

In Memoriam
National Police Week

FBI LAW ENFORCEMENT BULLETIN

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The Cover:
Law enforcement officers who have made the ultimate sacrifice are honored throughout the Nation during National Police Week. (Photo courtesy of The Police Chief.)

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

William H. Webster, Director

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Director's Message

Since 1974, over 1,000 U.S. police officers have been feloniously killed in the line of duty. This month, we honor their memory on Peace Officers Memorial Day, May 15.

The Congress of the United States authorized the President to also proclaim the week in which May 15 occurs as National Police Week, a time when all of America can recognize the service law enforcement gives our society. How fitting that this takes place in the month that begins with Law Day, when we reaffirm our national commitment to the rule of law in this country. This month also marks the 92d anniversary of the International Association of Chiefs of Police (IACP), an organization of law enforcement executives in the United States.

This week of recognition was first proposed by the IACP in 1935 to "establish a feeling of cooperation among the citizens and police officers of this country." Today, with the tremendously improved cooperation between police and their communities, we see an overall decline in the crime rate for the past 2 years, which is good news to police officers and other citizens.

There is good news, too, in the steady decline in the number of officers feloniously killed over the last decade. Since 1974's high of 132 police officers killed, the number has dropped to 80 in 1983, and last year a further decrease to 72 officers who died protecting their communities.

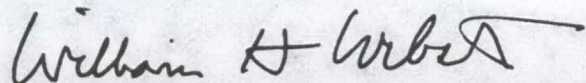
Of course, the loss of one police officer to criminal action is too much, but it is heartening to see a lessening in the casualty rate in today's war on crime. The decline in officers killed is partially a result of technology, the development of Kevlar, the ballistic fiber used in soft body armor.

We see soft body armor, or ballistic vests, saving officers' lives again and again today, not only in gun battles but in some automobile accidents when a steering column would have penetrated an officer's chest if it were not for the vest.

The FBI has issued vests to all its Special Agents for use when they encounter the kind of threatening situations that can confront police officers at any time. In city after city across the Nation if the municipal budget does not allow for the purchase of vests for officers, public subscriptions, often begun by the news media, have raised the necessary funds.

A majority of the officers killed in the last decade were shot in the upper chest or upper back, areas that would have been protected by ballistic vests if they had been worn. In 1983, one-fourth of the victim officers killed were wearing some type of body armor, but all were shot in areas not protected by their vests (except one officer shot at close range by a 30/30 rifle).

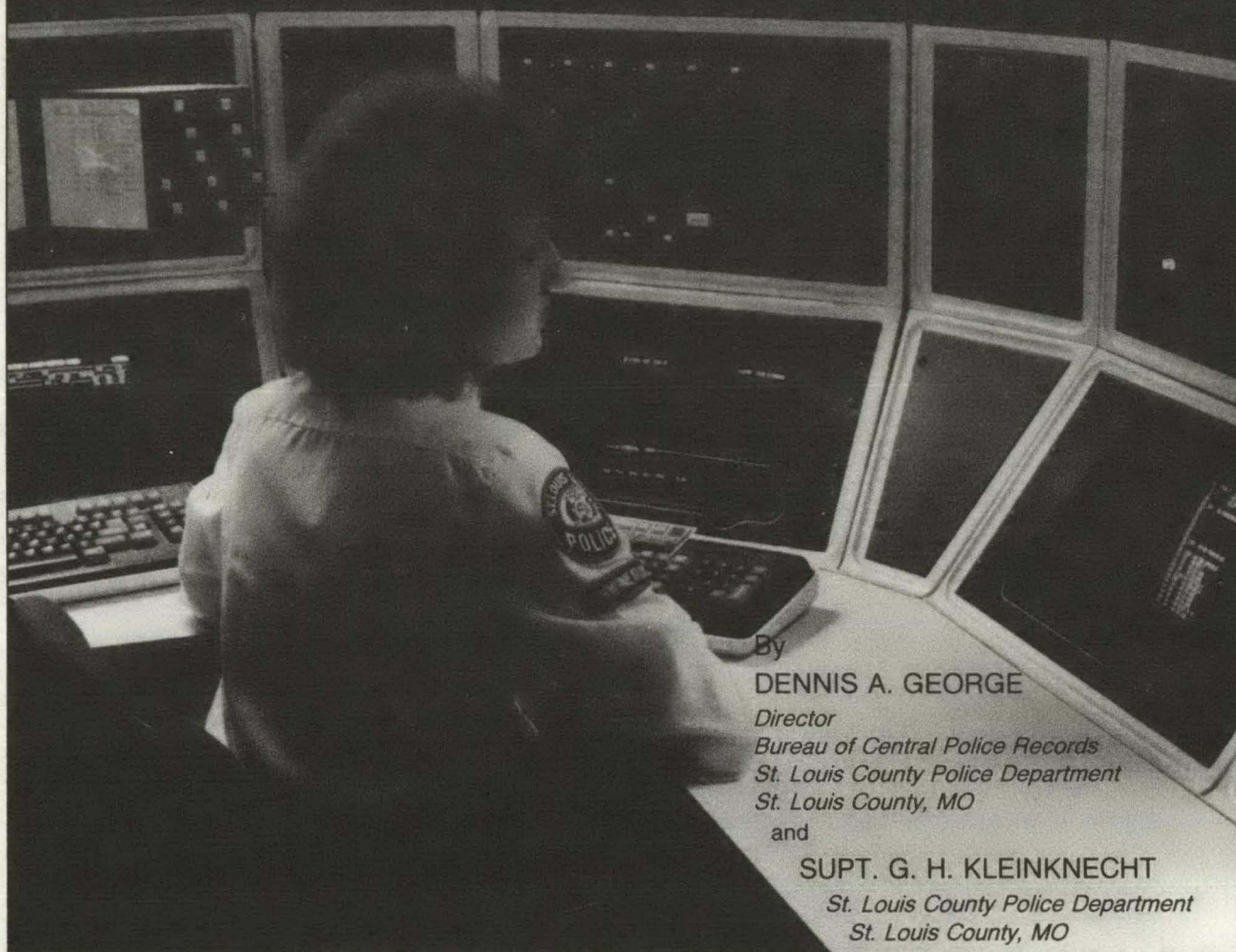
In this month when we honor the memory of those law enforcement officers who have made the ultimate sacrifice, when we honor those who stand ready to do the same, it is time that *every* community insure that its police officers have access to this technological achievement.



William H. Webster
Director
May 1, 1985

CARE

Computer Assisted Report Entry



By

DENNIS A. GEORGE

Director

Bureau of Central Police Records

St. Louis County Police Department

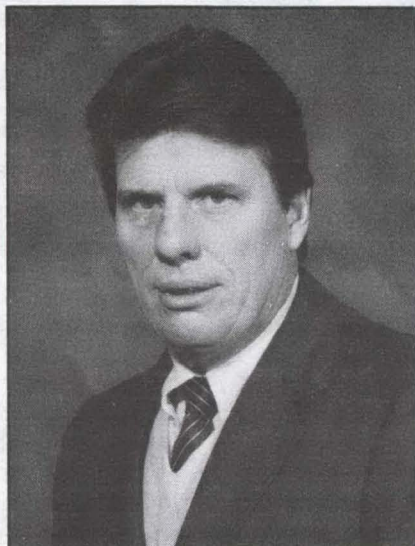
St. Louis County, MO

and

SUPT. G. H. KLEINKNECHT

St. Louis County Police Department

St. Louis County, MO



Mr. George



Superintendent Kleinknecht

The St. Louis County Police Department serves an area of 317 square miles with over 400,000 residents, and a precinct serves each of the five geographically divided areas of the county. In 1983, with 557 police officers and 186 noncommissioned personnel, approximately 600,000 calls for service were handled by the department and over 100,000 written police reports were generated. As most police administrators realize, an increase in the demand for services must be met by a corresponding increase in efficiency in order to offset fiscal constraints.

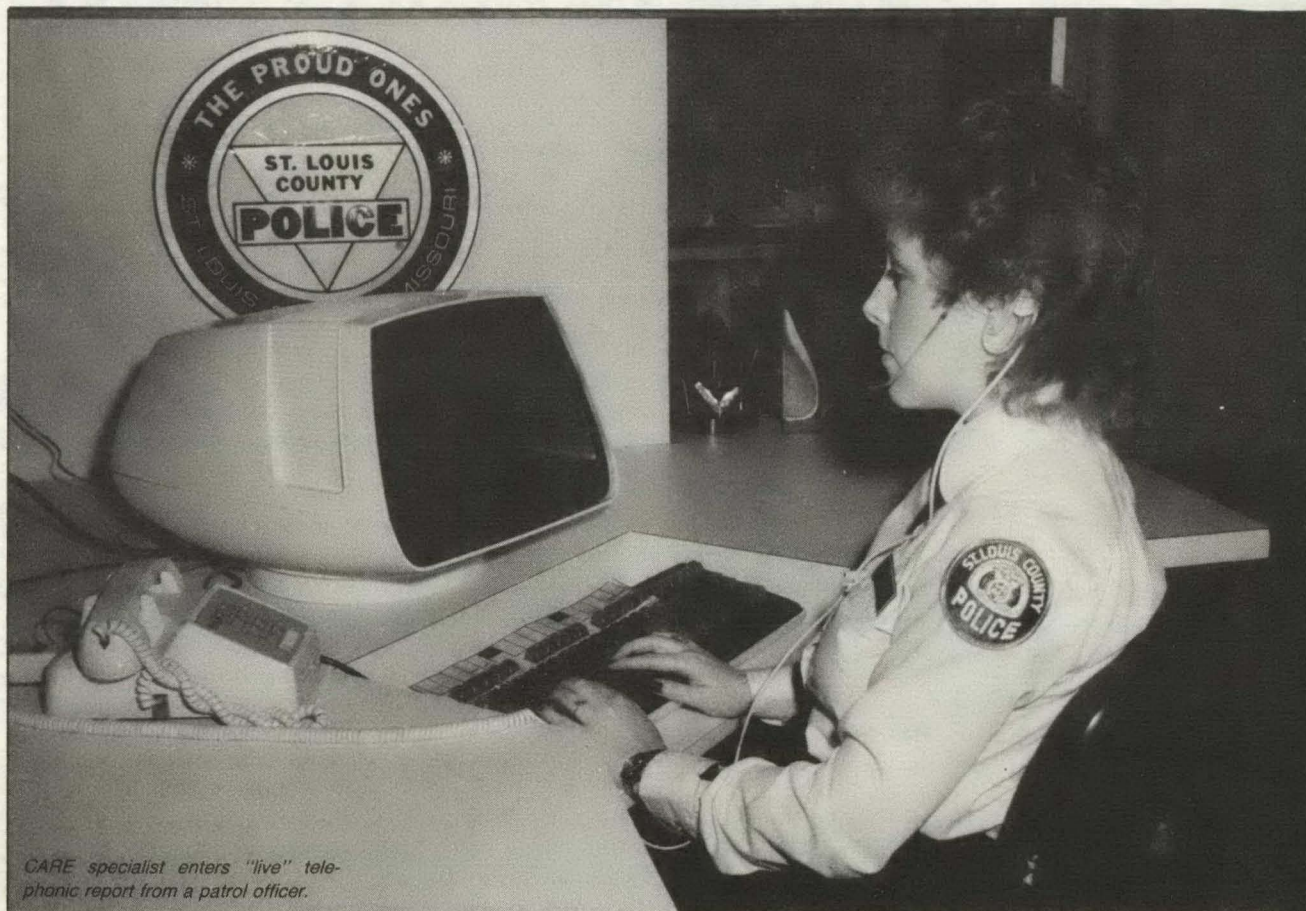
One area that consumes many hours of a police officer's time is report writing. A 3-month survey taken of patrol officers within our department indicated that they spent up to 20 percent of their time writing police reports. With this in mind, a task force was formed in 1982 to study the feasibility of using computer technology to assist in writing police reports. The task force was directed to explore conceptually an automated "live reporting system" much further advanced than the "typical telephone reporting system" in use today. The system must not only produce police reports but also serve as the primary source of management information accessible instantaneously from remote locations. After months of research and discussion, the task force established a formal plan with the following goals:

- 1) Reduce time spent by uniform police officers in preparing reports, thus increasing officer and supervisor "street time."

- 2) Provide instant "online" management information and instant retrieval of reports from any remote location, such as the precinct or detective office.
- 3) Reduce office space used to maintain "hard copies" in filing cabinets or vaults by "storing" reports in computer memory.
- 4) Improve the quality, accuracy, and timeliness of crime analysis, management reports, and Uniform Crime Reports (UCR) by electronically processing, aggregating, distributing, and filing of these documents.
- 5) Improve the quality, legibility, and accuracy of police reports.

