



JUNE 1992

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Graffiti Paint Outs

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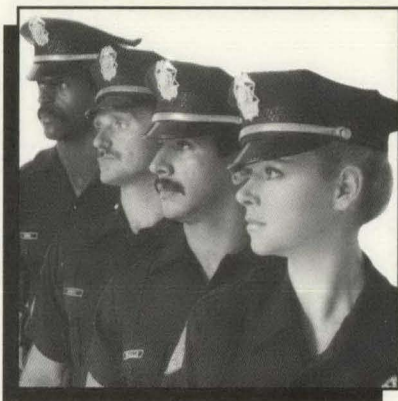
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Volume 61
Number 6



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

William S. Sessions, Director

Contributors' opinions and statements should not be considered as an endorsement by the FBI for any policy, program, or service.

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

Editor—Dr. Stephen D. Gladis
Managing Editor—Kathryn E. Sulewski
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Production Manager—Andrew DiRosa
Staff Assistant—Darlene J. Butler

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



Graffiti Paint Outs

By
DANIEL SCHATZ

As the presence of gangs increases in cities nationwide, so does the problem of graffiti. Graffiti often broadcasts the activities of street gangs, such as whether the gang deals in drugs, whether they plan to kill, or whether they have already killed. Left unchecked, graffiti breeds crime, erodes community confidence, and substantially reduces property values.¹

In Los Angeles, a new police initiative—the Graffiti Abatement and Investigation Program—mixes traditional law enforcement techniques with community relations, neighborhood beautification, and youth counseling to help alleviate the graffiti problem. This article dis-

cusses how the program evolved, how it works, and how it affects neighborhoods plagued with the problem of graffiti.

POLICE INVOLVEMENT

Some argue that law enforcement should not involve itself in graffiti—community service organizations or private enterprise should handle the problem. However, administrators of the Los Angeles Police Department (LAPD) believe that law enforcement should work hand-in-hand with the community to reduce or eliminate graffiti for several reasons.

First, community groups find it dangerous to remove graffiti in certain neighborhoods. For example, in

Los Angeles, several drive-by shootings occurred when citizen groups attempted to remove graffiti. This made a police presence at graffiti removal sites necessary.

In addition, a phenomenon known as “tagging” appears regularly in neighborhoods throughout Los Angeles. Tagging involves the scrawling of names, monikers, or symbols on area walls. Many taggers hope to join gangs, and the more times their names appear in different locations, the greater publicity they receive. This becomes their way of gaining the attention of gang members.

One Los Angeles area youth, for example, scrawled his moniker more than 10,000 times during a



“
***The extent of graffiti
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program started.***
”

*Captain Schatz is the commanding officer of the
Northeast Patrol, Los Angeles, California, Police
Department.*

vandalism rampage throughout southern California. Officials estimate that he caused more than \$500,000 damage to public and private properties. Moreover, this activity generated a cult following that spawned a wave of graffiti vandalism in the city.

Graffiti, whether gang-related or the work of a tagger, sends a message that a lawless element controls the community. However, when the police work with the community to take an active role in graffiti removal, law-abiding citizens take back control of the neighborhood.

POLICE-ASSISTED COMMUNITY ENHANCEMENT PROGRAM

The LAPD's Police-Assisted Community Enhancement Program (PACE) served as the forerunner of the Graffiti Abatement Program. PACE was developed on the philosophy that crime evolves when communities ignore the early signs of blight, such as rundown buildings, abandoned cars and houses, accumulating trash, and graffiti. Therefore, in order to deal with

these early signs of decay, each police precinct within Los Angeles assigned a PACE coordinator to handle public complaints and what are traditionally considered low-level crimes.

PACE coordinators often contacted other city agencies, such as the Department of Building and Safety, for help in dealing with community problems, such as graffiti. However, because city agencies were backlogged with work, expecting speedy assistance in graffiti removal became impractical. Knowing that graffiti caused a major concern to the citizens in the northeast patrol area of Los Angeles, officials implemented the Graffiti Abatement and Investigation Program, not only to remove graffiti but also to enforce and investigate graffiti violations.

THE GRAFFITI ABATEMENT AND INVESTIGATION PROGRAM

Under the Graffiti Abatement and Investigation Program, juvenile offenders referred to the program paint over graffiti found in many inner-city neighborhoods. How-

ever, before officials implemented the Graffiti Abatement Program, they needed to obtain special permission for the northeast patrol area, the first neighborhood targeted for the program, to act as a referral agency. This allowed juvenile detectives, probation department personnel, and juvenile courts to refer offenders to the abatement program as a condition of sentences and probations that require community service. As a result, these officials immediately began to refer any "at risk" juveniles arrested for graffiti vandalism, theft, and in some cases, burglary, to the northeast patrol area for community service.²

Offenders can also enter the abatement program through parental referral. A parental referral usually occurs when officers identify a youth whose name appears in graffiti throughout a particular area. When this happens, officers ask the parents to refer their child voluntarily to the program, rather than having officers formally charge the youth with a graffiti violation. In these cases, officers must obtain parental waivers before the youths participate in paint outs.

Orientation

When juveniles enter the program, PACE officers meet with them and a parent or guardian for an orientation. At this time, officers explain the program and counsel the juveniles about the seriousness of the offense.

During this orientation period, officers also attempt to obtain information regarding other graffiti suspects. Because the majority of taggers work with other suspects and may even belong to tagging clubs, information gained from

offenders enables officers to contact other juvenile suspects before graffiti outbreaks occur.

The "Paint Outs"

After the orientation period, the juveniles complete their community service time by painting over graffiti found throughout the area. Paint outs, which usually occur on weekends or during other nonschool hours, target specific neighborhoods in order to make the most efficient use of community service worker hours.

City agencies and private businesses donate paint for the program, while other community groups donate funds to buy paint. Because of the tremendous amount of paint used—from 500 to 700 gallons of paint per month—these donations contribute significantly to the success of the program.

Counseling Program

All offenders in the program receive counseling from police officers, from professional counselors, who offer their time pro bono, or from ex-convicts, who volunteer to counsel offenders on the ultimate consequences of their crimes. Because the youths in the program are not hardcore criminals, they respond well to the counseling program. They enjoy the interaction with the police officers and begin to see them in a different light. Many also begin to see that the vandalism they committed was senseless, and they see how much effort goes into removing graffiti. After painting out

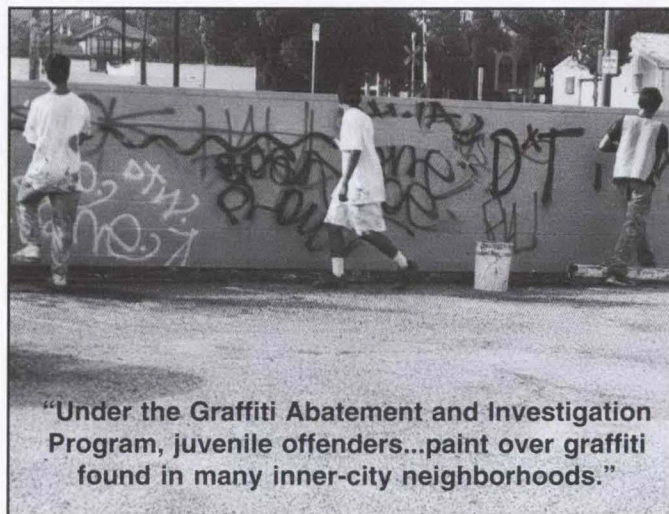
the same areas four and five times, they understand the frustration experienced by the community.

ENFORCING THE PROGRAM

With the program in place, officers need to enforce graffiti violations stringently. To accomplish this, PACE coordinators work with plainclothes officers, who patrol areas of repeated graffiti problems. The plainclothes officers keep the restored areas under surveillance

school personnel, who many times identify individuals who write graffiti, as well as their particular "tags." The officers often use this information to decide which areas to keep under surveillance so they can refer these eligible arrestees to the graffiti abatement program. This ensures a continual pool of workers and breaks the cycle of vandalism for many juveniles.

Also important to the success of the abatement program is the liaison between the PACE officer and the senior lead basic car plan officer (SLO) of the area. SLOs serve as community policing officers within certain assigned areas. They form close liaisons with community members, and since they patrol only their assigned areas, they always know what areas need paint outs. They then have the opportunity to use program workers to cover graffiti found in their areas of responsibility.



"Under the Graffiti Abatement and Investigation Program, juvenile offenders...paint over graffiti found in many inner-city neighborhoods."

and arrest any repeat violators, while the PACE coordinators follow up any citizen or officer complaints regarding areas that need attention. They also maintain a list of locations that need attention, as well as locations that juveniles have already painted over.

In addition, PACE coordinators actively recruit "at risk" youths into the program, follow up on leads, and contact possible suspects, who often provide names of other offenders, their tag names, and the schools they attend. To assist them in this effort, PACE officers stay in contact with

CONCLUSION

The extent of graffiti in the northeast area diminished greatly after the abatement program started. Areas previously vandalized on a daily basis now go months before new graffiti appears.

The success of the program also promotes cooperation throughout the community. Fast food franchises now provide meals for the youths in the program, and a city councilman provided both a power spray painter and a van to transport the workers.

The Graffiti Abatement Program works well for both the citizens and the offenders arrested for graffiti violations. The department receives numerous letters of support from citizens who benefit from graffiti removal in their areas. In addition, citizens get a sense of security from the sight of officers directing youths to paint-out areas.

On the other hand, the paint outs give youths the chance to form valuable relationships with police officers and allow them to see, first-hand, the problems created by graffiti. None of the nearly 50 juveniles who completed the program has been re-arrested for a graffiti violation.

Some of the youths form relationships with police officers that they wish to continue. In order to do this in a constructive way, they volunteer to attend paint outs, even after they leave the program. Workers of this type receive \$10 from donated funds for their effort.

While the program has only been implemented in the northeast section, the success of the Graffiti Abatement Program prompted the LAPD to consider it for citywide implementation. The program provides a winning combination of elements necessary to reduce the problem of graffiti. It works for the LAPD—it can work for other departments as well. ♦

Endnotes

¹ James Q. Wilson and George Kelling, "Broken Windows," *The Atlantic Monthly*, March 1982.

² The LAPD considers youths who are not hardcore criminals with records of serious felonies but who commit a low-level offense, such as graffiti, to be "at risk."

Federal Prisons: Work Experience Linked with Post-Release Success

Study conducted by
Gerald G. Gaes and William G. Saylor

The Post-Release Employment Project (PREP), a broad-based study of inmates in Federal penal institutions conducted by the Bureau of Prisons' (BOP) Office of Research and Evaluation, indicates that prison work and training programs have a significant positive impact on inmates who participate in these activities. Initial PREP results reveal that inmates who receive training and work experience during their incarceration generate fewer misconduct reports in prison, are more likely to be employed during their halfway house stays and after their release, and are less likely to commit additional crimes (recidivate) than similar inmates who were not trained or employed during their imprisonments.

THE STUDY

The PREP study was the first comprehensive analysis of UNICOR—the Federal Prison's Industries—conducted by the BOP. It evaluated the effectiveness of BOP job training and employment programs in preparing inmates for productive careers upon their release from prison.

The study analyzed the differences between Federal offenders who received training/

work experience (the study group) and offenders with similar backgrounds who did not participate in these activities (the comparison group). The researchers employed a sophisticated matching technique to ensure that any differences observed between the two groups could be attributed primarily to exposure to work/training programs and not to any pre-existing differences in criminal history, preprison work experience, education, or other factors.

GENERAL FINDINGS Institutional Adjustments

Initial results suggest that participants who received work training (the study group) demonstrated better institutional adjustment than those who did not (the comparison group). Study group members were less likely to receive misconduct reports within their last year of incarceration, and if they did, it was less likely to have been for serious misconduct. In addition, study group members demonstrated a higher level of responsibility—as measured by dependability indicators, interaction with staff members and other inmates, and judgment in financial matters—than did their comparison group counterparts.

Halfway House

Like many penal systems, the Bureau of Prisons contracts halfway houses to provide qualified inmates with an opportunity to work in the community prior to the end of their imprisonment. The halfway house experience, however, also affords inmates the first opportunity to commit additional crimes.

Almost the same proportion of study group and comparison group members (83.9 percent compared to 83.3 percent) completed their halfway house stay successfully. However, inmates in the study group were 24.4 percent more likely to obtain full-time employment while residing in the halfway house. Of the 3,070 study group inmates released through a halfway house, 86.5 percent obtained a full-time job, while only 62.1 percent of the 1,043 comparison group inmates gained full-time employment upon leaving the halfway house.

Post-Release Reviews

Most inmates who successfully completed their halfway house stays then entered a period of community supervision (parole). Officials monitored members of the PREP survey groups by contacting their probation officers

monthly and conducting full followup reviews at 6- and 12-month intervals. At the 1-year review point, 6.6 percent of study group offenders had their parole revoked, while 10.1 percent of comparison group offenders lost parole privileges.

