FBI Law Enforcement Bulletin

Features

Departments

Crisis Negotiation Teams
Selection and Training

By CHUCK REGINI, M.A.

C risis negotiation is one of law enforcement's most effective tools. The successful resolution of tens of thousands of hostage, barricade, attempted suicide, and kidnapping cases throughout the world repeatedly has demonstrated its value. Developed over 25 years ago, the concept has helped save the lives of countless law enforcement officers, hostages, and suicidal subjects.[1] These successful cases, as well as those that resulted in the loss of fellow officers and hostages, have shown the need for careful deliberation in the selection and training of a crisis negotiation team (CNT).[2] Certain skills and expertise make more successful negotiators, which result in more peaceful resolutions in shorter time frames.

Law enforcement agencies strongly believe in the importance of selecting and training well-staffed and well-equipped tactical teams, but some departments fail to take the same approach with their CNTs. Today, crisis negotiation constitutes a highly refined law enforcement discipline. From a safety and liability aspect, law enforcement administrators must understand how to select, organize, train, and equip teams of crisis negotiators to work with their tactical teams in handling the specific types of incidents that agencies encounter today.[3]

SELECTING TEAM MEMBERS

The CNT Leader

The selection of a leader presents the first consideration in organizing and staffing a CNT. The position of CNT leader, as well as

tactical team leader, may be the most critical in a hostage-barricade incident. CNT leaders must be experienced, knowledgeable, and articulate supervisors or senior investigators. Additionally, they should be well trained in the most current procedures for establishing and maintaining negotiations with a hostage-taker or barricaded subject, interfacing with a tactical team, and assessing the behavioral dynamics in an incident, including risk assessment. CNT leaders also must understand how to devise a flexible negotiation strategy based on this dynamic assessment and effectively articulate this strategy to the incident commander and tactical team leader. They also should have some knowledge of behavioral sciences because an incident assessment entails an understanding of human behavior and often involves communicating with mental health professionals. Further, a familiarization with certain psychological

and sociological concepts often proves helpful. This can be attained through college classes, crisis negotiation training sessions, and other professional conferences and seminars, as well as working as a criminal investigator and conducting numerous interviews of hostile and manipulative subjects and witnesses.

CNT leaders optimally should be equal in rank to the tactical team leader to facilitate discussion of alternative courses of action and balance in reaching consensus on strategy recommendations. Frequently, CNT leaders are subordinate to tactical team leaders. Having one team leader higher in rank can act as an inhibiting factor in discussions and result in one team leader dominating the strategy formulation and having more influence with the incident commander.

Availability and time commitment also are important considerations in the selection of a

CNT leader. CNT leaders typically will respond to every hostage-barricade incident, which can be a full-time job in many large cities. CNT leaders also have responsibilities even when no ongoing incident exists. They train CNT members, recruit new members, acquire equipment, keep open communication with on-scene commanders and tactical team leaders, document CNT training and operations, maintain a standard operating procedure for crisis negotiations, and stay current in the professional literature on crisis negotiations and recent cases. Additionally, CNT leaders are responsible for the morale of the CNT and should ensure that the team is recognized appropriately for its performance. Working on a CNT can be a demanding and thankless job. Call-outs occur typically during the late evening or early morning and can last for hours, sometimes days. CNT leaders, as well as agency officials, should ensure that CNT members understand that they are appreciated for the sacrifices that they often must make.

CNT Members

The selection of CNT members proves important as well. The best criminal investigators tend to be the best crisis negotiators. Strong criminal investigators will have had contact with a wide variety of people in diverse, and often stressful and dangerous, circumstances. Further, the nonconfrontational and nonjudgmental approach of a good negotiator typically is found in criminal investigators who possess exceptional interview and interrogation skills.

" *Certain skills and expertise make more successful negotiators....* "

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Good crisis negotiators also must have the ability to remain calm under emotionally demanding situations. Talking to a hostage-taker who is holding a gun to the head of a small child and demanding a car in 5 minutes or he is going to kill the child can raise the emotions of the most seasoned agent or police officer. Yet, a good negotiator will maintain a steady and calm voice while deliberately applying the prescribed negotiation strategy. Self-control constitutes one of the most critical attributes of an effective negotiator.

As with the CNT team leader, availability and time commitment also are important considerations in selecting individual CNT members. They must have the time to participate in training and be available for call-outs, regardless of other responsibilities. Additionally, CNT members who know a foreign language can prove extremely beneficial in communities where residents speak that particular language.

ASSIGNING RESPONSIBILITIES

More than one negotiator needs to work an incident. The FBI's Crisis Negotiation Unit recommends that agencies use at least three negotiators in each incident. One team member acts as the primary negotiator and engages the subject in dialogue. The second team member acts as the coach, or secondary negotiator, and assists the primary in choosing specific dialogue and communication techniques. The third team member acts as the team leader and assists in formulating the overall negotiation strategy and

interfaces with the other crisis response components as they arrive, such as tactical team members, the incident commander, investigators, and a myriad of others, to collect and disseminate information for the negotiators. Some jurisdictions recommend four to six CNT members for smaller incidents.[4] As an incident becomes larger or more protracted, more CNT members will be required as the functions of the CNT increase and communication,

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coordination, and strategy assessment become more complex and difficult.[5] In a significant protracted hostage incident, as many as 8 to 10 CNT members working two 12-hour shifts may be required, resulting in a total of 16 to 20 negotiators.

In the initial development of law enforcement crisis negotiations, one or two negotiators handled most incidents. A tactical team would deploy to an incident with a full compliment of well-equipped personnel trained to handle the most common tactical

contingencies and would begin to develop a strategy while negotiators simply talked to the subject. Often, negotiators had minimal training, no assistance or intelligence information, and little interaction with the tactical team. Experience has revealed that a properly staffed CNT can more thoroughly assess an incident, generate better strategies, and efficiently perform vital team functions, such as coaching the primary negotiator talking with the subject, maintaining situation boards, keeping a log, communicating with the incident commander and command post, and corresponding with the tactical team. The analysis of thousands of hostage, barricade, and attempted suicide cases in the law enforcement negotiation community has identified these functions as crucial to conducting smooth and effective negotiations. Disasters can occur when agencies ignore any of these functions.

TRAINING THE TEAM

Once an agency has selected a team and assigned responsibilities, they must determine the type of training that members need. What do new, as well as experienced, negotiators and team leaders need to know to effectively handle the types of incidents police negotiators face today? Agency training programs should address the most common types of incidents that the CNT is likely to encounter and reflect the most current proven professional knowledge in the field.[6]

The FBI's Hostage Barricade Statistics (HOBAS) indicate that most police CNTs are not engaged

in conventional hostage incidents in which a subject holds a hostage to obtain some concession from the police or government.[7] These stereotypical hostage incidents involve subjects with substantive demands. Some of the best examples of this type of incident may occur in correctional settings where several inmates take over a portion of a facility and hold staff members hostage to demand better living conditions or transportation for escape. HOBAS indicates that most incidents handled by police CNTs do not involve substantive demands, rather they involve subjects in crisis.[8] These subjects face a seemingly insurmountable problem or loss and are unable to cope with it or solve it. The subject's problem-solving skills to find peaceful alternatives have failed. Typically, the subject will be in a heightened emotional state, exhibiting some form of anger, depression, or frustration.[9] Examples of these crisis situations include domestic violence-based hostage-barricade situations, trapped criminals/fugitives, attempted suicides, and incidents involving subjects with mental illness. These incidents require skills in crisis intervention, not conventional hostage negotiation bargaining to resolve them.[10]

CNT training consists of basic skills training, advanced/specialized skills training, team leader skills training, and regular team and individual skills maintenance training. The FBI's Crisis Negotiation Unit recommends that, at a minimum, new CNT members attend a 40-hour basic crisis negotiation course, which should include extensive training in crisis intervention, suicide assessment and intervention, and knowledge of how to work the various positions on a CNT in an incident and how to operate with a tactical team as well. The basic training should include extensive and various role-playing drills and case studies of actual incidents.

Experienced CNT members can use advanced or specialized training for further work in crisis intervention techniques, which could include training in handling

> **CNTs also should be familiar with how their agencies' tactical teams operate in certain situations.**

manipulative subjects, reframing techniques to put a "different spin" on negative thoughts and perceptions of hostile subjects, and using guided discovery-questioning techniques to augment a negotiator's basic problem-solving skills. Advanced/specialized classes for experienced CNT members and CNT leaders should include further training and practice in risk assessment, legal considerations in hostage-barricade incidents, procedures for handling a protracted/major

incident, effects of alcohol and other drugs, kidnap/extortion negotiations, role of the media in crisis negotiations, and use of third-party intermediaries[11] and mental health professionals.

Experienced negotiators and CNT leaders should practice strategy and risk assessment using actual case studies in assessment drills, as well as role-playing exercises. Strategy and risk assessment are important functions of both CNT and tactical team leaders. Each team leader must analyze the facts and circumstances as they become available and make strategy recommendations to the incident commander based upon proven concepts and previous incidents, not conjecture and anecdotal information.

CNTs also should be familiar with how their agencies' tactical teams operate in certain situations. CNTs regularly should practice delivery, hostage release, and surrender plans with their tactical teams. There are sensitive, and often very dangerous, evolutions during a hostage-barricade situation. The potential for miscommunication between the CNT, hostage-taker, and tactical team is high. A small annual, or semiannual, joint exercise with the CNT, tactical team, and any officials who may find themselves in the role of an incident commander can greatly help alleviate any potential miscommunications.

Attendance at national or regional negotiation conferences and seminars also offers an opportunity for CNT members to review incidents from other agencies, see

the problems encountered, and learn how the respective agencies overcame these problems. It also gives CNT members an opportunity to hear actual negotiation tapes from hostage-barricade incidents. CNT members can observe the high emotional states of the subjects and how other CNTs assessed the situation, formulated strategy, and applied crisis intervention and hostage negotiation skills to resolve the incidents. This is an excellent way to obtain valuable experience in handling these types of subjects. This kind of exposure has an "inoculation" effect on the CNT so that they do not become alarmed or dismayed at the emotions exhibited by subjects in these types of incidents and are better able to maintain composure and self-control while dealing with them.

CONCLUSION

From a liability and safety standpoint, law enforcement agencies must ensure that they carefully select a crisis negotiation team and that the team maintains a high level of proficiency in the application of their skills.[12] Most CNTs do not have enough hostage-barricade incidents to maintain this level of proficiency through operations alone. Just as with tactical teams, mandatory regular periodic training proves vital to sustaining a CNT's proficiency. CNT team leaders also must ensure that this training is well documented in case agencies must demonstrate their efforts to ensure that their crisis response personnel remain at a high level of proficiency.

Modern law enforcement agencies rely on properly trained, equipped, and staffed crisis negotiation teams to work with their tactical teams in handling the critical incidents that may develop. Given the significant role of a police department's CNT in saving the lives of police officers, hostages, and suicidal subjects, agencies must ensure that their CNTs are carefully selected and well trained in the most current techniques and case studies; oversights easily can lead to tragedy. ✦

Endnotes

[1] Gary W. Noesner, "Negotiation Concepts for Commanders," *FBI Law Enforcement Bulletin*, January 1999, 6-14.

[2] Based on statistics from the FBI's Hostage Barricade System (HOBAS) database, March 2001.

[3] Anthony Hare, "Training Crisis Negotiators: Updating Negotiation Techniques and Training," in Randall Rogan, Mitchell Hammer, and Clinton R. Van Zandt, *Dynamic Processes of Crisis Negotiations* (Westport, CT: Praeger Publishers, 1997), 159.

[4] Ray Birge, "Barricade and Hostage Incidents: Team Roles and Structure Provide the Balance," *The Negotiator, Official Publication of the California Association of Hostage Negotiators*, Spring 2001, 1.

[5] FBI, Critical Incident Response Group, Crisis Negotiation Unit, "Negotiation Operations Center Protocols" class.

[6] Supra note 3.

[7] Supra note 2.

[8] Supra note 2.

