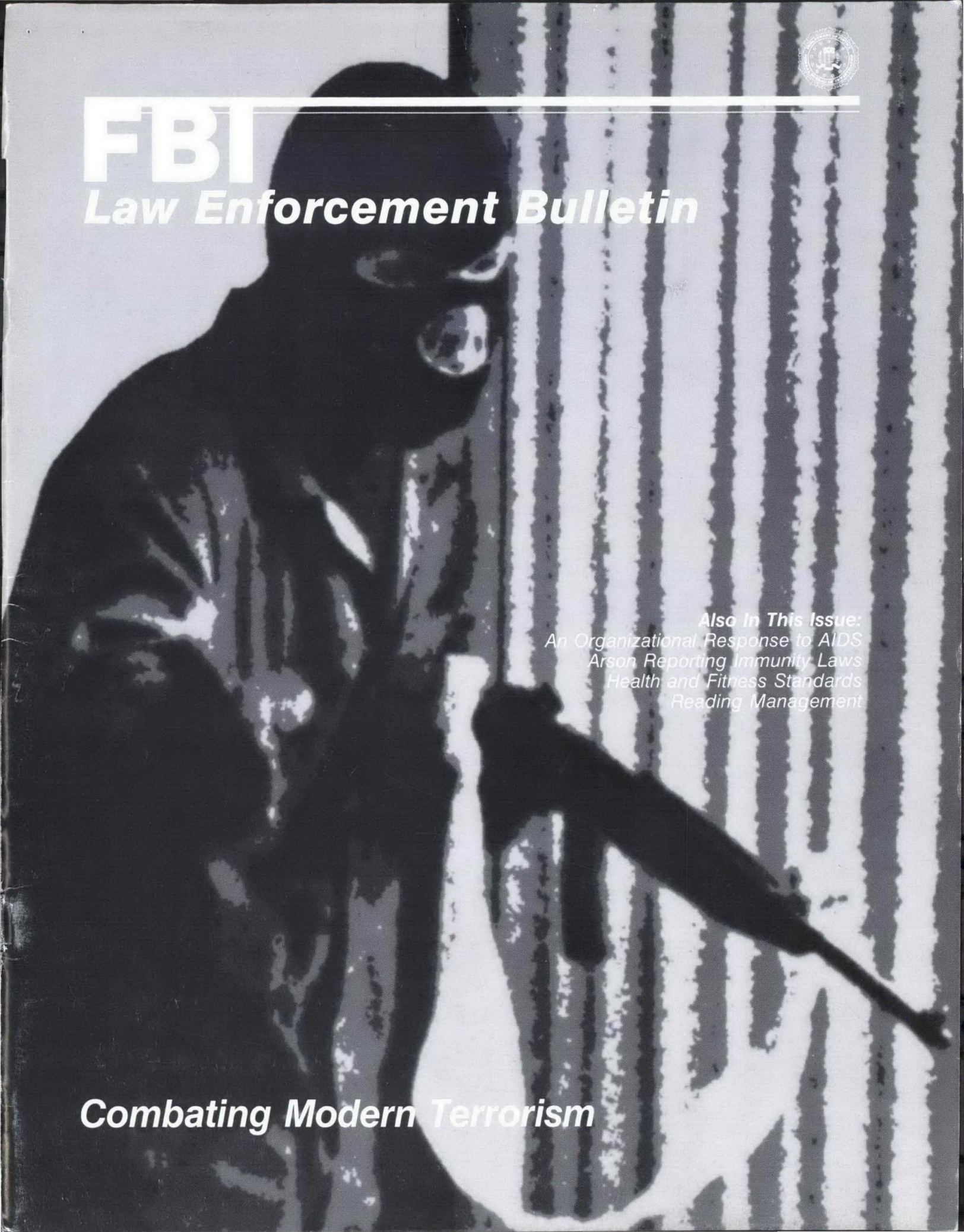

# FBI Law Enforcement Bulletin

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*June 1989, Volume 58, Number 6*

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# *Law Enforcement Bulletin*

**United States Department of Justice**
**Federal Bureau of Investigation**
**Washington, DC 20535**

**William S. Sessions, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

Published by the Office of Public Affairs,
Milt Ahlerich, *Assistant Director*

***Editor***—Stephen D. Gladis
***Managing Editor***—Kathryn E. Sulewski
***Art Director***—John E. Ott
***Production Manager***—Joseph Andrew Di Rosa


**The Cover:** Intelligence analysis is an important weapon in law enforcement's battle against terrorism. See article p. 1.

The FBI Law Enforcement Bulletin (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 10th and Pennsylvania Ave., N.W., Washington, DC 20535. Second-Class postage paid at Washington, DC. Postmaster: Send address changes to Federal Bureau of Investigation, FBI Law Enforcement Bulletin, Washington, DC 20535.

ISSN 0014-5688 USPS 383-310

# *The Role of Analysis in Combating* **Modern Terrorism**

By
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*Chief of Police*
*Los Angeles, CA*

The Los Angeles Police Department (LAPD) is one of the few law enforcement organizations in the United States which has created a full-time unit for the purpose of combating terrorism. Los Angeles has become an international city with almost every religion, philosophy, cause, ethnic group, and special interest group represented, including those individuals or groups who espouse terrorism. The concern over the potential dangers to the citizens of Los Angeles, as a result of this situation, has been instrumental in the creation of not only the LAPD's Anti-Terrorist Division but also the Los Angeles Task Force on Terrorism (LATFOT). The latter is a multijurisdictional organization consisting of members from the LAPD's Anti-Terrorist Division, the Los Angeles Sheriff's Department, and the Federal Bureau of Investigation. These organizations have combined their resources to counteract local terrorist activities and to track national and international terrorist trends.

The LAPD's Anti-Terrorist Division (ATD) was created in 1983 and functions under rigid, court-imposed guidelines. These guidelines established procedures for qualifying individuals or groups for investigation based upon a strict definition of what constitutes terrorist activity. Similar guidelines are quickly becoming the norm for other major law enforcement agencies that engage in intelligence gathering relating to terrorism.

Within the LAPD, the Anti-Terrorist Division is composed of four sections—Surveillance, Investigative, Legal, and Intelligence Analysis. It is, however, the Analysis Unit, staffed by sworn personnel, which is credited with placing the division on the leading edge of innovative techniques in the battle against terrorism. The duties of the Analysis Unit include preparing the following:

- Threat assessments—Operations-oriented reports containing information on major events, visiting dignitaries, planned demonstrations, and other activities which may be targeted for terrorist activities.
- Officer safety bulletins—Interdepartmental memos regarding terrorist threats, such as new weapons or tactics, which reflect directly on the police officer working the street.
- Briefing papers—Reports covering key world and national situations involving terrorism, which could ultimately affect the City of Los Angeles.
- Intelligence analysis—Translating intelligence data into meaningful investigative conclusions for effective case management.

> ***"... analysis [is] the examination of raw intelligence data that enables the analyst to uncover possible terrorism trends and provide appropriate investigative management."***

However, of these four main duties, it is intelligence analysis which has become the most important function of the Analysis Unit. Intelligence analysis is the key factor between an intelligence unit which performs to the peak of its ability and one which merely functions as a file unit.

### The Analysis Mission

Terrorist acts, as defined by the guidelines governing ATD, are: Unlawful actions which can reasonably be expected to result in death, serious bodily injury, or significant property damage and which are intended to have such results to further societal objectives, to influence societal action, or to harass on the basis of race, religion, or national origin. With this definition in mind, analysis can be described as the examination of raw intelligence data that enables the analyst to uncover possible terrorism trends and provide appropriate investigative management.

Analysis gives meaning and direction to intelligence information. Usually, an intelligence investigator will provide raw information for the analyst to process and compare to existing data. The analyst's goal is to fill investigative gaps and make suggestions for additional investigative steps. An analyst will also use provided information to make decisions concerning the current and future effects of terrorist

group movements and activities. This procedure is known as trend analysis. When an investigator receives information back from an analyst, the processed data can then be used to make management decisions regarding specific investigative operations and targets and to follow up on newly developed leads.

While the activities of each intelligence function are dependent on one another for support, the overall responsibilities of investigators and analysts are distinct. The analyst is tasked with looking beyond specific cases to find similarities and differences in many different investigations, while the investigator focuses on individual leads and details of gathering information.

Another analytical function is to disseminate properly information produced by the unit. To achieve this, analysts prepare formal intelligence analysis reports. These reports form the basis for the final intelligence product. Often, this information will be transmitted orally to an investigator, but it is still essential that information of this nature be documented for future reference.

An analyst's success in these areas can be enhanced by developing a rapport with the case investigators. By showing an interest in a caseload and then providing a useful analysis product, the analyst will build trust and confidence with his investigative counterparts and facilitate a two-way flow of information.

### The Analysis Process

In traditional crime solving, the functions of investigation and analysis are rarely considered separate actions. When assigned a case, an investigator constantly develops ideas about how the crime was committed and who committed the crime. As the detectives proceed, they analyze these ideas, discarding those which do not fit in with the evidence accumulated while developing others. However, in an intelligence unit, analysis is a distinct and separate procedure which is most effective when handled on a full-time basis by trained personnel.

A simple description of analysis can be arrived at by comparing analysis to assembling a jigsaw puzzle. First, all the pieces of the puzzle, or as many as are available, are gathered together. This compares to the function of compiling raw intelligence data. Next, the puzzle pieces are organized most effectively by identifying borders, an action comparable to establishing the parameters of an investigation. Once this is accomplished, other recognizable pieces can be put into place. This action relates to the analysis function of identifying terrorist cell groups, leadership, funding, philosophy, and other recognizable factors.

The next step in putting together a puzzle is one of the most important. Without a picture from which to work, a hypothesis is formed regarding what the picture will reveal. This will help locate the proper position for other puzzle pieces. As applied to analysis, a hypothesis is a hunch or educated guess formed from pieces of information at hand, which will create a flexible basis for furthering the investigation. The more pieces of a puzzle that are placed in their proper positions, the greater the chance of identifying the entire picture.

Even when the picture appears to be near completion, an analyst must be careful not to force a conclusion or become overly adamant. A hypothesis may not always be completely correct, but it should be based on the evidence at hand and include sound logic and practicality. Practical judgments of this nature will generate investigative leads and provide a basis for case management.

Chief Gates

***"The process of analysis is becoming increasingly important in modern law enforcement's battle against terrorism."***

To make the comparison of analysis to puzzle construction even closer, consider taking three puzzles, mixing all the pieces together, removing half the pieces, and then trying to construct the puzzles without referring to the pictures on the puzzle boxes. This example comes the closest to the actual task facing an intelligence analyst. However, by learning the proper analysis techniques, an analyst can become skilled in assembling information into a clear pattern and in defining the areas which are most important to the investigation.

> ***"... intelligence analysis makes the difference between an intelligence unit which merely files information and one that uses gathered information efficiently and effectively against terrorist elements."***

### Summarizing

A closer look at the analysis process shows that it can be separated into three steps—summarizing, comparing, and explaining. The summarizing process consists of combining all available source information, including investigator input, open source materials, department records, etc. This process assists the analyst in eliminating data which may be of marginal value.

### Comparing

Following the summarizing process, new data are compared with previously gathered information to see how it fits with already-established analytical hypotheses and other factual information. This comparison is the most important step in the procedure, as it is through this function that "meaning" is derived from all the summarized information. During this step, the analyst must constantly be asking, "What is significant?" and "What does this indicate?" By comparing summarized information to an already-established hypothesis (a hunch or strong guess as to the outcome of the case being investigated), an analyst can quickly see how the hypothesis is affected by new information. In other words, does the information support the original hypothesis, or does the analyst need to adjust the hypothesis to support the new evidence?

There will be many frustrating times when the analyst will be unable to logically compare the gathered information and the hypothetical explanations. When this happens, existing data should be reexamined more thoroughly, or further information sought, to clarify the unknown.

### Explaining

Once a thorough comparison has been made, and new leads or facts relating to a specific case have been discovered, an intelligence analysis report should be completed to explain the information and bring it to the attention of the concerned investigator. Thus, the explaining step of the analysis process begins.

This explanation should include whether information gathered showed any significant relationships; the meaning, or lack of meaning, of those relationships; the "big picture" of the findings in terms of terrorist trends; and any requests, requirements, or suggestions for further investigative steps. The analyst then needs to receive feedback from the investigator as to the value of the analytical insights and the results of investigative follow-up.

The information an analyst processes should not be limited to police sources only. To fill previously identified investigative gaps, analysts must make use of open-source material such as daily newspapers, targeted group publications, and other pertinent periodicals. Open-source information is often extremely valuable in providing general insight into a group or individual's philosophy, activities, and plans. To read open-source information effectively, analysts must be cognizant of the needs of the investigations for which they are responsible and constantly look for new applications which the material may provide.

With the information received from reading various sources, analysts should begin to identify general group membership and leadership positions by using flow charts (graphs showing a simple timeline of incident occurrences), link charts (graphs detailing the connections between related persons

and/or incidents), and other visual case representations. Coupled with updated hypotheses, these analytical procedures will assist in identifying changes and developments as the investigation proceeds. Link, VIA (Visual Investigative Analysis), time-line, and other visual representations can often provide valuable information and insight for the investigators working on a specific case.

The intelligence analyst must work closely with the assigned case investigator. This requires teamwork in all aspects of the case. The analyst must maintain credibility by providing accurate, logical, and utilitarian information to the investigator. Additionally, flexibility must be exercised when presenting unproven hypotheses and theories. Conclusions that are arrived at via the analytical process should not be forced onto the investigator who may be pursuing a different direction in the case. Time and the addition of further information will prove or disprove the analyst's hypotheses.

