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Child Fatality Review Boards



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FBI Law Enforcement Bulletin

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Evidence-Based Decisions on Police Pursuits The Officer's Perspective

By DAVID P. SCHULTZ, ED HUDAK, and GEOFFREY P. ALPERT, Ph.D.

“**P**erhaps the most compelling, ongoing, and logical reason for law enforcement’s continued interest in high-speed vehicle pursuits has been its concern in balancing the values of crime control and offender apprehension with ensuring the safety of all parties who potentially might be involved—police

officers, suspects, victims, bystanders, and the community.”¹ This balancing test has formed the cornerstone of pursuit policies, training, and practice for the past several decades.

Police pursuit records provide some frightening statistics. First, the majority of police pursuits involve a stop for a traffic violation.

Second, one person dies every day as a result of a police pursuit. On average, from 1994 through 1998, one law enforcement officer was killed every 11 weeks in a pursuit, and 1 percent of all U.S. law enforcement officers who died in the line of duty lost their lives in vehicle pursuits. Innocent third



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parties who just happened to be in the way constitute 42 percent of persons killed or injured in police pursuits. Further, 1 out of every 100 high-speed pursuits results in a fatality.²

Within the context of these horrific statistics, officers are charged with protecting public safety, which often requires serious personal and social risks. Although empirical evidence is scant, each study conducted on police pursuits enhances the available knowledge. That is the main purpose of the authors' research, along with providing policy makers and trainers another tool to assist them in formulating evidence-based decisions.³

Dynamics of Pursuits

Obviously, the goal of the officer is to apprehend and

arrest the suspect. While the officer originates an enforcement stop, the suspect, if he flees, initiates a pursuit.⁴ When this occurs, the officer must respond to the suspect—who has no rules—with a balanced and reasonable approach to apprehend him. Accordingly, the officer must become aware of personal capabilities and take into account environmental conditions that may affect his ability to accomplish the overall mission of the police, to protect lives. The officer must factor into the decision-making process the risk created by the suspect's driving, the potential actions of innocent bystanders and others who may become involved, and the influence of his actions on the suspect's driving. In addition, the officer must consider the likelihood of apprehension in the decision to continue a

chase. In other words, the officer must balance the goals of law enforcement with the public's safety.

The officer must understand that when a suspect refuses to stop for the emergency lights and siren, a common encounter turns quickly into a high-risk and dangerous event where the "show of authority" may negatively affect the suspect's driving. If the suspect continues or increases his reckless operation of the vehicle, the officer, basing his reaction on policy and training, must respond to the potential benefit and risk of the pursuit and also understand the influence of the chase on the participants. The need to "win" and make that arrest can be influenced by the adrenaline rush felt by the officer who also must recognize that the fleeing suspect will have the same

experience. Because research has demonstrated the impact of this on an officer's vision, hearing, motor skills, and decision making, it would appear necessary to prepare for the same adverse affect it could have on fleeing suspects.⁵ Clearly, a pursuit is an exciting event and involves one person running to escape and another chasing to catch. One important challenge for the officer is that there are only limited ways to get the suspect to stop, including a tire deflation device, a precision immobilization technique (PIT) maneuver at proper speeds and locations, or an application of deadly force.⁶

The dynamics of most pursuits include the fleeing suspect raising risks to the welfare of the officer, the public, and himself by not stopping and then driving recklessly. The fleeing suspect is attempting to escape the consequences of his actions and avoid being taken into custody. Most pursuits are for minor offenses, and whether those fleeing suspects have committed a serious crime is pure speculation.⁷ In addition, research has shown that if the police refrain from chasing all offenders or terminate their pursuits, no significant increase in the number of suspects who flee would occur.⁸

One of the dilemmas faced by law enforcement is whether or not to continue a chase.

Stated differently, the question is, What are the consequences of continuing or terminating a dangerous pursuit? Most policies include the balanced and reasonable approach and require officers to terminate when the risks created by the chase outweigh the need to immediately apprehend. It is understood that when an officer terminates his active involvement in a pursuit,

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The fleeing suspect is attempting to escape the consequences of his actions and avoid being taken into custody.

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the suspect likely will escape apprehension at that time. Many progressive policies instruct officers who terminate a chase to stop, pull over, radio their position, and drive away from the suspect to signal that the officer has given up and the suspect has “won.” The point of this tactic is to notify dispatch of the termination and to inform the suspect that he can slow down and drive safely without constantly looking in his mirrors. The question is, When will the suspect slow and his driving

become safe? Without a doubt, the reckless actions of the fleeing suspect can create a dangerous situation for all concerned. The question of when the suspect will slow down and return to reasonable and safe driving, however, remains.

Insight from Suspects

Because knowledge of suspects' behavior is limited to anecdotal information from officers and empirical data from the suspects themselves, four researchers conducted a study as part of a grant from the National Institute of Justice wherein they interviewed suspects who had fled from the police.⁹ Their effort, the first systematic study to quantify the perceptions of suspects involved in pursuits, provided information on a variety of topics, including the demographics of those who fled from the police (their average age was 26, and 94 percent were male), as well as what happened (30 percent of the suspects crashed, 30 percent stopped, and 25 percent outran the police) and why they fled (32 percent were driving a stolen car, 27 percent had a suspended driver's license, 27 percent wanted to avoid arrest, and 21 percent were driving under the influence).¹⁰ One of the more interesting findings from the suspects concerned their willingness to slow down when the police stopped chasing them.

Approximately 75 percent reported that they would slow down when they felt safe. They explained that on average, they would have “to be free from the police show of authority by emergency lights or siren for approximately 2 blocks in town...and 2.5 miles on a freeway.”¹¹ In other words, suspects who have fled from the police report that once the officer terminates the pursuit, they will slow down within a reasonable period.

In addition to the suspects’ data on pursuit termination, a researcher surveyed members of the Airborne Law Enforcement Association to determine their experiences with pursuits. The data revealed that after ground units terminated their pursuit, “on average, suspects continued driving dangerously for 90 seconds before slowing.”¹² The researcher concluded that “results from this pilot study, other prior research, and anecdotal evidence suggest most fleeing suspects will return to safe driving behavior within a relatively short period of time after ground pursuits are terminated. However, there will be those cases where despite law enforcement efforts to pursue less frequently and to terminate more pursuits as quickly as possible, fleeing suspects will create tragedies.”¹³

During years of training officers in decision making,

instructors have heard a wide array of responses concerning the behavior of fleeing suspects during pursuits. The anecdotal information has indicated that officers realize suspects will not continue their recklessness forever and at some point will slow down. Conventional wisdom has suspects reducing speed quickly in town and after a longer period on a highway or freeway. Discussions of officers’ beliefs about the behavior

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of fleeing suspects have been neither extensive nor systematic; they have occurred during training, debriefings, and in other informal situations.

While the research has been scant, the opinions about suspect behavior have been widespread. Discussions held in training sessions point to a wide variety of opinions concerning pursuits, the proper police response, and suspect

behavior. What is known is that pursuits are dangerous and place officers, citizens, and suspects at risk. What is not known is how to make them safer for all concerned. Some policies mandate the termination of a pursuit when the risks outweigh the benefits. The thinking behind this approach is to have the police not be part of the problem but part of the solution. If possible, a safe and proper PIT maneuver can bring an end to some chases. In many other cases, it is more appropriate for the officer in a pursuit to turn off his lights and siren and stop or turn around. This behavior is designed to signal to the suspect that he is safe and can slow down and remove the risk to the public. Once the suspect receives this signal, it is anticipated that he will slow down. As in any aspect of law enforcement, defensible decisions should be based on empirical evidence. In pursuit matters, however, suspects have claimed that they will slow down and become safer relatively quickly after a pursuit is terminated. But, what do officers have to say about these issues?

No attempt has occurred to quantify officers’ experiences or perceptions about the behavior of fleeing suspects. The authors’ study, therefore, complements the research conducted with suspects by asking police officers many of the same questions.

Perceptions of Officers

Starting in July 2007 and ending in June 2008, the lead author surveyed participants in the Law Enforcement In-Service Training in Emergency Vehicle Operations and Police Pursuits course at the Minnesota Highway Safety and Research Center in St. Cloud. He collected data from 1,015 officers, representing 10,968 years of experience. Agency size ranged from 2 to 1,624 sworn officers, with the average being 40. Data also were collected from 362 preservice recruits who attended training during the same period. Obviously, this method of data collection relies on memory and perception. It is important to recognize that any self-reported

data may have errors of memory and maturation. However, when requesting information that is neither sensitive nor consequential, it is likely that respondents will provide honest answers. The researchers gave the officers and recruits sufficient time and instructed them to report their information as accurately as possible. A few officers and recruits did not answer some questions, but the missing answers were minimal.

The officers reported being involved in a total of 10,384 pursuits of which 959 (9 percent) resulted in a collision involving a police vehicle and 3,571 (34 percent) ended with the suspect crashing. While some involved multiple objects,

the authors estimated that 35 to 40 percent of all of the pursuits resulted in a crash. These officers terminated 1,133 (11 percent) of their pursuits with 447 of those involving motorcycles. The officers advised that they believed 227 (20 percent) of the pursuits they terminated resulted in a crash. In addition to halting pursuits by turning off the emergency lights and siren, they used the PIT maneuver 1,018 times that resulted in 35 (.03 percent) injuries and no deaths, demonstrating that the PIT can be effective and efficient when used properly.