Although these figures clearly indicate that inmates participating in UNICOR programs are less likely to commit crimes upon release, it should be noted that both groups involved in this study recidivated at a lower rate than found in other studies conducted by the Bureau of Prisons. In a recent BOP recidivism study, for example, data collected showed that about 20 percent of inmates

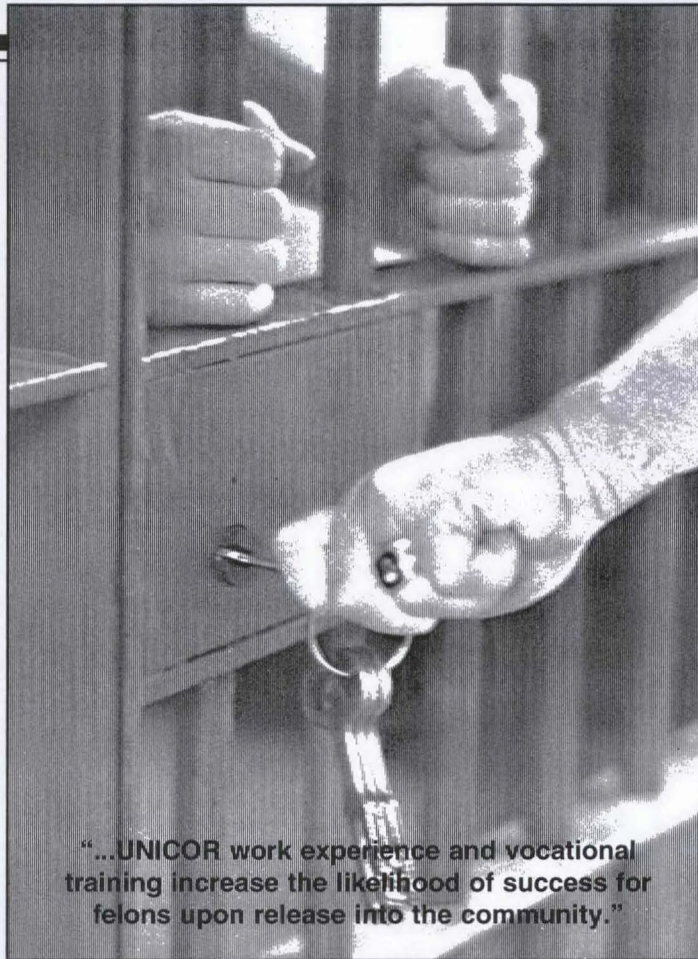
either had their parole revoked or were re-arrested within a year of their release. Surveys indicated that the percentage of recidivism was 19.4 in 1980, 23.9 in 1982, and 19.2 in 1987.

RESULTS AND FUTURE ANALYSIS

General conclusions can be drawn from this study. Results indicate that UNICOR work experience and vocational training increase the likelihood of success for felons upon release into the community. These preliminary results also point to other areas that will benefit

from further examination. Future analysis is planned to measure the relationship between work/vocational training and occupational changes before, during, and after release from prison. This analysis will also evaluate the applicability of job skills learned in prison to the economic climate of inmates' communities, as well as the performance of individual work and training programs. ♦

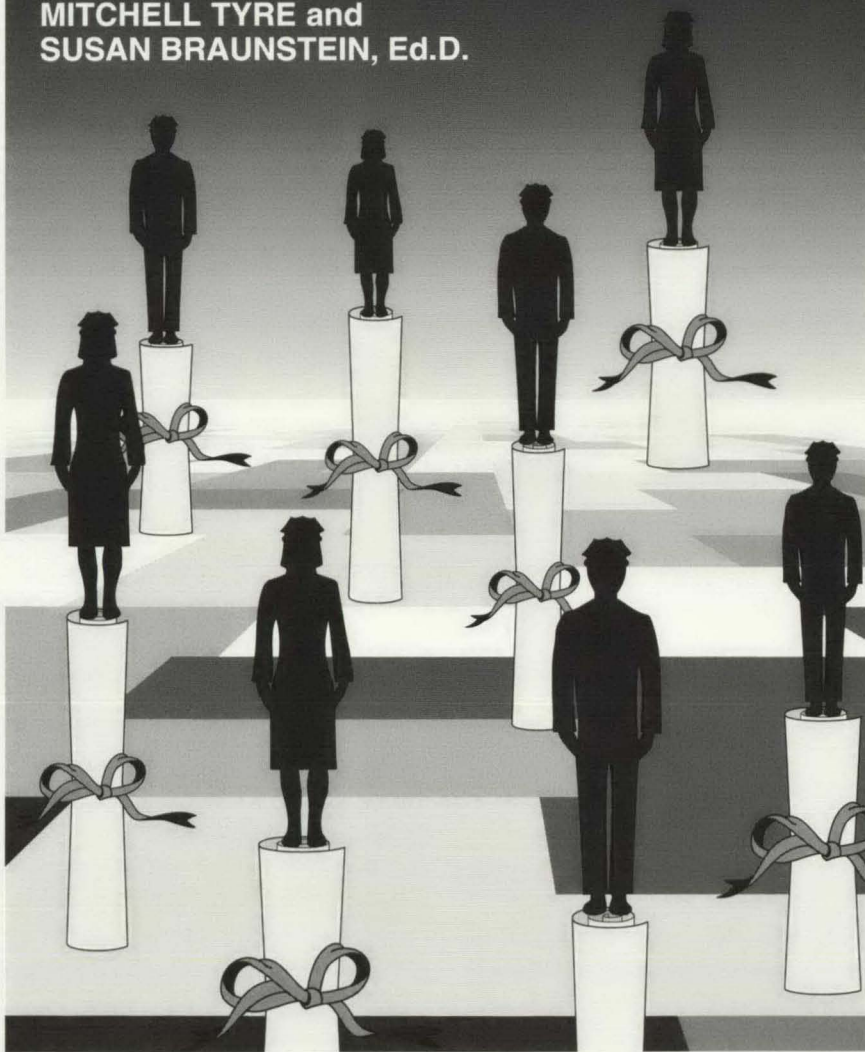
Mr. Gaes is the director and Mr. Saylor is the deputy director of the Office of Research and Evaluation, Federal Bureau of Prisons, Washington, D.C.



"...UNICOR work experience and vocational training increase the likelihood of success for felons upon release into the community."

Higher Education and Ethical Policing

By
**MITCHELL TYRE and
SUSAN BRAUNSTEIN, Ed.D.**



In March 1991, the now famous Rodney King videotape was first broadcast to television viewers across the Nation and around the world. Suddenly, police

ethics were being discussed in editorials, news programs, and on radio and television talk shows. However, concern about ethical police behavior predated this blinding media

spotlight by many years. In fact, since the introduction of organized law enforcement agencies, communities and departments have agonized over the sometimes unethical decisions made by individual officers that resulted in criminal acts, decreasing departmental morale, and increased public dissatisfaction.

This article presents a brief overview of the prevailing beliefs among researchers concerning the effects of higher education on ethical policing and explains how these beliefs developed. In addition, the article discusses the results of two recent studies of Florida police officers that measure the relationship between higher education and the ethical behavior expected of law enforcement officers.

ETHICS IN POLICING

The nature of policing dictates that officers must consistently make immediate and demanding decisions. These decisions call into play ethical and moral, as well as procedural and legal, questions and are most often made without recourse to specific directions from superiors or specific policy directives.

Another factor that forces officers to make difficult decisions is the changing role of law enforcement in today's society. As William Scott noted in his article on college education requirements for police officers, the role of officers is changing "... from pure enforcement of the law to one of dealing with people and their problems. Police...are taking a more holistic approach to the community."¹ This social work/community problem-solving approach creates even more demands on officers, as such a tech-

nique often requires them to choose between criminal justice or community service solutions. These decisions may be made with reference to policy, ethical standards, or on the basis of expediency, among other factors.

A further, but often overlooked, reason for ethics education is the myth of full enforcement. In *Police Training for Tough Calls: Discretionary Situations*, Frank Vandall argues that most formal police training relies on the principles of full enforcement. Practitioners, of course, are aware that full enforcement is impossible, impractical, and undesirable. Consequently, officers often make enforcement decisions with little formal guidance from their training or their departments.

According to Vandall, one result of this is inadequate recruit training in applied ethics. He states, "Since the task of the officer is thought to be simply to arrest when there is a violation, little attempt is made in training to distinguish similar calls or to give examples of how a particular law or department rule (if any) might be applied in different situations."²

In practice, enforcement policy is generally determined by the lowest ranks, i.e., patrol officers who interact with the public. In many cases, the decision for arrest is based solely on their discretion.³ Nevertheless, much police training and education fails to deal with the concept of discretion in law enforcement.⁴

The Benefits of Higher Education

Higher education has been cited as an advantage and even a cure-all

since at least 1917,⁵ and numerous studies have called for college education for police personnel.⁶ Nevertheless, many police administrators meet such proposals with less than whole-hearted enthusiasm.

This could rest in the fact that many police supervisors do not believe that college education produces better officers.⁷ Indeed, a field survey of police administrators and supervisors in Florida revealed that many administrators believe that much of the research undertaken at universities is purely theoretical and unsupported by real life experience.⁸

This belief, however, seems contrary to the findings of other surveys gauging the relationship between higher education and policing. In M.S. Meagher's 1983 study of 183 officers at one agency, the frequency of occurrence of specific positive acts was statistically different when controlled for higher edu-

cation. Meagher did not claim that higher education was the sole cause, but the study showed a clear relationship between higher education and the performance of desirable police tasks, such as the ability to communicate, the capacity to evaluate personal characteristics of others, and the ability to analyze and synthesize data logically.⁹ All these are important factors in making ethical decisions.

David Murrell's 1982 doctoral dissertation took as its working hypothesis the assertion that an educated officer would be a better officer.¹⁰ To test this hypothesis, he compiled a list of measurable factors that constituted good police work and compared the performance of educated and noneducated officers in two departments. The results conformed closely with his expectations. He concluded, "... college education makes for superior police work performance...."¹¹



Chief Tyre commands the Juno Beach, Florida, Police Department.



Dr. Braunstein is an associate professor of communications at Lynn University, Boca Raton, Florida.

In a 1988 study of the Los Angeles Police Department, Hooper concluded that there were "no appreciable differences across educational levels in the performance of police duties [but] generally, educational level accounts for some difference in proficiency of police tasks."¹² Among the specific revelations of this study was the finding

A Moral Code

To educate police officers adequately in the ethical sense, they must be encouraged to create a "moral code."¹⁶ It is this internalized code to which officers turn when decisions must be made without recourse to specific direction from superiors or policy, and such occasions are frequent in police work.

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...research seems to indicate that there is a positive correlation between higher education, fewer disciplinary actions, and fewer citizen complaints.

”

that officers who have completed 2 years of college are less likely to be accused of misconduct.¹³

A New York City-Rand Institute Study of the NYPD concluded that "... college educated officers in New York performed at a level well above average."¹⁴ The study also found that more educated officers were "... less likely to incur civilian complaints."¹⁵

Although such research is helpful in pointing out relationships between education and performance, it rarely focuses directly on ethics. Often, however, the subject is examined through such measures as disciplinary records and civilian complaints. Although studies are not unanimous on the subject, research seems to indicate that there is a positive correlation between higher education, fewer disciplinary actions, and fewer citizen complaints.

Traditionally throughout American history, a liberal education has been viewed as the means by which citizens are grounded in the principles of an ethical, educated life. It is the liberal education portion of the college curriculum that is expected to lay the basis for cultural literacy and to provide the foundation for cultural values.¹⁷

One characteristic of general education, as opposed to career training, is the emphasis general education puts on the ethical and aesthetic development of the individual. As may be expected, there is evidence that such an education does positively affect student values.¹⁸ In short, a liberal education helps to define and foster an individual's moral code.

CURRENT STANDARDS

In spite of government incentives and increasing departmental

practices to encourage higher education, most police officers in this country have not completed a higher education degree. In Florida, for example, only about 35 percent of the State's police officers have earned a college degree.¹⁹

Most officers still must complete an academy curriculum that bears little similarity to higher education. For instance, in Florida, police officer candidates must complete a 520-hour, rigidly defined curriculum at a designated police academy. This curriculum includes no "humanities" or general education courses, and only a 1-hour class on ethics.

FLORIDA STUDIES

In an effort to expand the data relating ethical policing to higher education, the authors initiated two research studies of Florida police officers. The first study concentrated on forced choice scenarios; the other centered on decertification proceedings by the Florida Department of Law Enforcement (FDLE).

Study One: Forced Choice Scenarios

This study required respondents to choose between various responses to three different scenarios that posed ethical dilemmas. Fifty active duty police officers from two departments and 60 control subjects (persons who were not sworn officers) were given forced choices, ranging from ethically sound, to unethical, to outright illegal.

The results indicated that educational levels had a direct positive effect upon *all* individuals surveyed—those with more advanced

education were more likely to make ethically sound choices. However, for police officers, the correlation between a college degree and ethical decisions was 12 times greater than for the control group.²⁰

The importance of this study is not that the attitudes described will accurately predict behavior, but that at least under scrutiny, educated police officers choose ethically better answers. They may or may not act according to those answers in real-life situations, but they have demonstrated that they know the morally acceptable behaviors and will choose them in a controlled study situation. That is less true of the officers who have not completed a college degree program.

Study Two: Examination of Decertifications

The second study examined 1987-1988 data concerning the statistical relationship between probable cause for decertification hearings by the FDLE and educational levels of officers. The FDLE, through the Criminal Justice Standards and Training Commission (CJSTC), holds probable cause hearings to determine if an officer's certification should be suspended for a specific period of time or revoked.

The 1987 statistics revealed that officers who had not attained a 2-year college degree were roughly four times more likely to be brought before the commission for illegal or unethical behavior. In 1988, FDLE figures indicated that 1 in 217 officers with less than an associate's degree was brought before the commission to face disciplinary action.

However, only 1 in 686 with an associate's degree was brought before the commission.

In 1989, the figures were quite similar. Sixty-five percent of all officers in the State had less than a 2-year degree; 35 percent had at least a 2-year degree. Yet, only 15 percent of the officers brought before the CJSTC for disciplinary hearings had a 2-year degree.

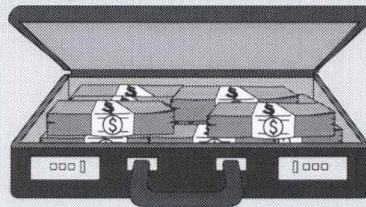
This research is preliminary. No effort has been made to control for age, length of service, type of degree, or other variables that other studies indicate might be significant. However, the research indicates that possession of a college degree acts as a predictor of behavior

in that those officers who have a degree are statistically less likely to be involved in the decertification process.

