no constitutional basis exists for challenging a department's training program. It is not necessarily essential that an officer first be held liable before the claim against the municipality can succeed, but only that a constitutional violation must first be established. As noted previously, even if the plaintiff succeeds in proving that a constitutional violation occurred, an officer may yet escape personal liability by asserting the defense of qualified immunity.[20]

**The Second Link—A "Policy" of Inadequate Training**

Because *respondeat superior*—vicarious liability—does not apply in sec. 1983 lawsuits, establishing that an officer committed a constitutional violation is not sufficient to attach liability to the department. It is necessary to establish that the officer's training was deficient and that the deficiency was due to the department's policy or custom.

In *Canton*, the Court established a relatively high standard for plaintiffs to reach if they are to succeed against a municipality under the "failure to train" theory of liability. Although the Court rejected the proposition that a plaintiff must show that "the policy in question [is] itself unconstitutional," the challenge of proving that municipal policymakers were deliberately indifferent to training deficiencies and the potential risks becomes a formidable one.

The Court recognized as much and emphasized the point by addressing two potential assertions. First, if a plaintiff alleges that a particular officer was unsatisfactorily trained, it could be that "...the officer's shortcomings may have resulted from factors other than a faulty training program."[21] Second, if the plaintiff asserts that the injury or accident could have been avoided had an officer received better or more training, the Court offered a possible response by noting that "such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they must deal."[22]

The point is that proof of an officer's violation of a constitutional right and proof that the violation may not have occurred if the training had been different in certain respects will not satisfy the plaintiff's burden of proving that a training program is constitutionally deficient. Among other things, the Court noted that "...an otherwise sound program [may be] negligently administered....And plainly, adequately trained officers occasionally make mistakes...."[23] The design and administration of the program must be so lacking as to demonstrate "deliberate indifference" on the part of the agency. The Supreme Court emphasized:

> "Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under [sec.] 1983."[24]

An illustration of how the standard can apply is found in *Davis* v. *Mason County*.[25] Plaintiffs sued the county alleging that sheriff's deputies used excessive force in four separate incidents and that the officers' actions resulted in part from inadequate training. The department produced evidence that a training program existed, but a jury returned a verdict for the plaintiffs.

In sustaining the jury verdict of inadequate training against the department, the Federal appellate court noted several important factors. First, some officers on the department never attended the State training academy, and although the department devised a "field training program" as a substitute for attendance at the State academy, no evidence existed to prove that it was seriously implemented. Second, two training officers quit the department, describing the training program as a "joke." And, third, the deputies "received no training in the constitutional limits on the use of force." Therefore, the court concluded:

> "The training that the deputies received was woefully inadequate, if it can be said to have existed at all... the deprivation of plaintiffs' Fourth Amendment rights was a direct consequence of the inadequacy of the training the deputies received."[26]

***"The design and administration of the program must be so lacking as to demonstrate 'deliberate indifference' on the part of the agency."***

### The Third Link—A Causal Connection

Even if a plaintiff establishes that an officer violated the plaintiff's constitutional rights and that the violation was caused by a training program of the municipality that was so deficient as to reflect a policy of "deliberate indifference" to the rights of its inhabitants, it is still necessary to establish a causal connection between the deficient training policy and the constitutional injury. As the Supreme Court explained in *Canton*:

> "...for liability to attach...the identified deficiency in a city's training program must be closely related to the ultimate injury."[27]

These relatively high standards of fault and causation reflect a reluctance to open the floodgates to "unprecedented liability" claims against local government entities. "In virtually every instance where a person has had his or her constitutional rights violated by a city employee, a [plaintiff] will be able to point to something the city 'could have done' to prevent the unfortunate incident.'"[28] Furthermore, the Court has consistently exhibited a reluctance to involve the Federal courts in "...an endless exercise of second-guessing municipal employee-training programs...an exercise we believe the federal courts are ill-suited to undertake...."[29]

The preceding discussion should establish some perspective and allay some concerns regarding the risks of lawsuits based on deficiencies in training. But if the risks of legitimate lawsuits are not as great as once feared, they nevertheless do exist and are of sufficient importance to justify constant and careful attention to law enforcement training needs. In *Canton,* the Supreme Court noted:

> "...it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and *the inadequacy so likely to result in the violation of constitutional rights*, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable *if it actually causes injury*."[30] (emphasis added)

In summary, "failure to train" is a legitimate cause of action under 42 U.S.C. 1983 and affixes liability on local government entities or policymaking officials when it can be shown that the failure to train constituted a policy or practice of the entity and that it caused a constitutional violation. Part II of this article will consider the vulnerability of firearms training programs to this kind of lawsuit, the issues most likely to arise, and some practical steps that can be taken to minimize the risks of liability.✦

*(Continued Next Month)*

**Endnotes**

[1] 489 U.S. 378 (1989).

