



FBI Law Enforcement Bulletin

November 2007
Volume 76
Number 11

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

Robert S. Mueller III
Director

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

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

Editor

John E. Ott

Associate Editors

Cynthia L. Lewis
David W. MacWha
Bunny S. Morris

Art Director

Denise Bennett Smith

Assistant Art Director

Stephanie L. Lowe

Staff Assistants

Cynthia H. McWhirt
Gabriel E. Ryan

This publication is produced by members of the Law Enforcement Communication Unit, Training Division. Issues are available online at <http://www.fbi.gov>.

E-mail Address

leb@fbiacademy.edu

Cover Photo

© Photodisc

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

Features

Program Evaluations (Part One)

By W. Dean Lee

1

Law enforcement agencies at all levels can benefit from having their major programs evaluated.

Spirituality in Law Enforcement

By Samuel L. Feemster

8

Just as DNA is the building block of human existence, spirituality is the DNA of law enforcement practice.

Documenting the Use of Force

By Todd Coleman

18

Officers must properly document incidents involving the use of force.

Supreme Court Cases 2006-2007 Term

By the FBI Academy
Legal Instruction Unit

25

Five Supreme Court decisions of particular importance to law enforcement are summarized.

Departments

7 Leadership Spotlight Standard-Bearers

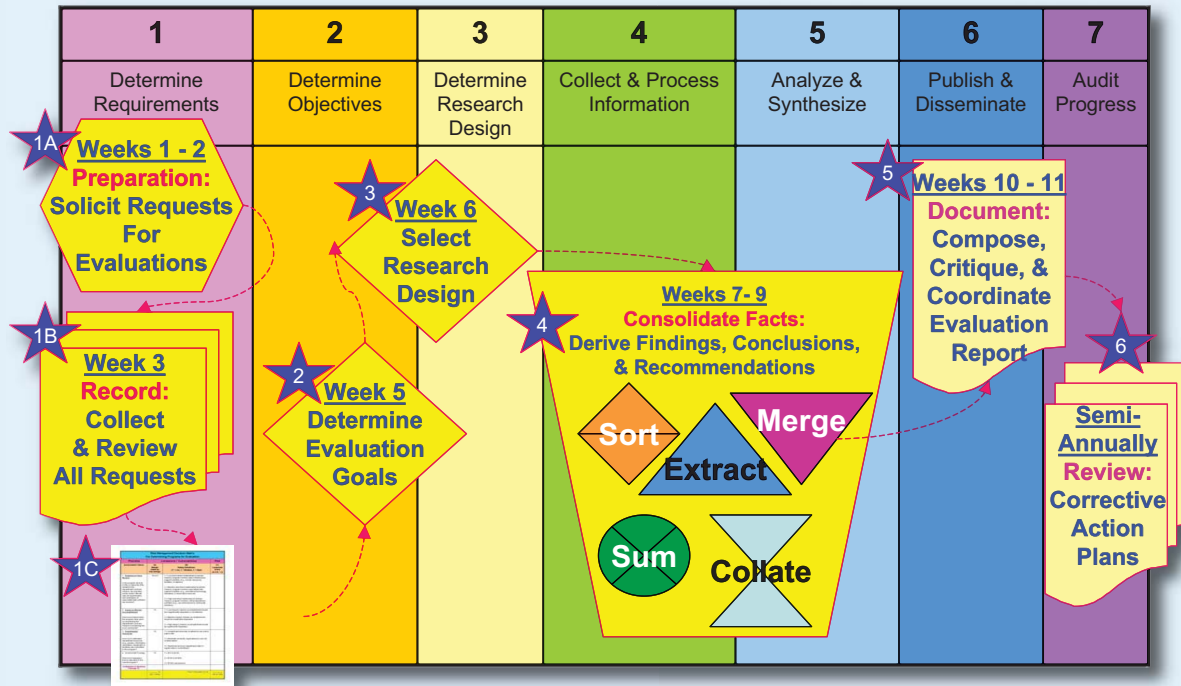
24 Book Review Investigating Child Exploitation and Pornography

UNITED STATES DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION		Statement of Ownership, Management, and Circulation (For completion by owner, publisher, or editor)	
1. Publication Title	FBI Law Enforcement Bulletin	2. Issue Frequency	Monthly
3. Issue Date for Circulation Data Below	October 2007	4. Annual Subscription Price	\$5.00
5. Number of Issues Published Annually	12	6. Annual Circulation - Total	12,000
7. Total Number of Copies (Net press run)	12,000	8. Total Number of Copies (Net press run)	12,000
9. Total Number of Copies (Net press run)	12,000	10. Total Number of Copies (Net press run)	12,000
11. Total Number of Copies (Net press run)	12,000	12. Total Number of Copies (Net press run)	12,000
13. Total Number of Copies (Net press run)	12,000	14. Total Number of Copies (Net press run)	12,000
15. Total Number of Copies (Net press run)	12,000	16. Total Number of Copies (Net press run)	12,000
17. Total Number of Copies (Net press run)	12,000	18. Total Number of Copies (Net press run)	12,000
19. Total Number of Copies (Net press run)	12,000	20. Total Number of Copies (Net press run)	12,000
21. Total Number of Copies (Net press run)	12,000	22. Total Number of Copies (Net press run)	12,000
23. Total Number of Copies (Net press run)	12,000	24. Total Number of Copies (Net press run)	12,000
25. Total Number of Copies (Net press run)	12,000	26. Total Number of Copies (Net press run)	12,000
27. Total Number of Copies (Net press run)	12,000	28. Total Number of Copies (Net press run)	12,000
29. Total Number of Copies (Net press run)	12,000	30. Total Number of Copies (Net press run)	12,000
31. Total Number of Copies (Net press run)	12,000	32. Total Number of Copies (Net press run)	12,000
33. Total Number of Copies (Net press run)	12,000	34. Total Number of Copies (Net press run)	12,000
35. Total Number of Copies (Net press run)	12,000	36. Total Number of Copies (Net press run)	12,000
37. Total Number of Copies (Net press run)	12,000	38. Total Number of Copies (Net press run)	12,000
39. Total Number of Copies (Net press run)	12,000	40. Total Number of Copies (Net press run)	12,000
41. Total Number of Copies (Net press run)	12,000	42. Total Number of Copies (Net press run)	12,000
43. Total Number of Copies (Net press run)	12,000	44. Total Number of Copies (Net press run)	12,000
45. Total Number of Copies (Net press run)	12,000	46. Total Number of Copies (Net press run)	12,000
47. Total Number of Copies (Net press run)	12,000	48. Total Number of Copies (Net press run)	12,000
49. Total Number of Copies (Net press run)	12,000	50. Total Number of Copies (Net press run)	12,000
51. Total Number of Copies (Net press run)	12,000	52. Total Number of Copies (Net press run)	12,000
53. Total Number of Copies (Net press run)	12,000	54. Total Number of Copies (Net press run)	12,000
55. Total Number of Copies (Net press run)	12,000	56. Total Number of Copies (Net press run)	12,000
57. Total Number of Copies (Net press run)	12,000	58. Total Number of Copies (Net press run)	12,000
59. Total Number of Copies (Net press run)	12,000	60. Total Number of Copies (Net press run)	12,000
61. Total Number of Copies (Net press run)	12,000	62. Total Number of Copies (Net press run)	12,000
63. Total Number of Copies (Net press run)	12,000	64. Total Number of Copies (Net press run)	12,000
65. Total Number of Copies (Net press run)	12,000	66. Total Number of Copies (Net press run)	12,000
67. Total Number of Copies (Net press run)	12,000	68. Total Number of Copies (Net press run)	12,000
69. Total Number of Copies (Net press run)	12,000	70. Total Number of Copies (Net press run)	12,000
71. Total Number of Copies (Net press run)	12,000	72. Total Number of Copies (Net press run)	12,000
73. Total Number of Copies (Net press run)	12,000	74. Total Number of Copies (Net press run)	12,000
75. Total Number of Copies (Net press run)	12,000	76. Total Number of Copies (Net press run)	12,000
77. Total Number of Copies (Net press run)	12,000	78. Total Number of Copies (Net press run)	12,000
79. Total Number of Copies (Net press run)	12,000	80. Total Number of Copies (Net press run)	12,000
81. Total Number of Copies (Net press run)	12,000	82. Total Number of Copies (Net press run)	12,000
83. Total Number of Copies (Net press run)	12,000	84. Total Number of Copies (Net press run)	12,000
85. Total Number of Copies (Net press run)	12,000	86. Total Number of Copies (Net press run)	12,000
87. Total Number of Copies (Net press run)	12,000	88. Total Number of Copies (Net press run)	12,000
89. Total Number of Copies (Net press run)	12,000	90. Total Number of Copies (Net press run)	12,000
91. Total Number of Copies (Net press run)	12,000	92. Total Number of Copies (Net press run)	12,000
93. Total Number of Copies (Net press run)	12,000	94. Total Number of Copies (Net press run)	12,000
95. Total Number of Copies (Net press run)	12,000	96. Total Number of Copies (Net press run)	12,000
97. Total Number of Copies (Net press run)	12,000	98. Total Number of Copies (Net press run)	12,000
99. Total Number of Copies (Net press run)	12,000	100. Total Number of Copies (Net press run)	12,000

Program Evaluations

Improving Operational Effectiveness and Organizational Efficiency

By W. DEAN LEE, Ph.D.



Seven-Phase Evaluation Management Process

Law enforcement agencies at all levels can benefit from having their major programs evaluated. Properly conducted independent assessments, with follow-on curative steps, should help improve effectiveness and efficiency. Select major tasks common to most law enforcement organizations and capable of being evaluated include operational assignments (e.g., specialty squads and street patrolling), organizational structures (e.g., personnel administration and

records management), and community-related services (e.g., public relations and crime prevention).

When did your department last evaluate its major programs? Are they effectively fulfilling their intended purposes and meeting evolving changes? Are limited resources used efficiently? Are evaluations linked to future planning, funding, and daily management efforts? To fully explore program evaluations, the *FBI Law Enforcement Bulletin* presents this article in

three parts. The first covers the purpose of evaluations, the benefits of conducting them, timing considerations, and the first two elements of a generic, seven-phase evaluation management process (EMP).

Purpose of Evaluations

Impartial evaluations of select programs, especially those with a strategic impact upon the department's mission and performance, help determine if the programs are fulfilling the stakeholders' needs,



Dr. Lee, originator of the FBI's Blue Book for Program Evaluation, heads the Organizational Program Evaluation and Analysis Unit at FBI Headquarters.

“ Properly conducted independent assessments, with follow-on curative steps, should help improve effectiveness and efficiency. ”

satisfying the organization's own objectives, meeting prescribed regulatory standards, exploiting the optimum use of resources, complying with oversight responsibilities, and remaining accountable to senior officials and the general public. However, even if an evaluation is brilliantly planned and flawlessly executed, it still may be worthless unless the stakeholders support it and the agency implements and enforces the requisite corrective actions.

Clear standards to guide program evaluations are essential, such as single-source reference material for program analysts (i.e., evaluators). Several useful federal publications highlighting generally acceptable government auditing standards are publicly available.¹ The FBI recently developed a comprehensive plan² for its internal evaluation of major programs with a foundation consisting of four integrated pillars.

1) Core proficiencies comprise 5 team and 31 individual fundamental competencies that form the *professional* foundation needed to ensure the highest quality of professional evaluations.

2) Principles of professionalism include 15 core standards of excellence that provide the *ethical* foundation of acceptable conduct upon which evaluators must adhere.

3) The evaluation management process has a seven-phase course of action that composes the *logical* foundation that ranges from determining evaluation requirements to auditing the progress of corrective actions.