### Practical Analysis Applications

To outsiders, terrorism can appear to be a senseless, random activity without purpose, direction, or possibility of prediction. However, for those involved in the detection, prevention, and analysis of terrorism, it is clear that the opposite is true. In most cases, terrorism is carried out by an organized group with a clear goal in mind and is therefore amenable to systematic analysis.

Terrorist attacks are not carried out or planned in a vacuum. Clues, significant indicators, and other types of evidence can be uncovered before, during, and after terrorist actions. The key is in being able to analyze this evidence and provide a course of action. This will enable management decisions to be made regarding preventive or reactive courses of action to preclude future terrorist attacks by individuals or groups.

For a new intelligence unit member tasked with analyzing the actions of a terrorist group which may have been in existence for a decade or more, the first step to be taken should be to read, read, and read some more. The analyst must be thoroughly familiar with the history of the case and the current progress of the investigation.

The next step for the newly assigned analyst is to begin breaking down all of the gathered intelligence and available open-source information into component parts to identify organizational leadership, current and past membership, group philosophy, prior terrorist actions, methods of operation, and stated goals. By organizing the information in this manner, a large case, with many diverse elements, can be formed into an understandable and manageable entity. Once the case is organized, an analyst can begin to look into capabilities of the group and begin to assess current potential for terrorism.

> ***"Analysis gives meaning and direction to intelligence information."***

An analyst should then begin to track the actions of the terrorist group's current membership using charting techniques to discover leadership, movement, stated goals, and philosophical changes. This information, combined with an assessment of the group's capabilities, should provide the analyst with enough input to start analyzing and predicting the target group's current status and possible future actions. Investigative deficiencies, possible trends, and new leads which are uncovered should be brought to the attention of the intelligence investigator through the previously discussed intelligence analysis report.

### Conclusion

The process of analysis is becoming increasingly important in modern law enforcement's battle against terrorism. The analyst's role in this battle has expanded to the point where it has become a major element in ensuring the success of an intelligence investigation. This is achieved by encouraging teamwork between the analyst and the investigator. As the investigator gathers information, the analyst provides an overall picture of the case and assists in interpreting the meaning of disparate pieces of information. Above all, analysis provides a solid basis for case management decisions. The ultimate result is that intelligence analysis makes the difference between an intelligence unit which merely files information and one that uses gathered information efficiently and effectively against terrorist elements.

FBI

HIV "budding" from the host cell

# AIDS/HIV Carriers
## An Organizational Response

By
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*Public Information Coordinator*
*The National Sheriffs' Association*
*Alexandria, VA*

As the 1980s draw to a close, it is clear that among the myriad of issues confronting employers, none is more urgent than the human immunodeficiency virus (HIV). Indeed, this virus, which progressively deteriorates the immune system and causes a condition known as acquired immune deficiency syndrome (AIDS), raises legal, moral, and ethical questions.

When AIDS was first identified in 1981, it was a mysterious, rare disease that became alarmingly common in homosexual men. Later, it was learned that the virus is transmitted through blood, semen, vaginal secretions, and possibly breast milk.

Today, people are diagnosed as having AIDS if they test positive to HIV *and* have developed any of a few rare opportunistic infections. The most common are Pneumocystis carinii pneumonia and Kaposi's sarcoma, a rare skin cancer. (Opportunistic infections occur when the immune system breaks down.)

Persons infected with HIV move through the disease's various stages. The progression from

initial infection to AIDS can take from 2 to 10 years. During this period, persons may be asymptomatic and exhibit no outward symptoms. Yet, they are capable of transmitting the infection.

As of November 1988, 78,312 cases of AIDS have been reported to the Centers for Disease Control (CDC) in Atlanta, GA. Unfortunately, 44,071 deaths were also reported. Another 1 to 1.5 million Americans are infected with HIV but show no symptoms.[1] In essence, AIDS represents the *first epidemic of immune deficiency in medical history.*

### Mortality Rates to Increase

In the absence of a scientific solution to HIV, the grim reality is that almost all who are infected with HIV will eventually develop AIDS and die.[2] The potential bridges for transmitting the infection leave virtually *no segment* of the U.S. population completely free from the threat of AIDS.[3]

AIDS is primarily a sexually transmitted disease, with alternate modes of transmission through blood and blood products. Therefore, exposure to HIV, rather than membership in a "high-risk group" (blacks, Hispanics, homosexual men or IV drug abusers),[4] is the single most important factor leading to infection.

### Confronting HIV Problems

At some future point, *all* organizations can expect to confront HIV infection among their staff. In fact, according to a survey completed by the American Society of Personnel Administrators, the number of employers experiencing HIV infection or AIDS in their workforce increased from 9 percent in 1985 to 33 percent in 1987.[5]

Within the criminal justice community, the impact of HIV has been widespread and profound.

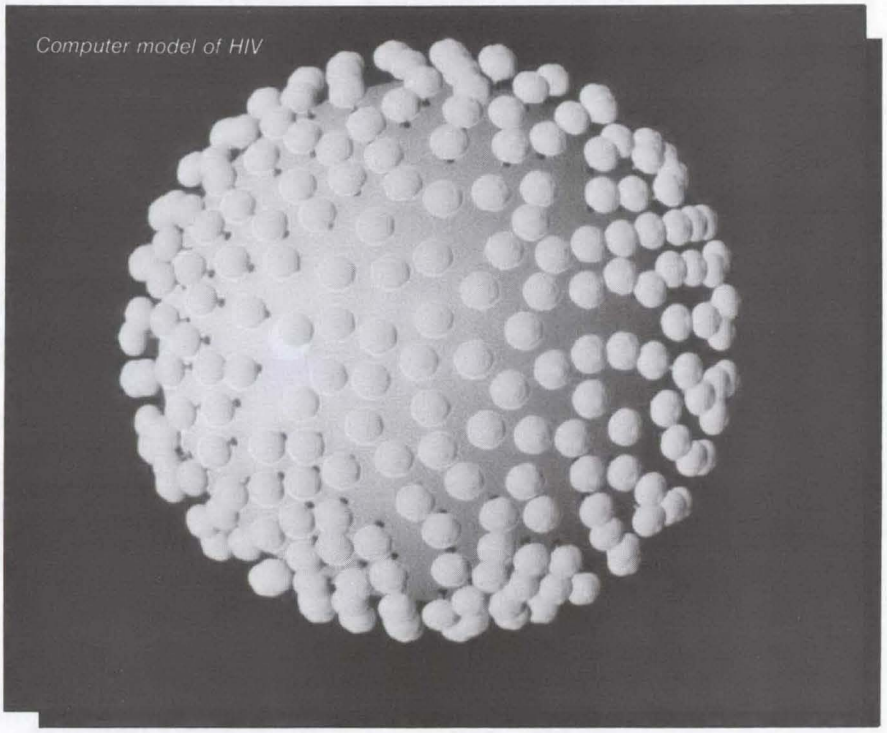
> **"...all *organizations can expect to confront HIV infection among their staff.*"**

Recently, information on the causes, symptoms, and transmission of HIV has been disseminated throughout the criminal justice profession. Thus, most administrators already recognize the urgent need for preparedness concerning potential contact with HIV-infected offenders. (According to a survey by the National Sheriffs' Association, under a grant from the Bureau of Justice Assistance, more than 80 percent of State criminal justice training agencies now provide training in the management of persons with AIDS.)

Yet, when dealing with an infected person, many agencies still need *explicitly defined guidelines* outlining their responsibilities. The probability of HIV infection among their own employees in the future is a bleak reality.

### Employee Policies

Extensive research has determined that employees with HIV do not pose a health threat in the workplace. And, with the exception of those with acute symptoms, most are able to carry out normal job responsibilities. However, co-workers perceive those



*Computer model of HIV*

who are known to have the virus as a threat. This conflict between perception and reality poses difficult policy and practice questions.

The first step to prepare for the possibility of HIV in the workplace is to establish *written guidelines* prior to confronting the first case. These guidelines should clearly define and ensure that:

1) Managers are provided with adequate information, as well as assistance, to carry out their responsibilities appropriately, effectively, and humanely.

2) The staff is provided with sufficient knowledge to eliminate unwarranted fears.

3) Employees infected with HIV retain their civil rights.

Proactive, written policies and guidelines clearly define the organization's expectations. And, when presented by credible trainers, they help foster greater compassion and better treatment for persons with HIV.

**Policy Development**

In formulating appropriate policies, employers should anticipate questions or "crisis" incidents which may arise, such as a co-worker's refusal to work with an HIV-infected person. Each of the following areas should be accurately addressed *in writing:* 1) The policy statement, 2) a clear rationale for that policy, and 3) a strategy for implementing the policy. Reference materials supporting the policies should be maintained and updated as necessary.

**Policy Issues**

The Federal Rehabilitation Act provides for persons infected with HIV to have a legal right to be treated without discrimination and to not be isolated from the normal work environment, but only if the "program or activity receive[s] Federal financial assistance."[6] At least one court has held that unless the specific program in which the handicapped employee is involved received Federal funds, the Rehabilitation Act does not apply.[7] Also, the act protects only "otherwise qualified" employees, and it is difficult to say confidently that AIDS/HIV carriers are otherwise qualified to be police officers.[8]

> ***"The prospect of HIV-infected employees in the workplace represents a significant problem for all organizations ...."***

To understand their responsibilities, administrators must closely follow HIV-related cases and legislation. Also, policymakers must continue to be flexible as the courts develop greater understanding of this deadly disease.

The right to work applies only if the employer can "reasonably accommodate" the handicapped employee. Again, there are few precedents on this issue, but one court decision[9] suggests that a police employer is not required to create "light duty" positions. And while employers are not required to find another job for an employee, agencies cannot deny a reasonably available opportunity under existing policies.[10] However, an agency can force an employee to take a medical leave of absence if the employee is no longer able to perform the job.

Employees also have the right to withhold HIV antibody test results, but case law on this issue is mixed. Several court decisions suggest that there may be an affirmative obligation to disclose HIV tests in some situations.[11]

Current Centers for Disease Control guidelines concerning HIV antibody testing as a condition of employment, or of continued employment, do not recommend testing for any particular employment position.[12] Further, several States have passed laws expressly banning testing employees and applicants for AIDS. In a recent case involving a Nebraska State agency, the court held that requiring certain employees in a community-based mental health setting to undergo mandatory testing for HIV violated the fourth amendment.[13] The court found overwhelming medical evidence which confirmed that the risk of HIV transmission in the workplace (even with sometimes violent, mentally ill clients) was "trivial to the point of nonexistence."[14]

The disclosure of health records of persons who carry the HIV virus is also in question.[15] However, if managers disclose the con-

dition of an employee with HIV without official reason to do so, they can be subject to administrative penalties. The manager cannot, without the employee's consent, tell staff members if one of their co-workers has tested positive for HIV or has identified himself/herself as having HIV.

> ***"...there must ... be psychological and social support services available for all employees."***

If an employee with HIV informs the manager that he or she needs assistance or cannot perform normal duties, the manager may ask the appropriate superiors for specific guidance.[16] Managers and supervisors should also have access to HIV information and to someone with whom they can discuss situations concerning HIV.

Recognizing and dealing effectively with employees who are concerned about or refuse to work with employees with HIV makes more sense than invoking strict disciplinary measures. Managers should take employees' concerns seriously and should provide them with appropriate information and counseling by a representative of psychological support services, an AIDS advisory team, or an outside expert. However, staff members should be expected to continue working with fellow employees who have HIV. The manager

### Checklist of Procedures for Officers Who Sustain Accidental Exposure to Communicable and Infectious Diseases

- An officer first reports an exposure incident to his/her first-line supervisor. The supervisor attempts to determine the significance of the exposure, and when necessary, contacts Psychological Services for assistance.
- If the exposure appears significant, the officer fills out a report of injury and makes an appointment at Psychological Services for assistance.
- Officers should be scheduled for pre-test counseling with Psychological Services within 1 working day, unless they prefer to be scheduled later. (Family members may also be counseled.)
- Pre-test counseling focuses on providing accurate information and dealing with the officer's anxiety. It also addresses the following: The significance of the exposure and the need for the required series of blood tests to determine the presence of the HIV antibody; confidentiality of test results (the officer is informed that results are hand-carried to Psychological Services and will be kept in separate confidential files for at least 1 year); and procedures for post-test counseling to discuss the significance of the results following each test (the officer is made to understand that no results are given by telephone).
- The test series includes a baseline test within 2 weeks of exposure, with follow-up testing at regular intervals over 1 year.
- Family Services requires an appointment for the baseline test (a brief physical will also be performed); the officer will present a memo from Psychological Services that authorizes his/her testing. Follow-up testing at 3-month intervals over the next year does not require appointments.
- If the officer is to be tested at the hospital, he or she should take the memo from Psychological Services authorizing the testing, as well as a hospital pre-admissions sheet.

*(Compiled by the Prince George's County, MD, Police Department)*

should also explain to employees that starting or spreading rumors concerning an employee's health can cause grave damage.

### Training

Administrators must be knowledgeable of 1) staff concerns, 2) the laws regarding the treatment of persons with AIDS in the workplace, 3) the various employee reactions to a co-worker with AIDS, and 4) the moral and ethical considerations inherent in managing such workers. In addition, both administrators and staff must clearly understand the basic facts about HIV, as well as the agency's related policies.

