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Telemarketing
Fraud

FBI Law Enforcement Bulletin

Features

Departments

Lasting Impact
Maintaining Neighborhood Order
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During the past two decades, law enforcement agencies around the country have adopted the combined operational strategies of community-oriented policing and problem solving (COPPS) to address a wide range of crime problems and the quality-of-life issues that often surround them. Using the COPPS model, police officers and citizens in communities of every size and demographic makeup have joined together to address these problems in new and creative ways.

However, despite the ever-increasing prevalence of community-oriented policing and a growing litany of successful problem-solving interventions, few police administrators or scholars have focused on the strategic issues involved in *maintaining* the enhanced quality of life and sense of community safety that successful community-based policing efforts often create. As communities across the country are discovering, maintenance becomes a key issue after the initial problem-solving push has

produced results. To ensure that problem-solving initiatives have a lasting impact on communities, law enforcement agencies should develop practical strategies to ensure that community policing yields long-term solutions rather than short-term fixes.

Long-term Solutions

Much of what has been written about maintenance issues is featured in the most important contemporary discussions of crime and its impact on communities. In their

landmark "Broken Windows" article, James Q. Wilson and George Kelling describe in very compelling language the potential long-term implications of leaving neighborhood problems unattended.[1] The pioneering work of Herman Goldstein on problem-oriented policing suggests that in-depth analyses of related incidents and the development of tailor-made responses are keys to resolving underlying problems within a community.[2] Goldstein's research contributed to the development of the SARA (scanning, analysis, response, and assessment) model of problem solving, which would be applied successfully by the Newport News, Virginia, Police Department in the mid-1980s to address long-standing crime problems in specific areas of the city.

Each of these works, and the documented successes of problem solving in Newport News, helped lay the philosophical and opera-

tional groundwork for community-oriented policing as it is currently practiced in departments around the country. However, because of their groundbreaking nature, they could only hint at the strategic issues involved in maintaining a problem-solving posture after the initial COPPS interventions had taken place.

Like a patient requiring long-term care, neighborhoods plagued with problems require periodic attention to ensure a healthy environment is preserved. In recent years, a growing number of communities that developed and implemented successful community-oriented intervention strategies have wrestled with the problems of maintaining reduced crime levels after the initial intervention has taken place.

Law enforcement agencies have learned that some crime problems—such as gang violence and drug dealing—tend to resurface. Likewise, certain community envi-

ronments—public housing developments, high-density apartment complexes, and urban centers—are prone to rapid degeneration once high-impact intervention policies terminate.

To ensure that community-oriented and problem-solving initiatives have a lasting impact, law enforcement administrators should include maintenance in the strategic planning process. To do so effectively, they first must possess a clear understanding of problem solving as a method to address community problems.

Strategic Response to Persistent Problems

Problem solving is the linchpin of COPPS. It helps agencies adopt long-term solutions to address crime, fear, and disorder. The SARA model provides the police with a useful tool for identifying, analyzing, responding to, and evaluating crime problems and neighborhood concerns. Application of the SARA model leads officers away from short-term, reactive, and incident-driven responses and moves them toward long-term outcomes based on in-depth analysis and collaboration with citizens, municipal agencies, and others.

When formalized, the SARA model serves many useful purposes. These include:

• Providing documentation of initial intervention efforts and their outcomes

• Producing a record of interested parties, or stakeholders, both internal (specifically, officers and support staff involved in the initial
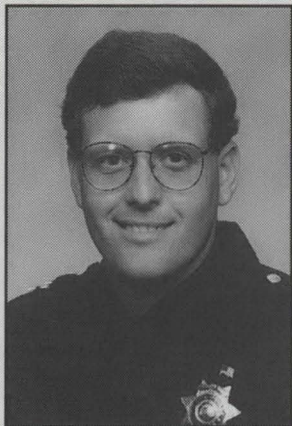
Dr. Glensor is the Deputy Chief of the Reno, Nevada, Police Department.
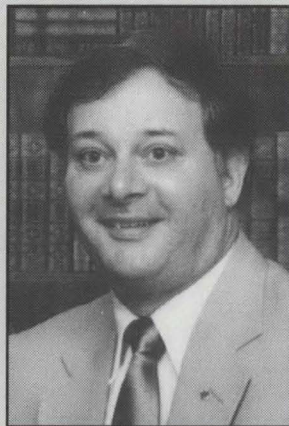
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intervention projects) and external (including business and property owners, residents, and other city and government agencies)

• Creating a database of problems defined by type, area of town, time of day, and other factors. This information provides the who, what, when, where, and how of addressing ongoing problems

• Developing a training mechanism and a record of information resources for other officers to review and gain ideas about how to address similar situations.

The information acquired from the SARA process assists officers with ongoing problem assessment and maintenance, as well as helping to mobilize original stakeholders to reestablish neighborhood control. The benefits of formalizing the problem-solving process have led many agencies to develop computer-based programs to support SARA.

Like many agencies, the Reno, Nevada, Police Department has relied on the SARA model to implement problem solving initiatives during the past decade. One of these initiatives, undertaken in a low-income residential area known as Virginia Lake, illustrates how quickly crime problems can return to troubling levels after an initial intervention. The case study that follows demonstrates the importance of maintenance in any problem-solving approach. It also shows how documenting initial efforts can speed the process of repair by providing an agency vital information about strategies and stakeholders.

CASE STUDY: VIRGINIA LAKE

In many ways, the Virginia Lake area qualifies as a classic candidate for a problem-oriented policing approach. At the time of the initial intervention by the Reno Police Department (RPD), the 1.5-square-mile area in the south

" ...neighborhoods plagued with problems require periodic attention to ensure that a healthy environment is preserved. "

patrol division was home to approximately 6,600 residents. In 1992, the annual per capita income for area residents was $12,600. Virginia Lake includes five contiguous, high-density apartment complexes, each controlled by absentee owners. The area also consists of several strip-mall shopping centers, numerous retail establishments, and a large public park.

The Initial Intervention

Beginning in the late 1980s, calls for service from the Virginia Lake area increased steadily until February 1992, when two RPD beat officers, working the swing shift (4 p.m. to 2 a.m.) in the area, decided to conduct an inquiry to determine the extent of the problems. From February to August 1992, the officers developed and initiated a problem-solving effort in the area. During this 6-month period, the officers used periods between service calls, as well as limited additional time provided by their supervisors, to analyze the problems and develop responses. In doing so, the officers used the SARA model to guide and document their efforts. In the period following the initial intervention, this documentation would prove invaluable to subsequent maintenance efforts in the targeted area.

Scanning

Scanning department records revealed that approximately 10,000 calls for service emanated from Virginia Lake annually. The majority of these calls involved domestic violence, burglaries, disturbances, and gang-related activities. The area had recently experienced two gang-related homicides, the kidnap-murder of two children, and increased drug activity.

During interviews with the officers, residents expressed considerable fear of crime but also related an underlying atmosphere of tension, brought about by the influx of gang-related graffiti, assaults, fighting, and shots fired. Residents also expressed concern with the outward signs of neighborhood disorder, including abandoned buildings and vehicles, traffic problems, and uncollected refuse.

Analysis

With the assistance of the department's crime analyst, the

officers developed a survey and administered it to 120 business owners, residents, and apartment managers in the Virginia Lake area. The respondents were asked to define the area's problems, discuss their fears, and suggest actions the police, other city agencies, and residents could take to address the area's problems.

The survey produced numerous interesting findings and uncovered several problems that had not been revealed by other forms of crime analysis. For example, residents expressed tremendous fear of gang behavior and its resultant problems, such as graffiti, random gunfire, and the presence of suspicious persons. Residents participating in the survey recommended organizing a formal Neighborhood Watch program.

Business owners in the area, also expressing concern with burglaries and juvenile offenses, inquired about crime prevention programs and supported efforts to organize a business watch. In addition, the survey revealed that apartment managers neither knew nor communicated with one another. As a result, a number of evicted renters simply moved from one complex to another in the same area.

Often, the concerns expressed by tenants in one apartment complex differed considerably from those expressed by tenants in the complex across the street. The varied nature of these concerns convinced the officers that tailored responses to specific problems would succeed better than a generic cookie-cutter approach to problem solving.

In addition to the citizen survey, the department also conducted an environmental survey of the area. Department personnel photographed street intersections and relayed the photographs to the city's streets department. Likewise, officers videotaped abandoned buildings for the fire department. In addition, officers performed speed and

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traffic surveys, as well as a lighting survey. They also observed that the area's landscaping consisted primarily of rocks, which provided ready ammunition for youths who participated in one of the area's favorite pastimes—throwing stones at vehicle and apartment windows.

Residents expressed considerable enthusiasm about assisting the police department to address the many problems that confronted the area. During an initial neighborhood meeting, residents, police officers, and other stakeholders discussed the problems and possible solutions. During the intervention period, stakeholders continued to share their concerns and ideas

and to chart the intervention's progress during monthly follow-up meetings.

Response

When the officers determined the magnitude of the problems facing the area, they began to formulate plans for tailor-made solutions to them. Experience had shown the officers that arresting offenders should be considered *part* of the solution; but arrests alone rarely result in long-term improvements to complex neighborhood problems. The officers knew they would have to explore other options.

Armed with vast amounts of information and data, the officers initiated a collaborative, citywide response to the area's problems. The response comprised a balance of crime control and crime prevention efforts. The city attorney drafted a graffiti ordinance. A gang enforcement team worked with the beat officers to target gang-related incidents in the area. Pressure on drug dealers and arrests increased in the apartment complexes. The city imposed a curfew at the public park, which had become a focal point for gang activity and drug dealing. At the same time, the police department initiated bike and foot patrols to complement vehicle patrols throughout the area. The enhanced patrols produced immediate results when officers apprehended several juveniles responsible for a string of vehicle burglaries.

With guidance from the police department, landlords and tenants from the five apartment complexes established a resident council; residents and business owners launched

Neighborhood and Business Watch programs. Apartment managers received landlord-tenant training and began to exert friendly pressure on one another to proactively address problems on their properties. The manager of one complex initiated a latchkey program to keep young students busy after school.

The beat officers also coordinated efforts to address environmental issues as another means of crime prevention. The local power company evaluated and corrected area lighting problems. The resident council, working with local salvage yards, initiated a program to remove abandoned vehicles. Residents and apartment managers launched a cleanup campaign. The city's parks department and residents jointly cleaned, painted, and repaired the park facilities. Apartment managers arranged to have pyracantha shrubs planted around fences to make them more formidable crime barriers. The city razed abandoned buildings and a community service organization purchased recreational equipment and transformed a vacant lot into a neighborhood park.

Assessment

Effective assessment of a problem-solving initiative actually begins in the analysis stage, when the police department collects baseline data on the extent of the problems in a targeted area. As the Virginia Lake intervention drew to a close, the beat officers evaluated the overall effectiveness of their efforts and determined whether any remaining issues required additional analysis or responses. They based

their outcome evaluations on both quantitative and qualitative data, including calls for service, reported crimes, and results from citizen surveys.

The officers compared calls for service data from February to August 1992 to figures for the same period in 1991. The comparison revealed significant decreases in robberies, assault and battery offenses, assaults with a deadly weapon (ADW), commercial and residential burglaries, and vehicle thefts during the months of the intervention. As often occurs when communities mobilize against crime and citizen trust in the police to respond grows, reports of disturbances, destruction of property, domestic violence, shots fired, and suspicious persons increased moderately during the intervention.

