

U.S. Department of Justice
Federal Bureau of Investigation



May 1998

FBI Law Enforcement

B • U • L • L • E • T • I • N

Investigative Detention





May 1998
Volume 67
Number 5

United States
Department of Justice
Federal Bureau of
Investigation
Washington, DC
20535-0001

Louis J. Freeh
Director

Contributors' opinions and statements should not be considered an endorsement by the FBI for any policy, program, or service.

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodical postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

Editor

John E. Ott

Managing Editor

Kim Waggoner

Associate Editors

Glen Bartolomei

Cynthia L. Lewis

Bunny S. Morris

Art Director

Brian K. Parnell

Assistant Art Director

Denise K. Bennett

Staff Assistant

Linda W. Szumilo

Internet Address

leb@fbi.gov

Cover photo

© K.L. Morrison

Send article submissions to
Editor, *FBI Law Enforcement
Bulletin*, FBI Academy, Madison
Building, Room 209, Quantico,
VA 22135.

FBI Law Enforcement BULLETIN

Features

The Comprehensive Care Model

By Diana Fishbein

1

By joining forces with a wide range of partners to employ proactive, comprehensive strategies, police agencies can address the problems that concern their citizens.

Peer Supporters

By Peter Finn and
Julie Esselman Tomz

10

Peer supporters can help law enforcement employees overcome the stress that threatens the quality of their professional and personal lives.

Telecommunications Fraud

By John T. O'Brien

20

Advances in telecommunications technology have produced ways for enterprising criminals to commit fraud.

Investigative Detention

By John C. Hall

26

Officers conducting investigative stops based on reasonable suspicion of criminal activity must tailor the use of force to fit the circumstances.

Departments

6 Focus on Research

Visual Perception in
Low-Light Levels

19 Book Review

Police Ethics

The Comprehensive Care Model

Providing a Framework for Community Policing

By DIANA FISHBEIN, Ph.D.



Amid the push for partnerships between local government, police, schools, and community groups as a means to prevent crime, many jurisdictions struggle with how to coordinate such a comprehensive effort. Even in the era of community policing, agency administrators rarely meet with community residents to identify common goals, much less to strategize about how to cooperate in a common endeavor. Moreover, approaching sometimes-unfriendly or distrustful community groups to join in the decision-making process

presents an even more formidable task. Yet, forming lasting relationships among key government leaders, police departments, and community groups across the country could have a substantial impact on public safety issues.

Indeed, the community represents a major, often-untapped crime prevention resource. Residents can provide an essential information base greater than that of police departments with limited personnel and resources. In turn, the police act as catalysts who bring the necessary resources to bear on specific,

community-identified public safety problems. Police work then becomes comprehensive, problem solving and proactive as opposed to solely reactive. It makes sense to devise a way in which local government agencies and the community can connect effectively. The comprehensive care model represents one such way.

PRINCIPLES OF THE MODEL

The premise behind the comprehensive care model is that to succeed, prevention programs must mobilize every aspect of the

community to address the underlying problems that, if left untouched, would lead to crime. The model relies on community engagement, proactive approaches, and comprehensive strategies.

Community Engagement

The hallmark of the comprehensive care model is community engagement. In order to encourage community involvement, police administrators first must accept and support the idea that community members have a potential role in police activities. Oftentimes, the move to a community-oriented approach requires redesigning department infrastructures, training systems, evaluation methods, and strategic planning activities to accommodate community input. The department also must engage community members by soliciting their opinions, building trust, fostering relationships, participating in community groups, and developing

programs that allow citizens to actively assist in policing responsibilities. For example, police officers might establish or join a parent-teacher association or other neighborhood organization, form a task force with residents to solve a particular problem, or invite citizens to sit on an internal board, such as an advisory group or a research and development team.

After readying the infrastructure to support community involvement, the department must identify community organizations that reflect the varied interests and concerns in the jurisdiction and that represent the full range of characteristics and behavior patterns in the region. To do this, the department should obtain a list of registered organizations and groups from a state or local corporations commission, city hall, or the courthouse. Organizations with a viable track record and, at a minimum, neighborhood-level membership,

could be selected for further consideration.

The next step would be to obtain a complete description of the community from official records available to police departments and other local government agencies. This includes features such as racial composition; children living under the poverty level; the homeless, elderly and gay populations; gang membership; public housing residents; and other relevant features. Matching this information with the list of organizations will yield a selection of groups that represent the community and include a complete range of interests.

Third, the department should conduct a needs assessment to identify the most pressing problems in the community, the perceived obstacles and tensions that exist, and the proposed resolutions and strategies. The assessment should include input from the groups selected, the department staff, the mayor, school administrators, youth leaders, and other community representatives.

The assessment also should include an inventory of community strengths. Rather than focusing only on the risk factors and problems that plague a neighborhood, identifying assets enables the police and their coalition to develop an inventory of key residents, associations, and institutions from which to build relationships and partnerships. These assets serve as protective factors; that is, they improve residents' resistance to risk factors. Protective factors may include extended family situations, availability of apprentice-type jobs, social cohesion,



**“
...the
comprehensive
care model is
designed to meet
the unique needs
of every
community.
”**

Dr. Fishbein is a research scientist at the High Intensity Drug Trafficking Area Program of the University of Maryland in Greenbelt.

stability in housing arrangements, or the presence of strong neighborhood groups.

This prevention framework, or asset-based strategy,¹ defines both risk and protective factors in a target area in order to direct the problem-solving capacities of relevant players. This way, officers do not start from scratch; they can tap into existing resources, no matter how high risk the neighborhood appears. Through this assessment, police and other agencies become intimately familiar with the community. They have the knowledge at hand to engage community leaders and solve prevailing public safety problems.

Proactive Approaches

Proactive approaches represent the second principle of the comprehensive care model. Rather than simply reacting to a crime that has already been committed, police officers attempt to identify conditions that generate criminal activity. The ultimate goal of comprehensive care is to reduce crime and disorder by carefully examining the nature and extent of neighborhood conditions that contribute to these maladies and then create and apply appropriate remedies. Individuals and groups are affected in different ways by problems and have different ideas about solving them. For this reason, problem-solving initiatives must be innovative and focused. They must represent a coordinated effort by the police, the community, and other players, including policy makers.

Problem-solving approaches involve several steps. First, the

community partners must identify the problems and priorities in their neighborhoods by conducting surveys; analyzing crime patterns, trends, and offender behaviors; holding community meetings; establishing task forces; and familiarizing themselves with the many causes of crime. Second, the police should pinpoint the "hot spots," areas where crime and its underlying problems are most concentrated. Third, the partners should develop,

“

...the community represents a major, often-untapped crime prevention resource.

”

or tailor from other sources, innovative solutions with the highest potential for eliminating or reducing the problems. Once implemented, these solutions must be evaluated and modified, if necessary. Objective evaluation requires collecting data before and after the remedies are implemented.

Comprehensive Strategies

Third, the comprehensive care model calls for comprehensive strategies. Crime prevention programs work best when addressed by a multidisciplinary team of individuals capable of thoroughly assessing the problem and

offering solutions. For example, a community experiencing problems with youth handgun activity would need to pool the expertise of school administrators, teachers, parents, police, medical and psychological professionals, community organizations, juvenile services, and district attorneys. Only in this way can the underlying problems of juveniles who carry handguns—which may include anything from a psychological or psychiatric disorder to the presence of child abuse or a lack of supervision—be thoroughly addressed.

In Oregon, for instance, programs exist to prevent juvenile conduct disorders that often lead to delinquency and drug abuse. Previous efforts had yielded positive, yet short-lived, results. These programs helped children in only one or two problem areas. For example, an intervention that improved the children's relationships with their parents may not have overcome problems at school. To address a broader scope of problems, program designers have developed an approach that works with troubled youngsters at home, in class, and on the playground. Called Universal Interventions, the program involves parents and schools in a wide range of activities, including skill and academic development, parenting techniques, conflict resolution, supervision, and a variety of other techniques that target the multi-problem lifestyles of many youngsters with conduct disorders.

While this program does not specifically include police, similar strategies can be employed by including local government and the

police to expand the support network. The School Resource Officer (SRO) program, for example, offers a great deal of promise. An SRO integrated into the fabric of a school's administration can link school-age children with their community and local government, as well as provide essential services and referrals to their families. Research shows that this approach can prevent both drug abuse and school violence and channel students' activities in productive ways.²

Another comprehensive effort began in Washington, DC, as an effort to reduce violence among inner-city youth. Known as the Howard University Violence Prevention Project, the program creates a safety net and provides legitimate options for at-risk children, as well as encouraging identification with a value system that will protect against prevailing social risk factors. Integral to this strategy is a team approach that involves parents, teachers, mental health professionals, business owners, and local police.

The police component of the project, called the Youth Trauma Team, serves as an excellent example of community policing. Along with psychologists, the police respond to violent incidents that occur at night. They talk to children who have been a part of or have witnessed violence. The following day, they link youngsters with services as needed. Police officers receive training in conflict resolution, cultural sensitivity, and crisis deescalation. They also have networked or partnered extensive-

ly with existing services in their community in a multidisciplinary team effort to provide comprehensive care.

Although these programs all focus on youth, the comprehensive care model is designed to meet the

**“
Crime prevention
programs work best
when addressed by a
multidisciplinary
team of individuals
capable of thoroughly
assessing the
problem and offering
solutions.
”**

unique needs of every community. By joining forces with a wide range of partners, an agency can address the problems that concern its citizens. Moreover, a truly comprehensive effort requires that conventional boundaries expand between offices, agencies, and seemingly distant parties in the community. All parties involved must recognize their overlapping roles and common objectives. Turf building, territoriality, competition, budgetary battles, vested interests, and the like must be put aside in order to work collaboratively. The comprehensive care model does not simply entail enhanced communication; it can only work when its principles are applied systemically

and previously established boundaries are comfortably expanded. Traditionally, the parties sign a memorandum of understanding to identify the exact roles and responsibilities of each and to avoid confusion and disagreement later.

THE REWARDS OF COMPREHENSIVE CARE

The return on investment for comprehensive care programs promises to be substantial. In addition to the immediate effects on the neighborhood environment, the use of community policing officers in a comprehensive care capacity can prove cost-effective for the criminal justice system and society at large. There are fewer court cases because fewer incidents make it that far; officers handle many cases at the street level. The cases that do go to trial are better prepared because officers can draw information from their established community partnerships. They also know offenders better, and as a result, offenders receive more fitting sentences and may possibly avoid prison. A reduced need for correctional facilities and training schools (once called reform schools) could provide significant savings. For those who face imprisonment, an after-care component, sometimes called reintegrative policing,³ can identify inmates in need of services and provide sufficient community resources to help them make a smooth transition back to the community and make positive lifestyle changes.

Additional cost savings may come from a decreased need for health care, as fewer crime victims

need treatment. There also may be a reduced need for psychological and educational services to deal with the trauma associated with witnessing violence and the academic difficulties that hamper the children of criminal offenders. Finally, fewer cases would involve law enforcement, legal and judicial systems, and social services. Indeed, the financial and personal costs of managing entrenched delinquent and criminal behavior are astronomical compared to the costs of comprehensive care programs designed to prevent their onset.

CONCLUSION

For a crime prevention strategy to have long-term effects on reducing criminal behavior and improving the quality of life, community members must work hand in hand with local government to identify underlying problems and devise solutions through cooperative problem-solving activities. In the past, the police have shied away from duties that many of them viewed as the responsibility of social workers. Yet, today's community policing officers have the unique advantage of having direct access to individuals in need and having experiential knowledge of the problems that plague these individuals. Although administrators may need to rethink their organizational philosophies to promote partnerships, proactive problem solving, comprehensive strategies, and community engagement, the principles behind a community policing philosophy apply easily to the comprehensive care model.

Experts have linked criminal behavior to a variety of causes, including social disorder and isolation, a lack of resources and alternatives, and an inadequate support network.⁴ A concerted and comprehensive effort by all members of the community can minimize the risks and increase resiliency and, in turn, may help to prevent crime. ♦

Endnotes

¹ S. Stout, J. Sushinsky, M. Davila, A. Ross, and J. Harris, "Mapping the Course for Community Building," Montgomery County Prevention Coalition Forum, Johns Hopkins Center, Rockville, Maryland, October 1996.

