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# FBI Law Enforcement

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# Major Case Management Key Components

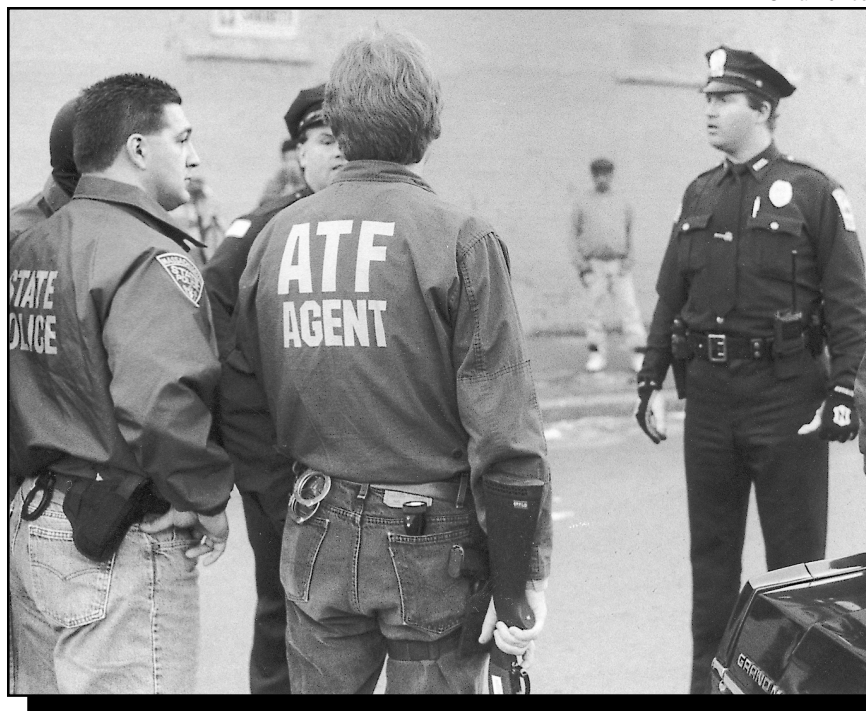
By BRIAN P. CARROLL, M.S.

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Newspaper headlines, such as “Midtown Rapist Still at Large,” and “One Year and Authorities Yet to Solve Celebrity Murder,” call attention to major law enforcement cases, and similar headlines have become common in many communities across the nation. Because of the different dynamics involved, the way authorities manage a major case contributes to a wide range of areas that can have positive or negative consequences for an agency. Major case investigations provide opportunities for law enforcement managers beyond case solution. Although major cases eventually will end and fade from the headlines, the agency always will remain under public scrutiny. Therefore, major case managers should strive for particularly strong organization at the end of the investigation.

## THE MAJOR CASE

Major cases have no boundaries within the various investigative responsibilities of law enforcement agencies. Regardless of the specific type of crime, most major cases share the following common elements: length in duration, similar types of criminal activity, multiagency involvement, impact on personnel and resources, and a great deal of media attention at the outset or conclusion.<sup>1</sup> While law enforcement agencies should



generally *investigate* major cases much like any other case (i.e., according to existing protocols), they should *manage* them differently than regular cases.

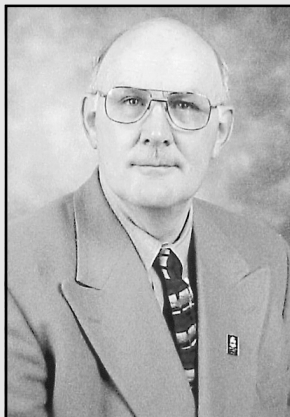
At some point, most law enforcement agencies will have a major case to investigate. During normal operations, the public may perceive an agency as very effective in its responsibilities, affording little review of its efforts; however, during a major case investigation, the agency can expect additional attention and scrutiny. The public expects the police to solve the case, and failure to do so may result in

damage to the agency's image and credibility.

Major cases do not end with the solution of the case. Major case managers who monitor the needs of the various elements of the case contribute to the solution of the case, as well as to the overall positive development of the organization.

## INFLUENCING FACTORS

Researchers have identified five significant elements that can influence the outcome of major cases—the mission statement, the role of each participant, the identity



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**Case managers must identify participants and define their role within the major case team.**  
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of the stakeholders, the perception of the stakeholders, and the attention given to the long-term impact of the case.<sup>2</sup> By using these five elements as a guide, managers can increase the chances of a successful case outcome.

### **The Mission Statement**

Managers must develop a mission statement and ensure all individuals involved in the investigative effort understand it at the outset of the case. The mission statement should define the organization's purpose and incorporate the necessities for case solution, as well as the enduring responsibilities expected beyond case solution.<sup>3</sup> An effective mission establishes attainable goals and objectives, which help investigators track progress by providing precise targets and immediate feedback. Also, they help define what the organization seeks to accomplish through its ongoing, long-term operations.<sup>4</sup> For example, in a serial rapist case, the mission would be to identify and arrest the rapist. In addition, the mission can incorporate

such objectives as meeting the needs for prosecution, allaying public fears, identifying related crimes, and disrupting the perpetrators' future criminal activity.

Often, major case investigations involve multiagencies. In such joint task forces, the mission statement can incorporate an objective of meeting the individual needs of participating agencies. If the same individual commits crimes in multiple jurisdictions, then each agency should consider other victims' needs as well. The mission would include gathering evidence to solve all of the crimes committed by the suspect, and goals within the mission can include gathering evidence to solve the individual rapes. After managers specify the mission and goals of the case, they must place them into action through an operating strategy—a broad plan of action for pursuing and achieving the goals and satisfying the mission.<sup>5</sup>

### **The Role of Participants**

Case managers must identify participants and define their role within the major case team. This

remains particularly important when those involved in the case have not worked together previously. If management and others involved do not understand or agree to their roles, conflict may arise, especially when investigators from other agencies participate. Managers of major cases can prevent such conflicts by delineating responsibilities at the onset and fully explaining their expectations, which should answer questions, such as—

- who is part of the decision-making group;
- will the team use a participant's particular expertise;
- what is the specific role of prosecutors in controlling the direction of the investigation;
- how will hostage negotiators participate in the commander's advisory team;
- which agency will take the lead in multiagency investigations; and
- can the media spokesperson talk to the media without direction?

Several problems can arise in this area that may decrease a group's effectiveness.<sup>6</sup> First, role conflict, or the incompatibility between a role's requirements and an individual's own beliefs, attitudes, or expectations. Second, role ambiguity, where the role recipients do not understand their specific actions or responsibilities in the case or an individual's actual behavioral requirements are not clear. Studies of roles in the work environment have identified that the negative relationship of role ambiguity and role conflict remains stronger

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among individuals who report a higher need for clarity in the work setting. The same individuals place this area of clarity above control of their environment or assignment.<sup>7</sup> The pressures on major case managers for solution may cause them to place excessive demands on their staff by assigning additional investigative or administrative tasks that they may not be suited for. In doing so, the case manager contributes to another factor that may decrease a group's effectiveness—role overload, where an individual becomes overwhelmed by the job's requirements.

By identifying personnel and defining and explaining their roles, managers can minimize conflicts that will affect the ability to meet the mission of the major case team. Case managers should not assume that individuals understand their role and must make the effort to assure that all participants know what they expect of them.

### **The Stakeholders Identity**

Successful case strategies consider the implications of both internal and external stakeholders. Stakeholders who believe that the process recognizes their interests and rights and can compare them with those of other stakeholders will develop trust in the mission of the organization.<sup>8</sup>

Case managers should consider who and what the case impacts. Once managers identify the stakeholders, they should consider the needs of the individual stakeholders and if they will affect the achievement of the mission.

In the example involving the serial rapist, the victims and

investigators are the internal stakeholders. Initially, the external stakeholders are the families of victims and the communities where the crimes occurred; however, as the case progresses, additional external stakeholders may appear, such as the media, public officials, medical personnel, or additional communities.

### **The Perception of Stakeholders**

Perception refers to a process where individuals receive, organize, and interpret information from their environment.<sup>9</sup> How individuals judge another person or event is influenced by their ability to retrieve relevant information, how easily they can retrieve the information, and the visibility of the event or behavior.

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Perceptions of stakeholders in major cases affect how they participate in strategy implementation.<sup>10</sup> Because people can hold different views on the same situation, the interpretation of the meaning of a particular event determines how these individuals will react.<sup>11</sup> Research has shown, due to influence of past experiences and socialization, people from varying cultural environments can perceive similar

events quite differently.<sup>12</sup> When stakeholders perceive something, they essentially attempt to fit that event into a preestablished frame of reference.<sup>13</sup> As a result, managers must remain conscientious of how others perceive their actions, comments, or reputation.<sup>14</sup>

The information individuals expect to see or hear also can influence perception. Oftentimes, people hear what they expect to hear, rather than what a person actually said.<sup>15</sup> Individuals use a system that filters out some messages while paying more attention to others. When people receive information that conflicts with what they believe, they tend to ignore it or distort it to make it conform to their beliefs, which can reduce the effectiveness of communication.<sup>16</sup> This remains important when dealing with external stakeholders because they often hold perceptions of authorities based on their previous experiences that may not match reality. For example, if major case managers develop a decision process that solicits input from stakeholders, and previous experiences of the stakeholders did not involve a collaborative approach, they may not recognize it as such.

Negative publicity about the agency, unrelated to the case, may influence how stakeholders develop their frame of reference.<sup>17</sup> Ultimately, when individuals perceive behavior of other individuals differently from the way it was intended, a limited effective working relationship will result.<sup>18</sup>

If the public perceives police as capable of performing their job, then it remains easier to persuade the public to have confidence in



their abilities. If the media perceives the police as candid and truthful in their comments, they will likely have fewer questions on the investigative efforts.

By remembering that different individuals can perceive the organization and its mission in various ways, whether factual or distorted, managers can become more effective in dealing with stakeholders. Experts believe that even when individuals only perceive a situation as real, it often results in real consequences.<sup>19</sup>

### The Long-term Solution

Case managers should not focus only on the short-term solution of the case but the long-term impact of the investigative effort on future organizational endeavors. Burdening investigators with making decisions with long-term impact can detract from their immediate efforts at case solution. Managers need to consider the implications of the investigative effort on such areas as organizational credibility, budget, stakeholder acceptance of organizational initiatives, development of personnel, ability to provide expected services, and developing confidence in organizational capabilities from public officials who impact on agency operations.

When major cases occur, pressures exist from internal and external stakeholders to solve the case.<sup>20</sup> These pressures often cause managers to lose sight of the long-range implications of the investigative efforts. The enhanced scrutiny of major cases brings additional pressure for solution and also can contribute to adding resources otherwise not available, enhancing the

professional reputation of the organization, developing positive perceptions of the organization, and providing experiences that will improve future major case responses.

Managers who have an expanded focus during a major case contribute to the overall organizational goals, not just the goals of the case. For example, if an agency plans to participate in future task forces, they can contribute to these future experiences by developing positive experiences with other agencies involved in the ongoing major case, resulting in the enhancement of the department's reputation and a positive perception from individuals involved.

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### CONCLUSION

Anecdotal evidence shows that methods in which managers handle their responsibilities ultimately impacts the overall success or failure of the case. Although the solution of a case may not always require direct influence or involvement from management, individuals subsequently reviewing a case may not gauge the success of its management on the solution, but rather on the impact the investigation had on different elements involved in the case. Effective investigation

coupled with effective management will equate to success. Major cases demand more than solution—they bring with them expectations of a management effort that encompasses more than an investigative focus. By identifying and focusing on key elements of major cases, managers can contribute to the entire process of major case management. ♦

### Endnotes

<sup>1</sup> “Major Case Management,” *FBI Management Quarterly* 6, no. 2 (Spring 1986): 1.

<sup>2</sup> The author has identified these elements through discussions with investigators and law enforcement executives and reviews of forums, such as FBI-sponsored seminars in law enforcement executive development, major case management for police managers, and training for foreign police executives in major case management.