4) The professional development program involves four learning approaches that make up the *scholarly*

foundation for expanding the evaluators' analytical credentials.

An EMP should be a proactive, coherent, and flexible method to independently examine programs and their effects upon form and function. The specific design of an EMP should be customized to meet the needs of the department, its key decision makers, and the local community.

Overall, people assigned to conduct program evaluations should have one basic desired goal: to help improve the evaluated programs by providing accurate, impartial, thorough, and timely evaluations and analyses of select activities and by proposing practical and actionable recommendations for positive change. The independence of evaluators to seek out the facts also is essential, specifically to ensure the objectivity and neutrality of all assessments. Program evaluators must adhere to the highest standards of impartiality, ethics, and professionalism. In short, they must do what is best for the law enforcement agency and the community.

Benefits of Evaluations

Program evaluations can discover internal or external challenges inhibiting performance and impeding progress, including any duplication of efforts or conflicts with other programs. They can identify tangible problems relating to

staffing, training, information sharing, operations, administration, planning, design, coordination, auditing, performance, and logistics. In addition, they can detect intangible challenges concerning divergent perspectives, leadership, management, institutional and cultural barriers, group interactions, morale issues, and reception of feedback.

Program evaluations also can determine if internal audits, evaluations, risk assessments, and performance measures are linked to the department's processes for strategic planning, controlling resources, budget forecasting, and realigning priorities to meet evolving changes and new requirements. Finally, they can provide visibility and substantiate evidence of systemic problems that may justify increased attention and commitment of additional funding and resources.

Timing of Evaluations

Law enforcement agencies can conduct program evaluations periodically or as needed and may find three common time periods adequate. First, formative evaluations begin during program development and continue through the early stages with the intent of assessing initial activities to identify and correct any deficiencies as soon as detected and to promote overall progress and

improvement. Organizations can have formative evaluations completed internally by the program stakeholders and as often as necessary.

Second, progressive evaluations occur after the program has started and is actively underway. They assess whether the program is performing as planned, producing required outputs (the products and services), and achieving desired outcomes (the desired end states and results) with the goal

“

Program evaluators must adhere to the highest standards of impartiality, ethics, and professionalism.

”

of ensuring progress, achievement, and compliance. Progress evaluations may be performed internally or by external audit agencies. As the program matures and depending upon its projected duration, evaluations may be completed at least two or more times to measure and examine the relationships between levels of outputs and outcomes at different stages of implementation.

Third, post evaluations take place after the program has ended (e.g., completed its mission; satisfied key objectives; or terminated due to realignment, changes in priorities, lack of need, or loss of funding) to assess whether it performed as planned, produced the required outputs, and achieved the desired outcomes. The goal is to document lessons learned for future use in other endeavors and evaluations and to provide accountability of the program's value, management, successes, and failures. Post evaluations may be performed internally or by external audit agencies. Departments should complete them as soon as possible while the information is fresh and sources remain available and prior to refunding the same program or implementing similar ones in the future.

Phase 1: Determine Requirements

To begin the process, agencies need to identify those major programs that should be evaluated to determine their effectiveness in fulfilling public service requirements. Sources who may request evaluations can include senior management and department officials; internal entities, such as employees and precincts; and external ones, including government agencies and community groups. A modified risk management approach³

Figure 1**Risk Management Decision Matrix
For Determining Programs for Evaluation**

Priorities	Limitations / Vulnerabilities		Risk
Assessment Criteria	(A) Weight Value by Percentage	(B) Rating Definitions (1 = Low, 2 = Medium, 3 = High)	(C) Composite Score (A X B = C)
1. <u>Relations to Prime Mission.</u> Is the program directly (10%) or indirectly (5%) related to the department's primary mission, top priorities, and/or senior officials special requirements; and what types of associated daily activities are involved?	10 or 5	1 = Low and indirect relationship to primary mission; program involves daily infrastructure support activities (e.g., human resources, facilities, & logistics). 2 = Medium and direct relationship to primary mission; program involves specialized vital support activities (e.g., operational technology, laboratory, & information services). 3 = High and direct relationship to primary mission, program involves critical operational activities (e.g., law enforcement & community relations).	
2. <u>Impact on Mission Accomplishment.</u> How much impact does the program have upon accomplishing the department's primary mission in protecting the local community?	10	1 = Low impact; mission accomplishment would be insignificantly degraded or not effected. 2 = Medium impact; mission accomplishment would be moderately degraded. 3 = High impact; mission accomplishment would be significantly degraded.	
3. <u>Departmental Resources.</u> How much estimated department resources (e.g., people, information, operations, equipment, & facilities) are committed to the program?	10	1 = Insignificant amounts; localized to one unit or patrol shift. 2 = Moderate amounts; regionalized to one HQ or field station. 3 = Significant amount; department-wide or region-wide in commitment.	
4. <u>Government Funding.</u> How much taxpayers' fund is allocated to the overall program?	10	1 = \$1K to \$10K. 2 = \$10K to \$100K. 3 = \$100K and beyond.	
Continuation of Questions 5 through 21.			
	_____ % (95 / 100%)	Total Composite Score:	_____ (95 to 300)

may be used for determining and prioritizing which programs should be evaluated and when, based on the calculated need for the evaluation and balanced by available evaluation resources. Managers and evaluators should consider some basic questions when reviewing each program for possible evaluation.

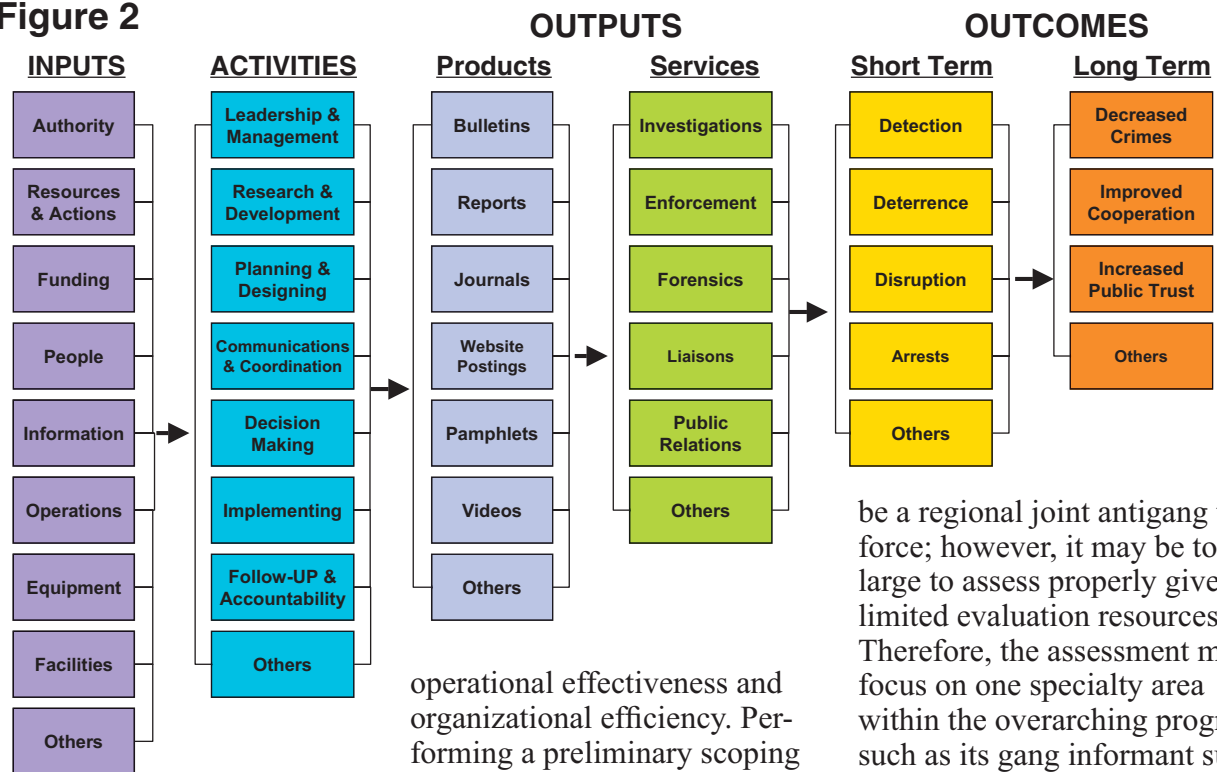
- **Programs (Assets):** What specialty programs are most important to accomplishing the department's mission or contributing to its vital daily functions?
- **Challenges (Threats):** What reported or anticipated major internal or external

challenges and problems may adversely impact achievement of the program's objectives?

- **Pathways (Vulnerabilities):** What significant issues exist within the program that may be pathways for the internal problems to ultimately affect the program's success?
- **Perils (Risks):** What are the overall determined perils necessitating a program evaluation, based on the program's interrelated priorities, limitations, and vulnerabilities?
- **Corrective actions (Countermeasures):** What corrective actions and resources may be needed to help mitigate, eliminate, or prevent major program problems?

A negative response to any one of these questions may invalidate the need for an evaluation. For example, if no known or anticipated threats or vulnerabilities exist, there may be no risk to the program and, consequently, no justifiable need to perform a costly evaluation at that particular time. Historically, however, almost all programs will have some type and degree of systemic predicaments that may be identified through independent evaluations. Figure 1 highlights a sample risk management decision matrix with the top four assessment criteria.⁴ Additional risk-based

Figure 2



information (e.g., answers to the above questions) may be discovered during later research.

Calculating a total composite score for each program can enable agencies to develop an order-of-merit list. Departments then could record programs in descending order of priority based on evaluation resources available. The list may remain valid for a predetermined time or updated as needed to meet new requirements.

Phase 2: Identify Objectives

Evaluation objectives are those distinct specialty projects or related activities within the overarching major program that should receive in-depth evaluation to improve overall

operational effectiveness and organizational efficiency. Performing a preliminary scoping (i.e., the active and passive gathering of relevant information to determine the specific evaluation goals or boundaries for the evaluation) of major programs approved for evaluations can determine if any are beyond the available evaluation resources. For example, active collection involves aggressively seeking out and engaging multiple information sources, such as networking human contacts, whereas passive collection entails the gathering of data from reliable archival sources, including reports, bulletins, publications, and Web sites.

Organizations may scope large programs to determine what keystone specialty or subprograms to evaluate. For example, a major program might

be a regional joint antigang task force; however, it may be too large to assess properly given limited evaluation resources. Therefore, the assessment may focus on one specialty area within the overarching program, such as its gang informant subprogram. As appropriate, agencies may use the same methodology detailed in figure 1 to help determine subprograms to evaluate. Applying one standardized approach will ensure uniformity in methodology.

Ideally, evaluators and program managers should participate in the collective formulation of initial and subsequent evaluation objectives. Specific ones may involve an evaluation of a program's overall effectiveness; compliance with applicable laws and regulations; adequacy of management; and ability to forecast and respond to risks, problems, and changes. However, to ensure impartiality and to promote a candid assessment, evaluators must retain the inherent duty and independence

to pursue those objectives deemed necessary in the best interest of the department and community. Active participation by all stakeholders should promote better cooperation and result in more accurate findings and useful recommendations.

Developing a logic model of a program should help determine some of the key areas for evaluation. A model aids in conceptualizing and identifying major elements within a program, specifically for diagramming the relationships and interconnections between inputs, activities, and output products and services versus short- and long-term outcomes. Figure 2 highlights a simplified logic model for diagramming a generic departmental program.

When preparing an initial model, it may prove more effective to reverse the thought flow process (i.e., single modeling) or, in other words, to work backwards starting with the desired long-term outcomes and then determining the vital program areas and linkages that must be established before successful achievement of the outcomes. The resulting chart provides evaluators with a framework for studying the flow of work from inputs to long-term outcomes, which aid in detecting potential areas of strengths and weaknesses and for identifying lines of parity and disparity. This information should help determine key

points for closer evaluation and for supporting the resulting findings, conclusions, and recommendations.

