

U.S. Department of Justice
Federal Bureau of Investigation



August 2012

FBI Law Enforcement Bulletin

**Crowd
Management**



August 2012
Volume 81
Number 8

United States
Department of Justice
Federal Bureau of Investigation
Washington, DC 20535-0001

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Director

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135.

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Cover Photo

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Send article submissions to Editor,
FBI Law Enforcement Bulletin,
FBI Academy,
Quantico, VA 22135.

FBI Law Enforcement Bulletin

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Please read an important announcement on page 28 about the new online initiative for the magazine.



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Crowd Management Adopting a New Paradigm

By MIKE MASTERSON

Managing crowds is one of the most important tasks police perform. Whether or not members of the public agree with this practice, they often judge how well law enforcement officers achieve this—if it is done fairly and effectively. Of course, officers should treat everyone with respect and courtesy without regard to race, gender, national origin, political beliefs, religious practice, sexual orientation, or economic status.

Although perhaps daunting, the primary function of police is relational, whether they respond to a domestic dispute, investigate a crime, enforce a traffic regulation, or handle a crowd. Once officers understand this, they will find it easier to determine what to do and how to do it.¹

Lessons Learned

Studied by law enforcement for at least 40 years, crowd control is important due to the

dangers posed by unruly gatherings. To this end, it proves fair to ask whether police leaders do all they can to share lessons learned and incorporate best practices into crowd management philosophy, training, and tactics.

As a young police officer in Madison, Wisconsin, in the 1970s, the author experienced the Vietnam War's aftermath at home and the eruptions of student unrest. A state capital and home to a major university,

Madison at times is a hotbed for protests. From antiapartheid demonstrations and dismantling of shantytowns on capitol property to an annual alcohol-laden Halloween festival, the author, along with fellow officers, monitored and managed parties and protesters for over four decades. With groups ranging from 6 church members to 250,000 people celebrating in a city park, Madison police successfully balanced rights to assembly and free speech with citizen and officer safety.

The author benefited from those lessons on crowd management when becoming chief of the Boise, Idaho, Police Department in 2005. The city subsequently hosted the National Governors' Conference and the 2009 Special Olympics World Winter Games. Boise police officers manage a wide variety

of protests, parades, and demonstrations on issues, such as immigration, human rights, and most recently, a death penalty execution and Occupy Boise.

A police chief's involvement and direction prove critical to officers' ability to successfully manage emotional, potentially volatile crowds. The message received from top-level management greatly influences the behavior and mind-set of frontline officers. Shaping these attitudes begins with a solid understanding that police work involves building relationships with members of the public whom officers are sworn to serve and protect.

British Influence

The International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF) have an

increasing amount of information available on best practices in crowd management. PERF's recent publication *Managing Major Events: Best Practices from the Field* contains insight offered by law enforcement leaders from the United States and Canada on what has worked for them.² This report includes the Vancouver, British Columbia, Police Department's new policy on tolerance and restraint when dealing with crowds. Police leadership in Vancouver recognized the success of British crowd control policies, sent their senior executives overseas to study the model, and brought back trainers to assist officers with implementing this new style of crowd control during the 2010 Winter Olympics.

With British input, Vancouver police developed a meet-and-greet strategy. Instead of using riot police in menacing outfits, police officers in standard uniforms engaged the crowd. They shook hands, asked people how they were doing, and told them that officers were there to keep them safe. This created a psychological bond with the group that paid dividends. It becomes more difficult for people to fight the police after being friendly with individual officers.³

British research on policing crowds confirms the strategic need for proactive relationship building by police. In the 1980s,



Chief Masterson heads the Boise, Idaho, Police Department.

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British research on policing crowds confirms the strategic need for proactive relationship building by police.

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a professor at the University of St. Andrews in Scotland published early findings on how law enforcement tactics shape crowd identity and behavior.⁴

Later, a doctor at the University of Liverpool published research on hooliganism—rowdy, violent, or destructive behavior—at British soccer games. Named after fans of a soccer club involved in two riots with South Wales Police in 2001 and 2002, the Cardiff Approach is based on two leading theories of crime reduction—the Elaborated Social Identity Model (ESIM), the leading scientific theory of crowd psychology, and the Procedural Justice Theory (PSJ).

The ESIM maintains that crowd violence escalates if people think police officers treat them unfairly. PSJ proposes that group members comply with the law when they perceive that officers act with justice and legitimacy.⁵ When a crowd becomes unruly and individuals perceive unfair treatment by law enforcement officers, violence can escalate, and a riot can erupt. Recent research finds support for both perspectives and concludes that when police officers act with legitimacy, disorder becomes less likely because citizens will trust and support law enforcement efforts and behave appropriately.⁶

The Madison Method

Modern research supports a philosophy of public order

policing from the 1970s referred to as The Madison Method of Handling People in Crowds and Demonstrations.⁷ This approach begins with defining the mission and safeguarding the fundamental rights of people to gather and speak out legally. The philosophy should reflect the agency's core values in viewing citizens as customers. This focus is not situational; it cannot be turned on and off depending on the crisis.

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Officers should begin with constructive engagement, dialogue, and a soft approach.

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Law enforcement agencies facilitate and protect the public's right to free speech and assembly. When officers realize they are at a protest to ensure these rights, they direct their responses accordingly, from planning to implementing the plan. Officers must have a well-defined mission that encourages the peaceful gathering of people and uses planning, open communication, negotiation, and leadership to accomplish this goal.

Los Angeles Police Department (LAPD) commanders achieved success in planning and communicating their agency's mission during an Occupy Los Angeles gathering. Throughout the event, officers' objective was to facilitate the peaceful removal of all people and their belongings from the city hall park area. Participants received a reasonable amount of time to leave, after which officers issued a dispersal order. Anyone refusing to exit the park faced arrest.⁸

Officers should begin with constructive engagement, dialogue, and a soft approach. British law enforcement agencies call this the “softly-softly approach.” Law enforcement personnel mingle and relate to the crowd using low-key procedures based on participants' behavior, rather than their reputation or officers' preconceived notions of their intent.

Police and demonstration organizers should coordinate prior to an event. This reinforces law enforcement's role as facilitator, rather than confronter. Maintaining dialogue throughout the event helps minimize conflict. Of course, dialogue involves two-way conversation—sometimes this means listening to unpopular opinions and suggestions. There is only one crowd; however, individuals comprise that mass. If the event is peaceful, officers

Public Order Policing Model

An effective public order policing model has several components. The foundation begins with scientific theory and evidence based on researched and tested techniques. Effective contemporary crowd control methods used by American, Canadian, and British agencies support these techniques. Police procedures strongly influence law enforcement training, thus, affecting officers' responses.



should remain approachable to, for instance, give the location of the nearest ATM, provide the phone number for a taxi, or supply directions to a parking lot.

Officers must avoid donning their hard gear as a first step. They should remember lessons learned from the 1960s civil rights movement and Vietnam War protests. Police should not rely solely on their equipment and tools.⁹ Experience shows that when used as a primary tactical option in public order policing, dialogue is invaluable. Law enforcement officers must defuse confrontations to ensure strong ties with the community. If they fail, rather than stronger community goodwill, the effect will be less civility and the erosion of constitutional rights.¹⁰

Negotiation and Education

Officers must negotiate, educate, and maintain continual dialogue with organizers and crowd members. Police personnel initially must state that they defend the public's right to demonstrate, but cannot allow the crowd to hurt others or destroy property. Whether officers support the crowd's position or if the group holds an unpopular view, law enforcement agencies must remain neutral and prevent physical injuries or property destruction. If arrests become necessary, police officers must respect individuals and avert harm to anyone in custody. Officers must convey that they expect cooperation in return.

Recently, an elected leader in Boise recognized the need for

officers to address crowd management questions. It became apparent that some demonstrators misinterpreted law enforcement agencies' approach. While police engaged in reasonable, steady conversation, the public sometimes saw this as uncaring, which indicated the importance of educating demonstrators early. In Vancouver, officers quickly relayed to Winter Olympics fans the strategy to keep everyone safe.

Protection and Professionalism

Protecting officers who work with a crowd is important. The Stockholm, Sweden, Police Department uses highly visible and identifiable "dialogue police," while British law enforcement agencies use "communication police." The Boise Police Department maintains a tactical unit with full protective equipment on standby in an out-of-sight location near the demonstration. The unit serves as an emergency response to protect officers and the public from harm. Its mission is to safeguard people first and property second. Deploying the emergency response team is a last alternative when soft crowd control tactics prove ineffective.

