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# FBI Law Enforcement

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## CRACK IN PARADISE





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# FBI Law Enforcement

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## Features

### Dealing Crack Cocaine

By Gordon James Knowles

1

*A police officer takes an unc customary look at the drug trade in paradise.*

### Implementing Change

By Ronald W. Glensor  
and Ken Peak

14

*The shift to community policing demands a change in thinking as well as tactics.*

### Operation REACT

By Matt L. Rodriguez  
and William D. Branon

22

*The Chicago Police Department and the FBI's Chicago Field Office joined forces to combat a surge in shootings in two police districts.*

### Disclosing Officer Misconduct

By Lisa A. Regini

27

*A prosecutor's constitutional duty to disclose exculpatory information to the defense includes releasing some officers' personnel information.*

## Departments

### 8 Crime Data

Crime Down in 1995

### 13 Unusual Weapon

Flashlight Gun

### 9 Point of View

Executive Skills  
and Abilities

### 21 Snap Shots

Faithful Friend

# Dealing Crack Cocaine

## A View From The Streets of Honolulu

By GORDON JAMES KNOWLES, M.A.

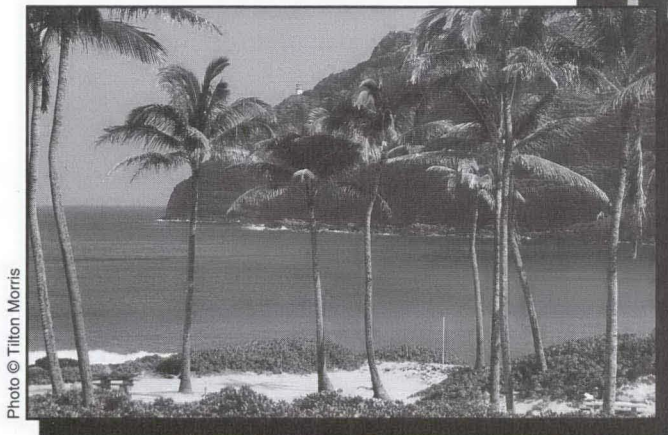
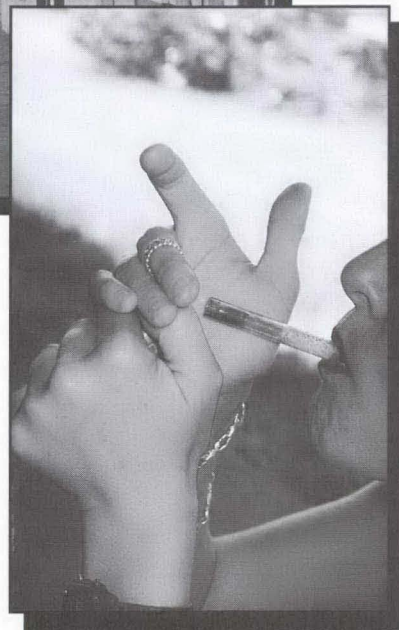
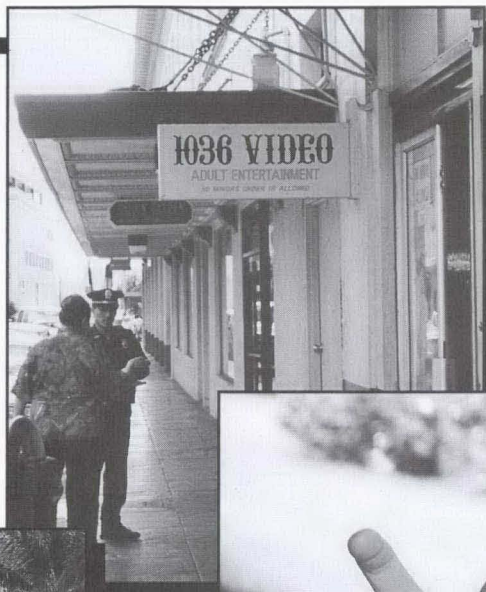


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Criminal justice professionals generally view the urban drug scene through their official contacts with it. For example, police officers arrest offenders, judges and prosecutors try defendants, probation and parole officers manage cases, and drug treatment counselors treat patients. Such necessarily limited exposure, however, may not provide a complete picture of drug trafficking.

To uncover the dynamics and social structure of this illicit street activity, I interviewed and observed five drug runners who sell crack cocaine in Honolulu, Hawaii's Chinatown district.<sup>1</sup> The

perspective of these men and women involved in the drug trade can offer insight into other ways to address the crack cocaine problem.

### THE STUDY

#### Setting

Hawaii, a well-known hub of international travel and tourism, consists of eight major islands. Its capital, Honolulu, is located on the Island of Oahu and is the largest city in the state, as well as the focus of government and commerce. Eighty percent of the 1.3 million people who live in Hawaii reside in the city and county of Honolulu.

This study focuses on Honolulu's "Chinatown," which has been a popular subject for previous research on deviant behavior.<sup>2</sup> Chinatown also has been noted for a number of vice crimes, such as gambling and prostitution, since the latter part of the 19th century. Its vice district resembles similar sections of cities around the world. One previous study described it thus:

At dusk, the dilapidated brick buildings come to life. Sailors, "respectable citizens" out slumming, prostitutes, pimps, police and vice squads men converge in the tattoo parlors, pornography shops, movies,



bars, and pool halls which line both sides of the streets.<sup>3</sup>

### Methodology

I collected data using field observations cross-checked by interviews and preprinted questionnaires. The questionnaire contained 22 open-ended questions asking the subjects how they sold their crack cocaine. I also observed drug dealers conducting transactions on the street, in vehicles, and in video theaters that specialize in hard-core pornography.

In addition to observing and conversing casually with the subjects, I conducted in-depth, taped interviews, paying them from \$10 to \$20 in cash for their time, an amount comparable to what they would make for a single drug transaction. Because of the expense, I limited the sample to five subjects. Some subjects, as well as members of the surrounding populace, were using and

under the influence of crack cocaine at the times of observation.

### Sample

The picture of a clearly defined structure of trafficking crack cocaine in Chinatown emerged from the research. The street-level drug trade consists of dealers, runners, promoters, and addicts (buyers). Dealers supply crack cocaine to the promoters and runners. Promoters locate or "hook" new buyers. Runners solicit prospective buyers on street corners.

I selected five subjects to interview for this study using the snowball sampling method.<sup>4</sup> That is, I asked the first subject to recommend the second subject, the second to recommend the third, and so on, thus creating a snowball effect.

The sample included two black males, Fred and Darryl, one white male, Carl, one white female, Toni, and one Filipino female, Michelle.

All of the subjects had moved to Hawaii from the mainland. They ranged in age from 27 to 44, and each had completed 1 to 3 years of college.

Only one subject, Darryl, reported a prior arrest history for dealing crack cocaine on Oahu. Michelle reported an arrest history, but only for prostitution, and Toni reported doing 6 years in a federal prison for embezzlement. Carl reported being arrested frequently for offenses related to drug usage, i.e., theft and shoplifting, but never being arrested specifically for using or possessing drugs. Fred reported two prior arrests on the mainland for trafficking cocaine, but none for the 8 years he had resided on Oahu.

All five subjects in this study defined themselves as runners. In general, runners are crack addicts who traffic crack cocaine to support their habits.

Runners stand on a street corner and ask passersby (on foot and in vehicles) if they "need anything." Sometimes the inquiries go unspoken, with the runners glancing at people and waiting for nonverbal cues. They then take the buyers' money, exchange it for drugs from the dealers, and run the drugs back to the buyers.<sup>5</sup>

The runners all claimed to be addicted and worked as runners to support their expensive habits. The opportunity to get "free smoke" by pinching a small portion of the amount purchased for customers drew them to becoming runners, although they do not discuss this practice with their clients. The subjects rationalized that being a runner involved the greatest risk of arrest, so taking free smoke was justified.



Officer Knowles is a federal police officer serving in the Pearl Harbor, Hawaii, Police Division.

**“...the dealers set the agenda for what drugs are marketed, irrespective of law enforcement efforts or user preference.”**



When asked why runners do not become dealers and thus gain more access to crack cocaine, Michelle responded that the fear of hard prison time deterred her. Carl also added that four big dealers in Chinatown had a monopoly on crack cocaine distribution. Toni, Fred, and Darryl presented similar reasons that made becoming a dealer unattractive.

Carl also noted that most runners who were addicts and tried to become dealers ended up "smoking their load" before it could be sold. Toni stated that the "big time dealers" in Chinatown were not users and were in the crack business strictly to make money. This money would then be used for gambling or other types of illegal revenue-generating schemes.

#### THE DRAW OF CRACK COCAINE

Why is crack cocaine so popular with the users? Smoking crack cocaine produces a similar but more intense high than powdered cocaine. Both induce excitement, euphoria, increased alertness, and wakefulness, although the effects of powdered cocaine last longer.

Noted for its intensity and pleasurable effects, cocaine has the potential for extraordinary psychic dependency. A tape-recorded conversation with Carl concerning the addictive power of crack cocaine's high supports this claim. He said:

Well, whoever is hearing this, naturally you're an adult and probably experienced an orgasm. Magnify that 10,000 times throughout your whole body, and I do mean 10,000.

That's why most of your people who get into crack lose their sex life. They lose their sex drive because crack is [their] whole new woman. That might sound weird or stupid, but that's the way it is. It's a feeling; it's a state of euphoria like you would not believe. It's unreal, but if you've never done it, whoever I'm talking to, don't ever try it.<sup>6</sup>

***All five subjects in this study defined themselves as runners...crack addicts who traffic crack cocaine to support their habits.***

Members of the sample reported that they use crack cocaine to forget about life or mask their personal problems until they can deal with them, and they supposed their clients felt the same. When asked about his experience while under the influence of crack cocaine, Carl replied:

I feel high like you wouldn't believe.... It's hard to explain how you feel.... I feel like I'm floating on air.... On one hand...I feel like an idiot for doing what I'm doing and that is absolutely nothing except getting high, but on the other hand, I love it because I'm getting high as much as I want,

when I want...and that makes up for everything else. You see people who live on the streets, 99 percent of them smoke crack because it's a way for them to forget about life...forget about the things you wanted in life...this is like a replacement.

For the subjects of the study, crack cocaine appears to provide an escape, however temporary, in exchange for a lifetime commitment of usage. When asked how crack cocaine addiction could be stopped, Carl simply stated, "You can't...period. It will be on this earth as long as there is people. As long as there is people, there will be people smoking crack cocaine." He advised anyone considering trying crack cocaine, "Don't ever do it, don't even try it once. You do it once, I don't [care] who you are, you will be hooked for the rest of your life."

During the interviews, I raised questions about crack cocaine's prevalence over other drugs, such as heroin, crystal methamphetamine, and marijuana, in Chinatown. According to Carl, heroin had lost its popularity because of the AIDS/HIV epidemic among intravenous drug users. Carl and Darryl both explained that marijuana was basically considered a "kiddie" drug, sold too cheaply in large amounts for dealers to make a profit.

The subjects said that crystal methamphetamine (commonly referred to as "ice") sold for less than half as much as cocaine and provided a tremendously better high. Drug intelligence<sup>7</sup> and popular media reports indicated that ice was an epidemic on the island. Despite these



reports, hardly anyone approached me during my research to buy ice. I frequently observed people smoking crack cocaine on street corners, in dark alleys, and in doorways, but crystal methamphetamine seemed almost nonexistent and difficult to get in the Chinatown area. I concluded that factors other than consumer demand apparently affected the drug market, and I asked the subjects about those.

### **POLITICS OF THE DRUG SUBCULTURE**

I initially assumed that concerted law enforcement efforts to curb ice distribution on the island of Oahu led to its scarcity. However, Carl and the others quickly dismissed this hypothesis, believing that law enforcement had little or nothing to do with it. Instead, a rigidly structured drug subculture controlled by the dealers dictated which drugs could be bought and when.

Carl explained that nearly all of the cocaine comes from Colombia and that organized crime groups in the United States and South America would not let any countries in Southeast Asia (the source of crystal methamphetamine) move in on the multibillion dollar drug industry. The small amount of ice for sale on the island came from the high percentage of individuals who had strong ties with organized crime in Southeast Asian countries.