<sup>3</sup> J. P. Ivancevich, P. Lorenzi, S. J. Skinner, and P. B. Crosby, *Management - Quality and Competitiveness*, 2nd ed., (Chicago, IL: Irwin, 1997), 195.

<sup>4</sup> *Ibid.*, 197-198.

<sup>5</sup> *Ibid.*, 184.

<sup>6</sup> *Ibid.*, 300.

<sup>7</sup> Michael P. O'Driscoll and Terry A. Beehr, “Moderating Effects of Perceived Control and Need for Clarity on the Relationship Between Role Stressors and Employee Affective Reactions,” *The Journal of Social Psychology*, April 2000, 151.

<sup>8</sup> *Supra* note 3, 200.

<sup>9</sup> James L. Bowditch and Anthony F. Buono, *A Primer on Organizational Behavior*, (New York, NY: John Wiley and Sons, 1994), 124.

<sup>10</sup> *Supra* note 1.

<sup>11</sup> *Supra* note 9, 104.

<sup>12</sup> *Supra* note 9, 108.

<sup>13</sup> *Supra* note 9, 106.

<sup>14</sup> *Supra* note 1.

<sup>15</sup> *Supra* note 9, 111.

<sup>16</sup> *Supra* note 3, 381.

<sup>17</sup> *Supra* note 3, 381.

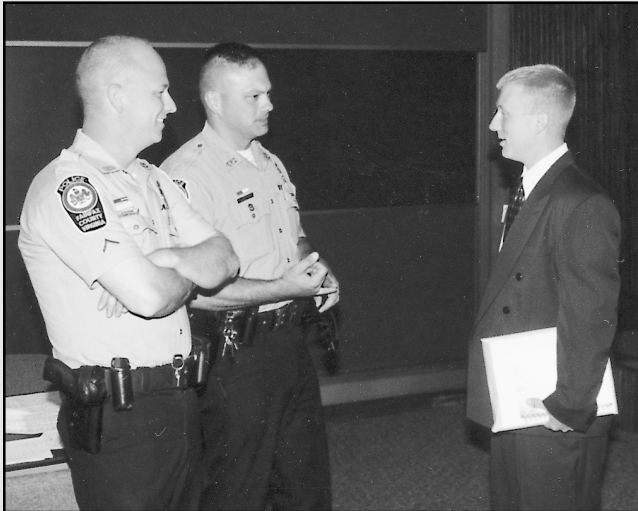
<sup>18</sup> *Supra* note 9, 127.

<sup>19</sup> *Supra* note 9, 127.

<sup>20</sup> *Supra* note 1.

## Fast Track Application Process Speeds Hiring

By Floyd S. Hulsey, M.P.A., and Maureen Goodwin



*"In today's labor market, the best-qualified candidates are not willing to wait months for your selection process to run its course. Public safety organizations must develop valid selection approaches that are also timely. Otherwise, by the time the selection process has run its course, the best-qualified candidates may have found other jobs."*

**T**oday's fierce competitive climate demands that law enforcement agencies move quickly to identify and hire qualified applicants in the shortest time possible. If they do not, quicker, more aggressive employers will hire these scarce qualified applicants and place an even greater burden on departments trying to acquire and retain adequate staffs to serve the communities they protect. What can agencies do to speed the hiring process?

### POLK COUNTY'S EXPERIENCE

One of the 10 largest police agencies in Florida, the Polk County Sheriff's Office (PCSO) employs 1,430 full-time employees. Sworn officers comprise 36.2 percent of the total; detention officers represent 29.8 percent; and nonofficer support, or civilian, employees make up the remaining 34 percent.<sup>2</sup>

Polk County is located in central Florida about midway between the metropolitan areas of Tampa and Orlando. Better starting salaries in those areas entice many PCSO officer applicants, as well as current sworn personnel attracted to the higher wages. Compounding this difficulty, large corporations in the area often lure civilian employees, adversely impacting PCSO's efforts to attract and retain 911 operators, computer programmers, clerical workers, and other support personnel. Such circumstances contributed to the agency's 9.5 percent annual attrition rate in 1999.

Besides offering higher salaries, private sector employers can make job offers to applicants in a much shorter time than law enforcement agencies, sometimes hiring applicants the day that they apply. Such speed is possible because the employers usually do not require extensive background investigations, nor do they normally use polygraph examinations or other assessment tools essential to the law enforcement hiring process. Moreover, Polk County, with a population rapidly approaching one-half million, faces its lowest unemployment rates in history, averaging less than 5 percent annually. While this represents a fortunate economic reversal, it further reduces the shrinking pool of qualified applicants seeking careers in law enforcement.

### Examining the Problem

PCSO began the year 2000 with the challenge of fully staffing a new detention facility, designed to hold over 1,000 individuals, while dealing with normal attrition and lengthy applicant processing times. To obtain sufficient personnel to meet these needs, PCSO's Human Resources Division calculated that it must hire 304 applicants during the fiscal year. Because only about 24 percent of applicants succeed in gaining employment, the division estimated that this hiring goal would require processing more than 1,400 applications. The division based this figure on previous experience. For example, during fiscal year 1998-99, the division received 612 applications. Of this total, 24.3 percent of the candidates applied for civilian positions, 43.1 percent for officer positions, and 32.5 percent for detention officer positions.

Individuals seeking these positions submitted applications by a variety of methods. Some brought

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their applications in person; some had friends, relatives, or agency members submit them; and others sent the material through the mail or via the agency's Web site. Many of these applications arrived without the required documentation or complete information. This caused the agency to make time-consuming additional contacts with applicants prior to processing the application or resulted in the application remaining dormant while awaiting further action, sometimes for months.

Once the agency obtained all of the required information, it conducted a full background investigation, which included checking police records and verifying employment references, prior to conducting an oral interview. PCSO then issued a conditional offer of employment to those applicants completing this stage of the hiring process.

Following the conditional offer, applicants for support positions had to undergo a polygraph examination and urinalysis prior to hiring. In addition to these preemployment requirements, officer and detention officer applicants also had to pass a physical examination, physical agility test, and psychological evaluation.

### Finding the Solution

Recognizing its processing times as unacceptable, the agency enlisted the Graduate Studies Division of the University of South Florida in Tampa to analyze its application and hiring procedure. A review of 20 deputy sheriff applications processed during the first 6 months of the 1998-99 fiscal year revealed that the average processing time took more than 256 days. An analysis of 12 detention officer applications showed an average of 200 days to hire. The fastest processing time stood at 72 days, while the most lengthy took 367 days. Scheduling a personal interview involved the longest waiting time for applicants.

Twenty civilian applications processed during the same period required an average of 85 days from the submission of the application to the hiring date. The shorter processing time reflected the fewer tests

(psychological, physical, and physical agility examinations) required of nonofficer applicants.

Later that fiscal year, PCSO analyzed 91 applicants hired during a 6-month period. An average of 62 days elapsed from the time of application until the individuals joined the agency. Hiring an officer required an average of 72 days. Longer times often were required if difficulties arose with completing the background investigation or if the applicant did not complete final testing in a timely manner.

Alarming, the agency discovered that 24.2 percent of its total applicants withdrew from the process prior to PCSO making a hiring decision. Presumably, these applicants received offers of other employment opportunities prior to completion of the PCSO's lengthy application process. The agency hired only 18.2 percent of officer applicants, while it employed

24.3 percent of the total applicants. Clearly, PCSO needed to overhaul its application and hiring process. Consequently, in January 2000, the agency implemented its Fast Track Hiring Process and established ambitious goals to make a hiring decision within an average of 30 working days after receiving an application.

### Implementing Fast Track

The first step in implementing the Fast Track process involved accepting only complete applications submitted personally by the applicant directly to the PCSO's Human Resources Division.<sup>3</sup> If an applicant submits an incomplete application, human resources personnel instruct the individual to complete the application, then telephone them for an interview appointment. The in-person requirement, even for applicants from another state, initially raised the objection of being less "customer friendly." However, the sheriff felt that the new process actually would prove *more* customer friendly by enabling PCSO personnel to interview candidates the same day that they submit applications and inform them immediately of their eligibility for employment.

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applicants in a much  
shorter time than law  
enforcement  
agencies....  
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Once applicants submit a completed application to the Human Resources Division, a staffing specialist immediately completes preliminary qualifying checks while the applicant waits. Preliminary checks include driving, credit, and criminal histories, all conducted electronically. Applicants not meeting established standards receive immediate notification.

Applicants who meet the hiring standards on these preliminary checks are interviewed during their initial visit by a ranking officer or by a civilian supervisor if applying for a support position. PCSO initiated this step because the University of South Florida study reported long delays in the amount of time required for the agency to complete preliminary and background investigations prior to interviewing applicants. The study further revealed that such delays probably contributed greatly to the loss of nearly 25 percent of applicants who withdrew from the process prior to being hired.

The Human Resources director schedules ranking officers to interview applicants on a rotating basis. These officers receive training in the interview process and use manuals prepared by the Human Resource Division to ensure that they conduct structured, standardized interviews that establish a numerical score.

Applicants receiving a passing score on the personal interview receive a letter at that time advising them that they passed the interview. The letter gives applicants tangible evidence that the agency is considering hiring them. It also informs them that they must pass additional qualifying steps, including a background investigation.

PCSO initiates the background investigation immediately. It also limits employment references to the past 10 years, unless applicants worked for a criminal justice agency before that time. The agency has found that private sector employers rarely maintain employment records more than 3 years after an employee leaves the company, usually making efforts to obtain references over 10 years old fruitless.

## **Empowering Human Resources**

Upon completion of the background investigation, the Human Resources director reviews the application package for compliance with eligibility requirements, hiring standards, and employment laws. Prior to the Fast Track process, three ranking officers (a captain, major, and colonel) reviewed all applications, which proved time consuming and slowed the approval process unnecessarily.

Elevated to the equivalent rank of a sworn major, the Human Resource director now has the authority to issue a conditional offer of employment, eliminating time-consuming reviews by other command levels. The conditional offer details the final testing requirements. The applicant must complete all final testing within 10 days, or the agency may withdraw the offer.

## **Decreasing Hiring Time**

With the Fast Track process, the time elapsed from issuance of a conditional offer to final hire has decreased 45 percent. Although the final hiring decision still rests with the commander of the respective department that has the available position, Fast Track has streamlined the initial phases of the application process significantly. For example, an analysis of 697 applications submitted during the

first 12 months of the new process revealed an overall decrease of 40 percent in the average number of days required to complete the procedure. Specifically, officer applications decreased 17 percent, from 72 to 60 days; detention officer applications declined 37 percent, from 60 to 38 days; and civilian processing dropped 49 percent, from 49 to 25 days.

Actual completion time of 50 percent of the applicants hired were processed in 30 days or less. Civilian hires, of course, scored the greatest reductions, with 76 percent completed within 30 days. Encouragingly, the agency experienced a 19 percent decrease in the number of applicant withdrawals during the initial 12 months. Moreover, the average number of hires remained steady at 24.2 percent,

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indicating that hiring standards have not suffered with a speedier process.

## CONCLUSION

To remain competitive in the recruiting market for qualified employees, law enforcement agencies must develop new ways to speed the hiring process. Failure to do so will result in the law enforcement profession losing highly skilled potential employees to other occupations.

In the past 2 years, the Polk County, Florida, Sheriff's Office realized that time represented its main enemy when hiring both officers and civilians. Since implementing its Fast Track Hiring Process, however, the agency, in only 12 months, decreased application processing times an average of 40 percent. Primarily, the agency accomplished this by streamlining its process, interviewing applicants early, providing applicants with an initial acceptance letter immediately, and reducing processing time. Over time, the Polk County Sheriff's Office expects hiring rates to

improve even more as it refines its new hiring method. This will enhance the agency's ability to attract and retain competent, motivated law enforcement employees who can ably serve and protect the citizens of their community. ♦

## Endnotes

<sup>1</sup> Richard Solie, "The Human Race: Speeding the Hiring Process," *APCO911 Magazine*, July 2000, 20-24.

<sup>2</sup> Due to rounding, some percentages in this article may not total 100 percent.