Law enforcement agencies can show leadership in preparation and training for events by using specially qualified police officers. The best officers to use

in crowd control situations are those specifically selected and trained who have the personality to use a soft approach under difficult circumstances. Self-control proves essential.

Not all police officers can manage multitudes effectively. Crowd control offers a rare opportunity for agencies to cultivate a positive public image. When officers operate as a team, the public observes confidence and professionalism far above any uniformed presence.

Accountability and Visibility

While restraining from the employment of force is important, its use may become necessary at large gatherings, especially those born out of passion. Officers working at large events must realize that someone watches and records all arrests. Police officers with up-to-date training in making team arrests ensure efficient apprehensions.

Avoiding the use of outside agencies can be wise. Officers from other locations may differ in philosophy, training, or ability to work together during a conspicuous event. External resources could lack soft crowd management experience or community knowledge. It proves important to local agency leaders that officers take personal responsibility for crowd management in their city.

Occasionally, outside help proves necessary. A recent event in Boise required the

participation of five large agencies consisting of state, county, and city forces. The effort was well-planned and coordinated. Success came from all stakeholders' early planning and clear understanding of the mission.

Avoiding anonymity and promoting accountability are essential. By ensuring police officers assigned to crowd control are identifiable, with names and badge numbers clearly visible,

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Participants perceive the legitimacy of police actions based on how officers interact with the crowd throughout an event.

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agencies prevent their officers from becoming anonymous agents. Obscurity or depersonalization of officers encourages negative crowd behavior and leads to unaccountable actions.

Agencies should videotape events. Segments recorded by participants, bystanders, and media are useful; however, when departments record their own documentation, they ensure its value for case review, accountability, and context. The University of California,

Berkeley, Police Department has such a practice. Normally, it videotapes all demonstrations or crowd situations to ensure complete records of the event. During periods in which violations, police actions, or other significant activities occur, the agency employs at least two video cameras.¹¹ To safeguard the First Amendment and privacy rights of those participating in the event, agencies should adopt a policy governing retention and destruction of these tapes.

During high-profile or large demonstrations, police command officers must remain on the scene, visible, interactive, and willing to take charge. This provides an excellent opportunity to assess the mood of the crowd and reinforce the agency's outlook and crowd management tactics.

Communication and Preparation

With 24-hour news, cell phone cameras, Facebook, Twitter, and hundreds of other social media connections, it becomes important to prevent potentially dangerous rumors from appearing as facts. Because of erroneous witness statements and other misleading or false information, justifiable use of force has triggered riots. Law enforcement agencies play a major role in responsibly reporting accurate information quickly and continually for the benefit

of officers, the public, and the media. Although officers are not responsible for inaccurate reporting, developing a proactive, engaged media plan is important. Social media serves as an excellent way to directly communicate department messages and obtain information on events.

Law enforcement agencies must have a plan to de-escalate conflict situations. If an arrest becomes necessary, the individual taken into custody should be one who threatens the peace of the event. Sometimes, officers disperse a crowd to preserve harmony and prevent injuries and property damage. Police officers with specialized skills and equipment do this best. Law enforcement agencies must prepare for circumstances that suddenly can turn a crowd confrontational.

At any large demonstration, law enforcement officers primarily serve as peacekeepers facilitating lawful intentions and expressions. Participants perceive the legitimacy of police actions based on how officers interact with the crowd throughout an event. Communicating expectations, negotiating continually, and emphasizing the goal of safety are vital. Officers should not confuse the actions of a few with those of the group. Law enforcement personnel must remain firm, fair, and professional.

Conclusion

Commonplace instant, mass, and social media provide an opportunity to highlight and improve the public's view of law enforcement legitimacy. Using communication and best practices in crowd management, officers reinforce their position as peacekeepers. Police, the most

“Law enforcement agencies play a major role in responsibly reporting accurate information quickly and continually for the benefit of police, the public, and the media.”

visible form of government, must continue to ensure that the First Amendment rights of the public they serve are protected and guaranteed. ♦

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Perspective

Detecting Deception

By Joe Navarro, M.A.

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Throughout their careers, law enforcement officers must face the challenge of determining when someone is lying or hiding information.¹ As researchers have demonstrated, this task can prove difficult. Most people have no better than a 50/50 chance of detecting deception.² Increasing these odds requires preparation and skillful execution.

IMPORTANT FACTORS

Skill Development

Some people say that chance favors the prepared mind; this holds true in life, particularly in law enforcement. Just as officers must stay abreast of current case law and best practices, they also need to remain aware of the latest research on non-verbal communication and deception.

The literature on body language and deception detection continually evolves. Unfortunately, officers rarely receive advanced education in non-verbal communication after they leave the police academy. Some will study it on their own, and others may read an occasional article. However, instruction in communication rarely is emphasized the same way as legal or firearms training. This is regrettable because law enforcement officers collect information through awareness and interpretation of behavior.

By developing skills in observation and lie detection, officers enhance their job performance and guard against the wrongful assignment of guilt to someone who merely is nervous or anxious.³ As important as it is to detect deception, it is just as vital for officers to determine the truth. DNA exonerations over the last 10 years have shown that

in cases where subjects later were cleared, officers mistakenly attributed nervousness and anxiety to lying and culpability and did not realize that claims of innocence actually held true.⁴

Interview Setting

While an officer's skill is important for detecting deception, so are the setting and environment. Obviously, not every interview is conducted under perfect conditions; however, if officers understand those circumstances, they can prepare better to achieve that idyllic situation. Polygraphers know the ideal surroundings for conducting a forensic interview. They give polygraph examinations in a quiet area with only the interviewer and subject present.

The most advantageous way to conduct an interview is in a quiet room with no distractions or time restraints. The space should have only two chairs and a small side table for the interrogator. The interviewee ideally will sit near the door (less

psychological stress), in the open and with no barriers. This way, the interviewer can observe the subject's whole body at all times. Investigators should have the freedom to move around the room and adjust their seating position as necessary.

Psychological Comfort

The key to detecting deception is enabling the interviewee to relax by using traditional methods, such as rapport building. Establishing this relationship creates psychological comfort.⁵ When this is accomplished, the interviewer can ascertain baseline behaviors for later comparison, ensure optimal recall, and diminish the subject's capacity to resist or argue. It also demonstrates to the court that there was no coercion or mental pressure. When it comes to deception, determining these baseline behaviors through psychological comfort is essential.

Effective Communication

In some respects, interviewing entails nothing more than "effective communication with a purpose."⁶ In a forensic setting, investigators search for information with general investigative value or something that may prove their case. That constitutes the purpose of the interview.

Communicating effectively includes both verbal and nonverbal messages. It means that interrogators must ask questions properly so as not to arouse behaviors that mask true sentiments. When an interviewer becomes suspicious of a statement or begins to accuse a suspect, a negative emotional response usually results—the kind most people feel when someone blames them for something. When stimulated this way, the interviewee's emotional state and nonverbal behavior become altered, masking true sentiments.⁷ This affects the innocent, as well as the guilty.

If investigators ask questions with curiosity rather than suspicion or animosity, they will notice the suspect displaying nervousness, tension, stress, anxiety, fear, apprehension, concern, or dislike as a



Mr. Navarro, a retired FBI special agent with the National Security Division's Behavioral Analysis Program, currently is an adjunct professor at Saint Leo University in Saint Leo, Florida.

result of the substance of the question, rather than the tone. This proves critical to detecting deception because the interviewer's tone, attitude, demeanor, intensity, and manner all affect the emotions of the interviewee. It is better to be curious than accusatory. Once interviewers cross that line, the suspect's behaviors result from emotions, not guilt.

Fortunately for investigators, not all words have the same weight to the guilty. A killer who used an ice pick may react differently if asked about a machete, knife, or gun. Those words may not have the same effect because only the mention of the specific murder weapon holds any kind of threat.⁸

When the suspect with guilty knowledge hears a question, survival instincts kick in, body movements can become restricted, and psychological discomfort may result. Interviewers may observe these reactions as body tension, a furrowed forehead, immobile arms, disappearing or tense lips, and distancing by leaning away. At the same time, this person initiates pacifiers—any tactile self-touching, such as stroking the face, biting nails, licking lips, wringing hands, or tugging at clothing—to relieve stress.

As most parents know from caring for an infant who does not speak, the brain responds to the world around it in real time, which allows people to see or sense what others think or feel.⁹ However, each person physically responds differently to stressors. Some people show stress by excessively sweating, vigorously massaging their neck or forehead, blocking with their eyes, ventilating their shirt, or tightly grasping their legs. More subtle persons swallow hard, compress or lick their lips, conceal their neck dimple with a hand, or cover

their thumbs with their fingers. Over 215 identified behaviors associated with stress and discomfort provide clues as to how a person feels when asked a question.¹⁰ Fear, guilt, shame, and excitement cause emotional responses that most people cannot control. These provide insight during the interview process.