[2] *Pierson* v. *Ray*, 386 U.S. 547 (1967). In *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), the Supreme Court held that government employees sued for alleged constitutional violations are shielded from liability if their conduct did not violate "clearly established" *law* of which a reasonable person should have known. In *Anderson* v. *Creighton*, 107 S.Ct. 3034 (1987), the Court extended this protection to circumstances where government employees reasonably believe that their conduct is within the bounds of clearly established law in light of the *facts* known at the time of the action.

[3] The text of the 11th amendment is as follows: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

[4] *See, e.g., Lake Country Estates* v. *Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); and *Edelman* v. *Jordan*, 415 U.S. 651 (1974).

[5] *See Monroe* v. *Pape*, 365 U.S. 167 (1961).

[6] 436 U.S. 658 (1978).

[7] *Owen* v. *City of Independence*, 445 U.S. 622 (1980).

[8] 403 U.S. 388 (1971).

[9] 28 U.S.C. sec. 2671, et. seq.

[10] The Supreme Court has held that proof of simple negligence is not sufficient to establish a constitutional violation. *See Daniels* v. *Williams*, 106 S.Ct. 662 (1986).

[11] 489 U.S. 378 (1989)(plaintiff sued the police department for failing to train its personnel adequately to deal with medical problems of arrestees).

[12] *Id.* at 388.

[13] *Id.* at 391.

[14] 489 U.S. 593 (1989).

[15] *Id.* at 597.

[16] 906 F.2d 791 (1st. Cir. 1991).

[17] *Id.* at 798. For a contrary view, *see Keller* v. *Frink*, 745 F. Supp. 1428 (S.D. Ind. 1990).

[18] 489 U.S. at 588-589. In addition to the 4th amendment, there are two other constitutional provisions that govern the use of force—the 8th amendment, which protects against "cruel and unusual punishments," and the due process clauses of the 5th and 14th amendments, which protect against uses of force that "shock the conscience." *See Rochin* v, *California*, 342 U.S. 165 (1952). However, the Supreme Court has limited the eighth amendment protections to convicted prisoners, *Ingraham* v. *Wright*, 430 U.S. 651 (1977); apart from pretrial detainees, it is not yet clear where due process applies. *See Bell* v. *Wolfish*, 441 U.S. 520 (1979).

[19] 490 U.S., at 396.

[20] *See, e.g., Medina* v. *City and County of Denver*, 960 F.2d 1493 (10th Cir. 1992).

[21] 489 U.S., at 390-391.

[22] *Id.* at 391.

[23] *Id.*

[24] *Id.* at 389.

[25] 927 F.2d 1473 (9th Cir. 1991).

[26] *Id.* at 1482-1483. For other examples where training was deemed to be inadequate, *see Bordanaro* v. *McLeod*, 871 F.2d 1151 (1st Cir. 1989)(insufficient training in use of force) and *Simmons* v. *City of Philadelphia*, 947 F.2d 1042 (3d Cir. 1991)(insufficient training in handling potentially suicidal detainees). Examples where training was deemed adequate may be found in *Dorman* v. *District of Columbia*, 888 F.2d 159 (D.C. Cir. 1989)(suicide prevention training); *Colburn* v. *Upper Darby Township*, 946 F.2d 1017 (3d Cir. 1991)(suicide prevention); *Mateyko* v. *Felix*, 924 F.2d 824 (9th Cir. 1990)(tazar training).

[27] *Id.* at 391. *See Buffington* v. *Baltimore County, MD*, 913 F.2d 113 (4th Cir. 1990)(no evidence that failure to train officers in suicide prevention caused suicide).

[28] *Id.* at 392.

[29] *Id.*

[30] *Id.* at 390.