In a follow-up survey, area residents expressed less fear of crime, cited an improved physical environment in the neighborhood, and pointed with satisfaction to ongoing self-help efforts, as the resident council continued meeting on a regular basis. The reductions in

serious criminal activity and calls for service, coupled with improvements to physical environmental conditions throughout the area and the development of citizen-based organizations, led to a gradual reduction of the beat officers' efforts, as the police department returned control of the neighborhood to its residents.

FLEETING SUCCESS

In the year following the police department's concentrated presence in Virginia Lake, conditions in the area began to worsen. While robbery, ADW, and vehicle theft rates continued to fall, the number of family disturbances, assault and battery offenses, reported prowlers, and residential and vehicle burglaries increased significantly.

In 1994, two years after the police department's intervention efforts, conditions deteriorated further. Crimes against persons increased sharply. ADWs spiked (up 500 percent from 1991 levels), as did robberies and reports of suspicious persons in the area. Commercial burglaries increased 44

percent over 1991 figures. Residents expressed a heightened sense of fear, particularly because of recurring gang-related activities in the neighborhood.

Because of the serious downturn in conditions in the area, the resident council recontacted the two officers who had initiated the 1992 intervention efforts. However, because the officers had since been reassigned to specialized units elsewhere, there was little they could do to assist the council. While the new beat officers assigned to the neighborhood and their supervisors were concerned about the declining state of the neighborhood and sought to improve conditions, they were unfamiliar with the area's history. The attrition of area residents and apartment managers also had a negative impact on ongoing maintenance and problem-solving efforts in the area.

Eventually, by using information contained in the original project file, the beat officers were able to reclaim the neighborhood and reestablish a network of partnerships with the resident council, apartment managers, business people, and other city departments and government agencies. After renewed police concentration in the area, a new assessment of the crime problem revealed that crime and calls for service data for many of the targeted offenses had returned to the reduced levels achieved during the original intervention effort.

Still, some problems persisted. Commercial, residential, and vehicle burglaries continued to rise significantly, as did reports of prowlers. During the renewed intervention efforts, over 80 shots were fired in the area—a 453 percent increase over 1991 figures. Reports of family disturbances greatly exceeded their 1991 levels.

Some criminologists might view these increases as "random noise"—changes in criminal activity that occur routinely in economically deprived areas. However, another characterization might be that the increased crime levels for

> " ...agencies should work to maintain reduced crime and fear levels by continuing to assess and respond to emerging problems. "

certain offenses reflect, at least to some degree, the reduction of police-citizen maintenance efforts in the area. This indicates that certain neighborhood conditions can lead to increased crime and disorder and thus demand greater maintenance efforts from stakeholders. The police department must continue to explore ways to address these ongoing problems.

Maintaining the Initial Success

The Virginia Lake case study demonstrates a central truth about problem-oriented policing: Law enforcement cannot engage in intensive crime control and prevention efforts and then become essentially inactive in a particular "hot spot." Problems once brought under control quickly can return. Therefore, law enforcement agencies must identify those areas and crime conditions where problems are prone to recur and implement the necessary mechanisms to sustain problem-solving efforts. To ensure a lasting impact, agencies should plan for a long-term approach when implementing community-oriented problem-solving responses.

Document Efforts

Law enforcement agencies should document their problem-solving efforts using the SARA model. If possible, officers should computerize documentation—such as using automated databases for tracking and retrieving information by type, area, officer assignments, shift, and other factors. Keeping this important information readily accessible will help ensure that maintenance efforts will continue even if the personnel involved in the original intervention effort are assigned elsewhere. Agency administrators should develop methods to periodically update the original project file. Information should include the names of new stakeholders—such as incoming apartment managers—as well as updated crime figures and service call data for the targeted area.

Train All Personnel

Agencies should train *all* personnel—sworn and support—in COPPS methodologies and develop

administrative systems to ensure that officers and supervisors understand the history and status of problems in the areas to which they are assigned. To accomplish this agencywide, commanders might consider posting, in a conspicuous place such as the patrol briefing room, a list of projects by area and officers involved.

Keep Other Agencies Involved

Administrators also should keep municipal agencies that took part in any initial intervention initiatives informed and involved in ongoing efforts to maintain an enhanced quality of life in the targeted area. The police departments in Newport News, Virginia, and San Diego, California, formed analysis advisory committees that serve as vehicles for monthly meetings between police and other government agencies to discuss and monitor ongoing problem-solving efforts.

Keep Stakeholders Informed

Likewise, administrators should ensure that beat officers keep concerned citizens groups— landlord-tenant associations, Business and neighborhood Watches, and neighborhood advisory groups —informed about ongoing efforts in target areas. The continued involvement of such groups represents an essential element in any ongoing crime control effort.

CONCLUSION

Crime is a dynamic force. That is, it tends to respond and adapt to changing environments. Therefore, an effective response to crime also must be dynamic. When law enforcement agencies mobilize for a short-term blitz of activity directed at specific crime problems in particular neighborhoods, they often realize impressive initial results. But, without ongoing maintenance, conditions in troubled areas can quickly deteriorate to a level as bad, or worse, than those that originally precipitated the intervention.

Therefore, agencies should approach problem solving as a long-term commitment. After the initial intervention has reversed a downward spiral, law enforcement agencies should work to maintain reduced crime and fear levels by continuing to assess and respond to emerging problems. To do so, beat officers and administrators should maintain regular liaison with community leaders, business groups, and other municipal agencies. Law enforcement administrators should view the success of any initial problem-solving intervention effort not as the end of the agency's efforts in the targeted area but as the beginning of a renewed and ongoing relationship.◆

Endnotes

[1] J.Q. Wilson and G. Kelling, "The Police and Neighborhood Safety: Broken Windows," *The Atlantic Monthly*, March 1982, 29-38.

[2] H. Goldstein, *Problem-oriented Policing* (New York: McGraw-Hill, 1990).

Book Review

Interviewing and Interrogation for Law Enforcement by John E. Hess, published by Anderson Publishing, Cincinnati, Ohio, 1997.

There is an abundance of material that suggests techniques for conducting effective interviews and interrogations. *Interviewing and Interrogation for Law Enforcement* is a new resource that offers much valuable insight for veteran and novice investigators alike.

The presentation is crisp, comprehensive, and well organized. Readers will appreciate that the delivery also is refreshingly efficient—every word counts, and at 109 pages, the book easily can be read in one sitting. Despite the wealth of information presented, however, the tone is conversational and direct. In fact, like any good interview, the book reads like a conversation with a purpose.

The author, a former FBI special agent, who spent 12 years as an instructor at the FBI Academy, draws upon his considerable experience—both as a field investigator and as an instructor—to impart the kind of practical advice all investigators wish they had received before their first investigations. Equally important, he uses his gift as a storyteller to relate many of the lessons *he* learned from officers who attended the FBI National Academy courses that he taught. Indeed within the first several pages, readers quickly feel that they are learning from some of the most talented practitioners in the field.

The book is divided into three sections, consisting of three chapters. The first section focuses on interviewing. In a particularly interesting chapter on demeanor, the author discusses the attributes of adopting an at-ease and confident air during interviews. A comparison of the interview styles demonstrated by two fictional law enforcement officers—Deputy Barney Fyfe and Lieutenant Columbo—serve to reinforce many of the points the author makes. Much of what the author shares about interviewing is commonsense advice made more compelling because it is presented in the form of case studies, anecdotes, and quotes. Among the many memorable statements, "Think of each interview as a first date and leave nothing to chance."

The second section deals with detecting deception. Much of the discussion focuses on the ability of investigators to recognize the "symptoms" of dishonesty by posing leading questions to subjects and noting changes in their demeanor. This section also summarizes what investigators should look for in nonverbal behavior and discusses the study, and practical value to interviewers, of neurolinguistics.

The book's third section focuses on interrogations. The three chapters in this final section lay a strong groundwork for conducting sound interrogations. The author explains effective ways to make an accusation, deliver the "sales pitch," avert denials, and ensure that a subject is listening. The discussion also stresses the importance of finer points that help lead to confessions—such as establishing trust with a subject and conveying competence during interrogations. As it does throughout the book, attention to detail comes through in the form of some thoughtful housekeeping advice, in this case suggestions for setting up the interrogation room and using props during interrogations.

Each chapter concludes with a suggested reading list that reflects the author's broad grasp of the subject matter. The lists provide suggestions especially helpful to readers interested in learning more about such concepts as the cognitive interview, nonverbal communication, effective listening, and neurolinguistics.

A common myth pervades law enforcement that effective interviewers are born, not made. This book has as much merit for seasoned investigators as it does for those who have never conducted an interrogation before. The book provides easy-to-use techniques that any investigator could adopt to enhance their skills in these areas. *Interviewing and Interrogation for Law Enforcement* should be required reading for all recruits and detectives.

Reviewed by
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Metro Transit Police Department
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Hidden Faces
Combating Telemarketing Fraud
By KEITH SLOTTER, CPA
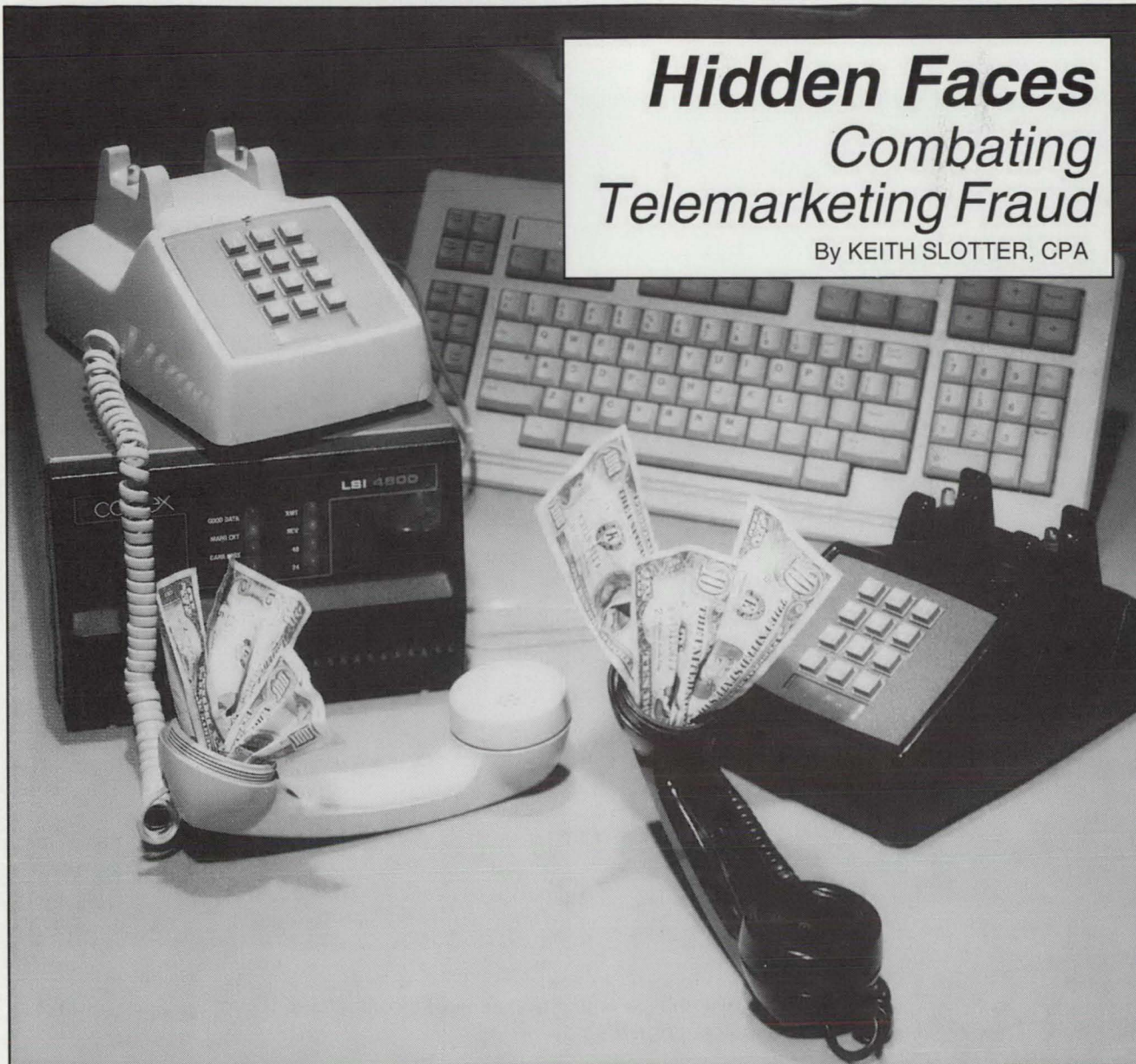
> *"And the grand prize is... $25,000 in cold... hard... cash! There are only five people left in our holiday bonus bonanza, and it looks to me like you're on top! I hope you can afford an addition to your one-car garage, because you're going to need it!"*

How many times does the phone ring at dinnertime with claims like this from overzealous telemarketers trying to lure a purchase in exchange for promised riches and award winnings? Worse, how many people do you know who have been taken in by these schemes?

