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**Louis J. Freeh,
Director**

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FBI Law Enforcement B·U·L·L·E·T·I·N

Features

Departments

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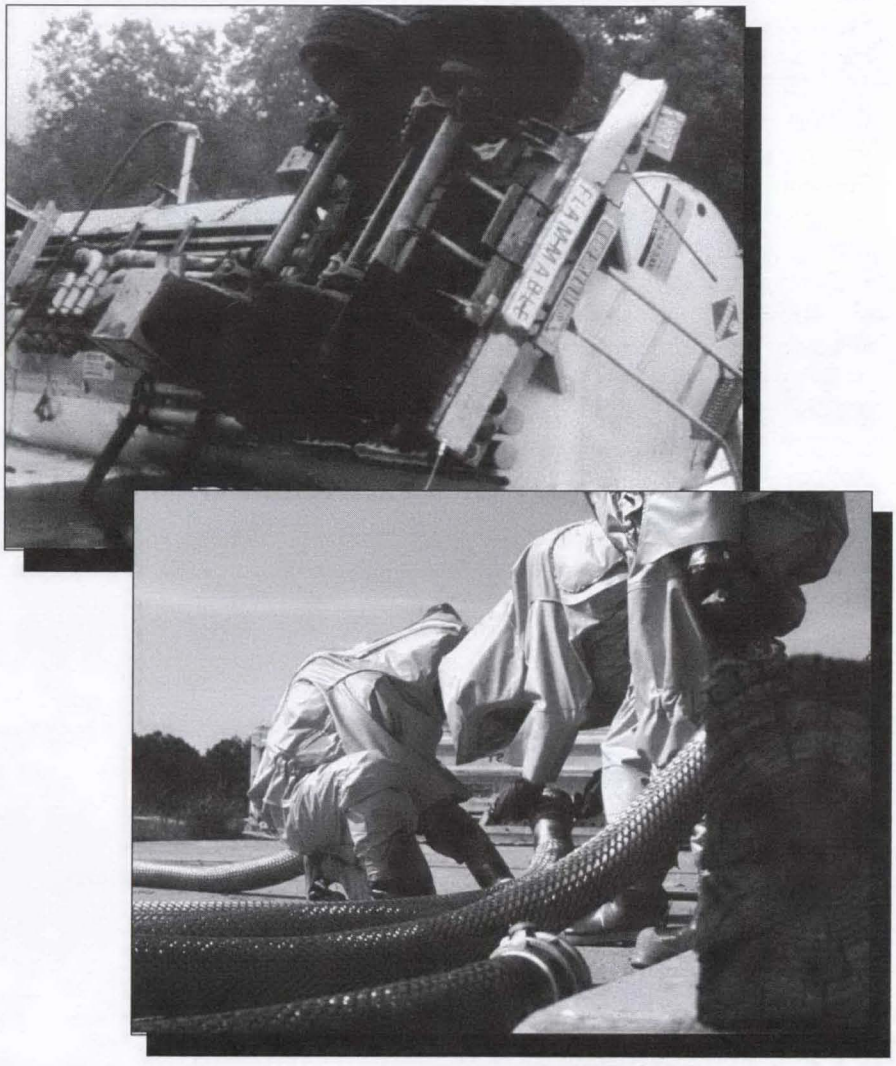
Hazardous Materials Training
A Necessity for Today's Law Enforcement

By
MICHAEL L. DONAHUE



The U.S. Department of Transportation estimates that 500,000 interstate shipments of hazardous materials occur daily in the United States. These shipments involve every aspect of the transportation system, including rail, marine, air, and highway transit.

Although the industry's overall safety record is excellent, accidents involving hazardous materials can, and do, happen. The rising volume of shipments and the potential for mishaps to occur make it imperative that the emergency response community be prepared to deal effectively with such incidents.

The potential for an emergency in any location—from a small town to a large metropolitan area—also reinforces the importance of emergency response training for State and local law enforcement personnel, who are often the first called to the scene of an accident. The initial actions performed at the scene of a hazardous materials incident set the stage for the ultimate success or failure in resolving the emergency safely.

This is especially true in small urban or rural areas, where the probability for an incident may be viewed as low, but where the consequences of mismanaging an accident could be devastating. An inappropriate response may endanger personnel, the surrounding community, and the environment. Proper training represents the most effective insurance against a minor accident becoming a major disaster.

REGULATIONS

In 1986, the Office of Technology Assessment issued a report indicating that only 25 percent of first responders—firefighters, police officers, and emergency medical services personnel—received

adequate training to respond to hazardous materials incidents and that over 1.5 million first responders needed additional training. The report went on to cite effective hazardous materials training as the most pressing need in emergency response today.[1]

In the late 1980's, the Federal Government moved to improve preparation levels. In March 1989, the Occupational Safety and Health Administration (OSHA) issued *Hazardous Waste Operations and Emergency Response,* 29 CFR 1910.120, commonly referred to as HAZWOPER. This regulation, which established minimum training levels for emergency response personnel, became effective in March 1990.

