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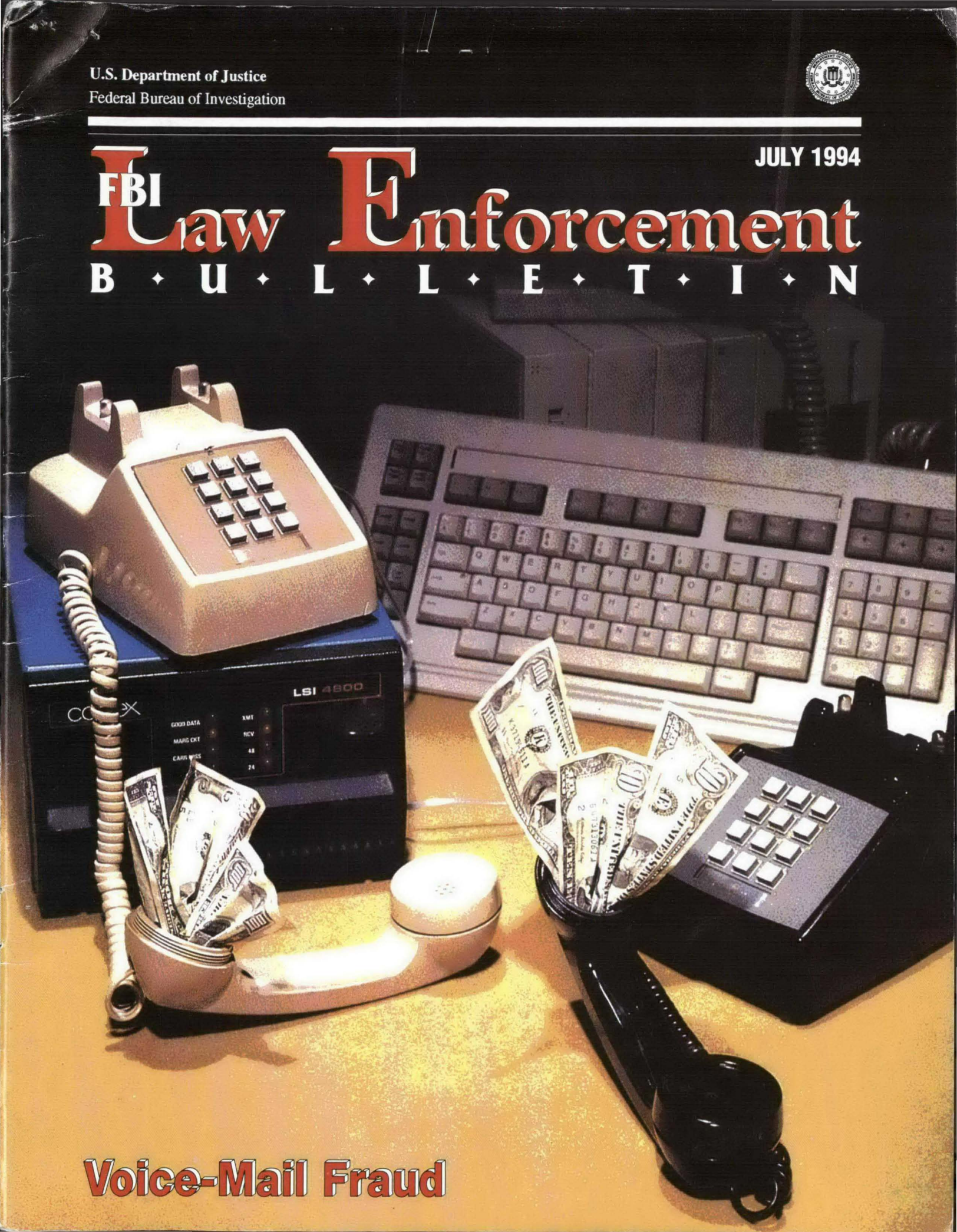

Voice-Mail Fraud

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**Louis J. Freeh
Director**

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Features

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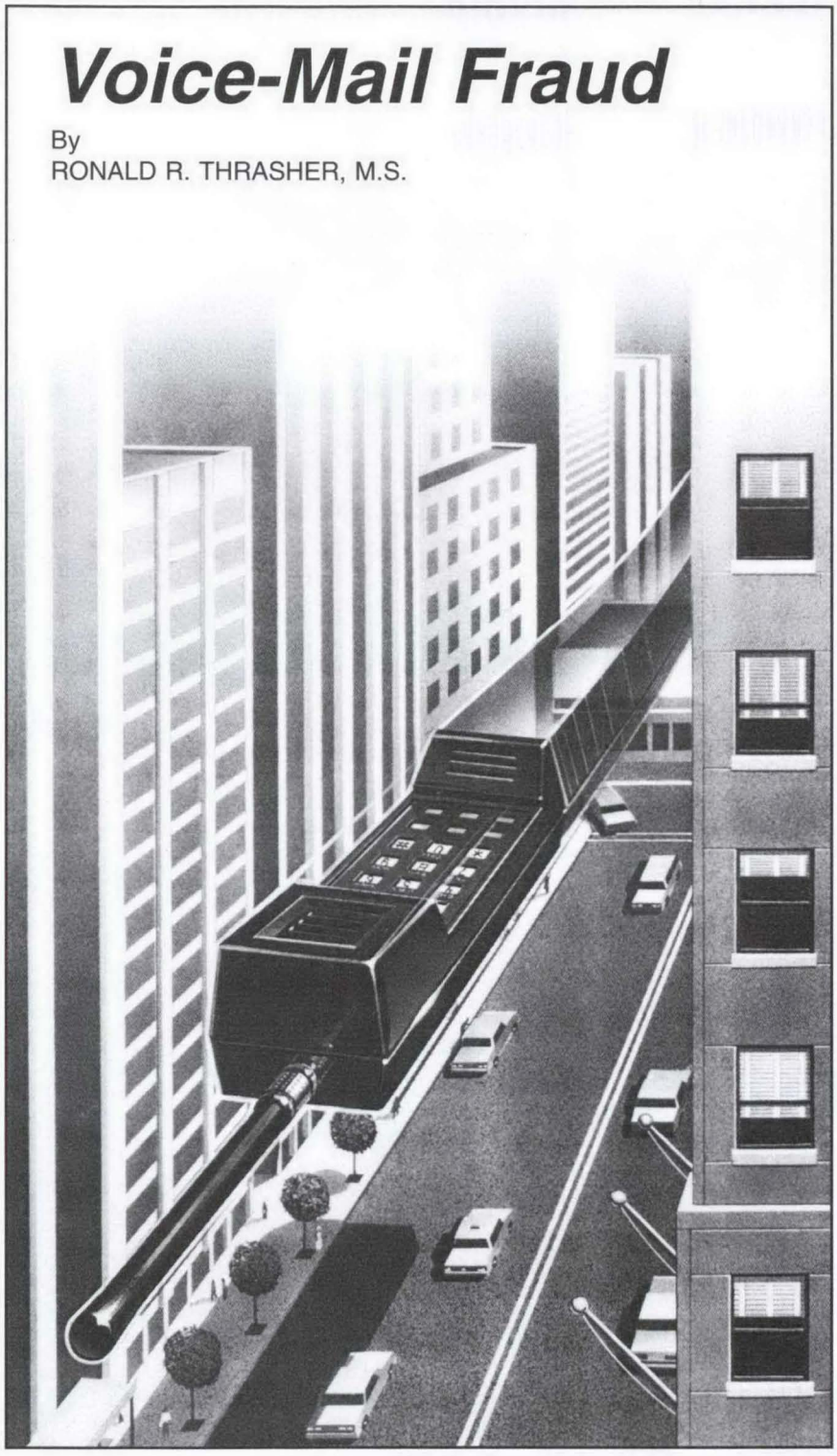
Voice-Mail Fraud

By
RONALD R. THRASHER, M.S.



An employee out of town on business phones the employer using the toll-free number. Once inside the voice-mail system, the employee enters a number code that gives access to a dial tone. This allows the caller to make personal, long-distance calls that are ultimately billed to the employer's account. The caller, in fact, commits fraud against the business by using the voice-mail system for personal use.

For many investigators, the use of stolen telephone calling cards and "computer hacking" of telephone billings are familiar offenses. Less known, however, is the fraudulent use of commercial voice-mail services.

Voice mail is the recording callers often hear when they phone a corporate or government office. The recording provides limited instructions on how callers can be connected with an individual, should they need to talk to a real person. More commonly, the recording tells callers how to leave a recorded message in the office's "voice mailbox." These services often include the capability of allowing mailbox holders to phone their own mailbox by dialing a number code (password) to recover messages.

Criminals usually commit voice-mail fraud against businesses equipped with a toll-free (1-800) customer service number that employs one of a variety of voice-mail systems. The fraud takes place when a caller leaves a personal, nonbusiness-related message for another individual within a business' voice mailbox, usually using

the toll-free number, and another individual retrieves the message, again using the toll-free number. The loss is reflected in the long distance calls, many times from overseas numbers, that are charged to the business' or government office's toll-free service.

Fraud Variations

Because telephone long-distance packages offer a variety of customer services, voice-mail fraud has several variations. One type of fraud, detailed in the beginning of this article, occurs when the toll-free service makes available remote access dialing.

Offenders phoning a voice-mail system equipped with remote access dialing can quickly access the code, frequently a four-digit number, through a computer modem. Once they gain access, callers can make personal use of the service to further other criminal enterprises, or to sell the access code for a profit.

The illegal selling of long-distance service is most commonly associated with stolen calling card numbers. Corporations have recorded losses exceeding $1,000 within the first few hours following the report of a stolen corporate calling card.

While the sale and use of remote access dialing codes appears less frequently, this crime is increasing rapidly. The loss to one corporation exceeded $220,000 within the first 13 hours after the fraudulent activation of a remote-access dialing code. Should offenders first access the remote system at the beginning of a 3-day weekend or holiday period, which delays detection, the crime is compounded further.

Offender Profile

A wide range of individuals are likely to commit voice-mail fraud. Young offenders often use voice mail illegally to send chain messages, similar to chain letters of years past. Some individuals simply wish to avoid long-distance charges by leaving and receiving personal messages through the use of a corporation's toll-free voice mail.

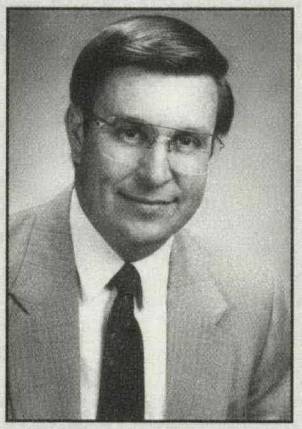
Computer "hackers" may attack the system for profit or simply for the thrill of defeating the security safeguards. However, investigators should not envision computer hackers only as college students who break into a security system solely for the challenge of beating the programs. While this still occurs, hackers of all ages usually obtain and enter access codes on computer bulletin boards, newsletters, and specialty magazines as a way of showing off their prowess. This practice gives countless others the means to commit fraud.

Also, it appears that many hackers have become more profit-motivated. Investigations into voice-mail fraud have revealed that these individuals set dollar amounts for access information and then sell the information, usually to other criminals. At times, they auction the information and sell it to the highest bidder.

Of equal interest to law enforcement are hackers who access a system to commit corporate espionage and drug traffickers who are interested in a secure, no-cost message delivery system. These individuals often access voice mail by using a pay phone or stolen mobile equipment to avoid identification through tracing, line identifying, or phone taps.

Investigation

When initiating an investigation into voice-mail fraud,



"Criminals usually commit voice-mail fraud against businesses equipped with a toll-free (1-800) customer service number...."

Lieutenant Thrasher is the Criminal Investigation Commander in the Stillwater, Oklahoma, Police Department.

investigators should first target the mailbox, which often reveals valuable information. They should identify if the fraud was initiated against an existing, seldom-used mailbox or following the installation of a new mailbox. It is also important to know how passwords or number codes are created or changed and if the password to give access to the targeted mailbox was recently changed.

Investigators also need to verify if a computer terminal was used to make a change in the mailbox and if the computer was equipped with a modem. If so, investigators should then determine if access to the computer took place at unusual times (late at night, during lunch, on holidays and weekends, etc.) and who accessed the computer (authorized or unauthorized personnel).

Then, within constitutional parameters, the next step for investigators is to review the voice-mail messages, because many systems record the date and time of incoming messages. Message times can then be compared to toll-free invoices to identify the source and location of incoming calls. While a good avenue for investigators to pursue, this may pose some difficulty if the fraud originates from a public phone or stolen mobile equipment.

