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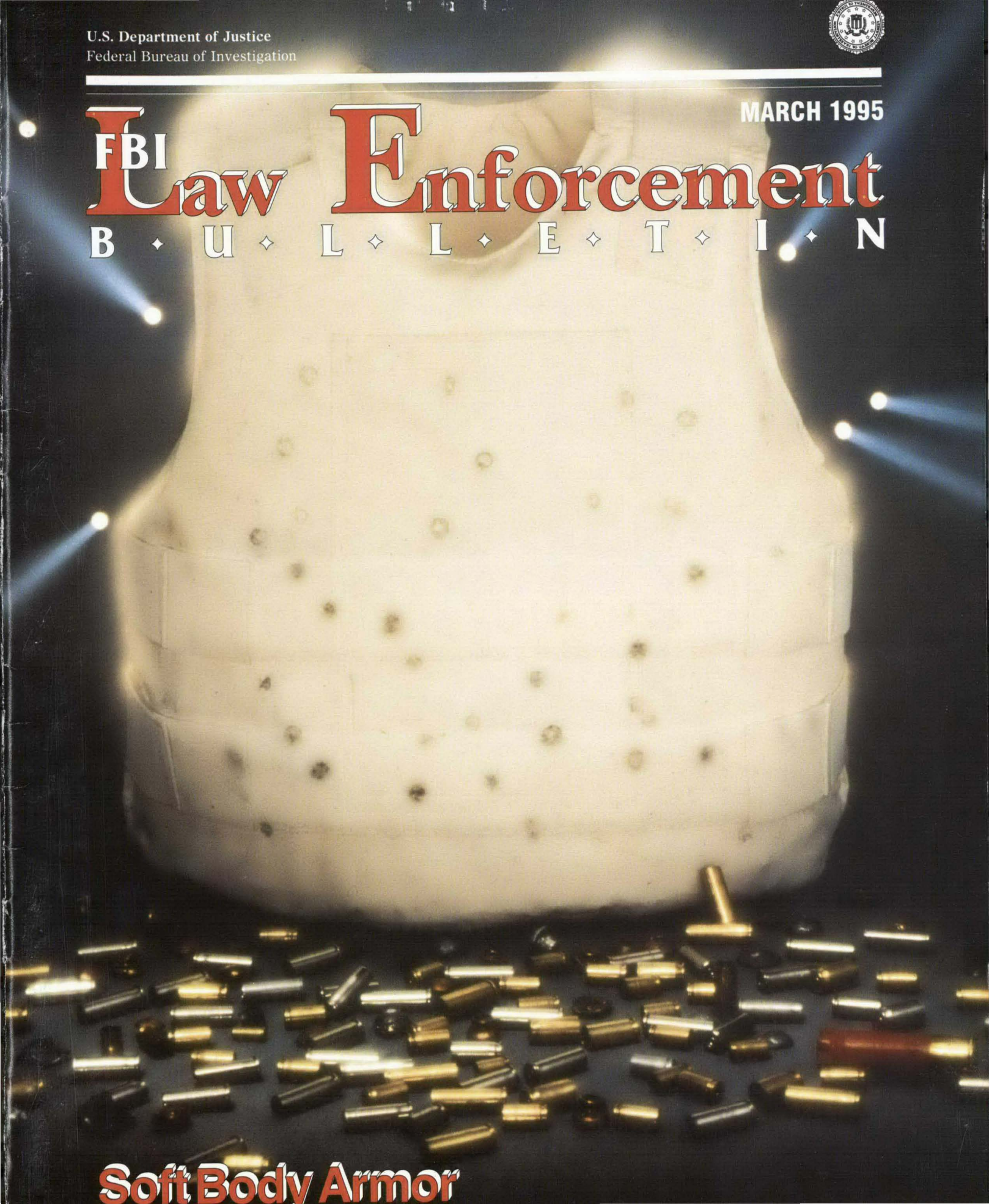

Soft Body Armor

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**Louis J. Freeh
Director**

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Features

Departments

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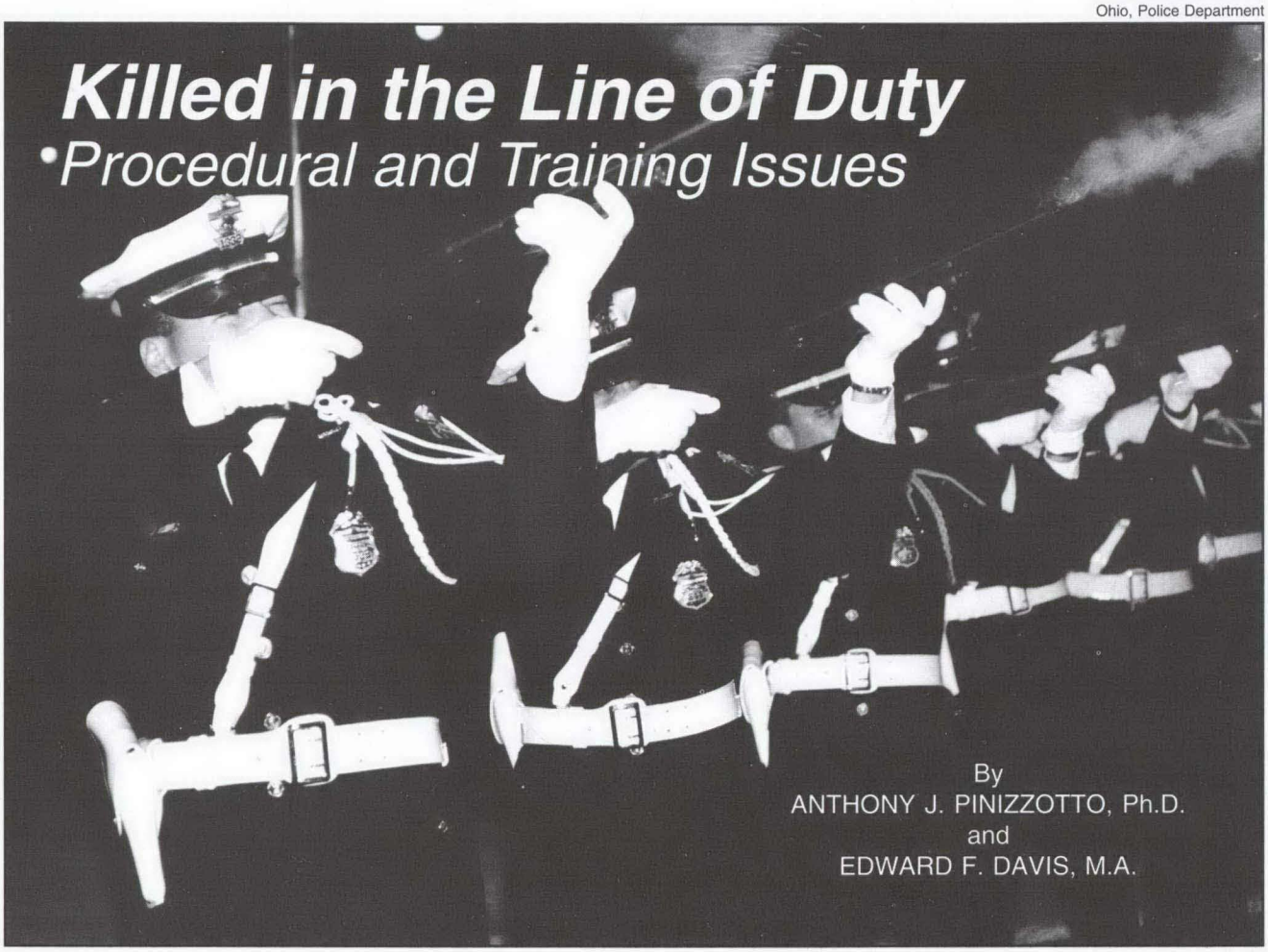


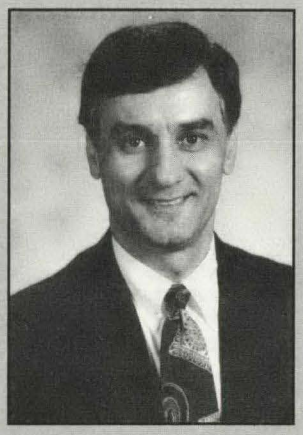
Killed in the Line of Duty
Procedural and Training Issues

By
ANTHONY J. PINIZZOTTO, Ph.D.
and
EDWARD F. DAVIS, M.A.

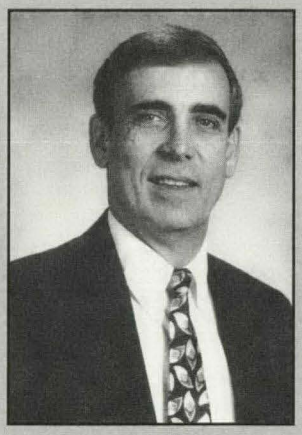
In September 1992, the FBI published the findings of a 3-year comprehensive study entitled *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers*. The study focused on why a particular offender feloniously killed a particular officer within a specified set of circumstances. During the study, researchers from the FBI's Uniform Crime Reporting (UCR) Program examined 51 cases, in which 50 offenders killed 54 law enforcement officers, to develop information concerning the slain officers, the offenders, and the situations that brought the officers and killers together into a "deadly mix."

Subsequent to the publication of *Killed in the Line of Duty*, UCR staff members traveled throughout the country to speak to various groups of law enforcement professionals and conduct training sessions on the methodology and results of the study.[1] During the presentations, participants raised many important issues that either were not developed fully or not covered at all in the publication. As a result, much more information, particularly on law enforcement management and law enforcement training, came to light.

This article addresses three of the major issues—use-of-force policies, training, and supervising for safety—that emerged from discussions with law enforcement command personnel, training officers, first-line supervisors, and street officers. The issues are not addressed in order of importance. And, while each is discussed in detail, the same caveat given in the conclusion of *Killed in the Line of Duty* again must be offered. That is: "Given the extraordinary pressure of decision-making in law enforcement,



Dr. Pinizzotto is a psychologist assigned to the Behavioral Science Unit at the FBI Academy.



Mr. Davis is a criminal investigations instructor in the Behavioral Science Unit.

combined with a mix of deadly factors, such as disordered personalities of the offenders, misperceptions of imminent threats, and possible procedural miscues that are characteristic of these incidents, it is clear that further research on all aspects of law enforcement safety is needed."

POLICY ISSUE: USE OF FORCE

Conversations with various law enforcement officers indicated that numerous changes in use-of-force policies took place during the past 10 years. No individual agency's use-of-force policy is discussed in this article; rather, the article focuses on comments made by law enforcement officers from diverse agencies with regard to the *Killed in the Line of Duty* study.

A detailed and critical examination of exact policies and procedures regarding the drawing of a service weapon was not made in these conversations. However, the various discussions of agency policies and procedures revealed confusion and apprehension among members of the same agency as to when they believed they could draw and fire their service weapons for self-protection and still be in compliance with their guidelines. One officer from the Midwest commented that today, police officers are so afraid of litigation and disciplinary action that they hesitate to draw their service weapons.

Confusion and apprehension also existed about when an officer felt that the service weapon should be drawn, and if necessary, at what point to fire it. Numerous officers advised that they were forbidden even to draw their service weapon unless the perpetrator first produced a weapon. It is very difficult to imagine responding to a call for a "robbery in progress with shots fired," while not being allowed to draw a weapon until the perpetrator shows one. A group of military police line officers stated that it was their understanding that their regulations did not permit them to place a round in the chamber of their service weapon until given the command by a superior.

These comments are consistent with what the study revealed. That is, the procedures in which officers were trained sometimes came in conflict with their personal safety. The study showed that of the 54 slain officers, 46 did not fire their service weapons, and 11 victim officers were killed with their weapons. One offender admitted that he knew the officer would not use the weapon, even though the officer pointed it at him. The offender stated that he knew this by the way the officer looked at him and how he held his gun.

The importance and necessity of a well-defined, clearly understood, and easily implemented deadly force policy are issues accepted and endorsed by line officers and command personnel. The reality, as described by various officers and officials during discussions on this issue, is quite different, however. Confusion and apprehension about the use of deadly force and the use of a service weapon for self-protection should not exist in any agency. Numerous chief law enforcement officials stated that each agency should periodically review its use-of-force policy and ensure that line staff and command members of the department understand this policy.

TRAINING ISSUES

Law enforcement agencies cannot plan, and subsequently establish, procedures and training for every conceivable eventuality or situation with which their officers will be confronted. They can, however, make the commitment in attitude, personnel, and other resources

to give officers every possible advantage by providing relevant and timely training in all areas.

The study examined several training issues, to include approaching vehicles and suspects, conducting searches and seizures, controlling persons and/or situations, training at night, and administering first aid. One criticism of the study, from a source outside the law enforcement community, suggested that the training issues discussed were "simplistic" and "elementary" issues that "every police officer should know." Although they may appear this way, the issues remain crucial to safe patrol, as reports of officers killed and injured in the line of duty testify.

