



# FBI

June 1991

## ***Law Enforcement Bulletin***



### ***Pharmaceutical Diversion and Abuse***





### Features



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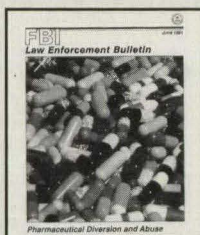


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William S. Sessions, Director

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# ***Pharmaceutical Diversion and Abuse***

## ***Our Nation's Other Drug Problem***

By  
THOMAS C. BABICKE



**T**he news today seems to be the BIG C—cocaine, crack, cartel, and Colombia. Record drug seizures are being made across the globe. Illicit drugs and drug-related crimes persist everywhere. There is not a State, city, school, or even a family in America that has not heard about or seen the damaging effects of drugs. Yet, a startling fact remains. Even if the flood of illicit drugs into the United States could be eradicated, and every marijuana or coca field destroyed before it was cultivated, the United States would still have a ready supply of drugs. The misuse and abuse of pharma-

ceutical prescription drugs would still be a law enforcement problem. This article examines the historical development of various pharmaceutical substances and discusses tactics that may lessen the abuse of such substances.

### **HISTORY OF CONTROLLED SUBSTANCES**

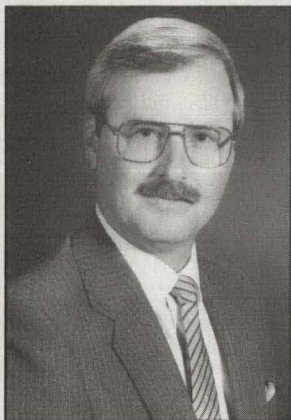
#### **Narcotics**

Throughout history, pharmaceutical companies and individuals have searched for new and more effective drugs to cope with problems such as pain, depression,

anxiety, insomnia, and obesity. One of the first to do so in modern history was a German scientist, Frederick Serturmer, who extracted morphine from opium in 1805. Morphine, a narcotic, is very effective in relieving pain; however, it is also 10 times more potent than opium and 10 times more addictive. In 1832, codeine, another narcotic, was isolated, and by 1853, Alexander Wood had invented the hypodermic syringe.

The American Civil War (1861-1865), the Prussian-Austrian War (1866), and the Franco-Prussian War (1870) broadened the use of





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**“Even if the flood of illicit drugs into the United States could be eradicated...the United States would still have a ready supply of drugs.”**

such narcotics as morphine and codeine in treating wounded soldiers. As a result, morphine addiction became known as the “soldier’s disease.” Then, in 1898, Bayer Laboratories marketed heroin, which is three times more potent and addictive than morphine.

### **Barbiturates**

The development of barbiturates followed the same course as narcotics. From 1903, when the first barbiturate was created, through the 1970s, the American public had access to an increasing number of this class of drugs.<sup>1</sup> In fact, the benzodiazepines as a combined class of drugs easily are the most prescribed drugs in the country.

### **Stimulants**

This class of drugs followed its own course of development. In the 1930s, amphetamines were first used to counteract narcolepsy and later as an appetite suppressant. But, by the

end of the decade, the Third Reich had found an alternate use for them—to increase the efficiency of the German army. In 1944, American soldiers were also advised to use amphetamines. And, in 1969, astronaut Gordon Cooper was ordered to take an amphetamine to increase his alertness prior to a manual re-entry of the space module.

Even the general populace is well aware of amphetamines’ effects. And, although amphetamines and some other stimulants have been placed in Schedule II, and their use in long-term obesity treatment restricted, other similar drugs, such as phentermine, phendimetrazine, and diethylpropion, are still readily prescribed.

### **SPECIAL PROBLEMS FOR LAW ENFORCEMENT**

Pharmaceutically controlled substances provide law enforcement with various unique problems, basically because they can be both legal

in one case and illegal in another. For example, a heroin junkie has a prescription for hydromorphone (Dilaudid), a powerful narcotic. Does the addict have a legal prescription? Was the doctor aware of his addiction to heroin? Such questions must be answered because hydromorphone can easily be used to replace heroin.

Law enforcement officers may be confronted with another example of legal or illegal prescription drug use. For instance, in this fictitious account, Mrs. Johnson receives a prescription for Xanax, a benzodiazepine, after an appointment with Dr. Smith on Monday. On Tuesday, she sees Dr. Jones and receives a prescription for Valium, another benzodiazepine. On Wednesday, a visit to Dr. Taylor provides a prescription for Tranxene, also a benzodiazepine. Basically, Mrs. Johnson acquires different drugs from different doctors, an action that quite possibly is illegal.

Prescription fraud is another problem for law enforcement. This occurs when offenders either steal prescription pads or alter or photocopy prescriptions. Some ingenious individuals have even had their own prescription pads printed along with a telephone number answered by a fictitious nurse.

Then, there are the occasional problems with some doctors, dentists, pharmacists, and others in the medical profession. These few unscrupulous individuals contribute to the misuse or abuse of controlled drugs by prescribing drugs illegally and for illegitimate purposes. In some cases, they may even deal drugs or



prescriptions or may be abusing prescription drugs themselves.

## **LAW ENFORCEMENT DIRECTIONS**

There are several ways to attack prescription drug abuse and the diversion of these drugs into illicit traffic. First, communication between law enforcement departments is essential. Doctor shoppers and prescription forgers do not usually stay in one location; therefore, in order to build a case against such criminals, it is often necessary to contact neighboring police departments for additional information.

Law enforcement personnel must also be properly trained to recognize a script forger or doctor shopper, to read prescriptions, and to know which pharmacies will fill questionable prescriptions. Officers should also be thoroughly familiar with how to confiscate a prescription as evidence with minimum difficulty.

In addition, officers or investigators must be familiar with the effects and legitimate uses of controlled substances. For example, if several drugs are prescribed simultaneously, do any have similar central nervous system effects? Law enforcement personnel must also understand, for example, that a specialist, such as an oncologist, may legitimately prescribe a strong narcotic for a terminally ill patient. At the same time, they must also know that it would be highly unusual, and most likely illegal, for a dentist to prescribe amphetamines.

Specific legal expertise and training is often necessary to in-

vestigate pharmaceutical diversion cases. For example, an investigation may involve fourth and fifth amendment rights and how they apply to practitioners or to a patient's right to privacy. In addition, the agencies that investigate these crimes differ from jurisdiction to jurisdiction. Therefore, to build a successful case, officers and investigators must be familiar with various applicable laws.

## **MULTIPLE COPY PRESCRIPTION PROGRAMS**

### **Prescription Program Legislation**

Gathering information about doctor shoppers, script forgers, or physicians selling prescriptions and investigating the resulting cases can often be difficult, tedious, and time consuming. However, several States

cost and are usually in three parts; however, Rhode Island and Hawaii use two-part forms. In most States the pharmacy that fills the prescription maintains the original form, the prescribing physician keeps a copy, and the third copy is sent to the designated State agency for statistical purposes.

These multiple copy prescription laws have had some dramatic effects. The State of Illinois, Department of Alcoholism and Substance Abuse, published an analysis of their triplicate prescription form program for 1985 through 1988.<sup>2</sup> According to this enlightening report, prescriptions stolen by street users were used primarily to acquire two sought-after prescription drugs, namely hydromorphone (Dilaudid) and phenmetrazine (Preludin). According to the report, "Totals for Fiscal Year 1988 show a drastic reduction in the

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***Pharmaceutically controlled substances provide law enforcement with various unique problems....***

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have found a partial answer to this problem in the form of a Multiple Copy Prescription Program (MCP). Currently, nine States, including California, Hawaii, Idaho, Illinois, Indiana, Michigan, New York, Rhode Island, and Texas, have passed multiple copy prescription legislation, in most cases for Schedule II drugs only.

The prescription forms are provided to physicians at a nominal

number of diverted dosage units reported in Fiscal Year 1985. Diverted hydromorphone dosage units dropped from 29,314 in FY 1985 to 1600 in FY 1988...Phenmetrazine dosage units which totalled 6,090 in FY 1985 have dropped to 0 in FY 1988."<sup>3</sup>

In addition, the State of New York, in a bold move, extended their triplicate prescription law to include benzodiazepines. These drugs, which



include drugs such as Valium and Xanax, are the most prescribed pharmaceuticals in the United States. The results were substantial. In a letter dated June 6, 1989, to the DEA Administrator, the Secretary to New York's Governor reported that "during a week in December 1988 and a week in January 1989...benzodiazepine prescriptions filled by 21 'pill mill' pharmacies in New York City had fallen by 79 percent...."<sup>4</sup>

### Obstacles to MCPs

Obviously, MCPs can be very effective in stopping pharmaceutical drug diversion. But a program such as this is not without controversy. Large pharmaceutical companies have continually lobbied against these prescription programs. In addition, the American Medical Association (AMA) does not support the concept of MCPs and has proposed its own alternative in the form of prescription forms labeled PADS (Prescription Analysis and Data Synthesis) and PADS II.

However, the dramatic effect of MCPs cannot be disputed. MCPs help to:

- Acquire controlled substance prescription information at the patient level (Federal information systems do not monitor controlled substances at this level);
- Reduce the abuse and misuse of Schedule II and other covered controlled substances without adversely affecting the supply of these drugs for legitimate medical needs;

- Discourage the indiscriminate prescribing and dispensing of affected controlled substances by monitoring the prescribing physicians;

**“...MCPs can be very effective in stopping pharmaceutical drug diversion.”**

- “...collect information for law enforcement and regulatory purposes which identified potential controlled substance diversion by prescribing and dispensing practitioners, ‘doctor shoppers’ and other drug abusers, and prescription forgers”;<sup>5</sup>
- Reduce prescription forgery by limiting the availability of prescription blanks, which could be stolen or acquired by potential prescription forgers.

For the most part, States that have enacted multiple copy prescription programs have experienced many or all of these benefits. As a result, States using MCPs have also been able to squelch the critics’ complaints quite effectively by citing the program’s accomplishments.

### CONCLUSION

The diversion, misuse, and abuse of pharmaceutically con-

trolled substances has long been a law enforcement problem. Continued cooperation and the sharing of information among the various law enforcement agencies are essential to develop the expertise to investigate these crimes. However, tools such as Multiple Copy Prescription Programs have helped to deal with this problem effectively and need to be promoted. In fact, a report of the White House Conference for a Drug Free America recommends that “all states should adopt legislation establishing multiple-copy prescription programs.”<sup>6</sup>

But, none of these efforts can be truly effective without a concerted effort to educate the public about the dangers of prescription medication abuse. Only then can the United States deal with its other drug problem.

**LEB**

### Footnotes

<sup>1</sup> In 1903, Barbitol was synthesized and first used. Barbitol was followed by phenobarbitol (Luminal) in 1912, amobarbitol (Amytal) in 1923, pentobarbital (Nembutal) along with secobarbital (1930). Then, in 1946, meprobamate (Miltown) was patented, followed by the first benzodiazepine clordiazepoxide (Librium) in 1947. Diazepam (Valium), a smaller dosage but more potent benzodiazepine, supplanted Librium in the early 1970s. Valium was the leading seller among all prescriptions from 1972 to 1978.

<sup>2</sup> Triplicate Prescription Control Section, “1988 Operation Report With a Four Year Analysis,” State of Illinois, Department of Alcoholism and Substance Abuse, 1988.

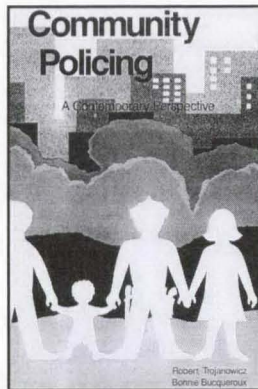
<sup>3</sup> Ibid.