"Telemarketing" was a term coined by telephone companies in the mid-1970s indicating a way to promote sales through phone solicitation. Con artists quickly learned that selling and promoting over the phone offered a new wrinkle on age-old customer swindle schemes. By promising cash, cars, jewelry, and other prizes, unscrupulous telemarketers have fleeced millions of people out of their hard-earned savings. Many victims are the elderly—folks who normally close deals on a handshake, but have been conned out of their retirement nest eggs in exchange for cheap trinkets.

Illegal telemarketing schemes have one common element.

Whether the products offered for sale are pens, vitamins, water purifiers, lottery winnings, or investments, illegal telemarketers prosper by promising customers an array of valuable prizes—big rewards that never come.

Over time, illegal telemarketing has become an international problem, with new and varied operations springing up throughout the United States, Canada, and Europe. To put today's problem into perspective, one must examine how illegal telemarketing operations, called "boiler rooms," operate and how they developed.

INSIDE THE BOILER ROOM BUSINESS

To trace the inner workings of an illegal telemarketing operation, one must understand the language, as well as exactly how and why business is conducted the way it is. Most boiler rooms operate in six stages—solicitation, sales, verification, collection, shipping, and customer service. Each stage depends on the others for success.

Solicitation

No boiler room can prosper without a core base of victims and continuous new prospects. Telemarketers solicit potential customers in two ways—either inbound or outbound. Inbound systems usually involve a bulk mailer of some sort, often a card or certificate, notifying prospects that they have won a prize or business opportunity and requesting that they call the company within the next 24 or 48 hours. This deadline creates a sense of urgency that a big award might be missed if the offer is not acted upon immediately. Mailers result in about a 5 to 7 percent response rate for most boiler rooms. Outbound systems use the cold-calling approach—telemarketers get on the phone and pitch their promotions through unsolicited initial contact.

Regardless of which system is used, all telemarketers rely on leads. These phone professionals do not pick names out of the phone book; they operate from lead lists—hundreds of names and telephone numbers that boiler room owners purchase from lead brokers, usually on a weekly basis. Lead lists identify likely prospects, often those who have been victimized recently by other telemarketers. A boiler room owner might pay anywhere from 5 cents to 5 dollars per name, depending on the likelihood of a sale. Most boiler rooms exclusively solicit out-of-state victims in order to avoid the risk of personal confrontation in the future.

Sales

As the heart and soul of any boiler room, sales personnel do not all do the same job. They are located in various rooms inside the company depending on their function. Many salespeople at all levels operate using a written pitch, usually drafted by the owner or room manager. However, most phone representatives are given wide latitude in price negotiations and what they can say and promise a victim.

Front Room

The front room is where the new, less experienced salespeople, sometimes called "fronters," work. They generally contact new prospects from their lead lists and offer the customers products and awards with relatively low prices, usually

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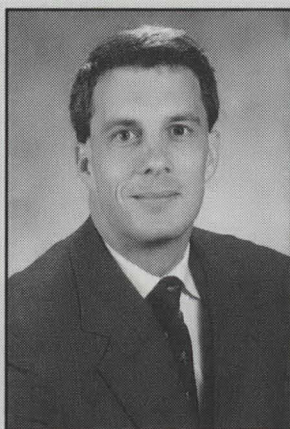
Special Agent Slotter serves in the FBI's New Haven, Connecticut, office.

between $299 and $599. They are managed separately and segregated from the more advanced operators.

No Sale Room

This room houses salespeople who refuse to take no for an answer. Once the fronter has failed in a sale, the lead is forwarded to the No Sale Room, where a more experienced telemarketer takes a second crack at it. This telemarketer feigns misunderstanding and incredulity that the customer is not taking advantage of the opportunity being offered and usually says something like this:

> "Frankly Mr. Jones, my associates and I are completely confused, and we're not sure what to do about it. What you're telling us is that you don't want your prize—that we should just forget about it and send it off to some other lucky customer? I don't think you realize what you have coming to you."

Sometimes these salespeople, or "no salers," try to explain away the cost of an award or product by claiming that the fee simply covers the costs associated with the prize, such as shipping, insurance, and taxes.

Reload Room

A boiler room lives or dies through the success of its reload room, the established phone professional's turf. These salespeople, called "reloaders," use high-pressure tactics and an assortment of bogus promises to convince past victims that they should buy again. Ironically, these victims are the easiest to pitch because they tend to spend more and more money in hopes of eventually winning that big prize or at least breaking even. Reloaders fuel those hopes with lies and unkept promises about grander promotions and newfound riches if the victim will just play along one more time.

Reload orders often total thousands of dollars apiece and represent the bulk of the company's illicit income. Seasoned reloaders commonly earn well over $100,000 in commissions annually.

Verification

Verifiers recontact customers shortly after a sale has been completed. They review the promotion, awards, and price with the customers. More important, they attempt to diffuse the misrepresentations made by the sales representatives. Verifiers also secure arrangements for the victims to pay for the bogus products.

Collection

To circumvent the problem of buyers' remorse, telemarketers need to ensure that customers pay them as quickly as possible. The two most common methods of payment are checks sent via overnight delivery and demand draft authorizations. The verifier secures the customer's address and arranges for the overnight courier to pick up the check as soon as possible, with all charges to be paid by the boiler room. By using check debits or demand drafts, telemarketers also can arrange for the direct electronic transfer of funds from a victim's bank account.

Because of the instability and illegality of most boiler room operations, telemarketers generally cannot obtain bank merchant accounts for credit card sales. Some owners misrepresent the nature of their businesses to secure such accounts, but once banks determine that the companies' profits are generated exclusively through phone

sales, they quickly shut down the accounts.

Shipping

Also known as the "back end," most telemarketers initially get into trouble at this point. It is one thing to lie over the phone to induce a sale; it is another thing to lie over the phone and then not ship the customer anything, not even the least valuable award. Many financially strapped owners, to their detriment, resort to nonshipment when business gets hectic. Reliable shipping minimizes customer complaints, which, in turn, reduces the threat of law enforcement intervention.

Incidentally, most illegal prize rooms operate on a 10 to 1 principle; that is, they award a prize costing one-tenth of the amount paid. There even have been cases in which boiler rooms awarded victims vacation packages that consisted of nothing more than travel certificates the boiler room bought in bulk for pennies apiece.[1]

Customer Service

This task requires a special talent and also might be called customer harassment or customer intimidation. Once victims realize they have been duped, the customer service representative (CSR) must eliminate the problem using any tactics necessary. The CSR usually is an old-time telemarketer who either belittles and berates customers into submission or, through an endless series of delay tactics and empty promises, wears the complainants down until they eventually give up. Only the most persistent customers or the threat of law

enforcement action actually elicits a refund.

HISTORY OF TELEMARKETING

The first major illegal telemarketing company was Fifty States Distributors. This company began operations in 1975 in Las Vegas and eventually spread out across the west. Fifty States sold advertising

> **Secrecy is the key to illegal telemarketing success.**

specialty products or "ad specs"— usually pens, key-chains, or refrigerator magnets with a company's embossed name and logo—to businesses throughout the country. The owner of Fifty States, Barry Schrader, soon learned that his phone representatives could sell more products by offering customers a watch or other jewelry trinket along with their orders.[2] This simple gesture eventually evolved into the 1-in-5 scheme, which has become a staple of illegal prize room operations.

In the 1-in-5 scam, telemarketers guarantee that customers will receive one of five prizes—with the top award being an automobile or other lucrative item, all the way down to the least valuable prize, often represented to be a television,

VCR, or stereo. In fact, the least valuable award is buried somewhere in the middle, and, though represented to be valuable, it usually consists of worthless jewelry, artwork, or costly and restricted vacation packages. Everyone gets this award—except for the few customers who have spent thousands and thousands of dollars chasing dreams concocted through crafty salesmanship. Of course, before becoming eligible for an award, the victim must purchase something, often a product with a true value difficult for amateurs to determine. The first rule of illegal telemarketing is that no one gets more than they pay for.

Fifty States, which employed more than 300 salespeople at its peak, eventually was raided and shut down in 1979. Unfortunately, former managers and salespeople spread across the country to start their own scam operations, such as Cypress Creek Promotions in Fort Lauderdale, Florida, Nationwide Marketing in San Diego, California, and Pioneer Enterprises in Las Vegas, Nevada, which at one time was the largest boiler room in the United States.

EARLY LAW ENFORCEMENT EFFORTS

Secrecy is the key to illegal telemarketing success. Telemarketers, by nature, shun outsiders. They feel secure in defrauding people throughout the country with the comfortable detachment of never having to meet their victims face to face. Telemarketing companies are equally wary of law enforcement, and their operations are primed for

quick relocation, as required. A boiler room owner easily can set up an office without any overhead concerns, needing only office space, desks, and phones, all under the cover of an innocuous name, often with the words "marketing" or "promotions" in the title.

Further complicating law enforcement's efforts at investigating boiler room operators, most employees, from the owner to the lowest level salespeople, use aliases, or "phone names," to insulate themselves from suspicion. Tracing an alias involves extensive police surveillance and cumbersome records review, often without success.

Prior to 1990, most law enforcement investigations were historical in nature. Federal agents and local detectives were challenged to pore over thousands of documents, including sales orders, payroll records, shipping receipts, purchase orders, telephone toll records, and bank account information, to reconstruct company operations. Additionally, cases only could be solved by contacting and interviewing hundreds of victims across the country, making successful telemarketing investigations at all levels of law enforcement very rare.

Boiler room operators simply can pack up and move to another county or town, leaving pursuers perplexed. Part of the problem is that the boiler room community has its own language and way of doing business. Investigators attempting to thwart boiler room operators quickly learned that without thorough knowledge of boiler room lingo and behavior, their limited understanding of such operations immediately would compromise their

proactive investigative efforts. Many of these barriers ultimately toppled in the early 1990s with the FBI's Operation Disconnect, which gave law enforcement one of its first real glimpses inside the boiler rooms of America.

OPERATION DISCONNECT

After the FBI, state attorneys general throughout the country, and innumerable police departments suffered years of investigative frustration, the FBI solicited the services of a former boiler room manager, who guided agents through this intricate and secretive world. With this intelligence, the FBI's Salt Lake City office initiated undercover operation Bo Deal, which subsequently evolved into national Operation Disconnect. In

Disconnect, undercover agents posed as distributors of a computerized lead service, promising con artists profits far beyond what they were raking in already. This technique enabled agents to gain first-person admissions of illicit sales tactics and to understand boiler room machinations fully. During this undercover operation, investigators developed so-called hot tests in which agents, posing as customers, purchased products and recorded the fraudulent pitches and unkept promises of telemarketers throughout the country.