The study highlighted two areas in which law enforcement training appeared deficient—training at night and administering first aid. Because these two training concerns received the most attention in discussions about the study, they are addressed in this article.

Night Training

The study stated that "traditional law enforcement training has been found to limit night training for various reasons....Consideration should be given to providing all training normally offered during daylight at night as well." This coincides with what FBI data indicate—the largest number of felonious killings and assaults of law enforcement officers most frequently occur during the nighttime hours.[2]

Yet, discussions with law enforcement officers verified that many departments and agencies continue to train officers Monday through Friday between the hours of 8 a.m. and 4 p.m. Most stated that the reasons for continued daytime training include union contracts with fixed shift clauses, night differential in pay for both the trainee and the trainer, and the safety of the student.

It is ironic that the safety issue was raised as a major reason for *not* training at night. If an officer practicing a felony apprehension trips and falls during a night training exercise, the results might be a twisted ankle or a cut or abrasion to the hand. Yet, if an officer suffers these same injuries while conducting an actual felony apprehension at night, they could result in the officer's death.

> ***"Specific areas have been identified where law enforcement training and procedures may have had a role in the eventual deaths of law enforcement officers."***

Training that reflects actual work conditions assists in identifying problem areas that require special attention for officers to conduct their duties both effectively and safely. This kind of training under real-life conditions can save lives.

Night training should address procedures related to traffic and pedestrian stops, searches of persons and vehicles, use of artificial light sources, use of handcuffs and other prisoner restraints, weapons and self-defense training, and first aid to oneself and to other law enforcement officers. At least one State training academy heeded the message of the survey results and developed a block of night training to include all activities previously conducted only during daylight hours.

First Aid

The study showed that killers knew the importance of first aid. One killer admitted to carrying a first-aid kit on his burglary jobs and, as a result, was able to treat his wounds after being shot by an officer during one of his crimes. Another killer stopped along his escape route to purchase fresh fruit in an attempt to replenish the potassium he lost as a result of the blood loss from a gunshot wound. Still another related how he evaluated the several gunshot wounds that he received, determined none were life-threatening, and then planned his escape from his law enforcement pursuers.

Many officers attending the presentations related that they were less than confident in their own first-aid skills. One officer trained as a medical first responder and a volunteer member of an emergency medical team stated that he never practiced giving first aid to someone who wore the same uniform that he did. He wondered what effect, if any, seeing a victim in uniform would have on his performance. He went on to say that approximating this type of experience in training may well reduce the shock of seeing this "in real life." His comments were well-received by other members of the audience, who also suggested

that training should be more realistic, using some "training victims" in an officer's uniform.

In another study currently being conducted,[3] a victim officer emphasized during the interview the need for all departments to conduct first-aid training in the academy and to incorporate advanced first-aid training in inservice programs. This officer was working the midnight to 8 a.m. tour of duty in a one-officer, marked, radio patrol unit. He responded to a "suspicious person" call and subsequently ended up in a fight with the suspect. During this encounter, the officer's throat was slashed from ear to ear. He, in turn, eventually shot his assailant.

Many officers responded to the scene, but no one rendered first aid to the victim officer. He was transported in a police patrol vehicle to the hospital, where a physician was the first individual to give first aid by placing his hand over the wound.

This case highlights the need for training to enable officers to help themselves and fellow officers. No one gave first aid to this victim officer, nor did he attempt to treat himself. Yet, as stated earlier, several killers of law enforcement officers knew how to treat their own wounds.

Discussion participants suggested that first aid also should be taught during night training. Perhaps because of the subdued lighting, the wounded officer's injuries did not appear as life-threatening to his fellow officers as they actually were. Training and planning for all possible medical contingencies can be useful in treating serious injuries and saving officers' lives.

SUPERVISING FOR SAFETY

Supervising for safety refers to the concept that police supervisors need to focus on factors that affect officer safety while performing their duties. For example, supervisors must not overlook or fail to correct procedural errors or equipment violations because doing so could place officers in danger.

While not a direct focus of the study, the question of first-line supervision and officers' safety was raised by various members of the law enforcement community who were interviewed during the study. The most often-asked question was,

> ***"Confusion and apprehension about the use of deadly force and the use of a service weapon for self-protection should not exist in any agency."***

"Is present law enforcement first-line supervision developed to increase safety procedures of the patrol officer?" Unfortunately, most officers and first-line supervisors answered "no."

The literature on law enforcement supervision is, at best, vague on the issue of supervising for safety. During the presentations conducted after the publication of *Killed in the Line of Duty*, numerous supervisors readily admitted that supervising for safety was unknown in their agencies and that they never considered it a part of their regular duties.

Participants asked thought-provoking questions regarding supervising for safety. These individuals had considered incorporating the findings of the study in their own departments, e.g., that an officer's receiving a lower performance rating might be one of several early signs of the potential for a law enforcement killing. One such question was, "What do I do as a sergeant when I have one or more officers with over 8 years on the job, and they're suffering from 'burnout' or they've received a lower assessment or evaluation of their work performance than they're regularly given?" The sergeant continued by saying, "I can't put them all in the station."

As evidenced by this supervisor's frustration, there are no easy solutions to these issues. However, they do need to be addressed within each agency, as the consequences can be and, in some cases, have been fatal. The study showed that 10 victims received performance ratings of successful or better over several rating periods, but just prior to their deaths, these officers received a lower assessment.

Many supervisors also point to the reluctance of police unions or labor organizations to address the issue of supervising for safety. Several sergeants gave the simple, but pointed, example of the use of a flashlight during a tour of duty to support their claim.

The union contract stated that the department was to issue all uniforms and equipment to the officers. Because the department did not issue every officer a flashlight, no one was required to have a flashlight, regardless of the tour of duty. Even

if the sergeants had the officers' safety as their first priority, they could not require officers to carry a flashlight. The union, while trying to protect its members by having the department supply equipment to the officers, not only overlooked the flashlight but also potentially stood in the way of the sergeants' supervising for safety.

Can any officer imagine working a tour of duty without having a flashlight readily available, much less during an evening or midnight tour? Clearly, everyone should have the issue of safety first and foremost on their agendas.

Mid-level managers are included with first-line supervisors in this issue of supervising for safety because the study revealed that nine of the victim officers held the rank of sergeant or higher. While the victim's rank was not reported in the original publication, subsequent reflection on the topic of supervising for safety revealed that certain issues seem to have a greater or more direct relationship to the position and rank the particular law enforcement officer holds. Supervisor is one of those positions.

Several officers made statements that the actions or inactions of supervisors can send the wrong safety message to line officers. Supervisors who fail to follow safe, accepted, and proper procedures while performing their jobs do not set the right example through their behavior.

For example, one sergeant included in the study was killed after making a traffic stop. He had placed his patrol vehicle in front of the killer's vehicle and walked toward the killer's vehicle after exiting the driver's side door. The killer stated that this gave him the advantage because he already had the gun in his hand. It was only a matter of waiting until the sergeant walked close enough to the window of the car so that he could shoot him.

A second sergeant ordered one of three drug suspects to stand behind him during a search of the suspects' car. When the sergeant started to look in the trunk of the stopped vehicle for additional drugs without waiting for available backup, the killer removed the sergeant's weapon from his holster and killed him. One reluctantly could assume that this was not the first time the victim sergeant violated established and accepted police procedures regarding the control of suspects.

Most patrol officers would welcome positive, constructive review of their work practices, particularly when the practice regards issues of their own safety. However, in order for sergeants to observe and supervise the ways in which officers make traffic stops, approach suspects, conduct searches, and apply handcuffs, the sergeants would have to be on the scene of these occurrences. The proper use of handcuffs on a prisoner makes both the officer and the prisoner safe; yet, few sergeants check how a prisoner is handcuffed.

Another area that has considerable impact on safety involves the flow of information. In many cases, information on safety issues never makes it to the sergeants and officers. For example, many officers and sergeants stated they were aware of the study on police officers killed but very few actually read the published report because they had never seen it.

For supervising for safety to function, both the first-line supervisor and the line officer have to agree that safety is a key issue in supervision. In addition, supervisors must create a safety-conscious environment through their example and by providing safety information to line officers.

CONCLUSION

Specific areas have been identified where law enforcement training and procedures may have had a role in the eventual deaths of law enforcement officers. From the published findings of the study *Killed in the Line of Duty* and the numerous presentations and discussions that followed its release, some crucial insights were identified that may reduce the likelihood of an officer's being killed in the line of duty—use-of-force policies, night training, first-aid experience, and supervising for safety.

These issues already are part of the official training, policy, and procedures of many departments. However, as an official of a large

agency commented following a presentation, "Although each of these issues is covered in our department policies and procedures manuals, we do not review them on any regular and consistent basis."

One administrator admitted that the study confirmed in his mind the need to return to basics, i.e., the consistent and regular application of basic survival and investigative principles that have been taught, and continue to be taught, in the academy. The problem as he saw it, with majority support from the assembled group of police training instructors, is that routine complacency has become a hazard to officer safety.

Perhaps it is time for each department to make a commitment to review and update department training and policy manuals on a regular basis and to ensure that line staff and command personnel understand the policies and procedures. This practice may save an officer's life.✦

Endnotes

[1] Presentations on the *Killed in the Line of Duty* study were given during meetings of the International Association of Chiefs of Police, the National Sheriff's Association, the Canadian Association of Chiefs of Police, and the American Society of Law Enforcement Trainers. In addition, presentations also were given to requesting agencies, including 8 Federal agencies, 10 State agencies, and over 350 local agencies (county police, municipal police, county sheriffs, and township departments).

[2] From 1983 to 1992, almost 62 percent of officer killings and 72 percent of assaults on officers occurred between the hours of 6 p.m. and 6 a.m.

[3] The authors currently are conducting a study concerning violence against law enforcement officers. This study examines cases in which law enforcement officers survived serious assaults committed with a firearm or a cutting instrument.

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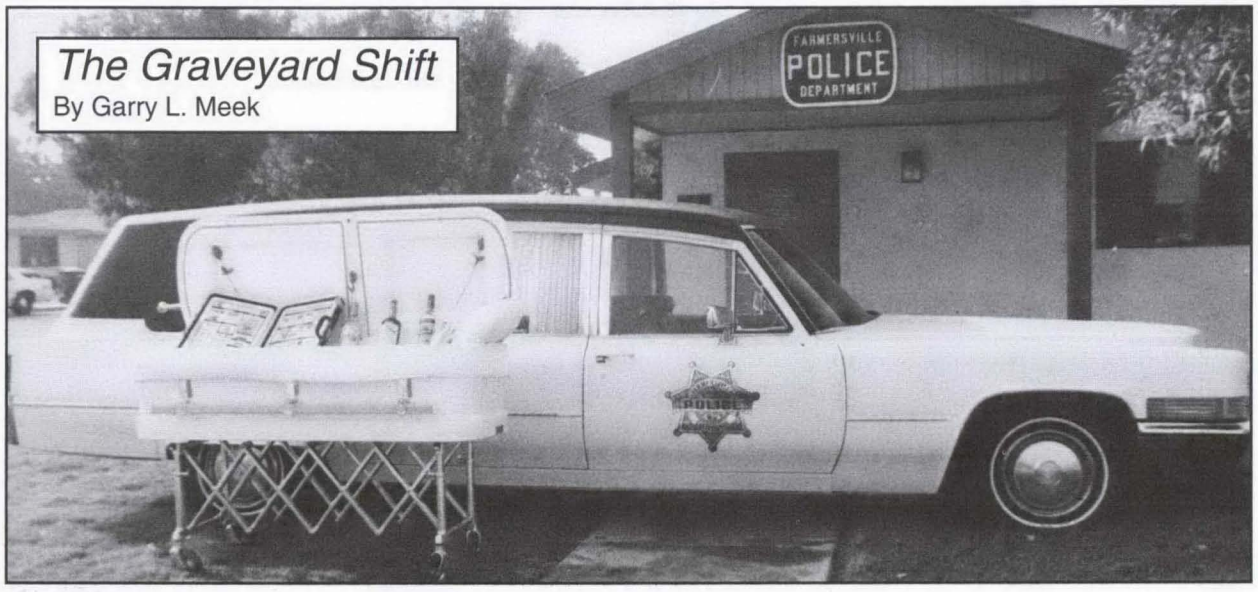
  (916) 392-4640
- IACP NET
  1-800-227-9640
- CompuServe
  1-800-848-8199 (Ask for Representative 346. *Law Enforcement* is available only through their restricted law enforcement library.)

The Graveyard Shift

By Garry L. Meek



Conveying the true dangers of alcohol and drugs, especially to young people not acquainted with the full scope of threats posed by substance abuse, can be a difficult task. The City of Farmersville, California, initiated an innovative way to really drive the message home.