The preservice recruits reported that they believed that 61 percent of the pursuits would

Table 1. Officers' Perceptions of Fleeing Suspects' Behavior

	In-Town Pursuits	Out-of-Town Pursuits	70% of Officers*
Number	985	983	684
Missing	30	32	
Mean	1.72 blocks	7 miles	3.9 miles
Median	1	5	5

*Officers who reported on average that suspects would quit running after 10 miles.



end in a crash and that if they terminated a pursuit, 39 percent of those would crash anyway. In other words, these young recruits believed that by terminating the pursuit, 22 percent fewer crashes would occur.

Perhaps the most important aspect of this research involved the officers' and recruits' opinions concerning when a fleeing suspect would slow down after a chase had been terminated. The authors asked the officers and recruits, "If a pursuit was terminated, how far do you believe the suspect would run if in town and if out of town?" Table 1 shows the answers for in-town pursuits in blocks and for those conducted out of town in miles and tenths of a mile.

On average, the officers reported that suspects would quit running after 1.7 blocks in town. Overall, 98 percent advised that suspects would

stop within 5 or fewer blocks. The other 2 percent believed that the suspects would continue fleeing for a greater distance.

In out-of-town pursuits, the officers thought that on average, suspects would quit running after 7 miles. Seventy percent believed that suspects would stop within 10 miles, whereas 30 percent felt that the suspects would continue beyond that distance. The officers who believed that suspects would quit running before 10 miles reported an average response of slightly less than 4 miles. That is, those officers who believed that suspects would be impacted by their lights and sirens being turned off felt that suspects would quit running after 3.9 miles. Similarly, 62 percent of the officers indicated that suspects would quit running within 5 or fewer miles with an average response of 3.5 miles.

Interestingly, the recruits—who had no real experience with policing or pursuits—advised that fleeing suspects would quit running after 2.9 blocks in town and 4.2 miles out of town. Overall, the authors interpreted these findings to indicate that most officers generally believe suspects will quit running after about 2 blocks in town and approximately 4 miles out of town.

Implications of Research

Balancing the need to immediately apprehend a fleeing suspect with the risk created by the chase forms the foundation of police pursuit policies. The operational meaning of this test is that once an officer terminates his pursuit, the suspect will slow down and blend into traffic, go home, or exit the vehicle and try to escape on foot. In other words, pursuit policies are based on the notion that once an officer or supervisor terminates a pursuit because the risks are too great, the public will be safer than if the pursuit is continued. Unfortunately, empirical research on the actions of fleeing suspects is scarce, but the data in this study expressed officers' opinions on what suspects will do after they terminate their active attempt to apprehend such individuals.

Evidence-based decision making in law enforcement has been an important improvement

in policy development and training.¹⁴ As researchers and police agencies form partnerships and conduct collaborative studies, the results can be used to design best practices and evaluate practitioners. As a result, both the law enforcement community and the public will benefit from decisions based on systematic research findings. Additionally, policies and training can be explained to officers using quantitative and qualitative research findings as opposed to anecdotes.

Conclusion

While more research needs to be conducted on the actions of fleeing suspects after a pursuit has been terminated, it is noteworthy that fleeing suspects and officers have provided similar answers to the questions of suspect behavior. Specifically, the majority of suspects reported that they would slow after 2 blocks in an urban area, while the officers thought the suspects would do so in just under 2 blocks. On freeways, the majority of the suspects reported that they would slow after 2.5 miles, whereas most of the officers felt they would after just under 4 miles. Because the reality may be somewhere in between these estimates, more research is needed to test these findings. While the research reported here or anywhere else cannot predict the actions of a specific

suspect, it does suggest that in the aggregate, fleeing suspects will behave within specified parameters.¹⁵

It is important to consider that pursuit policies are based on the belief that fleeing suspects will slow down at some point after a pursuit is terminated. Research findings support that principle and

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Perhaps the most important aspect of this research involved...opinions concerning when a fleeing suspect would slow down after a chase had been terminated.

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provide empirical data that can guide policies and training. Of course, whether or not police officers should terminate an active attempt to apprehend a suspect is a different question that depends on what they know or have reasonable suspicion to believe that the suspect has done. ♦

Endnotes

¹ C.M. Lum and G. Fachner, *Police Pursuits in an Age of Innovation and Reform* (Alexandria, VA: International Association of Chiefs of Police, 2008), 4.

² John Hill, “High-Speed Police Pursuits: Dangers, Dynamics, and Risk Reduction,” *FBI Law Enforcement Bulletin*, July 2002, 14-18.

³ The authors presented findings from their initial research on this topic in “Emergency Driving and Pursuits: The Officer’s Perspective,” *FBI Law Enforcement Bulletin*, April 2009, 1-7. The current article includes additional research they have conducted since then.

⁴ For clarity and illustrative purposes, the authors refer to officers and suspects as males.

⁵ James Meyerhoff, William Norris, George Saviolakis, Terry Wollert, Bob Burge, Valerie Atkins, and Charles Spielberger, “Evaluating Performance of Law Enforcement Personnel During a Stressful Training Scenario,” *Annals of the New York Academy of Sciences* 1032 (2004): 250-253.

⁶ G. Alpert, D. Kenney, R. Dunham, and W. Smith, *Police Pursuits: What We Know* (Washington, DC: Police Executive Research Forum, 2000).

⁷ John Hill, “High-Speed Police Pursuits: Dangers, Dynamics, and Risk Reduction.”

⁸ For a discussion of the experiences of the Orlando, Florida, Police Department, see G. Alpert, R. Dunham, and M. Stroschne, *Policing: Continuity and Change* (Long Grove, IL: Waveland Press, 2006), 194-205.

⁹ R. Dunham, G. Alpert, D. Kenney, and P. Cromwell, “High Speed Pursuit: The Offender’s Perspective,” *Criminal Justice and Behavior* 20 (1998): 30-45.

¹⁰ Suspects could list more than one reason.

¹¹ Dunham, Alpert, Kenney, and Cromwell, “High Speed Pursuit: The Offender’s Perspective,” 38.

¹² Jeff Martin, “Pursuit Termination: A Lifesaver?” *Law and Order* 49 (2001): 30-33.

¹³ Ibid.

¹⁴ L. Sherman, *Evidence-Based Policing: Ideas in American Policing* (Washington, DC: Police Foundation, 1998).

¹⁵ This would be an ecological fallacy.

Perspective

Risk Management and Police Training

By Thomas Connelly



While undergoing hostage rescue training, an officer is seriously wounded with a firearm mistaken for an “air soft” training gun. During an active-shooter exercise, a sheriff’s deputy recruit suffers a gunshot resulting in the amputation of a finger and later files a negligence lawsuit. In the midst of filming a training exercise, an officer was gravely injured after an explosive device detonated and door fragments struck him in the abdomen.¹ And, the list goes on.

To safeguard communities from crime, violence, and acts of terrorism, police organizations hire the most qualified candidates available and train them to be their best. However, agencies sometimes may not take adequate measures to reduce the risk of injuries and casualties.

Training accidents, many with tragic consequences, have occurred throughout law enforcement’s history. To help decrease such incidents, police executives, managers, and instructors must

recognize the need for risk management and incorporate contemporary safety protocols into their training plans and programs.

Training for Dangerous Work

As the law enforcement profession and technology have advanced over the past few decades, officers have faced elevated levels of risk in the training environment. Thirty years ago, police training primarily consisted of classroom-based instruction supplemented with some practical activities. Now, particularly as technology has flourished, it has evolved to include more experiential and scenario-based exercises simulating situations that officers will encounter in the field. Such training always presents more risk and potential for injury than classroom teaching. Any scenario-based exercises; firearms-related training, routine or not; vehicle operations courses; training involving physical tasks, including those combined with specialized knowledge (e.g., rappelling); and a

*Captain Connelly retired from
the Los Altos, California,
Police Department.*



myriad of other examples present an elevated level of danger.

Today, the public has increased expectations of law enforcement, and this has impacted training. Police response to active-shooter situations represents one high-profile example. Until the tragic massacre at Columbine High School in 1999, first-responding officers generally secured the perimeters and waited for the arrival of SWAT teams. However, after Columbine, the policing industry recognized the need to incorporate measures to minimize the loss of life in ongoing spree-killing events, which still occur with disturbing regularity.

Law enforcement developed new protocols and began training officers to achieve higher levels of tactical awareness and proficiency in these situations. Now, line officers learn basic hostage rescue tactics, a task previously handled by well-equipped and highly trained SWAT officers. Most of the active-shooter courses include scenario-based training incorporating unloaded or simulated firearms, along with classroom instruction. Sometimes, officers

complete a live-firing component at a range. Such instruction, which can involve students who have less exposure to the intricacies of the requisite tactics using real or simulated weapons, presents risk.