[9] Michael J. McMains and Wayman C. Mullins, *Crisis Negotiations* (Cincinnati, OH: Anderson Publishing, 1996).

[10] Ibid.

[11] Stephen J. Romano, "Third-Party Intermediaries and Crisis Negotiations," *FBI Law Enforcement Bulletin*, October 1998, 20-24.

[12] Jeffrey Higginbotham, "Legal Issues in Crisis Management," *FBI Law Enforcement Bulletin*, June 1994, 27-32.

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Police Practice

STOP CRIME
Systematic Tracking Operation Program Community Reporting Incidents More Effectively

By James Larsen

Poor communication within any police department can limit the information flow between managers and line personnel. Getting the information from one unit to another before it becomes outdated is an ongoing struggle. To help eliminate this problem, the Plantation, Florida, Police Department implemented the Systematic Tracking Operation Program Community Reporting Incidents More Effectively (STOP CRIME).

Background

STOP CRIME derives its foundation from the New York City Police Department's CompStat (Computerized Analysis of Crime Statistics) initiative. A crime-mapping software application, designed by two former New York City Transit Police officers in 1992, constitutes the heart of CompStat. The software application demonstrated areas where criminal activity occurred, which helped law enforcement officers develop enforcement strategies. As information became a powerful tool for police administrators and line personnel, accountability, a second part of the CompStat process, developed. The accountability process resulted in scheduled meetings where precinct commanders reported to a review panel. The review process evolved into a high-pressure setting where commanders answered queries about criminal activity in their precincts.

In March 2000, the Plantation Police Department researched a patrol district concept predicated on accountability and dividing the city into two sections to make it more manageable. The department published a template to explore the possibility and solicit recommendations from line personnel. Over the next 6 months, department administrators met several times to discuss the accountability factors most applicable and important to the agency's management.

Implementation

On October 1, 2000, the Plantation Police Department implemented the district concept with a monthly accountability process incorporated in the plan. Two captains, with responsibility and accountability for the crimes, incidents, problems, and community concerns that arise in their areas, command the districts. The agency adopted the SARA (scanning, analysis, response, and assessment) model of problem solving as a tool for critical thinking.[1] Problem ownership constitutes one of the key components to the SARA model and the district plan. Detectives and zone officers under the new concept have responsibility for solving problems, and they provide monthly activity accounts to their sergeants who, in turn, compile a comprehensive report to each district commander.

Once a month, the district commander presents an accountability report and gives an oral presentation to the STOP CRIME board, which consists of the chief of police and the two deputy chiefs. The crime analyst also attends these meetings to assist the district commanders with statistical data and any information needed during the presentation.

Results

The STOP CRIME program helps the Plantation Police Department improve communication. Although the department has a somewhat traditional organizational structure and supports the concepts of chain of

command, STOP CRIME has flattened the communication flow within the agency. On a daily basis, this process enhances the exchange of information on criminal activity. Road patrol district commanders obtain essential information directly from such sources as detectives and officers in an effort to reduce the filtering of communication.

The board review process makes the STOP CRIME program slightly different from other accountability systems. Commanding officers present both written and oral presentations, with the question and answer segment designed around a positive brainstorming format. Officers present empirical data, but mere numbers do not provide the basis for critiquing command staff; the process encompasses total quality management more than numerical analysis. The STOP CRIME program measures short- and long-term goals and not only quantitative objectives but also, more important, qualitative goals of the organization and the community that it serves. It seeks empowerment and ownership, rather than focusing on criticism. The STOP CRIME program couples with the district concept to provide several benefits, such as—

- an increased commitment to community policing;

- the development of two neighborhood enhancement projects;

- strengthened vertical communication;

- the establishment of a comprehensive reporting system;

- accountability at all levels of the organization;

- the nurturing of problem-solving skills throughout the agency; and

- the ownership of problem and empowerment of personnel.

The Plantation Police Department's traffic initiative represents one example of a quantitative plan using both the STOP CRIME accountability program and the district concept. During 2000, Plantation experienced a dramatic increase in the traffic fatalities rate. In 1999, 6 deaths resulted from traffic crashes, compared with 25 in 2000. These occurrences prompted a vigorous traffic program to curb traffic violations within the city limits, which

Highlights of Survey Results

Items of major concern to residents in their neighborhoods

	Yes	No	Unknown
Traffic	43%	52%	5%
Juveniles	32%	63%	5%
Drugs	17%	78%	5%
Burglaries	44%	50%	6%
Robberies	29%	66%	5%
Auto thefts	24%	71%	5%
Code enforcement	25%	70%	5%

Frequency that residents see a police officer/vehicle in their neighborhoods

Very often	23%
Sometimes	62%
Never	13%
Unknown	2%

Number of residents who have been a victim of crime and *did not* call the police

Yes	11%
No	84%
Unknown	4%

entailed both an education and awareness program coupled with an increase in selective traffic enforcement. The department received the first data to support the possibility of a positive impact of the program in June 2001. The crime analyst published a citywide traffic evaluation comparing January through March 2001 statistics with data collected for the same time period in 2000. The agency issued 6,119 citations in the first 3 months of 2001, an increase of 33 percent over the previous year. As the citations increased by this significant number, the traffic crashes decreased by 7 percent in the same time frame. The number of fatalities also declined from 25 in 2000 to two in 2001.

Measuring success qualitatively proves more difficult. The agency surveyed the community in an effort to establish a base level of satisfaction. The department distributed approximately 3,000 surveys

throughout the city and experienced a 14 percent return rate. The survey revealed that 63 percent of the respondents were very satisfied with the quality of life in their neighborhoods and 51 percent stated that they were very satisfied with the police who serve their communities. Of those responding, 61 percent never have been victims of a crime in Plantation, and, when asked how they would rate their perception of crime in Plantation, 51 percent responded that it was a minor problem. Future surveys that the department conducts should reveal the impact that these programs have in Plantation.

Conclusion

The success of law enforcement agencies depends on the sharing of information between managers and line personnel. The Plantation, Florida, Police Department implemented its STOP CRIME program to improve communication among its officers and to ensure accountability at all levels of the agency. The program's flexibility highlights change to reflect the conditions of the community while adhering to the accountability aspect of the program. Further, the STOP CRIME program focuses on employee empowerment and problem ownership. District commanders make regular presentations about crimes in their areas to a review board, answer questions, and work with managers to find solutions. By enhancing the method by which information is communicated among managers and line personnel, the Plantation Police Department has become more prepared to STOP CRIME.

For more information on the Plantation, Florida, Police Department's STOP CRIME Program, please contact Captain Jim Larsen at 954-797-2111. ✦

Endnotes

[1] For more information on SARA models, see Terry Eisenberg and Bruce Glasscock, "Looking Inward with Problem-Oriented Policing," *FBI Law Enforcement Bulletin*, July 2001, 1-5; and Loreen Wolfer, Thomas E. Baker, and Ralph Zezza, "Problem-Solving Policing: Eliminating Hot Spots," *FBI Law Enforcement Bulletin*, November 1999, 9-14.

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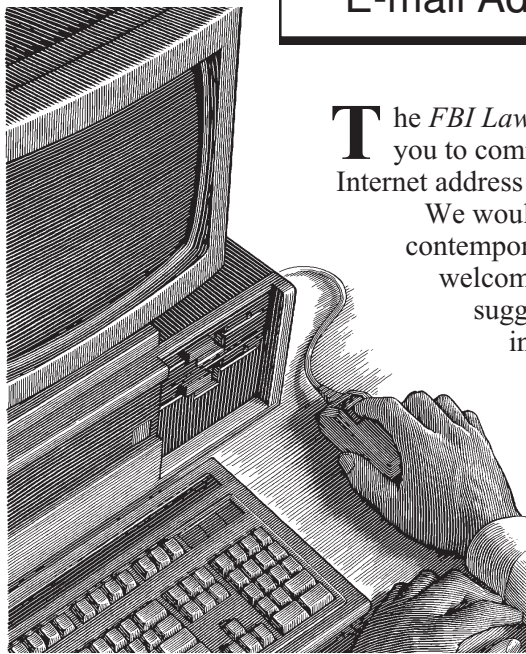
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Criminal Confessions
Overcoming the Challenges

By Michael R. Napier and
Susan H. Adams, Ph.D.

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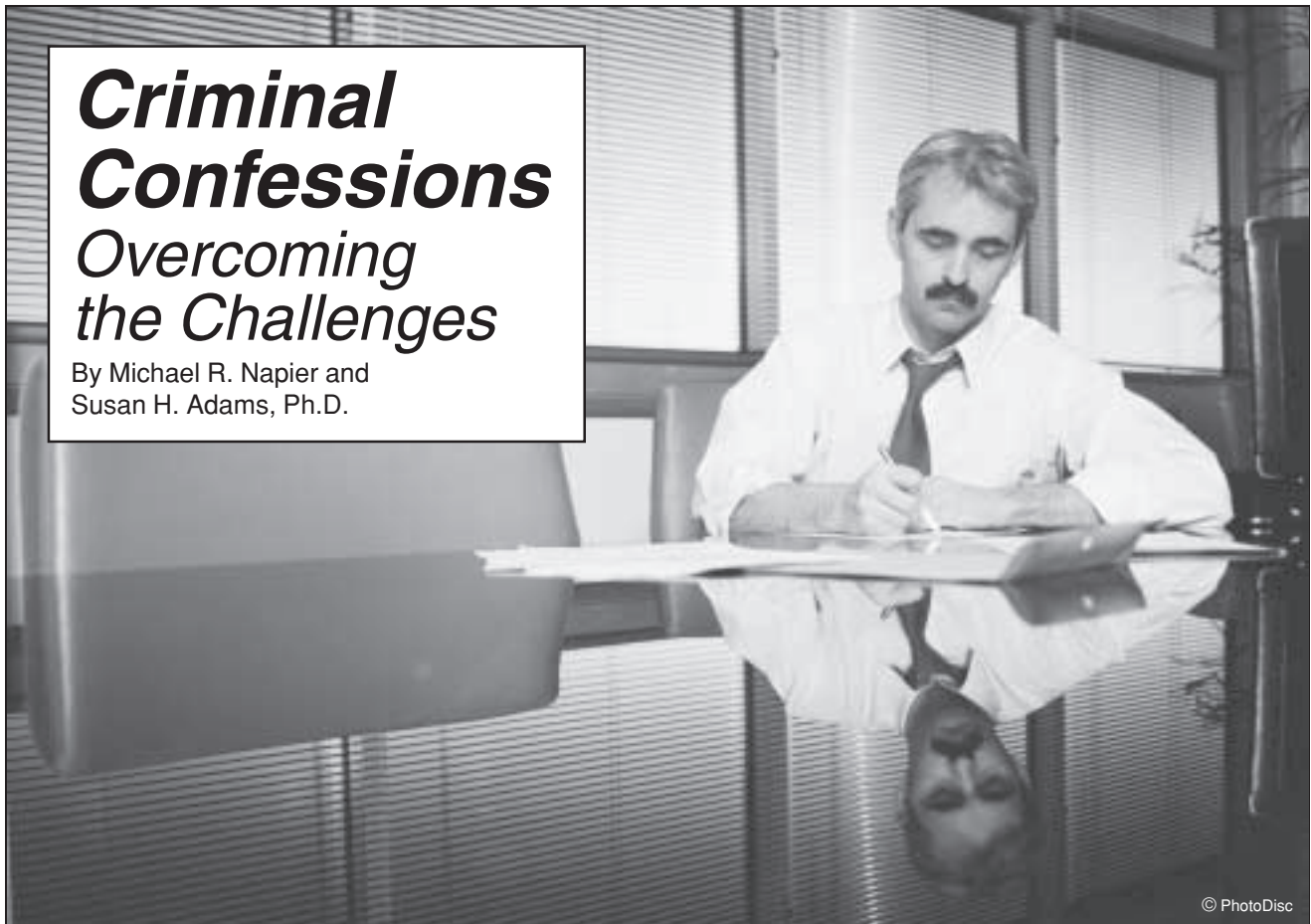
American law enforcement consists of dedicated, talented men and women of integrity and vision. Such officers would not sacrifice their sworn duty to catch a criminal by knowingly allowing the conviction of an innocent suspect. To do so would leave a criminal free to act again. Investigators attempt to identify, charge, and prosecute the criminal population by operating within an ethical framework in diverse, sometimes uncertain, but always challenging circumstancess.

