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Director

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The Law Enforcement Intelligence Function

State, Local, and Tribal Agencies

By DAVID L. CARTER, Ph.D.

Law enforcement intelligence has changed dramatically since the terrorist attacks of September 11, 2001. Fueled by the need for more widespread information sharing and a higher quality of intelligence for counterterrorism, these reforms also have helped law enforcement agencies investigate criminal enterprises and prevent crimes of all types.

With the development of the intelligence-led policing (ILP) philosophy and its operationalization through the National Criminal Intelligence

Sharing Plan (NCISP), state, local, and tribal law enforcement organizations have begun to revisit their roles in intelligence processes. Agencies that have intelligence units should reexamine their operating policies and guidelines to ensure consistency with national standards, contemporary laws, and current acceptable practices. Those without such units need to develop some type of intelligence capacity, even if it consists of only one person trained to understand the language, processes, and products available. This individual can

serve as the department's intelligence contact point, as well as the conduit to disseminate information to those who need it.

The foundation of developing an intelligence capacity rests on understanding its role in the overall mission of the organization. ILP serves as the contemporary model for this function.¹ Emerging as a concept following an International Association of Chiefs of Police (IACP) summit on intelligence and information sharing, ILP seeks to provide guidance on operational activities based on



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empirical evidence objectively assessed and analyzed.²

As the community policing philosophy evolved by embracing problem solving and, most recently, Compstat, it became clear that law enforcement agencies could effectively manage crime and disorder in their communities by basing their operations on an analysis of empirically collected data on trends of concern.³ While analysis (including Compstat) tends to concentrate on street crimes and burglaries within a jurisdiction, ILP focuses on complex, multijurisdictional crime and terrorism. Like community policing, ILP is proactive, giving operational guidance and, hence, using resources more efficiently and effectively. Importantly, ILP provides philosophical integration of intelligence activities within law enforcement operations,

rather than being an undefined tangential activity as was too often the case in the past.

Of course, any concept must be translated to practice to have an effect. As a result, the NCISP serves as a blueprint for administrators to promote intelligence sharing while, at the same time, protecting citizens' constitutional rights. The plan establishes standards for maintaining records, training personnel, developing information-sharing partnerships, and generally enhancing the ability of the law enforcement community to prevent terrorism and organized crime through a robust intelligence capacity.

The emergence of ILP and the NCISP significantly enhanced the law enforcement intelligence function. The challenge now centers on implementing these initiatives in America's law enforcement

agencies, addressing the concerns expressed by citizens on matters of privacy and the expression of free speech, and accomplishing these objectives in a relatively short time frame.

PURPOSE SERVED

In the purest sense, intelligence is the product of an analytic process that evaluates information collected from diverse sources, integrates the relevant data into a cohesive package, and produces a conclusion or estimate about a criminal phenomenon by using the scientific approach to problem solving (i.e., analysis). Thus, intelligence, a synergistic product, can provide meaningful and trustworthy direction to law enforcement decision makers about complex unlawful activities, including criminal enterprises and extremists, as well as terrorists.

Essentially, an intelligence function within a law enforcement organization serves two broad purposes. The first involves prevention (tactical intelligence). This includes gaining or developing information related to threats of terrorism or crime and using this information to apprehend offenders, harden targets, or employ strategies that will eliminate or mitigate the threat. The second purpose covers planning and resource allocation (strategic intelligence). The

intelligence function provides information to decision makers about the changing nature, characteristics, and methodologies of threats, as well as emerging threat idiosyncrasies, so they can develop response strategies and reallocate resources as necessary to accomplish effective prevention.

While investigation clearly constitutes part of the information collection process, the intelligence function often is more exploratory and broadly focused than a criminal investigation, per se.⁴ For example, a law enforcement department may reasonably suspect that a person or group has the intent, capacity, and resolve to commit a crime or terrorist act. However, evidence may fall short of the probable cause standard, even concerning an arrest for criminal attempt or conspiracy. Moreover, a compelling community safety reason may exist for keeping an inquiry open to identify other criminal offenders, notably leaders, and weapons that they may use.

Because of this broader role, as well as the need to keep information secure and to maintain records on individuals where evidence of criminal involvement is uncertain or tangential, law enforcement agencies must abide by rigid guidelines that protect the constitutional rights of citizens while, at the same time,

permitting inquiries to proceed for purposes of community safety.⁵ These guidelines also facilitate accurate and secure information sharing because the nature of terrorism and criminal enterprise threats are inherently multijurisdictional. Further, if law enforcement organizations at all strata of government subscribe to the same guidelines, they can increase information sharing because they know that the security and integrity of the records will remain intact.

“Agencies must establish policies with respect to what types of data they will impart and to whom.”

ACCOUNTABILITY FACTOR

Law enforcement agencies must consider many factors in the development of an intelligence function; however, a number of contemporary issues rank as the “first among equals” in today’s environment. Part of the reason lies in a well-publicized history of past abuses of information collection and record keeping. As a result, various watchdog groups and

members of the public have begun to scrutinize law enforcement intelligence operations. Moreover, modern police managers insist on careful accountability in the intelligence function because of the responsibility to uphold citizens’ rights, as well as to reduce exposure to liability.

Criminal Predicate

Lessons learned from a legacy of lawsuits against intelligence units dating back to the 1960s clearly demonstrate that departments cannot collect information about individuals and store it in an intelligence records system unless a criminal predicate exists. This often proves more difficult than it may appear. Individuals who support an unpopular cause, have radical beliefs, or express an ideology that undermines America’s founding principles may be distasteful, but these actions fall within their constitutionally protected rights. As such, agencies may not keep intelligence records on them, even ones personally held by unit employees, unless a reasonable suspicion documented in the records system demonstrates that the individuals are involved in criminal activity.

Policies and Procedures

To ensure that intelligence files meet constitutional standards, law enforcement

organizations must establish policies and procedures concerning the collection, assessment, storage, dissemination, and purging of criminal intelligence records. Agencies that receive federal funding for a multijurisdictional intelligence records system must adhere to the federal regulation 28 CFR Part 23, which establishes guidelines for submitting and entering data, securing the system, accessing the system for inquiries, disseminating information, reviewing records, and purging data. While the regulation exempts single-agency and nonfederally funded systems, adhering to the standard remains a sound practice, especially as an affirmative defense in a liability lawsuit related to records keeping.⁶

Collection Issues

Permeating both the criminal predicate and records system concerns is the collection and retention of information about people protesting issues in support of positions viewed as extreme that conceivably may result in violence, criminal disorder, or property damage.⁷ In such cases, the existence of a criminal predicate often is unclear. It proves difficult, if not impossible, to determine when members of a demonstration may continue a vocal, yet lawful, protest versus those who commit a criminal

act, sometimes out of spontaneity. Often more problematic—for political, rather than legal, reasons—is an undercover officer’s attendance at an open planning meeting of a protest group to identify participants and assess the probability of unlawful actions.

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On one hand, collecting information on people in situations where criminal activity is only a possibility may violate their civil rights if no crime occurs and the records remain on file. Conversely, not gathering it may be negligent should community security become compromised if violence or property damage emerges from the event.

Departments should collect information that relates to establishing a criminal predicate, identifying and apprehending criminal law violators, gathering evidence and witnesses to support prosecution,

and ensuring that community safety is not compromised. Information about demonstrators may include—

- personal data of each member (e.g., name, age, sex, race, ethnicity, and residence);
- group organization (Is there a parent or national group? How formal is the structure? What are the rules of the organization? What does the organization condone and condemn with respect to demonstrations?);
- the basis of their ideology and what it teaches them;
- their goals and what they want to accomplish, including changes to policy or law, making their cause known, disruption of society, or destruction of enemies;
- their protest style, such as their history, stated plans, and inferences from their informal network; and
- their mood, which can help determine community safety (Are they making or posing threats?).

To best accomplish these goals, law enforcement organizations should have clear procedures and training in place to deal with these issues. The following recommendations are perhaps the most restrictive approach to information collection under these circumstances;

however, they nonetheless present an avenue to afford both the strictest protection of citizens' rights and the greatest precaution against liability.

- Agencies should have written guidelines and training on specific provisions of substantive law, including elements of the offenses, which may arise from a protest or demonstration.
- They should instruct their personnel to make detailed documentation of observations and actions that support the elements of offenses and to exclude First Amendment expressions and noncriminal statements.
- Supervisors should approve an information collection plan, including each incident wherein meetings are monitored, and review and approve reports. They should purge information that does not support the elements of the offenses or aid as evidence.
- Collection methods should use the least intrusive means available.
- Personnel should purge photographs and video recordings not evidentiary in nature nor supportive of a criminal investigation.
- If a surveillance is based, in part, on the fact that affiliate groups or persons within the group have committed

criminal law violations in the past while participating in similar situations, these records should include appropriate documentation.

- The records should fully articulate any compelling community safety issues.



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REQUIREMENTS AND PRODUCTS

Law enforcement departments should focus on what they do not know. "The absence of evidence is not the absence of a threat."⁸ Agencies define intelligence requirements to gain these new insights. If they develop new intelligence, they must transmit it in a consumable form to permit personnel—from the executive to the street officer—to make the best decisions about how to deal with the threats.

Intelligence Requirements

In essence, an intelligence requirement seeks to fill a gap

with the missing information that a decision maker needs.⁹ Defining a requirement is not necessarily an easy process. It involves detecting the potential threats (terrorist or criminal) within the jurisdiction and determining their veracity, as well as identifying potential targets in the area and assessing their vulnerability. Throughout this process, occasions will arise when departments have insufficient information to make judgments, thereby encountering an intelligence requirement. Threats will change over time, obligating agencies to make this process consistent. While the effort may appear laborious, it nonetheless provides the best use of resources because it focuses on true needs, not random or nonessential information.

Law enforcement organizations must report requirements in an easily understood manner that specifically addresses the need they fulfill. Hence, in the planning process, an intelligence unit should define its products, a series of regularly prepared intelligence reports that have a specific format and convey an intended message.