Carl then commented that these ethnic ties are not common throughout the rest of the United States, and crystal methamphetamine would not be easy to get outside of Hawaii. Toni added that attempts by Southeast Asian organized crime groups

to move in on the mainland U.S. drug economy were met by death inflicted by South American organized crime figures and organizations. All of the subjects interviewed were quite well-versed in the politics of the drug subculture.

***“All of the subjects interviewed were quite well-versed in the politics of the drug subculture.”***

In essence, it appears that the dealers set the agenda for what drugs are marketed, irrespective of law enforcement efforts or user preference. When asked why dealers preferred crack cocaine over other drugs, Carl explained:

It has nothing to do with the high. Me personally, I've never experienced crystal methamphetamine.... That's a whole new world and it is probably a much better high than crack, and from what I hear it is. But the problem here is that it's twenty times cheaper than crack. If all the major drug dealers on this island let crystal methamphetamine get out..., it would put them out of business. In other words, if I was to buy a \$10 bag of crystal methamphetamine and smoke it, I'd be...wrecked for 10 or 11 hours.... Now a cocaine dealer

doesn't want that...; he doesn't want me spending \$10 or \$15 a day.... He wants me spending \$150 a day.... That's why they don't want [crystal methamphetamine] on the streets.

To further understand the economic advantages of pushing crack over other forms of cocaine, one must understand the manufacturing processes involved. Dealers usually distribute illicit cocaine as a white crystalline powder, often diluted by a variety of other ingredients. The most common additives include sugars, such as lactose, inositol, mannitol, and local anesthetics, such as lidocaine.<sup>8</sup>

Addicts and dealers prefer free basing cocaine for a better high, but this has a strong economic drawback from the dealers' perspective, as Carl explained. To free base cocaine, users mix powdered cocaine and baking soda in a ratio of three parts cocaine to one part baking soda. They then place this mixture in water and bring it to a boil. At this point the water appears very oily. They then re-move the mixture from the heat and allow it to cool. As it cools, the water becomes clear and the mixture crystallizes into a rock-like form. The end product weighs approximately one half of the original cocaine. It can now be smoked in a pipe but no longer can be snorted.

Free basing is dangerous because cocaine hydrochloride (powdered form) can become volatile when heated to convert it to a cocaine base (rock form). In the early 1980s, cocaine commonly was administered by snorting the powdered variety through the nasal passages; however, the subjects stated



that they and their clients now prefer to smoke it.

Making crack cocaine follows the same basic procedure as free basing, but dealers combine baking soda with an additional ingredient, known on the street as "comeback." The runners said that the Chinese invented comeback and that the big-time dealers who sell crack cocaine have easy access to the substance. A Miami study defined comeback as a cocaine analog, such as lidocaine, that binds with the cocaine when heated and increases the volume of the end product.<sup>9</sup>

Some substitute drugs have effects similar to crack cocaine, but they are actually other stimulants marketed as the genuine article. Known to some users as "crank," the mysterious substitutes may contain free base residue, concentrated caffeine, amphetamines, prescription stimulants, or any combination thereof.<sup>10</sup> A recent entry to this substitute market is pemoline, a potent central nervous system stimulant used for the treatment of attention-deficit disorders.<sup>11</sup>

For dealers, using comeback versus straight free basing in the manufacturing process has significant ramifications. Comeback doubles the original drug amount, so that 1 ounce of powdered cocaine becomes 2 ounces of crack. In contrast, free basing cuts the original amount in half. Even though straight free basing provides a better high for an addict, it cuts profits tremendously for dealers and runners.

### Effects of the Law

The subjects indicated that state laws affect the way crack is dealt on the street. The runners seemingly were knowledgeable concerning the current laws regarding crack cocaine and related paraphernalia.



The crack pipe is a small cylindrical glass tube roughly 4 inches in length and three-fourths of an inch in diameter. To smoke the crack, the user inserts a copper mesh screen (similar to steel wool) into the tube and packs it with a stick called a "pusher." After the crack rocks are put into the tube and heated with a cigarette lighter, the user inhales the smoke from the heated crack.

Carl reported that simply having the crack pipe and the screen separately was not an offense, but when the screen is in the cylinder, possession becomes an offense. In fact, Carl's description of a crack pipe falls under the Hawaii Revised Statutes Uniformed Controlled Substances Acts as "drug

paraphernalia"—equipment used or for the intended use of introducing a controlled substance into the human body. This includes "metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls."<sup>12</sup>

Use or possession with intent to use the crack pipe is a class C felony, and upon conviction, one can be imprisoned up to 5 years, fined up to \$5,000, or both.<sup>13</sup>

The "pipe man" sells crack pipes and copper mesh screens on the street. However, for this study, I purchased a "crack kit" or "junkie kit" (a glass pipe and some copper mesh) from a local convenience store for \$8.50 (estimated to be about seven times the actual value of the items). I went into the

store and asked the clerk if I could purchase a "glass straw." The clerk quickly handed me a small brown paper bag and asked for the \$8.50. Although selling these items is not illegal, their intended use when purchased is obvious.

I found it peculiar that a legitimate business would knowingly contribute to the drug trade. However, follow-up interviews with the subjects reported that these local establishments sold anywhere from 40 to 50 pipes daily, earning \$340 to \$425 a day in crack pipe sales alone.

The monetary incentive apparently persuades storekeepers to market crack pipes. Toni commented that the pipes were of poor quality and usually cracked from the intense heat needed for smoking crack; she



believed the storekeepers sold these poor quality pipes intentionally to get repeat buyers.

The quantity of drugs sold also was influenced by state laws. All of the runners I interviewed commonly sold an amount of crack cocaine called a "dirty thirty." The dirty thirty appeared to weigh roughly less than one eighth of an ounce, and it sold for \$30. By trafficking crack cocaine in this amount, the runner can be convicted only of a class C felony, promoting a dangerous drug in the third degree.<sup>14</sup>

The runners stated that they and their clients conducted drug transactions in this amount specifically to reduce the potential criminal penalties. From these comments, it appears that fear of incarceration does have some impact on suppressing drug trafficking.

### **Income and Housing**

The subjects had difficulty reporting the exact amount of money they made from dealing crack. They reported an average of \$300 a day from crack sales, but explained that they also got \$150 to \$200 each day in free smoke, which they valued just as much as money, if not more.

Estimating the amount of crack the subjects smoked daily also proved difficult. Michelle commented on her crack consumption:

Well, I was thinking about that the other day. For instance, let's say an eight ball [\$300 worth of crack cocaine] or three bullets [one bullet equals \$100 worth of crack cocaine], I can easily smoke that in a day, no problem. I mean, I've had

the pipe up to my mouth every 15 minutes, every 5 minutes, every 1 minute.... How much I smoke depends on a number of things, the amount of dope I have, the availability of dope in town, it just depends. ...[A]nd when supplies are low my usage is low and I have to hook to make the difference.<sup>15</sup>

“  
***The subjects indicated that state laws affect the way crack is dealt on the street.***  
”

Despite their earnings from selling crack or sex, all the subjects reported that they were homeless. The men lived on the streets, but the women would try to find a "date" to sleep with at his house or require him to purchase a hotel room for them in exchange for sex. The women would resort, however, to sleeping on the street when necessary. The women had the option of bartering sex for money to survive when Chinatown's crack cocaine supplies became scarce, whereas the men did not.

Even though the subjects gained a substantial amount of free smoke from running crack, that alone did not satisfy their addictions. They reported that a significant amount of their monetary earnings still went to purchase crack to get high, not

leaving much for food or housing. They also explained that going back and forth from a residence or shelter 10 to 20 times a day to purchase crack was impractical, making it actually easier to live on the streets of Chinatown.

In addition, all the subjects reported running crack all day and night (there was no "best" time), which made living on the streets advantageous. They handled the need for a place to get high by using the 24-hour pornographic video theaters in Chinatown.<sup>16</sup>

### **OBSERVED BEHAVIORAL PATTERNS**

The drug runners described their method of selling crack cocaine, and I later observed this pattern of activity taking place on the streets of Chinatown. It did not appear to be specific to any one race, gender, or class; all of the runners dealt cocaine in this manner. This may suggest that officers could use similar observations to identify individuals involved in drug transactions.

Carl described a typical transaction in which an addict drives by in a car and holds up two fingers to a runner. This symbol means that the buyer wants to purchase a \$20 rock of crack cocaine.<sup>17</sup> The runner then approaches the buyer, receives the money, and quickly goes to one of the local bars or pornographic video theaters where the dealers have set up a safe house.<sup>18</sup> After giving the dealer the money and receiving the crack cocaine, the runner either takes a quick hit of the crack or pinches a small amount on the way



## What Are You Wearing?

I asked the drug runners how they identified undercover police officers. I expected them to tell me an elaborate story about testing strangers' knowledge of the lingo of drug transactions or something similar. Instead, the runners said that the police could easily be identified by their footwear.

In Honolulu, police officers' uniforms are black with black tennis shoes. Trained in street survival, undercover officers, even though they wear clothes that blend in with the population, often wear their tennis shoes to be ready to fight, chase a suspect, make an arrest, etc. In general, drug runners do

not have tactical training, so they wear what is comfortable—usually sandals or flip-flops because of the heat. The drug runners said they immediately pick up on the black tennis shoes, which, to them, signal an undercover officer.

I looked down at my feet and realized that I was wearing black tennis shoes, a carry-over from my own law enforcement training. The next night, I changed my footwear to brown high-tops. I immediately had more people willing to be interviewed than ever before.

What do you wear that might give you away?

back to the buyer. (Because the runners are addicted, they usually must take a hit of crack cocaine at least every 15 minutes.)

The runner then returns to the vehicle, giving the buyer the crack cocaine. If the runner encounters law enforcement officers on the return to the buyer, he or she drops the small amount of drugs onto the ground, knowing that the small rocks of crack quickly will become lost on the busy city street corner.

## CONCLUSION

This study, and others like it, can provide criminal justice professionals with a deeper understanding of the complexity of drug trafficking. Such knowledge might not put an end to the drug trade, but, armed with a better understanding of the

drug world—the participants, their motivations, and their methods—police officers, prosecutors, judges, probation and parole officers, drug treatment counselors, as well as educators, can make more informed decisions in their attempts to squelch the drug trade, help addicts overcome their dependencies, and prevent the insidious influence of crack cocaine from reaching any deeper into our communities. ♦

## Endnotes

<sup>1</sup> The author conducted this research as part of his doctoral studies in sociology at the University of Hawaii at Manoa.

<sup>2</sup> See, for example, A. Lubliner, et al, *The Honolulu Queens*, Graduate Research Project, School of Social Work, University of Hawaii at Manoa, Honolulu, Hawaii, 1973; G. Yoshimoto, *Prostitutes of Hotel Street*, Graduate Research Project, School of Social Work, University of Hawaii at Manoa, Honolulu, Hawaii, 1983; and

G. Knowles, *A Study of Hotel Street Prostitutes in Honolulu, Hawaii*, 1992, Criminal Justice Department, Graduate Thesis, Chaminade University of Honolulu, 1992.

<sup>3</sup> Ibid., Lubliner, et al. 1.

<sup>4</sup> Snowball sampling is a nonprobability sampling method often employed in field research and most popular in studying deviant cases. For further information, see M. Maxfield and E. Babbie, *Research Methods for Criminal Justice and Criminology* (Belmont, CA: Wadsworth Publishing, 1995).

<sup>5</sup> Although some of the subjects reported trafficking additional commodities, such as heroin, marijuana, women, and sex, they all said they spent the majority of their time dealing and generating revenue from crack cocaine sales.

<sup>6</sup> Interview by author, March 28, 1995, Bishop and Merchant Streets, Chinatown, tape recording, Honolulu, Hawaii.

<sup>7</sup> National Institute of Justice, *The Rise of Crack and Ice: Experiences in Three Locales*, NCJ 139559 (Washington, DC: U.S. Department of Justice, 1993).

<sup>8</sup> U.S. Department of Justice, "Drugs of Abuse, Drug Enforcement Administration," 1988, 37.



## Crime Data

<sup>9</sup>J. Inciardi, R. Horwitz, and E. Pottieger, *Street Kids, Street Drugs, Street Crime: An Examination of Drug Use and Serious Delinquency in Miami* (Belmont, CA: Wadsworth Publishing, 1993), 100.

