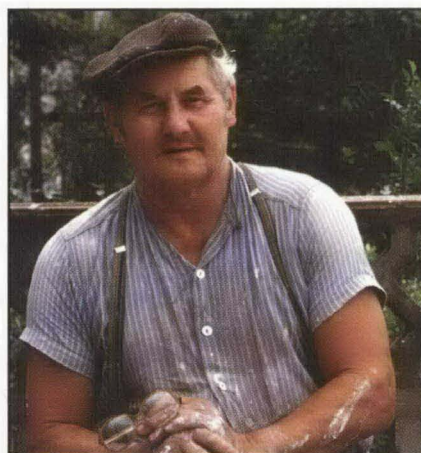
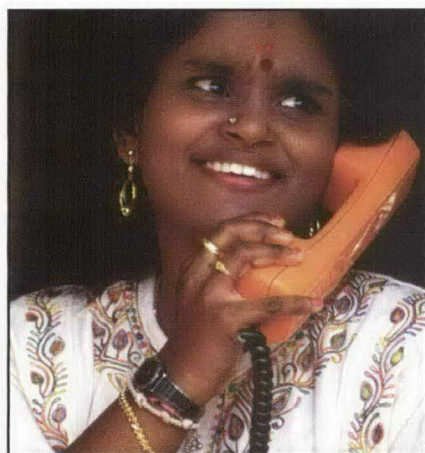
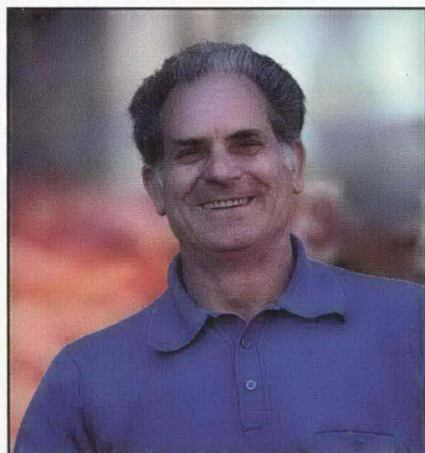
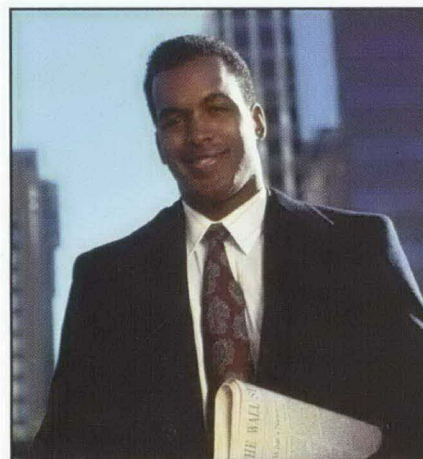
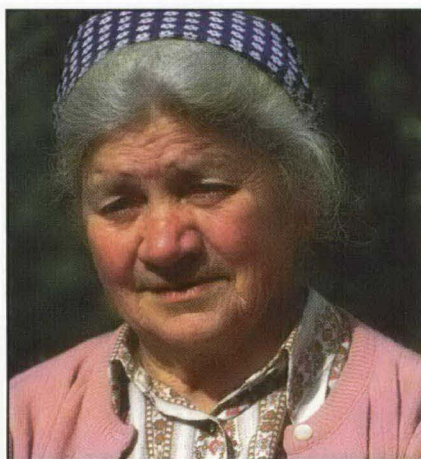
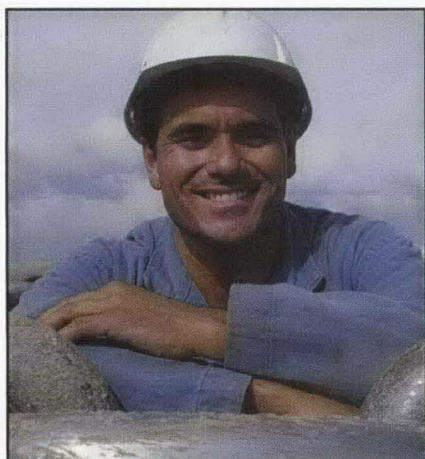




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Multicultural Policing



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Director

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Incorporating Diversity

Police Response to Multicultural Changes in Their Communities

By

BRAD R. BENNETT, D.P.A.

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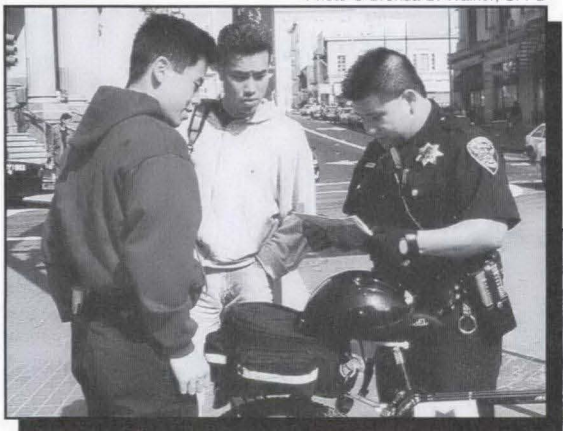


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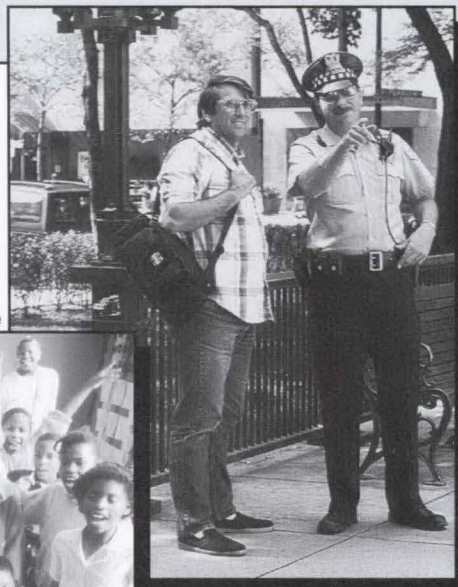


Photo © Regina Kosicki, FBI

A great demographic change is taking place in the United States, making the population much more multicultural and diverse than it used to be. As with other kinds of social changes, law enforcement agencies must adapt to the population shifts in their communities.

This article discusses the findings of a study undertaken to determine how law enforcement agencies in four California cities responded to demographic changes that took place in their communities between 1980 and 1994. The departments in San Jose, Long Beach, Stockton, and Garden Grove¹ now police cities

where African Americans, Asians, and Hispanics represent almost 50 percent of the population, an average of a 17-percent increase in the ethnic population since 1980. The departments have employed a number of strategies to best serve their changing communities.

REPRESENTATION AND INCORPORATION

All four police departments have made concerted efforts to incorporate into their organizations the varied and diverse members of their communities. Through recruiting and hiring strategies, citizen participation, training programs both

for employees and community members, community outreach initiatives, and community policing, each department has embraced its diverse community groups.

Recruiting and Hiring

San Jose developed a philosophy that recognizes and espouses the value of a diversified work force. This philosophy provided the fundamental ingredient that fostered the attitude necessary to lay the foundation for a successful recruiting and hiring strategy. Many of San Jose's recruiting efforts involve officers as culturally diverse as the applicants they seek. The recruiters seek out

potential applicants by attending events, such as festivals and job fairs, frequented by people from a variety of ethnic backgrounds, by advertising in bilingual publications, and by offering incentives to applicants who speak more than one language.

In addition to these fairly traditional approaches, San Jose also developed some unique ways to recruit and promote ethnically diverse employees. The department's program rewards officers with up to 40 hours of paid leave if the individuals they recruit become police officers. The department also helps all officer candidates to overcome obstacles, cultural or otherwise, in preparing for the department's written tests. Mentors from ethnically diverse police officer associations within the department help newly hired officers acclimate to the department.

San Jose's efforts to incorporate representatives of diverse groups do not stop at the entry level. The department continually monitors the

composition of special units, such as the detective, gang, training, and personnel units, to ensure that they represent the department and the community. Officers can serve in special units for only 3 years so that all members of the department have an opportunity to do so.

The department also incorporates diversity into its promotional procedures. Recruiting efforts and community relations are enhanced when community members from diverse backgrounds see people similar to themselves in a variety of positions and ranks throughout the department.

Similar to San Jose, the Long Beach, Garden Grove, and Stockton Police Departments have taken steps to recruit and hire personnel who reflect the cultural composition of their communities. Special emphasis has been placed on recruiting Asian applicants because of the large increase in Asian populations in these communities over the past decade.

All three departments hired individuals specifically to work with the Asian community and to attract more Asian applicants. Community leaders in Long Beach also help by training people within their cultural groups so they can qualify as potential candidates for positions within the police department and in city government in general. In addition, Long Beach established an Asian Affairs Advisory Committee, while Garden Grove works with the City Cultural Cohesiveness Committee to improve its recruiting efforts.

Citizen Participation

All four departments have undertaken successful efforts that bring diverse individuals into their organizations at different levels. These include civilian community service officer, reserve officer, police cadet, Law Enforcement Explorer, and Police Athletic League programs. Such initiatives provide excellent opportunities for police departments to familiarize citizens with agency operations.

These police departments also use a variety of methods for determining the concerns of community members. Forming advisory groups representative of the entire community has proven to be one effective way to establish collaborative relationships with diverse groups. Advisory groups give residents a voice and help them ensure that the department understands their unique needs and serves them in a professional manner. Such groups also prompt police agencies to be more open and responsive to the community.

In addition to forming advisory boards, departments developed



Commander Bennett serves in the South Lake Tahoe, California, Police Department.

“...the country is being called on to open its arms to people from many backgrounds, and police departments must do their part.”

”

neighborhood groups and solicited information through focus groups and citizen surveys. As many agencies move toward a more service-oriented, community-involved approach to policing, it will become increasingly important for the police to try to represent the wide variety of community groups in the ranks of employees and to incorporate the voices of the full range of citizens.

TRAINING

All four police departments conduct training programs to teach employees about the many cultures within their communities. The length of the programs varies tremendously, from a few-hour presentation to a week-long course.

In the two larger departments, San Jose and Long Beach, the programs are components of advanced officer training and are offered only to sworn personnel. The two smaller agencies, Stockton and Garden Grove, provide training to all employees. Most of the programs call on community members to facilitate the training, and the departments have developed rather uncommon approaches to their cultural diversity training.