An Overview of the New System

A police officer is dispatched to a complaint. He or she conducts the investigation, and upon determining a police report is required, requests a complaint number (file number) from the radio dispatcher. As most property crimes occur at a residence, the officer receives permission to use the victim's phone in order to call the CARE unit directly from the scene. The CARE specialist enters the complaint number into the system, which electronically retrieves all the previously entered information from the computer aided dispatch system (CAD) and displays this information on the CARE specialist's terminal screen. This information includes information previously taken from the caller and information automatically completed by the system. The CAD information displayed includes the caller's name, location of offense, call received time, call dispatch time, call arrival time, nature of assignment, unit assigned, and COGIS (geographical reporting area).



CARE specialist enters "live" telephonic report from a patrol officer.

The CARE specialist verifies with the officer the unit number assigned and location of assignment to ensure the file number is the one officially assigned to the incident. This verification process eliminates a previous problem of transposing digits in file or complaint numbers, and as a result, eliminates misfiled police reports. After completing the verification process, the officer is verbally led through the report by the CARE specialist who completes a series of formatted screens. Depending on the type of incident, only applicable screens are completed, including: MASTER, VICTIM, WITNESS, VEHICLE, PROPERTY, SUSPECT/ARREST, NARRATIVE, and EXIT/UCR.

The questions and answers are preprogrammed into the system and vary depending on the type of incident reported. The system was designed

using the same sequence of information and codes required in a handwritten report, thereby reducing significantly the amount of training for the officer. The officer is always led through the report in the same sequence. This procedure reduces the possibility of omitting necessary information. After using the system several weeks, officers have become very familiar with the sequence and organize their information accordingly, resulting in reduced operator entry time. Many officers have reduced their calling time by over 50 percent after using the system just a few weeks.

Most police officers have found that there is little or no need for "note taking," and by calling the report in from the crime scene, they are afforded the opportunity to ask the victim for information they may have forgotten, e.g., property descriptions. On the average, the time necessary to complete a report has been under 7 min-

utes. Another major benefit of the new system is that the officer is required to make just one telephone call. Report distribution to other elements of the department is done electronically, along with any teletype entries or notifications that may be required by the incident. When the officer completes his telephone call to the CARE unit, he returns to service knowing that the report is complete.

Benefits of CARE

From a management perspective, the CARE system provides many benefits. Since the system is an online system with remote access, managers at all levels can use the system. The system has been designed to be "user friendly." Division and precinct commanders can use the system to determine officers' productivity levels,

beat deployment, and crime trends and patterns. With the remote precinct terminal, field supervisors can determine their selective patrol targets by using the inquiry capabilities of the system to identify high-crime areas by reporting district, patrol beat, or by premise type. This information is always current, since it is updated as soon as a report is made and can be immediately aggregated. When fully implemented, the system will also be an excellent investigative tool.

Since the system's inception, the patrol time and availability of the beat officer has increased approximately 8 percent. Police officers report that they are now able to spend more time with followup investigations—time previously used to complete report forms manually.

Investigations are more complete since all pertinent facts are obtained with all mandatory computer fields

being completed before the CARE specialist can proceed. Each report is reviewed by a CARE supervisor to ensure completeness and accuracy. Field supervisors can spend more time overseeing their officers' actual field performance as time previously needed to review handwritten reports has been eliminated.

Headquarters commanders, by using their deskside terminals, have miniature "record rooms" at their fingertips. Police can view and print reports without leaving their office. Police executives have the same capabilities as the field commanders, such as determining crime trends and crime patterns, crime accounting, and Uniform Crime Reporting. Up-to-the-minute crime statistics are available with a simple computer inquiry. Crime statistics can be viewed and/or printed and broken down by precinct, month, year, day, or any combination of these fac-

tors. Also, crime comparisons of previous months or years can be made.

Paper files and file cabinets have been eliminated, resulting in additional floor space and less maintenance costs. Other costs, such as microfilming, have been significantly reduced since it is no longer necessary to maintain this storage medium. Staffing levels have been frozen at their 1982 level. Staffing for the CARE unit was provided by eliminating positions, such as UCR crime coders, UCR data entry clerks, and report distribution clerks. Distribution of police reports, which previously took between 4 to 7 days, now takes seconds. Reports are directed to their destination by the touch of the terminal key.

From a police officer's perspective, the system is miraculous. Comments ranging from "this is the best thing that's happened to the patrol officer since air conditioning" to "where has this been so long" are common. Since implementation, some officers claim they have all but forgotten how to write police reports, and seldom is an officer "stuck at the station" writing a late report. Overtime for report writing has been virtually eliminated.

From the citizen's perspective, the CARE system means being able to get a copy of a police report the same day. Previously, reports that were needed for insurance purposes took 3 to 10 days to process, and therefore, the victim or his insurance company had an extensive waiting period before a copy could be obtained. In most cases, the report is called in from the citizen's home, and the victim is assured that their stolen



Patrol officer enters complaint into the CARE system, while using victim's residential telephone.

Figure 1

MODE A CN# 85-330942 FUNCTION A SCREEN CODE A SCREEN NAME MASTER

DATE OF CALL 01/14/85
 TIME CALL RECD 06:30
 TIME CALL DISP 06:31
 ARRIVAL TIME 06:39
 CAR NUMBER 1306
 COGIS NUMBER 306.1
 CALL LOCATION 145 STREET Anywhere APT.
 CITY St. Louis
 CALLER'S NAME Doe
 CALLER'S ADD 145 Anywhere
 CALLER PHONE #888-1234
 NATURE CODE Burglary
 OFFICER'S DSN 0337
 OFFICER'S NAME George
 UNIT NUMBER 530
 DEPT MUNI CODE 099
 DEPT FOR CODE 099
 CASE STATUS Active
 OPERATOR'S DSN 0782
 CALL REC'D CODE Radio
 DATE/TIME OF REPORT 01/15/85 10:00
 OFFENSE INCIDENT Burglary
 OCCURRED FROM DAY Mon DATE 01/14/85 TIME 10:00 (A=AM/P=PM)
 TO Mon DATE 01/15/85 TIME 06:15 (A=AM/P=PM)
 PREMISE CODE Residence
 LOCATION OF OCC 145 STREET Anywhere APT.
 APARTMENT/SUBDIVISION _____
 POINT OF ENTRY CODE Door Back
 POINT OF EXIT CODE Door Back
 POINT OF ENTRY VISIBLE TO PATROL N (Y/N)
 ENTRY METHOD CODE Pried Lock
 TOOLS USED Pry Tool
 WEAPON/OBJECT USED Pry Bar
 WERE ANY OTHER FOLLOW-UP UNITS NOTIFIED Y (Y/N)

CASE STATUS CODES

A - Active
 C - Cleared By Arrest
 E - Exceptionally Cleared
 U - Unfounded
 I - Inactive

CALL RECEIVED CODES

R - Radio
 C - Citizen
 P - Phone
 S - Station
 O - On View

POINT OF
ENTRY/EXIT CODES

A - Door Front
 B - Door Back
 C - Door Side
 D - Door Garage
 E - Wall
 F - Roof
 G - Window Front
 H - Window Back
 I - Window Side
 J - Other

METHOD OF ENTRY

A - Alarm Bypass
 B - Hid in Building
 C - Stolen Key
 D - Pried Lock
 E - Picked Lock
 F - Ladder/Rope
 G - Broke Glass
 H - Removed Window Unit
 I - Forced
 J - Open Door/Window
 K - Unlocked Door/Window
 L - Impersonate
 M - Other
 N - Unknown

TOOLS USED CODES

A - Blunt Object
 B - Celluloid Stripe
 C - Channel Locks
 D - Coat Hanger
 E - Pry Tool
 F - Glass Cutter
 G - Hammer
 H - Key
 I - Ladder
 J - Saw
 K - Other
 L - Unknown

VIC

WIT

VEH

PROP

SUS

NAR

EXIT

“... the most significant savings has been our most valuable resource—the police officer’s patrol and availability time.”

property is being accurately described. Teletype inquiries concerning stolen property are sent immediately, which has assisted in the property recovery rate.

Hardware and Programming Needs

One of the objectives of the CARE task force was to complete all design specifications and programming with inhouse personnel. During the design stage, police officers, field supervisors, and management personnel were consulted to ensure that their needs would be met by the system. Even after the system was instituted, followup interviews were conducted with the users to ensure the system was performing as intended.

During the design phase, the task force always kept in mind that the system must be “user friendly” and “operator friendly.” If the system was to be successful, the system would have to be fast, with the operator making the minimum amount of key strokes for each entry. Reporting codes needed to complete reports were preprogrammed into the system. (See fig. 1.) Doing this eliminated the need for flip charts or other manual aids. An example of this is the use of personnel files, which are now automatically checked and verified when the operator enters the officer’s serial number. The system automatically enters the officer’s name and current assignment into the computerized report format.

The system was designed to accommodate existing computer hardware within the department so only a minimal amount of new hardware had to be purchased. The system currently

has a network of five remote computer terminals and high-speed printers in each of the five precincts and six terminals and a printer in the Division of Criminal Investigation.

Programmed into the system are various management information packages that retrieve and display online statistical data. For example, one package displays workload by hour, which is used to determine current and future staffing needs. Another package displays operators’ performance, including number of errors and volume of reports taken. Another program displays accounting information, such as number of reports taken, supplemental reports entered, etc.

The CARE unit is comprised of six work stations, each specially designed to afford the maximum amount of privacy for the operators yet providing comfort and ease of supervision. The work stations can be expanded to handle increased workload. Presently, there are 17 specialists assigned to the CARE unit, which operates 24 hours a day. Duty hours for the CARE specialists were formulated based upon workload studies and peak reporting times.

Future

Presently, the CARE unit receives property crimes only. This policy was intended to assist in the transition from the manual/hard copy reporting system to the computer-assisted method. It was believed that property crimes were less complex and more suitable for the initial phase of CARE. The CARE system was introduced into each precinct, one platoon at a time, gradually adding an additional platoon every 28 days. Even though property crimes represent approximately one-half of the total number of reports taken by the St. Louis County Police Department (or

50,000 annually), it was believed that before other crimes were included, a total evaluation would be needed. Future plans include adding crimes against persons, false alarms, missing persons, fraudulent checks, daily activity logs, and other reports currently being completed manually. Other county departments, such as the prosecuting attorney’s office, county counselor’s office, and possibly the court system, may be included as the number of computer terminals are expanded. Offering the CARE system to several municipal police departments is also presently being considered.

Conclusion

Even though the St. Louis County Police CARE Unit has been very successful, we have just begun to explore the many facets and potentials of computer-aided report writing and filing. Studies indicate favorable response from the citizens and police officers. They have been very impressed with the speed and accuracy of the system. Already demonstrated is a substantial cost savings on capital items such as microfilming, storage space, copying machines etc. However, the most significant savings has been our most valuable resource—the police officer’s patrol and availability time.

FBI

MASTER screen completed. Entry codes automatically appear on screen eliminating manual flip cards, etc.

Oral Resumes

An Innovative Promotional System That Works!

"Oral resumes are . . . an innovative and effective method for the selection of law enforcement managers and supervisors."

By
E.E. (TED) COOKE

*Chief of Police
Culver City, CA*

Assemble a randomly selected group of law enforcement administrators and ask them to decide upon the perfect system for promotions. The dialog would go on for hours, more likely days, with the participants perhaps narrowing down the list of successful methods to those that have been used most frequently in the past. Add a few personnel specialists to the group and the resulting chaos would probably register on the Richter scale.

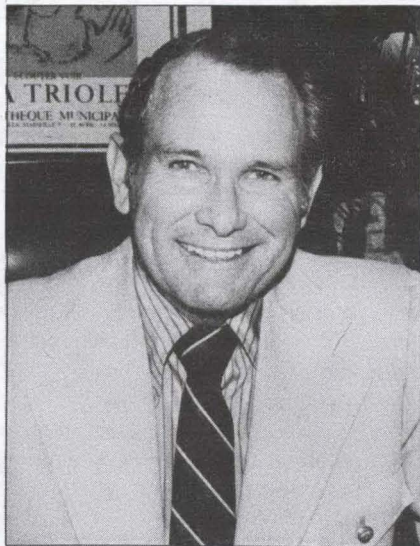
Law enforcement agencies have been searching for the "perfect" promotional system for decades, and for the most part, have made only one clearly recognizable discovery: There ain't no such animal! What works well in one agency might fail miserably in another. Factors such as agency size, regional location, and management styles must be considered.

The purpose of this article, therefore, is not to examine the paragon of promotional systems, but to discuss a procedure that has recently been used to establish promotional lists for the ranks of sergeant and lieutenant that is both innovative and widely accepted within the Culver City, CA, Police Department.