In May 1992, the chief developed plans for a unique alcohol and drug prevention display that could be exhibited at local school assemblies, car shows, and other public gatherings to discourage substance abuse. Through donations from a local funeral home and other area businesses, as well as an Indiana casket company, the chief obtained a 1970 Cadillac hearse and a youth-sized casket for the display. The hearse and casket became the focal points of a powerful presentation designed to show the serious, and potentially fatal, consequences of substance abuse.

A driver transports the casket in the hearse to each location. Graphic photographs portraying the realistic effects of alcohol and drug abuse are displayed in the casket. These photographs, compiled in a large photo album, show the not-so-glamorous side of substance abuse, depicting such things as injection sites on a heroin user's arms and the aftermath of motor vehicle accidents involving drunk drivers. Empty alcoholic beverage containers line the casket. To help viewers identify the tools—and tricks—of the drug trade, the casket also contains simulated drug paraphernalia.

While viewing the stark display, onlookers are encouraged to watch a brief video program on the dangers of alcohol and drug abuse. Officers also distribute handouts that reinforce the antisubstance-abuse message.

The display and video program have been well-received in numerous public appearances throughout the San Joaquin Valley. The unmistakable visual force of the hearse and casket underscores the intent of the display. By depicting the worst aspects of substance abuse, hopefully, the display will bring out the best in those who see it.✦

Chief Meek commands police and fire services in Farmersville, California.

The Central Texas Counterterrorism Working Group

By
BYRON A. SAGE, M.S.,
MACK WALLACE, J.D.,
and CAROLYN WIER

Public interest in terrorism tends to ebb and flow with the tide of outrageous acts committed by terrorists. In the early 1970s, masked international hijackers represented the worst fear of air travelers worldwide. In the mid-1980s, these fears resurfaced as a new wave of terrorists sought to intimidate governments through blackmail and alter public opinion by manipulating the mass media. Particularly barbaric acts, such as the 1988 downing of Pan Am Flight 103 or the bombing of the World Trade Center in 1993, demonstrate the terrorist penchant for destruction and the indiscriminate killing of innocent victims. Interspersed among these sensational acts of international terrorism are the equally desperate and senseless acts of domestic terrorists.

After a terrorist event, the public generally returns to a business-as-usual attitude following an initial period of revulsion. The law enforcement community, however, cannot afford to take a similar attitude. Those charged with ensuring public security must explore every option to safeguard against terrorist activity.

A number of agencies in the central Texas region have joined together in a cooperative effort to address this priority area of concern. The Central Texas Counterterrorism Working Group (CTCWG) represents a proactive effort to respond to the threat of terrorism in an area of the United States brimming with strategic commercial sites and important military installations.

DOMESTIC TERRORISTS

Past terrorist activity in the central Texas region demonstrates the need for a coordinated approach to counterterrorism. For years, the region served as the base of operation and support for several domestic terrorism groups. These ranged from right-wing, white supremacist groups to left-wing cells, such as the May 19 Communist Organization (M19CO).

Several cases illustrate the belief among terrorists that the central Texas region represents a safe haven from apprehension. One such case involved Richard Joseph Scutari, head of security for the white supremacist group, the Order, and one of the FBI's Top Ten Most Wanted fugitives for his part in the June 1983 murder of a talk show host in Denver, Colorado. After the slaying, Scutari fled Colorado for central Texas, where fellow white supremacists provided him refuge. His subsequent capture in San Antonio, Texas, demonstrated the attraction of the area to domestic terrorists.

Meanwhile, members of the violent May 19 Communist Organization continue to maintain an active presence in the area. The group's affiliation with the central Texas region dates back to the turbulent 1960s, when it operated freely among the less organized elements of the antiwar, antiestablishment movement. While these movements declined as the Vietnam War drew to a close, M19CO diversified into domestic terrorism and directly assisted in staging a series of criminal acts, ranging from armored car robbery and murder to the November 1983 bombing of the U.S. Capitol Building in Washington, DC.

Of the seven individuals subsequently indicted for the Capitol bombing, three were from Austin, Texas, with documented ties to M19CO. Six suspects were prosecuted and convicted. The seventh, Elizabeth Anna Duke (also known as Betty Ann Duke), fled while on bond and currently is being sought by Federal authorities.

Investigation into the Capitol bombing revealed that Duke and other members of M19CO's Austin Cell played a key role in this and other terrorist acts. The cell was responsible for thefts of high explosives from the central Texas region. These explosives ultimately were used in bombings in Washington, DC, New York City, and sites throughout the Nation's northeast. A number of M19CO members continue to live in the central Texas region and conceivably could provide support for Elizabeth Anna Duke.

These and other examples clearly demonstrate the presence of a broad-based terrorist threat in central Texas. They also underscore the need for a multijuridictional approach on the part of the public safety community in response to this menace.

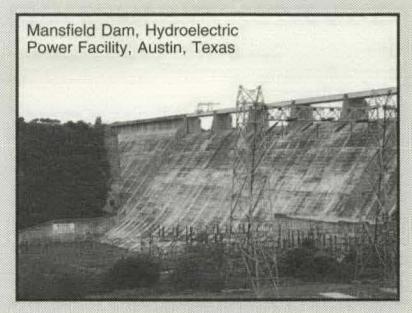
CONFRONTING THE TERRORIST THREAT

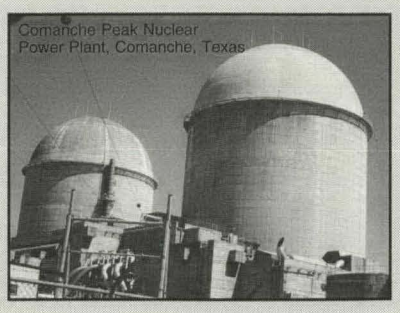
What eventually became the Central Texas Counterterrorism Working Group (CTCWG) initially formed in 1987 as a joint project by the San Antonio Office of the FBI, the Texas Department of Public Safety, and the Texas Railroad Commission to identify terrorist groups, activities, and potential targets of opportunity in the central region of Texas. Through previous

Special Agent Sage is assigned to the Austin, Texas, Resident Agency of the FBI's San Antonio Division.

Mr. Wallace is the former commissioner of the Texas Railroad Commission.

Mrs. Wier is a senior criminal analyst with the Texas Department of Public Safety.





The CTCWG works with the internal security departments of many local facilities to develop threat assessments and to evaluate their level of preparedness.

and ongoing investigations, it readily became apparent that the region could draw the attention of both domestic and international terrorists due to the presence of numerous potential areas of interest. These areas include several key assets, ranging from vital State government facilities in and around the capital city of Austin to major utilities, hydroelectric power plants, and a nuclear power facility.

The central Texas region also houses several key military installations, including a major U.S. Army facility at Fort Hood, which is home to two full-armored divisions and specialized airborne and armored units. In addition, several major universities, with related research and development programs, also are located within the central Texas region. The initial member agencies of the CTCWG viewed protection of these sites as a primary focus of the working group.

To address the established, ongoing threat of terrorism in the region, the core group of public safety agencies that organized on a temporary basis in 1987 expanded its mission and scope to encompass the mutual responsibilities of Federal, State, and local law enforcement. The Central Texas Counterterrorism Working Group now is comprised of 46 law enforcement agencies, representing different levels of jurisdiction. These agencies range from local metropolitan police departments and county sheriff's offices to the State's Department of Public Safety, the Texas Ranger Service, and the FBI. In addition, as the group's focus of jurisdictional interest grew, the sphere of CTCWG participation expanded to include military security and intelligence units in the central Texas area.

On a continuing basis, each of the participating law enforcement agencies and military units is tasked with identifying both individuals or groups who constitute a potential terrorist threat. The CTCWG also serves as a valuable forum to address a case- or agency-specific evaluation of vulnerable targets of opportunity that might interest either domestic or international terrorists. Identified areas have included points of access to major utility systems, perimeter security for key assets, and points of entry and exit of sensitive military installations or mass transportation facilities.

The Private Sector

On a more limited basis, the CTCWG reaches out to the many high-technology firms in the central Texas area. The effort to extend the scope of the CTCWG to these firms opens a valuable channel of communication between the law enforcement community and the private sector in an area of mutual concern.

The working group attempts to address the specific security needs of the private sector by assisting the firms' internal security departments to develop threat assessments and to evaluate their level of preparedness. Perhaps not surprisingly, the areas of concern expressed by these high-technology firms closely mirror those of the military installations, utilities, and mass transportation facilities in the area. These concerns include access and perimeter security issues, as well as the need for greater input from law enforcement agencies regarding employment background investigations at sensitive government contract facilities.

Meetings

The CTCWG meets every 2 months (more frequently as the need arises, as during Operation Desert Shield and the Gulf War). These meetings are hosted on a voluntary basis by one of the member agencies or a high-technology firm. The selection of meeting locations is based on a rotating schedule, which allows all CTCWG participant agencies and interested technology firms to share in shaping the topic material for particular meetings. In addition, site rotation allows each host to showcase its specific area of jurisdiction, territorial makeup, and unique facilities or mission statements. CTCWG participants then review these elements and make assessments regarding any potential areas of vulnerability.

The working group's meetings generally consist of an hour-long closed session followed by an open session of the same length. The closed sessions are restricted to law enforcement officials and military personnel on a need-to-know basis. This restricted access allows for a free exchange of intelligence data, while enabling agencies to adhere to their respective disclosure and dissemination guidelines.

The open sessions generally focus around a briefing by the host agency or firm and conclude, when possible, with a tour of the host's facilities. The open sessions also allow private sector firms to highlight specific areas of concern and request CTCWG members to address issues considered vital to the attendees and their organizations.

During the 8 years of the working group's existence, meetings have been held at such diverse locations as nuclear power plants, hydroelectric generating facilities, dams, military installations, major university campuses and research facilities, and railroad complexes. The diversity represented by the participating agencies allows the group to establish a vital, proactive network of specific points of contact and communication, while greatly enhancing the area's overall counterterrorism intelligence base.

> ***"Adequate preparation on the part of the public safety and high-technology communities represents the best response to the terrorist threat."***

Training

In addition to the bimonthly meetings of the working group, the FBI and Texas Department of Public Safety host joint training seminars under the auspices of the CTCWG. These seminars have focused on such topics as international terrorism, with guest speakers ranging from Israeli government and academic officials to leaders of Islamic mosques.

The working group also hosts training seminars that address domestic terrorism issues, with a primary focus on right-wing, white supremacist groups. So that attendees can gain a better understanding of allies and adversaries alike, these seminars have included speakers with various and divergent backgrounds, from undercover officers and case agents to the grand dragon of the Texas Knights of the Ku Klux Klan.

Special Events

The Central Texas Counterterrorism Working Group has provided direct support for several major events, ranging from military troop and equipment movements related to the Gulf War to preparing security measures for the 1991 International Economic Summit held in Houston. In conjunction with other agencies, the CTCWG also hosted a briefing seminar for law enforcement and military security units in preparation for World Cup soccer games held in the central Texas region during the summer of 1994.

CONCLUSION

The Central Texas Counterterrorism Working Group grew out of a need to provide proactive counterterrorist security to a particularly vulnerable region of the Nation. The key to its success is the high degree of cooperation that exists among the group's members as they share information and expertise to enhance the security of the entire region. This concept of informed preparedness could form the basis for similar interagency counterterrorism working groups in other regions of the Nation. Adequate preparation on the part of the public safety and high-technology communities represents the best response to the terrorist threat. ✦

Bulletin Reports

Asset Forfeiture

A collection of 16 manuals on asset forfeiture is available from the Bureau of Justice Assistance (BJA). Written by experts in asset forfeiture and financial investigations, these brief, but informative, manuals address various aspects of asset forfeiture. Some of the topics covered include financial search warrants, protection of third-party rights, informants and undercover investigations, and management and disposition of seized assets.

The entire series can be purchased by calling the BJA Clearinghouse at 1-800-688-4252. Those who purchase the series will automatically receive new editions as they become available.

Workplace Violence

The American Society of Industrial Security (ASIS) has published a compilation of over 500 summaries or abstracts of articles from various media sources, such as major U.S. newspapers, weekly business magazines, academic journals, and security trade publications. The *ASISNET Reference Series on Workplace Violence* includes information on studies, surveys, statistical analyses, and cases concerning workplace violence from 1989 to 1994. It provides background documentation for security professionals to develop plans and programs for workplace violence awareness and prevention.

The publication (Item #402) can be purchased from ASIS Catalog Sales, 1655 N. Fort Myer Drive, Suite 1200, Arlington, Virginia 22209. Orders also can be placed by calling 703-312-6313 or faxing a request to 703-243-4954.

Research

USING RESEARCH: A Primer for Law Enforcement Managers serves as a guide to research for police officials. The book is designed for police managers who want to improve their ability to interpret others' research and for those who want to know more about conducting research. It demonstrates how to carry out research and how to judge research quality. This book provides an introduction to the knowledge needed by police managers to be better research consumers and research producers.