Years ago, I participated in SWAT training that ended with a tragic and preventable death. During a hostage rescue exercise on a commuter train, one of the role players, a reserve officer, was shot and killed with a supposedly unloaded firearm. This young man left behind a wife and a young son. I witnessed this incident from just a few feet away, and I still can see the images of this senseless and avoidable tragedy. How did a loaded firearm get

into a “sterile” training environment? Could I have done anything to prevent this accident from occurring?

After such tragedies, an investigation commences to determine what went wrong. Police executives assure their staff and the public that they will find out what happened and make sure that it does not occur again. Unfortunately, it does. Those involved never think these incidents will happen to them.

The residual carnage in the aftermath of these events is predictable and cuts far deeper than the victims and their families. Most witnesses to

these tragedies wonder why, during “just another routine training day,” the accident happened. Everyone involved shares some of the same life-altering feelings and emotions. Many assume some responsibility, mostly emotionally and privately.

So, what costs accompany these senseless incidents? These tragic events take a devastating toll not only on those affected but on the professional reputation and internal opera-

tions of an organization. Entire agencies, perhaps multiple ones, are deeply impacted and changed forever. The liability exposure proves immense. Postevent investigations may result in criminal prosecutions. Otherwise successful careers become marred and, oftentimes, end. Nearly always, some type of wrongful death or negligence lawsuit follows; the cost of defending, litigating, and resolving them levies a huge financial burden on organizations.

What is the life of a police officer worth? More important, could the money used for the costs of investigating the incident, defending the lawsuit, paying settlements or negative judgments, and

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Training accidents, many with tragic consequences, have occurred throughout law enforcement's history.

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financing the postevent psychological intervention have helped proactively ensure a safer training environment? Why do these tragedies occur with such frequency and predictability? How can law enforcement fix the problem?

The answers to many unresolved questions prove complex. However, the basic response to the problem simply is prevention through proactive risk management and enhanced training plan development. Ineffective foresight and planning, along with, perhaps, some level of complacency, in the training environment represent the most common factors that lead to preventable accidents. Agencies must develop processes to adequately identify and address these factors.

Mitigating Potential Threats

Creating a truly safe training environment requires foresight, risk assessment, and preparation. Departments must have an organizationwide commitment to safety. While planning and developing courses, agencies must proactively identify danger and implement effective policies, procedures, and precautions well before any student participates. And, trainers and department leaders must be thoroughly knowledgeable of risk management techniques.

Law enforcement executives must institutionalize systems (e.g., policies, procedures, and practices) designed to identify risks in the training arena and develop processes to mitigate those risks. Leaders need to communicate and enforce, through rewards and consequences, their expectations throughout the organization. Agencies must have an unwavering, top-down organizational commitment to safety in the training environment. They also must ensure adequate instructor training and organizational resources, including

funding, to address safety protocol development and implementation. Finally, leaders must exemplify and communicate this dedication to safety through their words and, more important, their actions.

The selection of highly qualified and committed trainers is essential to ensure the success of any law enforcement training program, especially in higher risk environments. Trainers must be committed to safety, educated on training plan development and risk analysis, and open to changing their techniques to meet emerging needs and trends. They also must display sound risk analysis and innovative thinking capabilities. And, they never can exhibit complacency.

Agencies also need to adopt contemporary training safety practices. As the hazardous training environments and courses are unique and varied, so are the resultant safety considerations that departments need to address. Safety policies and procedures need to be flex-

ible, adaptable, and fluid so they effectively relate to varying training practices, environments, and plans. Additionally, agencies must incorporate into their training programs a system of checks and balances that reflect the appropriate level of risk.

All law enforcement leaders and trainers should proactively seek information, advice, and education in critical safety processes. Some helpful, readily available resources include the International Association of Chiefs of Police, National Tactical Officers' Association, national and regional training officers' associations, state police training oversight organizations, and other law enforcement trainers. Some private vendors, particularly manufacturers of various police weapons, restraint devices, and force-on-force training

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equipment, also offer instructor development courses that focus on training safety.

Conclusion

Law enforcement agencies must make training safety an organizationwide priority and a clearly defined expectation. Training naturally presents some level of risk; however, agencies must proactively identify and mitigate danger. Departments need to ensure the incorporation and support of contemporary safety procedures. Further, agencies must encourage students to proactively identify

perceived hazards and speak out without fear of ridicule or retribution.

Needless and avoidable training incidents resulting in injury or death should not continue. By taking the appropriate steps, departments can protect officers and allow them to continue to serve their communities. ♦

Endnotes

¹ Incidents were collected from various issues of CATO News, published quarterly by the California Association of Tactical Officers.

We Need Your E-mail Addresses

The *FBI Law Enforcement Bulletin* has been available to our readers online since March 1990. With the August 2009 issue, we began sending our readers e-mails announcing the latest edition and providing a direct link to the *FBI Law Enforcement Bulletin* on <http://www.fbi.gov>. There, you will be able to find the current edition, as well as previous issues of the *FBI Law Enforcement Bulletin* going back 10 years.

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We look forward to hearing from you at lebonline@fbiacademy.edu. Please continue to send comments, questions, or suggestions regarding articles to the *FBI Law Enforcement Bulletin* editors at leb@fbiacademy.edu.

Editor
FBI Law Enforcement Bulletin

Bulletin Reports

Advancing Community Policing

A recent release from the Office of Community Oriented Policing Services, *Advancing Community Policing Through Community Governance*, offers a collaborative approach to local governance in responding to community problems and issues. The publication reveals that as law enforcement agencies strengthen and advance their community policing efforts, they often call on their colleagues in other departments of their own city government to assist with problem-solving efforts in the community. Many city administrators and elected officials also are seeking ways to increase community involvement in local government matters in a more systematic way that results in a more transparent government structure that stresses accountability and responsiveness to the community. Cities that pursue these collective efforts are beginning to adopt a philosophical approach to local governance referred to as community governance, which is collaborative across agencies and service oriented.

Advancing Community Policing Through Community Governance details the community governance philosophy and describes its implementation in five communities across the country. The report (NCJ 227601) can be accessed at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>.

Police Recruitment and Retention

The RAND Center on Quality Policing convened a national summit on police recruitment and retention in the contemporary urban environment in June 2008. This summit, supported by the Office of Community Oriented Policing Services and the National Institute of Justice, brought nearly 60 participants together to discuss the challenges of recruiting and retaining of officers. Speakers discussed changing police workforce issues, strategies being employed, lessons that could be learned from other organizations, such as the military, and in-depth analyses of police recruiting and retention in selected cities. The Office of Community Oriented Policing Services report *Police Recruitment and Retention in the Contemporary Urban Environment* summarizes presentations, discussions, and opinions offered by panelists at the summit. For further information, access the document (NCJ 227663) at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>.

Intelligence Gathering

National Summit on Intelligence: Gathering, Sharing, Analysis, and Use After 9-11, an Office of Community Oriented Policing Services report, contains findings from a November 2007 summit that addressed challenges encountered in sharing criminal intelligence. The report indicates that since September 11, 2001, state, local, and tribal law enforcement agencies have made great strides in their ability to share intelligence, which is a critical factor in the continuing effort to prevent terrorist attacks. However, the full benefits of intelligence sharing have not yet been realized because the process itself remains a mystery to many police officers, and some law enforcement executives consider their agencies too small or too remote to participate in criminal intelligence sharing. The report includes eight recommendations on how

law enforcement agencies can share information and intelligence seamlessly while protecting privacy and civil rights. Readers can access the report (NCJ 227676) at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>.

Photo Exchange

NIJ Helps Police to Exchange Driver's License Photos, an In Short from the National Institute of Justice, describes the pilot project to transmit driver's license photographs across state lines and deliver the photos to an officer's computer within seconds of a request. Law enforcement agents often need to confirm the identity of someone not carrying a driver's license or other form of identification. Adding the capability to view a photo increases an officer's ability to make a positive identification, helps keep officers safe, and sometimes eliminates the need to detain an individual simply for identification purposes. NIJ partnered with law enforcement agencies in North Carolina, Oregon, South Carolina, and Virginia in 2008 to begin this endeavor, which is the first significant advance in the exchange of driver's license information since 1969 when states began making such information accessible to police officers. Readers can obtain additional information by accessing the report (NCJ 225801) at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>.

Child Fatality Review Boards

By GERALD KELLEY

*A statue stands in
a shaded place,
An angel girl with
an upturned face,
A name is written
on a polished rock,
A broken heart that
the world forgot.¹*

In 1987, the death of a 7-year-old boy at the hand of his mother's live-in boyfriend raised many questions about the procedures and practices used by the area's agencies that protected and served children. Newspaper articles brought into question the roles and responsibilities of the various organizations that

had dealt with the family prior to the youngster's death and why a closer working relationship did not exist among them. These questions were directed at the local children's social service, the schools, and the police because all had contact with the family. But, the information that each possessed was either not available or only so in small

amounts to the other agencies involved. What could the community do to ensure better coordination among these entities? To illustrate an effective solution, the author presents an overview of the child fatality review process by using an example from his local community of Summit County, Ohio.