In San Jose, the police chief sought input from members of the advisory board to design the cultural diversity training program for the department. Based on their suggestions, the training starts with a segment on change. It addresses a wide range of concerns relevant to individual and organizational change, including understanding the process of change and overcoming resistance. The initial instruction and the discussions that arose from it helped to eliminate many of the

barriers that often occur when dealing with new issues, ideas, and approaches.

The Long Beach Police Department collaborated with the National Conference of Christians and Jews to develop its 40-hour cultural awareness training course for all department employees. In addition to general topics related to cultural diversity, the program addresses some nontraditional subjects of interest, such as Anglo cultures, the police culture, the homeless, and various religions.

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***...to be responsive
to all citizens, police
departments must
find out what their
communities need.***

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Long Beach also emphasizes cultural diversity awareness in its basic recruit training academy. Recruits receive 8 hours of classroom instruction devoted to diversity awareness, and then they spend 16 training hours with citizens from the various ethnic groups within the city. Recruits and citizens thus have an opportunity to interact in a nonconfrontational, positive way.

In addition to cultural awareness training, all four departments encourage or provide training in the various languages spoken within their communities. Bilingual or multilingual officers can be very helpful to their departments and their communities. Unfortunately,

as communities become more and more diverse, the number of languages spoken increases as well, and it becomes difficult for agencies to cope. Still, by encouraging all officers to learn other languages, departments can facilitate communication with the full spectrum of community members.

COMMUNITY OUTREACH

To respond to the needs of their diverse communities, the police agencies in the study tried a variety of approaches, including police substations, citizen police academies, and youth programs. Many of these initiatives did not target ethnic neighborhoods in particular; instead, they impacted the police department's responsiveness to all community members.

Police Substations

The San Jose and Garden Grove departments have placed substations in areas where very distinct populations live. Police employees, representatives from other government agencies, and citizen volunteers who speak the residents' languages staff the substations.

Staff members work closely with merchants, apartment complex owners, and residents to ensure police responsiveness to the needs of each community. Especially in large cities, substations provide citizens the opportunity to access needed government services. They also enable government employees to establish personal relationships with community members.

Citizen Police Academies

A number of police departments across the United States have

adopted citizen police academies. Through these academies, police agencies seek to educate community members about the roles and responsibilities of police officers and to familiarize the public with the departments and how they work within the community.

San Jose and Garden Grove both have citizen police academies. San Jose includes a wide variety of community members in its classes. Garden Grove requires members of its community policing advisory board to attend the academy to acquaint them with the functions, policies, and operations of the police department.

As noted, to be responsive to all citizens, police departments must find out what their communities need. Similarly, departments also should educate their communities about the functions of the police department, as well as any changes that occur within the department. An open exchange of information between each community and its police department promotes understanding and greater cooperation.

Youth Programs

All four departments have developed youth-centered programs to enhance their relationships with young people in their communities. These programs generally focus on at-risk youth, who often come from culturally diverse backgrounds.

Initiatives include assigning beat officers to schools, conducting educational programs, and sponsoring Police Athletic Leagues. Officers teach Drug and Alcohol Resistance Education (D.A.R.E.), participate in after-school activities, and become involved in the

schools as role models, mentors, and counselors.

Involving diverse youth in Law Enforcement Explorer and police cadet programs also has proven advantageous. Youngsters learn self-discipline and often develop improved self-esteem. For students interested in law enforcement careers, these programs expose them to the department and provide them opportunities to learn about policing.

Through these programs, the departments have focused on getting the police and young people together in positive circumstances. Relationships between police and children have improved tremendously in the schools where officers have been assigned. Young people and officers get involved with each other in positive settings that benefit both groups. Positive contacts made

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A common theme became apparent during the study of these four California police departments: Leadership makes a difference.

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through these programs often translate into improved relationships between officers and the children's families as they interact outside the school environment.

COMMUNITY POLICING

Many members of the law enforcement profession believe that

community policing provides the best method for being responsive to and involved in the community. As an organizational philosophy, it promotes a set of values and corresponding procedures that form the basis for police-community interaction to solve problems. Community policing reverses the notion that the police have sole responsibility for maintaining public order, recognizing instead that the community at large is responsible for the conditions that generate crime.

Empowering the community to solve its own problems is the key to making community policing work. This means that the police and members of the community—neighbors, families, individuals, schools, organizations, churches, and businesses—must accept the challenge to assume joint responsibility for the community's safety and well-being.

The four departments studied, similar to many police agencies across the country, have taken steps to implement community policing. Many of the initiatives already described are components of those efforts. Most of the agency personnel interviewed for this study believe that this approach offers the best opportunity for responding effectively to changing and diverse communities. Only by listening to and working with community members can the police determine what needs to be done and how best to do it.

Officers in San Jose, Stockton, and Garden Grove were reassigned from normal patrol duties to specific neighborhoods. These officers formed partnerships with community groups to identify and solve neighborhood problems. The police

Increased Population Diversity

During the 1980s, 6 million people legally immigrated to the United States. In the previous two decades combined, only 7.4 million immigrants legally entered the country. Census information shows that between 1980 and 1990 the country's population of Asians doubled, from 1.5 percent to 3 percent of the U.S. population. The Hispanic population grew by half, from 6.4 percent to 9 percent of the population by 1990. Despite the rapid growth among immigrant groups, African Americans continue to be the largest minority group in the United States, representing 12.1 percent of the population in 1990.

The diversity of the United States is expected to expand even more. Projections by

the U.S. Census Bureau suggest that Asians will continue to be the fastest-growing race in America, reaching 11 percent of the population by the year 2050. Hispanics are expected to eclipse African Americans as the largest minority group by the year 2010 and to increase to 21 percent of the population by 2050. By that year, the number of African Americans probably will rise to 16 percent of the total population, while the number of whites will fall from 75 percent to 53 percent of the population. By 2050, the U.S. population will be divided almost evenly between minorities and non-Hispanic whites.⁴

Source: Chris Swingle, "U.S. Minorities Expected to Grow by 2050," *Democrat and Chronicle*, Rochester, New York, December 1992, 1.

arranged their priorities based on the problems identified by residents. Some of the strategies employed by these departments for solving community problems included community surveys, meetings, education, and involvement; neighborhood cleanups; citizen patrols; school and youth programs; government and social service involvement; and community empowerment initiatives.

The San Jose, Stockton, Long Beach, and Garden Grove departments are all moving toward implementing community policing departmentwide. These departments believe that to be successful they must involve all stakeholders in tailoring their philosophies and processes to meet the specific needs of their communities. Department employees, as well as community

members, must participate in the development of community policing as a law enforcement approach in order for it to be effective. Such participation raises two important sets of expectations—those between individual employees and the police organization and those between the community members and the organization. Police leaders must work to balance these expectations in order to move effectively toward community policing.

To begin this process, the agencies formed internal committees composed of a cross-section of department members to determine the particular approach most suitable for each department. After establishing a general internal philosophy and approach, representatives from the agencies then met with community members to design

specific strategies for the various communities within their cities.

Everyone involved in implementing community policing should recognize that it is not a fixed or standardized program. It is not a structured model of policing that can be replicated and transferred from agency to agency with ease. Rather, departments must adopt philosophies and approaches that meet the unique needs of their communities. Only in this way will community policing provide the promised benefits for police departments who want to serve their diverse communities effectively.

LEADERSHIP

A common theme became apparent during the study of these four California police departments: Leadership makes a difference. New

leaders in each organization led all four departments in making significant strides toward enhanced responsiveness to their communities. Interviews with department members revealed that what distinguished the new leaders from their predecessors was the ability to translate intentions into realities. Because they could deal effectively with their constituencies both inside and outside the organization, these leaders could turn their visions for their departments into action and reality.²

The current leaders recognized the influence of relationships among the agency, the individual employees, and the community members on organizational responsiveness. The leaders first addressed internal issues, because it is important to attend to employees' needs before addressing the needs of the community. Next, they developed strategies for dealing with police-community relationships.

These strategies reflect both a concern for community problems and a social responsibility that goes beyond law enforcement. They include service dimensions that recognize that crime prevention is a community matter and suggest that the police broaden their approach beyond merely responding to crime. The approaches adopted by the leaders of all four agencies recognize that the police must become more problem-oriented; they must scrutinize problems, obtain as much information as possible from everyone involved or affected, and only then develop solutions.³

CONCLUSION

All four agencies set the goal of being responsive to their changing communities. As shown by the various strategies and programs employed by each agency, there are many ways to achieve that goal. Developing positive relationships with young people from diverse

backgrounds, actively seeking input on departmental operations from the full spectrum of community members, conducting imaginative police training in the areas of cultural sensitivity and improved communication, and adopting the community policing philosophy moved these agencies toward their goals.

There is no guarantee that every effort to improve police service to a changing and diverse society will be successful. Yet, these four agencies show that imaginative and resourceful moves toward responding to changes in their communities can be made.

The United States historically has been noted for incorporating people from all over the world into a common society. Once again, the country is being called upon to open its arms to people from many backgrounds, and police departments must do their part. By embracing all segments of their communities, agencies can tap into the vast resources of their many members. By drawing on those strengths, the police and the public can work together to make communities safer for everyone. ♦

Ethnic Changes in Total Population

	1980 Ethnic Population	1990 Ethnic Population	Increase
San Jose	36%	50.4%	14.4%
Long Beach	33%	50.5%	17.5%
Stockton	43%	56.0%	13.0%
Garden Grove	22%	45.3%	23.3%

Endnotes

¹The 1990 census showed the populations of these cities as: San Jose, 782,248; Long Beach, 429,423; Stockton, 226,255; and Garden Grove, 149,700.

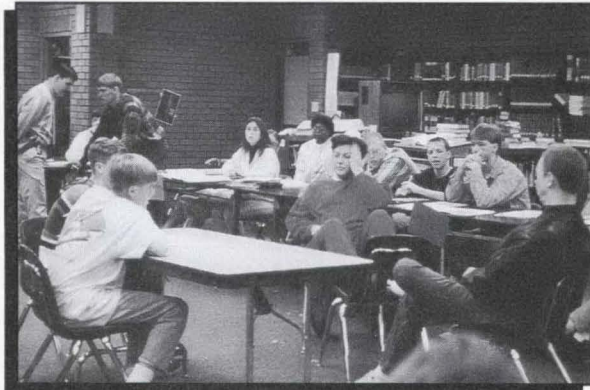
²Warren Bennis, "The Artform of Leadership," in *Public Administration in Action*, ed. Robert B. Denhardt and Barry Hammond (Pacific Grove, CA: Brooks/Cole Publishing, 1992), 311-315.

