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FBI Law Enforcement Bulletin

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Demands on Police Services in a WMD Incident

By JOEL A. CARLSON, M.S., C.P.P.



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Policing in America has changed significantly.

In this modern era, new realities facing the law enforcement profession include the terrorism dimension, the concepts of intelligence-led policing and multijurisdictional partnerships, and the incorporation of the private sector into homeland security.¹ Of course, the reality of day-to-day policing remains: all of the normal demands still exist, causing law enforcement agencies to do more with their

limited resources. Because the impact of a terrorist-driven weapon of mass destruction (WMD) event can be so significant, every effort must be made to prevent such an occurrence. Initiatives that support deterrence and prevention of terrorist activity represent another layer that law enforcement agencies must incorporate into their departmental programming.

The law enforcement community has developed a response capability for major

emergencies. In addition, it has encouraged communities to assess targets, risks, and vulnerabilities and to develop a plan to mitigate catastrophic events. If an incident occurs, those in the law enforcement profession must respond with all they have to protect the public. But, a major catastrophe caused by the criminal use of a WMD may well prove beyond the capability of any police agency to handle without the assistance of many law enforcement

organizations, public safety departments, other government services, and the private sector.

While the primary purpose of policing is to preserve life and protect property, agencies usually deal with one victim, residence, vehicle, commercial establishment, or limited incident at any one time. In a WMD event, however, they may face thousands of dead and injured victims, blocks of destroyed structures, and social consequences beyond any preconceived reality. Law enforcement executives must anticipate and plan for the meaningful utilization of available personnel and resources prior to the event to ensure an effective response to the demands that may befall their organizations.²

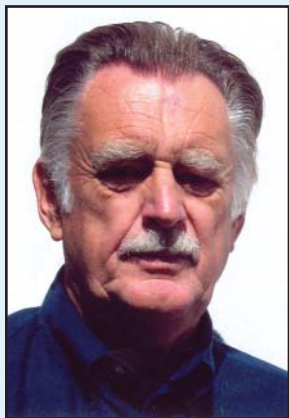
ASSESSMENT

The first contact with a major event may take place through the 911 operator. Following an inundation of calls reporting the incident, a dispatch of emergency response assets, including patrol officers from the department, will occur. Warnings of potential contamination and secondary devices, along with the need for initial situation assessment, must be part of the early dispatch. The initial assessment will include on-scene observation of apparent victims and identification of scene access routes, perpetrators present, and extenuating circumstances, such as existing fire, apparent explosive activity, collapsed buildings, and human activity. Within parameters

defined by the department, the dispatcher then can direct additional resources.

Because different types of WMD incidents have diverse response requirements, a difficult part of the initial assessment is the extent of contamination. Explosions may require search and rescue, as well as bomb squad, participation. On the other hand, chemical dispersals will need hazardous materials and personal protection for all responders. Scattering of biological agents might not become apparent until symptoms begin appearing many days after exposure; therefore, police investigation of such an attack may not happen until then. Release of nuclear or radiological material will require specialized teams and scientific modeling to assist in mitigation. The combination of explosives with any other WMD component depicts a scenario wherein the contamination of emergency responders is at high risk.

Of critical importance, terrorists may attempt to interfere with the emergency response to enhance the impact of their attack. Part of their agenda may include secondary explosives, creation of other events requiring emergency resources, and unauthorized entrance to restricted areas. Police assignment to security of incident command locations, emergency operation centers, staging areas, police



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Mr. Carlson, a retired FBI special agent in charge, former contractor for the U.S. Department of Energy in radiological emergency response, and former member of the technical staff of the Sandia National Laboratory, facilitated classes for Michigan State University for the past 4 years regarding police management issues related to potential WMD incidents.

facilities, and deployed equipment will prove essential.

RESPONSE

Rescuing the injured and trapped victims and calling for medical assistance constitute normal police and fire service functions. In a WMD incident, this process must occur but with strict attention to preserving the health and safety of responders. This implies that emergency responders without protective personal equipment should not perform such duties.

Contain and Protect

A major WMD event may have a significant footprint of damage and human loss. Limiting access to the affected area will be a law enforcement responsibility. The placement of barricades and police lines and the enforcement of access control to these areas will prove labor intensive. The identification and enforcement of emergency response routes into the area also will fall within the realm of policing. Because congestion will impede response, traffic control around the area will be critical. Incident command must convey the restrictions concerning site access to all responding organizations. In a major event, staffing perimeters and emergency routing will require significant personnel, thereby necessitating the exercise of mutual aid and memoranda of

understanding with surrounding law enforcement agencies. Barriers and police lines may have to be expanded outward when scientific assessment identifies hot and warm zones (frozen areas). Police command must assess the need for outside law enforcement and possibly National Guard assistance and request such resources early in the response. Because support deployments may take many hours to reach the affected community, local responders could be overtaxed for a lengthy period of time.

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In addition to site containment and protection, the police may have to assist in many other areas.

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Assist and Investigate

In addition to site containment and protection, the police may have to assist in many other areas. Detectives can pursue leads, develop intelligence, obtain statements from witnesses and victims, assist in searches of uncontaminated structures, and help identify missing persons. In addition,

the medical examiner or coroner may need them to help identify deceased individuals; document, collect, and preserve the personal belongings of these victims; and oversee security. Detectives also can assist the joint terrorism task force by providing local intelligence and help with investigative leads.

Uniform personnel may need to provide security and crowd control at hospitals and emergency clinics due to a large number of walk-in victims. In a biological attack, the health department may establish prophylactic centers where medical assessments and dispensing of medication will occur. In a major dispersal of a biological agent, many such centers will require police services to control crowds, monitor parking, and ensure security. If the federal government dispatches medication to the community, the local police will have to secure it from terrorist intrusion.

CRISIS MANAGEMENT

If authorities issue an evacuation order, police will need to assist emergency management personnel. Every community should have an evacuation plan in place that defines the prioritization of different population segments, areas for relocation, and modes of transportation. This plan should include police services requirements so that incident commanders have

predetermined direction in how to dispatch law enforcement support. In a WMD incident, authorities often choose to shelter the populace in place, rather than evacuate them. Police may need to notify the public with vehicle loudspeakers, enforce the sheltering-in-place order, protect evacuated areas, and secure private property.

Unified Command

The National Incident Management System (NIMS) defines a countrywide effort to enhance the management of emergencies in the United States. The Incident Command System (ICS) denotes the process for managing significant events. In a WMD incident, police undoubtedly will employ a unified command format at the incident command post (ICP). A police command person, with the authority to speak for the department, will occupy the command cell. Other police officials in the ICP will handle operations, logistics, planning, and finance/administration in conjunction with representatives of the other responding agencies. An emergency operations center (EOC) will support the ICP logistically and provide liaison with state and other governmental agencies. This EOC will house representatives of law enforcement and all other organizations involved in the deployment. Those called in

to assist the local department must be in the EOC or the ICP at the discretion of the incident command.

Communication between the various responding law enforcement agencies and other entities always presents a challenge due to the nonstandardization of equipment and frequencies. The state National Guard Civil Support Team (CST) can provide a frequency translator at the scene that will permit a melding of the various channels and frequencies. For technical support on site, officials should request the CST early in the deployment.

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Media Contact

The ICP will establish a joint information center (JIC) to handle all public and media releases, which require approval of the incident command cell so that the information remains accurate and the action does not interfere with operations.

Local public information officers (PIO) should be housed with press officers from other responding agencies. The police PIO must be present at the JIC around the clock to appropriately represent the law enforcement function, thus requiring more than one available PIO to cover this activity. The JIC will assist in controlling rumors, preparing press releases, monitoring press conferences, and maintaining liaison with media representatives.

SPECIAL CONCERNS

Health emergencies pose a special concern. In a delayed onset situation, police will face many challenges in assisting medical investigators. To identify the location and circumstances of the initial dispersal, officials may need to conduct numerous interviews of infected victims. Officers involved in this process or in any other contact with infected persons will require appropriate protection. In a situation involving an observed dispersal of a disease organism, police may have to restrict egress from the infected site, ensure the isolation of patients and health facilities, enforce health directives regarding “snow days,” and monitor the closing of commercial and government buildings. If a community quarantine becomes necessary, local law enforcement officers may have to enforce

the order of the health department in conjunction with health officials.³

Another pressing concern involves difficult staffing challenges. Police executives will have to cancel all leave, place on-duty personnel on 12-hour shifts, and send a portion of the uniform and command staff home to rest so that future shifts will be fresh. Normal policing of the community must continue, but officials will need to modify procedures to free personnel and assign officers from outside agencies to duties that do not require familiarity with the victim community. Authorities must prioritize police resource allocation and utilization and institute a tracking and reporting system for assignment of police personnel from the outset of the incident to maintain operational integrity and record expenditures for future reimbursement. Most important, law enforcement managers must ensure that police families receive assistance, which can prove essential to the support of their officers.