Investigators should not overlook possible employee involvement. Indicators of employee involvement include origin and destination of toll calls, time of computer access, password changes, and creation of new mailboxes. Investigators should also look for answers to the following questions:

- Was a system change made, without use of a modem, during the lunch hour, after hours, during a weekend or holiday, or at a time the business was not normally open?

> ***"A wide range of individuals are likely to commit voice-mail fraud."***

- Who would have access to either the computer or the telecommunications system, or both, and had the information or expertise to make the change?
- Who within the organization might be in dire financial straits or living beyond their income and could benefit from the fraud?

Prosecution

Many State statutes define fraud as the obtaining of money, property, or services by trick, deception, or false pretenses. This provides prosecutory authority for communication offenses.

Because voice-mail fraud may cross several jurisdictions, State and local prosecutors should also consider contacting a Federal prosecutor for assistance. Federal authority can be found within Title 18, U.S. Code, Sec. 1343. The code reads, in brief:

> "Whoever, having devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writing, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

Prevention

The excessive financial losses traced to voice-mail fraud can be prevented, or at least diminished, when companies take simple precautions. If a business has already been victimized, investigators can offer the following strategies to prevent further losses:

- Monitor abnormal calling patterns and toll-free service costs
- Enhance security and access codes to include more than the standard four digits
- Change codes frequently
- Assign corporate communication security to a single individual

- Make all employees more "security conscious"
- Block system access calls from locations outside the business service area and during those times the business is closed
- Develop a corporate plan in the event communication fraud is suspected, which includes immediate notification to law enforcement and a determination to prosecute offenders
- Guard security passwords and control access numbers
- Remove modem access for administrative system changes.

Conclusion

Communication fraud poses many challenges not encountered by the criminal investigator in more traditional crimes. Although losses attributed to telecommunication fraud reported by long-distance services exceed $1 billion annually, many law enforcement investigators are unfamiliar with voice-mail fraud.

Technological breakthroughs in communication allow the private sector to offer new and advanced products and services. This underscores the importance for law enforcement to recognize communication as a major interest of the criminal entrepreneur. Investigators must, therefore, broaden their knowledge of communication fraud, especially voice-mail fraud, to identify, apprehend, and prosecute the technologically advanced offender. ✦

Crime Data

Crime Decreases in 1993

According to preliminary Uniform Crime Reporting figures, the number of serious crimes reported to law enforcement agencies decreased 3 percent in 1993 when compared to 1992 data. This decrease continued the trend from 1992, when overall crime was down 3 percent from the previous year.

A Crime Index composed of violent and property crimes measures serious crime. Last year, violent crime dropped 1 percent, while property crime decreased 3 percent.

Among the individual violent crime offenses, only murder registered an increase from the 1992 level, one of 3 percent. Forcible rape fell 4 percent, robbery dropped 2 percent, and aggravated assault remained unchanged. For property crimes, arson and burglary each declined 6 percent, motor vehicle theft dropped 4 percent, and larceny-theft fell 2 percent.

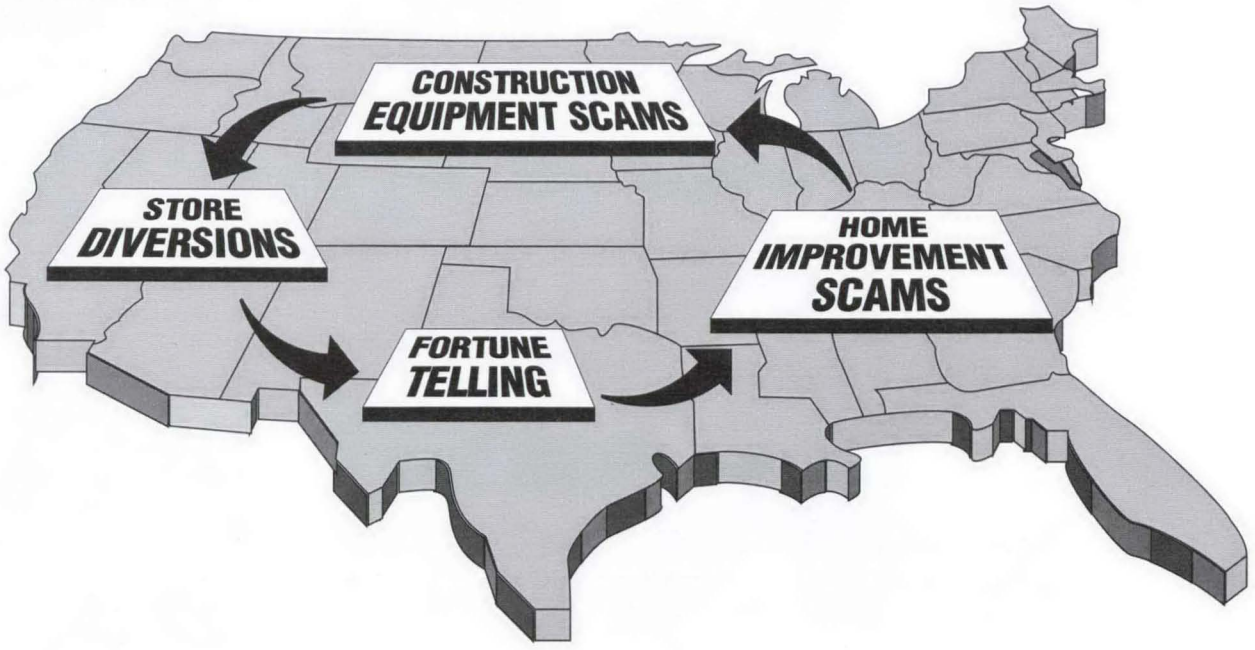
Declines in overall Crime Index totals occurred in all regions of the country. The Northeast registered a 5-percent decline; the Midwest, a 3-percent drop; and the South and West, a 2-percent decrease each.

All population groupings experienced Crime Index decreases during 1993. Cities with populations over 1 million recorded the greatest decline, one of 5 percent. The decreases reported by rural and suburban county law enforcement agencies were 3 percent and 2 percent, respectively. ✦

Source: FBI Uniform Crime Reporting Program, Press Release, "Crime Trends, 1993 versus 1992," May 1, 1994.

Traveling Criminals
Take the Money and Run

By
GARY L. MAZZONE



Throughout the United States, both law enforcement and consumer protection agencies receive complaints daily of con games and other criminal scams. While many of these schemes are perpetrated by con artists who reside and ply their trades only in their local areas, an increasing number of scams are committed by highly mobile criminal groups who travel from area to area stealing from citizens and escaping the detection of law enforcement.

The two major groups of traveling criminals now operating in the United States—the Rom Gypsies and the Travelers—have long histories in North America. Today, these two separate, and often competing, groups employ similar tactics to steal from unsuspecting victims. By understanding these groups' methods, law enforcement agencies can better protect the citizens of their communities.

DIFFERENT GROUPS, SIMILAR TACTICS

The Travelers first came to the United States in large numbers during the English migration of the 1700s and then again during the Irish potato famine in the 1840s. Today, an estimated 6,000 to 10,000 Travelers reside in the United States.[1]

Gypsies arrived in North America during the great wave of European migration from 1880 through the early 1900s. Gypsologists estimate that approximately 1 million Rom Gypsies currently reside throughout North America.[2]

The two groups do not interact. Travelers resent being called Gypsies. Gypsies, on the other hand, refer to themselves as the Rom, speak an unwritten language known as Romaines, and do not appreciate being mistaken for Travelers.

Certainly, not all Travelers or Gypsies participate in illicit activity. However, those who do generally carry on criminal

traditions that have evolved over many generations.

Home Improvement Scams

Typically, Travelers and Gypsies who do engage in crime are on the road plying their trades between 40 and 70 percent of the year. Members of both groups often represent themselves as self-employed home improvement contractors. They may pose as driveway sealers, basement and roof waterproofing specialists, or painters. As with many con artists, their preferred victims are the elderly.

In most cases, the group members do perform some type of work, though of extremely poor quality. They may spray roofs with a steam mist that they represent as sealant. The waterproofing agent used may be, in reality, thinned black paint. Their driveway sealant may be nothing more than drain oil.

The initial prices quoted may often appear quite reasonable, only to be grossly inflated when the job is finished. For example, a driveway may be quoted as requiring four pails of sealant at $20 a pail. When the job is completed, the contractor tells the victims that there must have been a misunderstanding—the job required 40 pails—and then applies pressure to secure payment.

Home Invasions

Additionally, both groups have been known to commit home invasions while they negotiate or perform residential improvement jobs, or as a predetermined sole objective. These invasions typically involve one or more group members searching for cash or jewelry, while another member of the group diverts the victim's attention. Alternately, group members may pose as public utility workers to gain entrance to a residence. Home invasions may also be performed openly in front of elderly victims.

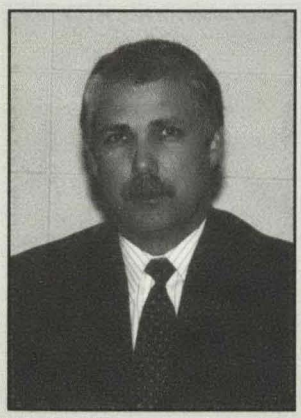
SPECIALTIES

Rom Gypsies

While both Travelers and Rom Gypsies commit many similar crimes, each group also specializes in particular types of criminal schemes. Gypsies, for example, often commit a slight variation of the home invasion scam, using only female group members to perform the con and to gain entry.

Gypsies also specialize in fortune telling—often seeking out elderly victims or individuals who have recently undergone some emotionally distressing experience. These scams usually begin innocently with a quick palm reading for $5 to $20. After gleaning information regarding the victims' lives, the "fortune-teller" relies on cunning to ensure that they return repeatedly. Promises of restored relationships, communication with deceased loved ones, or removal of curses are offered with ever-increasing fees. One investigation into fortunetelling con artists uncovered a single victim who had paid several thousand dollars to remove a curse.

Additionally, Rom Gypsies specialize in crimes known as store diversions.[3] Similar to home invasions, the object of store diversions is to steal a business' daily cash receipts. Store diversions may involve up to 20 Gypsies entering a store simultaneously. Some engage clerks in conversation, pretending to need assistance. The conversations may become boisterous, as group



Captain Mazzone serves with the Vernon, Connecticut, Police Department.

"...an increasing number of scams are committed by highly mobile criminal groups who travel from area to area stealing from citizens...."

members demand the employees' attention. Some may openly shoplift to divert the clerks' attention.

Once all employees and managers are handling the influx of troublesome customers, a group member surreptitiously locates the business office and seizes the cash from the deposit bag. As soon as the money is secured, the entire group leaves. Store managers may not have a clue until it is too late—proficient Gypsy criminal groups can carry out this scheme in a matter of minutes.

Travelers

Travelers may be involved in the sale of tools and shop equipment. Some groups commute across the country to solicit businesses—primarily gas stations, large farms, and construction companies—to buy hydraulic presses, engine pullers, and related tools at inflated prices.

Although the Travelers will bargain over their original price quotes, the merchandise is almost always overpriced. Frequently, the equipment is manufactured using substandard materials and is of poor quality. Travelers have been known to market these items with useless lifetime warranties (the salespersons have no traceable fixed address) under fictitious company names, such as the Carolina Tool and Equipment Company.

IDENTIFYING FACTORS

Upon receiving reports of any of these types of activities, law enforcement officers should first attempt to determine which of these groups may be involved. Frequently, this can be determined through the physical descriptions provided by victims. Victims often describe Rom Gypsies as having dark complexions, sometimes misidentifying them as Hispanic or Italian. Male Gypsies are often described as being heavyset; females as wearing low-cut blouses and long skirts, with their hair fixed in a bun. Investigators may find such stereotypical descriptions of limited value. Perhaps more revealing, victims often comment that, when they were among themselves, the offenders spoke a foreign language (Romaines), which the victims may identify as Spanish, Greek, Polish, or Italian.

> ***"...interagency cooperation represents perhaps the greatest asset law enforcement can employ in response to these traveling criminals."***

Conversely, Travelers will be described as having Anglo features with light-to-medium complexions. Their hair may be any color. Many Travelers reside in Southern States and speak with strong southern accents. When they commit crimes in other parts of the country, their accents provide a particularly helpful clue to investigators.

When engaged in home repair scams, both Rom Gypsies and Travelers typically use pickup trucks. Officers should take note of light-duty vehicles bearing unfamiliar contractors' names and out-of-State registration or license plates—especially trucks with fluid spraying or asphalt storage units in their beds.

Travelers often drive late-model, top-of-the-line trucks. Groups can often be found traveling in caravans on interstate highways, their well-maintained vehicles carrying such heavy equipment as hydraulic presses.