In particular, it is critical for administrators and staff to know agency procedures concerning an incident of possible transmission; i.e., 1) where there is actual contact with blood or body fluids of an HIV- infected person, such as through a needlestick injury or through other injuries, such as skin cuts, scrapes, rashes, etc.; and 2) how HIV-contaminated fluids can come in contact with the eyes, nose, or mouth. After the initial infection, it generally takes between 2 and 12 weeks for the body to produce HIV antibodies. And, while the risk of contracting HIV in this manner is extremely low, the following actions are recommended:

- An employee who believes he or she may have been exposed to HIV should report the incident to the supervisor.
- A voluntary, confidential, baseline blood test for HIV antibodies should be performed within 2 weeks of exposure because it must be shown that HIV infection occurred "on the job" in order for the employee to receive workman's compensation benefits.
- If the baseline test is negative, the test should be repeated at 6 weeks and again after 3, 6, 9 and 12 months to determine if transmission has occurred.
- During the retesting period, the exposed person should follow precautions to prevent possible transmission of the virus to others.

### Fostering Employee Understanding

In presenting the facts about AIDS, information should cover such factors as its devastating social and psychological effects. These include depression, concern about body image, finances, loss of control, and facing one's mortality. The facts should also address the behavioral manifestations of AIDS, i.e., the mental impairment seen in 50 to 75 percent of persons during the late stages of HIV infection. Such manifestations can include the slowing of information processing, inattention, confusion, conceptual and problem-solving impairment, learning and memory difficulties, apathy, motor slowness, and clumsiness.[17] Managers should

### Information and Sources

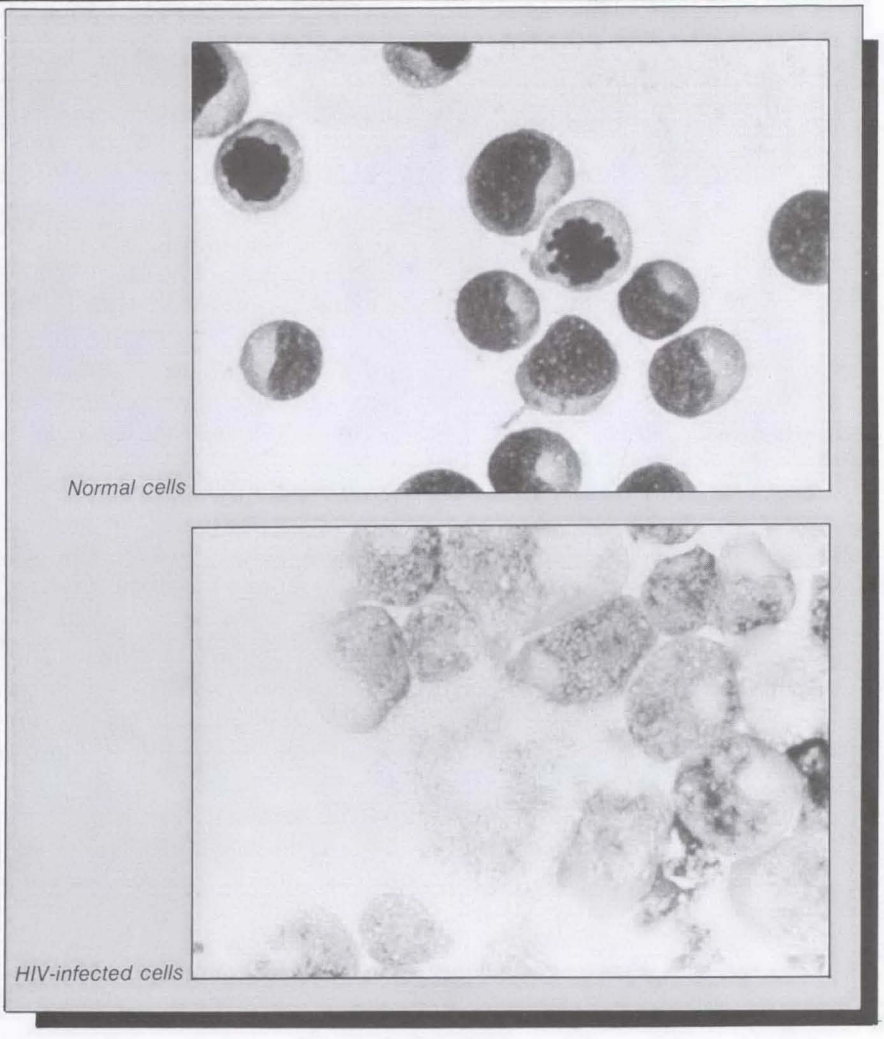
- *AIDS and Our Workplace*
New York City Police Department, June 1988
Helpline: 718-271-7777
- *AIDS Education for Emergency Workers*
American Red Cross
Post Office Box 160167
Sacramento, CA 95816
916-452-6541
- *National Institute of Justice AIDS Bulletin*
U.S. Department of Justice
National Criminal Justice Reference Service
Box 6000
Rockville, MD 20850
Toll Free - (800) 851-3420
Maryland and Washington, DC, metropolitan area
(301) 251-5000
- *AIDS and the Law Enforcement Officer: Concerns and Policy Responses*
By Theodore M. Hammett, Ph.D., June 1987
U.S. Department of Justice
National Institute of Justice
Office of Communication and Research Utilization
Washington, DC 20531
(202) 272-6001
- *National Institute of Justice Custom Search AIDS and Law Enforcement Document Abstract Concerning AIDS.*
U.S. Department of Justice
National Institute of Justice
(202) 272-6001

learn to recognize such indicators, and when necessary, take appropriate steps to deal with them accordingly.

Many persons who have HIV are targets of harassment and violence. They may also have been evicted from their homes, discharged from military service, and denied health benefits and social services. Therefore, managers should encourage "well" employees to show sensitivity and to provide support and understanding to infected persons who urgently need social, financial, and emotional support and who are, in essence, facing a death sentence.

## Employee Support Services

In addition to ongoing training, there must also be psychological and social support services available for all employees. To the noninfected, those who have experienced an incident of possible transmission, and the HIV-infected, psychological services can play a critical role.




## Conclusion

The prospect of HIV-infected employees in the workplace represents a significant problem for all organizations, including those in the criminal justice community. Even the employer who has had no instances of the disease must now anticipate them and act quickly to ensure that written, clearly defined policies are in place and that managers and staff are trained to support these policies.

Persons with HIV in the workplace do not pose a threat. However, it is critical that employers make the proper preparations. Employers must keep the lines of communication open and disseminate accurate information. Only through such efforts will employees adequately understand the disease, and thus, treat affected persons with the same compassion they would afford persons with any other life-threatening illness.

FBI

**Footnotes**

[1]Data according to the Centers for Disease Control, November 1988.

[2]Robert Redfield and Donald Burke, "HIV Infection: The Clinical Picture," *Scientific American*, October 1988.

[3]William Heyward and James Curran, "The Epidemiology of AIDS in the U.S.," *Scientific American*, October 1988.

[4]Approximately 66 percent of AIDS cases reported to CDC are homosexual/bisexual males, 16 percent are IV drug abusers, and 8 percent have both of these risks factors. Blacks and Hispanics together account for 41 percent of the AIDS cases reported to CDC, although these groups comprise only about 18 percent of the U.S. population.

[5]Stuart H. Bompey, "AIDS: An Employment Issue for the Eighties," Atlantic Information Services, Inc., April 1988.

[6]29 U.S.C. 794 provides, in part: "No otherwise qualified individual with handicaps ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...."; *Chalk* v. *U.S. District Court*, 840 F.2d 701 (9th Cir. 1988) (preliminary injunction issued to enjoin reassignment of AIDS-infected teacher to administrative position since he was likely to prevail on the merits of his Rehabilitation Act claim. The Office of Personnel Management guidelines prohibit adverse employee actions against HIV-infected persons because "the kind of non-sexual, person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission."

[7]*Foss* v. *City of Chicago*, 817 F.2d 34 (7th Cir. 1984) (Rehabilitation Act inapplicable where fire department received Federal funds for programs which had no connection with fireman's employment). *Compare, Arline* v. *School Board of Nassau County*, 772 F.2d 759 (11th Cir.), *affirmed* 107 S.Ct. 1123 (1987) (not required to show funding affected direct program of handicapped individual).

[8]*Arline*, ibid., at 1131 (determination of "otherwise qualified" must be "based on reasonable medical judgments given the state of medical knowledge about (a) the nature of the risk [how the disease is transmitted], (b) the duration of the risk [how long is the carrier infected], (c) the severity of the risk [what is the potential harm to third parties], and (d) the probability the disease will be transmitted and will cause varying degrees of harm."

[9]*Simon* v. *St. Louis County*, 735 F.2d 1082 (8th Cir. 1984) (need for unencumbered transfer/rotation policy made reasonable accommodation in police department unavailable).

[10]*Arline*, supra note 8, at 1131 n.19.

[11]*Baez* v. *Rapping*, 680 F.Supp 112 (SDNY 1988) (failure to report findings of prisoner-AIDS test with warning to avoid contact with body fluids may be malfeasance); *People* v. *Toure*, 523 NYS 2d 746 (N.Y. Sup. Cr. 1988) (rape victims entitled to results of AIDS test); *Shelvin* v. *Lykos*, 741 S.W. 2d 178 (Tex. App. 1st Dist. 1987) (disclosure of AIDS results to sheriff/jailer not permitted without showing results will be used to operate safe jail).

[12]*AIDS: The Legal Issues*, discussion draft of the American Bar Association AIDS Coordinating Committee, American Bar Association, Washington, DC, 1988. Entities subject to sec. 504 of the Rehabilitation Act of 1973 (the Federal Government, Federal contractors, and recipients of Federal financial assistance) are prohibited from testing applicants or employees for HIV unless it could be shown that such testing was "job related."

[13]*Glover* v. *ENCOR*, 3 IER Cases 135 (D. Neb. 1988), *affirmed* 867 F.2d 461 (8th Cir. 1989), (AIDS blood testing unreasonable since chance of transmission of disease to public service agency clients or within workplace is "miniscule, trivial, extremely low, extraordinarily low, theoretical and approaches zero.")

[14]Ibid.

[15]Supra note 11.

[16]U.S. General Accounting Office, "Manager's Guidelines for Dealing with Individual Cases of AIDS," Task force report appendix, U.S. Government Printing Office, December 1987.

[17]Testimony by Dr. Robert Heaton, Department of Psychiatry, University of California at San Diego, before the U.S. Commission on Civil Rights, Washington, DC, May 16-18, October 1988.



# The Bulletin Reports

## Private Employment of Police

The National Institute of Justice (NIJ) commissioned a Yale University professor, who lectures at the university's law school, to study the important issue of off-duty employment of police officers. ***Private Employment of Public Police,*** a NIJ *Research in Brief,* summarizes the key findings of the study, which examines many of the factors which impact on this critical law enforcement issue.

The author examines the three major ways in which police departments organize paid details and the varying points of view on department responsibility and liability. The study also considers the impact of uniformed, off-duty officers on the public's *perception* of safety and on *actual* public safety. It takes into account the presence and visibility of officers on paid detail and what effect contracting to supply such services has on the department's ability to muster additional manpower in a crisis.

Further, the study delineates other important considerations—limits on off-duty work, coordination and organization, compensation issues, policy and management issues, conflict of interest, competition with private security firms, and choosing the right model for off-duty police employment.

*To obtain a copy of the report, contact the National Criminal Justice Reference Service. Box 6000, Rockville, MD 20850 or call toll free (800) 732-3277. In Maryland and the Washington, DC, metropolitan area, the number is (301) 251-5500.*

## ABA Guidelines for Drug Testing Programs

***Drug Testing Programs by Public Employers: Suggested Guidelines*** is a 12-page pamphlet published by the American Bar Association's (ABA) Section of Urban, State and Local Government. The pamphlet is designed to "set out a reasonably safe method of establishing and implementing a drug testing program." However, it does not identify constitutional limits in this area of the law.

Divided into three sections, the pamphlet addresses considerations to initiate a drug testing program, generally identifies fourth amendment limits on the employer's ability to conduct testing, and suggests how a program should satisfy requirements to observe employee due process rights.

*Write to: ABA Order Fulfillment 533, 750 N. Lake Shore Dr., Chicago, IL 60611.*

## Police-Community Partnerships

The National Institute of Justice (NIJ) has published a series of research papers on the topic of police and the community. Developed by the Executive Sessions on Policing at Harvard University's John F. Kennedy School of Government, the reports concentrate on how law enforcement agencies can work with the communities to better control serious crime.

• ***Police and Communities: The Quiet Revolution*** reports on the reshaping of American policing that is directed toward community policing and problem-solving policing.

• ***Crime and Policing*** covers the various tactics used by modern-day law enforcement officials to combat serious crime.

• ***Policing and the Fear of Crime*** looks at the strategies of various police departments to reduce citizens' fear of crime in their communities.

The programs and strategies of this Nation's law enforcement agencies are changing the direction of policing. But the goal is clear: The police and citizens working together to better serve the community.

*Copies of these reports are available from the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850, call 1-800-851-3420; Maryland and Washington, DC, metropolitan callers (301) 251-5500.*

## 1988 Preliminary Crime Stats

The number of serious crimes in the Nation rose 3 percent from 1987 to 1988, according to preliminary statistics of the FBI's Uniform Crime Reporting (UCR) Program. Based on an Index of selected offenses, UCR figures measure changes in the level of crimes reported to law enforcement agencies across the country. Both the violent crime total and the property crime total showed increases, that of 5 and 2 percent, respectively.

Among the violent crimes in the Index, aggravated assault showed a 7-percent increase, the largest for 1988. Robbery was up 4 percent, murder rose 3 percent, and forcible rape increased 1 percent.

With regard to property crimes, motor vehicle theft increased 11 percent, larceny-theft rose 2 percent, and arson increased 1 percent. Burglary recorded the only decrease in the property crime category—1 percent.

