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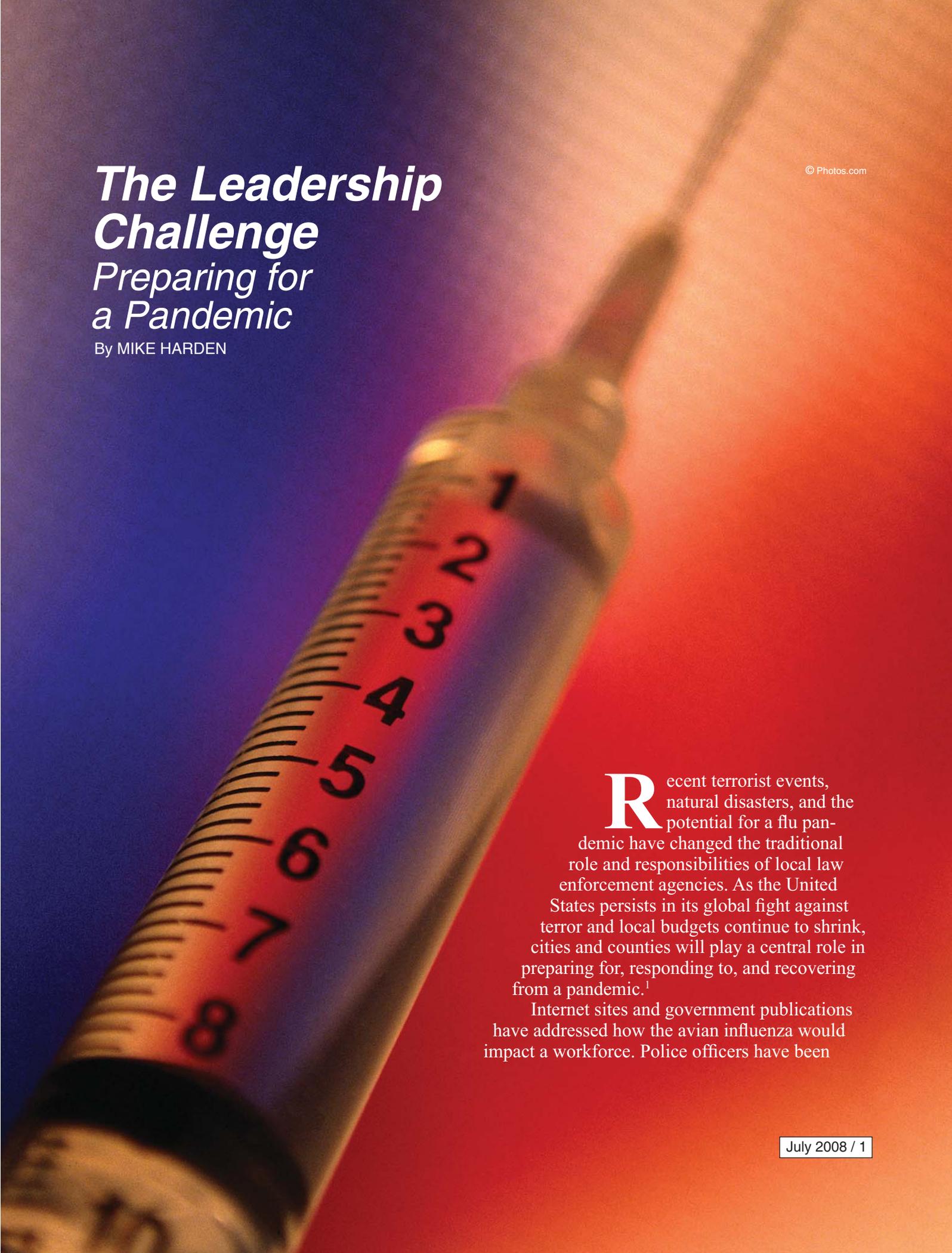
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Preparing for a Pandemic

By MIKE HARDEN



Recent terrorist events, natural disasters, and the potential for a flu pandemic have changed the traditional role and responsibilities of local law enforcement agencies. As the United States persists in its global fight against terror and local budgets continue to shrink, cities and counties will play a central role in preparing for, responding to, and recovering from a pandemic.¹

Internet sites and government publications have addressed how the avian influenza would impact a workforce. Police officers have been



Assistant Chief Harden serves with the Modesto, California, Police Department.

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trained to deal with chaotic situations, but limited research exists for leaders to teach their personnel to deal emotionally with mass casualties and exposure to a potentially lethal virus. In 2006, the Police Executive Research Forum (PERF) issued “Protecting Your Community from Terrorism,” a report noting that “more than 4 years after September 11, 2001, state and local entities responsible for the public safety still are working through how best to define, understand, and prepare for their new roles and responsibilities in responding to critical incidents. Government agencies in the United States and abroad are grappling with the same issue.” Although the document addressed the response to terrorism events, many of the same strategies could be used for a law enforcement response to a pandemic.

The potential loss of life among family members would shift priorities for many officers. Varying levels of commitment may occur if leaders ask officers to contain the spread of infection by enforcing isolation and quarantine among the general public. Additionally, officers might wonder whether they came into contact with someone who carried the virus, and a simple cough or scratchy throat might cause some to think they are infected. The risk of self-exposure would be too great for many, and managers may unrealistically expect unanimous participation in the wake of such an emotional and anxiety-filled event. Only those psychologically prepared through a well-communicated pandemic plan will participate once they know their families are safe. Law enforcement leaders should consider the

implications such an event would create on the workforce and develop realistic plans.

THE PANDEMIC

First recognized in 1997 when the virus infected 18 people in Hong Kong and resulted in 6 deaths, the avian flu H5N1 infection has killed large numbers of poultry flocks and other birds in Asia and Europe. And, since 2003, more than 100 cases have been reported. Health care professionals worry about the continued expansion of the virus, which has spread across eastern Asia and other countries by migratory birds and, in limited cases, has been transmitted to humans. It continues to evolve, and many scientists believe that an influenza pandemic will occur, although the timing and severity cannot easily be predicted. The most serious concern is eventual human-to-human transmission. Because humans lack sufficient immunity to prevent infection, the virus could become a pandemic.

The U.S. Department of Homeland Security and the President developed the National Strategy for Pandemic Influenza: Implementation Plan, which outlines the government’s preparation for detecting and responding to such an event and emphasizes the important role that local governments will play

in protecting citizens and preventing the virus from spreading.² Local communities should attempt to keep any outbreaks from extending beyond their borders, develop comprehensive preparedness and response plans, and integrate nonhealth entities (e.g., law enforcement agencies and other local organizations) in the plan. The national strategy plan and the National Incident Management System discuss roles, responsibilities, and how the communication system can strengthen teamwork in a crisis situation.

Legal Issues

Once the pandemic is understood and if a vaccine is available to prevent its spread, significant legal issues likely will emerge during an outbreak. If the United States orders the use of large-scale quarantines to prevent a full-scale pandemic, local law enforcement departments will be expected to play a significant role.³

What is the legal authority that will allow law enforcement to enforce involuntary quarantines? Naturally, a conflict exists between the U.S. Constitution, which protects personal freedom, and forced quarantines. States have enacted legislation and extended broad authority to local health departments to control disease, but those quarantines typically deal

with animals and agricultural products. Local health officials will call upon law enforcement agencies to assist in such an event, but the lack of uniformity from one jurisdiction to another poses significant challenges.

The California Health and Safety Code authorizes county health doctors to preserve and protect citizens' health by enforcing certain county orders, ordinances, and statutes. The law also allows local health

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The panel also discussed creating a pandemic czar position responsible for disseminating vital information....

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officers to take necessary preventative measures to control the spread of communicable diseases. How will orders be carried out? Will officers readily accept the health officer's authority to force quarantines? Is quarantine different from isolation in terms of limiting the spread of disease? Agencies' emergency preparedness planning should include answers to these questions from their local health doctor.

Availability of Medication

The influenza vaccine production process is long and complicated.⁴ The strain continually evolves, making the effective match between the vaccine and the strain an elusive target. The Centers for Disease Control and Prevention has a strategic national stockpile of medical supplies to protect the American public if such a health emergency occurs.⁵ Further, the U.S. Department of Health and Human Services (DHHS) is required to stockpile sufficient quantities of antiviral drugs to treat 25 percent of a target population in case of a pandemic. In 2006, the federal government requested each governor to submit their projected plans to purchase allocated antiviral drugs; population will determine distribution. Law enforcement leaders should consider the importance of protecting high-risk individuals and day-to-day services when planning distribution and review pandemic flu immunization strategies with their health department, providing prevention and wellness education to employees. If leaders fail to adequately prepare personnel for a pandemic, high employee absenteeism and low morale may occur. “The World Health Organization estimates that an influenza pandemic will affect 30 to 50 percent of working

adults. Agencies must anticipate and prepare for a reduced workforce due to the impact of influenza on their own personnel. As an agency, plans should consider a 50 percent or more absenteeism... Loss of staff to personal and family illness will be inevitable.”⁶ The duties of an officer require personal sacrifice during normal working conditions; in a pandemic, this would be even greater.

The California Office of Emergency Services (OES) Law Enforcement Branch issued “Preparedness Planning Document for Pandemic Flu Virus” in March 2006, which “specifically urges law enforcement agencies to engage in pandemic flu preparedness planning activities in cooperation with their respective health departments, emergency medical services, emergency management agencies, fire services, and other pertinent organizations.” The report also stated, “as an essential service, law enforcement personnel may receive top priority in receiving vaccinations against the identified flu virus.”

MODESTO’S EXPERIENCE

To assist in emergency preparedness planning, a panel of experts met in Modesto, California, to discuss how the flu pandemic would impact the working force and to identify possible trends and events that later would serve as a reference

point to begin preparing for it. The 11-member panel consisted of subject-matter experts from the law enforcement profession, poultry industry, and U.S. Department Agriculture. Also serving on the panel were the county’s public health doctor; a member of a local nonprofit, faith-based organization; a Red Cross/Federal Emergency Management Agency volunteer; a licensed and practicing police psychologist; and the president of the Modesto Police Officers Association. Members identified several trends that could adversely and emotionally impact employees while dealing with a pandemic.⁷

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Leaders should plan an emergency preparedness day.