RECOMMENDATIONS

Various actions regarding a major incident may assist law enforcement agencies in fulfilling their public safety responsibilities. The challenges are great, but preparation will ease the burden. Overall, departments should—

- update all memoranda of understanding and mutual aid agreements to ensure accuracy of contact points, logistical obligations, and legal interpretations;
- review departmental emergency response plan for currency and train personnel on its content;



- examine community emergency response plan, especially the annex on law enforcement, to ensure obligations can be met;
- inspect all checklists of other agency contacts for currency and completeness;
- train dispatchers on what initial actions are expected of them in a major emergency incident;
- evaluate provisions for the protection of officers from contamination and other health hazards;

- communicate to emergency medical and hospital staffs the police responsibilities in a major catastrophe so they understand their expectations for police services;
- work with the county or city emergency management personnel in orienting other public service employees (e.g., public works, school officials, bus drivers, and safety inspectors) about the challenges they may face in a major event and what they should expect concerning police services;
- contact the joint terrorism task force and the FBI WMD coordinator to determine the services they will provide in contaminated crime scene investigation, intelligence sharing, and investigative services; and
- review legal authorities in the areas of exigent search, property protection in ordered evacuation, enforcement of quarantine orders, and compelling evacuation; document these authorities; and familiarize personnel regarding them.

CONCLUSION

The possibility of a terrorist attack using weapons of mass destruction poses a challenge unlike any other facing today's law enforcement profession. Beyond dealing with the death

and destruction brought about by such an event, agencies must ensure the safety and survival of their personnel and their families. After all, those charged with responding to a WMD incident cannot perform at their highest level of effectiveness if they are concerned about the fate of their loved ones.

These issues represent a few of the many difficulties that law enforcement executives must consider in fulfilling their sworn responsibility of safeguarding the public. With properly implemented response plans

and combined efforts with other public safety entities, however, they can successfully repel any attempt to terrorize the citizens of their communities. ♦

Endnotes

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The Deadly Dilemma Shoot or Don't Shoot?

By Shannon Bohrer, M.B.A., Harry A. Kern, M.Ed.,
and Edward F. Davis, M.S.



When law enforcement officers fire their guns, the immediate consequences of their decisions are realized at the rate of 1,500 feet per second and are beyond reversal by any level of official review.¹

—Edward McErlain

Every day, law enforcement officers must draw their firearms for the defense of the public, fellow officers, and themselves. In the majority of situations, the officers fire no shots because the act of producing a firearm seems to stop the suspect's behavior. Sometimes, however, this is not the case, and the officer is forced to shoot. Because officers possess the authority under certain circumstances to deprive individuals of their freedom by arresting them, it should come as no surprise that sometimes they must use force, even deadly force, to obtain compliance. After all, in more simplistic terms, it often is not the officer's *decision* to use deadly force but the suspect's *actions* that require it.²

An example to help clarify this could involve a patrol officer who approached a private residence to investigate a trespassing complaint. From inside the house, a man fired several shots at him. Although seriously wounded, the officer returned fire and killed the shooter. However, even when the circumstances surrounding police shootings have clearly indicated that the only option available to officers was the use of their firearms, some segments of society have appeared very critical of such actions. While it is not unreasonable to question what law enforcement officers do, concerned citizens should endeavor to understand that the use of force, especially deadly force, constitutes a diverse issue—an emotional and controversial one. The immense responsibility placed upon law enforcement officers understandably necessitates the intense review of every incident involving the use of deadly force. However, it sometimes appears that these examinations stem from the misguided perspective of what the officer did wrong.

LEGAL OPINIONS

The courts seem to give officers wide deference with the use of deadly force and generally decide in their favor. As stated in *Graham v. Connor*, police “are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”³ Add to this mix that if officers incorrectly assess the situation or fail to act, fellow officers, citizens, or the officers themselves may be seriously injured or killed. Officers often have to make decisions in a matter of seconds that others want to second-guess and critique for years. Whereas some segments of society may appear to prejudge officers' actions or question their responses, the same certainly cannot be said of the courts.⁴

In the often-cited case *Sherrod v. Berry*, the court stated, “When a jury measures the objective reasonableness of an officer's action, it must stand in his shoes and judge the reasonableness of his

action based upon the information he possessed and the judgment he exercised in responding to that situation.... Knowledge of facts and circumstances gained after the fact (that the suspect was unarmed) has no place in the trial court's or jury's proper post-hoc analysis of the reasonableness of the actor's judgment."⁵

Police often shoot because they are forced to, and it is a decision usually formed in a very short time period. Interviews with officers who had used deadly force revealed, in most cases, that they made the decision quickly. But, of great importance, up to the point where they actually decided to fire their weapons, they had not considered using deadly force. And, equally interesting, most of these officers still seemed surprised that they had to do so.⁶

OFFICER RELUCTANCE

According to the FBI's annual *Law Enforcement Officers Killed and Assaulted* (LEOKA) report, police are assaulted about 60,000 times each year, with approximately 10,000 of these attacks involving weapons, of which 3,000 are firearms.⁷ In some of these incidents, officers have had to shoot someone to save other lives, including their own.

Most people outside the law enforcement community generally do not realize that many officers, given circumstances where they could employ deadly force, refrain and hesitate until the last possible moment or do not use it at all. For example, if officers shot and killed 10 percent of those who assaulted them, they would be shooting and killing 6,000 individuals a year. If they shot 50 percent of those who assaulted them with weapons, they would shoot 5,000 people annually. The reality is that police shoot and kill about 350

individuals each year, a number that can illustrate the frequency with which officers refrain from using deadly force.⁸

These statistics—how often the police shoot someone, compared with the number of assaults on officers and how often they are shot—indicate that officers usually are reluctant to shoot, which sometimes costs them their lives. As an example, after a trooper stopped a vehicle for a traffic violation, the driver exited the car and pointed a rifle in his direction. The trooper repeatedly commanded the individual to put down the gun. While the trooper refrained from using deadly force, the driver shot and killed him. This case is one of several published in recent editions of LEOKA where officers, after repeatedly ordering individuals to put down their firearms, were shot and killed by subjects who ignored these commands. Particularly disturbing, some of these incidents were recorded on the victim officers' in-vehicle video/audio systems.

A review of LEOKA data for the past 10 years (1996-2005) reveals that only 126 of the 575 officers feloniously killed in the line of duty fired their weapons.⁹ The law enforcement profession spends a significant amount of resources training officers to deal with critical incidents, yet, statistically, most of the officers killed in the line of duty did not fire their weapons or even attempt to use them. A problem in examining this is that no one can go back and ask these officers why.

The significance of officers being killed and never using or attempting to use their firearms became evident in an FBI study of selected felonious, line-of-duty officer deaths. The researchers found that only 15 percent of the officers fired their weapons. In two subsequent studies on officers

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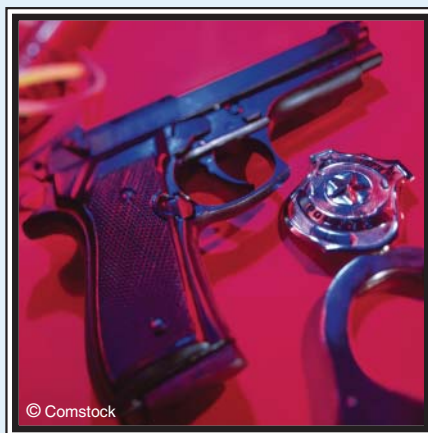
assaulted wherein all survived, 42 and 58 percent of officers, respectively, fired their weapons.¹⁰

DIVERSE REASONS

Because each police encounter is unique and each use of force, including deadly force, is a decision made by the officers involved in the confrontation, trying to explain why an officer does or does not shoot can prove problematic. From a variety of secondary research, interviews with officers and the individuals who assaulted them, and general police literature, the authors discovered several reasons that seemed to emerge as to why officers do not shoot. These fall into four basic categories that, while not intended as an all-inclusive list, appear to cover the larger segments of why officers often do not fire their weapons.