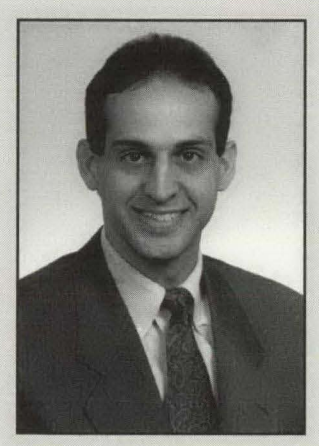
Federal legislation mandated issuing HAZWOPER as part of the sweeping Superfund Amendments and Reauthorization Act (SARA) of 1986. Title III of SARA is intended to improve the overall preparedness of communities throughout the Nation by encouraging the development of comprehensive hazardous materials emergency response plans.

Another section of SARA requires the Environmental Protection Agency (EPA) to issue standards for hazardous waste operations and emergency response. Although the EPA and OSHA standards contain identical substantive provisions, the regulations differ with respect to their scope of coverage.

The EPA's authority extends to State and local government employers conducting hazardous waste operations and emergency response in States that *do not* have a delegated OSHA program in effect. Currently, the EPA's authority extends to 27 States, one territory, and the District of Columbia. EPA regulations cover both compensated and noncompensated State and local government employees engaged in specified emergency response activities. Therefore, the EPA standards protect unpaid personnel, such as volunteer firefighters, who respond to hazardous substance emergencies.

While OSHA recommends that delegated State programs also cover unpaid employees, not all States follow this recommendation. Although Congress intended that these regulations cover all workers—including firefighters, emergency medical service personnel, and law enforcement officers—OSHA regulations generally do not apply to State and local government employees.

In short, Federal OSHA standards protect all private sector and Federal employees engaged in hazardous waste operations in States *without* an OSHA-approved plan. EPA worker protection standards cover all State and local government employees, including volunteers. In States with an OSHA-approved plan, the State program covers all private sector employees, as well as State and local government employees; Federal OSHA rules still cover Federal employees. States with their own OSHA-approved programs must develop a standard at least as stringent as the OSHA rule.



"Proper training represents the most effective insurance against a minor accident becoming a major disaster."

Mr. Donahue is the associate director of CHEMTREC, a public service operated by a chemical trade association in Washington, DC.

PROVISIONS

Both the OSHA and EPA worker protection standards affect employers whose workers engage in the following activities:

- Cleanup operations at uncontrolled hazardous waste sites when a government authority requires the cleanup[2]

- Corrective actions at treatment, storage, and disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA)[3]
- Voluntary cleanup operations at uncontrolled hazardous waste sites[4]
- Hazardous waste operations conducted at RCRA TSD facilities[5]
- Emergency response operations without regard to location, where there is the release or a substantial threat of release of a hazardous substance.[6]

Since other OSHA programs protect employees who respond to traditional fire and medical emergencies, HAZWOPER does not address these types of incidents. However, HAZWOPER *requires* that employers provide proper emergency response planning, training, and medical surveillance to all affected and potentially affected employees.

ENFORCEMENT

In general terms, OSHA can issue civil fines for noncompliance with the provisions of its standards. Additionally, in certain situations, such as the willful death of an employee, OSHA can refer cases to the U.S. Department of Justice for criminal prosecution. Although the EPA adopted a similar set of hazardous materials training regulations, its directive currently possesses no specific enforcement provisions for noncompliance. And, while a public official has yet to be prosecuted for failure to comply with either SARA or OSHA requirements, the possibility certainly exists.

TRAINING

The Hazardous Waste Operations and Emergency Response rule sets minimum training requirements for emergency response personnel, including law enforcement officers, who may be required to respond to hazardous materials incidents. OSHA mandates that the training be based on the duties and functions performed by each responder in a community safety agency. All employees hired after the effective date of the standard must receive appropriate training *before* they take part in actual emergency operations.[7]

> ***"Although the industry's overall safety record is excellent, accidents involving hazardous materials can, and do, happen."***