<sup>4</sup> Letter to DEA Administrator John Lawn from Gerald C. Crotty, Secretary to Governor Mario Cuomo of New York, dated June 6, 1989.

<sup>5</sup> U.S. Department of Justice, Drug Enforcement Administration, “Multiple Copy Prescription Programs Resource Guide,” July 1987, pp. 4-5.

<sup>6</sup> Final Report, The White House Conference for a Drug Free America, Washington, D.C., 1988, p. 66.





**Community Policing: A Contemporary Perspective**, by Robert Trojanowicz and Bonnie Bucqueroux, Anderson Publishing Co., Cincinnati, Ohio, 1990.

*Community Policing: A Contemporary Perspective* presents an updated vision of community policing and highlights the benefits this interactive style of law enforcement has on communities. The authors offer 10 principles of community policing and provide well-defined parameters of the concept.

Community policing is defined in the text as a partnership between law enforcement officers and citizens to solve community problems. The philosophy behind the concept is based on previous research and law enforcement programs, such as the Preventive Patrol Experiment, the Response Time Study, Managing Criminal Investigations, Integrated Criminal Apprehension Program, and the evaluations of various cities that have implemented this strategy.

*Community Policing: A Contemporary Perspective* describes how this style of policing requires more commitment from the

administrator and each officer in the department to expand their perceived roles beyond crime fighting. It focuses on officers maintaining a partnership with citizens, initiating personal dialogue to identify neighborhood problems, treating the problems identified, and working together to prevent problems from reoccurring. The book traces the history of community policing and relates how it is presently working in the United States to rebuild a sense of pride in community.

The authors demonstrate the impact of community policing on criminal activity by discussing the dynamics of crime and then describing the interactive potential of this form of policing, especially on the most serious crimes. They also show that the fear of crime can be lowered through community policing.

The final section of the book is devoted to the future of policing. The authors endorse the preservation of public policing rather than continuing the trend toward privatization of police services. They assert that departments embracing interactive police service may prevent the privatization of policing in their communities. The book ends with several case studies of communities that have successfully adopted this contemporary policing philosophy.

*Community Policing: A Contemporary Perspective* is recommended for all progressive law enforcement managers and community leaders. It is easy reading and one of the most definitive statements on the topic written to date.

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# ROP-ing in Fences

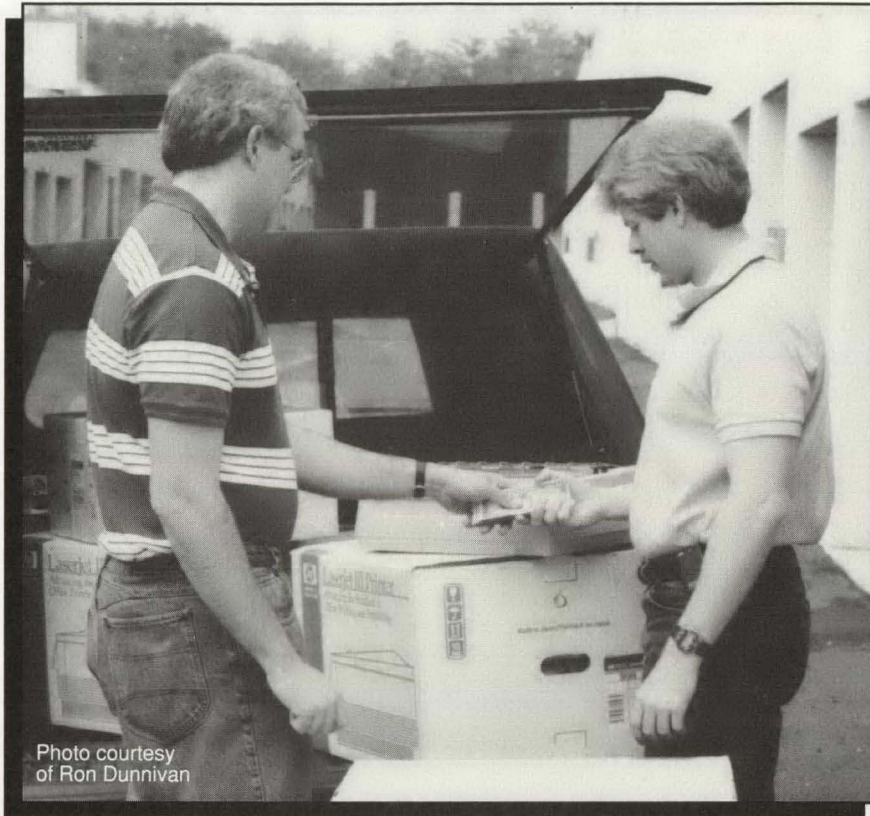


Photo courtesy  
of Ron Dunnivan

By  
JAMES TRAINUM,  
NANCY BROWN, AND  
RAYMOND SMITH, JR.

**T**o Dickens' Oliver, he was Fagan, the "...villainous-looking and repulsive..." trainer of young pickpockets.<sup>1</sup> In Sinclair's *The Jungle*, he was Rosenstein, "...the pawnbroker, who would buy anything...for one third of its value and guarantee to keep it hidden for a year."<sup>2</sup> All of us are familiar with the sleazy characters in the alley wearing trenchcoats lined with jewelry and a dozen watches on their arms. The fence is not only a part of our fiction and our folklore but also our everyday lives as well.

There are considerable difficulties inherent in building and prosecuting cases involving fences. For the most part, departments don't have programs specifically directed at fencing operations. However, this article explains how fencing markets and operations run, how to build cases against these offenders, and how to prosecute offenders successfully. By using the Washington, D.C., Metropolitan Police Department's and the FBI's ROPTIDE Program as an example, this article explains the steps that law enforcement agen-

cies can take to curtail, or end, fencing operations in their respective jurisdictions.

## Buying and Selling Stolen Goods

Because very few items are stolen by a professional thief for personal use, it is the fence who determines who will receive stolen goods. The thief may steal to support a gambling or drug habit, pay off substantial debts, or for many other reasons. In each case, unless the thief can directly use the stolen product, it must be converted to cash.



There must be a market for the stolen product, and this need is satisfied by the activities of the fence.

### The Marketplace

The market for stolen products is everywhere and so are the customers. The underground economy of stolen property is so substantial that *Forbes Magazine* recently published an article on the fencing business. It describes fencing as a business where "...inventory turnover is slow, but markups run 900%. Your suppliers will expect cash, but their prices are dirt cheap. There are legal risks, but they are minimal."<sup>3</sup>

One of the most common ways to convert property to cash is for the thief to act as the fence, selling the merchandise to customers on the street. As with any business, success depends on customers knowing where the goods will be sold. Shoplifters and petty thieves hawking their merchandise from plastic bags are a common sight, as are car trunks loaded with electronic equipment, clothing, tools, and other items. These thieves often receive 50% or more of the retail value of the merchandise.

### Fencing Businesses

A true "fence" is usually considered to be an established businessperson—one who knowingly purchases stolen property and redistributes it in any fashion for profit. In fact, most fences operate legitimate businesses in conjunction with their illegitimate fencing activities. In many cases, the business may have started out as a legitimate operation, but evolved into a fencing activity for the most obvious reason—increased profits.

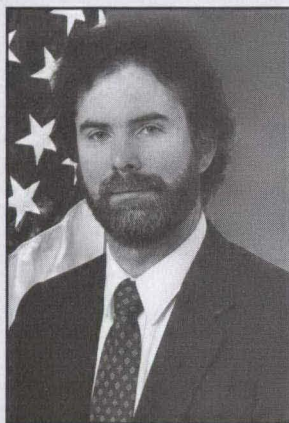
Almost any type of business can become involved in fencing activities. Retail stores can resell items shoplifted from stores that carry the same items. Construction businesses can use lumber and equipment stolen from other job sites. Appliance stores and contractors can purchase new appliances stolen from homes under construction. Junk and scrap yards, pawnbrokers, and secondhand and antique stores are the most common sources for fencing enterprises. Though police departments attempt to regulate these activities, they are often difficult to control or investigate.

### Law Enforcement and Fencing Operations

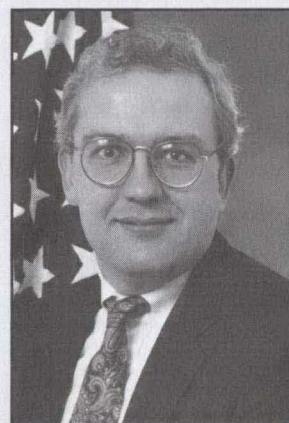
For law enforcement agencies, building a fencing case can be problematic. All jurisdictions have laws

dealing with the receipt of stolen property. For the most part, each contains elements which show that the police department must prove that the property was stolen. However, this is often difficult to prove without an admission that the receiver knew the property was stolen. Retail stores seldom maintain updated and accurate inventory records. Citizens, for the most part, do not record the serial numbers of their property, and lumber, tools, and other construction supplies seldom have identifying marks.

Even if undercover police officers posing as burglars sell merchandise to a fence, which they represent as stolen, the violation only constitutes the misdemeanor of attempting to receive stolen property because the item sold was not actually stolen. Additionally, because



Officer Trainum



Special Agent Smith

*Officer Trainum and Investigator Brown (photo not shown per author's request) are assigned to the Washington, D.C., Metropolitan Police Department's Repeat Offender Project. Special Agent Smith is assigned to the FBI's Washington Metropolitan Field Office.*



they are business people, most fences are very personable and many are even established in the community. As a result, few in law enforcement and the community are willing to expend the effort and money necessary to charge this type of criminal with a misdemeanor.

### **Sting Operations**

Most departments attack thieves through storefront sting operations. Copying known fencing operations, officers set up a business and begin buying stolen property themselves. As a result, thieves can be identified, stolen property is recovered, and multiple arrests can be made. However, disadvantages of using this technique include extremely large outlays of money, personnel, and time, which most departments either are unwilling or unable to make.

### **The Stolen Property Statute**

Using an innovative approach to the fencing problem, the District of Columbia approved the Trafficking in Stolen Property statute included in the Theft and White Collar Crimes Act of 1982.<sup>4</sup> This law took the Receiving Stolen Property statute one step further and directly addressed those who purchased stolen property with the intent to redistribute for profit.

The law simply states that anyone who sells or disposes of stolen property in any form for profit on two or more occasions, or anyone who receives stolen property on two or more occasions with intent to redistribute for profit, is guilty of a felony, punishable by a \$10,000 fine or 10 years' imprisonment or both. What makes this law unique is

that the property does not have to be stolen. As long as the person possessing or receiving the property has reason to believe that property is stolen, it is as good as stolen in the eyes of the court.

### **"ROP" Program**

Washington, D.C., clearly needed a specific police program to enforce these new laws that had the potential to clamp down on fences. The same year that the trafficking statute came into being, the Metropolitan Police Department formed its' Repeat Offender Project. Better known as ROP (pronounced rope), the project began as a proactive policing experiment. Basing its concept on the idea that a minority of

***“Junk and scrap yards, pawnbrokers, and secondhand and antique stores are the most common sources for fencing enterprises.”***

criminals committed the majority of crimes, ROP targeted individuals who were believed to be committing five or more Part I offenses<sup>5</sup> per week.

Officers handpicked for the experiment were told they could use any legal, moral, and ethical means necessary to put the target suspects behind bars. The project's success

was outstanding, and ROP was made a permanent unit within the police department. Shortly thereafter, administrators decided that ROP could also be used to deal with the fencing problem that faced the city.

ROP and the new trafficking law were practically made for each other. Though the new law made cases against fences easier than ever, the work necessary to build a good case demanded more than the street officer or average detective was able to give. Surveillance and undercover work were necessary, along with a supply of desirable bait property that the undercover officer could sell to the fence. Because of the operational creativity afforded to ROP, these problems were overcome, and during the winter of 1983, the law was first used to build cases against prominent fences in the metropolitan area.

