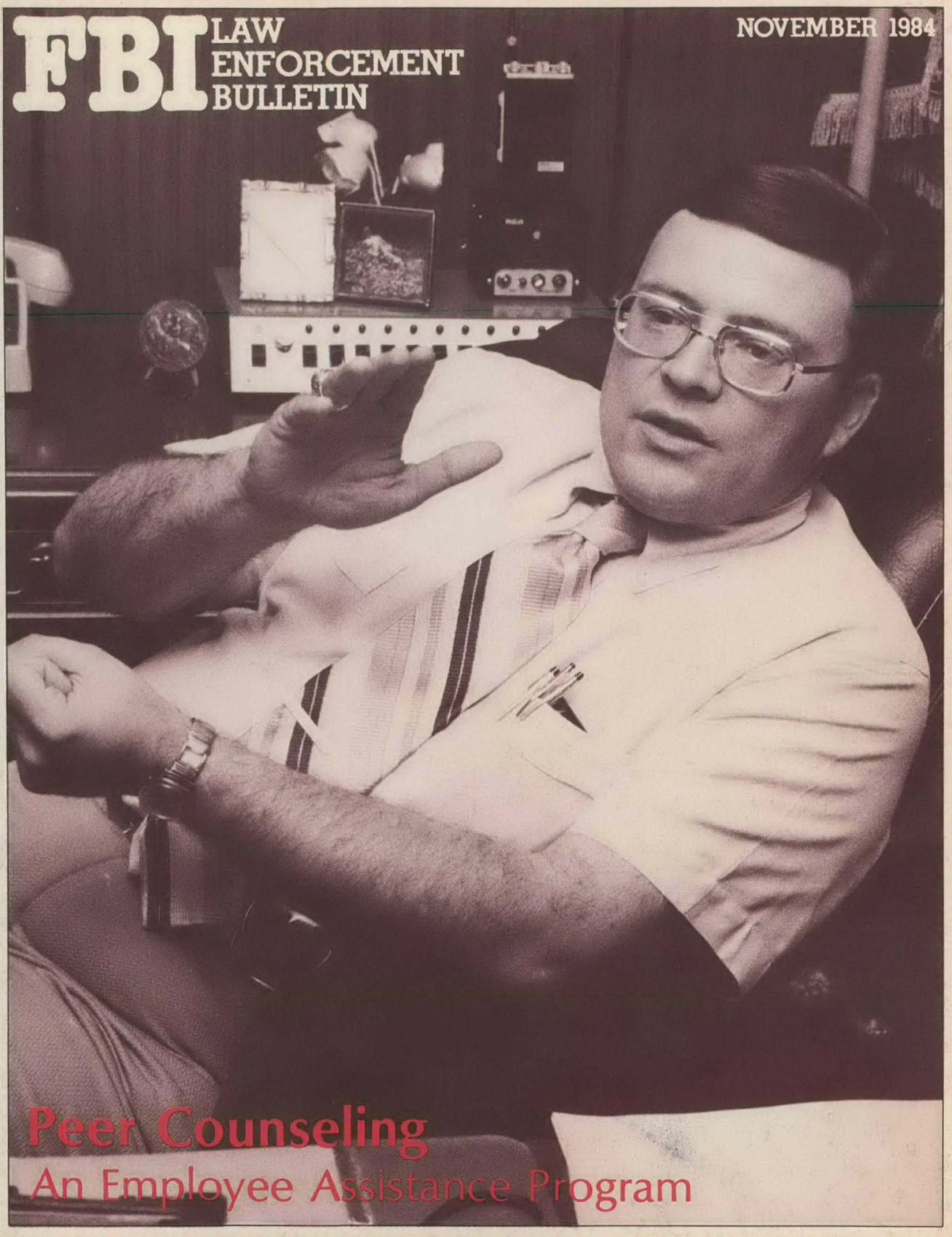
FBI LAW ENFORCEMENT BULLETIN

NOVEMBER 1984



Peer Counseling

An Employee Assistance Program

FBI LAW ENFORCEMENT BULLETIN

NOVEMBER 1984, VOLUME 53, NUMBER 11

Contents

The Cover: Peer counselors are proving to be effective in helping employees through stressful periods in their lives. See article page 2.

Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of Congressional and Public Affairs,
William M. Baker, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Writer/Editor—Karen McCarron
Production Manager—Jeffrey L. Summers
Reprints—Marlethia S. Black

ISSN 0014-5688 USPS 383-310

Director's Message

The FBI has historically regarded legal training as a necessary and important facet of the law enforcement profession. In addition to the legal training afforded our own Special Agents, since 1935 we have furnished legal training to law enforcement agencies of all jurisdictions through the FBI National Academy, as well as through guest appearances of FBI legal instructors.

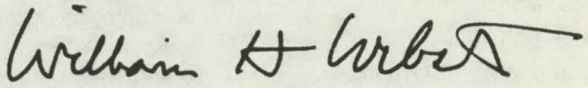
Such training of sworn officers continues to be an important part of our ongoing programs; however, the complexity of legal issues encountered by law enforcement officers, managers, and administrators in recent years highlights the need for each law enforcement agency to have ready and continuous access to a qualified legal advisor.

Efforts to meet this need have been made in a variety of ways. For example, some agencies rely on city attorneys or retained counsel from the private sector for legal advice and assistance. Others now have full- or part-time legal advisors, and many more are actively seeking such help. In order to foster the growth of this concept and to assist those who already serve in this capacity, this Bureau has established the FBI National Law Institute.

The institute, which will be held at the FBI Academy in Quantico, VA, will consist of an intensive 1-week program addressing such topics as the role of the law enforcement legal advisor, organization and management of the legal advisor's office, current legal problems facing law enforcement agencies, recent developments in constitutional criminal procedure, labor relations issues in law enforcement management, first amendment freedom of speech and press, constitutionally based employment rights, and race, sex, and age discrimination matters. The institute will feature well-known guest lecturers and will include a trip to the U.S. Supreme Court for a tour, explanation of the history and function of the Court, and attendance at oral arguments scheduled for that day.

Two 1-week institutes have already been scheduled. The first is being held this month at Quantico, and the second has been scheduled for March 1985. It is anticipated that succeeding programs will be scheduled at 6-month intervals. Each session will accommodate 50 attorneys with the FBI funding all cost for travel, room, and board. Further information concerning the institute and applications for attendance can be obtained from the Principal Legal Advisor assigned to the FBI field office in your area.

Apart from the direct benefits of the institute, our hope is that the program will foster a spirit of cooperation among legal advisors from different agencies so that information and problems will be shared on a continuing basis. As evidenced by the FBI National Academy and other multi-agency programs, continuing cooperation and assistance can only serve to enhance the overall professionalism of the law enforcement community.



William H. Webster
Director
November 1, 1984

Peer Counseling
An Employee Assistance Program

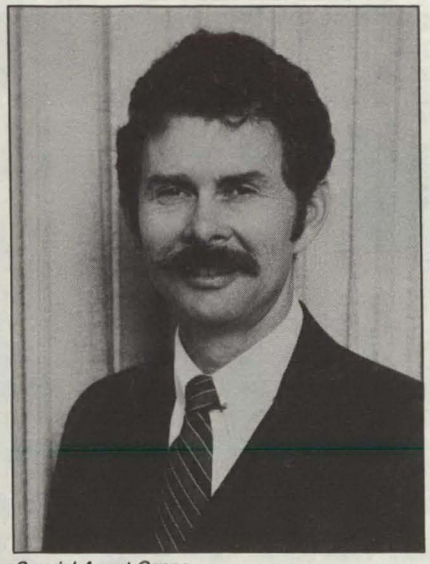
"A peer counseling program gives concrete evidence to employees that management does care."

By
F.L. CAPPS
Special Agent
Federal Bureau of Investigation
Los Angeles, CA

A primary challenge to law enforcement in the United States today is employee occupational stress overload. In a recent survey of U.S. law enforcement agencies conducted by the FBI's Training Division, the top 10 training priorities were identified. First among them was "personal stress."[1]

Stress affects us all—in the public sector, in private life, in the ranks of law enforcement, and at the top. In a 1982 interview, Los Angeles Police Chief Daryl Gates revealed that like his officers, he too feels stress. Gates called the nearly 4 years he has served as chief as "the most frustrating, discouraging period in my life."[2]

Stress is a major problem affecting law enforcement administrators today. Its overt effects can be seen in the high percentage of officers who



Special Agent Capps

have experienced stress-related illnesses and in its other critical sociocultural manifestations, such as increased alcohol use and a high rate of divorce.[3]

There is a large volume of research material available today on the occupational stresses police officers face. Roger Depue, Chief of the Behavioral Science Unit at the FBI Academy, points to the following major problem areas which impact on occupational stress: Ambiguity in the role of the police officer in today's complex society; problems adapting to the work environment when it involves a subculture, ethnic group, or lifestyle different from his own; conflict in separating his onduty activities from his personal life and maintaining a balance in allocating time to both; and the situational crisis brought on by the trauma associated with a death, serious injury, or a shooting incident. In addition, Depue points to the frustration of numerous "organizational factors," including poor equipment, lack of administrative support, and departmental disciplinary action.[4]

A 1975 study of police officers in Virginia found that the typical officer is exposed to an injured adult three times each month, a severe assault victim every 45 days, and a dead person every 3 months.[5]

A National Institute of Occupational Safety and Health study reported that 37 percent of the police studied had serious marital problems, 23 percent had serious alcohol problems, and 10 percent had significant drug problems. The study went on to note that policemen have a significantly higher rate of early death than the general population and rank third among all occupations in suicide.[6]

EMPLOYEE ASSISTANCE PROGRAMS

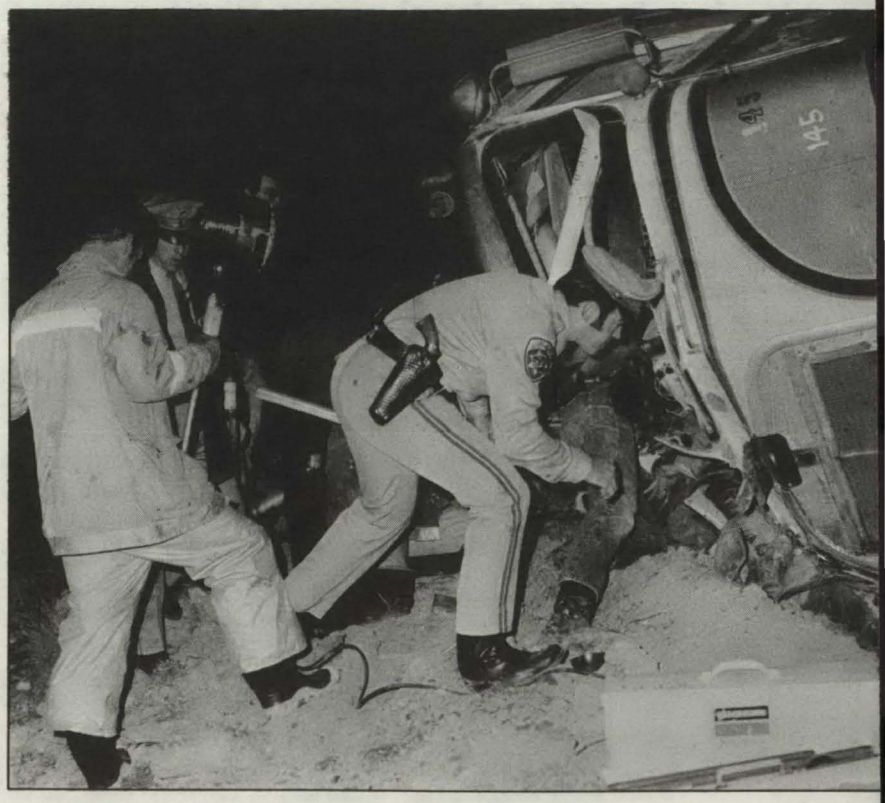
Corporate Programs

Programs that provide various types of assistance to employees are not new to either the public or private sectors of the United States. About 1 out of 5 of the Fortune 500 companies now have some sort of stress management program. Many of these programs are restricted to top executives even though studies have shown that the most stressed workers are in middle management. In addition to facing the pressures of climbing the corporate ladder, these workers are caught in a perilous bind—a lot of responsibility but little control.[7]

Corporate efforts to reduce stress range from the commonplace alcoholism program to onpremise exercise facilities, meditation, and company-sponsored biofeedback classes. At the Equitable Life Assurance Society in Manhattan, employees with frequent stress-related health complaints participated in an inhouse biofeedback program and reduced their average number of visits to the company medical office from 24 to fewer than 6 annually. Equitable saved $5.52 in medical costs for every $1 invested.[8]

At New York Telephone, a program involving periodic health exams for all employees and meditation lessons for those with stress-related symptoms has helped cut the corporate hypertension rate from 18 percent—about average for U.S. firms—to half that amount. New York Telephone estimates that it is saving $130,000 a year from reduced absenteeism alone.[9]

"A 1975 study of police officers in Virginia found that the typical officer is exposed to an injured adult three times each month, a severe assault victim every 45 days, and a dead person every 3 months."