Widely used law enforcement interview and interrogation techniques recently have come under scrutiny. Fundamental interview and interrogation principles can counter the criticisms, however, and safeguard the confessions by compiling solid, incriminating evidence.

CHALLENGES TO CONFESSIONS

Some critics of law enforcement techniques have gained notoriety, as well as some credibility.[1] Several criticisms earn merit by reminding investigators of practical procedures to safeguard the interviewers' most valued work product, the confession.

Critics use the term "coercive" to describe interview and interrogation tactics, claiming that they result in a coerced confession. The difficulty of identifying, with certainty, the number of confessions obtained through coercion hampers the critics' position.[2] Acquiring an accurate representation of false confessions obtained under police questioning remains imperative, and ongoing research attempts to address this need.[3] Even if each alleged false confession was indeed deceptive, the occurrence of alleged false confessions, when viewed in the framework of the millions of suspect interviews conducted annually, is statistically minuscule. Yet, professional officers view a single false confession as one too many.

The challenges to law enforcement interview tactics can be grouped into five categories. The application of corresponding interview principles, which involve simple and appropriate adjustments in style and technique, can address the criticism of law enforcement interview tactics. The application of these corresponding principles will enhance the suspect interview processes and strengthen the admissibility of confessions. When used regularly, these principles will illustrate the good-faith efforts of law enforcement in handling the investigative responsibilities of identifying suspects and obtaining constitutionally admissible confessions.

CATEGORY 1: BEHAVIOR

Challenge: Reading the Suspect's Behavior

One censure of police procedures involves observing the behavior of suspects in the interview room and selecting specific suspects for more intense investigative inquiry. Critics allege that an officer's ability to interpret behavior, such as the aversion of direct eye contact, is inadequate to protect the innocent from unreasonable investigative focus,[4] which may cause an improper concentration of limited police resources on the wrong suspect, thereby allowing the guilty party to escape detection. Critics accuse the police of placing excessive reliance on "hunches" and "on-the-spot reading" of verbal and nonverbal characteristics, using methods that are neither scientifically valid nor reliable. Investigations may focus on the wrong person because techniques do not distinguish between stressful responses caused by deception and responses to stress caused simply by accusatory interviewing.[5] Behaviors improperly interpreted by investigators may take on the weight of perceived evidence and increase the intensity of the police focus.

Interview Principle: Follow the Facts

Some cases do not contain the gift of clear evidence to follow on the path to the case solution. Investigators, therefore, rely on investigative experience and anecdotal lessons to identify responses consistent with known deceivers or individuals with guilty knowledge. Law enforcement must place "gut instincts" in context, however, by comparing them with investigative and evidentiary facts, which take precedence over instincts. Thorough investigative techniques will avoid a narrow focus on specific individuals by investigating all viable leads capable of identifying additional suspects and eliminating wrongly identified suspects. If the investigative hunch or the supposition does not align with known facts, investigators always should follow the facts.

CATEGORY 2: TRAITS

Challenge: Identifying Personal Vulnerabilities

Several critics point out that certain individuals possess traits that make them overly susceptible to police interrogation techniques, thereby leading to coerced confessions.[6] These impressionable traits include youthfulness, a low or borderline intelligent quotient (IQ), mental handicap, psychological inadequacy, recent bereavement, language barrier, alcohol or other

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drug withdrawal, illiteracy, fatigue, social isolation, or inexperience with the criminal justice system.[7] These traits have sufficient strength to affect the suspect's decision-making process, mental alertness, and suggestibility.

Interview Principle: Know The Suspect

The most productive interviews are planned well in advance. Except in exigent circumstances, competent investigators have learned to invest time in the initial information-gathering process.[8]

Investigators can design the initial, low-key interview phase to obtain "norming" information about how suspects normally respond, both verbally and nonverbally. This also presents an opportunity to gather information from suspects about their education and language ability, difficulties in life, and the foundation for their successes in life. By learning details about all aspects of a suspect's life and lifestyle, investigators can avoid subsequent problems.

For example, if officers believe that particular suspects have low IQs, not only should they check school records but also determine social-functioning ability. Do these offenders have below-normal intelligence, but a reputation for being street smart? To what language levels do they respond? What are their language difficulties or drug use patterns? How do they function in the real world? As noted by one interrogation expert, although suspects may have below-normal intelligence, they also may possess "a Ph.D. in social intelligence" or,

what police officers call, street smarts.[9]

By examining varied aspects of suspects' lives and closely questioning each source of information, investigators can compile a witness list to later defend their choice of investigative techniques. Law enforcement should not accept assertions of mental or personality disability. They should ask for specific examples and exceptions

> **"**
> ...open-ended questions make successful lying difficult.
> **"**

from witnesses who know the suspects. Vulnerable qualities should not exclude suspects from being interviewed. Such vulnerabilities as reduced mental capabilities, the ability to withstand pressure, bereavement, mental illness, age, or other personal traits that may increase suggestibility require special care when using questioning techniques. Investigators should place the suspect's vulnerability in context, adapt the investigative approach, and fully document any adaptations. Additionally, law enforcement officers should plan specific word use to determine if suspects understand questions at a particular language level or if the investigator's terminology needs an explanation. If suspects understand

language typically used with other offenders, investigators should document that fact, thereby substantiating concern for not overwhelming suspects or taking advantage of any declared vulnerability.

Case Example

A 10-year-old girl suddenly disappeared from a public street while on an errand to a store. A 29-year-old man became a suspect, and, through police investigation, he also became a suspect in a similar incident involving another prepubescent female 10 years earlier. Although the suspect was labeled intelligence handicapped at an early age, carefully gathered background information indicated his capability of dealing with life and living alone. Based on this knowledge, investigators felt that language adjustments were not necessary. Later testimony clearly indicated that the suspect understood each question and that he responded appropriately. Challenges to his multiple confessions were denied. The suspect now is on death row; his convictions for the two murders were based on confessions.

CATEGORY 3: STATEMENTS

Challenge: Contaminating Confessions

Some critics believe that police officers inadvertently contaminate confessions by relying on questions that contain crime scene data and investigative results.[10] Using crime scene or investigative photos in the questioning process may amplify this flaw. Through these procedures, the police might, in fact,

"educate" suspects[11] by providing knowledge that suspects simply repeat in an effort to escape intense interrogation pressure. As a result, suspects appear to offer a valid confession.

Case Example

A 13-year-old female was raped, murdered, and decapitated. A 16-year-old male was questioned as an alibi witness for the suspect. During the questioning of the alibi witness, the police became suspicious of his personal involvement in the crime. Eventually, he provided a description of the crime and pointed out crime scene details indicative of his direct involvement in the murder and decapitation. Investigators remained persistent, and the youth later provided an explanation of how he knew incriminating details. He reported that, while being questioned, an investigator sorted through crime scene pictures attempting to locate a specific picture. The suspect stated, "...when he switched...the pictures real quick, I saw what was happening before them pictures [the pictures selected for the investigator's specific question]...he says, where do you think the body was? But when he was switching them, I saw where the body was.... Then he says, where is the head part.... Anybody's going to know where a person's place is when they got the big, yellow thing [crime scene tape] around the water thing, the toilet. They had that caution thing all around there. I says, okay, right there" [indicating the exact location of the head]. Of special note, this youth had an intelligent quotient of about 70.[12]

Subsequently, the correct suspect was convicted of the crime and sentenced to life in prison.

Interview Principle: Preserve the Evidence

To avoid contaminating a suspect's subsequent admissions and unnecessarily revealing investigative knowledge, investigators should initiate the criminal involvement phase of questioning by using only open-ended questions, which avoid the pitfalls of leading or informing suspects. These questions begin with such phrases as "Describe for me...," "Tell me about...," and "Explain how...." These questions force suspects to commit to a version of events instead of

> **The most productive interviews are planned well in advance.**

simply agreeing with the investigator; they also prevent disclosing investigative knowledge. Because suspects may provide a wealth of information in this free narrative form, open-ended questions make successful lying difficult.[13] If, however, suspects decide to lie, open-ended questions provide a forum. This aspect of the open-ended question technique may help investigators because every

lie forecloses avenues by which suspects may later try to defend themselves.[14]

Investigators must receive answers to open-ended questions without any type of judgment, reaction, or interruption. By allowing suspects to tell their stories without interruption, investigators fulfill the basic purpose of an interview—to obtain information. Additionally, investigators benefit from committing suspects to a particular position,[15] which may contain information that later becomes evidence of guilt or provides a connection to the crime, crime scene, or victim.

The questioning process does not become contaminated when investigators initiate the interview with open-ended questions. Investigators have not told suspects the details of the crime or subsequent investigation and, thereby, have preserved the evidence. After listening to the narrative responses to the open-ended question, skilled investigators will probe with additional open-ended questions and will ask direct, closed questions later.

Displaying crime scene photos to suspects prior to obtaining admissions appears to have limited usefulness. By showing graphic details of the crime, suspects receive information that, when parroted back, give substance to their confessions. Crime scene photos may include holdout information, which primarily serves to validate confessions. However, from a psychological perspective, few, if any, suspects will be shocked into confessing when they see reminders of their gruesome acts.

CATEGORY 4: OPTIONS

Challenge: Creating
False Reality

Some critics allege that police use techniques that create a false reality for suspects by limiting their ability to reason and to consider alternative options.[16] Some argue that the police intentionally present only one side of the evidence or options available to suspects, namely only the ones that benefit the police. Once suspects accept a narrowed option, inferred benefits coerce them, such as avoidance of a premeditated murder charge in favor of describing the crime as an accident. The obvious benefit of accepting a suggested lesser alternative leads suspects to be coerced into a false confession out of fear of the police and possible prosecution.

Interview Principle:
Adjust Moral Responsibility

The interviewer should question suspects, not provide legal counsel.[17] The investigator's purpose does not include providing options for guilty suspects to conceal their involvement.

Experienced investigators understand the following aspects of confessions:

- Confessions are not readily given.

- Full confessions originate with small admissions.

- Guilty suspects seldom tell everything.

- Most offenders are not proud of their violence and recognize that it was wrong.

- Guilty suspects omit details that cast them in a harsh, critical light.

- Offenders usually confess to obtain a position they believe to be advantageous to them.[18]

Astute interviewers use rationalization, projection, and minimization to remove barriers to obtaining confessions.[19] These represent the same techniques that suspects use to justify and place their sometime abhorrent behaviors in terms that assuage their conscience.

Thus, these psychological techniques serve two purposes. They allow investigators to protect society by identifying guilty suspects. And, they also provide face-saving opportunities for suspects to make it easier for them to confess.

These techniques initially downplay the suspects' culpability by omitting their provocative behavior, blaming others, or minimizing their actual conduct. In certain circumstances, investigators might need to suggest that the suspects' criminality was an accident[20] or the result of an unexpected turn of events, which the victims might have provoked. Investigators attempt to obtain an admission or to place the suspect near the scene or with the victim. From the original admission of guilt, experienced investigators refine their techniques by using all of the case facts to point out the flaws and insufficiency in the original admission and to obtain a fuller, more accurate description of the suspect's criminal behavior.[21] Practiced interviewers use the initial admission as a wedge to open the door to additional incriminating statements.

The suggestion that investigators interrupt an admission of guilt in a homicide case to debate whether a suspect committed a premeditated or spontaneous murder is unrealistic. The final disclosure of case facts and laboratory results will provide details to reveal the most likely version of events. Seasoned interviewers know that the interview and interrogation phase constitutes only one portion of the entire investigation.