² J. Klopovic, J. McDaniel, B. Sullivan, M.L. Vasu, and E.S. Vasu, *Preventing School Violence by Helping Communities Help Children: School Resource Officers: An Analysis Overview*, North Carolina Governor's Crime Commission, 1994; J. McDaniel, B. Sullivan, E.S. Vasu, and M.L. Vasu, *Starting a School Outreach Program in Your Community: An Effective Practices Outline for the School Resource Officer Approach*, North Carolina Governor's Crime Commission, 1995. For additional information, contact James Corbin, executive director, National Association of School Resource Officers, 4222 Old Dominion Road, Orlando, FL 32812.

³ S. Guarino-Ghezzi, "Reintegrative Policing: A Model for Urban Juvenile Offenders," *Corrections Today*, December 1994, 141-153; and K.P. Haggerty, E.A. Wells, J.M. Jenson, R.F. Catalano, and J.D. Hawkins, "Delinquents and Drug Use: A Model Program for Community Reintegration," *Adolescence*, XXIV (94), 1989, 439-456.

⁴ L. Krivo and R.D. Peterson, "Extremely Disadvantaged Neighborhoods and Urban Crime," paper presented at the 47th annual meeting of the American Society of Criminology, Boston, MA, 1995.

Wanted: Photographs



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

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

Brian Parnell, Art
Director, *FBI Law
Enforcement Bulletin*,
FBI Academy, Madison
Building, Room 209,
Quantico, VA 22135.

Focus on Research

Visual Perception in Low-Light Levels Implications for Shooting Incidents

By Paul Michel, O.D.

Photo © Julie York

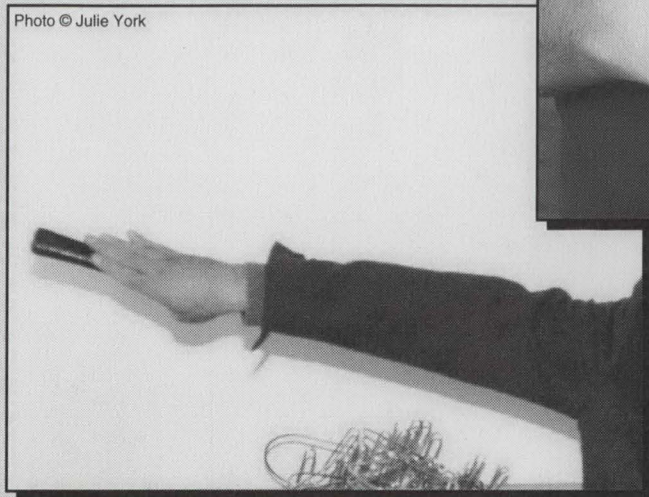


Photo © Photodisc



While on evening patrol, officers discovered two men lurking near a closed gas station in a high-crime area. In the confrontation that followed, the officers fired on the suspects, one of whom appeared to be holding a shotgun. The officers believed that the other man had pulled a chrome-plated handgun from his waistband. Later investigation revealed that the man was, in fact, holding a beer can. He sued the officer who shot him.

During the trial, expert testimony centered on the nature of human vision, the low level of light at the time of the incident, and the results of a research study that demonstrated the ability of healthy subjects to identify lethal versus nonlethal items under a range of low levels of light, the type of conditions officers often face when working at night.¹ The results of this study can assist investigators when determining what an officer can identify under certain environmental circumstances.

Procedure

This experiment used 12 police cadets as subjects. Prior to admission to the academy, a general physician had prescreened the cadets for corrected 20/20 distance visual acuity. Each cadet was reexamined individually for corrected 20/20 vision and measured for hidden refractive error—the cause of nearsightedness, farsightedness, and astigmatism—by observing how parallel beams of light reflect off the retina of the eye. The examination detected no eye disease among the cadets.

The cadets were taken from their classroom, which was at a standard office lighting level, and brought to the research room. A research assistant wore a black jacket, consistent with clothing often worn by crime suspects, and showed each cadet three nonlethal objects and a large-frame handgun under each of four incrementally increasing levels of low light. The black jacket served as a background for the

object, and the assistant stood behind an opaque partition that was quickly shifted down for 1 second. The assistant did not point the object in the direction of the cadet but held each object in a clenched fist close to his body, similar to the physical circumstance of many shooting incidents.

Specifically, the nonlethal objects consisted of a 6-inch piece of green garden hose, an 8-inch piece of black pipe, and a 6-inch chrome-plated screw driver. According to police documents, officers had misidentified similar objects as lethal during the past 10 years. Academy regulations prescribed only the use of academy-deactivated firearms in this study; therefore, a blue steel model 59 Smith & Wesson handgun was chosen as the lethal object because it has a large and distinctive shape.

The experiment used several lighting levels. These levels ranged from .04 foot-candles to .45 foot-candles. For comparison, a bright, full moon on a clear night exhibits illumination comparable to a .01 foot-candle lighting level. A person standing 30 to 40 feet from the direct beam of a vehicle's headlights at night compares to a .45 foot-candle lighting level.

Each cadet viewed each object individually for 1 second. After the presentation of the object, the cadet's attempt to identify the object was recorded.

Results

Each cadet viewed one lethal and three nonlethal objects at each lighting level. Therefore, 48 responses were recorded at each level.

At .04 foot-candles, cadets correctly identified an object only 4 times; they misidentified or said they could not identify an object 44 times. This represented a 9 percent rate of correct identification. At .10 foot-candles, cadets correctly identified an object only 8 times; they misidentified or said they could not identify an object 40 times. This represented an 18 percent rate of correct identification. At .25 foot-

candles, cadets correctly identified an object only 15 times; they misidentified or said they could not identify an object 33 times. This represented a 34 percent rate of correct identification. At .45 foot-candles, cadets correctly identified an object 37 times; they misidentified or said they could not identify an object 11 times. This represented an 84 percent rate of correct identification.

Cadets most frequently identified the handgun correctly. At .25 foot-candles, 10 of the 12 cadets identified the handgun correctly, but 2 cadets still incorrectly identified it or stated they could not identify the object. The gun used in the experiment is one of the largest handguns usually encountered on the street. Had a smaller pocket handgun been used, a higher rate of incorrect identification might have occurred in the low-lighting levels due to the smaller size. Cadets most frequently misidentified the 6-inch piece of green garden hose. Even at the .45-foot-candle level, cadets most frequently identified the hose as a gun. Only one cadet identified the hose as a pipe or cylindrical object.

“
**Visual functioning
dramatically
decreases in
response to
hormones secreted
during acute fear.**
”

Findings

This study demonstrated the difficulty officers have distinguishing between lethal and nonlethal objects under low-lighting levels. Most of the cadets voiced uncertainty about their responses, even when they were correct. When asked to make a determination of the object in less than .25 foot-candles of light, cadets most frequently responded “I cannot tell.” During an exit interview, 80 percent stated they relied upon the positioning of the assistant's hands to help make their determination of the objects. Yet, the assistant purposely had held the object in a neutral manner.

Practical Applications

Officer-involved shootings rarely occur exactly as constructed in this experiment. The time frame

Lethal/Nonlethal Lighting Test

Light Levels (Foot-candles)	Number of Objects Identified	Number of Objects Misidentified
.04	4	44
.10	8	40
.25	15	33
.45	37	11

involved from when an officer perceives danger to the time deadly force is considered necessary is more realistically only a fraction of a second and not the full second allotted in this experiment. Additionally, the suspect or the officer is frequently in motion before and during the shooting. This movement decreases visual ability.

The psychological and physiological effects of fear also decrease the level of visual functioning. The human body instantly undergoes profound physiological changes in response to perceived threatening circumstances. Visual functioning dramatically decreases in response to hormones secreted during acute fear.

Without sufficient lighting, the retina of the eye cannot form an accurate image of the external environment. An ambiguous image is created at the retina and transmitted to the brain. The brain then integrates this ambiguity with cognitive, memory, and emotional elements to form a perception. The officer uses this perception to evaluate the suspect's actions and to react. Based on the factors that affect officers' visual perceptions during confrontations in low-light levels, officers need at least 2.5 to 3 foot-candles of light to accurately identify an object. Shining a halogen flashlight on an object from a distance of 20 feet would create the level necessary for proper visual functioning.

Furthermore, lighting conditions that officers face prior to an incident may significantly affect their ability to discern shapes and details in a darker

environment. During the 20 minutes prior to the incident, if an officer is exposed to lighting higher than when the incident occurs, a transient disability affects the officer's vision. The retina experiences chemical and neurological changes as lighting levels change. After 40 minutes, a person's eyes adapt to low-level lighting conditions. If that lighting condition changes to a higher level of light for even a fraction of a second, the dark adaptation is lost. For example, if an officer seated in a darkened patrol car uses the car's interior light to check an address, the lighting level immediately changes and the officer loses

the dark adaptation. An overwhelming majority of officer-involved shooting incidents have demonstrated this often-overlooked disability. A thorough history of the officer's activities prior to the incident will aid a complete understanding of the visual environment under which the incident occurred.

Recommendations

This research study demonstrates that police officers have difficulty differentiating between lethal and nonlethal objects illuminated by less than .50 foot-candles of light, the level frequently encountered during routine police working conditions at night. Officers should recognize this disadvantage and adapt their procedures accordingly, by increasing lighting levels using their car's headlights and flashlights with halogen bulbs. A weapon-mounted lighting device, attached to the muzzle of an officer's weapon, can increase visual ability in low-level lighting conditions. This device is designed for short-barrel defensive shotguns, uses a small halogen bulb, and has an on/off switch. In addition, officers should train in low-level lighting conditions. Finally, during the investigation of an officer-involved shooting, police administrators should document the lighting level at the time of the incident with an illuminometer and consult a vision expert with experience in this area.

Conclusion

The investigation of an officer-involved shooting is never an easy undertaking. A number of variables

complicate the process, including the officer's visual perceptions prior to and during the incident. Prior shooting incidents and this research study indicate that officers have difficulty differentiating between lethal and nonlethal objects in low levels of light. By understanding the nature of human vision and the implications of this research, administrators and officers alike can prepare for the inevitable encounter with the suspect in the dark alley. Perhaps more important, by properly documenting shooting incidents, conducting thorough investigations, and preparing expert testimony on the nature of these

encounters, law enforcement agencies can avoid legal liability while reminding the public of the dangers associated with protecting the community. ♦

Endnote

The author of this article conducted the study and testified in court.

Dr. Michel, a board-certified therapeutic optometrist, serves as a specialist reserve police officer for the Los Angeles, California, Police Department's officer-involved shooting investigations unit.

Subscribe Now



United States Government
INFORMATION

Order Processing Code:

* 5826

☐ YES, please send _____ subscriptions to:

FBI Law Enforcement Bulletin (FBIEB) at \$20 each (\$25.00 foreign) per year.

The total cost of my order is \$ _____.

Price includes regular shipping & handling and is subject to change.

Name or title (Please type or print)

Company name Room, floor, suite

Street address

City State Zip code+4

Daytime phone including area code

Purchase order number (optional)

Credit card orders are welcome!

Fax your orders (202) 512-2250

Phone your orders (202) 512-1800

For privacy protection, check the box below:

☐ Do not make my name available to other mailers

Check method of payment:

☐ Check payable to: Superintendent of Documents

☐ GPO Deposit Account ☐

☐ VISA ☐ MasterCard ☐ Discover

☐

(expiration date)

☐

Authorizing signature

4/97

Mail to: Superintendent of Documents, PO Box 371954, Pittsburgh PA 15250-7954

Important: Please include this completed order form with your remittance.

Thank you for your order!

Using Peer Supporters to Help Address Law Enforcement Stress

By PETER FINN and JULIE ESSELMAN TOMZ



Police officers in crisis often seek help from their peers, and in every department, a few individuals who prove adept at helping others are turned to repeatedly. Law enforcement agencies attempt to capitalize on this natural phenomenon by establishing peer support programs. In doing so, they provide training to increase the effectiveness of these natural peer helpers while marketing their services so that as many individuals as possible become aware of the peer supporters' availability. Organized peer support programs also help

agencies choose just the right individuals to meet the needs of employees in trouble.

A number of law enforcement agencies currently use peer supporters to help employees prevent and deal with stress.¹ Their experiences can help other agencies implement their own peer support programs.