FBI Employee Assistance Programs

In the FBI's New York Office, a pilot program was established in 1977 for alcoholism and related problems. The program offered confidential assistance to employees who had alcohol problems that may be causing declines in job performance. The program used voluntary assistance from recovering alcoholics among New York Office employees and achieved great success in eliciting self-referral by employees suffering alcoholism problems. In 1981, about 45 employees sought assistance from the New York Office program. Of this number, 27 were self-referrals and 18 were management-initiated referrals. By the end of the year, 28 had been restored to full performance; only 3 had failed to respond favorably.[10] Based upon the success of the New York pilot program, the program was implemented Bureau-wide.

In a continuing effort to recognize and respond to employee needs, the FBI in early 1982 established a contractual agreement with two mental health professionals, Dr. David A. Soskis, M.D. and Dr. Carole W. Soskis, M.S.W., J.D., who provide psychiatric assistance to FBI employees who voluntarily seek help and psychological service consultation in administrative and operational matters. These two professionals handle a wide range of individual employee psychological problems either personally or by a system of referrals to psychologists who practice in the area where the employee resides. They also identify stressors that negatively affect job performance and design programs to impact on stress management. Employees may seek psychological assistance or be administratively referred by a supervisor.

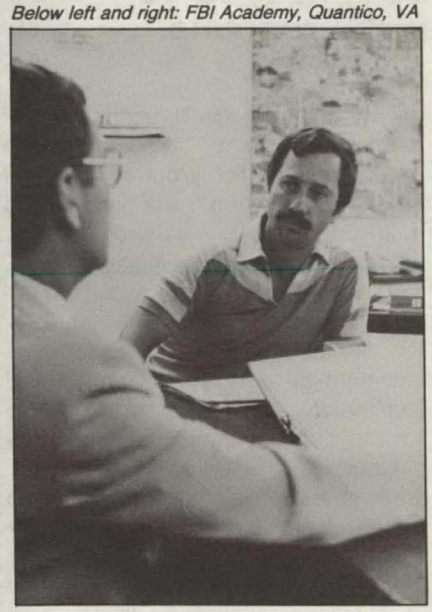
A second entity within the FBI which provides psychological services is the Behavioral Science Unit at the FBI Academy. This unit coordinates psychological services in the areas of training and operational support matters. This would include crime analysis, criminal profiling, personality assessment, and occupational stress awareness and management.

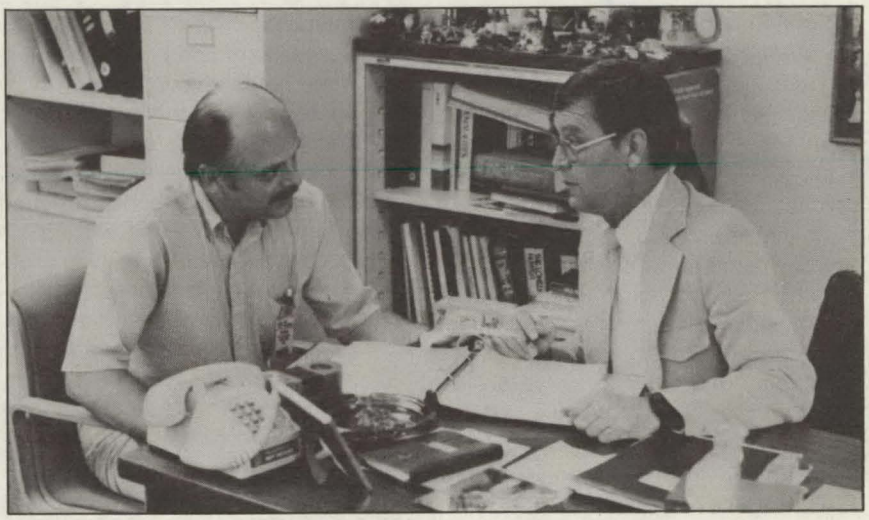
Recently, the FBI implemented two new programs designed to impact an area where psychological problems have surfaced. Dr. David Soskis and Dr. Carole Soskis, in coordination with members of the Behavioral Science Unit and Institutional Research Unit, developed psychological guidelines for the supervision of undercover operations. These guidelines were developed to reduce the anger, resentment, and potential for acting out that can accompany prolonged undercover assignments. A second program, which addressed the trauma associated with shooting incidents, was initiated in late 1983. This program provides intervention at the shooting scene, as well as training in prevention and long term followup.

The Los Angeles Police Department Peer Counseling Program

The Los Angeles Police Department (LAPD), like many large city departments, has full-time psychologists on staff, in addition to several of the employee assistance programs discussed above. They have also taken the lead in the initiation of a program of peer assistance or peer counseling. The LAPD is the first department in

Left: El Centro, CA
Below left and right: FBI Academy, Quantico, VA





the country to develop and implement an integrated and fully department-supported peer counseling program using regularly employed officers and civilians on a large scale.[11] It defines peer counseling as "a group of employees who have been to a three day school and have volunteered to give direct, simple support to people who are hurting." [12] Their program has been in existence for 2 years and has a proven track record. It began during the summer of 1981 in response to the major psychological trauma suffered by two LAPD officers as a result of their involvement in shooting incidents. It is important to note, however, that the program goes far beyond providing assistance to officers involved in shootings. Monthly statistics indicate that the majority of counseling time—70 percent—is spent on issues involving personal relationships, discipline, and career problems.[13]

Figure 1

Month	January 1984
Number of Counselors	69
Number of Counseling Hours	469
Number of Clients	191
Counseling Issues:	
a. Personal Relationships (Family stress and divorce)	54
b. Employee alcohol and substance abuses	15
c. Financial	11
d. Bereavement (Death and dying, illness)	20
e. Job Discipline	19
f. Career Advancement Problems	68

Program Goals

There are several goals of a counseling program of this type, including:

1) To help fellow employees through the temporary crisis situations that are a common part of our lives;
2) To develop a readily accessible network of employees trained and willing to be of service to their fellow employees who have expressed a need for assistance;
3) To develop an awareness among employees that they are not alone, that people are willing to listen to them, and that others care about them and their problems;
4) To develop among employees an awareness of the self-help alternatives that are available to them;
5) To develop a system of referrals which can provide, in more serious cases, appropriate professional care; and
6) To increase the availability of employees, thereby increasing organizational efficiency, through a program of intervention which can assist in defusing problems before they reach a point of crisis and result in the loss of worktime.

"Improved employee morale is considered by many to be the most important benefit derived from such programs."

Officer Reaction

Professional inhouse psychological services have been available at LAPD and other larger law enforcement agencies for years. However, many police officers who experience psychological problems do not consider obtaining professional help. This is seen by some to be a reflection of the officer's stereotypical belief that people who seek professional help are seriously ill, out of control, unmanly, or unfit for work.[14] Because police organizations tend generally to be close-knit, officers experiencing personal problems often feel more comfortable discussing these matters with a fellow officer rather than a mental health professional.

Peer Counsel Training

It is often believed that the counseling process requires extensive training and can only be conducted by specialists with advanced degrees. The opposite, however, appears to be true. The effectiveness of the minimally trained paraprofessional versus that of one who has received formal training in the mental health profession is considered in a 1979 paper by Joseph Durlak.[15] Professional mental health training does not appear to be a necessary prerequisite. Paraprofessionals are rated by the studies reviewed at least as effective and often better than professionals.

LAPD's training program for peer counselors is conducted over a 24-hour period by a team consisting of a licensed psychologist, an experienced peer counselor, several guest speakers, and role players. Topics include reflective listening, general assessment skills for distinguishing chronic from short-term problems, problem-solving skills, alcohol and drug abuse problems, the issue of death, dying and relationship termination, suicide risk assessment and management, and when and how to refer.[16] New counselors are given instruction in crisis counseling with maximum emphasis on the practical application of a simple but effective model designed to assist the employee in solving his own problems. During training sessions, new counselors assume alternately the roles of counselor and employee, first with classmates and later with trained, experienced peer counselors who take the role of an employee in need of help. By participating in these work counseling situations, the new counselor is able to see his own strengths and weaknesses, and with coaching, improve his skills.

Problem-solving Model

A three-phase crisis counseling model is presented to the new counselors. In the first and most important phase, the hurting employee is given as much time as is necessary to express his feelings. The counselor is taught to provide a nonjudgmental, emotionally supportive atmosphere using simple, positive listening skills to facilitate the employee's full discussion of the problem. In the second phase of this model, the counselor assesses the problem presented by the employee and verbally summarizes the points he has heard. This ensures that the counselor has fully heard the employee and that they are in agreement on all of the issues. In the last phase, options are discussed. In most cases, these options are selected by the employee who also makes his own decision concerning which option seems to be best.

Role of Management

The role of supervisors and administrators in this program is extremely important. They should be aware of how the program operates and must believe it to be beneficial to both their subordinates and the organization. Employees involved in counseling will need support and sometimes guidance from supervisory personnel, making it imperative that management at all levels be familiar and supportive of the program. It is also crucial that managers recognize that this program belongs to employees. Its success at LAPD is, in part, due to the fact that it was organized at the "grass roots level" by employees for employees and is not a management tool used to control employees or a conduit for information to be passed to management. In an interview, Chief Gates addressed this issue, saying, "I must tell you I'm kind of letting this thing grow on its own. I haven't reached down and tried to direct it because I think I could very quickly ruin the whole program just by saying, 'Okay, now I'm going to take control over it and we're going to do it my way.' I may not have the intention but it might appear that way. I've let it develop on its own."[17]

Confidentiality Issue

Peer counselors have no legally protected privilege of patient confidentiality as do most members of the mental health profession. Even without this legally recognized privilege, a high degree of confidentiality in a program of this type is necessary for its success. The regulations that govern the operation of the LAPD's Peer Counseling Program state that counselors have a responsibility to insure the confidentiality of their communications with employees, with the exception of situations involving criminal acts or violations of departmental reg-

Jacksonville, FL

"Employees who experience short term crises need to be heard, need to have the opportunity to feel understood, and need to receive peer recognition of the extent of the problems they face."

ulations. This limited confidentiality is considered central to the effectiveness of the program.[18]

Conclusion

The time between when an employee begins to experience the minor problems caused by the daily stresses of life and those problems developing to the point where the employee must seek help from a mental health professional is vast. During this period, the employee experiences pain and may make many bad decisions. It is also during this period that a network of peer counselors, acting as paraprofessionals, can step in to give early aid in assisting the employee in resolving his problem, or in severe cases, refer the employee to appropriate professional assistance.

Many acts committed by employees that require a disciplinary response from management are "cries for help." These acts may include shoplifting, drug abuse, alcoholism, or other equally undesirable activities. While peer counselors would be expected to refer these more complicated problems to full-time professionals, they are in a position to detect them early. Early detection and referral has the obvious benefit of preventing major problems later on.

Alcoholism programs involving peer counseling focus on one major issue—alcoholism. With a peer counseling program of the type the LAPD instituted, the focus is expanded to include a wider range of employee problems. These programs can increase productivity, reduce absenteeism, reduce grievances and the need of the disciplinary action, and improve employee morale. Improved employee morale is considered by many to be the most important benefit derived from such programs. A peer counseling program gives concrete evidence to employees that management does care.

Informal peer counseling is common among employees in law enforcement as well as other professions. Employees discuss their problems with their peers, from the most insignificant daily issues to the major life traumas. A study of officers involved in shootings indicates that "a significant phenomenon is that every police officer interviewed was, within 48 hours, back at the station to speak with his fellow officers."[19] Without proper training, however, the results of these peer contacts can be less than desirable. A Salt Lake City study showed that officers involved in shootings talk with their fellows 85 percent of the time.[20] Results show that fellow officers without proper training were reported to be of assistance in 59 percent of the cases, and in 41 percent of the cases surveyed, other officers were reported to be major source of aggravation. [21]

Employees who experience short term crises need to be heard, need to have the opportunity to feel understood, and need to receive peer recognition of the extent of the problems they face. Peer counseling offers a means of effectively providing this support to employees who are under stress. With careful planning and implementation, an organization can provide a workable support network of peer counselors at a low cost to support fellow employees and the organization as a whole in resolving significant problems with a resulting increase in organizational efficiency and employee well-being. **FBI**

Footnotes

[1] Robert G. Phillips, Jr., "State and Local Law Enforcement Training Needs," *FBI Law Enforcement Bulletin,* vol. 53, No. 8, August 1984, p. 9.