Our department is a civil service-based organization of 200 personnel, 103 of them sworn peace officers. Besides the chief, there are 13 sergeants, 8 lieutenants, 3 captains, and an assistant chief. The 78 police officers are assigned to a wide variety of assignments, such as patrol, detective, traffic, motors, and narcotics.

Promotional examinations in the sixties and the early seventies consisted of the standard written examination followed by the oral assessment panel. From the mid-seventies through 1982, the assessment center approach to promotions was used to formulate promotional lists. Both systems, however, had their drawbacks.

Both the oral assessment panel and the assessment center process involved raters recruited from *outside* the department. While it is true that outside raters are used quite frequently in promotional processes to minimize the spectre of inside "favoritism," outsiders also bring with them the management practices and philosophies from their own agencies that might not correspond directly with the agency and the candidates they are evaluating. Also, as William Bopp pointed out in *Police Personnel Administration*, "When outside panels are chosen to do the job, the first few eligibles who appear before them set the standards for the rest."¹



Chief Cooke

There was still another problem with using the assessment center process in Culver City—many qualified applicants had to be eliminated from the process because the structure of the process, even allowing for two 1-day sessions, only permitted a maximum of 18 candidates to compete for promotion. Since there was usually twice that number of qualified applicants, it became necessary to use a written examination to eliminate some of the candidates for sergeant. Not only did this result in a morale problem, but those eliminated solely on the basis of the written examination were quick to point out that written exams are not always valid. The President's Commission on Law Enforcement and Administration of Justice in their task force report supported this theory when they stated, "Written promotional examinations . . . do not test those qualities of leadership or administrative capacity which are presumably a major consideration in promotion to higher ranks."²

In mid-1984, when promotional exams for both lieutenant and sergeant were only a few months away, the chief began a series of discussions with his command staff, middle managers, and supervisors regarding the formulation of a newer examination process.

It was clearly understood that since the possibility of promotional advancement serves as a major personal incentive, the system selected must first and foremost be perceived by all as being fair—it must be based upon merit and untainted by favoritism. It was also necessary for the system to be structured so that all qualified applicants would be allowed to compete. Regardless of the methods employed, there could be no pre-examination elimination of potential candidates.

After almost 2 months of research and debate, a unique system was developed. This procedure,

dubbed the "oral resume," received virtually unanimous acceptance when presented to all department personnel at a series of meetings.

The Oral Resume

The oral resume requires that each group of promotional candidates be evaluated by panels comprised entirely of members from inside the department. The chief of police, assistant chief, and the three captains would compose the panel for those competing for the rank of lieutenant. The six senior lieutenants of the department were to comprise the panel for the candidates for sergeant.

Each candidate appeared at a prearranged time and had a maximum of 15 minutes to present his qualifications to the panel. The panel members were not allowed to ask any questions of the candidates, nor were they allowed to hold any discussion among themselves during the scoring process.

The raters scored each candidate on a scale of 1 to 100 percent in several areas, including education and training, past experience within the department, interpersonal relations, and their oral presentation. (See fig. 1.)

After all the scores for each candidate were tabulated, the highest and lowest scores were thrown out and the remaining scores were averaged. Seniority points were added, and the promotional list was then collated. (See fig. 2.)

This system was based loosely on the "Delphi System," first developed by the Rand Corporation.³ The Delphi System is a procedure for arriving at a consensus among a group of experts. This method, using questionnaires about specific problems, avoids direct contact and debate among the experts, which might induce hasty formulation of and commitment to certain ideas.

Postexamination Survey

The oral resumes for both sergeant and lieutenant were presented in November 1984. Each candidate was given a postexamination survey

Figure 1

**CITY OF CULVER CITY
RATING FOR
POLICE SERGEANT/LIEUTENANT EXAMINATION**

CANDIDATE _____ RATER _____ DATE _____

SCORING MATRIX	SCORE				
	UNACCEPTABLE 0-54	LIMITED 55-65	AVERAGE 70-79	GOOD 80-89	EXCELLENT 90-100
DIMENSIONS					
A. EDUCATION AND TRAINING	FOR OFFICE USE				
1. Education					
2. Experience					
A. Past Assignments					
B. Special Assignments					
B. PAST EXPERIENCE					
1. Writing Ability					
2. Administrative Insight					
3. Quantity of Work Performed					
4. Quality of Work Performed					
C. INTERPERSONAL RELATIONS					
1. Acceptance of Supervision					
2. Attitude Toward Fellow Emp.					
3. Attitude Toward the Public					
4. Approachability					
5. Appearance					
D. ORAL PRESENTATION					
1. Communication Skill					
2. Content					
3. Organization					
4. Clarity					
5. Appearance					

RATER'S SIGNATURE _____

form as he left the room following his presentation. The results were promising.

Twenty-six of the 36 officers who tested for sergeant (72 percent) responded. On a scale of 1 to 10, with 10 being the highest, these candidates had an overall confidence level of 7.7 in the process. Thirteen of these candidates had previously been involved in assessment centers and their overall rating was a surprising 8.0. Seventy-three percent of the respondents wished to continue having the oral resumes, 12 percent wanted assessment centers, and the remaining 15 percent indicated a desire for some other, though unspecified, examination format.

Of the 11 sergeants who tested for the rank of lieutenant, 9 of them (82 percent) responded to the questionnaire. The overall confidence level for this group was 8.1, and all of them had previously taken assessment centers. Among those who had previously taken three or more assessment centers, the overall rating was 8.5. Eight of the nine who responded (89 percent) wished to continue using the oral resume process.

Conclusion

It is important to note that in informal discussion groups after the examinations, the raters all expressed a high degree of confidence in the system. In many instances, their individual perceptions of many of the candidates changed dramatically after hearing their presentations. They became more aware of individual accomplishments, goals, and career directions.

The key to acceptance of the oral resume system throughout the department has been the openness of the system's development and application. Nothing was forced upon the candidates, and had there been any

expressed objection to the use of the system, it would not have been used.

This system is not being touted as the panacea that other examination methods have purported to be. Its success at the Culver City Police Department is certainly not a guarantee of success elsewhere. Oral resumes are, however, an innovative and effective method for the selection of law enforcement managers and supervisors. Oral resumes also serve as an extension of the personnel evaluation system. Candidates for future exams are already aware of who their promotional raters are going to be, so it is in their best interest to perform at the highest possible level for these individuals at all times.

Negative attitudes, which manifest themselves as poor overall work performance, will only serve to lower an individual's chances for promotion. No longer do candidates come under the scrutiny of promotional raters for a brief 15- to 30-minute period. Using the oral resume system, they are evaluated virtually every single day.

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Footnotes

¹ William J. Bopp, *Police Personnel Administration* (Boston: Holbrook Press, Inc., 1974), p. 249.

² The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* (Washington, DC: U.S. Government Printing Office, 1967), p. 142.

³ Lesley Albertson and Terence Cutler, "Delphi," *Futures*, vol. 8, No. 5, October 1976, pp. 397-404.

Figure 2

Sample Grade Determination From Panel Of Six Raters

Rater	Grade	High & Low Eliminated	Total Divided by Four	Seniority Points	Final Grade
1	98%	XXX			
2	95%	95%			
3	93%	93%			
			93.25%	+	
4	93%	93%		2.25	=
5	92%	92%			95.50%
6	89%	XXX			

Police Officer Recruitment and Affirmative Action Policy

"[Internal recruitment] will not only assist in meeting affirmative action criteria but will also help ensure that qualified candidates who have been oriented to the philosophy and goals of the department will be selected."

By

CHRISTOPHER A. HERTIG, C.P.P.

York College of Pennsylvania
York, PA

In recent years, management in both public and private sectors has become increasingly aware of the dangers involved in discriminatory hiring and promotional practices. This fear of the Equal Employment Opportunity Commission and privately pursued court actions has created a climate of trepidation within some managerial hierarchies, while causing other organizations' personnel management staffs to simply languish in despair. Regardless of the reasons for these feelings, management should attempt to solve the problems. There exists no place for timid inaction or rationalizations of improper management practices.

Equal Employment Opportunity Commission

In order to better understand the legal difficulties that face public and private employers who hire and promote in a discriminatory manner, it is necessary to take a brief look at the Equal Employment Opportunity Commission (EEOC).

The EEOC was created under Title VII of the 1964 Civil Rights Act, as amended in 1972, and was charged with the responsibility of investigating allegations of discrimination in employment practices. It was also mandated that it seek compliance with the Title VII regulations (which prohibit employment discrimination on the basis of race, sex, or age) through conference, conciliation, and persuasion.¹

In performing these functions, the commission interviews complainants to determine whether Title VII has been violated and examines company or department employment records. It also collects as a matter of routine practice, information regarding employment by sex, race, and age from all employers who have more than 100 employees.²

The EEOC tries to reach an agreement between the employer and employee in cases where it rules that discrimination is present. If a settlement cannot be reached, the EEOC refers the case to the appropriate State or local fair employment practices agency. In the absence of such

an agency, the commission investigates and the matter is settled in Federal court.³

Originally, the legal mandates of Title VII of the 1964 Civil Rights Act limited the jurisdiction of the EEOC to private employers, labor unions, and employment agencies engaged in an industry affecting commerce and employing 25 or more persons.⁴ In 1972, the act was amended to include both public and private employers with more than 15 employees, greatly increasing the jurisdiction of the EEOC so that today virtually all employers are under the scrutiny of the commission.

The EEOC uses the "four fifths rule" to determine whether employment discrimination exists. The procedure for application of this rule is as follows:

- 1) Calculate the rate of selection for each group (divide the number of persons selected from a group by the number of applicants from the group);
- 2) Observe which group has the highest selection rate;



Mr. Hertig

- 3) Calculate the impact ratios by comparing the selection rate for each group with that of the highest group (divide the selection rate for a group by the selection rate for the highest group); and
- 4) Observe whether the selection rate for any group is substantially less than the selection rate for the highest group (i.e. usually less than 4/5 or 80 percent). If it is, adverse impact is indicated.⁵

Need For Recruitment

An obvious means of avoiding EEOC investigations and subsequent lawsuits would be to recruit minorities and women for positions in law enforcement. By doing this, an employer can increase the number of applicants in each protected group that may be selected as employees. This will invalidate the often heard excuse, "We have to hire these people due to Title VII whether they are qualified or not."

Management can then not only hold the personnel department to a standard of accountability but can also avoid having to hire and eventually promote employees simply to comply with EEOC mandates. Both of these points are strong arguments for establishing a recruitment program aimed at members of protected groups, especially when you consider:

- 1) If an insufficient number of minorities or women are recruited, a decision must be made of whether to risk noncompliance with affirmative action laws or to hire an unqualified employee.
- 2) The person hired at a lower level today may be among the higher ranking personnel at some point in the future.
- 3) If employees who are not members of protected classes perceive that members of protected classes do not need to work as hard for advancements or that job advancement for themselves is

stifled due to quota requirements, they will become demoralized and resentful toward the department. The resulting morale problems can cause innumerable operational difficulties.

- 4) Members of protected classes will not see themselves as having accomplished anything and may believe that they are incapable of achievement, thereby needing the quota to get the job or promotion.⁶

External Recruitment Methods

In many areas today, public law enforcement agencies have begun to use "focus recruiting" for affirmative action purposes. "They have undertaken innovative, aggressive marketing strategies to entice qualified minorities, women, and prospective candidates with special skills to enter police work."⁷ These strategies run the gamut from traditional approaches using newspaper advertisements to ads on radio and television stations geared to minorities or women.⁸ These various methods of external recruitment include:

- 1) Newspaper or magazine ads run in publications that cater to minorities and women.
- 2) Radio and television advertising that is geared to protected groups, often done at no cost to the department since the ads can be run as a public service.
- 3) Billboard and poster advertising.
- 4) Direct mail campaign.
- 5) Visits to reserve centers.
- 6) Visits to colleges which serve not only as an opportunity to recruit minorities and women but also as a means of acquiring information on labor market conditions and projecting and maintaining the department's image.⁹
- 7) Referrals from officers who receive incentives for bringing in new recruits.¹⁰

Internal Recruitment Methods

In addition to external methods of recruitment geared toward finding candidates for entry-level positions, internal recruitment to find candidates for promotion should also be used. This strategy will not only assist in meeting affirmative action criteria but will also help ensure that qualified candidates who have been oriented to the philosophy and goals of the department will be selected. Some methods of internal recruitment are:

- 1) *Job postings*—This technique is effective since only those persons who are interested in the promotion will be considered. In recent years, the number of persons who have a "will to manage" has declined.¹¹ Selecting persons who are not really interested in the promotion can cause innumerable problems and should be avoided. Another advantage to this system is that it is inherently fair. No one can say that they didn't have a chance to apply for promotion. This factor alone often makes the increased workload (due to having to conduct numerous interviews) well worth the effort.
- 2) *Skill inventories*—While most law enforcement agencies today have personnel who have received specialized training or have special talents, it is often difficult to ascertain who these specialists are since their records (training, previous assignments, former employment) are buried in personnel files.
- 3) *Internal referrals from members of the department who are qualified to assess employee talents*—This system is good for placing personnel in specialized jobs but there must be careful control exercised in order to prevent the "good old boy" syndrome from occurring.