<sup>10</sup>J.A. Inciardi, *The War of Drugs, Heroin, Cocaine, Crime, and Public Policy* (Palto, CA: Mayfield Press, 1986), 82.

<sup>11</sup>Susan E. Polchert and Robert M. Morse, "Pemoline Abuse," *Journal of the American Medical Association*, August 16, 1985, 946-7.

<sup>12</sup>Hawaii Revised Statutes, "Uniform Controlled Substances Act," Section 329-1, *Hawaii Criminal and Traffic Law Manual*, 1994, 270.

<sup>13</sup>*Ibid.*, 286.

<sup>14</sup>Hawaii Revised Statutes, "Promoting a Dangerous Drug in the Third Degree, Sections 712-1243," *Hawaii Criminal and Traffic Law Manual*, 1994, 448.

<sup>15</sup>Interview by author, March 18, 1995, Bethel and Hotel Streets, Chinatown, tape recording, Honolulu, Hawaii.

<sup>16</sup>In Chinatown, the pornographic video theater serves as the Hawaiian version of the mainland crack house. The drug runners reported conducting drug transactions in the pornographic video theaters and stated that, on average, 70 percent of their drug transactions occurred exclusively in these theaters. They also used the theaters themselves for getting high about half of the time and estimated that an average of 86 percent of the people who entered the theaters did so to get high.

<sup>17</sup>The driver may hold three or four fingers, meaning "I want a \$30 or \$40 purchase of cocaine." Prices above \$40 and below \$20 are usually negotiated verbally between the buyer and seller, using code words such as "bullet" (\$100 worth of crack) and "eight ball" (\$300 worth of crack). These terms are mutually exclusive in drug trafficking lingo.

<sup>18</sup>On April 6, 1995, I conducted a reconnaissance of a particular establishment that was a safe house for crack dealers and observed a number of lookouts and body guards who had been deployed by the dealers. This practice seemed to explain how extremely difficult, if not impossible, it is for uniformed law enforcement to gain access or reach the dealers before being detected and reported by the lookouts.

### Crime Down in 1995

**P**reliminary statistics released by the FBI's Uniform Crime Reporting Program show that the number of serious crimes reported to U.S. law enforcement agencies decreased 2 percent in 1995, when compared to 1994 data. This represents the fourth consecutive annual decline in reported crime.

Serious crime is measured by an Index consisting of violent and property crimes. Violent crime fell 4 percent last year, while property crime declined 1 percent.

In the violent crime category, murder showed the greatest decline in 1995—8 percent. With regard to the other violent offenses, robbery dropped 7 percent; forcible rape, 6 percent; and aggravated assault, 3 percent.

The property crime of motor vehicle theft was down 6 percent, while both burglary and arson decreased 5 percent. Larceny-theft was the only offense to show an increase from 1994 to 1995, up 1 percent.

Geographically, all regions of the country experienced decreases in the overall Crime Index total. The Northeast registered a 4-percent drop in crime, and crime in the Midwest fell 2 percent. The South and West regions each recorded a 1-percent decline. Violent and property crimes also declined in all regions, except the West, where property crime remained at the 1994 level.

When grouped by population size, cities with over 1 million inhabitants showed the largest decline, 6 percent. Cities with populations from 500,000 to 999,999 and those with fewer than 25,000 inhabitants experienced a 1-percent increase. The crime data for the 2-year period of 1994 and 1995 show that suburban counties experienced a 1-percent decrease in their crime level, while rural counties reported a 3-percent increase. ♦

*The complete Preliminary Annual Uniform Crime Report is available on the FBI's Internet World Wide Web site at <http://www.fbi.gov>.*



### The Four R's for Police Executives

By James D. Sewell, Ph.D.

**F**or grammar school students of by-gone eras, basic education centered around the three R's—reading, 'riting, and 'rithmetic. Today, instructors who teach police management and leadership to executives or those who are just beginning their ascent into administrative positions need to focus on a set of professional basics—reading, 'riting, rhetoric, and roots.

In real estate, success hinges on location, location, location. For the law enforcement executive, "communication, communication, communication" serves as the axiom for success. Effective communication involves both input and output. The input comes from reading; the output, from 'riting and rhetoric (oral communication). Combined with an individual's roots, which encompass philosophies, values, and experiences, these elements form the cornerstone for executive development.

#### Reading

Reading often is the nemesis of law enforcement executives. The volumes of documents crossing their desks can be overwhelming. There is a never-ending flow of staff studies, reports, and correspondence. The papers found in their in-baskets beg for movement to their out-baskets. An abundance of other reading material and work fills their briefcases to be taken home at night.

Considering that all this information is pertinent to their departments, do these executives think that there is time to read anything else, even if they could enrich themselves by doing so? Most likely not.

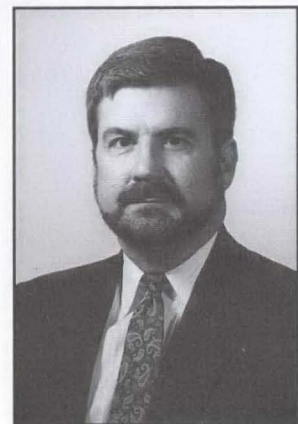
Yet, the need for the contemporary executive to be well-read and knowledgeable in a number of areas cannot be disputed. In this age of technology and information overload, the adage "Knowledge is Power" becomes even more true. Gaining power through knowledge requires executives to develop broad reading patterns and speed-driven, organized habits.

Executives can stay ahead of the information power curve in a number of ways. Trade and professional journals, such as *Police Chief*, *Law Enforcement Technology*, and the *FBI Law Enforcement Bulletin*, allow executives to stay abreast of trends in the profession, technological and programmatic innovations, and new law enforcement management techniques. Journals outside traditional law enforcement literature, such as *Public Administration Review*, *Harvard Business Review*, *The Futurist*, and *Governing*, promote a wider view of issues with a potential impact on law enforcement. Finally, daily papers at the local level or those with expanded perspectives, including *USA Today*, *The Wall Street Journal*, and *The New York Times*, can serve as predictors of political, social, and economic issues and forecasters of change.

Books on management, especially such classics as *In Search of Excellence* by Tom Peters and *The Leadership Challenge* by Kouzes and Posner, offer insight into a variety of topics applicable to virtually any law enforcement agency. Police executives only need to use imagination, insight, and energy to take a book's message and make the transition from the corporate to the public sector.

Santayana, the Spanish-born U.S. philosopher, humanist, and essayist, posited that "those who cannot remember the past are condemned to repeat it."<sup>1</sup> Hegel, a 19th-century German idealist philosopher, more cynically held, "What experience and history teach is this—that people and governments never have learned

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anything from history, or acted on principles deduced from it.”<sup>2</sup> Regardless of one’s point of view, historical analyses of law enforcement issues or other important events and people offer a perspective from which executives can learn.

Sun-tzu’s *The Art of War*, one of the earliest known compilations on the subject of war and strategy, serves as a primer for corporate strategies. Biographies and autobiographies provide insight into the personalities and tactics of political, military, corporate, and law enforcement leaders.

Books and monographs that focus on the strengths and weaknesses, successes and failures of public and private programs not only can be food for thought but also can identify the political and programmatic pitfalls that accompany efforts at institutional change. Most of these volumes contain ideas that law enforcement executives can transfer easily to the law enforcement or community setting.

But, what of the volume of material that contemporary executives constantly must digest? Reading, like any other learned skill, requires commitment and practice.

For the successful executive, this means scheduling uninterrupted time for serious reading and prioritizing reading as any other administrative task. It requires learning how to scan a variety of reading materials for meaningful information without becoming bogged down in minutiae. It also may mean enhancing one’s existing reading level by completing a speed-reading course or, to manage one’s time better, using services that summarize new executive-level books, provide them on tape, or publish newsletters that focus only on specific issues, such as supervision, diversity, or communication.

### **’Riting**

The power of the written word, especially in this age of electronic information exchange, cannot be

underestimated. It follows, then, that the ability to express one’s values, ideas, and programs effectively remains critical to the success and survival of any public or private sector executive. Those who meld the executive role with the art of wordsmithing recognize that this skill relies on both knowing how to write and practicing it continually.

“

**Executives who contribute to and promote an ongoing exchange of ideas give something back to the profession that has nurtured them.**

”

Effective writing requires the ability to assess the target audience and tailor the writing to the audience’s needs and reading level, not the author’s. It is based on a commitment to quality that forces an effective writer to edit and re-edit until a document is clear, concise, grammatically correct, and structurally sound.

Law enforcement executives face a variety of audiences that require their writing skills to be sharply honed. Within their departments, personnel must understand clearly the executive’s vision for the agency,

the values upon which this vision is based, and the articulation of day-to-day policy on procedural, managerial, and operational issues.

Within the community, the executive must be able to respond to correspondence from a myriad of constituents, articulate the department’s vision and mission to political leadership and special interest groups, and translate the department’s position on issues so that the average newspaper reader understands the executive’s editorial responses or “op ed” pieces. Success requires enough flexibility for the executive to adapt fluidly to the unique needs, levels of understanding, and technical expertise of each of these diverse groups.

An important and often-forgotten audience for an executive’s writing is other law enforcement executives. As programs come to fruition and executives analyze their successes and failures, it becomes not only expedient but also professionally responsible to share such information in professional and technical journals and magazines. Law enforcement can only grow and gain insight by such meaningful dialogue.



## Focal Points for Reflection and Self-Examination: The Executive's Challenge

Read, for instance:

- *The 7 Habits of Highly Effective People* by Stephen R. Covey (1989)
- *A Call to Character* by Colin Greer and Herbert Kohl (1995)
- *The Death of Common Sense* by Philip K. Howard (1994)
- *Megatrends 2000* by John Naisbitt and Patricia Aburdene (1990)
- *Mind of a Manager, Soul of a Leader* by Craig R. Hickman (1993)
- *My American Journey* by Colin Powell (1995)
- *On Our Own Terms: Portraits of Women Business Leaders* by Liane Enkelis and Karen Olsen (1995)
- *Thinking in Time: The Uses of History for Decision Makers* by Richard E. Neustadt and Ernest R. May (1986)

Write:

- Your autobiography, especially a description of your greatest moment

- A statement of your philosophy and your vision of the world
- Your vision of the future
- Your definition of success

Talk: (Rhetoric)

- With individuals different from you in race, gender, lifestyle, and education
- With your parents, your mentor, your boss, your significant other
- With people who work for you and for whom you work (elected and appointed officials as well as citizens)

Think: (Roots)

- What is important to you
- Where you want to be in 1 year, 5 years, 10 years, 20 years
- For what accomplishment you would most like to be remembered
- How you want to be described in a eulogy

Writing for professional journals and magazines should be viewed by experienced executives as a personal obligation. Executives who contribute to and promote an ongoing exchange of ideas give something back to the profession that has nurtured them. With this obligation comes an added responsibility to influence the direction of law enforcement.

It is most difficult to write for an audience of one's peers, but this audience should not be ignored or treated lightly. Executives must recognize that they do have something to contribute and that it takes time to

convey that knowledge in writing. An increasingly popular alternative, especially for first-time writers, is collaborative writing, that is, working with a colleague. Such an approach not only allows for the expression of two perspectives but also can reduce some of the initial trauma of "going it alone."

### Rhetoric

The most successful leaders in any field can express themselves effectively and persuasively not only in writing but also when communicating orally.



John and Robert Kennedy, Martin Luther King, and Ronald Reagan each demonstrated the ability to paint a picture of his vision of the world so that others could envision and be captivated by it. Such a skill is no less critical in those who lead law enforcement agencies.

Yet, skillful oral communication is not so much a product of innate ability as one of desire, training, and practice. While the desire comes from within the individual, the training that forms the platform for exceptional performance in oral communication readily can be acquired.

Most institutions of higher learning offer courses in public speaking. An increasing number of police academies incorporate courses in public presentation because the needs of the profession have dictated it. Perhaps most beneficial, though, are those organizations, notably Toastmasters International, that provide the training, ongoing opportunities to speak, critical feedback, and social support necessary to excel at public speaking.