[2] Beth Ann Krier, "How Chief Gates Copes With Pressure at the Top," *Los Angeles Times,* February 4, 1982.

[3] James D. Sewell, "Police Stress," *FBI Law Enforcement Bulletin,* vol. 50, No. 4, April 1981, p. 11.

[4] Roger L. Depue, "Turning Inward—The Police Officer Counselor," *FBI Law Enforcement Bulletin,* vol. 48, No. 2, February 1979, p. 9.

[5] Eric Nielsen and Deen L. Eskridge, "Post Shooting Procedures: The Forgotten Officer," *Police Produce News,* July 1982, p. 41.

[6] D. Bracy, "Police Stress—The American Response," *England Police Journal,* vol. 51, No. 3 July-September 1979, p. 263.

[7] Claudia Wallis, "Stress: Can We Cope?" *Time,* vol. 121, No. 23, June 6, 1983, p.54.

[8] Ibid., p. 54.

[9] Ibid.

[10] "Did 'Ya Hear About Harry?' " *FBI Agent,* vol. III, No. 2, Spring 1983, New Rochelle, NY, p. 4.

[11] Nels Klyver, "Peer Counseling for Police Personnel: A Dynamic Program in the Los Angeles Police Department," *The Police Chief,* vol. L, No. 11, November 1983, p. 66.

[12] Jerry L. Powell, "Peer Counseling Guidelines," *LAPD Peer Counseling Newsletter,* Los Angeles, CA, November 2, 1982.

[13] Ibid., October 3, 1983.

[14] Supra note 11, p. 66.

[15] Joseph A. Durlak, "Comparative Effectiveness of Paraprofessional and Professional Helpers," *Psychological Bulletin,* vol. 86, No. 1, 1979, p. 80.

[16] Supra note 11, p. 68.

[17] Supra note 2.

[18] Supra note 11, p. 68.

[19] Walter Lippert, "The Cost of Coming Out on Top—Emotional Responses to Surviving the Deadly Battle," *FBI Law Enforcement Bulletin,* vol. 50, No. 12, December 1981, p. 9.

[20] Supra note 5.

[21] Supra note 5.

Management/Labor Cooperation
Performance-based Compensation

"The Largo Police Department is actively working toward improving the level and quality of police service, while becoming more accountable to the public for our performance."

By
CHIEF JERALD R. VAUGHN
Police Department
Largo, FL

As economic conditions have placed financial restraints of varying degrees on governmental entities, public sector managers have been faced with a pressing challenge. That challenge, to ensure citizens that they are receiving full value for tax dollars expended, is at the forefront of the pursuit for an improved level of productivity by public employees. The Largo Police Department is actively working toward improving the level and quality of police service, while becoming more accountable to the public for our performance. Evidence of that effort is in the development and implementation of a performance-based compensation system.

The idea of compensating people in direct relationship to their performance is certainly not new. Many employees bring special skills, abilities, and ideas to the department and make significant contributions through their job performance. Those employees should be compensated in accordance with those efforts and contributions.

Of the nearly $5 million allocated for police operations in the city of Largo, 83 percent is used to cover the cost of personnel. It is imperative that methods of gaining a maximum return on such a sizable investment be aggressively pursued. By adopting a performance-based compensation system, the opportunity has been created to manage our human resources more fairly and effectively. We can now financially reward those employees who make the greatest contributions or penalize inferior performance. It requires that personnel develop appropriate knowledge, skills, and abilities while demonstrating their initiative through their job performance.

Background

The city of Largo police department consists of 154 sworn and civilian employees. Sworn personnel are represented in collective bargaining by a countywide Police Benevolent Association (PBA), and civilian personnel are represented by a local unit of the Communications Workers of America (CWA). Management, supervisory, and confidential employees are under a separate executive pay classification plan that is not subject to the collective bargaining process. The city negotiation team for collective bargaining is coordinated by a labor relations officer who serves as chief negotiator.

Chief Vaughn

Negotiations with both bargaining units commenced in mid-1983 for contracts that expired in September 1983. At the conclusion of negotiations, a ratified 3-year sealed agreement provided for performance-based compensation. From the outset of negotiations, the primary objective was to allocate limited financial resources in the most productive manner possible. Consistent with that objective was the need to examine traditional approaches of compensating public employees, vis-a-vis granting across-the-board pay increases with automatic step increases within prescribed time periods after entry into employment.

The Problem

The practice of granting across-the-board and automatic step increases essentially provides the same economic rewards to the marginal producer as it does to the high achiever. A very valid question with respect to what the true incentives are to work hard when such a situation exists begs for an answer.

While across-the-board and automatic step increases may have been initiated for legitimate reasons, experience would strongly suggest that the net result of the system has been to promote mediocrity in government. Additionally, this practice has played a major role in the spiraling cost of government. Granting across-the-board increases as a means of adjusting for inflation rarely accomplishes its purpose and rarely satisfies employees. Without question, the certainty of guaranteed raises in pay not tied to performance allows public employees a margin of comfort envied by many in the private sectior. Additionally, experienced emloyees who have advanced to the maximum level of the step system have only the across-the-board increase to look forward to without regard to the level of their performance. It is often these employees who are making significant contributions to the organization and who are, in effect, penalized economically by the system.

Performance-based Compensation as an Alternative

The performance-based compensation system totally eliminates across-the-board and automatic step increases. Each position continues to have a salary range that is determined in the collective bargaining process and is subsequently approved by the city commission. In the labor contract, the upper limit of the salary range was increased by 10 percent to allow the necessary room for future salary growth and to maintain the department's competitive position within the metropolitan area. The salary paid to the employee within the established range is based upon performance only and is no longer automatic. The employee's salary adjustment occurs on their employment anniversary date within the parameters of 0 to 10 percent, depending upon the level of performance achieved.

Perhaps the most difficult aspect of any performance-based compensation system is establishing the criteria by which judgments will be made with respect to how much or how little the salary increase will be. Whatever the criteria, it must be as fair and objective and as devoid of personality con-

"It is critical to not only develop accurate measurement devices . . . but also to develop a method by which they could be administered properly."

siderations as possible. In police service, these criteria are inherently more difficult to establish by the very nature of the job. While difficult, this is not impossible. The alternative would be to continue promoting mediocrity by maintaining a system that fails to recognize and reward good performance without penalizing inferior performance.

The Method

A committee was formed to develop a system of determining performance levels that would meet the needs of the city, the department, and the individual employee. The seven-member committee consists of three members appointed by the chief of police and three members appointed by the bargaining unit. The chief serves in an advisory capacity and maintains final authority for approval and implementation of the end product. Representatives of the Professional Standards Bureau of the police department participated in the committee meetings as observers to ensure that subsequent training to departmental employees was consistent with the intent of the methods being developed to measure performance levels.

The committee identified three major areas that seemingly have the most relevance in determining the level of an employee's performance, including:

1) Overall job knowledge;
2) *Quantity* of work produced; and
3) *Quality* of work produced.

It is critical to not only develop accurate measurement devices for each of the identified areas but also to develop a method by which they could be administered properly. It was decided that each part of the evaluation system should be independent of the other to ensure as fair and objective evaluation of the employee's performance as possible. The cumulative totals of the independent evaluation devices would determine a performance level and subsequent salary increase. The following merit criteria for performance raises were agreed upon:

1) Level I—3 to 4 percent;
2) Level II—5 to 6 percent;
3) Level III—7 to 8 percent; and
4) Level IV—9 to 10 percent.

Employees who do not meet the minimum criteria for Level I performance do not receive a performance raise. An employee who has received an evaluation resulting in a denial of a performance raise will be reevaluated every 60 days for a maximum of 6 months until performance improves. An improved level of performance must be achieved by the final 6-month evaluation or management may terminate or demote the employee according to the provisions of the ratified labor contract.

Evaluation Devices

Overall Job Knowledge—Competency Examination

A comprehensive examination is administered annually to allow the officer to demonstrate working knowledge of relevant statutes, ordinances, departmental policies, procedures, and rules. The examination consists of 100 straightforward situational questions that focus on critical issues such as powers of arrest, search and seizure, use of force, and many other operational issues required in the proper performance of duties. The constantly changing legal system within which an officer works demands continual monitoring to ensure that the officer's knowledge of his job is contemporary and sufficient. To neglect this very vital area would expose the officer, the department, and the city to liability arising from improper acts, and more importantly, would potentially expose citizens to police activity that is not consistent with current legal requirements or recognized professional practice.

The competency examination is administered by the Professional Standards Bureau, and the results are maintained there until they are incorporated into the final evaluation document to determine overall performance levels. A period of time is provided to prepare for the examination, and a competitive atmosphere is encouraged with awards to be presented for best individual score and best overall team scores. By encouraging individual and group study for the competency examination, the department experiences a significant benefit in terms of a reduction of operational problems that result from people simply knowing their job better.

Quantity of Work Produced

The police officer productivity assessment system is a rational, systematic approach to directing the activities of officers toward the achievement of specific performance objectives. It evaluates employee performance over a sustained period of time and assists in directing the employee's efforts toward improvement when

" . . . the time has come to move government toward more sound business practices found typically in the private sector. . . ."

necessary, while recognizing good and desirable performance. The assessment of productivity involves not only the quantity of the work produced but the quality and balance of overall activity as well. The system is not a quota system. It compares the performance of employees to other employees who are doing similar work under similar conditions. It is the officers in the field who collectively set the level of performance for a particular work team as opposed to numbers being dictated by the department. Experience with this program has clearly demonstrated that police officers possess the fundamental integrity and dedication to not compromise themselves by lowering performance standards en masse. The other two evaluation steps provide a system of checks and balances to offset the potential for abuse. Finally, the productivity assessment system is not oriented to any one specific activity, such as traffic enforcement. Emphasis is proportionate to established performance objectives that are current with identified public safety problems and trends.

Because a number of employees work different assignments within the department, such as investigations and community services, evaluation systems that are job specific and are performance objective based have been developed in order to ensure maximum results for time and effort expended.

Quality of Work Produced

The performance quality assessment system identifies factors associated with the most and least desirable outcomes of an officer's activities. By clearly identifying traits, characteristics, and actions consistent with high-quality performance and using a system that monitors the officer's performance throughout the rating period, an accurate assessment of the quality of the officer's work can be achieved. The performance quality appraisal system contains over 58 individual items evaluated by two supervisory officers. In order to achieve a higher quality of work performed through developing employees on an individualized basis, a quality assurance officer was appointed to work in the Professional Standards Bureau. This officer's function is to review officer activities from beginning to end against standards identified as highly desirable and appropriate. This random review encompasses the entire range of activities employees are involved with and identifies specific training needs, as well as the most effective and economical means of achieving them. It is not the role of the quality assurance officer to do the supervisor's job, but rather to provide staff support to the supervisor.

Summary

The performance-based compensation program is a departure from traditional police and government pay methods. Certainly, in today's difficult economic conditions, the examination of traditional methods and evaluation of their impact on service delivery is appropriate. Like any change that occurs, it will be met with a certain amount of natural resistance. There are those who will stand to gain because of their high levels of job performance, and there are those who stand to lose for the opposite reasons. Perhaps the time has come to move government toward more sound business practices found typically in the private sector and insert realistic incentives into the work place for those employees who choose to do more and do it well.

FBI

Exploiting the Financial Aspects of Major Drug Investigations

By
RICHARD J. MANGAN
Special Agent
Office of Intelligence
Drug Enforcement Administration
Washington, DC

Currency, vehicles, vessels, aircraft, houses, bank accounts, stocks, businesses, art, jewelry, and livestock—these are all examples of assets which have been acquired through illicit drug trafficking and seized by the Drug Enforcement Administration (DEA). During the first 10 months of FY-83, DEA seized over $65 million in such assets, and DEA cooperative investigations in the same period resulted in the seizure of another $132 million in trafficker assets.

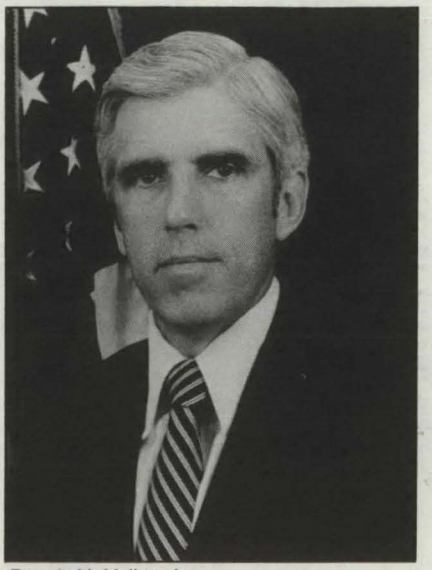
The seizures/forfeitures were made pursuant to the provisions of the following statutes: 18 U.S.C. sec. 1961 et seq. The Racketeer Influenced and Corrupt Organizations Act, commonly referred to as RICO; 21 U.S.C. sec. 843, which proscribes continuing criminal enterprises; and 21 U.S.C. sec. 881, the civil forfeiture authority of the Controlled Substances Act of 1970. These are the tools through which DEA is vigorously identifying, tracing, seizing, and forfeiting the proceeds generated by the multibillion dollar illicit U.S. drug trade.