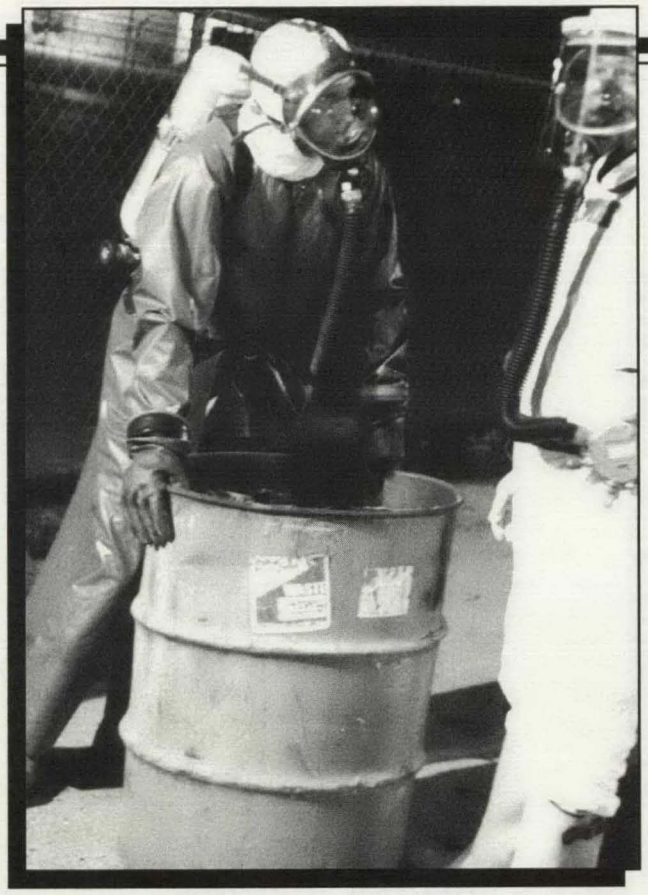
The OSHA standard divides training requirements into five distinct "levels." Each level specifies unique training requirements.

In the first responder (awareness level), employees must possess sufficient training or proven experience to recognize and report the presence of hazardous materials in an accident. Personnel in the second training category, first responder (operations level), must demonstrate competency at the "awareness level" and complete a minimum of 8 hours of more advanced hazardous waste response training.

Hazardous materials technicians, the third competency level, must complete at least 24 hours of training at the "operations level" and must possess sufficient experience to demonstrate additional expertise. Hazardous materials specialists—the fourth training category—must complete at least 24 hours of training at the "technician level" and possess sufficient experience to demonstrate additional expertise. Those designated as on-scene incident commanders must complete at least 24 hours of training at the first responder-operations level and possess sufficient experience to demonstrate additional expertise.

First Responder (Awareness Level) Training

Of the five training tiers, most law enforcement officers function at the first responder (awareness level). As stated in the OSHA standard, personnel at the "awareness-level" are considered "likely to witness or discover a hazardous substance release and...are expected to initiate an emergency response sequence by notifying the proper authorities of the release."[8] Generally, first responders at the awareness level take no action beyond notifying hazardous materials emergency response personnel and taking initial steps to ensure community safety.



Personnel at the first responder (awareness level) should receive training or possess sufficient experience to demonstrate competency in the following areas:

- An understanding of their role in the agency's emergency response plan, including familiarity with site security plans and knowledge of the *Emergency Response Guidebook*, published by the U.S. Department of Transportation (DOT)
- The ability to recognize the presence of hazardous materials in an emergency
- A rudimentary understanding of hazardous materials and the risks they present, and
- The ability to recognize additional resource needs and to notify appropriate personnel.

In addition to the OSHA standard, the National Fire Protection Association (NFPA) also developed guidelines for hazardous materials emergency response. *The Standard for Professional Competence of Responders to Hazardous Materials Incidents* (NFPA 472) is a voluntary, national consensus standard.[9] The 1992 edition of NFPA 472 includes the following definition and goals for first responders at the awareness tier. "Personnel at this level are those who, in the course of their regular duties, may be the first on the scene of an emergency involving hazardous materials. These employees are expected to recognize the presence of hazardous materials, protect themselves, call for trained emergency response personnel, and secure the area."[10]

Refresher Training

In addition to initial training requirements, emergency responders must also receive annual refresher training or demonstrate sufficient competency in relevant areas on a yearly basis.[11] While the OSHA standards mandate no specific refresher training curriculum, personnel must receive sufficient training to demonstrate competencies in specified areas.

Agencies should base the number of hours devoted to refresher training on the experience and previous training levels of agency personnel. For employees who do not receive refresher training but are able to demonstrate competency, employers must document, on a yearly basis, the method used to determine this capability.[12]

FIRST RESPONDER RESPONSIBILITY

When first on the scene of an emergency involving hazardous materials, law enforcement personnel should analyze the situation to determine the nature of the potential threat. To do so, first responders should survey the accident area from a safe location to identify the name and identification number (or warning placard) of any hazardous cargo.

With this data, first responders should refer to the DOT *Emergency Response Guidebook* for information pertaining to the specific materials involved. Once first responders establish the nature of the threat, they should then implement initial community protective measures and notification procedures consistent with local emergency response plans, agency standard operating procedures, and the current edition of the DOT *Emergency Response Guidebook.*

OTHER EMERGENCY EMPLOYEES

Hazardous materials incidents may require a response from a wide spectrum of personnel. These include skilled support personnel and specialist employees.

Skilled Support Personnel

Trained in the operation of specialized mechanical equipment—such as cranes, hoists, and backhoes—skilled support personnel generally are not employed by the same agencies as the other emergency response employees at the incident scene. Although they may be exposed to hazards during an emergency response, these workers remain at the scene only a short time to perform immediate emergency support work that cannot be performed by trained emergency response personnel.

Still, to ensure their safety, OSHA requires skilled support personnel to receive an initial briefing at the site, which must include the following elements:

- Instruction on the proper use of personal protective equipment
- A review of the potential on-site hazards
- An overview of the duties to be performed
- An overview of other safety and health precautions.

