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Editor

John E. Ott

Associate Editors

Cynthia L. Lewis

David W. MacWha

Bunny S. Morris

Art Director

Denise Bennett Smith

Assistant Art Director

Stephanie L. Lowe

Staff Assistant

Linda W. Szumilo

This publication is produced by members of the Law Enforcement Communication Unit, Training Division.

Internet Address

leb@fbiacademy.edu

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Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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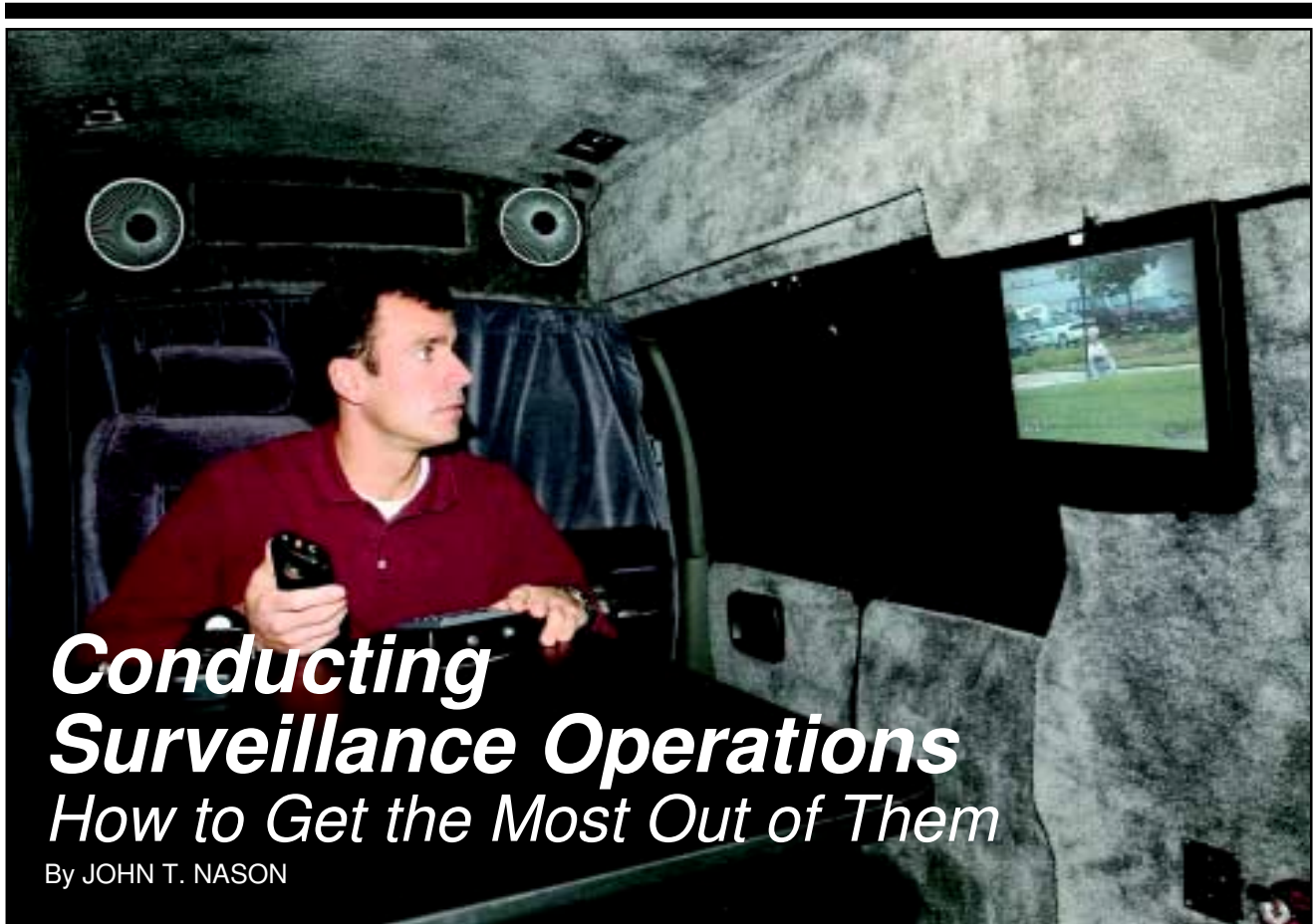
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Conducting Surveillance Operations How to Get the Most Out of Them

By JOHN T. NASON

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As the Hollywood detective sits in his four-door sedan, he downs numerous cups of coffee to stay awake and occasionally speaks into a two-way radio to other officers also maintaining the same stake-out ritual. Then, finally, in the predawn hours, the villain emerges from the location, playing right into the hands of the seasoned and street-smart hero who tails him to where he commits a crime, takes a hostage, or retrieves some stashed contraband. Then, in action-packed style, the detective handles the entire situation,

bringing the case to a successful conclusion.

While surveillances usually do not follow this scenario, those who have conducted such operations will admit that participating in a productive surveillance can be a rewarding and, at times, an exhilarating experience. Second only to operating confidential sources, surveillance is the most frequently employed investigative technique in obtaining arrests, indictments, and convictions for the FBI.

Unlike operating informants, however, conducting a surveillance requires using the team

concept. The considerable resources required for a surveillance draw personnel away from other investigative functions, which can pose problems. Also, the potential exists for alerting the subject of the investigation to law enforcement's interest, which conceivably could compromise the covertness of not only the surveillance but the entire case. Preparation and some fine-tuning at the onset can make the difference between having a productive surveillance and expending expensive resources and coming up empty-handed.

Law enforcement agencies primarily use surveillance to develop both intelligence and evidence to further investigations by identifying subjects, their activities, and their associates, along with their residences, places of business, hangouts, and other related locations. Surveillance also can identify potential sources, corroborate source information, provide security to undercover operatives, and gather data for site surveys. In addition, information obtained from surveillance can provide the probable cause for obtaining authorization for other investigative techniques, such as search warrants and wiretaps.

PLANNING AND PREPARATION

Once investigators decide that surveillance is appropriate, their agency's policy will

determine what levels of authorization are needed and how to allocate the necessary resources to the surveillance. Agencies should coordinate planned surveillances on a strict "need-to-know" basis.

At the onset, case managers, in conjunction with the physical surveillance, should consult technical services personnel to explore the feasibility of employing various measures, such as the use of video concealments, remote video, or tracking devices. Employing technical coverage or aircraft can function as force multipliers and enhance overall effectiveness, which can make the difference in obtaining productive results.

Prior to initiating the surveillance, investigators should update subject information to ensure that they have the most current available. For example,

a motor vehicle or utility check and confidential source contacts can save a lot of wasted time by revealing that the intended subject recently relocated or sold a vehicle. All team members should receive pertinent details, easily contained on a preprinted form, to include—

- the case background;
- the surveillance objective;
- the subject's caution statement (e.g., armed and dangerous or known to possess a firearm);
- the subject's previous experience with surveillance and whether the subject appears surveillance conscious; and
- the subject's personal data (e.g., all descriptive data with photo; criminal history; habits, such as martial arts practitioner or bodybuilder, and associates; the vehicles of the subject and associates; and the locations of residences, work, and hangouts).

SURVEILLANCE COMPONENTS

Realizing that staffing constraints often become an issue in determining the amount of members available for a surveillance, a team of six generally proves optimal for a moving surveillance. Having a larger team reduces the chance of losing the subject and limits exposure of



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Special Agent Nason heads the FBI's Special Operations Group, Aviation and Surveillance Operations Section, Critical Incident Response Group.

individual team members, enabling the surveillance to remain undetected.

Area Setup

Prior to setting up at a location, surveillance team members should hold an operational briefing to disseminate last-minute updates and to conduct a roll call. Then, they should check their communications, including primary and alternate radio frequencies; review their procedures and assignments, ranging from team leader to log keeper; and inspect their equipment and vehicles, including topping off fuel levels of all vehicles. One unit should conduct a site reconnaissance to assess the area in general and to specifically identify a location to set up the “eye” (i.e., the primary observation point)—or, if necessary, “eyes”—and to determine the likely routes of approach and departure, traffic patterns, and the location of bus stops and train stations, as well as areas to avoid, such as known criminal hangouts.

Once the eye is in place with as unobstructed a view as possible of the subject location, the other team members should position themselves so they cover all potential departure routes. They should minimize driving by the location and congregating in the area as these practices can alert the subject or the subject’s associates to a law enforcement

presence. In addition, keeping the radio volume low and concealing law enforcement equipment in vehicles can help team members remain undetected.

Mobile Surveillance

Once initial movement occurs, the eye calls out a description of the subject, always keeping radio transmissions as brief as possible. Because either

surveillance detection or losses of the subject generally occur shortly after initial movement, team members should remain alert and exercise extreme care at this point. While time, distance, and conditions determine how long any team member stays with the subject, a rule of thumb is to maintain one or two vehicles between the team member and the subject and “hand off”

Surveillance Kit Checklist

- Department two-way radio
- Handheld portable radio with harness and fully charged spare battery
- Mobile phone
- Still camera with telephoto lens, adequate supply of film or other removable medium, and spare battery
- Video camera with supply of tapes and extra battery
- Stabilizing device, such as a portable tripod
- Binoculars¹ and portable infrared or thermal-imaging² devices
- Detailed road maps for the area
- Compass or Global Positioning System receiver
- Flashlight with extra batteries
- Change of clothing with props, such as hats, to alter appearance and other personal items, including toiletries
- Food and water in a cooler
- Cash, including coins to use at toll lanes requiring exact change, and toll passes
- Extra set of car keys
- Towels and glass cleaner
- Equipment gear bag to hold above items



the subject to another team member after taking one turn.

If the subject is on foot or uses public transportation, team members designated as “legs” should quickly exit and secure their vehicles to assume foot surveillance. On foot, the team adopts an ABC method, wherein the primary eye rotates between team members with at least one team member on the opposite side of the street from the subject.

Static Surveillance

In situations where the surveillance is static (i.e., immobile) or for mobile surveillances that become stationary, staffed vehicles parked on the street are effective for a limited time only. Once team members realize that a particular location will require surveillance for a protracted period, they should use specialty vehicles, such as vans or other

utility vehicles, outfitted with closed-circuit television or remote video.