RECOMMENDATION

The research available on the subject, though admittedly preliminary, appears to confirm the concept that better educated officers generally can be expected to perform in an ethically sound way. Therefore, it may be advisable to consider integrating the learning objectives of the police academy (currently required in at least 20 States)²¹ into a 2-year college curriculum. The proposed curriculum would include task-specific skill courses for

Example of Forced Choice Scenario



You are on assignment to the Drug Squad and are in the process of serving a search warrant on a suspected drug dealer's house. The suspect is handcuffed, sitting on the bed in the back bedroom, where you find a suitcase with what appears to be a

small amount of marijuana on top of several stacks of \$20 bills, which you approximate to total \$50,000. The suspect says, "That stuff was left here by a friend—forget the dope and I'll forget the money." No other detective is present or has seen the money. Your son, a leukemia victim, is in need of a bone marrow transplant that insurance will not cover.

Would you:

- 1) Arrest the suspect for possession of marijuana and bribery
- 2) Take the money and forget the marijuana, since its only marijuana and not cocaine or harder drugs
- 3) Take only that part of the money needed for the operation
- 4) Take part of the money and arrest the suspect anyway
- 5) Call your partner and ask his opinion

officers, such as traffic stops and defensive tactics, but would also require liberal arts courses.

For this proposal to become a reality, however, will require support not only from community leaders but also from law enforcement managers. To break from traditional training methods will result in resistance from some quarters, but police administrators should insist on the very best training, education, and preparation for their officers. Modern societal expectations demand that law enforcement officers have a broad-based education.

CONCLUSION

The need for ethical officers is clear. The complexity of American society, the nature of police work, and the problems inherent in discretionary enforcement all require officers who are solidly grounded in applied ethics.

In all of the areas analyzed here—review of literature, scenario studies of sworn and nonsworn personnel, and examination of FDLE statistics on probable cause hearings—officers who had at least a 2-year college degree performed better than those who did not. There is no question that a behavior as complex as practicing ethical standards is influenced by many factors—education is but one among them. It does seem clear, however, that a positive correlation exists between college education, better police performance, and ethical police behavior.

Given the tremendous challenges facing law enforcement today and in the years to come, com-

munity and police administrators must consider any steps that could improve the capability of officers to ensure community safety. Research indicates that to promote ethical conduct, one step may be to integrate the traditional police academy curriculum with general college degree courses. ♦

“**In short, a liberal education helps to define and foster an individual's moral code.**”

Endnotes

¹ William Russell Scott, "College Education Requirements for Police Entry Level and Promotion: A Study," *Journal of Police and Criminal Psychology*, 1986, 16-17.

² Frank J. Vandall, *Police Training for Tough Calls: Discretionary Situations* (Atlanta: Center for Research in Social Change, Emory University, 1976), 4.

³ Kenneth Culp Davis, *Police Discretion* (St. Paul, Minnesota: West Publishing Co., 1975), 39.

⁴ Supra note 2.

⁵ Herman Goldstein, *Policing in a Free Society* (Cambridge: Ballinger, 1977), 283.

⁶ Mitchell Tyre and Susan Braunstein "Colleges May Provide Alternatives to Traditional Academies," *The Florida Police Chief*, Oct. 1989, 31 - 37; also Charles B. Saunders, Jr., *Upgrading the American Police: Education and Training for Better Law Enforcement* (Washington, D.C., 1970: The Brookings Institution), 112, 113; also Lawrence Sherman and the National Advisory Commission on Higher Education for Police Officers, *The Quality of Police Education: A Critical Review with Recommendations for Improving Programs in Higher Education* (San Francisco: Jossey-Bass, 1987).

⁷ See, e.g., Dennis D. Powell, "An Assessment of Attitudes Toward Police Education Needs," *Journal of Police & Criminal Psychology*, March 1986, 4.

⁸ Mitchell Tyre and Susan Braunstein, telephone and personal interviews conducted in Florida, 1989.

⁹ William Russell Scott, "College Education Requirements for Police Entry Level and Promotion: A Study," *Journal of Police and Criminal Psychology*, March 1986, 4.

¹⁰ David Murrell, *The Influence of Education in Police Work*, dissertation, Florida State University (1982).

¹¹ Ibid.

¹² Michael Kent Hooper, *The Relationship of College Education to Police Officer Job Performance*, dissertation, University of Michigan (1988).

¹³ Ibid.

¹⁴ Bernard Cohen and Jan M. Chaiken, *Police Background Characteristics and Performance* (Lexington, Massachusetts: Lexington Books D.C. Heath & Co., 1973).

¹⁵ Ibid.

¹⁶ Callahan concludes that teaching students the necessary analytical and critical skills and encouraging them to create their own moral systems encourages the development of such systems. Daniel Callahan, "Goals in the Teaching of Ethics," in *Ethics Teaching in Higher Education*, ed. Daniel Callahan and Sissela Bok (New York: Plenum Press, 1980), 61-80.

¹⁷ Howard R. Bowen, *Investment in Learning: The Individual and Social Value of Higher Education* (San Francisco: Jossey-Bass, 1977).

¹⁸ Eric Donald Hirsh, Jr., *Cultural Literacy: What Every American Needs to Know* (New York: Vintage Books, 1988).

¹⁹ Florida Department of Law Enforcement/DOE Criminal Justice Training Grant Task Force Seminar (May 1989).

²⁰ Study developed and administered by Susan Braunstein and Mitchell Tyre. Questionnaires administered to sworn officers of the Stuart, Florida, and Port St. Lucie, Florida, Police Departments and college students matched for age at Barry University and the College of Boca Raton, Florida, 1990. Authors assisted in statistical analysis by Robert Foresman, Florida Institute of Technology.

²¹ Supra note 19.

The Evidentiary Value of Plastic Bags

By
RICHARD F. STANKO and
DAVID W. ATTENBERGER



With the advent and explosive popularity of disposable products within our society, the FBI Laboratory has recently received contributor requests to conduct forensic examinations of disposable blown film products, such as garbage bags. Through such examinations, it is hoped that these disposable bags, which are obtained as evidence primarily in homicide or drug cases, will be associated to a similar film product located in the possession of a suspect.

This article discusses how disposable blown film is produced and explains the variety of manufacturing characteristics, such as pigment

bands, die lines or weld lines, fisheyes, and arrowheads, that may be found during examination of plastic bags. Finally, this article seeks to inform criminal investigators concerning the forensic value of blown film products when they are properly collected, preserved, and examined for unique manufacturing characteristics.

Preliminary Research

Pioneering research in the field was conducted by Ulf G. von Bremen and Lorne K. R. Blunt.¹ However, in order to further support their examinations and subsequent testimony, examiners from the FBI Laboratory determined that they

needed more first-hand information than the initial research provided. Therefore, the examiners visited manufacturing plants to find out how these products are made.

The Manufacturing Process

Blown film is produced by converting resin pellets (polyethylene) to a melt, which is then forced by an extruder through a ring-shaped die to form a continuous tube of plastic. As the melt exits the extruder(s), it is forced through a screen at high pressure, which may accelerate debris and impurities through the screen to the die. The inflated tube is regulated for desired film gauge, collapsed by

frames, and pulled through nib and idler rolls.²

After this process, several other procedures impart class and potential unique individual characteristics to the completed bags. These include hot knife cutting and simultaneous sealing of bag edges, reinflation to ensure the plastic film does not adhere together, teflon heat seal of the skirt or bag hem, perforation, separation, and packaging.

In an ideal manufacturing environment, all possible film defects would be detected and eliminated.³ But, in reality, a number of occurrences impart class and unique individual characteristics that enhance the forensic examination.

The Examination

The examination, physical comparison, and matching of polyethylene plastic bags are conducted

of such class characteristics as color, size, embossed code, and construction.⁴ Construction characteristics are related to manufacturing and include the location of seams, length of hem (the portion of the bag past the bottom seam), and pigment bands.⁵ These bands are caused by inadequate mixing of dyes and pigments with the melt and often run in the general direction of the film production.⁶ In addition, die lines or weld lines frequently occur during construction as a result of a damaged die mandrel or from degraded particles of resin or dust lodged under or in the die lips.⁷

As previously mentioned, during the manufacturing process, extruders mix resin pellets and dyes, and the melt is forced through a screen pack at great pressure. Carbon material, resin, pigment or simple grit is formed on either side

lines meeting at an apex and pointing away from the die mandrel during manufacturing.⁹

When the individual characteristics or imperfections, such as fisheyes and/or arrowheads, are recognized and compared, the examiner may be able to positively associate two bags as having originally been one piece of plastic. However, to make this conclusion, the random imperfections must be sufficient in quantity and must run across two consecutively produced bags.¹⁰

Another area of the manufacturing process that the FBI Laboratory has examined is the heat seal of the hem or bottom of the polyethylene bag. The heat seal is created as the sheet film is directed between two metal bars that are wrapped with teflon tape. Then, heat is applied, and the bag is sealed. The teflon tape prevents the melted plastic from adhering to the hot metal; however, it also randomly collects foreign particles and impurities that are then imprinted on consecutive bags. In addition, only the top teflon strip may be rotated to a clean section without stopping production. Examiners base their conclusions on the observation and comparison of the impurities collected on the teflon tape, the nicks and chips on the metal bars, and the resultant changing pattern that is imprinted on the hem.

After proper examination of these characteristics, examiners may be able to state that two bags were sealed by the same teflon tape/metal bar in close proximity. The importance of this type of testimony is magnified when it is explained that the manufacturing line moves at an approximate rate of 200 feet per minute and that research and exami-

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Because drug and homicide violations account for many of the crimes associated with polyethylene bags, special care is required to collect, preserve, and transmit these bags.

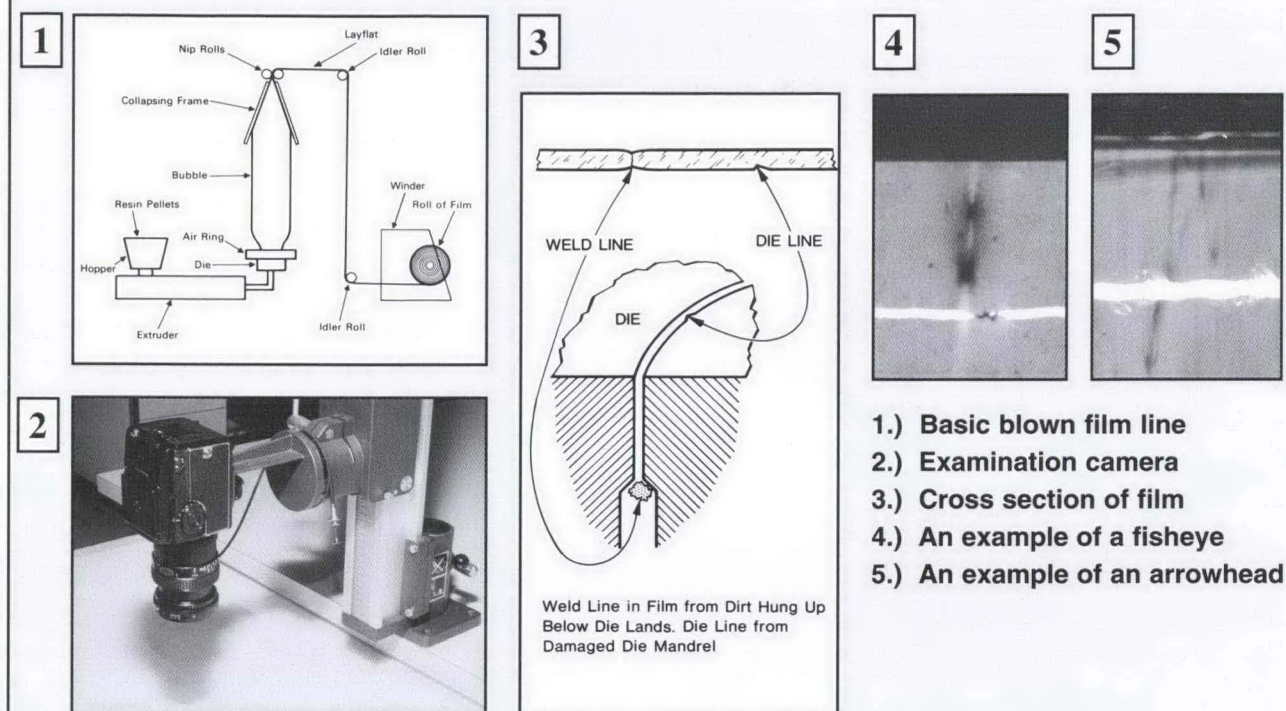
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visually with the aid of transmitted light and low power magnification. In addition, industry research has developed the use of a profilometer to measure caliper average, low point, high point, and profile of the polyethylene film. To record the examination, the specimens are affixed to a light table by double-sided light tack tape and photographed to document pertinent findings.

Preliminary examination and inter-comparison of questioned and known bags include the observation

of the screen pack and is randomly injected into the molten air column. Consequently, the plastic stretches around the unwanted material to form a fisheye. Fisheyes vary in size from one to several centimeters in length and appear as dark spots with one or two lighter colored tails.⁸

The introduction of unwanted contamination may also result in an individual characteristic known as an arrowhead. Arrowheads vary in length and size by several centimeters and manifest themselves as dark



- 1.) Basic blown film line
- 2.) Examination camera
- 3.) Cross section of film
- 4.) An example of a fisheye
- 5.) An example of an arrowhead

nation of consecutively produced bags has shown that over a roll of only 50 bags, the heat seal changes from the first bag to the last.

Collection, Preservation, and Transmittal

Because drug and homicide violations account for many of the crimes associated with polyethylene bags, special care is required to collect, preserve, and transmit these bags. During crime scene processing and subsequent searches of suspect locations conducted during these investigations, the investigator should collect bags of matching size and color that are distributed throughout a location to afford the examiner an opportunity to determine possible sequencing of the bags.

Additionally, investigators should not cut or rip the edges of the

bag to remove the contents. However, if an incision must be made, it should be made in the center of the bag in order to preserve the opening and all edges, seams, and hems for examination of manufacturing characteristics. If the bag is stained, it should be thoroughly air dried away from direct sunlight before submission to the Laboratory. Also, all polyethylene bags should be packed in unused paper bags or wrapping paper and mailed to the Laboratory by registered mail or express mail.