³Roy Roberg and Jack Kuykendall, *Police Organization and Management, Behavior, Theory, and Processes* (Pacific Grove, CA: Brooks/Cole Publishing, 1990), 48-52.

Police Practice

Students for Justice Teaching Young People About the Justice System

By Gary F. Toelke



From detective novels to television dramas to action-adventure movies, the media offer many fictionalized portrayals of the criminal justice system. Every year, young people spend literally hundreds of hours watching television and going to the movies, digesting the messages that the media feed them. Over time, their concepts of life and society become affected by these images.

While these productions may be entertaining, they very rarely provide an accurate depiction of law enforcement or the criminal justice system. In fact, in their drive to entertain, many television programs and motion pictures go to extremes. They either depict the criminal justice system as anything but just, or they create the impression that real-life law enforcement officers can accomplish superhuman feats.

In Union, Missouri, law enforcement officials and educators teamed up to provide young people with a more realistic look at the criminal justice system. In doing so, they also developed a way for students to gain a better appreciation for the role of law enforcement in society, as well as an understanding of the restrictions under which law enforcement officers must perform their complex duties.

Responding to a Need

During the 1993-94 school year, officials from Union High School, the Union, Missouri, Police Department, and the Franklin County, Missouri, Sheriff's Office met to discuss the need for a program directed at high school students to serve as a followup to the D.A.R.E. program delivered to junior high school students. All of the officials had children who attended Union High School, and each had heard numerous remarks from students that indicated a general lack of knowledge of the judicial system. Even worse, an animosity toward law enforcement appeared to be growing out of this lack of understanding.

The result of the initial meeting was a program that would be offered as part of the school's "club day." This event affords students an opportunity to form clubs and sets aside 2 hours each month for members to engage in club activities.

Getting Started

After planners secured approval for the concept from school officials, the school nurse, who assumed responsibility as the program's coordinator, began publicizing the club to students. She informed them that a new club was being formed for students who wanted to learn more about law enforcement and the criminal justice system. Potential members were advised that the club would not serve as a platform to air complaints, but would provide a forum for students to gain a practical understanding of the justice system.

In its first year, 20 students—ranging from freshmen to seniors—joined the club.

The coordinator and initial group of members named the club Students for Justice. They elected club officers and collaborated to write a constitution. To foster a sense of belonging, members also helped design a logo for a club T-shirt.

Changing Perspectives

The Franklin County Sheriff and a lieutenant from the Union Police Department were enlisted to serve as primary instructors for the club. When developing the curriculum, the sheriff realized he wanted to provide students with a different perspective on policing. He decided to introduce them to the criminal justice system from the inside by placing students in positions of authority, wherein they would act as police officers, prosecutors, and judges. In these role-playing exercises, the students would work a mock case under the same rules and regulations that criminal justice professionals must follow.

Role-playing

For the role plays, club members are divided into three groups representing law enforcement officers, prosecutors, and judges. Students in the law enforcement group are given a criminal case to process, complete with a mock crime scene set up in the classroom. Volunteer deputies and officers from the sheriff's and police departments serve as consultants to

the group and act as suspects, victims, and witnesses. The students process the crime scene, interview witnesses, question suspects, apply for warrants, and make arrests.

To give the students a realistic feel for police work, some of the witnesses behave in a hostile manner and even refuse to answer questions when interviewed. The volunteer officers also take on the role of defense counsel, challenging the students' search-and-seizure evidence.

The prosecution group builds its case based on reports and information supplied by the students in the law enforcement group. When the prosecution is ready to go to trial, students from the judicial group try the case.

In its first year, the club held its trial in the Franklin County Associate Circuit Court. School staff members selected six students not in the club to serve as the jury. School administrators set aside a full day for students involved in the trial.

A circuit court judge assisted the judicial group in hearing the case. During the trial, some witnesses recanted their testimony, and volunteer officers acting as defense attorneys

motioned to have certain evidence suppressed. These common complications gave students a better appreciation for the frustrations law enforcement officers often experience as they serve and protect their communities. The judicial proceedings also gave students a deeper practical understanding of the constitutional safeguards that they learn about in government and social science classes.

Seeing Results

Charter members of the club clearly exhibit a better understanding of the criminal justice system since completing the program. By their actions, these club graduates now display a heightened sense of respect for the role law enforcement officers play in the community and for the balance between freedom and responsibility in a democratic society.

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By dispelling myths and providing a realistic picture of policing...the Students for Justice program fosters understanding where mistrust once may have existed.

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Bulletin Reports

The success of the Students for Justice initiative has led to the club's expansion. Forty students—double the number in the original club—signed up for the 1994-95 program. This increased membership allowed for an additional group of club members to assume the role of the media.

Staffing the Program

Despite its achievements, the Students for Justice program requires only a modest commitment of personnel from the participating law enforcement agencies. The two primary instructors meet with the club once a month for 2 hours. Like the two instructors, other deputies and officers who volunteer to participate in the program generally do so during their regular duty hours. The 1 to 2 hours that these volunteers devote to the club each month requires no special scheduling.

Likewise, the primary instructors and law enforcement personnel who volunteer for the program do not need specialized training. They follow the program's curriculum and rely on their firsthand knowledge of police operations to instruct the club members.

Conclusion

Students now in high school will soon make their mark—positive or negative—on society. Guiding these young people toward the right choices does not require a tremendous commitment of resources from law enforcement. As the Students for Justice program proves, a modest investment of time and personnel can yield very positive results.

People who have only negative experiences with law enforcement generally adopt a skeptical view of the police. Fortunately, the converse also is true. By dispelling myths and providing a realistic picture of policing and the criminal justice system, the Students for Justice program fosters understanding where mistrust once may have existed. By doing so, the program encourages students to play by the rules when they become adults. ♦

Sheriff Toelke heads the Franklin County, Missouri, Sheriff's Office.

Crime Analysis

Computer mapping is state-of-the-art technology that the police can use against current and future criminal activity. *Crime Analysis through Computer Mapping*, a recent publication of the Police Executive Research Forum (PERF), offers practical advice for police professionals interested in implementing computer mapping in their agencies. Experts from a variety of fields discuss both the recent technological advances in computer mapping and the ways in which it can be applied to community- and problem-oriented policing.

Copies of *Crime Analysis through Computer Mapping* can be obtained from PERF, 1120 Connecticut Ave., NW, Suite 930, Washington, DC 20036. The phone number is (202) 466-7820; the fax number, (202) 466-7826.

IACP Murder Summit Report

In 1994, the International Association of Chiefs of Police (IACP) assembled 55 law enforcement practitioners and scholars to address the most evident and threatening dimension of contemporary violence in society—murder. The summit participants introduced, discussed, and advocated a broad package of recommendations to reduce murder and violence. *Murder in America: Recommendations from the IACP Murder Summit* reports the findings of this meeting.

The report includes a total of 39 action recommendations for law enforcement, the juvenile justice system, schools, legislatures, community groups, social service agencies, health service agencies, and individual citizens. According to the report, many of the tools are in the hands of police departments and communities now and need only to be implemented.

A copy of the report can be obtained from the IACP, 515 North Washington St., Alexandria, VA 22314-2357. The phone number is (703) 836-6767; the fax number, (703) 836-4543

Street Smarts

Safely Handling Intoxicated Persons

By GERALD W. GARNER, M.A.

Photo © K.L. Morrison



- Two State troopers arrest a drunk driver and take him into custody. After removing the driver's restraints, the troopers secure their own weapons. The inebriate subsequently produces a handgun and kills both troopers before escaping.
- An experienced patrol officer makes a traffic stop at approximately 11:30 p.m., taking a man and a woman into custody on alcohol-related charges. He places the unsecured prisoners into his patrol car with the woman in the front seat and the man in the back. En route to jail, the man stabs the officer multiple times with a knife. Both subjects escape. The officer dies after driving himself to a hospital.
- A sheriff's deputy responds to an early morning complaint of an intoxicated adult male threatening his ex-wife at a mobile home. As the deputy approaches the door of the trailer, he is shot fatally in the chest with a .22-caliber rifle. The suspect and his ex-wife subsequently are found dead nearby.

These recent real-life examples provide tangible proof of what every experienced law enforcement officer knows: Handling an intoxicated person is dangerous. Unless properly handled using time-proven safety procedures and tactics, a seemingly routine encounter can end in a violent tragedy.

Alcohol intoxication robs inebriates of their judgment and decisionmaking abilities at the same time that it reduces inhibitions and temporarily impairs motor skills. As a result, the mild-mannered, slightly built person who never would consider resisting a police officer when

sober may elect to physically attack that same officer when under the influence of alcohol.¹ Unless officers remain alert to the possibility of this life-threatening conduct, serious repercussions may result for both police officers and intoxicated offenders.

Above all else, the word "unpredictable" accurately describes intoxicated subjects. For this reason alone, police officers must remain aware that the "town drunk" who has not resisted arrest in a dozen past encounters with police may launch a deadly assault the 13th time. Likewise, the middle-aged business executive or the well-dressed professional who has been cooperative and jovial through a drunk-driving contact with officers suddenly may turn violent or even suicidal upon reaching a processing facility.

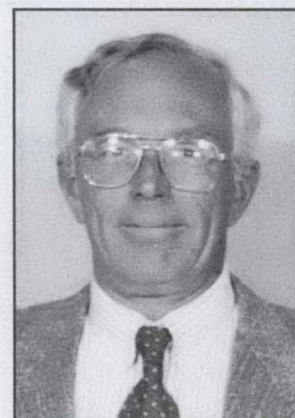
Whether young, old, professionally employed, or unemployed, all inebriates possess the tendency for sudden mood swings and aggressive behavior, which means that officers must take seriously all threats from individuals under the influence. At the same time, officers must disregard any promise that an inebriate makes.

The drunk driver who promises to go straight home if the officer allows it may honestly mean it at the time. Unfortunately, the promise gets forgotten 10 minutes later or the next time the individual drinks and drives. While they can never be risk-free, law enforcement's contacts with intoxicated persons can be raised to an acceptable level of safety, especially if officers adhere to field-tested guidelines.