Recruitment Planning

The decision to implement a recruitment program must be carefully considered. Since there may be an extensive amount of time, effort, and funds allocated to the endeavor, the program goals must be clearly identified. Strategies to meet these goals must be developed and methods of evaluating the effectiveness of the program must be established.

From the standpoint of affirmative action, particular emphasis must be placed upon record keeping. Records are needed to show the Government the number of minorities and females interviewed in comparison with those who are hired or promoted. In cases where a consent decree has been issued, the department may have to establish recruitment efforts meeting court-specified criteria. These are under court scrutiny so all recruitment activity, such as man-hours spent recruiting, should be documented.

Prior to embarking on a course of action designed to recruit women and minorities, the following steps should be taken:

- 1) A decision must be made by management to recruit specific types of personnel. This is necessary not only to initiate the program but to ensure that specific objectives are established and to enlist the full support of top management.
- 2) Recruitment policies must be established. These policies will serve as guidelines for the department to follow in meeting recruiting goals. Personnel from the human resources and legal sections should be involved in the policy formulation process. If inhouse expertise is unavailable, outside consultants should be used.
- 3) Sources and methods of recruitment must be established after an analysis of the external environment has been conducted. In this way, the most effective means of reaching the target populations can be identified and used.

- 4) The recruitment process must be evaluated. In some cases, recruiters are ineffective in their positions and not only cost the department money for their salary but cause recruitment goals to backslide. Recruiters must develop public relations expertise and effectively enlist the support of the media in order to be effective.¹²

Conclusion

Recruitment of qualified minorities and women is an effective means of meeting affirmative action guidelines. Without sufficient numbers of qualified minorities and women, police departments can be sued in Federal court by the Equal Employment Opportunity Commission or by private parties. While this can be a serious matter, the ensuing operational difficulties can be much more serious from the standpoint of adverse effect upon public safety. In addition to serious morale problems, the department may be faced with the no-win decision of either facing legal reprimands or committing the ultimate sin in personnel policy—placing unqualified officers on the streets. **FBI**

Footnotes

¹ James A. Conser, "EEO and It's Legal Implications" in *The Police Personnel System*, eds. James A. Conser and Calvin J. Swank (New York: John Wiley & Sons, 1983), p. 54.

² William F. Glueck, *Personnel: A Diagnostic Approach*, 3d ed. (Plano, TX: Business Publications Inc., 1983), p. 217.

³ *Ibid.*, pp. 216-217.

⁴ *Supra* note 1, p. 54.

⁵ *Ibid.*, p. 60.

⁶ Robert M. Domalewski, "Affirmative Action: Double Reserve Discrimination," Chicago, IL, Unpublished paper presented at the Academy of Criminal Justice Sciences' annual convention, March 1984.

⁷ Denny Falon, "Police Recruiters Launch Media Blitz," *The National Centurion*, vol. L, No. III, June 1983, p. 24.

⁸ Marc R. Levinson, "In North Carolina, Nothing Seems to Work," *Police Magazine*, March 1982, p. 14.

⁹ *Supra* note 2, p. 258.

¹⁰ *Ibid.*

¹¹ Andrew J. Temple and James M. Tolliver, "Affirmative Action—Making it Effective in the Public Sector," *Public Personnel Management Journal*, vol. XII, No. LL, Summer 1983, p. 212.

¹² *Supra* note 7, p. 24.

Think T.R.A.F.I.C.

"The traffic officer offers perhaps one of the greatest vehicles for positive public relations available to the police."

By
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Much maligned by line officers and considered the lowest echelon of responsibility among police officers, the traffic assignment is usually reserved for the rawest recruits, auxiliaries, special police officers, or for senior officers who have lost their zeal for enforcement action. Usually, traffic assignments are shunned whenever and wherever possible and may even be considered as a demotion by those so assigned. Because of this, many police departments feel a need to induce officers to accept traffic assignments on a regular basis by offering shift incentives or some special consideration. It has even been suggested by progressive police innovators that this position be eliminated by assigning the responsibilities to community service officers or the like.



The traffic officer offers perhaps one of the greatest vehicles for positive public relations available to the police. He provides a highly visible representation, and properly trained, he can project an image of professionalism on a daily basis that cannot be equalled in any other area of law enforcement. The impact of the traffic officer should not be underestimated.

The effective use of the traffic assignment must be carefully considered if one seeks to benefit from its obvious advantages. When we consider the number of citizens who "meet" the traffic officer at a busy intersection each day, we get an idea of the potential for good will we may be overlooking. His influence reaches beyond the motorist and pedestrian to include everyone within earshot of his whistle. Make no mistake, people make serious judgments of their

"Applying the principles espoused in T.R.A.F.I.C. requires little more than carefully selecting your traffic officer and upgrading the assignment to the level of a valid police mission."

White gloves not only add to appearance but are necessary appurtenances to the visual effects of traffic control. Reflector straps help when visibility is poor, as do flashlights.

Flair

Facilitating the movement of vehicles through an intersection is not easy; it requires instinct, concentration, a sense of rhythm, and an ability to make instant judgments. Everyone has his own style, and one's personality is reflected in this. A timid person has no place in the traffic circle. Style notwithstanding, the bottom line is to clear the intersection or at least to continue moving traffic with a minimum of inconvenience and delay.

Having a flair for traffic control requires an ability to learn finesse. One can never be intimidated when directing traffic. Exaggerated hand motions, coupled with a liberal use of the whistle, are perhaps the most effective means of maintaining the attention of those seeking to pass through the intersection.

Consistency is also important when directing traffic, and the whistle contributes greatly to this. It is recommended that one long blast of the whistle should serve to signal the stopping phase and several short sounds should get it moving. By working with such a predictable pattern of sounds, the traffic officer conditions those persons at the intersection to specific action. The sounds trigger a particular response, especially when the officer is not in view of the motorists. In traffic management, there are usually reaction delays even when the

intersection is moving well. Why compound them? Unnecessary delays interfere with the established rhythm, cause confusion and driver irritation, and could induce resistance.

Aside from its obvious attention-getting applications in moving and stopping traffic, the policeman's whistle offers other advantages. It becomes a source of great comfort to those persons who are within earshot. It reminds them that their police department is nearby. The sound also serves as a deterrent to potential wrong-doers.

Interest

There is little hope that the traffic officer can serve to become a major contributor to image enhancement unless *interest* is encouraged and maintained. The opportunities for service in the area of traffic control can exceed the other more traditional "cops and robbers" syndromes, if properly explored.

We can use the analogy of the offensive lineman in football. Certainly, he is one of the top unsung heroes in the annals of sports. Without effective blocking, there is little hope to score points. The only time the offensive lineman gets recognition is when he is caught committing a foul. Yet, we know key offensive personnel are virtually useless without adequate blocking, and the most successful teams usually have an effective offensive line. In the same vein, the traffic officer seldom gets the recognition he deserves, but his effective day-in and day-out performance brings much credit to his department.

Efforts must be made to assign only persons possessing T.R.A.F.I.C. qualities to the position of traffic officer. Unless the traffic officer displays genuine interest and enthusiasm for traffic control, his resultant lackluster

performance reflects negatively upon both his colleagues and the department. Supervisors are perhaps more guilty than others in covering the traffic assignments with unsuitable personalities. They give this assignment low priority and usually assign their least experienced officers to the traffic job. On the contrary, they should be thinking in terms of their best officers for this work.

Traffic control is work and can sometimes be tedious. However, properly attuned attitudes emanating from the very top echelon of the department, down through the ranks, can make it challenging and interesting.

Control

Maintaining control is both attitudinal and physical. The traffic officer must possess patience, intelligence, and tolerance. Motorists do not always behave the way we wish when we are directing traffic, and even the most exacting signals may be misinterpreted. To over-react when a driver fails to respond correctly to your signal only disrupts whatever flow you may have established. Allow for mistakes and respond well to them. A smiling countenance does much to engender good will, making your chore that much more agreeable. Bear in mind that you are in charge—assume control and maintain it.

No greater actor exists than the person who is assigned to traffic control. Like the pantomime, each motion requires measured exaggeration. The suggested procedure for stopping traffic is to accompany one long blast of the whistle with grandiose hand motions, with your index fingers pointing



Mr. Varney

police department through evaluations formed from observations of the traffic officer.

The simple formula for getting the most mileage from one's traffic assignment may be found through the application of the acronym T.R.A.F.I.C.—temperament, routine, appearance, flair, interest, and control.

Temperament

Certainly, the temperament of the traffic officer must be one of the important considerations. When officers regard this assignment as something to be avoided, their performance level will be less than enthusiastic, possibly even disastrous. People driving through busy intersections or through areas under construction where a traffic officer may be assigned are either favorably impressed or disillusioned, depending upon the ability of the traffic officer to adjust the flow of vehicular and pedestrian traffic. Do not underestimate the public. They are acutely aware of a smoothly functioning traffic pattern, and like people in any queue, understand when they are being unreasonably detained. To be inconvenienced in traffic as a result of the traffic officer's ineptness or lack of enthusiasm causes negative feelings toward a police department. On the positive side, however, efficient traffic management has an uplifting effect, leaving motorists and pedestrians with a feeling of confidence in their policing agency.

The temperament of officers assigned to traffic control must be reshaped to reflect the positive attitude of one who is making a major contribution toward the safety of the com-

munity. The traffic officer will probably never rate a headlined story in the local newspaper or radio station. Nevertheless, the impact of a good traffic officer, day in and day out, far exceeds the good will generated by one major police story. It is important, therefore, that the temperament of the traffic officer reflect a positive, enthusiastic, and outgoing attitude. Traffic control is both a challenge and an important service. It should be elevated to equal status with other police tasks. Supervisors and police executives should seek to cultivate and reinforce positive attitudes toward traffic officers, so that peer pressures will be less a negative factor upon those who are in this position. An added advantage is that all officers will reflect higher standards in traffic control because it is expected of them.

Routine

Managing traffic is not only a science, it is an art. Not everyone has the special ability it requires, and this is an important consideration when you select your traffic officer. You are seeking an individual who possesses an organized mentality, one that will permit instant alterations to accommodate a fluctuating traffic situation, sensitivity, and physical and mental alacrity.

Each intersection has its own personality. The least complicated method of traffic control is the most effective. In planning strategy, the traffic officer should work toward inducing a routine or system that both motorists and pedestrians will comprehend easily. By establishing a simple routine, the traffic flow is facilitated because of its predictability. Motorists are quick to anticipate the cadence when it is consistent, and reaction loss is greatly minimized. When