JUSTIFYING PEER SUPPORT PROGRAMS

Peer supporters serve two major functions. First, they provide a source of help for officers who are unwilling to bring their problems to

mental health professionals because they mistrust "shrinks," would feel stigmatized for not being able to handle their problems on their own, or are afraid that entering therapy might hurt their careers. While peer supporters cannot provide the level of service professionals can, they still can help considerably.² Furthermore, peer supporters usually are more accessible than professional counselors.

Second, peer supporters can refer receptive officers to professional counselors. Many officers are more likely to take advantage of

professional counseling services when a referral comes from a trusted peer than if they have to make an appointment on their own or follow the suggestion of a family member. In this regard, peer supporters act as a bridge to professionals.

Like professional counselors who are also sworn officers, peer supporters offer instant credibility and the ability to empathize. A large cadre of trained peer supporters can match fellow officers with those who have experienced the same incident, thus heightening the empathy inherent in the peer relationship. For example, the Bureau of Alcohol, Tobacco and Firearms (BATF) operates three peer programs, each with a separate focus, linking officers with peer supporters who are critical incident survivors, victims of sexual assault, or recovering alcoholics.

In addition, because of their daily contact with fellow officers, peer supporters are in a better position to detect incipient problems before they become full blown. As a result, peer support programs are "proactive and preventative in nature."³

DEFINING PEER SUPPORTER RESPONSIBILITIES

Peer supporters have three major responsibilities: *listening*, *assessing*, and *referring*.⁴ By *listening*, peer supporters provide an opportunity for officers under stress to express their frustrations, fears, and other emotions to another person who understands from personal experience how they are feeling and

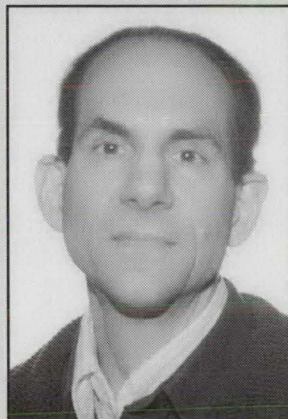
why they are upset. As one peer supporter said, "Most of the calls I get are about work-related anxiety due to department problems, not street problems. I become a sounding board, giving them an opportunity to vent."⁵

By listening, peer supporters also can assess whether the officer's problem is of a nature or severity that requires professional—and immediate—help. With proper training, peer supporters can note the signs that indicate an officer may be suicidal, homicidal, severely depressed, abusing alcohol or other drugs, or have other serious problems. If the officer has a serious problem, the peer can refer the person for professional help. Professional stress programs provide peer supporters with information about available referral resources in addition to the department's own stress services. For

example, when a peer supporter in San Bernardino was asked by another officer whether he could contract AIDS after cutting himself while subduing an HIV-positive suspect, the peer arranged for an expert in HIV exposure from a local hospital to talk to the officer.

IDENTIFYING APPROPRIATE ISSUES

Experts agree that peer supporters prove especially appropriate for assisting officers involved in shooting incidents and officers with drinking problems. Many peer supporters are recovering alcoholics who can link fellow officers with detoxification programs, inpatient treatment, and Alcoholics Anonymous groups. These peer supporters also may attend support group meetings with officers beginning the recovery process and, as sponsors, may follow up on their



Mr. Finn is a senior research associate for a private firm in Cambridge, Massachusetts, and a special officer with the Belmont, Massachusetts, Police Department.



Ms. Tomz, a former research associate for a private firm in Cambridge, Massachusetts, has recently returned to school.

attendance and help them to avoid or deal with lapses.

Officers who have been involved in critical incidents themselves can provide effective support to fellow officers who become involved in shootings. These officers often feel that no one can understand their turmoil except another officer who has experienced a similar incident. Furthermore, after being relieved of their weapons, interrogated, and subjected to a departmental investigation and possibly a civil suit, these officers often feel equally or even more disturbed by what they perceive as their department's lack of support. Reflecting the valuable role fellow officers can play, BATF mandates that all special agents in charge use the agency's peer supporters after every shooting that results in death or injury. While peer supporters should not provide counseling, they can and do help other officers realize that the fear, anger, and other emotions they may experience after a critical incident are normal under the circumstances.

Peer supporters help officers and their families during times of crisis not only by spending time with them but also by performing services for them. Peer supporters in San Bernardino painted one widow's house and cut another widow's grass. When a wounded officer was hospitalized, peer supporters fed the officer's cat. Supervisors in several departments call on peer supporters to stay with the family around the clock for a week after an officer is killed.

Stress can come from a variety of situations, even those that do not result in injury or death. Illinois

State Police peer supporters refer officers with money management problems to the state's credit bureau for assistance. Officers having trouble making credit card payments can work out an arrangement in which the credit card issuer prohibits further use of the card but imposes no additional interest on the money owed until the officer can pay it back. According to a peer supporter with the Michigan State

“

**...peer supporters
offer instant
credibility and
the ability to
empathize.**

”

police behavioral science section, “Money problems are a sign of or a source of stress for many officers, so it's entirely appropriate for peer supporters to link them with organizations that help them manage their money.”⁶

CONNECTING PEERS

Peer support can occur in a variety of settings. Peer supporters may respond to other officers' requests to meet and talk. A peer supporter in San Bernardino may get a radio call asking, “Are you clear for an 87?”—a request to talk that does not reveal the purpose of the meeting. In the New Haven, Connecticut, Police Department, officers can page the peer supporter of their choice 24 hours a day.

Some peer supporters always wait for other officers to come to

them, but many will approach a fellow officer when they observe the person having difficulty. Usually, their approach is subtle. Rather than announcing, “I'm a peer supporter, and I'm here to help you,” they say something like, “It seems like you've been coming on duty late the last few days. What's up?” A great deal of peer support takes place spontaneously around the water cooler, over coffee, or wherever an officer and a peer supporter happen to run into each other.

Officers who take time off to recover from a serious injury or illness often feel isolated and frightened. As a result, employees from the Palo Alto, California, Police Department receive training in workers' compensation law so they can visit at home officers who are disabled to provide support, information about their rights to workers' compensation, and assistance in navigating the complex reimbursement system. Officers involved in a shooting also can feel upset over their change of duties and the legal procedures that often follow. Peer supporters in the San Antonio Police Department prepare officers for these events, emphasizing that, while the change may last several months until any litigation has been resolved, it is only temporary.

RECRUITING, SCREENING, AND TRAINING PEER SUPPORTERS

Recruiting and Screening

Program directors use different approaches to recruit peer supporters. Some announce the position in police department and

association newsletters, departmentwide memos, at roll call, and at union or association meetings. The Erie County, New York, program received several referrals from police associations when the vice president of the Western New York Police Association, a network of law enforcement unions in the region, sent letters to its union members promoting the concept of peer support and inviting members to apply. BATF reviews its files to identify agents who have survived critical incidents. Reviews of past alcohol-related adverse actions identify possible candidates for the bureau's alcohol peer support program. Bureau staff counselors sometimes identify candidates from among their clients.

A police department in Texas combined several steps for recruiting peer supporters. First, the agency asked officers to volunteer. Then, it gave all officers in the agency a peer survey form to complete and return anonymously on which they ranked every officer in the department on a 1 to 5 scale (1 = totally unqualified) in terms of how effective each would be as a peer supporter. The form provided a short description of what peer support was and a brief overview of the activities peer supporters would conduct. Before analyzing the responses, a team of three psychologists interviewed the applicants about why they wanted to be peer supporters and what skills they could bring to their roles. The psychologists also asked a series of situational questions designed to assess the volunteers' communication and listening skills, as well as their ability to solve problems and

empathize. To qualify, volunteers had to be approved by a psychologist and ranked highly by their colleagues. Interestingly, the six individuals selected by the psychologists also had the highest average ratings among their colleagues.⁷ Peer supporters who have been recommended by their fellow officers are more likely to be accepted in their new roles than if sworn personnel had no say in their selection.⁸ However, rejected applicants may become resentful and damage the peer support component by criticizing it in front of other officers.



An agency's command staff should approve of the selections, as well. Administrators who disagree with the selections often do not encourage their use or make referrals and even may not allow peer supporters to spend on-duty time helping other officers.

Some law enforcement agencies accept applicants for peer supporter positions solely on the basis of a desire to help troubled colleagues. This is a mistake; instead, the program director needs to

develop selection criteria and institute recruitment procedures to ensure that only qualified officers are chosen and accepted. An effective peer program depends on screening out inappropriate officers. Peer supporters should be selected based on some combination of the following criteria:

- A reputation as someone whom others already seek out for informal peer support and who keeps information confidential
- Quality of social skills and ability to empathize
- Previous education and training
- Several years of experience on the street
- Nomination by other officers
- Approval or recommendation from the chief or other command staff
- Information provided in a letter of interest
- Previous use of the program
- Ability to complete the training program successfully.

While some officers who have recovered successfully from critical incidents should be chosen, peer supporters also should have a variety of experience so that it becomes possible to match peer supporters with officers under stress based on the similarity of their critical incidents. In addition to officers who have experienced shootings, officers can be selected who have experienced the death of a police partner, been alcoholics, or lived through family traumas, such as the death of a child or spouse.

Because officers usually are extremely reluctant to turn to anyone of a different rank for peer support, individuals of all ranks should be encouraged to become peer supporters. The International Association of Chiefs of Police recommends that peer supporters not assist "...supervisors, subordinates, or relatives."⁹ Program staff should try to train several sergeants and lieutenants as peer supporters so that senior officers have someone of their rank they can go to for assistance, as well as to increase support for the peer program among command staff. It also is important to recruit nonsworn employees and family members as peer supporters. Civilian personnel may feel uncomfortable sharing problems with officers, while family members may feel that they can receive empathetic treatment only from other family members.

In the past, some programs have required that officers have counseling certificates or degrees in order to become peer supporters. At one time, the Dallas Police Department required that peer supporters be state-licensed counselors. The New York City Police Department required its peer supporters, most of whom worked with other officers with drinking problems, to have completed all of the requirements leading to state certification as alcoholism counselors. However, most programs do not have such stringent requirements, and such certification is not necessarily a prerequisite to becoming an effective peer supporter. Still, in many states, certification serves an advantage by making conversations between peer

supporters and other officers privileged communication.

Finally, officers should volunteer to be peer supporters, and no external rewards should come with the position, such as enhanced chances for promotion. Only truly voluntary participation can ensure that the assistance peer supporters give will be perceived as genuine and, therefore, will prove beneficial.

“

...confidentiality stands as perhaps the knottiest issue related to using peer supporters.

”

Initial Training

Peer candidates generally receive 3 to 5 days of training. The DEA provides 64 hours of initial training, leading to certification of peer trauma team members, who then must receive 24 to 40 hours of additional training every 3 to 4 years to remain certified.

Training should focus on developing skills for active listening; recognizing and assessing officers' problems; determining the need for referral to professionals; and selecting the proper resource to provide professional assistance. Training also may cover problem-solving techniques, dealing with death, and responding to relationship problems.

Training must emphasize the need for peer supporters to avoid providing therapy, to know their limits as to what they can offer and do, and to contact professionals freely and immediately if they have questions about how to proceed. Training also should stress the need for peer supporters to maintain strict confidentiality unless employees pose a threat to themselves or others or have committed crimes. In such cases, peer supporters must explain what information cannot remain confidential.

Training typically involves lectures, demonstrations, and role-play exercises. In some programs, staff members videotape simulated support sessions and critique the interchange. The 3-day training program provided by the Long Beach, California, Police Department is divided into three parts: explanation, demonstration, and performance. During the training, instructors present psychological principles and later demonstrate them in a simulated counseling setting. The class then breaks into small groups to practice the skills under the instructors' supervision.¹⁰ Trainers in the Rochester, New York, Police Department assess trainee proficiency using a 5-point scale to rate the officers on such parameters as openness to learning and supervision, self-awareness, listening skills, objectivity, and the ability to maintain confidentiality. The trainees must achieve a defined level of proficiency before being allowed to work as peer supporters.¹¹

The San Bernardino program invites staff members from a county employee assistance program that

serves law enforcement officers to attend at least part of the training so they will not feel as though the peer supporters are competing with them for clients. Staff members from another program encourage peer supporters to meet with private practitioners to allay fears about taking away their business.¹² In fact, peer supporters will need to refer some individuals to area professionals. As a result, these professionals should attend at least some of the training so they understand the nature of the peer support program.¹³

Follow-up Training and Program Monitoring

Most programs provide follow-up to the initial training to reinforce or expand the peer supporters' skills, enable them to share and learn from their experiences, and monitor their activity. The peer supporters for the Rhode Island Centurion Program meet every 2 months for 2 hours of additional training provided by clinical staff from the inpatient hospital the program uses when clients need hospitalization. The training addresses topics in which the peer supporters have expressed interest, such as confidentiality and suicide indicators. Every 3 months, the Counseling Team, a group of professional therapists in San Bernardino, California, that provides stress services to a variety of area law enforcement agencies, offers a free, 3-hour follow-up training session to all peer supporters.