Four viable opportunities allow investigators to detect when a person hides something, feels anxious about a question, lies, or has knowledge of guilt. Once the interviewer is prepared, the ideal setting is arranged, and psychological comfort is reinforced, the interview process can begin.

Four Opportunities

When Asking

The first opportunity to detect deception arises when the interrogator asks a question. As the subject hears questions, the officer should look for behaviors that indicate restricted body movement (the freeze response, the first reaction to any threat),

negative affect (chin withdrawal or compressed lips), or self-soothing (hand-on-body touching or massaging). A proficient interviewer asks questions and observes without being intrusive, showing doubt, or displaying suspicion. Investigators should look for any sign of discomfort, nervousness, or pacifying as they ask their questions.

While Processing

Interviewers have a second chance to gauge for deception when the interviewee processes the question. Some people quickly think things over, while others take their time. Regardless, the interviewer is looking for the effects of processing

“...law enforcement officers collect information through awareness and interpretation of behavior.”

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the question. For example, interrogators should watch for actions, such as the suspect repeating the question (a delay tactic, perhaps), seemingly troubled by the question, hesitating, or appearing to think deeply and carefully (sign of a cognitive load). Other behaviors to note include interviewees suddenly locking their ankles around the legs of their chairs; looking straight ahead, frozen in their seats; or darting their eyes, looking for an answer. These observations are important because changes in behavior or facial expressions mean adjustments in thinking, processing information, or feeling emotions. If a subject struggles with or appears troubled by a question, the interviewer needs to determine the reason.

When Answering

The third occasion to assess for hidden information, deception, or guilty knowledge is when the interviewee answers the question.¹¹ The interrogator should note if the person gives the response with conviction, without hesitation, with an unwavering voice, or with confidence. Interviewers can watch to see if suspects respond passively, use a quiet voice, limit how much space they take up, or pacify themselves.

Other conduct by the subject might include answering with palms up (wishing to be believed) or palms down with fingers spread (dominant confidence display). They may reply with one shoulder slowly rising toward the ear, indicating weakness, doubt, insecurity, or lack of confidence. Their voices may crack, trail off, or change to a higher pitch, signifying important issues to explore. These tendencies indicate the need to

look closer at the individual and determine why these behaviors exist.

After Responding

Investigators have the fourth opportunity for assessment after the suspect answers a question. At that point, a skilled interviewer will wait and watch for 2 to 4 seconds, creating a natural but pregnant pause to observe the interviewee. A number of behaviors revealing knowledge or guilt may present themselves after a subject responds to a question. Suspects may move or shift around (wiggle), create distance (move the chair or lean away), conduct cathartic breathing (long exhale), self-soothe (massage their shoulder or leg), wipe away sweat, or perform other actions to relieve the stress resulting from hearing, processing, and answering the question. These discomfort behaviors speak volumes to the investigator.

Additional Considerations

After making the proper observations during these four phases, it proves useful to remember that speech errors, hesitation, lack of confidence, indicators of stress, and pacifiers in relation to a question merely suggest *some* cause. They indicate that a stimulus (the question) has created stress and that something is there to pursue, much as in a polygraph exam.¹² Investigators must remember that stress indicators do not conclusively indicate deception. As one nonverbal communications expert has said, “Unfortunately, there is no Pinocchio effect” when it comes to deception.¹³

Law enforcement officers must recognize the limits of lie detection. Deception can be identified

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Four viable opportunities allow investigators to detect when a person hides something, feels anxious about a question, lies, or has knowledge of guilt.
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only when all information is known, which usually is not the case. To guide them in their inquiries, investigators look for cues of discomfort or lack of confidence. If unknown issues or hidden information cause stress, interviewers must ask why. They should ascertain if the suspect is involved, lying, or not telling the entire story. Investigators should pursue all questions that indicate issues. A polygrapher cannot say definitively that persons have lied, only that they displayed indicators of stress when asked a question. Unfortunately, the same holds true for interviewers. That does not mean that interrogators stop asking questions. The interviewee's discomfort or lack of confidence during questioning compels knowledgeable investigators to look further.

CONCLUSION

Reliable indicators of deception presently may evade interviewers; however, law enforcement can look for signs in a suspect's verbal and nonverbal language that may indicate issues or deception. Interviewees' behaviors help investigators identify knowledge, guilt, deception, issues of concern, or concealed information. The author's experience teaches that during questioning, interviewers have four viable opportunities to look for these clues—valuable indicators that professional interrogators can use to determine the truth. ♦

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¹ The author bases the information in this article on his expertise and experience.

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Leadership Spotlight

Change Can Be a Slippery Slope

In any industry or profession, change proves difficult. For those of us in law enforcement, it can resemble a vehicle skidding out of control. Yet, a competent driver at the wheel can steer change effectively.

Far too often, employees view change as something forced upon them. Leaders can envision new policies, but not effectively communicating such changes will result in failure. I refer to this as rear wheel drive (RWD) leadership. A better alternative is front wheel drive (FWD) leadership.

Consider a RWD vehicle and its difficulty maneuvering up an icy hill. The engine (management) directs the rear wheels (employees) to move forward. While the vehicle (agency) tries to move up the hill (change), the wheels start to spin (confusion). Based on the spinning, the engine gives more power (commands) to propel the vehicle upward. Typically, this results in the vehicle facing the opposite direction and landing in a ditch.

Conversely, picture the FWD vehicle and the same scenario. The engine directs the front wheels (command staff) to move forward. Because they are located in the front of the vehicle, they lead it up the hill. They communicate with the rest of the vehicle by telegraphing what they will do (turn right or left, stop). The wheels

need less power and only subtle adjustments to stay on track. The rest of the vehicle typically has no choice but to follow their lead. As a perfect example of this process, former Chief Bill Bratton of the Los Angeles, California, and New York, New York, Police Departments focused on getting his command staff working together toward a common goal. Effective communication and motivation

resulted in the successful implementation of the desired vision/goal.

Regardless of the change, leaders need to communicate it—clearly—from the top and model it. Agencies will find changes easier to implement when personnel are led, rather than pushed, by the executive staff. By inspiring others to help implement the change, the process proves smoother and more effective. So, the next time significant change arises, ask yourself whether your actions will lead to the agency ending up all over the road and in a ditch facing the opposite direction or if your leadership style effectively will guide personnel steadily down the road and toward the final destination. ♦



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significant change arises, ask yourself whether your actions will lead to the agency ending up all over the road and in a ditch facing the opposite direction or if your leadership style effectively will guide personnel steadily down the road and toward the final destination. ♦

Special Agent Donald Soranno of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, a leadership fellow at the FBI Academy, prepared this Leadership Spotlight.

Focus on Ethics

The Power of Police Civility

By Andrew Borrello



People refer to ethics with a certain level of reverence. Numerous subdescriptors define it and its systemic roots, especially when applied to policing. It touches all aspects of society. Academies present classes on ethics, and law enforcement personnel attend courses and seminars to ensure that their professional decorum remains intact and harmonious in concept and action. Officers abide by a code of ethics.¹ Society scrutinizes and holds expectations of police conduct at a higher level than many other professions.

The ethical wheel has many spokes, including integrity, principles, values, morals, honesty, virtue, altruism, courage, character, and honor. While the contemporary pillars of ethics are taught and learned, mainstream theories and applications serve officers' daily needs. Another spoke in the wheel—civility—often is overlooked and not on the list of most popular moral descriptors.

Often inconspicuous and overshadowed by professionalism, civility serves as a tangible application of professional standards where concept and theory become overt action. It represents a powerhouse of potential. Law enforcement organizations seeking to reduce personnel complaints, enhance public image, deliver a high level of public service, and increase the effectiveness of community policing must understand the power and potential of police civility.

Definition

Civil service, civil unrest, and civil rights represent common terms. Less familiar is civility, often practiced haphazardly, sporadically, and unintentionally, if at all. Applied civility, however, requires well-focused purpose and deliberate intent.

Simply, civility entails treating others with respect; practicing good manners; and considering the feelings of other persons, their positions, and their situations. It represents self-disciplined behavior and patience with those who may not deserve it. Civility creates behavior that reduces conflict and stress and is void of self-interest.

Employee conflicts become healthy and productive with the application of civility. Sexual harassment cannot exist in a respectful, self-disciplined environment. Politicians dedicated to civil discourse will not use smear campaigns. Civility is right behavior that serves as an ethical sentry encouraging the prevention of and guarding against misconduct.