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Sensationalized Media Coverage

Panel members felt that the desire for immediate news coverage could exacerbate the crisis created by the pandemic. They strongly recommended that department leaders include family members in emergency preparedness planning to avoid

unnecessary absenteeism that might result solely from the fear and anxiety created by news reports. Law enforcement leaders should create opportunities to inform the media about pandemic preparations and even include them in the development of departmental plans.

Lack of Information

The public health doctor stated that it is critical for employees to obtain relevant information through the county public health department or the Centers for Disease Control and Prevention. The panel believed that if police departments want unanimous participation from all employees, leaders will have to provide training and timely information about flu transmission. A departmental plan that forecasts absences from work, details instructions on how to avoid face-to-face contact among employees, and outlines the availability of mental health services will aid the agency in managing and motivating the workforce. The panel also discussed creating a pandemic czar position responsible for disseminating vital information (e.g., through training bulletins and directives from OES and DHHS).

Safety Precautions

The panel identified the greatest failure of preparedness planning as employees who

neglect to design safety precautions for their own family. Leaders may have to deal with situations where families do not maintain emergency kits at home, have not discussed obligations for mandatory attendance at work, and do not have information about disease transmission. The panel believed that without such a home plan, leaders could not expect full cooperation from a majority of their staff members because some officers may decide that the risk is too great for their families if they report to work.

Generation of Officers

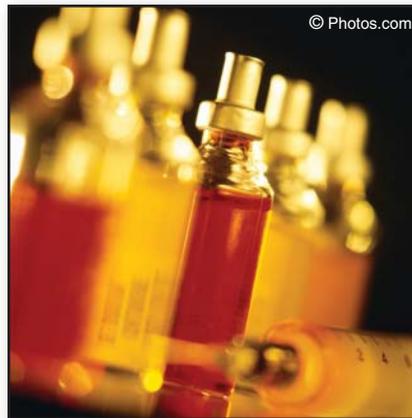
The panel's police psychologist stated that many employees entering the law enforcement profession are doing so for a job, rather than from a sense of calling or service. Newer officers might be more skeptical and jaded about service and more likely to simply walk off the job, creating a challenge for police leaders in such a crisis. Whereas no relevant data exists to support this concern, leaders should consider such information in their planning process.

Although the millennial generation presents new challenges as police recruits, some experts describe them as hardworking individuals who place more importance on doing work that allows them to have an impact on the world.⁸ Leaders should consider employees

from this generation dedicated and responsible, expecting them to work in the face of danger and not questioning their dedication.

Lack of Mutual Aid Resources

During a pandemic, law enforcement departments will have to stretch their available resources. At the same time, other public safety agencies will face this problem within their own jurisdictions without the ability to pool resources. The



panel believed that frustration and anxiety will occur among employees, further complicating the leader's ability to motivate and prepare personnel. The OES report states that regional law enforcement mutual aid coordinators will confer immediately to assist local agencies hit the hardest.

Quarantine Concerns

Officers on the front line may experience fear and apprehension while enforcing

mandatory quarantines and dealing with the conflict concerning personal freedoms. The daunting logistical problem of using police personnel to enforce large-scale quarantines would place added responsibilities on a workforce already operating at full capacity. The local public health doctor should determine whether forced quarantine means isolating individuals in their homes or cordoning off large segments of a community.

Inability to Communicate

Maintaining close control of a quarantine operation while confronting the spread of disease requires the ability to effectively communicate so police can inform the public with a coordinated and consistent message. The panel felt that without this capability, personnel quickly would become disillusioned and lack the motivation to serve. Such a situation swiftly would deteriorate into a feeling of desperation, leaving officers to wonder if their department truly cares about them if they do not even have the proper equipment to communicate with the various public safety disciplines called upon to deal with a pandemic.

THE LEADERSHIP PLAN

Leaders should remain flexible and create a sense of urgency for their department to

effectively respond during a pandemic. The panel developed recommendations reflected in the OES planning considerations report, and, although not exhaustive or all-inclusive, agencies can use them as a beginning point to prepare their workforce.

Create a New Position

This newly created position should be for a management-level person who develops and enhances coordination and partnerships with other local and state agencies, including the OES and the county public health, fire, food, and agricultural departments. This staff position would coordinate *all* of the department's efforts related to the flu pandemic.

Develop Better Communication

The panel made several recommendations to develop better communication. They suggested implementing a general order that delineates mandatory call-to-work responsibilities with different staffing levels determined by the severity of the pandemic and the need to maintain the continuity of government. A fact sheet regarding emergency preparedness and flu pandemic awareness would help inform citizens and employees, and agencies could post flu pandemic links on their intranet sites as a source

of information for employees. They recommended inviting the county public health doctor to attend roll-call training or help develop an instructional video that outlines the threat of the flu pandemic and how employees can become better prepared. Further, agencies should involve employee associations in the discussion and planning and keep a standing agenda item on the department's staff-meeting itinerary.



The panel also thought that a training bulletin could serve as an official departmentwide communication medium to decrease fear and better prepare employees if a pandemic becomes reality. The agency's overall strategic plan should include emergency and family preparedness planning, and departments regularly should discuss and distribute information

regarding the legal issues surrounding quarantines and who has the authority to order and enforce them.

Coordinate a Tabletop Exercise

The panel recommended that the pandemic coordinator arrange a tabletop exercise to evaluate urgent plans and infrastructure to employ in response to a pandemic. It should include partnerships with emergency service providers, emergency management representatives, and other public safety officials to identify gaps in coordination. The coordinator should consider having multiple tabletop exercises that involve as many employees as possible and cover multiple agencies and disciplines.

During this exercise, coordinators should evaluate radio interoperability deficiencies. Civil rights activist groups should join the exercise/planning. County counsel and city attorney staff members should assist in quarantine and other legal issues. The delay in pondering whether to quarantine could cause additional deaths and disease outbreaks. Leaders should develop a model for the distribution of vaccines and antiviral medications to law enforcement employees to limit the spread of disease. Finally, local elected officials should participate in the tabletop exercise.

Conduct a Preparedness Day

Leaders should plan an emergency preparedness day. Every employee should receive disaster preparedness checklists and home supply kits that include water, food, first aid supplies, tools, and other emergency paraphernalia, such as bedding and clothing. Agencies should develop a business partner to widely advertise the preparedness day when employees and community members receive kits at little or no cost. Staff members should involve their extended family, which will enable them to respond to work knowing that their family is cared for and prepared at home.

Purchase Equipment

Departments should purchase personal protective equipment and develop training on its proper use for all employees, not just personnel in the field. In an informal survey of local agencies, many had bought the equipment but had not issued it to their employees for field use, citing restrictive wear regulations and training as reasons for failure to distribute.

CONCLUSION

Law enforcement organizations can start employee preparedness planning with minimal resources and develop plans specific to their own agencies. Perceptive leaders should

expect reductions in the workforce as some employees will be caring for others while some may be too sick or even too scared to report to work. The intuitive leader can use some of these strategies to maximize the department's effectiveness and meet the responsibilities to maintain public order during a pandemic. Research has demonstrated that officers deal better with the stresses of a pandemic when emergency preparedness planning is integrated into the mission of the department well beforehand.

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...departments regularly should discuss and distribute information regarding the legal issues surrounding quarantines....

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The lessons learned from other tragic events emphasize the need to have proper employee-based preparedness training. Having employees respond to work in the face of potentially great personal risk presents a monumental leadership challenge, but one that can be accomplished if certain

steps are followed. When leaders effectively prepare their personnel for a pandemic, the result is one of accomplishment and participation; when they do not, the outcome may be disastrous. ♦

Endnotes

¹ The U.S. government's Web site for information on pandemic flu and avian influenza (www.pandemicflu.gov) defines a pandemic as a global disease outbreak. A flu pandemic occurs when a new influenza virus emerges for which people have little or no immunity and no vaccine exists. The disease easily spreads from person to person, causing serious illness, and it can sweep across the country and around the world in a short time.

² For more information, visit http://www.whitehouse.gov/homeland/nspi_implementation.pdf.

³ The International Association of Chiefs of Police/National Law Enforcement Policy Center, *Policy Review* (Summer/Fall 2005) stated that the U.S. military should help maintain civil order to effectively deal with the potential wide spread of disease. For more information, visit <http://www.theiacp.org/pubinfo/PRNewsltrVol17No2.pdf>.

⁴ <http://www.pandemicflu.gov>

⁵ <http://www.pandemictoolkit.com>

⁶ <http://www.oes.ca.gov/Operational/OESHome.nsf/ALL/1057949F5AE3457F8825716A00777372?OpenDocument>

⁷ The possible events were discussed in detail, and, although not supported by research, they did allow for the initial discussion about how a department could prepare its workforce emotionally for a pandemic event. The list of possible trends was not intended to be exhaustive or all-conclusive but, rather, a starting point to assist leaders in the creation of a vision for their departments.

⁸ For additional information, visit <http://www.threestarleadership.com>.

Followership The Natural Complement to Leadership

By Richard Martin



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The greatest danger for most of us is not that our aim is too high and we miss it but that it is too low and we reach it.

—Michelangelo

While leaders in law enforcement organizations constitute an important element in the success of their agencies' missions, equally significant are those who follow. One cannot exist without the other, and the success of any department depends upon both elements working in concert toward common organizational goals. Leaders make decisions on policy and oversee the development of plans for the success of the organization. Followers implement these plans and carry them through to completion. Although separate entities, leaders and followers are indelibly connected.

IMPORTANCE OF FOLLOWERSHIP

American culture usually does not hold followers in very high regard. Fascination with leaders far outweighs any consideration for followers. But, at some point, everyone is following, rather than leading.

Being a follower forms a natural part of life. Even leaders will transition from leading to following on numerous occasions every day. Indeed, with few exceptions, most people will spend the majority of their lives in a followership role. Yet, followership, or the act of following a leader, rarely garners the research community's attention and, subsequently, is not as well understood as leadership.

To begin research on the topic, it is necessary to first understand *why* followership is worth studying.¹ Although the concept seems self-explanatory and relatively simple, analyzing it can provide a greater understanding of leadership that, in turn, can foster the development of ways to enhance an organization's success.

