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FBI Law Enforcement Bulletin



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Rural and Suburban Police Leadership Targeting External Funding

By THOMAS E. BAKER, M.S., M.ED., LOREEN WOLFER, PH.D., and RALPH ZEZZA



While budget constraints compel law enforcement administrators to accomplish more with a smaller budget, state and federal grants have become important to police agencies faced with diminishing financial resources. Police executives must determine how to increase organizational efficiency, effectiveness, and equity. By improving their grantsmanship skills, police managers can enhance their opportunity to successfully achieve these objectives.

Escalating crime and additional community responsibilities can overwhelm law enforcement executives; however, improving their grant-writing skills can help them finance various opportunities to reduce crime. Large urban departments often are more successful at acquiring grant funding because they have the trained staff and resources to vigorously pursue grant application opportunities.

Acquiring additional financial support and grant funding in rural and suburban communities, which

represent an important sector of America's policing, can prove beneficial. According to the U.S. Census Bureau, approximately 15,000 of the 17,000 police agencies in the United States serve populations of less than 50,000. Many of these police departments are rural or suburban and have fewer than 25 sworn officers.

Because of their size, some smaller police agencies may experience difficulties in obtaining grants; however, certain grantsmanship methods exist that can help departments increase opportunities for grant selection and funding. A community does not always have to experience a high crime rate to receive a grant. Several reasons may exist that can explain this contradiction, one of which may be the grant application process.

Oftentimes, smaller agencies simply may not have applied for grants, or they may have felt intimidated by the paperwork and grant application process. In fact, rural and suburban police agencies can pursue grants as often and easily as larger departments. Learning to write successful grants is an evolutionary process. Police agencies may find that following some basic steps can prove useful in assisting them in the grantsmanship application process.

Target Funding

When considering applying for a grant, departments should initiate a timely application for the funds. Because the budget section of the grant application requires special attention, departments should assess potential fiscal requirements,

including hidden costs. A properly prepared budget can constitute the deciding factor in the grant selection process.

The budget section can persuade grant administrators that the department remains financially responsible and dedicated to implementing their identified goals and objectives; therefore, a poorly prepared budget section might eliminate the department from further grant consideration. The statement of the problem, along with the fiscal documentation, shows whether the department appropriately spends the money.

Select Professional Consultants

The department's decisions regarding who will serve as grant consultant and grant evaluator remain paramount to a positive outcome. Involving a grant consultant and a grant evaluator during the initial

proposal stage can ensure that the application contains clearly stated goals and objectives and that supporting financial documentation proves adequate.

Oftentimes, most problems with grants arise because of the improper choice of consultants and evaluators. To help avoid problems in the pre- and postassessment phases and ensure successful grant outcomes, agencies must depend on professional qualifications and cooperation of the consultants and evaluators.

Agencies need special grantsmanship skills when they apply for and implement federal and state grants. Rural suburban police agencies may consider contacting local colleges and universities for assistance. The criminal justice faculty can recommend candidates who could serve as a grant consultant or evaluator. Academics often become

involved in crime prevention research. Their flexible schedules give them the opportunity to serve as professional consultants. Although they serve as a partner of the grant process, they must remain neutral. Their objectivity allows them to motivate the department toward successful implementation of the grant.

Most important, the consultant must relate to law enforcement officials. This individual should have law enforcement experience and applied research skills. Police managers should try to match the consultant's expertise with the nature of the grant proposal.

The evaluator acts as a statistical consultant for the grant's research methods. A grant evaluator works with the primary consultant in the development of reliable survey designs. Surveys address community concerns about crime and



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safety, and the results help police departments design successful community interventions.

The evaluator should work with the consultant to design a pre-assessment and follow-up survey to evaluate the success of new crime prevention initiatives and intervention tactics. The grant evaluator statistically should analyze if the new policing initiatives fulfill the goals established during the strategic and tactical planning stages. Grant administrators anticipate that the final report will contain accurate, reliable, and valid statistical data. Excellent research sets the foundation for the strategic and tactical planning phases.

Plan Strategically

The strategic planning process establishes where the department is going and tactical planning defines how the department will get there. Police managers should develop a strategic and tactical plan to achieve crime fighting and prevention goals. Once managers assess their department's present state (where they are now), then they can project the future state (where they are going). Timely evaluations will prove useful in determining future changes. Assessment and measurement techniques are important issues when conducting grant research.

The consultant and evaluator can provide advice and technical support when developing a plan, as well as throughout the planning process. The plan should consist of a philosophy, statement of the problem, cohesive goals, objectives, and action plans. To aid in developing

A Case Study

In a small Pennsylvania town, a local park that once offered a safe, quiet area that local residents and children used for recreation became the object of repeated calls for police service. Many of the complaints involved vandalism and drug-related offenses. Young adults and juveniles harassed the occupants of an adjacent apartment complex and destroyed property owned by residents living in the surrounding area. The community residents and police instituted the community-oriented policing approach and applied for a grant to resolve the problem.

clear goals, grants provide strategic support for answering three basic questions: Where is the department going? How will the department get there? How will the department know when it has arrived?

Apply Problem-Oriented Policing

Police agencies can use numerous resources to help with the grant process.¹ Such documents help explain the community- and problem-oriented policing approach.

Although a number of different problem-solving techniques exist, SARA (scanning, analysis, response, and assessment) serves as the foundation for this process.² Scanning identifies a problem through a variety of sources of information, such as calls for service and citizen surveys; analysis requires the thoughtful examination of the nature of the problem; response develops one or more desired solutions to the problem; and assessment evaluates the effectiveness of the expected solution. An accurate analysis and definition of the problem will tailor the appropriate responses and remedial actions.

Describe the Scope of the Problem

The government is interested in reducing crime and, more so, in obtaining accurate research data that builds on crime control and prevention theory. First, agencies should establish a statement of the problem or needs assessment, which encourages governmental officials and other decision makers to provide funding for the project. A needs assessment remains a vital process that determines responses and courses of action.

The scope of the problem should describe the areas of concern and the affected population. It should identify the basic dimensions of the problem, define a project remedy, portray human needs, and avoid technical academic language. Subsequently, the reader should be able to anticipate the solution.

Determine a Hypothesis

A working hypothesis statement should follow the summation of the problem. Generally, the consultant and evaluator remain best suited to define the hypothesis and dependent and independent

variables. The hypothesis statement acts as a transition between the problem description and the goals and objectives. In other cases, a community-oriented policing philosophical statement supports the hierarchy of goals and objectives.

Define Goals and Objectives

Targeted goals should come from the statement of the problem. Goals are measurable, broad statements directed toward the outcomes. They point in the general direction and provide guidance for others to follow. The goals statement ultimately serves as the foundation for written immediate and intermediate objectives and could include actions to—

- develop a community-oriented policing philosophy;

- establish a philosophy, mission, and values statement;
- apply nontraditional methods of crime prevention;
- reduce the actual level of crime;
- minimize the perceived fear of crime;
- analyze crime generators; and
- evaluate goals and related objectives for efficiency and effectiveness.

Write Related Objectives

Police managers must determine specific objectives after formulating a philosophical statement and general goals. Objectives should quantify, measure, and constitute those specific tasks, conditions, and standards for the grant.

They also should be precise, specific, and target change, times, and specific baseline outcomes.

Formulate Responses

After the preassessment and scanning phase, police leaders should collaborate with stakeholders and community members and formulate traditional and nontraditional remedial responses. Responses may vary according to targets, offenders, victims, and area of crime. For example, in a scenario where a community experienced loitering, vandalism, and drug abuse in a local park, police developed the following responses specific to the target area:

- Target hardening: The community repaired the park fence and locked entrances during evening hours.

Examples of Community Evaluation Objectives

- Communicate the community-oriented policing philosophy through news media, community newsletters, or citizen meetings
- Collaborate with relevant agencies throughout the community
- Establish an active Neighborhood Watch Program
- Evaluate the citizens' confidence in the police department
- Appraise public satisfaction with police services
- Improve the willingness of citizens to help the police

Examples of Personnel Objectives

- Train police officers to implement problem-solving strategies and how to conduct crime prevention surveys
- Teach the crime prevention model to police officers
- Plan primary and secondary crime prevention strategies
- Gather and measure crime-specific data
- Conduct crime-specific planning

- Access control: Police patrolled the park to remove offenders with no legitimate reason for entering the area (e.g., individuals there after hours or conducting vandalism).
- Deflect offenders: Police discouraged loitering and diverted criminals from crime targets (i.e., drug and illegal alcohol violations).
- Control facilitators: The community posted signs listing rules, regulations, and ordinances.
- Formal surveillance: The police used a closed-circuit television system to monitor the park area.
- Natural surveillance: Community members pruned shrubbery, removed broken glass and graffiti around the park, and created a highly groomed and maintained area, which helped curb vandalism.
- Coordination: In addition to requesting cooperation from parents and school officials, police asked the telephone company to remove the pay phone in the park and requested the railroad authority to clean and maintain their property adjacent to the park.

Develop Plans

Working plans identify the steps and procedures necessary for the accomplishment of goals and objectives. They should remain specific, yet flexible, and identify the terms, steps, and procedures necessary to accomplish the objectives.

Once developed, managers should assign working plans to individual teams or officers. During this phase, leadership and motivational factors begin to influence productivity.

Work plans should include numerous tasks. For example, conducting a preliminary study where a criminal analyst or Neighborhood Watch members can administer the first preassessment opinion survey to the target and control group areas (e.g., local apartment complexes or residences adjacent to the target

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Learning to write successful grants is an evolutionary process.

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area). Within a 30-day time period, analysts should gather and assess the data and develop remedial action plans. Within 1 year after the initial survey, they should administer a follow-up study to check the progress and to analyze the response phase remedial actions and treatments in the target and control group areas. Next, they should compare and contrast citizen results with the preassessment and post-assessment surveys to determine whether improvements concerning crime prevention and public opinion have changed.

Evaluate Methods

Excellent research and statistical methods set the foundation for designing and implementing

appropriate survey methods. Agencies must follow the mandated requirements to ensure reliability and validity; otherwise, they may have to return the federal or state funds. Agencies must remember that the money is not discretionary, but rather allocated for a specific purpose. Excellent research justifies the grant's outcomes and financial expenditures.

Conclusion

To achieve a successful outcome, police managers who apply for grants must follow certain basic steps in evaluation research, which should follow the SARA evaluation/research process. Successful grants must start with the identification of a problem and the methodical filing of the grant application. Police managers must remember that evaluation constitutes the primary means for improving decision making and future programming.

A police executive's ability to achieve grant financial support remains a strategic component in successful modern-day policing. Improving grantsmanship skills and using competent consultants and evaluators can prove most valuable in assisting police managers to meet the mandated compliance requirements. ♦

Endnotes

¹ For example, the Bureau of Justice Assistance provides helpful, free publications that support grantsmanship, such as *Understanding Community Policing: A Framework for Action*; *Neighborhood-Oriented Policing in Rural Communities: A Program Planning Guide*; and *A Police Guide to Surveying Citizens and Their Environment*.

² Herman Goldstein, *Problem-Oriented Policing* (New York, NY: McGraw Hill, 1990), 50-57.

Bulletin Reports

DNA Evidence

What Every Law Enforcement Officer Should Know About DNA Evidence provides interactive training that covers in-depth information about the identification, preservation, and collection of DNA evidence at a crime scene. Information addressed in this interactive training program is delivered in two modules: the beginning-level module, which focuses on issues that arise for the first-responding law enforcement officer, and the advanced-level module, which delivers more in-depth information for the investigating officer or evidence technician. Recommended practices covered in this tutorial module may not apply to all situations or crime scenes, and officers should employ all local department or agency procedures or applicable laws that govern the use, collection, and processing of DNA evidence. The module is a product of the National Commission on the Future of DNA Evidence, developed by the Commission's Crime Scene Investigation Working Group. To order copies of the beginning- or advanced-level module, please call the National Criminal Justice Reference Service at 800-851-3420 or access its Web site at <http://www.ncjrs.org>.