The book can be purchased from the Police Executive Research Forum, 1120 Connecticut Ave, N.W., Suite 930, Washington, DC 20036. The telephone number is 202-466-7820; the fax number is 202-466-7826.

Police Case Studies

The Police Executive Research Forum (PERF) has published a series of case studies in police decisionmaking. The case studies resulted from a National Institute of Justice-funded project aimed at capturing and reconstructing police decisionmaking processes.

"The Cedar Grove Riot" case study examines how the Shreveport, Louisiana, Police Department handled the rioting and looting that ensued after a white female shot and killed a black male. The report shows how the mixture of city history, departmental history, neighborhood dynamics, criminal activity patterns, and other tensions within the city and department provided a backdrop for the disturbance.

"Drug Enforcement in Minority Communities" addresses the conflicts inherent in drug enforcement—conflicts over the police role in combating drugs and police behavior in minority communities. The discussion focuses on the Minneapolis, Minnesota, Police Department's efforts to address a new trend in the sale and use of illicit drugs, while maintaining the highest ethical and professional standards and ensuring civil liberties.

"Response to Antiabortion Demonstrations" examines the Cincinnati, Ohio, Police Department's handling of a major antiabortion demonstration. The report shows how the police department balanced the antiabortionists' right to freedom of speech and assembly with the privacy rights of clinic patients and physicians.

All three case studies can be purchased from the Police Executive Research Forum, 1120 Connecticut Ave., N.W., Suite 930, Washington, DC 20036. The telephone number is 202-466-7820; the fax number is 202-466-7826.

Questioning Children

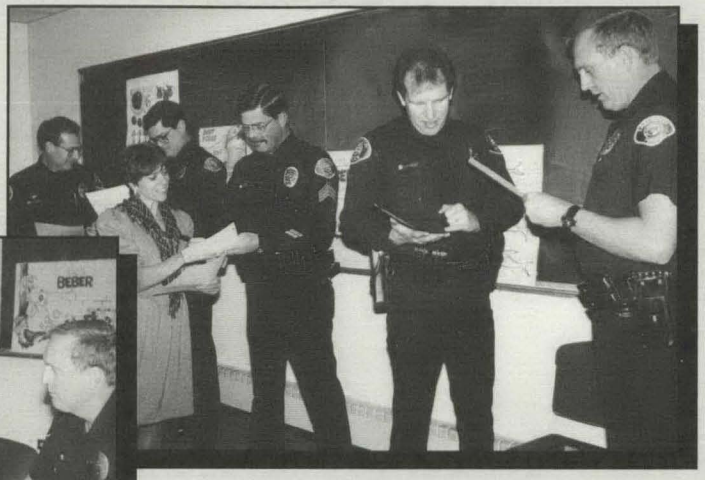
The American Bar Association (ABA) released a publication on interviewing children. *The Handbook on Questioning Children: A Linguistic Perspective* gives an overview of differences between child and adult language. It also provides a discussion of problems that adults often encounter when questioning children, a list of language-related reasons for inconsistencies in children's testimony, and a checklist for interviewing/questioning children. Also included in the handbook are a prototype for a preliminary competency examination of children and a detailed index.

The publication is available from the ABA Service Center-549, 541 North Fairbanks Court, Chicago, IL 60611. Orders also can be placed by calling 1-800-285-2221 or by faxing a written request to 312-988-5528.

Focus on Training

Accelerated Learning A New Approach to Cross-Cultural Training

By Alan C. Youngs, J.D.
and Ana Novas, M.A.



Hispanics now represent the fastest-growing ethnic group in the United States. According to the U.S. Census Bureau, Hispanics number over 23.4 million, representing more than 9 percent of the population. The Government estimates that these figures will double within 30 years and triple in 60.[1]

Police officers in departments nationwide are seeing the results of this phenomenon firsthand, as increased numbers of Hispanics move into their communities. One of the most difficult obstacles now facing police officers is the language barrier that often separates Spanish-speaking immigrants from the officers who must communicate with them.

The Lakewood, Colorado, Police Department recognized this problem several years ago and actively pursued a specialized cultural awareness and language training program for its officers. The program offers not only specialized language training for routine police business but also cultural background information to help officers gain insight into Hispanic behavioral patterns and customs.

An independent educational consultant and native of Spain created the program and now teaches the classes. She designed the curriculum after interviewing police officers, training officers, and gang members; riding with patrol officers; and conducting experimental classes. Based on her research and interaction with police officers, she concluded that accelerated learning concepts, combined with a highly interactive teaching style, would best suit the needs of the department.

Accelerated Learning

Accelerated learning, which provides the foundation for Lakewood's language training program, is not a new concept. Dr. Georgi Lozonov pioneered the process while experimenting with techniques to improve human memory. He discovered that the power of suggestion impacts a person's ability to learn and to remember information. Negative experiences create mental blocks that prevent individuals from learning effectively. In contrast, when

individuals have fun in a learning situation, they enjoy the process and wish to repeat it. They simply learn more.

Traditional teaching methods suit less than 50 percent of the population.[2] Instructors present information in a linear, step-by-step manner and expect participants to memorize it in a rote style. Classes like these are confining, competitive, and highly stressful.

Likewise, traditional language courses for police personnel often focus on rote memorization of phrases, questions, commands, and vocabulary taught out of context. This training is not effective in stimulating automatic recall in real-life situations because it does not prepare officers to understand answers offered by speakers who are not fluent in English during typical encounters. Further, traditional training fails to provide students with the cultural information they need to communicate effectively with individuals from different ethnic backgrounds. In short, to produce successful intercultural exchanges, officers must develop sensitivity toward other cultures and understand the meaning of words in the context of specific situations.

"Class exercises stress role-play and other interactive activities, which suit a variety of learning styles."

Accelerated learning fulfills these requirements. It relies heavily on experiential learning, is well-suited to the action-oriented reality of day-to-day street work, and consequently concentrates on getting participants to speak the language. Class exercises stress role-play and other interactive activities, which suit a variety of learning styles.

The Training Program

Initially, Lakewood police officers attend a 4-hour training session, which covers pronunciation exercises, memory techniques, vocabulary, and sentence structure. The course focuses on getting the officers to speak the language quickly without confusing them with complicated grammar rules. The vocabulary and grammar taught in this session enable officers to obtain basic personal information and to make arrests.

In addition, officers obtain a base knowledge of Hispanic culture, without which even the most simple interactions become complicated. For example, Hispanic surnames consist of the last name of the father, followed by the last name of the mother. Married women often do not take their husband's name. Or, they may add it to the end of their own name, with *de* in front of it. In any case, in order to complete an accurate records check, officers must make certain they have obtained the subject's complete name.

Officers also learn about two issues in Hispanic culture that may affect greatly their interactions with these individuals: Respect and authority. In many Latin American countries, the police brutalize citizens, who fear for their lives. Emigrating to the United States does not erase these feelings. Thus, Hispanics may avoid contact with the police at all costs. Or, when they must interact with police officers, they may look at the ground out of both fear and respect. Officers may find this behavior disconcerting, if not disrespectful, unless they understand the cultural basis for it.

The first training session gives Lakewood police officers a solid foundation in both language skills and cultural knowledge. Following the initial training, an intensive 3-day training seminar expands the officers' vocabulary base to include, for example, terms for physical and psychological attributes, time, professions, weapons, and street slang. They also learn commands for low-profile cursory searches and felony-prone searches, as well as other common commands used when effecting arrests.

Additional cultural issues are introduced during these sessions. Topics include the Hispanic concepts of time, courtesy, bonding, and perhaps most important, family values.

Hispanics place great importance on the family. An insult directed at a man's family, for example, almost always leads to a fight. Further, if arrested in front of his family, a Hispanic man may protest verbally and fight back to avoid embarrassment.

Likewise, traditional Hispanic women consider it their duty to stay with their husbands, regardless of what happens. In contrast, a Mexican-American woman whose husband abuses her probably will want to file charges and to encourage police involvement.

These examples illustrate merely a few of the ways in which the Hispanic view of the family affects their dealings with the police. For this reason, the training program employs a number of specialized exercises to give officers the appropriate knowledge and insight to interact successfully with Hispanic families. As noted previously, however, natives of different Spanish-speaking countries have diverse cultural values that affect their actions. Further, within each culture, individuals form different attitudes based on their social class, educational level, and living environment.

Overall, the courses rely heavily on dialogues, stories, illustrations, and healthy doses of humor to maintain student interest and motivation. Accelerated learning, with its emphasis on role-play, gets officers thinking on their feet and reacting to real-life situations.

"Accelerated learning, with its emphasis on experiential techniques, practicality, and humor, offers an effective means for law enforcement personnel to master a foreign language."

Followup Training

By design, the training program helps officers to make the transition from the classroom to the street. Students learn to recognize grammatical patterns in Spanish that they can apply later to unfamiliar vocabulary. In addition, the classes increase students' confidence and interest, encouraging many to continue studying on their own after they complete the course.

To facilitate home study, course materials include a workbook and two audio cassette tapes. Two pocket-sized, laminated cards contain the Spanish versions of the *Miranda* warning, basic questions and commands, and DUI procedures that officers can use on the street. In addition, each year the department holds an interactive training session in which members of the Hispanic community come to the department to communicate in Spanish with the police officers.

Conclusion

Traditional foreign language courses that focus on rote memorization often meet with resistance and limited success among law enforcement practitioners. Accelerated learning, with its emphasis on experiential techniques, practicality, and humor, offers an effective means for law enforcement personnel to master a foreign language. Perhaps more important, officers develop a sensitivity to people of other cultures.

While once considered a melting pot where immigrants assimilated with the population, the United States has become a country where people of many different ethnic origins proudly retain their native language and culture. With its new training program, one that provides a unique blend of language and cultural interaction, the Lakewood, Colorado, Police Department is meeting the challenge of policing a multicultural society.✦

Endnotes

[1] Thomas Weyr, *Hispanic USA: Breaking the Melting Pot* (New York: Harper & Row, 1988), 194.

[2] Colin Rose, *Accelerate Your Learning* (Aylesbury, England: Accelerated Learning Systems, 1992), 1-23.

Captain Youngs heads the Information Management Division of the Lakewood, Colorado, Police Department. Ms. Novas is a Spanish professor at the University of Colorado at Denver.

Soft Body Armor
The Legal Issues

By
Terry D. Edwards, J.D.

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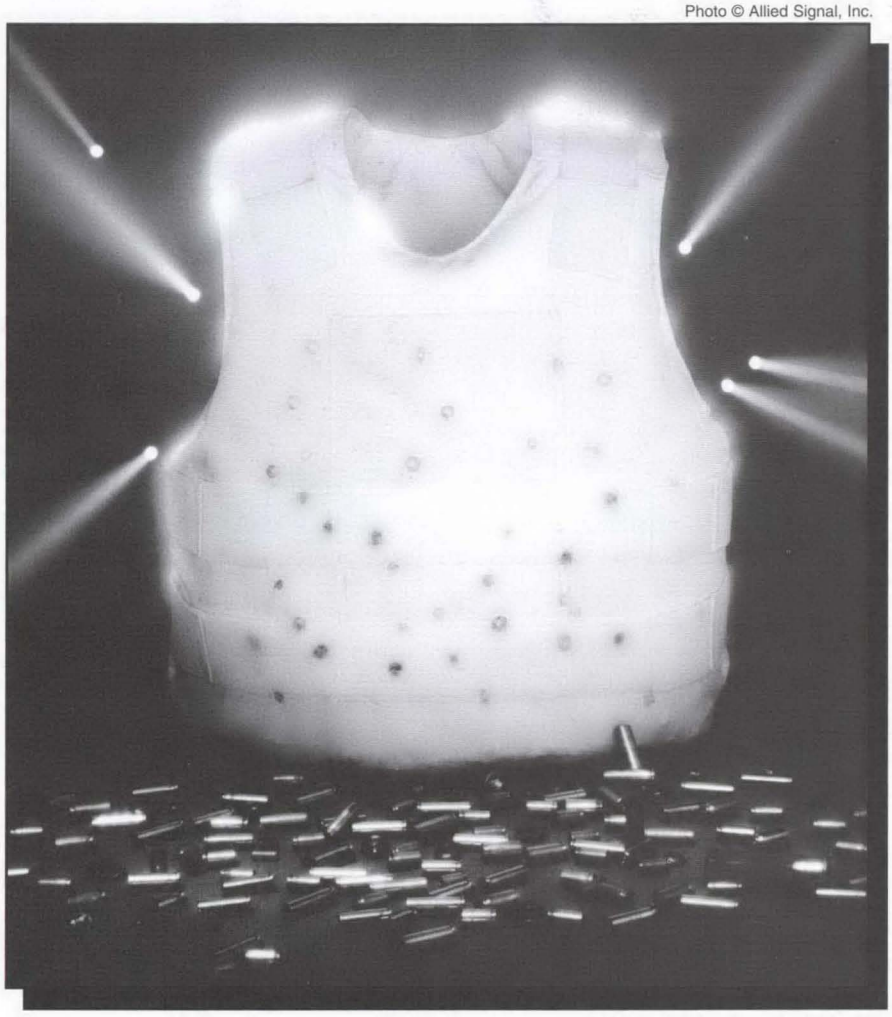


Throughout the ages, individuals threatened with weapons sought to protect themselves from injury through some form of protective garment. Early warriors relied on brine-soaked leather. Later, Roman armies wore fairly sophisticated metal breastplates. In the Middle Ages, knights relied on full suits of heavy armor and chain-like metal for protection. But, as science and technology enhanced defensive capabilities, the offensive capabilities of weapons also improved. Unfortunately, weapons' capabilities continued to outstrip the defensive protection offered by protective clothing.