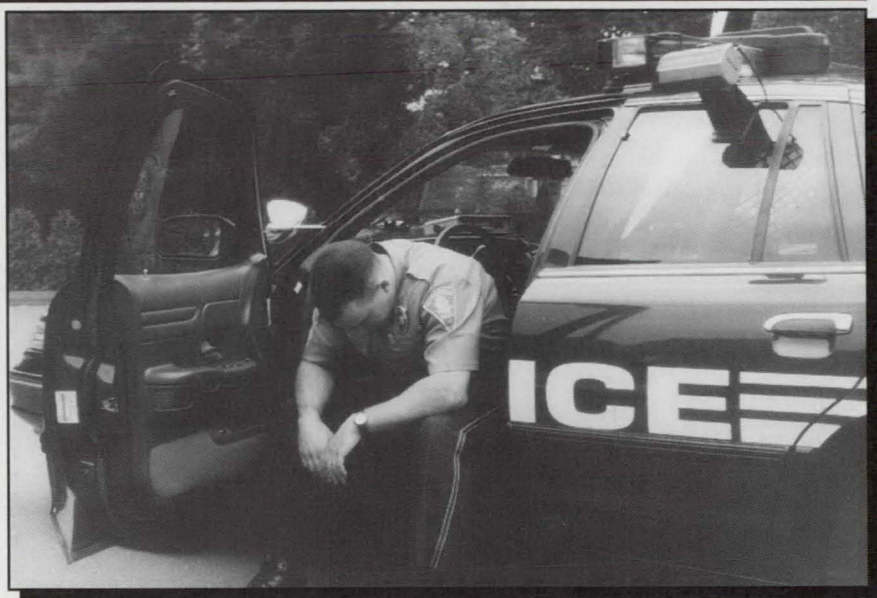
Staff from the Counseling Team and some other programs require that peer supporters complete contact sheet logs.¹⁴ The Counseling Team also asks peer supporters

to complete a simple checklist for each support session. The checklist includes a case number and an indication of whether the person was sworn or nonsworn; male or female; management or nonmanagement; and on-duty or off-duty. Also included is a list of stress-related issues for which the employee received support, ranging from problems with co-workers to financial concerns to substance abuse. The forms serve as a means to determine whether any peer supporters are being overworked, not only on the basis of the number of hours they have been spending on support but also as a result of transfers. By using these forms, the director of the Counseling Team learned that two of three homicide detectives serving as peer supporters in one agency had been transferred, leaving the entire responsibility for peer support with one remaining detective. By asking peer supporters to record their current shift assignment, the forms also detect if too many peer supporters are working

the same shift, leaving other shifts uncovered.

Finally, the forms may point to temporary departmentwide problems that may need to be addressed. For example, in one department, three-fourths of all peer support hours were being devoted to relationship problems; within a few months, 19 officers had gotten divorced. As a result, the Counseling Team offered a seminar on marriage and family support to the peer supporters.

Stress programs must monitor burnout among peer supporters, both in terms of the ongoing, everyday support and also following particularly intense incidents. If peer supporters seem overwhelmed with their caretaking responsibilities, the program manager may need to get outside help. Local victim/witness assistance programs and chaplains can meet this need. To help prevent peer burnout, the DEA offers an annual workshop called "Healing the Healer" for all clinicians and peer trauma team members who have



responded to a critical incident in the previous year.

OVERCOMING LIMITATIONS

Several potential weaknesses of peer programs exist. First, peer supporters cannot substitute for the services of mental health professionals. Just as some officers are reluctant to seek professional help, others are unwilling to talk with peer supporters because they want to be counseled by a professional or because they fear a lack of confidentiality in talking with a peer.

Indeed, confidentiality stands as perhaps the knottiest issue related to using peer supporters. Failure by peer supporters to maintain—and for management to respect—the confidentiality of what other officers say to a peer supporter can sabotage a peer support program. Some agencies try to ward off such threats. BATF emphasizes that peer supporters “are *mandated* to maintain total and complete confidentiality...no written reports are made or maintained.” Unfortunately, the office grapevine may spread word of an employee’s troubles, inadvertently damaging a peer supporter’s reputation. Georgia’s peer support program may solve this dilemma. There, the Peace Officer Standards and Training Council staff set up peer support teams in each of the state’s 10 emergency health regions. Members of each region’s team provide peer support to the public safety agencies within its jurisdiction, so employees need not turn to a co-worker for help.¹⁵

More important, however, communication between peer

supporters and officers usually is not considered privileged conversation under the law, regardless of department rules, because peer supporters are not licensed mental health professionals. As a result, courts and police supervisors have the legal right to ask what was said during these interactions. This lack of confidentiality under the law can present a major barrier to peer support during critical incident debriefings.

“

...peer support programs can provide a significant source of assistance in every law enforcement agency.

”

For example, during stress debriefings after critical incidents, officers who participate in the incident sometimes make statements that could be construed as admissions of wrongdoing, including comments that begin with such phrases as “I should have...” or “If only I had...” Law enforcement agencies cannot offer immunity from civil and criminal litigation to clinically unlicensed officers who participate in a debriefing to offer social support and are asked later to testify at departmental hearings or in civil and criminal proceedings about what they heard. As a result, program staff must warn officers

who obtain counseling not to say anything incriminating during a counseling or debriefing session with other officers or when speaking privately with a peer supporter. Because peer supporters can be subpoenaed to testify during officer use-of-force trials and administrative hearings, they should not participate in group or individual debriefings following such incidents. However, licensed professional program staff who conduct debriefings and who are protected under certification law in state statute and by Rule 501 of the Federal Rules of Evidence cannot be forced to testify.

Even peer supporters who have considerable training in counseling—but still are not licensed—may not be protected by confidentiality laws, depending on the definitions of various types of counselors in state statutes. A Massachusetts state trooper had nearly 300 hours of formal training in stress management, psychology, and related courses and several years of counseling experience both at a local chemical-dependency treatment center and his department’s employee assistance unit before being assigned to the unit full time. Although he was not licensed, he considered himself a social worker. Moreover, because his department’s policy deemed confidential all counseling provided through the employee assistance unit, the peer supporter told other troopers seeking his help that their communication would be kept in confidence.

In March 1995, a woman filed assault and battery and other criminal charges against a trooper whom the peer supporter had assisted; the

The Benefits and Limitations of Peer Supporters

Benefits

- Provide instant credibility and ability to empathize
- Assist fellow employees who are reluctant to talk with mental health professionals
- Recommend the program to other employees by attesting credibly to its confidentiality and concern
- Provide immediate assistance due to accessibility
- Detect incipient problems because of their daily contact with co-workers
- Less expensive than professionals

Limitations

- Cannot provide the professional care that licensed mental health practitioners can
- May try to offer full-scale counseling that they are not equipped to provide
- May be rejected by employees who want to talk only with a professional counselor
- May be avoided by employees because of the fear that problems will not be kept confidential
- Require time, effort, and patience to screen, train, and supervise
- May expose themselves and the department to legal liability

trooper was suspended from active duty. The peer supporter subsequently provided additional help to the trooper on several occasions. The peer supporter's records were subpoenaed for the trooper's trial, but the supporter petitioned for a protective order, alleging that because he was a social worker employed by the state, his conversations with the trooper were privileged communication.

Disagreement centered on the state's definition of a social worker. The law specified that "all communications between...a social worker employed in a state, county or municipal governmental agency and a client are confidential,"¹⁶ but the court maintained that the peer supporter was not, in fact, a social worker because he was not licensed. The Massachusetts Supreme Judicial Court later upheld the confidentiality of the

trooper's conversations with the peer supporter.¹⁷

Finally, communication between peer supporters and other officers is never confidential if the officers being offered support appear to be a danger to themselves or to others, have engaged in child or spousal abuse, or have committed other crimes. To minimize legal complications, agencies should consult with a local attorney regarding their state laws and court rulings pertaining to confidentiality.

Confidentiality issues notwithstanding, in some situations, using officers to provide peer support to colleagues in the same agency may not prove effective. BATF officials prefer not to use peer supporters who are located in the jurisdiction of critical incidents involving large numbers of agents because the peer supporters may be too severely affected themselves by the incident

to be able to help their colleagues. For example, after the bombing of the federal building in Oklahoma City in 1995, the BATF flew in eight peer supporters who contacted affected agents, their family members, and agents from other jurisdictions assigned to investigate the explosion. In the initial stage, the peer supporters allowed the visiting agents to continue their work without debriefing them but tried to remain visible, a task facilitated by the number of agents who already knew some of the peer supporters. Peer supporters also stayed with survivors and their families at hospitals and in homes.

About three-fourths of the agents' spouses attended the first voluntary meeting with the peer supporters in Oklahoma City. At this meeting, the peer supporters discussed the symptoms of stress the agents and their spouses could

expect to experience. A second meeting with spouses included their children. Next, the peer supporters approached all of the BATF employees, starting with those who had been in the building at the time of the explosion. Anticipating that some employees might be intimidated by mental health professionals, only peer supporters ran these initial sessions. Individual-level contact continued as the peer supporters encouraged everyone to approach them voluntarily. The employee assistance program mental health professionals were then integrated into the process.

Finally, in some jurisdictions, general issues of legal liability may make it unwise to establish a peer support program at all. For this reason, the Metro-Dade Police Department's stress program does not include a peer component, while the New York City Police Department requires that its peer supporters become certified alcoholism counselors. Agencies need to examine the issue of liability carefully to determine whether they will be immune from lawsuits if a peer supporter trained by their agency is accused of causing harm to another officer.

CONCLUSION

Professional stress services will remain essential for helping law enforcement officers cope with the pressure of police work. However, peer support programs can provide outlets for officers who are unwilling or not yet ready to seek professional help, make professional services acceptable to reluctant officers, and furnish assistance that only peers may have the time

or understanding to provide. A number of law enforcement agencies already have demonstrated that officers will welcome—at least over time—the help peer support programs can provide. Moreover, when employees get the help they need, their agencies also benefit. Sensitively and conscientiously implemented, peer support programs can provide a significant source of assistance in every law enforcement agency. ♦

“Officers who have been involved in critical incidents themselves can provide effective support to fellow officers....”

Endnotes

¹ The information in this article is based on a literature review on law enforcement stress and stress programs, as well as in-person and telephone interviews with program directors, mental health providers, law enforcement administrators, union and association officials, officers, family members, and civilians associated with law enforcement stress programs at a number of agencies. The programs researched for this article were selected based on the suggestions of an advisory board consisting of police psychologists and practitioners and the recommendations of law enforcement mental health professionals gathered at an FBI law enforcement symposium in Quantico, Virginia, in January 1995. This research project was supported by the U.S. Department of Justice, National Institute of Justice, Contract OJP-94-C-007. See Peter Finn and Julie Esselman Tomz, *Developing a Law Enforcement Stress Program for Officers and Their Families* (Washington, DC: U.S.

Government Printing Office, 1997) and “Reducing Stress: An Organization-Centered Approach,” *FBI Law Enforcement Bulletin*, August 1997, 20-26.

² Law enforcement therapists emphasize that officers who become peer supporters are not trained to provide counseling and, to avoid misunderstanding about their role, should be called “peer supporters,” not “peer counselors.”

³ M. McMains, “The Management and Treatment of Postshooting Trauma: Administration Programs,” in James T. Reese, James M. Horn, and Christine Dunning, *Critical Incidents in Policing* (Washington, DC: U.S. Department of Justice, 1991), 191-196.

⁴ Nancy Bohl, director, The Counseling Team, San Bernardino, California, interview with the authors, July 27, 1995.

⁵ Peer supporter who requested confidentiality, interview with the authors, July 26, 1995.

⁶ Jeffrey Atkins, Michigan State Police, behavioral science section, interview with the authors, June 20, 1995.

⁷ W.C. Mullins, “Peer Support Team Training and Intervention for the Police Family,” in James T. Reese and Ellen Scrivner, *Law Enforcement Families: Issues and Answers* (Washington, DC: U.S. Department of Justice, 1994), 205-212.