<sup>3</sup> According to the University of South Florida analysis of the agency's hiring process, the Human Resources Division should not track applicant processing time until it receives all of the required documentation to complete the application. Incomplete applications extend the time it takes to complete the selection process, making the hiring process appear less efficient.

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## Snap Shots

### Tornado

**T**ornadoes struck late in Bismarck and Burleigh County, North Dakota, in November 2000. At least five tornadoes were reported in Bismarck and the surrounding area during that time; 42 homes were damaged, and one person was hospitalized with injuries. A volunteer for Skywarn took this photograph as Burleigh County deputies blocked the highway to stop the traffic from driving into the path of the tornado. Approximately 140 miles to the west of Burleigh County, snowplows were working hard to keep the interstate open as snow was falling quickly and making travel very difficult.

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*Submitted by Sergeant Kelly J. Leben*

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# ***Community Mobilization***

## ***The Foundation for Community Policing***

By RECHEAL STEWART-BROWN

**W**hat is neighborhood policing? Does the law enforcement community believe in it? Or, is it just a flashy name to suggest a new approach? Neighborhood policing, as it currently exists at the San Diego, California, Police Department, looks very similar to the traditional style of policing—police at the forefront of solving community problems. So what has changed with this new style of policing? The obvious change has occurred in the process of identifying crime and quality-of-life problems that are priorities for police response. Before neighborhood policing, the department established these priorities by crime

rates and by the frequency of problems in an area. Community residents now, in part, identify priorities and express them to the department in community and police forums. The department then targets these problems for resolution and receives feedback regarding resident satisfaction and concerns.

Targeting crimes and quality-of-life problems identified by residents has proven effective in satisfying many of the needs of community residents. However, has the San Diego Police Department employed the concept of neighborhood policing to its potential? What about forming

partnerships with community residents and working with them to solve problems? After all, these individuals live among, experience, and commit the crimes the department tries to solve. While improving the quality of life represents part of the department's vision, it proves very difficult to achieve. The problem seems to involve the execution of this vision. Many programs and agencies work in seclusion, duplicating efforts and underusing one of the most powerful and knowledgeable resources—community residents.

The resistance of law enforcement to embrace community members as a resource to solve crime

problems may originate from universal, unwarranted stereotypes about inner-city residents. The San Diego Police Department challenged these perceptions and myths, such as community residents are incapable, uneducated, and apathetic. Certainly, the department had to overcome some hardships in working with community residents; however, these individuals proved amazingly effective as an integral part of the problem-solving process in the department's mobilization project, the City Heights Neighborhood Alliance.

## BACKGROUND

Located within San Diego's Mid-City Police Division, City Heights has a population of over 60,000. Culturally, this area is very diverse, with 26 languages spoken and large ethnic communities of Hispanics, Asians, and African-Americans. The median income stands at less than \$20,000, with 30

percent of the population below poverty standards. Violent crime is more than double the citywide average, and San Diego police serve approximately one-third of all search warrants in City Heights.

## Identifying Problems

Residents identified drug-related crimes and juvenile delinquency as their primary concerns. Such problems seriously impact their quality of life as they deal with traffic and litter from narcotic activities and prostitution, abandoned property, absent landlords, graffiti, and loud noise.

To decrease crime in City Heights, residents identified their top priorities as home ownership, economic development, childcare, youth activities, and decreased narcotic operations. Other priorities included increasing trust among neighbors, improving community and police relations, and enhancing opportunities for education.

Although the residents of City Heights expressed their desire for positive changes, few actively participated in creating that change. An extensive survey conducted in the area revealed lack of trust between neighbors and with the police. Also, fear of retaliation and urban deportation reigned, which influenced silence, submission, and acceptance of community crime and decay. Further, the added difficulty of language barriers, clash of cultures, and lack of knowledge regarding community resources and problem-solving techniques created additional complications.

## Identifying Solutions

Decreasing crime and proactive community problem solving constitute the impetus for the City Heights Neighborhood Alliance. The San Diego Police Department believed that it could approach crime from a problem-resolution focus instead of a reactive mode. To effectively employ the problem-resolution approach, community resident involvement proved imperative.<sup>1</sup> This involvement contributed the time and human resources necessary for efficient solutions to community difficulties. For example, identifying the problem; analyzing and documenting the extent of the problem; and contacting landlords, tenants, community members, code enforcement authorities, the police, and other city/government officials represent the time-consuming activities residents can do to enhance the efforts of law enforcement. Residents also bring the advantage of applying political pressure to solving problems by calling and



*Ms. Stewart-Brown, a licensed clinical social worker, serves as a community organizer for the San Diego, California, Police Department.*

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petitioning their local government members, organizing rallies or pickets, and involving the media.

Another important aspect of involving community residents in the alliance included training them in how to solve quality-of-life issues for which they typically call the police. Once trained, residents could experience an increased sense of power and control as they took an active role in solving their neighborhood problems. In 1999, for example, 2,300 calls for service in City Heights West were related to quality-of-life issues, including loud noise, loitering, youth disturbances, vandalism, and abandoned vehicles. These calls resulted in 621 hours of out-of-service time for police officers. Overall, if community residents had the knowledge and skills to solve problems, their active involvement could create a community where people would feel safe and want to live.

### **CITY HEIGHTS NEIGHBORHOOD ALLIANCE**

The City Heights Neighborhood Alliance, comprised of a team of police officers and civilian community organizers, set out to solve drug-related crimes in partnership with community residents and to provide residents with the knowledge and skills to solve their own neighborhood quality-of-life problems. If the alliance could accomplish this, it would resolve problem locations in the community using a variety of resources other than law enforcement. This would result in a decrease in out-of-service time by law enforcement to solve quality-of-life problems.

### **Mission, Goals, and Funding**

To reduce crime and increase safety to residents through a crime resolution strategy that involves the police and community working together denotes the alliance's mission. Its goals include mobilizing residents from each block in City Heights to participate in solving the problems of their own neighborhood; training community members to identify, analyze, and solve the conditions that affect

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primary concerns.***

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neighborhood safety and quality of life; improving collaboration between the members of the community, police, government, and community institutions; and developing a self-sustaining approach to neighborhood organization and management. The alliance received a 2-year grant from a private, nonprofit organization. The grant covered expenses related to training (including travel), office supplies, community computer equipment, salaries, and benefits.

### **Personnel**

The captain of San Diego's Mid-City Police Division directs, oversees, reviews, and guides the

project internally and has ultimate responsibility for program activities and direction. Area lieutenants provide police leadership and direction and set the policing priority and oversee and assist the program sergeant and the community relations officers. The project coordinator develops the community mobilization strategies, ensures that the program goals are accomplished, oversees the program budget, provides supervision to the community organizers, and acts as a liaison for the community and law enforcement, city, and other government agencies.

The program sergeant consults with and encourages officers, divisionwide, to work with community groups in collaborative problem solving; oversees problem-oriented policing projects in the service area; and evaluates the progress and effectiveness of the program, making regular updates to the Mid-City captain and San Diego's chief of police. Community organizers mobilize community residents to participate in neighborhood problem-solving efforts, facilitate community meetings, provide specialized training in problem solving, and, most important, mentor and train a team of leaders to sustain the mobilization efforts. Problem-solving experts provide beginning and advanced training in problem solving, work closely with community residents to strengthen trusting relationships, facilitate community meetings along with a community resident, target and patrol problem locations identified by the community, and, most important, develop trust with area youth



## Case Studies

These two examples highlight successful problem solving by community residents.

- At a City Heights apartment complex, problems included narcotic activities, prostitution, soliciting neighbors, sexual harassment of minors, and daily calls for emergency services. The community residents documented the problems and met three times with the owner. They discussed their concerns and held the owner responsible for making agreed changes. When the owner failed to follow through with improvements, community residents worked with the police, providing information that resulted in police action. The police made arrests and referred the case to state licensing authorities who cited the business for violating license standards and fined the owner. New managers took over, evicted the problem residents, completely remodeled the complex, and began renting to families.
- An area market had a history of narcotic activities, prostitution, and loitering. Community residents identified the problems and documented the extent of them. They wrote a letter to the owner, detailing the problems and included suggestions for improvements. Then, they invited the owner to a community meeting, and after receiving no response, they had petitions signed to support their request. After continuing to receive no response, community residents threatened to hold a protest in front of the store. This resulted in an immediate owner response. Additionally, the police increased patrols, made arrests, and accompanied the community residents when talking to the owners. Subsequently, the owner increased his presence on the property and improved security. He also installed a fence to stop graffiti, painted and cleaned the building, and hired community residents to help keep the property in good condition.

in identifying the extent of problems brought forth from residents, noting successes, and documenting overall efforts. The narcotics tactical team of police officers readily responds to narcotic crimes in the City Heights area. They also pay special attention to narcotic locations identified by police and community residents as part of the project.

## Program Design

Based on extensive research of effective community-oriented interventions, the alliance chose three top theories to provide the basis for program design. These theories include neighborhood collective efficacy, social learning, and social control.

### *Neighborhood Collective Efficacy*

This theory defines neighborhood collective efficacy as a dynamic that occurs when people develop a mutual trust between neighbors combined with a willingness to intervene for the common good of others.<sup>2</sup> Because City Heights has a low percentage of homeowners, a high percentage of cultural and language diversity, and low collective efficacy, neighbors are not acquainted and have little mutual trust. They also fear each other, place negative stereotypes on the different cultures and practices, and have the attitude of “mind your own business.”

The City Heights Neighborhood Alliance believes collective efficacy makes sense and is similar to techniques used in other successful community mobilization efforts.

and mentor them in community involvement.

The police neighborhood abatement officer works together with community residents, landlords, and homeowners on problem locations needing mitigation.

The officer’s immediate attention and action establishes the expectation of aggressive problem solving. Crime analysts provide crime statistics, research, and analysis to police personnel and community residents. This information helps

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The alliance attempted to employ this concept by bringing neighbors together and facilitating relationship building. It encouraged residents to present neighborhood problems that concerned them, prioritize these problems, and work on them in a conjoined effort with the police.

### *Social Learning*

“Differential association posits that criminal behavior is learned the same way as any other behavior, through intimate social settings.”<sup>3</sup> This theory brings to focus the problems faced in City Heights with the failure of collective community involvement. Few social settings occurred that taught the importance of community activism. Instead, neighbors remained estranged from each other and the community at large. Also, they tolerated criminal behavior and some residents even engaged in unlawful activities as a means of survival. Further, they relied on the police for solving crimes. Such behavior transmits social messages and expectations, which prove conducive to criminal behavior and the acceptance of crime.

Creating a tight-knit community, with collective resident concern and involvement, focused the alliance in its effort to achieve a more functional foundation for social learning. The alliance would attempt to build social relationships by bringing together residents of the culturally diverse community for a common cause. Then together, the residents would achieve a common goal and celebrate their success.

### *Social Control*

Fear of social consequences deters people from committing crimes because they do not want to risk the loss of social bonds through the embarrassment and humiliation that becoming a social outcast causes.<sup>4</sup> The lack of social relationships and social supports within the City Heights area contributed to the lack of social control. Community

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**Targeting crimes and quality-of-life problems...has proven effective in satisfying many of the needs of community residents.**

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residents did not hold their neighbors accountable for their unlawful and disorderly behavior. Overall, few social consequences, coupled with low expectations, resulted in little social control.

Now, through community and police problem solving, the residents of City Heights have begun to hold their neighbors accountable for their unlawful and disorderly behaviors. As neighbor relations and problem-solving efforts increase, the expectations community members have of each other also will increase.

### **Mobilization Techniques**

The City Heights Neighborhood Alliance employed three main mobilization techniques: door-to-door outreach, crisis theory, and community meetings. Organizers conducted all of these techniques in four languages, and the combined effect received the attention of community residents and proved effective at drawing the masses.

#### *Door-to-door Outreach*

Two community organizers mobilized residents within a 12-block area of City Heights. They went to every home and apartment with the purpose of actively engaging residents in a partnership with police to solve crime and quality-of-life problems. They collected names, addresses, and telephone numbers from each home for future mobilization and statistical references.