Officers who suspect Rom Gypsy or Traveler activities within their jurisdictions can often locate the groups in inexpensive (but not run-down) motels. Both groups also frequent campgrounds, either public or private. Traveler groups have been known to sell their trailers by advertising them with signs in the campgrounds in which they are staying.

PROTECTING THE PUBLIC

Upon determining Rom Gypsy- or Traveler-related criminal activity in a jurisdiction, the local law enforcement agency should transmit a teletype to other public safety agencies within a 200-mile radius. Both the Rom Gypsies and the Travelers seem to adhere to the old adage that "a dog does not foul its own yard." Group members normally establish a "base" for residence and fan out from there, leaving in the early morning and returning late in the afternoon. They will generally try to avoid attracting the attention of the

local law enforcement agency where they have established their base, and thus, may travel an hour or more *before* perpetrating their scams.

Local agencies should also issue press releases warning citizens that these criminals may be operating in the area. These releases should include a description of the scams being committed and should encourage citizens to report immediately to the police any contact with these criminals.

Police-sponsored instructional seminars for merchants associations often prove successful safeguards against store diversions. Such seminars generally teach store managers and employees how to recognize a store diversion in its initial stages and provide merchants with appropriate response strategies.

To protect customers from home invasions, utility companies routinely assist law enforcement agencies by periodically including warning fliers with their bills. These fliers should include a photograph of the utility company's worker identification badge and a warning to customers not to allow unauthorized persons access to their property.

CONCLUSION

Rom Gypsies and Travelers can be found in nearly every State in the Nation. Their traditional mobility presents a formidable challenge to law enforcement.

Still, their scams and offenses are predictable. Although they have honed their cunning through generations of criminal activity, they generally prey on the same victims—the vulnerable and the elderly—and commit the same types of crimes in jurisdiction after jurisdiction.

The secret of many Gypsy and Traveler scams is to first gain the trust and confidence of their victims. Accordingly, when dealing with such offenders, investigators should keep in mind this verse from a well-known opera:

> Things are seldom what they seem
> Skim milk masquerades as cream,
> Black sheep dwell in every fold,
> All that glitters is not gold.[4]

Because such groups prey on the ignorance, trust, or bad fortune of others, public safety agencies must be prepared to protect their citizens from these scam artists by quickly investigating reported offenses. And owing to the highly mobile nature of these types of groups, interagency cooperation represents perhaps the greatest asset law enforcement can employ in response to these traveling criminals. ✦

Endnotes

[1] Bruce H. Carter, *Gypsies, Travelers, & Thieves*, South Carolina Criminal Justice Agency, Columbia, South Carolina, 21.

[2] *Gypsy Lifestyles*, the Metropolitan Toronto Police Department, presented at a seminar entitled "Gypsy and Other Traveling Criminal Organizations," May 5, 1992, Portsmouth, New Hampshire.

[3] Robert P. Meiners, "Store Diversion Burglaries," *FBI Law Enforcement Bulletin*, March 1990, 7.

[4] *HMS Pinafore* (opera), Gilbert and Sullivan.

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.

Community Policing
Leading Officers into Danger?

By Stephen M. Springer

While traditional methods of policing fail to provide desired levels of crime control and public safety, police departments across the Nation search for new and innovative ways to provide law enforcement services to their communities. In recent years, community-oriented policing (COP) has emerged as the method of choice for many law enforcement agencies.

As part of the conversion from traditional policing methods to community-oriented policing, agencies have become more reliant on a "new breed" of police officers better suited for performing proactive, citizen-oriented policing functions in their communities.[1] For the officers involved, the COP approach places a premium on specific qualities, such as being personable, even-tempered, and service-oriented. In addition, these officers must possess good communication and problem-solving skills and be conservative in the use of force.

However, these qualities describe not only a good candidate for community policing but also an excellent candidate to be killed in the line of duty.[2] For this reason, police administrators owe it to their departments, their communities, and most importantly, their personnel to ensure that officers engaged in COP receive ongoing survival training that adequately addresses the challenges they face.

Good COP, Bad COP

Building closer and more trusting relationships between the police and communities is not only desirable but also imperative if law enforcement is to improve its effectiveness. However, this closeness and trust should not be achieved at the cost of placing officers in undue jeopardy. Unfortunately, the heightened level of police-citizen interaction that makes community policing an effective approach also creates potentially serious safety problems for officers.

Basic survival training teaches that police officers should not become complacent, lax, or too comfortable with a situation.[3] However, it is difficult for officers to "keep their guard up" and to stay alert when trying to develop close ties with community residents and project a friendly, nonthreatening demeanor—basic components of community policing.

Sergeant Springer serves with the Fairview Heights, Illinois, Police Department.

At the same time, research reveals that officers assigned to community policing feel safer, more confident, and better able to read people than do officers not involved in community policing.[4] As any veteran officer knows, a fine line exists between being "at ease" and being lax when following standard survival practices. Community policing officers, therefore, must remain vigilant not to be lulled into a false sense of security and subsequently place themselves in perilous situations.

Walking into Danger

A recent analysis of 51 line-of-duty deaths conducted by the FBI's Uniform Crime Reporting Program reveals striking similarities in many of the slain officers' approaches to policing. *Killed in the Line of Duty,*[5] a report based on the study's findings, provides various behavioral descriptors of the slain officers. These descriptors indicate that a majority of the victims shared similar qualities and characteristics. Most of these officers were described as being:

- Well-liked by the community
- Conservative in the use of force
- Hard-working

- Public relations and service-oriented
- Easygoing, and
- Willing to bend the rules regarding arrests, vehicle stops, handling of prisoners, and waiting for backup.

In addition, these officers consistently looked for the good in others. They believed that they could "read" people or situations and relax their guard in certain circumstances.

Many of these traits are exactly what administrators look for when selecting officers for community-oriented policing. In fact, these qualities—when balanced with appropriate levels of caution and discretion—are desirable in any officer who has regular contact with the public.

As the report emphasized, though, factors that jeopardize officer safety do not stem from these characteristics themselves but from actions that these traits may lead officers to take. The study discusses five areas relating to procedures and training that may be affected. They are:

1) *Absence of procedure*—situations in which an agency had no formalized procedures to handle the circumstance leading to a fatal assault.

2) *Conflicting procedures*—situations in which an agency had established procedures that were in conflict with officer safety.

3) *Procedural errors*—situations in which the victim officers failed to comply with accepted law enforcement procedures.

4) *Correct procedures*—situations in which the victim officers complied with accepted procedures but were still vulnerable to assault.

5) *Training*—situations that suggest agencies should provide additional officer safety training.

The study further separates officers' handling of the fatal incidents into two broad categories: Improper approaches to vehicles or suspects and failure to control persons or situations. During fatal encounters, 41 percent of the slain officers made improper approaches; 65 percent were unable to properly control persons or situations. Further, according to the study, only 2 of the 51 victim officers—or approximately 4 percent—made *no* procedural errors. These statistics reinforce the importance of maintaining effective officer safety and security measures, regardless of the situation.

> **"...officers engaged in COP should receive specialized instruction in proper community-oriented policing techniques, as well as periodic safety and survival training."**

Enhanced Training

The increased interaction with a broad range of citizens inherent in community-oriented policing requires that officers be prepared to assess and respond quickly to a multitude of scenarios. However, few departments provide the training necessary to accomplish this complex task fully.

Many of the procedural errors noted in *Killed in the Line of Duty* can be addressed through regular safety and survival techniques training. Departments should ensure that, at a minimum, all officers engaged in community-oriented policing receive this training on a regular basis. This instruction should range from defensive maneuvers to tactical strategies for approaching vehicles, buildings, and subjects.

But training should not stop there. Although many use-of-force continuums list verbal control as a key level in the escalation of force, most departments devote little, if any, training to developing this skill.

This is a needless—and potentially dangerous—oversight. A number of innovative techniques for dealing with confrontational subjects and traffic stops have been developed. The Verbal Judo approach—an excellent means of instruction in control and de-escalation—is gaining acceptance in police departments around the Nation. To provide officers with an effective alternative to physical confrontation, departments should periodically conduct training in these areas, as well as in basic communication skills.

Conclusion

Community policing represents an innovative form of policing that shows great promise in many communities around the Nation. It can be extremely beneficial to all parties involved—municipalities, communities, police departments, and individual officers. However, this method of policing also harbors some potentially lethal side effects—especially if implemented at the expense of officer safety training.

For this reason, officers engaged in COP should receive specialized instruction in proper community-oriented policing techniques, as well as periodic safety and survival training. Only a holistic approach to training will ensure that officers engaged in community-oriented policing are adequately prepared to respond to the challenges presented by this style of law enforcement. Otherwise, in their haste to improve efficiency and regain the support and trust of their communities, police departments across the Nation could be inadvertently training their officers to die. ✦

Endnotes

[1] Robert Trojanowicz and Bonnie Bucqueroux, *Community Policing: A Contemporary Perspective* (Cincinnati, Ohio: Anderson Publishing Company, 1990), 313-328.

[2] *Killed in the Line of Duty*, United States Department of Justice, Federal Bureau of Investigation, Washington, DC, 1992, 32.

[3] Ronald J. Adams, Thomas M. McTernan, and Charles Remsberg, *Street Survival Tactics for Armed Encounters* (Northbrook, Illinois: Calibre Press, 1981), 46.

[4] Supra, note 1, 224.

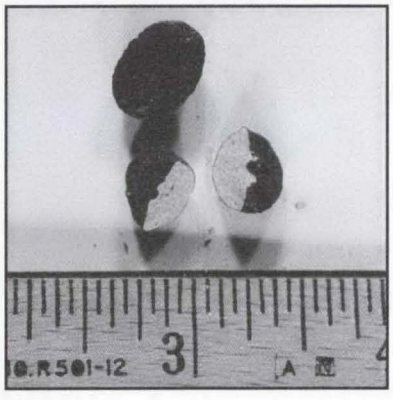
[5] Supra, note 2.

Sound Off *provides a forum for criminal justice professionals to express alternative views on accepted practices or to address emerging, and perhaps controversial, issues.* Law Enforcement *provides this platform to stimulate thought within the law enforcement community and to encourage administrators to consider new ways of addressing such issues. However, ideas expressed in* **Sound Off** *are strictly those of the author; their appearance in* Law Enforcement *should not be considered an endorsement by the FBI.*

Bulletin Alert

Hidden Heroin

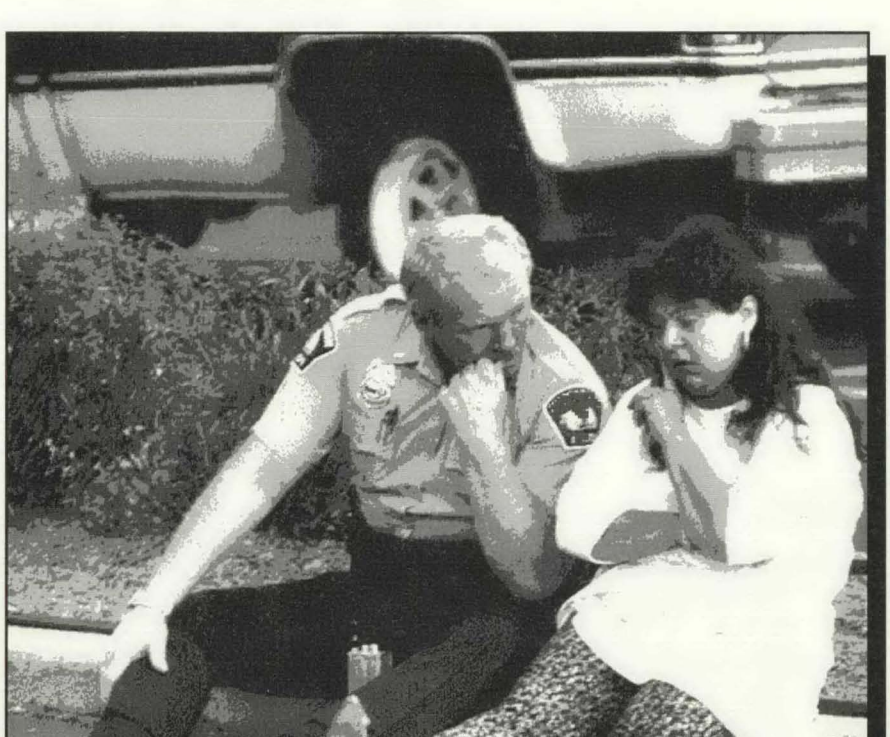
During the seizure of a heroin shipment, special agents of the FBI's Cleveland Office found tightly wrapped heroin packets secreted in what appeared to be coffee beans. Subsequent laboratory analysis by the Drug Enforcement Administration showed that the "beans" were, in fact, high-grade pellets of heroin. Because the pellets emitted the same aroma as genuine coffee beans, they may have been altered to confuse drug-sniffing dogs. ✦



Handle with Care

Dealing with Offenders Who Are Mentally Retarded

By
ARTHUR L. BOWKER, M.A.