### **Two Case Studies**

Intelligence determined that the owner of a grocery store located in the southeast section of Washington, D.C., was buying stolen food stamps and other merchandise. ROP began a joint investigation with the U.S. Department of Agriculture and sent an undercover officer into the store on three occasions to sell the owner bait property consisting of food stamps and electronic items. The food stamps, supplied by the Department of Agriculture, and electronic items donated by an area retail store were clearly represented as stolen by the undercover officer. After the owner exchanged cash for stolen property, search warrants were obtained and served on the store and at the store owner's home address in Maryland. Stolen property was re-



covered from both locations, and the store owner was convicted in D.C. Superior Court of Trafficking in Stolen Property.

With this experience under its belt, ROP tackled several other fencing operations. However, two problems quickly became evident. First, because of the nature of fencing (along with the size of the District of Columbia), the investigations usually extended outside the jurisdiction of ROP. Second, the supply of bait property was usually donated by local retail stores, and some of the merchandise, such as jewelry, simply could not cover the need. In searching for a solution to these problems, ROP turned to the Washington Metropolitan Field Office of the FBI. The cooperative efforts of these two law enforcement agencies proved to be effective as cases were made and criminals were prosecuted successfully.

The working relationship developed fully between the two agencies when they solved an important case in February 1987. ROP had uncovered a fencing operation working out of a Washington, D.C., restaurant. The restaurant was run by two brothers who were prominent figures in the local community. They were buying large amounts of stolen property, specifically items dealing with horses, and transporting them to one of the brother's horse farm in Virginia. There the items were being sold from a tack shop on the farm.

Using both FBI and ROP informants, an undercover officer began selling "stolen" property to the brothers after being introduced to them by another thief. When ROP's supply

of bait property quickly ran out, the FBI supplied over \$10,000 worth of items to be sold. Once the case was developed, ROP and the FBI were co-affiants on the search warrants,

home construction site burglars and their fences. During 1988, construction companies in the Washington, D.C., area lost in excess of \$6 million of materials and equipment. The

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***By drawing on the talents and resources of the two agencies, ROPTIDE has allowed the investigators to overcome obstacles that would have seriously crippled past fencing investigations.***

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which were executed in both Virginia and D.C. Items valued at approximately \$2 million were seized, representing property stolen in burglaries in Virginia, Maryland, and D.C.

#### **ROPTIDE**

Based on this and other successes, the Washington Field Office of the FBI and ROP formed a property crimes task force known as ROPTIDE in May 1987. ROPTIDE began with one FBI Special Agent and the ROP Squad, which consisted of one sergeant and six officers. It has since grown to six Agents, two sergeants, and nine officers. In addition, detectives from other surrounding departments assist with investigations that involve their jurisdictions and continually provide intelligence to help the task force select new targets.

ROPTIDE has three target thief categories that are consistently investigated. The first is that of new

second is that of home and office burglars and their fences. The third is that of professional and repetitive auto thieves and their outlets (chop shops, etc.).

When a target is identified, it is handled as a separate case. One FBI Agent and one ROP officer are designated as the case investigators. Together, they decide how to address the investigation and develop an investigative plan to include the use of different strategies, such as bait property, an undercover operation, consensual monitoring, closed-circuit television coverage, and informants. The Agent then makes a request for funds from FBI Headquarters, and upon receipt of the case funds, the undercover investigation begins.

In the interim, the investigators conduct additional background work, including surveillance, use of informants, analysis of telephone records, and other investigative techniques. This work is performed by



## Police Practices

ROPTIDE as a whole, not just by the lead investigators. Funding for the operation is provided by the FBI. These cooperative efforts proved to be successful in curtailing fencing activities. As of April, 1991, ROP-TIDE has led to 276 arrests, 201 indictments, 224 convictions, and the recovery of approximately \$8 million in stolen property.

### Conclusion

By drawing on the talents and resources of the two agencies, ROPTIDE has allowed the investigators to overcome obstacles that would have seriously crippled past fencing investigations. And, cases have been tackled that would have overwhelmed any department or agency working on its own. ROP-TIDE has recently been praised as being a very cost effective operation having a real impact on the crime problem in the Washington, D.C., metropolitan area.

Fencing operations contribute greatly to the level of crime and economic fraud wherever they occur. Cooperative law enforcement efforts and a directed program against fences can prove to be successful deterrents to this crime.

**LEB**

### Footnotes

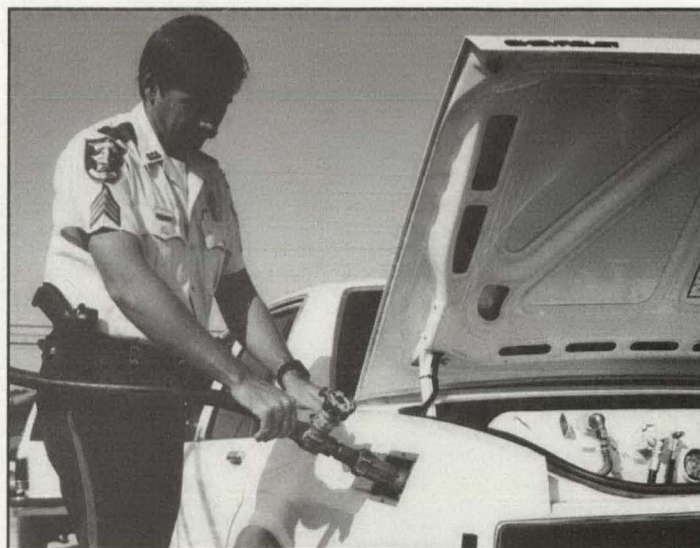
<sup>1</sup> Charles Dickens, *Oliver Twist* (New York: The New American Library, Inc., 1980).

<sup>2</sup> Upton Sinclair, *The Jungle* (New York: The New American Library, Inc., 1960).

<sup>3</sup> Steve Weiner and John Harris, "Hot Retailing," *Forbes Magazine*, August 7, 1989, vol. 144, No. 3.

<sup>4</sup> Washington, D.C. Law 4-164, secs. 22-3831 and 3832.

<sup>5</sup> A Part I offense, as described by the FBI, includes rape, robbery, homicide, burglary, arson, assault, and theft.



### Alternate Fuel Program

During the late 1970s, as the price of gasoline escalated and gas lines formed, the Sarasota County Sheriff's Department searched for an alternate fuel source to use in the department's fleet. Among other considerations, it was important to find a fuel that was clean burning. Because each car in the department's fleet logged over 86,000 miles per year, the cost of repairs and rebuilding was significant, and officials hoped a cleaner burning fuel would reduce these costs.

After considering all the alternatives, department officials chose to convert its fleet to liquid propane gas use, because it met the following criteria:

- It is readily available.
- It produces yearly savings on fuel costs.

- It burns cleaner, causing fewer cases of engine failure and need for replacement parts.

- It is not affected by fluctuating oil prices or worldwide supply.

### The Conversion

When officials purchase a new car for the department's fleet, mechanics assigned to the in-house fleet garage remove the carburetor, the air cleaner, and the fuel pump and fuel line. (These parts are placed in storage until the department is ready to sell the car, at which time the original equipment is replaced.) Mechanics then put a new liquid propane gas carburetor and air cleaning device on the car, as well as a fuel lock off and converter. Last, they place a



propane gas tank in the trunk of the car and make all the necessary connections.

The initial cost to convert a car, using new equipment, is approximately \$1,000, plus the cost of the mechanic's labor. However, since some of the parts, such as the liquid propane gas tanks (which cost approximately \$415) can be transferred to other cars, the cost of converting any replacement cars is less.

### Refueling

Department officials solicit bids each year from the distributors of propane gas, and the lowest bid is accepted. However, any distributor considered must also agree to be on 24-hour call and must agree to provide supply trucks to respond to department cars that run out of fuel while on patrol during major catastrophes, such as hurricanes or tornadoes.

The first vendor to supply the department with propane gas gave a 20-minute lesson on how to refuel safely, with an emphasis on how to bleed the valves on the car tanks. Now, experienced officers teach this simple technique and safety procedures to new officers.

Officers refuel their vehicles at large propane gas storage tanks that are located at three refueling sites around the county. Should officers accidentally drive off with the storage tank hose still connected to their tank, there are automatic shut-off valves on both the storage tanks and the tanks of the cars to prevent the escape of gas.

Refueling department cars that are used on road trips may

present more of a problem because liquid propane gas is not available at all service stations. However, recently, officers drove a department vehicle on a 2,000-mile road trip, and they experienced no difficulty in finding fuel. Many service stations and campgrounds sell liquid propane gas. There is also a directory available from the National Liquid Propane Gas Association that lists, by State, many sources of liquid propane gas.

### Results

During the past 11 years, over 200 vehicles used by the department have operated on liquid propane gas, including unmarked units used by the civil, warrants, and administrative sections. Overall maintenance costs are considerably less than they would be if gasoline were used in the units. The department saves approximately \$1,000 per year on the fuel costs of each vehicle, and the longevity of the engine has been increased.

Some departments replace patrol cars at 80,000 miles or less, but by using liquid propane gas, which does not leave carbon deposits in the engine, most vehicles will not need to be replaced until they register ap-

proximately 160,000 miles. In a department such as the Sarasota County Sheriff's Department, which has a one person, one patrol car concept, converting to an alternate fuel has resulted in a great savings.

### Conclusion

In this time of shrinking budgets and increasing costs, every department should look for cost-saving programs. For departments that have large fleets of department vehicles, using an alternate fuel, such as liquid propane gas, may be a viable way to save money. When this reduction in costs is combined with the increased engine longevity found in vehicles using liquid propane gas, the substantial savings realized may allow departments to pursue other important programs they have previously been unable to afford.

For further information or assistance on using liquid propane gas as an alternate fuel, contact the Sarasota County Sheriff's Department Office of Fleet Management, P.O. Box 4115, Sarasota, Florida 34230, (813) 951-5597.

**LEB**

*The information for this column was submitted by Lt. Bill Stookey, Sarasota County, Florida, Sheriff's Department.*

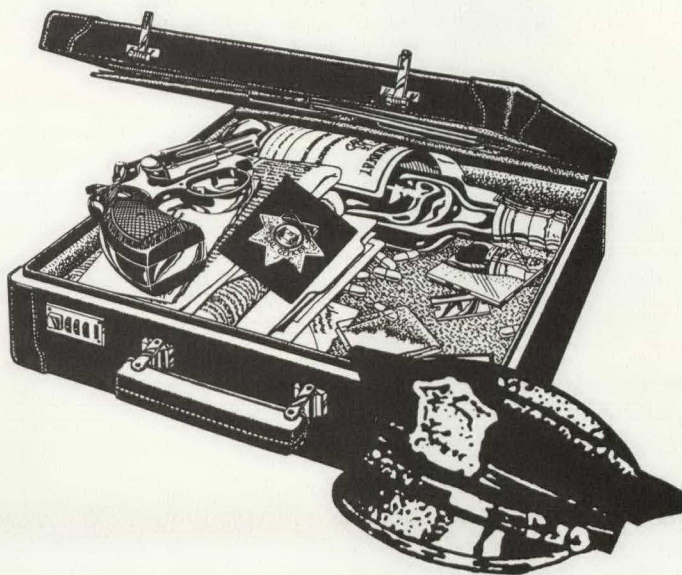
**Police Practices** serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.



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# ***Drug Abuse and Testing in Law Enforcement No Easy Answers***

By  
ANDREW J. HARVEY



**T**oday, the widespread use and abuse of drugs in our society has reached epidemic proportions. No one appears to be exempt, not athletes, top-level executives, celebrities, assembly workers, or police officers. The National Institute on Drug Abuse indicates that 19 percent of Americans over age 12 have used illicit drugs during the last year, that 65 percent of 18-25 year olds have used illicit drugs (44 percent in the last year), and that alcohol and drug abuse cost nearly \$100 billion in lost production in 1989.<sup>1</sup> This article discusses drug abuse

in law enforcement and the use of drug testing to combat drug use.