The organizers based the techniques employed to mobilize these residents on the theory that the best way to mobilize people is through already established connections.<sup>5</sup> These connections provide the trust and familiarity needed to motivate the participation of others, along with the motivating factor of not wanting to disappoint the person with whom one has a connection.

Although labor intensive, community organizers spent a great deal of time going door-to-door, talking with residents, and learning their views of community problems. They also obtained personal information, including strengths and weaknesses, that later could benefit their mobilization work.

## Lessons Learned

- Measure success by quality, not quantity. Involved residents, regardless of the number, effectively solving problems, no matter how many, result in success.
- Identify and address the core needs of residents. City Heights' residents faced unemployment, poverty, language barriers, lack of education, and lack of childcare. Such needs make it difficult for residents to employ energy toward community problems when they feel unable to improve their own situations. In these cases, a program solution may simply involve educating residents about community resources, or require a more complicated action, such as providing a program incentive that addresses their needs.
- Make people feel important and useful. All residents should have tasks, no matter how small, to complete prior to each meeting so they feel compelled to attend future meetings.
- Reflect the ethnic diversity of the community. Similarities between residents and community organizers prove helpful in establishing the trust needed to have residents open their doors, listen, and accept an invitation to attend a community meeting.
- Involve law enforcement in the process. The presence of law enforcement transmits a message to residents that they are important and that their concerns are a priority.
- Prepare organized, productive, and goal-oriented meetings, limited to 1 hour. At the end of the hour, ensure that the meeting has accomplished something and has resulted in as many people as possible having a task due at the next meeting. For ease in scheduling, hold meetings on designated days of the month.
- Build resident relationships. When the group size allows, break the larger group into smaller subgroups. This enables people to get acquainted and experience a sense of belonging. It also makes everyone feel involved and part of the process.
- Spend time in the community. High visibility transmits sincerity and affects resident trust. Use this time to assess problem locations together with residents, identify new problem locations, or meet and educate other residents about the program.
- Train community residents to organize and problem solve.
- Understand cultural diversity and residents' fear of community involvement. Some residents may fear deportation, while others have experienced only corrupt government and law enforcement in their native lands. Often, the lack of resident involvement is not due to uncaring attitudes, but to fear. Address these issues by using culturally diverse community organizers.
- Educate residents about the limitations of law enforcement as it impacts community problems. Many times, community problems arise that residents want the police to handle in a particular manner. When the police do not handle the situation to the residents' expectations, anger and mistrust result. With knowledge of law enforcement limitations, residents can work collaboratively with police to get the needed outcome.
- Involve young people. Youth represent the key to adult involvement and program longevity. In City Heights, youths attended community meetings and other program events in larger numbers than adults. They were consistent, willing, and excited about the task at hand, and their involvement attracted more adult participation.
- Create partnerships. Solving problems in a community requires effort from all affected agencies. This teamwork increases resources and decreases the chances of duplicating efforts.

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The effort made to go door-to-door established connections and familiarity with otherwise strangers. It also drew upon the common interest of crime and brought out the neighborhood quality-of-life problems. In all, the relationships developed by going door-to-door and through continued contacts, such as phone calls and community visibility, represented the foundation for mobilization efforts.

#### *Crisis Theory*

Community members coalesce under two conditions: when the police are inept, or when there is a crisis.<sup>6</sup> Community organizers applied this crisis theory. They compiled police statistics, as well as intelligence regarding resident-identified crime and problem locations. With this information, they developed flyers to educate community residents to the severity and extent of crime in their area. Overall, the flyers served two purposes: they depicted the state of crisis in the area and invited residents to a community meeting to address their concerns.

#### *Community Meetings*

Organizers distributed flyers regarding the community meeting a week before the actual event, and then, 3 days prior to the meeting, placed reminder phone calls to all community residents. The day of the meeting organizers knocked on doors and a police officer drove through the area announcing the meeting over a public address system.

A police officer and a community organizer facilitated the

meeting, keeping it organized and limited to 1 hour. This technique proved effective and seemed to match what community residents needed. They wanted to see the police involved in facilitating community meetings as security that their concerns were being heard and attended to on a law enforcement level. The community organizer provided community residents with the familiarity and connectedness needed for trust building and continuity.

**“  
...the relationships  
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#### **Resident Training**

To have community residents active in mobilizing their own neighborhoods to solve crime represented the long-term plan of the City Heights Neighborhood Alliance. To accomplish this task, residents received training in problem solving and community organization skills.

Police problem-solving experts and community organizers facilitated several training sessions based on actual case vignettes of area crime problems. Each resident received a notebook reviewing all resources available to solve most

neighborhood problems. And finally, the residents shadowed a community organizer to learn a variety of skills needed to mobilize their neighborhood.

The program trained over 200 residents in basic organization and problem-solving skills and then focused on eight residents who became neighborhood leaders. These leaders received personalized training and approximately 100 hours of additional one-to-one mentorship. They also received computer training and all of the necessary letters and forms. Last, they attended professional meetings where they met community leaders and city and government officials who could help with their mobilization efforts.

#### **Program Accomplishments**

*Mutual trust:* Surveys conducted both before and after the program, regarding the level of trust between neighbors in City Heights, revealed that prior to the community mobilization efforts, 41.7 percent of community residents said that they trusted their neighbors. After the efforts, 68.5 percent of community residents stated that they trusted their neighbors. This trust increased tolerance and understanding of diverse cultures and the number of problems that residents could resolve without law enforcement involvement.

*Trust in police:* Prior to mobilization efforts, community residents criticized the slow, or lack of, police response to their complaints. They also felt that the police were unfriendly and not as visible within the problem areas of their

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neighborhood. These complaints significantly decreased with the mobilization efforts. In fact, residents have become more confident that police hear their concerns and feel a sense of pride and empowerment as they interact more with the police.

***Mobilization techniques:*** The alliance mobilized a 4-square mile area in City Heights. Participants knocked on over 500 residential doors and over 500 residents attended community meetings. Resident involvement increased from zero to an established group of 15 to 24 involved residents who meet twice a month to identify and solve community crime and quality-of-life problems.

***Leadership:*** Community residents elected among themselves for the position of president, secretary, three community organizers, and three youth leaders. These leaders assumed the roles previously held by alliance team members and are now self-sufficient in organizing their neighborhood to solve crime and disorder problems.

***Youth involvement:*** The alliance offered three forms of training and leadership to the youths who attended the community meetings. First, for children ages 2 through 12, the youth leaders (community residents who regularly attend community meetings) prepared educational activities that related to community involvement and problem resolution. Second, youth, ages 13 through 17, rode bicycles with police officers after school to identify and solve youth crimes. They also identified other community-based problems, learned the skills to solve

them, and received weekly mentoring on a variety of self-improvement topics. Third, youth, ages 13 through 17, who were cited for placing graffiti on public property attended voluntary focus groups. The youth learned why they engaged in this activity, gained tools to help them stop, and discovered positive ways to give back to their community. For example, three of these youth discontinued their graffiti activity, involved themselves in positive school activities, and gave back to the community by painting murals at locations heavily targeted by graffiti.

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**...community agencies  
and businesses  
collaborated with  
the alliance team.**  
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***Diversity:*** Prior to the alliance in City Heights, the police had limited success in reaching ethnically diverse communities. The mobilization efforts successfully involved representatives from the Vietnamese, Somali, Cambodian, African, African-American, and Hispanic communities due, in part, to providing translators.

***Communitywide collaboration:*** Several community agencies and businesses collaborated with the alliance team. Fifteen businesses donated a total of \$4,000 in food, supplies, and equipment

toward community cleanups. Community agencies, such as religious organizations, community youth services, established cultural groups, and a drug recovery home, provided grant funding for the youth bicycle team, mentoring services, community meeting space, and translation services, while their volunteers spent 1,000 hours going door-to-door and calling community residents. Once efforts became known, the entire community provided assistance and developed means for a collaborative relationship.

***Problem-solving efforts:*** Residents solved several community drug problems in 10 months. They employed the successful technique of holding community meetings in front of the problem properties. They contacted property owners; told them about neighborhood complaints, as well as crime statistics and other documented problems; invited them to the meetings; and further informed the owners that the police would be involved. Other techniques included writing letters to property owners; signing petitions; bringing in resources, such as code compliance authorities and other officials; and threatening to picket or file a lawsuit.

***Community cleanups:*** The alliance held three community cleanups. Residents and community agencies donated 600 hours and disposed of 2 tons of garbage. The cleanups resulted in trash from criminal behavior (e.g., prostitution, loitering, and drug use) in areas heavily littered with mattresses, couches, and debris steadily decreasing over time.

*Residents as community organizers:* After several months of training and mentoring, community residents began to take over the mobilization efforts previously done by the City Heights Neighborhood Alliance. They began facilitating community meetings and guiding their neighbors and peers through the problem-solving process.

*Arrests:* The police narcotics team was an excellent resource and benefit to the community mobilization efforts. When residents identified a drug location and needed police assistance, this team moved in with force. Due to their support, over 320 drug dealers were arrested and jailed.

## CONCLUSION

The more traditional forms of neighborhood policing focus on communication but no interactive problem solving. Usually, residents identify community problems that they see as a priority. Then, law enforcement targets these problems for resolution. Although this strategy of policing has been effective in appeasing community residents and solving some crime and quality-of-life problems, it remains similar to the old style of policing—it puts the bulk of responsibility for problem resolution on law enforcement.

The City Heights Neighborhood Alliance in San Diego, California, has taken the concept of community policing to the next level. It promotes a wrap-around, problem-solving approach where police and community residents work in a true partnership to solve crime and quality-of-life issues.

This nontraditional neighborhood policing strategy promotes resident action. It empowers community residents with the knowledge, tools, and guidance to solve crimes and quality-of-life problems. By actively involving the individuals who live among, experience, and commit the crimes, the San Diego Police Department has created an effective and efficient alliance that can solve many of the problems that once required law enforcement intervention. ♦

## Endnotes

<sup>1</sup> Law enforcement has long recognized the benefits of working with community residents through such programs as Neighborhood Watch and community advisory boards. However, some communities have experienced problems with these programs. The San Diego Police Department studied the strengths and weaknesses of both programs in the development of the alliance. The department also employed the SARA (scanning, analysis, response, and assessment) model of problem solving in its community mobilization efforts.

<sup>2</sup> Robert J. Sampson, Ph.D., Professor of Sociology at the University of Chicago, published an abstract based on his multilevel study of collective efficacy in neighborhoods where there was substantial violent crime. He also stated his belief in collective efficacy being the strongest indicator of a healthy neighborhood with reduced crime.

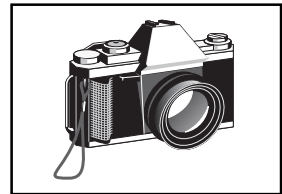
<sup>3</sup> Edwin H. Sutherland introduced the concept of differential association in his learning theory of crime causation.

<sup>4</sup> Travis Hirischi, Department of Justice, National Institute of Justice Research Brief *Neighborhoods and Violent Crime* (Washington, DC, July 1998).

<sup>5</sup> Robert Wuthnow, *Loose Connections: Joining Together In America's Fragmented Communities*, (Cambridge, MA: Harvard University Press, 1998).

<sup>6</sup> The theory of Dr. John E. Eck, a noted author and researcher. See, John E. Eck and David Weisburd eds., *Crime and Place* (Monsey, NY: Criminal Justice Press; and Washington, DC: The Police Executive Research Forum, 1995).

## Wanted: Photographs



The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

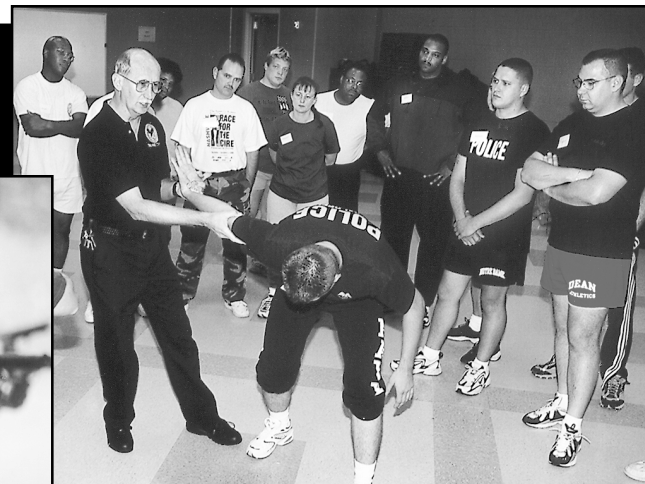
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# Veterans Affairs Police and Security Service

## Safeguarding America's Military Heritage

By RALPH C. KENNEDY, M.Ed.