As the term suggests, a follower is a person who follows the leadership of another. But, it is

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Ten Rules of Good Followership

1. Don't blame your boss for an unpopular decision or policy. Your job is to support, not undermine.
2. Fight with your boss if necessary, but do it in private. Avoid embarrassing situations and never reveal to others what was discussed.
3. Make the decision, then run it past the boss. Use your initiative.
4. Accept responsibility whenever it is offered.
5. Tell the truth and don't quibble. Your boss will be giving advice up the chain of command based on what you said.
6. Do your homework; give your boss all the information needed to make a decision; anticipate possible questions.
7. When making a recommendation, remember who probably will have to implement it. This means you must know your own limitations and weaknesses, as well as your strengths.
8. Keep your boss informed of what's going on in the unit.
9. If you see a problem, fix it. Don't worry about who would have gotten the blame or who now gets the praise.
10. Put in more than an honest day's work, but don't ever forget the needs of your family.

Source: Phillip S. Meilinger, "The Ten Rules of Good Followership," AU-24 Concepts for Air Force Leadership; retrieved on February 6, 2007, from <http://www.au.af.mil/au/awc/awcgate/au-24/meilinger.pdf>.

much more than that. Followership actually represents an interaction that occurs when subordinates work concurrently with leaders toward a goal of the organization. When viewed in this context, it becomes obvious why the law enforcement profession should examine the concept of followership.²

TRAITS OF EFFECTIVE FOLLOWERS

Understanding followership is paramount for navigating the complexities involved in encouraging subordinates to do their best. Effective followers are invaluable for their many sought-after traits, such as intelligence, independent thinking, self-reliance, and dependability, that can lead to accomplishing an agency's goals.

Intelligence

Intelligence, perhaps, is the most important characteristic inherent in effective followers and holds the key to all of the other aspects of such individuals. Intelligence allows followers to think for themselves and not rely solely upon a leader for guidance in the performance of their duties.

Independent Thinking

Independent thinking, while indicative of great leading, also lends itself to effective following. The ability to think independently means that a person does not wait to be told what to do. Instead, independent thinkers look ahead to determine what needs to be done. In doing so, they can anticipate

problems and creatively develop plans to deal with potential difficulties *before* they occur.

Self-Reliance

When people can think for themselves and seek solutions to their own problems, they become self-reliant, another quality present in effective followers. Such subordinates can ease the burdens placed on their leaders. Self-reliance allows followers to function without specific instructions from their superiors.

Dependability

Just as self-reliance is linked to independent thinking, dependability is connected to self-reliance. Indeed, this trait may represent a crucial characteristic of effective followers. It enables leaders to trust their subordinates and depend on them to follow directives, thereby accomplishing organizational goals.

Additionally, such employees assume responsibility for their actions—both good and bad. That, in turn, facilitates their willingness to take certain

risks. Employees who evade responsibility for their own conduct also avoid risks, no matter the possible gains. Many great accomplishments have resulted from those willing to extend themselves to try new approaches while, at the same time, remaining completely aware that the failure of such actions ultimately would rest with them.

Related to this trait of taking responsibility is the need for effective followers to speak truthfully. Understandably, this can come with a certain amount of risk. However, an organization can become crippled if its employees fail to voice their honest opinions when they run contrary to those of the agency's leaders.

LEADER-FOLLOWER RELATIONSHIP

Filling a leadership position does not make a person a leader; a distinction must be made between the two. Leadership positions are a formality. Rank structures ensure that all personnel know who *technically* is in charge. Leaders, on the other hand, may not necessarily hold such positions but

Additional Resources

- R. Kelley, "In Praise of Followers," *Harvard Business Review*, November-December 1998.
- Sharon Latour, "Dynamic Followership: The Prerequisite for Effective Leadership," *Air & Space Power Journal*, Winter 2004 (<http://www.au.af.mil/au/awc/awcgate/documents/latour2.doc>).
- J. Rosenau, "Followership and Discretion: Assessing the Dynamics of Modern Leadership," *Harvard International Review*, Fall 2004.
- W. Bennis, *An Invented Life: Reflections on Leadership and Change* (Upper Saddle River, NJ: Addison-Wesley, 1993).
- Robert Earl Kelley, *The Power of Followership: How to Create Leaders People Want to Follow and Followers Who Lead Themselves* (New York, NY: Doubleday-Currency, 1992).

be recognized simply by the influence they have on others around them.

The traits of effective followers are quite similar to those of effective leaders. Therefore, by concentrating efforts on developing competent followers, agencies, in essence, are creating their future leaders.

Proficient followers regard themselves as equals with their leaders. They do not consider their leaders as necessarily superior. That does not mean that their leaders may not possess greater knowledge regarding a specific job or task. Instead, it refers to the idea that, given the opportunity to learn, the follower is just as intelligent and capable as the leader. The concept of equality may threaten some leaders who mistake it for arrogance or even possible insubordination. Because capable followers voice their concerns and offer suggestions, some leaders may take this as a challenge to their authority. But, adept leaders of strong character would not view it this way and, instead, would see it as an opportunity to play a part in developing their followers into future leaders. After all, the education and growth of their subordinates constitute major objectives for leaders.

ORGANIZATIONAL CLIMATE

The climate of the organization plays a pivotal role in whether in-depth follower development will take place. If leaders feel compelled to protect their positions and make themselves indispensable by withholding certain knowledge from their subordinates, full followership development will not occur. Agencies must ensure that their personnel feel secure in their positions.

In addition, departments must demonstrate to all of their employees that working together

to achieve goals is in everyone's best interest. To this end, organizations must recognize exemplary performance and reward it appropriately. When leaders create an environment where followers are assured that hard work will not go unnoticed, they establish a foundation for accomplishing organizational goals while, simultaneously, allowing for the greatest development of the individual. This reinforces the concept that *all* members are followers.

CONCLUSION

Followership is an integral part of any law enforcement agency. Leaders cannot exist without followers. Throughout their lives and in any organization, employees will spend the majority of their time in a follower role as opposed to a leadership position.

Many of the traits that denote effective followers are

the same as those exhibited by the best leaders. That is why it is incumbent upon agencies to develop their followers. By creating an environment whereby followers can fully recognize their abilities, departments can enhance the accomplishment of their goals. Additionally, by developing their followers, organizations ensure an ample pool of future leaders. ♦

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Although separate entities, leaders and followers are indelibly connected.

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Endnotes

¹ For examples, access *The Balance of Leadership and Followership: Working Papers* at http://www.academy.umd.edu/publications/klspdocs/follower_index.htm; retrieved on February 6, 2007.

² For additional information on the concept, see Robert E. Kelley, *The Power of Followership: How to Create Leaders People Want to Follow and Followers Who Lead Themselves* (New York, NY: Doubleday-Currency, 1992); and Ira Chaleff, *The Courageous Follower: Standing Up to and for Our Leaders*, 2nd ed. (San Francisco, CA: Berrett-Koehler, 2003).

Leadership Spotlight

The Psychology of Leadership

If you want to manage somebody, manage yourself. Do that well, and you will be ready to stop managing and start leading.

—Scottish scholar

Leadership is an influence process. It is working with people to accomplish their goals, as well as those of the organization. An important difference between leaders and managers is the ability to inspire those we lead. The most effective leaders can instill passion and provide ethical direction to followers by using subtle psychology to affect those individuals either consciously or unconsciously. In the words of General Norman Schwarzkopf, “Leadership is confidence... but, far more important, leadership is character.”

Leadership comes more easily for some and harder for others, yet everyone needs to consciously hone their leadership abilities. The conscious leader applies a variety of psychological tactics that affect the reactions of an individual or a group to the environment in which they exist. Leadership is not about changing the mindset of the group but, instead, is the active cultivation of an environment that brings out the best in

people. Everyone has surroundings that bring out different facets of their own identity, and each facet is driven by emotionally charged perceptions within each environment. To lead, one must create a platform through education and awareness where individuals fulfill the needs of each other.

In *The Fifth Discipline*, Peter Senge observed that to be an effective leader, one must have a clear vision of the path and the ultimate destination, and that vision must be shared. A vision truly is shared when leaders and their followers have a similar picture and are committed to one another to achieve that vision.

This is best accomplished when leaders take an active, conscious effort to engage in the art and practice of leadership. ♦