CATEGORY 5:
CONSEQUENCES

Challenge: Promising
Coercive End-of-Line Benefits

Investigators move into clearly coercive territory when giving clear and substantial identification of end-of-line benefits to confession. The coercive aspect comes from investigators' statements that remaining silent will lead to greater penalties, but confessing to a minimized scenario will result in reward.[22] Investigators may openly suggest that

suspects will receive the most serious charge possible without a consent to the offered lesser interpretation of their actions.[23] Many interviewers blatantly and precisely will state the suspect's expected penalty in unmistakable terms, such as the death penalty versus life imprisonment or life imprisonment versus 20 years. Similarly, investigators may threaten harm via investigation or prosecution of a third party, such as a wife, brother, or child, if suspects reject the lessened scenario. Some critics accurately have identified these tactics as being coercive enough to make innocent people confess to a crime that they did not commit.

Interview Principle: Use Psychology Versus Coercion

The interview and interrogation system generally recognized as the most widely used and adapted in the United States follows the limitations imposed by the ethical standards, as well as the dictates, of the courts.[24] U.S. courts have allowed investigators the breadth of creativity in interviewing suspects, but any coercive investigative acts are offensive to the skilled professional. Successful interviewing does not hinge on coercive techniques because talented investigators have a ready reservoir of productive, acceptable, and psychologically effective methods. Blatant statements by investigators depicting the worse-case scenario facing a suspect who does not accept a lesser responsibility are coercive and unnecessary. In general, these statements follow the pattern of "If you don't cooperate, I am personally

going to prove your brother was up to his eyeballs in this murder. He will go down hard." Statements of this type are clearly coercive and less effective than the use of psychological techniques of rationalization, projection, and minimization.

However, a distinction exists between blatant statements and subtle references offered for interpretation as the suspect chooses. Suspects engage in a self-imposed, personal decision-making process that incorporates their life

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experiences, familiarity with the criminal justice system, and their time-tested psychological processes of rationalization, projection, and minimization. Suspects may explain reasons for the crime (rationalization), blame others (projection), or lessen their culpability and express remorse, even if unfelt (minimization). Guilty suspects attempt to describe their criminal acts as understandable, in a manner that places them in a better position to

obtain the desired lenient treatment. They eagerly listen for any opportunity to look good. Investigators are not responsible if suspects choose to offer an explanation of guilt that places them in what the suspects perceive as a favorable position. Investigators achieve part of their goal because the suspect must admit culpability to achieve this desired perceived position.

Investigators must accept the admission, return to the basics of the investigation, and obtain a statement that comports to the reality of the crime. Likewise, investigators must go well beyond the "I did it" admission. They must press for minute details to tie suspects to the crime scene to disclose their active participation in the crime.

Corroboration anchors the most secure confession. Some suspects may not readily provide information to support their involvement in a crime for fear of exposing the true nature of their evil acts. However, a suspect's corroboration by providing details known to only a few individuals, solidifies a confession. Evidence linking such details as the location of the body, the weapon, or the fruits of the crime provide a superior foundation for preventing the retraction of a confession or one otherwise successfully challenged in court.

PERSONAL DIGNITY

A final principle, underpinning the entire interview process, involves the concept of dignity. All individuals are entitled to maintaining their personal dignity and self-worth. Convicted felons have

explained that they more likely would confess to an investigator who treated them with respect and recognized their value as a person.[25] Allowing suspects to maintain dignity, even in adverse circumstances, is professional and increases the likelihood of obtaining a confession. One experienced investigator provides advice for interviewing the suspect of a particularly serious crime, "Remember, he has to go on living with himself."[26]

Many investigators now videotape their interviews to document the confession, which allows the attorneys and the jury to view it. This also allows investigators to view their interviewing performance and, thus, to learn from critiquing it. Videotaping can remind the investigator to treat the suspect with respect as a person, regardless of the nature of the crime.

CONCLUSION

Law enforcement agencies are governed, sometimes invisibly, by their organizations' value systems. Although organizations are built from the bottom up, their values flow in both directions. The concept of professionalism for the investigator begins with basic duties and carries through to a legal responsibility, providing sworn testimony in open court about ethically and legally obtained evidence.

The manner in which an investigator approaches interviewing and interrogation may symbolize the ultimate reflection of the professional values of a department. "Casual values" appear as a "casual attitude," which translates into matching behavior. The appearance of casual values in the interview room may result in suppression of admissions or confessions, but it also may reflect a "casual approach" to law enforcement at all levels. All aspects of law enforcement must reflect vigilance to the highest policing values, but nowhere more important than in the interview room and in presenting the investigative product of the interview. ◆

"
A final principle... involves the concept of dignity.
"

Endnotes

[1] The word critics is used throughout this article to denote a small number of social psychologists who have testified for the defense regarding the legal admissibility of some confessions.

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[11] David E. Zulawski and Douglas E. Wicklander, "Special Report 1: Interrogations, Interrogation: Understanding the Process," *Law and Order*, July 1998, 87.

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[14] Supra note 11, 85.

[15] Supra note 9, 253.

[16] Supra note 5, 194-195.

[17] Gerald M. Caplan, "Questioning *Miranda*," *Vanderbilt Law Review* 38, no. 6 (November 1985): 1,417.

[18] Supra note 9, 253.

[19] Michael R. Napier and Susan H. Adams, "Magic Words to Obtain Confessions," *FBI Law Enforcement Bulletin*, October 1998, 11-15.

[20] Supra note 3, 9.

[21] Supra note 3, 9.

[22] Supra note 6, 999 and 1,000.

[23] Supra note 5, 204, 205.

[24] Fred E. Inbau, John E. Reid, Joseph P. Buckley, and Brian C. Jayne, *Criminal Interrogation and Confession*s, 4th ed. (Gaithersburg, MD: Aspen Publishers, Inc., 2001).

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[26] Supra note 9, 253.

The Relationship Between Multicultural Training for Police and Effective Law Enforcement

By Gary R. Coderoni

Racial discrimination lawsuits have high price tags. Civil disorder is costly and often results in death, personal injury, and property loss. According to research, 90 percent of the major civil disorders that have occurred in the United States resulted from police-citizen conflicts, many of which could have been avoided. Multicultural training can reduce the number of lawsuits, as well as the possibility of civil disorder, but only can succeed with the acceptance and management of cultural diversity. Historically, strategies employed by police in dealing with minorities and minority issues have differed from those with other groups. While improvements in those strategies have occurred in the last decade, further improvements are needed and easily attainable. Although these discussions often have focused on African-Americans, many cultural diversity issues have similar implications on other racial and ethnic groups. This issue, of course, is not new to American policing. In 1962, the late Robert Kennedy, while serving as U.S. attorney general, said, "Every society gets the kind of criminal it deserves. What is equally true is that every community gets the class of law enforcement it insists on."[1] Communities must begin to insist, if not demand, that their police department's leadership seriously seek to discover and eliminate cultural biases, prejudices, and other barriers that impede the ability of the police to effectively deal with cultural differences in the community. While "racial profiling" has become the latest racial issue, it probably will not be the last. As America becomes more culturally diverse and citizens' skin colors begin to meld, the importance of recognizing sameness, rather than difference, becomes imperative.

Effects of Incidents

In terms of damaged police-community relations, public trust, and public confidence, the true cost of civil disorders, such as the reactions in Los Angeles following the acquittal of the police officers involved in the Rodney King incident, never will be fully understood. Now, 10 years later, the minority community in Los Angeles still feels the effects of that tragedy. Public trust is difficult to attain, important to maintain, and easily lost. One such incident can undo years of hard work and community bridge building. Similar situations have occurred in New York, Miami, and Washington, D.C. Each of these incidents resulted from police-citizen interactions that crossed racial and cultural lines.

Research indicates that the dynamics of a civil disorder may not be as complex as many believe. Police in mainstream America often deal with situations that lead to miscommunication and, inadvertently, tragic consequences if the police are not trained to recognize and understand citizen reactions based on differing cultural norms. As the United States quickly becomes one of the most culturally diverse nations, law enforcement agencies must train their officers to understand and be understood by those with whom they differ in areas other than merely language.

The results of not understanding cultural differences expend resources sorely needed for other police

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services and programs, which benefit communities. In addition to generating the enormous costs of rebuilding community trust and creating grounds for large monetary awards from civil suits, the loss of lives and injuries to citizens and police, as well as property damage, can have a serious impact on governments already fiscally challenged. These incidents can negatively affect the ability of local government to secure bonds, make it difficult and costly to obtain and maintain insurance, and frighten potential new businesses or cause established businesses to flee to the presumed safety and security of the suburbs, thereby reducing the tax base as they leave.

Law Enforcement Response

Law enforcement administrators must take a proactive approach to eliminate community disorder and unrest, particularly that which results from a lack of understanding on the part of officers engaged in policing an ever-increasing culturally diverse society. Administrators can reduce the human factors that provide many of the sparks that ignite community unrest and dissatisfaction by realizing, understanding, accepting, and managing cultural diversity and human differences, both within their departments and their communities.

What happens when the organizational culture of a police department, combined with the personal biases and prejudices of police officers, conflicts and clashes with the culture of the community? In brief, the community as a whole begins to become dysfunctional in terms of dealing with its own problems, which often leads to small concerns quickly escalating into larger, more complex issues. While law enforcement agencies must understand the various cultures in their service areas, they also must examine their own organizational culture and determine how it affects the way they view and value people in their communities. Racism and sexism, for example, exist within agencies because law enforcement represents a microcosm of society as a whole;

> "
> **...agencies must train their officers to understand and be understood by those with whom they differ in areas other than merely language.**
> "

police officers come from within that society. Like citizens, officers learn prejudice and bias from their culture. While training officers to be good law enforcement practitioners may be relatively simple, teaching them to be perfect human beings, who come from a less-than-perfect society, presents a much more difficult task.

Cultural diversity training helps police break free from their traditional stance of being "apart from" the community to a more inclusive philosophy of being "a part of" the community. Realizing the difficulty of becoming a part of something that they do not understand causes a desperate need for an intense and ongoing educational process for developing an understanding of cultural differences and how those differences affect policing a free and culturally diverse society.

Too often, police, like many others, tend to lump cultures into races or nationalities. This way of thinking does not prepare officers to deal with many of the challenges and conflicts of which they may become a part. For example, an officer may be assigned to a predominantly "black community" within a city. But, what constitutes a black community? Within the race, many diverse cultures exist, such as blacks of Hispanic, African, African-Caribbean, American, European, or Asian descent. Each culture, as opposed to race, within a community is unique and has different, as well as similar, needs that require serious consideration if police are to interact equally and effectively with every citizen.

A police department that reflects the cultural makeup of the community does not guarantee freedom from cultural conflict. Unintentional conflicts can result from not understanding cultural norms and differences. The acceptance and management of diversity cannot be just a program or strategy. Personal, personnel, and policy changes must occur from the top to the bottom of the organization. Law enforcement administrators must have insight into the attitudes, biases, and prejudices brought to, and

learned on, the job that their personnel carry into their communities.

Training and education remain the key to managing diversity and recognizing cultural differences. No training program automatically can change attitudes, but, with appropriate education and consistent reinforcement, agencies will encourage a positive change in behavior. Training must develop interpersonal skills, such as active listening, and police personnel must become aware of their own feelings, values, biases, and behaviors. Cultural diversity training, if not conducted properly or supported by changes in the organization, is better left undone. Training for the sake of training can diminish importance, damage morale, and undermine leadership credibility. Further, it wastes time and resources.

Many police departments will implement cultural diversity training by edict, assuming that it will take hold through osmosis. These agencies fail to realize that traditional values and ways of doing things have deep roots that reach throughout the organization. Although officers easily can become jaded and cynical due to the nature of their job, they always should remember that the people they serve are the same ones who gave them their authority to police. Only through training and continuous reinforcement can cultural diversity management take hold and become the organizational norm.

Conclusion

All organizations have a culture. The traditional police culture developed as a means of maintaining the status quo in society and police agencies and was intended to foster conformity. Changing an organization's mind-set presents a difficult challenge. Each police agency has its own cultural norms, expectations, rites, rituals, common language, and traditions that become very strong. Each police agency is part of a community, which also has its own culture and traditions.