## **Coping With The Drug Problem**

Unfortunately, law enforcement is not exempt from the problems of drug abuse. For the most part, law enforcement has had the responsibility to educate the public about drugs and to prevent drug abuse. In addition, high entrance standards, thorough background checks, a professional code of ethics, and the nature of the job all appear to be factors that have helped law enforcement minimize its own drug abuse problem.

But, now law enforcement must examine itself for encroaching drug abuse.

In order to take the first step toward an eventual resolution of drug abuse in law enforcement, the problem must be assessed and evaluated. Current and future police leaders will be challenged by this problem, and their success will be based partially upon their abilities to handle the situation in ways that enhance public confidence in their departments. All it takes is one incident for a department to lose its credibility with the public.



In an effort to help police departments cope with the problem of drug abuse and the issue of drug testing, the National Institute of Justice has launched an effort to learn how various departments deal with drug abuse and what steps should be considered. As part of this research, the institute surveyed 33 major police departments in 1986.<sup>2</sup> The survey revealed the following:

- Seventy-three percent of police departments conducted drug screening tests of all applicants;
- Virtually all departments had written policies and procedures for conducting tests under reasonable suspicion that officers were using illegal drugs;
- Twenty-one percent of the departments were seriously considering mandatory testing of all officers; and,
- Twenty-four percent of the departments indicated that treatment, rather than dismissal, would be appropriate for officers, depending on the type of drug abuse and frequency of use.

This survey indicates that many police administrators are moving positively to ensure that drug abuse does not invade and destroy their agencies. However, there is still uncertainty as to what departmental policy on drug testing should be and what the best procedures would be for carrying out the policy. In the

meantime, while some departments are debating the drug testing issue, some have implemented less drastic, interim measures to help with the problem.

### Interim Measures

Some departments are training their supervisors and managers to detect substance abuse in their officers. This is especially important because, unlike drug users on the street who may exhibit obvious signs of drug abuse, police officers who use drugs generally do not come to work visibly under the influence. Therefore, detection must be the result of a more subtle analysis by the police supervisor. A drop in performance, increased use of sick time, and excessive tardiness could all point to a substance abuse problem. However, many indicators of this nature are not so definitive; therefore, establishing a drug testing program makes sense.

### Why Implement Drug Testing

Society considers it especially important for police officers to be drug-free. In general, the public does not view starting drug testing procedures as an admission of a drug problem by a police agency, but rather as a means of ensuring drug-free law enforcement officers.

In fact, according to a recent *Newsweek* poll,<sup>3</sup> 85 percent of those polled believed that testing police officers for drug use was a good idea. It is most important to note that police officers ranked first in this poll as the occupational group the public thought was the most important to test. Air traffic controllers ranked a close second. The poll does not suggest that the public suspects widespread drug use in police work, but rather that citizens recognize the immense responsibility for life and safety with which law enforcement officers are entrusted.

**“ Developing and implementing a sound, effective drug abuse program...is not an easy task, but it is one that the department must face. ”**



*Sergeant Harvey is a member of the Alhambra, California, Police Department.*





**"Unfortunately, law enforcement is not exempt from the problems of drug abuse."**

A substantial amount of literature documents the negative effects of drugs on job performance, particularly on judgment, interpersonal skills, manual dexterity, and overall mental alertness. The tragic train accident in January 1987, is a graphic illustration of what can happen when people responsible for the safety of others use drugs. In this accident, a Conrail freight train ran a stop signal and slid into the path of an Amtrak passenger train, killing 16 people and injuring 175. Both crewmen of the Conrail freight train were found to have marijuana in their systems at the time of the accident.<sup>4</sup>

Because the community's safety is at stake, police administrators have both legal and moral obligations to identify officers whose job performance has slipped because of drugs. In addition, both the administrator and the agency may possibly be held liable if actions are not taken against employees whose inability to carry out their responsibilities are known

or should have been known to the department.

#### **To Test or Not To Test**

No chief can realistically attempt to implement any type of policy or program without fully examining all the pertinent issues, such as legal aspects, privacy rights, property interests, community standards, employee tolerances, and implementation considerations. Only after considering all the issues can a police executive begin to formulate policy and the procedures to implement the policy.

The National Institute on Drug Abuse recommends that decisions to initiate a drug screening program for employees should be based on three factors:<sup>5</sup>

- 1) The awareness of or concern about impaired performance at the worksite;
- 2) The impact of drug abuse upon the health, safety, security, and productivity of employees; and,

- 3) Supportive or alternative means to detect drug use in the workplace.

These factors are definitely worthy of consideration, but they are intended for workers in general, and not specifically for police officers whose duty it is to safeguard the public.

#### **Possible Solutions**

No catch-all solution exists. However, the following recommendations may help law enforcement managers deal with the problem of drug abuse among law enforcement officers.

First, the department should develop a comprehensive drug abuse program. This is vital to the success of dealing with drug abuse because problems of this nature cannot be solved simply through periodic urinalysis, even though it does have its place in helping to answer some questions. Only through the combined effects of education, training, compassion, employee counseling and assistance, and fair policies and procedures can law enforcement begin to tackle the problem.

Department administrators should then perform a self-assessment to decide where the agency is now, and where it wants to be with regard to its drug abuse program. Policies and procedures are useless without goals and objectives. Therefore, agency administrators must decide what direction they will take. The need for a drug abuse program should be evaluated as objectively as possible in terms of what is desired and what resources will be required.



The next step would be to design a program with the cooperative efforts of management, labor, legal advisers, and medical personnel. No one person can see all the various angles. The chief must ultimately do what is best, even though everyone may not agree with the decision. However, at least the chief should solicit and consider carefully input of people from relevant areas of concern.

Once an occupational drug abuse program is implemented, departmental employees should be made aware of the drug abuse program and what it entails. This educational campaign should include the program's purpose, background information, and all benefits and services of the program. In addition, the program's requirements should be explained so that all employees understand how the program will affect them. In this regard, first-line supervisors should be given particular attention because they will be responsible for explaining and administering the policies and procedures to the majority of the employees.

Agency administrators must decide what modes of testing are appropriate for their agencies. This can be done by identifying those situations where urinalysis drug testing will be required. Obviously, this decision must fall within legal guidelines.

Above all, drug testing should be performed in a professional manner. An individual's privacy and dignity should always be respected. Confidentiality is also important to the credibility of the program and should not be compromised either

with regard to employee assistance with a drug abuse problem or to the testing process. Tight chain-of-custody procedures should be established so that no one is wrongfully suspected of abusing drugs. Reliable testing is crucial, and although initial screening tests are acceptable for eliminating samples that test negative, no test should ever be considered positive without another test to confirm the results. Departments should choose laboratories very carefully and should monitor them for effectiveness and efficiency on a periodic, yet random, basis.

**“...whatever problem exists is only going to worsen unless positive steps are taken to control the problem.”**

As part of a comprehensive policy on drug abuse, the department must decide what to do when an employee tests positively for drugs. This involves initiating appropriate procedures for dealing with employees who test positively. Again, there are no right or wrong answers in this area, and prescribed procedure may be influenced by a department's collective bargaining standards.

As a final step, a department must develop appropriate channels and procedures for employees to explain and contest the results of a positive drug test. It is important legally and morally to give employ-

ees a chance to state their case and to explain a positive drug test. The department should also detail procedures for employees to contest any action that may deprive them of property or liberty.

## Conclusion

Developing and implementing a sound, effective drug abuse program for use in a law enforcement agency is not an easy task, but it is one that the department must face. American society is inundated with drugs and drug abuse. And unfortunately, law enforcement professionals must face the reality that drug abuse is not confined solely to those abusers on the street. It pervades all occupations, even law enforcement, although to what extent is unknown and still remains to be seen. It would appear reasonable, though, that whatever problem exists is only going to worsen unless positive steps are taken to control the problem.

Drug abuse and drug testing are dynamic, controversial topics. Hopefully, however, the top managers in law enforcement today will set the example and pave the way for the rest of society, while striving to reduce the epidemic drug problem in this Nation.

**LEB**

## Footnotes

<sup>1</sup> National Institute on Drug Abuse, *Drug Abuse in the Workplace*, 1986, p. 1.

<sup>2</sup> James Stewart, "Police and Drug Testing: A Look at Some Issues," *Police Chief*, October 1986, p. 27.

<sup>3</sup> "Pilots Treated For Drug Abuse," *Star News*, Pasadena, California, November 30, 1986.

<sup>4</sup> "Train Crew Tests Positive For Drug Use," *Star News*, Pasadena, California, January 15, 1987.

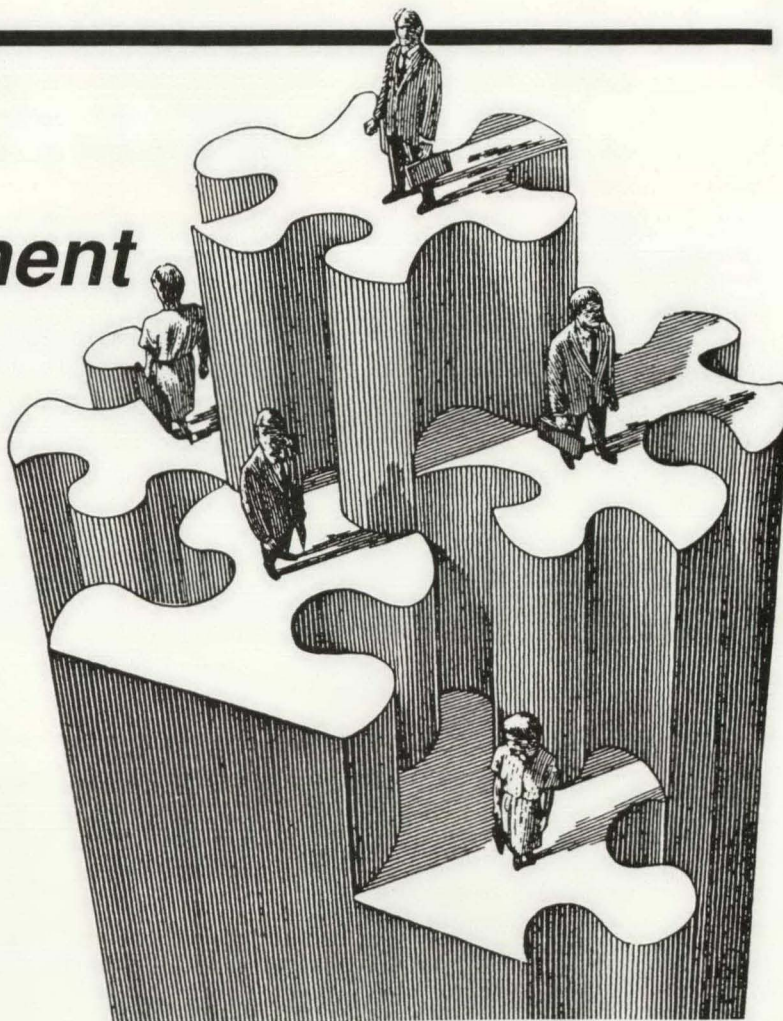
<sup>5</sup> *Supra* note 1, p. 5.