Documentation and Logs

One team member maintains a chronological log to document observations made collectively by the team. Once completed, each team member initials each entry in the log, reporting observations they personally witnessed. The team leader reviews it for accuracy; afterwards, the agency retains the original in the official file as evidence. Investigative personnel receive copies in a timely manner for analysis and logical follow-up.

SURVEILLANCE PHOTOGRAPHY

In addition to the written logs, still photographs and video footage provide visual documentation of an occurrence and constitute the work product of a

surveillance. The mere existence of photographs has resulted in countless jury convictions and guilty pleas being entered, thereby saving prosecutor’s offices and law enforcement agencies months of trial preparation, as well as the trial itself. For this reason, investigators should attempt to obtain the highest quality surveillance photographs whenever possible.

Digital Versus Conventional

The conversion from conventional to digital photography has not posed any significant evidentiary problems to date. While it is common knowledge that digital photography images can be easily manipulated, this also holds true when using conventional photography. However, a variety of authentication methods can maintain the integrity of a photo. In addition, adherence to an established handling procedure, such as the use of write-once read-many (WORM) media,³ further reduces vulnerability from a legal challenge.

Still Versus Video

Which type of photos, still or video, is more desirable for surveillance purposes? If possible, investigators should obtain both because both have advantages and drawbacks.

The overall picture quality of still photos generally proves

superior to video, even when obtaining a freeze-frame. Additionally, telephoto lenses needed in surveillance photography are more readily available for still cameras. And, individuals can view still photos more easily without the need for a monitor or VCR. A few rules can assist investigators in obtaining high-quality still photos.

- Because most investigators are not professional photographers, they should familiarize themselves with the features of a camera before taking it on a surveillance.
- Prior to taking photos, they should clean the camera lens and vehicle windshield.
- When taking photos from a vehicle, they should turn off the engine and film from a stabilized position using a tripod or makeshift devices, such as the steering wheel or dash board with a towel or beanbag for support.
- They should not delete any photos taken.
- When photographing from behind tinted glass, they should remember that they will lose at least one f-stop (i.e., the function that regulates the amount of light coming through a camera lens).
- To prevent being revealed from back lighting, they

should place a dark cloth behind them.

By contrast, video records the action occurring and can be used in conjunction with audio. Video cameras are capable of recording multiple frames per second and generally are easier

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During surveillances, participants must remain vigilant and alert to the possibility of countersurveillance techniques being employed against them.

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to operate than some of the high-quality still cameras. To obtain quality footage when using video, investigators should—

- set the video camera on manual focus;
- clean the lens and vehicle windshield;
- video continuously, minimizing camera movement and zooming;
- activate the date and time feature and ensure that the correct time and date are displayed;
- use the eye piece as the LCD can illuminate them, as well

as rapidly expend battery life; and

- upon completion, label the tape as the original and include their initials, time, date, and case identifier, as well as slide or remove the write-protect tab to prevent accidental erasure and make copies, labeling them as such.

SURVEILLANCE RISKS

Investigators always should assume that subjects engaged in operational, terrorist, or criminal activity will attempt to detect surveillance by employing a variety of methods and techniques. For example, as part of Al-Qaeda specialized training, operatives are instructed to follow meticulous operational security. Tactics include conducting dry runs prior to becoming operational, using secondary roads and public transportation to flush out surveillance, and employing prearranged signals to communicate the absence or presence of surveillance to other Al-Qaeda members.

Criminal subjects, particularly drug violators and organized crime figures, employ a variety of measures to detect surveillance, including the use of neighborhood lookouts and tail cars. During surveillances, participants must remain vigilant and alert to the possibility of countersurveillance techniques being employed against them.

Of paramount importance, investigators must remember that many in their profession have been assaulted, injured, and even killed while performing surveillance duties. For this reason, those involved in a surveillance must remain constantly aware of potential safety hazards. A dangerous situation can develop at any time, and investigators never should take it lightly. This becomes compounded when the surveillance occurs in a high-crime area and in hours of darkness. Risk assessments should be carried out at every level on an ongoing basis, which may result in the surveillance being terminated.

SURVEILLANCE TERMINATION

Often, the decision to terminate a surveillance can prove as difficult as the one to initiate it. Investigators should consider the following factors when deciding whether or not to terminate the surveillance:

- Assuming that the resources still exist, do the present circumstances warrant allocation of these considerable reserves at the expense of other cases or investigative functions?
- Is the surveillance still providing intelligence or evidence?

- Considering that the longer duration of the surveillance coverage increases the likelihood of detection, does the potential for gains outweigh the increased risk of detection?
- Would other investigative techniques or technical coverage prove more appropriate? After all, investigators always can cut back or reinstitute the surveillance if needed.

CONCLUSION

Surveillance is a valuable investigative tool and proves similar to most other law enforcement endeavors in that

Safety and Security Measures

- During a mobile surveillance, do not take unnecessary risks to keep up with a subject speeding, running red lights, or otherwise driving recklessly.
- While stationary, keep the vehicle windows closed and the doors locked.
- Regularly scan rear view mirrors to observe anyone or any activity to the rear.
- Alert other team members to any suspicious or unusual persons or activity in the area.
- In high-crime areas and in hours of darkness, remain in a heightened state of alert.
- Position vehicle to enable a rapid response to assist others if needed.
- Ensure vehicle has emergency equipment lights, siren, and first-aid kit.
- Keep identification, weapon, and ballistic vest assessable.
- Know and use challenge, password, and other appropriate safety measures to prevent friendly fire situation from developing.
- When leaving a vehicle to go on foot surveillance, fully secure the vehicle and equipment inside.

prior planning can go a long way toward increasing the chance of success. Because surveillance is such a resource-intensive operation, it remains incumbent upon those overseeing such efforts to ensure the efficient and effective use of such limited resources.

A successful surveillance not only can bring a case together but also can prove one of the most professionally and personally

fulfilling experiences in a law enforcement officer's career. Moreover, it can help law enforcement professionals accomplish their sworn duty of preserving the peace and safeguarding the citizens of their communities. ♦

Endnotes

¹ For additional information, see Carlyle Poindexter, "Surveillance Optics," *FBI Law Enforcement Bulletin*, March 2001, 7-9.

² For additional information, see Thomas D. Colbridge, "Thermal Imaging: Much Heat but Little Light," *FBI Law Enforcement Bulletin*, December 1997, 18-24.

³ "Any type of storage medium to which data can be written to only a single time, but can be read from any number of times. WORM media have a significantly longer shelf life than magnetic media and thus are used when data must be preserved for a long time." Retrieved on December 15, 2003, from <http://wombat.doc.ic.ac.uk>.

Clarification

Some of the information in "Geologic Material as Physical Evidence" that appeared in the March 2004 issue requires clarification. On page 4, the author stated "Minerals, especially small-sized ones, commonly are identified using x-ray diffraction and spectrographic techniques. Other instruments of value to the forensic geologist exist, particularly the scanning electron microscope and the electron microscope." While x-ray diffraction is a useful tool in mineral identification, polarized light microscopy is the primary technique used by trained geologists in mineral identification. Forensic geologists in the FBI Laboratory have a number of other instrumental techniques at their disposal that they use on a limited basis for the identification of unknown inorganic materials. These include x-ray fluorescence spectroscopy, scanning electron microscopy with energy dispersive spectrometry, cathodoluminescence, and Fourier transform infrared spectroscopy.

Also, on page 4, the suggestion that soil samples be submitted in "only plastic locking

bags or glass vials" is problematic. Glass tends to break during shipping, causing sample contamination. There also are many other appropriate sample containers that may be used for geologic evidence, the most preferable being those made of rigid plastic. Metal canisters never should be used. Additionally, on page 3, the author states the "...investigators should ensure that they remove earth materials from clothing...with extreme care...." To guarantee the best preservation of geologic materials from clothing, the investigator should submit, if possible, the entire object to the FBI Laboratory, allowing the geologists to remove the materials themselves. This ensures the lab examiner the best chance for preservation of important structural information. For the most up-to-date information on submitting geologic samples, the investigator should refer to the *Handbook of Forensic Services*, revised in 2003 and available in both hard copy and online at: www.fbi.gov/hq/lab/handbook/intro.htm. ♦

Focus on Training

Cop 101 Surviving Prisoner Searches

By Todd Coleman

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Two officers arrested a suspect and secured him in the back seat of their patrol vehicle.¹ One officer stood beside the car while the other sat in the front seat to use the radio. Suddenly, despite being handcuffed behind his back and belted into the seat, the suspect began shooting at the officers with a .45-caliber handgun that he had concealed in his waistband. The officer standing beside the vehicle died at the scene.

The chief of police in a small town arrested an individual and recovered a handgun from him during a search.² After transporting the suspect to a holding facility, the chief turned her attention from the suspect to make a phone call. The suspect pulled a second gun that he had concealed in a pouch in the front of his pants and shot the chief in the head, killing her.

Sadly, these represent only two out of the many actual incidents that cost law enforcement officers their lives every year. While tragic, these two deaths reveal a more distressing fact: they, like many others, could have been avoided. For the 10-year period 1993 through 2002, 20 officers were killed while handling or transporting prisoners.³ Although some incidents resulted from prisoners overpowering and disarming the victim officer, many others occurred due to weapons missed during incomplete searches of suspects. These numbers also do not include the “near misses” or “could have beens” that happen each year. A check with their local jail or holding facility about the number of weapons removed from prisoners each year should give law enforcement officers something to think about. These weapons do not include a James Bond laser-beam watch or something concealed in a hollowed-out boot heel. Rather, they involve a 9-mm or .45-caliber semiautomatic handgun stuffed in a waistband or a derringer, revolver, or other handgun hidden inside of a boot, pocket, or jacket. They are ordinary weapons that a thorough search would have discovered.

Although these tragic incidents happen all too often, they can be avoided, or at least vastly reduced, by paying attention to what I call “Cop 101.” Simply put, Cop 101 stresses the importance of reinforcing the basic survival skills of law enforcement and not neglecting these in the quest for more glamorous or exciting training. It seems that we never practice or refresh some of the most important techniques in law enforcement after we leave the training academy. For some reason, these were deemed important enough to be included during the academy, but, afterwards, they are viewed as too basic or simple to merit additional training time. During training, we often pay a great deal of attention to elaborate self-defense training, tactical shooting, pursuit driving, and a myriad of high-risk scenarios. All

of these are extremely important, and I am in no way implying otherwise. However, a small investment of time during training could pay large dividends in the form of saving an officer's life. By taking a few minutes and incorporating a segment dedicated to proper prisoner searches during follow-up training, law enforcement agencies can reiterate their importance.