While training lays the foundation, practice, not just the ability to "wing it," allows executives to refine their presentation skills. Rhetorical and oratorical abilities come from adequate preparation. Executives must concentrate on the subject matter and dedicate time for preparation. They must select a topic carefully that conveys a meaningful message, and they must exhibit the energy and nonverbal skills that make the audience active participants in the communication process.

Yet, as part of the four professional R's, rhetoric requires a component not ordinarily included in its definition. This component is the ability to listen. Effective executives not only must articulate their visions and persuade others of their beliefs but they also must listen actively to the rhetoric—the words, feelings, concerns, and nonverbal expressions—of others.

Active listening, with its emphasis on body language, hearing, and understanding, is critical to the communication process that allows executives to

integrate their visions with the actions and responses of others. Rhetoric, then, accentuates the *exchange* of verbal and nonverbal communication between executives and their constituents.

### Roots

As law enforcement's role continues to evolve in response to communication needs and social change, it is imperative that its executives develop a sense of roots. Such roots are grounded in the professional and personal philosophies, values, and experiences that form the basis for decisions, actions, and visible displays of leadership.

The successful nurturing of these roots requires certain acts. Nurturing means continually thinking, reading, and incorporating individual experiences into the philosophical underpinnings of one's own professional and personal life.

To nurture their roots successfully, executives first must take the time to develop their own philosophy, to determine who they are and for what they stand.

An unspoken mandate dictates that they identify those points of honor and integrity of greatest value to them, points that are subject to neither negotiation nor compromise.

Second, executives must be willing to live their philosophy. The adage "walk the talk" becomes an even more important truism for contemporary executives. Integrity spoken must become integrity lived.

Further, executives should accept the Socratic principle that "the unexamined life is not worth living" and critically evaluate, even challenge, the practical application of values that they express. One way is to use the four professional R's as focal points for reflection and self-examination.

Finally, executives must be willing, through role-modeling and mentoring, to encourage up-and-coming executives to develop personal and professional philosophies and values of their own. The challenge becomes the maintenance of an environment that

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practice.  
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allows one's staff to learn to make decisions, to make mistakes, and to grow in preparation for the mantle of leadership.

Within that environment comes the expectation that mentoring is an integral part of the organization's culture, that all managers accept the responsibility of developing the agency's future leaders. It means developing clinical skills that allow executives to observe proteges critically, to analyze their behavior as leaders objectively, and to facilitate the networking necessary for proteges to develop their own personal system of knowledge and support.

### Conclusion

The preparation of today's law enforcement executives requires an effective integration of learned

skills and natural abilities, as did teaching America's school children in earlier days. The successes of present and future executives will depend on their ability to communicate—using reading, writing, and rhetoric—and their reliance on, and understanding of, their roots to guide their actions. With these skills and abilities, law enforcement executives will be prepared to direct their profession masterfully into the next century and beyond. ♦

### Endnotes

<sup>1</sup> George Santayana, *The Life of Reason*, 1905-1906, vol. 1, chap. 12 (New York: Macmillan, 1981).

<sup>2</sup> Georg Wilhelm Friedrich Hegel, *Philosophy of History* (1832), trans. J. Sibree from *Great Books in Philosophy* (New York: Prometheus Books, 1990).

## Unusual Weapon

### Flashlight Gun



**T**his fully functional, 12-inch cast aluminum flashlight can fire two .38-caliber rounds from twin barrels located on the bottom of the light. The weapon is loaded by inserting two rounds into separate bushings that load into the barrels. The bushings snap into place when inserted into the flashlight and release when pressure is applied to a small button on the head of the light. The firing mechanism is cocked by pushing forward on the face casing and then pulling it back. Both rounds fire simultaneously when the on-and-off switch is pushed forward. Although no manufacturer's identification marks or numbers appear on the product, it appears to be professionally manufactured. ♦

*Submitted by Lt. David A. Johnson of the Ogunquit, Maine, Police Department.*



# Implementing Change

## Community-oriented Policing and Problem Solving

By RONALD W. GLENSOR, Ph.D.  
and KEN PEAK, Ph.D.

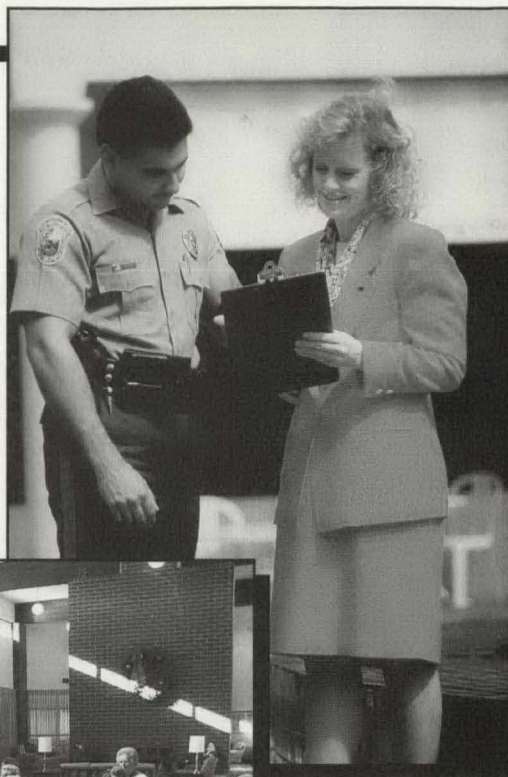


Photo © Orlando Mendez



Concern over crime has become a national preoccupation, fueled by nightly media reports and political posturing. This trend belies the slight, but consistent, decline in crime rates recorded over the past 4 years.<sup>1</sup>

While the public's view of crime and actual crime statistics may seem contradictory, police administrators should consider the disparity more closely before assuming that the public's visible concern is largely unfounded. They need to consider the other factors that contribute to this consuming fear of crime.

A nationwide survey conducted in March 1994, revealed that 44

percent of the respondents reported areas within a mile of their homes where they fear walking alone at night. Six of every 10 limit where they go by themselves.<sup>2</sup>

Although violent crime and media accounts of violence spark much of this concern, public perceptions also play an important role. Neighborhood disorder affects the public's perception of safety as surely as crime does.

People express more fear of strangers loitering near their residences than they do of random physical violence. Undoubtedly, they fear people they view as sinister—panhandlers, drunks, addicts,

rowdy teens, mentally imbalanced drifters, and the homeless. But, they also fear physical disorder—litter, abandoned buildings, graffiti, broken streetlights and windows, wrecked vehicles, and other indicators of neighborhood decline.<sup>3</sup>

The twin threats of violence and neighborhood disorder raise the public's fear of crime beyond the level that crime rates alone may seem to support. Over the past several years, these factors have led to a tremendous increase in calls for police service. Likewise, the rise in citizens' calls to the police has had a marked impact on the nature of policing itself.



## THE NATURE OF POLICING

Several studies over the past 3 decades have succinctly described the reality of policing under the professional paradigm. Officers devote less than 50 percent of their on-duty time to responding to calls for service. They spend the remainder on administrative tasks. Of the calls responded to by officers, *over 80 percent are for noncriminal incidents*.<sup>4</sup> Clearly, officers deal with disorder and the fear of crime more than they deal with actual crime. As a result, they find themselves continually applying short-term solutions to the same long-term problems.

Ultimately, the strengths and weaknesses of the professional model rest with its method for measuring success. Under this model, agencies do not gauge success by determining whether a problem has been resolved fully. Rather, they measure success by tracking such quantitative indicators as response times, arrest figures, and crime clearance rates.

This approach, while not without merit, assigns a great deal of weight to the accumulation of data. At the same time, it devotes too little effort to resolving problems long-term.

Granted, many incidents that the police confront require a one-time, short-term infusion of authority. But, as surveys and studies confirm, many calls for police service require a far more comprehensive response.

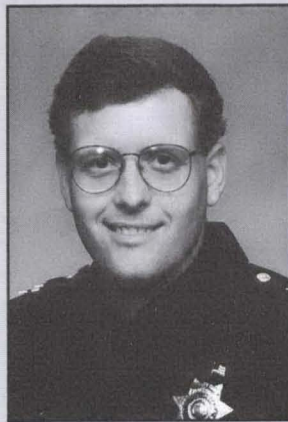
## COMMUNITY-ORIENTED POLICING AND PROBLEM SOLVING

To provide a structure to address the long-term factors that

produce crime and disorder, hundreds of American law enforcement agencies have adopted two separate but interrelated strategies—community-oriented policing and problem-oriented policing. To encompass the mutual ideals of these approaches, this article employs the term community-oriented policing and problem solving (COPPS).

COPPS is a proactive philosophy that promotes solving problems that are either criminal, affect the quality of life, or increase citizen fear of crime. It involves identifying, analyzing, and addressing community problems at their source.

Unfortunately, many individuals—both in and outside of policing—believe that the goals of the COPPS model can be achieved by merely putting officers on foot or bicycle patrol, or by opening neighborhood ministrations. Such approaches misrepresent the true potential of community-oriented policing and problem solving and establish unrealistically simplistic expectations.



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## FOUR KEYS TO SUCCESS

Moving an agency from the reactive, incident-driven mode to COPPS is no simple endeavor. Four principle components—leadership and management issues, organizational culture, field operations, and external relationships—must be rebuilt from the ground up to provide a strong basis for the COPPS model.

### Leadership and Management Issues

Successfully implementing COPPS requires a change in the management approach of an agency. Whenever law enforcement agencies adopt new programs or strategies, employees commonly want to know *why* the change is taking place. Administrators should understand that this is a valid concern.

To address employees' concerns, it is important to develop a mission statement that embodies the agency's new operating principles and long-term objectives. To be useful, the mission statement must articulate the basic values and goals



inherent in COPPS. Attention also must be given to policies and procedures, management styles, planning and program evaluation, and resources and finances.

#### *Police Leadership*

In *Problem-oriented Policing*, Herman Goldstein argues that good leaders "must have a set of values, a commitment to goals and governing principles."<sup>5</sup> Chief executives who attempt to guide their agencies out of the purely reactive mode must create a climate conducive to change. To do this they themselves must become viable change agents.

When implementing community-oriented policing and problem solving, chiefs should avoid the "bombshell" technique—simply announcing that COPPS is now the order of the day without developing a carefully designed plan of implementation. The chief's job begins by involving the entire agency to develop a clear vision and mission statement that is consistent with the principles of COPPS. These guiding tenets should recognize that the police do more than merely enforce laws. These principles should serve as the basis for establishing new values and goals.

Chief executives must remember that fully implementing the COPPS model takes years, not weeks or months. It requires careful and continuous planning to ensure that the organization's policies and procedures do not conflict with the basic principles of COPPS. Because the COPPS model places strong emphasis on street officers as primary problem solvers, chiefs also

should carefully evaluate resource allocation to determine if any redistribution is necessary.

The larger the organization, the more time necessary to implement COPPS, especially if it is being implemented department-wide. This period of changeover may involve considerable turbulence. Chief executives should be prepared to face a reluctance to change from those comfortable with the status quo.

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#### *Mid-level Management*

Mid-level police managers—lieutenants and captains—play a crucial role in the implementation of the COPPS model. Accordingly, they should be trained in the philosophy and methodology of the concept. Studies of the team policing programs of the 1970s found that many managers viewed that concept as a threat to their power. They subsequently "subverted and, in some cases, actively sabotaged" the effort.<sup>6</sup>

Mid-level managers need not be a hindrance to innovation. Indeed, many researchers who study law enforcement agencies identify middle managers as the locus of innovation.<sup>7</sup> If COPPS is to be

implemented successfully, mid-level managers must provide administrative support and remove any barriers that first-line supervisors may confront.

#### *First-line Supervisors*

As first-line supervisors, sergeants wield a tremendous amount of influence on the attitudes and behavior of officers. COPPS requires that sergeants allow their officers additional autonomy and authority to solve problems. This component of the COPPS model can seem threatening to first-line supervisors who, in turn, can create an enormous block to implementation.

Supervisory training should define a sergeant's role as "facilitator" rather than "controller." Sergeants often must run interference for their patrol officers to give them the time required to engage in problem solving. First-line supervisors also can assist by developing new COPPS activity forms and officer evaluation criteria that complement the new philosophy.