During World War II, however, rapidly advancing technology provided some hope with the development of flak jackets by the military. The early models were bulky, heavy, and offered protection primarily from fragments and slower projectiles, not from high-powered military rifles. The military made advancements during the next two decades, although little thought was given, or research dedicated, to providing the law enforcement community with any type of protective clothing. To some degree, this inattention could be attributed to the lack of a perceived threat against police officers.

This perception changed in the 1970s as violence erupted in virtually every U.S. city. Law enforcement in the United States witnessed an onslaught of protests—from Vietnam War demonstrations to large-scale, civil rights riots. During this same time period, the number of officers killed by firearms more than doubled—from 55 in 1966 to 127 in 1975.[1]

With this sudden and dramatic increase in both the nature and the degree of violence against the police, law enforcement agencies seriously considered the defensive options available to officers. The law enforcement community direly

needed some form of defensive protection against what was rapidly becoming a losing battle against assaults committed with firearms.

In 1975, the National Institute of Justice distributed 5,000 bullet-resistant vests to volunteer officers in 15 cities.[2] This began a 20-year effort to offer police officers some form of protection from firearms. Since then, great strides have been made to produce modern, reliable body armor for law enforcement.

Unfortunately, as body armor became more effective for law enforcement, the criminal element also learned of its value. With the increasing acceptance and routine use of body armor by criminals, the law enforcement community again finds itself slowly falling behind the "technological power curve." The question then becomes: What can be done legally when criminals wear body armor?

This article addresses the legal issues related to incidents where individuals wear, use, or possess body armor when committing criminal offenses. It focuses on the criminal statutes enacted by some States to criminalize such actions outright. It also examines those jurisdictions where specific criminal statutes have not been enacted but where police and prosecutors have employed various investigative and prosecutorial practices that have resulted in the introduction of body armor as evidence in criminal trials. Finally, the article offers suggestions to investigators and prosecutors on how to address this issue in the future.

MODERN BODY ARMOR

Modern body armor consists of a woven, mesh-like fabric, often assembled in layers, that reduces the penetration capabilities of firearm projectiles.[3] Because of its design, structure, and composition, the fabric disperses the energy and neutralizes the projectile. Body armor is manufactured in various strengths and is relatively lightweight and easily concealable.[4]

The criminal statutes discussed in this article[5] use a variety of terms to describe body armor; however, all statutes refer to garments specifically manufactured for the unique purpose of stopping firearm projectiles. The statutes of eight States use the term "body armor," while references to this type of protective clothing in other State statutes include "body vest," "bulletproof vest," and "bullet proof garment."[6]

The criminal statutes of some States actually define the type of body armor to which the statute refers. For example, the statutes of Florida and New York use very specific and technical definitions. Florida's statute also includes the National Institute of Justice's rating of the threat level. Conversely, the Illinois statute includes four very broad categories and offers very general definitions within each of the four categories.

"...the possession, use, and wearing of body armor by defendants have found their way as evidence into criminal trials...."

Professor Edwards is an assistant professor, Department of Justice Administration, at the University of Louisville in Louisville, Kentucky.

CRIMINAL STATUTES

The State statutes creating criminal offenses that prohibit the wearing, use, or possession of body armor can be divided into two broad categories: 1) Statutes creating substantive offenses and 2) statutes enhancing sentencing. Most of the statutes fall into the first category; that is, these statutes create separate criminal offenses for which defendants can be charged, convicted, and sentenced. However, two States (California and Wisconsin) opted not to create separate substantive offenses, but rather, adopted enhancing statutes that impose an additional sentence when an

individual is convicted of committing a crime while wearing body armor.

Statutes Creating Substantive Offenses

Criminal statutes that create substantive offenses involving body armor require a defendant to possess a guilty mind (mens rea) while simultaneously committing a wrongful deed (actus reus). The actus reus is the physical aspect of the crime, whereas the mens rea involves the intent factor.[7]

The vast majority of body armor criminal statutes are general intent crimes. This means that no specific mental purpose is required by the statute itself. Only Illinois requires that the defendant "knowingly" wear the body armor.

Additional Conditions

The statutes of 10 States criminalize only the wearing of body armor, whereas 3 States adopted statutes that criminalize both the wearing and use of body armor. Most State statutes, however, stipulate that an additional act is necessary.

For example, in Oklahoma, Massachusetts, and Wisconsin, a defendant must be committing or attempting to commit a felony while wearing body armor, although the Massachusetts statute also criminalizes the use of body armor, not just the wearing of it. A defendant in Michigan violates the body armor statute while committing violent acts or threatening to commit violent acts, even if the offenses are not felonies.

California's statute requires the defendant to be wearing body armor while committing or attempting to commit a violent offense, as defined in the California Penal Code. The body armor statutes in Florida, Louisiana, and New Jersey list specific offenses that a suspect must have committed or be attempting to commit while wearing body armor to violate the statute. Conversely, New Hampshire employs a sweeping provision that prohibits the use or wearing of body armor and expands the required additional act to include the commission of any misdemeanor or felony.

> ***"...all statutes refer to garments specifically manufactured for the unique purpose of stopping firearm projectiles."***

Three States require that a defendant, in addition to wearing or using body armor, possess a weapon before a violation of the body armor statute can occur. The Illinois statute requires that an offender knowingly wear body armor, possess a dangerous weapon, and commit or attempt to commit any offense. New York's statute stipulates that a person is guilty of unlawful wearing of body armor while committing a violent felony *and* possessing a firearm. In Virginia, the defendant must be in possession of either a firearm or a knife while wearing body armor *and* be committing a crime of violence to violate the statute.

Penalties

Just as the additional conditions required by the statutes vary, so do the penalties. In Illinois, the penalty is a misdemeanor for the first offense and a felony for subsequent offenses. Delaware's statute defines the offense of wearing body armor as a felony, imposes a minimum sentence of 3 years, and mandates that violators over the age of 16 be tried as adults. Some States designate the offense as a felony of a specific degree, e.g., third degree in Florida, class B in New Hampshire, class E in New Jersey, and class 4 in Virginia.

Three States specify the punishment without specifically characterizing the offense as a felony. For example, Louisiana's statute calls for a fine of not more than $2,000 or imprisonment with or without hard labor for no more than 2 years. In Massachusetts, the sentence is a minimum of 30 months and a maximum of 5 years in a State prison, *or* imprisonment of no less than 12 months and no more than 30 months in a jail or house of correction. Oklahoma requires imprisonment in a penitentiary for no more than 10 years for the first offense and not more than 20 years for subsequent offenses.

Probation and Parole

Two States even addressed parole and probation in their substantive criminal statutes. Delaware not only imposes a minimum sentence of 3 years but also mandates that "no person convicted for a violation of this section shall be eligible for parole or probation during such 3 years." New Hampshire prohibits any part of the sentence for violating

the body armor criminal statute from being served concurrently with any other prison term.

Statutes Enhancing Sentencing

California and Wisconsin approached the issue from a different perspective. The statutes in these States do not create a separate substantive criminal offense. Rather, they impose additional or enhanced sentences on defendants convicted of committing or attempting to commit other substantive crimes while wearing body armor.

California's statute prescribes an additional sentence "upon conviction of that [underlying] felony" to a term of either 1, 2, or 3 years. The statute requires that a 2-year term be imposed, unless the court finds aggravating or mitigating factors, and that the additional sentence run consecutively to the sentence for the underlying felony.

In Wisconsin, the statute authorizes, but interestingly does not require, a sentence of an additional 5 years. No mention is made, however, as to whether the sentence should run concurrently or consecutively.

OTHER EVIDENTIARY USES

Even in jurisdictions without substantive offenses or sentence-enhancing provisions, the possession, use, and wearing of body armor by defendants have found their way as evidence into criminal trials, mostly in cases involving drugs and weapons. In drug cases, the defendant usually has been charged with distribution of drugs or possession with intent to distribute, rather than with simple use or possession. Weapons cases, for the most part, involve defendants who are felons charged with possession of a firearm.

Stop and Frisk

For over 25 years, the law enforcement community has operated under the "stop and frisk" theory first outlined in *Terry* v. *Ohio*.[8] As a result of the *Terry* decision, to justify a stop, officers must be able to "clearly articulate" the facts that led them to conclude that "criminal activity is afoot."

Based on their training, experience, and education, officers who encounter individuals suspected of wearing, using, or possessing body armor should have little difficulty convincing a court of the suspect's criminal intent. After all, other than law enforcement, what occupation routinely requires body armor to be worn in the normal course of a work day? Once an officer reasonably determines some form of body armor is, in fact, being worn, while taking into consideration the time of day, location, and action of the defendant, that officer reasonably can conclude that a *Terry* "stop and frisk" situation has arisen.

> ***"A police officer's observation of a defendant's wearing, using, or possessing body armor can be critical in justifying a Terry stop and frisk."***

A police officer's observation of a defendant's wearing, using, or possessing body armor can be critical in justifying a *Terry* stop and frisk. In *United States* v. *Whitfield*,[9] officers observed a driver disregard a traffic signal. They initiated a traffic stop and arrested the driver for not having an operator's license. The defendant, who was a passenger, then stepped out of the vehicle. When the officers saw that he was wearing body armor, they conducted a *Terry* frisk and discovered a bulge in his clothing, which turned out to be a weapon.

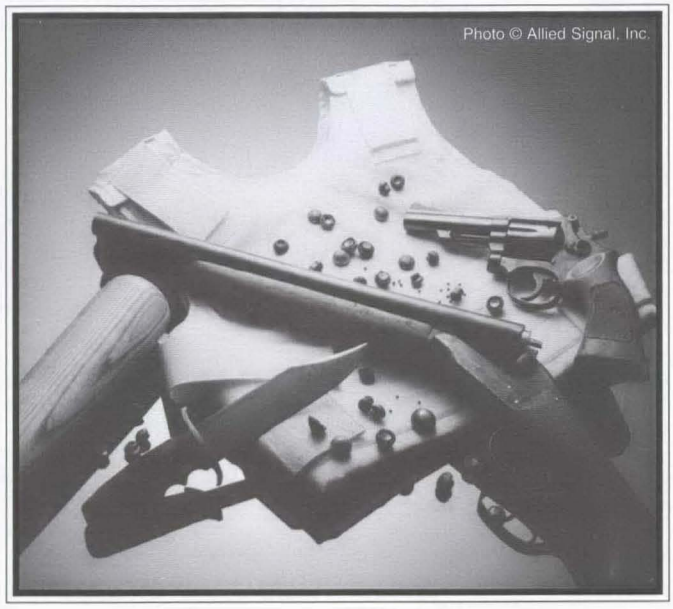
At trial, the defendant argued that the officers lacked reasonable suspicion to conduct the frisk, and therefore, the search was illegal. The court, specifically noting that the officers observed the defendant wearing body armor, ruled that the officers acted reasonably under the criteria outlined in *Terry*. The issue was raised again on appeal, but the appellate court in *Whitfield* ruled against the defendant.

Probable Cause to Arrest

Officers also can use the wearing, use, or possession of body armor as a clearly articulable fact in establishing probable cause to arrest. In *United States* v. *Rickus*,[10] officers observed a vehicle being driven very slowly through a neighborhood plagued by a rash of burglaries. They stopped the vehicle and saw a variety of tools, believed to be tools used by burglars, in plain view. One officer also saw a portion of body armor protruding from the defendant's jacket. The officer then removed the jacket to confirm that the defendant was wearing body armor. Based on the

suspicious vehicle, the presence of tools usually used by burglars, and the defendant's wearing body armor, the officers placed the defendant under arrest.

At trial, the defendant unsuccessfully argued that the officers lacked reasonable suspicion to remove the jacket or probable cause to effect an arrest. Specifically addressing the testimony regarding the presence of body armor in its ruling, the court held that the officers' observing body armor was a reliable factor in their rationally concluding that criminal activity was afoot and ruled that the frisk was valid. The court also concluded that the officers properly considered the presence of body armor as part of their probable cause to arrest the defendant for burglary.