⁸ Ibid.

⁹ International Association of Chiefs of Police, *Peer Support Guidelines*, Alexandria, Virginia, 1993.

¹⁰ R. Klein, “Police Peer Counseling: Officers Helping Officers,” *FBI Law Enforcement Bulletin*, October 1989, 1-4.

¹¹ G. Goolkasian, R.W. Geddes, and W. DeJong, *Coping with Police Stress* (Washington, DC: Government Printing Office, 1985), 57.

¹² E. Schmuckler, “Peer Support and Traumatic Incident Teams: A Statewide Multiagency Program,” in James T. Reese, James M. Horn, and Christine Dunning, *Critical Incidents in Policing*, (Washington, DC: U.S. Department of Justice, 1991), 318.

¹³ Supra note 4.

¹⁴ For an example of a detailed peer log, which may ask for more information than most peers can or will provide, see Blau, *Psychological Services for Law Enforcement* (New York: John Wiley and Sons, 1994), 181.

¹⁵ Supra note 12, 315-323.

¹⁶ Ma. St. 112 Section 135A.

¹⁷ *Gilbert M. Bernard v. The Justices of the District Court of Cambridge*, 424 Mass. 32, 673 N.E.2d 1220.

Book Review

Police Ethics: Crisis in Law Enforcement by Tom Barker, Ph.D., published by Charles C. Thomas, Springfield, Illinois, 1996.

Ethical problems are encountered in every profession, including law enforcement. The behavior of all law enforcement officers must conform to recognized ethical standards. By providing law enforcement officers and supervisors with an understanding of ethical behavior, *Police Ethics: Crisis in Law Enforcement* serves as a training manual for new officers and as a refresher for experienced officers.

In the preface, the author states that his objective is to provide law enforcement with an understanding of ethical behavior as it relates to the police occupation. The author succeeds in providing a concise overview of basic ethical issues facing the modern police agency.

The author begins by asking the perennial question of whether the work of law enforcement constitutes a profession. In finding that law enforcement has not reached certain standards required of a profession, the author argues that the true issue to be addressed is whether law enforcement officers can behave professionally. This is where ethics becomes essential.

The next four chapters dissect the *Law Enforcement Code of Ethics*. While discussing the weaknesses of some provisions of the code, the author advises that it provides an overall model for professional conduct by police officers. In analyzing the sections of the code that address the private lives of law enforcement officials, the author states that the status of being a law enforcement officer makes such provisions necessary in a code of ethics. The book addresses more universally acknowledged off-duty misconduct such as drug and alcohol abuse, instead of discussing how issues such as homosexuality and cohabitation are viewed in light of the code's requirement that law

enforcement officers "...keep [their] private life unsullied." We live in times where behavior seen by some individuals as acceptable or unsullied may be seen by others as misconduct for a law enforcement officer. The author chose to make the accepted point that even off-duty misconduct warrants punishment, as opposed to addressing the ethical question of what constitutes unsullied behavior. The remainder of the book discusses forms of misconduct and corruption and ways to control them. These chapters offer practical examples with which most officers can identify.

The author writes in an easily understood style and avoids the heavy-handed academic prose found in other texts addressing these areas. He offers a practical, well-rounded proposal for the police administrator to use in developing a program to both prevent misconduct and to deal with it if it occurs. Of particular interest is the author's discussion of the need to inform the general public of what the department expects of its police officers and what role the public needs to play to ensure the success of these expectations. Corruption and misconduct too often appear as internal police problems, not matters of public responsibility.

This timely work offers many examples and a few ideas for the police administrator to consider in the area of law enforcement ethics. It is not, and does not attempt to be, an academic dissertation on the subject. For the police administrator looking for an overview of law enforcement ethics, and for the new police officer interested in guidelines and warning signs, *Police Ethics: Crisis in Law Enforcement* is ideal.

Reviewed by
SSA Michael E. Brooks
Office of Law Enforcement Ethics
FBI Academy
Quantico, Virginia

Telecommunications Fraud

Opportunities for Techno-Criminals

By JOHN T. O'BRIEN, M.S.

Photo © Photodisc



The 1990s have been called the communications decade. New communication systems spring up seemingly overnight, and existing systems have expanded rapidly. This has been a great convenience and even a lifesaver for many citizens. At the same time, it has created opportunities for fraud.

Whether they use false information to establish customer accounts or employ technologically sophisticated means to steal account information, techno-criminals target both innocent citizens and telecommunications carriers

with a variety of fraudulent schemes. Yet, despite the advanced technology used by some offenders, law enforcement agencies can combat these crimes using traditional methods. Successful resolution of cases involving telecommunications fraud often depends on partnerships with service providers, combined with an understanding of the nature of the crimes.

Telecommunications Systems

The communication systems in the greatest demand by consumers are cellular telephone and personal communication services (PCS).

Although cellular telephone and personal communication services differ in their technology and the regulatory requirements, the two terms often are used interchangeably. Both are portable methods of communication between a moving subscriber and the landline telephone system. In both services, subscribers use a portable handset to establish a connection through a cell site. The cell site serves as a base station for a specific geographic area called a cell. In a large city, a cell may cover only a few blocks. In a rural area, one cell may encompass several square miles. As

a moving subscriber travels from one cell to another, the connection automatically transfers to the new cell site.

Types of Fraud

Cellular telephone and PCS fraud can be divided into low-tech fraud and high-tech fraud. Subscription fraud is the least sophisticated and the most common form of fraud. One consulting firm estimated that subscription fraud accounts for 80 percent of all PCS fraud.¹ Individuals establish service using false credentials, including their names, social security numbers, credit references, and salary information. They use the service but never pay for it. The carrier eventually disconnects the service but never recovers the costs or lost revenue.

Though disconnected by the home carrier, these individuals can continue to place calls by doing so from outside the home carrier's service area. The time delay between the delivery of this roaming service and the report of the service to the home carrier makes this type of fraud, called roaming fraud, possible. Roaming fraud proves especially costly because the home carrier remains responsible for paying the charges owed to the carrier that provided the roaming service. All cellular telephone and PCS carriers will be required to provide nationwide roaming service by June 1999. This will create greater opportunities for roaming fraud.

The most prevalent form of high-tech fraud is cloning fraud. Individuals acquire legitimate account information either by outright

theft from a carrier or by on-the-air interception. On-the-air interception of account information is possible whenever a cellular or PCS telephone is turned on, even if it is not being used.

Armed with someone else's account numbers, the thief programs them into a cellular or PCS telephone, creating a clone of the legitimate phone. After the home carrier has disconnected the service, the user may continue to place calls by using roaming service, thus committing roaming fraud.

Any cellular telephone or PCS network is vulnerable to low-tech fraud. The vulnerability of a cellular or PCS network to high-tech fraud depends on the technology the carrier employs.

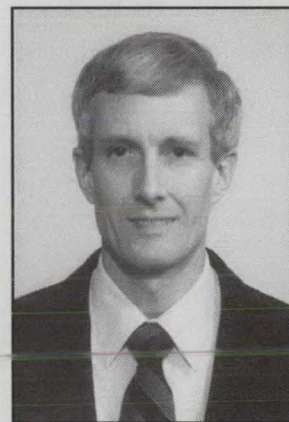
Vulnerability to High-tech Fraud

Most cellular telephone carriers use advanced mobile phone

service (AMPS). AMPS transmits an unencrypted analog frequency modulated (FM) signal, which can be intercepted with any FM receiver, such as a scanner. Scanners manufactured or sold in the United States normally block these frequencies; however, they can be modified, often as easily as removing one or two wires. A television set with an ultrahigh frequency tuner (UHF) also can be modified to receive cellular telephone frequencies. As a result, AMPS technology is especially vulnerable to cloning fraud and eavesdropping.

Cellular telephone carriers in larger cities employ a second-generation cellular telephone technology called time division multiple access (TDMA). It digitizes the subscriber's account information and voice and turns them into a high-speed stream of binary digits. A telephone using TDMA technology transmits its digitized

**“
Subscription
fraud is the least
sophisticated
and the most
common form of
fraud.
”**



Special Agent O'Brien serves in the FBI's Washington, D.C. office.

information only during an assigned time slot a mere several thousandths of a second long. These binary digits sent in intermittent bursts of incomplete information make TDMA less vulnerable to cloning fraud and eavesdropping. The carrier also may encrypt the signal, adding even more security.

Some TDMA carriers do not completely cover their service areas. In these areas, subscribers use dual-mode telephones that transition to AMPS if TDMA is not available. When this happens, the telephone becomes more vulnerable to cloning fraud and eavesdropping.

Personal communication services carriers use one of several different technologies on their networks. The two most common are global system for mobile communications (GSM) and code division multiple access (CDMA). In GSM communications, a subscriber's account information and voice are digitized and transmitted during an assigned time slot. The account information is stored in a subscriber identity module (SIM). The SIM is either a postage-stamp size, which remains inside the telephone, or a credit-card size, which the user inserts before making a call and removes afterward.

When a subscriber initiates a telephone call, the GSM network challenges the SIM in a process known as authentication. If the SIM responds correctly, the GSM network connects the call. GSM calls are encrypted using information stored in the SIM.

Experts believe that GSM remains immune to cloning fraud. Even if an individual obtained le-

gitimate account information by outright theft, the expense and effort required to counterfeit a SIM probably would not prove cost-effective for the thief. However, recent reports indicate that some enterprising individuals have developed a way to counterfeit SIMs using a laptop computer and other peripheral equipment.²

**“
...techno-criminals
target both innocent
citizens and
telecommunications
carriers with a
variety of fraudulent
schemes.
”**

In theory, GSM should be immune to roaming fraud, as well because a GSM carrier can require that the home system verify every challenge and response of a roaming subscriber. In practice, however, authenticating every roaming call adds considerable nonbillable communications to an already-overloaded network. As a result, some carriers do not require home system verification. Without it, a fraudulent subscriber can continue to use roaming service even after being disconnected by the home carrier.

CDMA, the second type of PCS technology, makes unauthorized reception difficult. CDMA

first digitizes the signal then adds the subscriber's code to these digits. Only a CDMA receiver with the subscriber's code can receive the transmission. CDMA transmits subscriber information over the same band of frequencies at the same time but uses unique codes to differentiate subscribers.

Although it offers an inherent degree of privacy, CDMA is not considered secure unless the signal also is encrypted. Many carriers who employ CDMA technology plan to incorporate encryption into their services. Still, after several weeks of effort, the research team from a consulting firm that specializes in cryptography broke the encryption scheme used in CDMA and TDMA.³ Nevertheless, CDMA is considered protected against unauthorized interception of account information and conversations.

The Cost of Fraud

The Cellular Telecommunications Industry Association (CTIA) estimated that PCS and cellular fraud cost carriers \$440 million in 1994, \$650 million in 1995, and \$710 million in 1996.⁴ Fraud can be divided into hard fraud, that is, the actual dollars a defrauded carrier loses, and soft costs, which represent revenues the carrier cannot collect from fraudulent subscribers.

When a call is routed from a cellular or PCS carrier's network to a recipient's home or business telephone, it is carried by the local telephone company. The cellular or PCS carrier pays a local interconnect charge for this service. In addition, the home carrier pays wholesale roaming charges when one of

its subscribers uses roaming service in another carrier's service area. Wholesale long-distance charges also apply to calls carried by a long-distance carrier.

The carrier normally bills a subscriber for a monthly service charge plus retail airtime charges. If the subscriber uses roaming service or places long-distance calls, the carrier bills these charges, as well. All of these charges represent revenues the carrier cannot collect from fraudulent subscribers.

Fraud Detection

Given the high cost of fraud, carriers employ various fraud-detection measures. Usually software-based, these programs attempt to identify fraudulent subscribers and cloned telephones. Some fraud-detection software creates a profile for a legitimate subscriber. It then monitors the subscriber's activity and compares it to the profile. If actual use deviates significantly from the profile, the system generates an alarm and notifies the carrier's loss-prevention or security personnel.

Other software monitors activity and flags certain calls—such as simultaneous calls from the same subscriber, high call counts, calls to or from pay telephones, calls to or from suspicious locations, and calls at suspicious times of the day. Exceeding a predetermined threshold generates an alarm and notifies security personnel.