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

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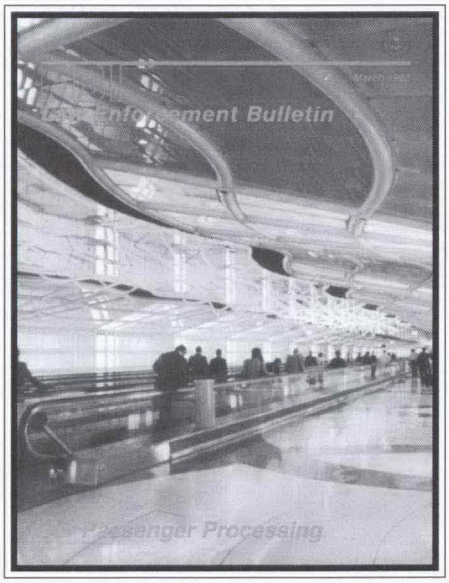

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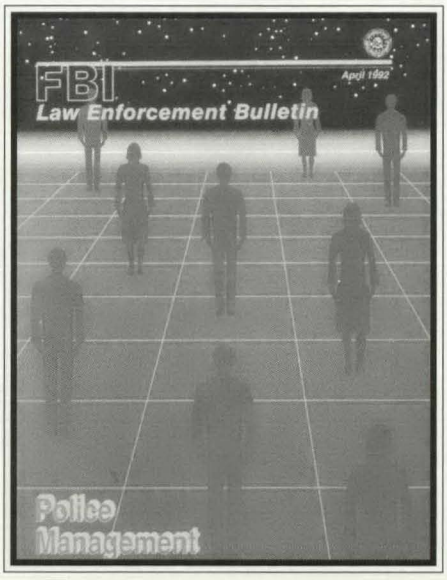


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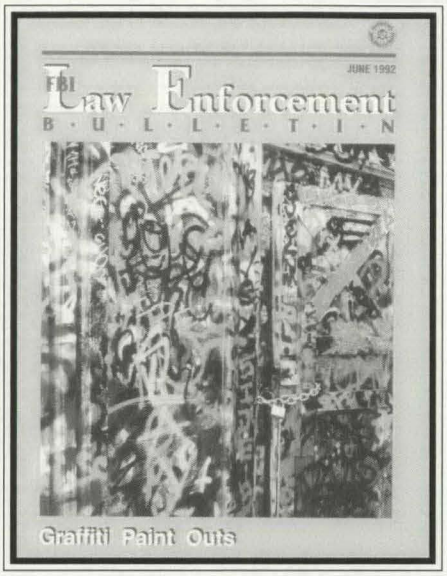

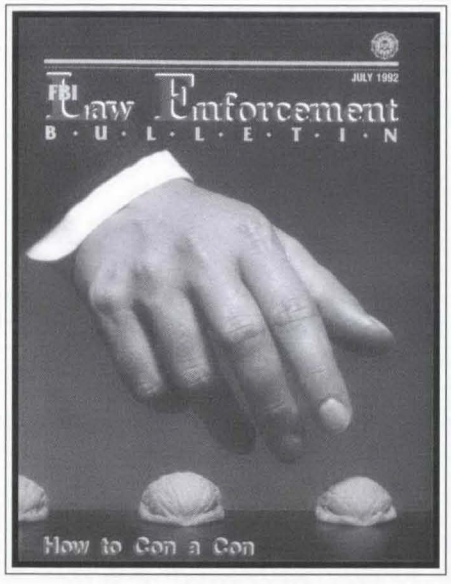


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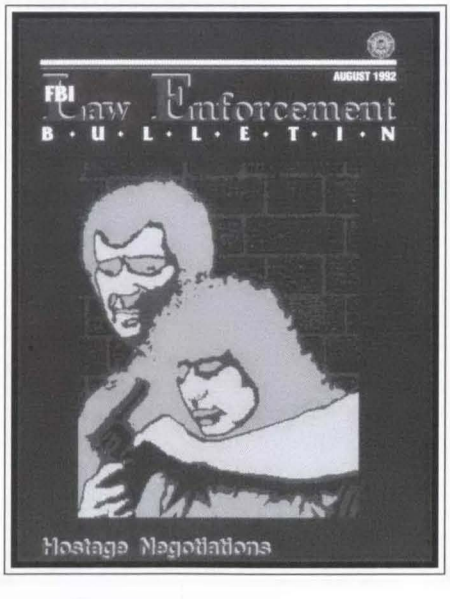