Conclusion

The forensic examination of polyethylene bags for class and unique individual characteristics, when conducted by an examiner with a thorough understanding of the manufacturing process, can provide criminal investigators with an additional scientific means to re-

solve questions of a plastic bag obtained as evidence in criminal cases. This procedure enhances law enforcement's ability to investigate and develop prosecutable cases. ♦

Endnotes

¹ Ulf G. von Bremen and Lorne K. R. Blunt, "Physical Comparison of Plastic Garbage Bags and Sandwich Bags," *Journal of Forensic Sciences*, vol. 28, No. 3, July 1983, pp. 647-648.

² USI Chemicals Company, *How to Solve Blown Film Problems*, p. 3.

³ *Ibid.*, p. 21.

⁴ *Supra* note 1.

⁵ *Supra* note 1, p. 648.

⁶ *Ibid.*

⁷ *Supra* note 2, p. 22.

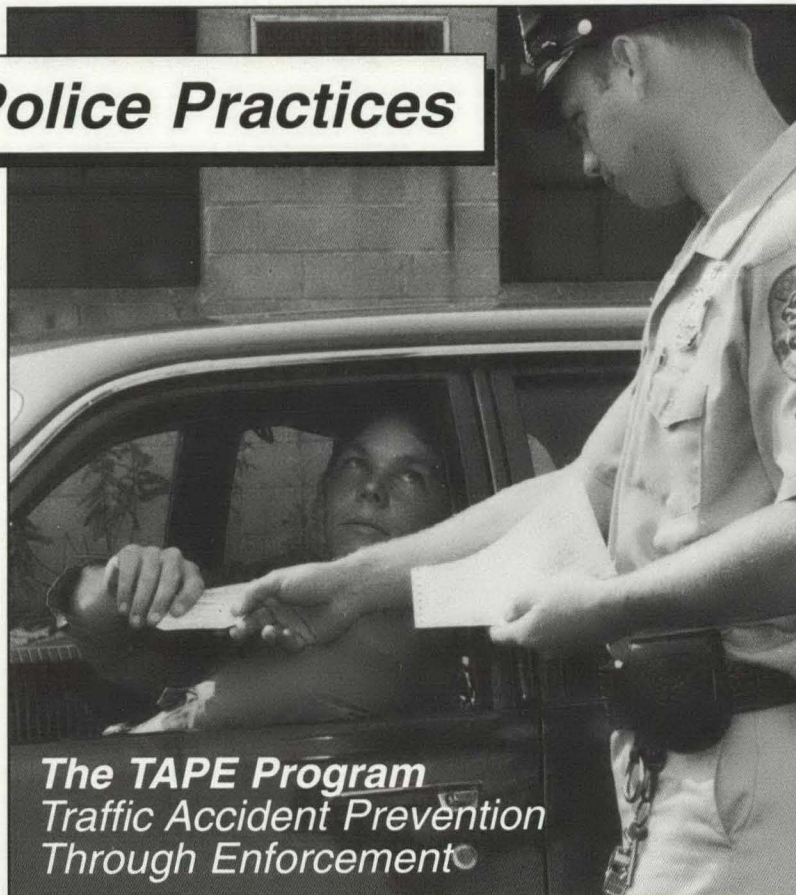
⁸ *Supra* note 1, p. 650.

⁹ *Supra* note 1, pp. 651-652.

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Special Agents Stanko and Attenberger are assigned to the Document Section, FBI Laboratory, Washington, D.C.

Police Practices



The TAPE Program *Traffic Accident Prevention Through Enforcement*

In the fall of 1990, the Uniform Patrol Division of the South Miami, Florida, Police Department began a program designed to make the roads safer through a proactive traffic enforcement approach. The department initiated the Traffic Accident Prevention Through Enforcement (TAPE) Program to address specific factors that adversely affected the safety of area roadways, and at the same time, would increase officer response times for other types of calls.

The Problem

During routine traffic stops, patrol officers encountered a large number of motorists driving with suspended and revoked licenses and some drivers who had never even been issued an operator's license. Standard department procedure had been to issue these drivers notices to appear in court in lieu of arrest. However, this approach resulted in many missed court appearances and created an atmosphere in which some illegal drivers flaunted their behavior with little fear of reprisal.

Also, because Florida eliminated vehicle safety inspections several years ago, there had been an increase in the number of vehicles being detected with faulty equipment, including burned-out tail, brake, and head lights. These vehicles posed a threat to all drivers, and their unsafe conditions resulted in increased traffic accidents that strained the resources of the entire police department. Patrol Division personnel decided that a more proactive approach to traffic enforcement was needed.

The TAPE Program

The Uniform Patrol Division established a separate detail of highly motivated officers to actively enforce license restrictions and vehicle safety codes. Officers assigned to the detail check all vehicles they stop through a special direct computer link with the Florida Department of Highway Safety and Motor Vehicles (FDHSMV).

Motorists with a single suspension continue to be issued a notice to appear in court (in lieu of arrest). However, habitual offenders receive more severe penalties. If a vehicle operator cannot produce a license when stopped, officers query the FDHSMV system to determine if one has ever been issued to the individual.

Officers may arrest anyone who falls into one or more of the following categories:

- Having multiple suspensions or revocations

- Having a prior DUI revocation, or a suspension for prior refusal to submit to DUI test
- Suspension for financial responsibility or
- Driving under the influence.

Of course, officers take into custody anyone with an open warrant for arrest or anyone who commits a criminal offense.

Personnel

The TAPE Program is based on the premise that a small number of officers could achieve a high-profile effect. The success of the program, however, depends on the professionalism of this small force of officers. Therefore, there is a high degree of camaraderie and coordination among the members of the TAPE detail.

A minimum of five sworn officers serve in each detail; the maximum number is seven. A supervisor always works alongside the officers, who volunteer for this special duty and adjust their work schedules and days off to do so. This not only helps to ensure that motivated officers work on this detail but it also significantly reduces the amount of overtime pay necessary to staff the force.

In addition, a designated communications officer handles all communication with the Florida Department of Highway Safety and Motor Vehicles. A special city frequency is dedicated to requests for FDHSMV assistance.

Results

It is difficult to assess the statistical information to determine the effectiveness of the program in decreasing the number of traffic accidents, but preliminary data reveal TAPE to be an effective traffic enforcement strategy. To date, the detail is responsible for 23 custodial arrests:

“The TAPE Program is based on the premise that a small number of officers could achieve a high-profile effect.”

- 14 for driving with a suspended or revoked license
- 5 for driving under the influence (DUI)
- 1 for driving with an invalid driver license
- 1 for reckless driving and
- 1 for a nontraffic-related criminal offense.

In addition, 36 promises to appear in court (in lieu of arrest) have been issued, and a total of 508 traffic citations have been issued by the TAPE detail.

Public acceptance and awareness also attest to the success of

the TAPE Program. The local media, including area radio stations, have publicized details about TAPE and have used the program to create more awareness among citizens concerning traffic safety. In turn, heightened visibility and understanding make the streets safer, thereby reducing the danger of traffic accidents. Coupled with periodic sobriety checkpoints, the TAPE Program has also proven to be an effective weapon in identifying those individuals who present the most danger to others—intoxicated drivers.

Conclusion

The TAPE Program makes the roadways of South Miami safer and more accident free. In addition, the police department realizes other positive effects, including heightened morale among the personnel participating in the detail and an increased sense of traffic safety awareness on the part of area drivers. In this regard, the TAPE Program succeeded even beyond the scope originally intended. ♦

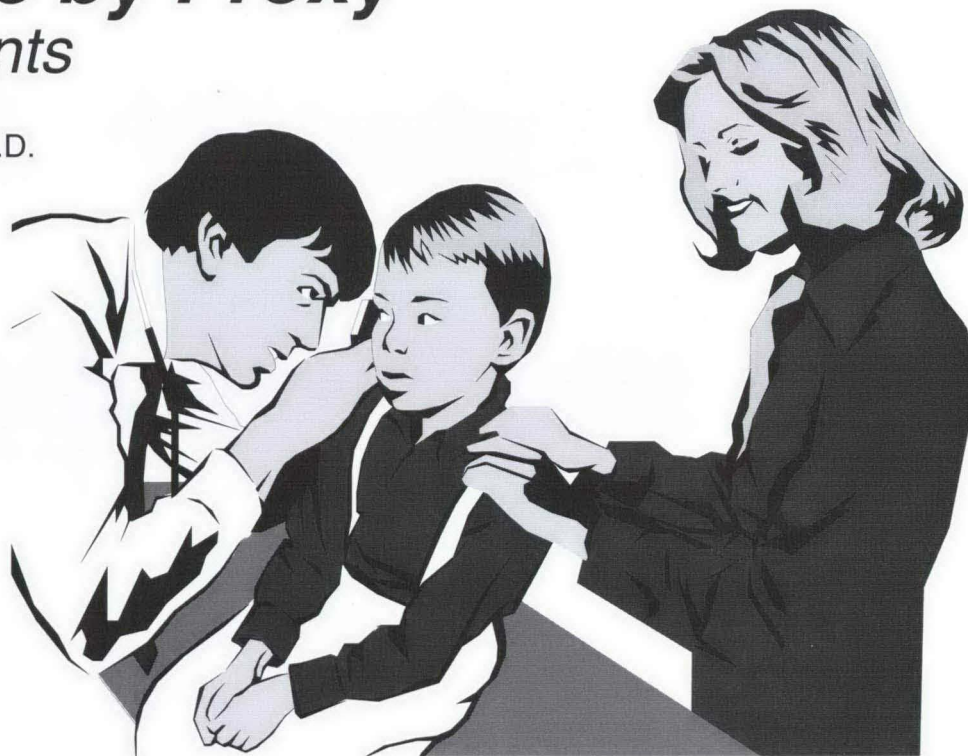
This information was provided by Capt. Greg Feldman, Commander of the Uniform Patrol Division of the South Miami, Florida, Police Department.

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.

Munchausen Syndrome by Proxy

Case Accounts

By
STEPHEN J. BOROS, M.D.
and
LARRY C. BRUBAKER



Hieronymous Karl Fredrich von Munchausen was an 18th century German baron and mercenary officer in the Russian cavalry. On his return from the Russo-Turkish wars, the baron entertained friends and neighbors with stories of his many exploits. Over time, his stories grew more and more expansive, and finally, quite outlandish. Munchausen became somewhat famous after a collection of his tales was published.¹

In 1794, at the age of 74, Munchausen married Bernhardine Brun, then 17 years old. It is said that on their wedding night, the

baron retired early, and his bride spent the night dancing with another. In 1795, Bernhardine gave birth to a son. Following the birth of this child, it was whispered that "the life of the Munchausen child will likely be short." The boy, named Polle, died at approximately 1 year of age under suspicious circumstances.²

Almost a century later, an unusual behavior pattern among young men gained recognition in the writings of Charcot. In 1877, he described adults, who through self-inflicted injuries or bogus medical documents, attempted to gain hospitalization and treatment. Charcot

called this condition "mania operativa passiva."³

Seventy-four years later, in 1951, Asher described a similar pattern of self-abuse, where individuals fabricated histories of illness. These fabrications invariably led to complex medical investigations, hospitalizations, and at times, needless surgery. Remembering Baron von Munchausen and his apocryphal tales, Asher named this condition Munchausen's Syndrome.⁴

Today, Munchausen's Syndrome is a recognized psychiatric disorder. The American Psychiatric Association's *Diagnostic and Statistical Manual of Disorders*

(DSM III-R) describes it as the "intentional production of physical symptoms."

MUNCHAUSEN SYNDROME BY PROXY

The term "Munchausen Syndrome by Proxy" (MSBP) was coined in a 1976 report describing four children who were so severely abused they were dwarfed.⁵ In 1977, Meadow described a somewhat less extreme form of child abuse in which mothers deliberately induced or falsely reported illnesses in their children. He also referred to this behavior as MSBP.⁶

Over the years, alternate terms, such as "Polle's syndrome" and "Meadow's syndrome," have been suggested; however, these terms never gained popularity. In contrast to its adult namesake, the American Psychiatric Association's DSM III-R does not consider Munchausen Syndrome by Proxy a psychiatric disorder.

Tragically, MSBP victims are usually children, and the perpetrators are almost always parents or parent substitutes. If and when victims are hospitalized, they may be subjected to multiple, and at times, dangerous diagnostic procedures that invariably produce negative or confounding results. When the victim and abuser are separated, however, the victim's symptoms cease. When confronted, the abuser characteristically denies any knowledge of how the child's illness occurred.

CASE REPORTS

In recent years, medical personnel at Children's Hospital in St. Paul, Minnesota, and local law en-

forcement agencies encountered several MSBP cases, three of which are outlined here. Two of the cases were presented with apnea, a condition where breathing temporarily stops. The third case was presented with recurrent infections masquerading as an immune deficiency.

Case #1

Victim

MA, a 9-month-old boy, was repeatedly admitted to Children's Hospital because of recurrent life-threatening apnea. At 7 weeks of age, he experienced his first apneic event, and his mother administered mouth-to-mouth ventilation. Spontaneous respiration returned, and MA was hospitalized, treated, and discharged with a home monitor.

During the next 9 months, MA experienced 10 similar events and 7 more hospitalizations. Eight of the events required mouth-to-mouth ventilation. All of these episodes occurred while mother and child were alone, and only MA's mother

witnessed the actual events. Two episodes occurred in the hospital.

Unfortunately, despite many tests and surgical procedures, MA's apnea persisted, and his growth slowed. Because of his persistent apnea and failure to thrive, MA received home nursing care. During these home visits, several nurses observed that MA would refuse to eat in his mother's presence. If she left the room, however, he would eat.