Use Existing Scenarios

Unfortunately, as those of us who have stood in front of a group of less than enthusiastic officers going through annual in-service training can attest, the idea of attending a class on prisoner search techniques will not be particularly well received, not to mention how it will impact the limited amount of training time available for the various topics of instruction that we need to cover. However, I have found that including prisoner searches in current officer-survival training can prove relatively painless. For example, if agencies use practical scenarios, which many do and training experts recommend, they can add a prisoner search at the end of an arrest scenario. In cases where instructors have scenarios set up where officers must subdue a role-player wearing some type of protective suit, they can have a second role-player nearby wearing regular street clothes and a concealed weapon. Instructors should alternate the type, number, and existence of a weapon on the role player so that officers do not fall into the routine of looking for the ever-present training weapon. After subduing the first role-player, officers can move to the second one and continue with the arrest. At this point, they can practice prisoner searches as part of the scenario. If officers miss

the weapon, instructors should have them repeat the scenario until they find any and all concealed weapons. This reinforces the importance that their agency places on this skill. Moreover, by incorporating prisoner searches as part of the existing training, instructors can avoid many of the obstacles of setting up and implementing an entirely new class.

Stress the Fundamentals

Instructors should stress the fundamentals of a complete and safe prisoner search. If the suspect is under arrest, then officers should conduct the search after handcuffing him.⁴ They always should handcuff the suspect behind his back unless some definite reason, such as physical impairments or injury, exists.⁵ After handcuffing the prisoner, officers should conduct the search from a safe position, staying behind the prisoner at a 45-degree angle from his body. Officers should avoid placing

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What an agency *fails* to train makes just as much of a statement about its attitude toward officer safety as what it *does* train.

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themselves in front of the prisoner because it makes them vulnerable to kicks, knee strikes, head butts, spitting, biting, and other forms of violent behavior. From the rear, officers can use one hand to maintain control of the prisoner and keep him off balance. Then, they can reach around him to conduct the search. Officers should be systematic during the search by sectioning the body into quadrants. For example, the front upper right quarter covers from the top of the head down to the groin and across to the center line of the body. The front lower right quarter begins just above the belt of the right leg and continues completely down the right leg. The quarters should overlap, ensuring that when officers search all of the quadrants, they will have

overlapped areas and not omitted any. They should pay special attention to places where weapons are commonly found, such as the waist area, boots, and clothing with multiple pockets.

Officers also need to keep in mind other safety issues. For example, they never should thrust their hands into the suspect's pockets. Instead, they should lightly touch the outside first, then squeeze and twist the pocket from the outside to lessen the risk of cutting themselves on sharp objects, such as needles or exposed blades. If necessary, they should slowly turn the suspect's pockets inside out, thus allowing them to remove sharp objects safely. In addition, officers should carry extra brown paper bags in their vehicles to hold these items. This avoids inadvertently giving the prisoner back an item that may contain some type of undiscovered concealed weapon, such as a missed razor inside of a wallet. This also allows officers to go through each item at a more secure and possibly well-lit area and makes it easy to determine if they missed something during a re-search of the prisoner. I encourage officers to take a few extra moments and conduct a re-search or, better yet, have a second officer do so. This helps ensure that the prisoner has been thoroughly searched.

This leads to my final point: searching a prisoner when transferring custody to another officer. Instructors should stress to officers that they should not be offended if another officer who assumes custody of their prisoner searches

that person nor should they worry about offending another officer by searching a prisoner they have received. This commonly occurs when one officer transports a prisoner for another officer. I strongly encourage officers to thoroughly search any prisoner they transport regardless of whether he already has been searched. In fact, while working narcotics, I got to the point where I told transporting officers that the prisoner had not

been searched, even if he had, because I noticed that if I told the transporting officers that the prisoner already had been searched, many times either they neglected to search him again or they conducted a minimal search at best.

Assess the Benefits

By keeping these points in mind and incorporating them into established officer-survival classes,

instructors can provide several benefits to both their officers and their agencies. First and foremost, it will keep officers safer on the street. By instilling the habit of conducting a proper and safe prisoner search, instructors can reduce the occurrence of officers injured and killed by armed prisoners. Second, it will allow instructors to identify individual officers who may have difficulties in this area. In turn, instructors can give these officers the additional training they need to ensure that they can safely and effectively search their prisoners. Finally, it makes a statement about where an agency stands on issues of officer safety. What an agency *fails* to train makes just as much of a statement about its attitude toward officer safety as what it *does* train.

Cop 101 Prisoner Search Tips

- Use caution with all prisoners, even those in handcuffs.
- Maintain a safe position.
- Be systematic and section the body into quadrants.
- Touch pockets before reaching inside or turn pockets inside out.
- Search all prisoners, even those received from other officers.

Conclusion

Law enforcement officers search suspects and prisoners on a daily basis. It stands as one of the most repeated tasks and, as such, can become a mundane chore. However, officers must remember that it also can prove deadly.

To ensure that their officers understand the dangers of conducting searches and the possible consequences of missed weapons, law enforcement agencies should include proper and safe search techniques as part of officer-survival training. By stressing the fundamentals and reminding officers of the hazards associated with searching suspects and prisoners, agencies can improve officer safety and enhance their effectiveness in protecting the general public. ♦

Endnotes

¹ U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted, 2000* (Washington, DC, 2001), 49.

² U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted, 1998* (Washington, DC, 1999), 59.

³ U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted, 2002* (Washington, DC, 2003), 25.

⁴ For illustrative purposes, the author refers to suspects as males.

⁵ This demonstrates the importance of agencies investing in waist restraints if they currently do not have them.

Master Police Officer Coleman, a certified police instructor, serves in the Special Operations Division of the Virginia Beach, Virginia, Police Department.

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Compstat Design

By JON M. SHANE

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The Compstat process, as described in the first part of this article, hinges on four crime-reduction principles: accurate and timely intelligence, effective tactics, rapid deployment of personnel and resources, and relentless follow-up and assessment.¹ Coupled with these are accountability and discretion at all levels of the law enforcement agency. The design of the Compstat model creates an atmosphere where both officers and executives can remain focused on the core mission of the agency, protecting the members of their community.

THE COMPSTAT DESIGN

The chief is *absolutely critical* to Compstat's design and success. He must sponsor and champion the process with the command staff.² "Sponsoring [Compstat] and championing it are different; sponsorship is necessary to provide legitimacy to the process, while championing provides the energy and commitment to follow through. [Compstat] does not just happen—involvement, courageous, and committed people make it happen. The department's leaders must serve as process champions. These people must believe

in the [Compstat] process and be committed to it."³

When designing the Compstat model for the organization, those involved in the process must sort through a few administrative details. These include organizational placement, required attendees, the facilitator, the facility, the equipment, and, most important, data collection, analysis, and presentation.

Organizational Placement

As a managerial function, Compstat should appear at the top of the organization. Data must flow to the chief and the

executive staff without delay. As few lines of reporting as possible should exist between the Compstat unit (or the individual responsible for collating the material) and the chief. This will ensure that the unit collates, analyzes, and delivers the data to the chief for preliminary review before preparing the final version for publication. The Compstat unit should not have to negotiate several organizational layers before handing the chief the completed work, particularly as the material is time sensitive.

Required Attendees

As a managerial process, Compstat employs *managers* to assess the operational effectiveness of the department and how those entrusted with geographic or organizational command perform in response to a set of given conditions (i.e., the Compstat data). Those required to attend Compstat include the department's executives (chief, deputy chiefs, captains, and division/section commanders) and those decision makers responsible for developing deployment strategies or committing resources (personnel or matériel).

Command-rank personnel must answer for the state of their commands, including how well they perform individually and compared with other commands and the total crime picture

within their commands. Commanders of speciality divisions (e.g., narcotics, warrants, robbery, and homicide) must report on the level of support they have committed to an area to reduce a problem, such as arrests effected, canvasses conducted, street surveillances performed, warrants served, and cases cleared, along with their command's overall performance.

All commanders receive support from their staffs—the executive officer, detective squad supervisor, and crime control officer⁴—during Compstat meetings. Commanders sit at the conference table with their support staffs directly behind them. The support staffs provide the commanders with notes, charts, statistics, and performance data on the strategies undertaken

since the last Compstat session. The support staffs, particularly the executive officers, must thoroughly attune themselves to their commanders' intentions and presentations.

The Facilitator

The chief or his executive-level designee *must* act as the Compstat facilitator. The chief sets the tone: if Compstat is important enough for him to take time out of his schedule, then participants should respect the process and take it seriously. In the chief's absence, an uninvolved member of the command staff, such as the chief of staff, assistant chief, or deputy commissioner, must assume the role. Other command staff officers have a biased interest because they are the ones facing critique. The facilitator moves

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Compstat, a process grounded in data, begins with collecting, analyzing, and mapping crime occurrences.

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Captain Shane is the commanding officer of the Policy and Planning Division of the Newark, New Jersey, Police Department.

Appropriate Statistics

Descriptive analysis	Maximum	Minimum	Mean	Median	Mode
	Violent and nonviolent crime summary		Aggregate increase or decrease		Standard deviation
Frequency distribution	Percentage increase or decrease	Proportion across categories	Ratio and rates Incidents to population Performance to police officers		
Organization and presentation of data	Pie charts (for percentage of total)		Bar charts (for aggregate data or rate; e.g., incidents per 100,000 people)		
	Line charts (frequency polygon); add trend lines to establish direction		Histograms with a normal curve (e.g, response time analysis)	Crosstab charts	

Compstat along, questioning the commanders, helping devise solutions, ordering information for the recap (outstanding issues requiring follow-up), and issuing censure when necessary. To achieve success, the facilitator should understand patrol and investigative strategies, know how to interpret statistics, and possess analytical skills concerning linking conditions, performance, and outcome.

The Compstat Facility

The Compstat facility need not be elaborate, merely large enough to comfortably accommodate all of the required personnel and, preferably, guests. The room should have audiovisual capabilities, such as an

overhead projector, a projection screen, computers, and an amplification system. Each commander should have printed copies (the Compstat book) of all of the visual aids (e.g., charts, graphs, and data). This ensures that everyone can follow along and remain attentive during the discussion.