Developing the Plan

Following the tragic death of the young boy, the children's services board initiated an effort to address the communication problem among the community's agencies. Members brought in experts from the medical, social, and legal fields for a symposium that presented information on how other communities had banded together to review child fatalities and seek preventive solutions. Relying on models in practice, a core group of participants gathered to study and begin the review process of child fatalities. The committee, composed of representatives from local child-serving agencies, public health officials, medical practitioners, the medical examiner, prosecutors, and law enforcement personnel, began with two main goals.

- 1) To review all child deaths and near deaths due to child abuse and neglect, to assess each involved-agency's system performance, to make recommendations for the

improvement of intra- and interagency performance, and to reduce the number of preventable deaths in the county

- 2) To present to the community a statement of the committee's analysis and findings

The committee relied on child fatality review models established in other communities, particularly the one in Los Angeles, California, that focused on a multiagency approach to coordinate the information each organization possessed. This approach enabled individual agencies to benefit from the exchange of information and improve performance as related to the welfare of children.² Since its beginning in 1978, the child fatality review process now exists in all 50 states and has

expanded from a core membership to include representatives from education, other health-related agencies, and the courts, along with prosecutors and other professionals as deemed necessary. It also now encompasses not only deaths from abuse and neglect but also those as a result of natural causes, accidents, and suicides.

In July 2000, Ohio passed a law mandating that each county in the state establish a child fatality review board governed by its department of health. To accomplish the law's ultimate purpose of reducing the incidence of preventable child deaths,³ each review board would—

- promote cooperation, collaboration, and communication among all groups that serve families and children;

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Local child fatality review boards analyze the data they have collected for trends occurring in their counties.

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Lieutenant Kelley is the unit commander for the Juvenile Bureau of the Akron, Ohio, Police Department.

-
- maintain a database of all child deaths to develop an understanding of the causes and incidences of them; and
 - recommend and develop plans for implementing local service and program changes and advise the department of health of aggregated data, trends, and patterns found in child deaths.⁴

Implementing the Process

The Summit County Child Fatality Review Board examines all of the child deaths that have occurred within the jurisdiction and incidents involving youngsters who lived in the county but died outside the area. The process starts with each member receiving a packet provided by the county's department of health that includes the death and birth certificates for each child who recently died except those involved in a pending criminal investigation.⁵ As with all cases reviewed, confidentiality is required by law.

First, the board examines the death certificate, which provides the cause and manner of death as determined by the medical examiner or the child's physician when the case does not involve the medical examiner. Next, it reviews the birth certificate, which covers general information about the child and the parents and details regarding

the mother's pregnancy history, both past and current.

In reviewing cases involving abuse or neglect, the committee members report on the contact they have had with the family. Children's social services will provide a history of their investigations regarding any abuse and neglect and their referrals to other agencies for follow-up assistance or training. This could range from life-skills training to medical services. Health providers will discuss training and

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In reviewing cases involving abuse or neglect, the committee members report on the contact they have had with the family.

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other assistance provided to the family, for example, referrals that the parents received during and after the child's birth to the Help Me Grow program.⁶ With older children, the schools can provide information on their progress and whether they have had disciplinary or attendance issues. Both areas can be indicators of problems occurring within the family. Once again, where

concern for a child has arisen, each agency will show what steps it has taken to correct the problem or to refer family members to another organization better suited to help them. Law enforcement will discuss contacts with the youngster and the family regarding arrests, calls of service to the household, and missing person reports about the child. While arrests are important factors to consider, they do not always reflect the complete dynamics of the family. Calls of service can reveal incidents of domestic violence and other family-related difficulties where no arrest took place. Missing person reports also can prove significant because many involve a juvenile running from a situation. Combining all of the information from the reporting agencies creates a clearer picture of the child's life and the roles that the community's various agencies have played in it. The information also can show the deficiencies, or “holes,” in the system that need correction.

After presenting all of the information, the committee discusses whether the death could have been prevented. Was a known safety risk ignored, or was the family even aware of the risk due to a lack of information? However, not all of the public information regarding safe practices is consistent.

Web Sites for Additional Information

American Academy of Pediatrics	http://www.aap.org
Centers for Disease Control and Prevention	http://www.cdc.gov
Inter-Agency Council on Child Abuse and Neglect	http://ican.co.la.ca.us/home.htm
National Center on Child Fatality Review	http://ican-ncfr.org
SIDS Network	http://sids-network.org

For example, some private organizations encourage sleeping with a newborn to promote bonding between the parents and the child. However, this practice can prove deadly if a parent rolls over on top of the child while sleeping. Each year, the committee investigates and reviews cases that list this as either the cause of or as a contributing factor to an infant's death. Some of these deaths are ruled undetermined if the medical examiner cannot ascertain whether they resulted from asphyxiation or a criminal act. During this portion of the process, committee members often discover additional information that may have contributed to the death. For example, during a discussion about an infant who died in a crib, a member asked about the make and model of the bed. It turned out that the manufacturer had recalled the crib for structural problems. Another member then suggested that the

committee notify all of the community's social service agencies about the recall and have them check the model against any donated cribs that they had received. Members compiled a list of organizations and sent out an informational letter describing the committee's safety concerns with the recalled crib and the potential dangers of its continued use.

Using the Information

Local child fatality review boards analyze the data they have collected for trends occurring in their counties. They address the necessary means and modes to educate the community to eliminate preventable deaths. Programs have mirrored national campaigns, such as the Back to Sleep and Don't Shake programs.⁷ Members gather resources for educational purposes and distribute them throughout the community. In certain instances, as with the Don't

Shake program, volunteers provide personal instruction to schools and other groups. With most review committees relying on their agency members for operating costs, they have to be extremely resourceful to get their message out. They have turned to their communities and local member agencies to provide funding for informational flyers, training videos, and other aids, which they distribute to schools, social programs, health departments, hospitals, private doctors, and retail businesses.

Each county review board sends the data it has collected to the state's department of health where such information forms the basis for the state's annual report of child deaths. The boards include their decisions concerning whether they believed that any deaths could have been prevented. These are subjective decisions based upon their reviews, which rely heavily on information gathered from

investigations of the deaths and medical records of the deceased children.

To aid their local child fatality review committees, law enforcement personnel and medical examiners must conduct thorough investigations of all deaths. Scene investigations are essential to the successful completion of all cases, both criminal and noncriminal. This proves especially important when investigating the death of a child. Many community organizations use the observations and information gathered from the scene to better understand why the child died and to determine if the death could have been prevented. Concise documentation of seemingly unimportant details, including sleeping conditions and positions, victim's clothing, and

room temperature, can provide the clues necessary for an accurate ruling on the death. All of this information then becomes part of the department of health's statistics. The more accurate the investigations, the better the analysis of why children die, which may lead to the development of ways to prevent such tragedies.

Conclusion

Child fatality review boards have been in existence for only 30 years. Since their inception, they have expanded both geographically and in content. From analyzing child abuse and neglect cases to studying all child deaths, their ultimate goal is the prevention of these tragic occurrences. Studies have shown that projects like the Back to Sleep program have

reduced the number of sudden deaths of infants by as much as 40 percent.⁸ Law enforcement has a major role to play in this process by conducting thorough scene investigations. This information, along with data obtained from medical examiner autopsies, will present an accurate picture of the manner of death. With this valuable information, the development of prevention programs can be directed toward reversing these fatalities. ♦

Endnotes

¹ Martina McBride, "Concrete Angel," *Greatest Hits*, RCA Records, 2001, written by Stephanie Bentley and Rob Crosby, produced by Martina McBride and Paul Worley.

² Michael Durfee, George Gellert, and Deanne Tilton-Durfee, "Origins and Clinical Relevance of Child Death Review Teams," *Journal of the American Medical Association* 267 (1992): 3172-3175.

³ See Ohio Department of Health, Child Fatality Review Web site at <http://www.odh.ohio.gov/odhPrograms/cfhs/cfr/cfr1.aspx>.

⁴ Counties that had review committees converted them to follow the guidelines established by the state's new law.

⁵ These deaths are either briefly reviewed or postponed until the prosecution is completed or the case has been closed by law enforcement.

⁶ For information on this program, access <http://www.ohiohelpmegrow.org>.

⁷ For information on the Back to Sleep program, access <http://www.nichd.nih.gov/sids/> and for the Don't Shake program, access <http://www.dontshakejake.org/>.

⁸ See Ohio Department of Health, Sudden Infant Death Web site at <http://www.odh.ohio.gov/odhPrograms/cfhs/sids/sids1.aspx>.



Hate Crime Statistics for 2008

Statistics released by the FBI revealed that 7,783 criminal incidents involving 9,168 offenses were reported in 2008 as a result of bias toward a particular race, religion, sexual orientation, ethnicity or national origin, or disability. Published by the FBI's Uniform Crime Reporting Program, *Hate Crime Statistics, 2008* includes data about hate crime incidents submitted by law enforcement agencies throughout the nation.

An analysis of the 7,780 single-bias incidents showed that 51.3 percent were motivated by a racial bias, 19.5 percent by a religious bias, 16.7 percent by a sexual orientation bias, and 11.5 percent by an ethnicity or national origin bias. One percent involved a bias against a disability.