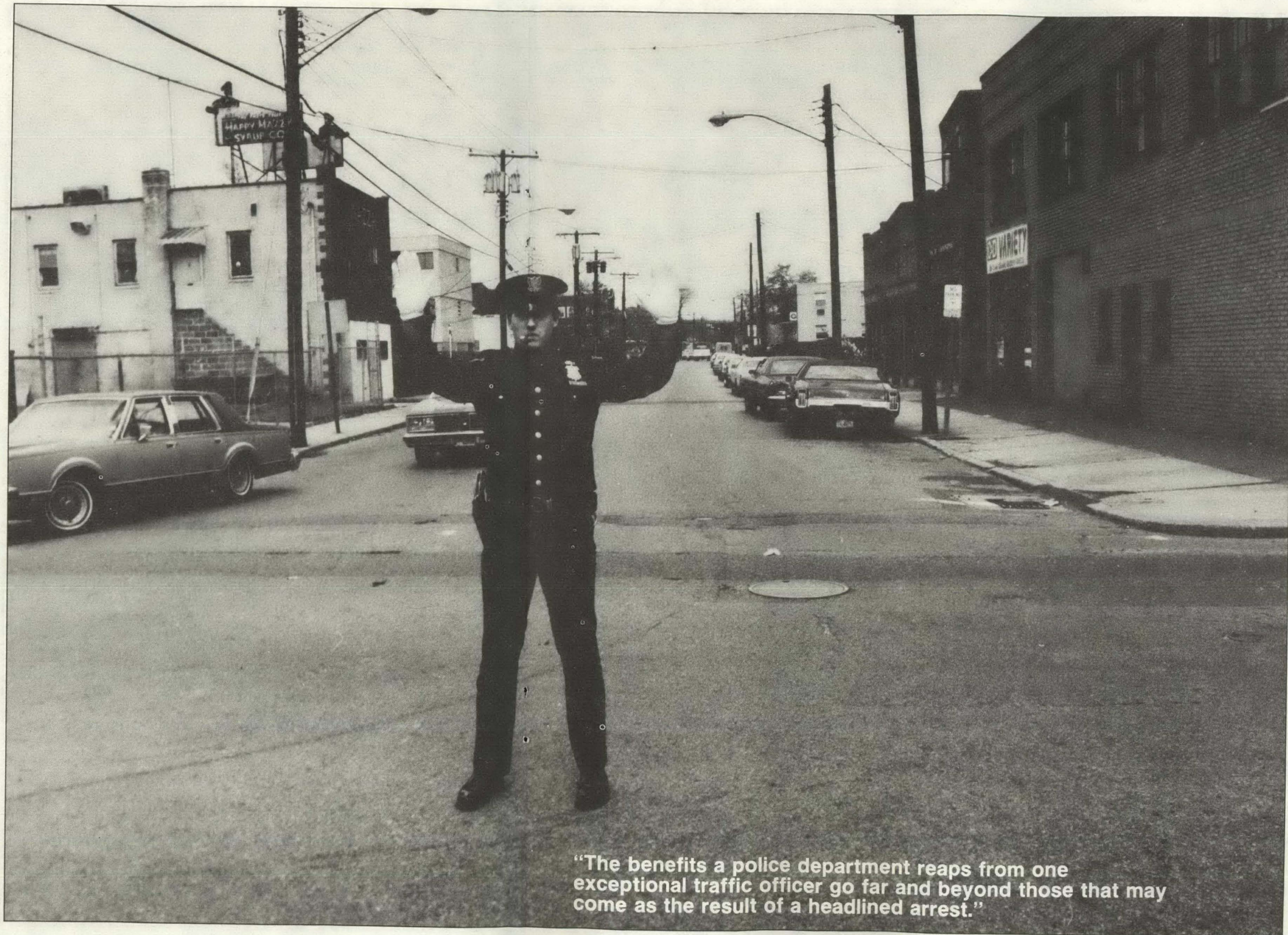
motorists understand what is expected of them, they become involved participants in the traffic pattern.

On the contrary, inconsistency brings with it not only confusion but a detachment on the part of the drivers toward what is being orchestrated and the inevitable reaction delays interrupt the routine, causing problems. Uncertainty on the part of motorists is attributable solely to the traffic officer's inability to assert control and maintain the cooperation he needs to keep traffic moving properly.

Appearance

Some officers make a better appearance than others. However, we can make the best of what we are by wearing our uniforms properly. It is understandable that not all traffic assignments will occur within an environment that is conducive to maintaining a clean, pressed uniform, but that does not excuse wearing baggy trousers, soiled blouses, or out-of-uniform clothing. Appearance is important because what people see reflects either positively or negatively upon both the officer and the entire department. A sharply dressed traffic officer commands almost instant respect.

Within the framework of appearance comes demeanor. Confidence and stage presence are also important. The spotlight is on the traffic officer. He is the focal point for action, and he must pay attention to the task at hand. Loitering on the corner or engaging in conversation with passersby or waiting motorists is inappropriate behavior. People who are detained in the intersection are resentful when traffic gets snarled because the officer is ignoring his responsibilities. On the other hand, they are impressed if his attitude is business-like and helpful.



"The benefits a police department reaps from one exceptional traffic officer go far and beyond those that may come as the result of a headlined arrest."

directly at the vehicles you wish to lead the lanes to be stopped. Be sure you have the drivers' attention. Then raise both arms high with your hands at right angles and fingers spread apart pointing to the lanes you intend to stop. Hold this position until all movement ceases.

You will find it easier to place yourself so that you are facing one of the lanes that has been stopped. Standing in this manner gives you freedom to work your arms while directing the moving lanes. It also affords you more balance.

The biggest bottleneck in any intersection is left turns. Intersections that prohibit such movement are the easiest to manage. During exceptional circumstances when detours become necessary and turns are not permitted, it is suggested that you use traffic stanchions or cones to facilitate the flow.

Most traffic intersections do, however, permit left turns, and should you be allowing motorists to cut across lanes, do not over-extend left turns to the exclusion of other traffic. Give everybody a chance to get through the intersection. The exception to this rule would be a lane from which a larger volume of traffic emanates. It would then be advisable to give that lane more priority. Most important is that everyone gets an opportunity to move through the intersection and that traffic moves in all directions.

Perhaps your greatest challenge as a traffic officer is to facilitate turns and continue the flow through the intersection. Therefore, when assisting traffic across the intersection, be

aware of the needs of those wishing to make turns. Once you have stopped all traffic, you should position yourself for the moving lanes. Should left turns be necessary, stop traffic in the oncoming lane and allow them to cut across. This requires considerable hand motion, as well as a busy whistle.

Usually motorists will sense your style and cooperate. Do not overlook those drivers seeking to make right turns. Right turns—probably the simplest to bring into play—can continue no matter which lanes are moving. It is important to remember that you are to maintain *control*. Assert yourself. If you are permitting right or left turns, make certain the drivers understand by continually working your hands and arms directing their prescribed routes. Additionally, while you are meshing the flow, be wary of vehicles you must stop in order to permit cross-over and merging traffic. It's been said of traffic control that if you have a tie, you lose. Bear this in mind.

Pedestrians are another important consideration. Before permitting any pedestrian to cross, be certain all traffic has stopped. Although it is safer to have pedestrians cross one street at a time, such a procedure is time-consuming. While the traffic officer is in control and traffic is safely stopped, diagonal crossings should be permitted.

Traffic control is a harmony of movement. If the officer is a T.R.A.F.I.C. man, he'll rise to the occasion. People should not have to assume what you wish them to do—keep control.

Conclusion

Police executives who entertain ideas of abandoning the tasks associated with traffic control in the interest

of freeing personnel for more "line-oriented" assignments should first seriously consider some of its advantages as a public relations medium. Beyond this, properly trained traffic officers can render a legitimate service to your community.

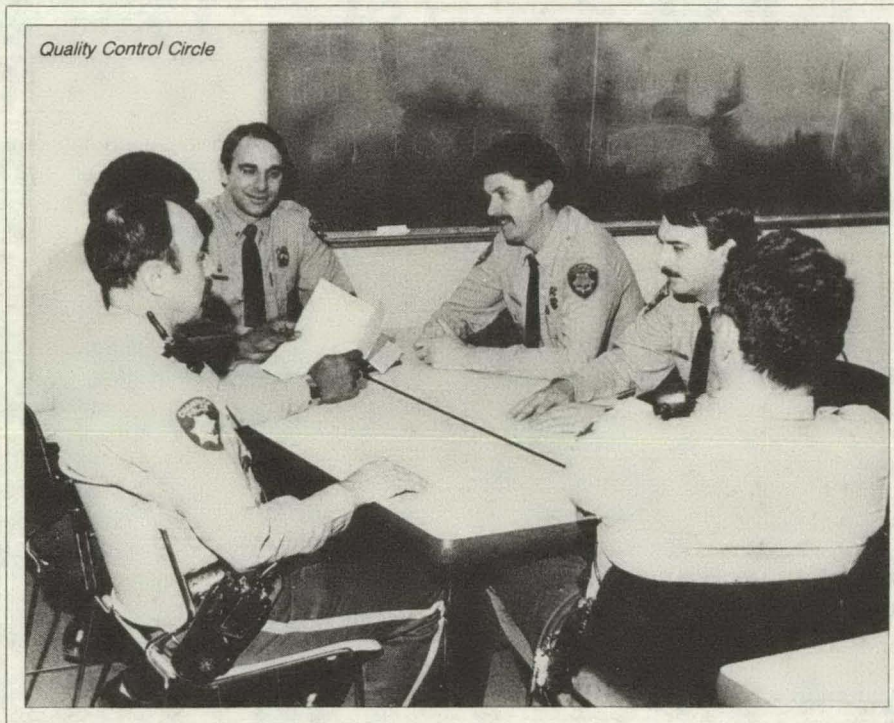
Applying the principles espoused in T.R.A.F.I.C. requires little more than carefully selecting your traffic officer and upgrading the assignment to the level of a valid police mission. Do this so that all members of your department come to recognize its value and need. Concurrently, supervisors should be instructed to monitor the performance of these officers and to give encouragement by extolling their exceptional efforts.

The benefits a police department reaps from one exceptional traffic officer go far and beyond those that may come as the result of a headlined arrest. These men are, in essence, in the trenches, and the department's rewards are similar to those attained from a standout beat cop. The influence of the traffic officer, however, is much greater because of his high visibility. This gives the officer a chance to enhance his department's image and gain supporters throughout the community.

FBI

A Japanese Management Technique Applied to Local Policing

By
LT. DONALD CARTER
and
LT. JOHN GNAGEY
*Police Department
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One of the hottest topics in the management field is the techniques used in Japan, and one of the primary components in that system of management is the concern for quality control. Related to this issue of quality control is the concept known as the "quality control circle." Considering the apparent success of Japanese management techniques and the high

reputation for quality that their products have, one has to wonder what impact the quality control circle might have upon American law enforcement.

Before examining an application of the quality control circle within an American law enforcement agency, let's briefly examine what this concept is and how it operates. The quality

"By allowing the employees to actually have a say in how their jobs are performed, they are provided with an incentive to see that the work is accomplished in the most efficient manner."

control circle is composed of a supervisor and a group of people working together on the same project or a related series of tasks. This group meets on a regular basis to discuss various questions, including:

- 1) Can the job be done more quickly with another approach?
- 2) Are all the particular steps involved in performing the task necessary?
- 3) Can some performance steps be eliminated, thereby making job performance more efficient?

The basic premise underlying the concept of the quality control circle is that the people actually doing the work know best how the work should be done and what needs to be done to improve the quality of work. By allowing the employees to actually have a say in how their jobs are performed, they are provided with an incentive to see that the work is accomplished in the most efficient manner. The incentive lies in the fact that no one likes to fail, and when it comes to *our* ideals, we especially do not want to fail. An employee's motivation is heightened when his suggestion for improvement is accepted, implemented, and through his efforts, produces the desired result.

Within the private industrial setting, it is quite common for employees to receive monetary rewards for their successfully implemented suggestions. This is possible because it is easy to define and measure the output of their efforts in the product they produce. However, within the public sector, this type of reward system and measurement is usually not possible. This is especially true within law enforcement since the primary product of a law enforcement agency is the service it provides to the community. Nonetheless, a close examination of the tasks performed by police officers reveals several that might be profitably subjected to the quality control circle concept.

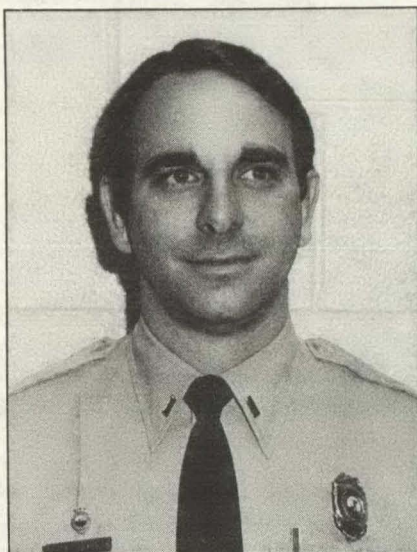
Recently, within the Champaign, IL, Police Department, the chief of police decided to reorganize the various patrol shifts in order to provide for a common training day each week. When this occurred, several supervisors on one of the shifts decided to use one of the monthly training days to see if the quality control circle concept could be successfully applied.

Initial Steps

The first step in instituting the concept was for the shift commander and his two immediate subordinate supervisors to meet to divide the shift into two equal groups. By doing so, it was possible for one of the groups to engage in training during the first half of the shift and then reverse roles with the second during the last half of the shift. It was also decided during this initial meeting that 1 hour of the 4 hours allotted for training would be devoted to the quality control circle. Recognizing that the concept had never been tried before, this time allocation was left open to future modifications.

Next, the shift commander and the supervisors focused on possible topics for discussion during the first meeting of the quality control circle. It was believed that the questions would have to be worded in a manner that would promote discussion, and they would have to relate to tasks the officers were performing that held the potential for improvement. As a result of this discussion, the following questions were only some of those developed:

- 1) In general, what are some of the problems facing the shift and what are some possible solutions to them?