Kidnapping of Juveniles

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) presents *Kidnapping of Juveniles: Patterns From NIBRS* by David Finkelhor and Richard Ormrod. This bulletin describes kidnapping of youths ages 17 and younger based on 1997 statistics reported by law enforcement agencies participating in the FBI's National Incident-Based Reporting System. Part of the Crimes Against Children Series, this OJJDP bulletin analyzes data on 1,214 juvenile kidnappings from jurisdictions in 12 states. Figures and tables illustrate findings on location, time of day, and injuries and deaths related to juvenile kidnapping. For copies of the report (NCJ 181161), contact the National Criminal Justice Reference Service at 800-851-3420 or electronically obtain it at <http://ojjdp.ncjrs.org/pubs>.

Crime Prevention

The Bureau of Justice Assistance (BJA) presents their *Guide for Preventing and Responding to School Violence*. This 70-page document outlines different strategies and approaches for members of school communities to consider when creating safer learning environments. This BJA-sponsored report offers guidance for school violence prevention and response in the following areas: preventing student violence, preparing a threat assessment strategy, planning and training for actual crises, responding to a crisis (both during and after), considering legal and legislative issues, and covering the crisis in the media. The roles of school staff and administrators, students, parents, law enforcement officials, and the community are discussed. The text also contains actual cases of school violence that provide in-depth information and illustrate the potential value of specific suggestions. Additionally, the guide includes a list of Web sites pertaining to school safety and violence reduction. A copy of this report (NCJ 181625) is available at <http://www.theiacp.org> or from the National Criminal Justice Reference Service at 800-851-3420.

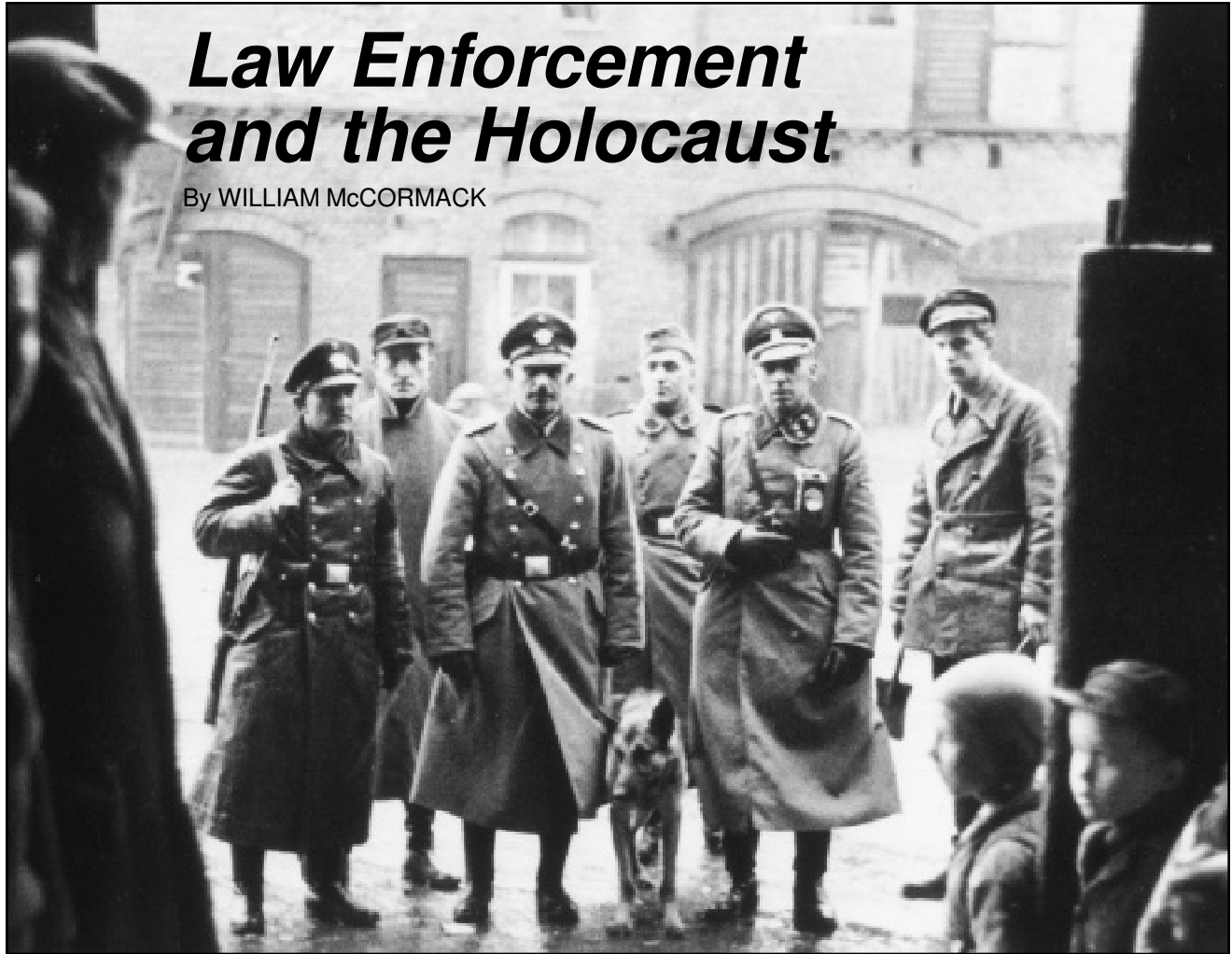
Corrections

But They All Come Back: Rethinking Prisoner Reentry, by Jeremy Travis, outlines a prisoner reentry model and the elements needed to make it work. This National Institute of Justice Research in Brief discusses the processes and goals of reentry—a nearly universal experience for criminal defendants, not just returning prisoners. This report explores reentry management approaches that reintegrate offenders into the community and prevent recurring antisocial behavior and emphasizes the need for the judiciary to play a greater role. Current briefs in this series from the Executive Sessions on Sentencing and Corrections focus on the emergence of “technocorrections,” the drug court approach and its evolution, and the “parallel universe” approach to prison management. This document is available electronically at <http://www.ncjrs.org> or contact the National Criminal Justice Reference Service at 800-851-3420.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 209, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Law Enforcement and the Holocaust

By WILLIAM McCORMACK



Law enforcement agencies in the Washington, D.C., metropolitan area recently have begun a training program drawing upon the U.S. Holocaust Memorial Museum as a resource to explore a variety of issues relevant to law enforcement today.¹ This program, cosponsored by the Anti-Defamation League, has provided law enforcement officers with a unique opportunity to witness the dangers and horrors that can occur when law enforcement abdicates its role as a protector of citizens'

liberties and rights and, ultimately, becomes a tool of a government involved in a systematic genocidal program. As a result of the success of this program, the museum also has instituted other educational programs for law enforcement officers, such as traveling exhibits from the museum that move to various cities within the United States.²

History

The U.S. Holocaust Memorial Museum, chartered by a unanimous Act of Congress in 1980 and opened

in 1993, is America's national institution for the documentation, study, and interpretation of Holocaust history. The public's response to and interest in the museum, which annually hosts over 2 million visitors to its permanent exhibits in Washington, D.C., has surpassed the expectations of those involved in its planning.

The museum's collaboration with law enforcement began in 1999 when the chief of the Washington, D.C., Metropolitan Police Department began using the

museum as a learning resource and tool for his agency. Since then, many Washington, D.C.-area law enforcement agencies, including the FBI, have incorporated a tour of the museum as a regular part of recruit training. In addition, law enforcement in-service training programs and the FBI National Academy have integrated tours and subsequent discussions about the Holocaust into ethics and other general police training.

The permanent exhibit at the museum provides a unique opportunity to experience images and artifacts dating from the period 1933 to 1945. The museum's exhibits include displays and videos on the Nazi's rise to power; Nazi programs and policies to control and manipulate the German people; Nazi schemes to create a master race; Nazi persecution of Jews, Romas (Gypsies), Jehovah's Witnesses, homosexuals, and political opponents; and the "Final Solution" (the systematic extermination of Jews in Nazi-controlled territory). Also, the museum's displays and videos provide insight into individual stories of Holocaust victims and rescuers and events at the end of World War II in Europe, such as the Nuremberg trials of accused Nazi war criminals.

Contemporary Implications

Material prepared by the museum staff and distributed to law enforcement officers provides interesting information concerning the state of law enforcement in Germany prior to the Nazi assumption of power and the eventual involvement of German police in Nazi programs and policies. The material

also includes explanations on how the Nazis assumed control of local and state police and integrated them into the Nazi's plans to control all aspects of German society.

Because Nazi programs were so extensive, they necessarily involved the control and use of German law enforcement authorities. However, it is often noted during tours that individuals from all professions in Germany played a role in supporting and furthering Nazi goals, including teachers, doctors, and judges. For example, doctors and scientists helped eliminate undesirables in society through euthanasia. This primarily involved killing individuals with mental and physical handicaps. Also, scientists and researchers assisted in programs to create a master race through the use of eugenics and the promotion of selective breeding.

Because Nazi programs were carried out by a modern technologically advanced society, it is interesting to compare and contrast the

activities of German law enforcement in the 1930s and 1940s and challenges facing American law enforcement officials today. For instance, the German police suffered from budgetary restraints during the Weimar Republic, the government prior to the Nazi assumption of power. Funding was cut for hiring, training, promotions, and raises, and the police had little money for such items as new forensic equipment and firearms.

The economic distress of the Weimar Republic contributed to a rapid increase in crime and organized criminal activity. Restrictions on law enforcement authority frustrated the police. The courts dismissed some criminal cases because the police failed to safeguard the rights of the accused. The emergence of a free press highly critical of police operations exacerbated these failures. Public criticism fostered a siege mentality among the police, who resented that the public blamed them when constitutional

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A visit to the museum raises many questions for today's law enforcement officer.

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restraints and lack of funding tied their hands. These challenges and obstacles facing the police in the Weimar Republic may seem comparable to similar ones facing police today in the United States.

When the Nazis came to power in 1933, many police remained skeptical of the Nazis because the Nazis previously had been investigated and jailed as agitators by the government. Nevertheless, Hitler posed as a champion of law and order and many police looked forward to the extension of police power promised by a strong, centralized state. Indeed, the Nazis did extend police power and alleviated many of the frustrations the police experienced in the Weimar Republic. The parallels between the plight of police in the Weimar Republic and issues facing police today lends particular relevance to the actions of German police after the Nazis assumed power. The Nazis eventually incorporated the professional

police into Nazi programs to repress political opposition and to discriminate against groups, such as the Jews.

The material distributed to law enforcement officers visiting the museum includes descriptions of various German police practices after the Nazi assumption of power. One practice, called “preventative police arrest,” was used against repeat criminal violators, persons whose antisocial behavior constituted a public danger, and persons who refused to identify or falsely identified themselves in an attempt to hide previous criminal acts. Individuals under “preventative police arrest” had no lawyer and no trial. They could be interned directly in concentration camps for a period determined by police.

In addition, “protective detention” or protective custody, allowed the police to indefinitely incarcerate people without specific charges and bring to trial persons deemed to

be potentially dangerous to the security of Nazi Germany. Some law enforcement officials see comparisons between these practices and aggressive law enforcement tactics used today, such as zero tolerance policies targeted toward gangs or vagrants. In addition, many individuals may see parallels to events in U.S. history, such as the U.S. government’s internment of Americans of Japanese ethnic origin during World War II or other national security measures directed at various ethnic groups in the United States during periods of international conflict.

The Holocaust Memorial Museum also serves as a learning tool to help understand the role the United States plays today in helping to maintain democracy and to preserve human rights around the world. A series of computer programs and other displays in the museum explore American responses to events in Germany from 1933 to 1945. American newspapers from this period described the increasing deprivation of civil rights experienced by Jews. For example, *Kristalnacht* (night of broken glass), which included the looting and burning of Jewish synagogues and businesses in 1938 by the Nazis, appeared on the front pages of American newspapers at that time.

These exhibits indicate that many people in the United States were aware that the Nazis increasingly were depriving the Jews of their civil rights. The failure of the United States and other countries to intervene in Germany in 1938 serves as an example of what can happen when countries neglect to take action against other countries



involved in serious violations of basic human rights. These exhibits may assist in understanding why the United States has assumed the role of “the police officer of the world.”