Many federal and local law enforcement agencies, along with 18 FBI field offices, participated in the March 1993 takedown, resulting in raids of 79 boiler rooms and the arrest of 300

Telemarketing Fraud Victim Profile

Unemployed 4.0%

Lower Income 4.0%

Single Women 3.0%

Other 3.0%

3.0% Credit Card Holders

General Public 30.0%

7.0% Investors

12.0% Small Business

34.0% Elderly
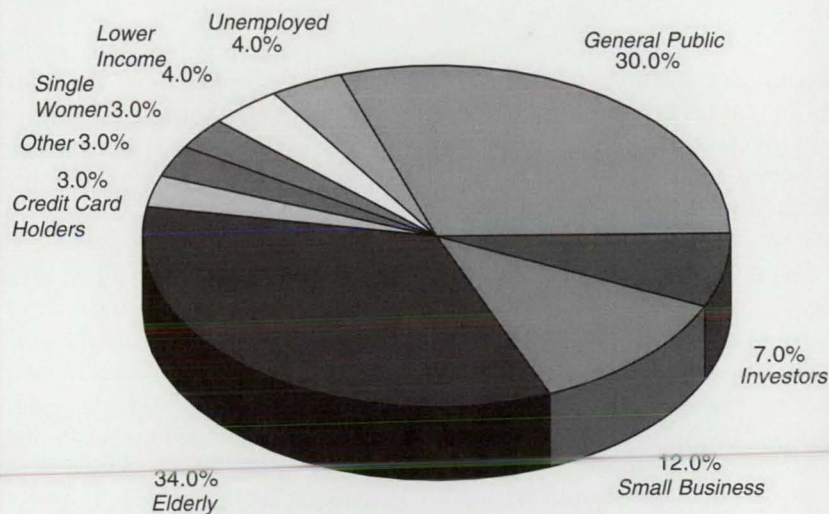
subjects nationwide.[3] Although Disconnect was a one-time operation, the methodology used in this investigation established a solid foundation for law enforcement to combat illegal boiler rooms in an effective, proactive manner.

PROACTIVE TELEMARKETING ENFORCEMENT

In the wake of Disconnect, many telemarketers became even more secretive and suspicious in their business dealings. Law enforcement quickly learned, however, that the bonds of secrecy and distance, so implicitly cherished by boiler room operators, could be effectively used against them. While phone professionals depend on deception and trickery for success, they never can be completely sure to whom they are speaking on the other end of the line. The challenge for law enforcement is to exploit this vulnerability and put investigators into the position of customers without arousing suspicion.

Operation Disconnect's success led the FBI's Miami division and the Fort Lauderdale Police Department to combine forces in 1994 in Operation Sunstroke. Together, they developed a strategy to place agents and detectives consistently in the role of victims, allowing for direct evidence of illegal sales tactics. Over time, a twofold system involving cooperating witnesses (CWs) and fictitious leads has developed.

First, cooperating witnesses with previous boiler room experience are sent into suspected illegal

telemarketing companies to seek employment. The CWs typically are trained by boiler room personnel in all phases of the operation and usually sit in on calls made by other employees. All activity in the boiler room is recorded, and the law enforcement agency reimburses victims upon takedown for any actual sales made by the CW. The evidence associated with this part of the investigation can be obtained in a matter of days.

> **"**
>
> **The key to combating telemarketing crimes is communication— both among law enforcement agencies and within communities.**
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> **"**

Second, fictitious leads are created and inserted into the boiler room. Telemarketers maintain an unquenchable thirst for new leads or "fresh paids," victims who have purchased from other telemarketers and likely will buy again. Leads, take many forms, often consisting of index cards, computer sheets, and previous sale orders. By creating their own leads, usually in the form of supposedly old sale orders, law enforcement officials can place themselves in the victim's hot seat. Standard sale order forms can be purchased from a business supply store or duplicated from previous searches and seizures. Once the form is completed with the

fictitious information and submitted to the boiler room, investigators can expect a call in a matter of days.

The next investigative step is to overcome the interstate aspects of telemarketing and create the illusion that the law enforcement victim actually is located in a faraway state. One way to set the stage is to work in tandem with another law enforcement agency out of state. For a relatively low cost, each agency can establish one or more telephones in its office space with calls forwarded permanently to the other agency. For instance, in Miami, the FBI and the Fort Lauderdale Police Department set up five telephones with recording equipment. Through cooperative efforts with other FBI and law enforcement offices, the phones in Florida were connected to phones in Atlanta, Dallas, Los Angeles, New York, and Chicago. Those phones were placed in permanent call forward status so that if, say, a telemarketer in Miami called a lead in Atlanta, the call automatically bounced to the phone bank in Fort Lauderdale. By replicating this strategy, law enforcement agencies can make phone solicitors believe they are conducting interstate sales when the investigators might be literally right next door.

To complete the scenario successfully, all law enforcement personnel involved in the investigation need to be briefed on case objectives, phone personas, how to elicit incriminating information, and the mechanics of arranging for the purchase and receipt of products and prizes—usually through a mail-drop arrangement. Once law

enforcement personnel make a purchase, the phone typically continues to ring with reloaders soliciting more money and, eventually, with other boiler rooms that have purchased the leads from the initial target.

Following Miami's success, the FBI in San Diego coordinated national Operation Senior Sentinel. In addition to investigators from multiple agencies, this initiative also solicited the services of retired law enforcement personnel and members of the American Association of Retired Persons (AARP) to pose as victims. To date, Senior Sentinel efforts have led to the arrests of over 1,000 boiler room subjects nationwide.[4]

CRIMINAL INNOVATIONS

Even with the successes of Disconnect, Senior Sentinel, and hundreds of similar local law enforcement operations, telemarketing continues to thrive. Canadian authorities, in particular, have witnessed explosive growth in illegal telemarketing during the past 3 years.[5] In addition, new variations on these schemes continue to arise. Some of the most popular include recovery schemes, so-called rip-and-tear operations, and investment schemes.[6]

Since operation Disconnect, telemarketers have discovered a more insidious way of defrauding customers. Phone professionals, posing as recovery and liquidation specialists, promise customers a return of their lost monies in exchange for an additional fee that supposedly covers court costs and other legal expenses. These con artists often claim to be working hand-in-hand with law enforcement

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Common Terms Used in the Telemarketing Trade

Dropping Mail: The process of bulk-mailing promotional materials (usually award notification letters or cards), enticing potential customers to call the boiler room to claim their prize.

Lay Down: An easy sale. A customer who is so excited about the promotion, he/she is an easy target for the salesperson.

Catalog Rebuttal: A phony catalog. Many telemarketers instruct customers to send in photographs of themselves with their awards. Customers are told the pictures will be published in the telemarketing company's catalog. This rebuttal lends an air of legitimacy to the deal even though no such catalog is ever published.

In the Ether: When a salesperson is able to excite a potential customer about the awards or prizes they may have won, the customer is said to be "in the ether." The customer is then brought "out of the ether" upon hearing the actual terms and conditions associated with the winnings.

Gimme Gift: The trinket or low-value prize that all customers receive, regardless of the extravagant prizes that were promised. Typical "gimme gifts" include cheap jewelry, travel certificates, and phony artwork.

Misreps: Misrepresentations, lies, and exaggerated statements made by the salesperson to close the sale.

Mooch: A sucker. In short, the ideal customer.

Spiff: An incentive or bonus given by the company to a salesperson who has had an especially successful day on the phone.

Takeover (TO): When one salesperson passes a customer on to another sales representative to try to wear the buyer down and close the deal. The second seller is usually fresher and often will try a different tact to elicit a sale.

Top Ten Telemarketing Company Locations in 1996

1) California
2) Florida
3) Texas
4) New York
5) Nevada
6) Georgia
7) Illinois
8) British Columbia
9) Quebec
10) Missouri
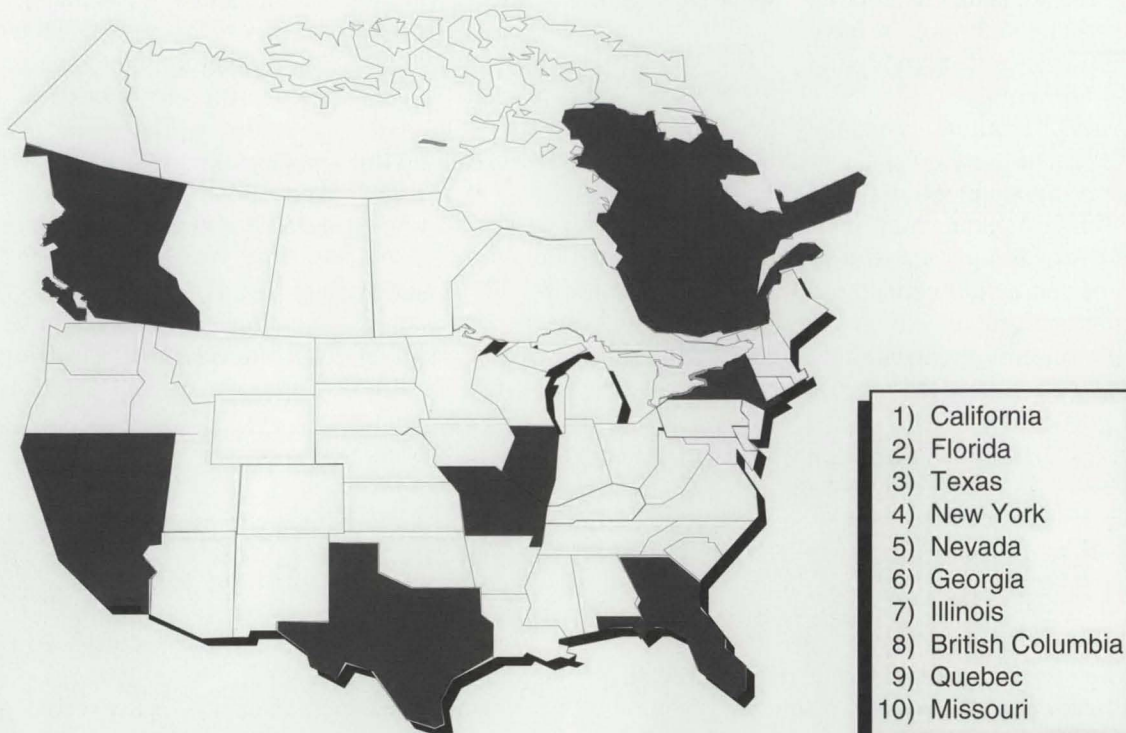
Source: National Fraud Information Center

authorities and prey on the victims' ultimate desire to recoup the losses they incurred, perhaps from the very telemarketers now promising to help.

To help avoid detection, another set of telemarketers, known as rip-and-tear operators, often work out of a basement or office facility with a month-to-month lease arrangement. Their goal is to defraud as many customers in as short a time as possible with no intention of fulfilling customer orders or awarding prizes. They just take the money and run.

A new wave of sophisticated telemarketing has emerged in the fraud arena. These phone professionals claim to be investment specialists, often referring to themselves as brokers or investors and their businesses as independent sales offices, or ISOs, rather than boiler rooms. They offer high-priced investments in stocks, bonds, and new business opportunities and might go so far as to furnish prospective victims with phony registration and prospectus papers. Despite their air of professionalism, their schemes are no more

legitimate than the rip-and-tear operators' ploys.