Practice

Civility differs from weakness. Practicing respectfulness does not mean officers must display extreme, overt kindness in all situations. As with the application of force, officers can use decorum subtly or with such depth that it can change a person's life. This practice has existed for centuries.

As a 13 year old, George Washington based his *Rules of Civility and Decent Behavior in Company and Conversation* on the English translation of a French book on manners. The first rule of 110 reads, "Every action done in company ought to be with some sign of respect to those...present."²

Dale Carnegie's bestsellers, including *How to Win Friends and Influence People*, have sold more than 50 million copies in 38 languages. He bases his work largely on the practice of civility. In his *Golden Book*, Carnegie discusses the simplest components of decorum: smiling, controlling criticism, avoiding arguments, being sincere, demonstrating overt appreciation, listening, considering all opinions, seeing other people's point of view, and sympathizing.³ Civility diminishes the gap between cliques, prevents divisional lines from

becoming walls, and promotes healthy collaborative teamwork. One can imagine the value of officers and supervisors who exemplify these traits.

Application

Common civility involves a driver slowing down to let a merging vehicle in the lane or a father who, despite his anger and frustration, resists cursing or yelling at a referee during a soccer game. It entails an

act of kindness, such as helping a stranger change a flat tire, using patience and tolerance when not slamming the door in a solicitor's face, or extending courtesy by not reading a text message in a movie theater.

Civility holds particular importance in law enforcement; when applied as a deliberate technique, the results can be amazing. Department leaders genuinely employing kindness in action can see morale increased, employees' work becoming enjoyable, citizen complaints decreased, and a more community-friendly organization exemplified. Use of this simple trait may help decrease the use or abuse of sick leave and prevent valuable officers from looking elsewhere for employment. Top-down civility in police agencies cultivates

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teamwork, stronger relationships, and organizational advocacy. The application of decorum by ranking staff transforms line-level personnel from employees into stakeholders who matter, eliminating any “us and them” mentality.

Interdepartmental gossip, rumors, and verbal disparagement often comprise friendly banter and require little more than thick skin, an intact ego, and a quick wit for verbal defense. Such behavior coming from informal leaders, supervisors, or managers is different. It cuts deeper and has a dynamic adverse impact. This lack of civility takes place when joking becomes personal, turns into backstabbing, or does not stop. Individuals often internalize their negative feelings. Those who continue such verbal assaults may be unaware of the recipient’s silent frustration or latent anger. In law enforcement, civility is most powerful and best practiced first among each other.

As officers apply decorum, people view them as consistent, not fair one day and unfair the next, or unapproachable on Monday and angry and distant on Tuesday. Applied civility is free of hidden agendas, politics, and cliques. The expectations of civility-based leadership are transparent, lucid, and balanced. This creates a comfortable working environment.

A supervisor receives a suggestion for a new program, change in policy, or needed training and responds in a timely manner. This professional courtesy communicates the importance of the person and the suggestion. Sometimes, officers approach commanders or supervisors and converse with the side of a face while the person continues typing on a keyboard. The application of civility suggests that supervisors stop what they are

doing and provide eye contact and full attention. This interpersonal communication personifies patience, respect, and tact and serves as a tangible component of civility.

Conclusion

Top-down police civility does not solve all of the unique issues faced by law enforcement. It can, however, result in positive changes and prevent adverse occurrences. Simple techniques and small tweaks often create bigger changes. When considering moral behavior, teaching leadership and ethics, or discussing professionalism, it is vital to consider civility and its unique qualities and add them to the repertoire. While understanding the power and potential of decorum is important, the small, collective, everyday applications of civility have the power to bring about real change. ♦

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Endnotes

¹ The International Association of Chiefs of Police (IACP) first developed a code of ethics in 1957. This code was revised at a conference in Louisville, KY, on October 17, 1989. In October 1991, IACP members unanimously voted to adopt the code. Retrieved from http://www.ehow.com/about_6331687_law-enforcement-code-ethics_.html#ixzz1qzVqbHOR (accessed April 3, 2012).

² George Washington, *Washington’s Rules of Civility and Decent Behavior in Company and Conversation*, <http://babel.hathitrust.org/cgi/pt?id=mdp.39015008918701;page=root;view=image;size=100;seq=1;num=1/> (accessed January 13, 2012).

³ Dale Carnegie, *The Golden Book*, <http://www.nagesh.com/reference/100-golden-rules/182-golden-rules-from-dale-carnegies-golden-book.html> (accessed January 13, 2012).

Lieutenant Borrello serves with the San Gabriel, California, Police Department.

ViCAP Alert

Attention

*Homicide, Missing Persons,
and Crime Analysis Units*



*Crist Nelson Dauberman, Sr.,
missing from Spotsylvania
County, Virginia, since
October 1993*

During the fall of 1993, Crist Nelson Dauberman, Sr., disappeared from his home in Spotsylvania County, Virginia. Dauberman was on disability due to post-traumatic stress disorder (PTSD). Since his disappearance, his family has not heard from him.

To provide or request additional information, please contact Detective Leonard

Race: White

Sex: Male

Age: 47 (at incident)

Height: 5'10" (70")

Weight: 213 lbs.

Hair: Brown

Eyes: Green/hazel

Scars/Marks/Tattoos: "Wendy" on left arm

Clothing: Unknown

Place of Birth: Lock Haven, Pennsylvania

Fingerprint Code: PI 07 14 13 17

PI 12 12 17 14

Fingerprint Pattern:

WU RS RS RS RS WU LS LS LS LS

RS AU WU WU WU

Agency Case #: 03-129561

Short, Spotsylvania County Sheriff's Office, Fredericksburg, Virginia, at 540-507-7106 or lshort@spotsylvania.va.us or contact the FBI's Violent Criminal Apprehension Program (ViCAP) at 800-634-4097 or vicap@leo.gov.

Contact ViCAP for information on how your agency can obtain access to the ViCAP Web National Crime Database.

Pickers, Protesters, and Police

The First Amendment and Investigative Activity

By CARL A. BENOIT, J.D.

Americans not only cherish the fundamental rights of religion, speech, press, assembly, and petition guaranteed by the First Amendment to the U.S. Constitution but regularly exercise these rights. Searching the headlines of any major newspaper or watching the evening news regularly uncovers stories about protests, pickets, or demonstrations that can surround religious, political, social, or economic issues and include people from all segments of society.



They involve war protestors, death penalty protestors, persons participating in labor disputes, and political protestors and take the form of marches, rallies, and boycotts. And, in the year of a general presidential election, political rallies and conventions seem to take center stage, where candidates, supporters, and opponents seek to express their own messages.

The United States' national commitment to the freedom of speech is so strong that its laws protect speech even when a majority of citizens finds it offensive. That is why, for instance, protestors can burn American flags at demonstrations or church members can picket outside military funerals holding signs that many people believe contain deplorable messages.¹ While the First

Amendment provides a wide zone of protection for individuals who convey these messages, the protections are not absolute. Under certain circumstances, protected First Amendment activity still may generate legitimate law enforcement attention. Many times, this police activity is not controversial or, even, newsworthy. For instance, the public expects a police presence to maintain order and ensure safety at a protest or march. However, on occasion, law enforcement officers take additional steps by conducting surveillance on groups of protestors, collecting information or intelligence about protestors, or commencing an investigation directed at members of a group. Although, in many situations, these law enforcement activities may be permissible, they carry

the potential to raise important constitutional and public concerns to which law enforcement agencies should be sensitive.

The challenge to those who have sworn to uphold the law is in finding the proper balance between using investigative techniques to protect the public from harm while not unlawfully interfering with the exercise of constitutionally protected rights. In a 2008 congressional hearing before the Senate Intelligence Committee, then FBI General Counsel Valerie Caproni made the following statement regarding this common law enforcement dilemma:

The FBI has the responsibility of protecting the country from national security and criminal threats while upholding the Constitution. We fail as an agency if we safeguard the country from terrorism but sacrifice the privacy and civil liberties that make us the country we are today.²

Striking the proper balance means determining when and under what circumstances investigative techniques can be used to gather information about the activities of individuals or groups to ensure that they are not conspiring, planning, or engaging in unlawful activity. The boundaries of First Amendment protection in this area, however, are not precise, are



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Special Agent Benoit serves as a legal instructor at the FBI Academy.

frequently driven by facts and circumstances, and are subject to varying levels of scrutiny in the courtroom and in the public arena. For its part, the FBI is not without guidance in balancing constitutional guarantees with its law enforcement and intelligence roles. FBI decisions on these challenging issues currently are guided by procedures set forth in the 2008 Attorney General's Guidelines for Domestic FBI Operations (hereinafter the Guidelines). While the Guidelines are binding on the FBI only, law enforcement agencies seeking guidance in this area may be well served in consulting them and adopting the underlying principles to help ensure their investigative activity is consistent with constitutional protection and to instill a sense of confidence with the public they serve that investigative priorities do not overtake constitutional guarantees. This article discusses the general legal principles governing investigative activity that implicates First Amendment interests, a history of the Guidelines, and, then, sets forth the basic principles within the Guidelines designed to safeguard First Amendment freedoms.