The museum’s exhibits also portray the refusal of the U.S. government to increase immigration quotas during the period 1933 to 1945. This includes a display concerning the tragic voyage of the passenger ship *Saint Louis*, which sailed from Europe to Cuba with almost 1,000 Jewish passengers seeking refuge from Nazi Germany. Ultimately, Cuba refused to allow the ship’s passengers to enter. Then, the ship sailed close to Miami, but the U.S. Coast Guard enforced U.S. policy by preventing anyone from jumping off the ship to freedom or allowing the ship to dock in the United States. Forced to sail back to Europe, many of the passengers subsequently died in the Holocaust. Law enforcement can use these exhibits to explore current U.S. immigration policies with respect to the immigration of individuals fleeing political, religious, or ethnic repression in other countries.

Moral Courage

Through the exhibits and stories of those involved in the events in Germany from 1933 to 1945, visitors to the museum learn that individuals in Germany, including law enforcement officials, reacted in a variety of ways. Commonly, police and other Germans either actively or passively participated and supported Nazi policies. However, the museum also portrays many stories of moral courage.

The museum distributes short biographies of three law enforcement officials, which typify individual responses to Nazi policies. Two of the biographies portray the majority of law enforcement officers who went along with the Nazi policies. One officer played a role in the “Final Solution” and the T4 medical killing program (euthanasia of individuals with handicaps). The other commanded mobile killing units responsible for the deaths of over 45,000 people.

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However, the biography of Swiss law enforcement officer, Paul Ernst Grueninger describes how he defied Swiss law concerning the immigration of Jews into Switzerland by falsifying reports and backdating passport stamps. He allowed 2,000 to 4,000 people to enter Switzerland in violation of Swiss law. As a result, Grueninger saved the lives of many of the Jews he allowed to illegally immigrate into Switzerland.

Grueninger was a 20-year veteran of Swiss government service. Nevertheless, because of his violation of Swiss law, Grueninger was prosecuted, convicted, and

dismissed from his job. He lost his pension and other government benefits as well. The difficult ethical and moral dilemma posed by Grueninger’s story includes the issue of whether laws or lawful and constitutional orders ever should be violated for a higher moral purpose.

Many of the exhibits in the museum detail individual stories of Holocaust rescuers and victims. These include exhibits about such people as Oscar Schindler, Raoul Wallenberg, Dietrich Bonhoeffer, and Anne Frank. Clearly, each participant in the events surrounding the Nazi rise to power, World War II, and the Holocaust faced a unique set of moral and ethical challenges. In many instances, such as with Paul Ernst Grueninger, decades passed before the public recognized and celebrated the moral courage of rescuers.

After Grueninger’s conviction and dismissal from Swiss government service in 1939, he had difficulty finding employment and worked various odd jobs for the rest of his life. The Yad Vashem Remembrance Authority in Jerusalem recognized him as “Righteous Among the Nations” in 1971, and he died in 1972. A court in Switzerland reviewed and overturned Grueninger’s conviction in 1995.

Conclusion

Several displays and films at the U.S. Holocaust Memorial Museum show scenes American soldiers encountered as they stumbled upon some of the concentration and death camps during the liberation of Europe from Nazi control. These images remind museum visitors of

U.S. soldiers' heroism, but also serve as a testament to the horror of the Holocaust. Many visitors leave with a renewed resolve that nothing like this ever will be allowed to occur again.

In an April 2, 2000, speech, the chief of the Washington, D.C., Metropolitan Police Department summarized one of the overriding questions that should haunt any law enforcement officer who visits the museum: "Where were the police? Where were the police when libraries were being looted and books burned? When Jewish businesses were being illegally targeted? When people were being classified and publicly harassed and,

ultimately, imprisoned and slaughtered? Where were the police?"

A visit to the museum raises many questions for today's law enforcement officer. Officers who witness the inhumanity displayed in graphic and vivid detail in the museum's exhibits leave with a deepened commitment to continually question the moral quality of their policing. However, many law enforcement officers also leave realizing that the question, "What would I have done?" is not a simple or easy one to answer. Ultimately, after visiting the museum, law enforcement officers have a deeper understanding and insight into law enforcement's role in society,

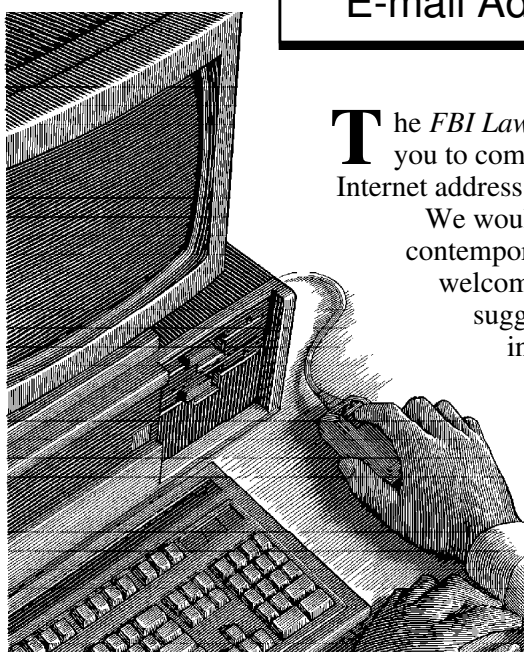
which must include a duty to prevent and detect crime, as well as an uncompromising commitment to protect citizens' human dignity and rights. ♦

Endnotes

¹ Material and information contained in this article were provided by the U.S. Holocaust Memorial Museum in Washington, DC. This includes written material prepared by museum historians, which is distributed to law enforcement visitors, material on display at the museum's permanent exhibit in Washington, DC, and material from the museum's Web site at <http://www.ushmm.org>.

² For further information on the traveling exhibits and other educational programs, law enforcement officials may contact Andres Abril at the museum in Washington, DC, telephone number 202-488-0420.

The *Bulletin's* E-mail Address



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

Closing the Recruitment Gap A Symposium's Findings

By Gary Vest, M.P.A.

While other factors may play a role, a booming economy and a low unemployment rate often constitute initial responses to a law enforcement agency's question of why it is receiving fewer applicants. Recruitment stands as a serious problem for agencies of all sizes throughout the United States. Although many agencies recognize the problem, they do not seem able to find a simple solution.

To this end, the 205th session of the FBI National Academy¹ held a symposium on recruitment. The participants selected the symposium format over the lecture-based structure because a symposium assumes that while the answers are not always clearly defined, the participants represent a valuable resource for exchanging ideas and sharing experiences on various aspects of a particular topic.

The 205th session was comprised of 264 command staff officers representing agencies from the United States and 24 other countries. Five separate breakout groups worked on different questions related to the issue of recruitment. The questions addressed many diverse issues, such as the amount of technology used by an agency, the traditional application process, and the size of the agency. With this last area in mind and because the participants came from agencies that differed widely in employee strength and jurisdiction coverage, each group separated, when appropriate, any response that might be different for a large agency versus a small agency. For the purpose of data collection, the two agency-size groups were those with fewer than 150 sworn officers and those with 150 or more sworn officers.

Overall, the participants felt that an effective recruitment initiative should seek to align a candidate's personal profile with that of the organization, including the psychological profiling of candidates to assess their personal desires with agency opportunities and community needs. An applicant should know what to expect from the agency. The

agency should consider its needs and determine what will attract qualified employees. Symposium participants discovered that, although responses are likely to differ from one agency to another, every agency's goal remains the same: to match the applicant's skills and desires with the agency's needs and culture.

Applicant Expectations

When asked to rank the top five items that new employees want, symposium participants responded with: 1) salary, 2) benefits (leave time, medical coverage, and retirement), 3) job security, 4) career development (specialization and promotion), and 5) job satisfaction (pride, excitement, and community). However, participants from larger agencies indicated that job security; personal growth opportunities; and pay, benefits, and retirement coverage represented the most important factors. Whereas, smaller agencies listed job satisfaction, work hours, city location, family atmosphere, quality-of-life issues, and type of work as important. Participants from the smaller agencies did not all agree that pay, benefits, and retirement options were the top motivating factors. Yet, not having a competitive salary can devastate an agency's recruitment program. The agency should attempt to compensate for low wages by accentuating training or other nonwage benefits. Many participants considered attractive work schedules and take-home cars as desirable benefits. Usually, when the salary is

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Police Department.*



competitive with other comparable agencies, then nontangible concerns become more important. For example, officers in a smaller agency may feel that they have a greater opportunity to make a difference in the organization. Smaller agencies have diversification of assignments, opportunity for training, and, often, a better quality of life. On the other hand, large departments may offer a greater variety of career options, more opportunities for advancement, and an increasingly diverse work environment.

Along with the top five items, symposium participants also said that a healthy work environment is important. Adequate staffing levels; fairness; friendly, two-way communication up and down the chain of command; supportive supervisors and managers; consistent work environment; adequate budget to provide resources; continual training and educational incentives; and career development programs constitute a healthy work environment. Participants agreed that a place where people want to work fosters a sense of camaraderie and encourages growth, where everyone works for a common goal.

Employees desire an environment where the upper echelon remains open to change and receptive to the ideas of subordinates, regardless of rank or status. Employees want to take ownership in the organization. Large numbers of agencies have shifted toward community-oriented policing (COP) or problem-oriented policing (POP). By its nature, this role modification from traditional law enforcement necessarily requires officers to become more interactive and communicative.

Finally, participants noted that people entering the law enforcement profession possess a diverse range of backgrounds. Some participants suggested that distinct differences exist between generations within the workforce. Generally, most agreed that officers often perceive value differences between the generations. For example, veteran officers thought that Generation X individuals² question authority, want more benefits, and desire more variety in work assignments. They appear more interested in personal

life than work. Some participants said, “They don’t want to pay their dues; they want things now.” Some participants from smaller agencies indicated that those in Generation X appear less interested in promotion.

The international participants had fewer concerns with Generation X employees than did their U.S. counterparts. Some participants felt that the Generation X issues appear over generalized, instead of a basic human reaction of people discounting those that they do not understand. However, with the advent of COP and POP, many agencies have shifted their service style to meet the diverse needs of their communities, which often reflect a broad cross section of generational differences and require officers to

understand the values of individuals from various age groups.

Agency Requirements

Symposium participants felt that the law enforcement profession needs intelligent, not just educated, officers who can solve problems and accept racial and cultural diversity. In short, agencies prefer smarter over tougher. Law enforcement is moving away from the “big tough cops” in favor of candidates,

regardless of size, who possess qualities that mirror the tenets of the COP and POP philosophies. Also, more and more, communities want service-oriented people with interpersonal skills as their guardians of justice. While participants recognized that the profession still attracts adventure seekers, they compiled the following attributes, or core values, desired of a law enforcement officer: adaptable, analytical, communicative, compassionate, courageous (both physically and morally), culturally sensitive, decisive, disciplined, ethical, goal oriented, incorruptible, mature, responsible, and self-motivated. In general, participants felt that agencies expect officers to have good interpersonal and communication skills, as well as sales and marketing abilities. They thought that officers should be adaptable to change, desire continued learning, and possess the ability to become either a generalist or a specialist or, at times, both.

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In addition to education, participants considered that technology may influence the recruitment effort....
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Law enforcement candidates must be prepared to work in a rapidly evolving environment. As communities face the transient issues of globalization, immigration, and language barriers, law enforcement officers increasingly will see more diverse opinions from within the community as this globalization spreads. Language and generation barriers continue to challenge law enforcement. Agencies must develop methods of bridging trust among the diverse groups that they will serve in the future. Law enforcement agencies may need to employ bilingual officers, interpreters, and computer translation programs to communicate, along with recruiting immigrants. Officers also must learn about cultural issues, such as ethnic holidays, traditions, and customs.

Symposium participants also felt that the profession needs officers from diverse educational backgrounds, not just criminal justice majors. Agencies should recruit or network with community planners, engineers, social scientists, and educators. Some thought that knowledge of community planning and foreign studies may have greater value than criminal justice course work. Many current law enforcement officers maintain the argument that “common sense” is needed more than a college education as a valid prerequisite for a law enforcement position. Generally, participants from larger agencies favored a 4-year college degree requirement. Others took the position that higher education is preferred but not required. If a college education is not a prerequisite, then participants said that agencies should consider educational incentives, such as tuition reimbursement and flexible work schedules, to encourage continued education and emphasize the value that they place on advanced learning.