Intelligence Products

To accomplish its goals, the unit should place intelligence and critical information in a format that maximizes the consumption and use of the knowledge. The report should

Comparing Compstat and Intelligence-Led Policing

| Compstat | Commonalities | Intelligence-Led Policing |
|---|--|--|
| <ul style="list-style-type: none"> • Single jurisdiction • Incident driven • Street crime and burglary • Crime mapping • Time sensitive (24-hour feedback and response) • Disrupt crime series (e.g., burglary ring) • Drives operations <ul style="list-style-type: none"> • Patrol • Tactical unit • Investigators • Analysis of offender MOs | <ul style="list-style-type: none"> • Each has a goal of prevention • Each requires <ul style="list-style-type: none"> • Organizational flexibility • Consistent information input • A significant analytic component • Bottom-up driven with respect to operational needs | <ul style="list-style-type: none"> • Multijurisdiction • Threat driven • Criminal enterprises and terrorism • Commodity flow; trafficking and transiting logistics • Strategic • Disrupt enterprises • Drives operations <ul style="list-style-type: none"> • JTTF • Organized crime investigations • Task forces • Analysis of enterprise MOs |

Note: Correlated goals and methodologies make both concepts complement each other.

identify the targeted consumer (e.g., patrol officers, administrators, or task force members), clearly convey the critical information, identify time parameters wherein the intelligence is actionable, and provide recommendations for follow-up.¹⁰

Intelligence products prove most useful when each has a specific purpose; follows a consistent, clear, and aesthetic format; and contains all of the critical information that the consumer needs without

superfluous details. The types of products will vary by the character of the department (e.g., state/local, urban/rural, or large/small), as well as the collection and analytic capacity of unit personnel. As a general rule, agencies may need only three specific reports: 1) those that aid in the investigation and apprehension of offenders; 2) ones that provide threat advisories to harden targets; and 3) those that assist with planning and resource allocation.

Without fixed, identifiable intelligence products, departments will waste efforts and share information ineffectively.

Operational Intelligence

This information often places law enforcement organizations in a controversial position. For purposes of community safety, agencies need to maintain information on some people and organizations for two reasons: 1) their potential to commit crimes and 2) their

existence as bona fide threats, although the parameters often prove difficult to specify. Departments monitor and record actions and affiliations of these individuals to help prevent future crimes or to build a criminal case later. Inherently problematic is the idea of a future offense. What is the rationale for keeping information on a person or group who has not committed a crime, but might? Essentially, if a compelling interest for community safety exists, law enforcement administrators can make an effective argument to maintain records on individuals who threaten that safety as long as they can present reasonable justification to show a relationship to criminality.

In this type of intelligence, a unit creates no product, per se, but, instead, develops regularly prepared and disseminated operational records on people and groups who pose threats.¹¹ Departments must maintain an important, yet difficult, balance: ensuring that no violation of constitutional rights occurred during the course of the process while, at the same time, compiling a resource of credible information for legitimate law enforcement purposes.

DISSEMINATION PROCESS

Obviously, dissemination represents the heart of information sharing. Agencies must

establish policies with respect to what types of data they will impart and to whom. Critical to appropriate dissemination is understanding which persons have the right and the need to know, both within the agency and externally. In some cases, the occasion may arise for multiple versions of one product. For example, a non-sensitive public edition of a report could advise citizens of possible threats, whereas another would provide more details to law enforcement personnel.

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With dissemination of sensitive material, a department should impose the third-agency rule, which means that any recipient of intelligence cannot share the information with another organization. This affords some degree of control and accountability, yet allows the originating department to waive the rule when appropriate.

Clearly, electronic networking provides the most efficient way to share information. With availability of secure e-mail systems, as well as Intranets in growing numbers of agencies, dissemination has become faster and easier. The caveat, however, is to ensure that the intelligence products contain essential information and reach the correct consumer. If reports deluge law enforcement officers, the overload will have the same outcome as not sharing information at all. That is, if officers delete intelligence products without reading them, then the effect becomes the same as not disseminating them in the first place.

STANDARDS AND INITIATIVES

To create the most professional and effective intelligence function, law enforcement executives should consider adopting a number of standards and initiatives. While most are not required, they nonetheless contribute to the efficacy of intelligence operations while concomitantly protecting civil rights and reducing liability.

- The philosophy of intelligence-led policing¹²
- The tenets and standards of the Global Justice Information Sharing Initiative¹³
- The standards of the National Criminal Intelligence Sharing Plan¹⁴

- The guidelines for information and intelligence sharing of the Office of Domestic Preparedness Guidelines for Homeland Security¹⁵
- The guidelines of the Commission on Accreditation for Law Enforcement Agencies (CALEA) Standard 51.1.1 Criminal Intelligence¹⁶
- The provisions of the International Association of Chiefs of Police (IACP) Model Criminal Intelligence Policy¹⁷
- The standards of the Law Enforcement Intelligence Bureau (LEIU) Criminal Intelligence File Guidelines¹⁸
- The IACP Code of Ethics¹⁹ or an agency-developed articulated code of ethics
- The IACP Code of Conduct²⁰ or an agency-created articulated code of conduct
- An agency-produced articulated statement of values²¹
- The regulations of 28 CFR Part 23 for its criminal intelligence records system²²
- The tenets of the Justice Information Privacy Guidelines²³
- The tenets for information system security defined in the Applying Security Practices to Justice Information Sharing Report²⁴

- Defined activities designed exclusively to prevent and control crime with no political, religious, or doctrinal purpose

An intelligence unit does not need to incorporate all of these factors verbatim. Rather, adherence to the spirit of the standards as an overarching philosophy that is operationalized via policy and procedures in a manner consistent with local law will suffice.

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CONCLUSION

The terrorist attacks of September 11, 2001, brought the intelligence function of the law enforcement community to the forefront. Increased awareness of the need for compiling essential information on those who threaten the safety of all Americans has changed the profession's role from solely fighting crime and disorder to include combating terrorism.

Officials responsible for any aspect of law enforcement operations must understand current intelligence initiatives as they become part of the fabric of the overall security of this country. Recognizing the importance of a robust intelligence capacity can help agencies work together to share information and fulfill their mission as society's protectors. ♦

Endnotes

¹ <http://www.theiacp.org/documents/pdfs/Publications/intelsharingreport%20.pdf>

² http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=137&issue_id=112003

³ Jon Shane, "Compstat Process," *FBI Law Enforcement Bulletin*, April 2004, 12-21; "Compstat Design," *FBI Law Enforcement Bulletin*, May 2004, 12-19; and "Compstat Implementation," *FBI Law Enforcement Bulletin*, June 2004, 13-21.

⁴ In the context of law enforcement intelligence, investigation is the pursuit of data based on leads and evidence associated with a particularly defined act to identify and apprehend offenders for prosecution. Information collection is the capture of data based on a reasonable suspicion of criminal involvement for use in developing cases, identifying crime trends, and protecting the community by means of intervention, apprehension, or target hardening.

⁵ This includes information in an intelligence temporary file, as well as noncriminal identifying information as defined in 28 CFR Part 23.

⁶ The *File Guidelines* prepared by the Law Enforcement Intelligence Unit (LEIU) may provide the best model for translating this regulation to policy and procedures. The provisions of this model have

²⁴ <http://it.ojp.gov/documents/asp/>

Book Review

Police Traffic Stops and Racial Profiling by James T. O'Riley, Charles C. Thomas, Publisher, Springfield, Illinois, 2002.

In *Police Traffic Stops and Racial Profiling*, the author provides a unique and comprehensive review of the literature, yet distills his research so that the critical information needed can be of great value to law enforcement organizations. The book's broad definition of racial profiling includes any actions "based upon racial or ethnic stereotypes and that have the effect of treating minority motorists differently than nonminority motorists."

Much of this interesting and well-researched text deals with departmentwide enforcement on civil rights laws under U.S. Code 42, Section 14141, along with some drastic consequences for law enforcement administrators should such a decree be levied. In-depth, the author dissects the consent decree section and its application to the New Jersey State Police experience.

An outstanding book, it presents reviews on the evolution of traffic stops versus constitutional decisions by the U.S. Supreme Court through the more recent decades. It also addresses both sides of the issues, including what the critics have to say about the concerns of racial profiling.

The book contains six critical steps proposed for law enforcement administrators to use in not violating racial profiling during traffic stops. These are supported by 20 outlined areas that can impact departmental budgets if law enforcement agencies are affected by an imposed consent decree.

The book design, in its distilled concept, addresses the core of issues and their responses with appropriate endnotes listed at the

conclusion of each chapter. This allows the reader an easy and quick review of specific references and comments to the chapter.

This book covers the necessary information for all law enforcement agencies at each level—city, county, state, and federal—that may need to address the ramifications of traffic stops and racial profiling. A major strong point about the book is a 38-page appendix, designed in an outline format. It commences with the first 5 pages of the New Jersey official joint application consent decree followed by 33 pages of the New Jersey decree concerning the state police, a crucial guide for other law enforcement administrators, managers, and first-line supervisors.

In addition, the applicability of this book includes, but is not limited to, all law enforcement training academies, in-service training programs, police-civilian review boards, and fraternal orders of police. Furthermore, it is recommended for policy and procedure writers, prosecutors and defense attorneys dealing with racial profiling cases, and applicable members of the U.S. Department of Justice, U.S. Senate and House of Representatives, state attorney general offices, and state legislatures.

Police Traffic Stops and Racial Profiling was a distinct pleasure to read. It is well designed and written in a comparative analysis format that is understandable.

Reviewed by
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U.S. Army Military Police Corps
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Chiefs of Police
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An abstract background image featuring a complex arrangement of interlocking gears in shades of orange, brown, and purple. Overlaid on this mechanical scene are various numbers in a bright green, glowing font. Some numbers are whole, while others are decimal values. The overall effect is one of intricate, interconnected systems, likely representing financial or operational processes.

Activity-Based Budgeting

Creating a Nexus Between Workload and Costs

By JON M. SHANE, M.A.

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At some point in their careers, executives will need to develop a budget. Indeed, this represents a primary responsibility. A budget is merely a plan described in financial terms. Knowing which budget plan to choose, however, depends on what a manager needs to convey. Many budget styles exist, each with a different purpose. For example, the most common government budget, the line-item style, is oriented toward control and

economy and answers the question, What is to be bought? A program budget, directed at planning and effectiveness, responds to the inquiry, What is to be achieved? And, a performance budget, disposed toward management and efficiency, replies to the query, What is to be done?¹ Each has its place depending upon the goal. However, one style, activity-based budgeting, has gained popularity over the last few years because of its ability to link

activities to expenses, giving executives a better understanding of the full costs of service and resource allocation.