Evidence of Knowledge or Intent

Many criminal statutes require that the defendant knowingly or intentionally commit a criminal act. The defense often rests its entire case solely on the fact that the prosecution failed to prove the defendant's knowledge or intent beyond a reasonable doubt. At times, the prosecution fails to introduce any tangible evidence that will refute the defendant's testimony. More and more, however, courts are allowing a defendant's wearing, using, or possessing body armor to be admitted as relevant circumstantial evidence to show that the defendant did possess the requisite knowledge or intent to establish guilt.

Most cases that allow body armor as relevant circumstantial evidence to show knowledge or intent involve drugs and weapons. Typical is *United States* v. *Petty*.[11] In *Petty*, officers executed a search warrant for a residence that the defendant did not own, but where he frequently stayed. There, they discovered a cache of firearms, "war manuals," body armor, and a variety of packaging materials, in addition to large quantities of drugs.

The defendant, whom the officers charged with possession of firearms and possession of cocaine with intent to distribute, objected to the introduction of the war manuals and body armor. The trial court, however, agreed with the prosecution that both the war manuals and the body armor were relevant and probative on the issues of whether the defendant knew that weapons were present and whether the defendant intended to distribute the cocaine.

A similar conclusion was reached by the court in *United States* v. *Gutierrez*,[12] where officers found body armor in a vehicle. Subsequently, the defendant, a passenger in the vehicle, was charged with possession of a firearm by a felon. The appellate court specifically addressed the issue of prejudice that the body armor might have on the defendant's case, but noted that the trial judge properly concluded that the body armor was relevant to the issue of knowledge and that the probative value of the body armor outweighed any prejudice to the defendant.

In another case, *United States* v. *Johnson*,[13] an officer stopped the defendant and saw that he was wearing body armor. Following a records inquiry and a search of the vehicle, which revealed a weapon, the officer charged the defendant with possession of a firearm by a felon. The appellate court upheld the trial judge's decision to admit testimony regarding body armor into evidence and noted that the trial judge correctly balanced probativeness against prejudice.

Typically, in such cases, the defense argues against the introduction of body armor as evidence, or testimony regarding a defendant's use or proximity to body armor, as

being improper to show bad character on the part of the defendant. Prosecutors argue, and some courts agree, that the presence of body armor is evidence of, and relevant to, intent, not character.

In *United States* v. *McDowell*,[14] a warrant search of an area frequented by the defendant revealed not only drugs but also body armor and large sums of money. The defendant was charged with possession of drugs with intent to distribute.

At trial, the defendant specifically objected, under the Federal Rules of Evidence,[15] to the introduction of testimony regarding body armor as being evidence of his "bad" character. The court disagreed with the defendant's characterization and noted, "The vest was logically part of the specific equipment [the defendant] might use in selling the drug, and thus tended to show that [he] actually intended to make such sales."[16]

Impeachment and Rebuttal

Officers and prosecutors also should be prepared to employ the use, possession, or wearing of body armor as outstanding and extremely damaging evidence for impeachment or rebuttal. Given the propensity of defendants to deny knowledge or intent, prosecutors who elicit testimony regarding the presence of body armor through cross-examination or rebuttal set evidentiary "traps" for the unwary defendant.

Sentencing

Even if prosecutors are unable or fail to introduce body armor as evidence, all is not lost. Investigative reports that properly note body armor can, and should, be forwarded to the appropriate agency to be included in the sentencing report.

Two courts have allowed the mention of body armor in sentencing documents. In *United States* v. *Taylor*,[17] officers conducted a vehicle stop and found several weapons in the vehicle and the defendants wearing body armor. As part of the sentencing under U.S. Sentencing Guidelines,[18] the issue arose as to whether the defendants' sentences could be reduced because they had accepted responsibility for their actions. When commenting on their decision to wear body armor, the defendants stated during a pre-sentence interview that "it's a jungle out there" and indicated that they merely were testing the weapons for self-defense.

> ***"Officers also can use the wearing, use, or possession of body armor as a clearly articulable fact in establishing probable cause to arrest."***

The trial court ruled, and the appellate court agreed, that the defendants' wearing of body armor could be used properly in the sentencing report to rebut their claims. The court went on to hold that the presence of body armor clearly refuted other statements by the defendants regarding innocent circumstances. In short, the appellate court agreed with the trial judge's ruling that given the presence of body armor, the defendants' presentencing statements were less than credible and certainly did not warrant a finding of remorse or acceptance of responsibility.[19]

Procedural Issues

The defense can object to the introduction of body armor as evidence, even if relevant, on the grounds that it tends to portray defendants as individuals who will commit crimes in the future and that the prejudice outweighs any probative value the evidence might have.[20] Accordingly, care should be taken not to introduce evidence of the presence of body armor to paint a picture of guilt by association. A court will sustain properly an objection and rule such evidence violated the Federal Rules of Evidence regarding bad character.[21]

Still, in cases where erroneous testimony is presented, courts have held such testimony to be harmless error.[22] Finally, even when testimony is presented and the bench overrules the defense counsel's objections at trial, courts are reluctant to reverse convictions.[23]

CONCLUSION

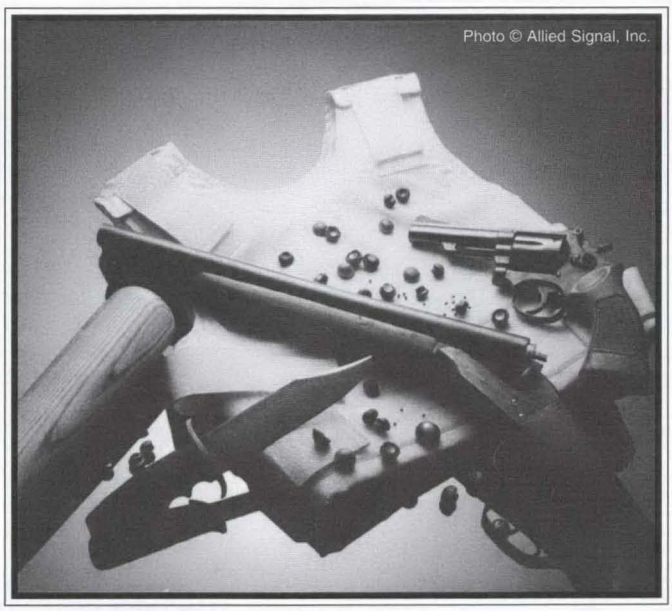
Today, criminals frequently have access to technology far exceeding that of the law enforcement community. The technological superiority of criminals is nowhere

more obvious than when it comes to firepower and the use of body armor as protective equipment. As a result, police officers must arm themselves with every available tool if they are to survive, much less succeed.

The diligent investigation and prosecution of those wearing body armor is one such tool. Many States have enacted legislation permitting law enforcement to investigate and charge defendants wearing, using, or possessing body armor with substantive criminal offenses. In these jurisdictions, every effort should be made to make officers aware of existing statutes and to train them in the proper investigative techniques to obtain the evidence necessary to convict under these statutes. Even in States without specific statutes, the possession, use, and wearing of body armor can play a significant evidentiary role.

Body armor can serve as evidence in criminal cases involving knowledge and/or intent. Additionally, testimony regarding body armor is useful as evidence for impeachment or rebuttal. If nothing else, prosecutors should include the use, possession, and wearing of body armor in sentencing reports.

Offenders will go to extreme measures to protect themselves while perpetrating their crimes. Without question, their ability to protect themselves must be abated. Statutes prohibiting the wearing, use, or possession of body armor by offenders can be an effective measure to accomplish this goal.✦



Endnotes

[1] Federal Bureau of Investigation, Uniform Crime Reporting Program, *Killed in the Line of Duty*, 1967 and 1976.

[2] Daniel E. Frank and Lester D. Shubin, *Selection and Application Guide to Police Body Armor*, Technology Assessment Program, NIJ Guide 100-87 (Washington, DC: National Institute of Justice, February 1989).

[3] Various terms, such as bulletproof vest, bullet resistant vest, body vest, and body armor, describe a garment specifically designed to protect the wearer from firearm projectiles. For the purpose of this article, the term "body armor" will be used to refer to this type of protective garment.

[4] *See, generally*, Frank and Shubin, supra note 2; *Police Armor Consumer Product List*, 6th ed. National Institute of Justice, August 1990; *Model Body Armor Procurement Package*, National Institute of Justice, January 1989.

[5] Cal. Penal Code sec. 12022.2 (West 1992 & Supp. 1994); Del. Code Ann, tit. 11, sec. 1449 (1987 & Supp. 1992); Fla. Stat. Ann. sec, 775.0845 (West 1976 & Supp. 1994); Ill. Ann. Stat. ch.33F (Smith-Hurd 1993); La. Rev. Stat. Ann. sec. 14:95.3 (West 1982 & Supp. 1994); Mass. Gen. L. ch. 269, sec. 10 (1992); Mich. Comp. Laws sec. 750.227f (West 1991 & Supp. 1993-94); N.H. Rev. Stat. Ann. sec. 650-B (1986 & Supp. 1993); N.J. Stat. Ann. sec. 2C:39-13 (West 1982 & Supp. 1994); N.Y. Penal Law sec. 270.29 (McKinney 1989 & Supp. 1994); Okla. Stat. Ann. tit. 21, sec. 1289.26 (West 1983 & Supp. 1994); Va. Code Ann. sec, 18.2-287.2 (Michie 1988 & Supp. 1994); Wis. Stat. Ann. sec. 939.64 (West 1982 & Supp. 1993).

[6] Delaware, Illinois, Louisiana, Massachusetts, Michigan, New Hampshire, Oklahoma, and Virginia use the term "body armor" in their statutes; California, New Jersey, and New York refer to the protective clothing as a body vest; the Florida statute uses bulletproof vest; and the Wisconsin statute refers to the garmet as a bullet proof garment.

[7] *Black's Law Dictionary*, 6th ed. (St. Paul, Minn.: West Publishing Co., 1990), 36 and 985.

[8] *Terry* v. *Ohio*, 392 U.S. 1 (1968).

[9] *United States* v. *Whitfield*, 907 F.2d 798 (8th Cir. 1990).

[10] *United States* v. *Rickus*, 566 F.Supp. 96 (E.D. Pa. 1983).

[11] *United States* v. *Petty*, 798 F.2d 1157 (8th Cir. 1986), *rev'd on other grounds*, 828 F.2d 2 (8th Cir. 1987).

[12] *United States* v. *Gutierrez*, 995 F.2d 169 (9th Cir. 1993).

[13] *United States* v. *Johnson*, 857 F.2d 500 (8th Cir. 1988).

[14] *United States* v. *McDowell*, 762 F.2d 1072 (D.C. Cir. 1985).

[15] Fed. R. Evid. 404(a).

[16] Supra note 14, at 1075.

[17] *United States* v. *Taylor*. 937 F.2d 676 (D.C. Cir. 1991).

[18] U.S. Sentencing Guidelines, sec. 3E1.1.

[19] *See also, United States* v. *Reaves*, 811 F.Supp. 1106 (E.D. Pa. 1993).

[20] *See, generally, United States* v. *Hans*, 738 F.2d 88 (3d Cir. 1984).

[21] Supra note 14.

[22] *See State* v. *Lucas*, 794 P.2d 1353 (Ariz. App. 1990).

[23] *Jackson* v. *State*, 522 So.2d 802 (Fla. 1988).

Point of View

Who is the Customer?

By
G. Lynn Nelson

Americans are born customers. No other society in history has placed so many diverse products and services before its citizens. Children become ingrained with the basic concepts of consumerism before they learn to tie their shoes. Corporations spend literally billions of dollars a year attempting to determine what their customers want. In general, our culture places a strong emphasis on the bond between the providers of goods and services and their customers.

Why then, do law enforcement agencies have such difficulty identifying what their customers want? Indeed, it seems that the police have lost sight of who the customer really is. This confusion seriously hampers the ability of law enforcement to control crime and protect communities. If we cannot identify who our customers are and what they want, how can we adequately serve them?

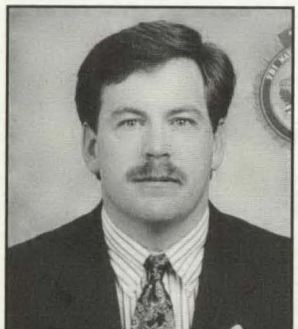
Identifying the Customer

In the bygone days of 1950s America, police officers maintained close ties with the citizens they served. In the fictional television town of Mayberry, Sheriff Andy Taylor understood very clearly who his customers were: The citizens of Mayberry. While conditions in the real world may never have been quite so idyllic, individuals who began a policing career in the 1960s and 1970s nonetheless have witnessed a vast change in the way law enforcement does business.

Most important, our perception of the *customer* changed from citizen to criminal. Granted, many of the forces that led to this shift were external, nurtured by rising crime rates and a simultaneous shift toward leniency within the criminal justice system. By the 1970s, the role of the police in society had shifted from proactive to almost exclusively reactive. As part of this transformation, wrongdoers became the main focus of attention within law enforcement. Criminals, in a sense, became the customers. Law enforcement became preoccupied with criminals, while relegating its true customers—citizens—to second-class.