Geographically, three of the Nation's four regions recorded increases from 1987 to 1988 in the Crime Index total. The Northeastern and Southern States each reported 4-percent increases, while the Western States registered a 3-percent rise. The Midwestern States showed no change.

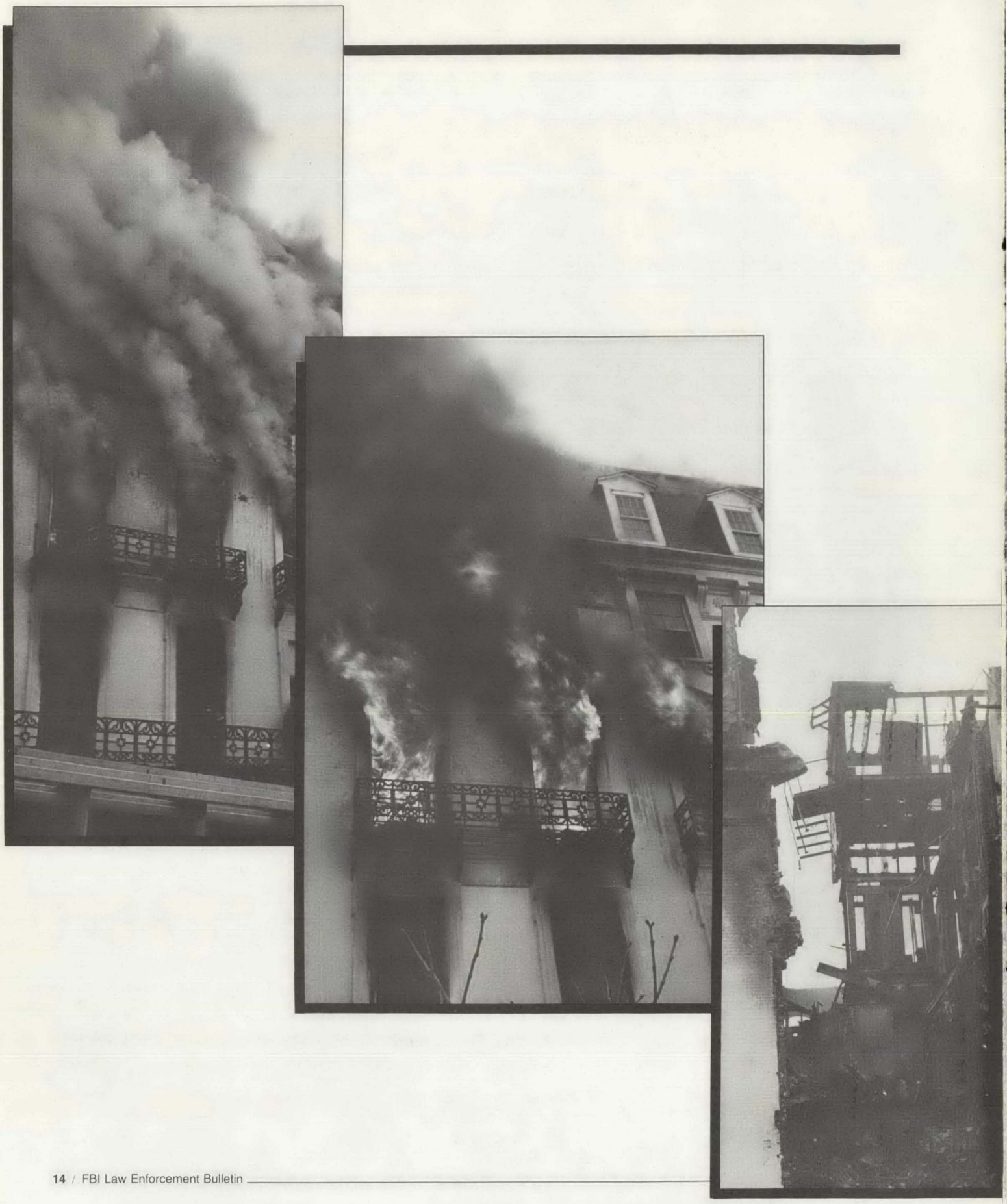
Cities with populations over 50,000 showed a 4-percent increase in the Crime Index offenses reported to police, whereas suburban and rural areas and cities outside metropolitan areas recorded 1-percent increases.

Final 1988 statistics will be released later this summer.

*(Source: Press release dated April 23, 1989, Crime Trends—1988 over 1987, Uniform Crime Reporting Program, Federal Bureau of Investigation, Washington, DC)*

***The Bulletin Reports,*** a compendium of criminal justice studies, reports, and project findings, is edited by Kathy Sulewski. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 7659, J. Edgar Hoover Building, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

(NOTE: The material presented in this section is intended to be strictly an information source and should not be considered as an endorsement by the FBI for any product or service.)



# Arson Reporting Immunity Laws

By
DAVID J. ICOVE, Ph.D., P.E.
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*National Center for the Analysis of Violent Crime*
*FBI Academy*
*Quantico, VA*
and
RICK GILMAN
*Executive Director*
*Insurance Committee for Arson Control*
*New York, NY*

While collecting evidence in a complex arson-for-profit case in a mid-Western State, Federal agents walk into an insurance claims adjusting company armed not with subpoenas or documentary search warrants, but with merely a simple letter of request asking for the information they need. These Federal agents know that a key element in the detection and prosecution of arson is the expedient exchange of information between insurance companies and law enforcement agencies.

Arson reporting immunity laws foster such exchange because they are designed to protect insurance companies from the threat of lawsuits when they share arson-related information with law enforcement officials.[1] In fact, insurance industry officials report that this exchange of information has a significant impact upon their companies' denial of civil arson-fraud claims and an increase by law enforcement agencies of the number of successful criminal arrests and convictions.[2]

This article informs fire and law enforcement agencies, which are tasked with investigating the crime of arson, about the existence of these laws in the 50 States and the District of Columbia.[3] Agencies interested in the application of immunity laws in arson investigations should, however, consult their legal advisor, due to the subtle State-to-State differences.

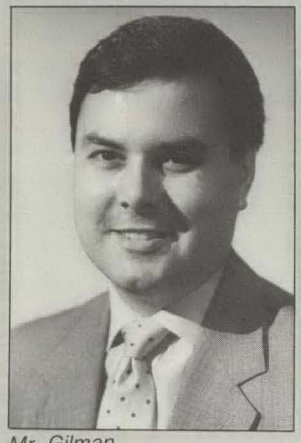
## BACKGROUND

In 1976, the Ohio legislature enacted the first law granting insurance companies immunity from lawsuit when they share arson-related information with law enforcement officials.[4] Using the Ohio statute, the Alliance of American Insurers, in 1977, authored model legislation entitled "Arson Reporting-Immunity Law." This model law is presently supported by numerous insurance industry groups, including the National Association of Independent Insurers, the American Insurance Association, and the members of the Insurance Committee for Arson Control.

The law's major purpose is to increase the flow of vital and timely investigative information between insurance companies and law enforcement agencies. The law requires insurers to inform the State fire marshal or other authorized agencies about fires that appear to be suspicious in origin. Specifically, the model law:

- Allows authorized agencies (defined on a State-by-State basis to include local, State, and/or Federal law enforcement officers, insurance commissioners, and/or prosecuting attorneys) to request from insurance companies all information concerning a policy holder involved in a fire loss. This information includes history of premium

Dr. Icove



Mr. Gilman

payments and previous claims, as well as investigatory files.

- Requires insurance companies to notify appropriate law enforcement agencies of suspicious fire losses. Such notices may constitute a request for an official investigation of the fire loss.
- Provides for the exchange of information between the insurance company and the law enforcement agencies, as well as exchange among those agencies.
- Grants limited civil and criminal immunity to those insurance companies and authorized agencies who exchange information.
- Safeguards the confidentiality of the released information.

## PROVISIONS OF THE MODEL IMMUNITY LAW

### Obtaining Information

Time is of the essence in an arson investigation. Removing the road block of requiring a subpoena or court order hastens the flow of information between the insurance companies and the investigating agencies.

In criminal probes of suspicious fire losses, it is vital that law enforcement agencies have access to all information relevant to the case under investigation. While much of the preliminary information developed by insurance companies may be unsubstantiated, it can assist the investigating authorities to develop leads, establish motive, and uncover other significant documentary evidence.

Most State-enacted immunity laws permit the release of information to authorized agencies at critical stages of the investigation by protecting the insurer from legal action, harassment, or punitive damages regarding any information it provides in good faith. Without this immunity law, or similar provisions, insurers would be inclined to withhold all but proven facts in order to avoid vulnerability to a civil lawsuit.

### Reporting Requirements

The mandatory requirement that companies notify agencies is twofold in purpose. First, it removes the element of discretion on the company's part and ensures that authorized agencies are notified of suspicious fire losses. Second, and perhaps more important, this requirement provides the company with added protection.

Because notification is statutorily mandated, it may be considered a qualified, privileged communication. Thus, it provides an extra blanket of security from libel or slander suits. However, mandated notice does not provide adequate incentive for releasing information if it stands alone—without concurrent immunity protection.

### Immunity From Prosecution

Immunity from civil and criminal liability is absolutely necessary for the success of these laws. Unless companies are allowed to release information to law enforcement without fear of liability, the statute's stated purpose can never be achieved.

In all immunity laws to date, civil or limited civil immunity is provided. In all but six States, criminal or limited criminal immunity is also covered by the stat-

utes. Four States enacted immunity protection, but did not use the terms "criminal" or "civil."

The immunity provision removes the climate of uncertainty which previously hampered cooperation in States prior to the enactment of immunity laws. To date, no insurance company has reported a test case regarding the release of unsubstantiated information to law enforcement agencies in cases of suspected arson.

**Reciprocity**

Reciprocity gives a company an extremely important tool for combating arson. In many cases, a company had only a suspicion and circumstantial evidence that arson occurred. Now, it may confirm suspicions of arson based on information requested from a law enforcement agency that has also investigated the fire. The investigating agency's opinion on the incendiary nature of an arson fire may also provide sufficient evidence for the company to deny a fraudulent claim.

The model immunity law provides that an insurer is entitled to request and receive information from law enforcement agencies. Although 34 States presently permit insurers to receive information from these agencies, several States have restricted this access by permitting agencies to refuse providing sensitive information, by denying insurers any access to specific kinds of information obtained by law enforcement personnel, or by permitting the agency to delay the exchange of information.

Minnesota has amended its laws to adopt the model immunity law language on reciprocity.[5] However, the legislature added definitive language which denied insurers the right to receive "non-conviction criminal history," the identity of a confidential source, or information which would be detrimental to another ongoing criminal investigation.

The timing of the information exchange is also a factor in reciprocity. Nevada, which provided for arson reporting and immunity in its fraudulent claims law, now entitles an insurance company to receive relevant information generated by an investigative or law enforcement agency. However, the information will not be made available until completion of the investigation or prosecution.[6]

The possible risks inherent in two-way exchange provisions are outweighed by the benefits. If arson schemes are to be curtailed or controlled, insurers and law enforcement officials must be legally authorized and empowered to mutually assist one another. This law allows the full resources of both the insurance industry and law enforcement agencies to be combined in a concerted program of detection and prosecution. Without such accessibility to information, both law enforcement agencies and insurers are compelled to make decisions with incomplete information.

**Testimony in Civil Cases**

This is a critical element of the model immunity law. Too often, if the criminal conviction is not pursued or fails, the civil action also fails for lack of ready access to the evidence and testimony available from investigators.

For example, testimony by investigating officers could include an expert opinion about the cause and origin of a fire, about the results requested and received from forensic laboratory examinations of fire debris, and about the significant statements made by witnesses. A majority of this information may already be a matter of public record; however, the testimony of law enforcement officials in civil court or by deposition may greatly assist the insurance company in its defense of a fraudulent claim.

Under the model immunity law, authorized agencies that request information from insurance companies may be later requested to testify in civil depositions and/or trials about the information uncovered in their probes. However, officers do not normally testify to information which could identify a confidential source or which could be detrimental to another ongoing criminal investigation. Through this provision in immunity legislation, the States are better able to keep the arsonist

> ***"Immunity from civil and criminal liability is absolutely necessary for the success of these laws."***

from profiting, even when criminal charges are not possible.

## OTHER ISSUES

### Privacy Act Issues

The arguments most frequently used opposing immunity laws involve State and Federal privacy issues. The model immunity law provides law enforcement agencies with the power to compel disclosure of information relating to insurance company investigations. This provision may permit the disclosure of personal information to legal authorities without the traditional protection afforded by subpoenas or other court orders.

Through the Right to Financial Privacy Act of 1978, Congress established a series of procedures by which law enforcement officers could obtain access to banking records.[7] While the model law makes no direct attempt to circumvent this system, it does not include any specific provisions regarding privacy. Opponents argue that there is a need for specific provisions to protect the privacy rights of individuals similar to the system of balances established by Congress regarding banking and other financial information.

### Notifying the Claimant

Authorized law enforcement agencies that request information from insurance companies should be aware that the insured may be notified of this inquiry. Three States—Arkansas, Florida, and Oklahoma—require insurers to provide notice to the insured about exchanges of information with authorized agencies. Arkansas' law requires insurance companies to provide an authorized agency with "relevant information."[8] Until 1983, the insurer was also required to provide its insured with a copy of the "report" sent to the agency within 30 days. While the language is not precise, apparently "report" means anything sent to the agency.

> "... officials need to establish clear procedures for the reporting and transfering of information...."

Florida's law provides for written notice to the insured, between 45 and 60 days, unless the agency finds that such disclosure would jeopardize lives, property, or the investigation.[9] In that case, the notice would be sent no sooner than 180 days, but before 190 days after the information is sent to the agency.