Fraud Prevention

Carriers also institute various fraud-prevention measures to prevent a fraudulent subscriber from

completing a call. These methods usually are hardware-based. Most carriers can provide subscribers with a four-digit personal identification number (PIN), which users must enter to complete a call. Some AMPS carriers transmit the PIN and the account information over different frequencies to make it more difficult for thieves to intercept and use the PIN.

Authentication also serves as a fraud-prevention measure, and a growing number of carriers are employing the technique. However, authentication is not available for AMPS.

Radio frequency (RF) fingerprinting detects subtle characteristics of the radio signals transmitted by cellular telephones. It can recognize the differences between the signals transmitted by a legiti-

mate phone and a clone. The network can prevent a cloned phone from completing a call. Carriers can exchange RF fingerprints to allow a carrier outside the home service area to recognize a legitimate roamer from a clone.

Investigation

Criminals, particularly organized-crime associates and drug dealers, have grown increasingly wary of law enforcement's ability to monitor their telephone activity. Many of them want cloned phones for security. Other criminals step forward to meet the demand, offering cloned phones for sale or programming a customer's phone for a fee. Law enforcement personnel should remain alert for source information indicating that someone is providing cloned phones.

Fraudulent Programmer

Clinton Watson of San Jose, California, wrote a software program that allowed fraudulent subscribers to program account information into cellular phones. After receiving an unusually large number of calls at his home from customers using cloned phones, Watson attracted the attention of a local cellular service provider, which contacted the U.S. Secret Service. In April 1994, the Secret Service and the San Jose Police Department executed a search warrant at his home. At the time, he was on probation for a 1988 conviction for cellular telephone cloning. In May 1996, he was sentenced to 5 years in prison, 3 years' probation, and \$300,000 restitution for cellular telephone fraud. He also received an additional year in prison for probation violation.

Source: "They Clone by Night," Tele.com, August 1996.

Undercover operations have met with some success. In one case, the U.S. Secret Service set up a computer bulletin board system to purchase stolen cellular telephone account information. The sting, Operation Cybersnare, netted suspects who stole millions of dollars worth of data.⁵ Storefront operations that sell and program purportedly cloned phones also have proven successful, as did Operation Cellmate. This joint effort between the state attorney's office in Jacksonville, Florida, the U.S. Secret Service, and the Naval Criminal Investigative Service, snared close to 100 suspects, many of whom used the cloned phones they purchased to engage in other illegal enterprises.⁶

In each of these cases, the cellular phone company provided valuable assistance. In fact, most cellular and PCS carriers will work with law enforcement agencies to identify and prosecute fraudulent

subscribers. However, telecommunications carriers are not equipped to provide the telephone number and location of a subscriber in real time. Thus, although undercover operations have successfully identified fraudulent subscribers, PCS and cellular carriers usually cannot contact law enforcement agencies quickly enough to catch a fraudulent user in the act. The most cost-effective option is to disconnect the service and absorb the loss.

This situation may change, however. Beginning in April 1998, cellular and PCS carriers will be required to provide public safety agencies with the telephone number and cell site location of a subscriber making a 911 call. By October 2001, carriers will be required to provide the location within 125 meters. These regulations are not meant to serve as fraud-prevention measures; rather, they represent a solution to the growing number of

calls to public safety agencies from cellular or PCS subscribers in distress and unsure of their locations. At the same time that these regulations would help pinpoint the location of 911 callers in need of assistance, they would prove helpful for fraud prevention and other law enforcement operations.

With the ability to provide telephone number and location information, the odds of catching criminals in the act and obtaining prosecution and possibly restitution will increase. The effectiveness of this strategy will depend on the relationship between the law enforcement agency and the carrier. Investigators interested in pursuing PCS or cellular fraud cases should contact the carriers in their service areas to determine their interest in establishing liaison and providing referrals.

Two recently introduced pieces of legislation also may help to combat cellular phone fraud. The first, the Cellular Telephone Privacy Act, makes it illegal to use a scanner with the "intent to defraud," specifically to capture a cellular phone's electronic serial number and use it to obtain unauthorized services. The second bill, the Wireless Telephone Protection Act, makes it a crime to use a scanner to capture cellular phone codes. It also asks the U.S. Sentencing Commission to amend sentencing guidelines for cloning.⁷ If passed, these two bills may deter individuals from committing fraud.

Conclusion

Demand for cellular telephone and personal communication

Brooklyn Bandits

In July 1996, members of an electronic fraud task force that included U.S. Secret Service agents and New York police officers arrested Abraham Romy and Irina Bashkavich of Brooklyn, New York. Over a 6-month period, the pair allegedly used equipment mounted on the windowsill of their 14th floor apartment to steal account information from more than 80,000 cellular phones in vehicles traveling on the nearby Belt Parkway. A Secret Service official declared the illegal operation the largest ever uncovered by law enforcement.

Source: Bob Twigg and Carol J. Castaneda, "Pair Held in Largest Cell Phone Ripoff," USA Today, July 3, 1996.

services continues to grow. In response, service providers use increasingly sophisticated technology to squeeze more conversations into the available frequency bands. At the same time, they must defend themselves and their customers against the increasing number of criminals who seek to exploit weaknesses in the network to commit fraud.

When law enforcement agencies team up with telecommunications companies, they gain insight into the technology used by

legitimate and illicit subscribers alike. More important, they form a united front from which to combat the various forms of telecommunications fraud. In doing so, they answer the call of the victims of today's information society. ♦

Endnotes

¹ The Yankee Consulting Group, cited in Tina Metivier, "The Weakest Links," *Wireless World*, January 1997, 40.

² Ibid.

³ Counterpane Systems, cited in Paul Rubin, "Sure It's Secure—But Is It Really Safe?" *Tele.com*, May 1997.

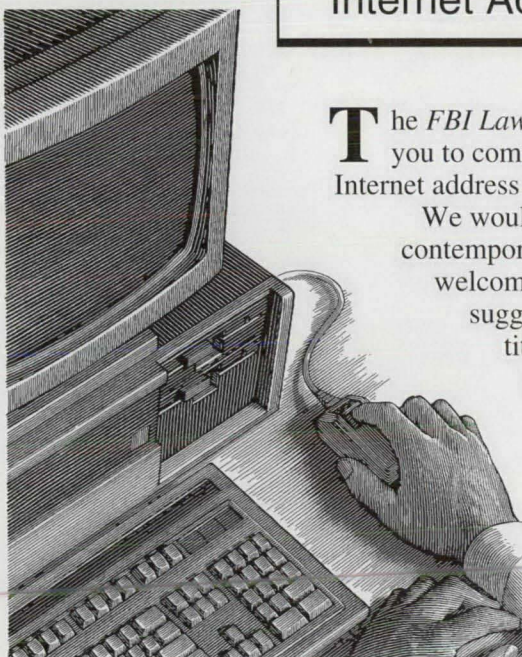
⁴ CTIA Wireless Fraud Conference, Orlando, Florida, September 30-October 2, 1997.

⁵ "Internet Sting Nets Alleged Hacker Ring," *The Detroit News*, September 12, 1995, [newspaper on-line]; available from <http://www.detnews.com>; Internet; accessed December 8, 1997; David Shepardson, "Hearing in Cell Phone Sting Sept. 28," *The Detroit News*, September 15, 1995, [newspaper on-line]; available from <http://www.detnews.com>; Internet; accessed December 8, 1997.

⁶ P.R. Beseler, "Operation Cellmate," *FBI Law Enforcement Bulletin*, April 1997, 1-5.

⁷ Steve Mansfield, "Don't Send in the Clones," *QST*, November 1997, 16.

The Bulletin's Internet Address



The *FBI Law Enforcement Bulletin* staff invites you to communicate with us via e-mail. Our Internet address is leb@fbi.gov.

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions. Please include your name, title, and agency on all e-mail messages.

Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.

Investigative Detention

Constitutional Constraints on Police Use of Force

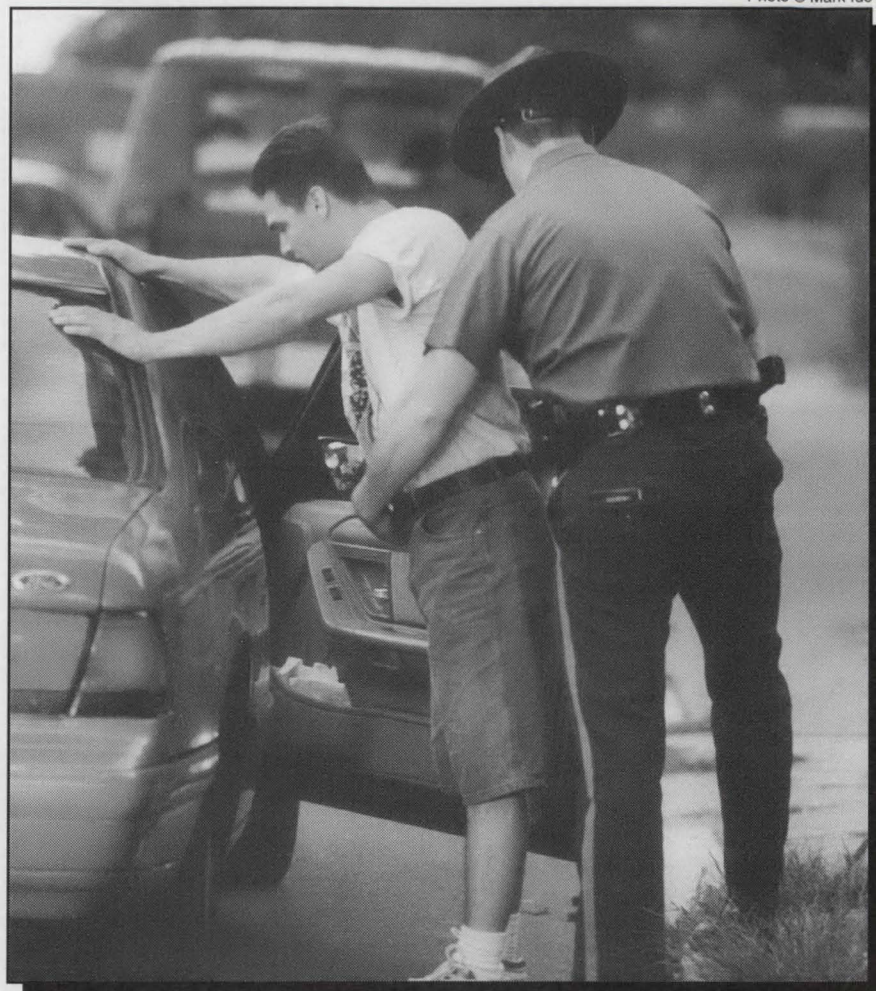
By JOHN C. HALL

Photo © Mark Ide

The U.S. Supreme Court defines a "seizure" of a person as "a governmental termination of freedom of movement through means intentionally applied."¹ Within that definition, the Court has recognized different types of seizures, depending upon the degree of governmental interference with a person's liberty. An arrest constitutes the highest level of interference and must be supported by probable cause. But in *Terry v. Ohio*,² the Court recognized that law enforcement officers "may, in appropriate circumstances and in an appropriate manner, approach a person for the purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest."³

The factual standard of "reasonable suspicion" is sufficient to justify a *Terry* stop. Although the stop is clearly a Fourth Amendment seizure and the person is not free to leave,⁴ the scope of the stop still is presumably less intrusive than an arrest. The higher standard of probable cause applies if the level of intrusion is not justified by the circumstances of an investigative stop.

The level of force used by the police is one of the most significant factors relating to the reasonableness of a particular intrusion. When officers possess the requisite reasonable suspicion to make an investigative stop, they are allowed



to take the necessary steps to both enforce the stop and protect themselves. The Supreme Court has observed that "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."⁵ This article discusses constitutional

constraints on police conduct when enforcing an investigatory stop.