Investigations aimed at locating and seizing the illicit profits of criminal enterprises have not always been pursued as vigorously as they are today. Historically, law enforcement's approach to the problem of drug trafficking was to arrest the violators and seize the drugs. The money, property, and other assets of these illegal organizations went largely untouched.

As long as traffickers are not deprived of "the glue that holds the whole thing together," as one U.S. Senator recently remarked, replacing arrested confederates and seized contraband can be easily accomplished. The potential for acquiring the vast profits associated with the illicit drug trade makes prison an acceptable risk to criminals as long as they know that those assets will be waiting for them upon completion of their sentences.

Today, the DEA uses an *integrated enforcement program* to combat illicit drug trafficking. This effort places emphasis on arresting the traffickers, seizing the drugs, and seizing and forfeiting the assets. The Financial and Special Intelligence Section was established in DEA headquarters to support efforts to track the profits of drug dealers, frequently through a maze of international banks and corporations. This section not only interacts with other law enforcement and regulatory agencies but also provides guidance to field divisions on major money laundering operations and actively provides analytical support to domestic and foreign drug investigations with substantial financial aspects.

In addition to the impact that asset seizures/forfeitures have on major drug organizations, such seizures/forfeitures also have the potential of producing revenues. However, not all asset seizures produce revenue. Many seizures not only fail to produce revenue but also may incur substantial costs to the seizing agency. The various expenses associated with hiring a manager to maintain an ongoing business which has been seized, providing security for seized property, and docking, storage, and tiedown costs for seized conveyances may all be significant. When the cost of deterioration, which frequently occurs when litigation lasts for 13 to 18 months or more, is added to the



Francis M. Mullen, Jr.
Administrator

above expenses, they may far outweigh the prices later obtained. On the one hand, while a $40,000 luxury car with no lien may produce revenue, its seizure will probably have little impact on a large drug trafficking organization. On the other hand, the seizure of a large ongoing business belonging to that organization may result in substantial custodial and maintenance expenses, but its impact on that trafficking group will also probably be significant.

A number of major changes to existing forfeiture legislation have been proposed. One of these proposals includes provision for the quick sale of seized property with the proceeds placed in escrow accounts so that regardless of which party prevails in the litigation, no one is hurt by the deterioration process. Other proposals include the funding and staffing of appropriate agencies to ensure proper custody, maintenance, and sale of seized and forfeited property; the possible seizure of "substitute assets" when drug-linked assets have been liquidated by traffickers; and the use of a certain percentage of forfeited assets for payment to cooperating individuals whose assistance was instrumental in major asset seizures. Another proposal permits the sharing of assets forfeited to the U.S. Government with State and local authorities who were instrumental in the investigation leading to the seizure.

"Investigating the financial aspects of drug trafficking has a number of unique elements that can frequently be confusing and frustrating to law enforcement officers inexperienced in these areas."

Investigating the financial aspects of drug trafficking has a number of unique elements that can frequently be confusing and frustrating to law enforcement officers inexperienced in these areas. Most agents and police officers deal infrequently with civil proceedings, making seizures and forfeitures under the civil statute initially problematic. The tracing of wire transfers of funds from one financial institution to another, the examination of seized business records, and the use of the Bank Secrecy Act to identify persons involved in domestic and foreign currency transactions that exceed the $10,000 domestic and $5,000 foreign reporting requirements are all new frontiers for some law enforcement agencies.

One of the most effective ways to overcome such problems involves the use of financial investigative task forces. The Internal Revenue Service (IRS) has been a leader in establishing this concept and is now involved in 26 such operations throughout the country. DEA participates in 16 of these task forces, and there is considerable involvement by the FBI, Customs, Bureau of Alcohol, Tobacco and Firearms, and other agencies as well.

The task forces are generally composed of investigators from various law enforcement agencies working together under one roof, along with a full-time prosecutor to coordinate with the agencies and make use of the grand jury through the issuance of subpoenas. Investigations are designed to focus on identifying those individuals who are reaping the profits from the illegal enterprise. A descrip-

tion of this task force concept issued by the IRS Criminal Investigation Division states:

"Furthermore, agencies working together produce better quality results by maximizing the exchange of information and technical expertise. Also agencies working together share informants. Task forces have gained valuable information from informants that was not previously shared by agencies working independently."

The IRS pamphlet lists several factors that enhance success of these task forces. They include:

1) Prosecutor dedication, coordination skills, and legal expertise;
2) Shared office space;
3) Creative investigators with dedication and ability;
4) Agency backing;
5) Shared information;
6) Publicity; and
7) State and local law enforcement involvement.

The advantages include:

1) Avoiding excessive duplication and waste through the "one government" concept;
2) Identifying previously unknown money launderers, high-level drug traffickers, major drug organizations, and prominent businessmen engaged in illegal drug trafficking;
3) Enhancing technical ability by combining agency expertise; and
4) Crippling drug organizations by maximizing the use of civil forfeiture procedures.

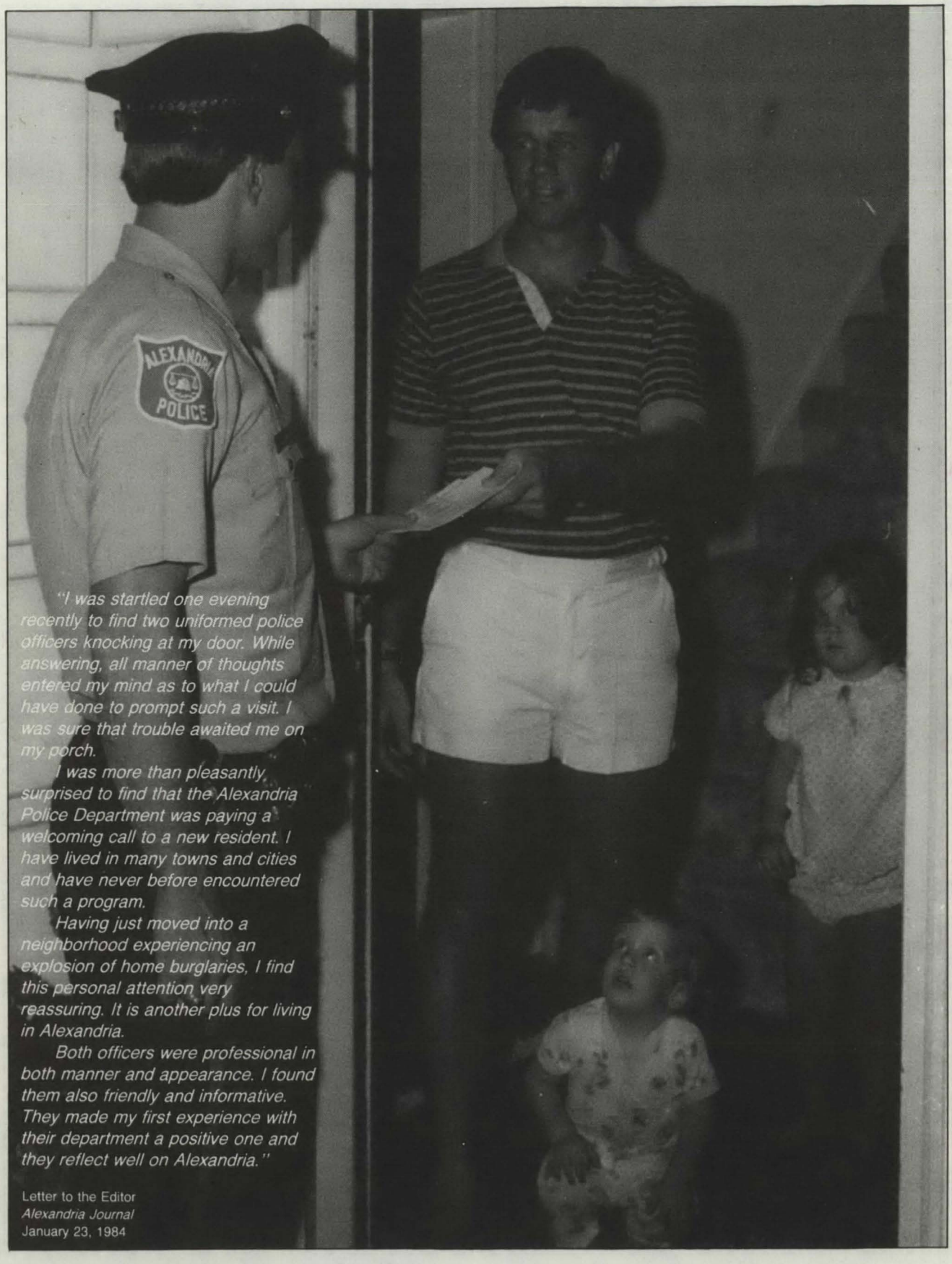
Although domestic investigations aimed at seizing and forfeiting illicitly acquired drug assets must unquestionably be a major element of our overall enforcement effort, we must be aware that as we become more efficient in this endeavor, traffickers are sure to increase their own efforts to move those assets out of the country and out of the reach of U.S. authorities.

The use of so-called "offshore haven countries" such as Panama, the Cayman Islands, the Bahamas, Hong Kong, Switzerland, Luxembourg, and the Channel Islands, to name only a few, is becoming increasingly prevalent as criminals attempt to secrete their money behind the veil of bank secrecy laws that exist in all these nations. The establishment of corporations in these countries using local attorneys or bank officers as the listed directors of the company prevents the revelation of the true corporate owners and insures the drug traffickers complete anonymity.

But even this discouraging phenomenon has a potential solution. Spearheaded by dedicated attorneys from the Department of Justice's Office of International Affairs and coordinated through the State Department, mutual assistance treaties on criminal matters are being negotiated, approved, and used to enable U.S. law enforcement authorities to obtain foreign business and bank records to be used as evidence in court proceedings. In some instances, as is the case of Switzerland, the treaty permits the freezing and forfeiture of bank accounts containing funds acquired from the illicit drug trade. Mutual assistance treaties have been or are being negotiated with Italy, Holland, Colombia, Jamaica, Panama, and the Netherlands Antilles.

Law enforcement officers and prosecutors must be encouraged to use these treaties, and in cases where such treaties are not in effect, to make court-to-court requests for international assistance through the letters rogatory (a court-to-court request for international judicial assistance) process. Only then can we become effective against trafficking organizations which have no respect for either national boundaries or national laws. Unless we pursue an aggressive program to exploit the financial aspects of major drug investigations, we will never remove the profits that make the chance of imprisonment simply part of the cost of doing business and well worth the risk of trafficking in drugs. **FBI**

"Unless we pursue an aggressive program to exploit the financial aspects of major drug investigations, we will never remove the profits that make the chance of imprisonment simply part of the cost of doing business and well worth the risk of trafficking in drugs."



"I was startled one evening recently to find two uniformed police officers knocking at my door. While answering, all manner of thoughts entered my mind as to what I could have done to prompt such a visit. I was sure that trouble awaited me on my porch.

I was more than pleasantly surprised to find that the Alexandria Police Department was paying a welcoming call to a new resident. I have lived in many towns and cities and have never before encountered such a program.

Having just moved into a neighborhood experiencing an explosion of home burglaries, I find this personal attention very reassuring. It is another plus for living in Alexandria.

Both officers were professional in both manner and appearance. I found them also friendly and informative. They made my first experience with their department a positive one and they reflect well on Alexandria."

Letter to the Editor
Alexandria Journal
January 23, 1984

". . . the Citizen Awareness Program . . . can be a very positive factor in strengthening the police/citizen relationship, and . . . can have a positive impact on crime prevention."

Alexandria's Citizen Awareness Program

By
CAPT. JOSEPH M. SEIFFERT
Department of Public Safety
Alexandria, VA

During the course of their workday, patrol officers have contact with many people. Unfortunately, many of these contacts occur while dealing with citizens' problems, maintaining order, or fighting crime. As a result, patrol officers may develop over a period of time a negative attitude toward the public.[1] The normal workload often prevents patrol officers from becoming involved in community relations projects, and in many departments, a separate Community Relations Unit exists to pursue better relationships between the community and the police.

In August 1979, an officer in the evening patrol division approached his commander with an idea for a project that would afford officers "positive" contacts with citizens and build better police/community relations in the process. The officer embarked on this project in his own beat area and believed it would benefit the officers and the department if implemented on a citywide basis.