Activity-based budgeting is an outgrowth of activity-based costing, similar to zero-based budgeting.² This budget type accounts for how staff members allocate their efforts among activities. After calculating the full cost of each task, managers can establish mechanisms that link support functions to the primary obligations of the

organization—in a law enforcement environment, the main activities are the direct costs of program delivery (e.g., patrol services, investigations, tactical operations, and traffic control).³ By developing a comprehensive activity-based budget, executives can create a clear nexus between workload and costs. Once they develop this, executives and managers can exercise control in several ways by assigning personnel based upon a demonstrated need; expanding or contracting personnel proportionately as the need changes; uncovering waste and hidden costs; viewing which activities are most and least expensive; assessing the full efficiency of the organization; identifying places to cut spending; establishing a cost baseline that may be influenced through process or technology changes that

reduce effort requirements for the activity;⁴ and, perhaps most important, arguing from an informed, objective position in favor of the organization's budget. To illustrate activity-based budgeting, the author presents the activities of a hypothetical police department's patrol force to determine the number of officers required to handle the workload; the cost of salaries, materials, and equipment; and the distribution of time across three primary categories of patrol work: calls for service, administrative duties, and proactive functions.

ACCOUNTABILITY AND POLITICS OF BUDGETING

Accountability

Being entrusted with public monies requires the utmost

integrity and responsibility. In recent years, efforts have begun to make budgets more readable and understandable. Activity-based budgeting is transparent and eliminates hidden costs. This allows a manager to see at a glance the most expensive activities and where to exercise control.

One of the keys to accountability involves the person assigned to handle the budget having real control over the resources that take the form of decision-making authority, information, and skills. After all, managers “cannot be responsible for a budget in which they have no authority to approve expenditures.”⁵

Politics of Budgeting

Appropriations battles are common. In fact, an executive charged with budget implementation and control should expect them from subordinates who look to that person to exercise leadership and to argue on their behalf for what they need to carry out their functions. In preparing for battle, an executive will find it useful to know that “budgets reflect choices about what government will and will not do; budgets reflect priorities—between police and flood control, day care, and road repair; budgets reflect the relative proportion of decisions made for local and constituency purpose and for efficiency and



Captain Shane serves with the Newark, New Jersey, Police Department.

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effectiveness and broader public goals. [Most important], public budgets are not merely technical managerial documents; they also are intrinsically and irreducibly political.”⁶ Because their budgets are politically driven, executives should understand elected leaders’ platforms, often mutually beneficial when seeking funds. The police department must compete with the other elements of city government for limited funds, making it of paramount importance for its leader to prepare a sound budget justification.

SUCCESSFUL STRATEGIES AND JUSTIFICATION

Strategies

Strategies differ from justifications. A strategy is an approach, a careful plan or method, or the art of devising or employing plans toward a goal. A justification means to prove or show to be just, right, or reasonable or to show to have had a sufficient legal reason.⁷ The chief executive’s goal is to retain the agency’s base budget and, if possible, to increase it above the current year’s appropriations. Developing a logical strategy provides the means to that end.

In November 2002, the Police Executive Research Forum (PERF) posted the final

draft of roundtable discussions with several police chiefs from around the country. Among the different budget strategies they considered, using crime and workload data was first on the list.⁸ Earlier research revealed that “increased workload was the second greatest factor contributing to an increase in positions.”⁹ While not infallible,

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Budget strategies and their attendant analysis are important, but justification remains the primary ingredient to the success of the agency’s budget.

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workload data is reasonable and objective. The other strategies discussed by PERF included “capitalize on sensational crime incidents (ideally, not occurring locally), carefully mobilize interest groups, plan strategically, participate fully in the federal grant process, maintain a close working relationship with the local chief executive and governing board members, and involve all levels of the police department.”¹⁰ In addition, aggregate population and

population density; age, sex, race, and ethnic composition; education levels; and per capita and median household income can support a budget proposal.

Justification

Budget strategies and their attendant analysis are important, but justification remains the primary ingredient to the success of the agency’s budget. A solid justification includes all of the relevant information for the legislative body, the budget office, and the city’s chief executive. The department should justify the budget in three separate spending categories: mandatory, base, and discretionary.

Mandatory Expenditures

Federal, state, or local laws govern mandatory expenditures, such as social security, pensions, unemployment contributions, and contractually negotiated benefits. Salaries also may fall into this category, except for those considered discretionary. It is best to justify mandatory budget expenditures by citing the applicable federal, state, and local laws.

Base Expenditures

Essential for the agency’s continued operation, base expenditures include utilities, equipment, supplies and materials, and other consumables. Justification in this category

Figure 1: Principal Modalities (Major Activities)

| Service Demands | Acuity | | | | |
|--|----------------------|----------------------|---|----------------------|--------------------------|
| | Hours Per Unit | Units Per Year | Total Employee Hours Per Modality | Officers Required | Percentage Allocation |
| Murder | 3 | 41 | 246 | 2 | 0.20% |
| Robbery | 1.5 | 2,110 | 6,330 | 2 | 5.15% |
| Burglary | 1 | 1,877 | 3,754 | 2 | 3.05% |
| Court Appearances | 1.5 | 1,234 | 9,255 | 5 | 7.53% |
| Theft (shoplifting and all others) | 0.58 | 6,522 | 7,566 | 2 | 6.15% |
| Arson | 1 | 51 | 102 | 2 | 0.08% |
| Rape | 1.5 | 88 | 264 | 2 | 0.21% |
| Fraud | 0.75 | 211 | 158 | 1 | 0.13% |
| Prostitution | 0.33 | 1,003 | 662 | 2 | 0.54% |
| Gambling Offense | 0.42 | 468 | 197 | 1 | 0.16% |
| Vicious Animal | 0.33 | 214 | 141 | 2 | 0.11% |
| Bomb Threat | 1 | 12 | 24 | 2 | 0.02% |
| Fire (car, house, building) | 1.5 | 123 | 369 | 2 | 0.30% |
| DWI | 1 | 44 | 88 | 2 | 0.07% |
| Emotionally Disturbed Person | 1 | 120 | 240 | 2 | 0.20% |
| Traffic Control | 2 | 2,190 | 13,140 | 3 | 10.69% |
| School Crossing | 2 | 1,080 | 6,480 | 3 | 5.27% |
| MV Pursuit | 0.75 | 81 | 243 | 4 | 0.20% |
| Arrest (average for all types of arrests) | 1.5 | 15,264 | 45,792 | 2 | 37.25% |
| Warrant Service | 0.75 | 73 | 110 | 2 | 0.09% |
| Code Enforcement Violations | 0.33 | 315 | 104 | 1 | 0.08% |
| Juvenile Condition (curfew, truancy, and all others) | 0.75 | 457 | 343 | 1 | 0.28% |
| Street Collapse | 1 | 14 | 28 | 2 | 0.02% |
| Wires Down | 1 | 58 | 58 | 1 | 0.05% |
| Burglar Alarm (residential, commercial) | 0.33 | 2,555 | 1,686 | 2 | 1.37% |
| Suicide | 1.5 | 22 | 66 | 2 | 0.05% |
| Sick/Injured Person | 0.75 | 720 | 540 | 1 | 0.44% |
| Train Accident | 8 | 1 | 48 | 6 | 0.04% |
| Kidnapping | 3 | 11 | 66 | 2 | 0.05% |
| Carjacking | 1 | 77 | 154 | 2 | 0.13% |
| Drug Sales | 0.3 | 5,041 | 3,025 | 2 | 2.46% |
| Assault (shooting, stabbing, blunt force) | 0.75 | 1,000 | 1,500 | 2 | 1.22% |
| Stolen Vehicle Report | 0.75 | 2,645 | 1,984 | 1 | 1.61% |
| Assist Officer (back up) | 0.25 | 152 | 76 | 2 | 0.06% |
| Directed Patrol Activities | 0.33 | 5,475 | 3,614 | 2 | 2.94% |
| Shots Fired | 0.33 | 730 | 482 | 2 | 0.39% |
| Domestic Violence | 1.25 | 3,255 | 8,138 | 2 | 6.62% |
| Motor Vehicle Accident (with or without injuries) | 1 | 1,825 | 3,650 | 2 | 2.97% |
| Disorderly Conduct (fight, loud music, noisy crowds) | 0.3 | 2,555 | 1,533 | 2 | 1.25% |
| Man with a Gun | 0.42 | 401 | 674 | 4 | 0.55% |
| Total | | 60,115 | 122,927 | | 100.00% |

comes from analyzing previous budgets and projections for service delivery. The executive must be prepared to explain increases in operating expenditures, such as developing a special task force to address a spike in drug crime. Budget review members always welcome workload and performance-improvement data.

Discretionary Expenditures

Discretionary expenditures enhance an existing level of service. These costs do not affect the department's operations but contribute to improved service delivery or a particular program's efficiency. A valid example is hiring. By hiring more officers, the agency expects to improve response time and reduce fear of crime, but not having the extra officers does not adversely impact the organization's ability to provide basic service. In defending discretionary spending, the executive must convince the budget review members of the necessity or worthiness of the proposal. Once again, workload and performance data are at the top of the list for developing the rationale.

THE WORKLOAD ANALYSIS

Objectivity denotes a recurring theme in budget development. The department will find an objective budget, based on

empirical data, the most reasonable and the easiest to justify. A question often raised in law enforcement circles is, How many officers do we need or should we have? Typical responses cover a range of options, including as many as we can afford, as many as the mayor and council want, or as many as the people of the city will pay for. While these statements have merit, "the only

“Once the agency has captured the principal modalities, it should format them for a typical computer spreadsheet application.”

logical and defensible means of determining how many persons should be assigned to patrol duty is through a careful and systematic analysis of the duties performed by patrol officers.”¹¹ This is true of any position within the police department; therefore, the first step toward a logical budget justification starts with a workload analysis.