In 2008, 5,542 hate crime offenses were classified as crimes against persons. Intimidation accounted for 48.8 percent of crimes against persons, simple assaults for 32.1 percent, and aggravated assaults for 18.5 percent. Seven murders were reported as hate crimes.

There were 3,608 hate crime offenses classified as crimes against property; the majority (82.3 percent) were acts of destruction, damage, or vandalism. The remaining 17.7 percent of crimes against property consisted of robbery, burglary, larceny-theft, motor vehicle theft, arson, and other offenses.

Of the 6,927 known offenders, 61.1 percent were white and 20.2 percent were black. The race was unknown for 11.0 percent, and other races accounted for the remaining known offenders.

The largest percentage (31.9 percent) of hate crime incidents occurred in or near homes; followed by 17.4 percent on highways, roads, alleys, or streets; 11.7 percent at schools or colleges; 6.1 percent in parking lots or garages; and 4.2 percent in churches, synagogues, or temples. The remaining 28.8 percent of hate crime incidents took place at other specified locations, multiple areas, or other or unknown places. To view the full report, visit <http://www.fbi.gov/ucr/hc2008/index.html>.

Wanted: Notable Speeches

The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered, along with an electronic version of the transcript saved on computer disk or e-mail them. Send the material to: Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Outreach and Communications Unit, Quantico, VA 22135, or to leb@fbiacademy.edu.

Notable Speech

The Badge of Trust

By John L. Gray

Two weeks ago, I was sitting in my office on a beautiful, calm Friday afternoon. Like all good chiefs and sheriffs, I was trying to come up with a plausible excuse to skate out of the office and start the weekend a little early. But, my scheming was interrupted when a secretary buzzed the intercom and said that the academy director was on line three. My first reaction was to chuckle and say, “OK—who is it really?” To my horror, she replied, “I’m serious. It’s the director of the Iowa Law Enforcement Academy (ILEA), and she wants to speak with you.”

Now, I do not care how long you have been in law enforcement in Iowa or what position you hold in your agency. If you are a graduate of ILEA and suddenly learn that the director is on the line, well, it can certainly give you pause. I would describe my reaction like that of a parolee who hears the warden unexpectedly knocking at the front door.

I have two officers in the 222nd basic class, so I thought that maybe one of them had been hurt. That has happened before. Or, maybe they both were in some kind of trouble. Maybe they were together on the driving course and lost control, and the car crashed through the wall of the administrative wing of the academy. Are they all sitting together in the director’s office—my two guys, the director, and the car? And, maybe it is really dusty and smoky in there with a funny smell in the air. Well, whatever was going on, I had no choice; I had to take the call.

As it turned out, Director Westfall simply wanted to invite me to speak at your graduation ceremony. So, thank you Director Westfall; members of the academy staff; the academy council; and the 222nd basic class for allowing me to be here today. I will try to make the next few minutes very simple as I direct my remarks to Iowa’s newest fleet of peace officers. I will quote one scripture

from the Bible, read one sentence from a U.S. Supreme Court Justice, and tell one story.

Unexpected Changes

Ecclesiastes, Chapter 1, verse 9 reads, “What has been is what will be; and what has been done is what will be done; and there is nothing new under the sun.” There is nothing new under the sun. You will see the accuracy of that scripture today because whatever thoughts I share with you here will be things that you already know. But, I hope to help you remember and prioritize some of those things, move them around to, perhaps, a more prominent place in your mind because keeping ideals, principles, and goals foremost in your thoughts will guide you to become the peace officers *you* want to be and the peace officers *we* want you to be.

First, I will remind you that life is lived minute by minute, and it changes at that same pace.

Chief Gray of the Altoona, Iowa, Police Department, delivered this commencement speech to the 222nd basic training class of the Iowa Law Enforcement Academy on July 11, 2008.



Unexpected illness, shocking news of the death of a loved one or someone you know, tornados, flooding—who could have imagined several weeks ago that a little town called Parkersburg would suffer such awful devastation from a tornado strike? Or, that shortly thereafter, so many of Iowa's cities and towns would be under inches and, eventually, feet of water? Places like Des Moines, Cedar Rapids, Iowa City, Oakville, Mason City, Waterloo, Elkader, and the list goes on. Some of you probably are from these places or have family or friends there. Whether we have direct ties to these communities or not, we all mourn the loss of life, property, businesses, and, most of all, normalcy because of a life that happens minute by minute.

Now, good things happen minute by minute as well. Maybe you just bought a new car or a new house. Falling in love, getting married, having babies—these can be minute-by-minute changes in our lives.

So, we take the good with the bad, and life goes on with nothing new under the sun. Of course, one new thing will happen to you today. In just a few minutes, a friend, family member, or loved one will affix a badge to your chest, a badge of public trust. And, it will represent an awesome responsibility that today and in this minute, you willingly accept. It will be bright, shiny, and new, and all of us here will be so proud of you for carrying its weight. It actually will seem pretty impressive at first. Then, you will get used to it and hardly notice it at all. I assure you that there will be days when that badge weighs 100 pounds, and it will feel like it is pinned to your heart, rather than on your chest.

Trust and Accountability

U.S. Supreme Court Justice Warren Burger stated, "It is often overlooked that no public

official in the entire range of modern government is given wider discretion on matters dealing with the daily lives of citizens as is the peace officer." The badge represents not only public trust but also public accountability. You already know where and how you receive your authority. It comes directly from those who give it to you freely and believe you will use it wisely—the people allow you your powers. The public willingly puts this work into your hands, and they trust you will use all the authority and might that badge

represents to take care of them in the proper manner. They do not want this responsibility for themselves; they want to give it to you. But, they also want you to get it right.

My charge to you today is to do just that—get it right. Do not bring shame upon yourself or your chosen profession. We all have heard and read the stories of peace officers in Iowa and elsewhere who have gotten it all wrong. Some let

their authority or influence go to their head, others forgot everything they learned at the academy, and a few forgot what they already knew about what is right and wrong. Do not let yourself fall into their category of disgrace. Do not shame the academy, fellow officers in this hall today, family members, and friends. Do not shame the people who hired you, and do not shame me. You have been called to a high duty. You will, without question, be held accountable for your every action as a peace officer. But, you also will win the respect and admiration of good people everywhere when you are true to your calling.

Citizens' Impressions

A few years ago, my officers and detectives served a search warrant on a house in Altoona where an illegal tattoo parlor operated. The house

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**...life is lived
minute by minute,
and it changes at
that same pace.**

”

was located near an elementary school, and young people well-known in the community lived there. School was out for the summer, and, on the morning the warrant was served, many people quickly became aware of all the squad cars and unmarked vehicles surrounding the home. Obviously, from the number of officers going in and out, something major was happening. Officers carried furniture and equipment from the porch of the home into the yard. They searched the entire house, and the police activity soon became the main topic of discussion in town.

My city administrator called me at home the night of the search warrant and asked if he could know what was going on. His little girls were so excited and upset that they could not relax, eat, or even talk about anything else. They had been riding their bikes and witnessed much of the activity at the house. Now, I admit that I did not understand at first. I asked the administrator why his daughters felt such distress. He said, "Don't you understand? For my daughters, at the ages of 8 and 10, this is the biggest thing that has ever happened in their lives!" Well, of course, he was right. These little kids never had seen the police in action, serving a warrant. They never had seen a house surrounded by more police cars than they even knew existed nor seen someone's possessions pulled out into the yard by the police and eventually taken away from the house. They did not understand, and they were afraid.

So, there really is nothing new under the sun unless you never have seen or experienced it yourself. Then, it is new, and you might feel just a little confused or upset. I learned a lesson that day, one that you already may know: never take your power and authority for granted. Remember that not everyone will automatically understand what

you are doing as a peace officer or why you make certain decisions. Realize that there will be times when *your* actions will be the biggest and most important thing that ever has happened in someone's life. There will be times when you have to be the sledgehammer or the battering ram to protect yourself and others or to accomplish your task. But, there will be many more times when, instead of being the sledgehammer, you can be a feather—times

when you can make your point, accomplish your goals, get the job done, and still be a feather. Temper the strength of your badge with humility and patience, and be willing to help the public recognize why you take certain actions.

Credibility and Honor

My final charge to you is to conduct yourself with honor, and remember that your personal credibility constitutes the most important asset you possess. If you lose your credibility, if people cannot trust or believe you, if you ever give them reason to think that you are deceitful or will engage in illegal activity if you believe you can get away with it, then you will have lost everything. Remember that you create your own reputation each day with every action and word. Protect your credibility and maintain your honor. It really is all you have.

Conclusion

In closing, I welcome you to this profession and urge you to wholeheartedly join those who have served before you. Your entire law enforcement family wishes you only the best, and we are glad to have you with us. We have been taking care of you and your family and friends for a very long time. Now, it is your turn to join us in this work. Congratulations. ♦

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**...not everyone
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decisions.**

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Recognizing Nonverbal Indicators of Comfort and Stress

While attending a recent task force meeting, I became amazed at how insensitive the team leader briefing the assembled officers on an upcoming operation was to the nonverbal stress indicators displayed by the group. He charged ahead, clearly making his point and obviously promoting his own personal agenda. I observed that the requests he delivered to the assembled group far exceeded the relationship he had with the individuals in the room. As each minute passed, more and more people averted their glances; angled their bodies away; and, in some cases, simply folded their arms, tilted their heads down, and either compressed their eyebrows or closed their eyes entirely. Even though the atmosphere said no, the oblivious team leader said yes.