To further enhance analysis, two models or flow charts may be assembled (i.e., dual comparison modeling). The first outlines what program managers originally intended to occur, and the second covers what actually exists in the program.

“

A modified risk management approach may be used for determining and prioritizing which programs should be evaluated and when....

”

Any areas or lines of differences and trajectory changes between the two will highlight the need for scrutiny, and the subsequent findings should help document discrepancies or gaps discovered in the program's plans, policies, procedures, and performance.

Conclusion

Developing an integrated evaluation management program will benefit both the law enforcement agency and the community it serves. The main

pillars of any program should consist of core proficiencies and principles of professionalism to guide all evaluations, a comprehensive evaluation management process, and an overarching professional development program to further improve each evaluator's professional credentials and creditability. Part two of this article will focus on the next two stages of the evaluation management process: selecting research design and collecting and processing information. ♦

Endnotes

¹ U.S. Government Accountability Office, *Government Auditing Standards of 1994* (Washington, DC, 1994); Office of Management and Budget, *Program Assessment Rating Tool of 2002* (Washington, DC, 2002); and President's Council on Integrity and Efficiency, *Quality Standards for Inspection of 2005* (Washington, DC, 2005).

² U.S. Department of Justice, Federal Bureau of Investigation, *Blue Book for Program Evaluations* (Washington, DC, 2007). The author focuses on select features of the FBI's EMP and presents many of the accompanying figures in an abbreviated format. Nevertheless, law enforcement agencies should be able to adapt the information for their use.

³ For additional information, see W.D. Lee, "Risk Assessments and Future Challenges," *FBI Law Enforcement Bulletin*, July 2005, 1-13; or access <http://www.fbi.gov/publications/leb/2005/july05leb.pdf>.

⁴ Although the FBI's EMP contains 21 baseline assessment criteria, only four criteria were shown due to space limitations. Readers interested in the other criteria may contact the author at deanlee@leo.gov.

Please forward questions and comments to Dr. Lee at deanlee@leo.gov.

Standard-Bearers: They Influence by Leadership

Setting an example is not the main means of influencing another, it is the only means.

—Albert Einstein

To be great leaders, we must work at improving our leadership skills throughout our lives. We must have the internal drive to build on strengths, the humility to recognize and improve on weaknesses, and the passion for leadership excellence that makes us everyday students of the art. Of the many concepts a leader must master, one reaches to the core of our character: leading by example. In its most simplistic form, leading by example is symbolized by the phrase “watch me, do as I do.” In this regard, “a leader is a standard-bearer, visible for all to recognize and evaluate.”¹

Leaders must avoid the notion that effective leadership requires personal attributes of being profane, abrasive, or volatile. A leader of this description will eventually look back to discover subordinates who are likewise profane, abrasive, and volatile. “A leader can be a power for good or evil. Live the kind of life you would have them lead and you will be surprised to see the number who will imitate you.”² Our actions are the most influential means to communicate our values, expectations, personal accountability, and strength of conviction. It is this remarkable impact of leadership that will allow our subordinates to carry on the mission in our absence, choose the correct path when no one is looking, and persevere during troubled times.

To be a standard-bearer obligates leaders to carry on their professional and personal lives as a model for others to follow. It also requires them to endure the hardships felt by their subordinates: if they work late, so must you. A leader can go only so far on words, policies, or directives. A leader’s actions are much more influential than mere words. That being the case, if you say you are going to do something, then do what you say you are going to do. Similarly, if you say you are not going to do something, don’t do it.

Make full use of your talents, have high expectations and professional standards, and demonstrate your expectations by living them for all to see. What you demand from others, demand more from yourself. In the words of Ralph Waldo Emerson, “What you are shouts so loudly in my ears, I cannot hear what you say.” Lead by example and be a standard-bearer. ♦

Endnotes

¹ General John A. Wickham, chief of staff, U.S. Army, at Virginia Military Institute, April 1985.

² Remarks by Major Christian Bach, a cavalry officer, at ROTC summer camp in 1918.

F. Wade Ammerman, a special agent assigned to the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Spirituality

The DNA of Law Enforcement Practice

By SAMUEL L. FEEMSTER, M.Div., J.D.

“Pace officers are exposed to the worst that life has to offer. [T]hey see the denizens of society at their very worst—when they have just been victimized or when they have just victimized someone else. Peace officers see the perpetrators of evil and the results of their evil deeds. The constant contact with evil is corrosive, and those effects are cumulative. From the initial selection of a peace officer..., great care must be taken to ensure the emotional, psychological, and physical health of

that individual. That care must address preparation for contact with evil, not just address evil’s effects. Law enforcement managers must recognize the short- and long-term effects of this work and...must protect those who they task with the protection of others.”¹

These profound comments from a veteran law enforcement executive highlight a danger that no bullet-resistant vest, superior firearm instruction, or innovative tactical technique can protect against. These observations reveal the acute need

for those in the law enforcement profession, as well as the communities they protect and serve, to recognize the nexus between intentional care of the body and spirit and vocational survival of those charged with enforcing this nation’s laws. In today’s world of terrorism; mass shootings, especially of children; and other heinous acts of violence, law enforcement officers are exposed to increasingly toxic situations that adversely affect their bodies, their minds, and, most of all, their spirits. Ultimately, this unrelenting exposure to

inherently evil individuals and the scenes of their crimes can critically impact officers' abilities to effectively perform their sworn duties.

For clarity, this article is not about religion² nor is it a treatise about ethics, fundamentalism of any kind, popular fads, intuition, emotional or social intelligence, religiosity, or stress management, per se. Rather, the author's purpose is to acknowledge the link between spirituality and law enforcement to enable its embrace within the profession. In other occupations, including those in the fields of medicine, higher education, and business, many employees, managers, and their organizations have recognized the healthy effects of embracing a critical spirituality. It is time for the law enforcement community to begin a dialogue that recognizes the humanness of officers and the tragic consequences that can occur when the toxicity they face on a daily basis overtakes them.

UNDERSTANDING THE CONNECTION

While some may perceive the subject of spirituality as controversial because of the common misunderstanding of the establishment clause of the First Amendment,³ society must become aware of the inherent spiritual nature of law enforcement. Spirituality denotes the nurturing of the spirit

throughout a person's life in all of its dimensions and expressions.⁴ The four basic components of spirituality include 1) a value-based meaning that emanates from a personal belief system, 2) the total integration of self in pursuit of holistic meaning, 3) the total integration of self in academic disciplines and vocational service, and 4) the recognition of self as a spiritual being on a human journey toward the destiny of that personal belief system. Thus, its domain encompasses research and practice in many areas, such as law, psychology, sociology, anthropology, criminology, criminal justice, religion, theology, and law enforcement.

Spirituality—a sense of meaning and purpose larger than the instrumental duties of law enforcement—affects the most critical aspects of

practice, performance, vitality, and longevity in the profession.⁵ It energizes the ethics of practice, resulting in exemplary (efficient and effective) performance. Whereas performance refers to what tasks officers do to enforce the law, practice is how and why they fulfill their sworn responsibilities, doing so with a spirit that evokes the highest virtues of human dignity (the spirit of the law). Vitality depicts the resilience officers must garner to overcome the toxic evils they encounter in the discharge of their duties. Longevity, which some officers believe encompasses a bar higher than mere survival alone, constitutes the result of nurturing the spirit of the law across many challenges (stresses) and venues of service.⁶

Within these four factors, the spirit of the law represents

“

Spirituality denotes the nurturing of the spirit throughout a person's life in all of its dimensions and expressions.

”



Special Agent Feemster is an instructor in the Behavioral Science Unit at the FBI Academy.

an awareness of the spiritual dimension of humanity that motivates and guides the establishment and enforcement of laws that fully promote justice.⁷ As one veteran law enforcement executive expressed, spirituality is “that look of gratitude when you have done a kind act, standing up for something important and meaningful to someone. That light behind a person’s face when I would show a dignity and respect for them when, perhaps, they supposed many thought them not worthy of respect.”⁸ The enforcement of statutes, regulations, and laws through practices and policies that immediately or subsequently affirm the dignity of the violator *and* the enforcer is spirituality personified. Human dignity is rooted inexorably in spirituality.⁹ It abounds when law enforcers, while adhering to the *letter* of the law, perform and practice their profession in accord with the *spirit* of the law. Spirituality is at work when, using the best judgment and tactical operations available, officers execute justice through selecting the least intrusive options or decide to favor alternative proven methods that engender trust for the enforcement service provider. In short, they seek the positive edification of the spirit of the person against whom enforcement is served by heeding that moral compass that restrains, compels, and enables

humans—in their law enforcement capacity—to do good: to do the right thing, the right way, for the right reason. As Dag Hammarskjöld, former secretary general of the United Nations, said, “Your position never gives you the right to command. It only imposes on you the duty of so living your life that others may receive your orders without being humiliated.”

“

...the spirit of the law represents an awareness of the spiritual dimension of humanity that motivates and guides the establishment and enforcement of laws that fully promote justice.

”

CONDUCTING EXPLORATORY RESEARCH

In May 2001, the FBI Academy’s Behavioral Science Unit (BSU) sponsored a satellite broadcast that focused on the responsibility of communities to answer the call to meet the needs of first responders. The following year, BSU hosted a Spirit of the Law Working

Group seminar to explore the feasibility of developing and initiating the spirit of the law into training academies and seminars. The objective was to design a curriculum to enable public safety agencies to inculcate best survival practices and to teach faith leaders how to meet the needs of first responders, particularly law enforcement personnel. Pursuant to the recommendations of this working group, a Spirit of the Law Conference was held in 2003. Following this conference, a second satellite broadcast in 2004 focused on the collaborative multidisciplinary responses to the expressed needs of the law enforcement profession.

The Approach

One of the action items from these activities was to establish curriculum content by extracting from law enforcement practitioners the best practices for surviving the vocational call to law enforcement given the intentional exposure to toxicity. BSU felt that the seasoned law enforcement executives invited to attend the FBI National Academy (NA)¹⁰ could detail the best practices for vocational survival. Therefore, a Spirit of the Law research project was initiated to study four NA sessions. Out of approximately 1,000 students, 747 of them (a 74 percent response rate) participated via a

Covert Dynamics of Spirituality

- Intuition is a signal of spirituality just as the sonic boom is a tangible indication that a supersonic aircraft has broken the sound barrier by its excessive speed. Physicists measure light and sound as approximations of unobservable forces at the subatomic level. Intuition senses evil and danger at the hidden level of spirituality in much the same way.
- Emotion constitutes the coding or interpretation of, or reaction to, the signals provided by spirituality.
- Ethics refer to the observable habits or behaviors that measure or indicate spirituality and act as a barometer of spiritual wellness.
- Stress—at alarming rates and in excessive amounts—can activate the breakdown of spirituality. It acts as an ecological virus that precipitates conflicts in ethics, emotions, cognition, and intuition.

nonrandom, purposive sample using a survey research design involving a 52-item questionnaire. The project involved 56 females, 689 males, and 2 respondents who did not specify their gender.¹¹ As to marital status, 79 percent were married, 13 percent were single, and 5 percent were divorced. The median age was 42 years; the median number of years of law enforcement service was 19; and the median number of years of management experience within law enforcement was 7.