The officer called his project the "Police Welcome Wagon Program," since it entailed visiting new homeowners on his beat. After checking a local newspaper for the weekly listing of property transfers within his beat, he would gather literature about the police department and city, and at some time during his tour of duty, visit the new residents. What occurred was a discussion about items of concern in the neighborhood regarding crime and the citizen's responsibility to assist the police in helping them. The visits lasted approximately 15 minutes.

The concept received immediate attention from the evening division management, since it appeared to be an excellent way to expose the patrol officer to a "positive" contact with a citizen as a part of directed patrol. Further, any substantial and lasting impact on crime seems to be directly related to the amount of assistance received from the community. The idea of having patrol officers talking to new residents *before* they became crime victims seemed to be a worthwhile, proactive project.

Pilot Program Implementation

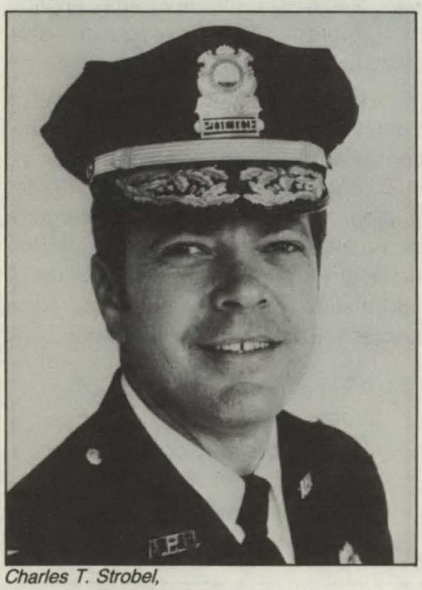
After discussions involving the evening division management staff and the initiating officer, a 10-week, citywide pilot program was implemented during the evening division's hours (4:00 p.m. to midnight) for single family detached, rowhouses, and semidetached townhouses.[2] The originator of the idea coordinated the project, and policy and procedure were developed and communicated to the patrol officers at rollcall. Emphasis was placed on the favorable impact this program could have on the officer/citizen relationship.

Rather than obtaining property transfer data from the newspaper, the coordinator visited the clerk of the circuit court weekly to obtain this information. The new property owner's name and address was then placed on duplicate 3 x 5 cards, and a packet of information was assembled for each address. Each packet contained:

—A luminous sticker with emergency telephone numbers,
—A self-addressed postcard the citizen can send to the Crime Resistance Section to request a security survey,

An Alexandria police officer delivers a CAP information packet to a new homeowner on his beat.

Captain Seiffert


Charles T. Strobel,
Public Safety Director

—A city map,
—A booklet about the city government and services, and
—The visiting officer's business card.

The coordinator kept one 3 x 5 card and delivered the second card and the information packet to the patrol officer working the area in which the dwelling was located. The officer was to visit the new resident within 4 working days, deliver the information packet, obtain the resident's new phone number and write it on the 3 x 5 card, and return the card to the coordinator who would match it with the card on file. The original card was then destroyed and the card from the officer was filed.

Pilot Program Results

At the end of the 10-week period, the coordinator submitted a staff study which revealed that 16 different officers visited 21 homes for an average visit of 15 minutes. Five homeowners and five officers were interviewed by the coordinator for their opinion of the program. All believed the program to be worthwhile and beneficial, and the direct contact between the officers and new residents did not place additional burden on staffing. It was determined that visits should be made only during evening hours when residents were more likely to be home. Division personnel generally agreed that the Citizen Awareness Program (CAP) can be a very positive factor in strengthening the police/citizen relationship, and over a period of time, can have a positive impact on crime prevention.

Restructured Citizen Awareness Program

As a result of the pilot program, the CAP was incorporated into the evening division's goals and objectives and implemented with several modifications:

1) The Crime Resistance Section obtains the home transfer information weekly from the Tax Assessment Office and assembles information packets, which are forwarded to the coordinator [3] in the evening patrol division.
2) The coordinator records the beat number and date assigned on two 3 x 5 cards and sends both cards and the information packet to the section supervisor. The section supervisor writes the assigned officer's name and due date on both cards. One card and packet are given to the beat officer. After contact with the resident is made and the telephone number noted on the card, it is reviewed by the supervisor, who sends both back to the coordinator. The coordinator's tickler file is then updated, and one set of all completed cards are sent monthly to the division commander.
3) If the officer finds no one home after three attempts, the information packet will be left at the residence and "mailboxed" is written on the card.
4) The division commander or a section lieutenant telephones a random 10-percent sample of the new residents contacted in order to obtain the citizen's perception of the program *and* the officer.

TABLE 1

SURVEY

CITIZEN AWARENESS PROGRAM

Now that the origins of the CAP have been explained to you, I would like you to take a few moments to give me your views of the program. You do not have to put your name on this form. Please complete the survey and hand it in before you leave rollcall. Thanks for your help.

1. HAVE YOU EVER VISITED A CITIZEN WITH A CAP?

(If no, please stop and turn the form in.)

YES 23 No 2

2. HOW MANY CAP's, ON THE AVERAGE, DO YOU GET EACH MONTH?

NUMBER Varied Response

3. WHAT IS YOUR IMPRESSION OF HOW THE CITIZENS GENERALLY VIEW THE CAP? (Check one)

Very positive responses	11
They like the program	12
Indifferent	0
They dislike being bothered	0
Very negative responses	0

4. DO YOU SEE A POSITIVE VALUE TO THE DEPARTMENT IN MAKING THESE CITIZEN CONTACTS?

YES 21 NO 0 UNDECIDED 2

5. HOW DO YOU FEEL ABOUT YOUR INVOLVEMENT IN THE CAP PROGRAM? (Check one)

Really enjoy participating in the program	4
Like being involved	2
Don't mind being involved	14
Can take it or leave it	3
Do not like being involved	0
Hate being involved	0

A police officer discusses neighborhood crime problems, city services, and crime prevention with new Alexandria residents.

Problems Encountered

The management audits have uncovered several problems. First, the officers are, on occasion, interrupting the citizen at mealtime or some other inopportune time. Second, a few officers simply hand the resident the information packet and leave without any discussion of the neighborhood, crime prevention, etc. This feedback is relayed to the officer through the supervisor for adjustments in technique. Another factor that has occurred occasionally is that the officer discovers the building is a rental dwelling and the current resident may have been living there for years even though the ownership of the house changed. If this happens, the information packet is still left with the resident. And finally, certain beats have a higher turnover of homeowners. In this case, adjoining beat officers share the workload.

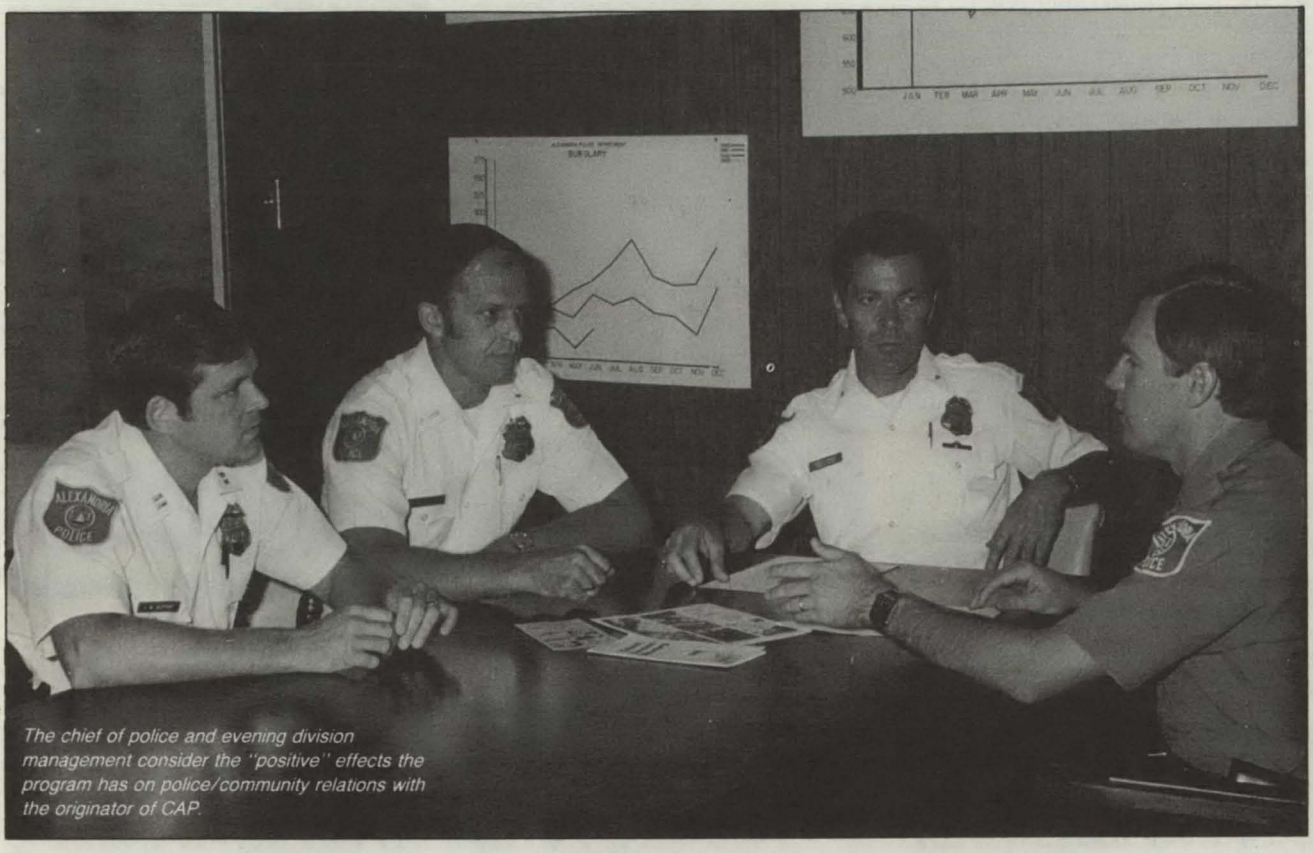
Officer Attitudes

In order to assess officers' attitudes about the community awareness program, a questionnaire was devised and given to 25 officers on the evening shift to be completed anonymously. The results show that such contacts are positive in the officers' opinions, and the officers do not mind being involved in the program. (See table 1.)

Summary

Patrol officers working the evening shift in the Alexandria Police Operations Bureau are involved in a program where they visit new homeowners residing on their beat. They talk about the neighborhood, city services, and crime prevention responsibilities of the citizen. Since June 1980,

"The Alexandria Citizen Awareness Program affords the patrol officer the opportunity to make a few positive contacts . . . which counter the negative perceptions he or she must deal with daily in their order maintenance and crime fighting role encounters."



The chief of police and evening division management consider the "positive" effects the program has on police/community relations with the originator of CAP.

approximately 68 information packets per month have been distributed with 83 percent of the residents being contacted personally by an officer. Twelve percent of the packets are left in mailboxes if the officer finds no one home after three attempts. Five percent of the homes were found to be vacant.

All of the residents sampled by a 10-percent monthly management audit have appreciated the department's efforts to inform them of the neighborhood crime problems and the city in general. Although some officers were described by residents as being "less than enthusiastic" about the program, most have been praised for being very informative and interested in the safety of the citizens. A very positive impression of the department has been formulated in the minds of these new residents. Crime Resistance Section officers also report receiving many favorable comments at civic association meetings from the new residents and from neighbors of the new residents.

The Alexandria Citizen Awareness Program affords the patrol officer the opportunity to make a few positive contacts during the month, which counter the negative perceptions he or she must deal with daily in their order maintenance and crime fighting role encounters. **FBI**

Footnotes

[1] Larry L. Tifft, "The 'Cop Personality' Reconsidered," *Journal of Police Science and Administration,* vol. 2, No. 3, September 1974, pp. 266–278.

[2] Alexandria has a population of 106,700 with over 48,000 households, of which 16,547 are single family detached, semidetached, or rowhouses. The large number of apartments and condominiums in Alexandria preclude their inclusion due to volume and no existing method to determine when new tenants move in.

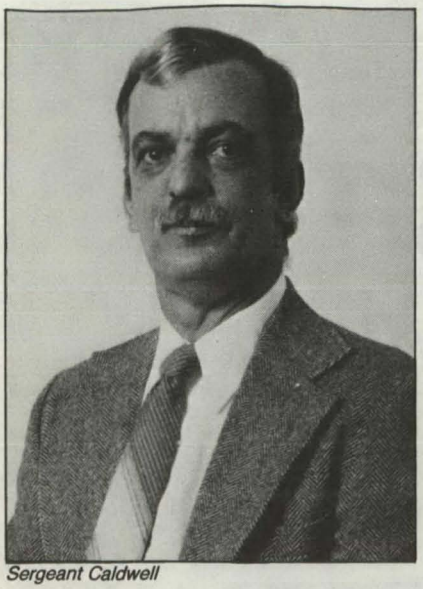
[3] The coordinator is a volunteer patrol officer and performs the CAP duties in addition to regular patrol assignments.