Unwillingness to Shoot People

Law enforcement officers believe that they are there to help people and to keep the peace or, put more simply, “to protect and serve,” a message displayed on most police vehicles. It is not in their nature to shoot people. To further explore this dynamic, the instructor of an FBI National Academy course on the use of force asked his students (police executives from across the country) about cases where they could have legally shot someone but did not. Over a 3-year period, 90 percent of these students responded that they had refrained from using deadly force when they had the legal right to shoot. That is not to say that these officers would not have used deadly force. The discussions that always followed this question generally ended with the officers agreeing that they would wait until the last possible moment before using deadly force.¹¹



A newspaper study in Portland, Oregon, reported similar findings. For a 2-year period, 28 percent of the officers said that they refrained from using deadly force, even though they had the legal right to employ it, once; another 28 percent did so twice; and 8 percent acted in this manner on three occasions.¹² In another study, 36 of the 50 officers assaulted reported that they had previous encounters where they could have legally used deadly force but did not because they felt that they did not have to. The average number of times the officers could have used deadly force and chose not to do so was four.¹³

Departmental Policies

Can a policy on the use of deadly force influence an officer's decision to employ it? In one study on officer safety, most of the officers interviewed readily recalled when their departmental policy said they could not shoot but did not remember when they could.¹⁴ What can agencies do to ensure that their policies give officers the utmost help in making the difficult decision to use deadly force?

The first step in developing a policy concerning the use of deadly force is to ensure that it complies with the state and federal laws that the department and its members are sworn to uphold. After establishing this, some agencies have included additional restraints for their officers to consider before using their firearms in a deadly force situation. While policies should contain directives for the security of the members of the community, as well as for the safety of the officers who serve to protect that community, the more details that agencies add may increase the time it takes officers to recall the contents and convince themselves to fire their weapons.

No policy reviewed for this article compelled any officer to use deadly force; officers must decide when to shoot. Departments should test their officers to ensure that they clearly understand the policy, especially those references to the proper time to use deadly force. In addition, agencies should review their policies to ensure that they do not overemphasize negative aspects, such as when not to shoot.¹⁵ After all, in the middle of a critical incident, if officers focus on when they *cannot* shoot, they may not have time to react and fire their weapons to safeguard innocent citizens, fellow officers, or themselves.

Misperceived Threats

Officers are not always prepared for what threats actually look like.¹⁶ After all, they train with targets that have no characteristics or with ones that resemble stereotypical “outlaws,” at least the way they think such criminals should look. In reality, individuals who have attempted to kill or who have killed officers have ranged from grandfathers in their 80s to preadolescent girls.¹⁷ If officers trained with pictorial targets that depicted such threats as these, would they hesitate to shoot?¹⁸

A convicted police killer stated that he knew the officer covering him would not shoot.¹⁹ Making that judgment, the subject took the officer’s firearm and killed him. Only a few months before, the deceased officer had to shoot a juvenile who died from these wounds. Many of his fellow officers felt that this caused him to not want to shoot anyone else.

Detriment to Career

This concept may sound strange, but a segment of sworn personnel believe it. In some departments, the organizational culture, either

intentional or not, seems to promote the idea that if officers have to shoot someone, they are doing something wrong. If an agency, after a justifiable shooting, charges the officer for violations of department regulations, none of which relate to the decision to shoot, it sends a strong signal to street officers—do not shoot anyone. Compounding this concern is the issue of the race of those involved in a police shooting. The extent of how this influences an officer’s decision to use force is unknown, but

many in the law enforcement community believe it exists to some degree.²⁰ Both of these factors, however, highlight the need for law enforcement organizations and the communities they serve to work together to ensure that officers who must use deadly force receive fair and balanced treatment.

RECOMMENDATIONS

Law enforcement officers need realistic training that incorporates the choices they may

have to make on the street. Training instructors must give officers the facts they will need to take appropriate action. The decision to shoot or not to shoot rests with the officers, not the instructors.

Use-of-force policies should be simple, easy to understand, and reinforced through practical exercises. When officers are embroiled in a violent encounter, they should not have to hesitate in making their decisions because they are unsure of their agencies’ use-of-force policies.

Law enforcement organizations should develop fair and balanced policies and procedures for investigating officer-involved shooting incidents. They should critique, review, and update these policies on a regular and timely basis.

Departments should encourage contact and educational opportunities with members of the public, the press, citizen groups, and other

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Can a policy on the use of deadly force influence an officer’s decision to employ it?

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organizations about law enforcement's use of force.²¹ Dialogue and discourse about conflicts, perspectives, and potential divisive incidents *before* they occur can help improve the critical examination of the issues surrounding the use of force. Officers need to understand that although they have the authority under certain circumstances to use deadly force, they must expect society to examine such incidents in exhaustive detail and, also, in a fair and balanced manner.

CONCLUSION

When citizens hear gunfire, they can seek cover, but they expect the police to rush toward the sound. After all, only sworn law enforcement personnel have the legal authority to use deadly force under certain circumstances.

As the public's guardians, officers often place themselves between the criminal element and the citizens they protect and serve. In doing so, they sometimes find themselves in harm's way and must use deadly force to safeguard innocent people and their fellow officers, as well as to survive the encounter themselves and continue their authorized duty of upholding this nation's laws. ♦



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the U.S. Supreme Court," *FBI Law Enforcement Bulletin*, September 2005, 27-32.

⁵ 856 F. 2d 802 (7th Cir. 1988).

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⁸ U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States*, available at <http://www.fbi.gov>.

⁹ <http://www.fbi.gov/ucr/killed/2005/table13.htm>

¹⁰ These three FBI studies comprise research on officer safety conducted over nearly a 20-year span. The researchers, Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, interviewed surviving officers and the offenders who assaulted them, as well as those felons who killed officers. They presented their findings in *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers* (1992); *In the Line of Fire: Violence Against Law Enforcement* (1997); and *Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers* (2006). These studies are available from the UCR Program Office at 888-827-6427.

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¹⁵ *Ibid.*, 43.

¹⁶ For additional information, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, "Officers' Perceptual Shorthand: What Messages Are Offenders Sending to Law Enforcement Officers?" *FBI Law Enforcement Bulletin*, July 2000, 1-6.

¹⁷ Supra note 7.

¹⁸ U.S. Department of Justice, Federal Bureau of Investigation, *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers* (Washington, DC, 1992); During an interview, a subject, who was 18 years old, 5'7," and 130 pounds at the time he killed a police officer, inferred that his youthful appearance may have misled the officer into believing that he was not a threat.

¹⁹ Anthony J. Pinizzotto and Edward F. Davis, Presentation given to the Maryland Police and Correctional Training Commissions class on deadly force management issues, 2005.

²⁰ Supra note 1, 147-161.

²¹ For additional information, see James D. Sewell, "Working with the Media in Times of Crisis: Key Principles for Law Enforcement," *FBI Law Enforcement Bulletin*, March 2007, 1-6.

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Mr. Davis, a retired police lieutenant and retired instructor in the Behavioral Science Unit at the FBI Academy, currently owns a private consulting company in Virginia.

Unusual Weapon

Screwball

Law enforcement officers should be aware that offenders may attempt to use the unusual weapon depicted in these photos. The plastic ball houses metal tools that can protrude between fingers to be used as a striking weapon. Offenders could hold the ball inside a closed fist.



Leadership Spotlight

Is Charisma the Key to Effective Leadership?

Don't say things. What you are stands over you the while, and thunders so that I cannot hear what you say to the contrary.

—Ralph Waldo Emerson

Max Weber first championed the idea of a special population of leaders whose unique personality enables them to display superhuman leadership powers.¹ Since then, the concept of charisma has been debated and researched with fervor and continues to offer ample fodder for a spirited leadership class.

One of my students recently wrote, “This week’s readings accentuate the idea that leadership is not a trait that only an elite or charismatic few possess....” The tone of his response was right. Leadership, as an art and skill, clearly can be learned and possessed by the masses. Yet, he (and the article he was reading) missed a very important aspect of effective leadership. People like charismatic leaders. They feel inspired by them. The truth, however, is that a negative correlation actually exists between charisma and effective leadership. Charisma can lift a crowd, even an organization, but it cannot sustain it without value-based substance. This may be why Jim Collins, in his extensive research, found that the highest category of effective leaders, what he called Level 5 leaders, were “self-effacing, quiet, reserved, even shy—these leaders are a paradoxical blend of personal humility and professional will.”²

As I reflect on the best leaders I have worked with over the years, this idea begins to jell. The best bosses did not overshadow me. They were poised, not animated. They were optimistic yet never prone to exaggeration. They were perseverant but not egotistical or self-serving. They were ambitious, but they cared more about the organization than their own careers. They gave me credit for a job well done and treated me as a valued member of the team.

Fear not those of you who possess a dynamic and powerful personality. All is not lost. In fact, confidence, decisiveness, enthusiasm, optimism, and the ability to interact with followers are extremely important elements of effective leadership. As with all positive characteristics or behaviors overused, however, they soon become an impediment to everything you wish to accomplish. ♦

Endnotes

¹ M. Weber, *The Theory of Social and Economic Organizations*, Trans. T. Parsons (New York, NY: Free Press, 1947).