In addition to education, participants considered that technology may influence the recruitment effort, depending on an applicant’s personal interests. Some applicants may be attracted to an agency that has the latest technology, while others may avoid an agency for the same reason. Several participants suggested

that when agencies consider technical skills as important, they could use the Internet as a tool for attracting those candidates more likely to embrace technology.

Finally, participants believed that COP and POP have raised community expectations of law enforcement to provide nontraditional service. Agencies embracing these strategies expect their personnel to become more involved on an individual basis, take

ownership of the problem, and work with others toward solutions. COP and POP require individuals to possess interpersonal skills and remain open to people who may disagree or have different opinions. Some participants noted that it may prove unreasonable to expect law enforcement officers to remain open and receptive to community needs if *their* needs are not recognized. Recruitment is an agency’s first opportunity

to introduce its philosophy toward service commitment. The COP and POP philosophies need to begin with the prospective employee.

Recruitment Challenges

After examining applicant expectations and agency requirements, symposium participants discussed what agencies can do to better align the recruitment process with their future needs. They felt that an agency should inform potential employees early in the application process of its vision and what applicants can expect if hired. Also, an agency must recognize that some applicants simply may not match its mission and needs, and the sooner the agency and the applicants discover this, the better.

According to symposium participants, large and small agencies appear to search for “good people” the same way. Many participants thought that an agency can attract quality candidates through current employees who say that it is a good place to work and demonstrate an outward sign of *esprit de corps*. Employees can act as cheerleaders for the agency by their attitude and demeanor. Also, the appearance of the officers, buildings, grounds, and vehicles reflect

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the agency's image. If an agency has a positive image, those outside the agency may perceive it as a good place to work. Likewise, the agency's reputation greatly influences the recruitment effort. For example, qualities, such as fairness and a high priority on training, can help attract qualified applicants. A lack of applications should prompt an agency to conduct a self-assessment to determine if its image and reputation represent it correctly.

Participants also decided that the recruitment process itself can help or hinder agencies gain high-caliber individuals. They thought that agencies should encourage their employees to actively recruit candidates by offering hiring incentives. They also felt that agencies should consider offering applicants a hiring bonus, paying their moving expenses, or providing other incentives. Participants noted that agencies should start early in school programs by drawing positive attention to themselves and the profession. Agencies should recruit from community colleges and universities and should consider hiring students for nonsworn jobs to introduce them to the law enforcement profession. Participants discussed additional potential resources for recruitment, including other criminal justice agencies, the military, police reserves, religious organizations, and schools, as well as job fairs and civic, social, and athletic events.

Participants agreed that requisite skills for entry-level law enforcement positions have changed in the past decade and that the application process should reflect this change. Participants from both large and small agencies thought that agencies should streamline the application process to make hiring faster and easier.³ The lengthy application process that most agencies use hinders the recruitment effort. Applicants want to be treated individually, not like a number. Highly bureaucratic recruitment processes are not likely to attract applicants who possess the desired skills that agencies need.

The participants did not give a clear indication whether the recruitment process should attempt to have generation-specific strategies. They felt that agencies need to promote themselves and develop a relationship that facilitates a better product or service to the public and, in turn, draws the public to law enforcement as a profession. Agencies need to attract people with integrity, ethics, and personal initiative.

Symposium participants also considered the issues of lateral entry and retention. Lateral entry brought mixed feelings and differing opinions. Generally, less opposition to lateral recruitment existed for entry-level and top positions. Participants expressed concern that first-line supervision and middle management positions should be an entitlement of current employees and not available for lateral entry.

Moreover, some agencies that have recruited extensively from other parts of the country have experienced a retention problem, with individuals growing homesick and wanting to return.

On the issue of retaining personnel, participants felt that employees in a healthy work environment tend to want to stay, which creates fewer vacancies and places a higher value on each new opportunity for employment.

On the other hand, high turnover

may result in negative consequences, such as increased overtime. High turnover also may cause agencies to prioritize existing programs and eliminate some due to personnel shortages. In addition, participants agreed that high turnover reduces the experience level on the street, thereby requiring more supervision. Relatively inexperienced officers begin training new officers. The lack of qualified people to replace senior positions has a negative impact on the command structure. In short, the overall skill level of the agency decreases. Participants stated that some agencies have field training officers (FTO) just off probation teaching new employees. Many departments have FTOs with fewer than 2 years of experience. This creates instability at the base of the

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...the participants felt that an effective recruitment initiative should seek to align a candidate's personal profile with that of the organization....

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organization. Not only do agencies need to recruit good people but they also need to keep them.

Conclusion

The 205th session of the FBI National Academy took on the challenge of improving the recruitment process, a difficulty faced by most agencies. The session used the symposium structure so as not to feed the participants' answers. Rather, such a format enabled the participants to exchange, in a professional dialogue, their ideas about the issues that impact recruitment.

The symposium participants defined many aspects that contribute to a successful recruitment effort. Mainly, they agreed that individuals interested in a career in law enforcement must match their skills and desires with an agency's needs and culture. Agencies, in turn, must examine their requirements

and recruit those individuals possessing specific abilities. Such a two-way effort can help close the recruitment gap and garner the law enforcement community valuable, goal-oriented employees who will serve and protect the public for many years. ♦

Endnotes

¹ The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects and conduct academic research on a variety of related topics.

² Some experts place the age range as those born during the years 1961 through 1981, while others say between the years 1966 and 1976. For additional information see, Kim Charrier, "Marketing Strategies for Attracting and Retaining Generation X Police Officers," *The Police Chief*, December 2000, 45-51; and Elizabeth Foley and Adrienne LeFevre, "Understanding Generation X," *Trial*, June 2000, 58-62, <http://proquest.umi.com/pdqweb>, accessed May 5, 2001.

³ For additional information on speeding the hiring process, see Floyd S. Hulsey and Maureen Goodwin, "Fast Track Application Process Speeds Hiring," *FBI Law Enforcement Bulletin*, June 2001, 5-8.

Crime Data

Law Enforcement Officers Killed in the Line of Duty, 2000

According to preliminary statistics released by the FBI, 51 law enforcement officers were killed feloniously in the line of duty in 2000. This represents an increase of 9 from the 1999 total of 42. Fifty separate incidents account for the 51 officer deaths in 2000. Law enforcement agencies have cleared 48 of these incidents by arrest or exceptional means. Two suspects remain at large.

During 2000, firearms were again the weapon most often used in the slaying of officers with 33 officers slain with handguns, 10 with rifles, and 4 with shotguns. Two officers were slain with their own weapons. Additionally, 3 officers were killed by vehicles, and 1 officer was killed with a knife. Thirty officers were wearing body armor at the time of their deaths.

Twelve officers lost their lives in arrest situations: 6 were serving arrest warrants; 3 were

investigating drug-related situations; 2 were trying to prevent robberies or apprehend robbery suspects; and 1 was handling a burglary. Another 13 officers were murdered while enforcing traffic laws, 10 while encountering ambush situations, 8 while answering disturbance calls, 6 while investigating suspicious persons or circumstances, and 2 while handling prisoners.

Additionally, preliminary statistics indicate that 83 officers were killed accidentally in the performance of their duties in 2000, an increase of 18 compared to the 65 accidental deaths in 1999.

For the complete preliminary annual Uniform Crime Report press release, access the FBI's Web site at <http://www.fbi.gov>. Final statistics and complete details will be published in the forthcoming *Law Enforcement Officers Killed and Assaulted, 2000*.

Institutional Integrity

The Four Elements of Self-Policing

By JOHN H. CONDITT, Jr.



Faced with allegations of systemic corruption, a law enforcement organization must undertake the daunting task of rebuilding its institutional integrity, not only within the ranks of its officers but also in the eyes of the citizens it serves. In such a situation, the organization will undoubtedly perform a critical review of its self-policing process. What went wrong? What fixes are possible? How could it have been prevented in the first place? Maintaining a high level of institutional integrity represents the key to preventing corruption within any organization. Law enforcement officials must understand how institutional integrity

interrelates with the concept of self-policing.

Citizens bestow great power and authority upon their law enforcement organizations. They expect and deserve accountability from their law enforcement public servants and demand that these organizations display a high degree of institutional integrity. Because of this, the law enforcement community remains particularly sensitive to acts of employee misconduct.

Traditionally, law enforcement organizations have addressed employee misconduct through the concept of self-policing and have encountered a myriad of legal, contractual, and social issues.

Differences in local and state regulations and the existence of internal factors, such as collective bargaining contracts, hinder the development of a standard model for self-policing that would work for every department. Consequently, internal disciplinary programs vary greatly throughout the law enforcement community.

Although the self-policing process differs in every department, all internal disciplinary programs share four common elements: establishing a code of conduct; conducting internal investigations; adjudicating misconduct; and reporting on the disciplinary process.¹ Agencies should examine how these four

elements interrelate and why they should manage them to help improve the institutional integrity of their departments. Conversely, the neglect or mismanagement of these elements can have serious consequences.

THE CODE OF CONDUCT

Every organization has an official, or formal, code of conduct that sets forth the responsibilities of its employees and the rules and regulations governing employee conduct. Likewise, every department has an informal code of conduct that influences employee behavior. The formal and informal codes of conduct combine to form the institutional integrity of the organization.

The Formal Code of Conduct

An organization's formal code of conduct consists of official policy, procedures, and applicable statutes and regulations. Employees learn about these official standards in training academies and continuing education courses.

In today's environment, most law enforcement personnel receive normal ethics training as part of their indoctrination into the formal code of conduct. For example, the FBI provides 16 classroom hours of ethics instruction as part of its 16-week training academy for new agents.² Similarly, new officer recruits in the Dallas, Texas, Police Department receive 8 hours of ethics instruction during their academy training.³

Indoctrination into the formal code of conduct, including ethics training, provides employees with a foundation of acceptable behavior. Additionally, it informs employees

of what administrators expect in the conduct of their professional lives. Law enforcement agencies enforce compliance with the official code of conduct through a formal disciplinary process.

The Informal Code of Conduct

The informal code of conduct is an organization's unwritten, generally accepted, standard of conduct. This standard represents the level of acceptable conduct that employees demand of themselves and their fellow employees. Because of its strong impact on institutional integrity, every department should strive to keep the informal code of conduct in line with the official code of conduct.

Eight to 16 hours of formal ethics training pales in comparison to the amount of time an employee will spend becoming indoctrinated into an organization's informal code of conduct. After completing

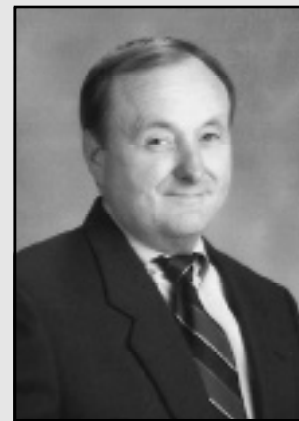
formal training and continuing throughout their career, employees learn the informal code by spending 8 to 10 hours each day interacting with peers and observing their behavior. Peer pressure, which, for many years, has been recognized as one of the strongest elements influencing behavior within an organization, enforces the unwritten code of conduct.⁴

Law enforcement managers should realize the impact that the informal code of conduct has on an organization—an out-of-control informal code of conduct can have severe consequences. Agencies can trace incidents of systemic corruption directly to problems with that organization's informal code of conduct. Even a relatively small number of employees with an undesirable informal code of conduct can affect institutional integrity adversely. The allegation of corruption in the Rampart area of Los

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***...departments
must apply
discipline in a fair
and reasonable
manner...***

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Mr. Conditt, former chief of the FBI's Internal Investigative Unit 1 in the Office of Professional Responsibility, now heads a private consulting and investigative company in the Dallas-Fort Worth, Texas, area.