First Amendment

The First Amendment provides:

Congress shall make no law respecting the establishment

of religion, or prohibiting the free exercise thereof; or of abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and petition the government for a redress of grievances.³

By its very terms, the First Amendment protects several rights that are thought essential to a free and democratic society.

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In an open society that values the exchange of ideas, the First Amendment guarantees that the rights of speech and association may be exercised with limited government intrusion. Most times, the right of speech and association are used to further legitimate social, political, economic, or other goals. Sometimes, however, the aims of a group or its members are criminal. While the First Amendment permits a significant amount of freedom in the expression of

messages and the forming of groups to support and convey these messages, these rights are not absolute.⁴ The challenge for law enforcement is determining at whom and at what point to draw this line. There is some degree of uncertainty in how a law enforcement agency should proceed. This uncertainty is a function of the desire to provide a wide zone of protection around speech and expression, as well as recognition that there are few Supreme Court cases on these issues. One such case before the Court in 1972 addressed government monitoring of First Amendment protected activity.

In *Laird v. Tatum*, the Supreme Court addressed a challenge to the lawfulness of government surveillance of political protests and protestors.⁵ In *Laird*, the particular issue before the Court was whether a surveillance program by the U.S. Army that collected information about lawful domestic protests violated the First Amendment rights of the protestors. The Court noted that certain governmental action that has only an indirect effect on First Amendment rights may be subject to a constitutional challenge if there is “a claim of specific present objective harm or a threat of a specific future harm.”⁶ Here, however, the protestors claimed only that their knowledge of the existence

of the surveillance program “chilled” the exercise of their First Amendment rights. The Supreme Court decided that the mere “knowledge that a governmental agency was engaged in certain activities” or the fear that “the agency might in the future take some other and additional action detrimental to that individual” were insufficient to state a valid legal claim.⁷ Therefore, the Court dismissed the case. After *Laird* it was clear that those seeking to challenge the actions of the government on First Amendment grounds must show substantial or concrete harm and more than the mere existence of a program or a subjective “chill.”

Seizing on the language in *Laird* that a First Amendment claim could be established by showing some objective harm to protestors, lower federal courts permitted lawsuits challenging police action when there was an allegation of specific harm or allegations that police action went beyond mere surveillance.⁸ While various federal courts have addressed some of these issues, there remains a lack of clear legal guidance on important questions, such as the level of information required before police activity can go beyond surveillance or what types of investigative techniques are permitted. As one First Amendment expert recently commented, “Lower courts have been

anything but uniform in their approach to First Amendment claims attacking investigations that are based on the protected expression of the targets.”⁹ The Guidelines were designed to fill this void and provide clear and specific guidance to the FBI with respect to its use of investigative activities.

Civil Rights March, 1963



BEFORE THE GUIDELINES

From its inception in 1908, the FBI has been charged with the collection of domestic intelligence and the investigation of matters concerning domestic security. In its early years, the authority for this mission came from various sources, including directives from the attorney general and from U.S. presidents. Intelligence-gathering programs that started in the 1930s and 1940s focusing on those posing a threat to America’s national security

transformed into investigations directed at antiwar and civil rights protestors in the 1960s.

Many of these FBI investigations and the methods used to conduct them came to light in 1975 when Senator Frank Church chaired hearings now known as the “Church Committee Hearings.”¹⁰ Over the course of its investigation, the Church Committee examined and revealed several aspects of FBI operations conducted under the agency’s Counterintelligence Program, or COINTELPRO, and, in particular, the FBI’s use of informants in Ku Klux Klan investigations; the opening of over 500,000 domestic intelligence files on U.S. citizens; and the use of investigative techniques to disrupt individuals or groups holding extreme viewpoints for purposes other than investigating criminal activity or threats to national security.

Two significant findings became clear throughout the hearings. First, the FBI used its resources to go beyond investigating groups and individuals and began to use its resources to discredit groups and individuals and undermine their lawful activities. Second, the FBI lacked clear internal guidance on how to operate in these areas.¹¹ At the conclusion of the Church Committee investigation, Senator Church stated that the purpose of his

hearings into FBI domestic investigations was to:

[E]valuate domestic intelligence according to standards of the Constitution and the statutes of our land. If fault is to be found, it does not rest in the [FBI] alone. It is to be found also in the long line of Attorneys General, Presidents, and Congresses who have given power and responsibility to the FBI, but have failed to give it adequate guidance, direction, and control.¹²

As a result of these findings and other similar hearings, the need for clear and specific guidelines was evident. The first set of Attorney General's Guidelines for Domestic FBI Operations was issued in 1976 by Attorney General Edward Levi. At the time, the attorney general testified before Congress that the guidelines "proceed from the proposition that Government monitoring of individuals or groups because they hold unpopular or controversial political views is intolerable in our society."¹³ While the Guidelines have gone through several revisions since 1976 (most recently in 2008 by Attorney General Michael Mukasey), its role in safeguarding the rights and liberties of U.S. citizens remains the same. The 2008 Guidelines form the basis for the discussion below.¹⁴

2008 ATTORNEY GENERAL'S GUIDELINES

The 2008 Guidelines represent an attempt to reconcile the FBI's need to be proactive in a post-9/11 world with the need for clear direction and control. Toward these ends, the Guidelines provide for two different levels of FBI information gathering or investigative activity. The first level of investigative activity is an assessment,

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and the second level is the predicated investigation.¹⁵ The Guidelines set forth the purpose of each activity and the investigative methods authorized for each. Regardless of whether it is conducting an assessment or predicated investigation, an essential element is common for all FBI investigative activities under the Guidelines—the requirement of an authorized purpose.

Authorized Purpose

Under the Guidelines, an authorized purpose exists for

the FBI when the goal of the information gathering activity is to “detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence.”¹⁶ Although the Guidelines do not govern state, local, or tribal law enforcement agencies, they can be instructive. Police agencies that seek to collect information about individuals or groups who engage in protected First Amendment activities can ensure that their conduct is unrelated to the content of the ideas or expressions of the individuals or groups by documenting the purpose for their information gathering or investigative activity. By taking this action, departments can help ensure that their investigative activity is not only consistent with its law enforcement mission but also that the activities in furtherance of their objectives remain related to and in the scope of the authorized purpose. For example, a state or local agency charged with protecting a community may seek to obtain information about an upcoming protest to plan for traffic disruptions, properly allocate its resources, or protect against the commission of crimes. However, the agency should not engage in the investigative activity if the purpose is to discourage the protestors from lawfully exercising their rights.



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Assessment

Where an authorized purpose can be established, the lowest level of investigative activity permitted under the Guidelines is an assessment. Assessments provide the FBI with the ability to be proactive without having first established a factual predicate. The trade-off is that only a limited number of investigative tools are available under the assessment. Recognizing that a factual predicate has not yet been established, the authorized methods intentionally consist of those considered of low intrusiveness. The flexibility of an assessment permits the FBI to obtain information about, for example, a potential violation of federal law, without having to wait for specific information confirming that the violation actually occurred. Because the detection and disruption of criminal

activity early in its inception is an important law enforcement goal, the Guidelines permit the FBI to take the initiative and collect information to determine whether criminal activity actually exists. Beyond the proactive collection of information, the FBI also may use an assessment when it receives allegations about crimes or threats to national security that can be resolved through the methods authorized by the Guidelines for the assessment.

While the Guidelines require only an authorized purpose before the FBI can collect information, strict limitations are placed on the investigative methods that are allowed. As noted above, the methods available under an assessment stage are considered to be of low intrusiveness. These methods are listed in Part II of the Guidelines.¹⁷ Authorized

methods under the assessment include, for example, permitting the FBI to obtain publicly available information (where there is a diminished expectation of privacy), checking government records (information the government already has in its possession), or seeking information from the public (limited inquiries to which the public is under no legal obligation to respond).

A police department that uses a similar framework for its investigative activity may use an assessment to proactively obtain information to further its mission. For example, a city may plan a large event to celebrate a historical milestone. Aware of this planned event, the police department may use the assessment proactively to review publicly available information, including online resources, to determine whether any protest groups plan on traveling to and attempting to disrupt the event so that it may plan for and allocate its resources as may be necessary.