CONCLUSION

The key to combating telemarketing crimes is communication— both among law enforcement agencies and within communities. By sharing investigative and intelligence information, law enforcement at all levels can defy the interstate aspects of these crimes. For example, the Boiler Room Task Force in San Diego maintains a comprehensive tape library consisting of thousands of recorded

telemarketing conversations that are available for law enforcement use. Nearly 200 recorded victim conversations are added to this collection weekly. Additionally, Federal Express, headquartered in Memphis, Tennessee, has established its own initiative against boiler rooms that use their delivery services. The cooperation and testimony of Federal Express officials in these matters has proven invaluable in bringing many of these criminals to justice.

Finally, the public, particularly the elderly population, depends on law enforcement to educate them about the pitfalls of dealing with boiler rooms and the common schemes to which they might become susceptible. Most of America's elderly population grew up in an era when trustworthiness was the norm and a person's word was his bond. They find it hard to comprehend that salespeople could lie in such a straightforward and outrageous fashion, and they are so embarrassed by their losses they find it difficult to report these crimes.

With the impact of proactive boiler room investigations and other intensified law enforcement efforts, former telemarketing hotbeds like Las Vegas, Texas, south Florida, and southern California, have seen significantly reduced illegal telemarketing activity. With cooperative efforts and a commitment to addressing the problem, law enforcement can continue to expose the hidden faces of illegal telemarketers around the world. ◆

Endnotes

[1] Operation Sunstroke, FBI, Miami Division, 1994.

[2] Warren Rupp, former manager, Fifty States Distributors, interview by author.

[3] Economic Crimes Unit, Financial Crimes Section, FBI Headquarters, Washington, DC.

[4] Ibid.

[5] National Fraud Information Center, A Project of the National Consumer's League, Washington, DC, 1996.

[6] Supra note 3.

Bulletin Reports

Police Contact with Citizens

Nearly 45 million U.S. residents have face-to-face contact with law enforcement officers annually, estimates a report from the National Institute of Justice (NIJ) and the Bureau of Justice Statistics (BJS). *Police Use of Force*, by Lawrence A. Greenfeld, Patrick A. Langan, and Steven K. Smith, with Robert J. Kaminski, represents the second annual report to Congress on the use of excessive force by law enforcement officers.

BJS surveyed 6,421 residents age 12 or older, allowing for extrapolation of the findings to the entire U.S. population. For example, of the 6,421 respondents, 1,308 had face-to-face contact with the police, representing 44.6 million people nationwide. The most common reasons for the contact included seeking assistance from or providing assistance to the police, falling victim to or serving as a witness to a crime, and receiving a traffic ticket. Men, whites, and individuals in their 20s were more likely to have contact with police, with teens most likely to have a police-initiated encounter and seniors most likely to initiate contact themselves.

Fourteen people said the police hit, pushed, or choked them; threatened them with a flashlight; restrained them with a police dog; threatened or actually sprayed them with chemical or pepper spray; threatened them with a gun; or used some other form of force against them. Of the 14, ten admitted that their own actions may have provoked the police to threaten or use force.

For a copy of this report, call the BJS Clearinghouse at 1-800-732-3277 or the fax-on-demand system at 301-519-5550. This report also is available on the BJS home page at http://www.ojp.usdoj.gov/bjs/.

Getting Tough on Crime

Since the early 1980s, a get-tough-on-crime approach has led to unprecedented growth in the size of federal and state prison populations. Between 1980 and 1995, prison populations grew from about 330,000 to over 1.5 million people. Have mandatory prison sentences for both violent and nonviolent offenders proven effective? Not according to a crime policy report from The Urban Institute. Authors James P. Lynch and William J. Sabol argue that public cries for tough sentences were based on faulty beliefs that the justice system was being too lenient on violent criminals. Sentencing reforms have indeed increased the number of incarcerated violent offenders with violent criminal histories. At the same time, nonviolent offenders with little or no criminal histories have paid the price, as well. Moreover, the number of prisoners with ties to legitimate institutions—shown to lower the risk of criminal behavior—has increased. Incarcerating these "socially integrated offenders" may not only be unnecessary but also may prove unwise, as reducing their ties to legitimate institutions may make them prone to criminal behavior. Imprisonment also may decrease their wage-earning ability, weaken their family structure, and limit their community's ability to fend off crime.

Overall, the increase in the number of incarcerated violent offenders did not translate to a substantial decrease in violent crime. And, the authors warn, a zero-tolerance approach to drug crimes could yield zero crime-control benefits for less serious offenders who typically have short criminal careers.

For a copy of this report, *Did Getting Tough on Crime Pay?*, contact The Urban Institute at 202-857-8687.

Distance Learning Pilot Program

In November 1996, the Operational Training Unit (OTU) in the FBI's National Security Division (NSD) became the first FBI entity to deliver in-service-caliber training to its employees via distance learning. Consisting of written materials, videotapes, and computer-based training, Introduction to Counterintelligence became the first phase of a training course given to newly assigned foreign counterintelligence (FCI) special agents. The second phase of their training required travel to the FBI's training academy in Quantico, Virginia, for a one-week, 40-hour basic counterintelligence in-service. The FBI previously had provided both phases of the training in one 2-week in-service at the Academy.

Evaluation of the pilot distance learning course concluded in June 1997 and was formalized in the OTU report, *Evaluation of*
Pilot Distance Learning Course: Interactive Multimedia Instruction & Simulation Program. The report reveals that agents found the class enjoyable and beneficial to their jobs. Many requested that additional courses be developed using the same method. More important, the evaluation revealed that the agents scored, on average, 20 percentage points higher on the posttest than on the pretest. In fact, their performance improved so much that the problems had to be made more complex to adequately challenge them.

The pilot distance learning course also revealed significant increases in productivity. Agents completed the equivalent of 40 hours of residential training in an average of 15 hours, a 63 percent reduction in training time. That means that OTU can train 457 agents in the time it took to train 25 agents using conventional platform classroom instruction.

Finally, the pilot distance learning course saved the FBI $1,170 per agent for each 40-hour course taught via traditional methods. Ultimately, savings will increase as agents no longer travel to the FBI Academy for basic FCI training.

In short, OTU's pilot distance learning course demonstrates that distance learning can be a viable, cost-effective training alternative for law enforcement agencies regardless of size. For a copy of the report, contact Patricia M. Boord, FBI Academy, NSD/OTU, Jefferson Building, Quantico, VA 22135.

Community Mediation Programs

In a community where numerous people of diverse cultures come together, conflict seems inevitable. Community mediation represents one way to resolve disputes, whether they are minor squabbles between next-door neighbors or potentially violent rivalries between youths. According to *Community Mediation Programs: Developments and Challenges*, over the past 20 years, hundreds of mediation programs have emerged across the nation. This National Institute of Justice (NIJ) publication, by Daniel McGillis, provides a comprehensive look at community mediation and covers a broad range of topics, including the history of mediation, approaches to dispute resolution, guidelines for establishing programs, and the assessment of mediation, to name a few. A portion of one chapter discusses the police department's role in community mediation programs. To order a copy of this publication, NCJ 165698, contact NIJ's National Criminal Justice Reference Service, Box 6000, Rockville, MD20849-6000, 800-851-3420, or access the home page at http://www.ncjrs.org.

Designing an Individualized Performance Evaluation System

A Values-Based Process

By MICHAEL KRAMER, M.A.

Many police agencies find effective employee performance evaluation an ongoing struggle. Some view employee performance evaluation as one of the useless trappings of bureaucracy. Others see value in evaluation but provide little or no training for the participants. Some agencies perform evaluations but do not make the process meaningful or constructive. Still other agencies address the issue simply by adopting a canned system from some other source.[1]

Employee performance evaluation, though, plays a crucial role in providing superior service to the general public. Public service agencies have an obligation to the citizens they serve to continually evaluate and improve performance on both an organizational and an individual level. A formal performance evaluation system provides the means to accomplish these goals. In addition, performance evaluation gives employees feedback about their work and provides administrators with a credible, defensible instrument on which to base personnel decisions. Finally, performance evaluations are an ideal way to communicate and reinforce organizational values. By addressing all of these issues, a first-rate system helps to maximize employee performance and improve service delivery.

To achieve these objectives, however, the performance evaluation system must meet the specific needs of the individual organization. Police departments not only should use formal

evaluation procedures but also should seriously consider developing their own, individualized evaluation systems. This article presents 10 steps for creating such a system. By following these steps, a department of any size or mission can tailor an evaluation process to meet its needs.

The Benefits of an Individualized System

Individualized performance evaluation systems are appropriate simply because each agency is unique. From small, rural police departments to federal agencies, law enforcement organizations differ by size, mission, geography, funding levels, community expectations, political environment, and other characteristics. Significant differences can exist even between agencies that, on the surface, appear very similar. Still, some police agencies adopt a one-size-fits-all approach to performance evaluation systems merely because it seems to be an easy way to address the issue. However, the easiest way to solve a problem is not necessarily the most effective.

Police agencies sometimes copy *what* other departments are doing, without first asking *why*. While an agency may not want to reinvent the wheel for every administrative issue, some concerns are critical to the operation of the agency and, as such, require individualized treatment. Effective personnel performance evaluation represents one such issue.

In general, individual attention is appropriate for an issue whenever the potential benefits substantially outweigh the required expenditures. For a minimal resource investment, any department can create its own evaluation system. Further, this design process allows effective evaluation that does not compete with the constant demands of a functioning department. After all, the primary job of a police department is *performance*, not performance *evaluation*.

No two departments are likely to produce exactly the same system when using this approach. It is meant to be flexible because no two departments have the same needs. The values one agency deems important will differ from those of another. In the final analysis, what matters most is that the system works for a particular agency.

Step 1: Administrative Direction and Support

The success of any project hinges on the support of agency administrators. In this case, agency administrators serve three vital functions. First, they must initiate the process. Someone at the top of the organization must commit to designing an effective performance evaluation process.

Second, agency administrators must provide the broad, overall objectives that the initiated change will accomplish. These objectives serve as guidelines to produce a system compatible with the organizational mission and goals.

Finally, administrators must provide adequate support in the form of such resources as time, money, space, and equipment to allow the process to succeed. In doing so, agency administrators demonstrate their commitment for the project. As important, administrators must accept the results. Otherwise, the employees who put their time and energy into designing the evaluation system only to find their hard work and ideas ignored or rejected will develop negative

" ...the performance evaluation system must meet the specific needs of the individual organization. "
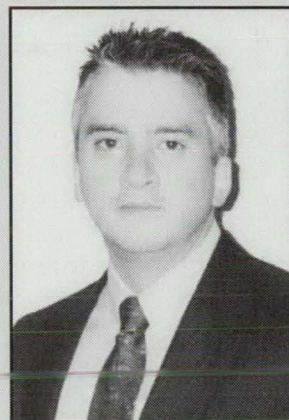
Officer Kramer, a certified law enforcement planner, serves with the Bainbridge Township Police Department in Chagrin Falls, Ohio.

attitudes toward the administration and the system.

Step 2: Committee Formation

For some people, the word "committee" has a negative connotation. Most people can relate at least one horror story that resulted from the time they served on a committee. Fortunately, the adage often applied to committee work, "paralysis by analysis," is not inevitable. With the right personnel and enough structure and direction, committees have decided advantages over top-down management decision making.

First, committees enrich the decision-making process by drawing upon the expertise and creativity of the department's most valuable resources, its people. In addition, the committee approach gives employees ownership over the outcome, or product, which builds commitment and loyalty to the product. Members of the committee become committed sellers of the system, rather than reluctant buyers. Additionally, most employees appreciate and enjoy having input into new policies or systems that will affect them directly.