Angeles, California, is a striking example. The Los Angeles Police Department's (LAPD) board of inquiry into the Rampart area corruption incident declared that the scandal had "devastated our relationship with the public we serve and threatened the integrity of our entire criminal justice system."⁵

Hiring ethical and trustworthy individuals constitutes the essential first step toward establishing an acceptable informal code of conduct. The LAPD board of inquiry into the Rampart incident cited a failure to adhere to this principle as a contributing factor in the alleged corruption within that division. The inquiry determined that employees involved in the scandal had been hired in spite of their criminal records, histories of violence, narcotics involvement, and other factors that should have precluded their employment as police officers.⁶

Periodic ethics refresher training can help organizations maintain a desirable informal code of conduct. Many departments now require such training of their personnel. The Dallas Police Department, for example, provides refresher ethics instruction as part of the required annual recertification training.⁷ Some agencies require additional ethics training for supervisors and for personnel involved in financial management and procurement processes.

Despite careful hiring procedures and formal ethics training programs, some employees still will become subjects of misconduct allegations. When managers learn of such allegations, the formal process of an internal investigation begins.

INTERNAL INVESTIGATIONS

The purpose of an internal investigation is to review allegations of employee misconduct and determine the facts of the case. The manner in which a department conducts its internal investigations has a great impact on the informal code of conduct of its employees. To achieve a favorable impact, employees must perceive the internal investigation process as fair and impartial. Equal treatment of all employees is fundamental to the concept of fairness; therefore, all allegations of employee misconduct should receive the same review

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...the law enforcement community remains particularly sensitive to acts of employee misconduct.

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process. The executive summary of the Rampart incident report emphasized this maxim by concluding that LAPD's board of inquiry determined a strong perception of a dual disciplinary standard within the department, one for captains and above and another for lieutenants and below.⁸

In the FBI, two internal investigative units within the Office of Professional Responsibility (OPR) conduct internal investigations. Identical in organization, each unit oversees one-half of the FBI's field

offices and headquarters divisions. FBI policy requires that these investigative units receive all allegations of employee misconduct. Unit managers review each allegation and decide if it warrants an investigation. This ensures that an employee accused of an act of misconduct in New York receives the same treatment as an employee accused of the same misconduct in California.

Assigning the case to an investigator with no potential conflict of interest and no supervisory responsibility over the employee under investigation ensures impartiality. The internal investigator should have equal or greater rank than the person they interview. This reduces the possibility of rank influencing the results of the investigation, as well as the potential for retaliation against the investigator.

Timeliness also impacts on the fairness of an investigation and is important to the employee under internal investigation, as well as to the public. Both have the right to expeditious handling of the investigation. The FBI operates under a 180-day deadline for the completion of all internal inquiries, beginning with the receipt of the allegation and ending when the case becomes adjudicated. The head of OPR, the highest ranking disciplinary official in the FBI, personally must approve the continuation of an investigation past the 180-day deadline.

Additionally, thoroughness is vitally important to the internal investigative process. Investigators experienced in handling complex, sensitive matters should conduct internal investigations. Many departments and agencies, including the FBI, assign internal investigations

to management personnel and consider such assignments an essential component in their professional development.

To further assure thoroughness in its internal investigations, the FBI requires that managers conduct periodic file reviews for every case. When the investigation is complete, managers review the case again to decide whether to close the case as unfounded or refer it to the next element—adjudication.

THE ADJUDICATION PROCESS

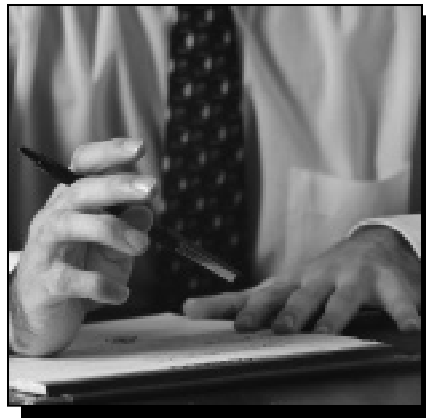
A case is ready for adjudication when management completes all investigative steps and thoroughly compiles all facts of an allegation. Some departments use a review board to adjudicate employee misconduct, and others rely on a senior official to make the decision. Regardless of the makeup of its adjudication process, every department adheres essentially to the same method—it compares the act of employee misconduct to prohibited behavior outlined in the official code of conduct and imposes suitable discipline.

The manner in which agencies adjudicate internal investigations can have a significant impact on the informal code of conduct within an organization. To achieve a favorable impact, departments must apply discipline in a fair and reasonable manner by imposing discipline similar to what they applied previously for the same misconduct.

The two adjudication units within the FBI's OPR use teams of attorneys and specially trained employees to review investigations and apply disciplinary precedent to

each case. The FBI maintains a computerized database of all discipline imposed on employees dating back to 1997 and reviews this historic record, or precedent base, for incidents that most closely match the current case. The FBI compares and contrasts the case with the historic precedent and administers discipline accordingly, which ensures that an employee who receives punishment in New York receives the same penalty for the same offense as an employee in California. Such a disciplinary database should remain relatively recent to keep the disciplinary precedent up-to-date with current policy, but it also should contain enough cases to cover a broad range of disciplinary precedent.

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The FBI's disciplinary process divides internal investigations into two broad categories of serious and nonserious misconduct. The level of discipline imposed for nonserious misconduct ranges from an oral reprimand to a maximum of 14 days of suspension without pay. Discipline for serious misconduct ranges from 15 days of suspension

without pay up to, and including, dismissal.

A critical component of adjudication is the appellate process. To ensure impartiality and fairness, employees should have the right to appeal certain levels of discipline. Similar to the U.S. judicial system, individuals can appeal to an authority who has the power to overturn a disciplinary finding. In the FBI, nonprobationary employees have the right to appeal discipline greater than a letter of censure to an appellate official within the FBI. The appellate official has the authority to overturn or reduce imposed discipline. Unlike the U.S. judicial system, however, the appellate official also has the authority to increase the level of discipline imposed by OPR. Once a case has been adjudicated completely, the disciplinary process reaches the fourth and final element.

THE REPORTING PROCESS

The reporting process constitutes the last stage of the self-policing process. Every organization has formal and informal means of communicating information,⁹ which also includes knowledge regarding a department's disciplinary process. Formal reporting methods consist of the official documents and notifications prepared by the department. Employees, and sometimes the public, generate reporting methods to fill the informational void left when the formal method is less than timely or fails to satisfy their interest.

The simplest formal reporting procedure involves notifying the subject employee of an investigation's results. At times,

this may occur only when the agency imposes final disciplinary action on the employee. However, relying solely on this form of reporting deprives a department of valuable opportunities to increase overall employee awareness of the standard of conduct expected of them. Furthermore, the department loses the opportunity to display openness and accountability concerning its internal affairs.

Some agencies, including the FBI, issue formal yearly reports on their disciplinary process. In June 2000, the FBI published its latest disciplinary program report, a comprehensive overview, for fiscal year 1999. The FBI prepares this report to increase the awareness of the standards of conduct expected of all of its employees. The report uses narratives and statistics to describe the FBI's disciplinary program, and it contains general information, such as an organizational chart of OPR, as well as specific statistical data on the results of all internal investigations conducted during that fiscal year. Additionally, the report includes recent policy guidance and information on current developments within the FBI's disciplinary program.¹⁰

Organizations must protect the privacy of employees subjected to the disciplinary process. However, agencies should not use privacy restrictions as an excuse for not having a comprehensive reporting program. Formal reports containing brief and generic descriptions of adjudicated misconduct can provide valuable guidance to employees and favorably impact the informal code of conduct in the organization.

Absent a comprehensive formal reporting and feedback procedure, employees will have to rely on the informal process. An organization has little, if any, control over the content and accuracy of information flowing through the informal reporting process.

CONCLUSION

Law enforcement officials should welcome constructive comments and suggestions that can improve the institutional integrity of their departments. Each agency operates in a unique environment; therefore, various methods of self-policing may work for different departments. However, an awareness

**“...thoroughness
is vitally important
to the internal
investigative process.”**

of the four elements of the self-policing process may help improve a department's disciplinary program and, thereby, strengthen the institutional integrity of the organization.

The FBI's Office of Professional Responsibility concluded its fiscal year 1998 disciplinary report with a message concerning the core values of the FBI. Although specifically directed toward FBI employees, the message can apply to all law enforcement agencies. Core values include uncompromising personal and institutional integrity.

Individuals who enforce the laws also must obey them, and they have an obligation to set a moral example for others to follow. A strong institutional integrity results from both an organizational culture that addresses and disciplines wrongdoing, as well as from its employees who actively support the task of fairly and expeditiously identifying and punishing misconduct within its ranks.¹¹ ♦

Endnotes

¹ The author developed his theory on the four elements of the self-policing process through his experience as a police officer and as an FBI special agent, including his assignment in the FBI's disciplinary program as chief of the FBI's Internal Investigative Unit 1, Office of Professional Responsibility.

² Michael A. DeFeo, Office of Professional Responsibility, FBI, interview by author, September 2000.

³ Steve Otto, director of training, Dallas, Texas, Police Department, interview by author, September 2000.

⁴ James L. Gibson, John M. Ivancevich, and James H. Donnelly, Jr., *Organizations—Behavior—Structure—Processes*, 8th ed. (Burr Ridge, IL: Irwin, 1994), 320-323.

⁵ Bernard C. Parks, *Los Angeles Police Department Board of Inquiry into the Rampart Area Corruption Incident, Executive Summary* (Los Angeles, CA: Los Angeles Police Department, 2000), 3; http://www.lapdonline.org/pdf_files/boi/boi_exec_summary.pdf; accessed January 26, 2001.

⁶ *Ibid.*, 4-5.

⁷ *Supra* note 3.

⁸ *Supra* note 5, 11.

⁹ Paul Hersey, Kenneth H. Blanchard, and Dewey E. Johnson, *Management of Organizational Behavior*, 7th ed. (New York, NY: Prentice Hall, 1996), 352.

¹⁰ U.S. Department of Justice, Federal Bureau of Investigation, *Fiscal Year 1999 Report, Office of Professional Responsibility* (Washington, DC, 2000), 25-26.

¹¹ U.S. Department of Justice, Federal Bureau of Investigation, *Fiscal Year 1998 Report, Office of Professional Responsibility*, (Washington, DC, 1999), 25.



Cadaver Dog Handbook: Forensic Training and Tactics for the Recovery of Human Remains by Andrew Rebmann, Edward David, and Marcella Sorg, published by CRC Press, New York, New York, 2000.

Every investigator should own the *Cadaver Dog Handbook*. The three authors bring with them an extensive amount of forensic training and experience. Rebmann, an experienced handler/trainer, has participated in over 1,000 searches. David, a medical examiner, holds both an M.D. and a Juris Doctorate. Sorg, a forensic anthropologist, holds a Ph.D. This vast range of expertise provides the reader with a unique view of the application of canines for the detection of human remains.

Divided into 10 chapters, the book "adopts an interdisciplinary approach, which renders the text useful to virtually all participants in the search for and the evaluation of human remains." Chapters 1 and 2 examine the history of cadaver dogs and explain the basis of how canines use scent, which proves valuable for handlers of any type of service dog.