² J. Collins, *Good to Great* (New York, NY: Harper Collins Publishers Inc., 2001), 12-13.

Dr. Jeff Green, chief of the FBI Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Bulletin Reports

HIV in Prisons

HIV in Prisons 2005, an annual bulletin from the Bureau of Justice Statistics, provides the number of HIV-infected and confirmed AIDS cases among state and federal prisoners for the year. The report contains the number of AIDS-related deaths in prisons, a profile of those inmates who died, the number of female and male HIV-infected prisoners or those with confirmed AIDS, and a comparison of confirmed AIDS rates for the general and prisoner populations. The document also examines trends in HIV infection, confirmed AIDS, and AIDS-related deaths. The 2005 data, from the National Prisoner Statistics and Deaths in Custody series, reveal that 18,953 males and 1,935 females in state prisons had the HIV infection or confirmed AIDS. During 2005, 176 state inmates died from AIDS-related causes, down from 185 in 2004. Twenty-seven federal prisoners died from AIDS-related causes in 2005, up from 18 in 2004. Access <http://www.ojp.usdoj.gov/bjs/abstract/hivp05.htm> for details about this report (NCJ 218915).

Corrections

The National Institute of Justice presents *Mental Health Screens for Corrections*, which reports on two projects aimed at creating and validating mental health screening instruments that corrections staff can use during intake. The researchers prepared short questionnaires that accurately identify inmates who require mental health interventions. One screen was found to be effective for men and is being adapted for women; the other has effective versions for both men and women. The screening instruments are reproduced in the appendices. This report is available at <http://www.ncjrs.gov/pdffiles1/nij/216152.pdf> or by contacting the National Criminal Justice Reference Service at 800-851-3420 or <http://www.ncjrs.gov>.

Police-Public Contacts

Contacts Between Police and the Public, 2005, a Bureau of Justice Statistics Special Report, presents data on the nature and characteristics of contacts between residents of the United States and the police over a 12-month period. More than 60,000 individuals age 16 or older participated in a nationally representative survey. Detailed findings on face-to-face contacts with police include the reason for and outcome of the contact, resident opinion on police behavior during the contact, and whether police used or threatened to use force during the contact. The document contains demographic characteristics of residents involved in traffic stops and use-of-force incidents and provides comparative analysis with

prior survey findings. Overall, the study found that about 9 out of 10 people who had contact with police in 2005 felt that the police acted properly. Access <http://www.ojp.usdoj.gov/bjs/abstract/cpp05.htm> for details concerning the report (NCJ 215243).

Adolescents and Violence

The National Institute of Justice (NIJ) has released the results of a study that examined the neighborhood conditions, individual characteristics, and family dynamics that can contribute to adolescent violence. This NIJ Research in Brief is titled *Adolescents, Neighborhoods, and Violence: Recent Findings from the Project on Human Development in Chicago Neighborhoods*. This report reveals findings that work to erase misleading stereotypes about race and violence, emphasizing the importance of neighborhood conditions and social processes that can foster adolescent violence. Access <http://www.ojp.usdoj.gov/nij/pubs-sum/217397.htm> for details.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Hall of Honor, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Law Enforcement and Hazmat/ WMD Emergency Response

NFPA 472 as a Tool for Compliance

By ED ALLEN and STEVE PATRICK



The growing threat of terrorists using weapons of mass destruction (WMD), as well as hazardous materials (hazmat) both as weapons and in criminal activities, has significantly altered the traditional philosophies of hazmat emergency response for the law enforcement community. In addition, the development of various tactical and operational procedures to meet the anticipated demands created by these response scenarios has blurred the classical distinction between offensive and

defensive response operations that have constituted the cornerstones of national hazmat operations standards since the 1980s.

First of all, what is the difference between a hazmat and WMD incident? From a health and safety perspective, little disparity exists. Hazardous materials can be any matter (solid, liquid, gas, or energy) that, when released, can harm people, property, or the environment. Weapons of mass destruction, as defined by Title 18 of the U.S. Code, describe the same materials and effects

but in measurable quantities. The difference lies in the events leading to the release: whether it was an accident or done with criminal intent. So, while the events that precede this type of incident may vary, the actions that responders take may very well be the same.

Since September 11, 2001, law enforcement administrators and managers across the country have endeavored to find appropriate guidance and the standards to build their response capabilities for scenarios involving hazmat and WMD

agents. To provide these leaders with information to assist them in assessing their current ability to respond to incidents that may involve hazmat or WMD, the authors present an overview of the recently revised National Fire Protection Association's (NFPA) Technical Standard 472: Professional Competencies of Responders to Hazardous Materials Incidents.¹

TRAINING TOOL

NFPA is a nonregulatory, voluntary, consensus-standards development organization accredited through the American National Standards Institute. As implied by its name, NFPA's origins come from the fire service and private industry. Historically, however, it has a much broader interest in life-safety issues for all emergency responders and related disciplines. NFPA standards are developed through over 200 technical committees, each comprised of representatives from manufacturing, research and testing, regulatory enforcement, users, and special experts. For example, the NFPA 472 Technical Committee has 33 members, including representatives from the FBI Hazardous Materials Response Unit, the National Tactical Officers Association, the National Bomb Squad Commanders, and the U.S. Capitol Police.

Although most law enforcement personnel may view



Lieutenant Allen is the emergency management coordinator and SWAT tactical operations coordinator for the Seminole County, Florida, Sheriff's Office.



Mr. Patrick is the program coordinator for hazardous materials operations within the FBI's Hazardous Materials Response Unit of the Laboratory Division.

NFPA 472 as a "fire service only" standard, its scope specifies minimum competencies for those who will respond to hazmat/WMD incidents, regardless of their agency or response discipline. Since its inception in 1986, NFPA 472 has gone through five revisions, with the last update in 2007.

As part of the recent revision cycle, the 472 Committee focused on two main areas: 1) the blurred distinction between traditional hazmat response and its relationship to the growing hazmat/WMD terrorism response issues and 2) the perception that the current standard does not address the needs of the emergency response community as a whole and is merely a "fire service" document. As a result, a working group formed to review the

previous standard (completed in 2002) and to evaluate opportunities for NFPA 472 to better meet the needs and concerns of all response disciplines. During the recent revision, the working group looked for consensus on major issues. All involved agreed that definitions should be universal and levels of responders should be clearly defined but still allow for mission-specific flexibility. Ultimately, the working group wanted the standard to focus on responders being trained to perform their expected tasks, regardless of their discipline.

Historically, any discussion on hazmat emergency responder training requirements always has focused upon which responder level someone falls into (e.g., awareness, operations, or technician), rather than

addressing the follow-up U.S. Occupational Safety and Health Administration's (OSHA) 1910.120 (q)(6) requirement that "...training shall be based on the duties and function to be performed by each responder of an emergency response organization." The net result is that responders often have received training in areas that clearly do not fall within their concept of operations or response capabilities. A major goal of the NFPA 472 revision process was to facilitate the matching of required skills and competencies with expected duties and tasks. The following summarizes the NFPA 472 proposed changes that potentially can impact law enforcement response operations:

- Emergency response operations to a terrorism or criminal scenario using hazardous materials are based upon the basic concepts of traditional hazmat response. Therefore, personnel cannot safely and effectively respond to a terrorism or criminal scenario involving hazmat/WMD unless they first understand this conventional approach.
- The scope of the standard applies to all emergency employees, regardless of discipline, who may respond to the emergency phase of a hazmat/WMD incident. This has remained consistent

since the standard was first published in 1988.

- Emergency responders, regardless of their discipline and organizational affiliation, should be trained to perform their expected tasks.

National standardized competencies ensure that officers receive training in the most current, widely accepted best practices in the hazmat/WMD arena.

- Personnel not directly involved in providing on-scene emergency response services (e.g., hospital first receivers) are not covered under the scope of this standard but in NFPA Standard 473: Competence of EMS Responders Responding to Hazardous Materials/Weapons of Mass Destruction Incidents.

TERMS DEFINED

A variety of terms have been used in recent years to

describe terrorism agents and the criminal use of hazardous materials. The 472 Committee chose to define hazardous materials as "matter (solid, liquid, or gas) that when released is capable of creating harm to people, the environment, and property. This includes weapons of mass destruction (WMD), as defined in 18 U.S. Code Section 2332A, as well as other criminal use of hazardous materials, such as drug labs, environmental crimes, or industrial sabotage."