In time, both medical and nursing staffs became increasingly suspicious that Mrs. A was somehow responsible for her child's apnea. To better observe mother-child interaction, MA was moved to a hospital room equipped for covert audiovisual surveillance.⁷

On the sixth day, the video clearly recorded Mrs. A bringing on the apnea by forcing the child into her chest, which caused him to lose consciousness. MA became limp and experienced a falling heart rate. Mrs. A then placed the baby back on the bed, called for



Dr. Boros is involved with the Infant Apnea Program at Children's Hospital, St. Paul, Minnesota.



Special Agent Brubaker is assigned to the FBI's Minneapolis Division.

help, and began mouth-to-mouth resuscitation.

The hospital immediately informed child protection services and police authorities, who reviewed the recording. Shortly thereafter, a team consisting of a physician, nurse, social worker, and police officer confronted the parents. At first, Mrs. A expressed disbelief at the suggestion that she smothered MA, but when she was informed of the video, she made no comment. She was then arrested.

Family History

Mrs. A was a 36-year-old occupational therapist and the mother of

three boys. Late into her pregnancy with MA, she worked in an early intervention program for developmentally delayed children. During many of MA's hospitalizations, she appeared caring and concerned, but emotionally distant. Clearly, Mrs. A was the dominant parent, who made all decisions regarding medical treatment.

Followup

Mrs. A subsequently pled guilty to felonious, third-degree assault. At the time, she stated: "The only time I ever caused MA to stop breathing was in the hospital." She received 3 years' probation during

which she was to receive psychotherapy. If she successfully completed psychotherapy, the felony charge would be reduced to a misdemeanor. She also had to live apart from her children and could only visit them in the presence of two adults.

MA had no further apnea, and at 24 months of age, he appeared vigorous, healthy, and normal. Eventually, the family was reunited.

Case #2

Victim

CB, a 10-month-old girl, was admitted to a hospital because of recurrent life-threatening apnea. CB was born in another State and was sexually assaulted at the age of 3 months by an acquaintance of her father. After the assault, local child protection services closely monitored the family.

At 6 months of age, CB experienced her first apneic episode. Her father shook her vigorously, then administered mouth-to-mouth ventilation. She was subsequently admitted to a local hospital. After examination and treatment, she was discharged with a home monitor. During the next 2 months, CB experienced six apneic events and three hospitalizations. The family then moved to Minnesota.

During her first month in Minnesota, CB experienced four apneic episodes and three more hospitalizations. All required vigorous stimulations to restore spontaneous breathing. Other family members observed the child immediately following the events. However, only CB's father ever witnessed all of the

Help for Investigators

Investigators assigned to work child abuse cases should investigate cases of MSBP as they do similar cases of abuse. In general, however, when confronted with possible cases of MSBP, investigators should:

- Review the victim's medical records to determine condition and illness
- Determine from contact with medical personnel the reporting parent's concerns and reactions to the child's medical treatment
- Compile a complete history of the family to determine previous involvement with law enforcement agencies, medical facilities, and social and child protection services
- Compile a detailed social history of the family, including deaths, injuries, and illnesses
- Interview family members, neighbors, and babysitters
- Use video surveillance in the hospital in accordance with State law, and
- Use a search warrant for the family's residence when collecting evidence of the assaults.

actual events. CB was eventually referred to Children's Hospital.

While in the hospital, CB had no clinical apnea or monitor alarms. And, most of the time, she appeared happy and playful. However, when anyone attempted to touch her face, she became hysterical and combative. Over time, both the medical and nursing staffs began to suspect that CB's parents were responsible for her apnea.

Local police and child protection services were notified, and CB was placed in a room with covert audio-visual surveillance.⁸ On the third day of video monitoring, the video recording clearly showed CB's father producing an apneic event by smothering her. Mr. B was viewed picking up the sleeping child, placing her prone on the bed, and forcing her face into the mattress. CB awoke and struggled to escape, wildly kicking her legs. Mr. B continued until CB's struggling stopped and she appeared limp and unconscious. Then, he repositioned her on the bed and called for help. A nurse entered the room, stimulated her, and administered supplemental oxygen.

CB's parents were confronted by a physician, nurse, and police officer. Mr. B adamantly denied smothering CB. He was subsequently arrested and removed from the hospital.

Family History

Mr. B. was a 27-year-old, unemployed, semi-literate laborer in good health. He was actively involved in CB's day-to-day medical care and was clearly the dominant parent. He also became very knowl-

edgeable of the mechanics of the various county and hospital welfare systems. Officials described him as "demanding and manipulative." During CB's hospitalizations, the family lived in a hotel adjacent to the hospital with room, board, and radio pagers provided by the hospital. Throughout CB's hospitalization, Mrs. B was passive and deferred all medical decisions to her husband.

“...MSBP victims are usually children, and the perpetrators are almost always parents or parent substitutes.”

When they first arrived in Minnesota, the family received emergency financial assistance and was closely monitored by local social service agencies. Four years earlier, Mrs. B was allegedly assaulted and raped. Two months prior to CB's monitored episode, Mrs. B was evaluated at a local emergency room for a "hysterical conversion reaction."

Followup

Following the incident at Children's Hospital, Mr. B was taken to the county jail, and upon viewing the video, he admitted to smothering CB. He also was charged with felonious, third-degree assault. The judge ordered a psychiatric examination. Mr. B also received a 10-month sentence in a

local workhouse and 5 years' probation. Also, he is to have no contact with his daughter or unsupervised contact with any child in the future.

Case #3

Victim

JC, a 2 1/2-year-old boy suffered from asthma, severe pneumonia, mysterious infections, and sudden fevers. He was hospitalized 20 times during an 18-month period. Doctors were even concerned that he may have AIDS. However, they soon began to suspect that the mother may have caused the child's problems. Finally, when the boy complained to his mother's friend that his thigh was sore because "Mommy gave me shots," the authorities were called.

Upon searching the residence, investigators seized medical charts and information and hypodermic needles. It was also believed that material also entered the boy through a catheter doctors surgically inserted in the arteries near his heart to give him constant medication.

Family History

JC's mother was a 24-year-old homemaker and part-time fast-food restaurant worker. When the mother was 7 years old, an older sister died of a brain tumor at Children's Hospital. During her sister's prolonged illness, JC's mother, by necessity, spent long periods of time at the hospital. Although this occurred long ago, JC's mother remembered the experience vividly.

During JC's many hospitalizations, the mother seemed almost

MSBP Warning Signs

- Unexplained, prolonged illness that is so extraordinary that it prompts medical professionals to remark that they've "Never seen anything like it before."
- Repeat hospitalizations and medical evaluations without definitive diagnosis.
- Inappropriate or incongruous symptoms and/or signs that don't make medical sense.
- Persistent failure of a child to tolerate or respond to medical therapy without clear cause.
- Signs and symptoms that disappear when away from the parent.
- A differential diagnosis consisting of disorders less common than MSBP.
- Mothers who are not as concerned by their child's illness as the medical staff, who are constantly with their ill child in the hospital, who are at ease on the children's ward, and who form unusually close relationships with the medical staff.
- Families in which sudden, unexplained infant deaths have occurred and that have several members alleged to have serious medical disorders.
- Mothers with previous medical experience and who often give a medical history similar to the child's.
- Parent who welcomes medical tests of the child, even if painful.
- Increased parental uneasiness as child "recovers" or approaches discharge.
- Parental attempts to convince the staff that the child is more ill than what is apparent.

obsessively involved in medical matters and hospital routines. She spent hours in the hospital library reading medical texts. She had few friends outside the hospital, and the medical and nursing staff described her as an isolated person.

JC's father was a 24-year-old church janitor, afflicted with many health problems—the most notable being severe insulin-dependent diabetes. During JC's many hospitalizations, his father appeared distant and only marginally involved. JC's 7-year-old sister was in good health and was named after her mother's deceased sister.

Followup

Since JC was removed from his home, he has been healthy. As in previous cases, only Mrs. C was present when the boy became ill, and until investigators showed

evidence linking her to her child's illnesses, she denied any wrongdoing. Assault charges were filed, and Mrs. C's case is pending.

CONCLUSION

Today, the consensus is that MSBP is not rare, is notoriously resistant to parental psychotherapy, and carries a very grim prognosis. Approximately 10 percent of MSBP victims die.

Unfortunately, more police agencies and medical professionals will be confronted with this form of abuse in the future. Hopefully, the information discussed here will alert law enforcement officers, especially those who deal with cases of abuse, to the warning signs of MSBP and will assist them in identifying the perpetrators and helping the victims. ♦

Endnotes

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- ² D. Burman and D. Stevens, "Munchausen Family," *Lancet*, August 27, 1977, 456.
- ³ M. Signal, M. Gelkopf, and G. Levertov, "Medical and Legal Aspects of Munchausen Syndrome by Proxy Perpetrator," *Medical Law*, September 1990, 739-749.
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- ⁵ J. Money, "Munchausen's Syndrome by Proxy: Update," *Journal of Pediatric Psychology*, November 1986, 583-584; J. Money, and J. Werlas, "Folie a Deux in Parents of Psychosocial Dwarfs: Two Cases," *Bulletin of the American Academy of Psychiatry and the Law*, April 1976, 351-362.
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- ⁷ R. Fiatal, "Lights, Camera, Action: Video Surveillance and the Fourth Amendment," *FBI Law Enforcement Bulletin*, January 1989, 23-30. See also *Sponick v. City of Detroit Police Department*, 211 N.W.2d 674, 690 (Mich. Ct. App. Div. I, 1973).
- ⁸ Ibid.

Police Recruitment

Today's Standard—Tomorrow's Challenge

By
RALPH S. OSBORN

If American policing is to survive in the 21st century, officials must plan today to address the problems of tomorrow. Police managers must begin now to recruit qualified individuals who can lead departments successfully into the next century.

However, rapid changes in demographics can make the problem of recruitment even more difficult. According to Trojanowicz and Carter, "By 2010, more than one-third of all American children will be black, Hispanic, or Asian."¹ The Caucasian majority of today will become a minority within America in less than 100 years.² Obviously, this change in society will have a tremendous impact on the recruiting process of the future.

The challenge of recruitment goes beyond demographics to the problem of shrinking numbers. According to the 1989 *FBI Uniform Crime Reports*, 6,664,062 young people between the ages of 15 and 29—the age group of the current potential work force—were arrested that year.³ And, because law enforcement must compete with private industry and the Armed Forces, the pool of qualified applicants shrinks even more. While this problem will impact on all law enforcement agencies, it will be hardest on small police agencies, which simply

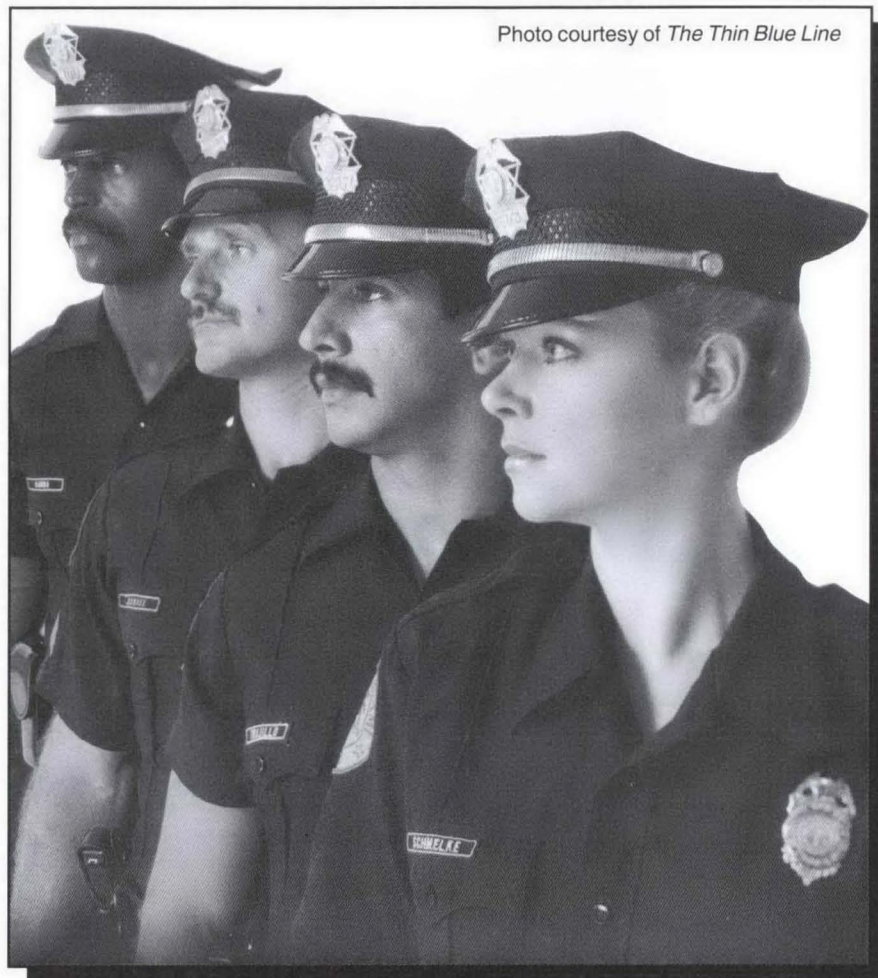


Photo courtesy of *The Thin Blue Line*

do not have the resources for extensive recruiting efforts.

As recruiting becomes more difficult, the temptation will be to hire now and qualify later. This is a dangerous posture to take—quantity will never be an adequate substitute for quality. Therefore, police departments must continue to focus

on qualified applicants, offer incentives that are more than just adequate, and develop creative recruitment programs to meet tomorrow's challenges.

This article examines the problems and challenges of police recruitment, both now and in the future. It also provides police

executives with some ideas that may be helpful when planning for the future.

Demographic Change

Over the next decade, there will be a decrease in both the number and the percentage of high school graduates who fall within the age range of most police applicants. The severe shortage of qualified applicants may result in some departments being dissolved.⁴ This thought, alone, should have police chiefs running to their personnel office to see how they may be affected.