VA defensive tactics training (above)

VA firearms training (left)

*"To care for him who shall have  
borne the battle and for his  
widow and his orphan."*

—Abraham Lincoln

The words spoken by Abraham Lincoln during his second inaugural address reflect the philosophy and principles that guide the U.S. Department of Veterans Affairs (VA). Title 38, Section 301(b) of the U.S. Code states that the mission of the VA is "to administer the laws providing benefits and other services to veterans and their dependents and the beneficiaries of veterans." To this end, the VA exists to give meaning, purpose, and reality to America's commitment to veterans of military service.

The VA comprises one of the largest departments in the federal

government. Its budget for fiscal year 2000 totaled over \$43.6 billion. The department employs more than 240,000 individuals, with almost 98 percent of the staff assigned to provide direct services to veterans and their families. The VA has facilities in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Philippines. The agency delivers veterans' services through 172 medical centers, 551 ambulatory and community-based outpatient clinics, 57 regional benefit offices, and 115 national cemeteries.

To assist in performing these services, the VA Police and

Security Service protects patients, visitors, employees, and property at VA medical centers and support facilities. The efforts of these officers, along with all other VA employees, to preserve the peaceful environment requisite to the operation of medical programs prove vital to the mission of delivering quality healthcare to America's veterans. Across the nation, approximately 2,200 VA police officers are assigned to Police and Security Service units in each individual VA medical center. Organizationally, the Police and Security Service constitutes one of three main sections of the Office of Security and Law Enforcement (OS&LE), which provides guidance, consultation, and investigative and direct operational support for all elements of the VA. The deputy assistant secretary for security and law enforcement heads the OS&LE and oversees and develops policy and procedures related to VA facility security and law enforcement operations, as well as VA police officer training.

## **THE ROLE OF THE VA POLICE AND SECURITY SERVICE**

### **Statutory Authority**

Title 38, Chapter 9, U.S. Code contains the statutory authority of the VA Police and Security Service. This statutory provision, subject to a duty of prior consultation with the U.S. Attorney General, enables the issuance of regulations governing conduct on property under the charge and control of the VA and penalties for their violation. The statute also authorizes VA police officers to enforce these regulations

and to arrest persons committing violations of these regulations and any federal laws while on VA property.

In addition, the legislation that created the VA Police and Security Service intended it to go well beyond the concept of traditional law enforcement to address the special needs of the veterans seeking treatment at VA medical facilities. Not only does the statute prescribe training of the scope and duration necessary for VA police officers in the proper exercise of their law enforcement and arrest authority, it also prescribes "training with particular emphasis on dealing with situations involving patients." The statutory reference to the service and treatment function clearly signals the unique role and expectation of the VA police officer in relation to America's military veterans.

### **VA Policy**

VA policy more explicitly defines the unique service role of the VA Police and Security Service.

***“Dealing with situations involving patients constitutes one of the unique challenges of a VA police officer’s job.”***



*Mr. Kennedy, a retired U.S. Secret Service special agent, serves as the deputy director of the Veterans Affairs Law Enforcement Training Center in North Little Rock, Arkansas.*

The policy states that to fully serve the VA mission while accomplishing specific protective duties, VA police officers must render courteous assistance to patients, visitors, and employees at all times and avoid the use of arrest procedures as much as possible. Moreover, VA police officers must handle persons with mental or emotional illnesses with a minimum of force to prevent their committing a violent act while awaiting professional medical assistance or advice.

### **Service-Related Activities**

Dealing with situations involving patients constitutes one of the unique challenges of a VA police officer's job. This nontraditional law enforcement role requires VA police officers, in certain situations, to become active members of a "treatment team" for veterans seeking care at VA facilities. In this role, VA police officers assume "standby" or "take charge" status in situations where a patient's level of violence approaches or exceeds the



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ability of the medical staff. In “take charge” situations, VA police officers must assume management of the situation until they can return control safely to the medical staff to continue treatment. For example, at one VA medical facility, officers were dispatched to the emergency room in a standby capacity while the medical staff attempted to treat a veteran. Upon arrival at the emergency room, the officers observed a male standing at the door of the treatment room talking to himself in a loud voice. The medical staff subsequently told the man that they would admit him to the hospital under a physician emergency certificate. He refused, argued with the medical staff, and finally attempted to leave. The officers stopped him at the exit door. At this point, the man became physically combative with them. He swung wildly at the officers with his fists and kicked one in the groin. The officers eventually used pepper spray to subdue him and placed him in restraints. At this point, the medical staff took charge and administered medication to assist in calming the man. Subsequently, medical personnel evaluated him, treated him for exposure to the pepper spray, and admitted him to the hospital. Neither officer sustained serious injuries.

Service-related activities account for the majority of a VA police officer’s time with only a small portion of time spent on crime-related work. However, in both instances, the guiding principle of the VA Police and Security Service remains preventing crimes and offenses through effective physical security and visible deterrence. VA police officers accomplish this

specialized mission through the concept and practice of situational law enforcement that emphasizes correcting improper behavior, rather than arbitrarily taking enforcement action for minor offenses.

Generally, VA police officers consider law enforcement action only after they have employed reasonable efforts to obtain voluntary compliance for petty offenses; however, this practice does not apply to felonies or serious misdemeanors

**“  
...the LETC stands  
as a national  
leader...in the federal  
system for law  
enforcement training  
in a healthcare  
environment...  
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committed by unimpaired individuals. The VA Police and Security Service judges the effectiveness of its police units and individual officers through the amount of competence, enthusiasm, and pride in providing services to the needy; an effective level of physical security; and a quality of law enforcement that fully respects individual rights. It does not measure success by the number of arrests made or citations issued.

The VA Police and Security Service mission requires officers to have knowledge of general law enforcement methods and techniques.

In addition, due to special mission requirements, VA police officers also must possess an array of special skills and abilities necessary to de-escalate volatile situations common in a healthcare environment. The special mission and role of the VA police officer presents a unique challenge in training. To this end, the VA created the Law Enforcement Training Center (LETC) in 1972 and charged it with administering a national training program that reflected the special mission performed by the VA Police and Security Service.

## **VA LAW ENFORCEMENT TRAINING CENTER**

### **Mission**

To provide duly appointed VA police officers with a specialized orientation to agency law enforcement policies and procedures, to train these officers in the proper exercise of statutory law enforcement authority, and to teach them to handle situations that involve patients or persons of diminished capacity constitute the mission of the VA LETC. Conceptually, the course provides police officers with the knowledge, skills, and abilities necessary to blend their duties as law enforcement officers with the special needs of the public that they serve. The unique, service-oriented law enforcement training provided by the LETC also proves consistent with the training needs of many other special mission or limited jurisdiction federal police agencies.<sup>1</sup>

### **History**

Early in 1971, the Office of Personnel Management converted VA

guard service officers to police officers, which required new police training methods. At the request of the VA, the FBI's Washington, D.C., field office developed and conducted a 1-week VA Police and Security Service orientation at the VA Medical Center in Washington, D.C.

Later in 1971, the VA Police and Security Service training operation moved to historic Fort Roots, a former U.S. Army post dating back to the 1880s, in North Little Rock, Arkansas. The VA selected the site primarily because of its central location and because it offered a medical center setting where VA police officers could study and learn in the same environment that they worked.

Since its inception, the LETC has moved forward in concept, design, and duration. Reviews by the Department of Justice and the VA Office of Inspector General and the OS&LE have resulted in significant changes and increased professionalism at the LETC. For example, the basic police officer training course has expanded from 64 hours in 1987 to its current length of 160 hours.

### Today

Currently, the LETC stands as a national leader and sole-source provider in the federal system for law enforcement training in a healthcare environment and other federal special mission or limited jurisdiction settings. The LETC conducts a basic law enforcement training program, along with in-services and specialized courses, for more than 2,200 VA police officers that serve at VA medical centers and other facilities throughout the nation. The

LETC, a division of OS&LE, is a highly successful fee-for-service VA Enterprise Center pilot.<sup>2</sup>

The Enterprise Center concept gives the LETC the flexibility to extend services to and partner with other federal agencies. Annually, the LETC provides law enforcement training to about 500 police officers in residence programs and to hundreds of other nonlaw enforcement (VA and nonVA) customers nationwide in specialized programs. Since 1996, the LETC has entered into training agreements with the Walter Reed Army Hospital, National Guard Bureau, Indian Hospital Service, National Gallery of Art, Department of Justice, and National Interagency Counterdrug Institute.

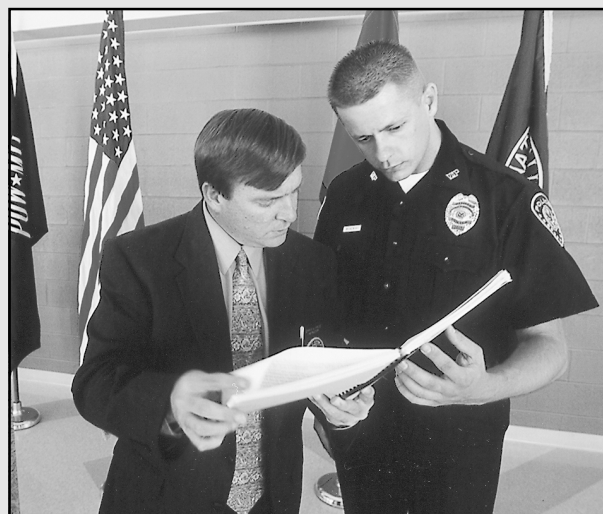
The facilities at the LETC consist of an administration building and an adjacent three-story facility that contains a 30-room (single occupancy) dormitory and two large state-of-the-art classrooms. Future

plans include a new administration building, an indoor pistol range, and additional dormitory space.

Currently, a director, a deputy director, six full-time instructors, and four administrative personnel staff the LETC. Instructors come from within and outside the ranks of the VA Police and Security Service; however, all instructors have significant general or specialized law enforcement experience. An adjunct instructor detached from the VA Regional Counsel's Office provides legal training, and the local VA medical center psychological services staff members provide behavioral science training support. In addition to training, the LETC coordinates national programs for VA Police and Security Service background investigations and badge issuance.

Prior to attending the 160-hour residence basic police officer training course, each VA police officer also must complete approximately

*VA police student consults with an instructor.*



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2 weeks of preparatory training. This training consists of a limited amount of formal instruction, self-study, and on-the-job training to introduce new VA police officers to duty-station-specific rules, regulations, policies, and procedures, as well as the basic concepts and unique aspects of policing in a healthcare environment.

### Courses Offered

The 160-hour basic police officer training course represents the core training offered at the LETC. This course trains VA police officers in all pertinent aspects of basic law enforcement with particular emphasis on specialized aspects of security and law enforcement in the healthcare environment. It also provides VA police officers with the knowledge and skills to successfully manage situations involving patients, including assaultive patients and persons of diminished capacity.

All VA police officers must complete the prescribed course during the first 90 days of employment to maintain their law enforcement status and arrest authority. The major subject matter areas of the basic course include behavioral sciences, police operations, preliminary investigation matters, administrative issues, and physical training, which includes baton usage, defensive tactics, and arrest techniques. In addition, the LETC offers several 40-hour specialized and advanced courses, such as a baton instructor course, a detective course, a semi-automatic pistol course, and a supervisory police officer course. It also offers a 96-hour firearms instructor course, a 20-hour

administrative investigation course, and seminars on self-protection and violence in the workplace.<sup>3</sup>

### In-service Training

The OS&LE and the LETC recognize that continuing education and training prove essential to an effective police operation. Each VA police officer receives a minimum of 40 hours of training annually. Mandatory subjects include such courses as baton recertification, legal issues, and officer safety and awareness. In addition, at the beginning of the calendar year, VA

***“VA police officers must render courteous assistance to patients, visitors, and employees at all times....”***

Police and Security Service units must develop annual training plans and often incorporate different delivery methods. For example, they can use a monthly in-service training film provided by the LETC to fulfill 12 hours of the annual in-service requirement.