Awareness-Level Personnel

"Persons who, in the course of their normal duties, could be the first on the scene of an emergency involving a hazmat/WMD and who are expected to recognize the presence of hazmat/WMD, protect themselves, call for trained personnel, and secure the area" constitutes the 472 Committee's definition of awareness-level personnel. One significant change involved dropping the term *responder* from this level because these individuals typically are not emergency responders. Examples of awareness-level personnel include plant security, public works, and facility maintenance personnel, as well as those employees who require OSHA Hazard Communications (OSHA 1910.1200) training.

Historically, many have viewed law enforcement officers as awareness-level responders who would recognize a hazardous materials release from a safe distance and then activate the local emergency response plan. Today, however, with the threat of terrorism and the growing trend of illicit drug labs, officers must do far more than observe from a safe distance. In addition, many law enforcement agencies are providing their officers with both skin and respiratory protection due to potential WMD threats. As a result, many sworn personnel now are expected to perform tasks that go beyond the traditional awareness-level responder.

Operations-Level Responder

The most substantial changes that will influence the law enforcement community pertain to the operations-level responder. If individuals are tasked to respond to the scene of a hazmat/WMD incident during the emergency phase, they now are viewed as operations-level personnel. This category includes members of fire rescue, law enforcement, emergency medical services, private industry, and other allied professions.

To better address the issue of matching requisite skills and competencies with expected duties at the operations level, the

472 Committee proposed breaking the operations-level competencies into two categories: core and mission specific. Core competencies would be required of all emergency responders tasked to respond to a hazmat/WMD incident. However, these do not include any product control, personal protective clothing, or equipment competencies and allow for performing only emergency decontamination. While some additional requirements pertaining to initial incident analysis clearly exist, these new proposed core competencies are not significantly greater than the historical awareness ones.

In contrast, the optional mission-specific competencies would enable the authority having jurisdiction (AHJ) to match

the expected tasks and duties of its personnel with the required competencies. Because these competencies are not mandated, the AHJ should view them as optional based upon an assessment of local risks. The 472 Committee proposed mission-specific competencies for wearing personal protective equipment, as provided by the AHJ; for performing technical and mass decontaminations, product control, air monitoring and sampling, victim rescue and recovery operations, and evidence preservation and sampling; and for responding to illicit laboratory incidents.

This shift to operations-level core and mission-specific competencies more accurately describes the tasks currently



performed by law enforcement personnel in light of current threats. Most patrol officers would receive training in the core competencies, whereas specialized operations, including SWAT, explosive ordnance disposal, mobile field force, and forensic units with a higher probability of hazmat/WMD exposure, would be trained in those mission-specific competencies based upon their concept of operations and expected duties.

To ensure the safety of personnel performing mission-specific competencies, the 472 Committee also proposed that the optional mission-specific competencies be performed under the guidance of a hazardous materials technician, allied professional (e.g., certified industrial hygienist or subject-matter expert as determined by the AHJ), or standard operating procedure.

Hazardous Materials Technician

While the 472 Committee made no significant changes to hazardous materials technician (HMT) competencies, it modified the definition of a hazardous materials response team to specifically point out that such an entity perform HMT-level skills and be staffed with personnel trained to the HMT level. Given that hazmat entry units are a typed resource under the National Incident Management

System, the 472 Committee believed that this would ensure consistency in operational capabilities.

CONCLUSION

Currently, many standards-development organizations are working on issues relative to the emergency response to incidents involving hazardous materials and weapons of mass destruction. The National Institute of Justice has revitalized

The most substantial changes that will influence the law enforcement community pertain to the operations-level responder.

its Law Enforcement Personal Protective Equipment Technical Working Group and currently is collaborating with the National Fire Protection Association to improve protective clothing and equipment standards that directly impact law enforcement emergency responders. National standardized competencies ensure that officers receive training in the most current, widely accepted best practices in the hazmat/WMD arena. They also help ensure that when

operations-level law enforcement officers and hazardous material technicians are on scene, they can speak the same language, conduct concurrent hazard and risk assessments, prioritize tactical goals, and support each other in carrying them out. In addition, uniformity between special operations disciplines that deploy with units outside their region proves critical in supporting the National Response Plan.

The revisions to NFPA 472 are a step in the right direction. It demonstrates that all involved disciplines can work together to help improve responder safety for everyone. The law enforcement community has many challenges ahead, including recognizing that it has taken a quantum leap in its role during hazmat/WMD incidents. To have an effective hazmat/WMD response capability, agencies must demonstrate that they are leveraging the knowledge and experience of other responders who have done this before. Most important, the law enforcement profession must actively participate in the standards-development process in the future. Such actions can enhance the safety of all responders and ensure the protection of all Americans. ♦

Endnotes

¹ Additional information on the NFPA 472 revision process can be found at the NFPA Web site, www.nfpa.org.

Law Enforcement **The Most Honorable Profession**

By Gregory P. Rothaus

It is truly an honor and a privilege for me to speak to the graduates of the police academy. This undoubtedly is one of the most important days in their lives, and it is a tremendous experience for me to take part in it. Some of my remarks today are designed for those in the audience who are not in the law enforcement profession. For the family, friends, and loved ones here to watch this graduation, I would like to impart a sense of reality of what policing is all about. I will share some things about our profession that, maybe, no one has ever told you or some aspects about it that you may not have thought of. There are things to know about our profession that television and the media never can capture. For the graduates, I have some career advice from a respected field training officer currently working for the sheriff. And, I have some advice from a local chief—me.

Honors of the Profession

The graduates have chosen to work in what I firmly believe is the most honorable profession in the world—law enforcement. Every day that police officers go to work, they do so not yet knowing what that day holds. Their tour of duty can be quiet and relatively uneventful, or it can bring forth a crisis where lives literally depend on officers' abilities to think clearly, put themselves in harm's way, and then make instantaneous, competent decisions.

Television provides some good police-related entertainment. It can show the excitement, drama, and even humor that we find in our business. But, TV never can show the feelings inside a police officer who has just apprehended someone with the gall to prey on others or the feelings of a deputy

who has just saved someone's life. The excitement and pride they feel from having done great things are real; it's not TV. And, although the "high" from doing great things can wane a bit over time, the impact of what they do is forever. They have intervened and changed the course of events in a way that never can be undone. The positive impact of their work often will last a lifetime, and, then, they will go to their next call where they just might do it all over again. That is the reality of policing, and I can think of nothing better.

The media also can give people a perception of what policing is all about and what police officers are really like. Because good news rarely sells, what we see often is not pleasant. We will see the negative stories that, in reality, are isolated incidents and not at all representative of our profession. I want to say a couple important things about that. First, when considered in their totality, these incidents are extremely rare and no individual or group is more upset about them than the men and women in law enforcement. Second, despite the efforts by some, these incidents never will define us. As a profession, we are defined by the courage,

Chief Rothaus heads the San Carlos, California, Police Department. He delivered this speech to graduates of the police academy at the College of San Mateo in California.

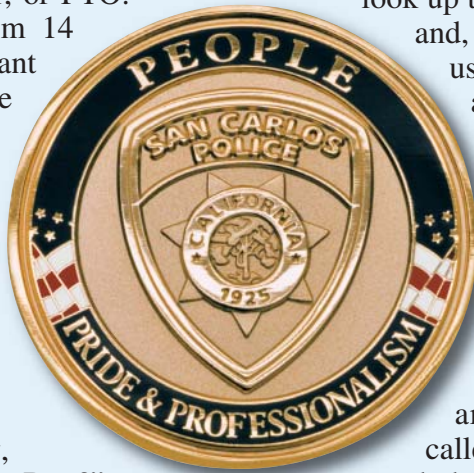


sacrifice, and commitment of the vast majority of officers who go to work each day and do their best under what often are difficult circumstances. The graduates on stage, as well as the officers seated around them, are willing to run into situations that most people will run away from. They will risk their lives for people they do not even know, and it is these traits that define them, not the isolated incidents reported in the media.

As you know, your training does not end today. When you arrive at your department, you will be assigned a field training officer, or FTO.

You will spend anywhere from 14 to 16 weeks with this important person, and I have some advice passed on to me by a seasoned FTO. Keep in mind, most FTOs probably are a bit older than you and from a different generation, so you have to be sensitive to that. These are the top five things not to say to your FTO.

- As you get into the car with your FTO, do not say, “Hey, where should I put my Game Boy?”
- Once you are behind the wheel, do not wonder out loud, “I sure hope these airbags work...”
- Do not stand in front of your FTO and say, “Do you want to see how fast I can draw my weapon?”
- I do not even know who your FTO is going to be, but I can tell you definitely not to ask, “Mind if I chew?” Whoever it is, they mind!
- If your FTO lets you listen to FM radio, do not reach for the station selector while simultaneously saying, “Dude, you down with 50 Cent?” Not only is your FTO not down with 50 Cent, he or she probably does not even know what you are talking about.