Offenders who have mental retardation comprise between 5 and 10 percent of the Nation's prison population.[1] Unfortunately, a great deal of confusion exists about these individuals. One study involving 100 police officers, 75 lawyers, and 35 judges found that "...while criminal justice system personnel may have some understanding of mental retardation, they are confused and uncertain about how to deal with this population in a professional manner."[2] As a result, law enforcement risks making offenders with mental retardation victims of circumstances, and the court system either sentences and commits them inappropriately or fails to punish them adequately.[3]

When dealing with offenders who have mental retardation, law enforcement officers usually base their reactions on two misconceptions. They view them either as "crazy" people who cannot refrain from committing dangerous and criminal acts or as child-like individuals who deserve pity, are not competent to stand trial for their actions, and must be diverted from the criminal justice process whenever possible.

Mental retardation must not, however, be viewed as an excuse or defense for criminal behavior. Affected individuals may warrant diversion from prosecution and the correctional process, just as other suspects might. Similarly, some individuals with mental retardation, like other offenders, may warrant serious sanctions by the criminal justice process for their criminal behavior. Thus, law enforcement officials, prosecutors, and the courts should view offenders with mental retardation in much the same manner as they would other suspects or defendants.

In order to do this, criminal justice professionals must fully understand the terms "mental retardation," "mental illness," "competency," and "insanity at the time of the act." What follows is an

explanation of these concepts, as well as specific advice on handling offenders who have mental retardation, both in the squad room and in the courtroom.

Mental Retardation vs. Mental Illness

Many people erroneously believe that mental retardation and mental illness are the same condition. However, there are distinct differences between the two. Mental illness can strike anyone at any time, regardless of the individual's intellectual capacity. Individuals who have a mental illness may have visual, auditory, and/or tactile hallucinations and/or delusions.

Conversely, mental retardation is a permanent condition that develops in individuals prior to age 18. It manifests itself in significantly below average intellectual functioning, as evidenced by intelligent quotient (IQ) testing, and substantial limitations in adaptive behavior—that is, social functioning or life skills—as indicated by psychological testing. Individuals identified as having mental retardation can also become mentally ill or abuse substances. ("Dual diagnosed" is the term applied to people with mental retardation who also experience substance abuse, mental illness, and/or character disorders.) But, with education and care, many people who are mentally retarded can become productive members of society.

Identifying Offenders with Mental Retardation

Individuals with mental retardation are not always easy to identify, especially those who function well socially. In fact, most do not readily admit they are mentally retarded, due to embarrassment, fear, and a desire not to be labeled "slow."

The question remains, then, how can law enforcement officials detect such individuals? The answer: They must observe behavior, analyze responses to questions, and contact collateral sources of information, such as school personnel and relatives.

Although police officers cannot positively diagnose retardation, they can identify likely affected offenders based on positive responses to several of the following questions:

- Does the individual wear clothing inappropriate for the season?
- Does the individual move awkwardly as if poorly coordinated?
- Does the individual use "simple words," reflecting only a limited vocabulary level?
- Does the individual parrot or repeat questions?
- Does the individual reside in a group home?
- Does the individual attend special education classes?
- Does the individual work or reside in a center for people with mental retardation?

While a person who is *not* mentally retarded may exhibit one or more of the above behaviors, police officers should err on the side of caution. That is, when officers suspect they have an offender with mental retardation, they should proceed as if the individual is mentally retarded until provided evidence to the contrary. This protects the offender's rights and prevents victimization in a custodial arrest situation. It also protects the department and increases the likelihood of successful prosecution if the case goes to trial.

The arresting officer may still place the offender in jail if the situation warrants such action.

> ***"Courts must be willing to obtain the services of qualified forensic psychologists to evaluate the competency of all offenders with mental retardation."***

Mr. Bowker, an investigator with the Office of Labor Management Standards, U.S. Department of Labor, Cleveland, Ohio, formerly headed the Mentally Retarded Offender Unit of the Cuyahoga County, Ohio, Adult Probation Department.

Street Tests

Patrol officers may find these "street tests" helpful in recognizing citizens who are mentally retarded. Officers should verify whether the individuals can:

1. Button their coats easily
2. Give coherent directions from one location to another
3. Repeat a question in their own words
4. Write their names clearly and without difficulty
5. Read and understand a newspaper
6. Recognize coins and make change
7. Tell time with ease
8. Use a telephone

(Source: The Arc, Training Key #353, "Contacts with Individuals Who are Mentally Retarded," 2-3.)

However, offenders with mental retardation should never be placed in cells with individuals who might abuse or victimize them.

Police officers may also question the offenders. In doing so, they should follow a few simple guidelines.

Interviewing Offenders with Mental Retardation

When conducting interviews, officers should, first and foremost, ensure that offenders understand their Miranda rights. If any doubt exists, the interviewer should consult a prosecuting official to determine whether to continue the interview or to stop and obtain the assistance of a qualified individual trained in dealing with people who are mentally retarded.

Officers should also make sure suspects understand the questions asked. To accomplish this, they should use easy-to-understand language and ask open-ended questions—not questions that merely require yes-or-no responses. In addition, officers should speak in a normal tone of voice; mental retardation does not affect hearing.

Offenders with mental retardation often try to please those in authority. As a result, they might confess to police, not out of guilt, but from a desire to please. They may also plead guilty to an offense without understanding all the ramifications.

Therefore, law enforcement officials should take care during interviews of suspects with mental retardation to ensure they do not lead or direct them to give inappropriate answers. Where warranted, officers should obtain assistance from professionally trained individuals. These guidelines apply not only to suspects but also to victims and witnesses with mental retardation.

Interviews should be well-documented, particularly when offenders disagree or elaborate on particular issues. By documenting interviews, officers can establish the facts regarding suspects' criminal actions and their understanding of their rights. Further, this documentation can provide insight into whether suspects are competent to stand trial.

Competency

Competency relates to many different issues. For example, individuals may be competent to get married but not to handle their finances or to make out a will. Criminal justice professionals must consider whether offenders with mental retardation are competent to understand their Miranda rights, to enter a plea, and to stand trial. A related issue involves whether individuals with mental retardation are competent to serve as trial witnesses.

Competency to stand trial is grounded in the 5th and 14th amendments. It protects individuals from prosecution when they cannot defend themselves because of mental illness or retardation. A finding of "not competent to stand trial" stops the criminal proceedings until the defendant can be restored to competency.

Mental retardation does not automatically make offenders incompetent to stand trial. Courts must be willing to obtain the services of qualified forensic psychologists to evaluate the competency of all offenders with mental retardation.

Unfortunately, because offenders with mental retardation often go undetected, their competency may never be questioned. In fact, a Cuyahoga County, Ohio, study of offenders on probation who were mentally retarded determined that competency evaluations had been ordered on only 27 percent of them.[4]

This study underscores the need to identify and evaluate offenders with mental retardation before they stand trial. Doing so not only protects the individual but also prevents the conviction from being overturned on appeal.

In determining competency, officials must establish whether offenders can help their attorneys prepare their defenses and assist in court. Offenders with mental retardation should also have a working understanding of the courtroom, including all of its participants and their respective roles.

Court-Appointed Experts

Court-appointed experts, namely forensic psychologists or psychiatrists, serve many purposes. They assist the court in determining whether offenders are competent to stand trial, and if declared incompetent, whether they could become competent through training and education.

For individuals declared fit for trial, court-appointed experts advise the court throughout the proceedings to ensure a fair trial. They also help offenders understand any plea agreement that the court may consider.

Although cases involving offenders with mental retardation require extensive use of experts, prosecutors and courts should be aware that not all psychologists are qualified to determine issues of competency. For example, in one case, a court-appointed psychologist used an IQ test to determine the intellectual age of an offender. When the psychologist gave the defendant's intellectual age as 7, the court incorrectly interpreted this to mean that he could not be held responsible for his actions, just as a 7-year-old child would not be held accountable.

However, the intellectual age aspect of this particular test was not widely accepted and is, in fact, no longer used. Unfortunately, this offender, who had a history of violent behavior, returned to his group home, where he continued to terrorize the other residents.

In another case, a court-appointed psychologist determined during an evaluation that an individual was "moderately retarded." However, further investigation revealed that this individual had attended regular classes in high school and had been on the honor roll. A subsequent evaluation by a qualified forensic psychologist revealed the individual was not mentally retarded and was merely "faking," hoping to receive lenient treatment.

> ***"Individuals with mental retardation are not always easy to identify, especially those who function well socially."***

Insanity at the Time of the Act

Insanity at the time of the act is a legal defense grounded in the concept that an insane individual is incapable of forming *mens rea,* or evil intent. Jurisdictions have different standards regarding insanity defenses. Basically, such defenses consist of the following elements: Whether individuals have a mental illness or disability and whether that disability impaired their capacity to distinguish between right and wrong or their ability to conform to the law at the time they committed the criminal act.

Some people believe that individuals with mental retardation automatically meet the disability prong of the test. However, this view fails to take into account the various levels of retardation, ranging from borderline to profound. Depending on their level of retardation, offenders may not meet the disability definition used for insanity defenses. Courts rely heavily on experts to determine whether an individual's level of retardation constitutes a disability.

Law enforcement officers can address the other components of the insanity defense by thoroughly investigating the criminal act and by interviewing the offender. Officers need to determine early in the investigation if offenders know the difference between right and wrong, if they knew they were committing a crime, and whether they could have refrained from the act. The following actions may indicate that offenders understood the meaning and consequences of their actions:

- Admitting to looking for a situation in which they were least likely to be apprehended
- Admitting to interrupting the act when they thought they might get caught

- Attempting to conceal involvement in the act
- Showing remorse prior to apprehension
- Expressing remorse for the act itself, not just for their apprehension.

Some psychologists also use the "police officer at the elbow" test. That is, they ask offenders with mental retardation if they would have committed the act if an officer had been "at their elbow" or nearby. A "no" answer is a good indication that individuals knew they were doing something wrong and possessed the ability to control their actions. In short, such an individual cannot successfully plead insanity.

Conclusion

Law enforcement agencies are charged with enforcing all laws equally, and criminal acts committed by offenders with mental retardation should be no exception. Law enforcement officers, prosecutors, and the courts need to take retardation into account but not use it as an excuse to divert the offender from the criminal justice process.

How successfully an agency deals with offenders who are mentally retarded depends on the professionalism and knowledge of its staff.[5] With a little extra effort, the criminal justice community can learn to handle this often-overlooked and frequently misunderstood segment of the population. ✦

Endnotes

[1] C.O. McDaniel, "Is Normalization the Answer for MROs?" *Corrections Today,* April 1987, 184-188; and M. Santamour, "The Offender with Mental Retardation," *The Prison Journal,* 1986, 66, 3-18

[2] J. Schilit, "The Mentally Retarded Offender and Criminal Justice Personnel," *The Council for Exceptional Children,* September 1979, 16-22.