The motivational level of the committee members goes a long way in determining the eventual success or failure of the project. Ideally, the agency leader should select a competent, knowledgeable chairperson who understands the mission of the department and the objectives of the process. The chairperson also should possess good organizational skills and be able to keep the committee from bogging down. The other committee members need not be experts on performance evaluation, but should be knowledgeable, positive, motivated employees. The chairperson can select members or ask for volunteers, keeping in mind that membership on the committee will entail a significant time and work commitment. In addition, to lend insight and credibility to the project, every rank as well as every area of the organization—e.g., patrol, detective bureau, communications, etc.—should be represented on the committee.

> **A valid, fair evaluation system requires measures and standards.**

Step 3: Introductory Tasks

The first order of business for the newly formed committee is to become familiar with the general principles of performance evaluation. The committee chairperson should obtain resources on the subject and disseminate them before the first official work session to give committee members a chance to review the information. The participants also should come to the first session with a list of values they believe ensure the success of the organization and its employees. These values should be broad enough to apply to every person in the organization. Later, the committee will pare them down.

The chairperson should assign such tasks before every session. While some people will fail to complete the assignments, everyone should at least think about the issues involved before meeting. Work sessions will prove more productive when committee members have a chance to prepare.

Step 4: Evaluation Design Process Explanation

To open the first work session, the committee chairperson should explain the steps involved in the evaluation design process. Doing so provides employees with a sense of purpose and direction and gives them confidence that their work will have meaning. The chairperson should explain the committee's objectives and discuss any guidelines to which members must adhere. Along these lines, while general timetables can help the committee stay on track, specific deadlines may cause some people to feel rushed and give the impression that speed is more important than substance. To encourage greater participation and more thoughtful responses, the chairperson should avoid imposing unnecessary time constraints.

Step 5: Values Identification

Once committee members understand the design process, they can begin to address the needs of the organization. The list of values that each person constructed earlier comes into play now. One at a time, the group members define and defend the values on their list. In doing so, the process draws upon each group member's unique perspective and role in the organization.

Next, to make the system more credible, the committee should supplement its expertise with that of outside sources. These sources can include a departmental mission statement, code of conduct, or oath of office; the results of a community survey or empirical research studies; standards established by organizations such as the Commission on Accreditation for Law Enforcement Agencies or the International Association of Chiefs of Police; and other evaluation systems. Any document or person that the committee can use as an example of organizational values will enrich the decision-making process.

After devising a list based on all of the available resources, the committee should employ an objective rating system to determine which of the values will merit evaluation and become performance dimensions. A system that allows all participants to have equal input and provides a clear target score works best. To do this, the committee could devise a scale to rate each value and establish a cutoff score. For example, the committee may decide to rate values from 1 to 5 and eliminate any value that scores below a 3.5, although committee members who feel strongly about a particular value could lobby to save it. Committee members could write down their scores and give them to the chairperson for tabulation, or members could switch papers with their peers, then read the scores aloud. Any method that encourages members to express their honest opinions without any pressure or fear of reprisal from other members should be employed.

For Further Reading

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Before moving on to the next step in the process, the committee must commit to specific values and define each one. For example, the committee may decide that the department values and should evaluate attendance and leadership. The committee then defines attendance as "being present for scheduled assignments." Leadership might be defined as "the demonstrated ability and willingness to make decisions and to set good, positive examples for others."

Step 6: Initial System Development

At this point, the committee needs to develop a few critical parameters for the system, such as the

length of the evaluation period and the rating scale the system will use. Deciding these issues will establish the framework for the specific measures and standards used to evaluate the agreed-upon performance dimensions.

Step 7: Measures and Standards

A valid, fair evaluation system requires measures and standards. Without them, employees will not know how to attain appropriate ratings. Employees must know, prior to being evaluated, how to achieve the desired scores.

The committee should begin by attempting to set objective measures and standards for each performance dimension. Objective measures are clear cut; they are backed by well-defined and well-documented criteria. How many days was the employee absent? Did the employee attend training classes? Objectivity is important to fair evaluation because it eliminates the opportunities for rater bias, which occurs when the rater allows inappropriate or unrelated opinions to influence the evaluation.

The measure for attendance might be the number of hours missed during the rating period due to personal illness or injury. Next, the committee identifies specific standards that employees must meet to attain certain ratings. For example, missing 0-8 hours might garner an employee an excellent rating; 9-16 hours, good; and 17-32 hours, average. The specific standards will depend on the initial guidelines established in step six, along with whatever expectations of performance the committee develops. The

committee could, for example, check the department's attendance records over the previous 2 or 3 years for a realistic guide.

In short, the committee should identify a departmental value, convert it to a simple, well-defined performance dimension, and then further clarify it through specific measures and standards. However, a department may find it difficult to create objective measures and standards for some performance dimensions. Those dimensions that do not lend themselves to objective evaluation either must be eliminated, or

> **...employees should feel vested in the system and care about their evaluations.**

subjective measures and standards must be established for them. In contrast to objective measures, subjective measures require that raters make judgments based on knowledge, experience, and system guidelines.

Is it better to have fewer, completely objective dimensions? Or should the agency include subjective dimensions to evaluate employees in as many areas as possible? In the end, committee members must answer these questions and decide what is best for their department. The Bainbridge Township Police Department maintains a system of

14 performance dimensions. Three values—attendance, professional development, and policies and procedures—are objective. The remaining 11, which include such dimensions as integrity, leadership, and teamwork, are subjective.

Subjective performance dimensions still require measures, in the form of behavioral examples, and specific standards. Behavioral examples need not be all-encompassing, but they are important because they 1) help raters recognize the behaviors associated with each dimension; 2) let those people being rated know what is expected; and 3) reduce the opportunities for rater bias contamination.

For example, the committee may decide that leadership should be evaluated. Failing to establish objective measures and standards for this dimension, the committee must turn to subjective ones. To measure this performance dimension, the committee would have to develop a list of behavioral examples.

Leaders . . .

• Set positive examples for others in their personal and professional conduct

• Readily accept responsibility

• Give credit to others when credit is due

• Use their powers of persuasion in a positive and constructive manner

• Are actively involved in, and make constructive contributions to, organizational goals.

These statements do not define leadership. They merely demonstrate a few positive, observable

examples. Evaluators should consider other relevant behavior observed during the evaluation period.

Like their objective counterparts, subjective performance dimensions also require specific evaluation standards. For example, an employee who demonstrates the qualities associated with leadership at least 90 percent of the time might achieve an excellent rating. A good rating might require meeting the standards between 75 and 89 percent of the time; average, less than 75 percent of the time.

The inclusion of behavioral examples and standards does not eliminate the need for subjective judgments. It simply provides enough structure so that given the proper training, raters can reduce the amount of bias introduced into the process. In addition, the specific behavioral examples and standards used will depend on performance expectations that exist within each individual department.

Some departments may wish to establish separate measures and standards for different units of the organization. For example, the measures and standards for a K-9 officer might differ from those for a member of the SWAT team. In Bainbridge Township, dispatchers have different safety standards than patrol officers do. For simplicity's sake, however, departments should maintain the same standards for all employees whenever possible.

Step 8: System Development Finalization

After defining performance dimensions and setting measures and standards for each one, the committee must determine exactly how the system will operate. That is, the committee must decide:

- What types of evaluation will the department use, for example, peer, supervisor, subordinate, or self?
- Who will evaluate whom?
- How often will evaluation interviews take place?
- What will be discussed?
- What type of training will employees need to operate the new system?
- What documentation will the new system require?
- Who will design any new forms deemed necessary?

The committee must determine the answers to these questions to remove any ambiguity in the new system. Members of the committee must understand, and have confidence in, the new system before moving on to the next step. Otherwise, they might be hesitant to include meaningful incentives designed to make the system relevant.

Step 9: System Relevance

The term "system relevance" refers to how integral the new system will be to the daily operations of the department. In other words, employees should feel vested in the system and care about their evaluations.

Ideally, the committee should establish a system of incentives that tie directly to performance. Otherwise, the entire system can become irrelevant. Each department will have to consider its own unique circumstances regarding what it can do. State and local ordinances, as well as union contracts, may prohibit certain actions. In the end, meaningful incentives will depend on the creativity of the committee. Without meaningful incentives, however, the system will not realize its full potential.

Step 10: Program Evaluation

Measuring the impact and effectiveness of an organizational program, policy, system, or procedure remains essential to its credibility. Without evaluation, administrators cannot state, with any certainty, that their programs work. When important decisions or taxpayer dollars are at stake, public service administrators must show that they are using the organization's resources efficiently and effectively. Program evaluation provides the evidence administrators need to make informed decisions.

Formal program evaluation requires recalling the original objectives of the endeavor and selecting appropriate ways, such as a department survey, to determine if the department is making progress toward those objectives. If so, how much? If not, why not? Is the

observed progress due to the new system, or is it attributable to some other factor? At what cost has this progress been made? Is this cost acceptable? Program evaluation answers these questions and makes the system defensible. Administrators also can use the information they gain through program evaluation to improve the system.

Conclusion

Performance evaluation remains essential to keeping a cadre of dedicated, hardworking employees. Because every organization is unique, law enforcement agencies should create individualized, effective performance evaluation systems. The values-based process starts with general objectives from the department administration, narrows them down to clearly defined values, then determines measures and standards to illustrate these new performance dimensions. A schedule of incentives can make the system an integral part of the organization's daily operations. Finally, the system itself is evaluated to ensure that it accomplishes its goals. By following this method, a police department can produce a defensible and credible evaluation system.

When employees feel their hard work counts for something, they strive to do their best. A carefully constructed evaluation system can make it happen.◆

Crime Data

Crime Decreases

The nation's law enforcement agencies reported a 4 percent decrease in serious crime during the first 6 months of 1997 when compared to figures reported during the same time period of the previous year, according to preliminary FBI Uniform Crime Reporting Program figures.

An Index of violent and property crimes is used to measure serious crime. Violent crime decreased 5 percent and property crime fell 4 percent during the first half of 1997.

In the category of violent crime, murder and robbery both dropped 9 percent; aggravated assault fell 3 percent; and forcible rape declined 2 percent. Among the property crimes, arson decreased 9 percent; motor vehicle theft and burglary both dropped 5 percent; and larceny-theft declined 4 percent.

Serious crime decreased in all of the geographic regions. Declines recorded include 6 percent in the northeast, 5 percent in both the midwest and west, and 3 percent in the south.

All of the nation's cities showed a decline in serious crime for the 6-month period, with the largest population groups, cities over 250,000, recording the largest decline, 6 percent. The decreases reported by suburban and rural county law enforcement agencies were 3 and 1 percent, respectively.

Source: FBI Uniform Crime Reporting Program, press release, "Crime Trends, 1996 versus 1997," November 23, 1997.

Checkpoints
Fourth Amendment Implications of Limiting Access to High Crime Areas
By KIMBERLY A. CRAWFORD, J.D.

I n the February issue of the *FBI Law Enforcement Bulletin*, the Legal Digest article discussed the need for innovative approaches to combat gang violence. Specifically, the article addressed the use of gang loitering ordinances and gang injunctions.[1] In keeping with that theme, this article discusses the Fourth Amendment implications of another innovative approach to combating violent gang crime—the use of checkpoints to limit access to high crime areas.