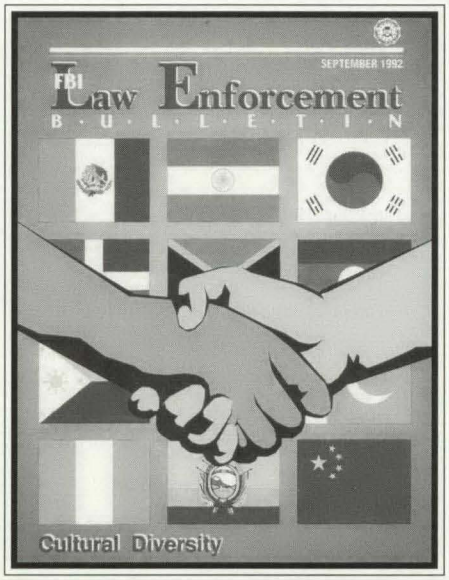

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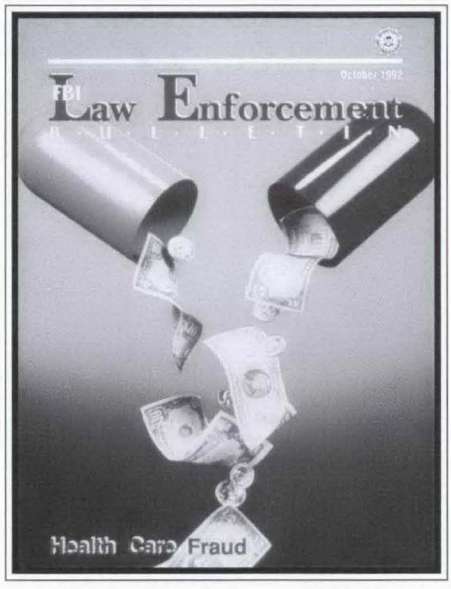


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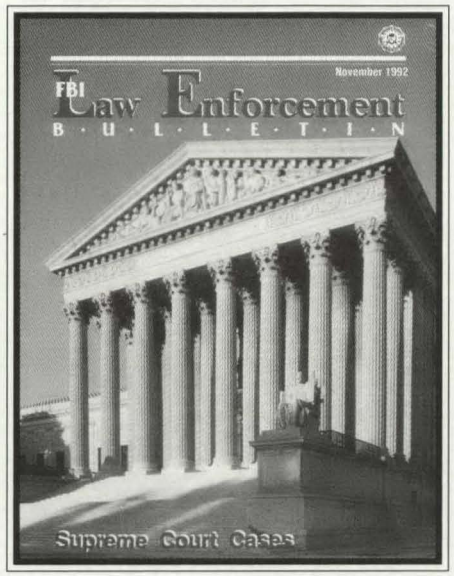

# The Bulletin Notes

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.

*Sergeant Carswell*

Upon arriving at the scene of a house fire, Sgt. Ricky Carswell of the Marianna, Florida, Police Department learned that a baby girl remained trapped inside. He entered the burning structure through a window, located the baby, and passed her out through the window to her father. Then, he used a fireman's air tank to supply air to the child until rescue personnel arrived. Sergeant Carswell also assisted paramedics in resuscitating the child while they transported her to the hospital.

*Officer Eaton*

While off duty, Officer Charles A. Eaton, III, of the Newbury, Massachusetts, Police Department was dining in a restaurant when an elderly patron began to choke on her food. Officer Eaton immediately went to the woman's aid, determined that she could not breathe, and applied the Heimlich maneuver, successfully dislodging the obstruction.

*Sergeant Lara*

Sgt. Joseph Lara of the Windcrest, Texas, Police Department responded with another officer to an activated burglar alarm at an area fast food restaurant. Upon arrival, he heard a man inside ordering employees into a walk-in cooler. As Sergeant Lara attempted to alert the other officer, who was positioned at the front of the building, the subject suddenly exited the back door, carrying a shotgun. When he announced himself and ordered the man to drop his weapon, the assailant turned and pointed the shotgun in his direction. Sergeant Lara then fired at the subject, causing him to drop his weapon and fall to the ground. A subsequent investigation revealed that the suspect, who was placed under arrest, had committed over 20 armed robberies and other crimes.

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