Critical Values

Now, I will give you more serious and chiefly advice. I have found in my career that sometimes the simplest advice is the best. We have an easier time remembering it and applying it. So, my advice is simple: if you follow these three critical values, I promise that you will have an enormously successful career.

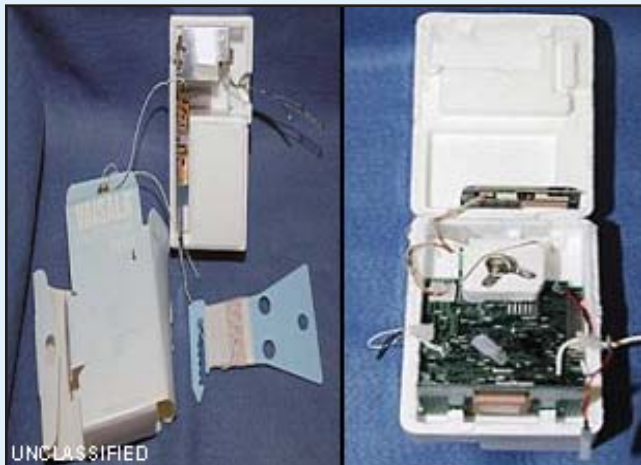
The first value is people. Policing is a people business. Almost everything we do involves people. There are people who need us; people who

look up to us; people who are afraid of us; and, yes, even people who run from us. But, they all are people, and they all should be treated with respect, compassion, and, when appropriate, accountability. They all should be treated like you would want a family member treated. Remember, although it may be your 300th burglary investigation, it is the first time someone ever broke into their home. They are upset and scared, and they called *you*. Make that case important, and please do not let them down.

The second value is professionalism. If I ask any 10 members of this audience what the concept of professionalism looks like in a law enforcement officer, I bet the answers I receive will be very similar. We want our officers to be honest, ethical, and courageous. Because laws and policies change often, we want them to be lifetime students and stay well-read and well-versed on law, policy, and tactics. We want our officers to be caring and compassionate, and we want to know that what just happened to us matters to them. When we first see them arrive at a scene, we want to see signs of command presence and confidence in the way they carry themselves. In short, the public wants to believe that they are safe with you, and it is the concept of professionalism that gives them that

Bulletin Alert

Mistaking Weather Balloon Components for Explosive Devices



Civilians and law enforcement officers—including first responders—sometimes misidentify the expended electronics and communications components of National Weather Service (NWS) weather balloons as suspicious or possible explosive devices. The components, called radiosondes, are harmless. The Department of Homeland Security and the FBI have no intelligence indicating that terrorists intend to use radiosondes as bomb components or as disguises for bombs.

False Alarms

The NWS launches approximately 75,000 weather balloons each year, the majority of which never are recovered. When a balloon bursts at high altitude, as designed, the radiosonde is released to return to earth, slowed by a small parachute. Radiosondes carry NWS markings and instructions to finders on how to mail them to NWS. About 20 percent of expended radiosondes are returned each year. In several cases, individuals discovering radiosondes have misidentified them as explosives, resulting in costly security responses and population anxiety.

- On May 1, 2007, a truck driver spotted a suspicious item, which had wires and batteries protruding, on top of a cargo container at the South Carolina State Ports Authority's terminal. Officials blocked access to parts of the port for 2 hours while investigating the device, finally determining that it was a radiosonde.¹
- A U.S. Postal Service clerk observed a suspicious item inside a collection box on December 7, 2006, in Tavernier, Florida. The clerk initially feared the item was some type of explosive device. The Monroe County Sheriff's Office bomb squad disrupted the item before identifying it as a radiosonde.²
- The Massachusetts State Police bomb squad investigated a report of a suspicious package on a road in Upton on August 2, 2002. They blocked a 1-mile section of the road for 90 minutes as the bomb squad examined the package, which contained batteries and wiring, and determined that the package was part of a weather balloon.³

Recommendations

DHS and the FBI have no intelligence on terrorist knowledge of or intent to use radiosonde components in explosive devices or to disguise explosive devices as radiosondes. Nonetheless, in the interest of safety, first responders and law enforcement officers should take all standard precautions relating to the handling of potential explosives when responding to what—upon full investigation—may turn out to be a harmless radiosonde. Training and familiarity with these components may enable authorities to expedite the identification of radiosondes as weather devices and preclude responders from reporting them as suspicious packages. Awareness of the appearance and components of radiosondes can help resolve an incident more quickly with less law enforcement and media attention.

For additional information on weather balloons and their radiosonde components, contact the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Public and Constituent Affairs, Washington, D.C. 20230. Or, visit a local NWS office, or access <http://www.ua.nws.noaa.gov>.

Suspicious Activities

Recipients should immediately report suspicious or criminal activities potentially related to terrorism to their local FBI Joint Terrorism Task Force and the DHS National Operations Center

(NOC). FBI regional phone numbers are online at <http://www.fbi.gov/contact/fo/fo.htm>. The NOC can be reached via telephone at 202-282-8101 or by e-mail at HSCenter@dhs.gov. ♦

Endnotes

¹ Peter Hull, "Weather Device Causes Bomb Scare," *The Post and Courier*, http://www.charleston.net/news/2007/may/04/weather_device_causes_bomb_scare/.

² FBI Miami Division electronic communication, "Suspicious Package, US Post Box, Tavernier, Florida," December 7, 2006.

³ "Weather Balloon Spurs Bomb Scare," *The Boston Herald*, August 3, 2002.

FBI Law Enforcement Bulletin Author Guidelines

Length: Manuscripts should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced) for feature articles and 1,200 to 2,000 words (5 to 8 pages, double-spaced) for specialized departments, such as Police Practice.

Format: Authors should submit three copies of their articles typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered, along with an electronic version saved on computer disk, or e-mail them.

Criteria: The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. It generally does not publish articles on similar topics within a 12-month period or accept those previously published or currently under consideration by other magazines. Because

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Submit to: Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Hall of Honor, Quantico, VA 22135; telephone: 703-632-1952; fax: 703-632-1968; e-mail: leb@fbiacademy.edu.

Pregnancy Discrimination Act

Guarantee of Equal Treatment, Not Preferential Treatment

By LISA A. BAKER, J.D.

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“Lieutenant, I have some exciting news, and I wanted to let you know first before word spread through the department; my husband and I are expecting our first child.” “Congratulations, Officer Smith, that is exciting news. We’ll have to talk at some point about how you want to handle

your work responsibilities.” “Well, Lieutenant, I was hoping that as the pregnancy proceeds, I could go on light duty.” The preceding dialogue illustrates a common personnel issue that arises in law enforcement agencies more so today than ever before. How should the law enforcement manager handle this situation? Should

the manager immediately take action to minimize the risk to the mother and unborn child? Is there a legal entitlement to such a response? Is there a legal entitlement to a light-duty assignment because of pregnancy? This article addresses the minimum that is legally required of an employer facing a situation involving a pregnant

employee. It also discusses what is not legally required, clarifying possible perceptions of preferential treatment when dealing with pregnancy and pregnancy-related conditions.

The condition of pregnancy presents a unique challenge within the context of discrimination. Title VII of the Civil Rights Act of 1964 (hereafter Title VII) includes sex within its protected characteristics.¹ While Congress specifically included sex within the scope of Title VII, uncertainty initially existed as to whether pregnancy fell within its coverage. In 1975, early guidance from the Equal Employment Opportunity Commission (EEOC) suggested that pregnancy and other pregnancy-related conditions were to be included within Title VII's coverage.² However, this was short-lived because the U.S. Supreme Court was about to rule in what became a controversial decision in which the Court concluded that pregnancy discrimination was not discrimination based on sex.

In 1976, the Supreme Court addressed the scope of the prohibition against discrimination on the basis of sex and whether pregnancy and pregnancy-related conditions fell within its parameters in *General Electric Co. v. Gilbert*.³ In *Gilbert*, the employer's benefits program was alleged to be discriminatory in violation of Title VII as it

excluded pregnancy and pregnancy-related conditions from its coverage while including other nonoccupational illnesses and accidents. Females alleged that the practice of offering unequal benefits based on pregnancy amounted to discrimination in violation of Title VII.⁴ The Supreme Court ruled against the class of females, concluding that the employer's treatment of pregnancy was not genderbased but, rather, constituted different treatment between those who are pregnant and nonpregnant, regardless of sex. The fact that only women could become pregnant did not support a conclusion that the different treatment was genderbased.⁵

In response to the *Gilbert* decision, Congress amended Title VII by passing the Pregnancy Discrimination Act of 1978.⁶

In this Act, Congress amended Title VII to provide that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work."⁷

Guarantee of Equal, Not Special, Treatment

The mandate of the Pregnancy Discrimination Act is consistently interpreted as requiring equal treatment as opposed to special or preferential treatment. As described by one federal circuit court:

[T]he Pregnancy Discrimination Act does not require preferential treatment for pregnant employees. Rather, it mandates that employers

“

The condition of pregnancy presents a unique challenge within the context of discrimination.