BASIC CONSIDERATIONS

The challenge for law enforcement officers conducting investigative detentions is to tailor the level of force to fit the circumstances. The consequences for failing to do

so can be somewhat different, and more costly, than if the same occurs during an arrest. For example, the integrity of an arrest based on probable cause will seldom be affected by an officer's use of excessive force. While officers may be liable for damages resulting from their unconstitutional actions, it is unlikely that evidence obtained incident to that arrest will be suppressed because the arrest itself was lawful. On the other hand, the use of excessive force during an investigative detention will likely be viewed by the courts as converting the stop into an arrest without the requisite probable cause. The consequences can be both civil suits against the police and suppression of evidence. A federal appellate court recently explained:

"The scope of activities during an investigatory detention must reasonably be related to the circumstances that initially justified the stop. When actions by the police exceed the bounds permitted by reasonable suspicion, the seizure becomes an arrest and must be supported by probable cause."⁶

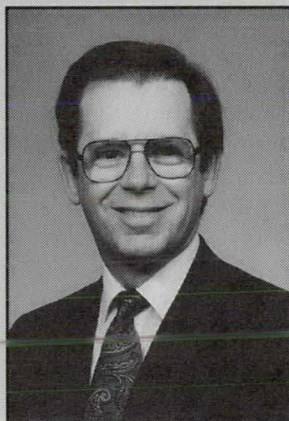
The Supreme Court has cautioned that the Fourth Amendment standard of "reasonableness" is not conducive to "precise definition or mechanical application."⁷ There is no simple formula to be memorized. On the positive side, the relative ambiguity in this concept of "reasonableness" provides the necessary flexibility that permits officers to deal with the inherent variables of everyday law enforcement. The Supreme Court recognizes this point:

"We understand the desirability of providing law enforcement authorities with a clear rule to guide their conduct. Nevertheless, we question the wisdom of a rigid...limitation. Such a limit would undermine the equally important need to allow authorities to graduate their responses to the demands of any particular situation."⁸

In the absence of bright line rules, it may be taken as a *general* rule that officers engaged in investigative detentions should avoid levels of force normally associated with arrests—physical restraint, detention inside a police car, display of weapons, or the use of handcuffs. As the following cases illustrate, it is not true that using such levels of force will never be reasonable in an investigative detention or that their use always converts a detention into a *de facto* arrest. One federal appellate court has observed:

"This doctrinal flexibility allows officers to take the steps necessary to protect themselves when they have adequate reason to believe that stopping and questioning the suspect will pose particular risks to their safety....It is because we consider both the inherent danger of the situation and the intrusiveness of the police action, that pointing a weapon at a suspect, and handcuffing him, or ordering him to lie on the ground, or placing him in a police car will not *automatically* convert an investigatory stop into an arrest that requires probable cause."⁹

Whether the level of force used by police in a given case is reasonable depends on a variety of factors. The following cases illustrate "reasonable" police use of particular levels of force during investigative detentions.



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

**“
The level of force used
to effect an investigative
stop must be tailored
to the facts and
circumstances
confronting law
enforcement officers
at the time that the
seizure occurs. ”**

REASONABLE USES OF FORCE

Physical Restraint

When police officers have the reasonable suspicion necessary to justify an investigative stop, the suspect is not free to walk away, and officers may use reasonable force to prevent the suspect from doing so. Physically grabbing suspects after lawfully commanding them to stop is a relatively nonintrusive means for officers to encourage compliance.

In *U.S. v. Dotson*,¹⁰ a police officer who was assisting an Internal Revenue Service Agent in a suspected money laundering case stopped the suspect in a vehicle. When the suspect started to get out of the car, the officer ordered him to remain inside. The suspect disregarded the officer's command and continued to get out of the car. The officer then placed his hand on the suspect's shoulder to prevent him running away. When the IRS Agent arrived at the scene, he placed the suspect under arrest. In an attempt to suppress cocaine and other evidence of drug activity recovered incident to the arrest, the defendant asserted that the officer's use of physical restraint amounted to an arrest for which there was no probable cause. The U.S. Court of Appeals for the Seventh Circuit rejected that argument and concluded that the officer had reasonable suspicion to justify an investigative stop and that his use of physical restraint to prevent the suspect from running away did not convert it into an arrest.

A similar result was reached in *Gallegos v. City of Colorado*

Springs,¹¹ where two officers attempted to stop a man to inquire about reports of a prowler and other disturbances in the area. When the officers first approached the man, they detected a strong odor of alcohol and observed that he appeared to be distraught and upset. The suspect ignored the officers' questions and continued to walk down the sidewalk. On three separate occasions, one of the officers grabbed the suspect's arm in an effort to stop him, and each time, the suspect

“

An investigative detention is a forcible seizure, governed by the 'reasonableness' standard of the Fourth Amendment.

”

jerked free and continued to walk away. When one of the officers grabbed the suspect by the shoulder, the suspect clenched his fists, turned to face the officers, and dropped into a crouch “similar to a wrestler's position.” In response to the suspect's actions, one officer applied an arm bar maneuver to the suspect's right arm, while the second officer grabbed his left arm and initiated a take-down action. The suspect later filed a lawsuit against the police officers and the department under Title 42, U.S. Code, Section 1983, alleging violation of his Fourth Amendment rights. The suspect claimed that the officers

stopped him without reasonable suspicion and used excessive force in the process.

The U.S. Court of Appeals for the Tenth Circuit ruled that the officers did not violate the suspect's Fourth Amendment rights because the initial stop of the suspect was an investigative detention supported by a reasonable suspicion that the suspect was involved in criminal activity. Moreover, the court found the level of force used by the officers was reasonable in light of the suspect's “strange and aggressive conduct....”¹²

Detention Inside a Police Vehicle

Placing a suspect inside a police vehicle is another level of restraint that could affect the reasonableness of an investigative detention. In *U.S. v. Bradshaw*,¹³ an officer stopped an automobile after observing what appeared to be an altered temporary tag in the rear window. When the driver got out of the car, the officer asked him to sit in the back of the police car while he checked the driver's license and vehicle certification. A second officer on routine patrol stopped to assist. When the second officer peered into the suspect vehicle's passenger window he observed what appeared to be a plastic bag containing marijuana. While retrieving the bag, the officer also discovered a revolver. In a motion to suppress the marijuana and the gun, the defendant claimed that his detention inside the police vehicle amounted to an arrest without probable cause.

The U.S. Court of Appeals for the Sixth Circuit affirmed the trial court's denial of the motion to

suppress. While noting that detention in a police car may rise to the level of an arrest, particularly when the purposes of the initial stop have been completed,¹⁴ it does not automatically do so. The court observed:

"Detention in a patrol car for several minutes is merely a normal part of police procedure for identifying delinquent drivers and does not constitute a custodial arrest."¹⁵

Display of Weapons

Although deadly force is not a viable option for enforcing an investigative stop, officers may frequently feel the need to display firearms during such stops as a means of discouraging aggressive behavior by potentially dangerous suspects. However, courts generally view the display of weapons by police as a factor that "increases the seriousness of the stop."¹⁶ The U.S. Court of Appeals for the Seventh Circuit has described the impact of a drawn gun in these terms:

"The significance of the pointed gun is that it makes the encounter far more frightening than if the officer's gun remains holstered, or even drawn but pointed down at his side; and certainly where the danger of the encounter to the officer, though potentially serious, is not clear and present, the deliberate pointing of a gun at the suspect is problematic."¹⁷

Despite these concerns, most courts have rejected the view that the display of weapons during an investigative stop always converts the

stop into an arrest.¹⁸ In *U.S. v. Conyers*,¹⁹ for example, police officers blocked a drug suspect's vehicle with their police car, and one of the officers drew his handgun, approached the suspect, and ordered him to raise his hands over his head. In an effort to suppress a weapon and cocaine discovered in his possession, Conyers asserted that the investigative stop was unreasonable, in part, because of the level of force used, i.e. blocking his car with the police vehicle, and display of the gun.

Photo © K.L. Morrison



Both the federal district and appellate courts rejected the subject's argument. Observing that "[i]t is common for a distributor in possession of drugs to flee when confronted by the police...,"²⁰ the U.S. Court of Appeals for the District of Columbia concluded:

"...the detaining officers did not act unreasonably when they pulled their cruiser in front of Conyers' car. An officer may take whatever steps are reasonably necessary to prevent a subject from fleeing during the course of an

investigatory stop" (emphasis added).²¹

With respect to displaying the weapon, the court reasoned that "because those who transport drugs often carry (and all too often use) a firearm...,"²² the officer was reasonable in drawing his weapon for his own protection as he approached the suspect's car. The court also observed that whereas 30 years ago it might have been unreasonable for police officers to assume that a suspected drug dealer in a car would be armed, "nowadays 'it could well be foolhardy for an officer to assume otherwise.'"²³

Handcuffing a Suspect

One of the most common symbols of an arrest in this country is police use of handcuffs. Consequently, when a police officer places a person in handcuffs, it invites the perception that an arrest has occurred. In spite of that perception, most courts have declined to adopt a blanket rule that using handcuffs to restrain a person under all circumstances is tantamount to an arrest.

In *U.S. v. Blackman*,²⁴ FBI agents investigating two armed bank robberies ordered four suspects out of an apartment and handcuffed them while they made inquiries into the robberies. The suspects eventually confessed to the robberies, but later sought to suppress the confessions by asserting that they were unlawfully arrested without probable cause. One of the significant factors they cited to support their claim was the use of handcuffs to detain them. Affirming the federal trial court's rejection of the

defendants' assertions, the U.S. Court of Appeals for the Eleventh Circuit concluded:

"In this case, the FBI agents had a reasonable suspicion that the occupants of the apartment committed the two bank robberies....In light of the violent nature of the robberies, of the number of suspects (four adult males) involved, and of the agents' need to protect themselves, the agents' act of calling for the defendants to come out of the apartment and handcuffing them once they were out of doors was not unreasonable" (emphasis added).²⁵

The cases discussed thus far provide examples of police use of various levels of force during investigative detentions that were viewed as reasonable by the courts. The following cases emphasize that while these various levels of force may be reasonable under some circumstances, they may be unreasonable in others.

UNREASONABLE USE OF FORCE

In *Washington v. Lambert*,²⁶ a police officer saw two men who, in his opinion, matched the descriptions of two armed robbery suspects. With the assistance of other officers, the two men were stopped at gunpoint, ordered out of their car, handcuffed, and placed in separate police cars for about 25 minutes. They were released when computer checks failed to disclose outstanding warrants or any other reasons for continuing the detentions. The two men filed a lawsuit against the

officers under Title 42, U.S. Code, Section 1983, alleging violations of their Fourth Amendment rights. Summary judgment was granted to all of the officers except the one who had initiated the stop because the trial judge concluded that he had caused what a reasonable officer should have known was an arrest without probable cause.

The U.S. Court of Appeals for the Ninth Circuit concurred in the lower court's judgment that the level of intrusion reached that of an arrest and that there was no

"...most courts have declined to adopt a blanket rule that using handcuffs to restrain a person under all circumstances is tantamount to an arrest."

probable cause to support it. Although the crime at issue was armed robbery, the court cited that the lack of specific information undermined the officers' authority to take the aggressive action described in this case. Noting that the similarity of the two men to the descriptions of the robbery suspects was "general," the court stated that "the more specific the information that leads the officers to suspect that the individuals...are the actual suspects...[and that they] are likely to forcibly resist...the more reasonable

the decision to use extraordinary measures to ensure the officers' safety."²⁷

Because the similarity of description was "tenuous," the court focused closely on any other factors that could have led the officers to believe that such force was necessary. The court identified four factors that could justify the use of "especially intrusive means of effecting a stop":

- The suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight
- The police have information that the suspect is currently armed
- The stop closely follows a violent crime
- The police have information that a crime is about to occur that may involve violence.

Noting that "some combination of these factors may also justify the use of aggressive police action without causing an investigatory stop to turn into an arrest," the court held that in the absence of any of them, "the use of such aggressive and highly intrusive tactics is not warranted...."²⁸

A similar result was reached in *Oliveira v. Mayer*,²⁹ where six officers in six police cars stopped a vehicle containing three burglary suspects. The officers ordered the suspects out of their car at gunpoint, required them to kneel or lie down, handcuffed them, and placed them in separate police cars. In a civil action against the police alleging violations of federal constitutional rights, a federal district court ruled

as a matter of law that the police actions violated the plaintiffs' constitutional rights.