#### **Organizational Culture**

Reactive crime-fighting strategies and organizational values represent strong barriers to COPPS. Therefore, before meaningful transition can occur, the very core of an organization's culture often must change. In this context, "culture" refers to a set of expectations and norms that guide employees' behavior.

Organizations base their culture largely on history, officer experiences, organizational structure, leadership style, and past methods of handling change. To ensure that community-oriented policing and



problem solving becomes a part of the organizational culture, and not simply a fleeting or peripheral "program," an agency must link COPPS to how it recruits, selects, trains, evaluates, promotes, rewards, and disciplines employees.

Agencies must review their recruiting literature and testing/selection processes to ensure that the skills, knowledge, and abilities used to select recruits are consistent with the desired traits of a COPPS officer. The training that recruits receive once they are hired becomes critical. Therefore, COPPS training must be integrated into the academy's curriculum fairly early in the implementation process.

In addition, both sworn and civilian employees should be taught the COPPS philosophy to ensure common understanding. Personnel should receive practical training related to the problem-solving model and other crime prevention and analysis strategies. Personnel also need to be trained on effective ways to involve other government agencies, private businesses, public and private service organizations, and the community in general. Agencies should include this instruction in field training curricula and updated annual training.

COPPS also changes the way organizations evaluate their officers. Evaluation criteria need not focus solely on efficiency—as indicated by citation and arrest numbers. Under COPPS, agencies should recognize officers who maximize resources and exhibit

initiative in solving seemingly intractable community problems. Administrators must remember that such activities often defy traditional numbers-oriented evaluation.

In fact, COPPS requires an evaluation system that measures whether attempted solutions successfully addressed community problems. Agencies must establish



forms of assessment, such as community surveys and data analysis methodologies, that adequately gauge the effectiveness of individual problem-solving initiatives.<sup>8</sup>

In an organization devoted to the principles of COPPS, promotional exams should not focus solely on tactical orientation, nor should awards be restricted to recognizing only heroic deeds. Employees' knowledge about COPPS and their problem-solving performance must be reflected in an agency's promotional and reward systems.

Likewise, a department's disciplinary system is an important guide for employees' behavior. Agencies must uncover and swiftly deal with behavior that threatens their COPPS efforts.

Cultural resistance to implementing COPPS invariably encompasses officers' belief that responding to service calls leaves them insufficient time to engage in problem solving. COPPS training should explain that if officers do not engage in problem solving they will continue rushing from spot to spot like pinballs, achieving short-term results at best. Still, agencies can and should do a number of things to garner more time for officers to engage in problem solving.

### Field Operations

Under COPPS, field officers become the focus of problem-solving efforts; they identify problems, apply in-depth analysis of the underlying causes, employ creative and collaborative responses, and evaluate the results of their efforts. This philosophy often requires more time and effort from officers than incident-driven methodologies allow.

An agency's administration might obtain more time for officers by analyzing calls for service and officers' workload and by evaluating what activities officers perform and how they spend their uncommitted time. Agencies need to work toward taking more offense reports over the telephone or through mail-in reporting and consider the



enactment of false alarm ordinances or other measures to reduce the number of unnecessary calls for police service.<sup>9</sup> Agencies also must seek ways to reduce the amount of time officers spend performing nonpolice functions.

Through better call management, supervisors can help by allowing officers to delay their responses to nonemergency calls. Supervisors in some agencies use cellular telephones to contact complainants directly and handle their problems, thus eliminating the need for an officer's response.

Problem solving also requires acquiring reliable data and information about substantive problems. Centralized and accessible crime analysis information should provide officers with reliable data on all calls for service, not merely Part I crimes. Identifying sites that yield repeat calls for service represents a vital component to establishing long-term response strategies.

Agencies often question whether to implement COPPS on a department-wide basis or through specialized units. Although specialized units may produce limited results more quickly, their long-range impact may prove detrimental to the organization if other personnel view COPPS as a temporary or specialized program. Consequently, there is a growing consensus that all personnel in an agency should be trained in and practice COPPS.

In addition, agencies must consider operational variables that impact the implementation of community-oriented policing and problem solving. Agencies that assign fixed shifts and beats generally

enjoy a higher success rate. Long-term and/or permanent beat and shift assignments—the ultimate forms of decentralization—allow officers to learn more about people, places, issues, and problems within neighborhoods. Agencies also may need to examine and modify rank structure to accommodate COPPS and to ensure that communication is not filtered, doctored, or suppressed.<sup>10</sup>

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#### External Relationships

While much can be debated about COPPS implementation, one thing is clear: COPPS requires changes in agencies' external relationships. The goal should be to establish new partnerships for sharing the information and resources necessary to solve neighborhood problems. As an integral component of this effort, law enforcement should foster cooperative working relationships with city agencies, businesses, service providers, and the community.

Because a deteriorating neighborhood might require cooperation among health, police, fire, zoning, and social service agencies, key

officials in each organization must be included early in the implementation process. The homeless, the mentally ill, and the victims of domestic violence often account for a high volume of police service calls. By working together, the police and other agencies can put victims in the hands of skilled practitioners and on the road to reclaiming their lives.

#### OTHER CONSIDERATIONS

##### Elected Officials

Soliciting and maintaining political support represents an essential element to implementing COPPS fully. Elected officials must provide sustenance and direction to any COPPS effort by allocating resources and developing strategic community-wide policies.

Unfortunately, political officials can be a difficult group for police administrators to influence: Their knowledge of policing traditionally is grounded in Uniform Crime Reports' statistics, response times, and case clearance rates. They rarely think of the police role beyond its law enforcement function.

The multiagency cooperation inherent in COPPS represents a new concept for many public officials. Elected officials also must understand that they cannot promise the community reduced response times and an officer's response to every type of call, or that drug-related crime, homelessness, and other social problems will be resolved within a finite time period. Both voters and elected officials should understand that to achieve long-term results, COPPS requires careful,



thoughtful approaches with realistic timeframes.

### Detectives

To many officers, investigation represents the single most important function of a police organization. An inevitable byproduct of this view is that uniformed officers are accorded less status than detectives. Thus, many patrol officers aspire to enter the investigative ranks. However, a shift to COPPS requires a new and enhanced role for line officers.

For this reason, detectives—who may feel that COPPS work is for uniformed officers alone—must be incorporated into the COPPS strategy. They should not view COPPS as an exclusive responsibility of the patrol force.

Detectives can relay information to the patrol division, while patrol officers can pass on relevant tips to detectives. In short, under COPPS, detectives are not the only crime solvers in the organization, and patrol officers no longer limit their duties to report taking.

### Unions

Is COPPS contrary to union interests? Does it conflict with contractual issues, such as shift staffing, work hours, and promotions? These questions pose serious barriers to many administrators, requiring careful thought and cooperation between labor and management before COPPS can be implemented.

If agencies exclude unions from the COPPS planning process, officers may well perceive its

implementation as a public relations gimmick to serve management's interests. Therefore, managers should explain their rationale and concerns to union leaders so that both groups can collaborate in planning the agency's future.

Photo © Paul McIver, Tribute



The implementation of the COPPS model is as important to labor as it is to management. Both sides desire a quality work environment for employees. COPPS fosters that and much more. It affords officers opportunities to use their talents creatively and to take control of their work environment through problem solving. COPPS also recognizes their cognitive abilities and rewards them for making lasting improvements in the community.

### CASE STUDY: COP+ IN RENO

In the mid-1980s, the Reno, Nevada, Police Department faced the challenges now confronting many law enforcement agencies.

A lagging economy had forced administrators to make significant reductions in staffing and resources, while calls for service continued to rise dramatically.

As the department struggled to cope with these challenges, community support eroded. A survey taken in 1987 revealed that citizens viewed the police department as being uncaring and heavy-handed. Two municipal bond issues that would have replaced officers lost to attrition failed because of a lack of voter support.

Department administrators saw the need for broadbased change. In May 1987, the Reno Police Department adopted a department-wide community policing strategy it labeled Community-oriented Policing Plus (COP+). Administrators realized that as part of COP+, the department must engage the community and city agencies in a shared approach to problem solving if it hoped to address the problems of increased crime and disorder.

First, the department decentralized patrol into three geographic sections, each commanded by an officer who assumed 24-hour responsibility for a specific area. The sergeants and officers assigned to the areas receive more permanent beat assignments so that they could become familiar with residents and businesses and their respective problems.

Each area commander formed a neighborhood advisory group (NAG). Made up of area residents, the NAGs reflect the unique socioeconomic makeup and ethnic



balance of each area and relate the specific crime concerns of the residents. Newsletters distributed prior to each quarterly meeting inform residents of a variety of department issues and programs, as well as crimes in their area. Today, neighborhood advisory group meetings provide citizens the opportunity to meet with officers, exchange information, and develop problem-solving strategies.

The department also established a quality assurance unit (considered the "plus" in COP+). Among other duties, this unit conducts biannual community surveys to identify citizens' concerns and evaluate the effectiveness of the department in resolving them. The survey results, which administrators use to make necessary operational or administrative policy adjustments, are presented to every department member, to the city council, and at community and NAG meetings.

To improve strained relations with the media, the department created a media advisory group. As part of this effort, the department appointed a public information officer to provide newscasters with a principal contact person in the agency.

In addition, the department's executive staff meets with members of the media twice a year to discuss policy issues and relations. The department also relaxed its press policy to encourage cooperation between officers and the media.

As community support grew for the department's efforts to solve problems through cooperation, residents began to take a more active part in problem solving. The

department established neighborhood police stations in each of the three patrol areas. For the most part, these stations were funded through private community donations. Civilian report takers staff the stations to provide residents with a means to file police reports in their own neighborhoods. The stations also provide citizens a place to meet with officers to discuss neighborhood problems and to obtain information about a variety of community-based programs offered by the department.

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***City agencies and social service organizations also became vital to the police department's problem-solving efforts.***

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City agencies and social service organizations also became vital to the police department's problem-solving efforts. Officers now routinely work with representatives from a variety of city agencies and offices, including planning, fire, streets, signs, and the city attorney to improve neighborhood conditions and eradicate specific problems.

The cooperative problem-solving approach led to the creation of several coalitions to address substantive community concerns. The gang alternative partnership (GAP) program brings together representatives from law enforcement, juvenile

courts, probation, education, and citizens groups to establish gang enforcement policy and diversion programs.

A similar consortium of concerned stakeholders works together to help the homeless through the homeless evaluation liaison program (HELP). Comprised of police officers, university students, and volunteer residents, HELP identifies homeless persons and places them with a social service agency that can best assist them. HELP's efforts have significantly reduced homeless-related offenses and the male population of the county jail.

The efforts of the Reno Police Department to establish external problem-solving partnerships emerged as a critical component of its community policing strategy. While such an approach represents a significant departure for most law enforcement agencies, department leaders have found that the wide range of crime-related problems facing Reno can best be met through a broadbased community response.

## **CONCLUSION**

Like any broadbased change to accepted practices, community-oriented policing and problem solving should be implemented carefully. Chief executives who commit to the COPPS approach face two critical considerations—overcoming organizational resistance to innovation and gauging and managing the pace of change once it is undertaken. Police executives should understand that COPPS is evolutionary; it occurs as a result of refining past practices, implementing new strategies,



and at times, accepting small wins in lieu of major victories. Successful implementation requires planning, patience, and time.

Agencies that provide a strong foundation for the COPPS model and nurture its growth will bring order to the chaos and fear often associated with organizational change. More important, these agencies will forge new relationships with city agencies and community members to *resolve* problems, not just respond to incidents. ♦

## Endnotes

<sup>1</sup> "Preliminary Annual Uniform Crime Report," Federal Bureau of Investigation, Washington, DC, released May 5, 1996.

<sup>2</sup> George Gallup, Jr., "The Gallup Poll Monthly," *The Gallup Poll*, March 1993.

<sup>3</sup> James Q. Wilson and George L. Kelling, "Broken Windows: Police and Neighborhood Safety," *The Atlantic*, March 1982, 29.

<sup>4</sup> See E. I. Cumming, I. Cumming, and L. Edell, "Policeman as Philosopher, Guide and Friend," *Social Problems*, 12, 1965, 276-286; T. Bercal, "Calls for Police Assistance," *American Behavioral Scientist*, 13, 1970, 682; Albert Reiss, *The Police and the Public* (New Haven, Connecticut: Yale University Press, 1971); R. Lilly, "What Are the Police Now Doing?" *Journal of Police Science and Administration*, 6, 1978, 51-60.