Data Collection, Analysis, and Presentation

Compstat, a process grounded in data, begins with collecting, analyzing, and mapping crime occurrences. Usually, the person or unit designated to gather and collate FBI Uniform Crime Reporting (UCR) and performance data handles these tasks and prepares the Compstat

book (a collated, printed version of the activity occurring in the previous Compstat period normally beginning on Monday at 12:01 a.m. and ending the following Sunday at 11:59 p.m., except for speciality divisions, such as narcotics and criminal investigations, which extend the period to 2 weeks to produce a better trend analysis).⁵ The Compstat book will vary in size based upon the jurisdiction and how each chief wishes to display the material. The best guiding principle for designing the Compstat book is *whatever issues are prevalent must be captured and made part of the book*. A typical Compstat book includes certain elements for the Compstat period, with the

sections separated by numbered, lettered, or named tab dividers (e.g., precincts and divisions), such as—

- cover page with Compstat period dates and conference number and name of featured command;
- recap of previous Compstat period's notes and issues;
- numerical crime summary of citywide data, such as aggregate number of incidents, average number of incidents, percentage change, rate of violent and nonviolent crime, and corresponding charts (e.g., pie chart representing crime rates for Part I offenses), sorted by offense;
- violent crime summary by offense in detail, sorted by precinct and weapon involved;
- property crime summary by offense in detail, sorted by precinct;
- precinct profile with identity of commanding officer, executive officer, detective squad supervisor; demographics; personnel strength by rank; and aggregate and disaggregate crime data by precinct;
- weekly sector analysis of crime data and performance comparisons across categories and citywide analysis by current week versus

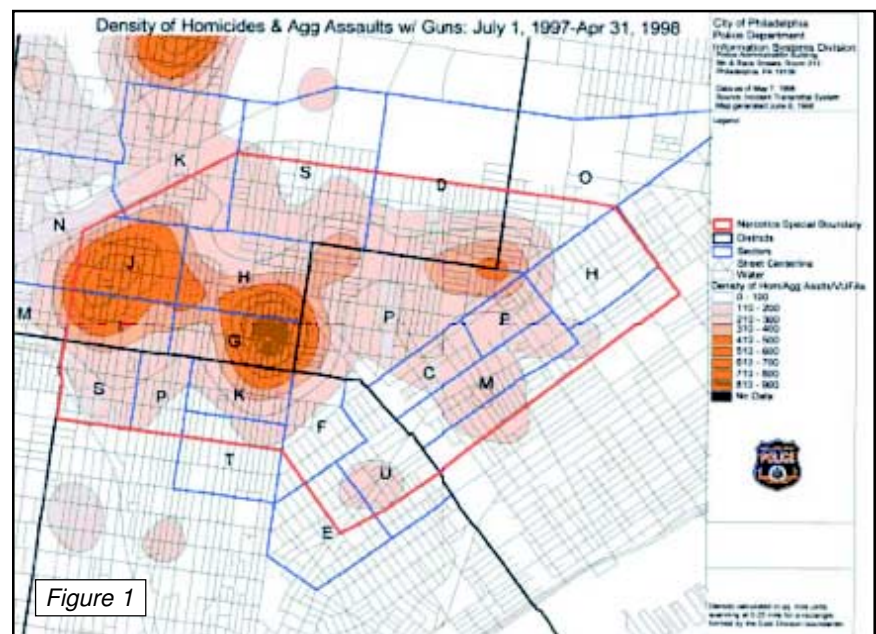
previous week, aggregate difference, and percentage change;

- crime maps with density comparisons and thematic layers with separate maps for each corresponding crime;
- narrative crime summary of every incident under investigation for Compstat period, sorted by date and described by sector, complaint number, date, time, location, type of premises, and means of attack (in speciality commands, more data specific to command or operation, such as make, model, color, caliber, and

serial number of recovered guns or packaging description and “brand name” of illegal drugs);

- pattern crimes with confirmed or emerging crime patterns (e.g., commercial robberies, residential burglaries, or sexual assaults of college students);
- performance indicators with type of arrests by patrol and detectives; summonses issued, both moving and parking, by type; field interviews by sector and precinct; arrest and search warrants issued and served; clearance rates for detective squads and individual

Hot-Spot Map of Homicides and Agg. Assaults with Guns



Source: Philadelphia Police Department, 1997-1998

detectives; sick time by precinct, tour, rank, and illness with ratio of sick to well officers; investigations and complaints against personnel by division, assignment, rank, sex, and tour with ratio of investigations to complaints; overtime by category, sorted by division; accidents with city vehicles by division, tour, and contributing circumstances; response time by precinct and tour with

priority code, number of calls dispatched and self-initiated, queue goals and average queue time, and travel on-scene and service times; and personnel grievance by division, rank, and category;

- optional data, such as abandoned/unsecured buildings, vacant lots, confirmed gangland areas, "top ten lists," truancy and curfew violations, found property lists, offenders'

residences (burglars, auto thieves), and sex-offender registrants, that can help commanders identify a nexus between noncrime conditions and crime, antecedents to existing problems, and who to enlist to control them;

- specialty commands, such as narcotics, traffic enforcement, special investigations, and task force operations, with data depicting their level of performance

Data Comparison

				Diff.	% +/-
Day to day	One chart for each week of the Compstat period				
Week to week	Current week	vs.	Previous week	+5	+3%
Month to month	March 2003	vs.	April 2003	-18	-27%
Quarter to quarter	Jan, Feb, Mar	vs.	Apr, May, Jun	+32	+44%
Half year to half year	1st 6 months	vs.	2nd 6 months	-63	-40%
Year to year	2002	vs.	2003	-27	-2%
Year to date	January 1, 2003 to present date			Aggregate	
Last 12 months	March 15, 2002 to March 14, 2003			Aggregate	
Custom date	Any time period (days, weeks, months, quarters, years, decades)				

Comparisons for each period against the prior period

Week	Current week 2003	vs.	Same week 2002
Month	Current month 2003	vs.	Same month 2002
Quarter	Jan, Feb, Mar 2003	vs.	Jan, Feb, Mar 2002
Half year	1st 6 months 2003	vs.	1st 6 months 2002
Year	Jan 1, 2003 to present	vs.	Jan 1, 2002 to present
12 months	Jan 18, 2002 to Jan 17, 2003	vs.	Jan 18, 2001 to Jan 17, 2002
Custom	Any custom date period compared with the prior date period		

germane to their command and pertinent to the Compstat process; and

- special programs, such as grant-funded initiatives, with explanations of performance measures specified in the program for monitoring purposes.

The best method of capturing calls-for-service and incident-report data involves a computer-aided dispatch (CAD) and a records-management system (RMS). A robust CAD and RMS can produce most of the Compstat book at the touch of a button. Otherwise, a data-entry clerk or crime analyst must enter the details of *every* incident report, arrest effected, summons issued, case cleared, and other pertinent information into a spreadsheet or database to produce the reports. Essentially, every piece of data to be presented must be collated in an easy-to-read format, organized in a logical order, and assembled into a coherent book.

Absent CAD or RMS reports, each command must capture the essential data elements each week and report them to the designated person or unit who arranges the style and format of the book. Desktop software applications with a suite of products, such as spreadsheets, databases, and word processing programs all in one,

make collating and analyzing the information quite easy. This, coupled with the use of special statistical programs for more complex analysis, works well for data reduction.

“

As a managerial function, Compstat should appear at the top of the organization.

”

Describing the Data

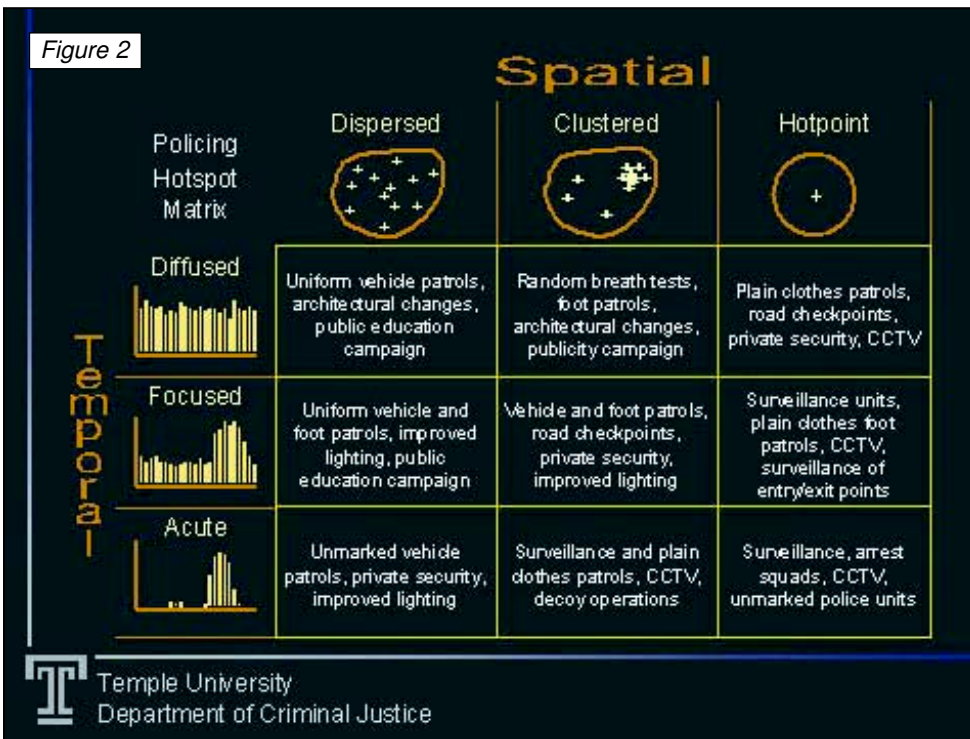
In displaying the information, the first step involves *describing* the data so that readers can quickly understand relevant information.⁶ Descriptive statistics give commanders a comprehensive overview of how their command is faring (see Appropriate Statistics chart).

The second type of descriptive statistics is designed to help [commanders] understand the relationship between two or more [crimes]. These statistics are called measures of association, and they enable [crime analysts] to quantify the strength and direction of a relationship.