The Results

Table 1 (page 12) displays some of the exploratory findings about aspects of spirituality. Even though these initial data are quite preliminary, among those surveyed, matters of spirituality clearly infused their practice and performance

of law enforcement. According to the overall pattern of survey responses offered by officers themselves, spirituality affected law enforcement in many ways. As the percentages in table 1 indicate, law enforcement executives were keenly aware of the spiritual significance of their work and the consequences of toxicity in their relationships and careers.

Table 2 (page 15) shows how these law enforcement leaders responded to a series of survey questions about evil. These exploratory findings revealed rather persuasively that *more than one-half* of all respondents sampled had encountered evil in some form via belief, interactions, and feelings. Slightly more than one-half viewed their roles as combating evil. Amazingly, exactly one-half reported having a

direct experience with evil. With these findings in mind, no recognition of the concept of evil can occur without engaging the realm of spirituality in some form or measure. Surprisingly, less than 30 percent of respondents thought that they had been adequately trained by their police academy to encounter evil. Notwithstanding the number of missing responses, this finding alone suggests that grappling with the spirit of the law is no idle or trendy pursuit.

Taken together, these data indicate that spirituality matters. In this survey, law enforcement executives evidenced spirituality in and out of religious venues. They were astute enough to distinguish between spirituality and religion. Some attended religious services, whereas others did not. Over one-half of respondents felt the presence of

a deity or higher power at work. Judging from these data, a systematic case appears to exist for researching spirituality in law enforcement beyond exploratory levels. More rigorous survey questionnaires and other methods must be designed as soon as possible, preferably using more definitive probability samples pursuant to the best standards of applied research.

ANSWERING THE CALL

Eighty-five percent of the 747 law enforcement officials participating in the survey viewed law enforcement as a calling, rather than an occupation. What did they mean by this? Defined as “a summons or strong inclination to a particular

state or course of action,”¹² a vocation “is an expression of who and what the person is. If an occupation occupies or captures one, a vocation sets one free to be who that person is called to be.”¹³ In a law enforcement context, individuals who voluntarily place themselves between innocence and danger to protect others clearly demonstrate their calling to a vocation that gives voice and vitality to meaningful inspirational values.

As the survey indicated, because law enforcement executives reported feeling drawn to the law enforcement profession, they believe that “it is not a job but is, instead, an extension of personhood and the offering of life. Vocations ultimately do not

take energy from us but give energy and life to us.”¹⁴ With this in mind, first responders must persistently nurture the core spirituality that radiates their attitude, disposition, intelligence, and behavior to remain vigilant, healthy, and effective throughout their chosen vocation. Those either unaware of the spiritual dimension of humanity or not equipped to defend against toxic exposure are overtaken, in varying degrees, by the evil they are called to protect against.

RECOGNIZING THE REALITY OF EVIL

Law enforcement agencies are duly established to protect citizens from evil and the toxicity of evil’s effects. In many

Table 1: Aspects of Spirituality

Items About Spirituality	Proportion Responding
Believe in a deity or higher power	89%
Believe spirituality and religion are not the same	64%
Have felt the presence of a deity or higher power while at work	55%
Believe law enforcement is not just a job but a calling	85%
Believe calling has adversely influenced friends/social life	60%
Believe calling has adversely impacted marital/relationship status	53%
Someone close to them has committed or attempted suicide	32%
Contemplated or attempted taking their own life	7%

contexts, evil can be defined as a destructive, poisonous form of spirituality with outward expressions that degrade, dispirit, disintegrate, dehumanize, and destroy humans beings, as well as the set of ideas, dignity, freedoms, networks, property, capital, and activities engulfing the constructive social institutions that people depend on for survival.¹⁵ Evil is not registered merely in the physical, intellectual, and emotional realms of humanity but directly in the spirit. The corrosive, accumulative effects of evil upon a spiritually underdeveloped law enforcement officer can prove as deadly as any cancer, heart attack, or chronic debilitating disease.¹⁶

A listing of conditions that frequently overtake the good men and women who accept their call to a law enforcement vocation include alcohol and drug abuse, apathy, burnout, cynicism, dark humor, departmental disharmony, divorce, domestic abuse, emotional disorders, a personal crisis of faith, and suicide.¹⁷ Some of these persist in epidemic proportions in the law enforcement culture. The unequivocal evidence of these afflictions tragically culminates in the high number of officer suicides reported by law enforcement agencies. Robert E. Douglas, executive director of the National P.O.L.I.C.E. Suicide Foundation, Inc., said,

“If we lost a Boeing 747 every year full of passengers, the FAA would ground them all until they found out what the problem was. We need to find causative factors for police suicide and do something about them.”¹⁸ Judging from volumes of extant data, some law enforcement officers also may lack training about the importance of acknowledging and persistently nurturing the core spirituality that manifests itself as personality, behavior, and health.¹⁹

“
Eighty-five percent of the 747 law enforcement officials participating in the survey viewed law enforcement as a calling, rather than an occupation.
”

Intentional, recurrent exposure to evil or the toxicity of its effects without any restoration, rehabilitation, or renewal deprives first responders of that inspiring *meaning* affirmed through spiritual awareness. Spiritual depravity, or dispiritedness, robs officers of discretion, thus rendering them

incapable of compassionate and protective enforcement. Dispirited law enforcement officers are unable to provide the services essential to a safe and healthy community because they are not healthy themselves. This disintegrated state, denoted by a separation of body and wholesome spirit or the presence of an evil spirit, results in the loss of discernment and caring and in the abdication of responsibility. This hidden terrorism of the spirit shows itself in a lack of concern for spirituality, in a deficient spirituality, and in an unrecognized spirituality. Left unabated, these pernicious indicators pave the road to malpractice in policing via corruption, disrespect, and intolerance. In this damaged state, officers cannot manifest for themselves nor extend to others the spirit of the law (enforcing laws in ways that respect human dignity in other beings). Just like the bite of a cobra, a poisonous spirituality can corrode officers' lives *long* after their careers end, as suggested by statistics on premature deaths, suicides, and other maladies.²⁰ To this end, best practices in spirituality can sustain both vitality and longevity for officers.

Yet, the primary survival skills that officers receive to defend against intentional exposure to evil and its toxic effects during the course of law enforcement training, when

present, are reactive at best. Each law enforcement candidate must demonstrate proficiencies in firearms and defensive tactics prior to graduating from accredited academies. While both skills are essential for keeping their bodies safe, neither proves sufficient for protecting their human spirits from the unavoidable toxic effects of intentional and repetitive exposure to evil. In the face of crises, catastrophic disasters, criminal behavior, or evil, officer safety training for *physical* survival does not morph into impenetrable protection for *spiritual* survival. Officers often face hazardous levels of stress, exponential dimensions of uncertainty, and unpredictable loads of complexity that can overwhelm their neglected spirituality. Altogether, too many negative stimuli and far too many psychological anxieties triggered by the uncertainties of daily police work can combine to produce an unfortunate stress that slowly kills or weakens the spiritual immune system of a first responder beyond critical levels, possibly triggering catastrophe.

FINDING A SHIELD AGAINST EVIL

Slowly, as careers progress, some officers sense that the compass directing their integrity, along with introspective

meditations about their responses to lawfully executed arrests, was implanted spiritually before they were sworn to protect *others* from evil and the toxicity of its effects. These officers cope with intentional exposure to evil by nurturing their spirituality through developed beliefs, rituals, practices, and positive activities. Meanwhile, other enforcers grasp the essence of the spirit of the law looking up from the bottom of the abyss that they have been looking down into via a crisis.

“
...law enforcement agencies must embrace policies and practices designed to address and accommodate the spiritual renewal of their officers.
”

Law Enforcement Participation

For first responders to guard against personal disintegration (frequently resorted to and sometimes employed as a survival skill against toxicity), they must become aware of their complex human

dimensions, as well as being equipped to nurture or protect themselves accordingly. As a seasoned law enforcement executive explained, “To stop or slow hardening of the heart, the officers must be taught to jealously hold onto their core values. They must believe that they are agents of good and that good will prevail over evil to promote balance within the heart.”²¹ Consequently, the absence of intentional instruction about spirituality (namely, the spirit of the law) inadvertently prevents officers from dealing with a root cause of stress, burn-out, despair, cynicism, apathy, suicide, and other maladies associated with the toxic exposure to evil.²² Over the last several decades, a plethora of empirical research has arisen that supports this crucial insight.²³ To this end, law enforcement agencies must embrace policies and practices designed to address and accommodate the spiritual *renewal* of their officers. In an era when studies about workplace spirituality are exploding across many occupations and industries around the world, the spirit of the law in policing is more necessary than ever.

Law enforcement officers are the lifeguards of communities. If they cannot swim, then society faces grave difficulties. The safety, security, and vitality of communities depend, to

Table 2: Existence and Toxic Effects of Evil

Item Measured	Proportion Responding YES	Proportion Responding NO	Number of Missing Responses	More than 50% in Agreement
Believe in evil	86%	13%	8	Yes
Have met an evil person	71%	27%	10	Yes
Have felt evil's presence	55%	38%	22	Yes
Believe officer's role is good versus evil	52%	46%	12	Yes
Have experienced evil's presence	50%	40%	53	No
Have been trained to cope with evil	29%	40%	181	No

a degree, upon the *health* of first responders, along with the safety and security conveyed by their *presence*. Through physiological, emotional, intellectual, and spiritual expression, first responders benchmark norms of acceptable behavior to those they serve and protect. Thus, equipping them to guard proactively against evil toxins has the potential of enhancing their lives and the communities they serve.

Community Involvement

This challenge of furthering police-community relationships does not rest with law enforcement alone. Communities that

depend upon sworn personnel to serve and protect residents must enable law enforcement agencies to provide training and resources for the implementation of best survival practices. Until communities systematically and intentionally minister to the needs of first responders (beginning in the training academy and continuing throughout their careers), some officers will continue to surrender to dispirit- edness compounded by chronic stress inherent in intentional exposure to evil and the toxicity of evil's effects. Medical re- search verifies conclusively that evil stresses can progressively destroy the cells of the body.²⁴

Communities must embrace *both* the preventive and main- tenance responsibilities regard- ing the holistic well-being of first responders to effectively meet the needs of dispirited law enforcement officers.

The implications of ac- knowledging the spiritual genesis of best law enforcement practices are enumerable.²⁵ One of the most obvious ben- efits is that communities will have access to multiple avenues, including innovations derived from systematic, ongoing be- havioral science research, that can assist with the acute and chronic needs of their officers.

LOOKING AHEAD

Qualitative observations suggest several possibilities for the future expansion of this area of research. First, as this work emphasizes, the law enforcement profession must begin to appreciate the adverse impact of exposure to evil toxins. Next, it must equip officers to guard proactively against the self-disintegration that can result from exposure to unabated evil. Third, it must develop a curriculum of best practices to be implemented by officers, educators, and communities working together to stem the tide of self-inflicted officer causalities. In addition, law enforcement training academies must circumspectly collaborate by joining this evolution toward a more holistic curriculum. In conjunction with stress, conflict, crisis management, tactical, and investigative training, as well as physical exercise, an intentional emphasis on spiritual wellness will produce a more effective vocation.

Along with new levels of awareness, funding, outreach, and inclusion, researchers also must fully investigate those aspects of spirituality that influence health and stimulate optimal law enforcement vocational well-being. If successful, they will find, discover, and disclose why and how spirituality elevates the performance, practice, vitality, and longevity of the law

enforcement profession's most valuable resource, the men and women who valiantly persevere against the evil they encounter on a daily basis.