Not only will there be fewer qualified applicants in the future, but the nature of our communities will change, as well. It is important that recruitment meet the needs of these changes. Because of changing demographics, the term "majority status" may become archaic within 100 years; there simply may be no majority within our society.

Therefore, police departments must aim for work forces that mirror

the communities that they serve. Failing in this will result in inadequate public service, at best, and violent confrontations between racial and ethnic groups and those in authority, at worst.

The transformation of urban areas across the country presents law enforcement with a serious problem. With many families moving out of cities to more homogeneous suburban communities, cities are left with largely racial and ethnic minorities that are oftentimes policed by nonminority whites. With the various race, ethnic, cultural, and language barriers that currently exist, these police officers can provide only minimal public services—they simply cannot fully understand the community they must police.

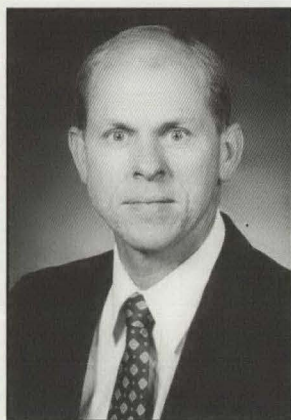
However, changing demographics may force the correction of this problem in the near future. During the next 10 years, only one out of four who enter the work force will be a white male.⁵ The others hired

will be either women or other minorities. Recognizing this, police executives can plan recruiting strategies now that will ensure that they get the most qualified individuals for their departments.

And, while it is important for police personnel officers to address the problems of changing racial and ethnic demographics, there is yet another recruitment problem looming on the horizon. "The percentage of the population between 16 and 24 years old will shrink from 30 percent of the labor force in 1985 to 16 percent in the year 2000."⁶ Not only will the population of those considered to be the age of typical police recruits be drastically cut, but police departments will have to share this pool with both private industry and the military.

Therefore, hiring the best qualified individuals, both today and in the future, will require police executives to work harder and smarter. Among other things, personnel officers need to develop successful recruiting programs that will provide incentives that change to meet the needs of each new generation of recruits.

For example, about 7 percent of today's law enforcement officers are women. During the next 10 years, however, two of every three new employees will be women.⁷ Considerable research has repeatedly concluded that women perform equally with men in many tasks. Therefore, law enforcement agencies should begin to plan recruiting strategies that will attract the best women to their departments. Officials should also examine their departments' employee benefits pack-



“If American policing is to survive in the 21st century, officials must plan today to address the problems of tomorrow.”

Captain Osborn is in the U.S. Marine Corps in Barstow, California.

age, as well as existing promotional systems, in order to determine whether they address issues that are important to women.

Recruitment Strategies

Traditionally, the police mission has been that of enforcing the law. In recent years, however, the emphasis has shifted toward crime prevention, and most recently, to a community policing model. In the future, the mission may be that of human resources.⁸ In order to meet this new role, law enforcement officials must institute innovative programs that will attract the applicants of the future.

Recruitment strategies of the past will not be sufficient to provide agencies with quality applicants. In a study conducted by the Los Angeles Police Department, researchers found that over 64 percent of new recruits surveyed received information on available positions within the department from police officers, friends, or relatives. Only 1.9 percent of the recruits learned of job openings through the more traditional newspaper employment ads.

The implications of this research are important. Each police officer must be viewed as a potential recruiter. For example, the Marine Corps offers extra vacation time and extra points toward promotion scores to anyone who recruits a new Marine. Police departments should consider offering similar incentives.

The Los Angeles Police Department also found that more than 50 percent of the candidates made the decision to become police officers at least 5 years prior to joining the

force.⁹ Because many potential recruits decide to enter law enforcement during high school and college, recruitment efforts should begin there.

In many cities, high school youths begin their involvement with law enforcement through cadet or explorer programs. New York City has taken this practice one step further. In an effort to keep

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”**

teenagers oriented toward a law enforcement career, the city allows them to take the police written entrance exam when they are 16 years old. Those who pass the test and stay out of trouble are guaranteed a job when they reach the appropriate age. This provides a tremendous incentive for the young person to “stay straight.”

The New York City Police Department also initiated a program to recruit college students for the Cadet Corps Program. In this program, the city pays \$3,000 toward the cadets' last 2 years in college. After graduation, if they serve for at least 2 years with the police department, the loan is considered paid in full. If they decide against police work, they must repay the loan with interest.

Students in the Cadet Corps are also offered paid, full-time summer employment and paid, part-time employment during the school year. They are able, during these times, to assist the police in community policing programs.¹⁰ It also allows the students to gain valuable experience in police work.

In addition to high schools and colleges, the military must always be viewed as an important source of potential law enforcement employees. Few persons who join the military make it a career. Active recruitment of these well-trained, well-educated, and highly disciplined individuals could add to the professionalism of any police department.

And finally, departments should develop programs aimed at changing traditional ethnic community attitudes of law enforcement careers. Some minority groups that have recently arrived in this country have brought with them fear and distrust of police. Because of this, they choose not to enter police work. Police managers must work to change this attitude, or they will fail to recruit from these ethnic groups.

The Need for Quality

Choosing quality over quantity in applicant processing is critical. In the future, quality will only become more important because individuals in the entry-level labor pool will compete for fewer available jobs. The applicants themselves will have more education than those in the past, and department personnel will be held to higher levels of professionalism and accountability.

With technological advances in the field of information systems, police officers have access to and are required to handle more and more data in shorter periods of time. Police officers of the future could find themselves working alone and without supervision, with only computers linking them to their departments. The demands of the job will be so great that any department that does not place the quality of applicants above all other considerations will soon find itself in trouble.

Departments that hire individuals who lack basic communication skills and read at substandard levels will be also handicapped. This is a Nation governed by laws. When a problem arises, a new law is written. Anyone who lacks the skills to read, comprehend, and then apply that knowledge, whether on the street or in court, will have difficulty succeeding in law enforcement or in maintaining professional standards. This leads some experts to believe that departments should test for basic educational skills during the hiring process, and that all recruits should test at a 12th grade level in both reading and writing.¹¹

Personnel Retention

No discussion about recruitment is complete without also discussing retention. Much of the recruiting efforts today are the result of job turnover, which is often the result of dissatisfied employees. If departments can minimize turnover by understanding the wants, needs, and desires of employees, they will ultimately need to recruit far fewer individuals.

Understanding is the key to retaining employees. Mid- to upper-level supervisors have different needs and values than new recruits. Treat both the same, and one group will be dissatisfied, with high job turnover rates as the result. Those departments that experience recurring job turnover are repeating the same personnel mistakes year after year. Understanding the needs of every new generation of recruits can greatly reduce employee dissatisfaction and job turnover.

Recruitment in the Future

Private industry has known for years that the best way to ensure future success is to plan now. It is no longer uncommon to encounter college courses or entire text books devoted to the study of strategic planning for the future. Law enforcement would do well to learn

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”

from this example. A basic understanding of the differences between the human resources of the past and present gives police officials a good idea of what problems will exist in the future.

Today's entry-level employees are nothing like those who

joined police forces in the 1960s. And, the young recruits of the 1980s will be quite different from the recruits of the 1990s. Today's new employees face an entirely new job market, and they bring with them an entirely new set of ethics and values.

The prospective police candidate of today must compete for a limited number of good jobs. The prosperous job market of the last two decades is gone. The result is young adults who are largely disappointed with their career options. "New employees today are overeducated and underemployed. The result is young people who are skeptical or even cynical of having careers. They see little value in adhering to the current work ethic."¹² It is important to recognize new recruits as individuals and to realize that they do not share the same values, ethics, goals, or objectives of recruits of the past.

According to police psychologist, Dr. Larry Blum, today's new recruits have less prior work experience than their predecessors, and they lack a sense of mission or purpose.¹³ For some departments, finding a single qualified applicant among hundreds can become a challenge in itself. Lifestyles are radically different, with single parents and working, unmarried couples both fairly common occurrences. In addition, very few applicants today have any military background, let alone any other work experience. They frustrate easily and react poorly to discipline. They view work as a means to an end, such as paying the rent and bills. Work is a job, not a career, and commitment is conspicuously absent. Their ability

to read and write may be deficient, and interests away from the job may be their top priority.

Conclusion

"Recruitment is likely to be the law enforcement issue in the year 2000."¹⁴ The number of individuals available for entry-level positions will be smaller than it is today. More organizations, both public and private, will be vying for the best potential employees. Departments must, therefore, try to understand the values of the current entry-level applicant and be sensitive to making changes in the department that will encourage these people to take pride in the department and give them a sense of ownership. Strategies should be also be developed to ensure that departments hire only the best qualified potential employees.

By examining the past and understanding the present, law enforcement officials will be better prepared to deal successfully with the future. Those who blindly approach the 21st century will do so with fear and uncertainty. However, those who plan for it now will welcome it with open arms. ♦

Endnotes

¹ Robert C. Trojanowicz and David L. Carter, "The Changing Face of America," *FBI Law Enforcement Bulletin*, January 1990, 6.

² Ibid.

³ U.S. Department of Justice, *Crime in the United States*, Uniform Crime Reports (1989), Washington, D.C., 182-183.

⁴ Gordon Bowers, "Avoiding the Recruitment Crisis," *The Journal of California Law Enforcement*, vol. 24, No. 2, 64-65.

⁵ Martha Farnsworth Riche, "America's New Workers," *American Demographics*, February 1988, 64.

⁶ Marvin J. Cetron, Wanda Rocha, and Rebecca Luckins, "Into the 21st Century, Long-

term Trends Affecting the United States," *The Futurist*, July/August 1988, 64.

⁷ Robert G. Norman, "Women Peace Officers: Law Enforcement Resource of the Future," *The Journal of California Law Enforcement*, vol. 23, No. 2, 63.

⁸ Supra, note 4, p. 66.

⁹ Harold R. Slater and Martin Reiser, "A Comparative Study of Factors Influencing Police Recruitment," *Journal of Police Science and Administration*, vol. 16, No. 3, p. 176.

¹⁰ Ordway P. Burden, "Recruiting Police from College," *FBI Law Enforcement Bulletin*, March 1988.

¹¹ Vance McLaughlin and Robert L. Bing, "Law Enforcement Personnel Selection: A Commentary," *Journal of Police Science and Administration*, vol. 15, No. 4, 272-3.

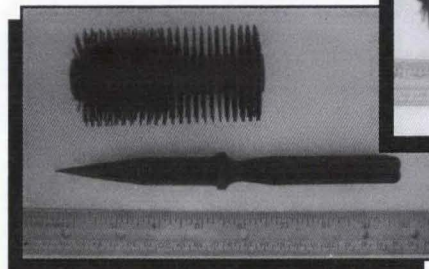
¹² Robert A. Krauss, "How Will the Changing Work Force Impact Law Enforcement Human Resource Practices in the Year 1995?" *California Commission on Peace Officer Standards and Training*, 1986, 7.

¹³ Ibid, p. 8.

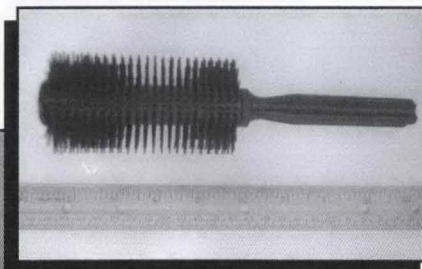
¹⁴ Supra note 4, p. 68.

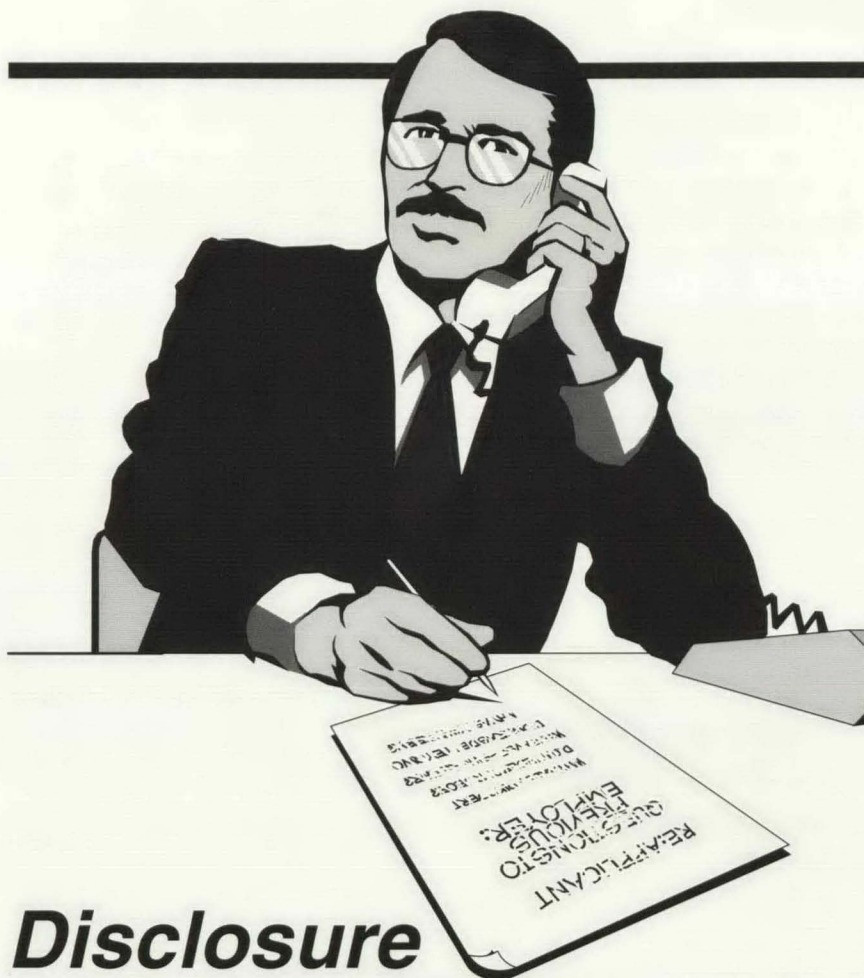
Deadly Hairbrush

An officer in the Greenfield, Ohio, Police Department ordered this seemingly harmless item from a weapons catalog. However, this ordinary hairbrush quickly converts into a knife or thrust dagger with a 3 1/2-inch blade when the bristle section of the brush is removed. The easily concealed weapon can be purchased for under \$15 and poses an obvious serious threat to law enforcement officers and corrections personnel. ♦



Unusual Weapon





Disclosure of Personnel Information Constitutional Limitations

By
JEFFREY HIGGINBOTHAM, J.D.