Data Collection

A workload analysis is “the process of collecting and analyzing data on patrol activities

for the purpose of more efficient scheduling and deployment of manpower.”¹² In activity-based budgeting, the process begins by collecting data on calls for service, generally captured by a computer-aided dispatch system (CAD). If the department does not have a CAD system, it will have to capture the data manually. The agency must have at least 1 complete year of data to account for seasonal fluctuations or other anomalies that might occur. A better data set would encompass 2 years of information to clarify these same variables and also to illuminate personnel trends. For example, gaining or losing officers may adversely impact how the organization handles calls for service, including the amount of time required to do so. The data set must include the—

- type of call;
- average number of hours spent handling the call;¹³
- number of calls of that type for the year (or the period being examined);
- number of officers required to handle the call; and
- total employee hours per modality.¹⁴

Once the agency has captured the principal modalities, it should format them for a typical computer spreadsheet application. After arranging the

| Figure 2: Distribution of Time | | | | | | |
|---------------------------------------|-------------|----------------|---|-------------|-------------|------------------|
| Activity | % | Time | Daily/Minutes | Daily/Hours | Split Force | Force Allocation |
| Service Demands | 60% | 122,927 | 288 | 4.8 | 88 | 66% |
| Administrative | 10% | 20,488 | 48 | 0.8 | 0 | 0% |
| Proactive | 30% | 61,463 | 144 | 2.4 | 45 | 34% |
| Total | 100% | 204,878 | 480 | 8 | 134 | 100% |
| Availability | | 2,086 | (40 hours per week, 52.14 weeks per year) | | | |
| Effective Strength | | 98.23 | FTE Patrol Officers | | | |
| Relief Factor | | 1.360 | FTE Patrol Officers | | | |
| Actual Strength | | 134 | FTE Patrol Officers | | | |

columns, the department can easily calculate the total employee hours per modality.¹⁵

Figure 1 represents the principal modalities and the acuity.¹⁶ The hours per unit show the average amount of time spent handling a single call for service of that type (e.g., one murder will require 3 hours). The units per year comprise the total number of calls for service for that type (e.g., 41 murders

occurred for the year). The department can derive the total employee hours per modality by simply multiplying the hours per unit times the units per year times the number of officers required. For example, a call for a murder takes two officers 3 hours to handle. Over the course of 1 year, officers will handle 41 murders for a total of 246 employee hours. The agency repeats these calculations for

each modality and then sums the units per year and the total employee hours per modality. The sums of these two categories provide the foundation for future calculations and for activity-based budgeting development. Units per year equal 60,115 while hours per employee modality total 122,927. The department can add the percentage allocation as a last column. This will provide an excellent visual representation of which activities consume the most, as well as the least, of the budget.

In addition, figure 1 shows that arrests consume 37.25 percent of the time, followed by traffic control duty with 10.69 percent. The department can order the percentages from highest to lowest, or vice versa, and contrast them against each other for comparison purposes, thereby revealing efficiency. In short, the executive sees where time is spent, thus influencing processes or technology changes that reduce effort requirements for the activity.

Figure 3: Nonproductive FTE (Relief Factor)

| Time Off | Days | Hours |
|------------------------|--------------|--------------|
| Vacation | 28 | 224 |
| Compensatory | 5 | 40 |
| Sick Leave | 15 | 120 |
| Personal | 3 | 24 |
| Training | 8 | 64 |
| Bereavement | 10 | 80 |
| Total Time Off | 69 | 552 |
| Work Year | 260.70 | 2,086 |
| Personnel Availability | 191.70 | 1,534 |
| Relief Factor | 1.360 | 1.360 |

Distribution of Time

The next step involves one of the most important in the budget development process because what happens with the distribution of time directly affects the budget. After determining the baseline calculations, it becomes necessary to distribute the time across three primary categories: service demands (i.e., calls for service), administrative duties, and proactive functions.

The first category, service demands, proves critical because the other areas receive their allotted time based on how much time this one consumes. The sum of employee hours per modality (122,927) represents 100 percent of the workload. Obviously, police officers must perform other assignments besides respond to calls for

service. These include administrative duties (e.g., submitting reports and attending meetings) and proactive functions (e.g., community policing and directed or self-initiated tasks). An agency cannot realistically formulate a budget around 100 percent of the total employee hours per modality without factoring in these other responsibilities. This reveals where prudent management decisions must be made regarding how much of the officers' time the department is willing to distribute across these three categories. In other words, the lower the percentage of time allocated for service demands, the more police officers the organization will need.

After determining the total hours, the agency calculates the effective strength of its patrol

force,¹⁷ which differs from the actual strength. Based on a work year of 2,086 hours, the effective strength is 98.23 full-time equivalent (FTEs) patrol officers. Because officers do not actually work 2,086 hours per year, one additional calculation becomes necessary, the relief factor. Figure 2 depicts the distribution of time across the three primary management categories and the effective patrol force strength.

Force Strength and the Relief Factor

Actual patrol force strength is the number of officers required to handle the workload. The relief factor, also known as nonproductive FTE, accounts for officers' time off for various reasons. Hours, the more basic and preferred work unit for

| Figure 4: Supervisory and Investigative Staff | | | |
|---|----------------------|-------|------------------------------|
| By ratio: 1 Sergeant per 7 Officers | Sergeants | 19.08 | effective strength |
| 1 Lieutenant per 5 Sergeants | Lieutenants | 3.82 | effective strength |
| 1 Detective per 20 Officers | Detectives | 8.82 | effective strength |
| Sub Total | | 31.71 | FTE Support Staff |
| Management Staff | | | |
| Not by ratio: 1 Captain per command | Captain | 1.000 | effective strength |
| 1 Executive Officer | Executive Lieutenant | 1.000 | effective strength |
| Sub Total | | 2.000 | FTE Command Staff (managers) |
| Support Staff for Management | | | |
| By ratio: 4 support staff members per manager | Civilian Aides | 8.000 | effective strength |
| Sub Total | | 8.000 | FTE Civilian Aides |
| Total | | 41.71 | |

these calculations, are more discreet and flexible, rather than days, which the author presents only for illustrative purposes. The relief factor is derived by a two-part subtraction and division equation. For example, figure 3 begins with a work year of 2,086 hours. By subtracting 552 hours of allotted time off (i.e., nonproductive FTE), the difference of 1,534 denotes personnel availability. Dividing the work year (2,086) by personnel availability (1,534) results in the quotient of 1.36. This means that it takes 1.36 police officers for every position to provide an acceptable level of service 365 days per year, 24 hours per day.

The final step, actual patrol strength, is determined by multiplying the effective strength by the relief factor. The effective strength is 98.23; the actual strength is 134 ($134 = 98.23 \times 1.36$). Thus, according to the distribution of time as

depicted in figure 2, 134 officers are required to carry out 204,878 hours of patrol operations over a period of 1 year.

Management and Support Staff Positions

Because law enforcement agencies operate with command-rank personnel, supervisors, and support staff, they must account for these employees to develop an accurate budget. Depending upon contractual stipulations or other managerial prerogatives, a department may or may not justify these positions by ratio. If not by ratio, then the agency only needs a fixed number. Figure 4 outlines the staff necessary to complete a department's workforce, and figure 5 shows the total personnel complement. Now that the agency has projected its workload and staffing needs, it can use the results to develop an activity-based budget.

BUDGET DEVELOPMENT

Salary Calculations

Calculating salaries constitutes the first element of activity-based budgeting. In many instances, personnel account for more than 90 percent of total budget expenses. The goal at this point is to establish the rate per employee hour. Establishing this figure creates a baseline from which to work and also is necessary for monitoring purposes. If the department needs to reduce expenses, it may not be able to do so from salaries because these usually are contractual. Knowing how much it costs to perform the required work can benefit managers and supervisors as they monitor individual and collective performance. The equation of salary times benefits times FTE or total employee hours per modality can calculate the rate per employee hour.

Figure 5:

| FTE Subtotal | | | | | |
|--------------|----------------------|------------|------------|---------|-----------------|
| | Position | Complement | Work Hours | Relief? | |
| | Captain | 1 | 9-5 MF | No | Actual Strength |
| | Executive Lieutenant | 1 | 9-5 MF | No | Actual Strength |
| | Lieutenant | 5 | 24/7 | Yes | Actual Strength |
| | Sergeant | 26 | 24/7 | Yes | Actual Strength |
| | Detective | 9 | 9-5 MF | No | Actual Strength |
| | Patrol Officer | 134 | 24/7 | Yes | Actual Strength |
| | Civilian Aides | 8 | 9-5 MF | No | Actual Strength |
| Total FTEs | | 184 | | | Actual Strength |

| Figure 6: Salary Calculations (includes relief factor) | | | | |
|---|---------------|------------------------|---------------------|-----------------------------------|
| FTE | Salary | Benefits at 20% | Salary Cost | Title |
| 134 | \$71,214 | \$14,243 | \$11,451,211 | Patrol Officers |
| 1 | \$108,109 | \$21,622 | \$129,731 | Captain |
| 1 | \$92,016 | \$18,403 | \$110,419 | Executive Lieutenant |
| 26 | \$84,789 | \$16,958 | \$2,645,417 | Lieutenant |
| 5 | \$77,215 | \$15,443 | \$463,290 | Sergeant |
| 9 | \$72,214 | \$14,443 | \$779,911 | Detective |
| 8 | \$27,125 | \$5,425 | \$260,400 | Support staff |
| 184 | | | \$15,840,379 | Total Salary Cost |
| | | divided by | 122,927 | total employee hours per modality |
| | | Rate per employee hour | \$128.86 | |

Figure 6 outlines the FTE salary calculations, including the benefits package, and shows the rate per employee hour as \$128.86.

Materials and Equipment Costs

In lean fiscal times, agencies generally reduce training and equipment budgets. Figure 7 depicts the total and unit costs for materials and equipment.

Materials usually consist of consumable supplies, such as pens, paper, flares, and crime scene tape. A simple calculation based on a fixed amount per employee can determine the unit cost for materials. In the example, materials are appropriated at \$700 per employee or \$128,480 total. By dividing the

total cost (\$128,480) by the number of units per year (60,115), the department can derive the unit cost for materials as \$2.14.

The larger category of equipment consists of various items necessary to adequately carry out the functions of the patrol officer. Equipment typically has a useful life of more than 3 years; however, this is not a rule. The agency can calculate equipment expenditures by spreading the cost of individual items across their useful life spans. Incurring the full expense of the equipment will not come until the department must replace the items. Therefore, the agency can predicate the cost upon the equipment's useful life. The

equation of cost equals quantity times unit cost divided by useful life in years shows the total cost for equipment as \$513,290. The department can derive the unit cost the same way it did for materials, which reveals a unit cost for equipment of \$8.54.

Present Level of Service

The final step, calculating the costs for the present level of service, involves reconciling all of the previous calculations to form the activity-based budget. First, the agency replicates figure 8, which holds the principal modalities. These serve as the foundation upon which the remainder of the budget will rest. The department must

conduct a few additional calculations to arrive at the total cost. These include salary per hour and per unit costs of salary, material, and equipment, along with the unit and total costs.

Salary Per Hour

By multiplying the rate per employee hour (\$128.86) by the total number of officers required, the department can

calculate the salary per hour cost. For example, the total number of officers required to handle a murder is two; multiplying this by the rate per employee hour results in a salary per hour of \$257.72.