Chapters 3 and 4 explain the methods of training a cadaver dog and the handling and use of training aids. Chapters 5 and 6 take a critical look at professional standards and legal issues, including the importance of proper methods for record keeping, court testimony, and qualifying

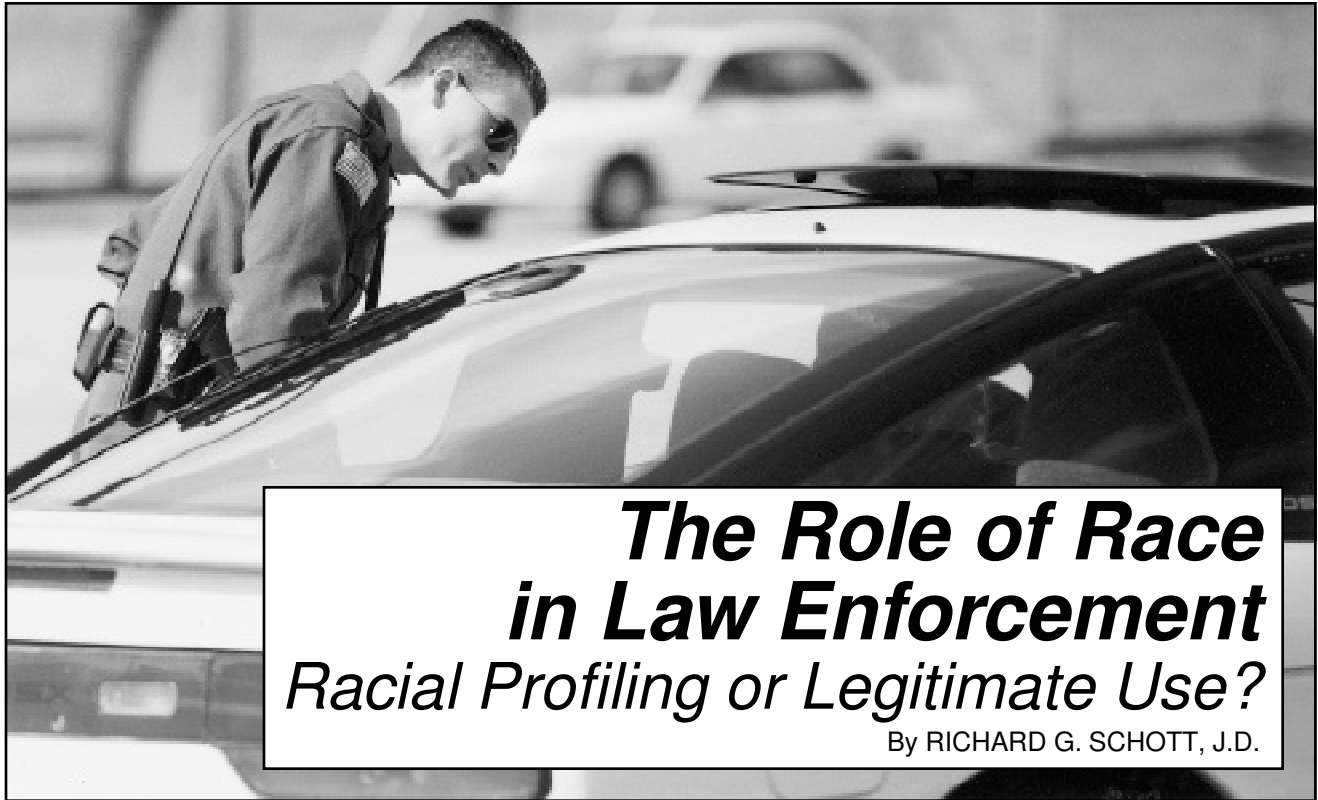
as an expert witness as components of credibility of a canine handler. These chapters also examine guidelines for conducting warranted and warrantless searches to reduce potential liability on the part of the canine handler.

Chapters 7 and 8 contain insightful information regarding search requests and the development of a search strategy. These chapters outline a number of factors, including environmental concerns, that determine the feasibility of conducting a search. Chapter 9 discusses the decomposition processes. This chapter dissects the natural processes that occur in outdoor death scenes. Knowledge of these factors increases the probability for successful recovery of evidence.

Chapters 10, 11, and 12 discuss the different types of searches and offer suggestions for the successful recovery of physical evidence. An abundance of easy-to-read diagrams assists the novice investigator in planning a search. Chapter 12 also contains detailed suggestions for conducting water searches under a variety of water and wind conditions. This is invaluable due to the lack of literature in this particular discipline of cadaver searches.

Overall, the *Cadaver Dog Handbook* presents itself as a quick reference guide on a range of subjects within the framework of forensics. The subject material is easily translated into potential applications for practitioners in the field, as well as those involved in the prosecution or defense of cases involving forensic evidence. Rebmann, David, and Sorg do a wonderful job of providing a foundation for the understanding of scent evidence and are a welcome addition to the limited research in this field. Handlers and administrators, as well as researchers and legal experts, should review this text and determine its many applications for themselves.

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The Role of Race in Law Enforcement Racial Profiling or Legitimate Use?

By RICHARD G. SCHOTT, J.D.

On May 14, 2001, three young African-American males were pulled over by the Indianapolis, Indiana, Police Department. According to one of the passenger's stepfather, the stop was a blatant example of racial profiling.¹ According to the officers on the scene, it was a legitimate traffic stop for failure to signal a turn. Which one of these characterizations was correct? Were both viewpoints arguable?

Few issues in society today generate as much controversy as the issue of racial profiling. It was a recurrent topic of debate during the 2000 presidential campaign, and racial profiling remains a frequently debated and divisive issue

in many local communities. The highway traffic practices of New Jersey and Maryland State Police troopers have been called into question as racially discriminatory. As a result, both departments have been required to compile exhaustive statistics on all future traffic stops. Other states have passed legislation requiring all law enforcement agencies within that state to maintain similar statistics.² But, what is racial profiling? Are there legitimate uses for racial characteristics during an investigation or other law enforcement activity? It is critically important for law enforcement officers to understand the difference between legitimate and illegitimate uses of race in their

law enforcement activities to maintain credibility within their communities.

This article explores the historical perspective of the use of race in the law, examines the constitutional challenges available to victims of racial profiling, and offers suggestions to rebut allegations of improper racial profiling.

It is important to define what is meant by racial profiling in this article and also to distinguish between the legitimate use of profiling and unlawful racial profiling. Profiles based on officers' training and experience are legitimate tools in police work. For example, the "drug courier profile"³ has long been recognized as an investigative

technique used by narcotics investigators.⁴ This “drug courier profile” has been described as “the collective or distilled experience of narcotics officers concerning characteristics repeatedly seen in drug smugglers.”⁵ Courts have held that matching a profile alone is not the equivalent of reasonable suspicion or probable cause necessary to conduct an investigative detention or arrest;⁶ but, police officers are entitled to assess the totality of the circumstances surrounding the subject of their attention in light of their experience and training, which may include “instruction on a drug courier profile.”⁷ Therefore, profiles, combined with other facts and circumstances, can establish reasonable suspicion or probable cause.

On the other hand, while race or color may be a factor to consider during certain police activity,⁸ race or color alone is insufficient for making a stop or arrest.⁹ Therefore, for purposes of this article, the term “racial profiling” refers to action taken by law enforcement officers solely because of an individual’s race. As the following discussion makes clear, this type of profiling has no place in law enforcement.

HISTORICAL PERSPECTIVE

Historically, there have been two broad legal attacks upon laws on the basis of race. First, citizens have attacked statutes that clearly treat people differently on the basis of their race. Second, citizens have challenged laws that, on their face, are racially neutral, but are enforced in a way that causes an adverse impact upon only one racial group.

Laws that are clearly aimed at particular racial (or other protected

classifications, such as sex or religion) groups are subject to exacting, strict scrutiny by the courts. The Supreme Court has said that “[l]egal restrictions which curtail the civil rights of a single racial group are immediately suspect.”¹⁰ Unless the government can show that distinguishing among racial groups serves a compelling governmental interest, the distinction is unconstitutional. This is the general principle that courts apply when examining the validity of laws that impact individuals of one race differently than members of other races. The Supreme Court has recognized, however, that “not all such restrictions are unconstitutional. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.”¹¹

For example, in the World War II-era case of *Korematsu v. United States*,¹² Fred Korematsu challenged an exclusion order, promulgated pursuant to an Executive Order,¹³ which directed that after May 9, 1942, all persons of Japanese

ancestry were to be excluded from certain military areas on the West Coast of the United States for security reasons. After being convicted for violating the exclusion order, Korematsu (an American of Japanese descent) challenged his conviction on the grounds that, among other things, the order denied him the equal protection of the laws implicit in the due process clause of the Fifth Amendment to the Constitution.¹⁴ The Supreme Court denied Korematsu’s challenge, holding that the exclusion order had a “definite and close relationship to the prevention of espionage and sabotage,”¹⁵ and recognizing it as necessary at the time it was made and when Korematsu violated it.¹⁶ In other words, during times of national crisis, such as war, preventing espionage and sabotage is important enough to permit the government to make distinctions based on race.

Statutes and orders like that challenged in the *Korematsu* case are extremely rare today. By far, the majority of today’s claims of

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

racially motivated police actions are based on two constitutional provisions: the reasonableness requirement of the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment. The essence of these claims is that while the laws being enforced by the police are facially race neutral, the way the police are enforcing them has an adverse impact on members of a particular race. Each of these claims will be examined in turn.

CONSTITUTIONAL CHALLENGES

The Fourth Amendment

The Fourth Amendment to the Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated....”¹⁷ To prove that a law enforcement action violates the Fourth Amendment, there must be either a search or a seizure as defined by the Supreme Court,¹⁸ and the search or seizure must be unreasonable. To be reasonable, a seizure must be justified by facts and circumstances known to the officer that give rise to either a reasonable suspicion that criminal activity is afoot in the case of an investigative detention;¹⁹ or, in the case of an arrest, probable cause to believe that the person seized has committed, or is committing, a crime.²⁰ An investigative detention or arrest made without the requisite factual basis violates the Fourth Amendment, and any evidence obtained as a result of the illegal seizure may be suppressed. In addition, individual

officers may face civil liability if the violations are intentional.

Many police seizures are challenged as being racially motivated. Clearly, officers who detain or arrest someone solely on the basis of race have violated the Fourth Amendment to the Constitution.²¹ Seizures of people should be based on what they do and not who they are. A more difficult case arises under the Fourth Amendment when the claim is made that an officer’s objectively reasonable seizure (i.e., a seizure based upon probable cause or reasonable suspicion) was only a pretext for racial profiling. The Supreme Court addressed the issue of pretextual seizures in a case decided in 1996.

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In *Whren v. United States*,²² Whren challenged a legitimate (i.e., one based upon probable cause) traffic stop as a pretextual one made only because the officer suspected the driver of having narcotics in his vehicle. In upholding the actions of the officer, the Supreme Court recognized that it had “never held, outside the context of inventory search or administrative inspection, that an officer’s motive invalidates objectively justifiable behavior under the

Fourth Amendment.”²³ Quite the contrary, the Court has “been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers.”²⁴ The decision in *Whren* stands for the proposition that the subjective motivation of a law enforcement officer does not invalidate an objectively reasonable seizure. The fact that an officer has probable cause on which to base a traffic stop makes that seizure reasonable for Fourth Amendment purposes. As discussed below, this does not mean that there is no viable constitutional challenge to the seizure. It simply means that a challenge based on the Fourth Amendment will fail.

Many police searches also are attacked as racially motivated. The Supreme Court has held that a reasonable Fourth Amendment search is one conducted with a search warrant based upon probable cause to believe evidence of a crime is present or is justified by a recognized exception to the search warrant requirement.²⁵ As with seizures, searches conducted without probable cause, but solely because of the race of the person searched or the race of the property owner, clearly violate the Fourth Amendment. However, like Fourth Amendment seizures, the courts will not inquire into the subjective motivation of the police as long as their searches are objectively reasonable.

Claims of racial profiling most often arise from two warrantless police searches justified by exceptions to the Fourth Amendment’s search warrant requirement.²⁶ It is the abuse of, not the exceptions

themselves, that are challenged. These two exceptions are the consent search²⁷ and the search incident to a lawful arrest.²⁸

The only legal requirement for a valid consent search is the voluntary consent of a person authorized to give it.²⁹ There is no warrant requirement nor any requirement that officers have probable cause to believe the person has committed a crime or that there is evidence of a crime present.³⁰ Consequently, the officer's motivation for asking for consent is irrelevant. As Justice Scalia recognized in the *Whren* case, even if officers ask for consent to search only because of the person's race, there is no Fourth Amendment violation.³¹

Another warrantless search often cited as racially motivated police action is the search incident to arrest. The only legal justification for the search incident to arrest is a lawful, custodial arrest.³² An arrest is lawful when based on probable cause to believe the person arrested has committed or is committing a crime. The seizure also must be custodial to justify the search; mere temporary detention is insufficient.³³ As with other Fourth Amendment searches, the underlying motivation of the officer is irrelevant to the issue of lawfulness of the search incident to arrest provided the arrest itself was constitutional.