<sup>5</sup> Herman Goldstein, *Problem-oriented Policing* (New York: McGraw-Hill, 1990), 153.

<sup>6</sup> Lawrence W. Sherman, *Team Policing: Seven Case Studies* (Washington, DC: Police Foundation, 1973), 10.

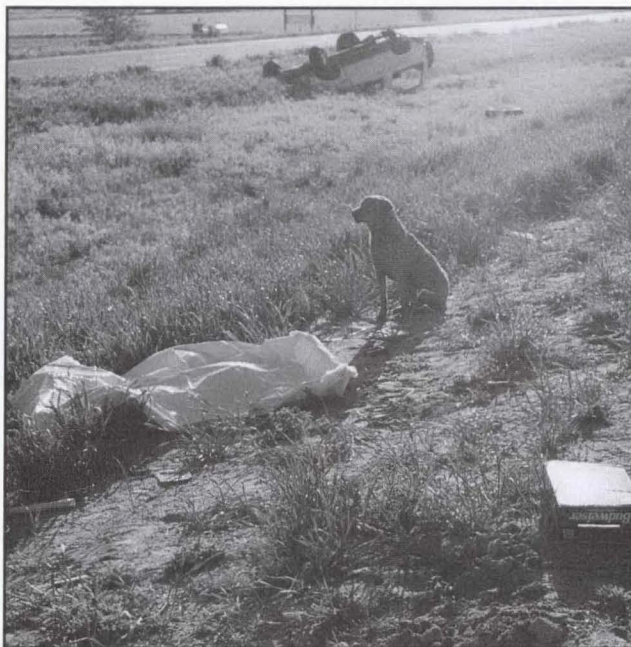
<sup>7</sup> Rosabeth Moss Kanter, "The Middle Manager as Innovator," *Harvard Business Review*, July-August 1982, 95-105.

<sup>8</sup> For a discussion of evaluation processes in several sites, see Dennis P. Rosenbaum (ed.) *The Challenge of Community Policing: Testing the Promise* (Thousand Oaks, California: Sage, 1994).

<sup>9</sup> See John J. Moslow, "False Alarms: Cause for Alarm," *FBI Law Enforcement Bulletin*, November 1994, 1.

<sup>10</sup> Malcom K. Sparrow, "Implementing Community Policing," *National Institute of Justice, Research in Brief*, 9, September 1988, 5.

## Faithful Friend



Nebraska State Trooper Mike Ritonya took this photograph at the scene of an automobile accident. The dog is sitting beside his 17-year-old owner who is covered by a tarp. Both the dog and his owner were ejected from the vehicle seen overturned in the background. The beer carton in the foreground shows a likely contributing factor to the crash. Trooper Ritonya said that the dog would not leave his owner's side.

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# **Operation REACT**

## **Targeting Violence in Chicago**

By MATT L. RODRIGUEZ, M.P.A. and WILLIAM D. BRANON

**T**he task force is not a new concept in policing. Task forces involving municipal, county, state, and federal law enforcement agencies have been used widely and with considerable success during the past 25 years to address drugs, gangs, and other serious crime problems that cross jurisdictional boundaries.

In their traditional application, however, task forces sometimes can become static and narrowly focused. In such cases, the very reason for creating a task force—to provide a dynamic and flexible response to a specific crime problem—may be forgotten as the task force becomes more established and entrenched.

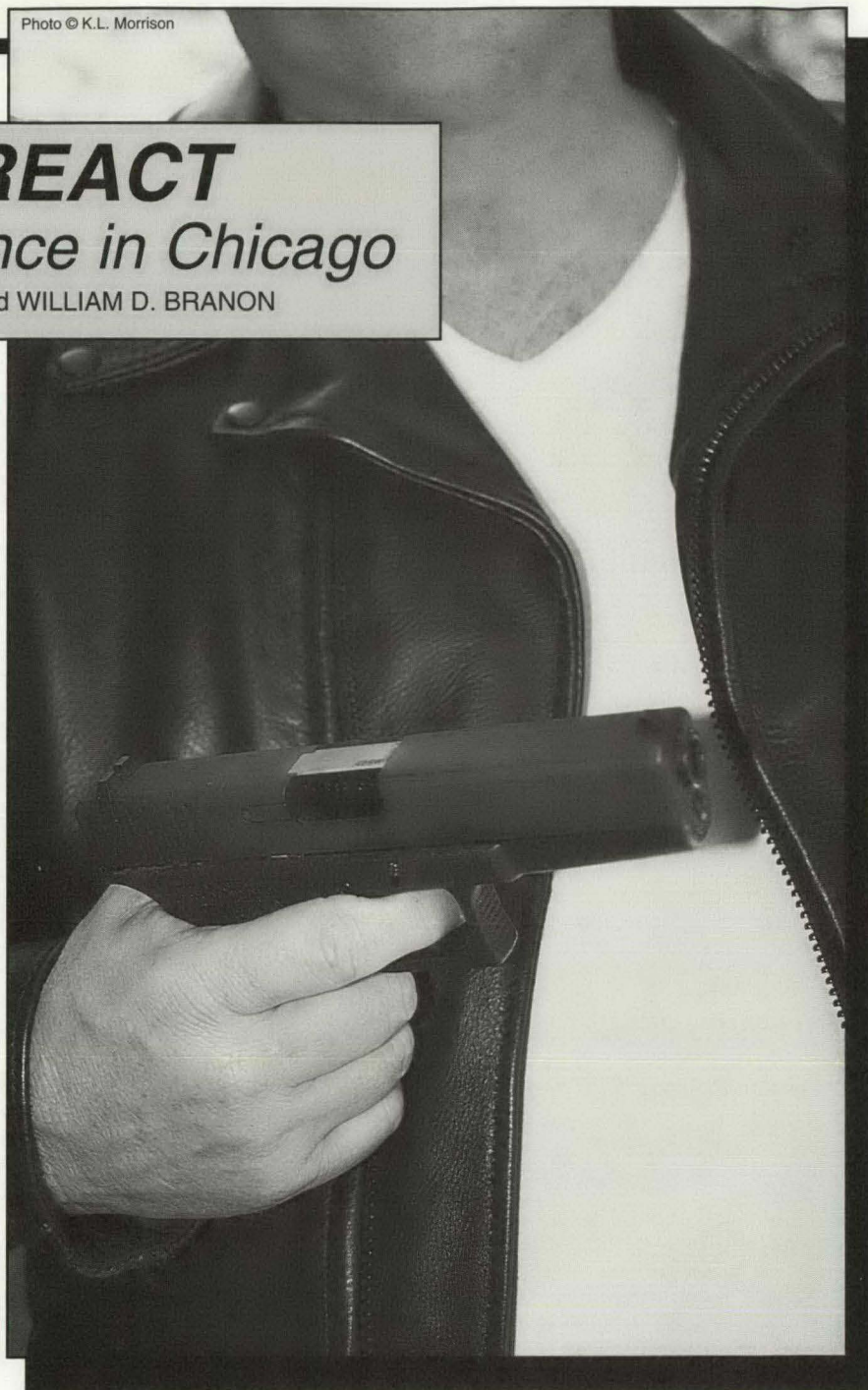
Recognizing the potential pitfalls of the task force approach, the Chicago, Illinois, Police Department (CPD) and the FBI's Chicago Field Office devised an innovative alternative to the traditional task force strategy. This approach—code-named Operation REACT—used the combined resources of the two agencies in a flexible manner for a limited period of time to tackle a pressing community need.

The problem that precipitated Operation REACT was an outbreak of primarily gang-sponsored violence in a select few neighborhoods on Chicago's South Side. To foster maximum impact, the operation pooled the resources of several distinct task forces. However, the

primary innovation, establishing a finite lifespan for the operation, proved to be a simple but effective way to ensure that the task force's efforts did not dissipate over time.

### **THE PROBLEM**

During the first 6 months of 1994, Chicago recorded 476 homicides, the highest number of homicides for the first half of any year in





the city's history. While several of the city's neighborhoods saw an increase in homicides, two police districts on the South Side—the 3rd and 4th, both in police area 2—experienced an exceptional outbreak of violence, including not just homicides but also drive-by shootings and other aggravated assaults.

The 3rd and 4th police districts are home to approximately 233,000 residents living within a 32-square mile area. The area's population is largely working class, with large pockets both of poverty and crime.

These two districts experienced a 27-percent increase in homicides and a 21-percent increase in shootings between April and July 1994, when compared to figures for the same months in 1993. The primary cause for this increasing violence could be traced to an escalation in drug-related gang warfare. Much of this was directed by leaders of the Black Gangster Disciple Nation, the city's largest and most violent organized street gang, which was attempting to gain control of the illicit drug trade in various parts of the city's South Side.

In response to the outbreak of violence in the 3rd and 4th districts, the CPD initiated a number of short-term tactical responses using existing department resources. Precinct patrol officers and tactical units stepped up enforcement efforts in the highest crime neighborhoods, while department administrators re-assigned detectives from other parts of the city to concentrate on solving violent crimes in the two target districts.

Because much of the crime occurring in the two districts was

being committed by offenders from surrounding districts, officers from the department's Special Operations Section and the Enhanced Drug and Gang Enforcement (EDGE) Program supplemented and expanded these efforts to provide an enhanced presence throughout police area 2. Under EDGE, teams of officers from the area's five precincts, along with personnel from other specialized units, saturated specific neighborhoods for short periods of time, identifying and arresting offenders and serving outstanding warrants.

While these efforts helped to contain some of the violence in the targeted districts, the shootings and killings continued. In addition, the overwhelming growth in caseloads taxed the ability of detectives to solve violent crimes as they occurred. By the summer of 1994, it became clear that a more dynamic response was necessary to address the rising level of violence on the

city's South Side in general, and in districts 3 and 4 specifically.

## **THE RESPONSE: OPERATION REACT**

In July 1994, the command staff of the CPD and the executive management of the FBI's Chicago Field Office developed a plan that had never before been attempted in the city: A cooperative effort in which federal agents would operate out of one of the police department's detective facilities. As part of the plan, FBI agents would team up with police detectives, gang crime specialists, and patrol officers to attack violent crime in a single, concentrated high-crime area.

The joint police-FBI effort also would be supplemented by new, more intensive tactics established within the police department, along with support from several existing FBI-sponsored task forces. In addition to personnel, the FBI



*Superintendent Rodriguez commands the Chicago, Illinois, Police Department.*



*Mr. Branon is the former Special Agent in Charge of the FBI's Chicago Office.*



contributed equipment and other resources that would be committed to area 2's detective commander for the duration of the initiative.

On August 2, 1994, Operation REACT began. Originally envisioned as a 3-month operation, the cooperative effort continued for 4 months, due to the number of largescale investigations launched. The operation primarily involved the work of three specially formed task forces.

While each of the three task forces operated with some autonomy, the overall effort was directed by the deputy chief of the area 2 patrol division. This marked the first time an operation of this scope and magnitude had been directed by area leadership within the police department's patrol division.

#### **Violent Crime Task Force**

As part of Operation REACT, six FBI agents and six police detectives were assigned full-time to area 2's detective commander. The members of the Violent Crime Task Force focused their efforts solely on investigating homicides and other violent crime in the targeted neighborhoods of districts 3 and 4.

#### **Fugitive Task Force**

Composed of investigators from the police department, the FBI, the Cook County Sheriff's Police, and the U.S. Marshal's Service, the Fugitive Task Force concentrated on locating and apprehending those fugitives wanted for violent crimes who resided or were being harbored within police area 2. This allowed permanently assigned police detectives to focus on the escalating number of homicide cases.

#### **Joint Task Force on Gangs**

Composed of FBI and CPD personnel, as well as personnel from the Chicago Housing Authority Police Department, the Illinois State Police, and the Cook County Sheriff's Police, the Joint Task Force on Gangs targeted high-ranking members of the Black Gangster Disciples Nation for investigation and prosecution. The task force used sophisticated investigative techniques, including court-authorized electronic surveillance, to disrupt the gang's extensive drug trafficking operations in the target area.