Oklahoma's law states that an insurance company must notify the insured if it wants information from an authorized State agency.[10] If the insured requests, the company is required to provide copies of all information received.

Industry efforts to repeal or amend these provisions of the laws have met with limited success. Undoubtedly, the commitment to remove this potential barrier to the free exchange of information contemplated by arson reporting immunity laws will continue.

## CURRENT DEVELOPMENTS

Presently, all 50 States and the District of Columbia have passed some form of arson reporting immunity legislation. Twelve of these laws reflect all of the important elements of the industry-developed model law. The trade associations are working to bring the existing laws in conformity with the model. Recent surveys conducted by several insurance trade associations indicate that the existence of immunity statutes had, in large part, relieved their member insurance companies' concerns about liability for releasing information on suspicious losses.[11] A majority of the firms surveyed now regularly comply with the legislation and report that cooperation with law enforcement authorities has resulted in higher arson convictions.

A frequent problem cited by responding companies was the lack of interest and follow-through by some local officials. For this reason, officials need to establish clear procedures for the reporting and transfering of information and to fund and staff adequately the agencies responsible for the collection and use of information.

## PREDICTING ARSON-PRONE STRUCTURES

The FBI's National Center for the Analysis of Violent Crime (NCAVC) maintains an active role in the use and dissemination of the Arson Information Management System (AIMS) technology. The NCAVC uses AIMS computer

analyses to, among other things, profile arson-prone structures within a community.

With the development of AIMS projects by State and local police and fire investigative agencies, additional interest has been placed on the prediction of arson-prone structures.[12] Research by various jurisdictions, insurance companies, and Federal agencies using AIMS analyses have produced "profiles" to predict arson-prone structures and to recommend fire prevention measures.[13] Some of the very data needed to predict potential targets are contained within insurance company underwriting files.[14]

> ***"The possible risks inherent in two-way exchange provisions are outweighed by the benefits."***

In response to this novel approach to arson prediction and prevention efforts, some States have modified their immunity laws to address these requests for information from local authorities. For example, Connecticut law grants companies immunity for reporting to law enforcement officials information regarding "potential" or actual losses due to fires of suspicious or incendiary origin.[15] This law does not contain objective criteria for determining a "potential" arson risk. Although it is clear that an insurer is not obligated, under Connecticut law, to report information regarding potential losses, some insurers believe that without objective criteria or a clear definition of potential arson, divulging pre-fire information may expose them to civil liability.

The laws of Hawaii, Illinois, Kentucky, and Ohio now contain provisions similar to those of Connecticut.[16] However, without such a clear definition of potential arson, a number of insurers believe the model arson reporting immunity law should not be amended to include the potential arson provision.

## RECOMMENDATIONS

The authors make the following recommendations to both government and insurance industry representatives tasked with combating arson:

- Fire and law enforcement officials should familiarize themselves with the Arson Reporting Immunity Law in their States.
- Insurance industry claims personnel should expeditiously notify the appropriate fire and law enforcement officials when they suspect arson or fraud during their preliminary probes.
- States which have adopted an immunity law which does not contain all the provisions of the model should bring their laws into conformity, with special emphasis on reciprocal exchange of information, notice to a single agency, provisions to allow authorities to testify in civil cases, and requests of information on potential losses.
- State officials should establish clear, timely reporting procedures of information by insurance company personnel so that such information can be quickly disseminated to the appropriate fire or law enforcement agency.

For further information on the topics discussed in this article, write directly to the National Center for the Analysis of Violent Crime, FBI Academy, Quantico, VA 22135.

FBI

**Footnotes**

[1]Insurance Committee for Arson Control, "State-by-State Summary of Arson Reporting-Immunity Laws," 1985.

[2]Bradley L. Kading, "Statement from the Alliance of American Insurers," Washington, DC, 9/8/88.

[3]Officials should refer to their individual State immunity law for further information and guidelines.

[4]Ohio Rev. Code Ann. sec. 3737.16.

[5]Minn. Stat. sec. 299F.052-057.

[6]Nev. Rev. Stat. sec. 686A.281-289 and 679B.157.

[7]Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95-630.

[8]Ark. Stat. Ann. sec. 66-5601 et seq.

[9]Fla. Stat. sec. 633.175(1)-(8).

[10]Okla. Stat. tit. 36, sec. 6301 et seq.

[11]Supra note 2.

[12]D.J. Icove and M.O. Soliman, "Arson Information Management System: Users Guide and Documentation," International Association of Arson Investigators, U.S. Fire Administration Agreement EMW-K-0812, Marlboro, MA, 1983; D.J. Icove, "Principles of Incendiary Fire Analysis," Ph.D. dissertation, 1979.

[13]R. Cook, J. Roehl, and A. Harrell, "Predicting and Preventing Arson," Institute for Social Analysis, 9/86.

[14]"Resisting Arson-Fraud," Allstate Insurance Company, 1/83.

[15]Conn. Gen. Stat. sec. 38-114h.

[16]Hawaii Rev. Stat. 132-4.5(a)-(e); Ill. Rev. Stat. ch. 73, sec. 1153; Ky Rev. Stat. sec. 304.20-150 et seq.

# Police Practices

## Jefferson County "Drunk Busters"

There was a time when the police had to rely solely on their own resources to identify drunk drivers. Those days are long gone, at least in Jefferson County, KY. Today, community-conscious citizens who have a vested interest in keeping the roads safe for everyone are rallying to get the drunk driver off the streets.

"Drunk Busters," a program conceived by a local bus driver, enlists the aid of thousands of private and public sector employees to notify police when they witness erratic driving behavior. To date, over 20 agencies, with a combined total of 4,074 vehicles, have joined in the effort. They place special stickers reading "Drunk Buster On Board" on the rear of their vehicles. The back, peel-off portion of the sticker lists the 20 most obvious warning signs of drunk drivers. (See sidebar.)

After becoming familiar with these signs, vehicle operators are asked to call police when they suspect someone is driving under the influence of alcohol or other intoxicants. The police are then dispatched to the location where the vehicle was last seen. If they spot the vehicle, they will observe the behavior of the driver themselves, looking for any of the driving habits that would warrant stopping the vehicle and administering a sobriety test. The program has been endorsed by MADD (Mothers Against Drunk Drivers).

"We've spent thousands of federal, state, and local dollars in an effort to answer the problem of the drinking driver," comments a county judge. "But money isn't always the best remedy. By pulling this community together, we're showing that Jefferson Countians are serious when we say, 'We want it to stop.' "

The assistant chief of police of Jefferson County adds, "This is just the beginning. We hope to eventually involve the entire community in watching for drunk drivers."

For more information on this program, contact:

Patrolman Bob Yates
Jefferson County
Police Department
600 W. Jefferson Street
Louisville, KY 40202
(502) 625-6125

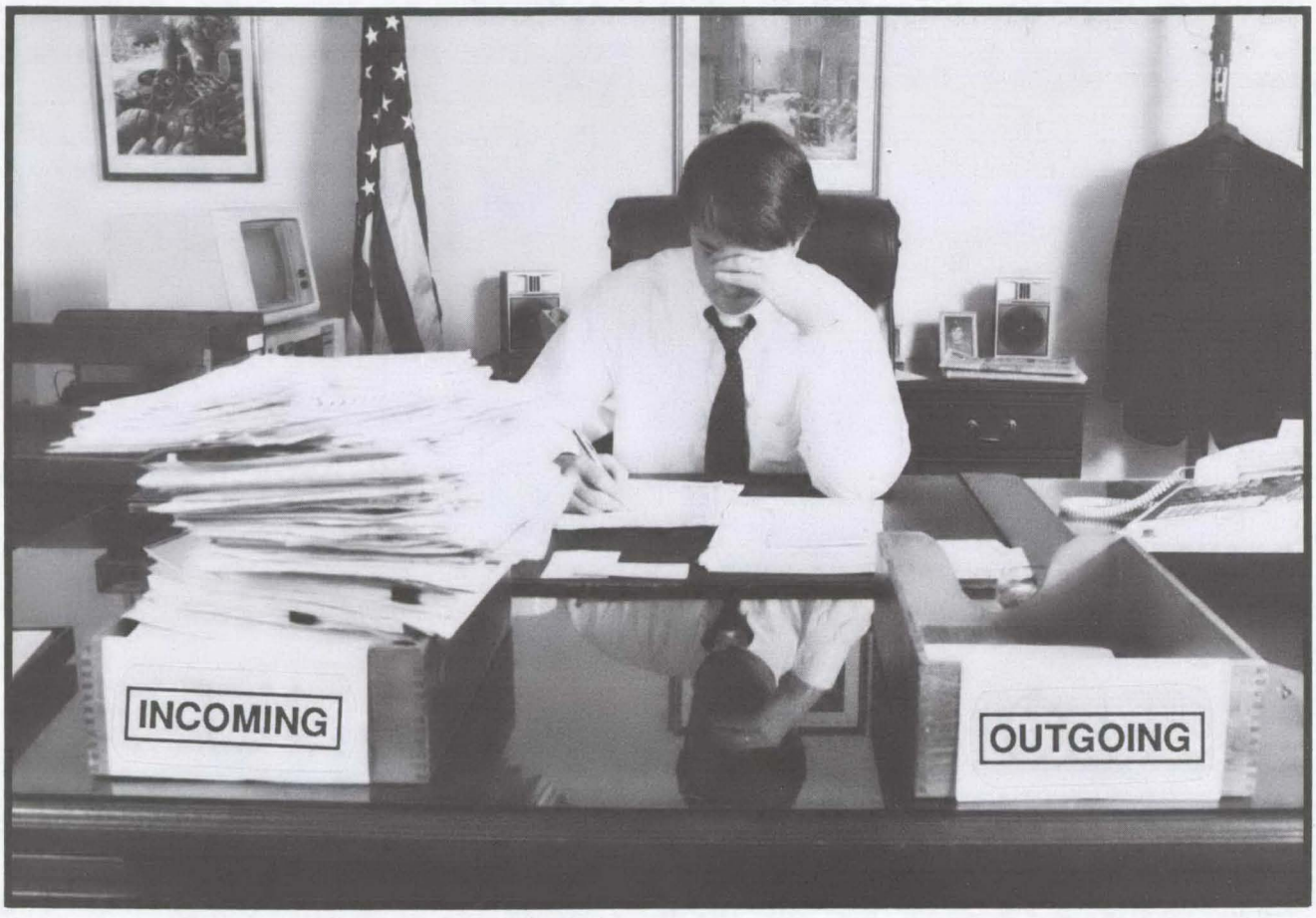
**"Drunk Busters" Guidelines**

Participants in the "Drunk Busters" Program are advised that a driver demonstrating one or more of the following characteristics could be operating a vehicle under the influence of alcohol or other intoxicants. If they notice any of the "erratic" driving habits listed, they are asked to call the police as soon as possible with a description of the vehicle, location, and license number. They are also strictly warned that in no way should they approach or follow the vehicle.

A driver could be under the influence of intoxicants if he or she:

1. Makes wide turns
2. Weaves in the roadway
3. Straddles the center line
4. Nearly strikes another vehicle
5. Drives on other than the designated roadway
6. Drives slowly (normally 10 m.p.h. below limit)
7. Appears to be drunk
8. Stops without cause in the roadway
9. Follows another vehicle too closely
10. Drifts from lane to lane
11. Rides the center line
12. Brakes erratically
13. Drives into opposing or crossing traffic
14. Signals inconsistently with driving actions
15. Has a slow response to traffic signals
16. Stops inappropriately in the driving lane
17. Turns abruptly or illegally
18. Accelerates or decelerates rapidly
19. Fails to dim headlights
20. Has headlights off in darkness

***Police Practices*** serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7659, 10th & Pennsylvania Ave., NW, Washington, DC 20535.




# Reading Management for Police Administrators

By
George Stevens

Reading demands placed on you as police administrators are varied, but always constant. You may have to continuously read reports, memos, or new books to keep current. You must also keep up with the daily mail that threatens to strangle you, even though only a portion of that reading is necessary or helpful. You were trained, as many of us were in school, to be a power reader, to read deliberately and slowly, to stop and recheck, to double back, to make sure that you've grasped everything. This is invaluable and absolutely necessary for some of your reading. But, you, as police administrators, need to read quickly and efficiently in order to find information beneficial to you. Somewhere in that stack of incoming mail may be a vital memo or report. The problem is finding it.

Through prescribed drills, you will learn to focus on and eliminate your restrictive reading habits. As a result, your reading speed will increase and you will comprehend more. While some

speed-reading instructors claim that their courses will increase your reading ability to 1,000 words per minute, this goal is unrealistic for most of us.

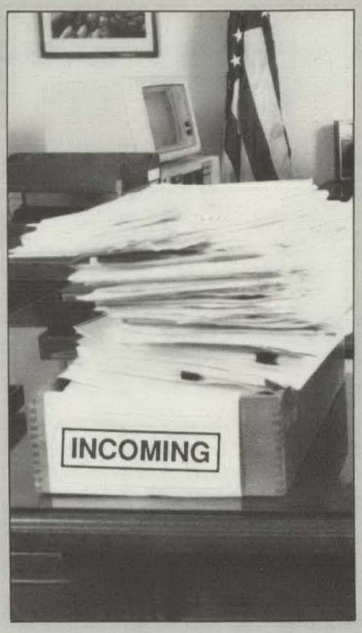
The following techniques promise a much humbler, yet far more obtainable, goal. By using these techniques, you may increase your reading speed by a more realistic 100 words per minute. With speed as a clerical tool, you will be able to find the time to read the material and obtain information of greatest value to you and your department.