The officer's authority to search incident to arrest extends to minor criminal offenses.³⁴ In *Atwater v. City of Lago Vista*,³⁵ the Supreme Court ruled that the Fourth Amendment does not forbid a warrantless arrest for a "minor criminal offense," such as a misdemeanor

seatbelt violation punishable only by a fine.³⁶ This affirmation of an officer's authority to search incident to any custodial arrest, even arrests for relatively minor offenses, raised concerns regarding racially motivated police action. In a dissenting opinion after acknowledging that a very broad range of conduct falls into the category of fine-only misdemeanors, including many traffic violations,³⁷ Justice Sandra Day O'Connor confronted

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the issue of racial profiling. Justice O'Connor wrote, "as the recent debate over racial profiling demonstrates all too clearly, a relatively minor traffic infraction often may serve as an excuse for stopping and harassing an individual. After today, the arsenal available to any officer extends to a full arrest and the searches permissible concomitant to that arrest."³⁸ Her dissenting opinion pointed out that "[s]uch unbounded discretion carries with it grave potential for abuse."³⁹

It is important to put the preceding discussion in perspective. The Supreme Court has made it clear that as long as the government can show that police searches and

seizures are objectively reasonable (i.e., based on probable cause or reasonable suspicion), they do not violate the Fourth Amendment, regardless of the officer's subjective (actual) motivation for the search or seizure. That does not mean, however, that objectively reasonable searches and seizures can never violate the Constitution. Officers motivated by prejudice who lawfully search or seize only members of certain racial, ethnic, religious, or gender groups are still subject to claims of constitutional violations. As Justice Scalia wrote in the *Whren* decision: "...the Constitution prohibits selective enforcement of the law based on considerations, such as race. But the constitutional basis for objecting to intentionally discriminatory application of the laws is the Equal Protection Clause, not the Fourth Amendment."⁴⁰

The Fourteenth Amendment

The concept that laws must be applied equally to all races has been embedded in the Constitution since 1868. The Fourteenth Amendment guarantees that states shall not deny any person the equal protection of the law.⁴¹ The Fourteenth Amendment's Equal Protection Clause, rather than the Fourth Amendment, is likely to be the basis of a successful constitutional challenge to discriminatory racial profiling by police. The basic requirement of the Equal Protection Clause is that "every state govern impartially."⁴² However, treating people differently is not always unconstitutional. The Supreme Court recognizes that states may distinguish among people and groups as long as the distinction bears some rational

basis to a legitimate governmental purpose.⁴³ Distinctions made on the basis of certain characteristics, however, will be given closer attention by the courts and will be judged by the “strict scrutiny” standard.⁴⁴ Distinctions on the basis of race are among those suspect classifications that courts will examine closely.

Courts have recognized three types of equal protection claims. The first is governmental adoption of a law or policy that intentionally classifies people on the basis of race or other basis.⁴⁵ The second is governmental enforcement of a facially neutral statute in an intentionally discriminatory manner.⁴⁶ The third is that a facially neutral statute has an adverse impact on certain groups and that the statute was enacted with discriminatory intent.⁴⁷ Most often, allegations of equal protection violations involving police activity fall into the second category.

As early as 1886, the Supreme Court recognized that laws and ordinances can be enforced in such a way that they have an unequal effect on certain groups of people. In *Yick Wo v. Hopkins*,⁴⁸ a man named Yick Wo challenged his imprisonment for violating a San Francisco municipal ordinance regulating laundries. The ordinance required the consent of the board of supervisors to operate a laundry out of a wooden building. The restriction did not apply to laundries housed in brick or stone buildings. Of the 320 laundries in San Francisco at the time, approximately 240 were owned and operated by Chinese individuals, with the vast majority in wooden structures. The statistics presented by Yick Wo to challenge the ordinance revealed that

approximately 200 Chinese laundry operators applied for permission to continue operating their laundry businesses in wooden structures. All of these applications were denied. Meanwhile, all but one of the approximately 80 applications from non-Chinese owned laundries operated in wooden structures were granted. Yick Wo was imprisoned when he continued to operate his laundry without the permit and failed to pay the \$10 fine imposed on him.

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In spite of the clearly race-neutral language of the ordinance, Yick Wo challenged the enforcement of the permit requirement as a violation of the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court upheld Yick Wo’s challenge and directed that he be released from custody. In a strongly worded opinion by Justice Stanley Matthews, the Court found that the enforcement of the ordinance had been undertaken “with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws...which is secured...by the broad and benign provisions of the

Fourteenth Amendment to the Constitution of the United States.”⁴⁹ Matthews recognized that although “the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.”⁵⁰ The Supreme Court struck down the local ordinance, which, on its face, certainly treated members of all races the same.

Courts have recognized that objectively reasonable police actions, such as lawful searches and seizures conducted with the requisite probable cause or reasonable suspicion, still may be challenged under the Constitution’s Equal Protection Clause if they are used to selectively target individuals because of their race or other protected status. In other words, if police lawfully seize (arrest or detain) or lawfully search a disproportionately large number of persons from one group, they are open to claims of selective enforcement of the law or unequal protection of the law. As one New Jersey court has put it, objectively reasonable police action is subject to constitutional challenge if a department has “embarked upon an officially sanctioned de facto policy of targeting minorities for investigation and arrest.”⁵¹

When bringing this type of equal protection challenge—that facially neutral laws are being enforced in an intentionally discriminatory manner—the Supreme Court

has developed a threshold standard to prevail on the challenge. In *U.S. v. Armstrong*,⁵² two black defendants alleged that the prosecuting attorney had singled them out for prosecution because of their race. To prevail on their selective prosecution claim, the Court held that the defendants would have to “produce some evidence that similarly situated defendants of other races could have been prosecuted, but were not....”⁵³ Thus, victims of alleged racial profiling must argue that they are being subjected to police action or prosecution when members of other races are not, even though they could be.

This threshold burden has made statistical data an important component in most racial profiling challenges. The absence of data to support or defend many of these challenges has created the need to compile detailed statistics of everyday police actions. A 1995 federal court case demonstrates the importance of statistical analysis in equal protection cases.

In *U.S. v. Travis*,⁵⁴ the U.S. Court of Appeals for the Sixth Circuit faced a claim that police violated the Equal Protection Clause by targeting a woman for questioning because of her race. A detective, assigned to the Cincinnati/Northern Kentucky Airport, focused his investigative attention on a flight arriving from Los Angeles because numerous passengers from the same flight had been arrested for drug possession in the past. The detective examined the list of passengers for anyone connecting to a city known for drug distribution. While reviewing the list, his interest was piqued by the name “Angel

Chavez” because, according to his testimony, of the unusual first name coupled with a common surname. He denied selecting the name because it was Hispanic. The detective then determined that Chavez’s ticket was one-way from Los Angeles to Cleveland, and it was purchased 5 hours before departure from a travel agency which the detective recognized as one located within the Los Angeles airport that had sold tickets to several drug couriers arrested in prior cases. When no one got off the flight whom he believed to be Chavez, he went to

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the boarding gate for the Cleveland flight. He saw two women traveling alone. Both were African-American. After eliminating one woman, the detective approached the defendant. He identified himself as an airport police officer. She identified herself as “Angela Chavez” and produced an Ohio driver’s license in the name of Angela Travis. The detective informed her that he was looking for narcotics or narcotics proceeds and asked for permission to look in her bags. She consented and officers found cocaine in her purse and arrested her. Travis

sought suppression of the evidence on the ground that police had targeted her for a consensual encounter because of her race. Her argument rested on statistics compiled from incident reports prepared by the Airport Police Task Force.

The court first noted that there was no Fourth Amendment search and seizure issue in the case. All parties agreed that both the encounter with Travis and the search of her bags was consensual. Consequently, the detectives did not need reasonable suspicion or probable cause to justify their actions.⁵⁵

However, both the government and Travis agreed, and the court ruled that consensual encounters and searches based *solely* on race may violate the Equal Protection Clause of the Fourteenth Amendment without a showing of a compelling governmental interest, even absent a Fourth Amendment violation.⁵⁶ To prove this type of claim, defendants must produce facts or statistics showing that they were targeted solely because of their race. The burden then shifts to the police to show that they did not act solely on the basis of the defendant’s race or that they had a compelling reason for the race-based encounter. Where police motives for the consensual encounter are mixed (include both race and nonrace reasons), there is no equal protection violation, according to the Sixth Circuit.⁵⁷ The court did not address the appropriate remedy for equal protection violations because it found no violation in this case.

The defendant (Travis) lost her challenge because the government showed that the police had several

reasons for questioning her independent of race. They included the purchase of a one-way ticket from Los Angeles to Cleveland, a city known for drug trafficking; the authorities' past experience of arresting several drug traffickers on this flight; her ticket purchase only 5 hours prior to departure from a travel agency that had sold tickets to drug traffickers in the past; and the name "Angel Chavez" appearing on the ticket. Because Travis had not been selected solely because of her race (in fact, the detective testified race was not an issue at all), the court found no equal protection violation.

In an interesting concurring opinion, one judge agreed with the result of the case but found this equal protection analysis flawed. Judge Alice M. Batchelder noted that officers need "no reason whatever to approach citizens for the purpose of engaging in consensual encounters."⁵⁸ Thus, she was "mystified" that the majority would hold that while a consensual encounter with a nonminority individual requires no basis for suspecting that individual of wrongdoing, a consensual encounter with a member of a minority race must be based on some articulable or particularized suspicion of a nonracial nature.⁵⁹ She argued that because there is no constitutional right not to be encountered by police, there can be no equal protection violation in such consensual encounters.

It is important to note that like most claims of equal protection violations, the defendant in *Travis* relied on statistics to support her allegation. She presented numbers

gathered from incident reports generated by the Airport Police Task Force. On the surface, the numbers seemed to support her claim. The appellate court pointed out, however, that the statistics used were misleading. The reports recorded only encounters that ended in arrest or were otherwise suspicious enough to merit a report. Not all consensual encounters at the airport were reported. Additionally, the statistics only related to task force encounters at the airport, not all police encounters at the airport. Many of the reports did not include the

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race of the person encountered. Finally, the reports used by the defendant focused on the race of airline passengers encountered at the airport on various routes; there was no information regarding the racial makeup of passengers traveling the particular route at issue. The lesson is clear for law enforcement. Statistics can be misleading. For this reason, all claims of racial profiling based on statistics must be closely examined.

LEGITIMATE USE OF RACE

An important question not addressed in cases discussed thus far is whether race ever can be a valid

consideration when conducting law enforcement activity.

Race can be a legitimate consideration for police officers. In the *Travis*⁶⁰ opinion, the majority concluded that "race or ethnic background may become a legitimate consideration when investigators have information on this subject about a particular suspect."⁶¹ Clearly, this consideration is not only constitutional but efficient and logical as well. A recent U.S. Second Circuit Court of Appeals case is illustrative.

In *Brown v. City of Oneonta*,⁶² a 77-year-old woman was attacked near Oneonta, New York. The victim reported to the New York State Police that her assailant was a young black male and that he had cut his hand with his knife during the attack. A police canine unit tracked the assailant's scent from the scene of the crime toward the nearby campus of the State University of New York College at Oneonta ("SUCO"). Only 2 percent of the SUCO students were black. Based on this information, the police contacted SUCO and obtained a list of all black male students. They then attempted to locate and question every black male student at SUCO. When this effort produced no suspects, the police conducted a "sweep" of Oneonta. They questioned nonwhite persons on the streets and inspected their hands for cuts. Several people questioned, as well as those on the SUCO list, brought a civil action against various police departments, individual officers, and others. Their claims for damages included allegations that their rights under both the

Fourth and Fourteenth Amendments were violated.⁶³

Using traditional Fourth Amendment analysis, the Second Circuit found that individuals seized, for Fourth Amendment purposes, had viable claims if the seizures were executed without the requisite reasonable suspicion or probable cause.⁶⁴ In other words, those seized solely because of their race were seized in violation of the Fourth Amendment. However, very few of the plaintiffs were actually seized; most answered police questioning during consensual encounters.