> " Unintentional conflicts can result from not understanding cultural norms and differences. "

Twenty-first century America rapidly is becoming more diverse. Identifying the status quo has become increasingly difficult. The dynamics of society demonstrate that cultural and racial divisions are becoming more prevalent and the basic social and economic disparities that have caused many problems in America have not, and will not, disappear anytime soon. The same conditions that exist in society today were present more than 25 years ago when this country literally was tearing itself apart racially.[2] As long as the rift between cultures continues and so many people perceive that they have no legitimate means to achieve the American dream, racial clashes will continue to occur.

In 1840, Alex de Tocqueville, a French social philosopher, addressed the issue of race relations in the United States in his time by saying, "If there ever are great revolutions there, they will be caused by the presence of the blacks upon American soil. That is to say, it will not be the equality of social conditions but rather their inequality which may give rise thereto."[3] Cultural conflict is nothing new, even de Tocqueville realized its potentially destructive consequences in the 1840s.

But, enlightened, better-educated police officers can open their profession and their communities to new ideas and approaches that can help reduce these problems. With appropriate, well-developed training, law enforcement agencies can provide their officers with the tools to understand, appreciate, and deal with the cultural differences that impact their daily interactions with the citizens they are sworn to protect. ◆

Endnotes

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Citizen Police Academies
Do They Just Entertain?

By ELIZABETH M. BONELLO
and JOSEPH A. SCHAFER, Ph.D.

I n the past two decades, citizen police academies (CPAs) have become increasingly popular among American police agencies of all sizes. Departments design CPA programs to provide participants with a basic idea of crime and policing in their communities. Several authors have suggested that CPAs help improve public relations and increase partnerships between citizens and the police.[1] Despite such suggestions, little research supports or disproves the impact of CPA programs on participants. Consequently, whether police departments are getting the most out of their citizen academies remains unclear.

HISTORY OF CPA PROGRAMS

At the heart of the philosophy of community policing is collaboration, communication, and interaction between the police and the community they serve.[2] Law enforcement agencies across the United States have experimented with a wide variety of programs in an effort to build cooperation and facilitate communication with local citizens. Such efforts will foster new alliances between the police and the public, in part, by removing some of the mystery and uncertainty that surrounds police work. Many departments have developed and implemented CPAs.

CPAs, condensed versions of regular police academies, first were developed in the United Kingdom in 1977 for the purpose of acquainting citizens with the nature and structure of policing.[3] The United States first tried the idea when the Orlando, Florida, Police Department launched their CPA in 1985.[4] Graduates obtain a window into the organization and get a view of the people who have the responsibility of protecting their neighborhoods. CPAs typically combine classroom lectures, demonstrations, and, in many cases, a "ride along" with a police officer to educate participants. Graduates usually share their experiences and beliefs with their

friends and neighbors. In this way, the sponsoring department fosters stronger citizen commitment and builds community support beyond the small number of actual program participants.

CPA CURRICULUM

Academy curriculum serves a twofold purpose. First, the curriculum introduces students to police operations and demonstrates the complex nature of policing. Students receive an overview of the organization of the sponsoring agency and the crime issues that create the most problems in the community. They have an opportunity to understand the rationale police officers use to handle certain situations. Through their participation, graduates may begin to view an officer's conduct as being driven by acceptable motives (e.g., officer safety considerations), rather than inappropriate biases (e.g., a citizen's race/ethnicity, sex, or age). This observation allows citizens to develop an appreciation for the challenges associated with policing their community.

A second, and perhaps less obvious, purpose of the CPA curriculum is to foster a sense of goodwill. Students become acquainted with members of the department and have an opportunity to come into contact with the police through positive interactions. Agencies hope that CPA graduates will have a better appreciation for the difficult nature of policing as an occupation, making them more empathetic and understanding toward the agency. Additionally, after completing the program, departments hope that graduates serve as advocates for the police within the community.

Despite the prevalence of CPA programs, little is known about the ways in which they affect a citizen's beliefs and perceptions.

Much of what has been written about CPAs has consisted of basic descriptions of specific programs.[5] Average CPA programs usually last 11 weeks, meet once a week for 3 hours, serve 27 students per session, and cost $3,500 (including personnel expenses).[6] A recent survey found that 45 percent of municipal police and county sheriff's departments operated some form of a CPA. Most of these academies typically dealt with general law enforcement information, although some agencies implemented special academies aimed at youth or senior citizens.[7] Although CPAs are more common in larger departments, agencies of all sizes have used these programs.

LANSING POLICE DEPARTMENT'S EXPERIENCE

In the early 1990s, the Lansing, Michigan, Police Department (LPD) struggled to establish community policing as its way of doing business. Like many cities that have tried to engage in cooperative problem solving, the department found that Lansing's residents hesitated to join forces with them. Also, through more extensive interaction with citizens, officers realized that the public lacked a basic understanding about the motivation and justification behind many police procedures. During the same time period, LPD officers were involved in two shootings, which heightened public scrutiny of the police and raised levels of distrust within some segments of the population. The department anxiously sought ways to improve their strained relationship with the community.

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Program Development

Against this backdrop, the LPD began its CPA with three goals in mind. Specifically, the agency decided to—

1) create a network of citizens who have a basic understanding about the workings of the department and the complexity of police work;

2) give CPA students the information they need to better evaluate media reports about police performance; and

3) increase the likelihood that CPA graduates will work with officers to identify and solve neighborhood problems.

The agency anticipated that citizens who were better informed about the department and the complex nature of policing would be sympathetic and supportive toward the agency. They also hoped that CPA graduates would vocalize their experiences and share the knowledge they gained with others in the community.

The Lansing CPA classes meet one night a week for 10 consecutive weeks for a total of 30 hours. They cover such topics as the history of the department, an overview of the 911 center, patrol operations, the detective bureau, the firearms training simulator, use-of-force policy, detention, the special tactics and rescue team, crime scene investigation, and domestic violence response. The department held its first academy in the spring of 1996. Since then, they have held two CPA sessions each year. An LPD officer recruited the initial academy class from Neighborhood Watch coordinators, and the department has advertised subsequent classes in the local paper.

Program Evaluation

The Lansing Police Department attempted to establish whether it was meeting the goals established for its CPA program. To do so, the agency developed and administered a survey to all of its CPA graduates. The LPD mailed questionnaires to all of its 134 CPA graduates. Seventy-one percent (68 women and 24 men) of the graduates responded. Through this process, the department discovered a shortcoming in its academy program that prevented it from reaching its true potential.

> " *A...purpose of the CPA curriculum is to foster a sense of goodwill.* "

The findings suggested that, while sponsoring a CPA may prove useful for improving police-community relations and increasing partnerships, agencies can take additional steps to increase the impact of citizen academies. The following summary provides the key survey findings:

• CPA participation increased knowledge of crime, safety, and community policing in Lansing: Respondents reported an increased awareness of crime and safety issues (increased awareness reported by 87 percent), police activities (increased awareness reported by 91 percent), and police-initiated problem-solving efforts (increased awareness reported by 87 percent) as a result of attending the CPA.

• Involvement as a volunteer increased modestly: Fifty-six percent of the respondents had volunteered their time to support the department's crime and safety programs prior to attending the CPA. Sixty-three percent reported such involvement after graduation.

• Academy participation modified how graduates viewed media reports of the police: Seventy-four percent of the respondents advised that they viewed media reports about the police department differently after attending the academy. One student captured the essence of this response by stating, "I better understand the complex nature of policing; I now have more of a sense of what is *not* being reported by the media." These findings suggest that, to a large degree, LPD is meeting its goal of providing CPA students the information they need to evaluate media reports about the police.

• Respondents had positive views of both the agency and the program: Twenty-three percent of the respondents had a very positive view of the LPD before attending the academy. After completing the

Attendees' Comments

"I have a much deeper understanding of all the complexities of the job and department."

"I understand much more fully the hows and whys behind what the officers do. I had no idea!"

"Officers walk a fine line between performing duties under difficult circumstances and behaving in a manner that results in public approval."

"I was uninformed before and basically a 'conscientious objector' against violence. Now, I understand how much control and restraint the officers have in respect to their own actions and that the different levels of force allow for more control of their own actions."

"I can see the different situations that police have to go through, being careful to take everything into consideration, which we as civilians don't always see or realize...."

academy, 81 percent of the respondents reported that they viewed the department very positively. Only five of the respondents stated that they started the academy with a negative opinion of the police department. After completing the academy, four of these five had a positive or very positive view of the department. All of the respondents reported having a positive or very positive impression of the CPA.

- Program participation modified citizens' views of the department: Sixty-seven percent of the respondents stated that they viewed the police department differently as a result of their CPA experience. Those reporting changes in their views overwhelmingly indicated that such changes were in a positive direction.

- Respondents shared their experiences with others: Nearly all of the respondents (98 percent) reported that they had told others about the CPA. Information most commonly was shared with family members, friends, neighbors, and coworkers. When respondents were asked who they had told about the CPA, common answers included, "Anybody who would listen," "Everyone I know," and "People who complain or say bad things about the police."

- Many respondents reported an increase in their willingness to volunteer and collaborate: Approximately one-third (34 percent) of graduates stated that they were more willing to volunteer their time to support LPD programs as a result of their CPA experience. The vast majority of respondents (94 percent) stated that, as a result of participating in the CPA, they now are more likely to work with the police to solve a problem.

These results suggested that the LPD's CPA was meeting its goals and that the academy could have more of an impact if the department recruited students from different segments of the community. If the results experienced by the LPD are typical, citizens who participate in CPA programs enter with positive views of the police. Programs tend to strengthen citizens' views, but few participants began the LPD program with negative perceptions. Furthermore, many of the LPD respondents already were volunteering their time in support of department-initiated crime prevention and safety initiatives. Even if these citizens had not participated in the CPA program, they likely would hold a positive view of the agency, would volunteer to support police programs, and would be supporters of the department within the community. The agency realized the need to work harder to attract academy participants who did not already hold the organization in high regard.

Often, agencies exclude persons with a criminal history from

participating in CPA programs. While departments should run criminal history checks on prospective academy participants, agencies may want to reconsider the absolute exclusion of citizens with a criminal history. Academy applicants who have committed only minor offenses or have not been involved in criminal activity for some period of time might be able to bring important perspectives to the program. If departments want to strengthen ties with segments of the community that historically have been weak, they should avoid adopting policies that exclude large segments of the population.

The findings also suggested that the department needed to do more to capitalize on the willingness of graduates to volunteer and collaborate with the agency. One in three respondents reported that they were more willing to volunteer their time to support police programs after completing the academy. Nearly all of the respondents indicated that, after graduating from the academy, they were more willing to help the police solve neighborhood problems. Despite these findings, only a modest increase in the actual level of student involvement occurred.

The LPD has begun to take steps to recruit their detractors to join the CPA. Such efforts include providing CPA applications to those who contact internal affairs about minor complaints or misunderstandings, which stem from a lack of knowledge about police procedures; encouraging leaders in minority communities to attend the academy; and discussing the CPA on a radio talk show that has a large minority audience. Other suggestions include conducting a "mini-academy" for leaders in the minority community and encouraging them to invite others to attend the full CPA, hosting a youth academy targeting teenagers, and encouraging officers to promote the CPA to those they meet while on patrol.