Per Unit Costs

“Unit costs compare the volume of work anticipated to the items needed to complete the work and the funds required

to purchase the items. This method [is] used to justify the need for personnel or equipment....”¹⁸ This reveals the most salient feature of activity-based budgeting because identifying the individual costs is what this budget plan seeks to accomplish. To determine the salary per unit cost, the department multiplies the hours per unit (3) by the salary per hour (\$257.72), obtaining the salary

| Figure 7: | | Materials and Equipment | | | | |
|--|------------------|--------------------------------|----------|-----------|-----------------|------------------|
| Materials | | Equipment | | | | |
| Paper, Pencils, Reports, Forms, Crime Scene Tape, Flares and all other Consumable Supplies (@ \$700 per employee) | \$128,480 | | Quantity | Unit Cost | Useful Life/hrs | Cost |
| | | | | | | |
| | | Computers | 15 | \$1,700 | 5 | \$5,100 |
| Total | \$128,480 | Shotguns | 25 | \$700 | 15 | \$1,167 |
| divided by units per year | 60,115 | Typewriters | 15 | \$300 | 5 | \$900 |
| Unit Cost | \$2.14 | Marked Police Cars | 36 | \$35,000 | 3 | \$420,000 |
| | | Prisoner Van | 1 | \$40,000 | 6 | \$6,667 |
| | | First Aid Kit and Replacements | 80 | \$140 | 3 | \$3,733 |
| | | Nontraditional Vehicles | 5 | \$19,000 | 7 | \$13,571 |
| | | Night Vision Equipment | 5 | \$7,500 | 7 | \$5,357 |
| | | Walk-through Metal Detector | 1 | \$5,500 | 10 | \$550 |
| | | Gas Masks | 200 | \$320 | 7 | \$9,143 |
| | | Mesh Traffic Vests | 50 | \$30 | 5 | \$300 |
| | | Tripod Scene Lighting | 5 | \$1,000 | 7 | \$714 |
| | | Megaphones | 10 | \$90 | 7 | \$129 |
| | | Prisoner Legirons | 25 | \$43 | 10 | \$108 |
| | | Snow Blower | 1 | \$2,600 | 5 | \$520 |
| | | Laser Printers | 10 | \$1,400 | 5 | \$2,800 |
| | | Unmarked Police Cars | 6 | \$28,000 | 5 | \$33,600 |
| | | Traffic Cones | 100 | \$35 | 10 | \$350 |
| | | Suites of Furniture | 5 | \$7,500 | 10 | \$3,750 |
| | | Photocopier | 1 | \$25,000 | 6 | \$4,167 |
| | | Fax | 4 | \$499 | 3 | \$665 |
| | | Total | | | | \$513,290 |
| | | divided by units per year | | | | 60,115 |
| | | = equipment per unit | | | | \$8.54 |

Figure 8: The Activity-Based Budget: Present Level of Service

| | Units Per Year | Hours Per unit | Officers Required | Total Hours | Salary Per hour | Salary Per unit | Material Per unit | Equipment Per unit | Unit Cost | Total Cost | Percentage Allocated |
|---|----------------------|----------------------|----------------------|----------------|-----------------------|-----------------------|-------------------------|--------------------------|--------------|---------------------|-------------------------|
| Murder | 41 | 3 | 2 | 246.00 | \$257.72 | \$773.16 | \$2.14 | \$8.54 | \$783.84 | \$32,137.31 | 0.19% |
| Robbery | 2,110 | 1.5 | 2 | 6,330.00 | \$257.72 | \$386.58 | \$2.14 | \$8.54 | \$397.26 | \$838,210.65 | 5.09% |
| Burglary | 1,877 | 1 | 2 | 3,754.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$503,779.40 | 3.06% |
| Court Appearances | 1,234 | 1.5 | 5 | 9,255.00 | \$644.30 | \$966.45 | \$2.14 | \$8.54 | \$977.13 | \$1,205,774.74 | 7.32% |
| Theft (all types) | 6,522 | 0.58 | 2 | 7,565.52 | \$257.72 | \$149.48 | \$2.14 | \$8.54 | \$160.15 | \$1,044,521.19 | 6.34% |
| Arson | 51 | 1 | 2 | 102.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$13,688.20 | 0.08% |
| Rape | 88 | 1.5 | 2 | 264.00 | \$257.72 | \$386.58 | \$2.14 | \$8.54 | \$397.26 | \$34,958.55 | 0.21% |
| Fraud | 211 | 0.75 | 1 | 158.25 | \$128.86 | \$96.65 | \$2.14 | \$8.54 | \$107.32 | \$22,644.70 | 0.14% |
| Prostitution | 1,003 | 0.33 | 2 | 661.98 | \$257.72 | \$85.05 | \$2.14 | \$8.54 | \$95.72 | \$96,010.59 | 0.58% |
| Gambling Offense | 468 | 0.42 | 1 | 196.56 | \$128.86 | \$54.12 | \$2.14 | \$8.54 | \$64.80 | \$30,324.99 | 0.18% |
| Vicious Animal | 214 | 0.33 | 2 | 141.24 | \$257.72 | \$85.05 | \$2.14 | \$8.54 | \$95.72 | \$20,484.81 | 0.12% |
| Bomb Threat | 12 | 1 | 2 | 24.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$3,220.75 | 0.02% |
| Fire (all types) | 123 | 1.5 | 2 | 369.00 | \$257.72 | \$386.58 | \$2.14 | \$8.54 | \$397.26 | \$48,862.52 | 0.30% |
| DWI | 44 | 1 | 2 | 88.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$11,809.43 | 0.07% |
| Emotionally Disturbed Person | 120 | 1 | 2 | 240.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$32,207.53 | 0.20% |
| Traffic Control | 2,190 | 2 | 3 | 13,140.00 | \$386.58 | \$773.16 | \$2.14 | \$8.54 | \$783.84 | \$1,716,602.49 | 10.41% |
| School Crossing | 1,080 | 2 | 3 | 6,480.00 | \$386.58 | \$773.16 | \$2.14 | \$8.54 | \$783.84 | \$846,543.69 | 5.14% |
| MV Pursuit | 81 | 0.75 | 4 | 243.00 | \$515.44 | \$386.58 | \$2.14 | \$8.54 | \$397.26 | \$32,177.75 | 0.20% |
| Arrest (all types) | 15,264 | 1.5 | 2 | 45,792.00 | \$257.72 | \$386.58 | \$2.14 | \$8.54 | \$397.26 | \$6,063,719.11 | 36.79% |
| Warrant Service | 73 | 0.75 | 2 | 109.50 | \$257.72 | \$193.29 | \$2.14 | \$8.54 | \$203.97 | \$14,889.52 | 0.09% |
| Code Enforcement | 315 | 0.33 | 1 | 103.95 | \$128.86 | \$42.52 | \$2.14 | \$8.54 | \$53.20 | \$16,757.86 | 0.10% |
| Juvenile Condition | 457 | 0.75 | 1 | 342.75 | \$128.86 | \$96.65 | \$2.14 | \$8.54 | \$107.32 | \$49,045.62 | 0.30% |
| Street Collapse | 14 | 1 | 2 | 28.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$3,757.54 | 0.02% |
| Wires Down | 58 | 1 | 1 | 58.00 | \$128.86 | \$128.86 | \$2.14 | \$8.54 | \$139.54 | \$8,093.08 | 0.05% |
| Burglar Alarm (all types) | 2,555 | 0.33 | 2 | 1,686.30 | \$257.72 | \$85.05 | \$2.14 | \$8.54 | \$95.72 | \$244,573.34 | 1.48% |
| Suicide | 22 | 1.5 | 2 | 66.00 | \$257.72 | \$386.58 | \$2.14 | \$8.54 | \$397.26 | \$8,739.64 | 0.05% |
| Sick/Injured Person | 720 | 0.75 | 1 | 540.00 | \$128.86 | \$96.65 | \$2.14 | \$8.54 | \$107.32 | \$77,271.00 | 0.47% |
| Train accident | 1 | 8 | 6 | 48.00 | \$773.16 | \$6,185.29 | \$2.14 | \$8.54 | \$6,195.96 | \$6,195.96 | 0.04% |
| Kidnapping | 11 | 3 | 2 | 66.00 | \$257.72 | \$773.16 | \$2.14 | \$8.54 | \$783.84 | \$8,622.20 | 0.05% |
| Carjacking | 77 | 1 | 2 | 154.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$20,666.50 | 0.13% |
| Drug Sales | 5,041 | 0.3 | 2 | 3,024.60 | \$257.72 | \$77.32 | \$2.14 | \$8.54 | \$87.99 | \$443,566.72 | 2.69% |
| Assault (all types) | 1,000 | 0.75 | 2 | 1,500.00 | \$257.72 | \$193.29 | \$2.14 | \$8.54 | \$203.97 | \$203,965.97 | 1.24% |
| Stolen Vehicle | 2,645 | 0.75 | 1 | 1,983.75 | \$128.86 | \$96.65 | \$2.14 | \$8.54 | \$107.32 | \$283,863.62 | 1.72% |
| Assist Officer | 152 | 0.25 | 2 | 76.00 | \$257.72 | \$64.43 | \$2.14 | \$8.54 | \$75.11 | \$11,416.08 | 0.07% |
| Directed Patrol | 5,475 | 0.33 | 2 | 3,613.50 | \$257.72 | \$85.05 | \$2.14 | \$8.54 | \$95.72 | \$524,085.74 | 3.18% |
| Shots Fired | 730 | 0.33 | 2 | 481.80 | \$257.72 | \$85.05 | \$2.14 | \$8.54 | \$95.72 | \$69,878.10 | 0.42% |
| Domestic Violence Motor Vehicle Accident | 3,255 | 1.25 | 2 | 8,137.50 | \$257.72 | \$322.15 | \$2.14 | \$8.54 | \$332.83 | \$1,083,349.10 | 6.57% |
| Disorderly Conduct Person Armed with a Weapon | 1,825 | 1 | 2 | 3,650.00 | \$257.72 | \$257.72 | \$2.14 | \$8.54 | \$268.40 | \$489,822.80 | 2.97% |
| | 2,555 | 0.3 | 2 | 1,533.00 | \$257.72 | \$77.32 | \$2.14 | \$8.54 | \$87.99 | \$224,819.08 | 1.36% |
| | 401 | 0.42 | 4 | 673.68 | \$515.44 | \$216.49 | \$2.14 | \$8.54 | \$227.16 | \$91,091.48 | 0.55% |
| Total | 60,115 | | | 122,927 | | | | | | \$16,482,149 | 100.00% |

per unit cost for the modality of murder of \$773.16.