“

...law enforcement officers are murdered with sobering regularity by intoxicated persons.

”



Lieutenant Garner serves in the Lakewood, Colorado, Police Department.

Distinguish the Signs of Intoxication From Other Medical Conditions

As all experienced officers know, alcohol intoxication generally produces a readily observable set of physical and behavioral indicators. Although they may vary somewhat from one individual to the next, their presence can warn officers of possible irrational and dangerous behavior. Forewarned, officers can implement appropriate tactics and techniques to control the situation.

In addition to recognizing the obvious signs of intoxication, such as a strong smell of alcohol, slurred speech, or poor balance, officers also should look for more subtle clues, including soiled, disarrayed clothing; inappropriate or extreme emotional displays, such as laughing or crying for no apparent reason; and poor motor skills, such as the inability to find and extract a driver's license from a wallet. Generally speaking, the more indicators present in an

individual, the stronger the evidence of intoxication.

Nonetheless, officers must not overlook the possibility that injury, illness, or other factors, such as drug overdose or mental problems, may have produced the indicators. The situation may be complicated further if the ill or injured person also has been drinking. When in doubt, officers should seek prompt medical aid for the individual.

Gather Adequate Information

Adequate information can increase the safety of each contact with an intoxicated subject, whether the encounter results from a traffic stop, a service call, or a chance meeting. The more information about the subject that officers can gather in advance from dispatch, witnesses, acquaintances of the subject, and direct observation, the better they can predict the tactics needed to resolve the situation safely.

For instance, an officer might discover that the suspected inebriate

has a head injury or a medical condition mimicking intoxication. The individual may distrust law enforcement. Perhaps the subject is armed. In each case, the officer's safety procedures for approaching the individual likely will change, perhaps drastically.

Expect the Unexpected

Officers should anticipate the unexpected. Subjects laboring under the judgment-numbing effects of alcohol may not respond rationally to a given set of circumstances. An intoxicated driver may go from high speed into a panic stop at the sound of a police siren. The tipsy reveler contacted on a downtown sidewalk may respond to a patrol officer's request to produce identification by charging the officer, fists flailing. Thus, when dealing with individuals

under the influence, officers can stay safe only by staying alert and preparing for unpredictable conduct.

Exercise Patience

Many veteran law enforcement officers demonstrate excellent calming and reasoning abilities that work well with emotional, agitated individuals. Unfortunately, the inebriate's diminished ability to reason logically may defeat the efforts of well-intentioned officers.

As a result, officers confronted with intoxicated and perhaps belligerent persons oftentimes must call on a virtually bottomless well of tact and patience. They may have to explain repeatedly to the inebriate what a sober person could comprehend on the first try. While there are limits to how much time an officer can spend on these

communication efforts, in the long run, the extra effort may pay off in a defused confrontation that ends without violence.

In short, officers who treat an obnoxious, smelly inebriate with patience now may be avoiding a fight—or worse—later. From a very practical standpoint, then, the inebriate humanely treated by a law enforcement officer may be less likely to cause that officer grief. This, too, represents a part of street survival. And, although intoxicated individuals may lose their inhibitions and judgment, they do not relinquish their rights under the law; they merit firm but fair treatment, as would any citizen.

Consider New Techniques

When efforts at reasoning with an intoxicated subject fail, officers may need to resort to physical tactics. Yet, proven people-handling techniques may not work with extremely intoxicated individuals. In fact, officers may discover that they need to change tactics when a favored compliance hold fails to produce the desired effects.

Because a very intoxicated person may not react predictably to a normally effective hold or come-along technique due to an increased tolerance for discomfort, law enforcement practitioners should have alternate means of control readily at hand. This may require escalation to a defensive aerosol spray or an impact instrument if intoxicated persons attack officers seeking to control them.

Call for Backup

Even chemical sprays may not produce their desired distracting or

Survival Checklist For Handling Intoxicated Persons

- Distinguish the physical and behavioral symptoms of intoxication from other medical conditions
- Gather complete information before approaching suspects
- Expect the unexpected
- Exercise patience
- Consider new techniques to subdue uncooperative inebriates
- Request backup
- Handcuff and search offenders properly
- Monitor in-custody subjects for changes in physical condition, attitude, and demeanor

disabling effects when directed against an extremely intoxicated person. For this reason, the presence of backup is vital when dealing with individuals under the influence.

In addition to acting as a possible deterrent when subjects realize that officers outnumber them, an extra set of hands can make all the difference if subjects resist physically. Whereas a one-on-one physical confrontation may result in injury, the presence of additional officers may mean that even a violently resisting inebriate can be subdued without serious harm to anyone.

Enact In-Custody Safety Procedures

Officers who take suspects into custody on alcohol-related charges must handcuff and search them for weapons the same as they would any other suspect. Before placing intoxicated subjects in lockup, officers should confiscate any item that they might use to harm themselves or others. Potentially lethal items include belts, ties, pocket-knives, pens, and other sharp or pointed objects. Additionally, department personnel should monitor in-custody inebriates for signs of violence or illness.

Regardless of the techniques relied on to deal with a confused and otherwise difficult intoxicated person, safety-conscious law enforcement officers should stay flexible when responding to each under-the-influence challenge. By remaining inventive and adapting quickly to the existing circumstances, officers can bolster their effectiveness and at the same time widen the situation's safety margin.

Despite the need for flexibility, officers must apply standard, time-tested safety practices when dealing with an intoxicated offender, which include avoiding actions likely to allow the subject to assault or disarm them. In short, police officers must avoid the carelessness and apathy accompanying a dangerous mindset that says, "It's just a drunk." As an FBI study on officer killings reports, law enforcement officers are murdered with sobering regularity by intoxicated persons.²

Conclusion

Over a long career in law enforcement, police officers can count on a myriad of contacts with intoxicated individuals. For the untrained, careless, or apathetic officer, any one of these interactions could end in serious injury or death.

Intoxicated persons represent a potential threat to themselves and to everyone with whom they come in contact, including the law enforcement officers obligated to deal with them. Through constant vigilance and the consistent application of basic officer safety tactics and techniques, alert police professionals can reduce this considerable threat. For the benefit of law enforcement practitioners, as well as the citizens they serve, no less intense a response will suffice. ♦

Endnotes

¹ While different jurisdictions often apply distinct legal definitions to such terms as "intoxicated," "impaired," and "under the influence," here they will be used interchangeably to refer to all alcohol-induced conditions.

² *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers*, FBI Uniform Crime Reporting Program, Federal Bureau of Investigation, Washington, DC, September 1992, 12.

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Point of View

Improving Minority Relations

By Ronnie A. Carter

Right or wrong, many minorities hold a skeptical opinion of law enforcement and the criminal justice system in America. If law enforcement is to succeed in curbing the rising levels of violence in America, it must work to change these perceptions and to forge new partnerships with minority communities. In many ways, this change must be accomplished by individual officers changing the way they interact with the communities they serve. Today's officers must build on the progress their predecessors made in race relations over the past 30 years and work to break down the remaining walls that separate the police from some minority communities.

GROWING UP

I grew up in the 1960s and 1970s, as one of many black youths who feared the police. While the vast majority of white Americans viewed police officers as protectors, residents of minority communities held a far different view. Because I had only negative contacts with police officers, I believed that they did not represent our part of the community.

Unfortunately, several experiences during my teen years reinforced this view. When I was 16 years old, my older brother and I were driving home from a basketball game when the police stopped us in an all-white community for driving 5 miles per hour over the speed limit. I thought we would both be shot when the officers ordered us out of the car at gunpoint and slammed us down onto the hood. The officers arrested my brother when he complained. The charges were later dropped, and when I look back on the incident now, I can see that the officers were just as frightened as we were. Still, my fear and deep sense of humiliation were genuine at the moment. I experienced several similar encounters with the police during my teen years. Unfortunately, such encounters continue to occur all too frequently today.

FEAR OF THE UNKNOWN

I see two main reasons for such scenarios. First, law enforcement agencies sometimes put badges on

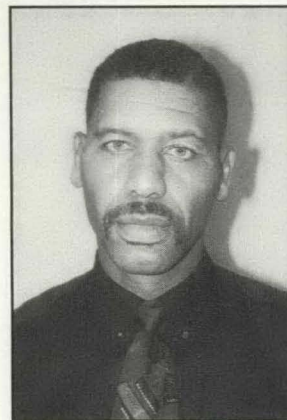
people who suddenly come to believe they have all the power in the world. The kid who used to have his lunch money taken from him grows up to wear a badge and carry a gun. With the full force of the police department behind him, now *he* can be the bully.

The second reason rests closer to the core of the race problem. People generally fear the unknown. The officers who stopped my brother and I did not know what to expect from two black youths driving through an all-white neighborhood. So, perhaps they reacted with undue force.

Years later, when I first joined the Bureau of Alcohol, Tobacco and Firearms, I experienced another aspect of this fear. Upon being assigned to Cleveland, Ohio, I attempted to rent a boarding room that had been advertised in a local newspaper. When my wife and I went to meet the landlord, a white woman in her mid-60s, she told us that we should have informed her that we were "colored." She could not possibly rent the room to us. She offered to make arrangements for us to stay with one of her black friends. I refused and insisted on the advertised room, agreeing to stay no more than 2 weeks if the arrangement proved unacceptable. Before the end of the second week, the woman confessed that she thought I was a nice young man and informed me that I was welcome to stay in the room. She explained that her initial reluctance stemmed from the only exposure she had to black people—largely negative images from television.

This also may be typical of what happens to law enforcement officers. Black officers feel a similar sense of apprehension when they enter a country-and-western bar to make an arrest. However, a subtle

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distinction exists in the decisionmaking process between white and minority officers. Many minority officers believe they will be disciplined—or even fired—if they use unnecessary force against a white or affluent person. So they sometimes walk on pins and needles. Until the past 10 or 15 years, most white officers did not fear such repercussions when they confronted poor or minority subjects. Unfortunately, some officers in these situations reacted too harshly, further eroding relations between minorities and the police.

Today, some black officers who have never lived in inner-city neighborhoods, or may have forgotten what conditions in these areas are like, seem to believe that it is their job to keep minority communities in control. Frequently, these officers repeat the same mistakes white officers made in the past: They react too harshly when dealing with inner-city youths. I believe much of this behavior stems from the desire of black officers to impress their white counterparts and to prove they belong.