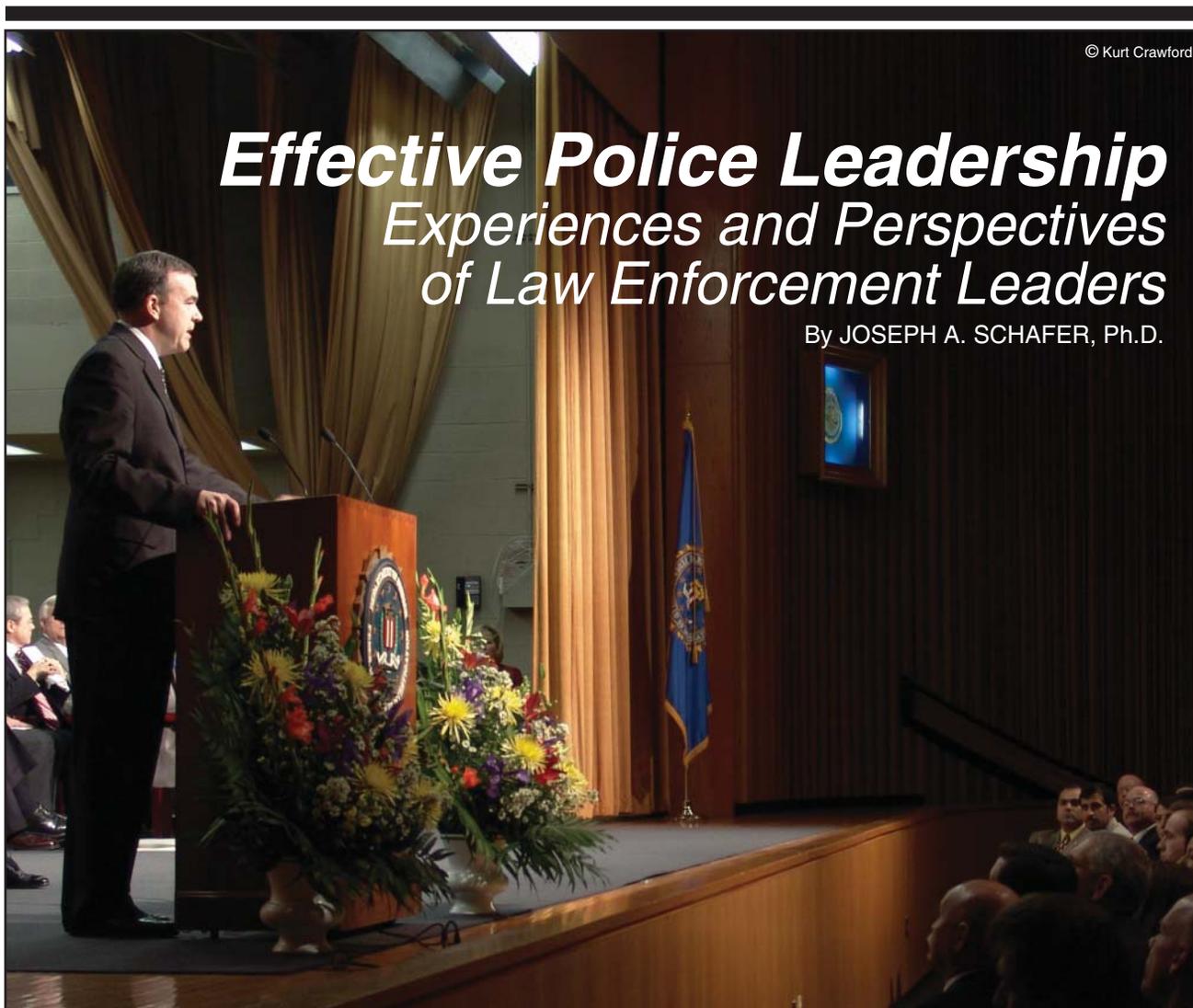
CONSCIOUS LEADERSHIP

Special Agent David Rushing, an instructor in the FBI's Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Effective Police Leadership

Experiences and Perspectives of Law Enforcement Leaders

By JOSEPH A. SCHAFER, Ph.D.



Leadership represents a crucial determinant of police organizational efficacy. Supervisors and others in formal positions of power must engage, motivate, and guide subordinates, community members, and other local officials. The evolving vision of patrol officers has led to a rethinking of the role of leadership even among those not possessing conventional supervisory control. Contemporary discussions

about patrol personnel suggest that “every officer is a leader.”¹ Agencies desire frontline employees who can lead citizens during chaotic situations, facilitate and direct problem-solving activities, and make neighborhoods safer.

Despite the centrality of leadership within policing, the vast majority of what is written about the subject uses data developed in other occupational and professional contexts,

especially the military and corporate worlds. While some aspects of organizations and leadership may translate easily into public safety settings, not all transfer universally. Consequently, most information about police leadership is based on anecdotes and case studies; little comes from systematic and broad research efforts.

This knowledge gap results in the presumption that what works in the military

and corporate worlds also will apply to the law enforcement profession. Such supposition, however, leaves many key questions about police leadership unanswered.

- What is effective leadership in policing? Is it the same in agencies of different sizes and cultures and in other professions? How can it be measured and evaluated?
- Are leaders born or made? How can departments recognize officers who display leadership ability? How can they develop this quality?
- What are the barriers to the expansion of effective leadership? What factors prevent officers from being more effective leaders? What traits and habits do effective police leaders exhibit?

To help answer these questions, the author offers the findings from his recent study on police leadership. By asking law enforcement leaders what they thought effective leadership involved, he hoped to gain further insight into an area of great concern to the profession.

STUDY PARTICIPANTS

While serving as a visiting researcher in the Behavioral Science Unit at the FBI Academy, the author surveyed National Academy (NA) attendees to assess their views of and experiences with leadership.² Over a 12-month period, he gave these command-level law enforcement officers the opportunity to complete a brief questionnaire during their first week in residence.³ Out of about 1,000 NA attendees, approximately three-quarters completed

the survey, which asked them to describe effective leadership, discuss how it could be measured, consider their experiences with leadership, suggest how to develop it, and identify the traits and habits of effective and ineffective police leaders. Additionally, the author interviewed some of these officers individually and in groups to further assess experiences and perceptions.

These NA attendees comprised an interesting research population. Although they did not meet strict scientific standards as a random sample, they represented a range of law enforcement organizations from across the country and around the world. They served in agencies of all shapes and sizes that had diverse missions, budgets, selection and training procedures, and operational styles. They brought a variety of experiences, educational backgrounds, and career histories to the study. While all had some level of supervisory authority, most did not head their employing agency. This proved particularly interesting when considering leadership: not only did they hold positions where they were expected to exhibit sound leadership but they also confronted the leadership styles and skills (or lack thereof) of both supervisors and subordinates. Viewed in this way, NA attendees provided a rich cross section



Dr. Schafer is an associate professor at Southern Illinois University's Center for the Study of Crime, Delinquency, and Corrections in Carbondale.

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A large portion of the study focused on developing a deeper understanding of effective leadership in policing.

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of perspectives into aspects of police leadership. The remainder of this article summarizes the key sentiments that NA attendees expressed regarding a range of leadership topics.

NATURE OF EFFECTIVE LEADERSHIP

A large portion of the study focused on developing a deeper understanding of effective leadership in policing. Discussions concerning leadership efficacy, however, first require a definition of that concept. In general, NA attendees felt that effective leadership is the achievement of organizational and unit goals, objectives, and missions. It involves moving a group of employees in the proper direction to achieve these desired outcomes. At times, this means influencing others to do what they otherwise would not do. The attendees kept this definition in mind when answering specific questions concerning effective leadership in policing.

What Is Effective Leadership in Policing?

To NA attendees, effective leadership is the process of setting a proper example for other officers by showing them how to police in a manner that is fair, service oriented, professional, and within the standards and expectations of the community. Effective leadership involves a set of actions and initiatives

to better the agency and the community it serves while also protecting the welfare, well-being, and interests of employees and the citizens they protect.

Is the Definition Universal?

Defining and discussing effective leadership in policing can raise a number of important secondary questions that consider how policing relates with other professions and how law enforcement organizations

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NA attendees felt that effective leadership, in general, was achieved through the use of common leader traits and habits.

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vary based on size, type (local, county, state), and culture. Is the definition of effective leadership generally universal across different agencies? NA attendees felt that little about the definition of effective leadership changed based on a department's size, type, and culture. Instead, they believed that the specific tactics and styles used by leaders, the agency's mission and goals, its resources, and the constraints and demands under which it operated could

vary. Overall, the study showed that while the core definition of effective leadership generally did not change across departments, differences did occur in agency context, such as the nature of the community and local culture.

A second consideration related to the extent to which effective leadership in policing was the same as effective leadership in other occupational contexts. NA attendees felt that effective leadership, in general, was achieved through the use of common leader traits and habits. They believed that in policing, versus other contexts, organizations tend to have a more rigid structure and are significantly different because of the capacity to use force and deny freedoms. They also thought that the nature of police work and the legal and symbolic importance of trust and ethics embedded in the profession require leaders to demonstrate more honesty and integrity than those in many other occupations.

How Can It Be Measured and Evaluated?

NA attendees felt that a number of indicators could determine whether a leader is effective. First, as implied by the definition, effective leaders demonstrate the achievement of organizational and unit goals and objectives. Next, they recruit and retain employees who

become successful and productive, generating quality work while demonstrating a positive attitude toward the job and the agency. Finally, effective leaders and their departments have a favorable image within their communities and among their peers and employees and do not generate a high volume of formal complaints or informal dissatisfaction.

Are Leaders Born or Made?

This age-old question found within leadership literature frequently is answered through biographical examples of recognized leaders. The leadership sections of libraries and book stores often contain a number of texts that offer accounts of great military, political, and corporate leaders.⁴ Other examinations of this issue consider whether cultural and social events forge great leaders within the crucible of adversity, such as seen in World War II.

NA attendees tended to believe that both explanations held some truth in understanding the emergence of leaders. While most people have some innate leadership traits and skills, the attendees felt that leaders step up to challenges and seek ways to better themselves and others. Leaders pursue education, training, experiences, opportunities, and mentoring that allow them to build upon and further develop their natural skills and

abilities. Although not necessarily born as strong leaders, these individuals possess a work ethic, drive, and desire that push them toward self-improvement. Perhaps not forged in the crucible of war, effective leaders tend to rise to the challenges of their local environment.



What Prevents the Expansion of Effective Leadership?

Regardless of the wealth of material about the importance of strong leaders, a deficiency of such individuals exists in most organizations. NA attendees reflected on the aspects of police organizations that seemed to prevent the growth of effective leadership within the profession. They felt that those in positions of formal authority tend to engage in more management than leadership; the relationship between these two concepts proves fundamental.⁵ Even more problematic, some

in positions of authority micro-manage, not allowing subordinates to exercise discretion and freedom in the performance of their duties. This stifles the emergence of leadership skills. Having the chance to practice being a leader and, perhaps, encountering some failure represents a significant element in developing future leaders. This opportunity, however, requires current leaders to grant freedom to subordinates, something micromanagers rarely do.

In addition, NA attendees thought that leaders may encounter resistance from those they seek to influence. While the process of leading includes finding ways to convince others to do things they would prefer not to do, it also assumes a certain degree of compliance and cooperation on the part of the “others.” Capable leaders can encounter difficulties in the face of poor followership, egotism, and resistance to change from those they seek to influence.

Finally, the attendees felt that those external to the police organization can affect its leaders. District attorneys, city and county officials, legislative bodies, judges, and citizens all make decisions that relate to a department’s budget, policies, and procedures in a way that limits the range of choices available to leaders. The attendees cited interpersonal dynamics and politics (broadly defined) as

influencing the choices leaders, especially those elected or appointed, can make. Determining the correct action to take in a given situation can be a complicated process because of limited resources. It may prove easier to identify a proper course of action than to secure the necessary money, personnel, materials, training, and approvals. To this end, the attendees thought that inadequate opportunities for training and education and insufficient mentoring can prevent officers from practicing and improving their leadership skills.