Unit Cost

The unit cost is the sum of salary per unit (\$773.16), materials per unit (\$2.14), and

equipment per unit (\$8.54) costs. The department's unit cost for murder totals \$783.84.

Total Costs

Total costs, the final calculation in the budget, are derived

by multiplying the units per year for each modality (41) by the unit cost (\$783.84). The total cost for the murder modality is \$32,173.31.

Figure 8 demonstrates the completed activity-based budget

plan outlining the entire cost for salaries, materials, and equipment. It becomes readily apparent that the percentage of the budget allocated per modality in figure 8 approximates the percentage of time allocated per modality in figure 1.

Budget Summary

Once the department has prepared the activity-based budget, it will find it useful to create a small budget summary by category, which would include salaries, materials, and equipment. The budget summary will help to reconcile the individual pieces of the budget. The total cost presented in figure 8 is \$16,482,149. When

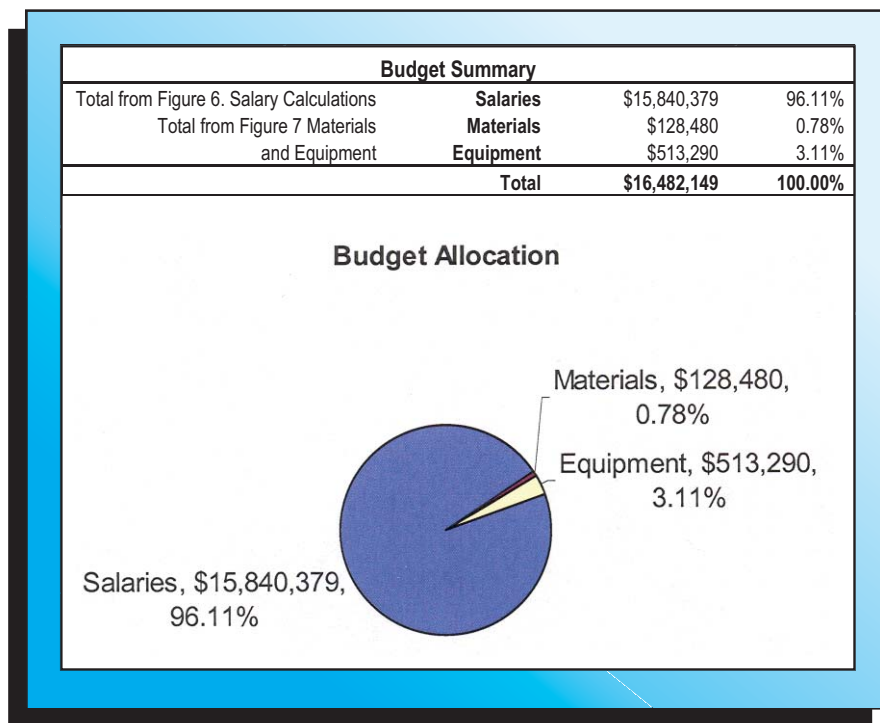
summing the categories (salaries, materials, and equipment) in the budget summary, the total must equal the activity-based budget total. A simple pie chart of the finished budget gives a valuable perspective of how the department will distribute its funds.

CONCLUSION

Activity-based budgeting, an objective way to link workload to costs, is easy to design. Each division of the police department can create one to examine its operational efficiency. Connecting all of the individual budgets provides the organization with a comprehensive picture of its operating

posture. Supervisors can use it to make adjustments in processes or shift personnel. Administrators can employ it to create partnership programs with the police department. In this sense, it is useful to see the proportion of the activity-based budget allocated to each partner. The department also can use it to justify hiring and promoting personnel. By using accepted industry standards of span of control, an executive can argue in favor of hiring and promoting based upon the volume of work.

Beyond its internal uses, activity-based budgeting has other merits. Many grant programs require one so grantors can see where their money is being spent and how efficiently grantees can administer the programs. Activity-based budgeting easily can be turned into a performance-based budget by attaching performance standards. It also can be used together with benchmarking to identify best practices.¹⁹ The basic steps in corporate benchmarking include deciding what process to benchmark, studying the process in their organization, identifying benchmarking partners, analyzing the processes of benchmarking partners to identify differences that account for superior performance, adapting and implementing best practices, and monitoring and



revising.²⁰ In the police department example, effecting arrests consumes nearly 37 percent of the activity. Benchmarking them could determine if a more efficient way exists to process arrests, including new technology that reduces the effort.

“Activity-based budgeting (ABB) holds [some] promise as a...solution to the faults and frustrations of traditional budgeting methods:

1. Traditional budgets don't identify waste. ABB exposes nonvalue costs.
2. Traditional budgets focus on workers. ABB focuses on workload.
3. Traditional budgets focus on division cost. ABB also focuses on process cost.
4. Traditional budgets focus on fixed versus variable costs. ABB also focuses on used versus unused capacity.
5. Traditional budgets measure 'effect.' ABB measures root 'cause.'”²¹

It also provides an alternative to traditional government budgets; the line item may be required by law, but nothing prevents an organization from adopting activity-based budgeting to solve internal problems. After all, “what is the bottom line when there is no ‘bottom line’? Performance!”²² ♦

Endnotes

¹ S.L. Riley and Peter W. Colby, *Practical Government Budgeting: A Workbook for Public Managers* (Albany, NY: State University of New York Press, 1991).

² A zero-based budget begins by preparing an operating plan or budget that starts with no authorized funds. For this type of budget, an organization must justify each activity every time it prepares a new budget.

³ D. Maddox, *Budgeting for Not-for-Profit Organizations* (New York, NY: John Wiley and Sons, 1999).

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In lean fiscal times, agencies generally reduce training and equipment budgets.

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⁴ Ibid., 228.

⁵ Ibid., 20.

⁶ I.S. Rubin, *The Politics of Public Budgeting: Getting and Spending, Borrowing and Balancing*, 4th ed. (New York, NY: Chatham House, 2000).

⁷ Both definitions retrieved on August 31, 2004, from <http://m-w.com>.

⁸ Police Executive Research Forum, *Police Department Budgeting: A Guide for Law Enforcement Chief Executives* (Washington, DC, 2002).

⁹ J.R. Greene, Tim S. Bynum, and Gary W. Corder, “Planning and the Play of Power: Resource Acquisition Among Criminal Justice Agencies,” *Journal of Criminal Justice* 14 (1986): 529-544.

¹⁰ Supra note 8, 2; and Aaron Wildavsky, *The Politics of the Budgetary Process*, 3rd ed. (Boston, MA: Little Brown and Company, 1979), 63-126.

¹¹ C.D. Hale, *Police Patrol: Operations and Management* (New York, NY: John Wiley and Sons, 1981).

¹² Ibid., 163.

¹³ Any portion of an hour is calculated as such. For example, 20 minutes is captured as .33 hours and 47 minutes as .783 hours.

¹⁴ In budgeting, modalities are the attributes (i.e., major activities) being examined. In this case, they are the types of calls for service.

¹⁵ In budgeting, acuity is the distinct detail, the calculations that comprise the budget.

¹⁶ Due to rounding, some numbers may not add to totals shown in the figures or referred to in the text of this article.

¹⁷ The effective strength of the patrol force is how many officers are on duty at a given time. Supra note 11, 167.

¹⁸ Supra note 1, 54.

¹⁹ In public sector application, the term *benchmarking* “features the identification of a point of reference for comparison or measurement purposes. With a benchmark, public officials can measure the performance gap between where they are and where they want to be and can track their progress in closing the gap.” D.N. Ammons, “A Proper Mentality for Benchmarking” in Gerald J. Miller, W. Bartley Hildreth, and Jack Rabin, *Performance-Based Budgeting* (Boulder, CO: Westview Press, 2001), 419-429.

²⁰ Ibid., 423.

²¹ T. Pryor, Integrated Cost Management Systems, Inc., *What Happened to ABB?* (2004); retrieved on December 23, 2004, from <http://www.icms.net/news-18.htm>.

²² P.F. Drucker, *Managing the Nonprofit Organization: Principles and Practices* (New York, NY: Harper Perennial, 1990).

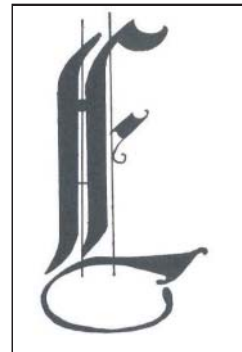
The author thanks Dr. Gerald Miller, Rutgers Graduate School of Public Administration, for inspiring this article.

ViCAP Alert

Unidentified Homicide Victim



Tattoo from right back shoulder of victim.



Tattoo rendering from left forearm of victim.



On June 18, 2001, a man collecting cans along Old Stage Road, near the intersection of Pecan Road in Jackson County, Mississippi, discovered a dead body wrapped in black plastic sheeting on the shoulder of the road. The local law enforcement authority, Jackson County Sheriff's Office, was contacted and responded to the crime scene. The area was processed and the body was recovered and transported to the hospital morgue for examination.

The Autopsy

An autopsy revealed that in addition to being wrapped in black plastic, the body was bundled in bed linens and carpet. Nylon rope was tied around

the victim's head, upper torso, waist, and feet. The bed linens were soaked with blood that had dried. There was a fresh, close gunshot wound to the right temple, which contributed to the victim's cause of death. During the autopsy, authorities obtained the victim's known fingerprints. The FBI and U.S. Department of Homeland Security examined the fingerprints with negative results.

The Victim

The victim's body is that of a stocky white male, believed to be of Hispanic origin, around 28 to 36 years old, approximately 5 feet 5-1/2 inches tall, weighing between 225 and 250 pounds, with close-cut, dark brown hair with a small amount of

gray. A number of tattoos and scars were recorded. The victim has a pierce scar on the left earlobe, an indent scar in the center of his forehead, a "C" shaped scar in his left eyebrow, a scar on the left side of his nose, and a possible gunshot scar on his left wrist. A tattoo of the name "John" is written in fine script in the clavicular region of his right upper chest; a black outlined tattoo, 9 by 4 inches, of a peacock is on his right upper back; and an old English script letter "E" or "F" is on his left forearm. Evidence and investigative efforts suggest that the victim may have been involved with narcotics distribution. The victim's NCIC number is U540002695 and his fingerprint code is 17131116141713101713.