These statistics are very useful because they enable a [crime analyst] to investigate two matters of practical importance: cause and prediction. These techniques help a [crime analyst] disentangle and uncover the connections between crimes. They help trace the ways in which some [crimes] might have causal influences on others, and, depending on the strength of the relationship, they enable a [crime analyst] to make predictions. The measures of association cannot, by themselves, *prove* that two [crimes] are causally related. However, these techniques can provide valuable clues about causation and are therefore extremely important for [commanders to test their beliefs about crime at certain locations].

For example, suppose a [crime analyst] was interested in the relationship between [calls for drug sales] and [aggravated assault shootings] and had gathered the appropriate data. By calculating the appropriate measure of association, the [crime analyst] could determine the strength of the relationship and its direction. Suppose the [crime analyst] found a strong, positive relationship between these

Figure 2



compensate for shifts in trends or patterns. Appropriate charts should display the information for each precinct, as well as city-wide, including the aggregate difference and percentage change in reported incidents (see Data Comparison chart). These charts should be disaggregated for each crime, and a chart depicting the temporal (time) distribution also should be included so commanders can see when crimes occur.

two variables. [A commander] would infer that [calls for drug sales] and [aggravated assault shootings] were closely related [strength of the relationship] and that as one increased in value, the other also increased [direction of the relationship]. [A crime analyst] could make predictions from one variable to the other, for example, [the more calls for drug sales, the higher the shootings].

Now, as a result of finding this strong, positive relationship, [a commander] might be tempted to make causal inferences. That is, [a commander] might jump to the conclusion that [a high

number of calls for drug sales leads to (causes) more shootings]. Such a conclusion might make a good deal of common sense and would certainly be supported statistically. However, the causal nature of the relationship is in no way *proven* by the statistical analysis. Measures of association can be taken as important clues about causation, but the mere existence of a relationship never should be taken as conclusive proof of causation.⁷

Comparing the Data

The next step involves *comparing* the data, which enables the chief and command staff to gauge progress and adjust or

Crime Mapping

The final step, spatial analysis or *crime mapping*, has gained popularity over the last 10 years as an inexpensive, valuable resource for law enforcement agencies to identify and plot the occurrence of crime. Crime analysts can detect “nodes,” “paths,” and “edges” along which criminals travel.⁸ They can create overlays of calls for service versus arrests effected, unsolved burglaries with known burglars’ residences, or calls for service with abandoned buildings. Analysts can create speciality maps, such as locating sex offenders’ residences (Megan’s Law registrants), recovered guns, recovered stolen autos, and thefts of auto headlights. Most important,

they can display aggregate data to show relationships among offenses in time space, also known as “hot-spot” analysis (see Figure 1). Once agencies conduct spatial and temporal analysis, they can develop intervention strategies (see Figure 2).⁹

A variety of commercial mapping software applications exist that integrate easily with the spreadsheet and database applications that harness the raw data. Personnel simply can import the data into the mapping program and run the reports to create the desired maps.¹⁰

CONCLUSION

The design and success of the Compstat model rests with the commitment level of the leaders of the law enforcement agency. They must sponsor and champion Compstat to their employees. They also must ensure that all administrative details are handled effectively and efficiently to produce the most important aspect of the process: data collection, analysis, and presentation. Next month, the *FBI Law Enforcement Bulletin* will feature the final part of this article in which the author will discuss the implementation and adaptability of the Compstat model. ♦

Endnotes

¹ Jon Shane, “Compstat Process,” *FBI Law Enforcement Bulletin*, April 2004, 12-21.

² For illustrative purposes and to maintain clarity, the author refers to the leaders of law enforcement organizations as chiefs and employs masculine pronouns for these individuals, as well as other command-level personnel, throughout the article as needed.

³ John M. Bryson, *Strategic Planning for Public and Nonprofit Organizations: A Guide to Strengthening and Sustaining Organizational Achievement* (San Francisco, CA: Jossey-Bass, 1995), 57.

“

Descriptive statistics give commanders a comprehensive overview of how their command is faring.

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⁴ The crime control officer (CCO) is a division/district-based position that monitors crime trends and patterns on a daily basis. The CCO advises the commander of conditions on a daily basis, captures crime data, analyzes trends and patterns, and makes recommendations on deployment strategies and tactics.

⁵ Some departments use a 2-week Compstat period with a 1-week overlap for all commands because they feel that this improves the ability to gauge trends and emerging patterns.

⁶ J.F. Healey, *Statistics: A Tool for Social Research*, 6th ed. (Belmont, CA: Wadsworth, 2002).

⁷ *Ibid.*, 8-9.

⁸ Paul and Patricia Brantingham have conducted work on the “geometry of crime,” suggesting that “each offender tends to be somewhat lazy, sticking close to known places and routes” in Marcus Felson, *Crime and Everyday Life*, 2d ed.

(Thousand Oaks, CA: Pine Forge Press-Sage Publications, 1998), 58. See also P.J. Brantingham and P.L. Brantingham, *Environmental Criminology* (Prospect Heights, IL: Waveland, 1991); “Environment, Route and Situation: Toward a Pattern Theory of Crime,” in R.V. Clarke and M. Felson, eds., *Routine Activity and Rational Choice: Advances in Criminological Theory* (New Brunswick, NJ: Transaction Books, 1993); and “Criminality of Place: Crime Generators and Crime Attractors,” *European Journal of Criminal Policy and Research* 3, (1995): 5-26.

⁹ J.H. Ratcliffe, “The Hot-Spot Matrix: A Framework for the Spatio-Temporal Targeting of Crime Reduction,” *Police Practice and Research*, 5 (2004); and as an unpublished paper presented at the 11th International Symposium on Environmental Criminology and Crime Analysis/ECCA, June 20, 2003, Cincinnati, OH; retrieved on June 26, 2003, from [http://www.jratcliffe.net/conf/Ratcliffe%20\(2004\)%20Hotspot%20matrix%20final%20draft.pdf](http://www.jratcliffe.net/conf/Ratcliffe%20(2004)%20Hotspot%20matrix%20final%20draft.pdf).

¹⁰ The Police Foundation’s Crime Mapping Laboratory in Washington, D.C., can provide excellent technical and crime-mapping assistance. The foundation “is an independent and unique resource for policing. The Police Foundation acts as a catalyst for change and an advocate for new ideas, in restating and reminding ourselves about the fundamental purposes of policing, and in ensuring that an important link remains intact between the police and the public they serve”; access the Police Foundation at <http://www.policefoundation.org>. For additional crime-mapping resources, see <http://www.cslj.net/links/CrimeMapping.htm>.

The author thanks his friend and colleague Chief Anthony F. Ambrose of the Newark, New Jersey, Police Department for his inspiration and insight concerning this article.

Police Assessment Testing: An Assessment Center Handbook for Law Enforcement Personnel by John L. Coleman, Charles C. Thomas, Publisher, Springfield, Illinois, 2002.

Selecting and maintaining competent law enforcement personnel at all levels is a never-ending and critical task. Law enforcement agencies focus testing of new hires and promotions of onboard personnel based on methods, such as a written examination, time in the department, and demonstrated performance, all of which represent necessary criteria. Some departments use the assessment center testing process integrated with these other methods for a more comprehensive assessment effort.

Police Assessment Testing: An Assessment Center Handbook for Law Enforcement Personnel is an outstanding handbook for departments using the assessment center process, planning to implement the integrated concept, or in need of professional assistance in upgrading their current testing procedures. The author commences the handbook with assessment center testing evolution, advantages, and disadvantages, along with sound performance strategies. The handbook identifies valuable information for the candidate of any position, recruit or rank-and-file member, concerning the "how to" in developing the necessary attitude and approach to participate in an assessment center testing challenge.

The work contains an analysis involving previous legal actions against departments, including 10 actual case law summaries and court rulings with an accompanying observation statement for each case. One chapter addresses 14 key areas that assessment centers should consider. It identifies how a

candidate in the assessment process must display the dominant skills required during the in-basket exercise testing. The chapter further identifies dominant skills and how those skills should be displayed in critical areas while participating in leader and leaderless group exercises. To assist in each exercise, the author has provided an example of a written instruction sheet for the reader to use to ensure proper assessment of the candidate.

Included in the handbook is an exercise that deals with effectively handling a counseling situation, with emphasis on the critical dominant skills to be tested in each candidate. The author presents a chapter on effective documentation of a problem analysis exercise that covers a candidate's performance display, or lack thereof, while appearing before the assessment center process.

Although this police assessment testing handbook contains several strong points, three significant ones rise above all of the others. First, a total of 30 dimensional skills are identified that may or may not be dominant in current departments, supported with a listing of seven sound tips that most departments can implement. Second, one chapter contains the principles of handling 16 different in-basket exercise examples that require candidate responses with numerous identified skills. Some of these skills include decision making, development of subordinates, and judgment and planning. Third, the handbook has an in-basket dimension matrix that identifies which of the dominant skills fall in specified overlapping areas, such as dealing with people, analysis, problem solving, organizing, leadership, and accountability, in and out of group situations.

Police Assessment Testing: An Assessment Center Handbook for Law Enforcement Personnel is essential for all law enforcement agencies at the city, county, state, and federal levels that are using or needing to use a well-designed and documented integrated process of selection and promotion of personnel. It is a vital tool for law enforcement commissioners, managers, administrators, and supervisors, as well as line and staff members. Most elements of the handbook may be considered for training in the academy setting and in-service programs to give

members an idea of what to expect during the process. As a handbook, it also contains information for procedure and policy writers, citizen review boards, and the university classroom setting.

Reviewed by
Major Larry R. Moore (Ret.)
U.S. Army Military Police Corps
Certified Emergency Manager
International Association of
Emergency Managers
Knoxville, Tennessee

Wanted: Book Reviews

The *Bulletin* invites criminal justice professionals to submit reviews of recently published nonfiction books they have read on topics relative to their field of expertise for possible inclusion in its Book Review department. The magazine publishes only positive reviews of between 350 and 500 words or 1 ½ to 2 pages double-spaced. As with article submissions, the *Bulletin* staff will edit book reviews for style, length, clarity, and format.