DIFFERENT STANDARDS

In reality, despite great strides forward, many black citizens and members of other minority groups remain profoundly skeptical of the police and of the criminal justice system in general. Most believe that different standards apply in minority communities.

Such sentiments explain a great deal about the character of the current wave of violent crime. Far too many people seem to believe that black-on-black or poor-on-poor crime somehow is acceptable to society and, therefore, does not mandate as harsh a sentence as do other crimes. Because they believe that money and power apply pressure on the police, they reason that those with little of either should not expect a high level of police service.

Unfortunately, in some instances, such a view may not be unfounded. In Charlotte, North Carolina, for example, a perception prevailed for many years that drug dealers who killed other drug dealers risked little chance of being prosecuted. Federal law enforcement officials and prosecutors now are working with the local police to prosecute such cases. While these

officials stress that offenders receive longer sentences in Federal rather than State court, most local residents believe that these offenders would not be prosecuted at all without Federal assistance.

In Minnesota, the State Supreme Court Task Force on Racial Bias in the Judicial System found a common perception among minority groups that the justice system is either unable or unwilling to vigorously investigate and prosecute assaults committed against minorities.¹ In its findings, published in 1993, the task force also reported that the State's criminal justice system is composed almost exclusively of white employees, many of whom possess little understanding of minority communities or their cultures. The task

force concluded that this lack of understanding created distrust among the State's minority populations.²

In 1991, an article in the *Dallas Morning News* reported a recent poll showing that over 80 percent of black respondents believed that the police administer justice unequally.³ In this same article, the chief of the Dallas Police Department touched upon an issue central to this sense of mistrust, commenting that the biggest concern minority citizens

have when it comes to the administration of justice is that they be treated with respect.⁴

Black citizens almost universally are incensed over issues of nonenforcement and underenforcement of criminal laws in their communities.⁵ The same can be said of minority communities in general. Likewise, contrary to popular belief, the vast majority of housing project residents do care about their communities and desperately want strict police enforcement. They simply want fair treatment.

CAUGHT IN THE MIDDLE

Because of the tension between the black community and the police, black law enforcement officers often find themselves caught in the middle. Most pursue a career in law enforcement either for the financial rewards or to make a difference in their communities. Eventually, the two reasons become intertwined.

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However, black officers commonly concede that some blacks view them as traitors when they enter the field of law enforcement. A black police sergeant related a typical scenario in an article that appeared in the *Austin American Statesman* in 1992. The sergeant was one of several officers in the home of a black woman whose son was being arrested for theft. The woman ignored the white officers handcuffing her son and snapped at the sergeant, "Why don't you get a real job?"⁶

Such scenarios, along with many other factors, might explain why recruiting minority officers remains a difficult task. Many minority officers must endure what is sometimes referred to as "double marginality." They do not feel accepted by their own minority group or by the white officers with whom they serve.⁷

Fortunately, this problem is not as pronounced as it once was due to the efforts of police departments and other groups in communities throughout America. Still, many black officers rising through the ranks feel they must serve a dual purpose. They must not only protect and serve the community at large but also mediate contacts between their departments and the black community.⁸ Other minority officers probably feel similar pressures. In short, as society moves forward in terms of race relations, the role of minority officers changes but does not necessarily become any easier.

MOVING FORWARD

How do we continue to move forward in reconciling the differences between our growing minority populations and law enforcement? We already have taken some important steps by implementing community-oriented policing (COP), initiating human relations training, promoting goals that bring police and communities together, and enhancing minority involvement in the policing process.

Community-Oriented Policing

Well-formulated and thoughtfully implemented community-oriented policing efforts greatly enhance the relationship between minority communities and law

enforcement. Through COP, officers can form strong bonds with law-abiding citizens and community networks.

A tragedy in Charlotte, North Carolina, illustrates the profound bond that can form between communities and officers. Two white community policing officers assigned to a housing development devoted many of their off-duty hours to performing improvement projects in the neighborhood. During a robbery attempt, a black subject killed the two officers. The city's black community, especially the residents of the housing project, reacted with outrage and helped the police department apprehend the assailant. In addition, the housing project tenants recommended that several of the streets and a park in the area be renamed in memory of the slain officers. Media coverage of the officers' funeral showed black children and adults in the community grieving along with police officers. It powerfully illustrated how much impact individual officers can have on a community.

Twenty years ago, in the book *Police and the Black Community*, Robert Wintersmith cited community policing as one of the best ways law enforcement could improve relations with the black community.⁹ However, he cautioned agencies against making mistakes that would doom any COP effort to revitalize relations with minority communities. One mistake was simply to deploy their best units in targeted areas and then

continue to operate in a business-as-usual fashion elsewhere.¹⁰

Human Relations Training

Instead, police departments should continue to improve the human relations training provided to all officers. Law enforcement officers should understand that as community servants, they can assist communities by lending a hand to help, in addition to apprehending wrongdoers.

At times, brute force is necessary. However, officers should resort to force *only* when it is necessary. As professionals, we should not let our fears and ignorance cause us to overreact. Like everything else,

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Law enforcement administrators must take the lead in promoting better relations with minority groups.

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self-control can be enhanced through effective training. Human relations training teaches officers to control situations and to overcome their fears and ignorance.

As part of this training, officers should learn that different cultures view things in different ways. Likewise, the actions of police officers may offend some people in ways the officers had not considered. For example, today's young people—especially minority youths—attach a great deal of importance to the concept of respect. It could not hurt for officers to understand what actions violate this sense of respect. Sometimes, it is not what we do, but how we do it.

New Goals

Law enforcement administrators must take the lead in promoting better relations with minority groups. Administrators should set realistic, practical goals and incorporate programs into the training process that simultaneously encourage and require compliance with those goals.

Administrators should ensure that training in this area directly impacts performance by tying success in meeting the established goals to performance reviews and promotion opportunities. Ideally, the training should be delivered by a *practitioner* who can inspire officers by relating personal experiences in policing multicultural communities.

Involvement of Minority Communities

Law enforcement agencies not only should provide the same level of service to all communities but also should promote the perception that every segment of the population will receive the same level of response. In return, the police should demand that the entire community get involved in the policing process by reporting crimes.

To increase citizens' awareness of the role they can play, some police departments air a series of television and radio programs produced by the National Institute of Justice. These programs recount crimes that could have been stopped by witnesses if they simply had contacted the police.¹¹

CONCLUSION

Do minorities perceive law enforcement negatively? Many do. Can we as law enforcement officers change that perception? Yes!

Police departments reflect society. Much of the mistrust that minorities feel toward the police stems from the negative view they hold of society in general. In other words, they view the police as enforcers of an unjust society. The police cannot change such broadly defined and entrenched views overnight.

However, those views *are* changing. The police must promote this change by reaching out to minority communities and instilling faith where there is doubt, trust where there is mistrust, and a realistic picture of what the police do where there is a lack of understanding. To accomplish these changes, law enforcement must foster professionalism within its own ranks.

Officers must attempt to understand the attitudes of all community members, including those of minority residents. By joining with the many citizens who want fair and equitable law enforcement, police officers will find that the real minority is not defined by race or class. The real minority is comprised of the few criminals who victimize society with little fear of being brought to justice. ♦

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As society moves forward in terms of race relations, the role of minority officers changes but does not necessarily become any easier.

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Endnotes

¹ Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, May 1993.

² Ibid.

³ Jason B. Johnson, "Police Agencies Struggle to Rebuild Ties with Minorities," *The Dallas (Texas) Morning News*, December 16, 1991, 9-A.

⁴ Ibid.

⁵ R.F. Wintersmith, *Police and the Black Community* (Lexington, MA: D.C. Heath, 1974).

⁶ A. Phillips Brooks, *Austin (Texas) American Statesman*, July 25, 1992.

⁷ K.J. Peak, *Policing American Methods, Issues, Challenges* (Inglewood, CA: Regents/Prentice-Hall, 1993).

⁸ Ibid.

⁹ Supra, note 5.

¹⁰ Ibid.

¹¹ R. Greenberg, *Let's Take Back Our Streets* (Chicago, IL: Contemporary Books, 1989).

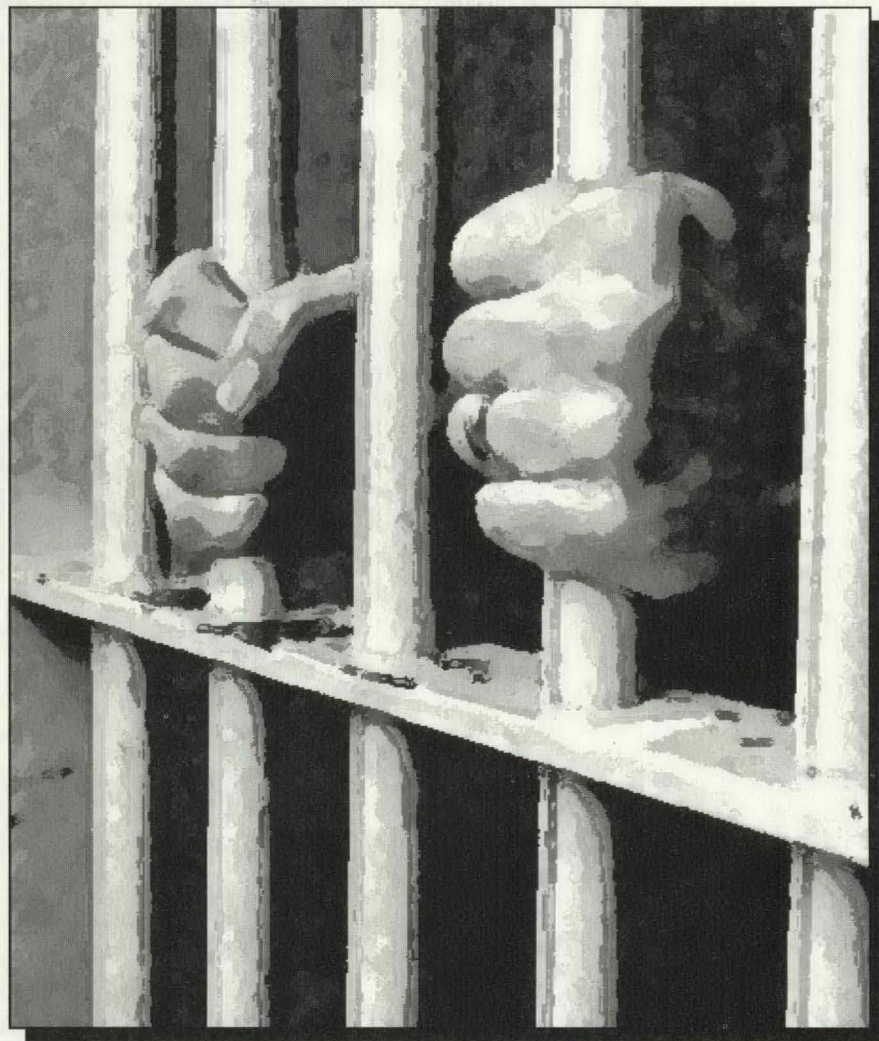
A Constitutional Guide to the Use of Cellmate Informants

By KIMBERLY A.
CRAWFORD, J.D.