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all crime analysis units, officers investigating crimes against persons, and narcotics units. Also, the offender's fingerprint profile should be provided to local and state laboratories for comparison purposes. Any agency requiring additional information or a copy of the fingerprint card should contact Detective Sergeant Ken McClenic of the Jackson County Sheriff's Office, Pascagoula, Mississippi, at 228-769-3063 or at ken_mcclenic@co.jackson.ms.us; or Crime Analyst Glen W. Wildey, Jr., of the FBI's Violent Criminal Apprehension Program (ViCAP) Unit at 703-632-4166 or gwildley@leo.gov. ♦

Unusual Weapon



FM Radio

This unusual weapon is a functional FM radio with ear phones that is worn on a belt but also conceals a gun. Law enforcement officers should be aware of the possible threat of this object.

Submitted by John F. Brannigan, a retired law enforcement officer and weapons concealment instructor.

The Supreme Court Brings an End to the “End Run” Around Miranda

By LUCY ANN HOOVER, J.D., LL.M.

Since *Miranda v. Arizona*,¹ the U.S. Supreme Court has remained steadfast in its position that for a defendant to waive the privilege against self-incrimination, the government must establish that the defendant did so knowingly, intelligently, and voluntarily. *Miranda* held that any statement arising from custodial interrogation of a suspect is presumed to be involuntary and, therefore, inadmissible unless the police first provide the suspect with

four specific warnings: the right to remain silent; that any statements may be used against them; the right to have an attorney present during questioning; and that an attorney will be appointed if he can not afford one.² Notwithstanding these warnings, the Court still could find the statement inadmissible if the Court concludes that the defendant did not waive those rights knowingly, intelligently, and voluntarily. In June 2004, the U.S. Supreme Court, once again, declared

that condition as nonnegotiable when it handed down its decision in *Missouri v. Seibert*.³

This article addresses the validity of a waiver provided by suspects who have just been subjected to a two-tiered interrogation tactic used in *Seibert* wherein an unwarned interrogation precedes the *Miranda* warnings and waiver and a confession is obtained. The article also discusses the factors that a court considers when determining whether suspects, subjected to this two-tiered

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approach, waived their *Miranda* rights knowingly, intelligently, and voluntarily. Finally, the impact the U.S. Supreme Court's decision will have on the two-tiered interrogation tactic, sometimes referred to as the "ask first, warn later" tactic, is addressed.

***Missouri v. Seibert:* The Two-Tiered Interrogation Strategy**

In *Missouri v. Seibert*, Patrice Seibert, the defendant, was a mother of five sons, one of whom, Jonathan, age 12, was stricken with cerebral palsy. When Jonathan died in his sleep, Seibert was fearful that she would be charged with negligence once the investigating authorities discovered Jonathan's body covered in bed sores. To avoid criminal culpability, she conspired with her two eldest sons and two of their friends to set fire to their mobile home, leaving Jonathan's body inside. However, she also was concerned with how she would explain leaving young Jonathan alone and unattended.

The answer was to leave Donald Rector, a teenager who was mentally ill and living with the Seibert family, in the mobile home with Jonathan. The medication that Rector was taking usually made him sleepy; therefore, the Seibert family counted on Rector being sound asleep in his bed when they set the fire. To them, the murder of young

Donald Rector seemed like the perfect way to destroy any evidence of their neglect of Jonathan.⁴

Seibert was arrested later for her role in this crime and transported to the police station for questioning. Once at the police station, the arresting officer began to question Seibert without advising her of her *Miranda* rights and receiving a waiver. The officer who arrested Seibert and interviewed her testified that he purposefully refrained from advising Seibert of her *Miranda* rights even though he knew he was engaged in a custodial interrogation. The officer "testified that he made a conscious decision to withhold *Miranda* warnings, question first, then give the warnings, and then repeat the question until he got the answer previously given."⁵ This was an interrogation technique that the

***“ Department
interrogation practices
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reflect the fundamental
principles announced
by the U.S. Supreme
Court in Miranda and
its progeny. ”***



Special Agent Hoover is a legal instructor at the FBI Academy.

officer had been taught. As a result, he was just "follow[ing] instructions."⁶

The officer testified that after Seibert was brought to the police station, he questioned her for approximately 30 to 40 minutes prior to advising her of her rights under *Miranda*. Thus, the questioning was "outside of *Miranda*." During this time, Seibert admitted that "she knew that Donald [Rector] was meant to die in the fire."⁷ Seibert was then afforded a 20-minute coffee and cigarette break.⁸ The second round of interrogation was conducted by the same police officer and in the same room. However, this time, the police officer "gave Seibert the *Miranda* warnings and obtained a signed waiver of rights from her."⁹

The second round of questioning began by referring to the first round of questioning and those statements obtained

“outside of *Miranda*.” Seibert confirmed that during the initial round of questioning, they had been discussing the events that occurred on the day of the fire. Following a few more questions that were rhetorical confirmations of admissions made in the prior unwarned confession, the police officer asked, “[Pa]trix, didn’t you tell me that [Donald Rector] was supposed to die in his sleep?”

Seibert answered, “If that would happen, ‘cause he was on that new medicine, you know....”

Finally, the police officer asked, “The Prozac? And it makes him sleepy. So he was supposed to die in his sleep?”

Seibert simply said, “Yes.”¹⁰

Seibert was convicted of second-degree murder. The trial court suppressed Seibert’s first statement because she had not been advised of the *Miranda* warnings prior to her custodial interrogation, but allowed her second statement to be used against her, relying on the U.S. Supreme Court’s ruling in *Oregon v. Elstad*.¹¹ The lower court held that this second round of statements was admissible because she was advised of her rights, and she provided a signed waiver. The Court reasoned that the problem with her unwarned first statement had been rehabilitated by advisement of the *Miranda* rights prior to her second statement. The Missouri

Supreme Court disagreed, concluding that this tactic violated *Miranda*, and the government appealed to the U.S. Supreme Court.¹²

The U.S. Supreme Court, agreeing with the Missouri Supreme Court, expressed concern about an interrogation strategy that endorses an intentional deprivation of *Miranda*

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The U.S. Supreme Court...expressed concern about a strategy that endorses an intentional deprivation of Miranda rights....
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rights, recognizing that “[a]lthough we have no statistics on the frequency of this practice, it is not confined to...Missouri.”¹³ The Supreme Court found that “the strategy of withholding *Miranda* warnings until after interrogating and drawing out a confession was promoted not only by his own department but by a national police training organization....”¹⁴ Moreover, the justices noted that “[t]his training is reflected in the reported cases involving deliberate questioning after invocation of *Miranda* rights”¹⁵ and that “scholars have

noticed a growing trend of such practices.”¹⁶

Despite what scholars deemed a growing trend, the Supreme Court appreciated the notion that “it is not the case, of course, that law enforcement educators en masse are urging that *Miranda* be honored only in breach.”¹⁷ Concluding, in fact, that “[m]ost police manuals do not advocate the question-first tactic, because they understand that *Oregon v. Elstad* involved an officer’s good faith failure to warn.”¹⁸

***Elstad* and Its Evolution into an Interrogation Tactic**

The U.S. Supreme Court held that Seibert’s waiver was not effective because of the unwarned interrogation just prior to providing her the *Miranda* rights. The Supreme Court’s ruling in *Seibert* rejected an interpretation of its holding in *Oregon v. Elstad* which seemed to promote the concept that the “mere recitation of the litty suffices to satisfy *Miranda* in every conceivable circumstance.”¹⁹ The U.S. Supreme Court’s holding in *Elstad* gave rise to what evolved into an approach to conducting interrogations that became somewhat popular and was used in *Seibert v. Missouri*; that is, holding off on advising suspects of their *Miranda* rights until after obtaining an incriminating statement or confession.

In *Seibert*, the U.S. Supreme Court took the opportunity to distinguish between the interrogation situation in *Elstad* and what occurred in *Seibert*.

Concerned with an approach that implicitly encouraged *Miranda* violations, the U.S. Supreme Court ruled that the practice of conducting two-tiered interrogations, sometimes referred to as “beachheading,”²⁰ violates the purpose of *Miranda*.

In *Elstad*, law enforcement officers went to the home of a burglary suspect to take him into custody. The suspect’s mother answered the door and led the officers to the suspect, who was in his bedroom. Prior to the arrest, one of the law enforcement officers waited for the suspect to get dressed and accompanied him to the living room while the other officer asked the suspect’s mother to step into the kitchen where he advised her that they had a warrant for her son’s arrest on a burglary charge. The officer who remained in the living room with the suspect testified that he “sat down with Mr. Elstad and asked him if he was aware why [they] were there to talk to him. He stated that he had no idea....” The officer then “asked him if he knew a person by the name of Gross, and he said yes, he did, and also added that he heard that there was a robbery at the Gross house.” It was at this point that the officer

“told Mr. Elstad that [he] felt [Elstad] was involved in that.” Mr. Elstad then “looked at [the officer] and stated, ‘Yes, I was there.’”²¹

The suspect then was transported to the police station, waived his *Miranda* rights, and provided a full confession. Counsel for the defendant, in a motion to suppress, argued that the confession in response to custodial interrogation at the police station was “tainted” by the unwarned statement made in the suspect’s living room.