Lieutenant Carter



Lieutenant Gnagey

- 2) Are there departmental forms or procedures in need of change, especially those that have a direct impact upon the shift?
- 3) Are there any cost savings that might be explored, such as the need to continually jump weak car batteries in cold weather, etc.?
- 4) How can we effectively approach DUI and the illegal transportation of alcohol?
- 5) How can we approach the problem of prostitution downtown?
- 6) When considering productivity, what self-initiated categories lend themselves to the establishment of a minimum standard, and what are some "ball park" figures on these standard expectations?
- 7) Can cooperative party details be formed?
- 8) What can be done about "afterhours" establishments?
- 9) How can we improve radio procedure?
- 10) What can be done about problem bar areas?

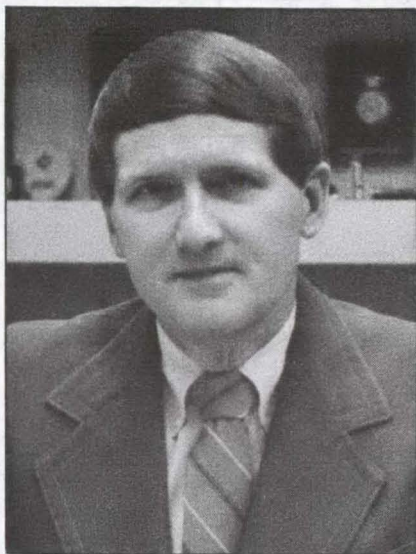
One very important point remained to be discussed before the attempted implementation of the concept. It was stressed that the supervisor should act *only* as the moderator or facilitator of the discussion. Supervisors were cautioned to expect that the discussion during the first session could wander. They should attempt to see that the discussion focused on positive issues, i.e., topics about which the group could do something. Also, it was to be expected that some previously unexpressed grievances might arise—a necessary prerequisite for a constructive discussion.

Implementation of the Quality Control Circle

The implementation of the program began with the supervisors casually mentioning the concept to officers during informal discussions. Once this had been accomplished, the stage was set for the first meeting.

During the initial meeting with the first group of officers, the shift commander attempted to explain the basic concept and to monitor the discussion in order to provide continuity between the two groups. The first group chose to spend the greatest portion of the session discussing the relative merits of a shift rotation policy that had recently been introduced. The emergence of this discussion topic was not really a surprise since it had been a topic of informal discussion between officers since shortly after its introduction. While the group did not focus upon specific problem solving, the discussion was nonetheless beneficial in clearing up misunderstandings about the policy.

During the meeting of the second group, some initial resistance in the form of nonparticipation was experienced. The supervisor was able to begin the discussion by asking for input concerning how the booking-in process might be accelerated. After giving the officers a few minutes to reflect on the issue, suggestions were sought. What followed was a lively discussion during which several valid modifications were suggested. Once the discussion began, the supervisor had to interrupt only a few times and then only for the purpose of getting the discussion back on track.



Donald G. Hanna
Chief of Police

After an hour of discussion, a short break was announced and the officers' involvement in the process was evidenced by the fact that few of the officers took advantage of the break opportunity. During the break, the supervisors agreed to extend the period beyond the originally allocated 1 hour. During the second hour, the supervisor restated what had been discussed and agreed upon the first hour and then opened up the discussion for additional problem solving. What happened during this stage was negotiation among the officers. One officer would state his ideas which would be discussed by the group until a mutually agreed upon step in the booking process was reached. This continued until the entire booking procedure had been discussed and a new procedure established. The previous booking procedure steps included:

- 1) The arresting officer transported the prisoner to the station and into the prisoner bay area.
- 2) The officer closed the bay door, making escape impossible, and while the prisoner was still handcuffed and sitting inside the patrol car, the officer locked up his weapon.
- 3) The prisoner was removed from the car and searched again.
- 4) The officer then contacted receiving personnel, via intercom, and was allowed entry into the booking area with the prisoner.
- 5) The officer then removed the prisoner's handcuffs, inventoried his property, and locked him in a cell. (In some instances it was necessary to check two to three cells to find an empty one).

The new booking procedure steps included:

- 1) While the officer is enroute to the station, he radios for a warrant check through the computer, using the name, sex, and date of birth of the prisoner. The desk personnel then check with records to see if there is any criminal history, a previous record, active warrants, or if an update is needed on the jacket. This information, along with printouts the arresting officer would need from the computer, are taken to the booking area for the arresting officer when he arrives.
- 2) When the officer brings the prisoner into the booking room, after securing the bay door and his weapon, he again searches the prisoner, and desk personnel assign the prisoner to a cell via the intercom.
- 3) The prisoner's property is removed and inventoried, a handwritten arrest card is completed by the arresting officer, and the prisoner is locked up in the assigned cell.
- 4) The arresting officer gives the handwritten arrest forms to the desk personnel to be typed and returns to patrol.
- 5) Desk personnel type the information at a convenient time during the shift.
- 6) The officer returns later to review the arrest packet and adds the report and sworn complaint.

"Production and innovative ideas seem to come out of [quality control sessions] in satisfying regularity."

Results

After meeting in the quality control circle with two groups of officers, several observations were made, including:

- 1) The initial allocation of 1 hour for the process was clearly insufficient. At least 2 hours of discussion would be needed.
- 2) The officers were able to conduct open and frank discussions, even to the point of discussing personal problems.
- 3) One officer commented on the positive value of a forum of this type, during which one was allowed to make his personal needs and concerns known to others for an attempt at resolution.

Shortly after the meetings, some officers expressed the opinion that this new procedure was a good idea but it would not be productive. They believed that the quality control circle was an exercise in futility. This, however, was not to be the case. The new booking procedure developed by the officers was implemented during the very next duty day for the shift, an action which served to reinforce in the officers' minds that their supervisors were committed to the concept of the quality control circle and the implementation of constructive officer input whenever possible.

In a more pragmatic vein, how did the new booking procedure work? Before the new procedure was developed, officers averaged 30- to 45-minutes-per-prisoner to book them and complete the required paperwork.

This was primarily because officers had to lock up the prisoner and then leave the booking room to retrieve needed information from elsewhere in the building. On occasion, it was necessary to do this three to four times for each prisoner.

After the new procedure was implemented, officers averaged 15- to 20-minutes-per-prisoner to complete the required tasks. This was a savings of 25- to 30-minutes-per-prisoner—time which could be better spent in proactive patrol operations. Even now, as the officers follow the new procedure, they continue to evaluate it and look for additional ways to streamline the process.

Conclusion

While the quality control circle is still in its early stages in our department, the results are nonetheless encouraging. Productive and innovative ideas seem to come out of the sessions in satisfying regularity. Reinforcement in terms of officer's feelings of involvement in the decision-making process are also being positively expressed.

The positive effects notwithstanding, caution should be exercised concerning a couple of points. First, the institution of quality control circles without the commitment of the involved employees is doomed to failure. Starting a new "management fad" with the expectation that its mere presence will bring positive results without commitment to the principles upon which it is based is a serious mistake. It will not work and can weaken management's credibility for future innovative programs. It is very frustrating to employees to be constantly introduced to new projects which are begun with enthusiasm and quietly discarded the following week.

Second, it should be stressed that people who act as moderators/facilitators for the quality control circles must be both articulate and patient. They will likely be called upon to justify every policy and procedure that ever existed and probably some that never did. The moderator/facilitator must be able to field the ridiculous and return to the rational, as well as guide the discussion without appearing to stifle the free exchange of ideas. They must have confidence in themselves and their abilities. If someone has a doubt about their ability to communicate on an equal basis with a group of officers—communication occasionally charged with emotion—the moderator/facilitator position is not for them.

If you are a manager or supervisor ready to meet the challenge of tapping the grassroots ability and creative potential of your department, the quality control circle is a concept for you. It is a tool for the development of productivity and efficiency which can result in the enhancement of your department, and most importantly, its personnel.

FBI

For further information concerning the application of the quality control concept within the law enforcement environment, please contact the authors:

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Defending Law Enforcement Officers Against Personal Liability in Constitutional Tort Litigation (Conclusion)

“ . . . liability . . . will not be imposed if the ‘official pleading the defense claims extraordinary circumstances and can prove that he neither knew or should have known of the relevant legal standard. . . .’ ”

Part 1 of this article described the basis for filing constitutional tort litigation against individual law enforcement officers and emphasized the assertion of appropriate defenses to expeditiously resolve these actions prior to trial. In this regard, the principal focus of part 1 was to review the Supreme Court's revision of the qualified immunity defense in *Harlow v. Fitzgerald*⁴⁷ and to analyze the meaning of “clearly established law.”

The conclusion of this article will analyze the second prong of the qualified immunity defense under the *Harlow* decision. This part will then discuss additional litigation tactics which officers may use to mitigate or otherwise counter the adverse impact of being named as a defendant in a constitutional tort civil action.

THE EXTRAORDINARY CIRCUMSTANCES

Prong of the Qualified Immunity Defense

As previously discussed, the key issue in asserting the qualified immunity defense is whether the applicable law which a defendant officer is al-

leged to have violated in committing a constitutional tort against the plaintiff was clearly established at the time of the incident which gave rise to the civil action. Liability usually will not be imposed if the law was not clearly established, but it will usually be imposed if the law was clearly established. In *Harlow*, the Supreme Court added another factor to consider beyond this determination. The Court stated that liability still will not be imposed if the “official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard. . . .”⁴⁸

The significance of this factor is to create a second prong in the qualified immunity defense. Even assuming that plaintiff has pleaded a constitutional tort allegedly committed by a defendant officer and has proven that the law allegedly violated by the officer was clearly established at the time of the incident, the defendant may still avoid liability by justifying his conduct on exceptional circumstances. The difficulty with this argument is defining “extraordinary circumstances” and articulating facts that meet the definition.

By

JEFFREY HIGGINBOTHAM

Special Agent

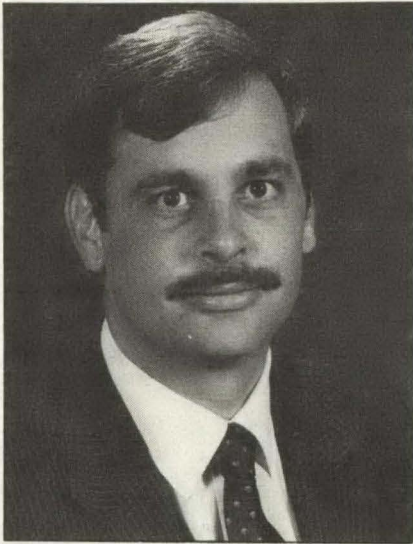
FBI Academy

Legal Counsel Division

Federal Bureau of Investigation

Quantico, VA

NOTE: This article presents a general discussion and is not intended to constitute legal advice in any specific situation or case. Legal advice in specific cases should be sought from a practicing member of the bar.



Special Agent Higginbotham

There have been relatively few cases litigated on this precise issue. It seems clear that the exceptional circumstances prong would protect officers or officials from liability for actions taken which were declared unlawful so shortly before the action took place that the acting officer or official could not reasonably have known or been expected to know that the conduct which he undertook had previously been declared illegal.⁴⁹

The exceptional circumstances prong of the qualified immunity test may have other applications, however. For example, in January 1979, the newly elected governor of Tennessee was sworn into office 3 days early in an attempt to end abuses in the pardon of prisoners and commutation of sentences under the administration of outgoing Governor Blanton. One of newly elected Governor Alexander's first acts was to order that the commutation of sentences issued by Governor Blanton be held in abeyance. When a lawsuit was filed challenging Governor Alexander's authority to issue that order, Governor Alexander asserted the defense of qualified immunity.⁵⁰ Though the court held that the law surrounding a governor's authority to hold commutations in abeyance was unclear, and therefore, qualified immunity was appropriate, it also noted that:

"The advice of the State Attorney General, two assistants, Special Counsel Fred Thompson, and counsel to the Governor . . . all was that the Governor was on firm legal grounds in taking the position he took. If necessary to the

decision, this Court would hold that such advice from such an array of qualified lawyers would certainly constitute good faith, and that he neither 'knew nor should have known' that his action was illegal.⁵¹

The court, in dicta, indicated on those facts that following official legal advice in the course of one's duties was exceptional circumstances sufficient to avoid liability for a constitutional tort.

The more difficult exceptional circumstances case is one involving an officer or official who violates the constitutional rights of a person, but does so under the instruction of a superior. Should constitutionally violative conduct undertaken at the instruction of a superior constitute an exceptional circumstance excusing an officer from liability? Only two known cases have dealt with the issue, and each has reached a different conclusion.

In *Green v. Maraio*,⁵² Camilla Maraio was the official court reporter transcribing proceedings at the criminal trial of Leroy Green. Green alleged in his 1983 suit that Maraio deprived him of his constitutional right to procedural due process when she altered the official transcript upon the instruction of the judge who presided over the criminal trial. The circuit court of appeals, however, dismissed Green's \$3 million damage claim. The court held that "Maraio acted pursuant to Judge Ingrassia's explicit instructions and thus is immunized from liability under 1983 by the defense of qualified immunity for actions carried out within the scope of those instructions."⁵³

The opposite conclusion was reached in *Hobson v. Wilson*.⁵⁴ In *Hobson*, plaintiffs alleged that several

"The admonition that insubstantial suits . . . should be disposed of through motions filed under the Federal Rules of Civil Procedure is . . . the most important aspect of the revised qualified immunity defense."