Over the 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 agree that the use of cellmate informants is an investigative technique that works very well in many cases.

In the 1990 case of *Illinois v. Perkins*,³ the U.S. Supreme Court, while not resolving the debate, answered an important question regarding the constitutionality of using cellmate informants. Specifically, the Court held that the use of cellmate informants does not violate the *Miranda*⁴ rule. This decision appeared to clear the way for law enforcement to take advantage of this very effective investigative technique.

However, the permissible use of cellmate informants was again questioned when Perkins subsequently argued successfully in State court that the use of the technique violated his previously invoked *Miranda* right to counsel.⁵ Because the Supreme Court refused to hear



the case a second time,⁶ the extent to which cellmate informants can be used lawfully against suspects who have earlier invoked a right to counsel remains open to debate in both lower Federal courts and State courts.

This article reviews the decisions in *Perkins* and examines subsequent cases dealing with the question left unresolved by the Supreme Court. It then provides a guide to the constitutional use of cellmate informants.

FIFTH AMENDMENT SELF-INCRIMINATION CLAUSE

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..."⁷ Over two decades ago, the Supreme Court in *Miranda v. Arizona*⁸ held that custodial interrogation of an individual creates a psychologically compelling atmosphere that works against this fifth amendment protection.⁹

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, and the rights they embody be waived, prior to the initiation of custodial interrogation. This rule, however, is not absolute.

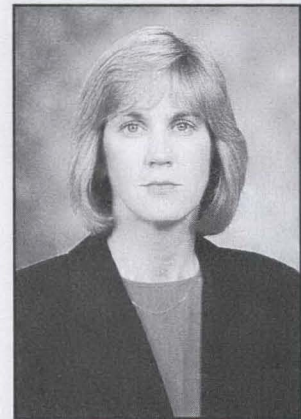
In *Illinois v. Perkins*,¹⁰ the Supreme Court recognized that there are limitations to the rule announced in *Miranda*. The defendant in *Perkins* was imprisoned in a State correctional facility on an assault charge, when a former fellow inmate and an undercover officer were placed in his cellblock in an attempt to gather information about a murder Perkins was believed to have committed. When discussing the

possibility of a prison break, the undercover officer responded to Perkins' claim that he could smuggle in a gun by asking Perkins whether he had ever "done" anyone. In reply, Perkins described at length a murder for hire he had committed. The following day, Perkins was charged with murder.

Prior to trial, Perkins moved to suppress the statements made to the undercover officer. Because no *Miranda* warnings had been given to Perkins prior to his conversation with the undercover officer, the trial court granted Perkins' motion to suppress. The Appellate Court of Illinois, holding that all undercover contacts with prisoners that are likely to elicit incriminating responses violate the rule in *Miranda*, affirmed the suppression order.¹¹

The U.S. Supreme Court reversed the appellate court's decision and 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,

"A cellmate informant may gather information about an unrelated crime because the sixth amendment is crime-specific."



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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 the undercover officer 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 whom he believed to be his fellow inmates. *Miranda* was not designed to protect individuals from themselves. Consequently, the Court held there was no violation of *Miranda* and remanded the case to the Illinois courts for further proceedings.

On remand, Perkins moved once again to have his statements

suppressed. Perkins' new motion was based on an allegation that, when arrested on the assault charge, he was advised of his rights and requested an attorney. Therefore, Perkins argued the statements subsequently made to the undercover officer violated his *Miranda* right to counsel as delineated in *Minnick v. Mississippi*.¹⁴

The Minnick Rule

When *Miranda* warnings are given to individuals in custody who then invoke either their rights to silence or counsel, all interrogation must cease immediately.¹⁵ Whether, and under what conditions, law enforcement officers subsequently may attempt to reinterrogate those individuals depends on which rights have been invoked.

In *Michigan v. Mosley*,¹⁶ the Supreme Court essentially interpreted the invocation of the right to silence as a request for time so suspects could think clearly about the situation. If that initial request is scrupulously honored, the Court held that attempts to reinterrogate may occur if suspects are afforded the time requested, or if they indicate, by initiating communications, that they have had enough time to think and now wish to talk.

As a result, reinterrogations following an invocation of the right to silence are deemed appropriate if: 1) A reasonable period of time has elapsed;¹⁷ or 2) interrogation was initiated by the suspect. In either case, any renewed attempt to interrogate a suspect must be preceded by a waiver of *Miranda* rights.

An invocation of the right to counsel, on the other hand, necessarily carries with it a different set of

procedural safeguards. Obviously, suspects invoking the right to counsel are not simply asking for time to assess the situation; they are, instead, requesting the assistance of an attorney.

In *Minnick*, the Court concluded that this invocation of the right to counsel is not satisfied by giving the suspect the opportunity to consult with an attorney. Rather, the Court held that any attempt to interrogate a custodial suspect once that individual has invoked the right to counsel is unlawful unless: 1) The suspect's attorney is actually present; or 2) the suspect changes his mind and reinitiates the interrogation.¹⁸

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Moreover, the protections afforded suspects who invoke their right to counsel remain in effect as long as they remain in custody. These protections are not crime specific¹⁹ because the invocation implies that suspects are not willing to deal with law enforcement on any criminal matter without the benefit of counsel for as long as they remain in custody.²⁰

Claiming a prior invocation of his right to counsel when first arrested on the assault charge, Perkins argued that the undercover officer's

question “have you ever ‘done’ anyone” amounted to reinterrogation in violation of the rule established in *Minnick*. Agreeing with Perkins, the Illinois courts granted the motion to suppress. When the Supreme Court refused the government's request to hear the case a second time, the question of whether cellmate informants could lawfully be used following an invocation of the right to counsel was relegated, at least temporarily, to the lower courts.

Application of Minnick to Cellmate Informants in Federal Courts

Since the Supreme Court decided the first *Perkins* case, three Federal courts of appeals²¹ have addressed the issue raised by Perkins on remand. In direct opposition to the Illinois courts, all three Federal courts concluded that an invocation of the *Miranda* right to counsel is not a bar to the subsequent use of a cellmate informant. Although unanimous in their decisions, the three Federal courts are not in complete agreement as to the reasons for reaching this conclusion.

Two of the three Federal courts of appeals reached their conclusion by interpreting the Supreme Court's decision in *Perkins* as excluding the use of cellmate informants from the definition of interrogation for purposes of *Miranda*.²² The case of *United States v. Stubbs*²³ is illustrative.

In *Stubbs*, the defendant was arrested when a customs official found cocaine on Edwards, her traveling companion. Following the arrest, defendant was advised of her *Miranda* rights and immediately invoked the right to counsel. Edwards,

on the other hand, immediately confessed and agreed to assist the government in its case against defendant.

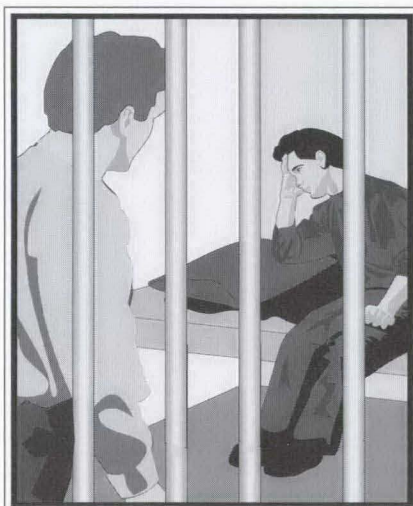
While incarcerated together, defendant reportedly told Edwards during a conversation that she would have to "take the rap" for defendant, but that defendant would take care of Edward's children. Edwards later testified regarding this conversation, and defendant was convicted.

On appeal, defendant claimed the use of her friend as a cellmate informant was interrogation in violation of her fifth amendment right to counsel invoked when she received her *Miranda* warnings. In support of her claim, defendant relied on the Supreme Court's language in *Rhode Island v. Innis*,²⁴ which defined interrogation as "not only...express questioning, but also...any words or actions on the part of the police...that the police should know are reasonably likely to elicit an incriminating response from the suspect."²⁵ Because law enforcement officers should have known that placing Edwards in her cell was "reasonably likely to elicit an incriminating response," defendant argued that the tactic was reinterrogation in violation of her invoked right to counsel.

The U.S. Court of Appeals for the 11th Circuit, however, noted that any determination of whether law enforcement activity amounts to interrogation must "focus primarily upon the perceptions of the suspect, rather than the intent of the police."²⁶ Reading the Supreme Court's decision in *Perkins* as a further refinement of the definition of interrogation, the court of appeals concluded that the use of cellmate

informants does not amount to interrogation because no compulsion is perceived by the suspect.²⁷

A third Federal court of appeals reached the conclusion that an invocation of the *Miranda* right to counsel is not a bar to the use of cellmate informants by a more direct approach. In *Alexander v. State*,²⁸ the



Court of Appeals for the Second Circuit, when confronted with defendant's claim that he had invoked his *Miranda* right to counsel prior to the government's use of a cellmate informant, regarded the claim as irrelevant and made the following statement:

Regardless of whether Alexander properly invoked his right to counsel, there is no support for the concept of a fifth amendment right to counsel which bars conduct not prohibited by *Miranda* itself. It is the fifth amendment's prohibition against compelled self-incrimination which provides the constitutional underpinning for

the prophylactic *Miranda* rules, including notice of the right to counsel. Absent a police dominated interrogation, the fifth amendment right to counsel does not attach.²⁹

Despite the fact that the Federal courts are not in agreement as to why the invocation of the *Miranda* right to counsel does not bar the subsequent use of cellmate informants, the logic of their conclusion is sound. Knowing, as a result of *Perkins*, that the use of a cellmate informant does not violate *Miranda*, it would be incongruous to hold that the technique violates *Minnick*, which is merely an interpretation of the rights guaranteed in *Miranda*.