“Hello, Chief Smith? This is Chief Jones. I am calling to inquire about one of your former employees who has applied for a position with my department. What can you tell me about John Doe’s performance as a police officer and the circumstances that led to his departure from your agency?”

This hypothetical conversation likely occurs many times a day across the United States as law enforcement organizations attempt to acquire relevant information about the past work experience of applicants. A prospective employer generally seeks all information bearing upon the decision to hire, including evaluations concerning perform-

ance and the circumstances and reasons for the applicant’s departure from the former job. However, a fear of being sued for disclosing derogatory information inhibits many former employers from releasing such information, particularly when the departure was the result of an involuntary termination.

This article discusses the Federal constitutional limitations on the disclosure of personnel information to prospective employers. It tells how law enforcement organizations can best serve the collective interests of the law enforcement profession by ensuring that relevant information bearing upon an applicant’s law enforcement qualifications is disclosed when properly requested.

The article begins with a discussion of the contours of the constitutional liberty interest claim and then discusses the procedural measures required when such a liberty interest is implicated. The article concludes with some recommended procedures to ensure that any disclosure of relevant personnel information bearing on one’s law enforcement qualifications are legally defensible.

Basic Elements of a Liberty Interest Claim

The 5th and 14th amendments to the U.S. Constitution provide that persons may not be deprived of their life, liberty, or property without due process of law. In the employment context, the protection of liberty is closely associated with reputation and the right to seek employment in the field of one’s choosing. In a series of four cases, the U.S. Supreme Court established three basic elements of a liberty interest claim.

These cases make clear that a plaintiff establishes a liberty interest claim only if there is: 1) Governmental publication or dissemination of 2) stigmatizing information concurrent with the loss of employment or alteration of one's legal status, and 3) the information disseminated is false.

In *Board of Regents v. Roth*,¹ a college professor whose 1-year contract was not renewed filed a lawsuit claiming that this action, done without any type of hearing in which he could contest that decision, deprived him of his liberty interest. The Supreme Court rejected that argument, noting that the "requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property...But the range of interests protected by procedural due process is not infinite."²

The Court found no deprivation of a liberty interest, since the decision not to renew Roth's teaching contract did not make a "charge against him that might seriously damage his standing and associations in the community,"³ or create a "stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities."⁴ Roth's inability to show a cognizable injury to his reputation was fatal to his liberty interest claim.

Injury to Reputation Alone Not Sufficient

In *Paul v. Davis*,⁵ two local law enforcement agencies distributed a "flyer" of active shoplifters to area merchants. The flyer included a named photograph of Davis. Davis

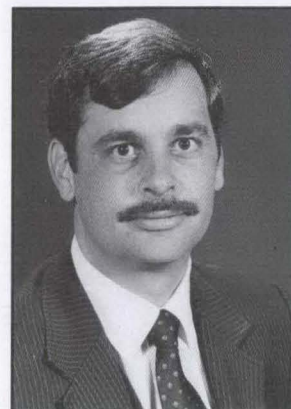
sued, claiming that his inclusion in the flyer damaged his reputation, and thereby, infringed his liberty interest.

The Court disagreed and held that even assuming that Davis' inclusion in the shoplifter flyer was stigmatizing and damaging to his reputation, such injury to "reputation alone, apart from some more tangible interests such as employment..."⁶ does not constitute a constitutional claim. To hold otherwise, ruled the Court, would allow all State tort defamation claims to assume constitutional significance. The Court held that a plaintiff must establish that the government's defamatory statements were coupled with either a "loss of government employment" or a significant "alteration of legal status."⁷

Public Disclosure Required

In *Bishop v. Wood*,⁸ a police department dismissed an officer for causing low morale, not following certain orders, poor attendance at training classes, and exhibiting conduct unsuited to a police officer. The department communicated the reasons for the dismissal privately to the employee, but had not revealed the reasons in any other context prior to the litigation. Bishop claimed that the defamatory information, coupled with his termination from employment, deprived him of his 14th amendment liberty interest.

The Supreme Court rejected the claim on the ground that there was no proof that the government had ever publicly disclosed the reasons for the officer's dismissal. The Court ruled that no liberty interest is implicated absent some



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public disclosure of the derogatory information.

Derogatory Information Must be False

In *Codd v. Velger*,⁹ the New York City Police Department (NYPD) terminated a probationary police officer after he put a gun in his mouth and threatened suicide. When his new employer, the Penn Central Railroad Police Department, learned of that information while examining his NYPD personnel file, it dismissed Velger. The officer sued, claiming the information concerning his threatened suicide was stigmatizing and had been disseminated when the NYPD released the information to Penn Central.

The Supreme Court denied the officer's claim because he failed to allege or prove that the information concerning his threatened suicide was false. The Court stated that "the hearing required where a nontenured employee has been stigmatized in the course of a decision

to terminate his employment is solely 'to provide the person an opportunity to clear his name.' If he does not challenge the substantial truth of the material in question, no hearing would afford a promise of achieving that result for him."¹⁰

What Constitutes Public Dissemination?

In *Bishop v. Wood*,¹¹ the Court held that private communication with an employee and disclosure during the course of employee-initiated litigation do not constitute public dissemination to support a liberty claim. Similarly, other courts have dismissed liberty claims for a variety of reasons.

Primarily, these claims failed because there was no allegation or proof of public disclosure where:

- 1) A chief reports to a board of commissioners that the applicant failed to pass the background check¹²
- 2) A public official made private threats to the terminated employee¹³
- 3) Dissemination of information was "intra-government"¹⁴
- 4) Information was simply included in a personnel file¹⁵
- 5) Discussion occurred at public forums requested by the former employee¹⁶ and
- 6) Media coverage was not attributable to the governmental release of information.¹⁷

Conversely, public dissemination has been found where the employer issues a press release¹⁸ or makes files or records available for others to inspect.¹⁹



What Disclosures are Stigmatizing?

A public disclosure of derogatory information does not rise to a liberty interest unless the information disclosed is stigmatizing and concurrent with the loss of employment or a significant alteration of legal status. In determining whether publicly disclosed information imposes a stigma on a government employee, courts look to the content of the information. Although "[a]ny time an employee is involuntarily terminated some stigma attaches which affects future employment opportunities,"²⁰ courts hold that not every injury to reputation is of constitutional dimension. Instead, only information that denigrates the employee's good name, reputation, honor or integrity, or imposes a badge of infamy, is deemed to rise to the level of a constitutional claim.

Courts have found that a public disclosure of information concerning an employee's honesty,²¹ morality,²² commission of a serious felony,²³ and manifest racism or serious mental illness²⁴ is sufficiently injurious to be stigmatizing. On the other hand, courts have found the following disclosures not stigmatizing:

- 1) An employer's statements labeling disputed allegations as "not worth a damn"²⁵
- 2) Accusations that an employee repeatedly questioned the chief's authority²⁶
- 3) An alleged failure to perform satisfactorily or to the satisfaction of a superior²⁷
- 4) Charging an employee with insubordination for neglect of duty or failure to follow orders²⁸
- 5) Claiming the employee had poor work habits²⁹ and
- 6) Characterizing the employee as unreliable.³⁰

Employment Actions that Constitute an Alteration of Legal Status

*Paul v. Davis*³¹ made it clear that damage to reputation alone does not create a constitutional injury, unless it is "...entangled with some other tangible interest,"³² such as loss of employment or significant alteration of legal status. A public defamatory statement uttered by the government incident to a termination that "foreclose[s]...[the] freedom to take advantage of other employment opportunities"³³ implicates a liberty interest.

However, it "is not necessary...that the right be completely extinguished, as in the case of a discharge, but merely that it be 'distinctly altered.'"³⁴ Thus, it is possible that an employment action short of an involuntary termination can implicate one's liberty interest.

For example, where an employee has a contractual right to either continued employment without discretionary demotion or to de-

served promotion, the denial of those rights in conjunction with a public derogatory statement could give rise to a liberty interest claim.³⁵ While "an employer cannot avoid liability by offering the employee a job far beneath the one he had,"³⁶ courts generally hold that an employee has no protected liberty interest in a particular position or assignment. Thus, courts have held that reassignment, coupled with the release of defamatory information, does not constitute a liberty interest violation.³⁷

The lack of an actual injury defeated a liberty claim in *Schneeweis v. Jacobs*,³⁸ where a high school basketball coach was suspended during mid-season, but was still paid the entire contractual stipend. The court ruled that she suffered no liberty deprivation, since she had no right to the renewal of her contract. Also, since she was fully paid, there was no alteration of her legal status. Similarly, in *Lawson v. Sheriff of Tippecanoe County, Ind.*,³⁹ the court held that a police dispatcher, who was terminated following the arrest of her husband but who was thereafter offered alternative county employment, had not suffered an employment-related injury sufficient to support a liberty interest claim.⁴⁰

Courts also hold that the injury to protected job interests must be tangible to support a liberty claim. In *Mosrie v. Barry*,⁴¹ a police officer challenged his lateral transfer, which did not cause any loss of rank or pay. He claimed that the publicly disclosed derogatory information that attended his transfer caused him the loss of certain job responsibilities and perquisites and a decrease in promotional potential. He also claimed his outside business inter-

ests suffered as a result of the adverse publicity surrounding his reassignment. The court rejected those claims and held that the constitutional protection against loss of liberty without due process of law does not encompass job reassignments not involving loss of rank or pay.

Likewise, the court in *Clark v. Township of Falls*,⁴² refused to find a deprivation of liberty where the plaintiff alleged only that the publicly disclosed information concerning his dismissal had been harmful in his informal job discussions with other employers. Since there was no concrete proof that his opportunity to seek other employment had been tangibly injured, there was no liberty interest impingement.⁴³

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Disclosures Following Resignations

The Supreme Court recently decided that a disclosure of personnel information concerning a former employee who resigned does not implicate a liberty interest. In *Siegert v. Gilley*,⁴⁴ a doctor resigned from his job at a government-run hospital. Sometime later, he applied for a position at another government facility. In the process of accrediting the doctor for practice, a letter was sent to the doctor's former supervi-

sor, who replied that the doctor was inept, unethical, and untrustworthy. When the accreditation was denied, the doctor sued, alleging a denial of his liberty interest without due process of law.

The Supreme Court rejected the claim and concluded that because the release of defamatory information did not accompany the doctor's termination, but came weeks later after the doctor resigned, no liberty interest deprivation occurred. The importance of *Siegert* is that the defamatory statement must be associated with an involuntary employment action to support a liberty interest claim.

Where an employee voluntarily resigns, derogatory information can be disclosed to a prospective employer without offending any protected liberty interest. However, it should be noted that *Siegert* only pertains to constitutionally based liberty interest claims and does not affect the viability of a State tort claim for defamation of character.⁴⁵

False Information Attributed to Government Action

A liberty interest claim can only be sustained where the government discloses false information.⁴⁶ Where the information stems from the media's inaccurate reporting, no claim may lie against the government employer.

For example, in *Beckham v. Harris*,⁴⁷ a police department fired an officer for filing false information in a police report and in affidavits for search and arrest warrants. After his discharge, the department issued a press release stating that the officer had been an "active participant in furnishing false information" to the department.⁴⁸

Sample of a Due Process Notice:

"This letter serves as notice that disciplinary action is being contemplated against you. The reason(s) for the contemplated action are (fill in the basis for the employment action). Your actions, as described above, constitute a violation of the policies and procedures of this department, namely, (provide citation to the specific section(s) of the department's manuals or rules violated). You have the right to reply, in writing, to the above charges within (xx) days. The reply you provide, if any, will be considered in deciding the final disciplinary action to be taken."

Thereafter, the local newspaper printed several stories that misstated the facts surrounding the officer's termination. The court refused to sustain the officer's liberty interest claim, finding that proof that "...a newspaper got things wrong in a manner injurious to [plaintiff] creates no cause of action against the [former employer]."⁴⁹

Due Process

Once a liberty interest has been infringed, the protection granted by the Constitution is due process of law. Due process guarantees reasonable notice and a hearing, the purpose of which "...is to provide the person an opportunity to clear his name."⁵⁰

The exact contours of the required notice and hearing were described in *Cleveland Board of Education v. Loudermill*,⁵¹ where a school dismissed a security guard when it learned that he failed to disclose a felony conviction on his application. The Supreme Court defined procedural due process to require oral or written notice of the charges, an explanation of the evidence supporting those charges, and an opportunity for employees to present their sides of the story.⁵²

Due process does not require a definitive resolution of the propriety

of the employment action, but only serves as an initial check against a mistaken decision.⁵³ The "hearing"⁵⁴ should be conducted by unbiased persons,⁵⁵ but does not include the right to confront or cross-examine witness⁵⁶ or to be represented by counsel.⁵⁷

Recommended Disclosure Policies

A law enforcement agency may choose from several legally defensible responses when a prospective employer makes an inquiry about a former employee. These responses include:

- 1) Providing only confirmation of employment but no substantive information that might be derogatory
- 2) Releasing only information known to be truthful
- 3) Disclosing only information that either does not stigmatize the former employee or is not associated with a termination or alteration of legal status or
- 4) Fully disclosing all relevant information.

The first three options ill-serve the law enforcement profession because they may result in the withholding of information that is extremely relevant to one's law

enforcement qualifications. Choosing to release only information known to be truthful is an unnecessarily restrictive standard because absolute truth is hard to ascertain in the myriad fact situations that surround employment actions. Disclosing only information that imposes no stigma, is not derogatory, or is not related to a job termination or other significant job alteration may deprive prospective law enforcement employers of information critical to the hiring decision.