THE WATSON AVENUE PILOT PLAN

In the summer of 1992, the Watson Avenue Special Operation was instituted in the Soundview neighborhood of the Bronx in an effort to stem the tide of a recent rise in drug activity and drive-by shootings in the area. The operation called for the cordoning of an 8 block area and the use of vehicle checkpoints to screen all individuals attempting to drive into the area. Officers operating the checkpoints were instructed to stop every vehicle entering the area and determine the driver's association with the neighb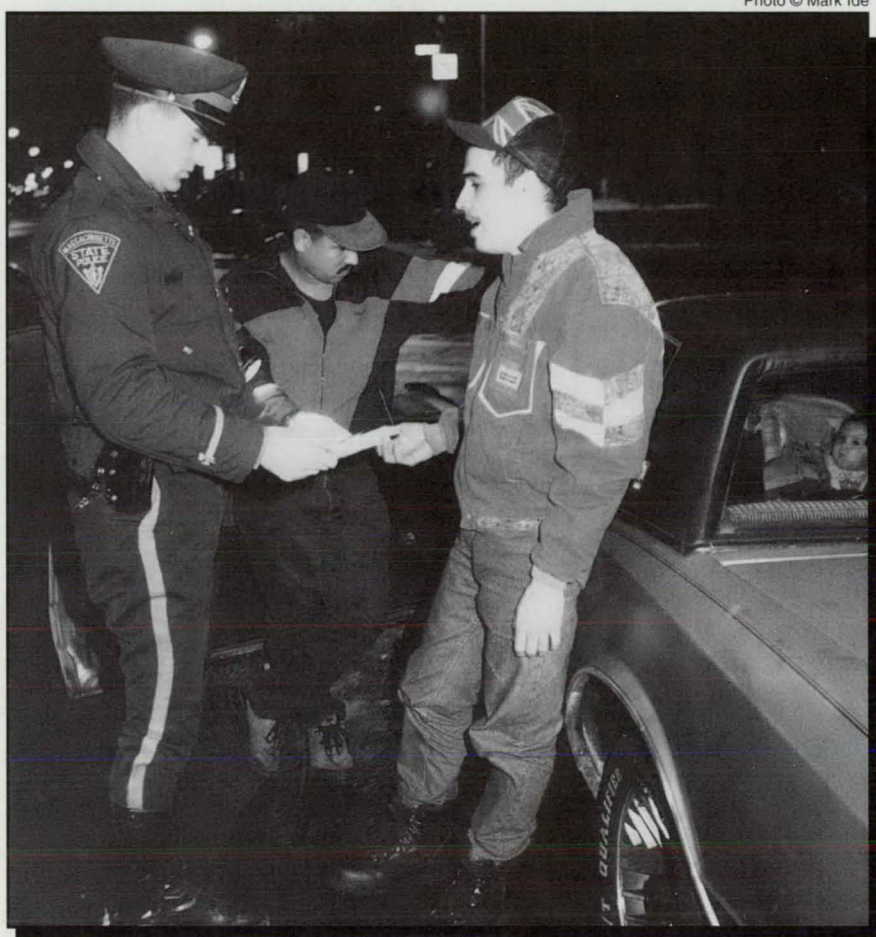orhood. Only residents, drivers of commercial vehicles, drivers of vehicles dropping off small children, or visitors to the local church were permitted to enter the area. Officers were further instructed to allow drivers to avoid the checkpoints by driving around the cordoned area or parking their vehicles and entering on foot. The checkpoint was operated on a random basis, 6 hours a day, 3 days a week, for a period of 3 weeks.[2]
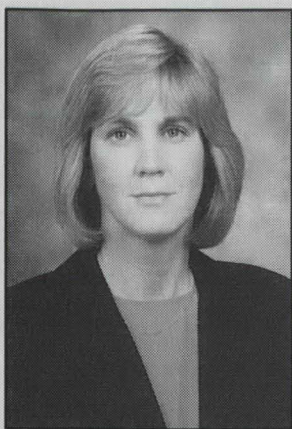
THE CHALLENGE

In September of 1992, Winfred Maxwell, a retired New York City police officer attempting to visit his daughter who lived in the Soundview neighborhood, was stopped at the Watson Avenue checkpoint and asked for identification. What happened thereafter is a matter of dispute.

According to Maxwell, he advised the officer at the checkpoint that he was a retired police officer and that his license and registration were in a pouch along with a registered handgun. When Maxwell reached for and opened the pouch, the officer, observing the handgun, drew his own service weapon and ordered Maxwell out of the vehicle. Although he complied with the officer's orders, Maxwell alleges that he was thrown to the ground, beaten, and subjected to racial epithets before being arrested and charged with assault, resisting arrest, disorderly conduct, and harassment. In a subsequent jury trial, Maxwell was acquitted on all charges.

Following his acquittal, Maxwell brought a civil action against the city of New York, the police department, and several named individuals, claiming that his civil and constitutional rights were violated by his encounter with the police at the checkpoint.[3] Many of the issues raised in Maxwell's civil suit centered around disputed facts that ultimately must be resolved by a judge or jury after hearing testimony in the matter. Resolution of the legality of the checkpoint stop itself, however, required only an interpretation of existing Fourth Amendment[4] case law and was resolved by the court on the defendants' motion for summary judgment.[5]

THE *SITZ* ANALYSIS

When determining the legality of the checkpoint in question, the district court in *Maxwell* necessarily began with a review of the United States Supreme Court's decision in *Michigan Department of State Police v. Sitz*.[6] In *Sitz*, the Supreme Court was confronted with,

and upheld, the constitutionality of a highway sobriety checkpoint.

The Court in *Sitz* began by acknowledging that all checkpoints, which by definition involve a "governmental termination of freedom of movement through means intentionally applied,"[7] constitute seizures under the Fourth Amendment and must, therefore, be *reasonable*. In determining the reasonableness of a checkpoint, the Court found it necessary to balance the seriousness of the problem addressed by the checkpoint and the ability of the checkpoint to have an impact on that problem against the "objective" and "subjective" intrusions on seized individuals.

Applying this test to the sobriety checkpoint at issue in *Sitz*, the Court concluded that no one could question the seriousness of the drunk driving problem on the nation's highways and that checkpoints are a reasonably effective method of addressing the problem. On balance, the Court found that the objective intrusion, measured by the "duration of the seizure and the intensity of the investigation,"[6] as well as the subjective intrusion, gauged by the "fear and surprise engendered in law-abiding motorists by the nature of the stop,"[9] were both minimal.

When evaluating the subjective intrusion of the sobriety checkpoint, the Court observed that the fear and surprise experienced by motorists would be minimized by the fact that motorists could see that all vehicles were being stopped and that officers were in uniform and displayed visible signs of their authority. Combining this fact with statistical data indicating that

stopped motorists were detained an average of 25 seconds, the Court concluded that the sobriety checkpoint was reasonable and, therefore, constitutional.

APPLICATION OF THE *SITZ* ANALYSIS BY THE DISTRICT COURT

The federal district court in *Maxwell v. City of New York*[10] had a difficult time applying the *Sitz* balancing test. The court reviewed statistical data regarding drive-by shootings, drug sales, and other criminal activity in the Soundview neighborhood and determined that there was, in fact, a serious problem. However, the court found insufficient undisputed facts to permit an intelligent assessment of the effectiveness of the checkpoint in combating the problem.

When attempting to evaluate the effectiveness of the checkpoint in question, the court defined its goal as measuring the "degree to which the seizure advances the public interest."[11] Recognizing that the Supreme Court has "made it clear that an in-depth statistical examination of a checkpoint's 'effectiveness' is not warranted,"[12] the court nevertheless found that there must be some means, "beyond the subjective evaluations by neighborhood residents,"[13] of measuring whether the checkpoint reasonably advanced its stated purpose.[14] Although it was undisputed that no drive-by shootings had occurred during the operation of the checkpoint, the court found insufficient information to measure the impact of the checkpoint on other criminal activity in the neighborhood. "Without a fuller picture of how the checkpoint affected a broad spectrum of crime," concluded the court, "the proper balancing test cannot be performed."[15] Because of its perceived inability to perform the *Sitz* balancing test without a further finding of facts, the district court denied the defendants' motions for summary judgment on the issue of the constitutionality of the checkpoint.

APPLICATION OF THE *SITZ* ANALYSIS BY THE COURT OF APPEALS

On review, the United States Court of Appeals for the Second Circuit was asked to reconsider the constitutionality of the checkpoint at issue in *Maxwell*.[16] Applying the same balancing test as the district court, the court of appeals considered identical factors but reached a decidedly different conclusion.

> **"...the court concluded that the checkpoint was reasonably believed to be an effective method of addressing the recent rise in crime...."**

First, the court of appeals accepted without hesitation the seriousness of the crime problem in the Soundview neighborhood. Next, the court considered the effectiveness of the checkpoint and observed that to satisfy this prong of the *Sitz* balancing test, the checkpoint need only be a *reasonable* method of addressing the crime problem, not necessarily the most effective method.[17] Moreover, the court pointed out that the critical point in time for determining whether a method of deterring crime is reasonably effective is at its implementation, not after the fact. Noting that similar checkpoints had been effectively used in the past by the New York City Police,[18] the court concluded that at the time of implementation the checkpoint was reasonably believed to be an effective method of addressing the recent rise in crime in the Soundview neighborhood and no further statistics regarding the actual decline in criminal activity were necessary to complete this element of the balancing test.

On the other side of the scale, the court weighed the objective and subjective intrusion caused by the checkpoint. Objectively, the intrusion was minimal because the intended duration and intensity of the checkpoint seizure were extremely limited. The court focused on the facts that only motorists seeking entry into the barricaded area were stopped and that the stop itself was specifically designed to be brief and aimed solely at ascertaining the motorist's affiliations with the cordoned area. Consequently, the court concluded that the "request for evidence of a legitimate reason to enter the barricaded area was not significantly intrusive."[19]

The court similarly dispatched with the subjective analysis. Noting that the Watson Avenue Special Operation plan called for the stopping of all vehicles seeking entry

into the effected area, the court found that there would be "little concern that the stop would generate 'fear and surprise' "[20] on the part of stopped motorists. All factors considered, the court of appeals concluded that the checkpoint in question passed the *Sitz* balancing test and granted defendant's motion for summary judgment. The United States Supreme Court subsequently refused Maxwell's request for review and the dismissal granted by the court of appeals was permitted to stand.[21]

LIMITING ACCESS AND THE FOURTH AMENDMENT

Apart from the legality of the checkpoint seizure, the court of appeals in *Maxwell* briefly considered the question of whether individuals simply denied access to high crime areas would have legitimate claims under the Fourth Amendment for unreasonable seizures. Although not an issue the court had to decide in *Maxwell*, this question is noteworthy because of its potential for argument in future cases where individuals are stopped lawfully at a checkpoint and then refused the right to enter.

When considering this issue, the court first pointed out that the Fourth Amendment only prohibits unreasonable searches and seizures. Because officers turning individuals away at a checkpoint are not "intruding into a reasonable expectation of privacy," no search has occurred.[22] Similarly, the *Maxwell* court suggested that turning individuals away from a high crime area does not significantly restrict their freedom of movement and, thus, does not constitute a seizure. In

reaching this point, the court noted that individuals who are turned away at a checkpoint are "free to go anywhere in the world"[23] except the restricted area and arguably are not "seized" in terms of the Fourth Amendment.[24] However, even if courts conclude that no Fourth Amendment seizure is involved in the simple denial of access to a particular area, departments contemplating the use of checkpoints should be mindful that any evidence of discriminatory or arbitrary denials of access would likely give rise to serious challenges to the legality of the checkpoints on other constitutional grounds.

> **"*...turning individuals away from a high crime area does not significantly restrict their freedom of movement....*"**

LESSONS LEARNED

The checkpoint stop of the vehicle at issue in *Maxwell* was ultimately found to pass constitutional muster. However, both the district court and the court of appeals discussed certain aspects of the checkpoint that were deemed controversial or potentially problematic. Although none of these aspects proved fatal, any police department considering the use of checkpoints to limit access to high crime areas should pay close attention to these

issues in order to lessen the likelihood of successful legal challenges.