Book reviewers should include two or three compelling points that the author makes, along with the complete title of the work; the names of the authors or editors; and the publishing company, city and state, and publication date. As a guide, the staff suggests that reviewers examine book reviews in past issues of the *Bulletin* to acquaint themselves with the magazine's requirements. Reviewers should submit their book reviews typed and double-spaced on 8 ½- by 11-inch white paper with all pages numbered. When possible, an electronic version of the review saved on computer disk should accompany the document. Send book reviews to:

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FBI Academy
Madison Building, Room 201
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telephone: 703-632-1952
e-mail: leb@fbiacademy.edu

The Need for School Resource Officers

By Mark D. Benigni, Ed.D

The city of Meriden, Connecticut, is a diverse community of about 58,000 residents approximately 20 miles north of New Haven and 20 miles south of the state capital Hartford. As the current mayor of Meriden, a school administrator, and a former teacher, education is one of my top priorities. In the midst of the accountability movement, when school systems reveal standardized test results of student progress to communities, not enough students challenge themselves to meet school proficiency standards. Further, increased suspensions and expulsions in schools confirm the need for discipline reform.

Educators and politicians continue to look for creative measures to keep children in school. While some practitioners proclaim graduated systems of discipline, training for teachers, and modification of zero-tolerance policies, I recommend the federally funded program COPS (Community Oriented Policing Services), which provides school resource officers (SROs). These certified police officers provide law enforcement and law-related teaching and counseling to students at public high schools. This approach requires a fundamental belief that *school* violence does not exist—all violence is *community* violence. Communities need collaboration between schools, police, and the juvenile justice system.

Legal Concerns

Facing increased pressure from concerned parents and educators regarding the need for discipline reform, the federal government and state legislators have changed existing laws and created new ones that, in turn, have required school districts to issue mandatory suspensions and expulsions. For example, federal law changes

in the mid-1990s mandated school districts to take specific disciplinary actions for weapon violations. In 1995, Connecticut legislators expanded the definition of a student possessing a deadly weapon. As a result, these changes have increased the number of suspensions and expulsions. In 2001, the Connecticut General Assembly adopted a new law to decrease the dropout rates in schools by changing the legal dropout age from 16 to 18. Students under the age of 18 now need the written consent of their parent or guardian to drop out of school. But, what will all of these legal changes do to keep kids actively engaged in school? Federal and state legal requirements often establish barriers that make it difficult for schools to find alternative discipline solutions.

Behavior Management

Behavioral problems can be treated similar to academic problems—in a nonpunitive atmosphere with understanding, respect, and patience.¹ This discipline process teaches students who are acting as a disturbance in the school environment how to think of ways to reach their goals without violating the rights of others.² When teachers and

Dr. Benigni serves as an assistant principal at Berlin High School in Meriden, Connecticut, and is the current mayor of Meriden.



school administrators develop strict discipline policies and pressure students to perform, many students push back and exhibit counter control. We must treat people according to the way they are designed; by presuming that we can deal with all students in the same way, we ignore their individuality and, in essence, set them up for failure. Educators and law enforcement must work together to develop a new way of operating—a method of deterring unnecessary disturbances.

The Study

After I interviewed SROs and surveyed school superintendents, police supervisors, principals, and SROs from 10 communities, my results showed that the SRO helps provide a safe environment in today's public high schools. In particular, respondents believed that a qualified SRO provides law enforcement, as well as law-related, counseling and teaching. All respondents in the study perceived that SROs fill an important role in their schools and all students can benefit from their presence. The community case studies revealed that the role of the SRO and the support for the SRO does not vary between cities or towns or affluent or economically deprived communities.

While my research noted the importance of SROs functioning as law enforcement officers in their schools, it did not address the SRO's role in daily discipline. Disciplining high school students has become increasingly difficult. School administrators hire assistant principals and deans of students to address daily discipline needs. According to one poll of the public's attitudes toward public schools, violence, gangs, and a lack of discipline are schools' biggest problems.³ Seventy-five percent of respondents believed that school police officers offer the most effective

school violence prevention program.⁴ Further, 65 percent of Americans surveyed thought that stationing a police officer in schools would reduce school violence.⁵ The presence of SROs in schools makes students, teachers, and staff members feel safer and deters acts of violence.⁶

SROs should be involved with both in-school and out-of-school suspensions, and they should work with school administrators to create alternatives to out-of-school suspensions. SROs should monitor school- and community-related service projects to acquaint themselves with students and assist school administrators with discipline. Additionally, SROs should meet with the in-school suspension group during the day for a period of group law-related counseling. Students are less likely to get in trouble if they understand and appreciate the consequences of their behavior beforehand.

SRO programs offer an opportunity for school officials to proactively protect their schools and improve their educational environment. School administrators should encourage parents to volunteer for community events, attend demonstrations and workshops about neighborhood safety and current activities, and watch for signs of trouble. Although SROs are the only individuals in the school setting who have the authority and ability to make arrests, an SRO's primary purpose is to deter students from trouble and encourage them to be active, positive participants in their school communities.

My research revealed the need for the school, police, and parents to work together to prevent school violence, and the SRO proves an important link between the three entities. Schools reflect society; if crime is occurring on the street, it also is happening in schools. Tragedies like

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**...respondents
believed that school
police officers offer
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prevention program.**
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Columbine can happen at any school; therefore, concerned citizens should take the necessary proactive measures to include an SRO on their school staff.

Data also revealed the need for police personnel to see the SRO's role in a new light. SROs are community police officers who work in the school community. With this new setting comes unique responsibilities and duties. "Having an officer in school can be a useful safety tool and offer a sense of security, but I think it's essential that the cops be trained to work with children."⁷ As a law enforcement officer, law-related counselor, and law-related educator,⁸ SROs become proactive participants in community efforts to ensure safe and orderly schools. Selected officers should collaborate with school administrators to create secure environments in which teachers can teach and students can learn. Educators and law enforcement personnel both maintain control of people and situations by enforcing rules/laws to keep our society (school or community) in order. Teachers and SROs can teach collaborative lessons on topics from the Bill of Rights to the importance of physical fitness; together, they can coach athletic teams and head school clubs as well.

Conclusion

The growing number of SRO programs indicates that communities are searching for effective methods to maintain secure schools and curb student violence. Deterrents, such as metal detectors and security guards, have proven insufficient in dealing with students who feel alienated from their peers or adults or in preventing intruders from disrupting schools. Boards of education are realizing that a more long-term,

all-encompassing approach to student alienation and school safety has become necessary.

For many communities, school resource officer programs constituted the first time schools and police worked collaboratively to improve the quality of life in their neighborhoods. Educational professionals must realize that community agencies, including law enforcement, often can offer expertise in many areas, including teaching and counseling. Educators and police personnel must view and use SROs as a resource because when they share their knowledge and expertise, students receive the best possible services and strengthen communities.

SRO programs present an opportunity for schools to open their doors to other community agencies and professionals. Law enforcement administrators and educational leaders face the challenge of continuing to search for creative methods of collaboration with other social systems in their

communities. We must ensure that our students remain in school programs and stay out of trouble—effective SRO programs prove a viable means to accomplish this feat. ♦

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SRO programs offer an opportunity for school officials to proactively protect their schools and improve their educational environment.
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Endnotes

¹ For more information on Edward E. Ford's Responsible Thinking Process, visit <http://www.responsiblethinking.com>.

² Ibid.

³ The 28th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools, retrieved on July 15, 2003, from <http://www.pdkintl.org/kappan/kpoll285.htm>.

⁴ *Youth Violence in Connecticut Schools*, The Connecticut Association of Schools Bulletin, May 1999.

⁵ Dr. Steven Berkowitz "What Role for Cops in School?" *Record-Journal*, December 28, 1999, 11.

⁶ Center for the Prevention of School Violence.

⁷ *Supra* note 5.

⁸ *Supra* note 6.



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In mid-July 2003, a fisherman on the Shenandoah River in Northern Virginia found the body of Brenda “Smiley” Paz. She was an intelligent, energetic 17-year-old who was 17 weeks pregnant and a former gang member.¹ She had an “encyclopedic knowledge” of Mara Salvatrucha (MS-13), a violent Salvadoran gang, and educated investigators of its history, structure, and operations.² Paz knew her only viable way out of MS-13 was to help put its

members in jail, and word soon spread that she was an informant, which caused her to be “green-lighted,” or targeted for murder by fellow MS-13 gang members.³ Paz entered the Witness Security Program (Program) in March 2003, but, due to the lure of gang life, Paz voluntarily left the Program in June. Within 3 weeks, her body was found in the river.⁴

Prosecutors wanting to use her testimony in the September 2001 murder of a rival gang

member were faced with a dilemma—using her unsworn statements may violate the Sixth Amendment guaranteeing a defendant the right to cross-examine the witness. Prosecutors availed themselves of this highly unusual tactic by arguing that Denis Rivera, Paz’s former boyfriend and member of MS-13, may have ordered Paz’s execution.⁵ Rivera was facing a murder trial in which the victim was stabbed several times, his head nearly severed, and his throat



Mr. Kash serves as a senior attorney for the DEA in Arlington, Virginia, and represents the United States in actions filed by confidential informants.

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The U.S. Supreme Court’s position on the constitutionality of identification of protected witnesses began in 1931....
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and esophagus removed.⁶ The prosecution argued that because Rivera allegedly was involved in the witness’ (Paz) execution, he cannot use the protection guaranteeing him the right to examine Paz. On October 7, 2003, the judge ruled that Paz’s statements, through the recollection of the court appointed guardian, *ad litem* (for purposes of the suit) can be used, though the court had not determined other issues, such as relevancy.⁷ On November 20, 2003, Rivera and a fellow gang member were convicted of murder and later sentenced to life in prison.⁸ This case demonstrates not only the necessity of the Program but the real dangers facing those who choose to leave its protective umbrella.

The Program, also sometimes referred to as WITSEC or the Witness Protection Program, is one weapon in the war on crime that has taken even greater significance since

September 11, 2001. The U.S. Department of Justice, Criminal Division, Office of Enforcement Operations (OEO) oversees the Program. The U.S. Marshals Service (USMS) administers the day-to-day operation of the Program for witnesses relocated in the community and the Federal Bureau of Prisons administers the day-to-day operation of the Program for witnesses who are incarcerated.