Any business that subscribed to such thinking would soon be out of business. But, law enforcement internalized this odd view into nearly every facet of its operations. Citizens, once a primary focus of law enforcement, became regarded as outsiders, meddlesome at best, troublesome at worst.

As a profession, law enforcement must rediscover its true customer base. Successful corporations devote a considerable portion of their budgets to this effort and spend a great deal of time determining what their customers want. Of course, individual law enforcement agencies do not possess the resources of major corporations, but that should not stop them from identifying their customers' needs. By taking some small steps, agencies can revitalize their relationship with the citizens they serve.



Detective Sergeant Nelson serves with the Cache County Sheriff's Office in Logan, Utah.

Determining Customer Needs

The first step is to determine what to ask customers. For example, to gauge the crime problem in certain areas, it may be helpful to find out if residents have been victimized or have seen criminal activity in their neighborhoods within a certain timeframe. It also is a good idea to elicit citizens' opinions regarding possible solutions to problems cited. Regardless of the specific questions asked, the effort to elicit information from customers should represent a long-term commitment on the part of the agency. Several attempts may be required before sufficient relevant feedback is received. In addition, as law enforcement addresses their needs, citizens' views may change.

Three main methods exist to obtain information from customers: Mailings, face-to-face meetings, and telephone calls. Each has distinct advantages and potential drawbacks.

For many agencies, the most practical method is to elicit information through mailed surveys. Citizens may be more forthcoming in citing an agency's shortcomings via an anonymous survey rather than during a personal visit or a telephone call from an officer. Agencies can arrange to have the surveys included with municipal billings or community newsletters. Whatever the distribution method used, surveys should include stamped, self-addressed envelopes for respondents to return.

> **"If we cannot identify who our customers are and what they want, how can we adequately serve them?"**

Face-to-face meetings allow citizens an opportunity to meet and get to know officers. When this approach is used, agencies should place a notice in the newspaper advising citizens of the specific meeting dates. While this method has proven very effective, even in high-crime areas, its success depends largely on the interest and concern exhibited by the interviewing officers. These contacts always should end with some type of support statement. For example, officers should request that citizens back police initiatives developed to address the problems discussed.

Telephone surveys also can be highly effective, and less costly. Agencies easily can select certain areas, even specific streets, to survey. But perhaps the best feature of telephone surveys is that they can be performed by volunteers. Retired residents represent an especially valuable and helpful human resource in this area. And getting volunteers to help solve the problems facing a community is an important step in "winning back" customers.

Regardless of the format, survey questions should be easy to understand and answer. One police agency asked a neighborhood's residents only two questions in its survey: What are the problems in your neighborhood? What can be done to resolve them?

Satisfying Customers: Community-Oriented Policing

Once an agency surveys its customers, the next step is to respond to their needs. In many ways, this process represents an integral component of community-oriented policing (COP). While COP does not replace traditional law enforcement methods, it does provide a proactive mechanism for agencies to satisfy the needs of their customers. COP is a philosophy that involves the entire department, not just a group of select officers.

In order for COP to succeed, all personnel within an agency should be trained to see the "big picture." This picture consists of citizens working with the police to address common issues and to solve community problems.

Despite the logic of this arrangement, administrators may find officers reluctant to embrace this seemingly simple concept. To ask officers accustomed to vehicle-based patrolling to get out of their squad cars and talk with citizens door-to-door may be an unpopular request. At the beginning, it may not be easy. However, once officers speak with citizens in positive situations, attitudes change. Instead of constantly being bombarded with negative situations, officers have the opportunity to see firsthand that the

majority of citizens support the police and their efforts to control crime. As law enforcement responds to the needs of its customers, citizen-police cooperation becomes the basis of a strong community-oriented policing effort.

Conclusion

To address community crime problems adequately, law enforcement must recognize its true customer base. During the past several decades, the police view in this area has become inverted. We have allowed our enemy—the criminal element—to become our primary focus. Meanwhile, our real customers—the citizens we serve—often are viewed as the enemy. For community-oriented policing to be successful, this distorted view must be corrected.

For when it comes to community safety, all of us are customers. Appreciating that we are part of a much larger picture helps us see the value of what we do. The police do not exist for criminals. We are sworn to serve and protect citizens.

Solutions for the problems that face our communities will not come overnight. But we stand a better chance of reaching our goals if we work *with* citizens rather than against them. The time has come to remember who the customer is, to find out what they want, and to work at finding solutions to community problems together.✦

Wanted: Photographs

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

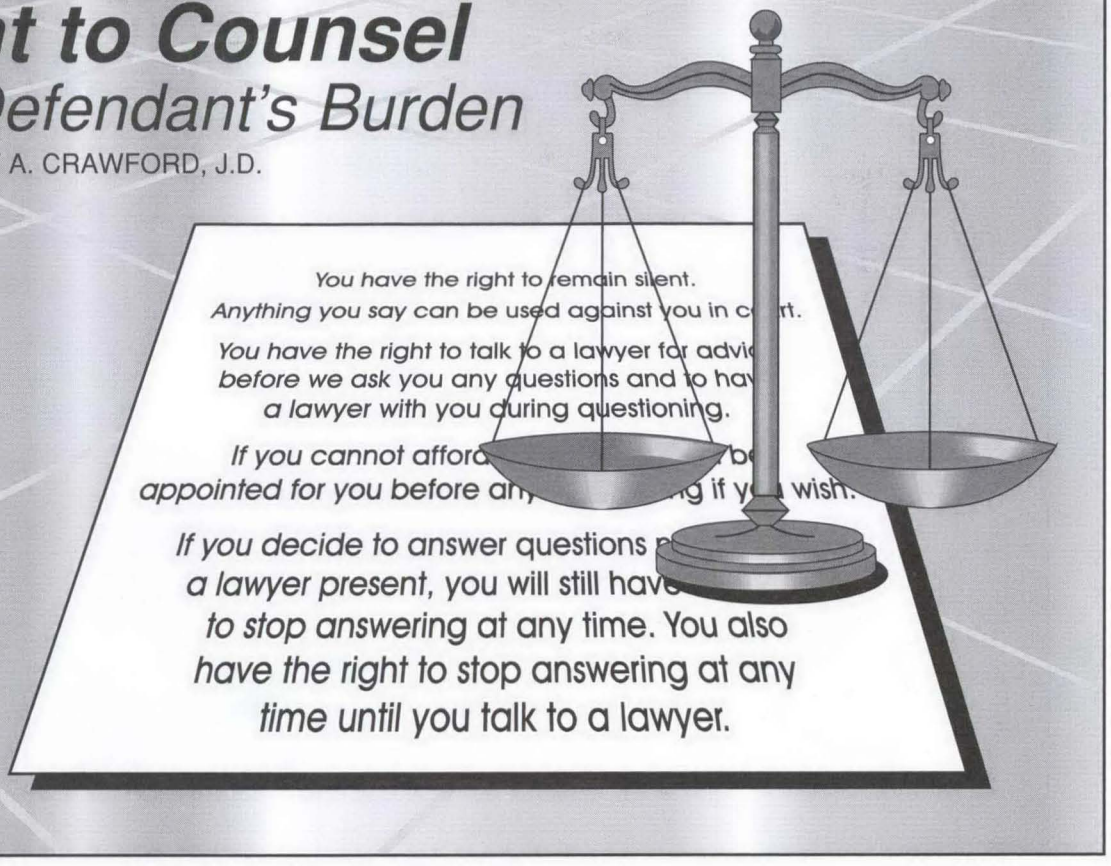
We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility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

John Ott, Art Director, *FBI Law Enforcement Bulletin*, Law Enforcement Communication Unit, FBI Academy, Quantico, VA 22135.

Invoking the Miranda *Right to Counsel*

The Defendant's Burden

By KIMBERLY A. CRAWFORD, J.D.



Beginning with the 1966 Supreme Court decision in *Miranda* v. *Arizona*,[1] law enforcement has endured three decades of court-imposed restraints on its ability to engage in custodial interrogation. The most significant of these restraints curtails law enforcement's ability to conduct custodial interrogation once the suspect invokes the right to counsel. The practical result of *Miranda* and its progeny is that a custodial suspect's invocation of the right to counsel effectively precludes any further government-initiated attempts at interrogation outside the presence of counsel.[2]

Because the invocation of *Miranda* rights, particularly the right to counsel, has such an onerous impact on law enforcement's ability to conduct interrogations, recent court decisions have begun to impose some limitations on a custodial suspect's ability to invoke that right.[3] Specifically, to ensure that a suspect's invocation of rights is not frivolous, the courts are requiring that the *Miranda* right to counsel be invoked unequivocally and in a timely manner.

This article reviews the recent court decisions and assesses their potential impact on the ability of custodial suspects to invoke the right to counsel. It then suggests ways in which law enforcement agencies can incorporate these new guidelines into their interrogation policies.

Invocation Must Be Unequivocal

In *Davis* v. *United States*,[4] the Supreme Court recently considered the degree of clarity necessary for a custodial suspect to invoke the *Miranda* right to counsel. The case arose when agents of the Naval Investigative Service (NIS) interrogated the defendant in connection with the beating death of a sailor.[5] Initially, the defendant waved his *Miranda* rights, but approximately

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

> ***"...the courts are requiring that the Miranda right to counsel be invoked unequivocally and in a timely manner."***

90 minutes into the interview, he remarked, "Maybe I should talk to a lawyer." At that point, the interrogation ceased long enough for the investigating agents to ask the defendant clarifying questions regarding his desire to consult with an attorney. When the defendant stated, "No, I don't want a lawyer," the interrogation continued and resulted in the elicitation of incriminating statements.

Prior to his court-martial, the defendant moved to suppress his statements on the grounds that the remark, "Maybe I should talk to a lawyer," was an invocation of his right to counsel and that further attempts by the government to interrogate him outside the presence of counsel violated his constitutional rights. The government, on the other hand, argued that the remark in question was, at best, an equivocal invocation and that the investigators were justified in asking clarifying questions. The government contended that once the defendant emphatically stated he did not want a lawyer, the subsequent interrogation was lawful. Agreeing with the government, the court denied the motion to suppress, and the defendant subsequently was convicted of murder.[6]

On review, the Supreme Court considered and rejected the defendant's argument that any mention of a lawyer, however ambiguous, is sufficient to invoke the right to counsel and that all further uncounseled interrogation necessarily must cease. Similarly, the Court declined to adopt the government's position that an ambiguous request for counsel constitutes an "equivocal invocation" that requires interrogators to seek clarification before further interrogation. Instead, the Court took a firmer stance and held that an equivocal request for a lawyer is insufficient to invoke the right to counsel and that there is no need for clarifying questions before proceeding with the interrogation.

In reaching its conclusion, the Court stressed the need for a "bright line"[7] rule that easily could be applied by law enforcement officers "in the real world of investigation and interrogation without unduly hampering the gathering of information."[8] To require interrogators to ask clarifying questions when an ambiguous request for counsel is voiced would obviate the "bright line" effect the Court was aiming for and force officers to "make difficult judgment calls about whether the suspect in fact wants a lawyer even though he hasn't said so, with the threat of suppression if they guess wrong."[9]

The Court's decision in *Davis* clearly puts the burden on custodial suspects to make unequivocal invocations of the right to counsel.[10] As a practical matter, however, law enforcement agencies would be wise to continue a policy of encouraging interrogators to ask clarifying questions when a suspect in custody makes an ambiguous request for counsel.

Although the Court in *Davis* purported to adopt a bright line rule that would save interrogators from making "difficult judgment calls" when requests for counsel are equivocal, interrogators must still use their judgment in determining whether requests are equivocal or not. The Court in *Davis* recognized its bright line rule did not obviate the need for interrogators to use discretion and offered the following advice:

> Of course, when a suspect makes an ambiguous or equivocal statement, it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an

> attorney....Clarifying questions help protect the rights of the suspect by ensuring that he gets an attorney if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel. But we decline to adopt a rule requiring officers to ask clarifying questions.[11]

State law enforcement agencies have additional incentive for adopting an interrogation policy that encourages clarifying questions. Although the Supreme Court has concluded that such questions are unnecessary under its interpretation of the U.S. Constitution, State courts are free to construe State constitutions in a manner that holds their law enforcement officers to higher standards.[12] It is reasonable to expect that some State courts, when interpreting their own constitutions, will reject the Supreme Court's bright line rule in *Davis* and will adopt the position that an ambiguous invocation of counsel necessitates the asking of clarifying questions.

The Supreme Court of Hawaii adopted this position in *State* v. *Hoey*.[13] The defendant in *Hoey* was arrested and charged with burglary and kidnaping. When advised of his right to counsel and to have counsel appointed, the defendant stated, "I don't have the money to buy one." In response, the officer conducting the interrogation asked the defendant if he thought he needed an attorney at that time. When the defendant conceded that he did not, the interrogation continued. The defendant challenged his subsequent conviction on several grounds, one of them being that continued interrogation was unlawful in light of his ambiguous request for counsel.