Stated Purpose of the Checkpoint

The stated purpose of the checkpoint is critical to the court's application of the *Sitz* balancing test. First, the stated purpose of the checkpoint must purport to advance the public's interest in resolving a serious problem in the community. Furthermore, the checkpoint must be considered a reasonably effective method of addressing the problem. Consequently, departments considering the use of checkpoints should carefully craft a statement of purpose that can be supported by statistical or anecdotal data demonstrating the seriousness of the perceived problem. Although statistical data is not necessary to demonstrate the effectiveness of the checkpoint, the collection of such data could be extremely effective in forestalling legal challenges in this area.

Instructions to Officers Operating the Checkpoint

Because the objective and subjective intrusions engendered by the checkpoint are judged in large part by the instructions given to the officers at the checkpoint, these instructions should be clearly worded and put in writing. The instructions should limit the objective intrusion by strictly limiting the duration of seizures at the checkpoint and curtailing the officers' investigations to only what is necessary to serve the stated purpose of the checkpoint, such as checking identification and determining association with the restricted area. The

subjective intrusion should be minimized by taking steps to diminish the fear and surprise engendered by the checkpoint. As noted by the court of appeals in *Maxwell*, stopping all cars is one way of accomplishing this goal.

Limiting Discretion of Officers Manning the Checkpoint

Although it is impossible to catalog in advance every circumstance that might arise at a checkpoint and to "provide a litmus test to resolve them,"[25] carefully crafted instructions can address and give guidance on many of the common issues that are likely to surface. For example, in *Maxwell*, the instructions given the officers "allowed all residents and commercial vehicles to enter, as well as persons dropping off little children or visiting the church."[26] Even though the court commented that these instructions were "as detailed as reasonably possible,"[27] it is important to note that the constitutional validity of these instructions was not directly at issue in *Maxwell*, and other courts have not addressed the issue. More detailed instructions should be given regarding predictable situations, such as elderly or disabled individuals wishing to enter the area for legitimate reasons. Carefully crafted instructions that limit officer discretion to the greatest extent possible will give the officers operating the checkpoint the confidence to handle their assignment swiftly and effectively[28] and reduce the likelihood that courts will find the police action unconstitutional based on the potential for arbitrary enforcement.

Checkpoint Checklist

- Submit written checkpoint plans for prior legal advice
- State the purpose of the checkpoint
- Checkpoints do not provide officers with automatic search authority
- Reasonable suspicion is required for further detentions.
- Limit the discretion of officers operating the checkpoint by providing them with clear and succinct written instructions
- Post checkpoint signs or give notice to approaching cars
- Keep traffic congestion to a minimum

Posting Signs or Giving Other Advance Notice

The court of appeals in *Maxwell* found that posted signs were not necessary to avoid engendering fear and surprise in motorists stopped at the Soundview neighborhood checkpoint because motorists could see that all cars were being stopped. However, the court's rationale may not apply to every checkpoint under review. For example, if a checkpoint is set up on a lightly traveled road where drivers do not have the advantage of seeing other cars being stopped, drivers may be surprised or fearful of what is happening when they are stopped. The entire issue can be avoided by posting signs or giving other advance notice.

No Automatic Search Authority

The court of appeals in *Maxwell* found that checkpoints constitute seizures but they are lawful under the Fourth Amendment if the societal interest advanced by the checkpoint outweighs the intrusion on the individuals stopped. The court was able to reach this conclusion because, under the Fourth Amendment, seizures need only be reasonable to be lawful. The same is not true for searches.

To be lawful, searches must be conducted pursuant to a warrant or one of the narrowly drawn exceptions to the warrant requirement.[29] Because officers manning checkpoints will not have warrants to search the vehicles stopped, no search can be permitted unless the facts of the particular stop give rise to one of the warrant exceptions. Thus, a search may be justified under the vehicle exception if, during a stop, officers make plain-view observations that give them probable cause to believe that there is evidence or contraband in the vehicle.[30] Or, more simply, officers could ask for voluntary consent to search a stopped vehicle.[31] In either case, the searches may be justified under exceptions to the warrant requirement but are not automatically justified as part of the stop.

Keep Traffic Congestion to a Minimum

One of the factors that courts consider when engaging in the *Sitz* balancing test is the length of the

delay generated by the checkpoint. In *New Jersey v. Barcia*,[32] for example, a sobriety and drug checkpoint was thoughtlessly placed on the New Jersey side of the George Washington bridge. The checkpoint tied up over 1 million cars for approximately 4 hours. In order to keep delays to a minimum, checkpoint locations should be carefully selected to avoid causing massive traffic congestion, and sufficient personnel should be assigned to the checkpoints to ensure swift, efficient handling of all stopped vehicles.

Further Detentions Require Reasonable Suspicion

The court of appeals in *Maxwell* was careful to point out that the initial stop of motorists at a checkpoint "need not be based on reasonable suspicion of particular drivers."[33] However, "the detention of a particular driver beyond the initial stop may require satisfaction of an individualized suspicion standard."[34]

Submit a Written Plan for Prior Legal Opinion

Any department contemplating employing checkpoints to limit access to high crime areas should submit a written plan to its legal department or legal advisor for prior review. By doing so, the department will force itself to put the entire plan in writing and will allow for any adjustments to the plan that may be required by nuances in state or local laws.

CONCLUSION

Drive-by shootings, drug trafficking, and gang related violence have seen a dramatic rise in the United States. In order to combat such criminal activity, police departments may have to take some innovative steps. Establishing checkpoints to limit access to high crime areas is one such step. However, *Maxwell* is the only federal court decision addressing Fourth Amendment implications of using checkpoints, and other related issues, such as refusing access, have not been resolved by the courts. Carefully established and operated checkpoints can be an effective temporary measure to give affected neighborhoods a much-needed reprieve and police departments the time they need to reestablish control of the area. Ultimately, the extent to which courts find such checkpoints constitutional may depend on how carefully departments adhere to the lessons learned from the *Maxwell* decisions.◆

Endnotes

[1] Lisa A. Regini, "Combating Gangs: The Need for Innovation," *FBI Law Enforcement Bulletin*, February 1998, 25-32.

[2] *Maxwell v. City of New York*, 102 F.3d 664, 666 (2nd Cir. 1996), *cert. denied* 118 S. Ct. 57 (1997).

[3] As a remedy for the alleged violations, Maxwell claimed injunctive and declaratory relief as well as monetary damages.

[4] Maxwell also claimed that his constitutional rights to intrastate travel and to associate freely were violated. These claims were dismissed by the district court and were not made part of the appeal.

[5] The court determined that Maxwell lacked standing to seek injunctive and declaratory relief.

[6] 110 S. Ct. 2481 (1990).

[7] *Id.* at 2485.

[8] *Id.* at 2486.

[9] *Id.*

[10] 1995 WL 244501 (S.D.N.Y. 1995)

[11] *Id.* at 6, quoting *Sitz* 110 S. Ct. 2490.

[12] *Id.* at 7.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] 102 F.3d 664 (2nd Cir. 1996), *cert. denied,* 118 S. Ct. 57 (1997).

[17] In *Sitz*, the Supreme Court held that the "choice among ... reasonable alternatives remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers." 110 S. Ct. at 2487. See also, *Brouhard v. Lee*, 125 F.3d 656, 660 (8th Cir. 1997).

[18] 125 F.3d at 667.

[19] *Id.*

[20] *Id.*

[21] 118 S. Ct. 57 (1997). The Supreme Court refused to review the grant of summary judgment ordered by the court of appeals. The order of summary judgment, which was based on the finding by the court of appeals that the defendants were entitled to qualified immunity, pertained only to the legality of the checkpoint seizures. The *Maxwell* case did not directly address the constitutionality of police refusing entry to a vehicle after a lawful checkpoint stop.

[22] *Katz v. U.S.*, 389 U.S. 347 (1967).

[23] 102 F.3d at 668 n.2.

[24] In *Maxwell*, individuals denied access at the checkpoint simply could park their vehicles and walk into the restricted area. However, that plainly would be problematic for the individuals with disabilities and elderly which highlights the importance of ensuring that objective criteria for denying access are as minimally intrusive as possible to accomplish the purpose for the checkpoint.

[25] 102 F.3d at 668.

[26] *Id.*

[27] *Id.*

[28] In *Maxwell*, a strong dissent was filed by Senior Circuit Judge Oakes on the grounds that too much discretion was given to the officer operating the Soundview checkpoint.

[29] *Katz v. U.S.*, 389 U.S. 347 (1967).

[30] *California v. Acevedo*, 111 S. Ct. 1982 (1991).

[31] Officers should be instructed to ask for consent only under exceptional circumstances and if to do so will not significantly increase the delay time of motorists stopped at the checkpoint.

[32] 228 N.J. Super. 267, 549 A.2d 491 (N.J. Super. 1988), aff'd 562 A.2d 246.

[33] 102 F.3d at 668.

[34] *Id.*

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

The Bulletin Notes

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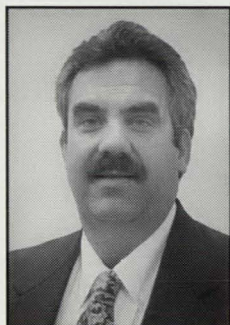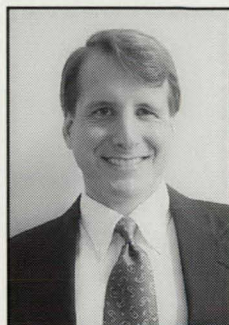
Sheriff Parker *Special Agent Poff*

At the Bedford County, Tennessee, Sheriff's Department, a subject who was awaiting processing after his arrest on local charges suddenly jumped two stories from an open window. He then fled on foot through the city of Shelbyville and dove into the nearby Duck River. As the subject drifted downriver, police officers tracked him along a steep embankment overlooking the river. As he approached a section of rapids, the subject pleaded with officers to shoot him. Bedford County Sheriff Clay Parker and FBI Special Agent Richard Poff slid down a steep, rocky ravine into the cold, deep, and swift current of the river. Together, they apprehended the subject midstream before the current carried him into the rapids. It was subsequently learned from Virginia authorities that the subject was a suspect in a homicide. The brave actions of Sheriff Parker and Special Agent Poff prevented the subject's injury or possible death.
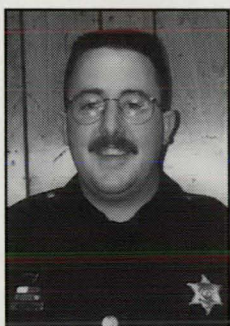
While on routine patrol, Officer Michael Hogan of the Mascoutah, Illinois, Police Department was dispatched to a construction site where it was reported a man had suffered a possible cardiac arrest. Officer Hogan arrived prior to the ambulance and joined other construction workers who were trying to revive the victim. He immediately administered CPR. Within minutes, the victim began breathing and was transported to the hospital where he fully recovered. Officer Hogan's swift response and CPR training saved the construction worker's life.

Officer Hogan

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

Patch Call

The patch of the West Haven, Connecticut, Police Department features a colonial patriot standing lookout on Savin Rock overlooking the waters of Long Island Sound. Savin Rock is named for the savin trees native to the area and remains a local landmark.

The City of Hampton, Virginia, Police Department patch features a shield that is divided into quadrants by the Red Cross of St. George. A halberdier from the reign of King James the I and a native indian stand by the shield. A crab above the shield represents the local seafood industry.