CONCLUSION

Just as DNA is the building block of human existence, spirituality is the DNA of law enforcement practice. One veteran law enforcement leader's own words aptly illustrate this, "Dedication to service—to the department, the community, to

In this damaged state, officers cannot manifest for themselves nor extend to others the spirit of the law....

each other—is one of the greatest characteristics a police officer can possess. It is a characteristic we look for, recruit for, and encourage for an officer's entire career. I believe, then, it is incumbent upon us as police managers and leaders to reflect this dedication and devotion to duty by accepting that the mental and emotional well-being of our officers is vitally important to our organization, the community, and, most important, the officers themselves."²⁶

Sharing the risk and responsibility for crime prevention will foster greater respect between the community and the police. In this environment, those who serve as the vanguards of America's communities will be better able to survive the exposure to evils that threaten all members of society. Moreover, acknowledging the spiritual genesis of the profession provides a promising framework for collaborative, multidisciplinary approaches to many of law enforcement's critical concerns.²⁷ ♦

Endnotes

¹ Lieutenant Adán Tejada, University of California Police Department, Berkeley, California, excerpt from midterm paper for Applied Behavioral Science for Law Enforcement Operations course, FBI National Academy 228th Session, Samuel L. Feemster, Instructor.

² R.C. Fuller, *Spiritual, But Not Religious: Understanding Unchurched America* (New York, NY: Oxford University Press, 2002).

³ U.S. Const. amend. I, in pertinent part, states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

⁴ Beginning with the title and continuing throughout the article, the author intentionally uses spirituality as the designated focus, rather than spirit. Although related, spirit and spirituality have distinct attributes. Spirit depicts an unobservable dimension that people must sustain for the same reasons that they must nourish their bodies and minds. In contrast, spirituality refers to disciplines undertaken in the care and furtherance of the wholesome or holistic development of the spirit.

⁵ I.I. Mitroff, *A Spiritual Audit of Corporate America: A Hard Look at Spirituality, Religion, and Values in the Workplace* (San Francisco, CA: Jossey-Bass, 1999); and G.F.A. Pierce, *Spirituality at Work* (Chicago, IL: Loyola Press, 2001).

⁶ G.C. Gallup, Jr. and T. Jones, *The Next American Spirituality* (Colorado Springs, CO: Victor Books, 2000).

⁷ This is the author's working definition of the term *spirit of the law*.

⁸ Captain Michael Arrowood, Covington, Kentucky, Police Department, excerpt from midterm paper for Applied Behavioral Science for Law Enforcement Operations course, FBI National Academy 227th Session, Samuel L. Feemster, Instructor.

⁹ J. Shea, *Spirituality and Health Care* (Chicago, IL: The Park Ridge Center for the Study of Health, Faith, and Ethics, 2000).

¹⁰ The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects.

¹¹ Without question, the views of female and ethnic minority law enforcement officials are underrepresented by this particular sample.

¹² *Merriam-Webster's Collegiate Dictionary*, 11th ed., s.v. "vocation."

¹³ Michael Catlett, Ph.D., adjunct at the John Leland Center for Theological Studies, Arlington, VA, "Spirituality and Vocation," Spirit of the Law Conference, FBI Academy, August 28, 2003.

¹⁴ Ibid.

¹⁵ R.L. Depue, *Between Good and Evil* (New York, NY: Warner Books, 2005).

¹⁶ C. Van Zandt, *Facing Down Evil* (New York, NY: Putnam, 2006).

¹⁷ D.C. Sheehan, ed., U.S. Department of Justice, Federal Bureau of Investigation, *Domestic Violence by Police Officers* (Washington, DC: 2000); and D.C. Sheehan and J.I. Warren, eds., U.S. Department of Justice, Federal Bureau of Investigation, *Suicide and Law Enforcement* (Washington, DC: 2001).

¹⁸ <http://www.psf.org>

¹⁹ D.C. Sheehan and J.I. Warren, eds., U.S. Department of Justice, Federal Bureau of Investigation, *Suicide and Law Enforcement* (Washington, DC: 2001).

²⁰ D.P. Hackett and J.M. Violanti, *Police Suicide: Tactics for Prevention* (Springfield, IL: Charles C. Thomas, 2003).

²¹ Administrative Sergeant David A. Teem, Newport, Oregon, Police Department, excerpt from midterm paper for Applied Behavioral Science for Law Enforcement Operations course, FBI National Academy 228th Session, Samuel L. Feemster, Instructor.

²² E. Taylor, *Shadow Culture: Psychology and Spirituality in America* (Washington, DC: Counterpoint, 1999).

²³ J. Garcia-Zamar, "Workplace Spirituality and Organizational Performance," *Public Administration Review* 63, no. 3 (2003): 355-363.

²⁴ D. Harman, ed., *Increasing Healthy Life Span* (New York, NY: New York Academy of Sciences, 2002).

²⁵ D.G. Myers, *The American Paradox: Spiritual Hunger in an Age of Plenty* (New Haven, CT: Yale University Press, 2000).

²⁶ Lieutenant Rick Pippins, Odessa, Texas, Police Department, excerpt from midterm paper for Applied Behavioral Science for Law Enforcement Operations course, FBI National Academy 224th Session, Samuel L. Feemster, Instructor.

²⁷ Australian Police Multicultural Advisory Bureau, *A Practical Reference to Religious Diversity for Operational Police* (Sydney, Australia: Australian Institute of Criminology, 2004).

The author gratefully acknowledges all of the FBI National Academy students who participated in the Spirit of the Law research project and thanks all of the interns assigned to the Behavioral Science Unit who contributed their talents to this effort. He also encourages readers interested in discussing and furthering this crucial issue to contact him at sfeemster@fbiacademy.edu.

Wanted: Photographs



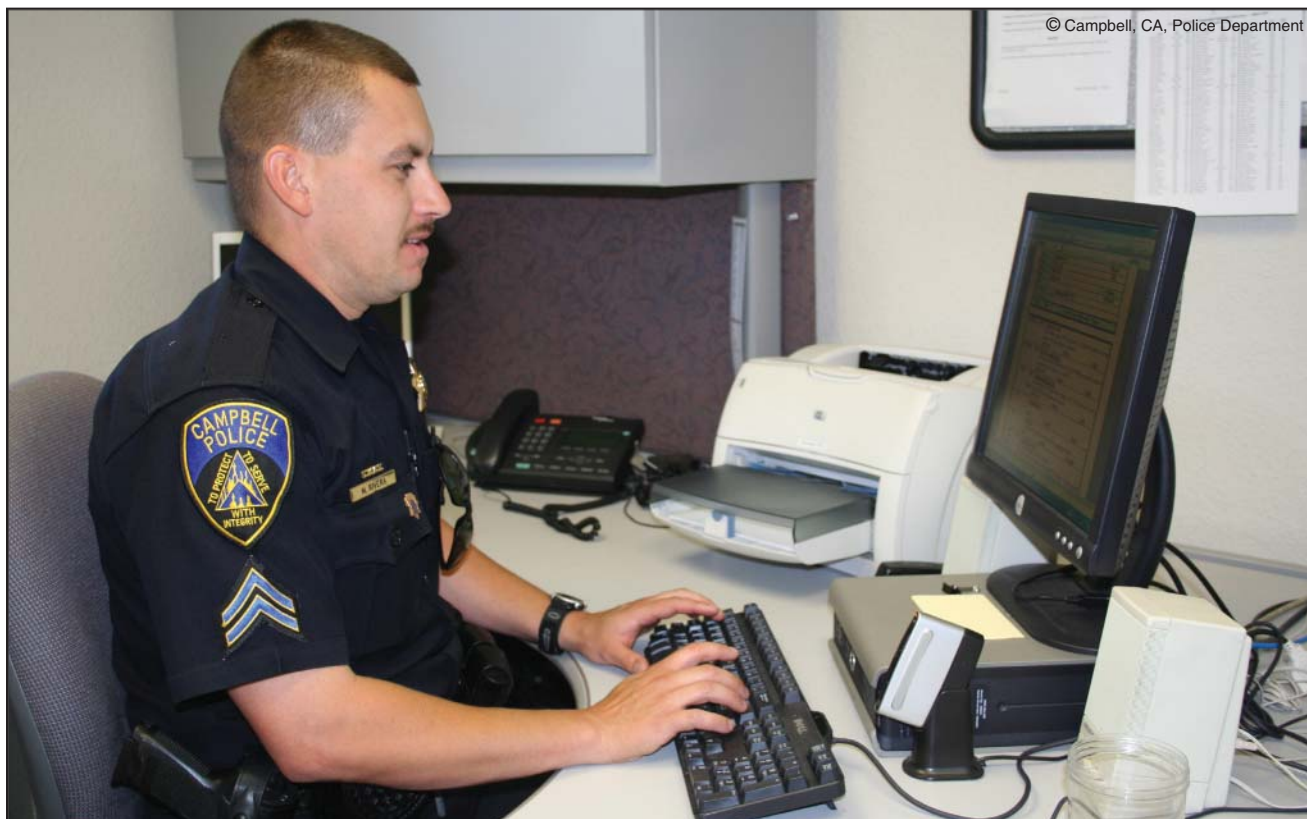
The *Bulletin* staff is always looking for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use color prints, digital photographs, or slides. It is our policy to credit photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

Art Director
FBI Law Enforcement
Bulletin, FBI Academy,
Madison Building,
Room 201, Quantico,
VA 22135.

Documenting the Use of Force

By TODD COLEMAN



Incidents requiring the use of force by police are an unfortunate reality for law enforcement agencies. Each occurrence demands accurate documentation that demonstrates in detail the necessity of such a response. On this subject, the U.S. Supreme Court stated “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them....”¹

Despite this emphasis by the Court, use-of-force documentation frequently excludes many of the details that could help explain and justify officers’ decisions. Too often, use-of-force reports only include information pertaining directly to the physical interaction with the suspect. Although those details, obviously, are important, additional information about the events leading up to and following the actual encounter may help

paint a clearer picture of why officers took a particular course of action.

While all agencies require personnel to document their actions concerning the use of force, many provide little or no guidance as to the type and quantity of information necessary. And, outside of the “check the box” format, little uniformity exists among these reports. This style may provide standardization within a

department, but it rarely gives personnel the opportunity to include all necessary information. Although some agencies remedy this by allowing officers to attach a memo or some type of essay to the use-of-force report, this leads back to the original problem of police not receiving training related to the information that they should include. Without proper education in this area, not only will officers receive unfair criticism for inadequate use-of-force documentation but they potentially will suffer other consequences for it.

USE-OF-FORCE DOCUMENTATION

Varying Purposes

The information included in use-of-force documentation fulfills a number of purposes. For instance, it serves as the basis for statistics and related reports. Agencies track the number of such incidents and the types of force used by and against their officers. Also, the FBI compiles this data for use in its Uniform Crime Reports.

Additionally, agencies employ this documentation to help develop and direct officer survival training. For example, departments can identify trends in the locations, times, and types of calls in which force is needed and focus training appropriately. And, they can use this information to make

necessary adjustments in their policies concerning how personnel should respond to calls for service.

Finally and, perhaps, most important to officers, the use-of-force report represents the tool that they will employ to explain their decisions in a particular encounter. Also, managers in the department's chain of command will use it to evaluate employees' actions. While officers may personally advise first-line supervisors or, perhaps, have them present at the time of the incident, they may never have had any interaction with high-ranking managers. In fact, in larger agencies, those evaluating officers' actions may not even know the employees; they initially will have only the report for information (except, of course, in extreme situations, such as when deadly force is

used). Properly prepared documentation will, in many cases, satisfy any postincident evaluations, avoiding the need for follow-up interviews.

Educating Officers

Agencies must teach their personnel to properly document use-of-force incidents. If officers understand the importance and benefits of completing these reports correctly, they should approach them in the same professional manner that they handle all of their duties.