Predicated Investigations

Section II of the Guidelines describe predicated investigation as the second level of investigative activity. As discussed below, predicated investigations include both preliminary and full investigations. Unlike assessments, which require only an authorized purpose, predicated investigations

require both an authorized purpose and a specific factual basis justifying the investigative activity. When both an authorized purpose and factual basis exist, a predicated investigation may be initiated, and a broader array of authorized investigate methods are permitted.

Preliminary Investigations

Preliminary investigations can be initiated, for example, when the FBI receives “information or an allegation” that “activity constituting a federal crime or threat to the national security has or may have occurred, is or may be occurring, or will or may occur....”¹⁸ Generally, preliminary investigations may be conducted only for a 6-month period.

During that period, the FBI is permitted to make use of a wide array of authorized investigative methods. According to the Guidelines, “all lawful methods” are permitted with very few exceptions.¹⁹ The list of lawful methods is detailed in Section V of the Guidelines. The purpose of the list is to ensure that investigative activity is consistent with the law and to place restrictions on the use of specified techniques. Techniques not authorized under the preliminary investigation include the use of electronic surveillance, such as a Title III or wiretap, or the use of a search warrant. One area of particular

concern in the Guidelines is the need for approval to engage in undercover activity. While the Guidelines permit undercover activity, it is permitted only in narrow circumstances and with prior approval.

Full Investigations

To open a full investigation, there must be “an articulable factual basis that reasonably indicates that activity constituting a federal crime or threat

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It is clear that these restrictions within the Guidelines ensure that improper use will not be made of information properly collected.

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to the national security has or may have occurred, is or may be occurring, or will or may occur....”²⁰ The Guidelines also permit the initiation of an enterprise investigation if there is “an articulable factual basis for the investigation that reasonably indicates that the group or organization may have engaged or may be engaged in” or planning or preparing to engage in a list of specific federal crimes. This list includes, among other things, international terrorism,

domestic terrorism, or the furthering of political or social goals through activities that involve force or violence and a violation of federal criminal law.²¹

Once a full investigation is commenced, the Guidelines permit the use of “all lawful methods” to conduct the investigation.²² Acts of violence or illegal electronic surveillance are prohibited,²³ one need only look at some of the findings of the Church Committee to see why authorization for these particular acts is prohibited.

This requirement of a factual basis for a preliminary or full investigation is significant. While it may be rare for a police department to intentionally use its investigative resources without having a valid law enforcement purpose, good intentions should not act as a substitute for expressly meeting this critical threshold. In addition, documenting the factual basis in writing preserves an opportunity for a review of the information by a responsible law enforcement officer to ensure that articulable facts or circumstances are present to justify the investigative activity. Careful documentation can help protect against any claim that law enforcement attention was based upon some improper motive. Documenting these facts and circumstances also will permit a review and independent



evaluation of information from a supervisor or other official.

Authorized Methods

Law enforcement agencies that seek to collect information about the activities of an individual or a group should consider the guidance found in Section V of the Guidelines. In particular, agencies carefully should specify in advance the techniques that are permitted to be used and those that will be prohibited so as to avoid ad hoc decision making that could result in officers unintentionally exceeding legal authorities. Specifically, agencies that seek to use undercover operations will find the discussion in Section V of the Guidelines instructive in helping them determine the proper use of this technique within their particular jurisdiction.

The Guidelines also recognize that different law enforcement techniques may be available to achieve a goal. To that end, the Guidelines require that in cases where different techniques are operationally sound and effective, the technique that is least intrusive on “the privacy and civil liberties of individuals and potential damage to reputation” should be used.²⁴

Retention and Sharing

The last section of the Guidelines sets forth the FBI’s authority to retain and share information it collects in accordance with the exercise of its authority.²⁵ To that end, the Guidelines describe in detail the entities to which properly collected information may be disseminated. This additional protection recognizes that investigative activity may result

in the incidental collection of information that is noncriminal in nature and that this information should not be shared unless dissemination is made to an authorized entity. It is clear that these restrictions within the Guidelines ensure that improper use will not be made of information properly collected. Police agencies that institute similar restrictions within their departments also can ensure that sharing information collected through investigative activity furthers an authorized purpose and is made only to appropriate entities.

Oversight

This last element does not have its own section within the Guidelines, but, nonetheless, represents a concept that is present throughout. The Guidelines contemplate that supervisory oversight—both internal and external—is a significant component of each section. Thus, the requirements discussed above, such as the necessity of a factual predicate before commencing investigative activity, require supervisory approval at different levels within the FBI.²⁶ The use of authorized techniques or the dissemination of information contain similar requirements. A police department that contemplates incorporating provisions of the Guidelines into its policies and procedures will recognize the

need to identify the appropriate supervisory personnel to act as approving authorities. The approving authorities provide a level of oversight within the department and ensure that investigative activities are appropriate and consistent with the mission and resources of the agency.

CASE STUDY

The provisions of the Guidelines as described above can provide guidance and a framework to be used by police departments that engage in any investigative activity. However, the Guidelines also are well suited for use in sensitive matters, such as investigative activity that may have an impact on protected First Amendment rights.

As an example, the activities of the Maryland State Police and its surveillance of antiwar and antideath penalty protestors from March 2005 to May 2006 provide a real and current example of how the incorporation of provisions within the Guidelines can help avoid claims of abuse of authority by law enforcement agencies and establish that operations are conducted consistent with constitutional protections.

Covert Operations

Commencing in March 2005, the Homeland Security and Intelligence Division

(HSID) of the Maryland State Police (MSP) conducted covert surveillance of antideath penalty and antiwar activists within the state of Maryland.²⁷ The purpose of the surveillance was to “prepare for any civil disturbance” resulting from the planned execution of two death row inmates.²⁸ Because of an overlap between antideath penalty protestors and antiwar protestors, the HSID began to monitor the antiwar groups for the same purpose. The initial activity consisted of preparing a “threat assessment” about protest activities surrounding an execution of a death row inmate. The threat assessment consisted of collecting information from public sources, but did not identify any information regarding unlawful conduct. However, an MSP analyst monitoring a covert Internet account came across information concerning antideath penalty meetings to organize demonstrations. Based upon this new information, an undercover MSP trooper attended the initial meeting. Over the next 14 months, the trooper attended additional meetings consisting of very small groups of activists. During this period, the trooper exchanged e-mails with other protestors and worked to “gain their friendship and trust.”²⁹ Many of the e-mails sent by the trooper did not attempt to solicit information

about protests. After attending a rally outside of a prison in April 2005, the undercover trooper learned that an antideath penalty protestor also was an antiwar protestor. This trooper then exchanged e-mails to learn more about the antiwar groups and attended at least two antiwar meetings. The trooper prepared investigative reports of her activities that contained details of these meetings and protests and included the names of people who attended them.

When these activities of the MSP came to light in July 2008, the public reaction was swift, as was the reaction of Governor Martin O’Malley. By the end of the month, the governor requested an independent review of the “intelligence-gathering operation undertaken by the MSP from approximately March 2005 to May 2006.”³⁰ A discussion of the findings of the independent review as detailed in this report with provisions of the Guidelines is instructive.

Report

The first step taken by the MSP, as documented within the report, was to open a “threat assessment” to determine whether there was a threat of public disturbance at the rallies. Under this, the MSP collected information from public Web sites and government databases to properly evaluate this threat. Because the MSP is charged with

“gathering intelligence on, and investigating, threats to public safety,” these findings suggest that the surveillance program was directed at an authorized purpose.³¹ The report also determined that the purpose of the surveillance was driven by the desire to protect public safety and that there was no indication that the surveillance was intended to suppress the First Amendment rights of the protestors. However, at the conclusion of this stage, the MSP did not identify “any specific threat to public safety or reason to suspect that either pro- or antideath penalty groups would engage in unlawful conduct in connection with the planned executions.”³² Under the Guidelines, the initial collection of information using relatively nonintrusive methods would be consistent with an assessment because it was related to an authorized purpose.

Despite the absence of actual information “that would support any reasonable, articulable suspicion that unlawful conduct or civil disturbances were likely to occur,” the MSP decided to assign an undercover trooper to attend antideath penalty meetings.³³ The trooper documented each meeting attended and, despite the lack of information indicating the likelihood of criminal activity, continued to attend the meetings for over a year. According to the report, “To the extent the MSP believed

there was some need to gather more information, [the undercover trooper’s] observations from the first several meetings should have conclusively eliminated any genuine public safety concerns....”³⁴ Many of the investigative reports filed by the undercover trooper included statements indicating that no problems or disruptions were observed, and no plans for criminal activity were identified.