Only full disclosure of all relevant information best serves the law enforcement profession. To facilitate that objective, each agency must be prepared to share all relevant information concerning the qualifications of police applicants.

To ensure that full disclosure of relevant information is legally defensible, a law enforcement agency that demotes with loss of pay or rank or terminates an employee should provide that employee with at least minimal due process. It is recommended that prior to any such adverse personnel action, the employee be given a written statement of the reasons for the contemplated action, an explanation of the evidence supporting those charges, and an opportunity to respond.

Conclusion

Affording due process to all adverse personnel actions produces both immediate and future benefits. It serves as a safeguard against mistaken actions and allows for the consideration of relevant and mitigating factors. In addition, affording due process prior to final adverse personnel actions permits law enforcement employers to disclose all relevant personnel infor-

mation to prospective law enforcement employers without fear of violating a former employee's liberty interest.⁵⁸ ♦

Endnotes

- ¹ 408 U.S. 564 (1972).
- ² *Id.* at 569-570.
- ³ *Id.* at 573.
- ⁴ *Id.*
- ⁵ 424 U.S. 693 (1976).
- ⁶ *Id.* at 701.
- ⁷ *Id.* at 706-708.
- ⁸ 426 U.S. 341 (1976).
- ⁹ 429 U.S. 624 (1977).
- ¹⁰ *Id.* at 627-628.
- ¹¹ 426 U.S. 341 (1976).
- ¹² *Ratajack v. Board of Fire and Police Commissioners*, 729 F.Supp. 603 (N.D. Ill. 1990); *Moore v. Martin*, 764 F.Supp. 1298, 1305 (N.D. Ill. 1991).
- ¹³ *Brocknell v. Norton*, 688 F.2d 588 (8th Cir. 1982).
- ¹⁴ *Harrison v. Board of County Commissioners for Adams County*, 775 F.Supp. 365, 367 (D. Colo. 1991).
- ¹⁵ *Johnson v. Martin*, 943 F.2d 15 (7th Cir. 1991); *Ceko v. Martin*, 753 F.Supp. 1418 (N.D. Ill. 1990). *But see, Brandt v. Board of Cooperative Educational Services*, 820 F.2d 41 (2d Cir. 1987); *Cf. Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989); *Duck v. Jacobs*, 739 F.Supp. 1545 (S.D. Ga. 1990).
- ¹⁶ *Arnold v. McClain*, 926 F.2d 963 (10th Cir. 1991); *Campos v. Guillot*, 743 F.2d 1123 (5th Cir. 1984).
- ¹⁷ *Melton v. City of Oklahoma City*, 928 F.2d 920 (10th Cir. 1991), *cert. denied*, 112 S.Ct. 296 (1991).
- ¹⁸ *Beckham v. Harris*, 756 F.2d 1032 (4th Cir. 1985), *cert. denied*, 474 U.S. 903 (1985); *FOP Lodge No. 5 v. Tucker*, 868 F.2d 74 (3d Cir. 1989); *White v. Thomas*, 660 F.2d 680 (5th Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982); *Bunting v. City of Columbia*, 639 F.2d 1090 (4th Cir. 1981); *Robinson v. City of Montgomery*, 809 F.2d 1355 (8th Cir. 1987).
- ¹⁹ *See*, note 18, *infra*. The Supreme Court in *Codd v. Velger*, 429 U.S. 624 (1977), declined to address the issue of whether a review of a personnel file done after the employee had signed a release permitting such an inspection constituted a public disclosure. Despite the lack of controlling Supreme Court precedent, it is recommended that law enforcement agencies assume that allowing inspection of personnel files, even pursuant to a signed release, does

constitute a public disclosure of that information.

- ²⁰ *Ratliff v. City of Milwaukee*, 795 F.2d 612, 625 (7th Cir. 1986).
- ²¹ *Id.* *See also, Lentsch v. Marshall*, 741 F.2d 301 (10th Cir. 1984).
- ²² *Melton*, 928 F.2d 920; *Zueck v. City of Nokomis*, 513 N.E.2d 125 (Ill. App. 5 Dist. 1987).
- ²³ *Green v. St. Louis Housing Authority*, 911 F.2d 65 (8th Cir. 1990); *Wellbanks v. Smith County, Texas*, 661 F.Supp. 212 (E.D. Tex. 1987).
- ²⁴ *Green*, 911 F.2d at 65; *Ceko*, 753 F.Supp. 1418.
- ²⁵ *Wulf v. City of Wichita*, 883 F.2d 842 (10th Cir. 1989).
- ²⁶ *Kennedy v. McCarty*, 778 F.Supp. 1465 (N.D. Ill. 1991).
- ²⁷ *Bailey v. Kirk*, 777 F.2d 567 (10th Cir. 1985); *Fleisher v. City of Signal Hill*, 829 F.2d 1491 (9th Cir. 1987), *cert. denied*, 485 U.S. 961 (1988).
- ²⁸ *Conaway v. Smith*, 853 F.2d 789 (10th Cir. 1988); *Hicks v. City of Watonga, Okla.*, 942 F.2d 737 (10th Cir. 1991). *But see, Ratliff v. City of Milwaukee*, 795 F.2d at 612.
- ²⁹ *Hicks*, 942 F.2d at 737.
- ³⁰ *Sipes v. United States*, 744 F.2d 1418 (10th Cir. 1984).
- ³¹ 424 U.S. at 693.
- ³² *Wulf*, 883 F.2d at 869.
- ³³ *Roth*, 408 U.S. at 573.
- ³⁴ *Kamenesh v. City of Miami*, 772 F.Supp. 583, 591 (S.D. Fla. 1991).
- ³⁵ *Id.*
- ³⁶ *Lawson v. Sheriff of Tippecanoe County, Ind.*, 725 F.2d 1136, 1139 (7th Cir. 1984).
- ³⁷ *Morash v. Strobel*, 842 F.2d 64 (4th Cir. 1987); *Altman v. Hurst*, 734 F.2d 1240 (7th Cir. 1984), *cert. denied*, 469 U.S. 982 (1984).
- ³⁸ 771 F.Supp. 733 (E.D. Va. 1991).
- ³⁹ 725 F.2d 1136 (7th Cir. 1984).
- ⁴⁰ *See also, Dobosz v. Walsh*, 892 F.2d 1135 (2d Cir. 1989).
- ⁴¹ 718 F.2d 1151 (D.C. Cir. 1983).
- ⁴² 890 F.2d 611 (3d Cir. 1989).
- ⁴³ *See also, Piesco v. City of New York, Dept of Personnel*, 753 F.Supp. 468, 478 n. 5 (S.D.N.Y. 1990).
- ⁴⁴ 111 S.Ct. 1789 (1991).
- ⁴⁵ *Id.* at 1794. Some States have legislatively eliminated such suits. For example, Florida has a law granting absolute immunity for former employers who, in good faith, disclose information about previous employees to prospective employers. *See, Individual Employment Rights Manual*, Section 550:25 (BNA 1991); and Arizona Revised Statutes, Section 23-1361.

⁴⁶ *Buxton v. City of Plant City, Fla.*, 871 F.2d 1037 (11th Cir. 1989); *Rosenstein v. City of Dallas, Texas*, 876 F.2d 392 (5th Cir. 1989); *modified on other grounds*, 901 F.2d 61, *cert. denied*, 111 S.Ct. 153 (1990). *See also, Codd v. Velger*, 429 U.S. 624 (1977).

⁴⁷ 756 F.2d 1032 (4th Cir.), *cert. denied*, 474 U.S. 903 (1985).

⁴⁸ *Id.* at 1038 n.12.

⁴⁹ *Id.* at 1039.

⁵⁰ *Board of Regents v. Roth*, 408 U.S. at 573 n. 12.

⁵¹ 105 S.Ct. 1487 (1985).

⁵² While there is apparently no legal requirement that the hearing precede the employment action where only a liberty interest is at stake, a policy that requires a predeprivation due process hearing in all cases would protect against both liberty and property interest claims and would also provide ease and uniformity of application. *See, e.g., Johnson v. City of Tarpon Springs*, 758 F.Supp. 1473 (M.D. Fla. 1991). However, for employees with a property interest in their jobs, a predeprivation hearing is required. *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985).

⁵³ *See, e.g., Rosenstein v. City of Dallas, Texas*, 876 F.2d at 398.

⁵⁴ The use of the term "hearing" does not mean a public forum is required. *Duchesne v. Williams*, 849 F.2d 1004 (6th Cir. 1988), *cert. denied*, 109 S.Ct. 1535 (1989); *Sewell v. Jefferson County Fiscal Court*, 863 F.2d 461 (6th Cir. 1988), *cert. denied*, 110 S.Ct. 75 (1989).

⁵⁵ *See e.g., Hicks v. City of Watonga, Okla.*, 942 F.2d 737 (10th Cir. 1991).

⁵⁶ *Meder v. City of Oklahoma City*, 869 F.2d 553 (10th Cir. 1989).

⁵⁷ *Panozzo v. Rhoads*, 905 F.2d 135 (7th Cir. 1990).

⁵⁸ It is recommended that if the employee chooses to respond orally, a written record be made and retained to memorialize that response. Written responses should also be retained. Disclosures to prospective employers should contain both the information generated by the former employer and any employee responses to that information.

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.

United States v. Randolph B. Jakobetz

U.S. Court of Appeals
_F.2d _ (2d Cir. 1992)

On January 9, 1992, in *United States v. Jakobetz*, the U.S. Court of Appeals for the Second Circuit ruled that DNA test results are admissible in criminal trials. *Jakobetz* is the first Federal appellate ruling that examines the validity of forensic DNA evidence. The court gave an extremely strong endorsement of the FBI's DNA analysis methods and procedures, instructing lower courts that they could properly take judicial notice of the general theories and specific techniques involved in DNA testing.

Jakobetz was a Federal kidnapping prosecution in Vermont. The victim, abducted at an interstate rest area in Vermont, was brutally and repeatedly raped and then released in New York. The genetic profile of semen recovered from the victim matched the genetic profile of the defendant. The FBI report stated that the chances of another unrelated person having the same genetic profile as Jakobetz were 1/300,000,000.

After a lengthy pretrial hearing, where the defense raised a substantial challenge to the admissibility of the DNA evidence, the trial court admitted the DNA evidence, endorsing the FBI's entire approach to forensic DNA testing. The trial court opinion was the first published opinion, *United States v. Jakobetz*, 747 F. Supp. 250 (D.Vt. 1990), that specifically addressed the reliability of the FBI's DNA testing methods. On appeal, the defense attacked the reliability of the FBI's DNA technology used to compare DNA samples, as

well as the population statistics associated with a DNA match.

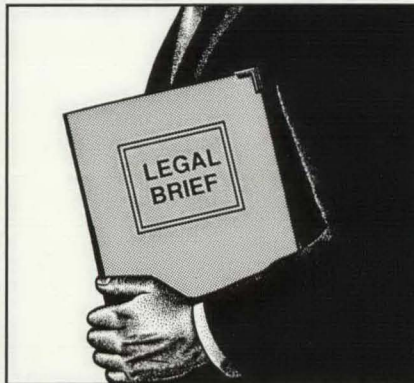
The appellate court, in rejecting all of the defendant's contentions, used the more liberal relevancy approach to determine if the DNA test results should be admitted and also rejected other more restrictive admissibility standards used by other courts. It stated, "Although we realize that DNA evidence does present special challenges, we do not think that they are so special as to require a new standard of admissibility."

The appellate also ruled that the trial court did not abuse its discretion in admitting the statistical data associated with the DNA match, finding that the procedures passed the relevancy test. The court, noting that the FBI's DNA testing procedures would pass the more restrictive admissibility standards used in other jurisdictions, said that other courts need not conduct lengthy admissibility hearings and could "properly take judicial notice of the general acceptability of the general theory and the use of these specific techniques."

In future cases, the court instructed that "Affidavits should normally suffice to provide a sufficient basis for admissibility." The court also cautioned that specific test results or procedures should be a weight question to be decided by the jury and not a threshold admissibility question.

The importance of the *Jakobetz* ruling rests on the fact that it soundly rejects the arguments set forth by DNA critics that have recently gained nationwide press. This timely victory for the entire law enforcement community should make it easier to introduce DNA test results in criminal trials. ♦

*This legal brief was written by Special Agent
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The Bulletin Notes

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



Sergeant Lee

While driving off duty during the early morning hours, Sgt. Michael Lee of the Jefferson County, Alabama, Sheriff's Department observed smoke and flames coming from a residence. He immediately notified the fire department, via a cellular telephone, and attempted to alert the residents by blowing his car horn. Sergeant Lee then entered the burning home and led the three occupants to safety.



Officer Clark

While driving off duty, Officer William Clark of the Boys Town, Nebraska, Police Department came upon a multivehicle accident. He stopped to render first aid to those with injuries and observed an unconscious woman still trapped in her burning automobile. Officer Clark released the victim's seatbelt, pried away the damaged dashboard that pinned her in the seat, and removed her from the car before it became engulfed in flames.



Sheriff Picou



Officer Marks

Sheriff Benjamin R. Picou and Correctional Officer Earl Marks of the Randolph County, Illinois, Sheriff's Office saved the life of a suicidal woman who jumped 60 feet from a bridge into the Mississippi River. Sheriff Picou and Officer Marks navigated a small boat through dark and treacherous waters, using flashlights to track the victim's weak pleas for help as the currents carried her quickly downstream. After rescuing the woman, the officers adeptly maneuvered their boat out of the path of an approaching barge that was bearing down on them. They then carried the victim, who was suffering from hypothermia and shock, one-half mile to an awaiting ambulance.

U.S. Department of Justice
Federal Bureau of Investigation

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Federal Bureau of Investigation
ISSN 0014-5688

Washington, D.C. 20535

Official Business
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