> ## *CPAs can further community policing goals by increasing understanding, trust, and dialogue with members of the community....*

CONCLUSION

Reaching out to citizens who are distrustful or skeptical of law enforcement and inviting them to take a closer look at police operations can prove intimidating and even unpleasant, but the rewards for doing so may be worth the effort. For agencies hoping to strengthen community alliances, the challenge for the future is to begin including a broader range of the public in their citizen police academy programs. Every department can identify groups within their community with which they have a history of misunderstandings and conflict. Departments should seek to draw academy participants from this portion of the community. Agencies need to improve relationships with those citizens who mistrust or feel alienated from their police, which is especially important if an agency hopes to succeed in carrying out community policing. CPAs can further community policing goals by increasing understanding, trust, and dialogue with members of the community who historically have been at odds with the police. CPA programs represent one mechanism that agencies can use to realize their community-policing objectives. ✦

Endnotes

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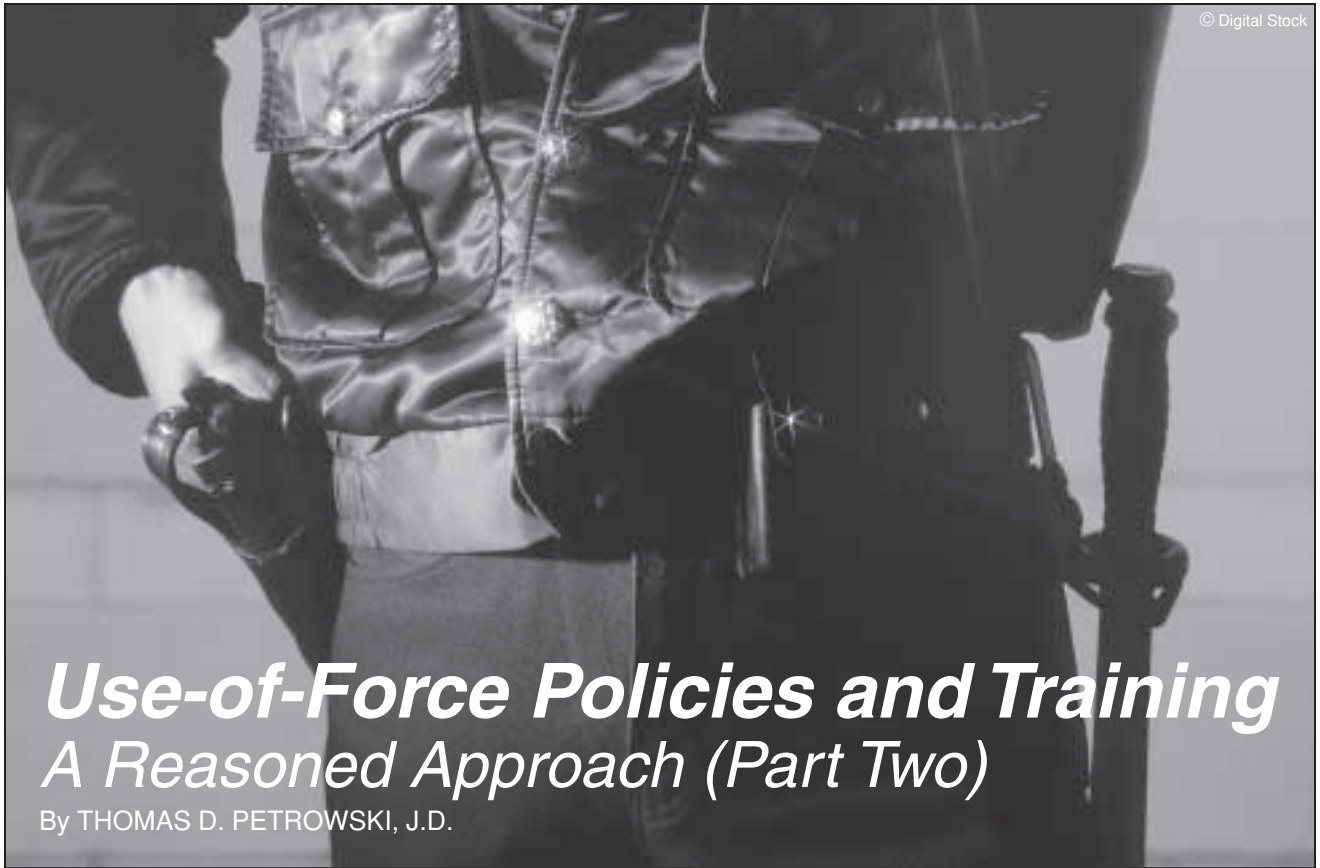
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Use-of-Force Policies and Training
A Reasoned Approach (Part Two)
By THOMAS D. PETROWSKI, J.D.

This is the second of a two-part article[1] examining law enforcement policies and training regarding the use of force. The first part provided an overview of constitutional constraints on the use of force by law enforcement and addressed the inherent hesitation of police officers to use significant levels of force. The law requires law enforcement officers to be reasonable and provides that there cannot be bright-line rules—"mechanical applications" in the words of the Supreme Court[2]—regarding what level of force an officer may use. Practical considerations inform the law. The law, which reflects the pragmatic factors, and the natural hesitation officers experience when using force suggest it is not prudent to use an escalating force continuum when training officers to use force in defense of life. Force continua perpetuate hesitation and exacerbate the natural reluctance of officers to apply significant force even when faced with a serious threat.

The Primary Use-of-Force Training Focus

When evaluating the reasonableness of force used by law enforcement, the Supreme Court said in *Graham v. Connor*[3] that "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application...; however, its proper application requires careful attention to the facts and circumstances of each particular case, including...whether the suspect poses an immediate threat to the safety of the officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight."[4] The Court thus observes that use of force by law enforcement officers[5] can arise from two circumstances:[6] 1) in response to an imminent threat of harm from a subject or 2) to effect the seizure of

a *nonthreatening* subject who is resisting or attempting to escape.

Use-of-force trainers must define a training focus that addresses both distinct situations. Using force to defend against serious assaults is a priority because of the gravity of the encounter; using force to make arrests—where there is no immediate threat to the arresting officer or others—is a significant training concern because this use of force is far more common than using force in defense of life.[7] The dilemma facing use-of-force trainers is how to prepare officers to use reasonable force in both situations—using adequate force without hesitation in defense of life but never using excessive force to make an arrest of a nonthreatening subject. The answer is to train officers to understand when they face an imminent threat. The ability to assess a threat will prompt officers to use necessary force in a timely manner when they are about to be assaulted and discourage unnecessary force when seizing an uncooperative, but nonthreatening, subject.

Threat Assessment

The cornerstone of use-of-force training should be threat assessment. The essence of the reasonableness inquiry in defense-of-life cases is whether the officer who used force reasonably perceived a threat.[8] That is, whenever law enforcement officers use force, the legal evaluation will focus on whether they reasonably perceived a threat at the time they used force and whether the force used was a response that an objectively reasonable law enforcement officer might

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have selected. Thus, the most important use-of-force attribute any law enforcement officer can develop is the ability to recognize a threat. The goal of this training is to enable officers to recognize an imminent threat and reasonably respond in a timely manner.[9]

A threat is a capability to do harm joined by hostile intent.[10] Both elements must be present for an individual to present a threat. Training should emphasize indicators of hostile intent and indicators of a capability (i.e., what subject conduct represents a threat).[11] Threat factors can be categorized as an indicator of either a capability or intent. Intent of a subject is the more critical consideration, but recognizing and articulating the intent of someone, particularly prior to an actual assault, often is very difficult. Examples of indicators of intent include aggressive verbal and nonverbal communications, coupled with noncompliance with clear verbal commands of an officer.[12] Capability indicators are easier to recognize because they are

more tangible. For example, possession of, or access to, a weapon (including an officer's weapon), a demonstrated combat ability or skill, size or fitness, or multiple subjects clearly indicate a capability to harm. Training to focus on cues of the subject that indicate a capability to harm, and understanding the logical inferences of those cues, is paramount.

For example, in training to assess a deadly threat, the FBI provides four categories of a deadly threat which are taught in conjunction with its deadly force policy.[13] If an agent has probable cause to believe any of the four examples exist and the subject poses a threat of serious physical injury, then deadly force may be permissible under the policy. The four examples of a deadly threat are as follows:

1) The subject possesses a weapon, or is attempting to gain access to a weapon, under circumstances indicating an intention to use it against the agent or others.

2) The subject is armed and running to gain the tactical advantage of cover.

3) A subject with the capability of inflicting death or serious physical injury, or otherwise incapacitating agents, without a deadly weapon, is demonstrating an intention to do so.

4) The subject is attempting to escape the vicinity of a violent confrontation in which he or she inflicted or attempted the infliction of death or serious physical injury.

Not only is intent difficult to determine before an actual attack, but it is also a natural human reaction to hesitate—subconsciously hoping the assault does not manifest.[14] This is why the common practice is to wait until a threat manifests—making the threat obvious—even though this places the victim officer in avoidable peril.[15]

Focusing use-of-force training on threat assessment prepares officers to make reasonable use-of-force decisions when confronted with a threat or when apprehending a nonthreatening subject. When officers thoroughly understand threat assessment, they recognize the existence and nature of a threat. When there is no immediate threat, officers have time to consider less intrusive means of effecting the arrest. However, if a threat exists, the officer immediately can address it without the delay caused by natural hesitation or a continuum. A reasonable response to a violent assault is to initially consider whether deadly force is necessary. If it is not,

the officer can select a suitable nondeadly option. If deadly force *is* necessary, there rarely is time to consider another option—which is exactly the problem with the conventional force continuum. Only when deadly force is *not* necessary is an officer likely to have the luxury of a moment to consider a nondeadly force option. While the typical force continuum can be applied to seizures of individuals who do not pose a significant threat and the "reverse" continuum (considering deadly force first) is appropriate

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for confronting threats, both responses (in a much simpler format) are the result of the threat assessment-based training model, which will naturally cause some hesitation in using force to seize nonthreatening subjects—where it should be.

**Threats of Attack
Versus Actual Attacks**

Use-of-force training should focus on the assessment of threat so officers can react to the *threat* of attack and not the *actual* attack. If a subject to be arrested has not threatened anyone, the arresting officers

initially can apply little or no force and then escalate their response as needed. But, once a subject poses a threat, it is critical to respond to that threat *before* it manifests into an assault.

Use-of-force training should prepare officers to respond to a threat before the assault occurs, enabling them to determine when they have probable cause to believe a threat exists without waiting until the actual assault is in progress. When the subject of the officer's force already is assaulting the officer or another, the threat assessment is simple. However, the law, and any rational department policy, does not require an officer to wait to act until an actual assault occurs.

The quintessential practical consideration in use of force by an officer is to respond to the *threat* of violence and not to the *actual* violence itself.[16] While understanding that someone poses a threat during an assault is certainly easier, assuming the officer still is capable of doing so, the resulting tactical disadvantages greatly outweigh the purpose of "strike only after being struck" teachings.

Generally, if an officer responds to an actual assault, there has been an unnecessary delay in that response.[17] The law recognizes this fundamental principle. Examples of courts recognizing this issue are found in cases of police officers reasonably using deadly force against unarmed subjects who the officer reasonably believed to be armed.[18] For example, in *Anderson v. Russell*,[19] the Fourth Circuit Court of Appeals found reasonable an officer's (Russell) use of deadly

force against an unarmed man (Anderson) who the officer believed was reaching for a weapon. The court noted:

"The evidence establishes that immediately before Russell fired, Anderson was reaching toward what Russell believed to be a gun. Any reasonable officer in Russell's position would have imminently feared for his safety and the safety of others. This circuit has consistently held that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action... [a]ccordingly, because Russell had sound reason to believe that Anderson was armed, *Russell acted reasonably by firing on Anderson as a protective measure before directly observing a deadly weapon.*"[20]

The Fourth Circuit also addressed this issue in *McLenagan v. Karnes*,[21] holding that an officer was entitled to use deadly force when he had reason to believe that the suspect was armed. The court reemphasized this in *Elliot v. Leavitt,*[22] stating: "[t]he critical point, however, is precisely that [the subject] was 'threatening,' threatening the lives of [the officers]. The Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists."[23]

The notion that threats should be addressed before a suspect acts is not limited to deadly force situations; it applies to any use of force. In *Wardlaw v. Pickett*,[24]

Pickett (a U.S. Marshal) was removing an individual from a courthouse. Mr. Wardlaw (a friend of the individual being removed) ran up to Pickett yelling at him to leave his friend alone. As Wardlaw closed on Pickett, and before actually assaulting him, "Pickett turned and punched the approaching

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> ### *Use-of-force training should prepare officers to respond to a threat before the assault occurs.*
> "

Wardlaw once in the jaw and two or three times in the chest."[25] In finding Pickett's actions reasonable, the court noted:

"[W]hen Wardlaw rushed down the stairs toward them, Pickett...[was] in a vulnerable position, caught in a stairwell and moving an uncooperative individual. Wardlaw admits that he shouted at the deputies as he approached them, thus, again reasonably, *raising a fear that he was about to attack*. Furthermore, as Wardlaw acknowledges, Pickett hit him no more than three or four times, all in rapid succession. Once Wardlaw sat down on the stairs, and it became apparent that he was not going to attack, Pickett did not hit him.... We believe that no reasonable jury could find that Pickett's use of force was

so excessive that no reasonable officer could have believed it to be lawful."[26]

This case illustrates an example of a reasonable response to the threat of assault without waiting for the actual assault to commence. Note that the court also took notice of the fact that Pickett ceased his use of force as soon as "it became apparent that he [Wardlaw] was not going to attack." The court found the use-of-force decision reasonable based on the presence, or absence, of a threat.