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It is here that the need for both an authorized purpose and a factual predicate becomes clear to permit the opening of a predicated investigation and allow specific investigative techniques. There was no question that the MSP was motivated by the desire to protect the public safety, but that motivation, without any factual basis, would permit investigative activity to be directed at nearly every group. As documented in the report, the MSP initiated and continued undercover surveillance without

a factual basis to indicate there was any threat to public safety. The Guidelines do not authorize such activity without a factual predicate, and the Maryland report concluded that “the surveillance undertaken here is inconsistent with an overarching value in our democratic society - the free and unfettered debate of important public questions. Such police conduct ought to be prohibited as a matter of public policy.”³⁵

The report on the MSP activities also included discussions on the dissemination of information collected and the importance of supervision and oversight of operations of this nature. These issues of supervision and oversight are addressed in the Guidelines, and adherence to the Guidelines would help ensure that all aspects of investigative activity help to ensure the legitimacy and legality of such activity.

CONCLUSION

In an era of increasing public attention and scrutiny directed at law enforcement agencies in the conduct of their investigations, the use of internal guidelines and procedures can ensure that police departments operate consistent with their mission and in compliance with the law. Agencies seeking to develop or enhance their policies can look to the Attorney General’s Guidelines as a

valuable source of information. As discussed previously, the Guidelines contain clear and practical directions that can be incorporated into departmental policies. The benefits include, among other things, the assurance that investigative activity is directed at a mission related purpose and that it is conducted in a lawful manner. Adherence to a set of guidelines also will foster a sense of public trust and support. ♦

Endnotes

- ¹ *Texas v. Johnson*, 491 U.S. 397 (1989); and *Snyder v. Phelps*, 131 S.Ct. 1207 (2011).
- ² Hearing before the Select Committee on Intelligence of the U.S. Senate, S. Hr. 110-846, September 23, 2008, at pg. 9.
- ³ U.S. Constitution, amend. 1.
- ⁴ *Schenck v. United States*, 249 U.S. 47, 52 (1919).
- ⁵ *Laird v. Tatum*, 408 U.S. 1 (1972).
- ⁶ *Id.* at 14.
- ⁷ *Id.* at 13-14.
- ⁸ See *Handschui v. Special Services*, 349 F.Supp. 766 (D.C.N.Y. 1972) (The New York City Police Department entered a consent decree as a result of this case, which required the police department to follow an earlier version of the Attorney General's Guidelines.).
- ⁹ Lawrence Rosenthal, *First Amendment Investigations and the Inescapable Pragmatism of the Common Law of Free Speech*, 86 Ind. L.J. 1, 39 (Winter 2011).
- ¹⁰ Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (1975).
- ¹¹ U.S. Department of Justice, Office of the Inspector General, *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines* (Redacted), Special Report, September 2005, Chapter Two: Historical Background of the Attorney General's Investigative

Guidelines. Retrieved from <http://www.justice.gov/oig/special/0509/chapter2.html> (accessed on April 2, 2012).

- ¹² *Id.* at 2.
- ¹³ Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong. 257 (1976).
- ¹⁴ The Guidelines are available at <http://www.justice.gov/ag/readingroom/guidelines.pdf>. Another source is *Recommendations for First Amendment Protected Events For State and Local Law Enforcement Agencies*, at www.it.ojp.gov/documents/First_Amendment_Guidance.pdf (accessed July 19, 2012).
- ¹⁵ AGG Section II at pgs. 16-18.
- ¹⁶ AGG Section II at pg. 16.
- ¹⁷ AGG Section II Part A, Paragraph 4 at pg. 20.
- ¹⁸ AGG Section II Part B, Paragraph 3 at pg. 21.
- ¹⁹ AGG Section II, Part B, Paragraph 4 b i at pg. 22.
- ²⁰ AGG Section II Part B, Paragraph 3 at pg. 21; and AGG Section II, Part B, Paragraph 4 a iii at pg. 22.
- ²¹ AGG Section II Part C at pg. 23.
- ²² AGG Section II Part B, Paragraph 4 b ii at pg. 22.
- ²³ AGG Section V Part C at pgs 33, 34.
- ²⁴ AGG Section I Part C, Paragraph 2 a at pg. 12.
- ²⁵ AGG Section VI at pg. 35.
- ²⁶ AGG Section II Part B 2 at pg. 20.
- ²⁷ The information contained within this section comes from the results of an investigation into these activities at the request of Maryland Governor Martin O'Malley. The report is entitled: *Review of Maryland State Police Covert Surveillance of Anti-Death Penalty and Anti-War Groups From March 2005 to May 2006*, by Stephen H. Sachs, dated September 29, 2008.
- ²⁸ *Id.* at pg. 2.
- ²⁹ *Id.* at pg. 35.
- ³⁰ *Id.* at pg. 13.
- ³¹ *Id.*
- ³² *Id.* at pg. 27.
- ³³ *Id.* at pg. 23.
- ³⁴ *Id.* at pg. 29.
- ³⁵ *Id.* at pg. 3.

Wanted: Photographs



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

We can use digital photographs or color prints. It is our policy to credit photographers when their work appears in the magazine. Contributors sending prints should send duplicate copies, not originals, as we do not accept responsibility for damaged or lost prints. Send materials to:

Art Director
FBI Law Enforcement
Bulletin, FBI Academy,
Quantico, VA 22135.

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A MESSAGE TO OUR READERS

The Bulletin Moves to Online Only

The *FBI Law Enforcement Bulletin*, published monthly since 1932, will discontinue printing hard copy issues after December 2012. We are enhancing the magazine's online presence with an updated Web page. The sleeker-looking online format will improve readability and search capability, maximize accessibility, provide more opportunities for readers and authors to communicate, and be available on mobile devices. The *Bulletin* will continue to feature academically renowned, peer-reviewed content for its readers.

We will release one or more articles per week on the Web page and offer numerous sections featuring articles on specific topics; archived issues; and departments, such as Patch Calls and Bulletin Notes. Later in the year, we plan to provide e-publication readers with a themed, quarterly publication of selected articles designed for that viewing format.

To see current and archived issues, author guidelines, and more, please visit <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin>. A revised version of our author guidelines, specifically written to provide suggestions for submitting material for our online publication, will be available soon on the same Web site. Although we will continue accepting longer articles based on the previous guidelines (2,000 to 3,500 words) for the time being, we may feature them as a series of two or more parts. We encourage authors to begin submitting shorter articles (600 to 1,200 words) that will be better suited for the revised online format.

If you ever have been intimidated by writing a lengthy article for the *Bulletin*, this is your opportunity to write and submit a shorter one. A brief article featuring a successful administrative or adjudicated investigative initiative of your department would be welcome. If you have any questions or concerns, please e-mail us at our new address, leb@ic.fbi.gov. We look forward to hearing from you.

John E. Ott
Editor
FBI Law Enforcement Bulletin



Honor of the Badge

By Paul F. Williams, M.S.

I addressed this class of apprentice police officers on day one, back in January, and promised them that throughout the upcoming training, they would be tested mentally, physically, and emotionally. If asked, I know they would agree that the last 6 months have done just that. The challenges they faced came from all angles, and each individual, no doubt, has a favorite (or not) that they had to overcome to succeed. It's gratifying for me to see all of you here tonight and to celebrate with these recruits the culmination of their efforts. For the family and friends of each of these young men, thank you for all you have done to create an environment where your loved ones can be successful,

and thanks, in advance, for your continued support as they move out of the classroom and into the field.

As I considered what to speak about tonight, realizing I wanted to address not only the recruits but also each of you in attendance, my thoughts kept returning to one very appropriate topic: the badge. As we move through the evening's activities, you will hear from various people, see awards presented, get a glimpse into academy life, and learn a little about each of the recruits as they step forward to shake hands and receive their certificates. But, more important to each of them, as they cross the stage and shake my hand, I will

present them with a Springfield, Missouri, Police Department (SPD) badge. For all the accolades and achievements this class has garnered, receiving the badge is the true realization of their dream and the official recognition of their graduation from recruits or apprentices to officers.

The badge is the one item that the recruits don't receive until tonight. Every other piece of equipment is issued and used during training: guns, handcuffs, batons, pepper spray, flashlight, vests, and many others. This equipment has served them well, and with it they have passed all their tests and practical exercises. They all are Commission on Peace Officer Standards and Training (POST) Class A certified law enforcement officers. (I double checked, and, yes, each of you passed the certification exam!). They traded in their grey-and-black recruit uniforms this morning and are wearing their SPD blues tonight—but without a badge. I remember that feeling, the excitement of knowing all the hard work had been worth it and the uniform I was wearing was soon to be complete with the addition of the final most important piece,

my badge. At the end of our ceremonies tonight, you will have the honor of pinning on the badges of your recruits and serving as witnesses as they make that final transition from recruit to officer.