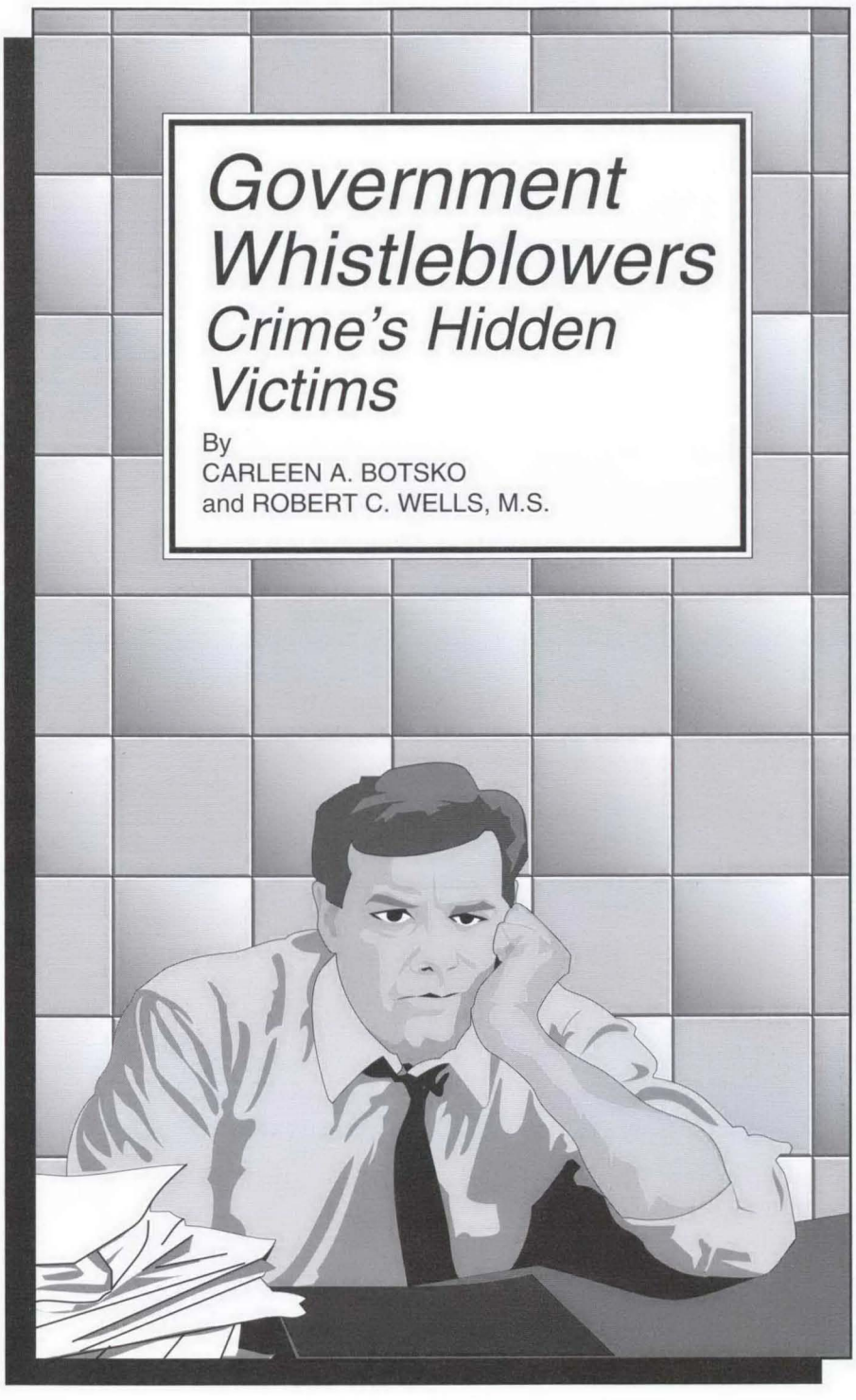
[3] Ibid.

[4] A. Bowker and Robert E. Schweid, "Habilitation of the Retarded Offender in Cuyahoga County," *Federal Probation,* December 1992, 48-52.

[5] For more information on mental retardation, contact The Arc, 500 E. Border Street, Suite 300, Arlington, TX 76010, 817-261-6003 or 800-433-5255. The Arc is a national organization on mental retardation.

Government Whistleblowers
Crime's Hidden Victims

By
CARLEEN A. BOTSKO
and ROBERT C. WELLS, M.S.



For the past 8 years, Tom has worked for the same Federal agency. He earns a good salary as a senior research analyst and owns a home in a quiet suburb. He and his wife have two children and a third is on the way. Although Tom is, by all accounts, a model employee, he is about to make a decision that will place his career, and eventually other aspects of his life, in jeopardy.

During the past several months, Tom has observed his supervisor taking routine lunches with a local contractor who does business with Tom's section. He also has learned from several knowledgeable sources that this same contractor paid for many of the frills included in his supervisor's recent Hawaiian vacation. While irritated by the apparent lack of judgment demonstrated by his supervisor, Tom did not wish to make waves in an otherwise ideal work situation.

Now, as his supervisor rummages through bids submitted by contractors for an upcoming project, Tom observes him dial the phone and ask for the contractor with whom he lunches regularly. In partial disbelief, Tom overhears his supervisor read off the bid totals.

Tom knows that this information must be reported to the appropriate authorities. While he has no interest in becoming involved in a lengthy Federal investigation, he does what he has been encouraged to do during numerous agency security awareness briefings—he dials his agency's hotline number.

Reluctantly, Tom has joined the ranks of an often-misunderstood circle referred to as government whistleblowers. Unfortunately, these potentially invaluable witnesses to serious criminal acts and breaches of public trust routinely must endure what Tom fears most—protracted and tedious inquiries carried out by investigators who appear insensitive as they methodically pursue "the facts."

This need not be the case. White-collar crime investigators can take steps to alleviate the fear and anxiety often experienced by whistleblowers. In doing so, they can successfully sustain these witnesses through the long and often-bewildering investigative/judicial process.

THE EMOTIONAL IMPACT OF CRIME

In white-collar crime investigations, the testimony provided by government whistleblowers may be the best evidence for proving a case. Investigators need to preserve the testimony of these important eye witnesses just as they would protect corporate financial records. An integral component of this effort includes understanding the emotional impact witnesses experience. Investigators must ensure that these emotional factors do not become barriers to the quality and quantity of information disclosed by these informers.

The Whistleblower as Victim

Traditionally, in many white-collar crime cases, the government is labeled as the victim. But what about individuals like Tom? In the months, or even years, ahead, his role will be that of a witness for the government. Still, his emotional response—including nervous distress caused by the retaliatory actions of his supervisor—closely parallels those of violent crime *victims*. In order to deal effectively with such witnesses, investigators must understand how the impact of crime affects an investigation.

A psychologist and former New York City police officer, Morton Bard, provided the first glimpse of the emotional impact of crime from the perspective of the victim. In a behavioral profile of victims and witnesses,[1] he identified three separate stages in the process of resolving the crisis brought on by their involvement in a crime. These three stages are impact, recoil, and reorganization.

Stage 1: Impact

The impact stage is characterized by disbelief, disorientation, disorganization/confusion, feelings of vulnerability, suggestibility, and difficulty in recalling details. In the case of whistleblowers, the impact stage begins when they report the crime and can last up to 72 hours.

Stage 2: Recoil

In the recoil stage, whistleblowers commonly exhibit intense anger, resentment, extreme fear, shame, or guilt, as well as phobic reactions to details of the crime, particular places, times of day, and kinds of people. This is the stage during which most white-collar crime investigators deal with witnesses. For whistleblowers, this stage begins several days after reporting the crime and continues until the investigation ends.

The recoil stage represents a particularly difficult period for most victims and witnesses. During this period, their thinking often focuses

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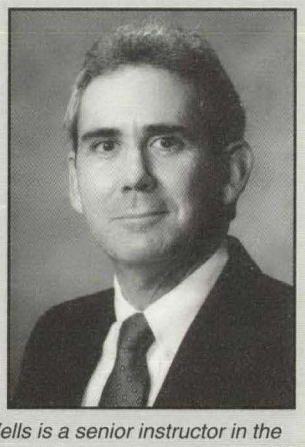

Mr. Wells is a senior instructor in the Behavioral Science Division of FLETC.

on understanding why the crime occurred or why they chose to get involved. Most will wake early each morning, as Tom did, thinking about the crime and mentally replaying the events in an attempt to understand it fully. During this period, some will take an emotional roller coaster ride. Moods will fluctuate between feelings of apathy and anger, resignation and rage, serenity and anxiety. Victims/witnesses may be obsessed with the crime one minute and deny such feelings the next.

In Tom's case, he became haunted by fears of reprisal at the hands of his supervisor. Because he experienced all of the emotional reactions common to the recoil stage, his family, friends, and coworkers noticed changes in his behavior. Once well-liked and well-respected, Tom no longer felt a part of the organization. He increasingly isolated himself from coworkers. Ultimately, his supervisor was able to exploit these changes in his behavior as justification for a series of negative job actions against him.

Stage 3: Reorganization

During the reorganization stage, feelings of fear and rage slowly diminish as the victim thinks and talks less about the crime. Like Tom, most victims, witnesses, or whistleblowers will be unable to achieve this stage of resolution while the criminal case is pending.[1]

White-Collar Crime Investigations

White-collar crime investigators should realize that criminal investigations may escalate the crisis experienced by whistleblowers. While Tom struggles with a disorienting assortment of emotional reactions, the justice system may add new elements to his ordeal.

In addition to the emotional reactions experienced in the impact, recoil, and reorganization stages, whistleblowers also face challenges brought on by the investigative process itself. Investigators should realize that these elements, often unique to white-collar crime cases, may affect an informer's ability to sustain the rigors of the investigative and judicial processes.

> ***"...the testimony provided by government whistleblowers may be the best evidence for proving a case."***

Perhaps the most profound of these factors is the time required to investigate and to prosecute a white-collar crime case successfully. Most citizens get their information concerning the workings of the criminal justice system from television. Of course, on television, cases move quickly—in sharp contrast to the slow, methodical process of investigating and prosecuting a case of fraud against the government. Whistleblowers should be informed from the outset that white-collar crime investigations may last 1 to 5 years.

The types of guilt experienced by whistleblowers may seriously affect their ability to provide information. Many whistleblowers will experience not one but two layers of guilt. As a whistleblower, the individual may initially feel guilty about "turning in" an employer, particularly one who has provided the employee with a "real" job or an opportunity to excel. Once the whistleblower resolves this layer of guilt, another often develops—guilt over not reporting the illegal activities when they first took place. Whistleblowers may believe that investigators view them as irresponsible for not reporting the incidents sooner. Investigators should reassure whistleblowers who place such undue pressure on themselves.

In addition, whistleblowers may fear losing their positions while the case is investigated. This fear results from the pressure of continuing to work within an environment that is under investigation. Whistleblowers often question whether their identity as the complainant has been disclosed. To allay these fears, investigators should assure whistleblowers that every effort will be taken to protect their identity.

DEALING WITH WHISTLEBLOWERS

To gather the most accurate information, investigators should first focus on the needs and concerns of whistleblowers. When whistleblowers sense a genuine interest in their welfare, they focus more energy on the needs of an investigation. Accordingly,

investigators should learn more about the emotional reactions common to whistleblowers.[2]

Additionally, investigators should ask questions to find out whether informers are experiencing any emotional reactions. Are they getting along with coworkers, supervisors, spouses, children? Are they having trouble keeping focused either at home or at the office? Are they experiencing anger or guilt? Are they having difficulty sleeping?

If whistleblowers admit to a problem, investigators should discuss it with them. Most important, investigators should make sure that whistleblowers fully understand the process in which they are involved. Investigators may need to review whistleblowers' roles continually during the judicial process, depending on their emotional state and ability to deal with the situation.

It is important to give a whistleblower the opportunity to vent feelings of anger or fear before initiating any questioning. Investigators should ask how things are going and watch to see whether the whistleblower's body language and other nonverbal reactions match verbal responses. If the verbal response is positive while a frown forms on the subject's face, then investigators should understand that the whistleblower may not be emotionally prepared to cooperate fully.

Investigators should prompt whistleblowers to break down their resistance by eliciting questions from them before the inquiry begins. For example, they might consider saying, "We are going to be asking you a lot of questions, but before we do, do you have anything that you would like to ask?" A common response might be, "Yes, I have a question. How long is it going to take for the government to get this case to trial?" Such a question allows investigators to respond sympathetically, thus building trust and breaking down emotional barriers. A proper response would be, "You are right. We know this has not been easy for you. We would like to tell you where we are with the investigation."

> ***"Effective management of witnesses represents one of the most challenging responsibilities for white-collar crime investigators."***

Investigators should also acknowledge whistleblowers' agendas in order to help disarm the hidden anger that may develop toward the government. By letting whistleblowers know what to expect, investigators remove another barrier, allowing whistleblowers to devote more energy to recalling information, thus enhancing the investigation.

As part of this effort, investigators should also keep whistleblowers informed of the status of the investigation. Generally, it is best to keep them advised as major events unfold, such as possible indictment, arrest, or trial dates.

Finally, investigators should advise whistleblowers of their rights. Because these rights differ from State to State and among agencies, investigators must be fully aware of the laws, regulations, and court decisions that fall under their jurisdiction.

GETTING PAST EMOTIONS

Whistleblowers do not arrive for interviews bearing clear indicators of their emotional state or agenda. However, imagine if a whistleblower did arrive for an interview wearing a nametag complete with an emotional reading: Bob—angry. Investigators would first acknowledge, then help to diffuse, the anger. Likewise, investigators' reactions should be the same, even though they may have to prompt whistleblowers to reveal their true emotional state.

Consider the following example. For the past 6 months, an employee's marriage has been deteriorating. Because she fears her marital problems may interfere with her work performance, she decides to speak to her supervisor. As she haltingly begins to relate her problems, her supervisor interrupts—telling her that a report he had wanted at the end of the week will have to be on his desk by this afternoon.

Chances are that the supervisor will get the report. But how good will it be? The fact that the supervisor failed to address the employee's emotional concerns will directly affect the quality of the report.

For white-collar crime investigators, the same thing can occur if they ask for information before dealing with the emotional agenda of whistleblowers. Consider how

much of their attention and energy remains focused on such concerns as job loss rather than on the questions being asked of them by investigators.