FBI Agents and others had participated in a counterintelligence program aimed at exposing, disrupting, and discrediting certain radical black and leftist groups in an attempt to neutralize and counter their propensity for violence and civil disorder. At trial, a jury found certain of the defendants to have violated the plaintiffs' first amendment rights of free speech and association. On appeal, the Circuit Court of Appeals for the District of Columbia was asked to hold that the defendant FBI Agents were entitled to qualified immunity because their individual participation was only in accordance with a counterintelligence program established at the highest levels of the FBI. The circuit court rejected that argument believing that to permit qualified immunity under such circumstances is tantamount to excusing disobedience of law based solely on obedience to a defendant's superiors. The court left open the question, however, of whether the extraordinary circumstances prong might shield a defendant from liability who complied with approved organizational policy only after protesting the policy at issue. Inasmuch as there was no factual support in the record in *Hobson* that any of the Agent-defendants participated in the counterintelligence program only after questioning or protesting the policy, the court found no exceptional circumstances present.

It is difficult to predict the parameters for successful assertion of the extraordinary circumstances prong of the qualified immunity defense. So few courts have been faced with the issue that the contours of this aspect of the defense are not yet formed. At this stage of the defense's development, officers and their attorneys defending actions for alleged constitutional violations should nevertheless

consider the possibility of raising and litigating an extraordinary circumstances defense. The decision will turn on the facts of the case and the need to use "exceptional circumstances" to buttress the argument that the law was not clearly established. Certainly, under current judicial interpretations, very recent changes in the law or reliance on official legal advice in the course of one's duties may be sufficient exceptional circumstances to avoid liability.

The Qualified Immunity Defense Summarized

When the Supreme Court abandoned the subjective component of the qualified immunity defense in *Harlow v. Fitzgerald*,⁵⁵ it did so with the desire to permit the speedy resolution of insubstantial claims of constitutional violations without the necessity of trial and its attendant discovery. The admonition that insubstantial suits should not become involved in discovery or proceed to trial but rather should be disposed of through motions filed under the Federal Rules of Civil Procedure is, perhaps, to the sued officer or official the most important aspect of the revised qualified immunity defense. If a defendant officer's attorney uses defenses available under *Harlow*, he may be able to prevent the specter of a lawsuit from hanging over the officer's head, interfering with the performance of assigned duties and impeding his willingness to take necessary and immediate actions in other employment related situations.

Certainly, "[w]here an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate . . . [b]ut where an official's duties legitimately require action in which clearly established rights are not implicated the public interest may be better served by action taken 'with independent and without fear of consequences.'"⁵⁶ Every effort should be made to resolve the lawsuit quickly, without need for expensive and time-consuming discovery. Attorneys who do so will find they have served their clients well and have also provided society in general a great service by returning the officer's attention back to his investigative duties and responsibilities. Under the *Harlow* decision, a framework exists for a defendant officer to argue, where appropriate, that the law was not clearly established at the time of the incident and/or that even if it were, his conduct is justified on exceptional circumstances.

Appeal of Denial of Qualified Immunity

One final issue remains with regard to the qualified immunity defense. If the attempt to resolve the action by dispositive motion asserting qualified immunity is denied by the presiding judge, does the defendant have any recourse other than responding to discovery requests and going to trial? At that stage in the proceedings, may the defendant appeal the denial of qualified immunity? The courts which have decided this issue have split⁵⁷ on whether the denial of qualified immunity is immediately appealable, but the Supreme Court has agreed to address the issue.⁵⁸ Until

"Police officers and officials who are named as defendants in constitutional tort litigation should make judicious use of the counterclaim based on advice of counsel."

the Supreme Court rules, defendant officers and their attorneys should consider pursuing an appeal of the denial of qualified immunity. The appeal is certainly preferable to responding to burdensome discovery requests and/or going to trial.

ADDITIONAL LITIGATION TACTICS FOR COMBATING FRIVOLOUS LITIGATION

As this article has indicated, police officers and officials often find themselves as defendants in civil actions. The nature of their work in making arrests and conducting searches and seizures certainly presents a climate in which lawsuits are, perhaps, inevitable. However, no one can reliably predict the precise reason a lawsuit is filed since, in truth, only the plaintiff knows why he chose to file his complaint. Greed and vindictiveness are among possible motivating factors which spawn litigation but are usually unsuccessful in securing monetary awards. These actions are vexing to both the individual defendants and to the judicial system forced to handle them. As previously discussed, qualified immunity and other defenses are available to dispose of frivolous or insubstantial lawsuits. Other procedures are available to defendant officers and their attorneys in defending these actions. Appropriate and restrained use of these procedures may discourage the filing or continued prosecution of groundless actions which may have been filed solely to harass a law enforcement officer. These procedures include counterclaims, attempts to have attorney's fees assessed against plaintiffs, and attempts to have sanctions imposed against plaintiff's attorney.

Counterclaims

The Federal Rules of Civil Procedure which govern procedural matters in both § 1983 and *Bivens* actions permit, and sometimes require, that claims of a defendant against a plaintiff be raised and litigated at the same time as the plaintiff's claims are litigated.⁵⁹ Some counterclaims against a plaintiff have been successful and resulted in monetary awards in favor of the officer against the plaintiff who originally filed the suit. If an officer has a legitimate legal claim against the defendant, he should bring it to the attention of his attorney for consideration as a counterclaim.⁶⁰

Typical counterclaims raised by officers sued under 1983 include battery and defamation.⁶¹ For example, in *Meiners v. Morarity*,⁶² law enforcement officers who had been sued under § 1983 by a plaintiff for allegedly depriving him of certain fourth and fifth amendment rights counterclaimed against the plaintiff for defamation and injury to their reputation. The officers claimed to have suffered injury by plaintiff's derogatory comments to the press which accused the officers of theft and other illegal or improper conduct during the plaintiff's arrest and search of his home. A jury trial resulted in a verdict for the eight defendant officers and judgment against the plaintiff in the amount of \$15,000. Although the award was overturned on appeal because of a faulty jury instruction, the appellate court clearly indicated that such defamation counterclaims are viable if supported by the facts.

Defendant officers may also counterclaim for physical injuries incurred in the incident which gave rise to plaintiff's civil action. In *McCurry v. Allen*,⁶³ the jury awarded an officer \$105,000 for injuries suffered by the officer at the hands of the plaintiff. The officer, acting undercover, was shot by the plaintiff while involved in an attempted drug purchase and arrest of the plaintiff. The plaintiff subsequently alleged in a § 1983 action that the officer, along with others, violated his constitutional rights by beating him following his arrest, conducting an illegal search, and engaging in a conspiracy to deprive him of his constitutional rights. The defendant officer counterclaimed for damages resulting from the injuries inflicted by the gunshot. The jury dismissed the plaintiff's constitutional claims and awarded the officer \$5,000 in compensatory damages and \$100,000 in punitive damages. On appeal, the judgment for the officer was upheld.

Police officers and officials who are named as defendants in constitutional tort litigation should make judicious use of the counterclaim based on advice of counsel. Counterclaims should be filed only where they are legitimately supported by facts and law. Where they warrant filing, in the opinion of counsel, they may be pursued by officers taking full advantage of their rights as citizens to seek redress of their own injuries through the judicial system.

Attorney's Fees

One of the more obvious costs associated with an officer being sued for an alleged constitutional violation is the attorney's fees incurred in defending the civil action. The expenses of attorney's fees, if borne by the individual defendant, cause the officer to

be a "loser," even if he should prevail on the merits. However, the use of a 1976 Federal statute can sometimes lessen this financial burden and serve as a deterrent to plaintiffs who may be considering filing a groundless civil claim.

The American judicial system operates primarily on the theory that each party to a suit bears the expense of his own attorney's fees. In constitutional tort litigation, however, Congress believed that the sometimes heavy expense required to hire a lawyer acted as a barrier to impoverished people who could not afford a lawyer to represent them in their suits brought under § 1983. The fear that legal expenses might foreclose access to the courts for indigents with legitimate constitutional claims prompted Congress to enact the Civil Rights Attorney's Fees Award Act of 1976.⁶⁴

This statute was primarily designed to insure persons with civil rights grievances access to the Federal courts to litigate claims of constitutional violations. It allows for the recovery of attorney's fees in addition to actual damages. The significance of this act to defendant law enforcement officers is that it is actually phrased in neutral terms; it does not apply solely to a plaintiff, but may also be used by a defendant. It provides that the *prevailing* party may, in the discretion of the trial court, be awarded a reasonable amount for attorney's fees. This provision should not be overlooked when an officer and his attorney prepare a defense.

Though the act's language allows the prevailing party to be awarded attorney's fees, court decisions have

held that the defendant in a § 1983 action must do more than simply win the judgment on the merits before being entitled to attorney's fees. The Supreme Court has held that a defendant is only entitled to attorney's fees incurred in defense of civil rights litigation when the suit was "vexatious, frivolous, or brought to harass or embarrass the defendant."⁶⁵ "The fact that a plaintiff may ultimately lose his case is not itself sufficient justification for the assessment of fees"⁶⁶ in favor of the defendant. The suit must be groundless or without foundation or the plaintiff must have "continued to litigate after it clearly became so."⁶⁷

Though this attorney's fees provision is not often invoked in favor of a defendant, some courts have applied it after determining the plaintiff's civil rights suit was wholly without merit. For example, in *Hernas v. City of Hickory Hills*,⁶⁸ a plaintiff sued the City of Hickory Hills, the mayor, and certain named and unnamed police officers and firefighters for alleged harassment. Russ Lindemann was one of the Hickory Hills police officers named as a defendant for allegedly violating plaintiff's constitutional rights. However, despite naming Officer Lindemann as a defendant, the plaintiff totally failed to make a single specific allegation against Officer Lindemann that showed any harm to the plaintiff's constitutional rights. Because of the plaintiff's complete failure to connect Officer Lindemann with a constitutional violation, the court found that the plaintiff wrongfully caused the suit to be brought against him and that it was, therefore, filed without any foundation. Accordingly, Officer Lindemann was entitled under the Civil Rights Attorney's Fees Award Act to receive from the plaintiff an award of

attorney's fees.

An even more dramatic example of a defendant recovering attorney's fees can be found in *American Family Life Assurance Company of Columbus v. Teasdale*.⁶⁹ Teasdale was a former governor of Missouri who, during his term of office, publicly criticized the plaintiff-insurance company for its involvement in the sale of cancer insurance policies. Plaintiff filed a lawsuit claiming that former Governor Teasdale had violated the company's constitutional rights and seeking damages totaling \$9 million. When a jury found for Teasdale and refused to grant any relief to the plaintiff, Teasdale filed a motion for an award of attorney's fees incurred in his defense. In support of the motion, Teasdale showed that the lawsuit had been filed in an attempt to hurt him politically, that it was only one of a series of lawsuits the plaintiff routinely filed in an attempt to silence its critics, that after it was filed plaintiff made no attempt to produce evidence of its claimed \$9 million financial loss, and that it was totally vindictive. The trial court judge found that the plaintiff's frivolous and vindictive lawsuit met the standard announced by the Supreme Court in *Hensley v. Eckerhart*⁷⁰ and awarded Teasdale \$63,287.21 in attorney's fees. The court made clear its displeasure with the plaintiff by stating:

"Where a plaintiff has used the legal system as a vehicle of vengeance . . . it must be prepared to pay the fare. In this case . . . the fare is \$63,287.21."⁷¹

“Where a plaintiff has used the legal system as a vehicle of vengeance, . . . it must be prepared to pay the fare.”

Plaintiff appealed the adverse judgment and attorney's fees award to the Eighth Circuit Court of Appeals. That court joined the trial court in rebuking the plaintiff's claims. It found that:

“... American's multimillion dollar lawsuit was designed not to vindicate its legal rights, but to expose Teasdale to public obloquy, harassment and the enormous financial and emotional hardships of defending groundless charges that he misused his public office for personal gain. However, Teasdale was not the only victim; the entire public inevitably suffers when a vindictive plaintiff squanders limited judicial resources by prosecuting frivolous lawsuits.”⁷²

The circuit court went one step further, finding that even the appeal was frivolous and “served only to prolong the plight of Teasdale and needlessly burden and inconvenience the judiciary.”⁷³ The costs of the appeal were also assessed to the plaintiff.