Despite compliance with *Miranda* at the station house, the defense argued that once the “cat [was] out of the bag,”²² any efforts of law enforcement to rehabilitate or save an already tainted admission were pointless. The defense argued that the law enforcement officer’s comment that he “felt” the young man was involved in the burglary was an “elicitation” akin to interrogation. Accordingly, the statements, including

the station house confession derived from the officer’s exchange with the suspect, should be suppressed because *Miranda* warnings had not been provided during the initial exchange at the house. The lower court held that once the initial *Miranda* violation occurred, all that followed was tainted, including the station house confession and, therefore, inadmissible. The lower court reasoned that “[r]egardless of the absence of actual compulsion, the coercive impact of the unconstitutionally obtained statement remains because in a defendant’s mind it has sealed his fate.”²³

The Supreme Court agreed with the lower court’s recognition that “[i]t is this [coercive] impact that must be dissipated in order to make a subsequent confession admissible.”²⁴ The Court identified two of the most important factors to consider in determining whether that coercive impact has been dissipated as: the “lapse of time and change of place from the original surroundings.”²⁵ The Court stated that it has “never gone so far as to hold that making a confession under circumstances which preclude its use perpetually disables the confessor from making a usable one after those conditions have been removed.”²⁶ Moreover, the *Elstad* Court continued, “[t]here is a vast difference between the direct consequences flowing

from coercion of a confession by physical violence or the deliberate means calculated to break the suspect's will and the uncertain consequences of disclosure of a 'guilty secret' freely given in response to an unwarned but noncoercive question, as in this case."²⁷

Based upon this reasoning, the U.S. Supreme Court rejected with the lower court's reasoning in *Elstad* and found that the purpose of the pause in the burglary suspect's living room, where he first acknowledged being at the scene of the crime, was not to interrogate him but, rather, to inform his mother of the reason for the arrest. The Court characterized the police officer's failure to warn as an "oversight" that "may have been the result of confusion as to whether the brief exchange qualified as 'custodial interrogation' or...may simply have reflected...reluctance to initiate an alarming police procedure before [an officer] with [the young man's] mother."²⁸

The Supreme Court also found that there was no indication of coercion by the police officers at the time the suspect admitted his presence at the scene of the crime. Further, that the issue of coercion goes to the heart of *Miranda*. The constitutional protection ensures, that "no person shall be compelled in any criminal case to be a witness against himself." The

Court recognized that a "simple failure to administer the [*Miranda*] warnings" with no indication of behavior on the part of the law enforcement officer that could be interpreted as coercion, compulsion, or an effort to "undermine the



suspect's ability to exercise his free will" should not keep out a statement that otherwise is voluntary.²⁹ "Suppressing post-warning statements under such circumstances would serve 'neither the general goal of deterring improper police misconduct nor the Fifth Amendment goal of assuring trustworthy evidence.'"³⁰

Unintentional Versus Intentional Violations

Seibert presented the U.S. Supreme Court with the opportunity to distinguish between the "simple failure to warn" and the calculated practice of a two-tiered interrogation technique consciously chosen by an officer to disregard the government's obligation to provide

Miranda warnings and obtain a waiver. The police officer conducting the interrogation in *Seibert* admitted that he made a "conscious decision to withhold *Miranda* warnings." The stated purpose of this practice was to afford the police officer the time and opportunity to establish rapport with suspects in an effort to get them to open up and make admissions or full confessions. According to training, once the suspect has "let the cat out of the bag," the interrogating officer should provide the *Miranda* warnings and ask the suspect for a waiver. The government argued that once *Miranda* rights are provided and waived, statements should be admitted in the subsequent prosecution.

The U.S. Supreme Court rejected that line of reasoning in *Seibert* because its primary concern was one of abuse. Moreover, because the object of such a practice was to "question first, *Mirandize* later," the Court reasoned that it fundamentally "render[ed] *Miranda* warnings ineffective by waiting for a particularly opportune time to give them," specifically, "after the suspect has already confessed."³¹

The Court's opposition to a practice that renders the *Miranda* warnings ineffective is a reaffirmation of the *Miranda* ruling in 1966 in which it held that "incommunicado interrogation of individuals in a

police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights violates the Constitution.”³² Once advised, the suspect may waive those rights afforded by *Miranda*, provided that the waiver is made voluntarily, knowingly, and intelligently.

For law enforcement officers, the threshold problem that the *Seibert* case presents, aside from eliminating an interrogation tactic endorsed and practiced by many, boils down to a basic question, How can a person voluntarily, knowingly and intelligently waive a right to remain silent when the officer, through deliberate tactics, has already managed to get the “cat out of the bag”?

To give credence to *Seibert*’s second confession, the Court would have had to reject their long-standing holding concern that anyone subjected to custodial interrogation is guaranteed “a full and effective warning of his rights.”³³ A practice of condoning the “mere recitation of the [*Miranda*] litany”³⁴ is arguably a full warning, but hardly effective, as there exists the genuine fear that “rights declared in words may be lost in reality.”³⁵ This is especially true in a sequential confession case, like *Seibert*, in which the “earlier and later statements are realistically seen as parts of a single, unwarned sequence of questioning.”³⁶

The U.S. Supreme Court held that the recitation of the *Miranda* warnings “midstream” did not effectively provide the procedural safeguards it envisioned in *Miranda*. In doing so, the Court questioned the validity of *Seibert*’s waiver, questioning whether it was made voluntarily, knowingly, and intelligently when *Miranda* was presented to her after she already had “let the cat out of

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the bag.” After all, could she truly appreciate the fact that the protections afforded to her by *Miranda*, albeit midstream, provided her with the opportunity to invoke either or both of her rights to silence and to counsel?

In distinguishing *Elstad* from *Seibert* with regard to those questions, the U.S. Supreme Court agreed with the Missouri Supreme Court’s opinion that the interrogating officer’s “intentional omission of a *Miranda* warning was

intended to deprive *Seibert* of the opportunity knowingly and intelligently to waive her *Miranda* rights.”³⁷ Further, the Court went on to say that “[t]o allow the police to achieve an ‘end run’ around *Miranda*...would encourage *Miranda* violations and diminish *Miranda*’s role in protecting the privilege against self-incrimination.”³⁸

Post-*Seibert* Developments

In *U.S. v. Stewart*,³⁹ the Third Circuit Court of Appeals remanded a case of a bank robber and directed that the admissibility of the confession be evaluated in light of the *Seibert* ruling. The circuit court of appeals expressed concern that the confession may be the product of a two-tiered interrogation. As such, the case was remanded to obtain sufficient information to rule on the validity of the defendant’s waiver. Additional information was needed regarding the temporal and spatial circumstances surrounding the first and second interrogations before ruling on the admissibility of the confessions. The circuit court of appeals stated that this analysis would involve consideration of “a series of relevant facts that bear on whether *Miranda* warnings delivered midstream could be effective enough to accomplish their objectives: the completeness and detail of the questions and

answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first."⁴⁰

Impact of *Seibert* on Interrogation Tactics

As a result of *Seibert*, law enforcement agencies must reevaluate their interrogation practices to ensure that they are consistent with the Court's ruling. The previously endorsed practice of holding off on providing the advice of rights to an arrestee with a follow-up "warned" interview, viewed by some as an effective interrogation tactic, will lose its effectiveness when the confession is suppressed. Thus, department interrogation practices should continue to reflect the fundamental principles announced by the U.S. Supreme Court in *Miranda* and its progeny.

Conclusion

As noted by the Supreme Court, the *Elstad* ruling evolved into an interrogation tactic that encouraged law enforcement to interview an individual who was in custody "outside of *Miranda*" to pave the way to a full confession. The decision of the Supreme Court in *Seibert* has rejected expressed opposition to such

interrogation tactics, viewing them as an attempt to "achieve an 'end run' around *Miranda*." However, effective interviewers often will want to establish a rapport with the interviewee before launching into the heart of the interview. Such rapport building, to the extent that it

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The issue of coercion goes to the heart of Miranda.

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occurs, now must be conducted consistent with the Court's mandate in *Seibert*. There is no doubt that the impact of pre-warning exchanges between interviewer and an in-custody interviewee on the admissibility of statements obtained post-*Miranda* will be followed closely in light of the Court's ruling in *Seibert*. ♦

Endnotes

¹ 348 U.S. 436 (1966).

² *Id.* at 444. The Fifth Amendment to the U.S. Constitution provides in pertinent part that "no person...shall be compelled in any criminal case to be a witness against himself...."

³ 124 S. Ct. 2601 (2004).

⁴ *Id.* at 2605.

⁵ *Id.* at 2606

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ No. 23729, 2002 WL 114804 (1/3/2002) (not released for publication), citing *Oregon v. Elstad*, 470 U.S. 298 (1985).

¹² *State v. Seibert*, 93 S.W.3d 700 (2002).

¹³ *Seibert*, at 2608. The Supreme Court noted that the Police Law Institute instructed officers on the two-tiered interrogation approach. Additionally, the Court referred to other training programs that encouraged the practice of questioning outside of *Miranda* first to secure an admission prior to proceeding with the advice of rights. *Id.*

¹⁴ *Id.* at 2609.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Seibert*, at 2610.

²⁰ *Id.*

²¹ *Elstad*, at 1289.

²² *Id.*

²³ *Id.* at 1290.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1294.

²⁷ *Id.* at 1295.

²⁸ *Id.* at 1296.

²⁹ *Id.* at 1293.

³⁰ *Seibert*, at 2604.

³¹ *Id.* at 2610.

³² *Miranda*, at 436.

³³ *Id.* at 444.

³⁴ *Seibert*, at 2610.

³⁵ *Miranda*, at 443.

³⁶ *Seibert*, at 2610.

³⁷ *Id.* at 2606-2607.

³⁸ *Id.* at 2607.

³⁹ 388 F. 3d 1079 (2004).

⁴⁰ *Id.* at 1089.

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.

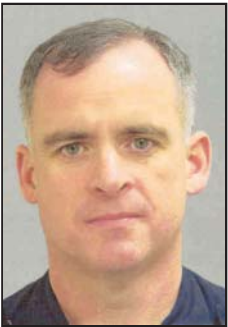
The Bulletin Notes

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



Trooper Schneider

While on traffic patrol, Trooper Kevin Schneider of the Wisconsin State Patrol observed a vehicle that was being driven erratically. When he attempted to stop the car, a high-speed chase ensued. Within a few minutes, the male driver stopped the vehicle in the middle of the road and refused to exit the car. As Trooper Schneider cautiously approached, the man displayed a 7-inch fixed-blade knife and deeply slit his own throat and carotid artery. The trooper quickly removed the knife from the driver—now going into shock—and administered first aid to stop the profuse bleeding. Then, the individual was transported to a local hospital for emergency surgery; he later recovered. Trooper Schneider's brave actions and quick thinking saved the man's life.



Lieutenant Heavey



Lieutenant Cochran

Lieutenants James Heavey and Richard Cochran of the Greenwich, Connecticut, Police Department were the first to respond to a house fire. Upon arrival, the officers found flames under a rear two-story deck and stairway, the only access to the second- and third-floor apartments. Fearing the fire would spread and trap the residents—two women and a young girl, the officers climbed the burning deck and rescued the three occupants from the building. The swift and heroic actions of Lieutenants Heavey and Cochran saved the residents from harm.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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Patch Call



The seal of the city of Connersville serves as the design of the police department's patch. At the center is an old canal house, representing the transportation of goods; smokestacks, depicting industry; and a Spartan head, symbolizing excellence in school athletics. The colors are those of the United States.



The patch of the Gilford, New Hampshire, Police Department, a replica of the town seal, features the waters of Lake Winnepesaukee with mountain ranges in the background. The boat represents the recreational opportunities offered by Gilford.