”



Special Agent Baker is chief of the Legal Instruction Unit at the FBI Academy.

treat pregnant employees *the same* as nonpregnant employees who are similarly situated with respect to their ability to work [emphasis supplied].⁸

For example, in *Tysinger v. Police Department of the City of Zanesville*,⁹ Officer Teresa Tysinger, an 8-year veteran police officer with the Zanesville Police Department, alleged unlawful pregnancy discrimination after her department refused to assign her to a light-duty assignment that she sought on account of her pregnancy. After discovering that she was pregnant, she expressed concern to her employer that some of her duties, such as dealing with suspects and pushing vehicles, might place her unborn child in danger. At that time, she discussed possible alternative work assignments with her employer, but no further action was taken.¹⁰ Approximately 1 month after disclosing that she was pregnant, she was involved in an altercation with a suspect. This prompted her doctor to write a letter to her employer requesting work restrictions, including a request that she be placed on light duty during the remainder of her pregnancy. The officer presented this letter to the chief who informed her that, consistent with a citywide policy of no light duty, there was no light-duty assignment within the department and that

she would have to be off work until after her pregnancy and able to return to full duty.¹¹

Officer Tysinger's leave of absence began in September 2000, continued until she returned to work in June 2001, and consisted of both paid and unpaid leave. In conjunction with her return to work, she brought an action against the city of Zanesville, alleging unlawful sex discrimination

“

...the right to take time off for the purpose of caring for a newborn or the adoption of a child is not just maternal but also belongs to the father.

”

in violation of Title VII when it failed to accommodate her pregnancy by reassigning her to another position that she could perform, despite the fact that it had made such accommodations in the past for both pregnant and nonpregnant employees.

In support of her claim, she provided two comparables in an effort to establish that she had been treated differently from other officers who were similarly situated. The court

concluded that her examples failed to support her claim as the officers were not granted more favorable treatment. In the cases that she alleged proved discrimination, both officers continued performing their normal duties despite suffering from some type of physical injury. Neither officer had received an accommodation of light nor restricted duty. As stated by the court:

Despite their temporary infirmities, they presented themselves to their employer as willing and able to continue working in their normal capacities. Tysinger, on the other hand, distinguished herself by asserting the need for and requesting a temporary alteration in her job duties. In this respect, she sought from her employer not the same or equal treatment...but *more favorable* treatment (emphasis supplied).¹²

The sensitivity of Officer Tysinger's situation was not discounted by the court. As stated by the court, “Tysinger is not to be faulted for asserting her physician-prescribed need for light duty.”¹³ While other officers might have assumed the risk that they could perform their duties despite a physical limitation, Officer Tysinger had to take into account the health and well-being of her unborn child.

The court went on to state:

This interest undeniably deserved and arguably even demanded *her* preferential treatment. However, the law, rightly or wrongly, does not extend this preferential obligation to the employer. A pregnant employee's employer is required only to afford equal treatment, not preferential treatment.¹⁴

Consistent with the mandate of equal, not special, treatment is the principle that employer decisions motivated by paternalistic notions of pregnancy and benevolence also violate the Pregnancy Discrimination Act. For example, in the dialogue introducing this topic at the beginning of the article, the agency's decision to immediately transfer the officer to an assignment that is less demanding and risky out of a sense of duty to protect the officer's unborn child would violate the Pregnancy Discrimination Act.¹⁵

Light Duty for On-the-Job Injuries

While the Pregnancy Discrimination Act does not require an employer to adopt a light-duty program, it may impact how it is managed. One issue that arises is whether a light-duty program that only offers light-duty assignments to those injured on the job violates the Pregnancy Discrimination Act. Courts that have addressed this



issue have reached conflicting results. The majority of courts that have addressed this issue have concluded that because the policy does not deny light duty due to pregnancy but, rather, how the disabling condition occurred, it is not unlawful pregnancy discrimination to offer light duty for on-the-job injuries only.¹⁶ In reaching this conclusion, one court commented that "[the employer] treated [the employee] the same as it treats any other worker who suffered an injury off duty."¹⁷

A different result was reached by the Sixth Circuit Court of Appeals in *Ensley-Gaines v. Runyon*.¹⁸ In this case, a U.S. Postal Service policy of granting limited duty assignments to occupational injuries only and light duty to any other employee was challenged by a pregnant employee. The employee argued that because limited-duty assignments were

entitlements, while light duty was solely within the discretion of management based on work needs, the policy amounted to unlawful discrimination as she was denied a work benefit due to her pregnancy.¹⁹ The Sixth Circuit concluded that the employee had met her burden of proof, establishing a prima facie case of unlawful discrimination as the employer's policy treated pregnant employees differently from employees injured on the job. The Sixth Circuit reasoned that the Pregnancy Discrimination Act requires employers to treat pregnant employees the same as those similarly situated in their ability or inability to do their job.²⁰ Once established that the employees are similar in their ability or inability to do their job, the employer may not treat the nonpregnant employee more favorably than the pregnant employee.

Conditions Covered by the Pregnancy Discrimination Act

The protection against discrimination on the basis of pregnancy includes within its scope “women affected by pregnancy, childbirth, or related medical conditions.”²¹ For example, the Pregnancy Discrimination Act protection extends to potential pregnancy. A woman cannot be discriminated against on account of her prior use of maternity leave and the fact that she may become pregnant again.²² The protections afforded are limited, however, in the sense that they guarantee only equal treatment, not special treatment. For example, the decision to terminate an employee due to excessive absences, even if caused by pregnancy, is not a violation of the Pregnancy Discrimination Act provided similarly situated nonpregnant employees would have their use of leave scrutinized in a similar manner and suffer similar adverse consequences.²³

Other aspects of maternal care have been determined to fall outside the scope of pregnancy-related conditions, including breast-feeding and time in which to pump breast milk at work. In *McNil v. New York City Department of Correction*,²⁴ a correction officer alleged unlawful discrimination after she was denied certain discretionary benefits due to being placed on a chronic absence list with her

employer. The officer was determined to be medically disabled due to pregnancy and childbirth for a period of approximately 9 months. She was then determined to be fit for duty by her doctor. However, she continued to be absent from work for a period of 5 months to breast-feed her child. This resulted in her being placed on the chronic absence list and suffering adverse consequences as a result.

“

A woman cannot be discriminated against on account of her prior use of maternity leave and the fact that she may become pregnant again.

”

Once she learned of her status on this list, she challenged the employer’s position, arguing that due to the special medical needs of her infant, she was medically required to breast-feed her son and thus, the action taken against her violated the Pregnancy Discrimination Act.²⁵ The court held that her termination did not violate the statute because her desire to breast-feed her infant fell outside the scope of “pregnancy, childbirth

or [a] related medical condition.” The court determined that decisions relating to breast-feeding and weaning a child are decisions about child rearing as opposed to conditions that directly relate to pregnancy and childbirth and, thus, are not within the scope of protections afforded by the Pregnancy Discrimination Act.²⁶

Along similar lines, courts that have addressed the issue of a mother’s right to pump breast milk in the workplace have ruled that an employer is not legally obligated under the Pregnancy Discrimination Act or any other federal statute to provide time or space for an employee to pump breast milk.²⁷ For example, in *Martinez v. N. B.C., Inc.*,²⁸ an employee had received permission to go to an empty room and pump her breast milk three times a day for about 20 minutes each. She was able to lock the door; however, on several occasions, she was interrupted when people tried to get into the room. She thereafter demanded a special room free from interruption. This request was denied by her employer. Ultimately, she resigned from the company when she refused a change in assignment, citing child-care needs. She later sued, alleging a variety of discriminatory violations by her former employer, including a violation of the Americans with Disabilities Act

(ADA) on account of the failure to accommodate her condition, as well as a violation of Title VII.

With respect to the ADA claim, the court rejected her argument that her employer had a duty to accommodate her condition and provide her with a secure, sanitary location to pump breast milk, citing a long line of cases that, absent unusual circumstances, pregnancy and pregnancy-related conditions are not disabilities within the meaning of the ADA.²⁹

With regard to Title VII, the court disagreed with the former employee's claim that she was unlawfully discriminated against on the basis of her gender and her desire to engage in an activity unique to her gender. The court rejected her argument that she was subjected to unfavorable treatment on account of her gender simply because she was adversely impacted by her employer on account of her desire to engage in an activity unique to women. The court observed that "if there is no comparable subclass of members of the opposite gender, the requisite comparison to the opposite gender is impossible."³⁰ Accordingly, the former employee cannot claim that she was treated unfairly as opposed to similarly situated men as any



such comparison is inherently impossible.