CONCLUSION

Effective management of witnesses represents one of the most challenging responsibilities for white-collar crime investigators. To overcome such barriers as anger and fear and to collect and preserve the most accurate testimony possible from government whistleblowers, investigators should focus on informers' emotional agendas.

Investigators must also remember that good information is best preserved by keeping the source of that information informed. In the final analysis, a whistleblower who knows what to expect from the investigative and judicial process is more likely to be an effective and credible witness when called upon to recall facts or to testify.✦

Endnotes

[1] Morton Bard and Dawn Sangrey, *The Crime Victim's Book*, 2d ed. (New York: Brunner/Mazel Publishers), 1986.

[2] To assist investigators, the Behavioral Science Division at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, developed a course to address these specific issues.

Author Guidelines

Manuscript Specifications

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

Format: All manuscripts should be double-spaced and typed on 8 1/2" by 11" white paper. All pages should be numbered, and three copies should be submitted for review purposes.

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Basis For Judging Manuscripts: Manuscripts are judged on the following points: Factual accuracy, style and ease of reading, structure and logical flow, length, relevance to audience, and analysis of information. Favorable consideration generally will not be given to an article that has been published previously or that is being considered for publication by another magazine. Articles that are used to advertise a product or a service will be rejected.

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Point of View

Telephone Etiquette—Packaging It Better

By
David E. Bentz, M.S.

At a recent Rotary meeting, one member, the vice president of a local bank, handed me his business card with a woman's name written on the back of it. He asked me to call her and discuss the way she was treated when she recently called the police to report a burglary of her car. My heart sank. "What now?" I asked myself. "Wouldn't it be nice to have a citizen pass on a positive experience with the department for a change?"

I made it a point to call the woman as soon as I returned to my office. She explained to me that the person who answered her weekend call was not very helpful. Trying to be diplomatic, she was obviously minimizing her displeasure.

I could sense her hesitancy, so I asked her to be specific and to tell me everything. She said that the person who answered her call told her that an officer could not come to her house to take a report. Instead, she was informed that she would have to call back on Monday to the Telephone Report Unit. "But it was not what I was told so much as the way the person told me," she continued. "It seemed that she could have cared less what happened to me. She did not even explain why the police would not be coming, nor did she give me the number of your Telephone Report Unit."

Naturally, I wanted more information, such as the date and time she called, but I sensed that she would have none of it. She claimed that it was not really such a big deal and that she did not want to get anyone in trouble. "And besides," she continued, "when I called the Telephone Report Unit on Monday morning, I spoke with a nice woman who was very helpful."

Does this story sound familiar? Certainly, many police executives could point to similar occurrences within their own departments. It appears that some individuals in public service have omitted the word "service" from their vocabularies. But after all, service constitutes a significant component of the law enforcement mission.

If executives successfully explain the importance of customer service, employees will try to be more helpful and will impress callers favorably, just as the person in the Telephone Report Unit did. Working in law enforcement does not eliminate the concept of customer service. Rather, service to the customer—the public—forms the essence of police work.

Service to the Customer

In their book, *In Search of Excellence,* Thomas J. Peters and Robert H. Waterman, Jr., cite being "close to the customer" as one of the eight attributes that characterize excellent, innovative companies.[1] Employees working in companies like these "...learn from the people they serve. They provide unparalleled quality, service, and reliability—things that work and last."[2]

In the current economic climate, government agencies, as well as businesses, are focusing on "right-sizing." Every agency is battling for funds, and revenues are at a premium. The public mistrusts big

business and government, so law enforcement agencies must start packaging their services better. These services include enforcing laws, investigating and preventing crimes, apprehending suspects, maintaining public safety, and conducting the myriad of other duties performed by Federal, State, and local agencies. Being the best, most efficient law enforcement agency will not save any organization if it lacks the proper packaging. In fact, people often judge an entire agency based on an encounter with a single employee. Undesirable impressions translate into skepticism and negativism toward all law enforcement employees and can lead to failures of proposed tax initiatives for public safety.

Everyone on the law enforcement team, from the dispatcher to the head of the agency, must understand and embrace the dynamics of what the public (the customer) wants and, in fact, demands. Law enforcement personnel can achieve such understanding quite simply by remembering the "Golden Rule": Do unto others as you would have them do unto you.

I provide members of my team with a practical approach to this timeless canon. I ask them to imagine that their mother, father, or other loved one has traveled alone to an unfamiliar city. While there, a thief breaks into the vehicle and steals Christmas presents. I then ask my team members how they would want their loved ones to be treated by the police when they call to report the crime.

Finally, I ask what would be their overall opinion of that agency based on the one positive or negative encounter experienced by their loved one? How would they feel about the community? The answers given by team members reaffirm the importance of positive, helpful contacts with the public.

Get Closer to the Customer

I offer the following suggestions to law enforcement employees to help them to improve service and to bring them closer to the customer. First, treat every caller like a favorite member of the family. All employees should identify themselves by department and name and should try to connect callers with the individual whom they are trying to reach. Employees also should make every effort to transfer the caller to the appropriate person and avoid, if possible, having the caller place another call.

During all telephone conversations with the public, employees should be polite and express their desire to assist the caller, saying, for example, "How may I help you?" All employees should strive to be problem solvers. If the caller has reached the wrong department or agency, for instance, the responding employee should refer them to the appropriate one. Finally, employees should end conversations on an upbeat note, perhaps by giving callers their name and number and offering assistance in the future.

Conclusion

Law enforcement employees must begin to package themselves and their products better. They must express a genuine desire to provide quality service each and every time they answer the phone or greet the public, their customer. As for me, I am looking forward to the phone call that I know will be coming soon: It will compliment a member of my team for delivering excellent public service. ✦

Endnotes

[1] Thomas J. Peters and Robert H. Waterman, Jr., *In Search of Excellence* (New York: Harper & Row Publishers, 1982), 14.

[2] Ibid.

Captain Bentz heads the Administrative Services Section of the Stockton, California, Police Department.

Drug-Free Block Plan

By Charles W. Bennett, Jr.,
and A. Christine Bailor, M.P.A.

Open-air drug markets remain a persistent and frustrating problem for many police departments. These drug markets allow dealers to sell their wares quickly to both drive-up and walk-up customers. They are frequently found in residential districts, with both the dealers and buyers coming in from other areas to conduct their business.

Once-vital neighborhoods quickly become crumbling slums when this type of drug activity moves into the area. Overt, street corner drug dealing results in acts of violence, neighborhood decay, mistrust of governmental authorities, and citizen fear.

As a result, law-abiding citizens who live near open-air drug markets frequently develop a "bunker mentality." They stay inside their homes as much as possible, lose contact with their neighbors, and purposely isolate themselves from the illegal activities taking place outside.

Unfortunately, police departments nationwide have found it difficult—if not impossible—to eliminate open-air drug markets. Although "buy-busts," long-term undercover operations, surveillance, and even reverse drug sales have resulted in thousands of felony arrests, the problem continues. Drug dealers arrested by police are frequently back on the street or replaced by another "entrepreneur" before officers complete the arrest paperwork.

While citizens believe that the answer to this problem is increased neighborhood police patrols, law enforcement leaders recognize that this measure does little to solve the problem. Instead, it merely results in the displacement of dealers to other neighborhoods. Meanwhile, increased police patrols in one sector leave other areas with reduced services, making these areas even more vulnerable to new problems. Clearly, this issue requires a different approach.

A Different Approach

When the number of open-air drug markets began to increase within its jurisdiction, the Richmond, Virginia, Police Department created an innovative program to combat the problem. Recognizing that closing open-air drug markets required a joint police-community effort, police administrators developed a Drug-Free Block Plan. This plan allows citizens—working closely with police—to take back their neighborhoods from drug dealers.

The Drug-Free Block Plan has three specific goals. The first is to involve both citizens and police in combating neighborhood drug problems on a

block-by-block basis. The partnership between police and citizens strengthens the effort to rid the block of not only illegal drug activity but also the environmental factors that contribute to it.

The second goal of the program is to foster a police-community partnership that is positive, action-oriented, and achievable. The alliance that forms serves to better the community as a whole. Administrators sustain this bond between the community and the police through a rapid response to community requests. Failing to deliver promised services dooms the program.

The third goal is to use the program as a catalyst for the active involvement of all city agencies and services to enhance the quality of life within the affected neighborhoods. At monthly meetings, citizens in the community bring specific concerns they may have to the attention of police. Police officials then request that personnel from city agencies that can resolve these concerns attend the next monthly meeting.

> **"This plan allows citizens—working closely with police—to take back their neighborhoods from drug dealers."**

The police, however, do not organize a drug-free block; the citizens who live on the block do. The police help by informing citizens of the Drug-Free Block Plan's existence and by providing interested citizens with the organizational strategy.

Partnership Agreement

The Drug-Free Block Plan requires a true community and police partnership. Both community members and the department make certain commitments, take certain risks, and share in the ultimate success or failure of the program.

As part of the partnership, citizens voluntarily commit to lead individual drug-free lives, to forbid the use or possession of illegal drugs in their homes, and to work together to enhance the problem-solving relationship between the department and the neighborhood. Furthermore, they agree to unite against crime by refusing to tolerate illegal drug or criminal activity on their block, reporting all such activity to authorities, and testifying in court when necessary.

In return for the citizens' commitment, the department pledges to provide a police point-of-contact in the neighborhood precinct and a team of officers to develop tactics to impede drug sales and to arrest any involved individual. These officers, as well as the beat officers, carry digital pagers and cellular phones so that residents can contact them easily. This also ensures that when neighbors have information regarding problems on the block, they can talk directly with an officer they know personally.

The department also makes the commitment to reprogram the dispatch computer to give higher priority to calls of illegal drug dealing and disorder in the drug-free neighborhoods. This translates into a quicker response by police which, in turn, further solidifies the positive rapport between the community and the police.

The department also resolves to involve other city agencies in the plan. These agencies may provide resource material on how to enhance the quality of life in the participating neighborhoods, and representatives may attend meetings to help resolve problems that fall within the parameters of their agencies.

For example, if citizens complain to police that there is not enough lighting in the neighborhood, representatives of the utility company meet with the citizens to discuss what can be done to rectify the situation. This personalized attention not only builds trust between citizens and police but it also brings an improved image of the neighborhood to those who live, work, and visit there.

Finally, the department agrees to designate the blocks as drug-free by placing signs at each end of the participating blocks. Police officials also provide citizens with "Drug-Free House" stickers, which they can display in the windows of their homes.

Signing the Agreement

To further cement this partnership, police officials and community members sign a formal, written agreement. In order to qualify for the program, 80 percent of all adults, 60 percent of the neighborhood's youth (6th grade through high school), and 80 percent of all property owners in the designated block must sign the agreement, reaffirming their desire to rid their block of illegal drug activity.

These participation thresholds are kept high by design. Residents, as well as property and business owners, must truly want to involve themselves in the program. If they fail to form a united front against drugs, the police will not incorporate their block into the program.

Once the prerequisite number of block citizens sign the agreement, the mayor, city manager, chief of police, and the appropriate precinct commander sign the agreement at a public ceremony held on the block. The city's Traffic Engineering Department then installs the drug-free signs, and neighborhood residents receive the stickers to place in their windows. The dispatch computer is also immediately reprogrammed for that particular block, sending a strong signal to other neighborhoods that those who make a commitment to work with the police for the betterment of the community get quicker responses to calls for assistance.

> **"As citizens see these services making a difference in their neighborhoods, they become even more engaged in the partnership...."**

Enforcement

With the signed agreement in hand, the department and the community together begin to focus on the block's drug issues and how the problems can be eliminated. To begin, the precinct's Street Enforcement Unit (SEU) surveys the block and develops a written plan for meeting the specific needs of the neighborhood. Then, SEU supervisors implement the operations of the plan. They also provide regular reports to the precinct commander, who is responsible for making whatever personnel assignments are necessary to achieve the plan's enforcement goals.

SEU officers coordinate with assigned beat units to meet with neighbors, explain various aspects of the program, and schedule regular meetings between citizens, police, and other city agencies. However, a team of precinct officers implements the tactics specifically designed to impede neighborhood drug dealing. These officers also make necessary arrests and maintain contact with neighborhood citizens.

Conclusion

To date, 19 blocks in Richmond have joined the Drug-Free Block Plan. Of these, 14 have experienced a 25- to 30-percent decrease in total calls for service. Even more important, there is increased citizen satisfaction within the neighborhoods. Community members and business owners now believe that their neighborhoods are safer, more pleasant places to live.

Because this plan demands a considerable commitment on the part of both the neighborhoods and the department, officials estimate that only five additional blocks per year will join the plan. The plan requires a true partnership between police and citizens—it cannot survive when the police act simply as overseers.