### Program Review

To ensure that the training remains of the highest quality and meets the needs of the VA, the OS&LE and the LETC have sought periodic, independent outside review of the basic police officer

training course. Over the years, various experts in the field of criminal justice academics, including past and present FBI officials and graduate-level professors, have reviewed the course. In addition, the University of Arkansas at Little Rock grants 6 hours of undergraduate criminal justice college credits for successful completion of the 160-hour basic police officer training course.

### CONCLUSION

Many veterans of the U.S. military who have made sacrifices in the service of their country require medical intervention and other assistance. The Department of Veterans Affairs, along with its Police and Security Service, administers such aid to many American veterans, who have sustained physical, mental, or emotional injuries while performing their duties, and to their families and beneficiaries.

The primary role of the VA police officer is to provide the peaceful environment requisite to treatment initiatives at VA medical centers. Officers accomplish this function by conducting highly visible and inquisitive patrol activities to deter criminal activity while remaining alert to provide direction and assistance to veterans and their families. The role of the VA police officer proves unique in the law enforcement profession in that the clinical treatment of the veteran remains paramount while law enforcement action is initiated only as a last resort.

The VA Law Enforcement Training Center provides the necessary law enforcement training for VA police officers. Since its

inception in 1972, the LETC has made great strides in its efforts to adequately and effectively train VA police officers for the rigors of their profession. Today, the LETC is a state-of-the-art police training facility and a highly successful VA Enterprise Center pilot that provides a comprehensive program of basic, in-service, and specialized police training for the VA Police and Security Service, along with a limited number of other special mission federal police agencies. As with President Lincoln's desire to help wounded Civil War veterans, their families, and the survivors of fallen

combatants, the VA and its police officers have developed a deep commitment to honor and assist all military veterans and their families and ensure that these individuals obtain the level of care and respect that they so richly deserve. ♦

#### Endnotes

<sup>1</sup> For additional information, access the Office of Security and Law Enforcement's Web site at <http://vawww.va.gov/osle>, or contact the Law Enforcement Training Center at 2200 Fort Roots Drive, Building 104, North Little Rock, AR 72114; telephone: 501-257-4160 (office) and 501-257-4145 (fax).

<sup>2</sup> The Government Management Reform Act of 1994 authorized federal agencies to establish

a new type of revolving fund (Franchise Fund) on a pilot basis to provide common administrative services. Unlike other government revolving funds, Franchise Funds are required to price products at full cost and compete for customers. The VA saw this as an opportunity to improve the quality and reduce the unit costs associated with such services. For additional information, access the VA Enterprise Center's Web site at <http://www.va.gov/fund>.

<sup>3</sup> Firearms training is a recent addition to the LETC annual course schedule. Prior to 1996, the VA Police and Security Services maintained a long tradition of not having its officers carry firearms and armed them, instead, with only pepper spray and a side-handle baton. However, between 1985 and 1996, five VA police officers were shot and killed in the line of duty. As a result, in 1996, the VA drafted a stringent plan for gradually training and arming all of its police officers.

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# ***Indian Tribal Sovereignty***

## ***Criminal Jurisdiction and Procedure***

By MICHAEL J. BULZOMI, J.D.

**T**he relationship between Indian tribes and the U.S. government has changed dramatically over the last 200 years. During the British colonial period, Indian tribes were considered foreign nations by the British crown and were dealt with by treaty. This relationship worked so well that the majority of the tribes allied with the British during the Revolutionary War. The relationship between the tribes and the American colonists was never as strong. At first, the colonists treated the tribes as they were treated by the British, as independent sovereigns, but their

sovereignty was diluted over time, and they were treated as dependant sovereigns, retaining limited control of their internal affairs. This changing and uneasy relationship set the stage for many battles, both in the field and in the courts, regarding the status of Indian tribes in modern America.

This article briefly examines the judicial history of tribal sovereignty in American courts. It then reviews the major federal legislation impacting criminal jurisdiction on tribal land and discusses the impact of the federal Constitution on the tribes.

### **THE QUESTION OF SOVEREIGNTY**

In the 1830s, the U.S. Supreme Court decided two cases collectively known as the Cherokee cases: *Cherokee Nation v. Georgia*<sup>1</sup> and *Worcester v. Georgia*.<sup>2</sup> In *Cherokee Nation v. Georgia*, the Cherokee tribe sued to overturn certain laws of the state of Georgia that it felt interfered with its internal affairs. In order to bring the suit, the tribe had to qualify as a “foreign nation” under the U.S. Constitution.<sup>3</sup> The Court decided the tribe was not a foreign nation and dismissed the suit. However, the Court did

characterize the tribe as a “domestic dependent nation.”<sup>4</sup> The following year, the Court decided the case of *Worcester v. Georgia*. In this case, Georgia had passed a law requiring a state permit for any non-Indian to live on the Cherokee reservation. Worcester, a missionary, broke the law and was arrested. The Supreme Court decided that the laws of the state of Georgia had no force on the Cherokee reservation. The Court said that Indian reservations are “distinct political communities, having territorial boundaries, within which their authority is exclusive....”<sup>5</sup>

The Cherokee cases clearly established that the tribes were separate political entities with authority over their internal affairs and beyond the reach of the authority of the individual states. However, their relationship with the federal government was much different. As noted previously, in *Cherokee Nation v. Georgia*, the Supreme Court characterized the tribes as dependent nations, meaning dependent upon the authority of the federal government. The Court described the relationship as that of a “ward to his guardian.”<sup>6</sup> The Court interpreted this trust relationship to mean that the federal government, specifically Congress, could exercise extensive authority over the tribes.<sup>7</sup> In 1903, the Court recognized that Congress has plenary power over Indian affairs “by reason of its exercise of guardianship over their interests.”<sup>8</sup> Over the years, Congress has used that plenary power to apportion criminal jurisdiction on Indian lands among federal, state, and Indian governments.

## CRIMINAL JURISDICTION

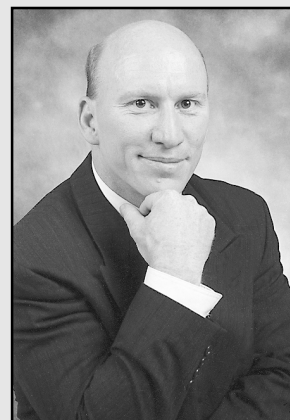
### The Federal Enclaves Act

In 1817, Congress passed The Federal Enclaves Act,<sup>9</sup> asserting federal criminal jurisdiction over non-Indians for crimes they commit in Indian country and over Indians for some crimes they commit against non-Indians. Under the act, “the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States... [extend] to the Indian country.”<sup>10</sup> Consequently, for jurisdictional purposes, Indian land is treated today as a “federal enclave,” similar to a federal building, park, prison, or military base. The act has three important exceptions: it does not apply to crimes by Indians against Indians; to crimes by Indians that have been punished by the tribe; nor to crimes over which a treaty gives

exclusive jurisdiction to the tribe. The act appears to cover “victimless” crimes committed by Indians, but the Supreme Court, in *United States v. Quiver*,<sup>11</sup> held that the federal government lacked jurisdiction in such cases where both parties are Indian.

The act imports the entire body of federal criminal law into Indian country. Federal enclave laws adopt or define traditional state law crimes, such as arson, murder, and robbery, and apply them to federal enclaves by making the site of the crime one of its elements. Thus, one can violate an enclave law only by committing a certain act in an enclave. However, the federal criminal code applied to federal enclaves is by no means complete. Congress recognized that there were criminal acts being committed within federal enclaves that were going unpunished because there were no specific federal criminal laws

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prohibiting them and because state criminal law had no force within these enclaves, including Indian country.

Congress addressed this oversight in 1825 by enacting the Assimilative Crimes Act.<sup>12</sup> That act reads in part:

Whoever within or upon any [federal enclave] is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.<sup>13</sup>

This provision makes state criminal law applicable to any offense, not otherwise specifically addressed by a separate federal statute, when committed on a federal enclave. Because the definition of federal enclave includes Indian reservations, this provision is applicable to Indian country through the Federal Enclaves Act.

An important question left open by the Federal Enclaves Act was which sovereign has jurisdiction over crimes on Indian land when both the defendant and victim are non-Indians. The U.S. Supreme Court dealt with that issue in 1881 in *United States v. McBratney*.<sup>14</sup> The case involved the murder of a non-Indian by another non-Indian on the Ute Indian reservation in Colorado. The defendant was tried

and found guilty of murder in federal court. The defendant appealed his conviction on the ground that there was no federal jurisdiction to try his case. The Supreme Court ruled in favor of the defendant finding that when a crime is committed on an Indian reservation by a non-Indian against a non-Indian, the state in which the reservation is located has criminal jurisdiction. The Court reasoned that unless the enabling act admitting a state into the Union excluded state jurisdiction over crimes committed on an Indian reservation involving only non-Indian parties, state courts are vested with jurisdiction over non-Indians who commit crimes on Indian lands.<sup>15</sup>

“

***Indian tribal sovereignty has a significant impact on criminal jurisdiction and procedure....***

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### **The Major Crimes Act**

Another major limitation of the Federal Enclaves Act is that it does not address crimes on Indian lands where both parties are Indians. A crime on the Brule Sioux reservation in 1881 spurred Congress to enact legislation to overcome this limitation.

On August 5, 1881, Crow Dog shot and killed Chief Spotted Tail. Both individuals were Brule Sioux, and Brule law required that Crow Dog make reparations to Spotted Tail's family. When the press reported the resolution of this tribal case, restitution in the form of \$600, eight horses, and one blanket, a cry for federal intervention arose. Chief Spotted Tail was well liked by white settlers and federal government officials, who believed that a matter such as this should be resolved in federal court. Crow Dog was arrested and tried by a federal territorial court and sentenced to hang for murder. On appeal, the Supreme Court ruled that Indian offenders committing crimes on the reservation were not subject to federal jurisdiction and reversed the conviction.<sup>16</sup> The Court explained that by treaty, the United States had allowed the tribe to retain its sovereignty. Any new criminal jurisdiction policy on the part of the U.S. government would require “a clear expression...of Congress.”<sup>17</sup> The public demanded action, causing Congress to enact the Major Crimes Act.

The Major Crimes Act<sup>18</sup> was passed in 1885 and established federal jurisdiction over seven crimes committed by Indians in Indian country. The original seven crimes covered by the act were, murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny. The act has been subsequently amended to include seven additional crimes: kidnaping, incest, assault with a dangerous weapon, assault resulting in serious

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bodily injury, assault with intent to commit rape, robbery, and felonious sexual molestation of a minor. The intent of the act was to permit federal punishment of major crimes by Indians against Indians; however, the Major Crimes Act applies whether the victim is Indian or non-Indian.<sup>19</sup>

Taken together, the Major Crimes Act, the Federal Enclaves Act, and the Assimilative Crimes Act give the federal government exclusive jurisdiction to prosecute offenses committed on Indian lands when the defendant is non-Indian and the offense is committed against an Indian or Indian interests and when an Indian defendant commits one of the major crimes enumerated in the Major Crimes Act. States have jurisdiction over crimes involving non-Indian defendants and victims committed on Indian lands within their borders. The tribes have jurisdiction over nonmajor crimes (misdemeanors) committed on Indian lands by Indians.