The appeals court found, furthermore, that the actions of the police did not deprive the plaintiffs of their right to equal protection under the law. The plaintiffs' argument that they had been denied equal protection by a law or policy that expressly classified persons on the basis of race was rejected. The court stated that the plaintiffs had not been "questioned solely on the basis of their race. They were questioned on the altogether legitimate basis of a physical description given by the victim of a crime."⁶⁵ It is clear that not all consideration of race when investigating crime is unconstitutional.⁶⁶

CONSEQUENCES OF RACIAL PROFILING

It is important to note that the *Brown* case was a civil lawsuit brought by the plaintiffs against various police departments and individuals for monetary damages. If a person is intentionally denied constitutional (most likely his Fourteenth Amendment Equal Protection) rights by a police practice

amounting to discriminatory racial profiling, that department and the individual officers engaging in the practice may well be subject to civil liability under a traditional Section 1983 lawsuit.⁶⁷ A successful Section 1983 lawsuit, of course, requires the plaintiff to allege and prove an intentional constitutional violation. Intentional racial profiling is a denial of one or more constitutional rights, subjecting those involved in the violation to civil liability.

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CONCLUSION

The issue of racial profiling is one of great concern for law enforcement agencies throughout the country. Expensive statistical compilations have been mandated for some departments; many others have begun compiling records voluntarily. The same statistics can sometimes be interpreted by those on either side of a debate to support conflicting arguments. When claims of equal protection violations are made, statistical evidence is almost always used to support or defend the case.

Fourth Amendment challenges are analyzed in traditional terms to

determine the reasonableness of a search or seizure. Depending on the circumstances of a particular seizure, police are required to possess either reasonable suspicion or probable cause. To conduct a valid search under the Fourth Amendment, either a warrant or an exception to the warrant requirement is necessary. The Supreme Court has consistently held that the subjective motivations of individual police officers do not make objectively reasonable Fourth Amendment searches and seizures unconstitutional. For this reason, few claims of racial profiling, even if race is the motivating factor of the officers involved, violate the Fourth Amendment. Only if actions are taken without the requisite reasonable suspicion, probable cause, warrant, or exception to the warrant requirement, will a search or seizure not pass Fourth Amendment muster.

Racially motivated police actions can be challenged using a Fourteenth Amendment Equal Protection clause argument. Individuals alleging an equal protection violation will have to produce evidence that they were subjected to police actions that were not initiated against similarly situated members of other races. This evidence usually comes in the form of statistics. However, statistics should not be accepted as definitive proof until they have been analyzed and put into the context in which they are being used. Many departments have begun compiling their own statistics to defend claims based on a different batch of statistics.

Training individual officers on the legal and practical issues involved with claims of racial

profiling is of paramount importance. Preventing the improper use of race in policing is critical. It will not only help maintain credibility within the community, but it also may prevent civil liability on the part of the department and individual officers. ♦

Endnotes

¹ M.T. Sprinkles letter to Editor, *The Indianapolis Star*, May 19, 2001.

² See, e.g., Missouri R.S. 590.650:

2. Each time a peace officer stops a driver of a motor vehicle for a violation of any motor vehicle statute or ordinance, that officer shall report the following information to the law enforcement agency that employs the officer:

1) The age, gender, and race or minority group of the individual stopped.

³ See, e.g., *Florida v. Royer*, 460 U.S. 491 (1983). *Royer* defined the “drug courier profile” as an abstract of characteristics found to be typical of persons transporting illegal drugs, note 2.

⁴ *Id.*

⁵ *Florida v. Royer*, 460 U.S. at 525, note 6 (Rehnquist, J., dissenting).

⁶ See, e.g., *Reid v. Georgia*, 448 U.S. 438 (1980) and *Royer* at 525, note 6.

⁷ *Florida v. Royer*, 460 U.S. at 525, note 6. See, also, *Terry v. Ohio*, 392 U.S. 1 (1968).

⁸ *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975).

⁹ *Brignoni-Ponce*, 422 U.S. at 886-887 (1975) (appearance of Mexican ancestry alone is insufficient to justify a stop or arrest under the Fourth Amendment); *United States v. Bautista*, 684 F.2d 1286, 1289 (9th Cir. 1982) (race or color alone is not a sufficient basis for making an investigatory stop); *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131 (N.D. Cal. 2000) (race or appearance alone is insufficient to justify a stop or arrest, FN5).

¹⁰ *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

¹¹ *Id.*

¹² *Korematsu*, 323 U.S. at 214.

¹³ Executive Order No. 9066, 7 Fed. Reg. 1407, which declared that “the successful prosecution of the war requires every possible protection against espionage and against sabotage....”

¹⁴ U.S. Const. amend.V, which states, in pertinent part, “No person shall be...deprived of life, liberty, or property, without due process of law.”

¹⁵ *Korematsu*, 323 U.S. at 218.

¹⁶ *Id.* at 218-219.

¹⁷ U.S. Const. amend. IV.

¹⁸ A Fourth Amendment search is a governmental invasion into a person’s reasonable expectation of privacy. See, e.g., *Oliver v. U.S.*, 466 U.S. 170 (1984). A Fourth Amendment seizure occurs when, in view of all of the circumstances surrounding an incident, a person reasonably believes he or she is not free to leave an encounter with a governmental official. See, e.g., *Michigan v. Chesternut*, 486 U.S. 567 (1988).

¹⁹ *Terry v. Ohio*, *supra* note 7.

²⁰ *Beck v. Ohio*, 379 U.S. 89 (1964).

²¹ *Supra* note 9.

²² 517 U.S. 806 (1996).

²³ *Id.* at 812.

²⁴ *Whren*, 517 U.S. at 813.

²⁵ *Katz v. United States*, 398 U.S. 347 (1967). The five exceptions to the search warrant requirement recognized by the Supreme Court are the consent search (*Schneckloth v. Bustamonte*, 412 U.S. 218 [1973]); the search incident to arrest (*U.S. v. Robinson*, 414 U.S. 218 [1973]); the emergency or exigent circumstances search (*Warden v. Hayden*, 387 U.S. 294 [1967]); the motor vehicle search (*Carroll v. U.S.*, 267 U.S. 132 [1925]); and the inventory search (*South Dakota v. Opperman*, 428 U.S. 364 [1976]).

²⁶ U.S. Const. amend. IV, states in pertinent part, “...no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

²⁷ See, e.g., *Schneckloth v. Bustamonte*, *supra* note 25.

²⁸ See, e.g., *Chimel v. California*, 395 U.S. 752 (1969).

²⁹ *Ohio v. Robinette*, 519 U.S. 33 (1996).

³⁰ *Schneckloth v. Bustamonte*, *supra* note 25.

³¹ *Whren*, *supra* note 22 at 812-813.

³² *U.S. v. Robinson*, *supra* note 25.

³³ *Knowles v. Iowa*, 525 U.S. 113 (1998).

³⁴ *Atwater v. City of Lago Vista*, 121 S. Ct. 1536 (2001).

³⁵ *Id.*

³⁶ *Atwater*, *supra* note 34 at 1541.

³⁷ *Atwater*, *supra* note 34 at 1566.

³⁸ *Atwater*, *supra* note 34 at 1567.

³⁹ *Atwater*, *supra* note 34 at 1567.

⁴⁰ *Whren*, *supra* note 22 at 813.

⁴¹ U.S. Const. amend. XIV provides, in pertinent part, “[N]or shall any State...deny to any person within its jurisdiction the equal protection of the laws.”

⁴² *Craig v. Boren*, 429 U.S. 190, 211 (1976).

⁴³ *Heller v. Doe*, 509 U.S. 312 (1993); *Board of Trustees of the University of Alabama, et. al. v. Garrett*, 531 U.S. 356 (2001).

⁴⁴ *Romer v. Evans*, 517 U.S. 620 (1996).

⁴⁵ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

⁴⁶ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

⁴⁷ *Village of Arlington Heights v. Metropolitan Housing Development Authority*, 429 U.S. 252 (1977).

⁴⁸ *Yick Wo*, *supra* note 46.

⁴⁹ *Yick Wo*, *supra* note 46 at 373.

⁵⁰ *Yick Wo*, *supra* note 46 at 373-374.

⁵¹ *State v. Kennedy*, 588 A.2d 834 (N.J. Super. 1991).

⁵² 517 U.S. 456 (1996).

⁵³ *Id.* at 469.

⁵⁴ 62 F.3d 170 (6th Cir. 1995).

⁵⁵ *Id.* at 173.

⁵⁶ *Travis*, 62 F.3d at 173-174.

⁵⁷ *Travis*, 62 F.3d at 174.

⁵⁸ *Travis*, 62 F.3d 170, 176 (Batchelder, J., dissenting).

⁵⁹ *Id.*

⁶⁰ *Travis*, *supra* note 54.

⁶¹ *Id.* at 174.

⁶² 195 F.3d 111 (2nd Cir. 1999).

⁶³ *Id.* at 116.

⁶⁴ *Brown v. City of Oneonta*, 195 F.3d at 121-122.

⁶⁵ *Id.* at 119.

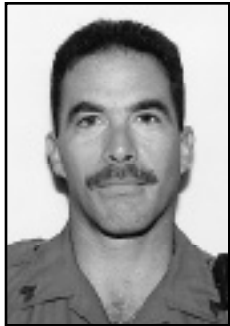
⁶⁶ On June 4, 2001, the Supreme Court refused a writ of certiorari from a Fifth Circuit Court of Appeals case in which the plaintiffs in a civil lawsuit alleged that they had been held and questioned solely because they are black. The lower federal courts had thrown out the \$30 million civil rights lawsuit on the grounds that the officers had the discretion to make the arrests and were immune from suit. *Bibbs v. Lubbock*, 69 U.S.L.W. 3673 (No. 00-1550).

⁶⁷ 42 USCA 1983.

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

The Bulletin Notes

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



Sergeant Devlin



Patrolman Parks

While on routine patrol, Sergeant Michael Devlin and Patrolman Perry Parks of the Medford Township, New Jersey, Police Division were dispatched to an apartment fire. A witness on the scene advised the officers that a victim was trapped inside the apartment. Disregarding their own safety, the officers entered the building to locate the occupant, but the thick smoke overcame the officers and forced them outside two separate times without finding the resident. On their third attempt, after reaching the top of the stairs, Sergeant Devlin hooked his foot on the top step and held Patrolman Parks' leg while both officers lay on their stomachs

trying to locate the occupant. Finally, they found the 41-year-old, semiconscious resident and pulled her out of the burning apartment. Although the resident and both officers were treated for smoke inhalation, due to the teamwork and courageous life-saving actions of these officers, no one suffered any serious injuries.



Sergeant Parks

Sergeant Thomas Parks of the North Palm Beach, Florida, Department of Public Safety responded to a 911 call that a man had fallen into the waterway. Upon arrival, Sergeant Parks observed an adult male floating face down in approximately 8 feet of water and approximately 10 feet from the seawall. Without hesitation, Sergeant Parks jumped into the water, swam to the unconscious individual, brought his head out of the water, and pulled him back to a dock at the seawall. Because of the man's size and weight, Sergeant Parks had to keep the man afloat while he awaited assistance from other officers in removing the man from the water.

Unfortunately, the man fell into a coma and later lost his life. Sergeant Parks risked his own life while attempting to save the victim.

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 209, Quantico, VA 22135.

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Remembering the Heroes



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The *FBI Law Enforcement Bulletin* proudly recognizes the heroic actions of the many men and women in the public safety sector who unflinchingly carried out their duties in the face of the tragic events of September 11, 2001. Many of these individuals gave their lives to rescue those caught in the deadly attacks on the World Trade Center and the Pentagon. These courageous and valiant firefighters, law enforcement officers, emergency service personnel, and other public safety employees persevered amidst an inconceivable landscape of death and devastation to act in the highest tradition of public service.

In an equally selfless manner, many private citizens performed unknown acts of bravery in the skies above the United States to avoid further loss of life. Also, many individuals at the attack sites chose to aid others who were injured or trapped without regard for their own safety, significantly reducing the number of fatalities and injuries. These stalwart and compassionate heroes emerged from all walks of life to stand together against an unimaginable terror.