This briefing must be given before personnel participate in any emergency response operation that involves hazardous materials.

Specialist Employees

Commanders may also call upon specialist employees to assist in an emergency response effort. These individuals possess specialized knowledge concerning some aspect of emergency response or hazardous substances. Although OSHA does not specify hourly training requirements for these workers, specialist employees, such as chemists, industrial hygienists, and environmental engineers, must receive yearly training commensurate with their area of specialization.

EMERGENCY RESPONSE PLAN

For any agency that may be involved in an hazardous materials response effort, including law enforcement departments, the OSHA standard mandates the development of an emergency response plan. These plans must be in writing and available for inspection and reproduction by employees and OSHA personnel.[13]

> ***"The initial actions performed at the scene...set the stage for the ultimate success or failure in resolving the emergency safely."***

In developing plans, employers must take into account the variety of potential emergencies that could occur within their agencies' jurisdiction. OSHA specifies that emergency response plans address:

- Pre-emergency planning and coordination with outside parties
- Personnel roles, lines of authority, training, and communication
- Emergency prevention
- Determining safe distance ranges and places of refuge
- Site security and control
- Evacuation routes and procedures
- Decontamination procedures
- Emergency medical treatment and first aid
- Critiques of response and followup
- Proper use of personal protective equipment and emergency equipment.

Emergency response plans must also include procedures for establishing an incident command system and must identify the chain of command that will operate during hazardous materials emergencies. In addition to the OSHA requirements, the Superfund Amendments and Reauthorization Act specifies additional planning requirements that address overall emergency response efforts.

Law enforcement agencies without existing emergency response plans should contact other fire or police agencies to obtain copies of their plans and then use them as guidelines in developing their own. Emergency response plans are not only essential to comply with the law but they also serve as an important preplanning document that defines the roles, responsibilities, and emergency operational procedures for department personnel *before* an incident occurs.

CONCLUSION

Despite the industry's enviable safety record, every jurisdiction in

the Nation must prepare for the possibility of an emergency involving hazardous materials. Recent Federal regulations and voluntary industry initiatives encourage public safety agencies at all levels to take proactive steps to protect personnel, communities, and the environment.

Agency administrators should remember that the goal of these Federal regulations is to protect emergency response personnel and the public in the event of accidents. Due to the number of hazardous materials shipments throughout the United States, agency administrators should make every effort to prepare now for emergencies. The potential for an incident makes effective planning in this area critical.✦

Endnotes

[1] U.S. Congress, Office of Technology Assessment, *Transportation of Hazardous Materials*, OTA-SET-304 (Washington, DC: U.S. Government Printing Office, July 1986).

[2] 29 CFR 1910.120 (a)(ii)

[3] Ibid.

[4] 29 CFR 1910.120 (a)(iii).

[5] 29 CFR 1910.120 (a)(iv).

[6] 29 CFR 1910.120 (a)(v).

[7] 29 CFR 1910.120 (q)(6).

[8] 29 CFR 1910.120 (q)(6)(i).

[9] *Standard for Professional Competence of Responders to Hazardous Materials Incidents,* (NFPA 472), National Fire Protection Association, Quincy, Massachusetts, 1992. Compliance with NFPA is not required by law, unless specifically adopted for reference by individual States. However, the September 1989, edition of NFPA 472 formed the basis for training requirements contained in OSHA 1910.120.

[10] Ibid.

[11] 29 CFR 1910.120 (q)(8).

[12] 29 CFR 1910.120 (q)(8)(ii).

[13] 29 CFR 1910.120 (q)(2).

Author Guidelines

Manuscript Specifications

Length: 1,000 to 3,000 words or 5 to 12 pages double-spaced.

Format: All manuscripts should be double-spaced and typed on 8 1/2" by 11" white paper. All pages should be numbered, and three copies should be submitted for review purposes.

Publication

Basis For Judging Manuscripts: Manuscripts are judged on the following points: Factual accuracy, style and ease of reading, structure and logical flow, length, relevance to audience, and analysis of information. Favorable consideration will generally not be given to an article that has been published previously or that is being considered for publication by another magazine. Articles that are used to advertise a product or a service will be rejected.

Query Letters: The Editor suggests that authors submit a detailed one- to two-page outline before writing an article. This is intended to help authors but does not guarantee publication of the article.

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Line-of-Duty Death Policies
Preparing for the Worst

By
NANCY A. NEWLAND, M.S.