***“From the beginning, planners designed Operation REACT as a high-impact, but short-term, operation.”***

#### **MOBILIZATION OF DEPARTMENT RESOURCES**

Several specialized tactical mission teams within the police department complemented the efforts of the Operation REACT task forces. These mission teams worked closely with the task forces to maximize resources and impact.

#### **Special Gang Mission Team**

The Special Gang Mission Team was established specifically to support Operation REACT. Made up of 2 sergeants and 20 officers, the team saturated the streets in the two

targeted districts during the operation. It also provided high visibility enforcement, gathered intelligence, and monitored street-level activity at known drug locations.

In addition, the team conducted aggressive street-stops of vehicles for traffic and regulatory violations. In doing so, they made extensive use of Chicago's vehicle impoundment law, which allows police officers to seize vehicles in which firearms are recovered.

#### **Detective Area Mission Team**

During Operation REACT, one police officer from each of the five districts in area 2 was assigned to assist detectives in investigating the growing caseload of violent crimes. The officers' familiarity with the criminal element in their districts provided detectives with valuable information for investigations.

#### **Gang, Drugs, and Prostitution Units**

The department's permanent gang, drugs, and prostitution units increased their efforts in the two districts to support the work of the task forces and mission teams. The assistance of these centralized units—especially their strong administrative support—enabled members of the task forces and mission teams to devote the majority of their time to street work rather than paper work.

#### **Court Advocacy**

To help galvanize the community's support, the police department also worked with the city to expand court advocacy efforts in the targeted districts. Area residents fed up with rising levels of lawlessness quickly identified high-profile cases



and turned out in large numbers to follow these cases through the court system.

## RESULTS

From the beginning, planners designed Operation REACT as a high-impact, but short-term, operation. On November 30, 1994, Operation REACT did something task force initiatives rarely do—it officially ended. While high-level gang and drug ring investigations begun by the task forces still continue, the joint task forces disbanded, and the personnel assigned to Operation REACT resumed their regular duties when the operation came to an end. Enforcement and investigative initiatives undertaken during the 4 months of the operation had a profound impact on the crime problem in the target area.

Results were impressive. Between August and November 1994, the police department's Special Gang Mission Team made 417 arrests, including 7 arrests for murder and 50 for drug violations. The team also recovered 157 firearms.

Other specific successes included a sweep on August 25th that resulted in the arrest of 35 fugitives from area 2. More than 50 FBI agents—along with sheriff's police, state police, and personnel from the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, and the U.S. Marshal's Service—assisted area commanders in this 1-day operation.

Perhaps the most significant outcome of Operation REACT, however, was a notable decline in the level of violence in the 3rd and 4th districts. In the months between

August and November, these two districts recorded a 13-percent reduction in shootings, from 276 in 1993 to 240 during the same months in 1994. In addition, the homicide rate in the two districts leveled off considerably during the 4 months of the operation. Although the number of homicides in the August-November period still increased slightly (from 34 in 1993 to 35 in 1994), this small increase was in marked contrast to the 27-percent rise recorded for the April-July period.

Despite the short-term nature of the initiative, Operation REACT proved to have a continuing impact on the crime problem in the targeted districts. The number of aggravated assaults for the first 6 months of 1995 dropped to 288, down from 432 during the same period in 1994. From January through June 1995, districts 3 and 4 recorded 48 homicides, down from a record high of 74 for the same 6 months in 1994.



**"Despite the short-term nature of the initiative, Operation REACT proved to have a continuing impact on the crime problem in the targeted districts."**

## CONCLUSION

Law enforcement agencies faced with a sudden increase in violent crime in a concentrated geographic area generally rely on their own resources to mount a short-term tactical response. To do this, agencies typically redeploy or assign additional personnel to the high-crime area and use specialized tactical, gang, and drug units to provide high visibility enforcement action.

When the Chicago Police Department confronted an outbreak of gang warfare and drug-related violence in two police districts, the agency responded in the traditional way. However, the severity of the crime problem and the limited impact of the department's response demonstrated the need for a more dramatic and concentrated effort.

Department leaders joined with the executives of the FBI's Chicago Field Office and developed a task



force approach that would focus sufficient resources on the problem to produce significant results in a limited period of time. Operation REACT produced immediate, positive results. Entrenched drug distribution operations were disrupted. Homicides that may have remained unsolved were cleared, and violent offenders were arrested. Career criminals and fugitives who had committed crimes with little fear of retribution were identified, apprehended, and removed from the communities that they had once victimized at will.

Although only 4 months in duration, Operation REACT proved to have a lasting impact on the crime problems facing the community. Following an unprecedented surge in violent crime during the first 6 months of 1994, the task force contributed to a leveling of the homicide rate and a significant reduction in the number of shootings.

The reductions in violent crime have provided welcome relief for communities beset with violence and in desperate need of solutions. The immediate, short-term relief brought about by Operation REACT, in turn, has presented an opportunity—and a strong foundation—for longer-term, crime-reduction strategies to take hold in the communities. Perhaps as important, the effectiveness of this more flexible and dynamic approach to the traditional task force strategy has paved the way for similar efforts involving the Chicago Police Department and other federal, state, and local agencies. ♦

## Law Enforcement's New Internet Address



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# Disclosing Officer Misconduct A Constitutional Duty

By LISA A. REGINI, J.D.



**"[T]he government simply cannot avoid responsibility for knowing when the suppression of evidence has come to portend such an effect on a trial's outcome as to destroy confidence in its result.**

....

**This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence....[T]his is as it should be."<sup>1</sup>**

A recent U.S. Supreme Court decision concerning the government's constitutional duty to disclose information favorable to the accused contained the language in the beginning quote. Implicit in this language is a reaffirmation of the prosecutor's role as "...the representative...of a sovereignty...whose interest...in a criminal prosecution is not that it shall win a case, but that justice shall be done."<sup>2</sup>

Personnel information concerning law enforcement officers who testify against the accused may be as important to the defense as evidence directly affecting innocence.<sup>3</sup> Prior

instances of lack of candor, prior bad acts, or a reputation for untruthfulness can be used to impeach an officer's testimony against the accused and are fundamental ingredients to a defendant's right to a fair trial.

The Court's recent decision involving a prosecutor's constitutional duty to disclose exculpatory information comes at a time when law enforcement is under tremendous scrutiny in society as a whole and in the courtroom. Now more than ever before, defense attorneys are attacking their clients' prosecution by attacking those who are responsible for the investigation,



fueling ever-increasing numbers of requests for information contained within law enforcement personnel files.

The disclosure of law enforcement personnel information often implicates sensitive professional and privacy interests, particularly in cases where the officer has been exonerated or the matter is personal in nature. Accordingly, while the defendant's right to a fair trial is paramount, the defendant does not have a right to "everything known to the prosecutor."<sup>4</sup>

This article examines the government's duty to provide information relating to personnel and disciplinary matters concerning law enforcement officers who will testify on the government's behalf. The article first reviews relevant case law establishing the government's legal duty to disclose exculpatory information. Then, it addresses the need for law enforcement agencies and prosecutors to establish policies

concerning the general types of information required to be disclosed and methods by which this information can be maintained, retrieved, and disseminated to prosecutors when necessary.

### DISCLOSURE OF EXCULPATORY INFORMATION

In the landmark decision of *Brady v. Maryland*,<sup>5</sup> the U.S. Supreme Court recognized that fundamental notions of fairness and due process within the meaning of the 5th and 14th amendments require the government to provide evidence favorable to the defense. *Brady* clearly established that in a criminal case, the accused has a right to any exculpatory evidence, i.e., any evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment, irrespective of the good or bad faith on the government's

part in failing to disclose such information.<sup>6</sup>

In *Brady*, the defendant was convicted of first-degree murder and sentenced to death. Brady testified about his participation in the crime but stated his companion actually committed the murder. Prior to trial, Brady requested copies of statements provided by the companion. The government provided some of those statements but failed to provide the statement in which the companion admitted killing the victim. Brady did not learn of this statement until after he was convicted and sentenced.

The Supreme Court agreed with Brady's contention that the government's failure to provide the companion's statement amounted to a denial of his right to due process of law guaranteed by the 14th amendment. The Court concluded that while the statement did not affect Brady's culpability relating to the first-degree murder charge, the companion's statement was relevant for purposes of Brady's punishment. The Court elaborated on the defendant's constitutional right to discover exculpatory evidence in a criminal proceeding by concluding that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment."<sup>7</sup>

From this decision emerged the term "*Brady* material," which is used by both attorneys and law enforcement officers to describe exculpatory material that, according to the *Brady* rule, must be provided to the defense if material to guilt or punishment. The focus of this article



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

**“...the government is constitutionally required to disclose any evidence favorable to the defendant... including evidence that may impact on the credibility of a witness.**

**”**



is not to define the universe of *Brady* material but rather to identify the types of information concerning the conduct of law enforcement officers that falls within the *Brady* rule.

### **BRADY MATERIAL: IMPEACHING WITNESSES**

The Supreme Court extended the *Brady* rule to include material affecting a witness' credibility. In *Napue v. Illinois*,<sup>8</sup> the Supreme Court held that the prosecutor's use of false testimony that goes to the credibility of a witness violates due process.

In *Napue*, the defendant was tried for murder. The government's main witness, also implicated in the murder, falsely testified that he received no consideration in return for his testimony. The government, knowing that testimony to be false, failed to correct the record. The Supreme Court concluded that the jury's evaluation of the truthfulness and reliability of testimony may affect the determination of guilt or innocence and that "...it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."<sup>9</sup>

### **ABSENCE OF BAD FAITH IS NO DEFENSE**

The Supreme Court subsequently used the *Brady* rule to expand the principle announced in *Napue*. In *Giglio v. United States*,<sup>10</sup> the assistant U.S. attorney (AUSA), who presented the case before a grand jury, made an unauthorized promise of leniency to the main government witness, a co-conspirator in the case. The AUSA who

tried the case was unaware of this earlier promise. The witness testified falsely at trial that he received no consideration for his testimony.

The Supreme Court in *Giglio* reversed the conviction, holding that the AUSA's promise was attributable to the government, regardless of the absence of bad faith on the part of the prosecutor who tried the

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case. The Court believed evidence of this promise would impact the credibility of this key government witness and that the jury was entitled to consider this evidence when weighing the testimony of the witness.

As a result of *Brady* and *Giglio*, the government is constitutionally required to disclose any evidence favorable to the defendant that is material to either guilt or punishment, including evidence that may impact on the credibility of a witness. Furthermore, the defendant's failure to request favorable evidence does not leave the government free of this obligation because constitutional error results "...if there is a

reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."<sup>11</sup>

### **DUTY TO DISCOVER BRADY MATERIAL**

In its 1995 decision in *Kyles v. Whitley*,<sup>12</sup> the Supreme Court ruled that a prosecutor's constitutional duty to provide exculpatory evidence to a defendant includes a related duty to exercise reasonable diligence to discover or learn of the existence of such evidence. In *Kyles*, the defendant was convicted and sentenced to death for the murder of a woman in a grocery store parking lot. The Supreme Court, in reversing the conviction, identified information that had been improperly suppressed by the government. This information pertained to the government's investigation and statements made by witnesses who testified at trial.

Key to the government's investigation was the assistance of an informant who called police to report that he had just purchased a car from his friend, Kyles, that matched the description of a car belonging to a victim of a murder he heard reported on the news. The informant met with detectives and began assisting in the investigation.