TRAITS AND HABITS OF LEADERS

Many of the questions posed to NA attendees dealt with issues of academic and philosophical relevance that appeared somewhat removed from the everyday environments of police supervisors and leaders. Although important in understanding leadership and its development, such topics offer limited assistance to those currently seeking to provide quality leadership within a modern law enforcement organization. Of greater relevance is consideration of effective leaders, in particular the traits and habits contributing to leadership success.⁶ Some attendees were asked to describe the traits, habits, and routines of police leaders they considered particularly

effective. Conversely, other attendees were asked to comment on ineffective leaders and detail what they did or failed to do that caused inefficacy.

Effective Leader Responses

Although law enforcement agencies vary in their missions, goals, and strategies, effective leaders set an example of how to carry out policing and embody the tone, tactics, and philosophy within a given organization. NA attendees repeatedly identified leadership by example as a key personality trait of

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...the attendees felt that those external to the police organization can affect its leaders.

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effective leaders who possess a high level of honesty and integrity. Unlike other career fields, the trust and legal responsibilities associated with law enforcement make these two traits key factors in the efficacy of all employees. Leaders who exude honesty and integrity not only set a proper example for others in their organization but also demonstrate their trustworthiness. Attendees indicated that

trust was central to leadership efficacy. The physical, legal, and other risks associated with policing make trust a central concern; trust ensures that officers will follow the vision and direction of their leaders.

Other traits that NA attendees considered important included valuing input from coworkers, subordinates, and others. Though decisive in action, effective leaders recognize that improvements always can be made. They know that strong communication and listening skills are crucial and that sometimes they must explain their decisions and actions to ensure compliance and support. Effective leaders also understand the human aspect of being a leader. They show concern for the emotional well-being of their coworkers and subordinates by demonstrating compassion and respect.

Fairness and courage also were of key importance to NA attendees. Officers are expected to treat citizens with fairness, respect, and dignity while showing courage in the performance of their sworn duties. Likewise, effective leaders must exhibit these same traits. They display courage by sometimes making unpopular yet correct decisions. They perform their duties ethically and appropriately and never ask others to do more than they will do themselves. While they do not shy away

Traits of Effective Leaders

- Set a proper example and demonstrate trustworthiness
- Consider input from others
- Accept responsibility and admit mistakes
- Make informed decisions based on appropriate research and study
- Treat all employees fairly and with dignity
- Allow subordinates to handle duties commensurate with their skills and level of authority

from becoming involved in situations requiring their leadership skills, they also recognize when to allow subordinates to handle incidents commensurate with their skills and level of authority.

Using appropriate information to form sound decisions ranked high with NA attendees. Effective leaders research situations (or delegate that task) so they can base their decisions on reasonable assessments of relevant data. This requires them to be knowledgeable, aware of current innovations, and willing to try new ideas and tactics. To achieve efficacy, leaders must continue to educate themselves through reading, research, and attending conferences and training.

Finally, to be effective, leaders must understand the crucial importance between leadership and management. Though management skills are

helpful in some aspects of the profession, NA attendees indicated that policing needed more leadership from supervisors and others throughout the organization. In particular, effective leaders avoid micromanaging the actions of subordinates and coworkers. They set a proper tone, show how the job is to be done, and give others the freedom to find ways to complete assigned duties within those parameters.

Ineffective Leader Responses

NA attendees felt that ineffective leaders tend to be motivated by their personal self-interests. They seek positions of authority because they enjoy the power, prestige, status, or money and not because they have a desire to serve the needs of the organization. Ineffective leaders generally have poor communication skills. They may hear the

views and perspectives of others but do not truly listen. They often lack strong interpersonal skills and show little concern or compassion for others. This failure to connect limits their ability to convince subordinates to follow their lead.

Another trait that NA attendees described involved a rigid leadership or policing style. These leaders unwillingly adopt new methods, procedures, or ways of thinking. Although leadership involves moving individuals and organizations toward new and better ways of operating, ineffective leaders remain tied to current and past objectives. Often not grounded by known beliefs, ineffective leaders can be unpredictable. Consequently, their actions appear capricious and arbitrary. Subordinates suffer because they are unsure how to act in a manner consistent with the leader's vision, typically because the leader has no vision. The past actions of ineffective leaders may have resulted in the loss of respect from subordinates who now view them as incompetent, shortsighted, arbitrary, vindictive, or incapable of making critical and difficult decisions.

NA attendees also thought that ineffective leaders spend their time and energy managing and micromanaging, instead of leading. They dictate to others

and make unilateral decisions, rather than involving others and seeking their input. Such actions often frustrate subordinates and limit the development of future leaders, including likely successors.

Finally, NA attendees deemed leaders ineffective for failing to act. Because they have not embraced the notion of leadership, they do not seek to inspire and motivate subordinates. Ineffective leaders may exhibit a double standard in their work ethic, expecting more than 100 percent from their employees while appearing to do little actual work themselves. Failing to set a proper tone of professionalism, dedication, and vigilance makes it unlikely that subordinates will exhibit these desired work habits. Most critical to NA attendees, some ineffective leaders fail to act altogether. When they must make difficult, complex, and important decisions, these leaders delay, defer, or ignore the matter.

CONCLUSION

Increasingly, law enforcement organizations are recognizing the importance of leadership development and evaluation. Moving into these new domains requires that agencies develop definitions of what effective leadership means in their own communities and organizational context. Equipped with this definition, they can

begin to consider how to evaluate leadership potential among newer officers. This process also enables departments to work toward the improvement of leadership skills among current and future leaders.

A variety of new and innovative development programs have emerged in recent years, though clear evidence of their efficacy remains elusive. The key is to continue to strive for leadership development, both

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Attendees indicated that trust was central to leadership efficacy.

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individually and organizationally. At the end of the day, effective leaders may be those individuals who continually strive toward self-improvement. This ongoing pursuit undoubtedly will ensure that others emulate this quality, strengthening not just the skills of the leaders themselves but also elevating the leadership performance of those around them. ♦

Endnotes

¹ Terry D. Anderson, Kenneth Gisborne, and Patrick Holliday, *Every Officer*

Is a Leader: Coaching Leadership, Learning, and Performance in Justice, Public Safety, and Security Organizations, 2nd ed. (Victoria, BC: Trafford, 2006).

² Operational since 2004, the Futurists in Residence (FIR) program is part of the Futures Working Group, a partnership between the FBI and the Society of Police Futurists International (<http://www.policefuturists.org>). It affords researchers and practitioners an opportunity to conduct original research. See the April 2008 edition of the *FBI Law Enforcement Bulletin* for the recent FIR effort on recognizing laser threats.

³ The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects. Between 200 and 250 officers from a mixture of small, medium, and large organizations attend each session.

⁴ Two recent books have taken this approach in studying police leadership: M.R. Haberfeld, *Police Leadership* (Upper Saddle River, NJ: Prentice Hall, 2006); and Renford Reese, *Leadership in the LAPD: Walking the Tightrope* (Durham, NC: Carolina Academic Press, 2005).

⁵ For a discussion of how these two concepts relate to one another, see Gary Yukl, *Leadership in Organizations*, 5th ed. (Upper Saddle River, NJ: Prentice Hall, 2002), 5-6.

⁶ For two of the seminal discussions of these matters in nonpolicing contexts, see Warren Bennis, *On Becoming a Leader* (New York, NY: Basic Books, 2003); and John W. Gardner, *On Leadership* (New York, NY: The Free Press, 1990).

The author thanks the members of the Behavioral Science Unit at the FBI Academy for their cooperation and hospitality, particularly its chief, Special Agent Harry Kern; Dr. Carl Jensen, a retired special agent; and Dr. John Jarvis. He also thanks all of the participants from National Academy Sessions 226 through 229 for their cooperation and candor.

Processing Domestic Violence Cases

The Bureau of Justice Statistics report *State Court Processing of Domestic Violence Cases* examines domestic and nondomestic violence cases filed in May 2002 in 15 large urban counties. The study compares the domestic and nondomestic offenses of sexual and aggravated assault on 11 prosecution, conviction, and sentencing outcome measures. In addition, the report provides data regarding court-issued protection orders, guilty plea versus trial convictions, and the demographic characteristics of domestic violence defendants. Of particular interest, the findings reveal that one-third of violent felony defendants were charged with domestic violence; those individuals prosecuted for domestic sexual assaults had a higher overall conviction rate (98 percent) than those for nondomestic sexual assaults (87 percent); and domestic aggravated assault defendants (54 percent) were less likely to be granted pretrial release than those involved in nondomestic aggravated assaults (62 percent). Readers interested in obtaining this report (NCJ 214993) can access the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.org>.

Child Sex Offenses

The Bureau of Justice Statistics report *Federal Prosecution of Child Sex Exploitation Offenders, 2006* presents federal criminal case processing statistics on child sex offenses, including sex transportation, sexual abuse, and child pornography. The bulletin includes data on case processing, such as the number of cases referred, prosecuted, and convicted. It provides defendant characteristics at initial hearing for the three types of offenses and contains data on changes in the number of defendants charged from 1994 to 2006. Some of the findings revealed that a total of 2,039 suspects were prosecuted for federal sex offenses in 2006, representing about 2.5 percent of the 83,148 suspects prosecuted in federal courts. The main sex exploitation offense referred to U.S. attorneys shifted from sex abuse (73 percent) in 1994 to child pornography (69 percent) in 2006. Convicted sex offenders sentenced to prison increased from 81 percent in 1996 to 96 percent in 2006. To obtain a copy of the complete report (NCJ 219412), access <http://www/ojp.usdoj.gov/bjs/pub/pdf/fpcseo06.pdf>.

Mental Health Courts

Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court, a Bureau of Justice Assistance report, identifies 10 essential elements of mental health court design and implementation. Each element contains a short statement describing criteria mental health courts should meet followed by several paragraphs explaining why the element is important and how courts can adhere to it. Although both adult and juvenile mental health courts have emerged in recent years, this publication pertains only to adult ones primarily for two reasons: 1) currently, only a few mental health courts target juveniles and 2) the significant differences between the provision of services for the two populations make it difficult to develop a document that encompasses both. The complete report (NCJ 221523) is available at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.org>.