Departments can draw from several methods that require little time and resources to train officers in completing use-of-force documentation. For instance, they can have recruits prepare reports in conjunction with scenarios they encounter during self-defense and use-of-force training. This

**“Agencies must
teach their
personnel to
properly document
use-of-force
incidents.”**



Officer Coleman serves with the Virginia Beach, Virginia, Police Department.

technique allows trainers to instill, early in officers' careers, the habit of properly documenting incidents. Obviously, this practice can serve as part of annual refresher training for certified officers, as well.

Agencies also can use footage of police encounters in classroom situations. In doing so, large numbers of officers can watch the same scenario together and then fill out a use-of-force report. Rather than having each individual complete a live enactment, this practice saves time and ensures uniformity in that the officers document the same encounter, enabling trainers to better compare the students' performance.

Each method has its appropriate time and place. And, a combination of both can help ensure that officers receive proper training in the documentation of use-of-force incidents.

Preparing the Report

When writing the report, officers should simply tell the story of the encounter from beginning to end. They need to remember that people unfamiliar with the incident and, perhaps, police training and practices will read it. For direction and uniformity while allowing officers the freedom to include all pertinent information, the report can be divided into several sections: *assessment*, *observations*, *actions*, and *summary*.

Assessment

The first section deals with the officers' assessment of the situation when initially responding; this takes into account information provided by the dispatcher, including the type of call and, possibly, prior events at the incident location. Such assessments can change several times during the course of the call as the dispatcher provides updates. Obviously, the severity of the situation will affect how

“

***All of the facts
and circumstances
surrounding an
incident prove
important....***

”

police approach it and if they deem the use of force necessary. Officers must include the call type given at the time of dispatch, as well as what the actual incident turned out to be. For example, if police responded to a reported robbery but, instead, discovered a case of shoplifting, their actions should be evaluated as if they were dealing with the more severe, dangerous robbery incident before they received updated information.

Of course, force also may prove necessary when confronting suspects who have committed less serious crimes. However, as the courts do, agencies must consider the severity of the crime in evaluating the use of force. In the previous example, if the police simply stated that they responded to a shoplifting incident, those evaluating the officers' actions would not have an accurate picture of what happened.

Observations

When documenting use of force, police seem most likely to omit details in this category. Instead, they must include the numerous observations they made during a call. First, officers should document information about the suspects. This includes the number of subjects and their size. And, the report should contain a description of their clothing. Was it inappropriate for the environment or climate (e.g., a coat in hot weather)? Did they wear baggy garments, possibly indicating the presence of concealed weapons? Was the clothing gang related? Further, a T-shirt advertising a martial arts school or military unit may indicate extraordinary physical abilities. The report also should note other indicators, such as the suspects' demeanor, body language, evidence of intoxication or drug use, and prior

encounters with law enforcement. Police need to document the presence of any factors that may indicate possible resistance by suspects.

Next, officers should note observations of their surroundings. These would include descriptions of the area where the contact occurred (e.g., Were there any escape routes? Did the encounter occur in a known high-crime area or in gang territory?). Further, although the time of the encounter will be known, police should note other factors, such as visibility due to darkness or weather. Officers should record any details connected with the environment that could have heightened the threat to them.

Also, police should include observations about themselves. Important information includes the number, size, experience level, abilities, and limitations of personnel present.

Finally, officers must document all relevant details leading up to their application of force. Failure to include this information in the report may result in an incomplete representation of the facts and circumstances that the police faced when making use-of-force decisions. In turn, anyone evaluating their actions will be unable to do so properly. Consequences could include additional investigation of the officers or, worse yet, a finding against employees whose

actions were justified but inadequately explained.

Actions

Obviously, this section constitutes the focus of most use-of-force reports. Generally, officers include a wealth of information concerning their physical actions during an encounter. However, police should document both the physical and verbal behavior, closely intertwined and often simultaneous, of both themselves and the suspect.

© Campbell, CA, Police Department



Information pertaining to officers' verbal interaction with the suspect should include the announced identification of themselves as police and any commands or warnings issued, as well as the person's reaction. Noncompliance illustrates an individual's state of mind. Did the person make statements acknowledging the officers' identity? Police also should note any threats or confrontational

statements made by the suspect. Sometimes, hostile individuals will state their intention to resist or assault officers. Police also should note a suspect's lack of a verbal response or refusal to speak during an encounter. This abnormal behavior also could demonstrate the person's lack of cooperation.

Documentation of the physical encounter should feature the type of resistance exhibited by the suspect and the physical control techniques employed by the officers. Important details include actions by the individual prior to those of the police, such as assuming a fighting stance; removing clothing; hyperventilating, as in preparation for a fight; or any other such behavior. How else did the person show aggression throughout the encounter? Police also need to describe their actions plainly. To ensure clarity, if using terminology from an agency's use-of-force model, officers should elaborate on terms, such as *defensive tactics* (e.g., Did the officers use punches, kicks, or elbow and knee strikes?).

When appropriate, the report also should include the steps in the officers' escalation of force. Although, many times, the initial application of force by police will gain control of a suspect, in other instances it will not. On those occasions, documentation should include the failure to achieve

compliance with a lower application of force, as well as the need to escalate to a higher force level. Of course, situations also exist in which officers need to start at a higher level of force; police should respond with the level necessary to deal with the threat, up to and including deadly force, if appropriate.

Finally, officers should describe the de-escalation of force. The report should have some type of explanation that once they achieved control and compliance, the application of force ceased and control was maintained through the use of some type of restraints in compliance with department policies.

While police may find it tedious to thoroughly document the numerous actions between themselves and a suspect during an encounter, they must do so to clearly explain their use of force. As the information concerning police actions ties in with the description of the officers' assessments and observations, anyone evaluating the officers' actions will have a clear picture with which to do so.

Summary

Often, officers do not include enough information pertaining to the conclusion of the encounter. While most police address the need for and administration of first aid, many stop there. In addition to first-aid

issues, officers should document details concerning any postarrest events, which help illustrate the suspect's frame of mind during the encounter.

The report should contain documentation and photographs of any first aid required by the suspect or officers. Too often, minor injuries sustained by police that did not require medical treatment receive inadequate attention. Often, officers simply want to "tough it out" or the injury is considered insignificant.

“

The information included in use-of-force documentation fulfills a number of purposes.

”

Another unacceptable reason is that many supervisors are reluctant to complete paperwork associated with only a minor injury to an officer.

Any injuries to police, albeit insignificant, need documentation for several reasons. First, department policy probably requires it. Also, a record helps to strengthen the officers' justification for use of force during an encounter. Further, suspects often will argue in court or in

support of a false complaint against police that they never resisted and that the officers used force for no reason. While documenting a minor injury does not guarantee a finding in favor of police use of force, it serves as one more step in painting a clear picture for whoever is evaluating officers' actions.

Police also must provide documentation and photographs of suspects requiring and receiving first aid, as well as individuals who do not complain of or display injuries. In this regard, officers can help prevent a false claim of a police-inflicted injury. In addition, the report should document any waiver of medical attention, and, if emergency personnel responded, police should obtain a copy of the refusal-of-treatment form and include it with the report.

Officers must document and photograph any damage to police equipment. This includes uniforms torn during the encounter or damage to patrol vehicles by the suspect during transport. Both instances would signify the combative nature of the individual during the encounter.

And, indication of intoxication or impairment, such as vomiting or urinating, during transport should be documented. Later, when these suspects appear in court or make a complaint, they will do so while

cleaned up, presenting themselves as upstanding citizens. However, documented evidence that shows their state at the time of the encounter will allow the judge or the person reviewing the officers' actions to see suspects as they were at the time of the incident.

When remanding a suspect into custody, officers should document their notification of personnel (recording employees' names) at the holding facility of any injuries to the individual. This way, police can avoid blame for any medical complications suffered by the subject after going into custody. Officers also should record their proper use of handcuffs, as well as leg and other specialty restraints; documentation of this fact demonstrates the continuance of the suspect's combative behavior.

Finally, police should list all witnesses to the incident, including those who observed the suspect's demeanor before or after the encounter (e.g., jail employees, medical personnel, citizens, and other officers). Their names and a brief synopsis of what information they can provide should be included in the report.

Completing the Report

At first, officers may find it overwhelming to include all of this detailed information in a report. But, with a little practice,

it will become second nature. Also, all of the aforementioned details probably will not be present in every encounter, but officers should recognize and include the types of information important to a particular incident.

As always, officers need to ensure the accuracy of their work. And, the report should look professional as it ultimately may be reviewed in court. While police usually will complete their use-of-force documentation shortly after the incident, they should wait for a period of time after initial completion before proofreading and making corrections. Officers more likely will make errors if they finish the report immediately after involvement in a physical confrontation with a subject. In this regard, police should practice patience and allow emotions to settle and thoughts to clear. By slowing down, being thorough, and

proofreading, officers should produce a professional, error-free report.

CONCLUSION

All of the facts and circumstances surrounding an incident prove important in the evaluation of a use-of-force incident. The officers involved must ensure that they document and bring to light every relevant detail.

All agencies strive to prepare their personnel for the challenges they will face, both on the street and off. In this regard, departments must ensure that their officers receive proper training pertaining to this learnable skill. After all, the ability of police to thoroughly and accurately document a use-of-force incident benefits both themselves and the agency they work for. ♦

Endnotes

¹ *Graham v. Connor*, 490 U.S. 386 (1989).



Book Review

Investigating Child Exploitation and Pornography: The Internet, The Law, and Forensic Science by Monique Mattei Ferraro and Eoghan Casey, Elsevier Academic Press, San Diego, California, 2005.

With its ever-increasing popularity and inherent convenience for the consumer, the Internet has introduced many challenges to the law enforcement community, especially in the realm of child pornographers. As these predators of children have discovered thousands of potential victims on the Web, a corresponding spike of child pornography cases also has occurred. These have proven difficult for both law enforcement officials and legislators to address as the regulatory process has fallen behind the explosive pace of technology.

Of particular concern for investigators is understanding Internet applications and how to apply this knowledge to case resolution. For example, what does the term *digital evidence* mean when investigators subpoena Internet records of a suspected child pornographer's account? Further, how do investigators track Internet activities, and, once they recognize computer-generated evidence, how do they seize and preserve it?

Prosecution proves equally important to the successful conclusion of a case. Recognizing and selecting applicable law for prosecution can challenge even the most seasoned prosecutor as case law struggles to keep pace with the Internet and advances in computer technology.

A recently published work attempts to address these issues and many others related to investigating and prosecuting child

pornography cases. *Investigating Child Exploitation and Pornography: The Internet, The Law, and Forensic Science* addresses a range of topics critical for an understanding of the practical and legal issues encompassing child pornography investigations.

The text first takes the reader on a journey through the history of child pornography and the corresponding development of case law. Next, the work introduces the reader to Internet applications and defines cybervictims, as well as cyberoffenders.

The following section of the text concentrates solely on investigating Internet child exploitation. The authors do an excellent job of parlaying practical investigative strategies with computer terminology. In other words, the reader tasked with investigating this type of criminal activity will have a practical reference guide when needed.

The text concludes with a review of applicable law regarding Internet regulation. Within this section, the reader can find numerous examples of cited case law combined with prosecutive strategies.

For those tasked with investigating and prosecuting child pornography cases, *Investigating Child Exploitation and Pornography: The Internet, The Law, and Forensic Science* is essential reading. It serves as a current and comprehensive compilation that can be used to secure justice for child victims, their families, and society.

Reviewed by
Special Agent Randy Bowling
National Security Branch
FBI Headquarters

Supreme Court Cases 2006-2007 Term

By the FBI ACADEMY
LEGAL INSTRUCTION UNIT

In the most recent term, the U.S. Supreme Court decided several cases of significance to law enforcement. These include several decisions regarding Fourth Amendment issues, one concerning the interpretation of what constitutes a “violent felony” within the meaning of the Armed Career Criminal Act, and one addressing the significance of a “scope of employment” certification in Federal Tort Claims Act litigation. This article includes a synopsis of each of these cases.