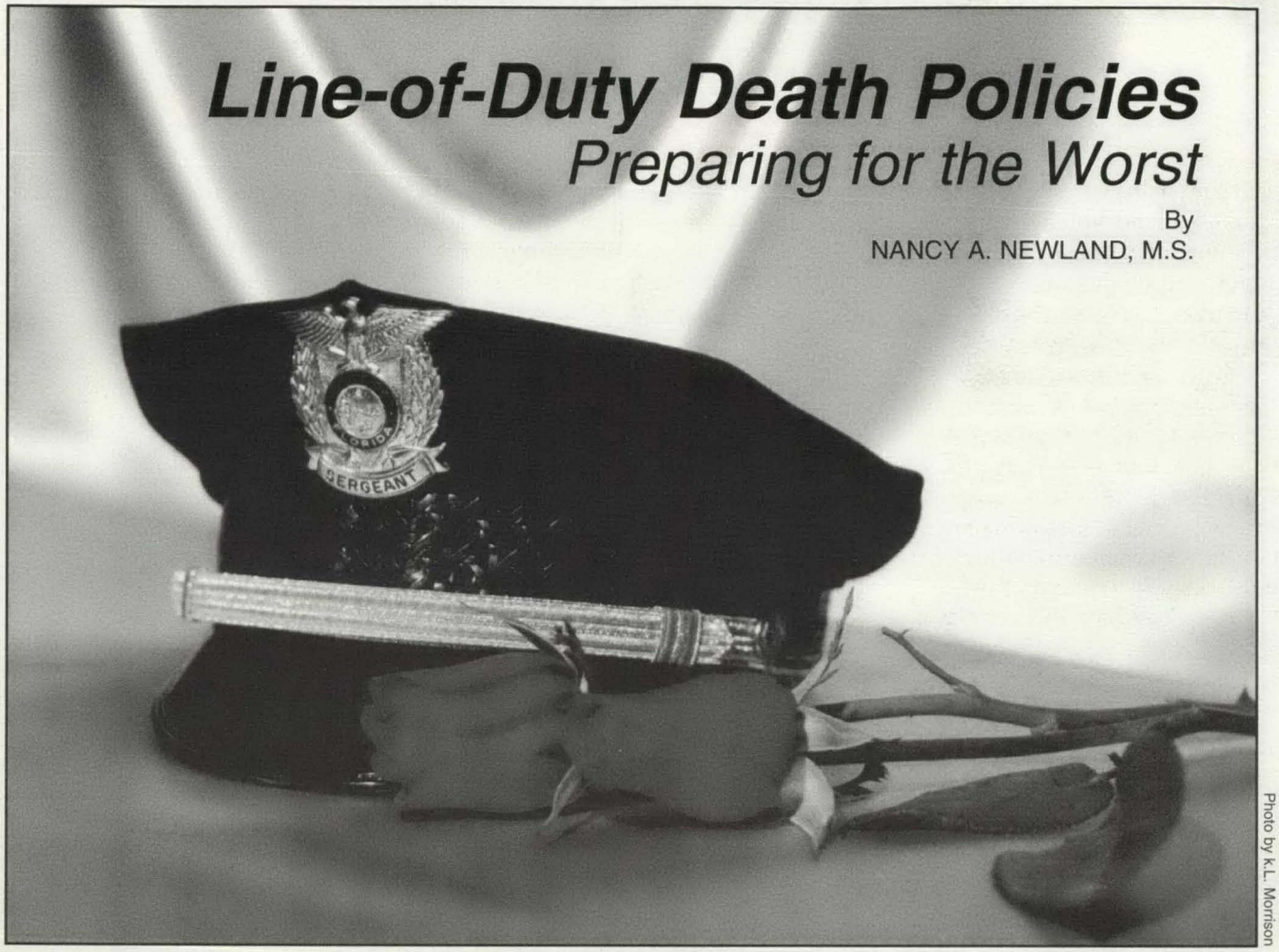


Photo by K.L. Morrison

"Killed in the line of duty." This phrase strikes not only sorrow but also concern in the hearts of law enforcement administrators. Most law enforcement managers realize that their responsibility to a fallen officer reaches beyond the apprehension and conviction of a killer. Whenever an officer dies while on duty—whether the victim of a training accident, a traffic accident, or a murder—the administration must consider certain factors.

Law enforcement administrators must not only ensure that the deceased officer's family receives compassionate treatment but they must also anticipate the possible effects of the death on department employees. These and related issues can be dealt with more effectively with a written line-of-duty death policy.

Writing a Policy

Departments that have written line-of-duty death policies in place prior to an unexpected death experience fewer problems during this type of crisis. Indeed, such policies offer far-reaching advantages. Not only will officers be better prepared to deal with this sudden, violent trauma, but departments will also find fewer job-related disabilities arising from the aftermath of such an incident. A definitive plan allows agencies to function more effectively during one of the highest stress situations officers may ever face.

An effective line-of-duty death policy addresses several areas of concern. These include notifying the victim's family, friends, and coworkers; providing debriefing and/or counseling to department employees; completing a thorough and objective investigation of the incident; and conducting training sessions to help employees prepare for any future incidents.

Notifying Family Members and Friends

Immediately following an officer's death, the department should notify the victim's family and assist in every way possible as they attempt to cope with the sudden loss of their loved one. If requested, family members should be given private time with the deceased. Furthermore, trained personnel should accompany the family to the hospital or morgue, assist with funeral arrangements, and provide support during both the wake/visitation and the funeral.