In *Prymer v. Ogden*,[27] a police officer (Ogden) had arrested and handcuffed Prymer. As Ogden was walking with Prymer to the police transport vehicle, Prymer made a gurgling noise in his throat as if he were going to spit on Ogden. Ogden "struck Mr. Prymer in the forehead with a straight-arm stun technique to redirect Mr. Prymer's head."[28] In finding Ogden's response to the threat of being spat on reasonable, the court commented that "Mr. Prymer was preparing to spit on Officer Ogden and that the open-handed stun technique was a reasonable response *to prevent Mr. Prymer's actions*."[29]

Reasonable Force Is Always Preemptive

In use-of-force training, the concept of striking after the threat is realized but before the assault commences often is referred to as preemptive force. This incorrectly suggests that using force after the assault commences is not preemptive. Actually, any legal use of force is preemptive in nature, regardless of whether the assault has started.

Force lawfully used is employed to prevent—that is, preempt—future harm; it is never to punish.

Once an individual has commenced an assault, force used against that subject is not to address the previous assault, but to prevent future assaults. The assessment of threat is just easier once the assault occurs. Except for force included in a criminal sentence, constitutionally permissive force always is preemptive in nature. Sound use-of-force training should refrain from characterizing preassault responses as "preemptive" because it suggests a legal distinction between preassault and postassault uses of force. There is no such distinction. It is either justified (i.e., the threat has reasonably been perceived) or it is not.

Action Versus Reaction

Training to respond to threats lets officers act, not react. This is critcal because there are inherent limitations on a person's ability to assess and respond to perceived threats. An individual's reaction always is slower than the action that prompted the response. This is commonly referred to as the reactionary gap.[30] Action always beats reaction, making it even more critical to respond to the threat of violence, and not to the actual violence itself. In any violent encounter, one party takes advantage of the reactionary gap; the other must react and be at a significant disadvantage. When possible, officers must be on the "action" side of the action/reaction model.

In *Montoute v. Carr*,[31] the Court of Appeals for the 11th Circuit addressed the reactionary gap and the concept that an officer must react to a threat before it manifests into an assault. In *Montoute*, a police officer was chasing a subject armed with a sawed-off shotgun. The officer eventually shot the subject in the back after verbal commands to stop went unheeded. The court noted:

> "[although the subject] never turned to face [the pursuing officer] and never actually pointed the sawed-off shotgun at anyone.... There was nothing to prevent him from doing either, or both, in a split second. At least where orders to drop the weapon have gone unheeded, an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force."[32]

> **"** *The determination of what force is reasonable is based on the unique, practical considerations facing the officer.* **"**

Hesitation, resulting in a delay of only fractions of a second, puts an officer at great risk, particularly when coupled with the unavoidable psychophysiological delay associated with reacting to a subject's action. Training to respond to preassault threats, as the officer did in *Montoute*, places officers in a position to act and the subject in the disadvantageous position of reacting.

Reducing Incidents of Unreasonable Force

Threat assessment training will reduce incidents of unreasonable force. Courts look for the presence of a threat or attempt to escape in evaluating use of force by law enforcement. If courts find the force to be unreasonable, it is typically because there was no threat or escape attempt. For example, in *Lee v. Ferraro*,[33] an officer allegedly slammed an arrestee's head into the trunk of her car after arresting and handcuffing her. The court found:

> "...there is absolutely no evidence indicating that [the arrestee] posed any threat to the arresting officer or to anyone else. Similarly, ...there is no indication that [the arrestee] actively resisted or attempted to flee.... We can discern no reason, let alone any legitimate law enforcement need, for [the officer] to have led [the arrestee] to the back of her car and slammed her head against the trunk *after* she was arrested and secured in handcuffs. At this point, [the arrestee] clearly posed no threat at all to the officer or to anyone else and no risk of flight. Under all of the factors set forth in the governing case law, the facts...plainly show that the force used by [the officer] *after* effecting [the] arrest was unnecessary and disproportionate."[34]

This case illustrates the chief use-of-force concern of the law

enforcement manager: a postarrest, postthreat use of force. It typically occurs after a high-stress interaction between the arresting officer and the subject, such as a high-speed chase or assault by the subject. Such uses of force are punitive in nature, and, while there may be extreme provocation, such force used in the absence of a threat or escape attempt *never* will be constitutionally reasonable.

The training model based on threat assessment teaches officers to instinctively associate use of force with a threat. It conditions officers to respond to a threat with appropriate force and immediately cease all force options once an arrest is effected and there is no threat.[35] This method underscores the inviolate rule that, regardless of any provocation, once a seizure has been made and the threat ceases, so must any use of force.

The response of many departments (particularly after well-publicized incidents) is to implement across-the-board restrictions on all uses of force and to emphasize an escalating force continuum. However, denying officers lawful and necessary force options is not the appropriate method to reduce uses of excessive force. Proper training in threat assessment is the answer; training should condition officers to associate force with a threat and associate discontinuing force with the termination of a threat.

A Reasoned Use-of-Force Policy

A sound use-of-force policy should explain its purpose and philosophy. The policy should emphasize reasonableness as its core—

both in the perception of a threat or escape attempt and the application of force. The adoption of any mechanical rules regarding the application of force must be avoided because each circumstance is unique and reasonableness is based on the totality of the circumstances. The policy should address the two justifications for using force: a threat to officers or others or to effect seizures of nonthreatening subjects.

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Specific quotes from *Graham*[36] and any relevant state law[37] also should be included. It is imperative that departments identify considerations in determining reasonableness and include examples of what constitutes a threat. A policy should include a discussion of deadly force and nondeadly force applications[38] through a random presentation of force options (not as a continuum). It also should include the requirement to seek medical attention if the force used has resulted in any injury to the subject,[39] as well as administrative reporting requirements regarding use-of-force incidents. The cornerstone of the policy should be threat assessment, not an escalating

approach or a force continuum. Escalating responses should be encouraged when making seizures of individuals assessed to be nonthreatening but never must be the foundation of a force policy.

Conclusion

The U.S. Constitution prohibits law enforcement officers from using unreasonable force. The determination of what force is reasonable is based on the unique, practical considerations facing the officer. "Reasonableness" is a concept not capable of precise definition. Like obscenity, it is difficult to legally define but will be known when seen.[40] Force can be lawfully used by law enforcement officers either in response to a threat or to effect the seizure of a nonthreatening subject. Officer response to these two justifications can be very different; training and policies should emphasize this distinction.

When law enforcement officers use force, the ultimate legal questions are: 1) why the officers perceived the subject of their force to be either a threat or to otherwise hinder the seizure in a nonthreatening manner; and 2) whether that perception and the response were objectively reasonable.

Policy makers and trainers must focus on core use-of-force principles:

• Hesitation in using force is natural and inevitable. Policies and training must focus on overcoming hesitation, not encouraging it.

• There never can be bright-line rules. Every use-of-force situation is unique.

- The cornerstone of use-of-force training must be threat assessment.
- Officers must be trained to respond to the *threat* of violence and not to the *actual* violence itself.
- Use-of-force responses to the two force justifications are very different. Where there is a threat, officers must be trained to not hesitate and must be able to deploy reasonable force quickly. When seizing a nonthreatening subject, officers often can use force in an escalating manner and attempt less intrusive force options.

Using force in an escalating manner must be a secondary consideration. Because arrests of non-threatening subjects are more common, some departments make the escalating approach the foundation of their use-of-force policies and training in order to prevent the excessive use force. This exacerbates the natural hesitation officers experience and leaves officers less prepared to respond to a threat. The focus of policy and training first and foremost must be the determination of whether someone poses a threat. Use-of-force training based on threat assessment will result in an escalating approach when it is appropriate and a timely response when it is not. If used effectively, this approach will train officers to immediately cease application of force once a threat is no longer present and eliminate postarrest punitive force. It is clear, in both the law and in practice, that the proper approach to the use of force is not all-encompassing restrictions on force or using the escalating force continua as the primary response. Such dangerous policies place officers at significant and avoidable risk. As the Fourth Circuit Court of Appeals said in *Elliot*: "The Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm"[41]—neither should thier departments. ◆

Endnotes

[1] Thomas D. Petrowski, "Use-of-Force Policies and Training: A Reasoned Approach," *FBI Law Enforcement Bulletin*, October 2002, 25-32 (hereafter "Part One").

[2] *Graham v. Connor*, 490 U.S. 386, 396 (1989).

[3] *Id.* at 396.

[4] *Graham* at 396.

[5] All law enforcement seizures inherently involve some use or threat of force. Even handcuffing a compliant subject constitutes a level of force. The Supreme Court said in *Graham* at 396: "Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." This article focuses on force used to respond to subject resistance—either a threatening or nonthreatening hindrance to a seizure.

[6] The critical distinction between the two justifications is the presence of a threat of harm to the arresting officers or others. A subject who is escaping poses different tactical considerations than an individual simply resisting. However, in terms of preparing an officer to make such a seizure, the significant consideration is that there is no imminent threat to the officers, which may allow time for an escalating approach and possible attempt at lesser force options. Obviously, a subject can be a threat to the officers or others while escaping or resisting in which case force, up to and including deadly force, would be applied to interdict the threat. See *infra*, notes 8 and 12.

[7] See U.S. Department of Justice, Office of Justice Programs, *Use of Force By Police, Overview of National and Local Data*, (1999). This report notes at page vii of the Executive Summary:

In 7,512 adult custod[ial] arrests...fewer than one out of five arrests involved police use of physical force (defined as use of any weapon, use of any weaponless tactic, or use of severe restraints)...Also known with substantial confidence is that police use of force typically occurs at the lower end of the force spectrum, involving grabbing, pushing, or shoving. In the study focusing on 7,512 adult custody arrests, for instance, about 80 percent of arrests in which police used force involved use of weaponless tactics. Grabbing was the tactic used about half the time. About 2.1 percent of all arrests involved use of weapons by police. Chemical agents, such as pepper spray, were the weapons most frequently used (1.2 percent of all arrests), with firearms least often used (0.2 percent).

[8] The Supreme Court made clear in *Graham* that the conclusive legal questions when law enforcement officers use force in self defense are: (i) why the officer perceived the subject of their force to be a threat or to otherwise hinder the seizure in a nonthreatening manner; and (ii) whether that perception, and the response, were objectively reasonable. Additionally, the Court also focused on the presence of a threat as the foundation of the use-of-force decision in its most significant opinion on the use of deadly force by law enforcement, *Tennessee v. Garner*, 105 S. Ct. 1694 (1985). The Court said at 1701: "Where the suspect poses no immediate *threat* to the officer and no *threat* to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.... Where the officer has probable cause to believe that the suspect poses a *threat* of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force" (emphasis added).

When force is used to effect the seizure of a nonthreatening noncompliant subject, the inquiry also is focused on the officer's reasonableness in response to the conduct, albeit nonthreatening, of the subject.

The Supreme Court also has used the presence or absence of a threat as the determining issue in Eighth Amendment use-of-force cases. In *Hope v. Pelzer*, 122 S. Ct. 2508 (2002), at 2513, the Court affirmed the lower courts finding that "[using force] for a period of time that surpasses that *necessary to quell a threat* or restore order is a violation of the Eighth Amendment; and at 2519: [w]e find that [the use of force] for a period of time extending past that *required to address an immediate*

danger or threat is a violation of the Eighth Amendment" (emphasis added). See also *Treats v. Morgan*, 8th Cir., 2002 WL 31055497, where the court noted: "[t]he law...does [not] justify punitive use of force on difficult inmates not posing a real threat to other persons.... A basis for an Eighth Amendment claim exists when...an officer uses pepper spray without warning on an inmate who...poses no threat."