History

The Web site Wikipedia defines *badge* as “a device or accoutrement, often containing the insignia of an organization, which is presented or displayed to indicate some feat of service, a special accomplishment, a symbol of authority granted by taking an oath, a sign of legitimate employment or student status, or as a simple means of identification.”¹ We see its use throughout American law enforcement history, especially in the Old West. Every town had a marshal or sheriff denoted not by a uniform or special clothing or equipment, but by the badge he wore on his chest—a sign to all that he represented law and order. This was a given, known throughout the land, that if you wore a badge, you were legitimate and had authority. A posse was deputized simply by having each man swear an oath, and he was handed a badge.

From Matt Dillon in *Gunsmoke* to Rooster Cogburn in *True Grit*, examples of this abound through literature and film. My favorite is from *The Treasure of the Sierra Madre*, a 1948 film starring Humphrey Bogart. In one scene, Bogart and his partner take cover in the rocks as a large band of Mexican banditos rides in. The leader calls for him to come out, stating that he has nothing to fear as they are the *policia*, the *federales*. Bogart responds, “If you're the police, show me your badges.” The classic reply? “Badges? We don't need no stinking badges!” which is met by immediate gunfire. The ready assumption is evident—no badge equals no police—no further explanation is necessary.

But, I think we can go back even further in history to form the basis for our traditional use of a badge. *Merriam-Webster* states that a badge is “a device or token especially of membership in a



Chief Williams heads the Springfield, Missouri, Police Department.

society or group, or an emblem awarded for a particular accomplishment” and that the first badges were used in the 14th century.² These were an outgrowth from the shields used by warriors and knights in the Middle Ages. The forerunners to today’s SPD badge might be items, such as the *buckler* and the *targe*. The buckler was a small metal round shield that was carried on a belt and used for hand-to-hand combat by soldiers and knights into the 16th century. The targe was a small, round metal shield used by Scottish clans that was effective against bayonets, cavalry swords, and, even, firearms in close-in fighting. Bucklers and targes were emblazoned with the knight’s emblem or family crest, much like our badge contains an eagle, the seal of the state of Missouri, and the words “Springfield Police.”

It is appropriate that during the police academy, analogies to knights are used to highlight training experiences. The knights of old believed in the Code of Chivalry. They promised to defend the weak, be courteous to all women, be loyal to their king, and serve God at all times. Knights were expected to be humble before others, especially their superiors. They also were expected not to “talk too much”—in other words, not to boast. The Code of Chivalry demanded that a knight give mercy to a vanquished enemy. It also appears that there is a direct correlation between the ancient Code of Chivalry and the Law Enforcement Oath of Honor, which states:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our

actions. I will always uphold the Constitution and community I serve.

In many ways, today’s police officers are modern day knights, and the badge is their shield.

Even the Bible contains a knightly reference. In his letter to the Ephesians, the Apostle Paul extols us to “put on the full armor of God so that when the day of evil comes you may be able to stand your ground,” and he continues, “with all this take up the shield of faith.”³ This certainly

applies to each and every one of us in uniform. In today’s world, who but police officers are tasked with facing the worst in society and not shirking from this duty, standing our ground to protect others. It also is interesting to me that Paul equates faith with the shield. Think about it. That which you must make a conscious decision to believe in equates to that which you use to deflect and protect yourself from attack, in addition to the rest of your armor. I encourage

each of you to take this to heart and to have faith in God, your fellow officers, your training, your education and experience, and your family, all exhibited in the badge you will wear.

Legacy

While in the academy, the recruits pass a shadow box with their badges in it every day when they enter the classroom, providing a visual image of the goal they hope to attain. Why, you may ask, is the badge such a unique item that we hold onto until now, protect and guard, and keep seemingly just out of reach for 6 months? After all, isn’t it just a piece of metal? Aren’t the Missouri POST Class A license and the SPD commission card—with my signature—more important, and don’t

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**The pride
of wearing the
badge transcends
generations.**

”

they carry more weight? While it is true that those things are needed as support behind the badge, the badge is the symbol of authority; it is a public display of a police officer's acceptance of the responsibility that comes with that authority. It is a visible sign that the wearer is a person of integrity, character, and courage, as well as an example of the commitment to the sworn oath the officer has taken to serve and protect and a means of connecting police officers to the community that entrusts them with providing for their safety and security.

It is not something to take lightly. The pride of wearing the badge transcends generations. A recent example in *American Police Beat* magazine detailed the family tradition tied to a badge in Chicago worn by four members of the same family for over three generations.⁴ As a third-generation police officer, I can understand the pride exhibited by this family in a badge and badge number. My father and grandfather wore the same badge in Detroit, Michigan, and it was retired from service when I chose to start my career in Tulsa, Oklahoma. In Springfield, we issue badges with a department service number etched on it. These numbers also have meaning because they are chronological, depicting at a glance to your fellow officers your department seniority (we are in the 1600s now, and those with triple-digit numbers wear them proudly). But, we also make exceptions for legacy officers—family members wishing to wear the number of a retired officer. Now, for those in the audience who aren't

aware, the academy class is allotted a group of consecutive badge numbers, and, in the spirit of competition, they will be awarded tonight in order of their academic rank in the class—instant seniority for those at the top of the class and a reward for their achievement.

Conclusion

In closing, remember that I, too, have stood where you will stand, in front of family, friends, members of the SPD, elected officials, and residents of our community, while my wife pinned on my badge after I swore my oath. I know that, tonight, you will feel the same immense pride, honor, and sense of accomplishment, as well as the awesome responsibility that is bestowed upon you with that seemingly simple act. As this occurs this evening and from now on, every time you place that badge on your chest for the rest of your career, I charge you to reflect on one

portion of the Law Enforcement Oath of Honor: "I will never betray my badge." Congratulations, and may God bless each of you from this day forward. ♦

“

It is appropriate that during the police academy, analogies to knights are used to highlight training experiences.

”

Endnotes

¹ <http://en.wikipedia.org/wiki/Badge> (accessed August 24, 2011).

² *Merriam-Webster's Collegiate Dictionary*, 11th ed., s.v. "Badge."

³ Ephesians 6:11-16.

⁴ *American Police Beat*, <http://www.apbweb.com/> (accessed August 25, 2011).

Bulletin Honors



Alpine Border Patrol Station 9/11 Memorial, Texas

On September 11, 2001, the Marfa, Texas, Border Patrol Sector was conducting a groundbreaking ceremony for its new Alpine Station facility. The ceremony was halted when the report of the attacks on the East Coast was received, and all personnel were put on full alert. Ten years later, on September 11, 2011, the Alpine Border Patrol Station 9/11 Memorial was dedicated. This tribute to the brave men and women who lost their lives was designed and constructed by Alpine Station agents, Marfa Sector employees, and retired border patrol agents. A steel artifact, a corner piece of the World Trade Center weighing 1,300 pounds and measuring 8 feet across and 6 feet tall, was transported from New York City to the Alpine Station by two border patrol agents. The community turned out to welcome the piece in a somber procession led by the local sheriff. At the dedication ceremony, Marfa Sector Chief Patrol Agent John J. Smietana, Jr., stated, "In spite of the terror of the moment, a great number of law enforcement officers, fire fighters, and others continued to do their jobs with the last full measure of devotion. This simple metal beam will be displayed as a reminder of their courage and sacrifice." The monument is located on the front lawn of the Alpine Station and is open to the public during daylight hours.

U.S. Department of Justice
Federal Bureau of Investigation
FBI Law Enforcement Bulletin
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Periodicals
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use \$300

Patch Call



The borough of Media, Pennsylvania, was incorporated in 1850 and serves as the seat of government for Delaware County. Located 12 miles west of Philadelphia, the borough is one of the few areas in the country that has used the same trolley system continuously since the turn of the 20th century. This still-active trolley is depicted on the patch of the Media Police Department alongside the area's rich Victorian architecture. The depiction also serves as Media's seal, which proudly states the borough is "Everybody's Hometown."



The traditionally shaped patch of the Elberton, Georgia, Police Department prominently features the city's seal in its center. The middle depicts an outline of Elbert County, for which Elberton is the seat of government, along with a smaller outline of the state. The red and white stripes against a blue background with stars embody the patriotic sentiments of the community. At the foreground of the seal is a representation of the city's churches, courts, and granite industry. Elberton is considered the "Granite Capital of the World," producing more granite products annually than anywhere else.