The question of criminal jurisdiction over misdemeanors where the defendant is non-Indian remained unanswered until the Supreme Court decided *Oliphant v. Suquamish Indian Tribe*.<sup>20</sup> In this case, tribal police arrested Oliphant, a non-Indian living on a reservation in Washington State. Oliphant was charged with resisting arrest and assault of a police officer. He was found guilty in tribal court and appealed his conviction, claiming he was not subject to Indian jurisdiction because he was not an Indian. The Supreme Court upheld Oliphant's claim. The court found that due to the tribe's domestic,

dependant status, it did not have jurisdiction over non-Indians unless Congress granted such power.

The above cases illustrate that if a non-Indian commits a crime against an Indian on a reservation then the federal government has jurisdiction. If a crime is committed in Indian country by a non-Indian against a non-Indian, then the state has jurisdiction. But what if a nonmember Indian commits a crime on a reservation?



In *Duro v. Reina*,<sup>21</sup> the Supreme Court defined the term “Indian” for purposes of tribal criminal jurisdiction. Tribal police arrested Duro for discharging a firearm on the Salt River Pima-Maricopa Indian Reservation, a misdemeanor charge. Duro had allegedly used the firearm to kill a 14-year-old boy from the Gila River Indian tribe. (The murder falls into the jurisdiction of the federal government because it is a felony). Duro was an enrolled member of the Torres-Martinez band of the Cahuilla Mission Indians of California, but was living

and working on the Salt River Pima-Maricopa Indian Reservation in Arizona. Duro appealed his misdemeanor conviction on the grounds that the Indian Civil Rights Act of 1968 prohibits tribes from prosecuting non-Indians. The Supreme Court held that the tribe had no jurisdiction over nonmember Indians. The Court ruled that tribes differed in social and cultural structures and that enrollment in a tribe constitutes consent to the authority of that tribe but not to other tribes. Congress responded to the *Duro* decision by passing Public Law 102-137,<sup>22</sup> which gives tribes jurisdiction in misdemeanor crimes over all Indians to include nonmember Indians.

#### Public Law 280

The issue of criminal jurisdiction on Indian lands was further confused by the passage of Public Law 280<sup>23</sup> in 1953. This federal law grants so-called “mandatory states” all criminal and civil jurisdiction over Indian lands within their borders. The states affected by the legislation were California, Minnesota (except for the Red Lake Reservation), Nebraska, Oregon (except for the Warm Springs Reservation), Wisconsin, and Alaska after gaining statehood (except for the Annette Islands Metlakatla Indians). This law effectively terminates all tribal criminal jurisdiction in the affected Indian country within these states. Public Law 280 also provides that any state (so-called “optional states”) wishing to assume jurisdiction over tribes within their borders may do so by state law or by amending the state constitution.



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## CONSTITUTIONAL ISSUES

In 1896, the Supreme Court decided *Talton v. Mayes*.<sup>24</sup> The case involved a tribe's use of a grand jury system that did not use the number of jurors specified in the U.S. Constitution. The Court ruled that Indian tribes are not bound by the provisions of the U.S. Constitution. The Court recognized that Indian tribes are sovereign nations, whose sovereignty was established and recognized prior to the adoption of the Constitution, and had not ratified the Constitution as the states had. Consequently, the tribes were not constrained by any of the provisions of the federal Constitution when dealing with tribal members, and tribal members could not claim any Constitutional protections against the actions of their tribes. Congress became concerned about the implications of this holding and passed the Indian Civil Rights Act of 1968<sup>25</sup> (ICRA).

### The Indian Civil Rights Act of 1968

The ICRA imposed most of the substantive restraints of the Bill of Rights upon the tribes. The most important exclusions from the act are the right to *appointed* counsel (the act provides a right to counsel at the tribal member's expense) and the Grand Jury Clause of the Fifth Amendment. The ICRA prohibits the exclusion of evidence as a remedy for violations of its provisions. The act also limits tribal criminal jurisdiction over Indians to misdemeanors. The maximum penalties in tribal court for misdemeanors are up to 1 year in jail and \$5,000 in fines per count.<sup>26</sup> The question

remains to what effect, if any, the ICRA has upon states or the federal government.

### Double Jeopardy

The Double Jeopardy Clause of the federal Constitution provides: "...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."<sup>27</sup> A similar provision is found in the Indian Civil Rights Act.<sup>28</sup> Under the Dual Sovereignty Doctrine,<sup>29</sup> prosecution of a defendant under the

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**...state and federal  
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defined in the  
Bill of Rights.**

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laws of separate sovereigns does not subject a defendant to double jeopardy. This is based on the principle that either, or both, sovereigns may punish such an offender for the same offense because the defendant has committed two separate offenses, one offense against each sovereign.

In *United States v. Wheeler*,<sup>30</sup> the Supreme Court was asked whether tribal punishment and successive federal punishment amounted to a violation of the federal double jeopardy doctrine. Anthony Wheeler was an enrolled member of

the Navajo Nation. He was arrested by tribal police and pled guilty in tribal court to disorderly conduct and contributing to the delinquency of a minor. He was then charged in federal court with statutory rape for conduct arising from the same incident. The appeal rested on Wheeler's contention that the second prosecution was barred by the double jeopardy clause contained in the Fifth Amendment of the U.S. Constitution.

The Court found that the tribes retain criminal jurisdiction unless it is "withdrawn by treaty or statute, or by implication as a necessary result of their dependent status...."<sup>31</sup> Because the Navajo Nation's criminal jurisdiction over its tribal members was never divested, it retained its criminal jurisdiction. A subsequent federal prosecution was not double jeopardy because Wheeler's first prosecution was by a sovereign separate from the United States.<sup>32</sup> This case settled the double jeopardy issue regarding Indians tried in tribal court and then prosecuted in federal court for acts arising out of the same offense. But what if the Indian involved is not a member of the tribe prosecuting him?

In *United States v. Weaselhead*,<sup>33</sup> the Eighth Circuit Court of Appeals held that Public Law 102-137 allowed tribes to retain criminal jurisdiction over all Indians on their reservations, whether enrolled members of the prosecuting tribe or not. Therefore, because these two sovereigns, the tribe and the federal government, are prosecuting on the basis of their own inherent sovereignty, double jeopardy is not violated by dual prosecutions.

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## Extradition

Extradition is “the surrender by one nation or state to another of an individual accused or convicted of an offense committed within the territorial jurisdiction of the latter authority, which, being competent to try and to punish the offender, demands his surrender.”<sup>34</sup> Extradition between separate sovereigns is normally established by treaty. If no extradition treaty exists between nations, no legal duty to extradite exists. Extradition between states is governed by the Extradition Clause of the U.S. Constitution.<sup>35</sup> However, because the U.S. Constitution does not bind Indian tribes, extradition between states and Indian tribes must be facilitated through some other means, either by a treaty agreement with the federal government or an extradition agreement between a state and a tribe.

In *Merrill v. Turtle*,<sup>36</sup> the Navajo tribe refused Oklahoma’s request to extradite Turtle, a Cheyenne Indian, living on the Navajo reservation. The state of Oklahoma asked the state of Arizona to arrest and extradite Turtle. Officers from Arizona entered onto the Navajo reservation and arrested Turtle. The Ninth Circuit Court of Appeals decided that the state of Arizona had no authority to arrest Turtle on the Navajo reservation on behalf of the state of Oklahoma. In reaching its decision, the court relied on the Navajo Treaty of 1868, which provided for extradition between the tribe and the federal government. The court also relied on a 1956 Navajo resolution containing extradition procedures that only provided for extradition to Arizona, New

Mexico, and Utah. The court viewed federal approval of this resolution as evidence that the tribe was exercising its own inherent extradition authority. The court further found that the state of Arizona could not assume the tribe’s extradition authority. The Turtle case was followed by a New Mexico Supreme Court case, *Benally v. Marcum*,<sup>37</sup> which held that an arrest by a nontribal officer of a tribe member on a reservation was invalid because it did not comport with the extradition requirements of the Navajo code.



Some subsequent cases have not been as supportive of tribal extradition requirements. For example, in *Davis v. Mueller*,<sup>38</sup> Davis was an enrolled member of the Turtle Mountain Band of Chippewa Indians living and working on the reservation at the time of his arrest. The Turtle Mountain Tribe had an extradition clause in its tribal code. With the cooperation of the tribal police, county sheriff officers questioned and arrested Davis on the

reservation for an alleged offense occurring both on and off the reservation. Davis refused to waive his extradition rights and requested a hearing before a tribal judge. When the officers were informed that no judge would be available that day, they took Davis into custody and placed him in the county jail, despite the officers’ knowledge that such an action was a violation of the Turtle Mountain extradition ordinance. Davis filed his objections with the state supreme court and sought a writ of habeas corpus from the federal courts.

The U.S. Court of Appeals for the Eighth Circuit balanced the importance of tribal sovereignty against the harm caused to Davis by the illegal arrest and refused to divest the state courts of jurisdiction or grant habeas corpus. The court acknowledged the duty of federal courts to protect tribal sovereignty from state interference and that the sheriff’s officers’ refusal to follow extradition procedures interfered with tribal judicial authority. However, the court decided that the circumstances of the illegal arrest did not rise to a level that would violate the Due Process Clause. The court used the Fourteenth Amendment standard because it was judging the actions of state officers, not tribal officers. The court also held that the state had not acted in bad faith.

In both *Benally* and *Mueller*, the tribes had enacted valid extradition laws. The reviewing courts agreed that the tribal members had been illegally arrested due to the states’ failure to comply with the requirements of the tribal extradition procedures. The courts made

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their decisions after an analysis of the harm suffered by the defendant, the egregious disregard of the extradition procedure, the prejudice to the defendant in having to endure state trial and appeals, and the overall interference with tribal rights of self-government. Based on these factors, the courts decided whether exclusion of evidence was a sufficient sanction against the state, or whether the release of the defendant pending the state's compliance with the extradition laws was required.

It is generally preferable to follow tribal extradition procedures to avoid possible legal consequences and to foster good working relationships with tribal governments. However, not all tribes have extradition procedures. For example, in *State v. Spotted Horse*,<sup>39</sup> the Supreme Court of South Dakota reviewed the arrest of Spotted Horse on the Standing Rock Sioux Reservation by a city police officer for an offense committed off the reservation. The court noted that the tribe had no provision for extradition in its code. Therefore, the court found no interference with tribal self-government, holding instead that the state seizure of a tribe member on a reservation was an allowable remedy.

### **The Sixth Amendment Right to Counsel**

Indian tribal sovereignty and the Sixth Amendment right to counsel clause of the U.S. Constitution recently has become an issue. The Sixth Amendment right to counsel attaches when formal charges have been filed or when adversarial

judicial proceedings have been initiated.<sup>40</sup> This right to counsel is crime specific—meaning that it applies only to the crime to which the individual has been formally charged.<sup>41</sup> Where a state and the federal government, two separate sovereigns, intend to prosecute an individual for crimes arising from the same nucleus of facts, the Sixth Amendment protection afforded the individual formally charged by one sovereign does not necessarily bind the other sovereign who has yet to formally charge the individual.<sup>42</sup> Indian tribes are not only separate sovereigns but also are not bound

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**...states may execute state search warrants on Indian reservations, providing there are no tribal code procedures in place regarding the execution of state search warrants.**  
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by the limitations of the U.S. Constitution. Does the invocation of the right to counsel in tribal court bind the other sovereign? This issue was addressed by the Sixth Circuit of the U.S. Court of Appeals in *United States v. Doherty*.<sup>43</sup>

Doherty, a member of the Hannahville Indian Community Tribal Reservation in the Upper Peninsula of Michigan, appealed his conviction of two federal counts

of knowingly engaging in sexual acts with a child. Prior to the initiation of any federal charges, federal agents had interrogated Doherty while he was incarcerated pending further tribal proceedings. Doherty waived his Fifth Amendment rights and voluntarily gave a signed statement to the federal agents. Doherty argued that the introduction of his confession into evidence in federal court violated his Sixth Amendment right to counsel because he had already been arraigned for a statutory rape misdemeanor tribal charge, arising from the same facts as the federal charges, and had requested an attorney at his own expense in accordance with the ICRA.