MOBILE COMPUTER TERMINALS

By
SGT. JAMES CALDWELL
Police Department
Arlington County, VA

Police officers in Arlington County, VA, a suburban community across the Potomac River from the Nation's capital, have added a new weapon to their arsenal. This new weapon is not a gun, a new type of ammunition, or tear gas, but a computer terminal.

When they leave rollcall, the officers go to their squad cars and turn on a compact computer terminal. By typing in a few codes on the terminal, they tell the dispatcher that they are ready for service and what radio designation they will be using. During the course of the day, they will use these terminals to keep the dispatcher informed of their status; to make wanted checks on subjects, vehicles, and tags they encounter during their tour; to determine operator permit status of motorists, both in-state and



Sergeant Caldwell

William K. Stover
Chief of Police

out-of-state; and to determine the registered owner of vehicles involved in crimes, accidents, and other incidents. They can also use the terminals to review calls that they have been dispatched on and to send messages to or receive messages from the dispatcher and other police officers.

These computer terminals, known as mobile digital terminals, mobile data terminals, keyboard data terminals, or multiline terminals, are part of a major, if not radical, restructuring of Arlington County's public safety communications.

Some of the other changes include the combining of police, fire, and emergency medical service (EMS) dispatching; implementation of the 911 universal emergency number telephone system; and the procurement and installation of a computer-aided dispatch (CAD) system. The mobile terminals are an integral, if not essential, aspect of the overall restructuring.

Background

While the history of the merger of Arlington police, fire, and EMS communications goes back many years, the first concrete step occurred in 1975 when fire/EMS communications was moved into a room adjacent to the police communications center.

Between 1975 and mid-1980, all sworn police and fire personnel other than the commanding officer and operations supervisor had been removed from communications. The merged center, now known as the Emergency Communications Center (ECC), was required to perform all public safety communications for the county with a staff of 38 nonsworn personnel, down 4 positions from the premerger strength. A review of the historical workload, including data from call counters, dispatched calls for service reports, and law enforcement data bank inquiry statistics, led the planning task force to the conclusion that the existing system would not support an efficient merged center. The task force recommended that a new system be developed according to the following criteria.

1) It would be a system that would assist call takers in determining the correct jurisdiction. Because of overlaps between telephone exchanges and political boundaries, many of the 911 calls received in Arlington would be originating from neighboring jurisdictions.
2) Calls that require the immediate dispatch of Arlington police, fire, and EMS units would be rapidly switched to the dispatch and control positions and recorded in a manner that would permit future use for management information.
3) Each action taken with respect to a call, up to and including final disposition, would be identified with the correct time and date.
4) Each call would have its own unique identifying and/or incident number.
5) Each call would be identifiable with one of the 428 police subcensus areas and/or up to 200 fire/EMS zones.
6) The means by which such calls are processed would minimize the physical handling of paper, the need for verbal communications between call takers and dispatchers, and the need for call takers to leave their positions.

"These computer terminals . . . are part of a major . . . restructuring of Arlington County's public safety communications."

7) The response time to inquiries from officers on the street who might be in contact with wanted persons or persons in possession of stolen property would be maintained or improved.

These essentials and other performance specifications were incorporated into a request for proposal (RFP) from vendors of communications equipment. The successful bidder included in the proposal a number of mobile computer terminals. Since the purpose of the merger was to reduce manpower costs while providing an efficient emergency communications operation, these mobile terminals were seen as a means of providing a rapid turnaround time on inquiries from officers on the street without adding more dispatchers. If these units could handle an appreciable percentage of the data base inquiries, the police administrative dispatcher would be able to provide a quicker response to other officers who did not have terminals and could also assist in handling the increased volume of telephone calls anticipated with the implementation of 911.

The mobile terminals were also seen as a means of improving individual officer productivity, reducing the time that a motorist had to be detained, and as a way of restoring some privacy to police communications.

System Description

The mobile terminals acquired by Arlington County provide the officer on the street with the means to: Directly access computer data files such as local, State, and national crime information files and State motor vehicle registries; send messages to the dispatcher or other mobile terminals; receive assignment and case-related data and text messages; and transmit status, emergency, and unit identification information to the dispatcher without the use of voice communications.

The terminals are mounted on an adjustable bracket in the front of the police car within easy reach of the officer. They feature a 6-line, 240 character, solid state (plasma) display with variable brightness, an alphanumeric keyboard similar to a typewriter, an array of status keys programed to correspond to the most frequently used status changes (inservice, enroute call, at scene of call, traffic stop, out-of-service, etc.), and a group of function keys that are used to prepare the terminal to send a message, make an inquiry, or acknowledge the receipt of a message. The terminals also include a protected emergency button which, when pressed, tells the dispatcher that an officer has an emergency and identifies which officer has sent the message.

The terminals are wired into a 35-watt, single channel, mobile transceiver that operates on a frequency with no voice usage. Several years' experience with fire department "status only" terminals operating on the primary voice channel led to an immediate decision to not have mobile terminal traffic on the primary channels. All vehicles are equipped with roof-mounted gain antennas. Messages, inquiries, or status changes from the officer are translated by the terminal into a signal that can modulate the radio frequency carrier provided by the transceiver. The signal is then picked up at the receiver sites, compared for quality, and the best signal is routed to a processor which retranslates the signal into information that can be processed by the central computer. The processor also sends back an acknowledgement to the officer. Information going to the officer follows the reverse of this path. "Canned" messages, including unit identification, emergency messages, status changes, and requests for inquiry formats, are typically transmitted in less than ⅛ second. Text is transmitted at a rate of 1700 words per minute.

Officers do not have to monitor for a clear channel in order to send their message. The system determines when the air is clear and transmits the message. Internal electronics insure that no two waiting terminals transmit at the same instant to eliminate the possibility of garbled messages. Unacknowledged messages are retransmitted up to four times (2 to 6 seconds apart). The terminals automatically acknowledge received messages to the base processor to avoid tying up the system, but the officer can also acknowledge to the dispatcher to let the dispatcher know that he has received his message or assignment.

Messages from the officer to the dispatcher are stored in a message-waiting queue at the dispatcher's position. A simple keyboard command allows the dispatcher to display the officer's message on a CRT screen. Emergency messages are automatically displayed.

Inquiries into computer data base files are sorted and routed at the central computer. Local CAD files are accessed directly. All other inquiries are routed, along with an identifier, via a high-speed telephone line (2400 baud) to the Virginia Criminal Information Network (VCIN) computer in Richmond, VA. The inquiry is then an-

"The mobile terminal program has lived up to its promise."

swered by VCIN or routed further to the National Crime Information Center (NCIC) or the National Law Enforcement Telecommunications System (NLETS), depending on the nature of the inquiry. The central computer in Arlington receives responses to the inquiries, determines which unit made the inquiry, and routes the reply to the unit, all in a matter of seconds, then prints the response on an associated printer at the ECC.

Implementation

An initial shipment of 15 mobile terminals was included as part of the CAD system. The mobile terminal program required the dedication of a radio channel, procurement and installation of backbone radio frequency equipment (base station, satellite receivers, and signal quality comparator systems), and the procurement and installation of a separate mobile transceiver for each mobile terminal.

Since Arlington uses midsized vehicles and the driver's compartment must provide space for more than just the officer and terminal, a task force approach to the physical installation problem was employed. The task force consisted of three police officers, plus representatives from the vehicle maintenance shop and the private radio service that installs and maintains the department's radios.

One of the prime considerations was that the terminal not interfere with the quick removal of the floor-mounted shotguns that are carried in all patrol vehicles. The task force also had to consider the location of control heads for existing voice radios and the new data radios, plus siren controls from four different manufacturers.

The final installation ended up cantilevering the terminals, via a specially fabricated bracket, over a portion of the front right seat rather than following the vendor-recommended transmission hump mounting. Bringing the system up was surprisingly easy due, in no small measure, to the expertise of the vendor and Virginia's VCIN staff, as well as the enthusiastic and innovative approach of the installation task force.

Installation of the mobile terminals in 15 pool vehicles (police cars used around the clock in patrol) was begun simultaneously with the training of personnel in using the terminals. A hard-wired termlnal was installed at the police headquarters building, and a vendor-supplied trainer provided terminal training to patrol supervisors and other key personnel. Patrol supervisors followed up with incar training of patrol officers.

The system was fully operational about 3 months after installation was completed. The delay was intentional. It permitted the supervisors to complete their training, gave the department time to develop and publish an agency-oriented users manual, and gave the officers time to become familiar with the terminals by running inquiries and sending messages.

Conclusion

The mobile terminal program has lived up to its promise. Monthly reports on data base inquiries indicate that mobile terminals are used for about one-third of all departmental inquiries. Overall volume is up, yet the ECC has also absorbed an approximate 12- to 15-percent increase in dispatched calls for service. Arrest rates for criminal offenses and for revoked permits and suspended permits are up (the kind of hits one would expect to receive on mobile terminals, but the increased arrests are also due in part to a vigorous driving while intoxicated enforcement program which leads to more revoked and suspended permits). A 6-month evaluation of hits in these categories, plus stolen vehicles and tags, showed that 41.2 percent of all hits were from mobile terminal inquiries. After recovering stolen vehicles on two consecutive nights of terminal training, one of the supervisors inquired as to when his terminal would be installed. An unanticipated benefit of the program is that officers are using less air time requesting repeats on addresses, lookouts, and other case-related information.

Perhaps more indicative of the success of the program is the fact that Arlington now has 35 terminals in operation, is working with the vendor to add inquiry capabilities for the NCIC gun and article files, and has undertaken some pilot tests that may lead to the dispatch of low priority, low hazard calls by terminal only, further conserving valuable air time. The police department is also exploring potential mobile terminal access into the files of a local criminal information system which is scheduled for late spring 1984. **FBI**

Freedom of Speech and Law Enforcement

An Analysis of *Connick* v. *Myers* (Part I)

". . . an employee's privately expressed speech is not necessarily entitled to the same degree of constitutional protection as employee speech more closely tied to a matter of public interest."

By
DANIEL L. SCHOFIELD
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, VA

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

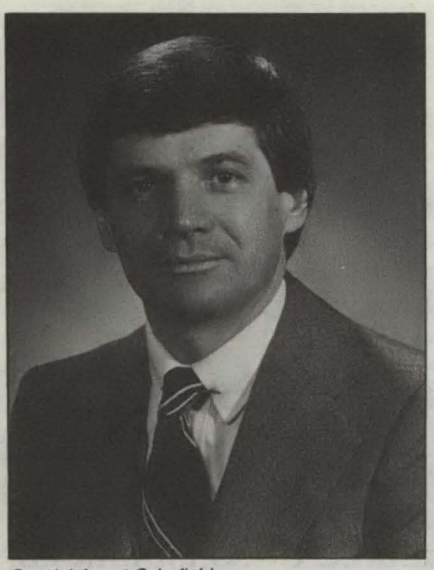
Prior to the 1960's, public employment was viewed as a privilege, and public employees were afforded little constitutional protection in their jobs. The origin of this right/privilege approach is frequently traced to the following statement by Justice Holmes in an 1892 decision rejecting the constitutional argument of a policeman who had been fired for engaging in political activities:

> "[t]he petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him."[1]

During the 1960's, the rationale underlying the right/privilege distinction was clearly repudiated by the U.S. Supreme Court.[2] Despite repeated acknowledgments of governmental power to insure the fitness and loyalty of employees, the Supreme Court ruled that public employees were no longer ". . . relegated to a watered-down version of constitutional rights."[3]

The demise of the right/privilege distinction gave rise to new and difficult questions regarding the speech rights of public employees. For example, should a law enforcement employee be afforded the same first amendment protection as private citizens to engage in expressive activity? If not, what factors should the courts consider in determining the extent of protection to afford in a particular situation? In its 1968 decision in *Pickering* v. *Board of Education*,[4] the Supreme Court provided important answers to those questions by establishing a balancing standard which weighs the competing interests of the governmental employer, employee, and public. In 1983, the Court decided *Connick* v. *Myers*,[5] which established an important exception to the traditional balancing standard.

This article begins with a discussion of several Supreme Court decisions establishing a balancing standard to protect the nonpartisan speech activity of public employees. The *Connick* decision creating an exception to the balancing test for personal employee grievances is then analyzed. The second part of this article examines the interpretation and impact of *Connick* in the lower courts. Specific cases involving speech-related claims



Special Agent Schofield

by law enforcement employees are discussed. Finally, several recommendations are offered for the development and implementation of organizational policy relating to employee speech activity.