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# Plateauing in Law Enforcement

By  
JAMES M. CHILDERS



**B**urnout is a very familiar concept to law enforcement officers. It occurs when the pressures of a demanding profession become too much for an individual to handle adequately. The effects of burnout can be manifested in alcohol/drug abuse, excessive sick leave absences, strained relations with colleagues, or other self-destructive behavior. Feeling helpless, some officers may even turn to suicide as a final way out.<sup>1</sup>

Though not as well documented or defined, another phenomenon that may be even more widespread than burnout is the problem of plateauing

in law enforcement. While the effects of both burnout and plateauing may appear similar, the causes, and therefore, the potential cures of the two problems are very different. Provided here are the fundamental differences between burnout and plateauing, the unique causes of plateauing, and finally, suggestions for plateaued officers to overcome this serious, but not insurmountable, problem.

## Causes of Plateauing

Consider this scenario: A police officer graduated from the police academy about 10 years

ago. Fighting crime and helping others were the officer's primary purposes in life. The streets were a war zone, and there was always a battle or challenge ahead.

Then, eventually, the challenges ended. A lot of hard work and personal sacrifice had gone into achieving rank and seniority. But now, the red lights and sirens don't make the adrenaline flow as before. The car accidents with injuries are just a lot of paperwork. Going on a drug raid just means having to wake up early. The officer's current rank is stagnant, and the paperwork and citizen complaints are overwhelming. The



job is not hated; it is just dull. There seems to be no way out. Seemingly, it has all been done, and the job has become routine. A major aspect of life has stabilized, as it ultimately must. The officer, feeling significantly dissatisfied, is plateaued.<sup>2</sup>

Characteristics of the plateaued officer may depend on the type of plateauing being experienced. Content plateauing, for example, may occur when career goals have been achieved. If an officer had set a goal while in the police academy to eventually become a homicide lieutenant and that goal has been met, then eventually the challenge ends and boredom may set in.

Structural plateauing may occur when the promotions end. This results from the "99% Rule." In essence, each department can have only one chief; thus, 99% of the staff have to be subordinates. If motivated officers are forced to realize that the position of chief administrator, or other prized posts, may not be attained, then they may become plateaued. A sense of despair may contribute to the effects of plateauing.

When work becomes the most important aspect of law enforcement officers' lives, they may be plateaued in life. This type of plateauing may have deeply rooted causes stemming from professional and personal relationships, or other factors.

In any case, plateaued officers may become frustrated and lose the sense of challenge that was once a prime motivating force. When individuals reach this point, the continuing effects of plateauing, if left unchecked, may act to remove any realistic sense of public appreciation or duty.

**"Plateauing leaves an individual bored and frustrated and can significantly undermine an officer's ability to perform effectively."**



*Sergeant Childers serves in the Lubbock, Texas, Police Department.*

### **Differentiating Burnout and Plateauing**

Burnout should not be confused with plateauing. Burnout is defined as a complex process that affects several major areas of human functioning—physical, intellectual, emotional, and social.<sup>3</sup>

Physical fatigue is usually one of the first symptoms of burnout. This usually takes the form of a general listlessness that carries over from work to home. Intellectual burnout, for the officer, is demonstrated by a negative attitude toward the job. Officers develop an attitude of cynicism, along with an inaccurate sense of public appreciation. Emotional symptoms most common to police burnout are anger and frustration, which cannot be effectively expressed. This may lead to depression, characterized by sleep and eating disturbances and a feeling of pessimism at work and at home.

Socially, the emotional insulation and isolation result in officers

having difficulty maintaining satisfying interpersonal relationships. The ultimate social symptom of burnout in law enforcement may be alcoholism. The dream of protecting and serving is falling apart, and relationships with colleagues are strained. Drinking may be viewed as the only way to escape a world that is crumbling.

Plateaued officers, however, are not so psychologically or physiologically involved in the problem. They generally understand the importance of maintaining societal control for the safety of all. Self-esteem and a sense of self-worth remain strong, and indeed, may even become exaggerated. Because the condition is not nearly as complex as burnout, the possibility of solving the problems associated with plateauing are high.

### **Solutions for Plateauing**

Simply examining life and future goals may lead to a resolution



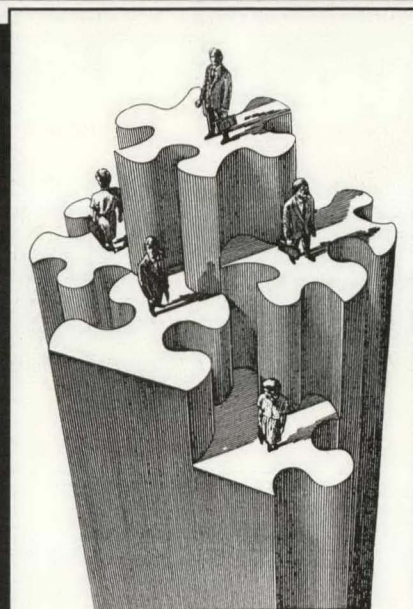
of plateauing. Officers may have to evaluate personal and professional priorities and realign career goals and objectives.

Seeking new challenges is often a key to overcoming plateauing. This may include completing a bachelor's or master's degree or taking courses at a local college or university.

Creating challenges at one's current level may include experimenting with different techniques of policing. One might try new patrol procedures to reduce armed robberies or attempt to motivate a squad by aiding and encouraging them to reach their goals. A change in duty assignments may resolve the plateauing effect. When an opening becomes available in another division, plateaued officers should strongly consider transferring. Learning a new job and applying new ideas can be challenging as well as rewarding.

For some, a career change may be the only way to eliminate plateauing. This solution should be thoroughly researched. Consulting career counselors or persons in another field of interest may be helpful. However, this option should only be considered when other alternatives will not work. Once the decision is made, it may be difficult or impossible to "get back the badge."

Police administrators can help decrease the occurrence and severity of plateauing by including education of this concept in the basic academy training program. Allowing lateral transfers and voluntary shift transfers, when feasible, can also often reduce the effects of plateauing.



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First-line supervisors have a great impact on officers and can greatly affect to what degree they become plateaued. Merely educating new officers about the concept will help. Because plateauing may occur several times throughout a career, guiding young officers toward more specific goals may be very helpful in preventing the effects of plateauing later in a law enforcement career. Simply rewarding officers for jobs well done will help sustain the challenges and promote a realistic sense of self-worth. Provid-

ing desirable task assignments is another method to maintain challenges and reduce boredom.

## Conclusion

While not as complex or as deeply rooted as burnout, the problem of plateauing can be a serious one that should be addressed by the law enforcement community. Plateauing leaves an individual bored and frustrated and can significantly undermine an officer's ability to perform effectively. When the specific causes and effects of plateauing are understood, possible solutions can be provided by either the officer or the department. Unlike burnout, the effects of plateauing can be reversed through relatively minor administrative action, such as a lateral transfer or a new duty assignment.

Plateauing can be reduced and the effects eased, but by no means can it be eliminated completely from law enforcement, or any other field, for that matter. For severe cases, counseling may provide the only effective solution. All alternatives should be evaluated carefully before a decision is made. For the officer, just recognizing that plateauing has occurred is the initial step toward a solution.

**LEB**

## Footnotes

<sup>1</sup> I. David Welch, Donald C. Medeiros, George A. Tate, *Beyond Burnout* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1982), p. 6.

<sup>2</sup> Judith M. Bardwick, *The Plateauing Trap* (New York: American Management Association, 1986), p. 3.

<sup>3</sup> Supra note 1, pp. 102-105.



# *Gunshot Primer Residue*

## *The Invisible Clue*

By  
ROGER W. AARON

Photo courtesy  
of Larry Wallery

**D**uring an early morning armed robbery of a convenience store, the sole clerk is shot. A suspect is arrested 20 minutes later, several blocks away without a weapon. On his hands, however, is gunshot primer residue (GSR), an invisible clue that could be used by investigators in this and most other crimes involving a firearm. Unfortunately, in many such instances, this valuable evidence would not be made available to investigators or jurors. Why not? There are various reasons, including an unfamiliarity with proper procedures for collecting GSR for analysis. This article addresses the

strengths and weaknesses of these processes and offers suggestions for more effective use of this often overlooked evidence.

### **Background**

The explosion inside a firing cartridge burns the gunpowder so completely that no analytical technique has yet been developed that consistently identifies the remaining trace quantities of unburned powder on the hands or clothing of the shooter. However, several procedures to accomplish this have been tried over the years. In the first attempts to associate an indi-

vidual with a firearm, the hands were coated with a film of paraffin in order to lift off residual nitrites. This residue then could be visualized with diphenylamine.

This procedure was abandoned over 20 years ago, however, because nitrites do not provide sufficient specificity, and because large deposits are necessary to yield an adequate color development. Still, even today, many investigators erroneously refer to the "paraffin test" when discussing modern gunshot primer residue analysis.

Continued investigation into applications of neutron activation



analysis identified two noncombustible primer mixture components, barium and antimony, as detectable residues from the discharge of most ammunition.<sup>1</sup> It was this discovery that led to the reliable tests available to the law enforcement community today.

### Procedure

In the most common analytical protocol, cotton swabs moistened with diluted nitric acid are wiped over the web and palm areas of each hand. Neutron activation analysis (NAA) or atomic absorption spectroscopy (AA) is used to determine the quantities of barium and antimony on the swabs from both areas of each hand. Since neither barium nor antimony is unique to GSR, it is necessary to find both elements in amounts within the range found on the hands of persons who are known

to have recently fired a weapon (a control group).

In another method, technicians use adhesive disks to pick up microscopic particles of GSR from the hands. A scanning electron microscope (SEM) equipped to conduct energy dispersive X-ray analysis (EDXA) is used to detect particles containing barium and antimony. SEM-EDXA produces a visual image of particles, thereby providing the analyst with useful size and shape information. Additionally, the barium and antimony are shown to occur specifically within these particles, as opposed to being part of general background contamination. This technique has gained support in recent years due to the development of automated systems that simplify and eliminate much of the lengthy and tedious searching process.

There are variations and combinations of these methods. However, they all rely, at least in part, on finding barium and antimony as presumptive evidence of GSR.

### Collecting Evidence

Gunshot primer residue is much like chalk on the hands of a school teacher using a blackboard. The minute the teacher walks away from the board, chalk loss starts through mechanical actions, such as rubbing the hands together, putting them in pockets, rubbing them against clothing, or handling objects. Therefore, officers are instructed to collect GSR evidence immediately upon making an arrest. Generally, there is little hope of finding adequate quantities of barium and antimony to associate an individual with a weapon after 3 hours of normal hand activities. And, washing the hands removes essentially all GSR deposits.

Unfortunately, ideal GSR collection procedures are at odds with the fundamental precept of immediately handcuffing arrestees' hands behind their backs. This cuffing procedure can greatly decrease the amount of GSR because the outer webs of the hands are pressed against the body. Any improper procedures should be addressed by arresting officers and crime scene personnel since they could lead to elimination or contamination of this potentially valuable evidence.

GSR collection kits are available at police supply stores and through catalogs. The deceptively simple appearance of these kits implies that acceptable substitutes can be made from standard drug-store items. However, this practice



*Special Agent Aaron is assigned to the FBI Laboratory in Washington, DC.*

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GSR test is that it can  
associate an individual  
with a firearm.***  
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can introduce multiple errors into the collection process. These errors can be avoided by using collection kits and questionnaires prepared commercially or by knowledgeable laboratory personnel.

### Important Points

The real value of the GSR test is that it can associate an individual with a firearm. It is important, however, to note that this does not identify that person as the shooter. GSR can settle on any hand placed near a weapon as it is fired. A person can pick up GSR simply by handling a dirty weapon or discharged ammunition components. It is also possible, but very unlikely, that residue would be deposited on hands by other means. Thus, placing an individual in an environment of GSR generally puts that person in the presence of a firearm.

At the same time, failure to find GSR on the hands does not mean that a person tested did not handle or fire a weapon. For example, many test firings under controlled conditions in the FBI Laboratory do not deposit sufficient quantities of the material to allow identification. A firearm may produce deposits on five consecutive firings but not on the sixth. A weapon may simply not be sufficiently dirty or not handled enough to effect a transfer.