Benefits Programs

Consistent with the mandate of equal but not preferential or special treatment, employer-benefit programs must treat the condition of pregnancy, childbirth, or related medical conditions the same as disabilities caused by other medical conditions. For example, any health insurance provided by an employer must cover the expenses associated with pregnancy on the same terms as other medical conditions. If benefits, such as accrual of seniority, vacation calculation, or pay increases, are provided to workers on leave for nonpregnancy-related disabilities, they must be given on the same terms and conditions for those on leave as a result of pregnancy or pregnancy-related conditions.³¹

Limited Preference and the Family Medical Leave Act

While a complete discussion of the Family Medical Leave Act (FMLA) is beyond the scope of this article, any discussion of pregnancy and pregnancy-related conditions should address provisions of the FMLA that relate to the care of a newborn.³² The FMLA entitles eligible employees to a minimum of unpaid leave (or paid leave if available) during any 12 weeks during any 12-month period on account of the birth of a child. Eligible employees are individuals who have been employed for at least 1 year by the employer and who have provided at least 1,250 hours of service during the previous 12-month period.³³ Eligible employees are entitled to take off up to 12 weeks following the arrival of a newborn or the adoption of a child and retain

their position with their employer. The form in which this leave is taken depends on the employee and the employer's leave policies. Employees may elect to use accrued, personal, or sick leave for any or all of the 12-week period covered by the FMLA, or employers may require them to do so.³⁴ The mandate of the FMLA is not to require employers to provide additional leave but, rather, to recognize the right to be absent from work for covered conditions or family needs. Additionally, the right to take time off for the purpose of caring for a newborn or the adoption of a child is not just maternal but also belongs to the father.

Conclusion

Because of the special physical demands placed on officers and the possibility of a violent confrontation at any time during the workday, law enforcement employers are faced with a complex situation when an officer announces that she is pregnant. The needs of law enforcement employers and their employees are unique. Understanding what the law requires and, equally important, what it does not require is critical when faced with these situations. ♦

Endnotes

¹ See 42 U.S.C. § 2000(e)-2(a)(1) (2000), prohibiting an employer from "discriminat[ing] against any individual with respect to his compensation, terms,

conditions, or privileges of employment, because of such individual's...sex....

² 29 C.F.R. § 1604.10(b) (1975).

³ 429 U.S. 125 (1976).

⁴ *Id.* at 128.

⁵ *Id.* at 136.

⁶ 42 U.S.C. § 2000e(k). See *Newport News Shipbuilding and Dry Dock Co. v. EEOC* 462 U.S. 669, 678 (1983) (The Pregnancy Discrimination Act was a direct result of Congress' "disapproval of both the holding and reasoning of the Court in the *Gilbert* decision).

⁷ 42 U.S.C. § 2000e(k).

⁸ *Tysinger v. Police Department of the City of Zanesville*, 463 F.3d 569, 575 (6th Cir. 2006), citing *Ensley-Gaines v. Runyon*, 100 F.3d 1220 (6th Cir. 1996); *Reeves v. Swift Transportation Co., Inc.*, 446 F.3d 637 (6th Cir. 2006) (rejecting the notion that light duty is required under the Pregnancy Discrimination Act).

⁹ 463 F.3d 569 (6th Cir. 2006).

¹⁰ *Id.* at 571.

¹¹ *Id.*

¹² *Id.* at 574.

¹³ *Supra* note 2.

¹⁴ *Supra* note 9 at 575.

¹⁵ *Zuniga v. Kleberg County Hospital*, 692 F.2d 986 (5th Cir. 1982).

¹⁶ See *Urbano v. Continental Airlines, Inc.*, 138 F.3d 204 (5th Cir. 1998); *Troupe v. May Department Stores, Co.*, 20 F.3d 734 (7th Cir. 1994); *Rhett v. Carnegie Center Associates*, 129 F.3d 290 (3rd Cir. 1997).

¹⁷ *Urbano* at 208.

¹⁸ 100 F.3d 1220 (6th Cir. 1996).

¹⁹ *Urbano* at 207.

²⁰ *Supra* note 18 at 1226.

²¹ 42 U.S.C. § 2000(e)-2(a)(1).

²² *Walsh v. National Computer Systems*, 332 F.3d 1150 (8th Cir. 2003).

²³ *Stout v. Baxter Healthcare Corporation*, 282 F.3d 856 (5th Cir. 2002); *Marafino v. St. Louis County Circuit Court*, 707 F.2d 1005 (8th Cir. 1983) (decision to not hire a pregnant applicant due to the fact that she would be on leave immediately upon starting the job did not violate the Pregnancy Discrimination Act

as employer demonstrated that it would not have hired any applicant, pregnant or not, who would have to be on leave immediately); *Marshall v. American Hospital Association*, 157 F.3d 520 (7th Cir. 1998).

²⁴ 950 F. Supp. 564 (S.D.N.Y. 1996).

²⁵ *Id.* at 567.

²⁶ See also *Wallace v. Pyro Mining Company*, 789 F. Supp. 867 (W.D. Ky. 1990), *aff'd* 951 F.2d 351 (6th Cir. 1991) (employer's decision to not extend employee's leave of absence to breast-feed her child did not violate the Pregnancy Discrimination Act, stating, "[w]hile breast-feeding, like pregnancy, is a uniquely female attribute, excluding breast-feeding from those circumstances for which [the employer] will grant personal leave is not impermissible gender-based discrimination...."), quoted in *Martinez v. N.B.C., Inc.*, 49 F. Supp. 2d 305, 309 (S.D.N.Y. 1999).

²⁷ Many states have enacted legislation to offer protections to mothers returning to work to enable them to pump breast milk in the workplace. See, for example, Cal. Lab. Code § 1030 (West 2001); 820 Ill. Comp. Stat. 260/10 (2001).

²⁸ 49 F. Supp. 2d 305 (S.D.N.Y. 1999).

²⁹ *Id.* at 309.

³⁰ *Id.*

³¹ 29 C.F.R. § 1604.10.

³² For a comprehensive discussion of the scope of the rights and protections afforded eligible employees under the FMLA, see Richard Schott, "The Family Medical Leave Act: Impact on the Law Enforcement Employer," *FBI Law Enforcement Bulletin*, January 2006, 25-32.

³³ 29 U.S.C. § 2611.

³⁴ *Birdwell v. City of Gadsden*, 970 F.2d 802 (11th Cir. 1992).

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

The Bulletin Notes

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



Officer Gourley

One afternoon, Officer Bruce Gourley, Jr., of the Cordele, Georgia, Police Department responded to a call of a vicious animal. Upon arrival, he found a dog biting at four small children on a trampoline. The animal was too close to them for him to safely use any type of weapon. Quickly, Officer Gourley approached the trampoline, and a young girl jumped into his arms. As he carried her to safety, the dog bit her in-line skate. While other responding officers moved the girl to a safe location, Officer Gourley grabbed the animal around the neck with his bare hands and wrestled it to the ground, holding it for several minutes while the other officers moved the remaining children to safety and animal-control personnel arrived. No one was injured in the incident.



Officer Bradshaw

Officer Chuck Bradshaw of the Belmont, California, Police Department responded to a call of smoke coming from an occupied automobile. He arrived on the scene with three other officers. Without hesitation, Officer Bradshaw entered the broken rear window of the car, which was filled with smoke and fire, pulled the unconscious victim out of the rear window, and passed him to another officer. The victim was taken to a safe location where he received treatment for life-threatening injuries. Officer Bradshaw was treated for smoke inhalation.



Detective Spradling

Detective Ernest Spradling of the Schertz, Texas, Police Department observed a dump truck stalled on railroad tracks. A train was fast approaching. Without regard for his own safety, Detective Spradling ran to the truck and pulled the elderly driver to safety, just seconds before impact. The individual later claimed that he did not hear or see the train coming.

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, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.

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Patch Call



The patch of the St. Marys, West Virginia, Police Department is designed in memory of the September 11, 2001 attacks. The sky blue background symbolizes where the attacks originated; the flag represents this great country; the eagle depicts the rights and freedoms that police officers protect every day; and the date honors those who made the ultimate sacrifice.



Topsham, Maine, was incorporated as a town in 1764 and derived its name from English settlers from Topsham, England. The patch of its police department features the Native American leader Chief Pejepscot.