SUPREME COURT DEVELOPMENT OF CONSTITUTIONAL SPEECH PROTECTION FOR PUBLIC EMPLOYEES

The *Pickering* Decision

Marvin Pickering was dismissed from his job as a high school teacher for sending a letter to a newspaper which criticized the board of education's handling of past proposals to raise revenue for the schools and the board's allocation of financial resources between educational and athletic programs. The Supreme Court ruled that Pickering's dismissal was an unconstitutional infringement of his freedom of speech. The Court recognized the enormous variety of situations where an employee's speech might be considered grounds for dismissal and opted for a flexible standard that could accommodate and weigh the competing interests of the governmental employer, employee, and public.[6] The Court relied on the following six factors in reaching its decision favorable to Pickering's claim:

1) The critical statements were not directed at a person with whom Pickering had a close working relationship requiring personal loyalty and confidence; [7]
2) The speech did not adversely affect the maintenance of discipline by Pickering's superiors or harmony among his co-workers; [8]
3) The inclusion of erroneous information in Pickering's letter was not per se detrimental because it related to matters of public record and could be easily rebutted by the board; [9]
4) The statements were not so unfounded as to evidence unfitness or incompetence; [10]
5) The criticism concerned a matter of public concern and was offered by an employee likely to have an informed opinion; [11] and
6) The public statements did not impede Pickering's performance as a teacher or interfere with the regular operation of the schools.[12]

Burdens of Proof

Pickering established a balancing of interests test as the constitutionally required substantive standard of judicial review for determining the permissibility of governmental restrictions on employee speech. But *Pickering* did not provide any guidance for reviewing courts regarding the appropriate allocation of burdens of proof between the governmental employer and employee. Subsequent to *Pickering*, there was considerable disagreement in the lower courts concerning the procedural issue of causation and the nature of the casual relationship employees were required to establish.[13] Much of that disagreement centered on the following two questions: 1) Should employees gain reinstatement where they show that their protected speech activity was a *motivating factor* in their dismissal; or 2) should governmental employers prevail when it is established that the same decision *would have* been reached in the absence of that activity?

". . . employers need not be inhibited from terminating employees simply because their protected speech reinforces the correctness of an employment decision that would have been reached anyway."

In its 1977 decision in *Mt. Healthy* v. *Doyle,*[14] the Court adopted a two-step rule of causation which definitively establishes the burdens of proof for employers and employees. In *Mt. Healthy,* an untenured high school teacher's contract was not renewed by the board of education because he allegedly demonstrated a lack of tact in handling professional matters. Specifically, the teacher was accused of telephoning a radio station regarding the substance of a teacher dress code and of making obscene gestures to students in the school cafeteria.[15] The Court began its analysis by observing that a teacher's right to reinstatement on first amendment grounds is not defeated by a lack of tenure.[16] Accepting the district court's finding that the communication to the radio station was protected speech under *Pickering,*[17] the Court nonetheless concluded that a public employee is not constitutionally entitled to relief just because protected speech played a substantial part in a termination decision.[18] Rejection of a rule of causation focusing solely on whether protected speech motivates employment decisions is premised on the Court's concern that employees should not be placed in a better position as a result of their having engaged in constitutionally protected speech than they would have otherwise occupied.[19] *Mt. Healthy* thus makes it clear that employers need not be inhibited from terminating employees simply because their protected speech reinforces the correctness of an employment decsion that *would have* been reached anyway.[20]

Under *Mt. Healthy,* employees have the threshold burden of showing that their conduct is constitutionally protected under *Pickering* and that it was a motivating factor in the disciplinary action. When that initial burden is met, the second phase of the causation inquiry begins with the burden of production shifting to the employer to show by a preponderance of the evidence that the same result *would have* been reached in the absence of the protected conduct.[21] It is not enough for an employer to show that the employee *could have* been discharged. The first amendment is sufficiently vindicated only if employees are placed in no worse a position than they *would have* occupied in the absence of protected activity.[22] Under *Mt. Healthy,* the burden of producing evidence on the issue of causation can shift to employers, but the ultimate burden of proving a constitutional violation remains at all times with employees who prevail only by establishing that they *would have* been rehired *but for* the protected conduct.

The standard of causation formulated in *Mt. Healthy* represents an effort by the Court to strike a balance that fairly accommodates the interests of employers and employees. Justice Rehnquist's opinion reflects concern for a rule of causation more favorable to employees that might result in windfalls by permitting incompetent or misbehaving employees to shield themselves from disciplinary action by engaging in protected activity.[23] Conversely, a rule more favorable to employers could chill protected expression by encouraging employer discepton in offering spurious motivational reasons for employment decisions.

Defining the "Public Interest" Requirement

Privately expressed speech

The Supreme Court in *Pickering* declined to accept the premise that public employees ". . . may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on *matters of public interest* . . . ." [24] That "matters of public interest" language in *Pickering* has become an important limitation on the speech protection afforded public employees. The *Pickering* Court did not offer any interpretive guidance concerning the contours of this public interest requirement.[25] The Court's first definition of that term occurred in the 1979 decision in *Givhan* v. *Western Line Consolidated School District.*[26] Givhan worked as a junior high school teacher and was dismissed following a series of private encounters with her principal where she claimed *inter alia* that policies and practices of the school district were racially discriminatory. The U.S. Court of Appeals for the Fifth Circuit had ruled that Givhan's privately expressed complaints and opinions were not protected under *Pickering.*[27]

The Supreme Court unanimously disagreed and held that a public employee's private expressions are *not beyond* constitutional protection.[28] *Givhan* clearly extends first amendment protection to private, as well as public, expression. However, the Court cautions in a footnote that an employee's privately expressed speech is not necessarily entitled to the same degree of constitutional protection as employee speech more

". . . no balancing of interests is required where employee speech does not relate to a matter of public interest."

closely tied to a matter of public interest.[29] The Court stated that when government employees personally confront immediate superiors, ". . . institutional efficiency may be threatened not only by the content of the employee's message, but also by the manner, time, and place in which it is delivered." [30] While acknowledging that those additional considerations are important in balancing the interests under *Pickering,* the Court clearly rejects the argument that a public employee's freedom of speech is lost when that employee ". . . arranges to communicate privately with his employer rather than to spread his views before the public." [31]

The decision in *Givhan* represents only a narrow interpretation of the "public interest" requirement set forth in *Pickering.* Despite its holdings that privately expressed employee speech is not categorically excluded from *Pickering* protection, *Givhan* does not constitute a wholesale endorsement of the argument that all private speech is protected. In fact, language in the opinion indicates a reluctance to afford constitutional protection to all private on-the-job expression. The underlying rationale for that hesitancy emerged 4 years later in *Connick* v. *Myers,*[32] where the Court was asked to decide whether personal internal employee grievances should be considered matters of public interest covered by *Pickering.*

Personal internal grievances

In *Connick,* the Court greatly enhances the legal significance of *Pickering's* "public interest" requirement. In the following quotation, the Court categorically rejects a balancing standard of judicial review for employee speech that is not a matter of public concern and announces an exception to *Pickering's* applicability:

> ". . . when a public employee speaks not as a citizen upon *matters of public concern,* but instead as an employee upon *matters only of personal interest,* absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior." [33]

Connick is the most important decision concerning first amendment speech protection for public employees since *Pickering* and merits a detailed discussion.

Factual background and lower court decisions

Sheila Myers was employed as an assistant district attorney in New Orleans for over 5 years and served at the pleasure of Harry Connick, the district attorney for Orleans Parish. Uncontroverted evidence indicates that she was a competent, conscientious, and effective trial attorney. In October of 1980, Myers was advised that she was being transferred to prosecute cases in a different section of the criminal court. Myers was strongly opposed to the transfer and expressed her reluctance to several of her supervisors, including Connick. She also expressed concern about conditions in the office and informed a superior she would do some research to see if her concerns were mirrored by others within the office. She proceeded to prepare a questionnaire soliciting the views of her fellow staff members concerning office transfer policy, office morale, the need for a grievance committee, the level of confidence in supervisors, and whether employees felt pressured to work in political campaigns. Myers distributed the questionnaire to 15 assistant district attorneys in the office during the working day. When Connick was informed about the questionnaire, he fired Myers, citing as reasons both her refusal to accept the transfer and her distribution of the questionnaire which he considered an act of insubordination.[34]

Myers subsequently filed suit under 42 U.S.C. 1983, contending that her employment was wrongfully terminated because she had exercised her constitutionally protected right of free speech in circulating the questionnaire. A U.S. district court concluded the questionnaire was the real reason behind the termination, despite Connick's assertion that Myers was fired for refusing the transfer.[35] The district court also ruled that Myers' distribution of the questionnaire was a form of speech and entitled to constitutional protection unless ". . . it substantially and materially or unduly interferes with the effective operation of the District Attorney's Office." [36] Striking the *Pickering* balance for Myers, the district court concluded: 1) That the issues presented in the questionnaire are related to the effective functioning of the district attorney's office, a matter of "public concern," and 2) that Connick had failed to demonstrate clearly that the questionnaire

caused substantial interference with either established office policy, Myers' work performance, or the maintenance of close working relationships.[37] The U.S. Court of Appeals for the Fifth Circuit affirmed on the basis of the district court's opinion.[38]

Supreme Court reversal

By a vote of 5 to 4, the Supreme Court reversed and concluded that the district court had misapplied *Pickering's* "matters of public interest" requirement. The Court reaffirms that the *Pickering* balancing test is generally the appropriate standard of judicial review for determining when employee speech is constitutionally protected. But the majority opinion authored by Justice White [39] then concludes that the expressive activity for which Sheila Myers was dismissed is not protected under that balancing standard. Most importantly, the Court ruled that personal internal employee grievances are categorically excluded from *Pickering's* coverage because such speech does not relate to a matter of public concern. In other words, no balancing of interests is required where employee speech does not relate to a matter of public interest.

The *Connick* decision manifests profound doctrinal disagreement on the Court over the interpretation of *Pickering's* "public interest" requirement. The Justices also differed over the resolution of practical problems that inevitably result from a clash between managerial efficiency and employee expressive activity. Set forth below is a discussion of the Court's justification for a public interest requirement and its conclusion that only one question in the questionnaire circulated by Sheila Myers relates to matter of public interest and merits a particularized balancing of interests.

Justification for a "public interest" requirement

Justice White's majority opinion justifies a "public interest" requirement by observing that *Pickering's* use of that language was not accidental, but rather ". . . reflects both the historical evolvement of the rights of public employees, and the common sense realization that government offices could not function if every employment decision became a constitutional matter." [40] He makes several observations about the interrelationship between first amendment values and public employment. First, speech on *public affairs* is the essence of self-government and is entitled to special protection because it assures the ". . . unfettered interchange of ideas for the bringing about of political and social changes desired by the people." [41] Second, the constitutional protection established in *Pickering* is designed to ensure that citizens working in government are not deprived by virtue of that employment from exercising their fundamental right to participate in *public affairs.*[42] Third, public employees should not be afforded a constitutionally based grant of immunity for employee grievances if such protection would not be similarly afforded to other citizens who do not work for the government.[43] In other words, public employees should not be afforded greater speech protection than private citizens. Fourth, common sense and managerial efficiency demand judicial deference to managerial prerogatives when employee expression concerns internal office affairs: "While as a matter of good judgment, public officials should be receptive to constructive criticism offered by their employees, the first amendment does not require a public office to be run as a roundtable for employee complaints over internal office affairs."[44]

From these observations, the majority reaches two important conclusions of law. First, no balancing of interests under *Pickering* is constitutionally required to protect employee speech unless that speech is ". . . fairly characterized as constituting speech on a matter of public concern . . . ." [45] In a somewhat deferential tone, the Court makes the following concession to managerial efficiency:

> "When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment. Perhaps the government employer's dismissal of the worker may not be fair, but ordinary dismissals from government service which violate no fixed tenure or applicable statute or regulation are not subject to judicial review even if the reasons for the dismissal are alleged to be mistaken or unreasonable." [46]

The second conclusion of law pertains to the scope of the "matters of public concern" requirement. The Court held that with the exception of one question concerning official pressure to work for particular political

" 'When employee speech concerning office policy arises from an employment dispute . . . additional weight must be given to the supervisor's view that the employee has threatened the authority of the employer to run the office.' "

candidates, the questionnaire circulated by Sheila Myers did not fall under the rubric of "matters of public concern." [47] The Court reviewed the questions pertaining to confidence and trust in various supervisors, office morale, and the need for a grievance system as mere extensions of her personal grievance. This conclusion was reached because the majority found that Myers 1) did not seek to inform the public about problems in the management or operation of the district attorney's office, 2) did not bring to light actual or potential wrongdoing or breach of public trust, and 3) did not ask questions in order to evaluate the performance of the office, ". . . but rather to gather ammunition for another round of controversy with her superiors." [48] The Court notes that the subject of office morale and discipline could in dfferent circumstances be a matter of public concern, but did not attain that status in the content, form, or context of the Myers' questionnaire.[49]