When considering the use of a cellmate informant, however, law enforcement officers should be mindful that this issue remains unresolved by the Supreme Court and may be deemed unlawful by State courts following the reasoning of the Illinois court in *Perkins*. Therefore, the use of cellmate informants after an invocation of the right to counsel should be reviewed by a legal advisor or prosecutor to ensure the technique is legal in a particular jurisdiction.

FIFTH AMENDMENT— DUE PROCESS

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 property, without the due process of law."³⁰ The due process clause has been interpreted by the Supreme Court as requiring that all defendants in criminal prosecutions be treated with fundamental fairness.³¹

With respect to confessions, the Court has held that to be fair, a confession must be voluntary.³² 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.

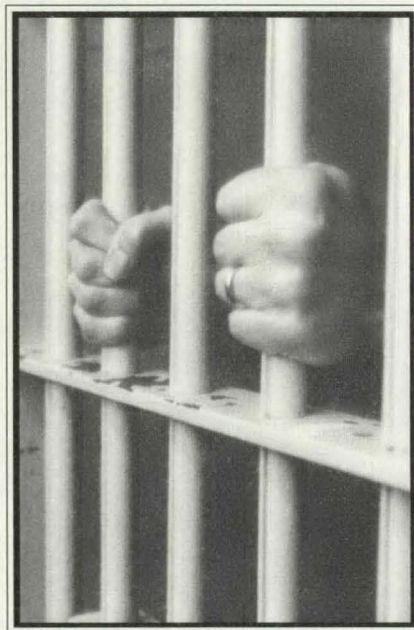
On the other hand, no unfairness or due process violation would result from the use of an uncoerced statement voluntarily made by the suspect. By their very nature, cellmate informants are not generally considered coercive. The very reason suspects confide in cellmate informants is because suspects feel comfortable with them.

However, it is conceivable that an overzealous cellmate informant may violate a suspect's due process rights by gathering information through the use of threats or abuse.³³ To avoid due process problems, law enforcement officers should select cellmate informants carefully and provide those individuals with clear instructions to ensure that nothing is done to coerce the suspect into making an involuntary statement.

SIXTH AMENDMENT— RIGHT TO COUNSEL

Another constitutional concern confronting law enforcement officers 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."³⁴

The Supreme Court has interpreted the sixth amendment as guaranteeing not merely the right to counsel, but more important, the right to the effective *assistance* of counsel.³⁵ To be effective, an attorney must be permitted to form a relationship with the accused some time prior to trial,³⁶ and the government cannot interfere needlessly with that relationship. Thus, to resolve all sixth amendment concerns, law enforcement officers 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. The Supreme 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.³⁷

If no formal charges have been filed against the suspect and no initial appearance before the court has been conducted, no critical stage in the prosecution has been reached, and a cellmate informant can be used without concern for the suspect's sixth amendment right to counsel. If, on the other hand, a critical stage has been reached, 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.

Postcritical 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 perform lawfully without interfering with that suspect's right to counsel. These two functions are: 1) Gathering information regarding an unrelated crime,³⁸ or 2) acting as a listening post.³⁹

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.⁴⁰ Under the sixth amendment, a suspect only has the right to the assistance of counsel with respect to the crimes formally charged against

him.⁴¹ If 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.

Listening Post

If a cellmate informant is placed with the intent of gathering information about a crime that is the 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.⁴² Rather, there must be some deliberate attempt to elicit information regarding those charges from the suspect.⁴³

It is the act of deliberate elicitation that creates the sixth amendment violation. Consequently, a law enforcement officer who places an informant in a 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.⁴⁴

CONCLUSION

Confined suspects often have an overwhelming desire to talk about their criminal activities with those they consider their peers. Law enforcement officers can take advantage of this phenomenon by placing an informant in the prison population.

When doing so, however, officers must be ever mindful of the

boundaries set by the fifth and sixth amendments. Thoughtful selection, careful planning, and detailed instruction can ensure that an informant operates within those boundaries and conforms to fifth and sixth amendment standards. ♦

**“
...an invocation of the
Miranda right to
counsel is not a bar to
the subsequent use of
a cellmate informant.
”**

Endnotes

¹ *Illinois v. Perkins*, 110 S.Ct. 2394, 2397 (1990).

² 110 S.Ct. 2394, 2400 (Brennan, J., concurring).

³ 110 S.Ct. 2394 (1990).

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵ *People v. Perkins*, 618 N.E.2d 1275 (Ill. App. 1993).

⁶ *Illinois v. Perkins*, 114 S.Ct. 2692 (1994)(cert. denied).

⁷ U.S. CONST. amend. V.

⁸ 384 U.S. 436 (1966).

⁹ *Id.* at 467.

¹⁰ 110 S.Ct. 2394 (1990).

¹¹ *People v. Perkins*, 531 N.E.2d 141 (Ill. App. 1988).

¹² 110 S.Ct. 2394, 2397 (1990).

¹³ *Id.* In *Perkins*, the Supreme Court used the words “coercion” and “compulsion” interchangeably.

¹⁴ 111 S.Ct. 486 (1990). *Perkins* actually claimed that the actions of the government violated *Edwards v. Arizona*, 101 S.Ct. 1885 (1981). However, because *Minnick* is a more recent interpretation of the *Edwards* rule and was in effect at the time of *Perkins*' motion, this article will analyze the motion under the Supreme Court's decision in *Minnick*.

¹⁵ 384 U.S. 436, 474 (1966).

¹⁶ 423 U.S. 96 (1975).

¹⁷ In *Mosley*, 2 hours were considered to be a sufficient period of time.

¹⁸ In *Minnick*, the Court stated that “*Edwards* does not foreclose finding a waiver of Fifth Amendment protections after counsel has been requested, provided the accused has initiated the conversation or discussions with the authorities....” 111 S.Ct. 486 at 492.

¹⁹ See, *Arizona v. Roberson*, 108 S.Ct. 2093 (1988), where the Supreme Court held that the assertion of the right to counsel is effective against all topics of custodial interrogation.

²⁰ In a prison setting, the perpetuity of this rule could make it virtually impossible to conduct routine interrogations of inmates suspected of committing new crimes without having an attorney on hand to represent the inmates' interests.

²¹ *Alexander v. State*, 917 F.2d 747 (2d Cir. 1990); *United States v. Stubbs*, 944 F.2d 828 (11th Cir. 1991); and *Salkil v. Delo*, 990 F.2d 386 (8th Cir. 1993).

²² *United States v. Stubbs*, 944 F.2d 828 (11th Cir. 1991), and *Salkil v. Delo*, 990 F.2d 386 (8th Cir. 1993).

²³ 944 F.2d 828 (11th Cir. 1991).

²⁴ 100 S.Ct. 1682 (1980).

²⁵ *Id.* at 1689-1690.

²⁶ *Id.* at 1690.

²⁷ 944 F.2d 828 at 832.

²⁸ 917 F.2d 747 (2d. Cir. 1990).

²⁹ *Id.* at 751 (citations omitted).

³⁰ U.S. Const. amend. V.

³¹ *Brown v. Mississippi*, 297 U.S. 278 (1938).

³² *Id.*

³³ See, e.g., *Arizona v. Fulminate*, 111 S.Ct. 1246 (1991).

³⁴ U.S. CONST. amend. VI.

³⁵ *Cuyler v. Sullivan*, 100 S.Ct. 1708 (1980).

³⁶ *United States v. Wade*, 338 U.S. 218 (1967).

³⁷ *Massiah v. United States*, 377 U.S. 201 (1964).

³⁸ *Hoffa v. United States*, 385 U.S. 293 (1966).

³⁹ *Kuhlmann v. Wilson*, 106 S.Ct. 2616 (1986).

⁴⁰ 385 U.S. 293 (1966).

⁴¹ *Id.*

⁴² 106 S.Ct. 2616 (1986).

⁴³ *Id.*

⁴⁴ Although the burden of proof rests with the defendant on this issue, the government should be prepared to counteract claims of deliberate elicitation.