In addition to short-term assistance, a department's ongoing support for the family eases feelings of grief and abandonment. This support can come in the form of information concerning death benefits available to them as survivors or helping the family to understand the judicial process in the event of a trial. Essentially, the department should be there to assist in any way it can.

Oftentimes, officers form close bonds with certain coworkers. Management should treat employees who were close to the victim with the same respect and compassion accorded the family. Having a peer support group member or the employees' supervisors advise them, in person, of their friend's death can help to ease the trauma. Also, prompt notification prevents employees from learning of the incident by telephone or through the news media.

While the department should assign employees to assist the deceased officer's family, the victim's partner or close friends in the department should not act as the agency's primary liaison with the family. These individuals should be considered survivors, and as such, they should not be responsible for notifying the family of the death or making funeral arrangements. Nevertheless, any officer should be free to assist the family, upon request, if the officer feels capable of carrying out the responsibilities. But this should remain the officer's choice, not a task assigned by the department. At the same time, administrators need to understand that a partner or close friend in the department may need to be placed on leave until after the funeral.

"A definitive plan allows agencies to function more effectively during one of the highest stress situations officers may ever face."

Ms. Newland, a former law enforcement officer, is currently a consultant and trainer in critical incident trauma and line of duty death in Gulf Breeze, Florida.

Notifying Other Coworkers

Following a line-of-duty death, management often neglects the people who worked with the deceased officer every day. Yet, most likely, these people will also be greatly affected by the incident.

Department managers must handle the notification of their staffs with great sensitivity. A supervisor—designated beforehand by the department's line-of-duty death policy—should convey the news *in person* to all officers on duty at the time of the incident. This information should never be transmitted over the radio.

As members of later shifts report for duty, their supervisors have the responsibility of notifying them. This can be accomplished during roll call or line-up. Officers who report on the street directly from their homes should be instructed by radio to call their supervisors as soon as possible. Again, supervisors should not broadcast this news over the radio.

Debriefing and Counseling

Special consideration needs to be given to officers who assisted at the incident scene. These individuals should be given a mandatory debriefing, not a critique of the incident. This debriefing educates on-scene officers regarding the common reactions that they might encounter because of the traumatic

incident. Critical incident stress debriefing teams, available in many areas, can provide valuable assistance at this time.

Psychological counseling is recommended for officers involved at the scene, as well. This counseling benefits them most 2 to 4 weeks following the line-of-duty death and should continue for a period of 3 to 6 months. In fact, any employee directly involved in the incident should receive a debriefing, followed by counseling.

The department should also offer counseling to the family members or other significant individuals of any officer directly involved in a line-of-duty death. Counseling for these individuals should include how to recognize the symptoms of post-traumatic stress disorder. Failure of the family to understand this phenomenon creates additional stress for all concerned parties.

Investigating the Death

The department should not overlook the importance of conducting a thorough and objective investigation of an officer's death. For this reason, a partner, close friend, or officer who worked with the victim on a daily basis should never assume an active role in the investigation.

Consequently, law enforcement agencies may require outside assistance to investigate the incident. Obviously, small- to mid-sized agencies, which would likely have a greater ratio of officers who knew the victim well, could be more adversely affected by a line-of-duty death than larger agencies.

As the case progresses, the department needs to keep, to every extent possible, all personnel informed of the circumstances surrounding the case, progress of the investigation, court dates, and any other pertinent information. Providing concise, factual information precludes rumors from spreading throughout the department. This is important for the well-being of the other officers, as well as to keep a direct line of communication open that may provide information pertinent to the case.

> ***"A line-of-duty death policy is ineffective without training to accompany it."***

Training

A line-of-duty death policy is ineffective without training to accompany it. In fact, one of the most effective ways to deal with interdepartmental issues concerning a line-of-duty death is to educate officers prior to such an occurrence.

First, administrative officers—lieutenants and above—must understand all aspects of line-of-duty deaths and have a plan to deal with such incidents. In addition, because of the additional responsibilities given to sergeants and other front-line officers in such instances, they should receive comprehensive training that also stresses interpersonal communication skills.

All other officers should receive training, conducted by an expert in the field, on the dynamics of line-of-duty death and critical incident trauma. Covered in this training are such topics as crisis intervention and resolution, the causes and symptoms of stress, stress reduction methods, post-shooting and critical incident trauma, and the likelihood and effects of chronic involvement in critical incidents.

While discussing death is never pleasant, training sessions should, nevertheless, prepare officers for the worst. This involves learning how to prepare a will and completing or annually updating information for their personnel files. Information placed in personnel files should include insurance policy beneficiaries, next-of-kin information and any mitigating health factors affecting these individuals, specific wishes for funeral arrangements, locations of important papers or safety deposit boxes, and other pertinent information that the department needs to know in the event of an officer's death.