School Crime

Indicators of School Crime and Safety: 2007 contains data on crime and safety at school from the perspectives of students, teachers, principals, and the general population. A joint effort by the Bureau of Justice Statistics and the National Center for Education Statistics, this annual report examines crime occurring in school, as well as on the way to and from school. It also provides the most current detailed statistical information on the nature of crime in schools, school environments, and responses to violence and crime at school. The information came from an array of sources, including the National Crime Victimization Survey (1992-2005), the School Crime Supplement to the National Crime Victimization Survey (1995, 1991, 2001, 2003, and 2005), the Youth Risk Behavior Survey (1993, 1995, 1997, 1999, 2001, 2003, and 2005), the School Survey on Crime and Safety (1999-2000, 2003-2004, and 2005-2006), and the School and Staffing Survey (1993-1994, 1999-2000, and 2003-2004). Specifically, from July 1, 2005, through June 30, 2006, 35 school-associated violent deaths occurred in elementary and secondary schools in the United States. In the 2005-2006 school year, 78 percent of schools experienced one or more violent incidents of crime, 17 percent had one or more serious violent incidents, 46 percent recorded one or more thefts, and 68 percent experienced another type of crime. In 2005, approximately 6 percent of students 12 to 18 years of age reported that they avoided school activities or one or more places in school because they thought someone might attack or harm them. The report (NCJ 219553) is available at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.org>.

ViCAP Alert

Unidentified Recovered Body (Revised)

*Revision:
The retouched photograph
has been created and
added to this ViCAP Alert
in an effort to identify
“Jane Doe.”*



*Photograph that appeared in
previous ViCAP Alert.*



*Retouched photograph created
by the Special Projects Unit,
FBI Laboratory.*

On March 18, 2007, the nude body of an unidentified female, “Jane Doe,” was found in Prairie View, Waller County, Texas, near U.S. Highway 290. Prairie View is approximately 50 miles northwest of Houston, Texas.

The victim appears to be white or Hispanic, approximately 30 years old, 5 feet 4 inches tall, 151 pounds, with brown hair and green eyes. Her teeth were decayed; a dental chart is available for comparison purposes. Officials believe that she had been dead approximately 2 hours.

A plastic bag had been placed over the victim’s head and secured with duct tape around her neck. In addition, her hands had been severed from the body and have not been found. The ends of her arms were covered with the same type of plastic bag used to cover her head and were secured to her arms with duct tape. The victim’s head hair and pubic hair had been closely cut. She died of asphyxia due to external neck compression (the hyoid bone was broken).

Alert to Law Enforcement Agencies

The Prairie View Police Department, Texas Department of Public Safety, and FBI Violent Criminal Apprehension Program (ViCAP) Unit

request assistance in identifying the victim to determine when and where she disappeared and fell victim to this crime. The unique circumstances of her demise indicate the offender may have committed this type of crime in the past. Law enforcement agencies should bring this information to the attention of all homicide, cold case, missing persons, and crime analysis units. If any agency has a similar case (or cases), please contact one of the following individuals:

Sergeant Brian Taylor
Case number RA-2007-00126
Texas Department of Public Safety
979-865-3111
brian.taylor@txdps.state.tx.us

Lieutenant Wilbert White
Case number 07-0318-01
Prairie View Police Department
936-857-3521
white7711@aol.com

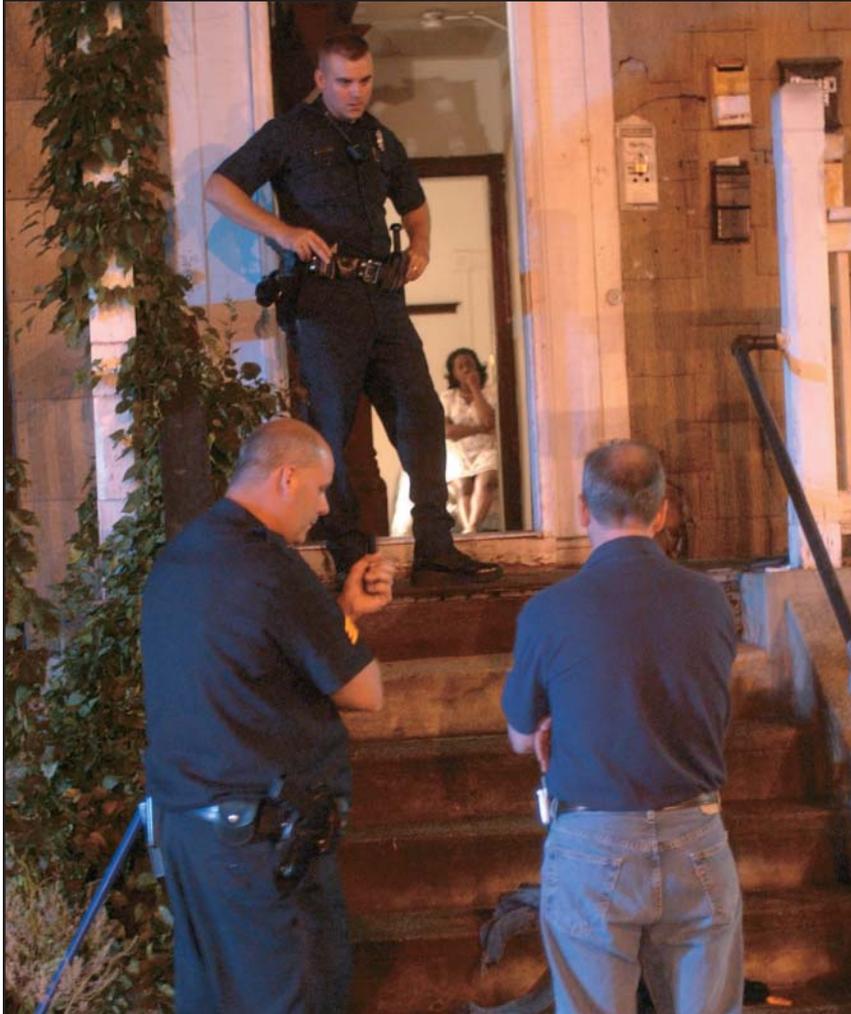
Crime Analyst Rick Blankenship
Case number 2007TX00009
FBI ViCAP Unit
703-632-4191
rblanken@leo.gov

Questioning “Authority”

Fourth Amendment Consent Searches

By CARL A. BENOIT, J.D.

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The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated....”¹ The scope of this language is

vast, but one protection firmly rooted within its terms is the protection afforded to the privacy of a person’s home from unreasonable government intrusion.² Thus, the Fourth Amendment consistently has been interpreted by the U.S. Supreme

Court to prohibit law enforcement from entering a residence without a valid warrant, subject to a few jealously guarded exceptions.³ One such exception to this general prohibition applies to entry made into a residence by police officers who obtain voluntary consent. Frequently, police officers seek consent to enter a residence to conduct an additional search once inside. This article examines the use of voluntary consent to permit police officers to make warrantless entries into a person’s home and discusses the limitations placed on this authority.

The reliance on an individual’s consent is a well-known and lawful tool police officers often rely on to conduct searches and seizures in a wide variety of situations and circumstances. The Supreme Court has recognized the lawfulness of the use of consent and has explained:

in a society based on law, the concept of agreement and consent should be given a weight and dignity of its own. Police officers act in full accordance with the law when they ask citizens for consent. It reinforces the rule of law for the citizen to advise the police of his or her own wishes and for the

police to act in reliance on that understanding. When this exchange takes place, it dispels inferences of coercion.⁴

The legal effect of the consent given is clear—it acts as a waiver of the Fourth Amendment in the particular situation in which it was obtained.⁵ However, when police officers seek to rely on consent to justify a warrantless entry into a residence, the Fourth Amendment imposes several requirements that must be satisfied for the entry to be lawful. It is important to note that because consent is considered an exception to the search warrant requirement, the burden to prove that these elements are satisfied is with law enforcement.⁶ The first requirement of consent is that of voluntariness.

THE REQUIREMENT OF VOLUNTARINESS

The Fourth Amendment requires police officers to prove that consent to enter a residence was given voluntarily and was not the product of duress or coercion.⁷ In *Schnekloth v. Bustamonte*⁸ the Supreme Court held that “the question whether consent was in fact ‘voluntary’...is a question of fact to be determined from the totality of the circumstances.”⁹ The application of this test requires a court to examine the circumstances that surround the situation in which the consent was obtained. Accordingly, there are three areas that generally are of concern: the characteristics of the consenting party, the actions/behavior of the police officers, and the environment of the questioning. Thus, courts have found relevant factors

used to determine the question of voluntariness to include (but are not limited to) the following factors: 1) the age, intelligence, and physical condition of the consenting party; 2) coercive police behavior, such as the language used to request consent; and 3) the length and location of the questioning.

Under the totality of the circumstances test, no single factor controls the determination of voluntariness. However, common issues arise with respect to voluntariness that are well settled. One such area involves the question of whether police officers must advise a person of their right to refuse the request. The U.S. Supreme Court addressed this issue and ruled that no requirement exists under the Fourth Amendment to inform an individual that they have the right to refuse to give consent.¹⁰ Knowledge of the right to refuse to grant consent simply is one factor the courts consider when determining the question of voluntariness. However, recognizing the importance of this factor in the totality of the circumstances, many agencies direct their officers to advise individuals of their right to refuse, when practicable, as a matter of policy. Additionally, because the test for consent is one of voluntariness, police officers may seek to obtain consent from an individual who has been



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The Fourth Amendment requires police officers to prove that consent to enter a residence was given voluntarily and was not the product of duress or coercion.

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lawfully detained or arrested.¹¹ Simply stated, “[a] person placed in official custody is not rendered incapable of giving his free and voluntary consent to a warrantless search.”¹²

A common situation raising the question of voluntariness occurs when police officers, in requesting consent, advise the party that if they do not consent to the search, the officers will seek to obtain a search warrant authorizing the search. The general rule is that such statements made by police officers do not render the consent involuntary if there was a basis for the issuance of a search warrant.¹³ However, if a police officer claims to possess a warrant or other authority to conduct the search and a person permits the search because of this claim, but the officer, in fact, does not have a warrant or other authority to search, the consent obtained as a result will not be valid, and the evidence will be suppressed. Thus, officers cannot rely on consent when it is given in response to a misrepresentation of authority to search.¹⁴

In addition to the requirement that the consent be the voluntary choice of the person giving consent, police officers also must establish that the person providing consent had the lawful authority over the property or premises officers wish to search.

THE REQUIREMENT OF THE AUTHORITY OF A CONSENTING PARTY

When police officers seek to enter a residence based on consent, they must obtain consent from a person who has the actual or apparent authority to grant the consent. The simplest case of authority occurs when an individual gives voluntary consent to the police officers to search property the individual exclusively possesses or uses.