As noted earlier, GSR could have been deposited but later removed through washing or normal use of the hands. A finding of inconclusive amounts of barium and antimony simply means that the analyst can offer no opinion of value associating a tested individual with a fire-

arm. The situation is analogous to a fingerprint analyst having no opinion concerning a particular person's presence at a crime scene if print analysis is inconclusive.

The tests using neutron activation analysis (NAA) or atomic absorption spectroscopy (AA) for determining the total barium and antimony in each sample does not

sistent with GSR by other parameters relevant to GSR tests.<sup>2</sup>

Analysis of GSR on the victim has little value in a suicide-homicide situation and should not be used routinely on the victim as an investigative tool. More gunshot residue goes out of the weapon's barrel with the bullet than escapes near the handle. If the victim of a close range

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***...failure to find GSR on the hands does not mean that a person tested did not handle or fire a weapon.***

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constitute an unequivocal identification of GSR. When elevated levels of both elements are found in a sample, the results are reported as being consistent with those obtained from persons known to have discharged a firearm. It is unlikely, but possible, to get independent environmental contamination of both elements in one or more of the four specimens collected from each person tested.

Barium and antimony can be found in trace amounts on most hands, and it is not uncommon to detect elevated levels in samples from a non-shooter's hands. In a recent study, the FBI Laboratory analyzed samples from the hands of persons who had not been near a firearm. Of 267 sets of hand samples analyzed, 9 (3 percent) had significantly elevated levels of both elements and most of these were eliminated as being con-

stituting attempts to grab the gun or instinctively shields the head, significant deposits can be left on the hands. Laboratory analysis cannot reliably determine whether the deposit was made in this manner or was the result of a self-directed firing.

Likewise, suspects at the crime scene should only be sampled if they do not admit to or cannot otherwise be associated with a weapon at the approximate time of the shooting. The person who just returned from a hunting trip or claims to have struggled with the victim (or assailant) over the weapon before the shooting, for example, generally should not be tested for GSR.

Accurate identification of GSR largely depends on the prior experiences of the laboratory performing the analysis to determine what is expected from specific areas of



the hands after handling weapons. Such information is not generally available, except for these specifically defined and studied areas of the hands. Thus, surfaces, such as automobile windows, clothing, and parts of the body other than these specific areas of the hands, are usually not suitable for GSR examinations.

Several factors can affect the analysis of unfamiliar surfaces, including environmental barium and antimony contamination and the

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**...surfaces, such as automobile windows, clothing, and parts of the body other than these specific areas of the hands, are usually not suitable for GSR examinations.**

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potential for previous exposure to GSR. The latter concern is significant because GSR is not volatile and will generally remain on a surface until it is mechanically removed. Thus, GSR on the clothing of a suspected shooter can be explained by that person handling a weapon while wearing the garment several weeks earlier.

### Conclusion

The detection of gunshot primer residue on the hands of an individual confirms that this person was in an

environment of the material within a few hours preceding the collection of samples. This would likely result from firing a weapon, handling a weapon or ammunition, or being in close proximity to a weapon as it is discharged by another person.

Failure to detect GSR on the hands indicates that the test offers no information of value in determining whether an individual had been in the presence of the material. With the exception of very few well-defined situations, nothing more should be inferred from the results of GSR tests.

To avoid useless analysis, officers should *not* collect samples if:

- The person can be associated recently with a firearm by a witness,
- The hands were washed or more than a few hours have elapsed since the shooting,
- The ammunition used in the shooting does not contain both barium and antimony.

Setting these parameters saves time and eliminates much of the misunderstanding and confusion surrounding GSR tests. Like any analytical process, certain conditions must exist to ensure a useful GSR analysis.

**LEB**

### Footnotes

<sup>1</sup> "Special Report on Gunshot Residues Measured by Neutron Activation Analysis," U.S. Atomic Energy Commission Report GA 9829, National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia, 1970.

<sup>2</sup> D.G. Havekost, C.A. Peters, and R.D. Koons, "Barium and Antimony Distributions on the Hands of Nonshooters," *Journal of Forensic Science*, JFSCA, vol. 35, No. 5, September 1990.

## EPA Manual

The U.S. Environmental Protection Agency (EPA) has developed a manual to provide introductory information on solid and hazardous waste management programs under the Resource Conservation and Recovery Act (RCRA). The 1990 edition of the **RCRA Orientation Manual** contains updated information that reflects the many regulatory changes that have transpired since the original manual was issued in 1985.

The manual is divided into seven sections. The first section provides an introduction to the RCRA. Sections II to IV outline the various subtitles of the act. The manual then addresses the regulation of medical waste and examines RCRA's relationship to other environmental laws. The final section covers the public's role in the RCRA program. Each section includes an overview of what is covered, illustrations and figures highlighting the text, and a summary of key points presented.

*To obtain a copy of this manual, contact the U.S. Government Printing Office, Washington, DC, (202) 783-3238. Request GPO Document 055-000-00354-5.*



# The Bulletin Reports

## NCJRS User Guide

The National Criminal Justice Reference Service (NCJRS) is the largest criminal justice information network in the world. It disseminates and furnishes research findings to policymakers, practitioners, researchers, academicians, and others in the criminal justice profession. It also offers a variety of services and products in response to special criminal justice questions.

To assist those interested in learning of available services and products, NCJRS has developed a *User Guide*. This guide, which is divided into nine sections, informs readers how to access the NCJRS data base and how to obtain the documents listed in the data base. It also tells how to access the various reference and referral services of NCJRS and its electronic bulletin board. The guide also provides information on publications, audiovisual materials, and microfiche services, among others.

To obtain a copy of the guide or to learn of the products and services of NCJRS, call the toll-free customer service number 1-800-851-3420 (301-251-5500 in Maryland and the Metropolitan Washington, D.C., area) or write to the National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850.

## Female Crime Victims

A report issued by the Bureau of Justice Statistics (BJS) shows that women in the United States sustained an average of 2.5 million violent crimes each year from 1979 to 1987. This BJS report, *Female Victims of Violent Crime*, notes that about one-quarter of these incidents were committed by family members or boyfriends and another 27 percent by people known to the victim. During this same period, males sustained an average of 4 million violent crimes annually, according to the report.

Among the women victims, 6 percent said the crime was a rape or an attempted rape, 17 percent had been robbed, 22 percent were victims of aggravated assault, and 56 percent described a simple assault. Of

those who were rape or attempted rape victims, 65% said they were attacked after nightfall, and more than one-third said the attack happened at or in their place of residence.

Twenty-four percent said the offender used a weapon, and 38% of these said the weapon was a gun. The report also notes that per capita rape and attempted rape rates were highest among women 16 to 24 years old, black women, and separated or divorced women.

A copy of this report can be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850. The toll-free number is 1-800-732-3277; in Maryland and the Washington, DC, metropolitan area, the number is 1-300-251-5500.

**The Bulletin Reports**, a collection of criminal justice studies, reports, and project findings, is written by Kathy Sulewski. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 7262, 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.)



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# Military Support to Civilian Law Enforcement Agencies

By  
R. BARRY CRONIN



*A U.S. Marine Corps military police drug detector dog team assists the U.S. Customs Service during an inspection of a Scandinavian merchant vessel.*

If a cross-section of police chiefs were polled concerning their understanding of the Posse Comitatus Act, most would likely answer that the act prohibits U.S. military personnel from performing civilian law enforcement functions.<sup>1</sup> However, to assume that Posse Comitatus prevents law enforcement agencies from obtaining any military support would be a mistake. In fact, several exceptions to the general prohibition exist, and civilian police organizations should not be reluctant to seek the military's help in certain circumstances.

This article provides an overview of the type of military support available to civilian law enforcement agencies. It then describes briefly the procedures for requesting military assistance, depending on the type and amount of support desired.

## PERMISSIBLE DIRECT ASSISTANCE

As a general rule, the Posse Comitatus Act restricts direct use of military personnel in civilian law enforcement operations. Direct assistance is defined as: 1) A search or seizure; 2) an arrest, apprehension, stop and frisk, or similar activity; or 3) the use of military



personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.<sup>2</sup>

Despite these restrictions, it is military policy to try to cooperate with civilian law enforcement officials to the maximum extent possible, depending upon national security and military preparedness, the tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law.<sup>3</sup> Even so, direct assistance is permissible when it is with the "...primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities."<sup>4</sup> The key is that direct assistance must support military interests. Police chiefs, especially those with jurisdictions near major military installations, should be aware of this important exception and of the various forms of military assistance available locally.

## **TYPES OF AVAILABLE ASSISTANCE**

### **Military Working Dog Teams**

The most widely requested form of military assistance is the military working dog (MWD) teams, which are located at almost every major Department of Defense (DoD) installation in the United States.<sup>5</sup> Normally, military bases have both explosive and drug detector dog teams available for use by civilian law enforcement with the understanding that military commitments will usually take precedence over civilian requests.<sup>6</sup>

**“The U.S. military stands ready to provide civilian law enforcement with whatever assistance it can....”**



*Major Cronin is stationed at U.S. Marine Corps Headquarters, Washington, DC.*

### **Training**

Every year, scores of civilian police agencies take advantage of firing ranges, combat towns, and other military training facilities. Depending on the size of the military installation, these facilities can vary from a standard, small arms requalification range to a full-scale combat town where police tactical units can practice in a realistic, urban setting. There are also demolitions ranges, as well as training areas where teams can conduct a variety of outside exercises. Additionally, office spaces and buildings may be used for traditional classroom training. And, if available, military instructors may also be used to train civilian law enforcement personnel.<sup>7</sup>

### **Expert Advice/Technical Assistance**

The military is authorized to provide expert advice to civilian law

enforcement agencies.<sup>8</sup> There is no restriction on this kind of support so long as military personnel do not participate directly in civilian law enforcement activities.

### **Equipment and Personnel**

Military equipment can be loaned to civilian law enforcement agencies on a temporary basis to support on-going operations and training. Approval for these requests is handled on a case-by-case basis.<sup>9</sup> In addition, personnel may also be requested in situations where it would be impractical from a cost or time perspective to train civilian personnel to operate and/or to maintain equipment.<sup>10</sup> For example, recently, a local police department requested assistance from a nearby Marine Corps base concerning a homicide case. Eleven Marines, using mine sweepers, were assigned to help the local police department conduct an area search for the homicide weapon.



In this case, it would have been highly impractical to train local police department members on how to use mine sweepers properly. In such cases, however, service members operating or maintaining equipment

## HOW TO REQUEST ASSISTANCE

There are various regulations regarding military support to civilian law enforcement agencies, and the level at which DoD approval is

area naval bases should be directed to the Security Officer.

## CONCLUSION

This article has briefly described a few of the exceptions to the Posse Comitatus Act with regard to civilian law enforcement requesting military assistance. Every year, hundreds of requests for assistance from civilian law enforcement are successfully supported by the U.S. military. As stated previously, routine requests can be approved locally, and civilian law enforcement administrators should contact their military counterparts about available support. The U.S. military stands ready to provide civilian law enforcement with whatever assistance it can, in accordance with the complex stipulations of Posse Comitatus. In many cases, all an agency has to do is ask.

**LEB**

“  
***...civilian police organizations  
should not be reluctant to seek the  
military's help in certain circumstances.***  
”

should not be placed in positions where violations of the Posse Comitatus Act might occur.