Traditionally, the Program has been used to protect witnesses and their families in cases involving organized crime, narcotics, motorcycle gangs, prison gangs, and public corruption. Due to the September 11 attacks and the consequent investigations into domestic and international terrorist groups, people with pertinent terrorist-related information have undoubtedly considered availing themselves of the protection this Program offers. Due to the sensitivity of

the Program, including the identities of the protectors and witnesses, specific names and locations cannot be discussed in this article. Indeed, no agency, entity, or person associated with the Program is permitted to release any information concerning specific operations of the Program and its participants.⁹ With limited exceptions, release of Program-related information, including that which pertains to current or former protected witnesses, even to that very witness, is prohibited except at the written direction of the director of the Program, the attorney general, or the assistant attorney general.¹⁰

Judicial Protections

Somewhat ironically, the need to provide for the safety of witnesses results from the constitutional protections afforded criminal *defendants*. The Sixth Amendment of the U.S. Constitution provides, in part, that “in all criminal prosecutions, the accused shall enjoy the right...to confront the witness against him....” Such protections were extended by the U.S. Supreme Court to defendants in state prosecutions through the Due Process Clause of the Fourteenth Amendment. Some states require prosecutors to identify everyone “known by the government [who has] knowledge of the relevant facts, while other states limit such disclosure only

to persons who will testify in trial or pretrial proceedings.”¹¹ Consequently, to protect witnesses pre- and posttrial and preserve the integrity and effectiveness of the criminal justice system, witnesses facing a threat to their personal safety are either incarcerated or placed under government protection.¹² However, other courts do not require that all witnesses reveal their identities.

The U.S. Supreme Court’s position on the constitutionality of identification of protected witnesses began in 1931 with its review of *Alford v. United States*¹³ in which the defense was denied the opportunity to question the witness at his residence. The Supreme Court opined, without consideration of the witness’ safety, that the defense must be able to place the witness in his environment and that “prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them.”¹⁴

In the next true test of this issue, the lower court, in *Smith v. Illinois*,¹⁵ refused to force the revelation of a witness’ true identity. Upon appellate review, the U.S. Supreme Court stated that “the witness’ name and address open countless avenues of in-court examination and out-of-court investigation...[forbidding

the defense from asking the “most rudimentary” questions of a witness’ name and address effectively] “emasculate[s] the right of cross-examination itself.”¹⁶ In his concurrence, U.S. Supreme Court Justice Byron White opined that the examination of a witness would be limited when specific questions “tend to endanger the personal

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In federal courts, as a general rule, if the informant’s identity is essential or even relevant, it must be provided.

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safety of the witness.”¹⁷ Although Justice White’s notation to a witness’ safety appears to be the first time this specific issue was raised, since that time, the balance between the need to protect a witness’ identity and the right to confront a witness in court has been considered by many federal and state courts and state legislatures.

In federal courts, as a general rule, if the informant’s identity is essential or even relevant, it must be provided.¹⁸ To refute this, the government must establish the existence of an actual threat.¹⁹ Similarly, New York

courts require the defense to demonstrate the necessity and materiality of witness information as it relates to guilt or innocence. The court then weighs the right of cross examination and the witness’ safety concerns.²⁰ Further, some courts raise the nondisclosure standard to whether the testimony is significant or crucial, while California prohibits the concealment of witness residential information as long as the witness is providing important information.²¹

Beyond judicial protection, there is one notable statutory protective shield known as the federal Victim and Witness Protection Act of 1982, which provides for the punishment of anyone who tampers with a witness, victim, or informant.²² This protection begins from the reporting stage of a crime to the conclusion of the trial testimony. All U.S. citizens inherit a legal obligation to provide testimony in criminal and civil proceedings, and the U.S. Supreme Court has held that not even the fear of death can obviate this requirement.²³ Despite the chance that harm could result from such testimony, the government does not have any legal obligation to provide any level of protection to a witness.²⁴

Policies and Statutory Provisions

Since the creation of the Program by the Organized Crime

Control Act of 1970²⁵ and amended by the Comprehensive Crime Control Act of 1984,²⁶ more than 7,500 witnesses and 9,500 family members have been afforded protection, which includes establishing new identities in new locations.²⁷ The attorney general has the sole authority to admit witnesses and their immediate families into the Program.²⁸ Although many parts of the governing statute and policies refer to the attorney general's authority, this authority has been delegated by the attorney general and is exercised by the senior associate director of the OEO who has been designated the director of the Witness Security Program and, in his absence, the director of the OEO.²⁹

While investigative agencies maintain policies regarding the use of the Program,³⁰ the governing policy is promulgated by the OEO and can be found in the U.S. Attorney's Manual (USAM) 9-21.000 *et seq.* For time-critical situations involving imminent danger where the investigative agency cannot provide the necessary security, the USAM sections 3-7.340 and 9-21.220 provide guidance concerning the Emergency Witness Assistance Program and authorization procedures for emergency Program protection.³¹ Typically, Program protection will be authorized only after the USMS has completed a preliminary interview to determine whether the

witness would be eligible for relocation consideration, the OEO has received all of the information necessary to make a determination that the witness is essential to a significant prosecution and is endangered as a result, and no other alternative exists but to enter the Program.³² During the preliminary interview, the witness will be given a general explanation of the services provided in the Program.³³

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Each investigative agency, whether federal, state or local, must submit its initial request for placing a witness into the Program to the OEO. The investigative agency first must request such assistance through the U.S. Attorney's Office for the district in which the investigative activity is to occur or, alternatively, where charges against the target will be filed. The U.S. Department of Justice, Criminal Division Section Chiefs/Office Directors, also can submit an

application for such assistance.³⁴ Once the witness is authorized to participate in the Program, the prosecutor must contact the OEO to arrange the appearance, date, time, place, and anticipated duration of appearances for all case-related matters. All pretrial conferences and briefings involving witnesses in the Program are conducted at neutral sites determined by the USMS after OEO approval.³⁵

For example, one federal investigative agency, the DEA, recognizes two levels of protective status in the Program.³⁶ Under the "Full Program Services," name changes and relocations are provided for the witness and his family. The less often used is the "Special Limited Service" that was developed for foreign nationals who face deportation and a threat in their own country. Although this does not provide a new identity to the witness, it suspends deportation proceedings against the witness.

Prior to requesting a witness' admission into the Program, an investigative agency must consider several issues. For example, the DEA sets forth the following criteria:

- The witness must be an established (registered and vetted) DEA Confidential Source of Information before entering the Program.
- The witness' anticipated testimony must be essential

- in the prosecution of the most significant violators.
- There exists a clear threat to the witness or his family or, alternatively, a documented pattern of violence by the defendants/associates.
- The witness must accept all security precautions (including a name change) mandated by the USMS.
- The witness cannot have any outstanding criminal charges against him.
- The witness understands that the Program is designed to make him legally self-sufficient.³⁷

The first step that an investigative agency must undertake to request a witness for the Program is to work with the prosecuting U.S. Attorney's Office on completion of an OEO Witness Security Unit application. The application includes the anticipated witness testimony and its necessity to a successful prosecution, the witness' cooperation and criminal history, the threat posed to the witness, and the risk the witness (and his family) may present to a new community.³⁸ The application is submitted to OEO by the U.S. Attorney's Office.³⁹ The investigative agency also must prepare a *threat assessment* to be sent to OEO. This report includes—

- a synopsis of the investigative records;

- a summary of the defendants and the criminal organization;
- the witness' involvement in the illegal activities being prosecuted;

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State and local agencies can request that a witness (and his family) involved in an organized criminal activity or other serious offense be placed into the Program.
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- details of any direct or potential threats to the witness or his family; and
- specific biographical information as to the defendants, the witness' associates and family members, and those who represent a threat to the witness.⁴⁰

A *risk assessment* also is required and must address the following issues:

- significance of the investigation or case in which the witness is cooperating;
- possible danger the witness and his family poses to the new relocation community;

- alternatives to placing the witness in the Program and why there is no alternative, or why they will not work;
- whether the prosecution can secure similar testimony from other sources;
- significance of the anticipated testimony;
- whether the need for the testimony outweighs the risk of danger he or his family poses to the public;
- any child custody issues and history of spousal abuse; and
- the witness' income and the Program's impact on this income.⁴¹

There was a time when courts held that “witness protection statutes contemplate only the protection of witnesses and their families—not protection of the public from the witnesses.”⁴² The Witness Security Reform Act of 1984 changed this position by requiring the attorney general to consider the danger a protected witness poses to the relocation community.⁴³ Once the assessments are completed, the DEA Chief of Operations Management forwards the report to the OEO.⁴⁴ DEA agents do not have to prepare a risk assessment for an incarcerated witness unless that witness will remain in the Program after his release. However, all persons who may pose a threat to the prisoner/

witness must be identified and their biographical information provided to the USMS or the Federal Bureau of Prisons.⁴⁵

In addition, the USAM requires the attorney general to consider a psychological evaluation of the witness and all family members to be relocated who are 18 years of age or older.⁴⁶ The USAM also mandates that any witnesses *entering* the Program will be required to satisfy any known debt or judgment and all outstanding criminal and civil obligations (i.e., fines, restitution).⁴⁷ For those persons already in the Program, however, the governing statute only requires the attorney general to “*urge* the person to comply with the [civil] judgment (emphasis added).”⁴⁸ In the event the person does not undertake reasonable efforts to satisfy the judgment, the attorney general has the discretion, after considering the danger posed and at the request of a plaintiff seeking civil relief, to release the person’s identity and location to the plaintiff, enabling the plaintiff to attempt to recover under the judgment directly. The statute also provides that the United States and its officers are exempt from any liability resulting from this disclosure.⁴⁹

The attorney general, through the USMS, can provide the necessary support to all persons in the Program. Such support includes new identities and documentation, housing and

moving expenses from the previous residence, basic living expenses, job search assistance, and any other services to assist the person to become legally self-sufficient.⁵⁰ The USMS also covers the costs (travel, housing, meals) incurred when a witness is scheduled to appear for trial or briefings. For those Program witnesses who are entitled to receive rewards for their participation, the investigative agency

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must submit a report, with the concurrence of the prosecutor, to the USMS Witness Security Program or Bureau of Prisons, Inmate Monitoring Section, along with the payment.⁵¹

Not all Program participants conduct themselves in a legal manner. In certain situations in which a participant commits a crime, a Victims Compensation Fund has been established for victims of those crimes.⁵² The OEO, as delegated by the attorney general, may make restitution or compensation (if the

crime results in death or serious bodily injury) to the victim or estate of the victim for medical and funeral costs and loss of wages.⁵³ Before such payment is made, however, the victim must have tried to secure restitution and compensation under available federal and state civil remedies.⁵⁴ Any recovery, including insurance payments, may preclude or mitigate compensation under the Victims Compensation Fund.