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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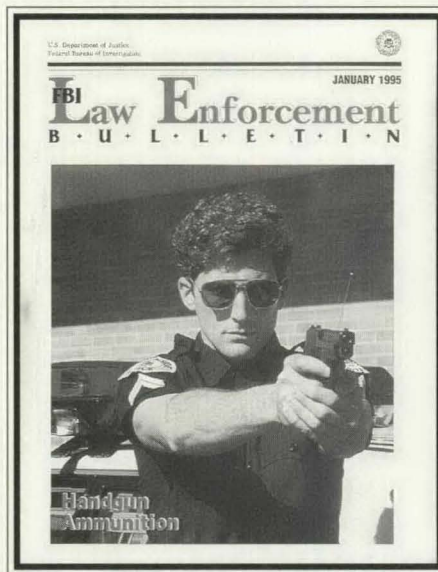
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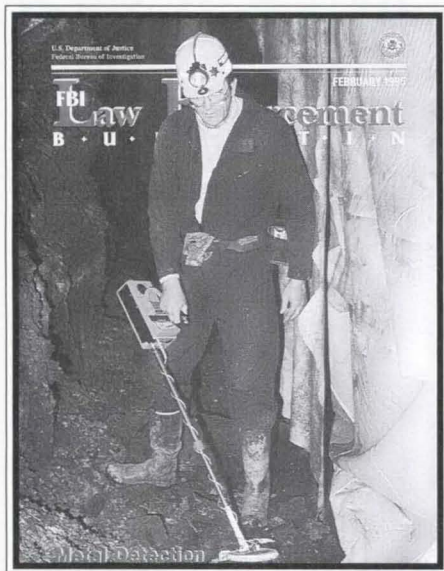
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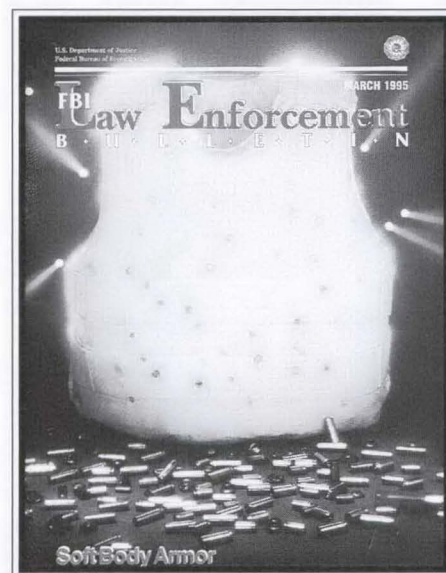
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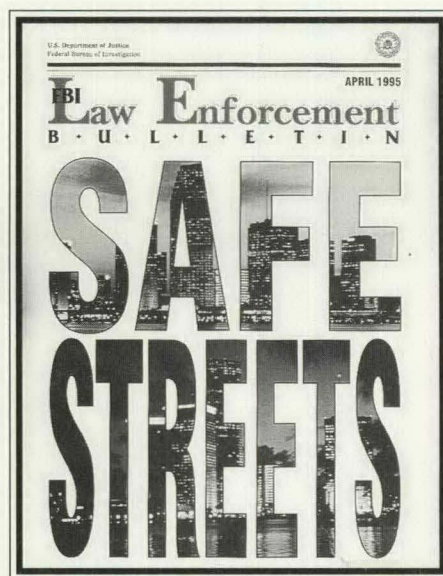
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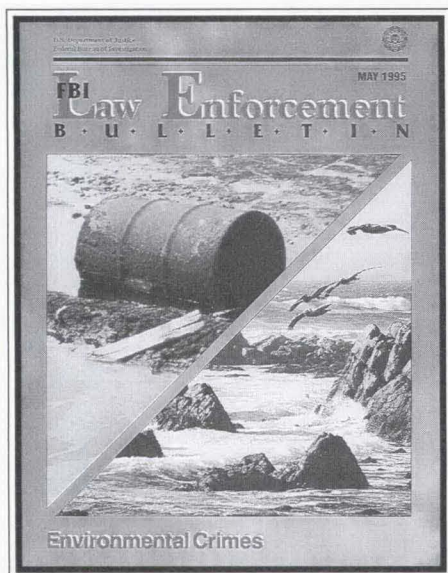
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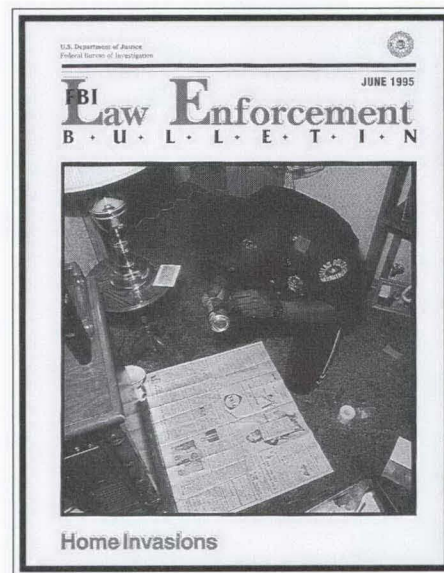
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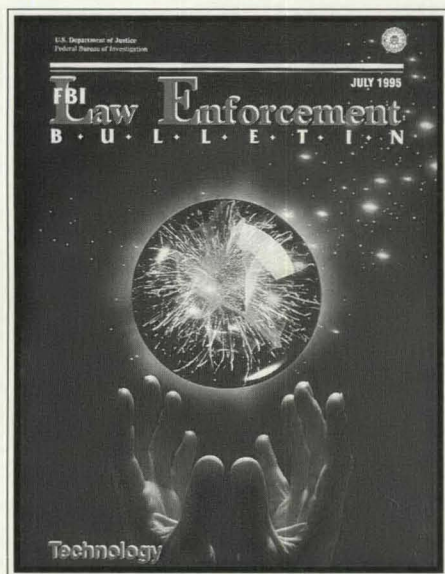
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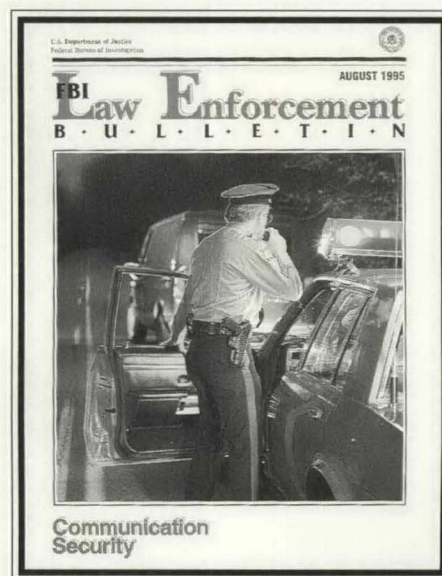
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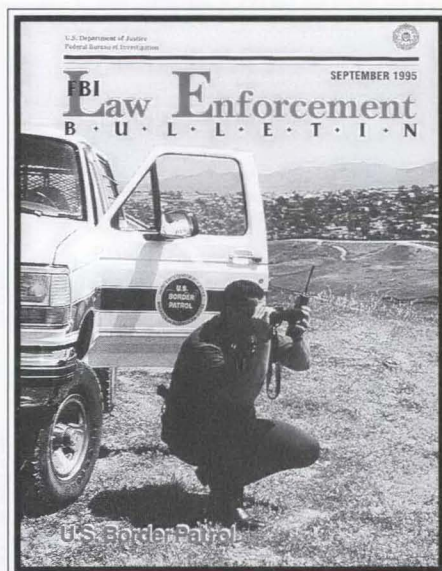
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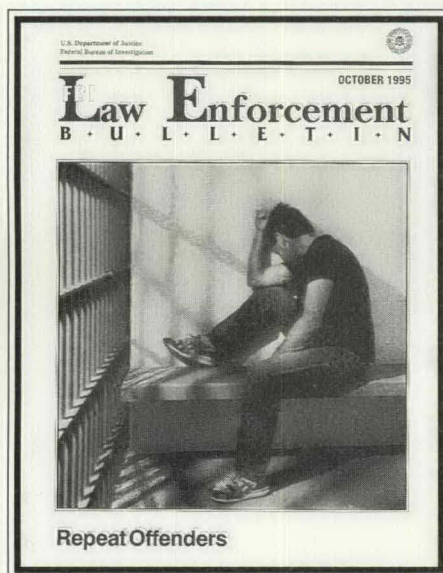
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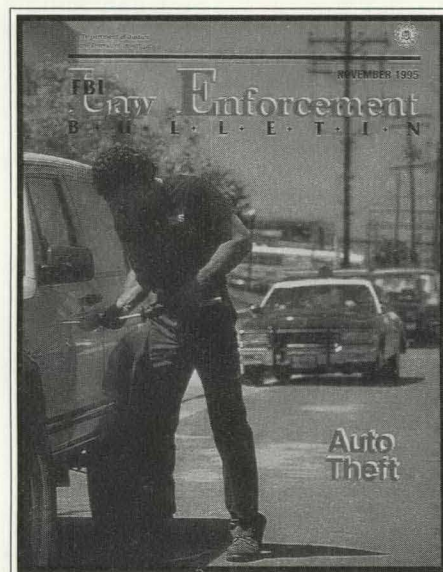
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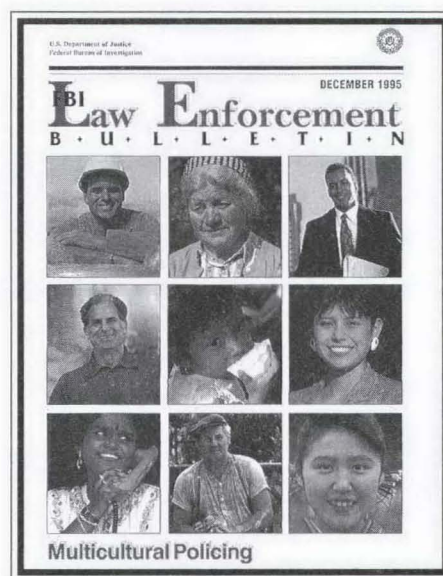
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Wanted: Photographs



The *Law Enforcement* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law

enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

John Ott, Art Director, *FBI Law Enforcement Bulletin*, Law Enforcement Communication Unit, FBI Academy, Quantico, VA 22135.

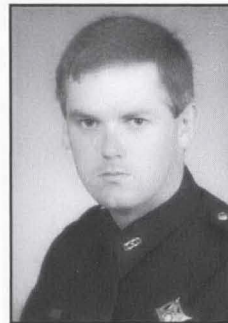
The Bulletin Notes

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

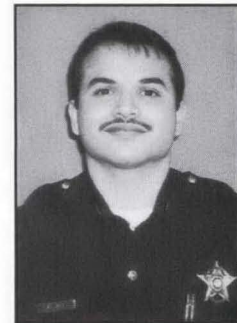


Officer Sewald

While off duty and en route to his home, Officer Lester Sewald of the Festus, Missouri, Police Department observed smoke coming from one of the homes in his neighborhood. Officer Sewald and an off-duty firefighter went to the residence to offer assistance to the retiree who lived there. Officer Sewald kicked in the front door, entered the smoke-filled house, and found the owner sleeping in a rear room. He picked up the man and began carrying him out but could not see through the dense smoke. As the firefighter called out to him from the front door, the officer was able to follow his voice and find his way out. Both Officer Sewald and the victim were treated for smoke inhalation and released.



Deputy Maddox



Deputy Guerra

As Deputy Bradley Maddox of the Dallas County, Texas, Sheriff's Department stood guard during the loading of 17 inmates into a jail van for transfer from one jail facility to another, an armed woman approached the van in an attempt to free her husband, a convicted felon. Sensing the woman's presence behind him, Deputy Maddox simultaneously ducked, retreated to the rear of the van, and drew his weapon. During a brief but intense gunfight, the female assailant was killed, and both Deputy Maddox and the convict were wounded. As this scenario unfolded, Deputy David Guerra, who was working at another jail facility one block away, overheard excited transmissions over the two-way radio. Exiting the jail, he stepped onto the sidewalk and observed the escaping convict running in his direction. Deputy Guerra grabbed the man, wrestled him to the ground, and handcuffed him. Deputy Maddox was later treated for a superficial gunshot wound and released. The escapee was treated for a gunshot wound to the hand and returned to custody.

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