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...officers cannot rely on consent when it is given in response to a misrepresentation of authority to search.

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The Fourth Amendment permits police officers to rely on the voluntary consent “from the individual whose property is searched” to conduct the search.¹⁵ More complicated cases involve obtaining consent from an individual who has common authority with other individuals over a residence.

Common Authority

Police officers frequently seek to obtain consent from a joint occupant of a residence,

rather than the defendant. The permissibility of relying on this consent to permit entry into a residence has been the subject of three cases decided by the U.S. Supreme Court. These cases provide police officers with a framework to analyze the Fourth Amendment implications of relying on consent from an individual who possesses common authority over a premises.

In *United States v. Matlock*,¹⁶ police officers arrested William Matlock for bank robbery in the front yard of the home that he shared with, among others, Gayle Graff and her parents. Even though the police officers knew that Matlock lived in the house, they did not ask him for consent to search. Instead, after arresting Matlock, three police officers went to the front door of the home and were let inside by Graff who was “dressed in a robe and holding her son in her arms.”¹⁷ The officers advised Graff that they were looking for a gun and money and asked for consent to search the house. Although Graff denied giving the officers consent at a suppression hearing, it was determined that Graff voluntarily consented to the search of the house, including the second-floor bedroom occupied by Matlock and Graff. During the search of the bedroom closet, police officers found \$4,995 in a diaper bag.¹⁸

The question before the Supreme Court was the admissibility of the seized money. A resolution of this question required the Supreme Court to determine whether the voluntary consent of a third party (Graff) to search Matlock's bedroom was legally sufficient to permit the introduction of the seized cash at Matlock's trial.¹⁹ After examining prior cases, the Supreme Court noted the following:

when the prosecution seeks to justify a warrantless search by proof of voluntary consent it is not limited to proof that consent was given by the defendant, but [the prosecution] may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.²⁰

To provide additional guidance on this matter, the Court added the following:

[c]ommon authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority that justifies the third party consent...rests rather on the mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants

has the right to permit inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.²¹

Thus, the question remaining for the Court to decide was whether the prosecution could meet this standard. The prosecution was able to establish that Graff and Matlock had represented themselves as husband and wife. At the time of the request for consent to search,

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Graff had told the officers that she and Matlock occupied the bedroom together. Shortly after, Graff told the officers that she and Matlock shared a dresser in the bedroom and that they regularly had slept in the bedroom, including the day of arrest.²² Based upon this information, the Court ruled that the government sustained its burden of proof to establish that "Graff's voluntary consent to search the

east bedroom was sufficient to warrant admitting into evidence the \$4,995 found in the diaper bag."²³

Apparent Authority

In *Illinois v. Rodriguez*,²⁴ police officers responded to a call for assistance from Gail Fischer. When the officers arrived, they met Fischer, who showed "signs of a severe beating."²⁵ Fischer told the officers that she had been assaulted earlier in the day by Edward Rodriguez and that Rodriguez was asleep in the apartment. During the conversation with the officers, Fischer referred to the apartment as "our" apartment and told the officers that she had clothes there. Fischer consented to go with the officers to the apartment. When they arrived, "Fischer unlocked the door with her key and gave the officers permission to search."²⁶ As they proceeded through the apartment to the bedroom, the officers observed drug paraphernalia and a substance they believed to be cocaine in plain view in the living room. The officers discovered additional drugs in the bedroom where Rodriguez was sleeping. The officers arrested Rodriguez and seized the drugs.²⁷ Rodriguez was charged with drug offenses and moved to suppress all evidence seized at the time of his arrest, claiming that Fischer did not have the authority to consent to the entry because

she had vacated the apartment several weeks earlier. The lower court ruled in favor of Rodriguez and suppressed the evidence. The court ruled that at the time of the search, Fischer did not have common authority over the apartment.²⁸ The decision was appealed to the U.S. Supreme Court.

The Supreme Court reaffirmed the general rule that voluntary consent is an exception to the Fourth Amendment's general prohibition of warrantless searches. According to the Court, voluntary consent can be obtained from either "the individual whose property is searched" or from "a third party who possesses common authority over the premises."²⁹ The Court then reviewed the evidence used by the lower court that established that Fischer moved from the apartment almost 1 month before the search, never went to the apartment when Rodriguez was not home, did not contribute to the rent, and did not have her name on the lease.³⁰ Based on these facts, the Supreme Court agreed that the state did not meet its burden of establishing that Fischer had common authority over the apartment.

The state contended that there was an alternative basis for upholding the search based on the police officer's reasonable belief that Fischer had the authority to give the consent.

Writing for a majority of the Supreme Court, Justice Scalia described this issue as "[w]hether a warrantless entry is valid based upon the consent of a third party, whom the police, at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not do so."³¹

In response to this claim, Rodriguez argued that "permitting a reasonable belief of common authority to validate an entry would" permit his Fourth

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[Officers] must obtain consent from a person who has the actual or apparent authority to grant the consent.
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Amendment rights" to be waived by another person.³² The Court did not agree. The Fourth Amendment simply assures Rodriguez that any government search of his property be reasonable. Thus, the real issue is not whether Rodriguez waived his rights to be free of searches, "but whether the right to be free of *unreasonable* searches has been *violated*."³³ To satisfy the Fourth Amendment's requirement of reasonableness, police

officers do not need to be correct in their factual determinations, they only need to be reasonable.³⁴ The Court held that the standard for determining consent to enter is an objective standard requiring a determination of whether "the facts available to the officer at the moment... 'warrant a man of reasonable caution in the belief' that the consenting party had authority over the premises."³⁵ The Court's language in this regard is instructive:

what we hold today does not suggest that law enforcement may always accept a person's invitation to enter a premises. Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry.³⁶

The Court then remanded the case to the Illinois Appellate Court to determine whether the police officers had a reasonable belief that Fischer had authority to consent to the entry of the premises.

Physically Present Objector

Neither *Matlock* nor *Rodriguez* presented the situation in which two people with common authority are physically present at the time that consent is

requested, but one party objects to the search while the other consents. Can police officers rely on the consent given by one person or must they honor the refusal? This question was answered in *Georgia v. Randolph*.³⁷

Janet Randolph called police after a domestic dispute with her husband, Scott, at their home that ended with Scott leaving with their child. When the responding police officers arrived, Janet told them that her husband used cocaine and that she had recently returned home after staying with her parents for a few weeks because of marital problems caused by her husband's cocaine habit. Scott Randolph returned soon after the police arrived, denied using cocaine, and claimed it was Janet who abused drugs. An officer and Janet left to reclaim the child and then returned to the scene, where she repeated allegations of Scott's drug use. She then told the officers that there were "items of drug evidence" inside the house.³⁸ When the officers asked Scott Randolph for permission to search, he refused. The officers then asked for and obtained Janet Randolph's consent to search. Janet brought an officer inside the home to Scott's bedroom where the officer observed a straw that appeared to have a cocaine residue. The police officer took the straw and both Randolphs to

the police station. The officers then obtained a warrant to search the home for evidence of drug use and seized more evidence, which was used to indict Scott Randolph for cocaine possession.³⁹

Before trial, Randolph sought to suppress all the evidence seized from his house "as products of a warrantless search of his house unauthorized by his wife's consent over his refusal."⁴⁰ The trial court refused to

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suppress the evidence, but, on appeal, the evidence was suppressed. The Georgia Supreme Court affirmed the appellate court's ruling and suppressed the evidence.⁴¹ The case was appealed to the U.S. Supreme Court.

The question before the Supreme Court was whether it was proper for the police officers to rely on "the permission of one occupant when the other, who later seeks to suppress the evidence, is present at the scene

and expressly refuses to consent."⁴² In this regard, the Court reviewed its consent cases involving authority, including both *Matlock* and *Rodriguez*, and noted that none of the cases involved "a second occupant physically present and refusing permission to search, and later moving to suppress evidence so obtained."⁴³

A resolution of this question requires an analysis of the basis for the co-occupant consent cases. The element present in each of these cases, according to the Court, is the "great significance given to widely shared social expectations..."⁴⁴

When authority over a premises is shared between tenants, it is understood that "any one of them may admit visitors" in the absence of the other.⁴⁵ Thus, the officers could rely on this usual understanding to permit their entry.⁴⁶

The facts in *Matlock* provide an example of common social understanding. When Mrs. Graff came to the door of the home with a baby, it was evident to the police officers that she belonged there, and the officers could rely on her consent to enter.

This normal social understanding holds true unless those living together "fall within some recognized hierarchy, like a household of parent and child or barracks housing military personnel of different

grades....”⁴⁷ Absent this relationship, there is no “recognized superior authority among disagreeing tenants,” and, thus, “there is no common understanding that one cotenant generally has a right or authority to prevail over the express wishes of another....”⁴⁸ Because one cotenant has no greater social or legal right over another present and objecting cotenant, a police officer, when confronted with this situation, cannot overcome the objection simply by relying on the consent of the nonobjecting cotenant. Based upon this, the Supreme Court held “that a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident.”⁴⁹ Thus, the evidence obtained against Scott Randolph was suppressed.

The Supreme Court was careful to note that this case did not involve a search based upon exigent circumstances and did not have “bearing on the capacity of the police to protect domestic victims.”⁵⁰ In this regard, the Court noted:

No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence;.... Thus, the question whether the

police might lawfully enter over the objection in order to provide any protection that might be reasonable is easily answered yes.⁵¹

A review of two federal appellate court decisions offers insight on the application of these principles. In *United States v. Hudspeth*⁵² police officers executing a search warrant for drugs at Hudspeth’s business located evidence of child pornography on a business

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The question of common authority must be determined by police officers based on the information and circumstances presented at the time.
”

computer. Hudspeth was arrested for possessing child pornography, and after receiving his *Miranda* warnings, Hudspeth made statements that led the officers to believe that Hudspeth’s home computer contained child pornography. Hudspeth refused to give the officers consent to search his home computer. Police officers then went to Hudspeth’s home and spoke with his wife. They identified themselves to her, informed her of her husband’s arrest, and

asked for consent to take the home computer. Mrs. Hudspeth asked the officers what would happen if she refused to consent, and she was told that they would apply for a search warrant and leave a police officer at the residence to prevent the destruction of evidence. Mrs. Hudspeth was *not* told that her husband had refused to give consent to search the computer. After trying unsuccessfully to contact her attorney, she gave the officers permission to take the computer. Evidence of child pornography was found on the home computer hard drive. Hudspeth moved to suppress this evidence. The lower court denied the motion to suppress, and Hudspeth appealed.