## READING PROBLEMS

There are three behaviors that slow down the adult reader. They occur primarily because we have an alphabetical reading system. Subvocalization, regression, and narrow eye span, which facilitate reading for children, hinder adult readers. When you overcome these three deterrents, however, you will immediately improve your reading speed.

But, before you begin these drills, it may be helpful to gauge your current reading speed. Select a short magazine or newspaper article and read for 5 minutes. Then, count the number of words per inch, measure the approximate number of inches you read, and divide by five. You can also use a novel to measure your reading speed. Count the words per line and multiply by the number of lines you read during the 5-minute period to determine your words per minute, then divide by five. This score will give you a starting point from which to improve.

You may also wish to isolate each drill or exercise and practice on your technique for a longer period of time. Practice will help to solidify these new skills in your mind and help you to combine them into your total reading process later on.




***"Subvocalization, regression, and narrow eye span ... hinder adult readers."***

### Subvocalization

Subvocalization, which is tiny unnoticeable contractions of the tongue and other speech-related organs made during speech, develops in the early stages of learning to read. When children first learn the alphabet, they interpret each letter into an appropriate noise. Reading aloud encourages children to experience the sound of language and reinforces their ability to read. Consequently, children learn to subvocalize and limit their reading speed to their talking speed, which is approximately 120-180 words per minute. This tendency to vocalize becomes an ingrained reading response. Even as adults, many readers still subvocalize as they read and remain slow readers. Thus, in order to increase reading speed to 300-500 words per minute, you must stop subvocalization.

You can stop subvocalization with this simple technique designed to block tongue movement. Place your tongue against the back of your teeth when reading. Don't be concerned about speed. This exercise teaches the brain to read and understand words without vocalizing them. As you become more practiced, your reading speed will improve to over 300-500 words per minute. Subvocalization will disappear when you reach this level, because at high speeds you cannot comfortably vocalize or subvocalize words.

### Regression

This tendency to look back over previously read material develops, because at times, you must examine the letters both at the beginning and at the end of words before you know how to pronounce them. Over a period of years, this behavior develops into a reading waver with the eye continuously glancing back to verify letters or words. This can slow down readers to about two-thirds of their potential speed.

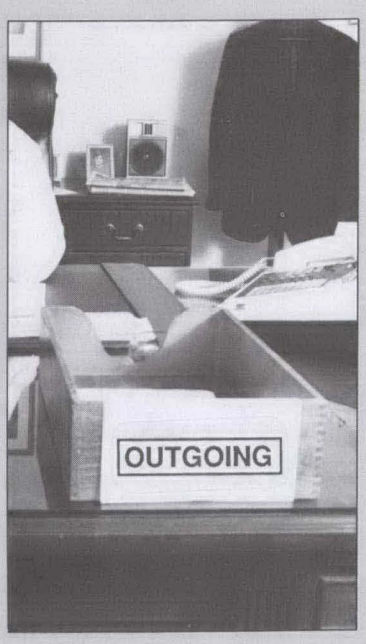
The tendency to look back is natural for a person learning to read, but when it becomes a habit,

it impedes normal reading progression. The trick to eliminating regression is the hand or finger sweep. As you underline the text in a continuous left to right motion, the finger is used as a target by the eye to control its movements. The brain controls eye movement by ocular pursuit, or simply put, tracking objects. Therefore, as you underline from left to right, with a steady smooth sweep, you will eliminate regression.

Several elements are involved in the regression exercise. First, read slowly, using the hand or finger sweep. Novels are particularly well-suited to this drill, so select a novel to practice with and read for 60 seconds. Deliberately read slower than necessary. Your objective: To see every word clearly and intently. Move your finger continuously and slowly across the line. Stare intently at each word. After 60 seconds, return to the beginnng and read the section again, a little faster, but still at a comfortable speed. You'll go a little faster and a little further. Repeat this process again, and try to read even faster. This means that your finger will cover the words as quickly as you can see them. Place your emphasis on tracking the words rapidly, not regressing.

### Narrow Eye Span

Narrow eye span inhibits fast reading. Again, because you learned to read using an alphabet, you examined each word very closely in order to master spelling. This limits your eye span to a few small word clusters or substantial parts of larger words. Even as an adult, the peripheral eye span limit is between two and three words.




***"Narrow eye span inhibits fast reading."***

To help eliminate narrow eye span, one technique is to try searching for your name in a magazine or newspaper article. Using this technique, you'll learn to take two lines at a time, as fast as you can, and to search back and forth. This is the same technique you commonly used when searching for a name in a phone book. Also, repeating your name to yourself will block any tendency to subvocalize. This enables you to work on subvocalization and narrow eye span simultaneously.

Another tactic for widening eye span involves reading and rereading a newspaper column at increasing rates of speed. This has some of the same effects as reading a column slow to fast; however, the important difference here is to maintain comprehension as best you can while you are rereading. Select a magazine or newspaper article and read the first page or at least the first column, depending how long they are. Having read that column, reread it in 30 seconds. Now, reread it in 20 seconds and then go as far as you can in 10 seconds.

## OTHER CORRECTIVE DRILLS

### Transfer Reading Exercise

To further increase your reading speed, there are additional exercises, such as the transfer reading exercise. Transfer reading is like scrimmaging in sports. You'll now merge the drill techniques into the game format. In essence, transfer reading means reading a little faster than is comfortable while still being conscious that you are looking at phrases—your eyes will move across the line and keep an even speed. Similarly, your concern should not be comprehension. In a scrimmage, you are not too concerned with the score—here also you are concerned only with technique.

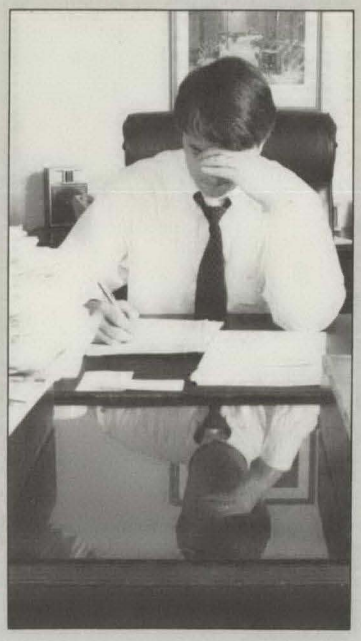
### Reading For Set

Reading for set is reading for comprehension. As you read, you will answer questions such as Who? What? Where? When? and Why? An important element when reading for set is to visualize whenever possible. Get a mental impression, a picture of the action. Imagery doubles memory. So, whenever possible, form some mental pictures of the story. While

regression, subvocalization, and narrow eye span slow you down, visual memory will increase your speed.

Open your novel to the first page, or to whatever page you happen to be on at this point, and read, in a relaxed frame of mind, for 5 or 10 minutes. In that period of time certain questions will answer themselves automatically: Who? What? Where? When? and Why? This orients your memory to the novel's basic structure. It is very difficult to read for speed until you have completed this drill and have read for set.

Having read for set, stop and jot down the title, the author, and the names of the main characters. A few moments of jotting this information down will serve to fix it in your memory. This technique is essential because writing down information fixes it in your mind, making it much easier to recall later. If possible, discussing the book with someone else also proves to be a very valuable tactic to ensure accurate memory.



"[Police administrators] need to read quickly and efficiently. ..."

### Reading Fast to Slow

The final drill is reading fast to slow. This involves timed readings and intense concentration to improve comprehension. This exercise involves a process of skimming, followed by slower reading. To perform this drill, pick a magazine or newspaper article with several columns and read the first column for set. Remember that set deals with answering the questions of Who? What? Where? When? and Why? Then, use the next three columns for a drill. Start at the top of the drill column and skim down the middle of the column, staring as intently as you can. Do this in approximately 5 seconds regardless of whether you are actually reading the words or not. Repeat this process in a 10-second, then 20-second, and finally in a 30-second timed reading. At this point read the columns as fast as you can comprehend. You will find that by having done the very fast timed readings and having read the columns several times that your comprehension and your reading speed will improve.

### Check Reading Speed

To check your reading speed, take one or two columns from an article and read for both speed and comprehension. Again, check your words per minute using one of the methods previously mentioned. Many people tend to underestimate their reading speed once they become skillful, so it's good just to reassure yourself that you are over that 250 or maybe into the 350-400 range by checking your rate periodically. Remember that normal reading speed is approximately 250 words per minute. Also, an occasional speed run does a lot for your concentration and keeps your mind from wandering.

Even a 100 words-per-minute increase, which you probably experienced when you practiced and drilled with these techniques, is a sizable improvement. For most of us, it represents an increase of approximately one-third in our reading speed.

### SUMMARY

Subvocalization, regression, and narrow eye span, behaviors which slowed you down and kept you reading as you were taught, will no longer hinder your normal reading progression. Having learned these simple techniques, you, as police administrators, will be able to manage your reading, to eliminate restrictive reading habits, and to read more efficiently. By doing so, you will find additional time for other more important duties. FBI

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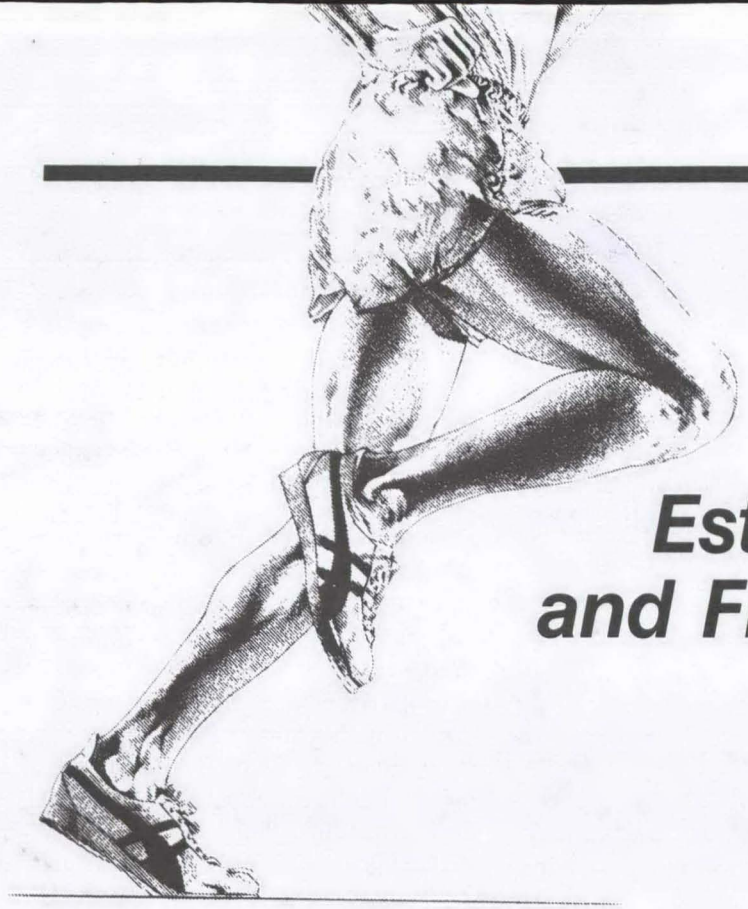
*George Stevens teaches reading skills courses to managers within the U.S. Department of Justice.*



# Establishing Health and Fitness Standards

## *Legal Considerations*

By
DANIEL L. SCHOFIELD, S.J.D.
*Special Agent*
*Legal Counsel Division*
*FBI Academy*
*Quantico, VA*

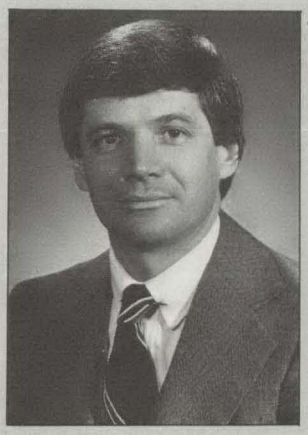
The health and fitness levels of law enforcement employees are a legitimate concern of law enforcement administrators and the American public. Law enforcement employees are expected to maintain high levels of physical fitness. However, many fitness-related problems and illnesses are brought on by lifestyle factors, such as tobacco usage, improper nutrition, and the lack of exercise. Some administrators have responded to the concern for employee fitness by developing mandatory health and fitness standards, such as nonsmoking regulations and obesity control guidelines; others attempt to ensure fitness for duty through the use of agility tests that measure a person's ability to perform specific tasks.

This article assesses the legality of various health and fitness standards under Title VII of the Civil Rights Act of 1964[1] (hereinafter title VII) and the U.S. Constitution. Court decisions suggest that law enforcement administrators have considerable latitude under the Constitution to enforce reasonable health and fitness standards that promote good health and job-related fitness in a positive manner. Conversely, title VII is violated by mandatory standards that disproportionately disadvantage women and are not properly validated as job related.

This article begins with a brief discussion of so-called "wellness" programs that establish goals for good health rather than mandatory standards. Next, the legality of various mandatory fitness standards is assessed in the context of recent court decisions involving law enforcement employment. Finally, specific recommendations are offered for the implementation and enforcement of health and fitness standards.

### A "WELLNESS" APPROACH TO EMPLOYEE FITNESS

A first and essential step in promoting the health and fitness of law enforcement employees is a department "wellness" program that encourages good health and provides various health-related benefits to employees on a voluntary basis. All law enforcement organizations should have a "wellness" program that provides employees with educational information on lifestyle issues, such as drinking, smoking, diet, and



Special Agent Schofield

> ***To be legally enforceable, all mandatory fitness standards must be reasonable.***

proper exercise. Various facilities and incentives can be offered to encourage employee participation in fitness programs. For example, the FBI's ''Focus on Fitness'' program provides 3 separate hours per week, on-duty time, for vigorous physical exercise programs. This commitment in finances and time is a definitive statement that as an institution, the FBI cares about the health and fitness levels of Agents and the tremendous impact those levels have on the individual's personal and professional capabilities.