However, the measured process of adding blocks ensures that police administrators can deliver promised services in a timely and effective manner. As citizens see these services making a difference in their neighborhoods, they become even more engaged in the partnership—a sure sign that the plan does, indeed, work.

At their best, community policing efforts bring hope back to ravaged communities. The Drug-Free Block Plan represents the community policing philosophy in action.✦

Deputy Chief Bennett and Captain Bailor serve with the Richmond, Virginia, Police Department.

Grooming and Weight Standards for Law Enforcement

The Legal Issues

By
WILLIAM U. McCORMACK, J.D.

Many law enforcement agencies have long had policies or regulations regarding the grooming, uniform or dress, and weight of their officers. These agencies recognize a legitimate need to require their officers to conform to grooming and weight standards, both from internal esprit de corps and public perception perspectives.

This article examines the constitutional and Federal statutory issues that arise when officers challenge these regulations. The article also provides guidance to law enforcement managers concerning the permissible scope of grooming and weight standards.

Rationally Based Grooming Standards

Since the 1976 Supreme Court decision in *Kelley* v. *Johnson*,[1] courts have shown deference to grooming standards challenged on constitutional grounds. In *Kelley*, the president of the Patrolmen's Benevolent Association challenged a police department regulation that required male members of the police force to maintain neat and trimmed hair at certain lengths and prohibited beards except for medical reasons.

The Supreme Court ruled that the police department demonstrated a rational connection between the grooming regulation and the promotion of safety of persons and property. Thus, the regulation was not in violation of the 14th amendment's due process liberty protections.[2]

The Court recognized that grooming standards and other restrictions, such as requirements that an officer salute the flag, wear a standard uniform, and refrain from

smoking in public, infringe an officer's freedom of choice in personal matters. However, the Court determined that a police department need only have a rational basis to constitutionally restrict an officer's freedom of choice in these areas.

The Court, in describing this deference to police agencies in such matters, stated:

> "Neither this Court...nor the District Court is in a position to weigh the police arguments in favor of and against a rule regulating hairstyles as a part of regulations governing a uniformed civilian service...This choice may be based on a desire to make police officers readily recognizable to members of the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself. Either one is a sufficiently rational justification...."[3]

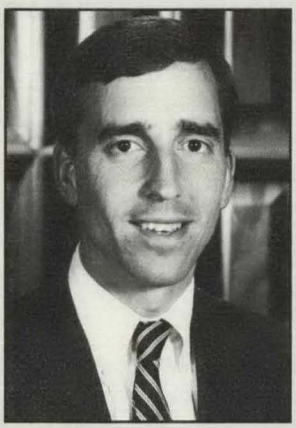
Since *Kelley*, courts generally grant wide leeway to law enforcement agencies in determining the constitutionality of a wide variety of restrictions on their officers. However, agencies must ensure that the restrictions do not infringe on a fundamental constitutional protection, such as the right to privacy,[4] the right to travel,[5] or the first amendment rights of free speech[6] and association.[7] In addition to grooming standards, courts reviewing constitutional challenges to secondary employment limitations,[8] residency requirements,[9] sick leave rules,[10] and antinepotism regulations[11] generally require only that the department have a legitimate, nonarbitrary reason for the rule or regulation to survive constitutional scrutiny under the rational basis analysis.

An example of the deferential nature of this type of scrutiny is *Rathert* v. *Village of Peotone*.[12] In *Rathert*, the plaintiffs, two police officers in a small police department, had their ears pierced and wanted to wear ear studs when off duty. The chief officially reprimanded the plaintiffs and demoted one of them from sergeant to patrolman. The plaintiffs then sued under 42 U.S.C. Section 1983, claiming that the defendant's prohibition on ear studs violated their rights to liberty and due process under the 14th amendment and their 1st amendment right to freedom of association.

The U.S. Court of Appeals for the Seventh Circuit ruled that the officers' liberty due process claim was governed by *Kelley* and that the chief had ample reason to impose the ear stud prohibition on the officers. The court stated that the officers, who were members of a small community, were generally known and recognized on and off duty and that the ear studs held the department up to ridicule and had an adverse impact on police effectiveness and esprit de corps.[13]

The seventh circuit also dismissed the officers' freedom of association claim by finding that the right to wear ear studs did not prohibit them from associating with others. The court stated that the plaintiffs failed to identify any associational interest as police officers that warranted constitutional protection for them to wear ear studs.[14]

In addition to the rationale in *Rathert*, courts have uniformly upheld grooming standards for police on such grounds as the development of a "shared pride," easy recognition of police by the public, and safety of an officer in a struggle.[15] Law enforcement managers



Special Agent McCormack is a legal instructor at the FBI Academy.

"...constitutional and Federal statutory issues arise when officers challenge [grooming and weight] regulations."

should understand, however, that these court decisions only determine the constitutionality of a challenged regulation, not the necessity or advisability of such rules.

Prohibited Grooming Standards

Although grooming standards have generally been upheld when challenged on a constitutional basis, certain grooming standards implicate protections provided by statutes designed to prevent discrimination based on race, gender, or handicapped status. For example, prohibitions on beards have been challenged by African-American males who suffer from a medical condition called pseudofolliculitis barbae (PFB), which causes men's faces to become infected if they shave.

Courts have ruled that police officers with PFB are protected under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2, and Federal statutes protecting persons with disabilities or handicaps from employment discrimination.[16] Departments considering a rule prohibiting beards should consider allowing for medical waivers for officers suffering from such conditions as PFB.

Another challenge that has been raised in grooming standards cases is potential gender discrimination, because men are often governed by one standard and women by another.[17] Courts have generally ruled that different standards for men and women do not violate title VII's gender discrimination prohibitions.[18] As long as the separate grooming standards are not overly burdensome on one sex and are enforced in an even-handed fashion, courts recognize that different grooming requirements for men and women may be lawful.[19]

For example, in *Wisclocki-Goin* v. *Mears*,[20] the plaintiff, a teacher in a juvenile detention center, was reprimanded and ultimately discharged in part for excessive makeup and for wearing her hair down. The plaintiff sued under title VII, alleging that these dress-code infractions were a pretext for illegal discrimination against women.

> **"...courts generally grant wide leeway to law enforcement agencies in determining the constitutionality of a wide variety of restrictions...."**

The U.S. Court of Appeals for the Seventh Circuit rejected the plaintiff's disparate treatment claim under title VII, because she failed to demonstrate that similarly situated male employees were treated differently. The court found that the plaintiff's employer had even-handedly applied a separate and equally strict dress and grooming standard to male employees.[21]

The court also addressed the plaintiff's disparate impact claim and found that the dress code did not work a hardship on females or adversely affect their employment opportunities. In addition, the court concluded that the strict grooming requirements were reasonably related to the employer's business needs and legitimate interests in maintaining the public's confidence in the professionalism of these government employees.[22]

Weight Standards

Law enforcement agencies have established maximum body-weight standards for reasons similiar to those justifying grooming standards, but weight standards may also promote physical fitness and effective job performance.[23] Constitutional challenges to these weight standards are subjected to the same rational basis test as grooming standards, and courts generally find reasonable weight standards constitutional if departments implement the standards in a nonarbitrary manner.[24] In this regard, courts are likely to require departments imposing weight standards for the first time to phase them in over a reasonable period to allow overweight officers a medically safe time to comply.

Weight Standards and Handicap Discrimination

Mandated weight standards have encountered varying court interpretations when challenged on the basis that they violate the Americans with Disabilities Act or the Rehabilitation Act of 1973. However, most cases have found that overweight employees are not protected by these statutes.

For example, in *Tudyman* v. *United Airlines*,[25] the plaintiff was rejected for a position as a flight

attendant because he exceeded the airline's maximum weight for a man of his height. The plaintiff admitted that his weight condition was voluntary and self-imposed because he was an avid body builder with a low percentage of body fat and a high percentage of muscle. The plaintiff sued under the Rehabilitation Act of 1973, claiming that his rejection for the flight attendant position was illegally based on his handicap.

The U.S. District Court for the Central District of California rejected the plaintiff's claim and found that the plaintiff's condition did not meet the definition of a handicap. The court stated that because the plaintiff's condition was voluntary, it was not caused by a physiological disorder, such as a glandular condition, and also that his inability to be a flight attendant did not substantially limit his ability to work.[26]

However, more recently, the U.S. Court of Appeals for the First Circuit in *Cook* v. *State of R.I. Dept. of MHRH*[27] upheld a claim by a nurse that she was illegally rejected for employment as an institutional assistant because of her weight. The plaintiff had worked successfully in the same mental health institution as an institutional assistant on two prior occasions, but when she reapplied for the same position a third time, she was rejected. The institution concluded that her morbid obesity compromised her ability to evacuate patients in case of an emergency and put her at greater risk of developing serious ailments.

The plaintiff prevailed at trial on her Rehabilitation Act claim, and the first circuit upheld the jury verdict. It found that the plaintiff qualified for protection because she proved sufficiently that she was either perceived as having an impairment that substantially limited a major life activity or actually had such an impairment.

The court noted that the plaintiff produced expert testimony at trial that morbid obesity is a physiological disorder involving a dysfunction of both the metabolic system and the neurological appetite-suppressing signal system. The court explained that morbid obesity is considered to be anyone who is either twice his or her optimal weight or more than 100 pounds over his or her optimal weight. The court also found that the plaintiff was treated or perceived by the institution as if she had a physical impairment that substantially limited her ability to work and her mobility.[28]

> ***"Constitutional challenges to...weight standards are subjected to the same rational basis test as grooming standards...."***

Finally, the court concluded that the plaintiff was protected under the statute because she was otherwise qualified to work as an institutional assistant. The court stated that the institution relied on generalizations regarding an obese person's capabilities and failed to make a fact-specific and individualized inquiry as to whether she could perform the physical tasks or essential functions of the institutional assistant position.[29]

Although weight standards have been upheld by courts in the context of firefighter[30] and paramedic[31] positions, law enforcement managers should proceed carefully in this area in light of the *Cook* case. Managers who wish to impose mandatory weight standards must carefully and individually assess each officer's condition in light of medical information concerning the underlying basis for failure to meet the standards. If an officer does not have a medical condition that causes the obesity, that is, the condition is voluntary, disability statutes generally do not provide any protection against enforcement of weight standards.

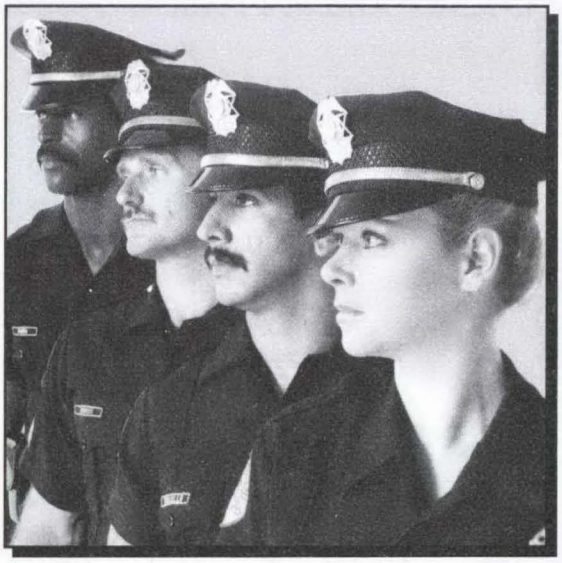
When an officer fails to meet the standard because of morbid obesity or a physiological disorder, such as a glandular condition,[32] then a separate assessment must be made whether the officer can do the essential functions of the job with or without reasonable accommodation. This determination must be made on an individual basis, with reference to the need for the officer to perform the physical demands of the job safely, and might require medical expertise.[33]

Conclusion

Courts have granted law enforcement managers broad discretion in determining what grooming standards are appropriate for their department or agency. Grooming standards will be upheld when challenged on a constitutional basis as long as there is a legitimate,

nonarbitrary reason for the standard. Managers, however, should make certain that no-beard policies accommodate officers who suffer from PFB and that the standards are enforced in an even-handed fashion between men and women.

Managers who wish to enforce weight standards on their officers face greater challenges. Courts have recognized that obesity can be caused by medical conditions that may entitle an officer to protection under such statutes as the Rehabilitation Act of 1973 or the Americans with Disabilities Act. When an officer's obesity is medically caused, an individual assessment must be made as to whether the officer can safely perform the essential functions of the job. If obesity is voluntary and not caused by a physiological disorder, or the person cannot safely perform the essential functions of the job even with reasonable accommodation, neither the ADA nor the Rehabilitation Act protect against adverse personnel decisions for failure to meet reasonable weight standards.✦



Endnotes

[1] 425 U.S. 238 (1976).