The Sixth Circuit held that the ICRA, not the Sixth Amendment, was the basis of Doherty's right to counsel in the tribal proceedings. The ICRA created a body of substantive rights for Indians molded in part on the Bill of Rights to protect Indians against excessive tribal authority. The ICRA, however, is not coextensive with the Sixth Amendment. The court stated that the existence of the attorney-client relationship between Doherty and his tribal court counsel did not arise from the Sixth Amendment. The court further advised that Doherty's invocation of the right to counsel in tribal court does not independently trigger the Sixth Amendment right to counsel because only the initiation of federal adversarial proceedings triggers Sixth Amendment protections. Prior to the initiation of federal proceedings Doherty had no Sixth Amendment right to counsel. The court held that Doherty's confession was properly admitted into

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evidence, not because federal agents were unconstrained by the Sixth Amendment, but because Doherty's Sixth Amendment right to counsel had not yet matured.

It should be stressed that state and federal officials owe Native Americans the protections defined in the Bill of Rights. Native Americans are citizens of the United States and the rule that tribal governments are not constrained by the limitations of the Bill of Rights and the Fourteenth Amendment "of course, does not relieve State and Federal governments of their obligations to individual Indians under these provisions."<sup>44</sup> However, if certain protections, such as the Sixth Amendment right to counsel, have not been triggered, then they are not applicable and can be disregarded until they are appropriately triggered and become applicable.

### STATE SEARCH WARRANTS

In *Kaul v. Stephan*,<sup>45</sup> the U.S. Court of Appeals for the Tenth Circuit held that the state of Kansas had jurisdiction to execute search warrants on reservations within its boundaries. It was a proper exercise of the state's authority pursuant to a specific Congressional delegation of jurisdiction over crimes committed by or against Indians on Indian reservations in the state of Kansas. The U.S. Supreme Court has not addressed the issue whether a state, lacking such a Congressional delegation, has jurisdiction to issue a warrant for a search within Indian country. However, the Court has stated that "even on reservations, state laws may be applied unless such application would interfere

with reservation self-government or would impair a right granted or reserved by federal law."<sup>46</sup>

The Idaho Supreme Court used the Court's two-part analysis in reaching its decision in *Idaho v. Mathews*.<sup>47</sup> Mathews, a Nez Perce Indian, was accused of murdering his estranged wife in Lewiston, Idaho. Mathews was living within the Nez Perce Indian Reservation at the time of the murder. A Lewiston police officer applied for and received two state search warrants, one for the home of Mathews and the other for the home of a relative of Mathews, both located within the Nez Perce Indian Reservation.



Mathews was later convicted of the murder and appealed the validity of the state warrants executed in Indian country.

The Idaho Supreme Court, using the Supreme Courts' two-prong test, first examined the question of whether the execution of a state search warrant within the Nez Perce Indian reservation unlawfully infringed on tribal sovereignty. The court found that tribal sovereignty

was not infringed because there was no Nez Perce tribal code establishing a procedure regulating the execution of state search warrants in cases involving Indians who had committed crimes outside of the reservation. Consequently, the execution of state search warrants within the reservation did not infringe on the right of the Nez Perce Tribe to govern itself.

The court then turned to the second prong of the analysis, requiring a determination of whether the state action is preempted by federal law. The court found that there was no federal law regarding the execution of state search warrants on Indian reservations. Therefore, the court held, in the absence of an established tribal procedure, the state court's issuance and execution of a search warrant for a search within the Nez Perce Indian Reservation neither unlawfully undermines the tribe's self-governance nor conflicts with federal law. Mathew's motion to suppress was denied.

Although the U.S. Supreme Court has not decided this issue, it appears that states may execute state search warrants on Indian reservations, providing there are no tribal code procedures in place regarding the execution of state search warrants. If a tribe has established such a procedure, states should follow the procedure.

### CONCLUSION

Indian tribal sovereignty has a significant impact on criminal jurisdiction and procedure, both in and out of Indian country. The impact is significant because there are three

distinct sovereigns, state, federal, and tribal, interacting with one another in what is best described as a patchwork of criminal jurisdiction. Each sovereign enjoys exclusive, partial, or no jurisdiction, depending on the location of the offense, the particular crime alleged, and the ethnicity of the parties involved. To determine which sovereign or sovereigns have jurisdiction, officers working in Indian country should assess situations they may encounter by asking the following questions:

- 1) Did the crime occur on or off Indian country?
- 2) If on, does a federal statute such as Public Law 280 confer exclusive criminal jurisdiction to a state?
- 3) If not, is the victim Indian or non-Indian?
- 4) Is the suspect Indian or non-Indian?
- 5) Is the crime a misdemeanor or a felony?
- 6) Is there a tribal code provision regarding extradition or state warrant execution?
- 7) Has something occurred to trigger Constitutional rights of the accused?

Due to the difficulty of determining criminal jurisdiction and procedure in Indian country, each situation must be judged individually, and investigators are urged to consult their legal advisors. However, by asking the above questions officers can begin to determine criminal jurisdiction and procedure in Indian country. ♦

#### Endnotes

- <sup>1</sup> 30 U.S.C. § 1 (1831).
- <sup>2</sup> 31 U.S.C. § 575 (1832).
- <sup>3</sup> U.S. Const. Art. III, Sec. 2.
- <sup>4</sup> *Id.* at 17.
- <sup>5</sup> *Ibid* 2 at 575.
- <sup>6</sup> *Ibid* 1 at 17.
- <sup>7</sup> See *United States v. Kagama*, 118 U.S. 375 (1886).
- <sup>8</sup> *Lone Wolf v. Hitchcock*, 187 U.S. 553 at 566 (1903).
- <sup>9</sup> Title 18 U.S.C.A. § 1152.
- <sup>10</sup> *Id.*
- <sup>11</sup> 241 U.S. 602 (1916).
- <sup>12</sup> Title 18 U.S.C.A. § 13.
- <sup>13</sup> *Id.*
- <sup>14</sup> 104 U.S. 621 (1881).

**“  
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”**

- <sup>15</sup> See also *Draper v. United States*, 164 U.S. 240 (1896).
- <sup>16</sup> *Ex Parte Crow Dog*, 109 U.S. 556 (1883).
- <sup>17</sup> *Id.* at 572.
- <sup>18</sup> Title 18 U.S.C.A. § 1153.
- <sup>19</sup> *United States v. Henry*, 432 F.2d 114 (9th Cir. 1970), modified 434 F.2d 1283, *cert. denied* 400 U.S. 1011 (1971).
- <sup>20</sup> 435 U.S. 191 (1978).
- <sup>21</sup> 110 S. Ct. 2053 (1990).
- <sup>22</sup> Title 25 U.S.C. § 1301(2), (4).
- <sup>23</sup> Title 18 U.S.C.A. § 1162.
- <sup>24</sup> 163 U.S. 196 (1896).
- <sup>25</sup> Title 25 U.S.C.A. § 1301 et seq.
- <sup>26</sup> *Id.* (as amended in 1986).
- <sup>27</sup> U.S. Const. Amend. V.

<sup>28</sup> Title 25 U.S.C. § 1302 (3).

<sup>29</sup> *United States v. Lanza*, 260 U.S. 377 (1922). (The Dual Sovereignty Doctrine arose out of a prohibition era case where the state of Washington charged the defendants with manufacturing intoxicating liquor. After the state case was concluded, the U.S. Attorney brought charges.)

<sup>30</sup> 435 U.S. 313 (1978).

<sup>31</sup> *Id.* at 323.

<sup>32</sup> See *Settler v. Yakima Tribal Court*, 419 F.2d 486 (9th Cir. 1969), *cert. denied*, 398 U.S. 903 (1970). (The Fifth Amendment can be invoked if a link is established between the federal government and a tribe that would impair tribal sovereignty, such as a federal government imposed tribal court that is under some federal control.)

<sup>33</sup> 156 F.3d 818 (8th Cir., 1998) reh'g granted and opinion vacated, 156 F.3d 818 on reh'g 165 F.3d 1209 (8th Cir. 1999) (en blanc) aff'd by an equally divided court 36 F.Supp.2d 908 (Neb. D.C. 1997) *cert. denied* 120 S. Ct. 82 (1999).

<sup>34</sup> 31A Am. Jur. 2d Extradition § 1 (1989).

<sup>35</sup> U.S. Const. Art. IV, § 2, cl. 2.

<sup>36</sup> 413 F.2d 683 (9th Cir. 1969), *cert. denied*, 396 U.S. 1003 (1970).

<sup>37</sup> 553 P.2d 1270 (N.M. 1976).

<sup>38</sup> 643 F.2d 521 (8th Cir., 1981), *cert. denied*, 454 U.S. 892 (1981).

<sup>39</sup> 462 N.W. 2d 463 (S.D. 1990).

<sup>40</sup> *Massiah v. United States*, 377 U.S. 201 (1964).

<sup>41</sup> *Hoffa v. United States*, 385 U.S. 293 (1966). See also *Texas v. Cobb*, \_\_\_ S. Ct. \_\_\_ (2001).

<sup>42</sup> *United States v. Garey*, 813 F.Supp. 1069 (U.S.D.C. Vermont 1993) aff'd by 19 F.3d 8 (2nd Cir. 1994). See also *Texas v. Cobb*, \_\_\_ S. Ct. \_\_\_ (2001).

<sup>43</sup> 126 F.3d 769 (1998).

<sup>44</sup> *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 at 56 (1978).

<sup>45</sup> 83 F.3d 1208 (10th Cir., 1996).

<sup>46</sup> *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 at 148 (1973).

<sup>47</sup> 986 P.2d 323 (1999).

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

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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.

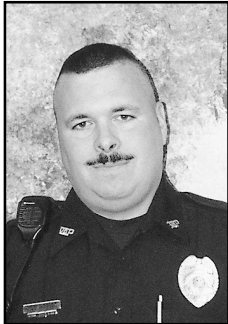


*Sergeant Woods*



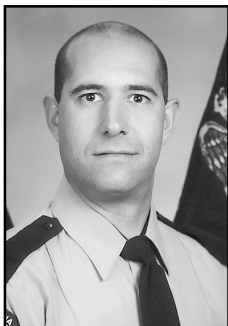
*Deputy Brown*

During the early morning hours, Michigan State Troopers pursued a stolen vehicle into Kalkaska County, Michigan. The stolen vehicle careened out of control and struck a cement post and caught fire. Sergeant Vencent Woods and Deputy Steven Brown of the Kalkaska Sheriff's office forced their way into the burning vehicle and pulled the two suspects to safety. Their quick action and disregard for their own safety saved the lives of the two individuals.



*Officer Hughes*

Off-duty Department of Veterans Affairs Police Officer Kyle Hughes was visiting the local YMCA swimming pool with his family in Grand Island, Nebraska. While there, he observed an 11-year-old girl learning to swim with the assistance of her 12-year-old friend. As the two reached the deep end of the pool, the young girl began to panic and began to pull her friend under the water in her struggle for survival. The 12-year-old managed to break free and swim to the edge of the pool, while the young girl sank to the bottom. Office Hughes realized the young girl was in trouble and quickly dove into the pool, pulled the girl to safety, administered first aid, and ensured her well being. Officer Hughes' selfless actions saved the life of this youngster.



*Trooper Marasco*

Trooper James J. Marasco, Jr., of the Pennsylvania State Police was on patrol in the early morning hours when a passing motorist notified him of a row house fire. Upon arriving on the scene, Trooper Marasco found the residence engulfed in flames and the surrounding row homes in imminent danger. Trooper Marasco attempted to enter the burning building but was driven back by the searing heat and flames. Realizing the residents in the other homes were in danger and could perish, Trooper Marasco went door-to-door to evacuate the residents and ensure their safety.

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## ***Patch Call***



The patch of the Sargent County, North Dakota, Sheriff's Department depicts a map of the state of North Dakota in the background of a five-point star badge with the state seal in the middle. The red square on the map shows the location of Sargent County.



Each symbol and color in the Rhode Island State Crime Laboratory seal has a special significance. The light blue color represents the official color of the University of Rhode Island, the circles of rope indicate the nautical ties of the ocean state and illustrate the continuous strength of the laboratory, and the official state seal represents the dedication of the laboratory and its employees to the people of Rhode Island.