''Wellness'' programs that merely establish goals for healthier employees are not violative of either the Constitution or title VII because there are no mandatory fitness standards or agility tests requiring a specific level of fitness. However, employees can be required to participate in ''wellness-related'' activities, such as an annual physical examination, training and counseling sessions, or a periodic fitness test to measure overall health and fitness. Required participation during working hours is a reasonable condition of employment that enables law enforcement administrators to gather information relative to employee health and fitness for duty; no constitutional or title VII provisions are implicated, since there are no mandatory standards resulting in adverse personnel action except for an employee's insubordinate failure to participate.[2]

## MANDATORY STANDARDS—GENERAL CONSIDERATIONS

The implementation and enforcement of mandatory health and fitness standards in a law enforcement organization raises potential legal issues under the Constitution and title VII. To be legally enforceable, all mandatory fitness standards must be reasonable. The Constitution only permits the enforcement of mandatory standards that have a ''rational basis'' and are fairly implemented.[3] However, the legality under title VII of a particular standard often depends on its impact. Title VII requires that mandatory standards with a disparate impact on women be justified by proof of job relatedness, which is considerably more burdensome for the government than the ''rational basis'' test.[4] The following discussion of court decisions illustrates the differing levels of governmental justification that are necessary to establish the legality of various mandatory standards.

### "Rational Basis" Required If No Disparate Impact

Mandatory health and fitness standards with no disparate impact under title VII are constitutional if rationally related to a legitimate governmental interest. Under this ''rational basis'' analysis, courts adopt a deferential posture that initially assumes the validity of the fitness standard. For example, in *Grusendorf* v. *City of Oklahoma*,[5] the U. S. Court of Appeals for the 10th Circuit upheld a nonsmoking rule because it had a rational relationship to the legitimate State purpose of promoting employee health and safety. Mr. Grusendorf had taken three puffs from a cigarette while on a lunch break from his job as a firefighter trainee with the Oklahoma City Fire Department and was fired for violating the terms of an agreement he signed as a precondition of employment that he would not smoke a cigarette, either on or off duty, for a period of 1 year from the time he began to work.

The court began its analysis of the constitutionality of this nonsmoking requirement by noting that the government has a heightened interest in regulating the activities of government employees when those regulations are rationally related to employee fitness for duty.[6] The court found a rational connection between the nonsmoking regulation and the promotion of the health and safety of the firefighter trainees on

grounds that good health and physical conditioning are essential requirements for firefighters and the Surgeon General's warning on the side of every box of cigarettes notes that smoking is hazardous to health.[7]

Courts also uphold reasonable visual acuity requirements for police that are rationally related to legitimate law enforcement interests.[8] For example, in *Padilla* v. *City of Topeka*,[9] the Supreme Court of Kansas employed a "rational basis" analysis and upheld a physical standard for hiring police with uncorrected visual acuity not less than 20/50 for each eye—correctable to 20/20 in each eye. Noting that visual acuity of police officers is a reasonable concern, the court found the standard constitutional, even though the acuity standard was relatively new to the department and a number of officers on the force could not meet it. The court concluded that "[I]t would be poor public policy to hold that a police department cannot upgrade its officers by imposing standards without terminating all existing officers who could not meet the new standards."[10] Judicial recognition of the need for reasonable health and fitness requirements is also evident in a Federal district court decision, which found a rational basis to support the denial of employment for the position of reserve police officer on the grounds that the applicant suffered from sensitivity to high temperatures.[11]

The courts have also upheld reasonable mandatory fitness standards despite claims of handicap discrimination under the Rehabilitation Act of 1973.[12] For example, the court in *Padilla* ruled that the city's refusal to hire the applicant as a police officer because of his myopic vision was not a violation of the Rehabilitation Act of 1973, which prohibits discrimination against "otherwise qualified handicapped" individuals and requires proof of a "physical or mental impairment which substantially limits one or more of such person's major life activities."[13] The court ruled that characteristics such as average height or strength that render an individual incapable of performing particular jobs are not "impairments" under the terms of the statute.[14]

In *Tydyman* v. *United Airlines*,[15] a Federal district court ruled that an applicant rejected on a weight guideline was not a "handicapped individual" within the meaning of the Rehabilitation Act because he had no physical impairment and was not substantially limited in a major life activity. Finally, in *Davis* v. *Meese*,[16] a Federal district court ruled that the FBI's exclusion of all insulin-dependent diabetics from applying for positions as Special Agents or investigative specialists does not violate the Rehabilitation Act of 1973, since they run the risk, although the likelihood may be small, of suffering severe hypoglycemic occurrence while on duty that would present danger of serious harm to themselves, co-workers, and uninvolved third parties.[17]

> ***"... law enforcement administrators have considerable latitude under the Constitution to enforce reasonable health and fitness standards...."***

### Standards With Disparate Impact Must Be Job Related

Fitness standards, such as agility tests that measure strength and speed, may have the effect of disqualifying a larger percentage of women than men, thus resulting in disparate impact under title VII. Agility tests with a disparate impact on women have been successfully challenged as being discriminatory under title VII.[18] However, the U.S. Supreme Court recently discussed the burdens of proof in these title VII disparate impact cases and defined the employer's burden of showing job relatedness in terms that may facilitate the defense of job-related agility tests in future litigation.

## SUPREME COURT DEFINES EMPLOYER BURDENS OF PROOF

In *Watson* v. *Fort Worth Bank and Trust*,[19] the Supreme Court reaffirmed the basic principle that an equally applied employment standard may violate title VII, even in the absence of a demonstrated discriminatory intent, because it may, in operation, be functionally equivalent to intentional discrimination.[20] In litigating these disparate impact claims under title VII, plaintiffs must identify the specific standard that is responsible for a statistical disparity and show how that standard disadvantaged them because of

their membership in a protected group. Disparate impact will not ordinarily be inferred, unless the members of a particular race, sex, or ethnic group are selected at a rate that is less than four-fifths of the rate at which the group with the highest rate is selected.[21]

> ***"All law enforcement organizations should have a 'wellness' program that provides employees with educational information on lifestyle issues...."***

The Court in *Watson* formulates a revised burden allocation scheme that should help employers establish the job relatedness of a reasonable fitness standard that has a disparate impact. The Court begins by noting that while an employer has the burden of showing that a particular standard has a manifest relationship to the employment in question, "... the ultimate burden of proving that discrimination against a protected group has been caused by that standard remains with the plaintiff at all times."[22] The Court then states that employers are not required, even when defending standardized requirements, to introduce formal "validation studies" showing that those particular standards predict actual on-the-job performance.[23]

The Court found precedential support for these assertions regarding the employer's burden of proving job relatedness in two earlier decisions involving law enforcement employment. In the first case, *New York City Transit Authority* v. *Beazer,*[24] the Court ruled that legitimate employment goals of safety and efficiency permitted the exclusion of methadone users from employment with the New York City Transit Authority; the "manifest relationship" test was satisfied even with respect to nonsafety-sensitive jobs because these legitimate goals were *significantly served* by the methadone exclusion.[25] In the second case, *Washington* v. *Davis,*[26] the Court held that the "job-relatedness" requirement was satisfied when the employer demonstrated that a written test was related to success at a police training academy "... wholly aside from [the test's] possible relationship to actual performance as a police officer."[27]

The holding in *Watson* represents a significant doctrinal shift for the Court. The scope of this apparent shift is reflected in the concurring opinion of three Justices who argue that the Court's discussion of the allocation of burdens of proof and production is "... flatly contradicted by our cases."[28] In a similar vein, Justice Stevens argued that it was "... unwise to announce a *fresh* interpretation of our prior cases applying disparate impact analysis to objective employment criteria."[29] Despite these statements, it is difficult to predict how the opinion in *Watson* will influence future lower court litigation concerning the legality under title VII of mandatory fitness standards for law enforcement.[30]

## LOWER COURT DECISIONS INVOLVING LAW ENFORCEMENT AGILITY TESTS

Lower courts are divided over the legality under title VII of agility tests with a disparate impact on women. Courts differ in much the same way as the Supreme Court did in *Watson* over the quantum of proof of job relatedness that is required.[31] The two decisions discussed below reach different conclusions and illustrate the difficulties inherent in predicting whether a particular fitness standard will be upheld as a necessary and valid predictor of successful job performance.

### Physical Agility Test Upheld

In a case decided prior to the Supreme Court's ruling in *Watson,* a Federal district court upheld two physical tests with a disparate impact on women by adopting a standard for measuring job relatedness that closely resembles the Court's formulation in *Watson.* In *United States* v. *Wichita Falls,*[32] the court ruled that an applicant's successful completion of the Wichita Falls Police Department's physical assessment and physical ability test was "... necessary to be an effective police officer in Wichita Falls, Texas."[33] The physical assessment test was used to screen applicants for entry into the police training academy. Applicants who successfully completed that test were subsequently required to pass a more strenuous physical agility test after they had

undergone some training in the police academy.

The physical assessment test operated as a screening mechanism for entry into the police academy by analyzing the general fitness of an individual instead of an applicant's ability to perform certain tasks. The test measured fitness in the following categories: (1) Cardiovascular function, (2) body composition, (3) flexibility, and (4) dynamic and absolute strength. In order to pass the test, an applicant needed to score "fair" for a person of his or her own sex who is 40 to 49 years of age.[34]

The court offered three reasons to support its conclusion that this physical assessment test did not discriminate against women. First, although women and men take the same test, the standards against which they are compared are not the same, since women are compared against women and men are compared against men. Second, the test is a nationally accepted and popular test for determining the general fitness of an individual and has "construct validity" because it accurately identifies physical characteristics necessary to perform as a police officer.[35] Third, the "fair" condition standard adopted by the department "... is the absolute minimum physical condition for an effective police officer. Officers are daily confronted with situations where they must exert physical force, move rapidly, and stress their cardiovascular system. They must be in at least 'fair' condition for a person between the ages of 40 and 49 to withstand these physical challenges."[36]

The physical agility test was given to applicants after they had passed the physical assessment test and undergone some training in the police academy. The physical agility test attempted to measure specific strengths and motor abilities directly related to the accomplishment of police functions. The department reasoned that since motor skills can be taught to a person who is in good general health as determined by the physical assessment test, the motor skills necessary for a police trainee entering the training academy need not be at the same level as that of a police officer. The department also believed that the additional strength and increased motor ability necessary for the performance of police duties and successful execution of the physical agility test could be acquired during the 16-week training period.

> **"... employees can be required to participate in 'wellness-related' activities...."**

The physical agility test consisted of an obstacle course (composed of a low obstacle, short wall (2′), medium wall (4′), high wall (5′), serpentine tunnel, balance beam, balance bar and horizontal ladder, transporting a 150-pound dummy 75 feet, a stairway run, and a quarter-mile run. Since police officers and expert witnesses testified that police officers must be able to perform all of the tasks in the physical agility test to be an effective officer, the court concluded that the "... various aspects of the test are *operational necessities* for a Wichita Falls police officer."[37] The court declared the agility test to be a valid predictor of job performance and "content valid" based on evidence presented at trial that the test accurately reflects the qualities needed to perform as a police officer, and evidence that the tasks performed in the physical agility test accurately simulate tasks performed by police officers.[38]

The precedential value of the court's holding in *Wichita Falls* is enhanced by the Supreme Court's subsequent holding in *Watson*. Even though the court offered no case authority to support its conclusion that a formal validation study was not required,[39] it is important to note that the Supreme Court reached a similar conclusion in *Watson*.[40]

**Agility Test Invalidated**

Other courts have invalidated agility tests with a disparate impact on women on grounds they are not based on an adequate job analysis and are not correlated to actual job performance. For example, in *Thomas* v. *City of Evanston*,[41] a title VII class action suit was brought by women who alleged that the city's use of a physical agility test to screen job applicants for the police department was illegal. The physical agility test which had a disparate impact on females contained several events, such as a stair climb, a quarter-mile run, and obstacle course. Applicants would receive an integer score ranging from one through five for each event, depending on their performance as compared to a table of norms. The agility test was based on a job analysis consisting of survey responses of three police chiefs and 30 hours of observation of

actual police activities by a graduate student riding along with police officers.

The court ruled the city had the burden of showing the test had content validity and that it could satisfy the following attributes of job relatedness:

> "First, the test-makers must have done a proper 'job analysis,' that is, a study of important work behaviors required for successful performance and their relative importance. Second, the test must be related to and representative of the content of the job. In other words, the test must measure ability to perform competently on the specific job. Third, the test must be scored so that it properly discriminates between those who can and cannot perform the job well."[42]

In that regard, the court ruled that the job analysis conducted by the city was plainly inadequate and that the agility test could not be analyzed to determine whether it was related to and representative of the job.[43] The court then offered the following advice concerning the development of physical agility standards for law enforcement employment:

> "It is well within the police executive's authority to devise a physical agility test which would be justifiable as a device to screen police applicants. Certainly the job demands some minimum level of coordination and strength. However, Title VII requires that a test that is discriminatory be necessary to the job and carefully validated. Too often tests which on the surface appear objective and scientific turn out to be based on ingrained stereotypes and speculative assumptions about what is "necessary" to the job. Thus, tests which discriminate against protected groups must be thoroughly documented and validated in order to minimize the risk of unwarranted discrimination against groups which have been traditionally frozen out of the work force."[44]

**"Mandatory health and fitness standards with no disparate impact under title VII are constitutional if rationally related to a legitimate governmental interest."**

## CONCLUSION

Court decisions discussed in this article suggest that law enforcement administrators have considerable latitude to develop and enforce reasonable health and fitness standards for law enforcement employment. Health and fitness standards are constitutionally valid if fairly implemented and rationally related to legitimate law enforcement interests. However, if a particular standard has a disparate impact on women, title VII requires that it be justified by a showing of job relatedness. Judicial disagreement over the appropriate burden of proof to establish job relatedness makes it difficult to predict whether a particular fitness standard with disparate impact will be upheld.