Los Angeles County, California v. Rettele, 127 S. Ct. 1989 (2007)

In this case, the U.S. Supreme Court held that law enforcement officers acted reasonably while executing a search warrant for a residence when they ordered naked residents out of their bed and held them



at gunpoint for 1 to 2 minutes while they verified that no weapons were present and that other persons were not close by. Despite the fact that the detained residents were Caucasian and the criminal suspects were African-American, the officers reasonably but mistakenly believed that the criminal suspects resided in the home. The presence of persons other than the suspects in the home did not immediately eliminate the possibility that the suspects lived there as well or that the

persons detained posed a threat to the officers.

From September to December 2001, the Los Angeles County Sheriff's Department investigated a fraud and identity theft ring involving four suspects known to be African-Americans. One had a registered 9-millimeter handgun. On December 11, 2001, a search warrant was obtained authorizing the search of two homes where the suspects were believed to be residing for documents and computer files. The

affidavit in support of the search warrant cited various sources, including DMV reports, mailing address lists, an outstanding warrant, and an Internet telephone directory all showing that the suspects resided at the homes named in the warrant. Unfortunately, it was not known that one of the homes had been sold 3 months earlier and currently was occupied by Max Rettele and his girlfriend, Judy Sadler, who were innocent owners having no connection to the criminal activity under investigation.

At around 7:15 on the morning of December 19, deputies executed the warrant by knocking on the door of the residence and announcing their presence. The door was answered by Ms. Sadler's 17-year-old son who was ordered to lie face down on the ground. This activity awoke Mr. Rettele and Ms. Sadler who were confronted in their bedroom. The deputies entered the bedroom with guns drawn and ordered them to get out of bed and show their hands. They protested that they were not wearing clothes. Mr. Rettele stood up and attempted to put on a pair of sweat pants, but deputies told him not to move. Ms. Sadler also stood up and attempted, without success, to cover herself with a sheet. The couple was held at gunpoint for 1 or 2 minutes before Mr. Rettele was allowed to retrieve

a robe for Ms. Sadler. He was then permitted to dress. The couple was escorted from the bedroom within 3 or 4 minutes and told to sit on the couch in the living room.

By that time, the deputies realized that they had made a mistake. They apologized to Mr. Rettele and Ms. Sadler, thanked them for not becoming too upset, and left a few minutes later. In total, the deputies left the home less than 15 minutes after arriving. They then proceeded to the other house the warrant authorized them to search, where they found the suspects. The suspects were arrested and ultimately convicted.



Mr. Rettele and Ms. Sadler filed a civil action under Title 42, U.S. Code, section 1983, in federal district court alleging a violation of their Fourth Amendment rights by obtaining a warrant in reckless fashion and conducting an unreasonable search and detention. The dis-

trict court granted a motion for summary judgment in favor of the defendants on the grounds that the search and seizure did not violate the Fourth Amendment, and, even if a violation occurred, the deputies were entitled to qualified immunity.¹

On appeal, the validity of the warrant was not challenged, but it was argued that the deputies had conducted the search in an unreasonable manner. The Ninth Circuit Court of Appeals reversed the lower court's grant of summary judgment and its qualified immunity determination.² The circuit court noted that a search or seizure may violate the Constitution if it is carried out in a way that is "unnecessarily painful, degrading or prolonged," or "involved an undue invasion of privacy."³ Applying that standard, the court concluded that Mr. Rettele and Ms. Sadler had raised genuine issues of material fact as to whether the officers violated the Fourth Amendment by subjecting them to an unreasonably prolonged, humiliating, and intrusive search and seizure. The court also held that qualified immunity should not have been granted in favor of the deputies because if the alleged facts were resolved in favor of Mr. Rettele and Ms. Sadler, the law was clearly established. In short any reasonable officer would have known that it was unreasonable to order persons out of

bed and hold them at gunpoint under the circumstances where it was obvious that they were not the suspects named in the warrant.

The court of appeals essentially held that because Mr. Rettele and Ms. Sadler were of a different race than the suspects, the officers were obligated to assume that they did not present a danger: "After taking one look at the plaintiffs, the deputies should have realized that the plaintiffs were not the subjects of the search warrant and did not pose a threat to the deputies' safety."⁴ The U.S. Supreme Court reversed, remarking that "[w]e need not pause long in rejecting this unsound position."⁵ The Supreme Court noted that officers have authority to detain occupants of premises during the execution of search warrants, and, further, in "executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search."⁶ Under that standard, the Court concluded that the deputies acted reasonably in this case.

The orders by the police to the occupants in the context of this lawful search, were permissible, perhaps necessary, to protect the safety of deputies.... The deputies needed a moment to secure the room and ensure that other persons close by did

not present a danger. Deputies were not required to turn their backs to allow Retelle and Sadler to retrieve clothing or to cover themselves with sheets. Rather, the "[r]isk of harm to both the police and occupants is minimized if the officers routinely exercise unquestioned command of the situation."⁷

This is not to say, however, that officers are free to force unclothed occupants to remain motionless and standing for any longer than necessary. Unreasonable actions in executing a search warrant include excessive force or restraints that cause unnecessary pain or are imposed for a prolonged or unnecessary period of time. In this case, there was no accusation that the detention was prolonged. Ms. Sadler testified that once the police were satisfied that no immediate threat was present, the officers "wanted us to get dressed and they were pressing us really fast to hurry up and get some clothes on."⁸

The Court summed up the constitutional issue as follows:

The Fourth Amendment allows warrants to be issued on probable cause, a standard well short of certainty. Valid warrants will issue to search the innocent and people like Retelle and Sadler unfortunately bear the cost.

Officers executing search warrants on occasion enter a house when residents are engaged in private activity and the resulting frustration, embarrassment and humiliation may be real, as was true here. When officers execute a valid search warrant and act in a reasonable manner to protect themselves from harm however, the Fourth Amendment is not violated.⁹

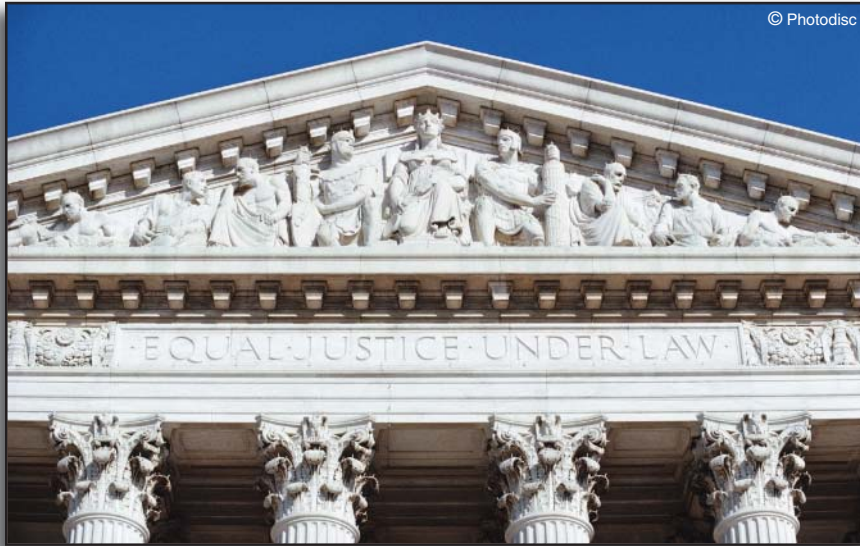
Having found no constitutional violation, the Court found it unnecessary to consider whether the defendants were entitled to qualified immunity.¹⁰

© Comstock Images



***Scott v. Harris,*
127 S. Ct. 1769 (2007)**

This case addressed the reasonableness of the use of force to terminate a motor vehicle pursuit. A Georgia county deputy attempted to stop a car driven by Victor Harris traveling 73 miles per hour in a 55 mile-per-hour zone. Harris refused to pull over and led police



on a chase at speeds exceeding 85 miles per hour. Deputy Scott heard the chase on the police radio and joined the pursuit. During the pursuit, Harris was nearly boxed in by police cars but was able to evade officers, striking Scott's police car in the effort. Shortly thereafter, Scott sought and received permission to stop Harris by using a Precision Intervention Technique (PIT) maneuver.¹¹ Instead of using the maneuver, Scott "applied his push bumper to the rear" of Harris' vehicle.¹² Harris lost control of his car, which left the roadway, rolled over, and crashed, rendering him a quadriplegic.¹³

Harris sued Deputy Scott, claiming excessive force was used against him in violation of the Fourth Amendment. The court of appeals held that a reasonable jury could find that Harris violated Scott's Fourth

Amendment right to be free from an unreasonable seizure.¹⁴ Harris appealed to the U.S. Supreme Court.

The Supreme Court noted that the "decision to terminate the car chase by ramming his bumper into [Harris'] vehicle" constituted a Fourth Amendment seizure.¹⁵ Because a seizure occurred, the Supreme Court noted that the appropriate standard for determining excessive claims is the objective reasonableness standard set forth in *Graham v. Connor*.¹⁶ According to the Court, "[t]he question we need to answer is whether Scott's actions were objectively reasonable."¹⁷ In making this determination, the Supreme Court rejected the claim made by Harris that the case should be analyzed as one involving the use of deadly physical force as set forth in *Tennessee v. Garner*.¹⁸ The

Garner case established standards for the use of deadly force in the context of an unarmed, fleeing suspect who was shot by a police officer solely to prevent his escape.¹⁹ The Court ruled the shooting, under those facts, an unreasonable seizure.²⁰ Rejecting Harris' argument, the Court explained that the facts of *Garner* were vastly different to those in the present case and commented that "the threat posed by the flight on foot of an unarmed suspect" is not "remotely comparable to the extreme danger to human life posed by [Harris] in this case."²¹ The Court noted that, regardless of whether the actions constituted deadly force, "all that matters is whether Scott's actions were reasonable."²²

In determining the reasonableness of the seizure, the Court employed the balancing-of-interests test, which "balance[s] the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."²³ In seeking to balance the interests, the Supreme Court noted that Harris posed "an actual and imminent threat" to pedestrians, motorists, and the police and that Scott's actions "posed a high likelihood of serious injury or death" to Harris.²⁴ Under these circumstances, it

was appropriate to consider the number of lives at risk and the relative culpability of the parties.²⁵ The Court stated:

It was [Harris], after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high speed flight that ultimately produces the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing [Harris] for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action he did.²⁶

The Supreme Court refused to accept the argument made by Harris that the public would be better protected by having the police terminate the pursuit. The Court commented that ceasing the pursuit was no guarantee that Harris would not continue to pose a danger to the public. In addition, the Court was reluctant “to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people’s lives in danger.”²⁷ Instead, the Court

established the following rule:

A police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.²⁸

© Comstock Images



***Brendlin v. California,*
127 S. Ct. 2400 (2007)**

In this case, the U.S. Supreme Court considered whether a traffic stop constitutes a seizure of a passenger in addition to the driver within the meaning of the Fourth Amendment. During the morning of November 27, 2001, Deputy Sheriff Brokenbrough and his partner observed a vehicle with expired registration tags. The deputies radioed dispatch and learned that an application for renewal of the registration was being processed for the vehicle. Later that day, the deputies

observed the same vehicle and noticed a temporary operating permit, indicating that it was legal to drive the vehicle. Disregarding the display of the temporary permit, the officers decided to pull the vehicle over.