Balancing the interests

Because the Court determined that one question in the questionnaire touched upon a matter of public concern, a particularized balancing of the interests was undertaken. *Connick* is the first Supreme Court decision since *Pickering* involving a comprehensive application of the *Pickering* balancing test to the speech of a public employee. The Court began by criticizing the district court for imposing an unduly onerous burden on the government to justify the discharge of Sheila Myers.[50] Rejecting a requirement that *Connick clearly demonstrate* that the questionnaire *substantially interfered* with the official responsibilities of the district attorney's office, the Court determined that *Pickering* requires a particularized balancing where the government's burden " . . . varies depending on the nature of the employee's expression." [51] The Court also emphasized that an appropriate balancing of competing interests can only be reached where a reviewing court gives full consideration to the government's interest in the effective and efficient fulfillment of its responsibilities.[52]

The Court identified four factors that it deemed relevant in concluding that Myers' conduct was not protected speech under *Pickering,* despite a finding that the questionnaire did not impede Myers' ability to perform her job and did not violate any announced office policy.[53] First, since close working relationships with superiors is important for the successful operation of a district attorney's office, a wide degree of deference should be afforded to *Connick's* judgment that Myers' questionnaire was an act of insubordination carrying a clear potential for the undermining of office relationships.[54] The Court added that a balancing of interests approach does not require that employers ". . . allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action."[55] Second, the manner, time, and place in which the questionnaire was distributed endangered the institutional efficiency of the office.[56] The questionnaire was prepared and distributed at the office during working hours and required Myers and others to take time away from their assigned duties. Third, the questionnaire arose in the *context* of an employment dispute between Myers and Connick over office transfer policy.[57] The Court offered the following guidance regarding the appropriate weight to attribute to this *context* factor:

> "When employee speech concerning office policy arises from an employment dispute concerning the very application of that policy to the speaker, additional weight must be given to the supervisor's view that the employee has threatened the authority of the employer to run the office."[58]

Finally, the Court concluded that the questionnaire touched upon matters of public interest in only a limited way and ". . . is most accurately characterized as an employee grievance concerning internal office policy."[59] The Court cautioned that *Pickering* would require a stronger showing of governmental justification if the questionnaire more substantially involved matters of public concern.[60] In reaching a final decision favorable to Connick, the Court concluded that it would ". . . be a pyrrhic victory for the great principles of free expression . . ." if Sheila Myers' first amendment right to participate in discussions concerning public affairs was confused with her attempt to constitutionalize an employee grievance.[61] **FBI**

(To be continued)

Footnotes

[1] *McAuliffe* v. *Mayor of New Bedford,* 29 N.E. 517, 517–18 (1892).

[2] For a comprehensive discussion of deficiencies and the decline of the right/privilege distinction, see Van Alstyne, "The Demise of the Right/Privilege Distinction in Constitutional Law," 81 Harv. L. Rev. 1439 (1968); Note, "The First Amendment and Public Employees: Time Marches On," 57 Geo. L.J. 134 (1968); and Note, "The First Amendment and Public Employees—An Emerging Constitutional Right to be a Policeman," 37 Geo. Wash. L. Rev. 409 (1968).

[3] *Garrity* v. *State of New Jersey,* 385 U.S. 493, 500 (1967). The Court held that policemen could not be required to choose between exercising their fifth amendment privilege against self-incrimination and forfeiture of their job.

[4] 391 U.S. 563 (1968).

[5] 103 S. Ct. 1684 (1983).

[6] The Court acknowledged that it was not feasible to lay down a general standard against which all such statements should be judged. 391 U.S. at 569.

[7] *Id.* at 570. In a footnote, the Court said that significantly different considerations would be involved where the relationship between a superior and a subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them. Moreover, the Court said it was possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal. *Id.* at n. 3.

[8] *Id.* at 570.

[9] *Id.* at 572.

[10] Pickering erroneously reported the amounts expended for athletics but was accurate in other facts set forth in his letter. The Court said that unfounded statements would merely be evidence of general competence, or lack thereof, and not an independent basis for dismissal. *Id.* at 573, n. 5.

[11] *Id.* at 572.

[12] *Id.* at 572–73.

[13] For a discussion of that disagreement, see Note, "Free Speech and Impermissible Motive in the Dismissal of Public Employees," 89 Yale L.J. 376, 383 (1979).

[14] 429 U.S. 274 (1977).

[15] *Id.* at 283. The teacher was also involved in an argument with another teacher, which resulted in a slapping incident, and referred to students, in connection with a disciplinary complaint, as "sons of bitches." *Id.* at 281–82.

[16] *Id.* at 283.

[17] *Id.* at 284.

[18] *Id.* at 285.

[19] *Id.*

[20] *Id.* at 286.

[21] *Id.* at 287. Once the employer offers evidence of legitimate reasons, the employee could attempt to prove that the presumptively valid cause asserted by the employer was pretextual.

[22] *Id.* at 285–86.

[23] *Id.*

[24] 391 U.S. at 568 (emphasis added).

[25] Lower courts were predictably divided in their interpretation of the *Pickering* "public interest" requirement. Compare *Clark* v. *Holmes,* 474 F.2d 928 (7th Cir. 1972) (teacher's disputes with his superiors and colleagues about course content and counseling were not matters of public concern and not protected); with *Jannetta* v. *Cole,* 493 F.2d 1334 (4th Cir. 1974) (fireman's internally circulated petition critical of departmental promotion policies was protected).

[26] 439 U.S. 410 (1979).

[27] *Ayers* v. *Western Line Consolidated School District,* 555 F.2d 1307 (5th Cir. 1977). The court of appeals was concerned about constitutionalizing the right to confront superiors. *Id.* at 1319.

[28] 439 U.S. at 413.

[29] *Id.* at 415, n. 4.

[30] *Id.*

[31] *Id.* at 415–16. The court also rejected the principal's "captive audience" argument by observing that he had opened his door to Givhan and was therefore not an unwilling recipient of her views.

[32] 103 S.Ct. 1689 (1983).

[33] *Id.* at 1690.

[34] Connick felt the questions concerning employee confidence in various supervisors and pressure to work on political campaigns would be particularly damaging if discovered by the press. *Id.* at 1687.

[35] *Myers* v. *Connick,* 507 F. Supp. 752 (E.D. La. 1981).

[36] *Id.* at 757.

[37] *Id.* at 759.

[38] 654 F.2d 719 (5th Cir. 1981).

[39] Joining Justice White were Justices Burger, Powell, Rehnquist, and O'Connor. Justice Brennan wrote the dissenting opinion and was joined by Justices Marshall, Blackmun, and Stevens.

[40] Justice White said the precedents in which *Pickering* is rooted, as well as their progeny, reflect a ". . . common sense realization that government offices could not function if every employment decision became a constitutional matter." 103 S.Ct. at 1688.

[41] *Id.* at 1689 (quoting from *Roth* v. *United States,* 354 U.S. 476).

[42] *Id.*

[43] *Id.* at 1690.

[44] *Id.* at 1691. The Court quoted with approval the following language from Justice Powell's opinion in *Arnett* v. *Kennedy,* 416 U.S. 134, 168 (1974): "To this end, the Government, as an employer, must have *wide discretion* and control over the management of its personnel and internal affairs. This includes the prerogative to remove employees whose conduct hinders efficient operation and to do so *with dispatch.* Prolonged retention of a disruptive or otherwise unsatisfactory employee can adversely affect discipline and morale in the work place, foster disharmony, and ultimately impair the efficiency of an office or agency." *Id.* at 1692 (emphasis added).

[45] *Id.* at 1689.

[46] 103 S.Ct. at 1689–90.

[47] *Id.* at 1690.

[48] *Id.* at 1690–91, n. 8

[49] *Id.*

[50] *Id.* at 1691.

[51] *Id.* at 1692.

[52] *Id.*

[53] *Id.* at 1692–93. The Court notes that the violation of office policy would strengthen Connick's position. *Id.* at n. 14. That statement correctly implies that a Government manager can constitutionally prohibit the circulation of questionnaires or petitions in a government office.

[54] The Court credited the testimony of Connick and a subordinate that the questionnaire appeared to be causing a "mini-insurrection" and constituted a final act of defiance. *Id.* at n. 11.

[55] *Id.* at 1692.

[56] *Id.* at 1693.

[57] *Id.*

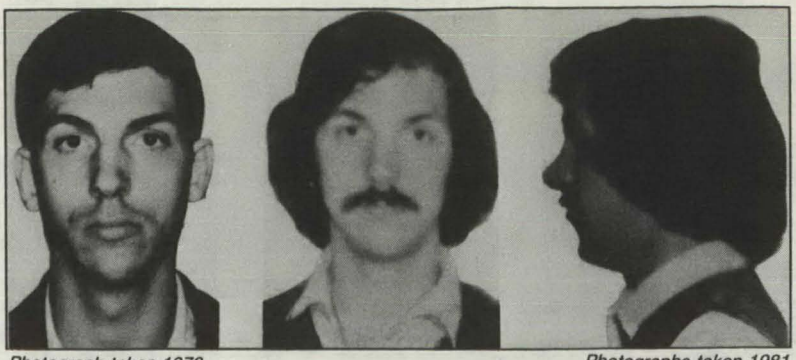
[58] *Id.*

[59] *Id.* at 1693–94.

[60] *Id.* at 1692–93.

[61] *Id.* at 1694.

WANTED BY THE FBI



Photograph taken 1978 *Photographs taken 1981*

Vincent James Russo

Vincent James Russo, also known as Frank Bravo, Sonny Brainerd, Jim Russo, Robert Tabler, Robert Dutch Tabler, Robert Dutch Tablir, Robert Dutch Zablir

Wanted For:

Interstate Flight—Robbery, Kidnaping, Attempted Murder

The Crime

Vincent James Russo is being sought in connection with an armed robbery in which a liquor store clerk was abducted, forced to the ground, and shot repeatedly at point-blank range with a .45-caliber automatic pistol.

A Federal warrant was issued on January 4, 1979, at San Diego, CA.

Description

Age	30, born July 20, 1954, Saint Albans, NY.
Height	5'11".
Weight	155 pounds.
Build	Slender—medium.
Hair	Brown (may be wearing Afro hairstyle).
Eyes	Brown.
Complexion	Olive.
Race	White.
Nationality	American.
Occupations	Assistant manager of fast food restaurants, former policeman, former U.S. Marine, waiter.
Scars and Marks	Moles on either side of mouth, three areas of skin discoloration on back; tattoo: U.S. Marine Corps emblem on upper right arm.
Remarks	Russo may be with a female companion, her 5-year-old daughter, and infant baby girl.
Social Security Numbers Used.	067-46-5747; 067-46-5848; 068-68-5464; 068-86-5767; 068-86-7673; 086-48-5767; 068-65-7673; 688-65-7673.
FBI No.	360 581 V3.

Caution

Russo has been added to the FBI's "Ten Most Wanted Fugitives" list. Consider him armed and extremely dangerous in view of the brutal nature of the crimes with which he is charged and his alleged former employment as a policeman.

Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

Classification Data:

NCIC Classification:
17CI14POPO117013DM12

Fingerprint Classification:
17 L 25 W IOO
S 6 R OOM 12

I.O 4847

Left index fingerprint

U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 452-903 QL 3

Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City State Zip

Interesting Pattern

This pattern is interesting because of the unusual formation in the lower right portion of the impression. This impression is classified as an accidental-type whorl. The tracing is outer.

U.S. Department of Justice
Federal Bureau of Investigation

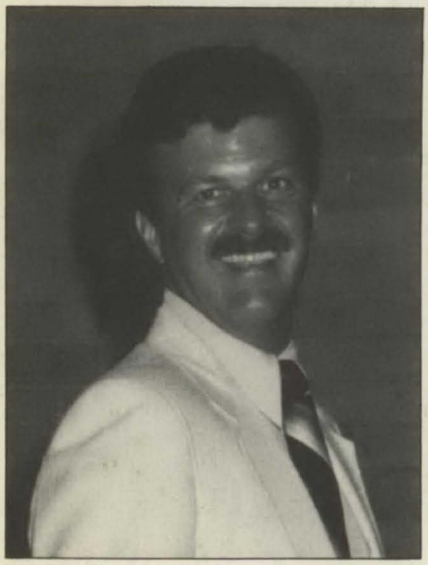
Second Class Mail
Postage and Fees Paid
Federal Bureau of Investigation
ISSN

Washington, D.C. 20535

Official Business
Penalty for Private Use $300
Address Correction Requested

The Bulletin Notes

that Detective Robert Gallagher of The New York City Police Department is the most decorated detective in the history of this department, having received over 200 citations for extraordinary bravery, including the Police Combat Cross, in the course of effecting 190 arrests of armed felons in 1983 alone. The Bulletin is pleased to join Detective Gallagher's superiors in commending his valor.



Detective Gallagher