[2] *Id.* at 247-248.

[3] *Id.* at 248.

[4] *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). *See, e.g., Kukla* v. *Village of Antioch*, 647 F.Supp. 799 (N.D. Ill. 1986) (cohabitation and sexual choice fall in the category of rights given intermediate scrutiny in public employee discharge cases. A police officer in a small department was lawfully disciplined for cohabitating with a dispatcher because there was a significant negative impact on the officer's effectiveness within the department.)

[5] *Dunn* v. *Blumstein*, 405 U.S. 330 (1972). *See, e.g., Grace* v. *City of Detroit*, 760 F.Supp. 646 (E.D. Mich. 1991)(requirement that applicants for city jobs be residents unlawfully burdens the constitutional right to travel, although once hired, the city's residency requirement is lawful) and *Perez* v. *Personnel Board of the City of Chicago*, 690 F.Supp. 670 (N.D. Ill. 1988).

[6] *Pickering* v. *Board of Education*, 391 U.S. 563 (1968); *Connick* v. *Myers*, 461 U.S. 138 (1983); and *Rankin* v. *McPherson*, 483 U.S. 378 (1987).

[7] *Roberts* v. *United States Jaycees*, 468 U.S. 609 (1984); *Rutan* v. *Republican Party of Illinois*, 497 U.S. 62 (1990); and *Click* v. *Copeland*, 970 F.2d 106 (5th Cir. 1992).

[8] *Decker* v. *City of Hampton*, 741 F.Supp. 1223 (E.D. Va. 1990); *Bowman* v. *Township of Pennsauken*, 709 F.Supp. 1329 (D.N.J. 1989); and *FOP, Lodge 73* v. *City of Evansville*, 559 N.E.2d 607 (Ind. 1990).

[9] *Hawks* v. *City of Pontiac*, 874 F.2d 347 (6th Cir. 1989); *Hawkinson* v. *Louisa County Civil Service Commission*, 431 N.W.2d 350 (Iowa 1988); and *Clinton Police Bargaining Unit* v. *City of Clinton*, 464 N.W.2d 875 (Iowa 1991). *But see NAACP* v. *Town of Harrison*, 940 F.2d 792 (3d Cir. 1991)(the town's residency rule disparately impacted minorities who did not meet the requirement. Though the policy could be justified under the Constitution, its application violated title VII.)

[10] *Crain* v. *Board of Police Commissioners of City of St. Louis*, 920 F.2d 1402 (8th Cir. 1990); *Hambsch* v. *Department of Treasury*, 796 F.2d 430 (D.C. Cir. 1986); and *Voorhees* v. *Shull*, 686 F.Supp 389 (E.D.N.Y. 1987).

[11] *Parsons* v. *County of Del Norte*, 728 F.2d 1234 (9th Cir.), *cert. denied*, 469 U.S. 846 (1984); *Collier* v. *Civil Service Commission*, 817 S.W.2d 404 (Tx. App. 1991); and *Parks* v. *Warner Robins, Georgia*, 841 F.Supp. 1205 (M.D. Ga. 1994).

[12] 903 F.2d 510 (7th Cir.), *cert. denied*, 498 U.S. 921 (1990).

[13] *Id.* at 516.

[14] *Id.* at 517.

[15] *Weaver* v. *Henderson*, 984 F.2d 11 (1st Cir. 1993)(policy banning facial hair on all Massachusetts State police except for undercover officers and those with a medical justification was lawful) and *Hottinger* v. *Pope County*, 971 F.2d 127 (8th Cir. 1992)(court held that ban on moustaches for emergency medical technicians was valid and that grooming standards must be upheld unless wholly irrational).

[16] *University of Maryland* v. *Boyd*, 612 A.2d 305 (Md. Ct. Spec. App. 1992)(termination of African-American police officer with PFB for violating the department's no-beard rule was illegal because the policy discriminated against African-Americans and PFB was a handicapping condition) and *Johnson* v. *Memphis Police Department*, 713 F.Supp. 244 (W.D. Tenn. 1989). *But see Fitzpatrick* v. *City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993) (disparate impact of no-beard rule on African-American firefighters was justified by business necessity of safely wearing respirators. Although PFB affected a major life activity under the Rehabilitation Act of 1973, firefighters with beards cannot perform the essential functions of the job, even with reasonable accommodations.)

[17] Courts have generally upheld grooming standards that are in conflict with a person's religious practices. *See Goldman* v. *Weinberger*, 475 U.S. 503 (1986)(Air Force officer prohibited from wearing yarmulke on duty); and *EEOC* v. *Sambo's of Georgia, Inc.*, 530 F.Supp. 86 (N.D. Ga. 1981)(restaurant chain's no-beard policy did not violate Sikh employee's title VII religious rights because clean-shavenness was a bona fide occupational qualification for manager of a restaurant). *But see* 10 U.S.C. Section 742, in which in 1987 Congress enacted a statute that allows a member of the Armed Forces to wear an item of religious apparel while in military uniform, unless the item would interfere with the performance of military duties or "the item is not neat and

conservative"; and the Religious Freedom Restoration Act, Public Law No. 103-141 (1993), 42 U.S.C. Section 2000bb, in which Congress seeks to reverse the Supreme Court decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), by requiring that government burdens on a person's exercise of religion must be justified by a "compelling governmental interest."

[18] *See, e.g., Bedker* v. *Domino's Pizza, Inc.*, 491 N.W.2d 275 (Mich. App. 1992)(an employer who requires males to keep their hair no longer than collar-length, but allows women to have long hair if it is held by a hair net, does not violate title VII) and *Longo* v. *Carlisle DeCoppet & Co.*, 537 F.2d 685 (2d Cir. 1976).

[19] *See, e.g., Craft* v. *Metromedia, Inc.*, 766 F.2d 1205 (8th Cir. 1985) (news anchorwoman, who was given suggestions on how to improve her appearance and ultimately demoted to reporter, not subjected to illegal discrimination, because employer enforced its appearance standards equally as to male and females.)

[20] 831 F.2d 1374 (7th Cir. 1987), *cert. denied*, 108 S.Ct. 1113 (1988).

[21] *Id.* at 1379.

[22] *Id.* at 1380.

[23] Courts have considered whether height and weight standards are in violation of title VII. *See generally Dothard* v. *Rawlinson*, 433 U.S. 321 (1977). However, many weight standards in police agencies are adjusted for height, sex, and body type to avoid disparate impact based on sex or ethnic origin. For a discussion of why gender-adjusted weight standards may not violate the 1991 amendment to title VII and its prohibition on the "norming" of test scores, *see* Sauls, "The Civil Rights Act of 1991—New Challenges for Employers," *FBI Law Enforcement Bulletin*, September 1992, pp. 25-32.

[24] *Johnson* v. *City of Tarpon Springs*, 758 F.Supp. 1473 (M.D. Fla. 1991) and *Hegwer* v. *Board of Civil Service Com'rs*, 7 Cal. Rptr.2d 389, 395, footnote 10 (Cal.App.2Dist. 1992).

[25] 608 F.Supp. 739 (C.D. Cal. 1984).

[26] *Id.* at 745-746.

[27] 10 F.3d 17 (1st Cir. 1993).

[28] *Id.* at 23.

[29] *Id.* at 27.

[30] *Armstrong* v. *City of Dallas*, 997 F.2d 62 (5th Cir. 1993) (removal of African-American firefighter from firefighting status based on his failure to adhere to weight guidelines was not discriminatory retaliation in violation of title VII) and *Smith* v. *Folmar*, 534 So.2d 309 (Ala. Civ. App. 1988)(firefighter was not denied due process or equal protection in imposition of weight standards on him).

[31] *Hegwer* v. *Board of Civil Service Com'rs*, 7 Cal.Rptr.2d 389 (Cal.App.2Dist. 1992) (overweight paramedic not illegally discriminated against based on her handicap status, because thyroid condition did not render her physically incapable of complying with the department's weight and body fat standards. In addition, the need for medically reasonable body fat and weight limitations for paramedics was not supported by stereotyped generalizations but by statistical studies establishing that obesity decreases the strength, agility, endurance, and speed of EMS workers) and *McMullen* v. *Civil Service Com'n*, 8 Cal.Rptr.2d 548 (Cal.App.2Dist. 1992).

[32] Obesity under Federal statutes does not constitute a qualifying disability absent proof of physiological causation, such as heart disease, diabetes, or systemic or metabolic factors. The Equal Employment Opportunity Commission in defining a disability under the Americans with Disabilities Act states: "It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural, and economic characteristics that are not impairments." Examples of the latter include such physical characteristics as "height, weight or muscle tone" that "are not the result of physiological disorder" 29 C.F.R. app. Section 1630.2(h)(1993). "Except in rare circumstances, obesity is not considered a disabling impairment." 29 C.F.R. app. Section 1630.2(j)(1993).

[33] For a comprehensive discussion of the ADA, *see* Higginbotham, "The Americans with Disabilities Act," *FBI Law Enforcement Bulletin*, August 1991, pp. 25-32. Many States also have disability protection statutes that differ from Federal statutes; however, only one State, Michigan, has specifically codified a prohibition against employment discrimination on the basis of weight. Mich. Comp. Laws Ann. Section 37.2102. *See, Cassista* v. *Community Foods, Inc.*, 22 Cal.Rptr.2d 287, 294, footnote 11 (Cal. 1993), for a review of State disability protection statutes and State court interpretations of the statutes.

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.

Dial Law Enforcement

Law Enforcement is now available via three computer dial-up services. Authorized law enforcement practitioners and related professionals who have a personal computer and a modem can access, download, or print current issues of *Law Enforcement* in their homes or offices by contacting these services. Those interested in obtaining information regarding these services should dial the following numbers directly:

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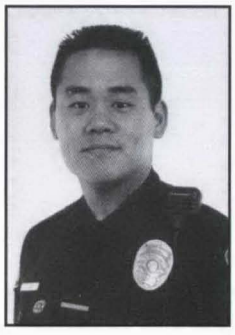
The Bulletin Notes

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. Law Enforcement *also wants to recognize their exemplary service to the law enforcement profession.*

Officer Douglas

Officer Barry Douglas of the University of Washington (Seattle) Police Department risked his life to save a suspect who had slipped into the freezing waters of an area lake in order to avoid apprehension. Unable to swim, the subject began drifting away from pursuing officers. Officer Douglas quickly removed his gunbelt and shoes and jumped into the water to assist the flailing man. He guided the suspect to a steel cable on an embankment. When the man had trouble holding on to the cable, Officer Douglas strapped his belt around the man and the cable. After 15 minutes in the frigid water, both men were transported by a harbor patrol vessel to a nearby dock. They were then treated for hypothermia.



Officer Kakiki

Officer Curtis Kakiki of the Glendale, California, Police Department responded to the report of a robbery at an area liquor store. When a vehicle matching the description of one used in the robbery passed his patrol car, Officer Kakiki pursued the vehicle. During the pursuit, one of the riders, a juvenile gang member, leaned out of the vehicle and fired several rounds at Officer Kakiki's cruiser. After crashing their vehicle in Hollywood, the three suspects were apprehended by Officer Kakiki and other officers from the Glendale and Los Angeles Police Departments.

Sergeant Marin

Officer Hall

Without regard for their own safety, Sgt. Jeronimo Marin and Officer Gary Hall of the Harker Heights, Texas, Police Department entered a burning residence to locate a man who was unable to see his way through the thick smoke. Sergeant Marin shined his flashlight until the resident saw the beam, and then both officers led the man to safety. All three were treated for smoke inhalation at the scene.

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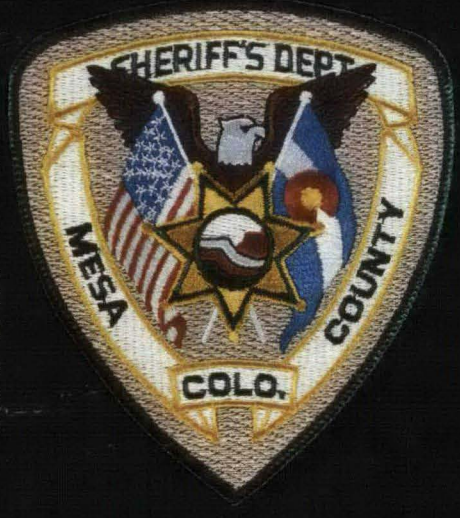
Patch Call

The Gearhart, Oregon, Police Department's patch features both the Douglas fir tree and the chinook salmon indigenous to the area. A sunset over the Pacific Ocean appears in the background.



The patch of the Mesa County, Colorado, Sheriff's Department depicts an eagle and the U.S. and Colorado flags behind a sheriff's star. Shown inside the star is the Grand Mesa mountain range for which the county is named.