Agreeing with the defendant, the Supreme Court of Hawaii reversed the conviction. In doing so, the court acknowledged that the defendant's statement to the interrogating officer was an ambiguous request for counsel that, according to the Supreme Court in *Davis*, requires no clarifying questions.

However, the Supreme Court of Hawaii made a conscious decision to afford its citizens broader protection under the State constitution. Accordingly, the court held that an ambiguous or equivocal request for counsel compels law enforcement officers in that State to either cease

> ***"...an equivocal request for a lawyer is insufficient to invoke the right to counsel...."***

all interrogation or resolve the ambiguity through clarifying questions.[14] Believing that the defendant's statement regarding his inability to afford an attorney was indicative of a misunderstanding of the right to appointed counsel that was not clarified by subsequent questioning, the court in *Hoey* concluded that the interrogating officer violated the defendant's State constitutional rights by continuing the interrogation.

Assuming that the court's decision in *Hoey* is not an aberration, law enforcement agencies can avoid similar decisions in their own State courts by adopting interrogation policies that require clarifying questions. By adopting such policies, agencies can decrease the likelihood that courts will second guess interrogators' judgments that invocations were ambiguous and forestall suppression of confessions based on State courts' adoption of standards higher than those set by the Supreme Court in *Davis*. Moreover, such policies have the added benefit of ensuring the protection of individuals' constitutional rights.

Invocations Must Be Timely

In addition to demanding that invocations be unequivocal, courts also have begun to hold that invocations of the *Miranda* right to counsel must be made in a timely manner. The genesis of the movement to compel timely invocations can be traced to the Supreme Court's decision in *McNeil* v. *Wisconsin*.[15]

In *McNeil*, the Court was confronted with the question of whether an invocation of the sixth amendment right to counsel encompassed an invocation of the *Miranda* right to counsel as well. Holding that it did not, a majority of the Court concluded that an invocation of the sixth amendment right to counsel, which is crime-specific, did not preclude government attempts to conduct subsequent custodial interrogations on unrelated topics.[16] Responding to

the dissent's criticism that the holding could be circumvented by an explicit invocation of *Miranda* rights at a preliminary hearing, the Court made the following statement:

> We have in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation'—which a preliminary hearing will not always, or even usually involve. If the *Miranda* right to counsel can be invoked at a preliminary hearing, it could be argued, there is no logical reason why it could not be invoked by a letter prior to arrest, or indeed even prior to identification as a suspect. Most rights must be asserted when the government seeks to take the action they protect against. The fact that we have allowed the *Miranda* right to counsel, once asserted, to be effective with respect to future custodial interrogation does not necessarily mean that we will allow it to be asserted initially outside the context of custodial interrogation, with similar future effect.[17]

Although not binding precedent, this statement prompted several lower courts to conclude that anticipatory invocations of the *Miranda* right to counsel are ineffective. For example, in *Alston* v. *Redman*,[18] the Court of Appeals for the Third Circuit relied on the language in *McNeil* to hold that a letter signed by a custodial defendant purporting to invoke the *Miranda* right to counsel had no impact on the government's ability to attempt subsequent interrogations.

In *Alston*, the defendant was arrested on charges of robbery and conspiracy. Following a voluntary waiver of his *Miranda* rights, the defendant was interrogated and confessed to several robberies. Three days later, while still in custody, the defendant met with a representative of the Public Defender's Office and signed a form letter addressed to the warden of the facility where he was incarcerated. The letter read as follows:

> Dear Sir:
>
> I am presently a detainee in this institution and I will not speak to any police officer, law enforcement officers, their agents, or representatives from the Department of Justice, or any jurisdiction, without a Public Defender being present at such a meeting.
>
> I further do not wish to be removed from my cell and brought to a meeting with the above-mentioned officers for the purpose of discussing a waiver of my constitutional rights in this regard.[19]

> ***"...some State courts...will adopt the position that an ambiguous invocation of counsel necessitates the asking of clarifying questions."***

Despite the letter, the defendant subsequently was interrogated by law enforcement officers following an advice and waiver of *Miranda* rights. The interrogation resulted in a second, more comprehensive confession, which the defendant later tried unsuccessfully to suppress.

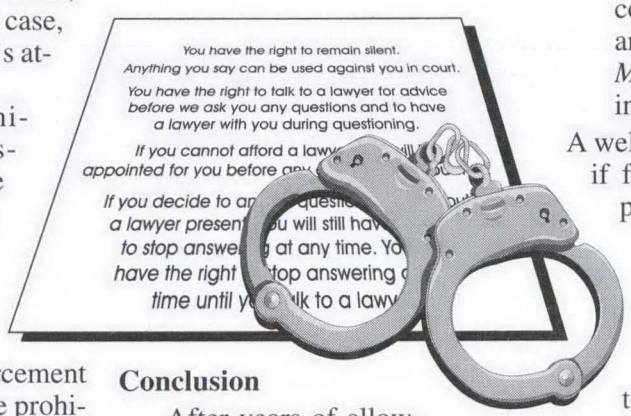
In his motion to suppress, the defendant argued that signing the form letter was sufficient to invoke his *Miranda* right to counsel and to "thwart any further police-initiated questioning."[20] However, after reviewing the Supreme Court's decision in *McNeil* and revisiting the underlying rationale in *Miranda*, the court rejected this argument. Recognizing that the design of the rule in *Miranda* was to protect individuals from the psychologically compelling effects of custodial interrogation, the court determined that the rule served no purpose unless the individual attempting to invoke it was in custody and being subjected to interrogation at the time of the invocation. Because the "interaction of custody and official interrogation"[21] was absent, the court concluded that the defendant's "*Miranda* right to counsel had simply not attached when [he] signed the invocation form in his cell,"[22] and therefore, the attempted invocation was ineffective.

A similar result was reached by the Court of Appeals for the Ninth Circuit in *United States* v. *Wright*.[23] Again relying on the Supreme Court's decision in *McNeil*, the court in *Wright* concluded that defense counsel's request at a plea

hearing to be present during any future interrogation of her client was insufficient to invoke the defendant's *Miranda* right to counsel. Rather, the court concluded that defense counsel's statement served only to invoke the sixth amendment right to counsel, which is crime-specific, and precluded only subsequent interrogation regarding the crime charged.[24] Government-initiated interrogation pertaining to uncharged offenses, which was at issue in this case, was not affected by counsel's attempted invocation.

Although not unanimous,[25] an ever-increasing number of courts are following the Supreme Court's recommendation in *McNeil* and holding that anticipatory invocations of *Miranda* rights are ineffective.[26] Law enforcement agencies that incorporate the prohibition against anticipatory invocations into their interrogation policies realize a distinct advantage. Such policies permit investigators to attempt uncounseled government-initiated interrogations in situations where custodial suspects have made untimely requests for counsel. Thus, suspects' enraged demands for counsel that precede or follow closely on the heels of custody will not preclude later interrogation attempts when tempers subside.

When formulating such interrogation policies, however, law enforcement agencies should consider one caveat: Invocations of the right to counsel are not likely to be deemed anticipatory if preceded by advice of rights. Although not widely litigated, at least one court has held that once custodial suspects are advised of their *Miranda* rights, subsequent requests for counsel are timely whether they coincide with attempted interrogations or not.[27] Therefore, agencies that want to take advantage of the courts' repudiation of anticipatory invocations should ensure that suspects are not advised of their *Miranda* rights precipitously.



Conclusion

After years of allowing custodial suspects to avoid police interrogation by invoking their *Miranda* rights, courts have begun to impose some reasonable restraints on when and how those rights must be invoked. To take full advantage of this new trend, law enforcement agencies must craft their interrogation policies carefully to incorporate these restrictions.

When formulating an interrogation policy, consideration should be given to the following provisions:

1) *Miranda* warnings should not be given until the suspect is in custody and interrogation imminent

2) When a suspect makes an ambiguous request for counsel following an advice of rights, interrogators should attempt to resolve the ambiguity by asking clarifying questions

3) Attempts by suspects to invoke the *Miranda* right to counsel prior to an advice of rights should not preclude officers from proceeding with an advice of rights and attempting to obtain a waiver

4) Attempts by defense counsel to invoke anticipatorily the clients' *Miranda* right to counsel are ineffective.

A well-crafted interrogation policy, if followed, will serve the dual purpose of securing the admissibility of suspects' statements and protecting individuals' constitutional rights. As with the formulation of any policy, a competent legal advisor should be consulted to ensure compliance with relevant legal principles.✦

Endnotes

[1] 384 U.S. 436 (1966).

[2] *Mississippi* v. *Minnick*, 111 S. Ct. 486 (1990).

[3] Courts also have begun to impose similar limitations on a suspect's ability to invoke the right to silence. *Coleman* v. *Singletary*, 30 F.3d 1420 (11th Cir. 1994).

[4] 114 S.Ct. 2350 (1994).

[5] Although Davis was not in custody at the time of the interrogation, military law required that he be advised that he was a suspect and informed of his *Miranda* rights.

[6] The conviction was upheld by the U.S. Court of Military Appeals. 36 M.J. 337 (1993).

[7] 114 S.Ct. at 2356.

[8] *Id.*

[9] *Id.*

[10] The Supreme Court recently reaffirmed its decision in *Davis* when it vacated and remanded the Alabama Court of Criminal Appeals

decision in *Brown* v. *State*, 630 So.2d 481 (Ala.Cr.App. 1993). The custodial suspect's statement at issue was, "Is it going to piss y'all off if I ask for my...to talk to a friend that is an attorney." 115 S.Ct. 43 (1994).

[11] 114 S.Ct. at 2356.

[12] *Cooper* v. *California*, 386 U.S. 58 (1967).

[13] 881 P.2d 504 (Hawaii 1994).

[14] *Id.* at 523.

[15] 111 S.Ct. 2204 (1991)

[16] *Id.* at 2209.

[17] *Id.* at 2211 n.3 (citations omitted).

[18] 34 F.3d 1237 (3d Cir. 1994).

[19] 34 F.3d 1240.

[20] *Id.* at 1241.

[21] *Perkins* v. *Illinois*, 110 S.Ct. 2394, 2397 (1990).

[22] 34 F.3d at 1245.

[23] 962 F.2d 953 (9th Cir. 1992).

[24] The court in *Wright* never addressed the issue of whether *Miranda* rights can be invoked by defense counsel on behalf of the client. However, in *Moran* v. *Burbine*, 106 S.Ct. 1135 (1986), the Supreme Court held that *Miranda* rights are personal and cannot be invoked by third parties.

[25] *See, e.g.*, *United States* v. *Kelsey*, 951 F.2d 1196 (10th Cir. 1991) and *State* v. *Torres*, 412 S.E.2d 20 (N.C. 1992).

[26] *See also, United States* v. *Little*, (unpublished) 9 F.3d 110 (table) 1993 WL 453396 (6th Cir. 1993), and *United States* v. *Shroeder*, 39 M.J. 471 (1994).

[27] *United States* v. *Goodson*, 22 M.J. 22 (1986).

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

Author Guidelines

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Length: 1,000 to 3,000 words or 5 to 12 pages double-spaced.

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Authors may contact the special agent police training coordinator at the nearest FBI field office for help in submitting articles, or manuscripts may be forwarded directly to: Editor, *FBI Law Enforcement Bulletin*, Law Enforcement Communication Unit, FBI Academy, Quantico, VA 22135.

The Bulletin Notes

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

Officer Atkinson

Two armed assailants robbed a convenience store late at night and abducted a 17-year-old girl. The gunmen pushed the girl into a waiting car and forced her to disrobe at knife-point. They then raped her repeatedly. The men later drove to a residential area where they continued the brutal assaults, threatening to kill the victim and throw her body into a nearby lake. When they noticed a patrol car, the men ducked out of sight, confident that an empty car in a driveway would be ignored. Instead, Officer Gary Atkinson of the Sumter, South Carolina, Police Department stopped to examine the vehicle that matched an alert placed after the robbery and abduction. As Officer Atkinson called for backup, the young woman screamed. The offenders ran but were captured a short time later. Officer Atkinson's diligence and quick thinking saved the young woman from almost certain death and led to the apprehension and subsequent conviction of two violent criminals.

Officer Wright

Officer Shann

Michigan Conservation Officers Pete Wright and Darryl Shann responded to a radio request for assistance from the Michigan State Police. A State trooper had been shot and was pinned behind his patrol vehicle by a subject armed with a scoped rifle. As the conservation officers arrived at the scene, the gunman was advancing toward the wounded trooper. The subject ignored repeated verbal commands from the officers to lay down his weapon. Realizing the immediate danger to the trooper and to civilian bystanders, the officers fired simultaneously at the subject, instantly disabling him with wounds to the arm and leg. The officers and the trooper quickly secured the scene. Officers Wright and Shann then administered first aid to the wounded trooper and the subject until emergency medical units arrived.

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