Throughout his involvement in the investigation, the informant often gave contradictory and sometimes self-incriminating statements. For example, the informant admitted to changing the license plates on the stolen car twice after purchasing it from Kyles.<sup>13</sup> The Supreme Court was especially troubled with the government's suppression of the



informant's statements in light of the defense's theory that Kyles had been framed by the informant.<sup>14</sup>

Also crucial to the government's case at trial was the testimony of eyewitnesses who identified Kyles as the killer. The Supreme Court found that disclosure of their pre-trial statements would have drastically weakened the government's case.<sup>15</sup>

For example, one witness provided a statement contemporaneous to the incident in which he admitted that he was at the scene but did not actually see the incident. This witness also stated that the only time he saw the assailant was when the assailant was attempting to flee the scene and described him as a black teenage male with a moustache and shoulder-length hair.<sup>16</sup>

However, at trial, this witness testified that he not only saw the assailant but that he also saw him struggle with the victim and remove a small .32-caliber handgun from his pocket and shoot the victim in the head. Furthermore, he omitted to mention the description that he provided earlier of the assailant—a description that did not resemble Kyles.<sup>17</sup>

The Supreme Court believed that “[a] jury would reasonably have been troubled by the adjustments to [the witness’] story...[and the statements] would have fueled a withering cross-examination, destroying confidence in his story and raising a substantial implication that the prosecutor had coached him to give it.”<sup>18</sup> The Court determined that the net effect of the information withheld from the defendant raised a reasonable probability that the outcome

would have been different, and thus, its suppression violated the defendant's right to a fair trial.<sup>19</sup>

Even though some of the information favorable to the defense was not disclosed to the prosecutor until after trial, the prosecutor still is held accountable for a *Brady* violation.<sup>20</sup> The Supreme Court in *Kyles* ruled that the prosecutor is held to a disclosure standard based on what all the government's officers knew at the time.<sup>21</sup>

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**...a prosecutor's constitutional duty to provide exculpatory evidence...includes a related duty to exercise reasonable diligence to discover or learn...of such evidence.**  
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The Court took the opportunity to elaborate on the prosecutor's role in instilling confidence in the trial's outcome by not only ensuring that the duty to provide exculpatory information is strictly adhered to but also by imposing a duty to learn of such information.<sup>22</sup> The Court imposed a duty on prosecutors to exercise diligence in discovering all evidence favorable to the defense within the government's possession and reasoned that this duty flows naturally from the power of the prosecutor to determine what information will remain undisclosed as not material to either guilt or

punishment. In its ruling, the Court stated:

On the one side, showing that the prosecution knew of an item of favorable evidence unknown to the defense does not [alone] amount to a *Brady* violation....But the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn means that an individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf, including the police.<sup>23</sup>

The “duty to learn” thus extends the prosecutor's obligation not only to ensure that all exculpatory information is provided to the defense but also to undertake reasonable steps to ensure that the prosecutor is aware of all such material in the government's possession.

## DISCOVERY OF PERSONNEL MATTERS

### Material Information

When reviewing decisions that apply the *Brady-Giglio* principles to law enforcement personnel and disciplinary information, it becomes apparent that few generalizations are possible. For example, allegations of misconduct that are part of a pending investigation generally are not required to be disclosed because they are preliminary or speculative.<sup>24</sup>



In *United States v. Veras*,<sup>25</sup> the U.S. Court of Appeals for the Seventh Circuit held that the government improperly suppressed information concerning a pending investigation into allegations that an officer lied in a search warrant affidavit and stole money during the execution of warrants. The government did not disclose the information because at the time it was required to provide discovery, the allegations consisted only of the word of a convicted drug dealer and perjurer who was in a position to benefit if the allegations were proven true.<sup>26</sup>

The court concluded that the government improperly suppressed the material, contrary to *Brady-Giglio*. The court reasoned that the information should have been disclosed to the defense because the information was of a serious nature and involved the credibility of a representative of the government. In addition, the government took the allegations seriously enough to initiate an investigation.<sup>27</sup>

Some generalizations concerning the government's disclosure obligations with respect to personnel or disciplinary information are possible. However, when formulating agency policies concerning what information will be shared, it is incumbent on police legal advisors and prosecutors to review the relevant case law in their jurisdictions. Generally, relevant portions of documents containing the following categories of information should be provided to prosecutors:<sup>28</sup>

- Any finding of misconduct, such as a disciplinary letter,

that reflects on the officer-witness' truthfulness

- Any finding of misconduct that indicates that the officer-witness may be biased
- Any credible allegation of misconduct, subject of a pending investigation, that reflects on the truthfulness or possible bias of the officer-witness, and
- Any past criminal charge or pending criminal charge brought against the officer-witness.



Allegations of misconduct that are unsubstantiated or result in the officer's exoneration generally are not considered impeachment material, and thus, need not be shared with the prosecutor. However, cases may arise where consideration should be given to disclosing the information to the prosecutor, particularly where the officer's credibility is significant to the prosecution. Some courts have required a review of a personnel file by the trial court judge for possible impeachment material, even where the officer has been exonerated.<sup>29</sup>

### Need for Coordination and Communication

As a result of *Kyles* and the Court's imposition of a duty to learn of *Brady-Giglio* material, it is apparent that prosecutors and law enforcement agencies need to establish guidelines to ensure that prosecutors receive sufficient information concerning law enforcement witnesses to meet their discovery obligations. Prosecutors also should be made aware of the sensitive professional and privacy interests at stake and the need to maintain the confidentiality of personnel and disciplinary matters, unless disclosure is required.

Prosecutors and law enforcement agencies may find it beneficial to discuss the government's obligation to provide personnel and disciplinary information in their jurisdictions and perhaps create a formal policy to foster consistency in resolving this difficult issue. Suggested topics of discussion include: 1) The types of disciplinary information that must be disclosed; 2) the degree of certainty that misconduct has occurred, which triggers disclosure; 3) the stage in the investigation when disclosure must be made; and 4) the extent to which prosecutors may retain law enforcement personnel information in their systems of records for future retrieval.

Agencies also should inform officers and other investigative personnel of their responsibility to advise prosecutors with whom they are working of potential impeachment information prior to testifying. As part of court-ordered discovery, a prosecutor also may request a



particular employee's personnel file be reviewed for potential impeachment material.<sup>30</sup> Procedures should be developed detailing how this request is made, whether there should be a showing that the employee is likely to testify, who in the agency should process the request and review the file, and what is the appropriate form of response.

## CONCLUSION

The constitutional duty to disclose exculpatory information to the defense plainly includes some law enforcement personnel information. Determining the extent to which the government has an obligation to provide personnel and disciplinary information concerning officers who may testify is a complicated endeavor, not subject to simple generalizations and often raising sensitive privacy and professional issues. It is, therefore, essential that law enforcement agencies and prosecutors develop policies to guide the resolution of this issue and to provide notice to officers as to what information will be subject to discovery. ♦

## Endnotes

<sup>1</sup> *Kyles v. Whitley*, 115 S.Ct. 1555, 1568 (1995).

<sup>2</sup> *Kyles* at 1568, quoting *Burger v. United States*, 295 U.S. 78, 88 (1935).

<sup>3</sup> See *Giglio v. United States*, 405 U.S. 150; *Napue v. Illinois*, 360 U.S. 264 (1959); *United States v. Smith*, 77 F.3d 511 (D.C. Cir. 1996).

<sup>4</sup> *United States v. Agurs*, 427 U.S. 97, 106 (1976).

<sup>5</sup> 373 U.S. 83 (1963).

<sup>6</sup> *Giglio v. United States*, 405 U.S. 150 (1963).

<sup>7</sup> *Brady* at 87.

<sup>8</sup> 360 U.S. 264 (1959).

<sup>9</sup> *Id.* at 269.

<sup>10</sup> 405 U.S. 150 (1963).

<sup>11</sup> *United States v. Bagley*, 473 U.S. 667 (1985) (addressing the "materiality standard" required in *Brady*).

<sup>12</sup> 115 S.Ct. 1555 (1995).

<sup>13</sup> *Id.* at 1572.

<sup>14</sup> *Id.* at 1563.

<sup>15</sup> *Id.* at 1570.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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<sup>19</sup> *Id.* at 1565. The Court noted that the opinion does not address the standard of materiality applied in cases where the prosecutor knowingly uses perjured testimony; a standard that is more favorable to the defense requiring only a showing of a reasonable likelihood that the false testimony could have affected the outcome. *Id.* at 1565, n. 7, citing *Agurs v. United States*, 427 U.S. 97 (1976). See also *Gilday v. Callahan*, 59 F.2d 257, 267 (1st Cir. 1995).

<sup>20</sup> See *Kyles* at 1568, citing Brief for Respondent at 25, 27, 30 and 31.

<sup>21</sup> *Id.* See also *Giglio* at 154.

<sup>22</sup> *Kyles* at 1568. The Court wrote that: "Unless, indeed, the adversary system of prosecution is to descend to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of the truth, the government simply cannot avoid responsibility for knowing when the suppression of evidence has come to portend such an effect on a trial's outcome as to destroy confidence in its result."

<sup>23</sup> *Id.* at 1567. In *United States v. Hanna*, 55 F.3d 1456 (9th Cir. 1995), the court, applying *Kyles*, found that the government failed to demonstrate that it inquired into obvious

inconsistencies between an officer's testimony and his written report concerning his discovery of a weapon in the defendant's possession. The court sent the case back to the district court for a further factual determination of whether a *Brady* violation occurred.

<sup>24</sup> *United States v. Agurs*, 427 U.S. 97 (1976); *United States v. Diaz*, 922 F.2d 998 (2d Cir. 1990) cert. denied, 500 U.S. 925 (1991) (prosecution has no *Brady* obligation to communicate preliminary or speculative information).

<sup>25</sup> 51 F.3d 1365 (7th Cir. 1995).

<sup>26</sup> *Id.* at 1374.

<sup>27</sup> *Id.* at 1374-1375. While concluding that the evidence should have been disclosed, the court further held that the conviction would not be reversed because the evidence would not have altered the outcome at trial, as the officer would simply have denied the allegations at trial and defense counsel would not have been able to bring in extrinsic evidence to rebut the denial. *Id.* at 1375.

<sup>28</sup> A separate issue, not addressed in this article, is the extent to which such information would be admissible against the officer-witness under the applicable rules of evidence. Application of the rules of evidence will narrow what ultimately may be used to impeach a witness. Generalizations on the impact of such rules on what is allowed as impeachment material are also difficult. For example, in *United States v. Ortiz*, 5 F.3d 288 (7th Cir. 1993), the court held that the trial court was well within its discretion in excluding a letter from an officer's personnel file indicating that he falsely reported hours of court attendance. The trial court concluded that this information was not sufficiently relevant to warrant its admission. Compare this to *Dreary v. Gloucester*, 9 F.3d 191 (1st Cir. 1993), in which the court held that a 10-year old disciplinary finding that an officer falsified overtime records was admissible.

<sup>29</sup> See *United States v. Kiszewski*, 877 F.2d 210, 215 (2d Cir. 1989).

<sup>30</sup> One court has held that *Kyles v. Whitley* requires that the prosecutor personally review the personnel file and may not delegate this duty to the agency. *United States v. Lacy*, 896 F.Supp. 982 (N.D.Cal. 1995), government's appeal filed 9/15/95, No. 95-10398.

**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.**



## 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 Yamaguchi

While on patrol, Officer Mark Yamaguchi of the Burbank, California, Police Department stopped a vehicle for a mechanical violation. As Officer Yamaguchi spoke to the driver, he observed the man attempting to reach behind the seat with his right hand. The officer then commanded the driver to keep both hands in view. As Officer Yamaguchi opened the driver's door to get a better view and to force the driver to comply with his command, the man suddenly pulled a loaded semi-automatic handgun from behind the seat and started to raise it toward the officer. Officer Yamaguchi immediately struck the driver in the head with his forearm and wrestled the man from the car. The subject dropped the gun during the struggle, and Officer Yamaguchi held him pinned to the ground until backup officers arrived. A subsequent search of the vehicle revealed a bag containing several bundles of cash. The subject, who was on parole for robbery, later admitted that he was on the way to participate in a cocaine rip-off when he was stopped.



Sergeant Little



Sergeant Bivens



Officer Lainez

Three officers from the New Orleans, Louisiana, Police Department rescued a driver whose vehicle plunged into the murky waters of an area bayou. Several citizens informed Sgt. Bruce Little, Sgt. Frank J. Bivens, and Officer Joseph A. Lainez that they saw a vehicle strike another car and careen into the nearby bayou. One of the witnesses observed that the driver appeared unconscious at the time of the accident. Without hesitation, the officers removed their equipment and dove into the cold water, following two citizens who were already swimming toward the submerging vehicle. The officers located the vehicle on the bottom of the bayou bed but after two attempts could not open the driver's door. On their third attempt, with time running out for the victim, the officers were able to get the car door open. They pulled the unconscious man from the vehicle and brought him to shore, where a rescue unit was waiting. Emergency medical technicians resuscitated the man and transported him to a local medical center for further treatment.



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