As we interact with the people in our lives, we constantly take in data on how they communicate with the world. We listen to how they say things, we watch their body language, and we observe how they communicate in writing. In every instance, we subconsciously record the normal pattern for communication from these individuals and any deviation from this gives us pause. We then ask, "What's wrong?" Studies have shown that approximately 60 to 85 percent of all communication is nonverbal. The baseline of nonverbal behavior can easily

be divided into two categories, comfort and stress. A strong leader can quickly recognize comfort from stress in those they intend to lead.

In the task force meeting, the team leader should have noticed how the assembled group started displaying stress by the way they were both blocking and compressing their body language. In general, if someone is exhibiting stress, their bodies will reflect it through either

compression or blocking. By contrast, when people are comfortable, they will present an open type of body language. The body will be angled toward the speaker; the eyebrows may elevate; the head may be tilted to the side; and, in general, a smile will ensue.

Regardless of the leadership role we assume in life (whether as a spouse, parent, law enforcement professional, or friend and colleague), it is imperative that we read and recognize the nonverbal body language of those with whom we interact. Our ability to lead is ultimately only as effective as our ability to recognize the effect our words and actions have on others. ♦



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Special Agent Robin K. Dreeke, an instructor at the Counterintelligence Training Center and an adjunct faculty member of the Leadership Development Institute, prepared this Leadership Spotlight.

ViCAP Alert



Attention: Homicide, Missing Persons, and Crime Analysis Units

Unidentified Victim

Race: White
Sex: Female
Hair: Brown
Height: 5'5"
Weight: 115

Clothing: Wrangler blue jeans, blue quilted peasant jacket, purple halter top blouse, and pink lace underwear

Jewelry: Hollow gold heart pendant and horn-shaped pendant.

Other: Red toenail polish



Basic Dental Report

Upper Right	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Upper Left
	A	F	A	F	N	P	N	N	N	N	N	P	P	F	F	A	
Lower Right	A	F	A	N	N	N	N	N	N	N	N	N	N	A	F	A	Lower Left
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	

On September 19, 1982, the remains of an unidentified female, "Jane Doe," were found on an island in the San Juan River in New Mexico. An autopsy indicated that the victim had been strangled. At this time, the woman and her killer have not been identified. Any relevant infor-

mation may be directed to Detective George Barter of the Archuleta County, Colorado, Sheriff's Office at 970-264-8450 or the FBI's Violent Criminal Apprehension (ViCAP) Program at 800-634-4097. All ViCAP Alerts can be reviewed at <http://www.fbi.gov/wanted/vicap/vicap.htm>.

Attention: Homicide, Missing Persons, and Crime Analysis Units



Unidentified Victim



Race: White
Sex: Male
Hair: Brown
Height: 5'10" – 5'11"

Clothing: Converse low-top tennis shoes; tan corduroy pants (size 31 waist, 31 inseam); white brief-style underwear (size 34, JC Penney brand); T-shirt with "Lazy B Guest Ranch, Fallon, NV" printed on the front

Basic Dental Report

Upper	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Upper
Right	P	F	F	N	N	N	N	N	N	N	N	P	P	F	F	P	Left
Lower	N	F	F	P	N	N	N	N	N	N	N	F	F	F	F	N	Lower
Right	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	Left

A= Antemortem loss (healed socket); F= Filling, inlay, onlay, or veneer;
N=Natural tooth-no filling ; P= Postmortem loss (open socket)



Image printed on front of T-shirt



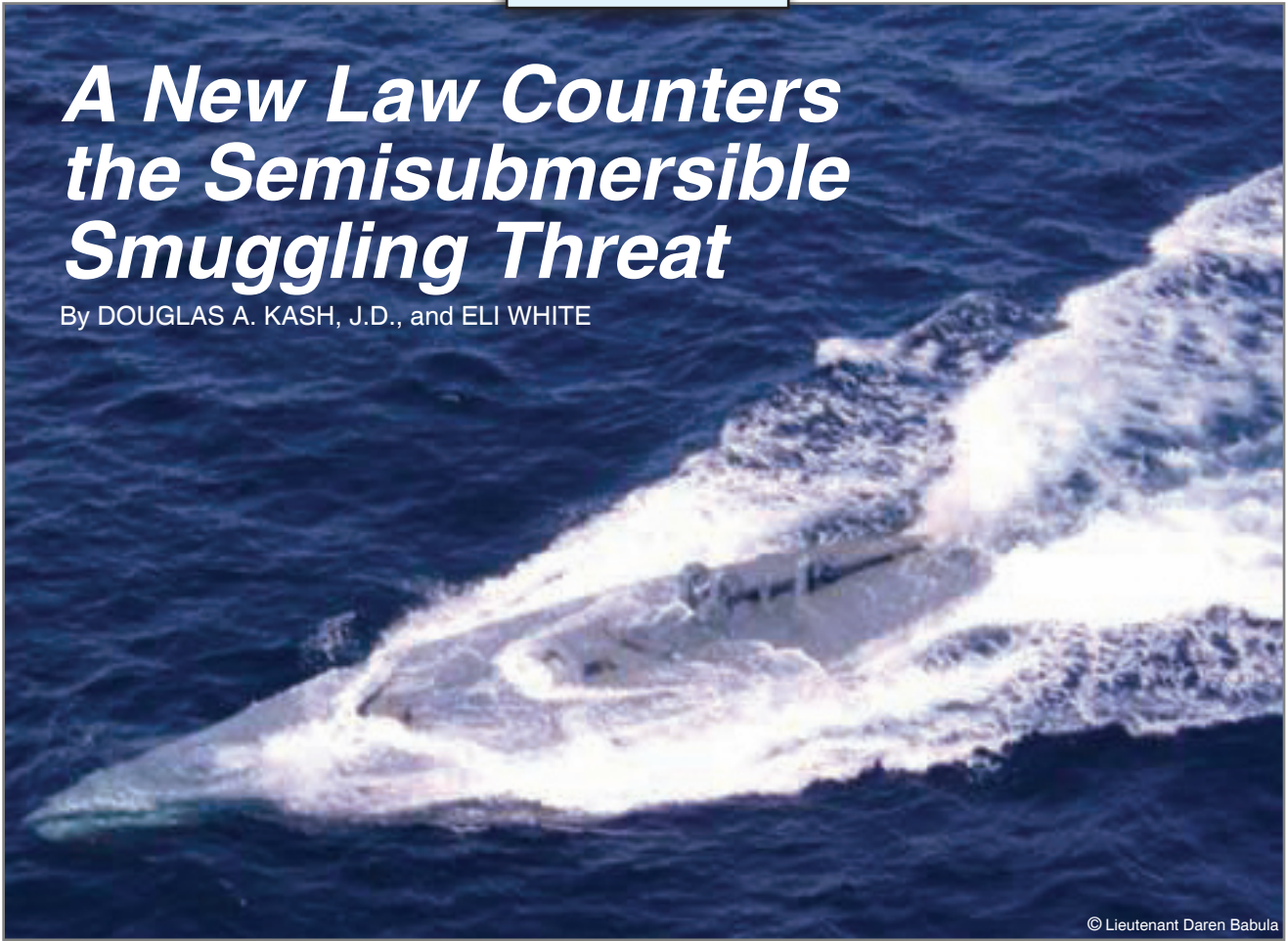
Part of a map printed on back of T-shirt

On October 22, 1982, the remains of an unidentified male, "John Doe," were found on the banks of the San Juan River in Colorado. An autopsy indicated that the individual had been shot with a small-caliber gun and suffered broken ribs before his death. At this time, the victim and his killer have not been identified.

Any relevant information can be directed to Detective George Barter of the Archuleta County, Colorado, Sheriff's Office at 970-264-8450 or the FBI's Violent Criminal Apprehension (ViCAP) Program at 800-634-4097. All ViCAP Alerts can be reviewed at <http://www.fbi.gov/wanted/vicap/vicap.htm>.

A New Law Counters the Semisubmersible Smuggling Threat

By DOUGLAS A. KASH, J.D., and ELI WHITE



© Lieutenant Daren Babula

During the past few years, the U.S. law enforcement and intelligence communities have seen the genesis and maturation of a relatively new technique for smuggling drugs into the country. Smugglers from South America have launched self-propelled semisubmersible (SPSS) vessels (alternatively referred to as a “low profile signature evading threat”) operated by a small crew carrying vast quantities of cocaine. These

submersibles typically deliver drugs to other vessels at sea and then are scuttled after off-loading. Ultimately, the cargo is shipped via land routes into the United States. Indeed, in other applications, this method can potentially facilitate the covert delivery of weapons of mass destruction (WMD), terrorists, illegal aliens, and any other item or criminal small enough to fit in the vessel. One U.S. Coast Guard official has estimated that up to three SPSSs carry drugs

along the Pacific coast each week.¹ The existing Maritime Drug Law Enforcement Act (MDLEA)² had not adequately addressed this new method of transporting narcotics. Therefore, new tools were needed to counter this emerging threat.