Accordingly, three recommendations are offered for the orderly development of law enforcement health and fitness standards. First, all law enforcement organizations should have a "wellness" program that promotes good health and fitness in a positive and non-punitive manner. Second, the impact of any mandatory standard should be carefully monitored and periodically reviewed to ensure that no person is unnecessarily disadvantaged; the enforcement of any mandatory standard with disparate impact on women should be avoided until there is clear and convincing evidence of its job relatedness. Third, prior to the enforcement of any mandatory standard, law enforcement administrators should consult with health and fitness experts and competent legal counsel to ensure that the standard is reasonable and legally defensible. FBI

**Footnotes**

[1]42 U.S.C. §2000e *et seq.*

[2]For a general discussion of constitutionally based employment rights, *see* Schofield, "Public Employment and the U.S. Constitution," *FBI Law Enforcement Bulletin*, vol. 47, Nos. 7 & 8, July and August, 1978.

[3]In *Kelley* v. *Johnson*, 96 S.Ct. at 1444, the Supreme Court discusses the "rational basis" test and emphasizes that "... state and federal governments, as employers, have interests sufficient to justify comprehensive and substantial restrictions upon the freedoms of their employees that go beyond the restrictions they might impose on the rest of the citizenry."

[4]For a general discussion of title VII requirements and a definition of disparate impact, *see* Schofield, "Title VII of the Civil Rights Act of 1964," *FBI Law Enforcement Bulletin*, vol 48, Nos. 4 & 5, April and May, 1979.

[5]816 F.2d 539 (10th Cir. 1987).

[6]*Id.* at 542.

[7]*Id.* at 543.

[8]*See, In re Gargano* v. *North Washington Fire Protection District*, 754 P.2d 393 (Colo. App. 1987). The court held that it is not unreasonable in the interest of public safety to upgrade forces by imposing higher physical standards for new employees without terminating all currently employed persons who do not meet the new standards; reduced visual acuity and weakened knee were not handicaps and were lawful reasons to reject applicants.

[9]708 P.2d 543 (Kan. 1985).

[10]*Id.* at 548.

[11]*See, Lowes* v. *Sayad*, 614 F.Supp. 1206 (D.C. Mo. 1985). In *Zigarelli* v. *NYSP*, 510 N.Y.S.2d 740 (N.Y. App. Div. 1987), the court held that loss of hearing in one ear disqualified officer from transferring to State police; police function requires a high standard of fitness.

[12]29 U.S.C. §701 *et seq.*

[13]29 U.S.C. §706(7)(B)(i).

[14]708 P.2d at 549.

[15]608 F.Supp. 739 (D.C. Calif. 1984).

[16]692 F.Supp. 505 (E.D. Pa. 1988).

[17]*Id.* at 520.

[18]*See Harless* v. *Duck*, 619 F.2d 611, 616–17 (6th Cir. 1980), *cert. denied*, 449 U.S. 872 (1980); *Blake* v. *City of Los Angeles*, 595 F.2d 1367, 1381–83 (9th Cir. 1979), *cert. denied*, 446 U.S. 928 (1980); *Burney* v. *City of Pawtucket*, 559 F.Supp. 1089 (D.R.I. 1983), *appeal dismissed*, 728 F.2d 547 (1st Cir. 1984); *Officers for Justice* v. *Civil Service Commission of San Francisco*, 395 F.Supp. 378, 381–86 (N.D. Cal. 1975); *generally* Annot. 53 A.L.R. Fed. 31 (1981).

[19]108 S.Ct. 2777 (1988).

[20]*Id.* at 2785.

[21]*See* EEOC "Uniform Guidelines on Employee Selection Procedures," 29 CFR §1607.4(D) (1988).

[22]108 S.Ct. at 2790.

[23]*Id.*

[24]440 U.S. 568 (1979).

[25]*Id.* at 587, n. 31.

[26]426 U.S. 229 (1976).

[27]*Id.* at 250.

[28]108 S.Ct. at 2792 (Blackmun concurring).

[29]*Id.* at 2797 (Stevens concurring).

[30]It is important to note that only a four member plurality in *Watson* agreed that the employer in a disparate impact case does not have the burden of proof to establish job relatedness and a direct correlation between the standard in question and actual job performance.

[31]Compare the contrasting rulings in: *Brunet* v. *City of Columbus*, 642 F.Supp. 1214 (S.D. Ohio 1986), appeal dismissed, 826 F.2d 1062 (6th Cir. 1987), *cert. denied*, 108 S.Ct 1593 (1988) (Under title VII, a lower quantum of proof of job relatedness for physical test that has adverse impact on women is not justified on ground that job implicates public safety; correlation of test scores and training academy scores was not sufficient to validate test; to be valid, physical test must be based on job analysis and correlated to actual job performance); and *Davis* v. *City of Dallas*, 777 F.2d 205 (5th Cir. 1985), *cert. denied*, 106 S.Ct. 1972 (1986) (The public interest in safety and responsibilities of a police officer justify the use of a lighter standard of job relatedness under title VII).

[32]47 FEP Cases 1629 (N.D. Tex. 1988).

[33]*Id.* at 1635.

[34]A person was classified in "fair" physical condition if that person scores equal to or better than 50 percent of the people tested of his or her own sex; the age bracket 40–49 was used because the oldest age for an applicant to the police academy was 44.

[35]*Id.* at 1634.

[36]*Id.* at 1634–35.

[37]*Id.* at 1633.

[38]*Id.* at 1633–34.

[39]*Id.* at 1634.

[40]In *Berkman* v. *New York City*, 812 F.2d 52 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 146 (1987), the court also held that title VII is not violated by a physical test of the ability to perform simulated job tasks without a specific measurement of stamina.

[41]610 F.Supp. 422 (D.C. Ill. 1985).

[42]*Id.* at 429.

[43]*Id.* at 430.

[44]*Id.* at 432.

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

# Wanted by the FBI

*Photographs taken 1985*

**Armando Garcia,**

also known as Aramando Gracia, "Scarface."

W; born 1-20-62 (not supported by birth records); Cuba; 5'9"; 180 lbs; muscular bld; brn hair; brn eyes; med comp; occ- former police officer.

Wanted by FBI for CONSPIRACY TO COMMIT RACKETEERING; RACKETEERING INFLUENCE AND CORRUPT ORGANIZATIONS; CIVIL RIGHTS VIOLATION TO DEPRIVE OF LIFE; CONSPIRACY TO DISTRIBUTE NARCOTICS AND POSSESSION WITH INTENT TO DISTRIBUTE NARCOTICS

NCIC Classification:

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I.O. 5057

Social Security Number Used: 359-52-4397

FBI No. 856 615 EA8

**Caution**

Garcia is being sought in connection with two thefts of 400 kilos of cocaine each from two boats docked at marinas on the Miami River. Garcia along with several other individuals have plotted to kill Government witnesses scheduled to testify against him. In attempting to execute this plot, he has been armed with an automatic weapon and silencer. Consider armed and extremely dangerous.

*Left thumb print*

# From the Editor

The January issue of the *FBI Law Enforcement Bulletin* marked the first time in its 57-year history that the *Bulletin* has had a full-color cover. We were proud and pleased to make this change in an effort to modernize the publication. But changes like this cost money, and in a time of fiscal constraints, money is in short supply. Therefore, we will only be able to have six color covers this year—usually alternating with the black-and-white and two-color covers.

There have also been a couple of other additions to the magazine. First, we have added a new column called "The *Bulletin* Reports." This column is a compendium of criminal justice studies, reports and project findings. Every month dozens of reports come into our offices at the *Bulletin*—many that we believe would be of interest and use to our readership. Hence the reason for this column. We will always try to provide both an address as well as a contact person and/or phone number for follow-up information. We ask that you submit to us any such information that you find or studies that your department may generate that may be of help to others in the profession.

Second, we have introduced another column called "Police Practices." A very practical, hands-on column, it attempts to capture current methods, techniques, and operations within the profession. We have listened to your comments and letters and believe that such a column will assist all departments by seeing how others practice the profession. It may be how a van can be cheaply converted into a surveillance vehicle (see our April issue) or a new way of handling drunk drivers (see p. 20). We hope to provide a forum for the exchange of practical, working concepts. Send us your submission—1–3 (max) pages typed, double spaced—and enclose pictures too.

What next? Law enforcement is loaded with issues that must be freely and openly discussed: The use of deadly force, outside employment of officers, unions, AIDS, and the list goes on and on. To provide a forum for your views on current issues, the *Bulletin* will begin a new column called "Issues." But for this column to work, you, the readers, must write it. So, send us your letters—your views on any issue involving the law enforcement profession. It will be a wide-open column—but of course, space is always a limiting factor. Due to the volume of mail we get, we will notify you only if your letter is to be printed. Letters should be no more than two pages typed, double spaced. Your letters must be dated and signed and provide both an address and phone number. The *Bulletin* will edit for length and clarity.

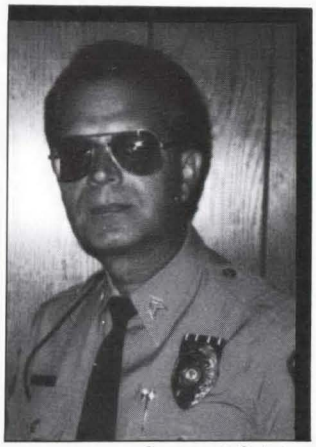
We at the *Bulletin* are constantly looking to provide you the best product we can. Send us your ideas and your suggestions. Write an article. Contribute to a column.

Thanks for your support.

Stephen D. Gladis
Editor

# The Bulletin Notes

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



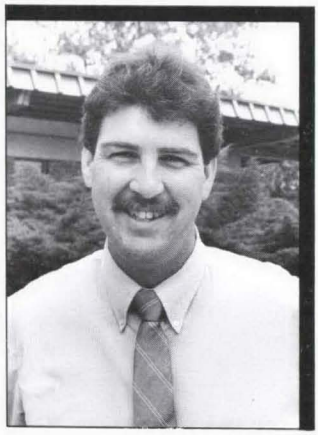
*Sergeant Celebre*

Sgt. Dominick G. Celebre of the Seaside Park, NJ, Police Department responded to a motor vehicle accident to discover that both automobiles involved had burst into flames. Upon learning that a passenger was trapped inside one of the automobiles, Sergeant Celebre approached the vehicle, only to be knocked to the ground by an explosion. As he continued toward the burning and smoke-filled car, he was joined by a volunteer fireman. The two were able to pull the unconscious victim from the vehicle only moments before fire from a second explosion completely consumed the automobile.

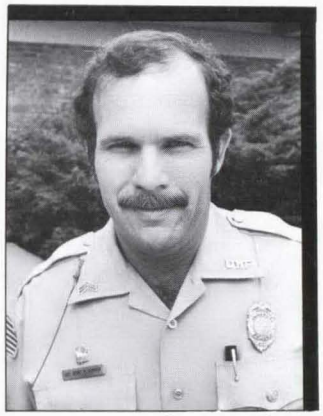
*Officer Williams*

Officer Lori I. Williams of the Fairfax County, VA, Police Department had returned home from patrol when she noticed a problem among several children playing unattended at a neighbor's house. She found a 15-month-old baby, with no discernible pulse or respiration, lying in a toddler pool. After shouting to an adult babysitter to phone 911, Officer Williams performed CPR on the child, saving her life.

Lt. Tom Johnson and Sgt. Jerry Farrior of the University of West Florida Public Safety and Security Department were called to the university's library to calm a disturbance. When they arrived, the man began firing a .25-caliber semi-automatic handgun at them. After warning bystanders away from the area, the two officers returned fire, wounded the suspect in the leg, and safely disarmed him.



*Lieutenant Johnson*



*Sergeant Farrior*

**U.S. Department of Justice**
Federal Bureau of Investigation

Second Class Mail
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Federal Bureau of Investigation
ISSN 0014-5688

*Washington, D.C. 20535*

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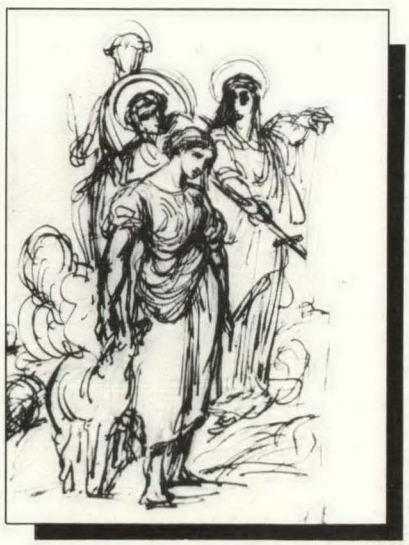
# Major Art Theft

On February 8, 1988, 19 paintings and 9 drawings were stolen from an art gallery in New York City, NY. The total value of the stolen artwork is estimated to be $6 million.

Any information concerning this theft should be directed to the FBI, Brooklyn-Queens, NY, telephone (718) 459-3140. Refer to their file number 87A-86857. You may also contact the National Stolen Art File, FBI Laboratory, Washington, DC, telephone (202) 324-4434.



Top right: *Still Life with Vegetables, Salami and a Wine Bottle* by Giacomo Ceruti or Nicola Van Houbraken
Right: *Joan of Arc* by Leon Benouville
Far right: *Still Life of Flowers in a Vase with Fruit and Mushrooms* by Paolo Cattamara