The use of this statute by defendants who prevail over frivolous and insubstantial lawsuits can serve as a disincentive for plaintiffs who cavalierly file civil rights suits knowing they cannot prevail.⁷⁴ When circumstances permit, an officer's claim for attorney's fees from a plaintiff can discourage similar actions in the future.

Sanctions Against the Plaintiff's Attorney

The final countermeasure that has recently added to the § 1983 defendant's arsenal is found in Rule 11, Federal Rules of Civil Procedure. A recent change in that rule requires an attorney to take affirmative steps to insure the lawsuit he files is supported in both law and facts, under pain of sanction for failure to do so. The

sanction may be imposed either at the behest of the defendant or upon the court's own initiative.⁷⁵ Since the change in Rule 11, sanctions have been applied in several cases.

For example, in *Dore v. Shultz*,⁷⁶ the plaintiff alleged that Secretary of State George Shultz negligently permitted the father of her child to remove the child to Kenya without a passport, in violation of her constitutional right to due process of law. Finding Secretary Shultz to be obviously shielded from liability under any theory, the court ruled that the plaintiff's lawyer violated Rule 11 by having filed the suit and said:

“[T]his is a frivolous lawsuit, completely lacking in merit. The court is mindful of the recent observation made by the Supreme Court in *Harlow v. Fitzgerald* (citations omitted), to the effect that insubstantial lawsuits against high public officials ‘undermine the effectiveness of Government as contemplated by our constitutional structure.’ . . . Such cases, the Court stressed, warrant a ‘firm application of the Federal Rules of Civil Procedure.’ . . . Accordingly, the attorney for plaintiff is sanctioned in the amount of two hundred dollars. . . .”⁷⁷

Similarly, a Federal district court invoked Rule 11 against two plaintiffs' lawyers in *Rodgers v. Lincoln Towing Service, Inc.*⁷⁸ In *Rodgers*, the plaintiff filed suit under 42 U.S.C. § 1983 against the City of Chicago, the superintendent of the Chicago Police Department, two individual Chicago

police officers, a private towing company, and two towing company employees over events arising from the towing of the plaintiff's car from a parking lot. The plaintiff's lawyers filed a “lengthy complaint that assert[ed] claims under virtually every conceivable theory. Using the Bill of Rights as a starting point, the plaintiff claim[ed] . . . that the defendants violated his rights under the first, fourth, fifth, sixth, seventh and eighth amendments. Not overlooking the later amendments, the plaintiff add[ed] a claim for denial of due process under the fourteenth amendment.”⁷⁹ The plaintiff's lawyers also claimed violations of various Federal and State statutes. The court methodically rejected each of the plaintiff's claims of constitutional and statutory violations and found that “[m]ost of those claims have no arguable basis in existing law. A reasonable amount of research before the [complaint] was drafted, which is all the new [Rule 11] requires would have revealed that”⁸⁰ Concluding that any lawyer should have been quickly able to determine the plaintiff had suffered no constitutional injury, the court found the plaintiff's lawyers to have filed “a ponderous, extravagant, and overblown complaint that was largely devoid of a colorable legal basis.”⁸¹ The court said:

“This was a clear-cut violation of rule 11. In such cases under the new rule, the court has the duty to impose an ‘appropriate’ sanction on the offending attorney.”⁸²

The sanction imposed by the court required the two lawyers to personally pay a third of the fees and costs incurred by the defendants in defense of the action.

The recent changes in Rule 11 were specifically designed to reduce the number of unfounded and frivolous suits filed. They impose an obligation on the attorney representing a person who claims a constitutional injury to make an initial determination that the claim is supportable in both law and fact. If that professional obligation is not met, the attorney may be personally subject to an appropriate sanction.

While Rule 11 permits the sanction to be imposed on the motion of a defendant or on the court's own initiative, defendant officers should not view this provision as a means of attacking attorneys who represent the plaintiffs and have filed suit against them. The rule recognizes that injured persons have a right to seek legal representation and permits attorneys to bring all suits which are reasonably supported by law. The rule was not designed as an instrument of attack for use by defendants merely because they have been sued. However, in instances where suit was filed when it clearly should not have been, a sanction against the attorney may act to deter other similar suits. Defendant officers and their attorney should carefully examine the lawsuit and the purpose behind this recent change in Rule 11 before asking the court to sanction a plaintiff's attorney for having filed the suit.

CONCLUSION

While civil litigation filed against responsible law enforcement officers in connection with the discharge of their duties is oppressive to them indi-

vidually and a drain on society as a whole, legal procedures have been established to reduce this burden. Defendant officers and their attorneys should use these procedures to minimize this adversity and attempt to discourage plaintiffs with frivolous and insubstantial allegations.

FBI

Footnotes

- ⁴⁷ 102 S.Ct. 2727 (1982).
- ⁴⁸ *Harlow v. Fitzgerald*, *supra* note 47, at 2739 (1982).
- ⁴⁹ But see *Muzychka v. Tyler*, 563 F.Supp. 1061 (E.D. Penn. 1983), where it was held that a Supreme Court opinion decided only 3 weeks before the action complained of had clearly established the applicable law.
- ⁵⁰ *Alexander v. Alexander*, 573 F.Supp. 373 (M.D. Tennessee 1983).
- ⁵¹ *Id.* at 375, n. 4. See also, *Wells v. Dallas Independent School District*, 576 F.Supp. 497 (N.D. Texas 1983).
- ⁵² 722 F.2d 1013 (2d Cir. 1983).
- ⁵³ *Id.* at 1018.
- ⁵⁴ *Supra* note 23, on petition for rehearing No. 76-01326, August 17, 1984. This issue is, however, on appeal. *Hobson v. Wilson*, 737 F.2d 1 (D.C. Cir. 1984), petition for cert. filed, 53 U.S.L.W. 3603 (U.S. Jan. 14, 1985) (No. 841139).
- ⁵⁵ *Supra* note 47.
- ⁵⁶ 102 S.Ct. at 2739.
- ⁵⁷ For cases allowing an immediate appeal of a denial of qualified immunity, see, *McSurely v. McClellan*, 697 F.2d 309 (D.C. Cir. 1982); *Evans v. Dillahunty*, 711 F.2d 828 (8th Cir. 1983); *Zweibon v. Mitchell*, 720 F.2d 162 (D.C. Cir. 1983); *Krohn v. United States*, 742 F.2d 24 (1st Cir. 1984). For cases denying the right of an immediate appeal, see, *Forsyth v. Kleindienst*, 729 F.2d 267 (3d Cir. 1984); *Bever v. Gilbertson*, 724 F.2d 1083 (4th Cir.), cert. denied, 105 S.Ct. 349 (1984); *Kenyatta v. Moore*, 744 F.2d 1179 (5th Cir. 1984); *Powers v. Lightner*, —F.2d— (7th Cir., No. 84-2312, 1/16/85).
- ⁵⁸ See, *Forsyth v. Kleindienst*, *supra*, cert. granted, 105 S.Ct. 322 (1984).
- ⁵⁹ See, Rule 13, Federal Rules of Civil Procedure.
- ⁶⁰ Counterclaims available to Federal law enforcement officers who are represented by the Department of Justice cannot be filed by the Government defense attorney inasmuch as the Department of Justice is authorized to represent the interests of the United States in litigation. The interests of the United States permits the defense of a Federal employee for acts arising out of the employee's official conduct, but does not permit the prosecution of a counterclaim which would be of interest only to the employee-defendant. See, 28 U.S.C. 517.
- ⁶¹ Defamation as used in this article includes the common torts of libel and slander.
- ⁶² 563 F.2d 343 (7th Cir. 1977). See also, *Appletree v. City of Hartford*, 555 F.Supp. 224 (D. Conn. 1983).
- ⁶³ 688 F.2d 581 (8th Cir. 1982). See also, *Driscoll v. Schmitt*, 649 F.2d 631 (8th Cir. 1981).
- ⁶⁴ Title 42, United States Code, 1988. See also, *Hensley v. Eckerhart*, 103 S.Ct. 1933, 1937 (1983).
- ⁶⁵ *Hensley v. Eckerhart*, *supra* note 64.
- ⁶⁶ *Hughes v. Rowe*, 449 U.S. 5, 14 (1980).
- ⁶⁷ *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978).

- ⁶⁸ 517 F.Supp. 592 (N.D. Illinois 1981). See also, *Scheriff v. Beck*, 452 F.Supp. 1254 (D. Colorado 1978); *Tarter v. Raybuck*, 742 F.2d 977 (6th Cir. 1984).
- ⁶⁹ 564 F.Supp. 1571 (W.D. Missouri 1983), *aff'd*, 733 F.2d 559 (8th Cir. 1984).
- ⁷⁰ *Supra* note 64.
- ⁷¹ 564 F.Supp. at 1575.
- ⁷² 733 F.2d at 570.
- ⁷³ 733 F.2d at 571.
- ⁷⁴ See, *Kostiuk v. Town of Riverhead*, 570 F.Supp. 603, 612-613 (E.D.N.Y. 1983).
- ⁷⁵ See, Rule 11, Federal Rules of Civil Procedure. See also, *Rodgers v. Lincoln Towing Service, Inc.*, 596 F.Supp. 13, 16 (N.D. Illinois 1984).
- ⁷⁶ 582 F.Supp. 154 (S.D.N.Y. 1984).
- ⁷⁷ *Id.* at 158.
- ⁷⁸ *Supra* note 75.
- ⁷⁹ 596 F.Supp. at 15.
- ⁸⁰ 596 F.Supp. at 16-17.
- ⁸¹ 596 F.Supp. at 22.
- ⁸² *Id.*

WANTED BY THE FBI



Photographs taken 1977

Steve Olivio Valdez

Steve Olivio Valdez, also known as Steven La Banca, Steve LaBlanca, Steve Pena, Steve Valdes, Estaban Olivio Valdez, Esteban Olivio Valdez, Esteben Olivio Valdez, Steve Valdez, Steve C. Valdez, Steve O. Valdez, and others

Wanted For:

Interstate Flight—Conspiracy to and Delivery of Heroin; Criminal Sexual Conduct

The Crime

Steve Olivio Valdez is being sought by the FBI in connection with illegal delivery of heroin in Kent County, MI, and sexually molesting two young girls under the age of 16.

A Federal warrant was issued on September 12, 1978, in Grand Rapids, MI.

Because of the time factor involved in printing the FBI Law Enforcement Bulletin, there is the possibility that this fugitive has already been apprehended. The nearest office of the FBI will have current information on this fugitive's status.

Description

Age..... 43, born December 26, 1941, San Antonio, TX.
 Height..... 5'6".
 Weight..... 210 to 220 pounds.
 Hair..... Black.
 Eyes..... Brown.
 Complexion..... Medium.
 Race..... White.
 Nationality..... American (Mexican descent).
 Occupations..... Truck driver, factory worker, plant laborer.
 Scars and Marks Scar on forehead, vaccination scar on upper left arm; tattoos: "USCG" upper left arm, "MaryAnn" lower left arm, "Steve" surrounded by stars lower left arm, "X" on left wrist.
 Remarks Valdez may be traveling with Anita Grace Perez, a Mexican female, date of birth November 1, 1952. Perez is not wanted by law enforcement authorities.

Social Security Number Used..... 450-54-8058.
 FBI No. 355 465 D.

Caution

Valdez, a reported narcotics user who has been known to carry a rifle in the past, is being sought in connection with criminal sexual conduct involving two young females. Consider Valdez armed and dangerous.

Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, DC 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

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NCIC Classification:
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Fingerprint Classification:
 23 L 25 W IOM
 L 8 W IOI 16

I.O. 4959



Right middle fingerprint

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Washington, DC 20535

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Federal Bureau of Investigation

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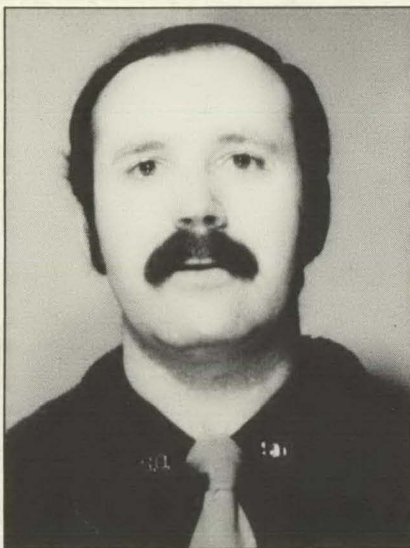


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The Bulletin Notes

Lt. Dave Evans of the Yellowstone County Sheriff's Department, Billings, MT, rescued a man from a car which had gone into the swift moving, cold water of the Yellowstone River. Lieutenant Evans' night rescue took two attempts to reach the man last July 4th. The Bulletin is pleased to recognize Lieutenant Evan's heroism.



Lieutenant Evans