A panel of the Eighth Circuit Court of Appeals determined that the search of the home computer violated *Georgia v. Randolph* by concluding “Hudspeth’s objection to the search overruled his wife’s later consent.”⁵³ The government requested a rehearing of the case that was granted.⁵⁴

The full Eighth Circuit Court of Appeals analyzed several factors in the case to decide whether Hudspeth’s Fourth Amendment rights were violated. First, Mrs. Hudspeth, a cotenant with her husband, had authority to consent on her own to the search, and this consent was voluntarily obtained by the police officers. Second, the

police officers were not confronted with the situation where two cotenants were physically present and one objected to the search. Mr. Hudspeth had been lawfully arrested and jailed and was not present at the home when his wife's consent was requested. The court noted "...the narrow holding of *Randolph*, which repeatedly referenced the defendant's physical presence and immediate objection, is inapplicable here."⁵⁵ Finally, the Fourth Amendment did not require the officers to inform Mrs. Hudspeth of her husband's refusal of consent. "This conclusion is supported by *Matlock* and *Rodriguez* where law enforcement officers bypassed the defendants against whom evidence was sought, although the defendants were present and available to participate in the consent colloquy."⁵⁶ Because Mr. Hudspeth was not at the door and objecting, the search was reasonable.

In *United States v. Murphy*,⁵⁷ police officers followed two individuals observed purchasing precursor chemicals to a storage facility. The officers knew that Murphy was staying in storage units rented by Dennis Roper. After a period of time, police officers knocked on the door of a storage unit. Murphy opened the door and held a 10-inch piece of pipe. After ordering Murphy to drop the pipe, the officer observed an operating methamphetamine

laboratory inside the storage unit.⁵⁸ The officer arrested Murphy, who refused to give consent to a search of the storage unit.⁵⁹ Later that same afternoon Roper arrived at the scene. He was arrested on an unrelated matter. Roper told the officers that he had given Murphy permission to reside at the storage unit. Roper gave the officers written consent to search the storage units which resulted in the seizure of a methamphetamine laboratory.⁶⁰ Murphy challenged the validity of Roper's consent to the search of the units. The district court

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objecting tenant.
”**

denied Murphy's motion to suppress. Murphy appealed.

Before the Ninth Circuit Court of Appeals, Murphy claimed that the search of the storage units violated the holding of *Georgia v. Randolph*. Murphy argued, "Roper's consent to the second search did not overcome [Murphy's] earlier objection to it."⁶¹ The government attempted to distinguish the present case from

that involved in *Randolph* on two grounds. First, *Randolph* involved the search of a residence while the present case involved the search of a storage unit. Second, in *Randolph*, both the consenting and objecting cotenants were physically present. In the present case, Murphy was arrested, and consent was sought from Roper 2 hours later.⁶²

In rejecting the government's arguments, the circuit court first noted, "there is no reason that the rule in *Randolph* should be limited to residences."⁶³ Thus, the circuit court held that *Randolph* "was rooted in the idea of common authority and the Supreme Court has extended the principle of common authority well beyond residences."⁶⁴ As for the government's argument that *Randolph* was distinguishable because Murphy and Roper were not both physically present when consent was sought, the circuit court held "when a cotenant objects to a search and another party with common authority subsequently gives consent to that search in the absence of the first cotenant the search is invalid as to the objecting cotenant."⁶⁵ According to the Ninth Circuit, "[o]nce a cotenant has registered his objection, his refusal to grant consent remains effective barring some objective manifestation that he has changed his position and no longer objects."⁶⁶ The court ruled that the search of the

storage unit violated Murphy's Fourth Amendment rights and suppressed the evidence seized. Thus, it appears that there is a conflict between the Eighth Circuit and the Ninth Circuit as to the scope of the protection afforded to cotenants with common authority under the *Randolph* case.

CONCLUSION

The cases discussed above provide guidance to police officers who seek to rely on voluntary consent to justify a warrantless entry into a residence jointly occupied. Police officers may continue to rely on the consent of an individual who possesses common authority to permit lawful entry into a residence so long as another tenant is not physically present and objecting to the search.

The question of common authority must be determined by police officers based on the information and circumstances presented at the time. Absent a situation where there is a clearly defined common understanding that one tenant has superior rights over a premises than another, police officers may rely on the consent of a tenant to enter a premises (as long as an objecting tenant is not present). However, there are some situations that present a police officer with facts where no common authority could reasonably be suspected. For example, a hotel manager or a

landlord cannot give consent to the search the room of a current occupant because there is no "common understanding of authority to admit third parties generally without the consent of the person occupying the premises."⁶⁷

It is very significant to note that the Supreme Court did not impose any obligation on police officers to take "affirmative steps to find a potentially objecting cotenant before acting on the permission they had already received."⁶⁸ According to the Supreme Court:

if a potential defendant with self-interest in objecting is in fact at the door and objects, the cotenant's permission does not suffice... whereas the potential objector, nearby but not invited to take part in the threshold colloquy, loses out.⁶⁹

Thus, the officers may rely on the consent of the person present and do not need to attempt to locate a potentially objecting tenant. This is true even when a potentially objecting cotenant is nearby "[s]o long as there is no evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection...."⁷⁰

The consent exception to the search warrant requirement is a valuable tool available to law enforcement officers. To make proper use of this tool, officers must be aware of the

requirements necessary for consent, as well as the limitations placed on its use. ♦

Endnotes

¹ U.S. Const. Amendment IV.

² *Payton v. New York*, 445 U.S. 573 (1980); *Kyllo v. United States*, 533 U.S. 27 (2001).

³ *Jones v. United States*, 357 U.S. 493, 499 (1958).

⁴ *United States v. Drayton*, 536 U.S. 194, 207 (2002).

⁵ *Id.* at 235.

⁶ *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

⁷ *Id.* at 219.

⁸ 412 U.S. 218, 219 (1973).

⁹ *Id.* at 227.

¹⁰ *Id.*

¹¹ *United States v. Watson*, 423 U.S. 411 (1976).

¹² *United States v. Moreno*, 897 F.2d 26, 33 (2nd Cir. 1990).

¹³ See *United States v. Lee*, 317 F.3d 26, 33 (1st Cir. 2003) ("Courts have held, with a regularity bordering on the monotonous, that this sort of statement, made in a case in which the facts were sufficient to support the issuance of a search warrant, does not constitute coercion") *United States v. Salvo*, 133 F.3d 943, 954-955 (6th Cir. 1998) (An FBI agent's statement that he would obtain a warrant does not make consent involuntary unless the statement was baseless.).

¹⁴ *Bumper v. North Carolina*, 391 U.S. 543 (1968).

¹⁵ *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

¹⁶ 415 U.S. 164 (1974).

¹⁷ *Id.* at 166. Matlock was the child's father.

¹⁸ *Id.* at 166-167, n. 1. Other items were seized from the house and the bedroom, but only the cash seized was at issue before the Supreme Court.

¹⁹ *Id.* at 166.

²⁰ *Id.* at 171.

²¹ *Id.* at 172, n. 7.

²² *Id.* at 176-177.

²³ *Id.* at 178. The Court also noted that because of its decision, it did not reach the argument by the government that the prosecution need only establish that the searching

The Bulletin Notes

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

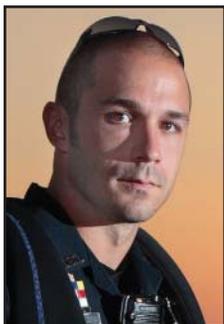


Lieutenant Brinkley



Officer Hertz

One evening, Lieutenant Jeff Brinkley and Officer Clint Hertz of the Ames, Iowa, Police Department responded to a vehicle fire at a local shopping mall. As both officers headed to the scene, they received additional information indicating that the car may be occupied. Upon arrival, Lieutenant Brinkley and Officer Hertz determined that the vehicle had been involved in a crash and that it now was engulfed in flames. Both officers quickly entered the burning car, unhooked the driver's seatbelt, and took him to safety. While Lieutenant Brinkley stayed with the victim, Officer Hertz reentered the vehicle to check for additional occupants. While doing so, the fire surged and further engulfed the car, causing Officer Hertz to withdraw. The brave actions of these two officers saved the life of the young driver. Fortunately, fire department personnel later verified that there were no other passengers.



Officer Jurjevich

Officer Ryan Jurjevich of the Tampa, Florida, Police Department was among a group of officers who responded to the spot where a motorist reported seeing someone standing on the edge of a bridge. By the time the officers arrived, the woman had been in the water for about 15 minutes. They threw a life preserver and ropes to her, but she could not save herself. Officer Jurjevich, who kept flippers and a life preserver on hand in case of emergency, took off his gun belt and shoes, put on the swim gear, and jumped about 35 feet into the cold water. He swam until he reached the victim, secured the life preserver around her, and grabbed the rope the other officers had dropped down. The woman clutched onto him and said she did not want to die. The officers on the bridge began pulling them about a half mile to safety. On the way back, the victim passed out, and her arms fell away from Officer Jurjevich's sides. He stopped kicking his flippers and wrapped both of his legs around her. At that time, a fire-rescue unit arrived and finished pulling Officer Jurjevich and the woman from the water. Officer Jurjevich had the beginning stages of hypothermia and received treatment at a local hospital. The victim received medical treatment and later was taken into protective custody after being deemed a danger to herself.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.

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Patch Call



The patch of the Germantown, Tennessee, Police Department shows the American bald eagle spreading its wings and clutching the Tennessee banner. The agency strives to uphold the traditional law enforcement values of courage, strength, justice, vigilance, and protection, as well as the state constitution.



The Fort Walton Beach, Florida, Police Department patch depicts a ship sailing along the Emerald Coast, situated on the Gulf of Mexico. As indicated, Florida became a state in 1845 and Fort Walton Beach a city in 1941. The five jets symbolize Eglin Air Force Base, the largest in the world.