The deputies approached the vehicle and requested the driver’s license. The deputies then noticed the passenger of the car whom they recognized as a possible parole violator. After the passenger identified himself to the deputies, they ran his name and determined that he had an outstanding warrant for his arrest. The deputies placed the passenger under arrest and conducted a search of his person, which produced a syringe cap. A pat-down search of the driver revealed syringes and a plastic bag containing a green leafy substance. The deputies then searched the car and found items used to manufacture methamphetamine.

The passenger, Bruce Brendlin, later was charged with possession and manufacture of methamphetamine. He moved to suppress the evidence found during his arrest and search of the car on the grounds that it was the fruit of an unlawful seizure. Brendlin argued that as the deputies did not have a valid reason for stopping the vehicle, his seizure was not supported by sufficient cause as required under the Fourth Amendment.

The state conceded that the stop of the vehicle was not supported by lawful grounds; however, as the stop was directed at the driver, the passenger was not seized within the meaning of the Fourth Amendment. Therefore, the initial encounter with the passenger did not violate the Constitution. The trial court denied Brendlin's motion to suppress, holding that he was not seized at the time of the stop. The California Court of Appeal reversed the denial of the suppression motion.²⁹ The state appealed this ruling to the California Supreme Court. On appeal, the California Supreme Court held that suppression of the evidence was not required. The court concluded that a passenger is not seized simply because a vehicle in which he or she is riding is stopped by law enforcement in the absence of additional circumstances that would lead a reasonable person (the passenger) to believe that he or she is the subject of the investigation or show of authority.³⁰ The court noted that absent some additional show of authority directed to the passenger, "the passenger is free to ignore the police presence and go about his or her business."³¹

The U.S. Supreme Court agreed to hear this case and in a unanimous decision reversed the California Supreme Court, ruling that once a vehicle is stopped by law enforcement,

all of the vehicle's occupants are seized within the meaning of the Fourth Amendment and, thus, may challenge the constitutionality of the seizure.

© Comstock Images



***James v. United States*,
27 S. Ct. 1586 (2007)
Lower Court Citation:
430 F.3d 1150 (11th Cir. 2005)**

The issue presented in this case was whether the Florida crime of "attempted burglary" satisfied the federal statutory meaning of "violent felony" so as to place the defendant under the provisions of the Armed Career Criminal Act (ACCA).³² The ACCA "provides that a defendant convicted of possession of a firearm by a convicted felon, in violation of § 922(g), is subject to a mandatory sentence of 15 years of imprisonment if the defendant has three prior convictions 'for a violent felony or a serious drug offense.'"³³ The petitioner to the

Supreme Court in the present case, Alphonso James, pleaded guilty in federal court to one count of being a convicted felon in possession of a firearm.³⁴ In his plea agreement, James also admitted to three prior felony convictions, including a conviction in Florida state court for attempted burglary of a dwelling.³⁵ These three prior convictions, the federal government argued, subjected James to the provisions of the ACCA.³⁶ James, on the other hand, argued that his attempted burglary conviction did not fall under the "violent felony" provision of the ACCA, keeping him from being susceptible to its 15-year mandatory minimum prison term.

The Court delved into the meaning of "violent felony" as defined by the ACCA to reach its conclusion that a conviction for attempted burglary under Florida law did satisfy its provisions. The ACCA defines violent felony as "any crime punishable by imprisonment for a term exceeding one year...that (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson, or extortion, involves use of explosives, or *otherwise involves conduct that presents a serious potential risk of physical injury to another*."³⁷ Because attempted burglary clearly does not satisfy the

terms of subsection (i) or the first two categories described in subsection (ii) of the ACCA, the Court's decision ultimately rested on the "otherwise involves conduct that presents a serious potential risk of physical injury to another" language at the end of subsection (ii). Reading Florida's burglary statute in conjunction with its criminal attempt statute led the Court to its conclusion.

At the time of James' conviction for attempted burglary, that crime was defined as "entering or remaining in a structure or conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain."³⁸ The criminal attempt statute, at the time, provided that "a person who attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such offense, but fails in the perpetration or is intercepted or prevented in the execution thereof, commits the offense of criminal attempt."³⁹ Based on an earlier Florida Supreme Court decision, the Supreme Court noted that attempted burglary requires an "overt act directed toward entering or remaining in a structure or conveyance."⁴⁰ The Court then noted that "[a]ll burglaries begin as attempted burglaries"⁴¹ and that many do

not reach their fruition because of a confrontation between the burglar and a third party—be it an occupant, police officer, or bystander.⁴² It is precisely this potential confrontation that makes attempted burglary a crime that "otherwise involves conduct that presents a serious potential risk of physical injury to another"⁴³ and, thus, satisfies the ACCA's violent felony provision.



***Osborn v. Haley*,
127 S. Ct. 881 (2007)**

This case originated as a state court lawsuit filed against a federal employee alleging tortious conduct in violation of state tort law. When the U.S. Department of Justice, relying on information provided by the local U.S. attorney's office, certified that the federal employee was entitled to "Westfall Act"⁴⁴ immunity because he was acting within the scope of his federal employment when the alleged

tortious activity occurred, the case was removed to federal court and the United States was substituted as the defendant pursuant to the Federal Tort Claims Act (FTCA).⁴⁵ In the original federal court proceeding following the removal of the case, the U.S. District Court for the Western District of Kentucky denied the substitution of the United States as the proper defendant because the U.S. attorney asserted that the tortious conduct attributed to the individual defendant had not occurred⁴⁶ and remanded the case back to Kentucky state court. The federal employee appealed that ruling to the Sixth Circuit Court of Appeals. The appellate court vacated the district court's remand order and instructed that court to retain jurisdiction over the case.⁴⁷ The plaintiff alleging the wrongdoing challenged that ruling to the Supreme Court.

The Westfall Act provides "federal employees absolute immunity from common-law tort claims arising out of acts they undertake in the course of their official duties."⁴⁸ Likewise, the FTCA governs matters wherein such tort claims are alleged and dictates that the employee (who has been certified to have been acting within the scope of his employment) is replaced by the United States as the proper defendant. Furthermore, "[i]f the action commenced in state court, the case is to be removed

to a federal district court....”⁴⁹ In the instant case, the federal district court held that when the U.S. attorney denied the conduct in question even occurred, remand back to state court was appropriate.

The U.S. Supreme Court affirmed the appellate court decision that once the Department of Justice certified that the federal employee was within the scope of his employment when the alleged activity took place, the removal to federal court was binding, at least until a determination by the fact finder that the employee was not acting in the scope of his employment.⁵⁰ This, the Court reasoned, would satisfy the core purpose of the Westfall Act — “to relieve covered employees from the cost and effort of defending the lawsuit, and to place those burdens on the Government’s shoulders.”⁵¹ ♦

Endnotes

¹ See 186 Fed.Appx. 765 (9th Cir.2006) (unpublished).

² *Id.*

³ *Id.* at 766, citing *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994).

⁴ *Id.*

⁵ 127 S. Ct. at 1993. See *Michigan v. Summers*, 452 U.S. 692 (1981).

⁶ *Id.*, citing *Muehler v. Mena*, 544 U.S. 93 (2005).

⁷ *Id.*, citing *Summers* at 702-703.

⁸ *Id.*

⁹ *Id.* at 1993-1994.

¹⁰ *Id.* at 1994. (The dissent continues a long-running debate within the Court concerning the proper order of resolving the distinct issues of qualified immunity

and the factual determination on the merits of the constitutionality of police action.) See, e.g., *Scott v. Harris*, 127 S. Ct. 1769 (2007); *Brosseau v. Haugen*, 125 S. Ct. 596 (2004); and *Saucier v. Katz*, 121 S. Ct. 2151 (2001).

¹¹ The technique is used to cause the fleeing vehicle to spin to a stop.

¹² *Scott v. Harris*, 127 S. Ct. 1769, 1773 (2007).

¹³ *Id.*

¹⁴ *Harris v. Cowetta County*, 433 F.3d 807 (11th Cir. 2005).

¹⁵ *Id.* at 1776, quoting *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989). (“If... the police cruiser had pulled alongside the fleeing car and sideswiped it, producing the crash then termination of the suspect’s freedom of movement would have been a seizure.”)



¹⁶ 490 U.S. 386 (1989).

¹⁷ *Harris* at 1777.

¹⁸ 71 U.S. 1 (1985).

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Harris* at 1777.

²² *Id.* at 1778.

²³ *Id.* at 1778, quoting *United States v. Place*, 462 U.S. 696, 703 (1983).

²⁴ *Id.* In this respect, the Court notes that while the culpability of the suspect is not relevant to the question of whether a seizure occurred, culpability is relevant to the reasonableness of the seizure.

²⁵ *Id.* at 1778. See also *Id.* at endnote 10 where the Court notes that while the culpability of the suspect is not relevant to the question of whether a seizure occurred, culpability is relevant to the reasonableness of the seizure.

²⁶ *Id.*

²⁷ *Id.* at 1779 (emphasis in original).

²⁸ *Id.*

²⁹ *People v. Brendlin*, 8 Cal.Rptr.3d 882 (2004).

³⁰ *People v. Brendlin*, 38 Cal.4th.1107, 136 P.3d 84 (2006).

³¹ *Id.* at 1117.

³² Title 18 U.S. Code § 924(e).

³³ 127 S. Ct. at 1590.

³⁴ Title 18 U.S. Code § 922(g).

³⁵ Fla. Stat. §§ 810.02 and 777.04.

³⁶ James’ other two convictions were clearly “serious drug offenses,” which were explicitly covered by the ACCA.

³⁷ 127 S. Ct. at 1591, citing Title 18 U.S. Code § 924(2)(B) (emphasis added).

³⁸ Fla. Stat. § 810.02(1) (1993).

³⁹ Fla. Stat. § 774.04(1).

⁴⁰ 127 S. Ct. at 1594, quoting *Jones v. State*, 608 So.2d 797, 799 (Fla. 1992).

⁴¹ 127 S. Ct. at 1595.

⁴² *Id.*

⁴³ Note 6, *supra* (emphasis added).

⁴⁴ Commonly known as the “Westfall Act,” Title 28 U.S. Code § 2679(b)(1) is actually The Federal Employees Liability Reform and Tort Compensation Act of 1988.

⁴⁵ Title 28 U.S. Code § 1346(b)(1).

⁴⁶ *Osborn v. Haley*, 127 S. Ct. 881, 888 (2007).

⁴⁷ 422 F.3d 359 (6th Cir. 2005).

⁴⁸ *Osborn* at 887 (emphasis added).

⁴⁹ *Id.* at 888, citing Title 28 U.S. Code § 2679(d)(2).

⁵⁰ *Id.* at 900.

⁵¹ *Id.* at 901.

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 Montoya

Upon responding to a home, Officer Paul Montoya of the Longview, Texas, Police Department observed a carport on fire and the female resident lying face down, engulfed in flames. Immediately, he began trying to save the victim, as well as the house. He retrieved the fire extinguisher from his patrol vehicle and used it to put out the flames on the woman, but the gasoline-fueled fire continued to burn. After the extinguisher was empty, Officer Montoya began opening bags of potting soil to throw onto the flames. Once he contained the fire, he continued putting water and soil on the woman to smother the smoldering fuel. The victim ultimately survived.



Officer Hamrick



Officer Winter

One evening, a young woman fell into a large sinkhole filled with debris-laden water that was gushing and churning violently from a water main break. She screamed for help and then disappeared under the surface. Fortunately, Officers Zane Hamrick and Justin Winter of the Honolulu, Hawaii, Police Department were in the immediate vicinity. Quickly, Officer Hamrick jumped into the sinkhole, where he was completely submerged and unable to touch the bottom. After locating the female, he brought her to the surface. Officer Winter then helped remove both the woman and Officer Hamrick from the dangerous waters.

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.

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

[illegible]

03/07