### Emergency Situations

In an emergency, civilian law enforcement authorities cannot waste time tracking down helicopters, dive teams, or explosive ordnance disposal (EOD) technicians. Fortunately, the military possesses a variety of capabilities to which a civilian law enforcement department may not have access. In fact, military search and rescue helicopters and military divers frequently aid civilian law enforcement in searches for boats and missing persons on oceans, lakes, or rivers. In addition, military EOD technicians regularly assist civilian law enforcement officials in ordnance recovery and disposal operations.

granted varies according to the amount and duration of the support desired. For example, in many cases, the base commanders can approve requests, while other requests must have higher approval. In addition, the military may require reimbursement for certain services.<sup>11</sup>

However, civilian law enforcement officials need not be completely familiar with all of these regulations. The senior military law enforcement official stationed at each installation is the point of contact for these services and can provide all the necessary information regarding any rules or regulations. Law enforcement agencies near Army or Marine Corps installations should contact the Provost Marshal. Those agencies near Air Force bases should contact the Chief of Security Police, while requests for assistance from

### Footnotes

<sup>1</sup> The Posse Comitatus Act provides: "...whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both." 18 USCA sec. 1385 (1984).

<sup>2</sup> SECNAVINST 5820.7B (paragraph 9.a.(3)) March 28, 1988.

<sup>3</sup> Ibid., paragraph 6.a.

<sup>4</sup> Ibid., paragraph 9.a. (2).

<sup>5</sup> 10 USCA sec. 374(b)(2) (1989).

<sup>6</sup> Capt. James L. Setzer, "Bomb Dog Teams," *FBI Law Enforcement Bulletin*, July 1990, pp. 12-13.

<sup>7</sup> 10 USCA sec. 373 (1989).

<sup>8</sup> 10 USCA sec. 371-380 (1989).

<sup>9</sup> Supra note 5.

<sup>10</sup> 10 USCA sec. 372 (1989).

<sup>11</sup> 10 USCA sec. 377 (1989).



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# ***Detaining Suspected Drug Couriers*** *Recent Court Decisions*

By  
WILLIAM U. McCORMACK



**S**ince 1968, the U.S. Supreme Court has recognized the constitutional authority of law enforcement officers to temporarily detain an individual on less than probable cause.<sup>1</sup> Temporary detentions have become an important tool of law enforcement in stopping the flow of illegal drugs into and around the United States. A temporary detention based on reasonable suspicion gives officers an opportunity to develop probable cause through the use of a trained drug-sniffing dog, further questioning of a suspect, and other investigative efforts that

may quickly confirm or dispel an officer's suspicion that the individual detained is a drug smuggler or courier.

In the course of drug interdiction efforts, some law enforcement agencies have developed lists of factors and so-called drug courier profiles<sup>2</sup> to assist officers in deciding whether to detain a suspect. Some of these factors and profiles have been challenged on constitutional grounds when a law enforcement officer employs them in detaining or stopping travelers in bus and train stations, airport terminals, and on the highways.

The purpose of this article is to alert law enforcement officers to the constitutional requirement for reasonable suspicion and to assist them in deciding whether reasonable suspicion exists to detain a suspected drug courier. It examines recent court decisions addressing whether police had established reasonable suspicion to detain suspected drug couriers and the extent to which drug courier profiles can be used by police to establish reasonable suspicion. This article then offers law enforcement officers some specific recommendations regarding the types of facts and



observed behavior that can constitutionally be used to establish reasonable suspicion for a temporary detention.

### USEFULNESS OF PROFILES

In 1989, the U.S. Supreme Court decided *United States v. Sokolow*,<sup>3</sup> a case involving the use of a drug courier profile to detain an individual in an airport. In *Sokolow*, the Court held that reasonable suspicion

to detain a person must be based on a totality of the circumstances and that the concept of reasonable suspicion is not readily or even usefully reduced to a neat set of legal rules. The Court reviewed the use of a drug courier profile in *Sokolow*, but did not find that the use of a profile either added to or detracted from the significance of the factors relied upon to detain a suspected drug courier. Rather, the Court found that based on a totality of the circumstances, all of the factors taken together amounted to reasonable suspicion to detain the defendant.

### Factual Background of *Sokolow*

In *Sokolow*, a young man (the suspect) approached a ticket agent at the Honolulu International Airport and requested two round-trip tickets to Miami for a flight leaving later that day. He was dressed in a black jumpsuit and was wearing gold jewelry. The suspect, appearing nervous, told the ticket agent that the tickets were for Andrew Kray and Janet Norian and paid for them with \$20 bills taken from a large roll of twenties. He and his female companion did not check their four pieces of luggage when they later boarded their flight.

After the ticket agent informed police about the cash purchase of the tickets, an officer checked the phone number given by the suspect and determined that it was not listed in the name Andrew Kray. The officer then determined that the suspect and his companion had reservations to return from Miami to Honolulu just 3 days from the date of their departure.

Drug Enforcement Administration (DEA) Agents observed that the

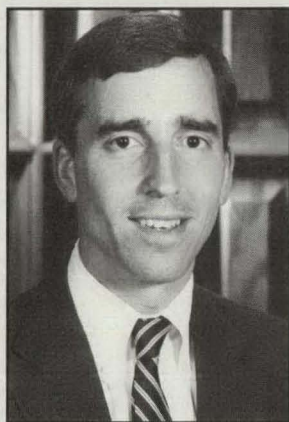
suspect appeared nervous during his return flight to Honolulu. Again, he had not checked any luggage and was dressed exactly as when he left Honolulu. After getting off the plane, the couple was detained by DEA Agents, who asked the suspect for his ticket and identification. They were told that he did not have them and that his name was Sokolow. Sokolow and his companion were then escorted to the DEA office at the airport, and shortly thereafter, a drug-sniffing dog alerted on Sokolow's brown shoulder bag, which was then searched pursuant to a search warrant. After a second search warrant was later obtained, 1,063 grams of cocaine were found in a different bag.

The U.S. Court of Appeals for the Ninth Circuit reversed Sokolow's subsequent conviction on the grounds that there was insufficient reasonable suspicion to detain him at the airport and that this illegal detention tainted the subsequent search of the bag. The U.S. Supreme Court reversed the Ninth Circuit and held that under a totality of the circumstances, there were sufficient facts known by the DEA Agents to justify Sokolow's detention.

### Reasonable Suspicion Based on Totality of Circumstances

In analyzing the facts needed to detain a suspected drug courier, the Supreme Court stated in *Sokolow* that an officer must be able to articulate something more than an unparticularized suspicion or hunch. The Court added that the level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence and obviously less than that needed for

“  
...each decision to  
detain an individual  
must be judged on  
the individual facts  
available...at the time  
of the stop, viewed in  
light of the officer's  
training and  
experience.”



Special Agent McCormack is a legal instructor at the FBI Academy in Quantico, Virginia.



probable cause.<sup>4</sup> In finding that reasonable suspicion existed based on a totality of the circumstances, the Court stated that the primary facts the DEA Agents relied upon to justify their stop were:

- 1) Sokolow paid \$2,100 for two airplane tickets from a roll of \$20 bills;
- 2) He traveled under a name that did not match the name under which his telephone number was listed;
- 3) His original destination was Miami, a source city for illicit drugs;
- 4) He stayed in Miami for only 48 hours, even though a round-trip flight from Honolulu to Miami takes 20 hours;
- 5) He appeared nervous during his trip; and
- 6) He checked none of his luggage.<sup>5</sup>

#### **Judicial Disagreement— Probative Value of Profiles**

The probative value of drug courier profiles was raised in *Sokolow* because a DEA Agent testified during the suppression hearing that Sokolow's behavior "had all the classic aspects of a drug courier."<sup>6</sup> In response, Sokolow argued that the DEA Agent's belief that his behavior was consistent with one of the DEA's drug courier profiles should detract from the probative or evidentiary significance of some of the profile factors the Agent observed. The Court disagreed as follows:

"A court sitting to determine the existence of reasonable

suspicion must require the Agent to articulate the factors leading to that conclusion, but the fact that these factors may be set forth in a 'profile' does not somehow detract from their evidentiary significance as seen by a trained agent."<sup>7</sup>

**"  
...the legal basis for a  
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suspicion based on a  
totality of the  
circumstances....  
"**

Illustrative of the judicial disagreement regarding the probative value of profiles, the dissent in *Sokolow* analyzed the use of drug courier profiles at greater length. They concluded that a law enforcement officer's mechanistic application of a drug courier profile in deciding whom to detain can only dull the officer's ability and determination to make sensitive and fact-specific decisions based on experience, particularly in ambiguous or borderline cases.<sup>8</sup>

*Sokolow* suggests that drug courier profiles should not be considered by officers as a panacea for establishing reasonable suspicion to detain an individual. However, courts appear to allow officers to use profiles as an investigative aid

in establishing reasonable suspicion to detain.

#### **PROFILES AS INVESTIGATIVE AIDS**

*Sokolow* makes it clear that law enforcement officers should not rely exclusively on drug courier profiles or a magical number of matching factors to establish reasonable suspicion to detain a suspected drug courier. Nonetheless, profiles can be particularly useful for a law enforcement officer who is recently hired or transferred from a different assignment.

Officers who have extensive experience conducting drug interdiction efforts in a particular airport or other public facility or area are likely to gain valuable knowledge about drug trafficking in that location. Putting that experience into the format of a profile can be a useful way for experienced officers to pass that knowledge and experience to another officer. A profile based on such knowledge and prior experience was viewed by one court as having the following investigative and factual significance:

"Indeed, the use of a profile is simply a means by which the law enforcement team communicates its collective expertise and empirical experience to the officer in the field and by which the officer, in turn, explains the special significance of his observations to the court."<sup>9</sup>

Profiles can aid courtroom testimony by helping officers to articulate the special significance of their observations. They can give officers a structured means to articulate reasonable suspicion based



on personal experiences and a means to organize knowledge received from other officers involved in previous drug investigations. Moreover, officers who identify the typical characteristics of drug couriers and then include those factors in a profile may be able to make more informed decisions regarding the existence of reasonable suspicion, since a profile can serve as a written list of factors that officers can use in making the decision whether to detain.

### **Probative Value of Observed Behavior**

Since the legal basis for a temporary detention is simply the presence or absence of reasonable suspicion based on a totality of the circumstances, officers involved in such stops should be aware of court decisions involving reasonable suspicion decided in their jurisdiction. While each fact pattern is different, there are common patterns in these court decisions that can provide guidance to officers who must decide whether reasonable suspicion exists to detain a suspected drug courier temporarily.

Courts tend to divide facts officers may attempt to use to establish reasonable suspicion into two general categories. The first category includes facts that describe a large number of innocent citizens, such as nervousness, destination or arrival at a "drug source" or "drug reception" city, manner of attire, time of travel, position among disembarking passengers, no checked luggage, and extreme confidence, such as looking straight ahead and walking fast.

The second category consists of facts indicative of illegal activity,

such as use of an alias or false name in travel, furtive or evasive behavior after seeing law enforcement officers, the unusual purchase of a ticket with cash, and the receipt by police of information or an anonymous tip that a particular person or type of person is a drug courier. Most lower courts applying *Sokolow's* totality of circumstances test require police to have some facts indicative of illegal activity before a temporary detention is deemed lawful.