On October 13, 2008, the president signed into law the Drug Trafficking Vessel Interdiction Act of 2008 (DTVIA).³ This law was enacted in direct response to the use of SPSS vessels to transport

vast amounts of illegal drugs through international waters to the United States. Congress has concluded that the growing use of these vessels is “a serious international problem, facilita[ting] trans-national crime, including drug trafficking, and terrorism, [as well as posing] a specific threat to the safety of maritime navigation and the security of the United States.”⁴ Accordingly, Congress passed the DTVIA, imposing criminal and civil penalties for the knowing operation, attempt, or conspiracy to operate a submersible or semisubmersible vessel that is without nationality in international waters, with the intent to evade detection. This law enables prosecutors to bring criminal charges in the United States even if the vessel and cargo were not recovered. Moreover, for a conviction under the law, the vessel need not be operating in a sovereign nation’s territorial waters as long as the operators use the vessel or engage in a conspiracy to use an unflagged vessel with the intent to evade detection.

The Problem

It is noted that other agencies in the U.S. intelligence and law enforcement communities have statistics and estimates that are different from the ones reported herein. On average, SPSS vessels range from 40 to

80 feet in length and are capable of carrying 4 crew members and more than 4-12 metric tons of drugs at a time.⁵ In addition, they can travel at a speed of up to 13 knots and a distance of 2,500 nautical miles without having to refuel.⁶ The vessels are specifically designed with low-signature wood and fiberglass construction to evade detection, thus making them incredibly difficult to identify.⁷ The structure of an SPSS is purposely shaped to minimize the vessel’s wake, while exhaust pipes are designed to minimize its thermal signature. In addition, it rides close to the surface, with approximately 1 foot of the craft showing above water, thus significantly reducing the likelihood of visual detection.⁸ However, it is important to note that there is no single design or

type of SPSS because they are built by more than one group in different locations and undergo continual design modifications.

Although SPSSs have proven to be incredibly difficult to detect and identify, law enforcement personnel have had some success in capturing crews and disrupting planned operations. One of the more audacious plans was discovered during a 2006 joint Italy-Colombia undercover operation in which agents found a half-built SPSS intended to transship drugs from Colombia to Italy.⁹ It was estimated that the vessel, which cost 1 to 2 million dollars to construct and operate, was capable of carrying 10 tons of cocaine worth \$500 million on the street.¹⁰ Assuming one kilogram is worth \$20,000 wholesale in the United States,



Mr. Kash serves as a senior attorney with the DEA's Domestic Criminal Law Section.



Eli White is a third-year student at the University of Illinois College of Law and served as a DEA legal intern during the summer of 2009.

a 10-ton vessel can carry \$20 million worth of product.¹¹ A typical SPSS crew is paid a minimum of \$10,000, with some being paid up to \$100,000 for a single delivery.

Prior to the enactment of the DTVIA, the Coast Guard and other law enforcement personnel captured multiple SPSS vessels carrying vast amounts of illegal drugs. In one seizure conducted on September 19, 2008, the Coast Guard intercepted a 60-foot SPSS traveling approximately 350 miles off the coast of Guatemala carrying 295 bales of cocaine, weighing 6.6 tons, with an estimated value of \$196 million.¹² One military commentator estimated that although drug traffickers launched 23 SPSSs between 2000 and 2007, in the first 6 months of fiscal year 2008, more than 45 SPSSs were launched from Colombia.¹³

The Need for DTVIA

Though the seizure of illegal drugs in the September 19, 2008, example and other similar interceptions allowed the operators of the SPSS to be charged under existing drug laws, prior to the enactment of the DTVIA, persons transporting drugs in an SPSS who successfully scuttled their vessel escaped criminal charges. Scuttling refers to the purposeful sinking of the vessel by opening valves, flooding the

interior, and, thus, sending all of the drugs or other contraband to the bottom of the ocean. With the drugs disposed of, law enforcement personnel lacked evidence of criminal wrongdoing under the MDLEA and were forced to treat the situation as a mere castaway rescue mission, picking up the occupants from the ocean and returning them to their home country.

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One U.S. Coast Guard
official has estimated
that up to three SPSSs
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the Pacific coast
each week.
”**

Today, it is *estimated* that more than one-third of all maritime cocaine flow via the Eastern Pacific area of South America entering the United States is shipped via SPSSs.¹⁴ According to at least one U.S. military official, there is an expectation that up to 90 SPSSs will be launched this year from South America with the capacity to haul hundreds of tons of cocaine with a street value of untold billions.¹⁵ These frightening scenarios, coupled with

the fact that a successful scuttle by an SPSS crew would provide law enforcement with no legal course of action, led to the introduction and passage of the DTVIA.

The Statute

The new DTVIA provides in pertinent part:

Whoever knowingly operates, or attempts or conspires to operate by any means, or embarks in any submersible vessel or semi-submersible vessel that is without nationality and that is navigating or has navigated into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country, with the intent to evade detection, shall be fined under this title, imprisoned not more than 15 years, or both.¹⁶

To obtain conviction under § 2285(a), the government must prove all elements of the crime, which consist of 1) a knowing mens rea (guilty knowledge and criminal intent) with regard to the operation, attempted operation, or conspiracy to operate 2) a submersible or semisubmersible vessel, 3) the vessel is without nationality, 4) the vessel is or has navigated into, through, or from international

waters, 5) with the intent to evade detection. Elements 2 and 5 are further defined in other sections of the U.S. Code.¹⁷ Specifically, a “[s]emi-submersible vessel” is “any watercraft constructed or adapted to be capable of operating with most of its hull and bulk under the surface of the water, including both manned and unmanned watercraft,”¹⁸ while a “submersible vessel” is defined as “a vessel that is capable of operating completely below the surface of the water, including both manned and unmanned watercraft.”¹⁹ In addition, intent to evade detection can be found where one or more of the following factors, among others, present prima facie evidence to conclude that a vessel has evasion as its purpose:

- 1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including—
 - a) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;...
 - e) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;
 - f) the presence of a camouflaging paint scheme,

or of materials used to camouflage the vessel, to avoid detection; or

g) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport;....

4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

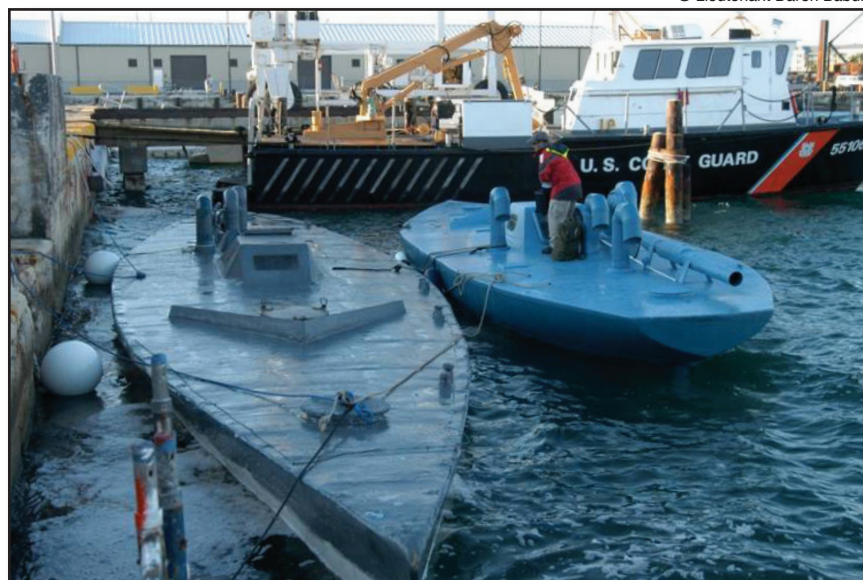
5) The failure of the vessel to stop or respond or heave to when hailed by government authority,

especially where the vessel conducts evasive maneuvering when hailed.

6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.²⁰

An affirmative defense is recognized where the defendant proves by a preponderance of the evidence that at the time of the offense, one of the following was true:

1) the vessel used in the offense was of the United States or lawfully registered in another nation, and the individual in charge of the vessel so claimed;



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2) the vessel was classed and designed in accordance with the rules of a classification society;

3) the vessel was lawfully operating in a government regulated or licensed activity; or

4) the vessel was equipped with and using an automatic identification, vessel monitoring or long range identification and tracking system.²¹

Further, the statute provides that a defendant satisfies his burden to demonstrate an affirmative defense where he produces specifically identified documents evidencing the existence of one of the factors listed above.²² In addition, subsection d further clarifies that where a claim of nationality or registry of the vessel is made so as to negate the presence of that element of the crime, that claim is recognized only where it is shown 1) the vessel possesses and produces documentary evidence of its nationality as provided in article 5 of the 1958 Convention on the High Seas, 2) the vessel is flying its nation's ensign or flag, or 3) the individual in charge of the vessel makes a verbal claim of nationality or registry.²³ Ironically, though the statute relies on the provisos of the 1958 Convention on the High Seas, the United States never has

ratified the treaty. The 1958 Convention was effectively replaced, along with three other treaties, by the U.N. Convention of the Law of the Sea that became effective in 1994.²⁴

A criminal conviction under the DTVIA is punishable by up to 15 years imprisonment in addition to a fine.²⁵ Additionally, civil liability may result in a penalty of up to \$1,000,000.²⁶

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Under the proposed sentencing guidelines, tiered enhancements can be applied for failure to heave, an attempt to sink the vessel, and the sinking of the vessel.²⁷ The potential DTVIA sentences are marginally less than under the MDLEA. The hope is that the DTVIA will encourage smugglers to abandon their voyages before they even get under way.