The U.S. Court of Appeals for the Second Circuit concurred and reviewed the different level of force used by the police as follows:

"Standing alone, no single factor would necessarily convert the plaintiffs' detention from a *Terry* stop into a *de facto* arrest. Indeed, courts have occasionally concluded that a particular detention was a permissible *Terry* stop even though it involved a few of the intrusive elements present in this case....Yet, the defendants do not cite and we have not discovered a single case in which a court has found a detention that involved numerous intrusive elements, *with little or no justification*, to be a *Terry* stop" (emphasis added).³⁰

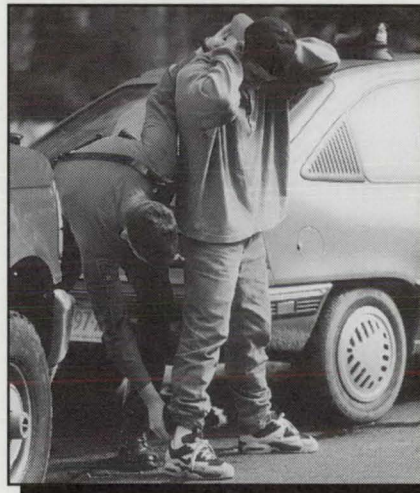
With respect to cases where an intrusive stop was deemed justified, the court pointed out that "the police have always had a reasonable basis to believe the suspect was armed or otherwise dangerous."³¹ Considering that the suspects were stopped in connection with a burglary, the court noted that "suspecting a person of having committed a burglary cannot, in and of itself, provide police with grounds to subject that person to an extremely intrusive *Terry* stop."³²

CONCLUSION

An investigative detention is a forcible seizure, governed by the "reasonableness" standard of the Fourth Amendment. The level of

force used to effect an investigative stop must be tailored to the facts and circumstances confronting law enforcement officers at the time the seizure occurs. The courts are consistent in the view that officers are not required to assume unnecessary risks to their safety when conducting investigative stops. On the other hand, any use of force that is not justified by the facts and circumstances will generally be viewed as converting the stop into an arrest, which, in the absence of probable cause, would be unconstitutional. ♦

Photo © Mark Ide



Endnotes

¹ *Brower v. County of Inyo*, 486 U.S. 593, 597 (1989).

² 392 U.S. 1 (1968).

³ *Id.* at 22.

⁴ *U.S. v. Edwards*, 53 F.3d 616, 619-620 (3rd Cir. 1995).

⁵ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁶ *U.S. v. Robinson*, 949 F.2d 851, 856 (6th Cir. 1991).

⁷ *Bell v. Wolfish*, 441 U.S. 520 (1979).

⁸ *U.S. v. Place*, 462 U.S. 696 (1983).

⁹ *Washington v. Lambert*, 98 F.3d 1181 (9th Cir. 1996).

¹⁰ 49 F.3d 227 (6th Cir. 1995).

¹¹ 114 F.3d 1024 (10th Cir. 1997).

¹² *Id.* at 1031.

¹³ 102 F.3d 204 (6th Cir. 1996).

¹⁴ *Id.*, at 212, citing *U.S. v. Mesa*, 62 F.3d 159 (6th Cir. 1995).

¹⁵ *Id.*, citing *U.S. v. Rodriguez*, 831 F.2d 162 (7th Cir. 1987).

¹⁶ *Washington v. Lambert*, 98 F.3d at 1189.

¹⁷ *U.S. v. Serna-Barreto*, 842 F.2d 965, 967 (7th Cir. 1988).

¹⁸ See, e.g., *U.S. v. Vega*, 72 F.3d 507 (7th Cir. 1995); *U.S. v. White*, 648 F.2d 29, (D.C. Cir.), *cert. denied*, 454 U.S. 924 (1981); *U.S. v. Jackson*, 918 F.2d 236 (1st Cir. 1990); *U.S. v. Perea*, 986 F.2d 633 (2nd Cir. 1993); *U.S. v. Edwards*, 53 F.3d 616 (3rd Cir. 1995); *U.S. v. Taylor*, 857 F.2d 210 (4th Cir. 1988); *U.S. v. Jones*, 759 F.2d 633 (8th Cir.), *cert. denied*, 474 U.S. 837 (1985); *Allen v. City of Los Angeles*, 66 F.3d 1052 (9th Cir. 1995); and *U.S. v. Edwards*, 103 F.3d 90 (10th Cir. 1996).

¹⁹ 118 F.3d 755 (D.C. Cir. 1997).

²⁰ *Id.* at 757.

²¹ *Id.*

²² *Id.*

²³ *Id.*, at 757-758, citing *U.S. v. Clark*, 24 F.3d 299, 304 (D.C. Cir. 1994).

²⁴ 66 F.3d 1572 (11th Cir. 1995).

²⁵ *Id.* at 1576.

²⁶ 98 F.3d 1181 (9th Cir. 1996).

²⁷ *Id.* at 1190.

²⁸ *Id.* at 1192.

²⁹ *Oliveira v. Mayer*, 23 F.3d 642 (2nd Cir. 1994).

³⁰ *Id.* at 647.

³¹ *Id.*, citing *U.S. v. Alexander*, 907 F.2d 269 (2nd Cir. 1990), *cert. denied*, 498 U.S. 1095 (1991); *U.S. v. Nargi*, 732 F.2d 1102 (2nd Cir. 1984); *U.S. v. Merkley*, 988 F.2d 1062 (10th Cir. 1993); *Courson v. McMillan*, 939 F.2d 1479 (11th Cir. 1991); *U.S. v. Alvarez*, 899 F.2d 833 (9th Cir. 1990), *cert. denied*, 498 U.S. 1024 (1991); and *U.S. v. Seelye*, 815 F.2d 48 (8th Cir. 1987).

³² 23 F.3d 642, n 1.

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

FBI Law Enforcement Bulletin

Author Guidelines

GENERAL INFORMATION

The *FBI Law Enforcement Bulletin* is an official publication of the Federal Bureau of Investigation and the U.S. Department of Justice.

Frequency of Publication: Monthly

Purpose: To provide a forum for the exchange of information on law enforcement-related topics.

Audience: Criminal justice professionals, primarily law enforcement managers.

MANUSCRIPT SPECIFICATIONS

Length: Feature article submissions should be 2,000 to 3,500 words (8 to 14 pages, double-spaced). Submissions for specialized departments, such as Police Practice, Case Study, and Sound Off, should be 1,200 to 2,000 words (5 to 8 pages, double-spaced).

Format: All submissions should be double-spaced and typed on 8 1/2- by 11-inch white paper. All pages should be numbered, and three copies should be submitted for review purposes. When possible, an electronic version of the article saved on computer disk should accompany the typed manuscript.

References should be used when quoting a source exactly, when citing or paraphrasing another person's work or ideas, or when referring to information that generally is not well known. Authors should refer to *A Manual for Writers of Term Papers, Theses, and Dissertations*, 6th ed., by Kate L. Turabian, for proper footnote citation format.

Research papers, reports, and studies should be revised to reflect the editorial needs of the *Bulletin*. Subheadings and lists should be used to break up the text and provide direction to readers.

Writing Style and Grammar: Articles generally should be written in the third person. (Point of View and Sound Off submissions are exceptions.) The *Bulletin* follows the *The*

New York Public Library Writer's Guide to Style and Usage. Potential authors should study several issues of the magazine to ensure that their writing style meets the *Bulletin's* requirements.

PUBLICATION

Basis for Judging Manuscripts: Material that has been published previously or that is under consideration by other magazines will be returned to the author. Submissions will be judged on the following points: Relevance to audience, factual accuracy, analysis of information, structure and logical flow, style and ease of reading, and length. Generally, articles on similar topics are not published within a 12-month period. Because the *Bulletin* is a government publication, favorable consideration cannot be given to articles that advertise a product or service.

Query Letters: Authors may submit a query letter along with a detailed 1- to 2-page outline before writing an article. Editorial staff members will review the query to determine suitability of topic. This is intended to help authors but does not guarantee acceptance of any article.

Author Notification: Receipt of manuscript will be confirmed. Notification of acceptance or rejection will follow review. Articles accepted for publication cannot be guaranteed a publication date.

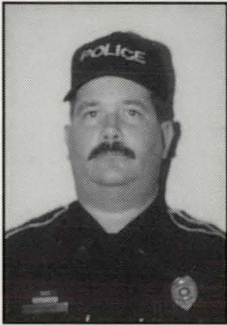
Editing: The *Bulletin* reserves the right to edit all manuscripts for length, clarity, format, and style.

SUBMISSION

Authors should mail their submissions to:
Editor, *FBI Law Enforcement Bulletin*,
FBI Academy, Madison Building, Room 209,
Quantico, Virginia 22135. Telephone:
(703)640-8666. FAX: (703)640-1474.

The Bulletin Notes

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

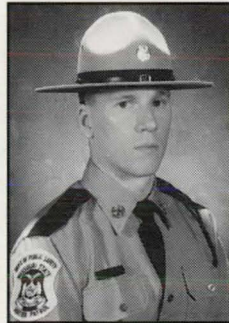


Officer Threet

While working overtime at the DeQuincy, Louisiana, Housing Authority, Officer Thomas Threet of the DeQuincy Police Department was dispatched to a nearby residential fire. Upon arrival, Officer Threet, with assistance from a neighbor, entered the house through a bedroom window. After helping an 18-year-old woman out of this window, Officer Threet learned that the young woman's elderly grandmother remained in the dwelling. Using his experience as a volunteer firefighter, Officer Threet located the grandmother in another bedroom and carried her to the window he had used to enter the house. At this time, a second officer arrived as backup and helped Officer Threet remove the grandmother from the burning residence. Officer Threet was transported to a local hospital for smoke inhalation and later released. Responding fire officials advised that the grandmother would have perished had Officer Threet not acted in such a quick and courageous manner.



Captain Swineburg



Patrolman Gottman

On a spring evening, Captain Bill Swineburg and Patrolman Erik Gottman of the Missouri State Water Patrol brought an end to one of the longest manhunts in the history of the state. Wanted in connection with three separate homicides, the suspect and his female companion had eluded authorities for nearly 2 months. Traveling on foot in the rugged Missouri countryside, the two suspects broke into houses periodically for food and other supplies. While searching a vacant house within the couple's locale, Captain Swineburg and Patrolman Gottman observed the armed male suspect inside the dwelling. Both officers identified themselves and requested that the man drop the weapon, raise his hands, and exit the house. After refusing these demands several times, the suspect finally exited the house. However, he held his companion hostage, pointing a rifle at her head and threatening to kill her. Captain Swineburg continued to move toward the pair as he ordered the man to put down the weapon. As the suspect turned his companion so he could point the rifle at Captain Swineburg, Patrolman Gottman shot the man in his exposed left side. The dedication and commitment to duty displayed by these two officers resulted in the capture of a dangerous murder suspect and the prevention of further loss of life.

U.S. Department of Justice
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

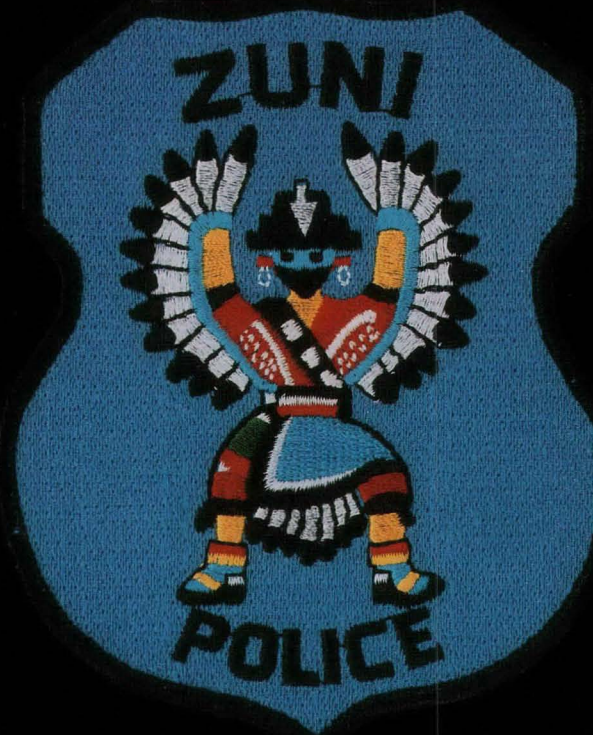
Periodical
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use \$300

Patch Call



The patch of the Duke University, North Carolina, Police Department features the Gothic-style Duke Chapel in the upper left quadrant, representing the west campus. Proceeding clockwise is a caduceus, representing the University Medical Center, the Baldwin Auditorium, representing the University's east campus, and a discus player, representing the University's many athletic programs.



The Zuni Tribal, New Mexico, Police Department patch features the tribe's legendary Knife Wing God. The god was once symbolic only to the Zuni Tribal Warriors, but it is now identified with veterans of wars and police officers. The Knife Wing God represents wisdom, strength, and courage.