Conclusion

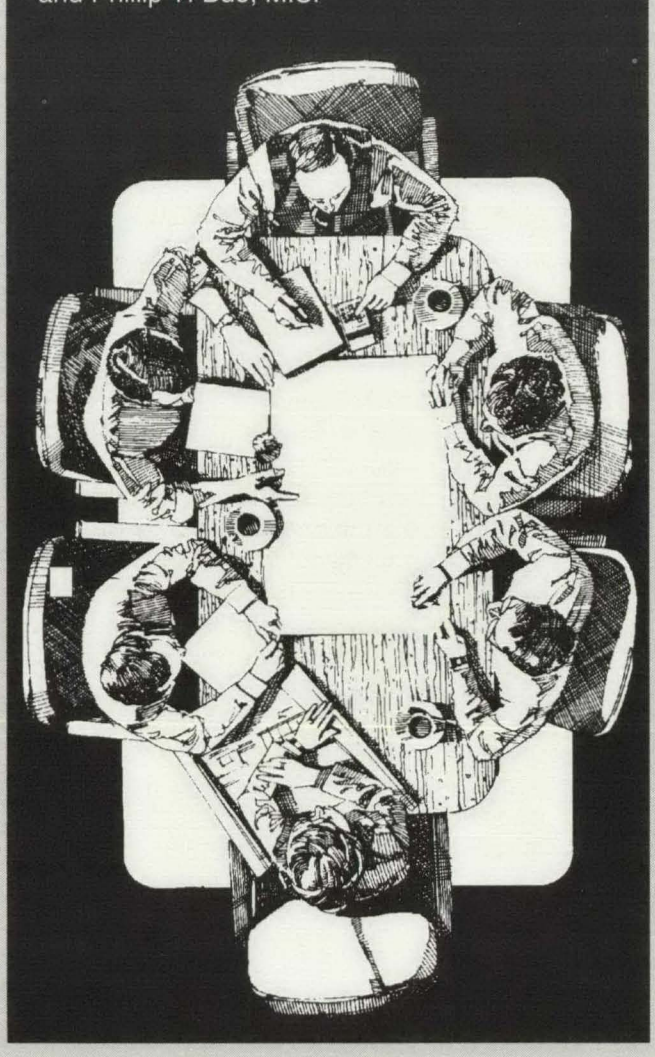
Law enforcement administrators are ultimately responsible for the proper handling of line-of-duty deaths. With preplanning and training, individual officers and the agency itself can cope more effectively with these tragedies.

Law enforcement agencies that invest time in proactive planning reduce their long-term personnel and financial losses. In fact, preparing to deal with line-of-duty deaths before they occur may be one of the most important issues facing any department. ✦

Focus on Personnel

Employee Involvement
Implementing Quality Change

By
Dan Corsentino, M.P.A.,
and Phillip T. Bue, M.S.



Some of the most critical problems that contribute to low morale, stress, and high turnover in law enforcement agencies today stem from a lack of employee involvement in the decisionmaking process. This circumstance results from various factors, perhaps, the primary one being that managers tend to be more interested in their own ideas and solutions than in those of their employees.[1] This is a somewhat understandable, but potentially destructive, stance for modern managers to take.

One simple tenet holds true in any occupation: If employees are not involved, they will likely resist change. Accordingly, *involvement* becomes the key to effectively implementing and increasing employee commitment to change.[2]

The Challenge of Change

Changing organizations and the views individuals hold is neither simple nor easy. People tend to cling to old views and habits. It requires considerable effort (both for organizations and individuals) to develop a set routine—a systematic pattern of doing things. The same holds true when attempting to establish a new way of doing things. In other words, to make *or* break a habit takes great commitment—and commitment comes from involvement. Therefore, involvement represents the catalyst in any quality change process.

Of course, the downside to involvement is risk. Managers who involve subordinates in the problem-solving process may fear losing control. For this reason, many find it easier, safer, and seemingly more efficient to continue making unilateral decisions and then directing (or expecting) others to accept and follow their decisions. Because this "easy way out" of decisionmaking harbors numerous shortcomings, the outcome produced through this process generally leaves something to be desired, especially in the area of compliance.

Today's supervisors must then choose between the safe and easy position of direct authoritative leadership and the far more risky, but infinitely more effective, principle of employee involvement in the decisionmaking process. The choice that they make could significantly impact on how well agencies retain employees, maintain high morale, and serve their communities.

The Quality and Commitment Formula

An effective decision has two dimensions—quality and commitment. By weighing these two dimensions and multiplying them, an effectiveness

factor can be determined. For example, supervisor A makes a quality decision—a perfect 10 on a 10-point scale. However, for various reasons, employee commitment to the decision is low—a 2 on a 10-point scale. As a result, a relatively ineffective decision is established (10 x 2 = a fairly low effectiveness factor of 20).

Now, consider that in the same matter, the supervisor involves employees in the decisionmaking process. The quality of the decision is compromised somewhat (dropping from 10 points to 7), but the commitment to it increases substantially (from 2 points to 8). In this case, the effectiveness factor (8 x 7) is a much more acceptable 56 points.[3] This means that the decision may not be as good, but it is almost three times as effective.