Application of the DTVIA

Since December 2008, law enforcement agencies have

encountered six SPSS vessels that were scuttled and sunk by its occupants in an attempt to avoid detection. Two cases brought under § 2285 resulted in conditional guilty pleas, with defense counsel filing motions alleging 1) the extraterritorial application of the DTVIA is unconstitutional and 2) the statutory element requiring a showing that defendant “attempt[ed] to evade detection” is unconstitutionally vague. In one of the two cases, the trial court denied both motions, but the issues are expected to be brought up on appeal to the U.S. Court of Appeals for the Eleventh Circuit.

In a third case, four defendants were found guilty of violating § 2285 in a bench trial and were scheduled to be sentenced in 2009. The defendants were apprehended after exiting their SPSS, donning life jackets, and deploying a life raft in response to being spotted by a law enforcement helicopter.

The remaining cases of scuttled SPSS vessels are currently pending and are likely to be charged under Title 46, the MDLEA, rather than the DTVIA. In one of those cases, a defendant confessed that drugs were aboard the vessel, thus providing evidence to support a Title 46 charge. The other two cases of SPSS vessels scuttled in May 2009 likely will be charged under Title 46 with incriminating statements or

other evidence supporting such action.

Conclusion

SPSS vessels are arguably nothing more than water-borne propelled containers carrying different payloads. These specific types of crafts have no legitimate uses, and their potential for causing damage—whether through drug trafficking, illegal aliens, or some other contraband—causes a great deal of concern.²⁸ The development of larger, longer-range fully submersible vessels, including those operated by remote control with GPS guidance, are underway. Without a crew to arrest and prosecute, law enforcement authorities will have a far more difficult time pursuing those responsible for launching their poison into American cities. The hypothetical doomsday scenarios include the delivery and detonation of a WMD off the U.S. coast, resulting in the loss of countless persons. It is, therefore, incumbent upon governments to arm the law enforcement and intelligence communities with all legal means, including legislation, to defend their citizens. The drugs brought in by smugglers find their way to every large city and small village in the United States, thus the need for federal legislation.

New-age radar technology, unmanned aerial vehicles and naval surface vessels, remote

laser infrared detection, acoustic sensors, and satellites are technologies being developed and deployed by U.S. intelligence, military, and law enforcement entities.²⁹ Along with traditional law enforcement techniques (including undercover investigations, confidential source exploitation, and postarrest interrogations), the United States is trying to defeat the latest smuggling methodologies and prosecute the purveyors of narcotics.

A typical SPSS crew is paid a minimum of \$10,000, with some being paid up to \$100,000 for a single delivery.

The enactment of the DTVIA is a potentially strong tool to deter the use of SPSS vessels to transport large amounts of drugs into the United States. Evidence of growing international cooperation occurred during the summer of 2009, when the Colombian Congress passed legislation making it a crime to construct SPSSs (12 years in prison) and for utilizing such vessels (14

years in prison).³⁰ By allowing for convictions resulting in heavy criminal and civil penalties, even where occupants successfully sink an SPSS prior to the seizure of any illegal narcotics, criminals are no longer permitted to merely travel back home after a failed trafficking attempt. ♦

Endnotes

¹ Kristen Noel, "New Law Would Help Drug Enforcement, Coast Guard Officer Says," <http://www.GlobalSecurity.Org/security/library/news/2008/10/sec-081002-afps01.htm>, (accessed on October 15, 2008).

² 46 U.S.C. 70501 et. seq.

³ Pub. L. 110-407, § 101 (2008).

⁴ *Id.* at Title I, Section 101.

⁵ The Self-Propelled Semisubmersibles Threat, <http://www.southcom.mil/AppsSC/factFiles.php?id=83> (last visited November 16, 2009); John C. Marcario, *New Law for New Threat*, SEAPOWER, March 2009 at 38. However, other commentators claim the vessels can carry up to 15 tons of cocaine. See Capt. Wade F. Wilkenson, *A New Underwater Threat*, Proceedings, U.S. Naval Institute, October 2008, 34.

⁶ Commander, U.S. Naval Forces Southern Command/U.S. Fourth Fleet, Semisubmersible Drug Vessel Intercepted by U.S. Navy, Coast Guard Team, <http://www.Southcom.mil/appssc/news.php?storyID=1387> (accessed on November 16, 2009).

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⁸ William Booth and Juan Ferero, "Plying the Pacific, Subs Surface as Key Tool of Drug Cartels," *The Washington Post*, June 6, 2009, A1, A7.

⁹ Nick Pisa, Drug Cops Foil Mafia Plot to Smuggle \$870m of Cocaine by Submarine, March 30, 2006, <http://www.cdninfo/news/industry/i060330.html> (accessed on August 10, 2009).

¹⁰ *Id.*

¹¹ Wade F. Wilkerson, 34.

¹² Second cocaine sub fished out by U.S., <http://www.msnbc.msn.com/id/26795833/print/1/displaymode/1098/> (accessed on August 6, 2009).

¹³ Captain Wade F. Wilkerson, A New Underwater Threat, October 14, 2008, <http://www.military.com/forums/0,15240,177265,00.html> (accessed on November 16, 2009).

¹⁴ *Id.* See also Cocaine Smuggling in 2008, Office of National Drug Control Policy, ONDCP-01-09, August 2009.

¹⁵ *Id.*

¹⁶ 18 U.S.C. § 2285(a)(West 2009).

¹⁷ See 18 U.S.C. § 2285(b), (h) (West, 2009).

¹⁸ 46 U.S.C. § 70502(f)(1) (West 2009).

¹⁹ *Id.* at (f)(2).

²⁰ 46 U.S.C. § 70507(b) (2009).

²¹ 18 U.S.C. § 2285(e) (2009).

²² *Id.*

²³ 18 U.S.C. § 2285(d)(2009).

²⁴ http://www.un.org/Depts/los/convention_agreements/texts/unclos/preamble.htm (accessed on August 19, 2009).

²⁵ 18 U.S.C. § 2285(a) (2009).

²⁶ 46 U.S.C § 70508(d) (2009).

²⁷ Amendments to the Sentencing Guidelines May 1, 2009 (Effective November 1, 2009), <http://www.ussc.gov/guideline.htm> (accessed on August 25, 2009).

²⁸ There is no available information to indicate that SPSSs have been used for any purpose other than shipping drugs.

²⁹ Wade F. Wilkerson, 36.

³⁰ Jeremy McDermott, "Colombia Out to Sink Cocaine Barons by Nabbing 'Drug

Subs,'" June 20, 2009, <http://www.the-scotsman.scotsman.com/world/Colombia-out-to-sink-cocaine.5385360.jp> (accessed on September 9, 2009).

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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.

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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 Dennemann



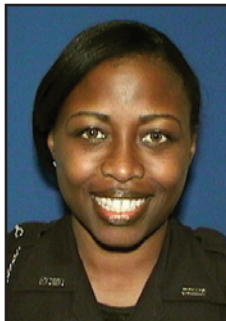
Officer Martin



Officer Henthorn

Officers Joseph Dennemann, Adrian Martin, and Thomas Henthorn of the Zionsville, Indiana, Police Department responded to a report of a drowning child at a residence. Upon arrival, Officer Dennemann located a woman holding an unconscious and unresponsive young girl near the pool. The woman advised the officers that she found the child at the bottom of the

deep end and that she was unsure how long the child had been under water. Immediately, Officer Dennemann began performing CPR with the aid of Officer Martin. The child began expelling large amounts of water and fluid from her mouth. Officer Henthorn helped the family and other children, while Officers Dennemann and Martin continued first aid until paramedics arrived, at which time the child began regaining consciousness. The young girl made a full recovery.



Sergeant Hinton

Sergeant Ophee Hinton of the Fulton County, Georgia, Marshal's Department noticed black smoke coming out of the side window of a home. Immediately, she requested assistance from the fire department. Sergeant Hinton then went to the front door and began knocking. A woman responded to the door and stated that she was unaware of the smoke and that other residents possibly could be inside. After advising her to leave, Sergeant Hinton began knocking on other doors down the hall and found one other woman inside. Sergeant Hinton ensured that both residents were outside at a safe distance from the home.

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, Outreach and Communications Unit, Quantico, VA 22135.

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Patch Call



The Louisiana Office of Alcohol and Tobacco Control patch is in the state's distinct boot-like shape. At the center, the Louisiana seal shows a pelican, the state bird, with its head turned to the left in a nest while feeding its three young.



The patch of the Wayland, Massachusetts, Police Department depicts a historic scene. Pilgrims are waving a symbolic white cloth as the East Sudbury Plantation, which later became Wayland, was created.