Recently, Senator Charles Schumer (D-NY) introduced legislation creating a “Short-Term State Witness Protection Service” within the USMS.⁵⁵ This new unit would be created to provide protection for witnesses in state and local trials involving major violent crimes.⁵⁶ The legislation also would provide grant money to state and local prosecutors whose states had at least 100 murders per year during the previous 5-year period.⁵⁷

State and Local Agency Usage

State and local agencies can request that a witness (and his family) involved in an organized criminal activity or other serious offense be placed into the Program. The initial request is transmitted to the U.S. Attorneys Office which, after its own review, forwards the request to the OEO, with its endorsement.⁵⁸ The witness’ placement is predicated on

the attorney general's finding that the witness and his family may suffer a crime of violence in connection to the witness' anticipated testimony.⁵⁹ In this scenario, the state or local agency must surrender its supervision of the witness to federal authorities and, according to the USAM, is *requested* to reimburse the federal government. However, pursuant to the governing statute, the attorney general may enter into an agreement with a state government that requests the use of the Program "in which that government *agrees to reimburse* the United States for expenses incurred in providing protection...."⁶⁰ The USMS will calculate the terms of any reimbursement, which will be set forth in a Memorandum of Understanding.⁶¹ Rarely are state cases taken without reimbursement unless there is a nexus to a federal investigation.

Recent State Developments

Individual states recently have undertaken legislative action to strengthen their respective witness protection programs. The U.S. attorney for the District of Columbia, who handles criminal matters throughout the federal district, recently stated that the intimidation of witnesses was the biggest problem in prosecuting city gangs.⁶² Across the river, both Houses of Congress for the Commonwealth of Virginia re-

cently introduced bills to increase the penalty to a felony for anyone who knowingly obstructs justice or who, by threat or force, intimidates a witness.⁶³ Similarly, Maryland's Congress introduced legislation to increase penalties for intimidating a witness to a felony and making first-degree murder of a witness a capitol crime.⁶⁴ These changes may forecast a wave of legislative fixes to come throughout the United States due to this growing problem.

Conclusion

Since its inception more than 30 years ago, the Witness Security Program has become an integral part in the war on crime with a newly found greater emphasis on terrorism. Despite a U.S. population of approximately 280 million people, covertly relocating a person and his family, as well as providing legal name changes, employment and medical assistance, personal protection when necessary, and ensuring that the witness and his family are respecting the Program mandates, is not an easy task. If history is any indication, there will be problems with participants in the Program committing crimes. In light of the number of persons who have entered the Program, the comparatively limited number of such problems is a testament to the dedication and professionalism of the persons responsible

for the Program. Indeed, it is these very people and the program they administer that may be the one viable option that can persuade a person with information about another September 11 type attack to provide that information and prevent the slaughter of many innocent Americans and punish those who seek to do this country harm. ♦

Endnotes

¹ Jerry Markon and Maria Glod, "Giving Up a New Life for a Gang Death," *The Washington Post*, August 10, 2003, sec. A, p. 1.

² *Id.*

³ *Id.* at sec. A, p. 16.

⁴ *Id.*

⁵ Jerry Markon and Maria Glod, "Prosecutors Hope to Quote Dead Witness," *The Washington Post*, August 16, 2003, sec. B, p. 4.

⁶ *Id.*

⁷ Maria Glod, "Gang Trial to Allow Statements of Deceased," *The Washington Post*, Oct. 7, 2003, sec. B, p. 1-2.

⁸ Maria Glod and Jerry Markon, "2 MS-13 Members Convicted of Slaying," *The Washington Post*, November 21, 2003, sec. B, p. 1. See also Jerry Markon, "2 MS-13 Members Get Life in Prison," *The Washington Post*, February 18, 2004, sec. B, p. 1.

⁹ 18 U.S.C. § 3521(b)(1) and (3)(2003), 28 C.F.R. 0.111B(b)(2003).

¹⁰ See "Release of Federal Witness Security Program Information," Stephen J. T'Kach, Director Witness Security Program, July 15, 2002. See also 18 U.S.C. § 3521(b)(1) and (3) and 28 C.F.R. 0.111B(b).

¹¹ Nora V. Demeleitner, "Section V: Witness Protection in Criminal Cases: Anonymity, Disguise or Other Options?" *American J. of Comp. Law*, 1998 Supp. 641, 643.

¹² *Id.*
¹³ 282 U.S. 687 (1931). *See also* Demeleitner, *supra* note 11, at 643.
¹⁴ *Id.* at 692.
¹⁵ 390 U.S. 129 (1968).
¹⁶ *Id.* at 131.
¹⁷ *Id.* at 133-34. (White, J., concurring).
¹⁸ *Roviaro v. United States*, 353 U.S. 53, 60-61 (1957).
¹⁹ Demeleitner, *supra* note 11, at 652. *See* 28 C.F.R. § 16.26(b)(4)(2003), the agency and the informant must consent to the disclosure. Note that typically mere “tipsters” would not have their identities revealed.
²⁰ *Id.* citing *People v. Stanard*, 365 N.E. 2d 857, 863 (NY 1977).
²¹ *Id.* citing Friedman, Annotation, *Right to Cross-Examine Witness As to His Place of Residence*, 85 A.L.R. 3d 541, 569-70 (1978 and Supp. 1997).
²² 18 U.S.C. § 1512 (2003).
²³ *Piemonte v. United States*, 367 U.S. 556, 559 (1961).
²⁴ *Piechowicz v. United States*, 885 F.2d 1207 (4th Cir. 1989).
²⁵ Organized Crime Control Act of 1970, Pub.L. No. 91-452, 84 Stat. 938.
²⁶ Witness Security Reform Act of 1984, Pub.L. No. 98-473, 98 Stat. 1837 (1984).
²⁷ Retrieved on October 16, 2003, from <http://www.usmarshals.gov/factsheets/witsec>.
²⁸ 18 U.S.C. § 3076 (2003).
²⁹ 18 U.S.C. § 3521(d)(3)(2003). *See also* USAM 9-21.200 (citing A.G. Order No. 1072-84).
³⁰ *See e.g.*, *DEA Special Agents Manual* § 6612.82.
³¹ *See also* 18 U.S.C. § 3521(e)(2003).
³² USAM 9-21.100, 9-21.300, 9-21.330, 9-21.400.
³³ USAM 9-21.300.
³⁴ USAM 9-21.400.
³⁵ USAM 9-21.700.
³⁶ *DEA Special Agents Manual* § 6612.82.H.
³⁷ *Id.* at § 6612.82.A.
³⁸ USAM at 9-21.100. A psychological profile will be conducted to assess the

danger a witness or his family may present to the community. *Id.* at 9-21.330.
³⁹ USAM 9-21.100 and *DEA Special Agents Manual* § 6612.82.B.
⁴⁰ *DEA Special Agents Manual* § 6612.82.E.1.
⁴¹ *Id.* at § 6612.82.E.2.
⁴² *Taitt v. United States*, 770 F. 2d 890 at 894 (10th Cir. 1985), citing *Bergmann v. United States* 689 F.2d 789 (8th Cir. 1982).
⁴³ 18 U.S.C. § 3521(c)(2003).
⁴⁴ *DEA Special Agents Manual* § 6612.82.E.
⁴⁵ *Id.* at § 6612.82.F.
⁴⁶ USAM 9-21.330.
⁴⁷ USAM 9-21.100.
⁴⁸ 18 U.S.C. § 3523 (a)(2003).
⁴⁹ *Id.*
⁵⁰ 18 U.S.C. § 3521 (2003).
⁵¹ USAM 9-21.910 and 9-21.920.
⁵² 18 U.S.C. § 3525 (2003).
⁵³ *Id.* at § 3525(a) and USAM 9-21.1020.
⁵⁴ *Id.* at § 3525(d).
⁵⁵ S. 1982, 108th Cong. 1st Sess. (December 9, 2003).
⁵⁶ *Id.* at § 570 (a).
⁵⁷ *Id.* at § 570 (b).
⁵⁸ USAM at 9-21.140.
⁵⁹ 18 U.S.C. § 3521(a)(1)(2003).
⁶⁰ 18 U.S.C. § 3526(b)(1)(2003).
⁶¹ USAM at 9-21.140.
⁶² Neely Tucker, “Girl’s Slaying Opens Window on Intimidation,” *The Washington Post*, February 2, 2004, sec. A, p. 1 and 10.
⁶³ H.B. 571, 2004 Sess., S.B. 321, 2004 Sess. (VA 2004).
⁶⁴ H.B. 263, 418th Sess. (MD 2004), S.B. 181 and 185, 418th Sess. (MD 2004).

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

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The *Bulletin* 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). We will give appropriate credit to photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

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The Bulletin Notes

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



Deputy Talley



Sergeant Carter

Deputy Clifton Talley of the Tulsa County, Oklahoma, Sheriff's Office was driving in his personal vehicle with his family when he observed Sergeant Mike Carter of the Sand Springs, Oklahoma, Police Department respond to a vehicle accident. A van had diverted from the roadway, gone through a fence, and collided with a parked truck; the injured driver was pinned beneath the dash and steering wheel. Deputy Talley noticed that a fire had ignited at the rear of the vehicle and decided that there was no time to wait for fire rescue

to assist the driver. He quickly exited his vehicle and assisted Sergeant Carter in extracting the woman from her van; due to the heavy smoke from the fire, they had to rely on touch to free her. After removing the driver from the vehicle, they immediately took her to on-scene medical personnel. The actions of Deputy Talley and Sergeant Carter prevented the serious injury or death of the driver.



Officer Davenport

Officer Kelly Davenport of the Richmond, Michigan, Police Department responded to a mobile home that was fully engulfed in flames. After arriving at the residence, Officer Davenport approached the front door, which was forced open by an off-duty firefighter and had thick, black smoke pouring out of it. Officer Davenport located a man lying inside the residence and, with the firefighter's help, crawled into the home and pulled the individual outside where he received immediate medical attention. Although

the man later died from his injuries, Officer Davenport made a valiant effort to save the individual's life.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