[9] This training focus avoids unnecessarily going through a progressive series of options to experiment to find the least intrusive tool. See Part One, note 28.

[10] Some force trainers include "opportunity" as a third element to this formula. Opportunity is actually a component of the "capability" element, because an individual would not have the capability to imminently harm if the opportunity was not present.

[11] For an example of training to identify cues which indicate a threat, see generally Thomas Gillespie, Darrel Hart, and John Boren, *Police Use of Force, A Line Officer's Guide* (Shawnee Mission, KS: Varro Press, 1998).

[12] This was part of the rationale of the Supreme Court in noting in *Garner*, *supra* note 8, that law enforcement officers should give verbal warnings when feasible before using deadly force to prevent the escape of an unarmed dangerous subject. The Court said in *Garner* at 1701. "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given."

But, when warnings are not feasible, they are not required, and no officer should delay in using necessary force. This issue was presented in *McLenagan v. Karnes,* 27 F.3d 1002 (4th Cir. 1994). The court noted at 1007: " For all [the officer] knew, the hesitation involved in giving a warning could readily cause such a warning to be his last. We decline, therefore, to fashion an inflexible rule that...an officer must always warn his suspect before firing— particularly where, as here, such a warning might easily have cost the officer his life."

Unfortunately, some courts greatly exaggerate the constitutional duty to give such warnings even when the facts clearly indicate no feasible way for such warnings to be given. See *Deorle v. Rutherford*, 242 F.3d 1119 (9th Cir. 2001) (Police officer should have given warnings before bean bag shooting of armed attacking subject 30 feet away), *Vaughn v. Cox*, 264 F.3d 1027 (11th Cir. 2001) (during high speed chase reaching 85 mph officer should have given verbal warnings before shooting from his cruiser into subject's vehicle), *Idaho v. Horiuchi*, 253 F.3d 359 (9th Cir. 2001) (FBI sniper deployed 200 yards in the woods from an armed subject should have given verbal warnings before shooting).

[13] See John C. Hall, "FBI Training on the New Federal Deadly Force Policy," *FBI Law Enforcement Bulletin*, April 1996, 25-32. It should be noted that state and local law enforcement agencies may have legal constraints more restrictive then the federal constitutional limits applicable to the FBI deadly force policy.

[14] See Part One, page 28.

[15] It should be noted that threat assessment based on intent and capability of a subject parallels use-of-force training for officers. The attributes use-of-force trainers instill in trainees are those that officers look for in subjects when assessing a threat. Any sound force training program should emphasize the mind-set of the officer ahead of the ability to apply force options. Bringing a proper mind-set to an encounter significantly supports both threat assessment and responding without hesitation.

[16] The strategy of addressing a threat before it manifests is fundamental to any violent encounter. This point often has been made since the terrorist attacks of September 11, 2001. For example, President Bush, in his commencement speech to West Point on June 1, 2002, remarked that "[w]e must take the battle to the enemy, disrupt his plans, and confront the worse threats before they emerge...the only path to safety is the path of action... [i]f we wait for threats to fully materialize, we will have waited too long...the war on terror will not be won on the defensive." Mike Allen and Karen DeYoung, *The Washington Post*, June 2, 2002.

See also Col. Rex Applegate, *Kill or Get Killed* (Boulder, CO: Paladin Press, 1943), and its progeny. Applegate discusses this issue regarding law enforcement at 103: "A pure definition of 'defensive shooting' is 'fire returned by an individual after the enemy fires the first shot.' The individual is then considered to be shooting in defense of his life.... This often occurs in law enforcement, without any intent of the officer involved. In some cases, such instructions—that is, to shoot only when shot at—actually have been issued to law enforcement officers in combating known desperate men. The result has been casualties among those who have faithfully followed them."

[17] Except for ambushes (see Part One, notes 13 and 23), assaults on law enforcement officers typically are prefaced by some interaction between the officer and the attacker.

[18] For examples of cases holding officer's use of deadly force to be reasonable see *Roy v. Lewiston*, 42 F.3d 691 (1st Cir. 1994) (police shot intoxicated man with two steak knives); *Salim v. Proulx*, 93 F. 3rd 86 (2nd Cir. 1996) (police shot juvenile who grabbed for officer's firearm); *Colston v. Barnhart*, 130 F.3d 96 (5th Cir. 1997) (police shot unarmed subject after he knocked them to the ground and moved in direction of police vehicle where shotgun was located); *Pena v. Leombruni*, 200 F.3d 1031 (7th Cir. 1999) (police officer shot man attacking with a concrete slab); *Monroe v. City of Phoenix*, 248 F. 3d 851 (9th Cir. 2001) (officer shot unarmed man who attacked officer); *Wilson v. Meeks*, 52 F. 3d 1547 (10th Cir. 1995) (police shot man armed with empty handgun). For examples of qualified immunity being denied in the use of deadly force against an unarmed subject, see *Ludwig v. Anderson*, 54 F.3d 465 (8th Cir. 1995) (police shot emotionally disturbed man armed with a knife) and *Clem v. Corbeau*, 284 F.3d 543 (4th Cir. 2002) (police officer shot unarmed man who posed no threat).

[19] 247 F.3d 125 (4th Cir. 2001). See also *Thompson v. Hubbard*, 257 F.3d 896 (8th Cir. 2001) where the court noted at 899: "An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun;" and the Court in *Ryder v. City of Topeka*, 814 F.2d 1412, (10th Cir.1987) at 1419, note 16, noting that "[t]here might be numerous situations that would justify a police officer's belief that a suspect was armed and that he posed an immediate threat to the officer, even though the suspect was not in fact armed. Certainly, whether a suspect is armed is a relevant factor in determining whether the suspect poses an immediate danger. A per se rule, however, that a police officer never may employ deadly force unless attacked by a suspect possessing a deadly weapon would place a police officer in a dangerous and unreasonable situation. Therefore, we conclude that whether a particular seizure is reasonable is

dependent on the 'totality of the circumstances' and not simply on whether the suspect was actually armed."

[20] *Id.* at 131 (emphasis added).

[21] The court in *McLenagan* held at 1007: "We do not think it wise to require a police officer, in all instances, to actually detect the presence of an object in a suspect's hands before firing on him." See also Part One at pages 26-27.

[22] 99 F.3d 640 (4th Cir. 1996). In *Elliot*, two police officers arrested Mr. Elliot for drunk driving. They handcuffed him and placed him in a marked cruiser. While the police officers were standing outside the cruiser, Mr. Elliot produced a handgun (which the arresting officers missed during their search of him) and pointed it at them. After unheeded verbal commands by the officers, both officers fired at Mr. Elliot in the cruiser fatally wounding him. The court granted Summary Judgement for the officers notwithstanding plaintiff's arguments that the officers' conduct was unreasonable because: Elliot was drunk; they should have found the gun during their search; they fired too many rounds; they should have restrained Elliot more effectively; they should have used less intrusive means; and, they should have simply gotten out of the way.

[23] *Id.* at 643.

[24] 1 F.3d 1297 (D.C. Cir.1993).

[25] *Id.* at 1300.

[26] *Wardlaw* at 1204 (emphasis added).

[27] 29 F.3d 1208 (7th Cir. 1994).

[28] *Id.* at 1211.

[29] *Prymer* at 1212 (emphasis added).

[30] See Bruce K. Siddle, *Sharpening the Warrior's Edge*, Chapter Four: *Survival Reaction Time*, PPCT Research Publications, Millstadt, IL, Fourth Edition, 2000.

[31] 114 F.3d 181 (11th Cir. 1997).

[32] *Id.* at 185.

[33] 284 F.3d 1188 (11th Cir. 2002).

[34] *Id.* at 1198. It should be noted that the court was reviewing this case to determine if it was appropriate to grant the arresting officer qualified immunity and therefore, assumed facts in a light most favorable to the arrestee. See also *U.S. v. Harris*, 293 F.3d 863, (5th Cir. 2002) (postarrest, postthreat use of force by police officer involving substantial provocation by arrestee/victim and ethic animus of arresting officer).

[35] Of course once an arrest is made, there still may be a threat issue. Examples include the *Elliot* and *Prymer* cases noted herein where both subjects were handcuffed and in custody when they posed a threat to the arresting officers.

[36] See Part One, note 6, for language in the *Graham* decision suitable for policy introduction. This language often also is used in jury instructions during excessive force litigation. See *Cox v. Treadway*, 75 F.3d 230 (6th Cir. 1996). The court upheld jury instructions that included specific *Graham* language, notwithstanding the plaintiff's characterization, and objection, of the language as inappropriate "Heat of Battle" instructions.

[37] For example, the following are Florida statutes relevant to the use of force by state and local law enforcement officers: § 776.05, law enforcement officers use of force in making an arrest; § 776.06, deadly force; and § 776.07, use of force to prevent escape.

[38] Departments should consider specifically addressing force options. For example, defining the use of an impact weapon as either deadly or nondeadly force or the use of a knife as an improvised weapon. See Steven Tarani, "Model Policy for Patrol Knives," *Law and Order*, January 2002. Mr. Tarani is a consultant to the FBI Defensive Tactics Program regarding edged and impact weapons.
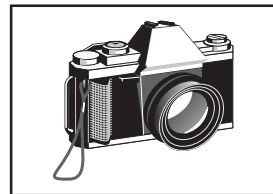
[39] While a use of force may be reasonable, it may create a duty to provide the subject of that force medical treatment. Not providing access to that treatment may result in other constitutional issues. See *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175 (9th Cir. 2002) (denial of Summary Judgement regarding defendant county's policy of delaying medical screening of combative inmates as it may pose a substantial risk of serious harm to detainees and whether county was aware of the risk). *Cf. Wilson v. Meeks*, 52 F.3d 1547, (10th Cir. 1995) (officers did not have duty to render medical attention to subject they had just shot).

[40] Supreme Court Justice Stewart said in his concurring opinion in *Jacobellis v. State of Ohio*, 84 S. Ct. 1676 (1964) regarding obscenity: "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it...."

[41] *Elliott* at 641.

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 those situations that transcend the normal rigors of the law enforcement profession.

Officer Junlakan

Officer Davis

Officers Prathet Junlakan and Jeff Davis of the Panama City, Florida, Police Department were on patrol when they observed a residential fire. As they approached the residence, they saw a person running out the door carrying a burning mattress. The person threw the mattress in the yard and ran back into the house. Officer Junlakan sprayed the mattress with a fire extinguisher. Officer Davis entered the home and encountered a large amount of smoke. He located the man who had just run inside, and he helped him outside to safety. Officer Davis went back inside the house and located the man's wife in a back bedroom. She was attempting to put out the fire, but Officer Davis convinced her to leave with him. Then, Officer Junlakan entered the home and heard someone coughing. He located a 4-year-old boy alone in a bedroom, and he carried the child out of the house to safety. Officer Davis went back into the house with a fire extinguisher and put out the fire in the bedroom. The quick thinking and courageous actions of Officers Junlakan and Davis saved the lives of these three people.

Officer Howe

While off duty one afternoon at his parents' residence, Officer Steve Howe of the Trenton, Tennessee, Police Department heard a loud crash. An automobile accident had just occurred in front of the home. Officer Howe rushed to the car and found a young female who had been thrown approximately 40 feet from the vehicle. He checked the victim and found that she did not have a heartbeat nor was she breathing. Officer Howe administered CPR until the victim regained a heartbeat. The victim was unable to breath because her throat and lungs had filled with blood. Using a vacuum hose from another car, Officer Howe cleared the young woman's airway. She suffered two broken arms, two broken legs, a broken back, and a concussion. Officer Howe's inventiveness and fast actions throughout this incident prevented the young woman from choking to death.

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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