#### *Innocent citizens*

Most courts hold that reasonable suspicion requires police to have more than merely facts and circumstances that describe a very large

**"...reasonable suspicion to detain requires factors or facts indicative or probative of illegal drug trafficking..."**

category of innocent citizens, such as no checked luggage, last or first off an airplane, nervousness or extreme confidence, early or late travel, flashy or grungy clothing, and travel to or from a drug-source city.<sup>10</sup> In the context of vehicle stops, facts in this category could include a young person driving a late model sports car or a person driving extremely cautiously on an interstate highway.<sup>11</sup> Such otherwise innocent conduct is generally not sufficient to estab-

lish reasonable suspicion to detain an individual.<sup>12</sup>

For example, the U.S. Court of Appeals for the Sixth Circuit found insufficient facts to justify a temporary detention in *United States v. Taylor*.<sup>13</sup> In that case, the defendant arrived in Memphis on a plane from Miami, Florida. His detention was based on the following factors:

- 1) Arrival from a drug-source city;
- 2) Walking away from the gate nervously and hurriedly moving faster than the other passengers;
- 3) Constantly looking backwards while walking;
- 4) Carrying a tote bag held tightly to his body; and
- 5) Leaving the terminal walking very fast.<sup>14</sup>

The court also disapproved of the stop on the grounds that the officers involved in the detention had little experience in identifying drug couriers. Also, testimony at the suppression hearing indicated that the defendant's race and grungy clothing may have been impermissibly considered by the officers in their decision to detain.<sup>15</sup>

#### *Facts indicative of illegal activity*

Most courts hold that reasonable suspicion to detain requires factors or facts indicative or probative of illegal drug trafficking, such as the use of a false name,<sup>16</sup> the unusual purchase of a ticket with cash,<sup>17</sup> and furtive or unusual behavior after seeing law enforcement officers.<sup>18</sup> In the context of vehicle stops, courts have found reasonable



suspicion where officers observed evidence associated with drug trafficking, such as seeing a beeper and papers with telephone numbers in a car or seeing a car with a large trunk with the items normally kept in the trunk on the back seat.<sup>19</sup>

### Information that Tips the Scale

Highly probative in determining reasonable suspicion is the receipt by law enforcement of information or a tip that a particular person or type of person is a drug courier.<sup>20</sup> For example, in *United States v. Condolee*,<sup>21</sup> the U.S. Court of Appeals for the Eighth Circuit upheld a temporary detention of a stylishly dressed black woman at the Kansas City International Airport based on the following factors:

- 1) The DEA Agent involved in the stop had 17 years' experience with substantial experience in drug trafficking investigations;
- 2) The defendant arrived early in the morning from Los Angeles, a source city especially for early courier dispatch;
- 3) The Agent involved had received a tip that two Los Angeles street gangs were using "sharply dressed black female couriers" to smuggle drugs through the Kansas City airport;
- 4) The defendant was traveling only with carry-on luggage and walked quickly and directly, while looking straight ahead; and
- 5) Prior to the actual temporary detention when

the defendant was talking to DEA Agents, she appeared nervous and attempted to conceal the contents of her purse, which made a loud thud when placed on a trash can.<sup>22</sup>

"Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or

**“  
In analyzing the facts needed to detain a suspected drug courier...an officer must be able to articulate something more than an unparticularized suspicion or hunch.  
”**

### Anonymous Tips and Corroboration

The U.S. Supreme Court recently held in *Alabama v. White*<sup>23</sup> that an anonymous tip when sufficiently corroborated can provide reasonable suspicion to detain an individual. In that case, police received an anonymous tip that the defendant would be leaving a particular apartment at a particular time in a brown Plymouth station wagon with the right taillight lens broken; that she would be going to a certain motel; and that she would be in possession of about an ounce of cocaine inside a brown attache case. Police went to the apartment, saw the defendant leave and enter the station wagon, and stopped her just short of the motel to which the tipster had predicted she would drive.

In approving the stop, the Court described the reasonable suspicion standard as follows:

content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause."<sup>24</sup>

Thus, informant information or anonymous tips not reliable enough to provide probable cause may provide the justification for a temporary detention, especially when corroborated by observed behavior that has probative value in determining reasonable suspicion.<sup>25</sup>

### SUMMARY

In order to stop and detain someone under the fourth amendment, the U.S. Constitution requires that a law enforcement officer justify the stop on something more than a mere suspicion or hunch. The stop must be based on an articulable and reasonable suspicion that criminal activity is afoot.



In developing and articulating reasonable suspicion, a profile can be a useful tool in categorizing and attaching particular significance to otherwise innocent behavior. However, each decision to detain an individual must be judged on the individual facts available to an officer at the time of the stop, viewed in light of the officer's training and experience.

Officers are encouraged to gather and evaluate as many facts as possible because the validity of a detention is determined by a totality of the circumstances test. Under this test, most courts attach particular significance to certain factors, such as the use of a false name, the unusual purchase of a ticket with cash, unusual furtive or evasive behavior, and the existence of informant information or a tip that a particular person or particular type of person is likely to be a drug courier.

**LEB**

Court found these facts insufficient to justify a temporary detention.

<sup>11</sup> See, e.g., *State v. Johnson*, 561 So.2d 1139 (Fla. 1990) (late model car being driven cautiously at 4:15 a.m. by 30-year-old male on I-95 not sufficient reasonable suspicion to justify stop of car on suspicion of drug trafficking); *Snow v. State*, 578 A.2d 816 (Md. App. 1990) (avoidance of eye contact by nervous driver stopped on I-95, the presence of several air fresheners, and driver's refusal to consent to search did not give reasonable suspicion to detain for drug trafficking); *United States v. Hernandez-Alvarado*, 891 F.2d 1414 (9th Cir. 1989) (no reasonable suspicion to stop when agent observed car bought from dealership associated with drug dealers, two-way antenna protruding from large trunk, driver

**“Profiles can aid courtroom testimony by helping officers to articulate the special significance of their observations.”**

driving cautiously, and car registered in a neighborhood known as a high drug smuggling area); and *United States v. Tapia*, 912 F.2d 1367 (11th Cir. 1990) (no reasonable suspicion to detain a motorist for drug smuggling when officer observed nervous Hispanic individual in car with out-of-State license allegedly traveling out of State to look for work with no visible signs of luggage. Court stated that these characteristics could plausibly describe the behavior of a large portion of the motorists engaged in travel on our interstate highways). See also, John Sauls, "Traffic Stops: Police Powers Under the Fourth Amendment," *FBI Law Enforcement Bulletin*, October 1989.

<sup>12</sup> See, e.g., *United States v. Millan*, 912 F.2d 1014 (8th Cir. 1990) (reasonable suspicion to detain traveler in an airport not present when DEA Agents knew defendant had arrived on an early flight from San Francisco to Kansas City, was one of the first passengers to deplane, carried a garment bag and had not checked luggage, dressed casually, wore a gold chain and had long hair, had purchased a one-way ticket costing \$179 with cash, was not traveling under an assumed name, could not remember the address or telephone number of the person allegedly visited, and had something evenly shaped in the pockets of his jacket).

<sup>13</sup> 917 F.2d 1402 (6th Cir. 1990).

<sup>14</sup> *Id.* at 1408.

<sup>15</sup> *Id.* at 1409.

<sup>16</sup> *Florida v. Royer*, 460 U.S. 491 (1983) and *United States v. Tavalacci*, 895 F.2d 1423 (D.C. Cir., 1990).

<sup>17</sup> *United States v. Colyer*, 878 F.2d 469 (D.C. Cir. 1989) and *United States v. Sterling*, 909 F.2d 1078 (7th Cir. 1990).

<sup>18</sup> See, e.g., *Florida v. Rodriguez*, 469 U.S. 1 (1984) (suspects glancing over shoulders and overheard saying, "Let's get out of here."); *United States v. Sullivan*, 903 F.2d 1093 (7th Cir. 1990) (detention of train traveler's luggage upheld based on travel from Los Angeles, a source city, one-way ticket purchased with cash on date of departure, defendant only carrying one small bag and appeared to divert eyes from police officers when followed by them, and appeared to pretend to make a telephone call without actually placing any money in a public phone); *United States v. Hayes*, 825 F.2d 32 (4th Cir. 1987) (the fact that defendants were traveling from a source city and appeared nervous not sufficient for reasonable suspicion, but when the defendants took flight after police identified themselves, detention based on reasonable suspicion then justified).

<sup>19</sup> See, *Derricot v. State*, 578 A.2d 791 (Md. App. 1990) (flashy vehicle and dress of young driver, as well as possession of paging device and papers bearing telephone numbers, gave reasonable suspicion to detain for drug trafficking); *Cresswell v. State*, 564 So.2d 480 (Fla. 1990) (nervous driver on I-95 in car with large trunk driving car registered to someone else, CB in car, ignition key separate from other keys, and items normally kept in trunk on back seat provided reasonable suspicion to justify detention of driver for drug trafficking).

<sup>20</sup> See, e.g., *United States v. Malone*, 886 F.2d 1162 (9th Cir. 1989) (stop in airport justified, in part, on defendant fitting a "gang member" profile based on knowledge of DEA Agents concerning Los Angeles street gang members transporting drugs into Seattle. Also, defendant glanced around terminal furtively, carried only a plastic shoe bag for a 3-day stay, had no identification, could not name anyone in Seattle to verify identity, and could not explain presence in the city).

<sup>21</sup> 915 F.2d 1206 (8th Cir. 1990).

<sup>22</sup> *Id.* at 1210.

<sup>23</sup> 110 S.Ct. 2412 (1990).

<sup>24</sup> *Id.* at 2416.

<sup>25</sup> See, e.g., *United States v. Lane*, 909 F.2d 895 (6th Cir. 1990) (informant's tip added to the totality of the circumstances justifying detention of defendant for drug possession).

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

#### Footnotes

<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1 (1968). See also, John C. Hall, "Investigative Detention: An Intermediate Response," *FBI Law Enforcement Bulletin*, November and December 1985 and January 1986; Jerome O. Campana, "Investigative Detention and the Drug Courier: Recent Supreme Court Decisions," *FBI Law Enforcement Bulletin*, November 1983.

<sup>2</sup> Drug courier profiles are typically developed by law enforcement officers who work in a particular area. Because the factors in one area may vary significantly from other areas, it may be difficult to determine significant factors nationwide.

<sup>3</sup> 109 S.Ct. 1581 (1989).

<sup>4</sup> *Id.* at 1585.

<sup>5</sup> *Id.* at 1583.

<sup>6</sup> *Id.* at 1587, n. 6.

<sup>7</sup> *Id.* at 1587.

<sup>8</sup> *Id.* at 1588.

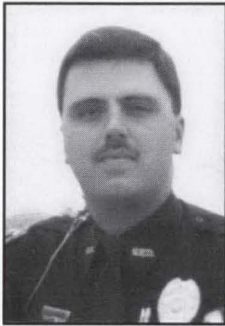
<sup>9</sup> *Derricot v. State*, 578 A.2d 791 (Md. App. 1990).

<sup>10</sup> In *Reid v. Georgia*, 448 U.S. 438 (1980) (per curiam), the petitioner arrived from Fort Lauderdale early in the morning, appeared to conceal the fact that he was traveling with a companion and had not checked luggage. The



## ***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 Bowen*

Sgt. Charles M. Bowen of the Selma, North Carolina, Police Department responded to an assault-in-progress call at a local clothing store. Upon arriving at the scene, he heard screams coming from a locked back room. When Sergeant Bowen kicked the door open, the wounded victim quickly exited the room. The assailant then attacked Sergeant Bowen, but was quickly subdued and placed into custody.



*Officer Patillo*

When Officer Steven Patillo of the California City, California, Police Department responded to a single vehicle accident, he found a 16-year-old youth suffering from severe injuries. The victim, who had been thrown from his motorcycle through the large plate glass window of a residence, was in danger of bleeding to death. Most of his upper arm had been lost in the collision, and the artery had been severed. Officer Patillo quickly administered first aid to stop the bleeding. He then calmed the victim until rescue units arrived. Because of Officer Patillo's quick action, doctors were able to save the victim's arm.



*Patrolman Akers*



*Patrolman McBride*

Patrolmen Joseph Akers and Charles McBride of the Hazlet Township, New Jersey, Police Department responded to a fire at a highrise apartment complex. Both officers attempted to extinguish the flames but were driven back by intense heat and heavy smoke. They then assisted in evacuating the many elderly residents on the two floors most endangered by the blaze. Although the elderly resident of the apartment in which the fire originated perished, the injury count and death toll would probably have been higher were it not for the actions of these patrolmen.



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