> **"One simple tenet holds true in any occupation: If employees are not involved, they will likely resist change."**

These seem like good odds. Nonetheless, many managers hesitate to involve employees in decisionmaking for fear of opening the door to other options, contaminating their own thinking, or compromising their positions. However, successful administrators know that the effectiveness of their decisions depends on quality and commitment, and they understand that commitment comes through employee involvement.

Solution to Problems

When individuals become involved in the problem-solving process, they become sincerely committed to generating solutions. Moreover, when employees identify their personal goals with the goals of their organizations, they release an enormous amount of energy, creativity, and loyalty. They gradually allow their perceptions to "thaw," broadening their thinking so that they offer well thought-out alternatives.[4] For these reasons, enlightened leaders and business managers throughout the industrial world use this simple principle of involvement.

Conversely, by using an authoritarian approach to problem-solving, managers slip into a condescending, or vertical, communication pattern. If employees sense that they are being "talked down to," or that a manager's motive is to manipulate workers rather than to make meaningful change, then they will resist the changes being asked of them.[5]

The most important element in establishing a content and prosperous atmosphere is to insist upon free, open, and honest communication up and down the management structure. Employees must participate more in organizational decisions to unlock their full potential, while managers take on the role of facilitator and expeditor.[6]

Conclusion

Law enforcement managers make a multitude of decisions every day. No one suggests turning every judgment call into a collaborative process. But, by involving employees in major decisions, managers do more than invite diverse opinions from those who will most likely be affected. They foster an environment of cooperation and empowerment that promotes compliance and strengthens agencies.

Managers should embrace this concept. Even if it may not always work, the problems that they now experience when implementing change will diminish.✦

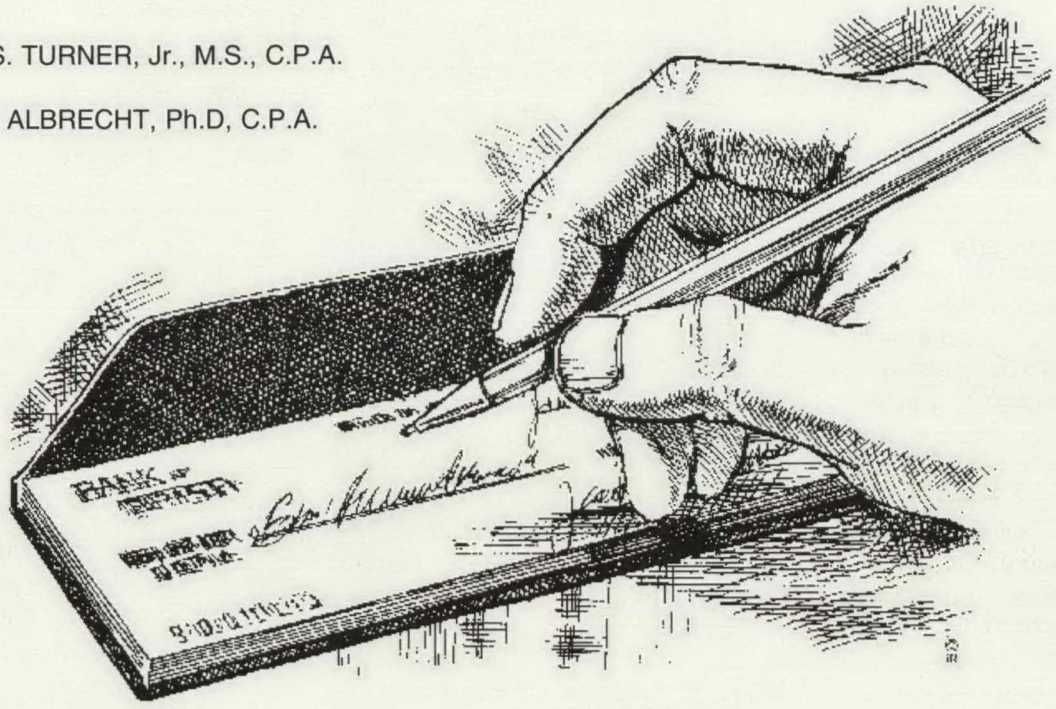
Endnotes

[1] Stephen R. Covey, *Principle-Centered Leadership* (New York: Summit Books, 1991), 217-223.
[2] Ibid., 217-223.
[3] Ibid., 219.
[4] Ibid., 220.
[5] Ibid., 222.
[6] David C. Cooper and Sabine H. Lobitz, *Quality Policing: The Madison Experience* (Washington, DC: Police Executive Research Forum, 1991).

Sheriff Corsentino heads the Pueblo County, Colorado, Sheriff's Department. Chief Bue heads the Sedalia, Missouri, Police Department.

Check Kiting
Detection, Prosecution, and Prevention

By
JOHNNY S. TURNER, Jr., M.S., C.P.A.
and
W. STEVE ALBRECHT, Ph.D, C.P.A.



Dennis Greer (not his real name) was struggling financially. After using a $1,000 inheritance to secure an unfurnished apartment, he supported himself with a minimum-wage job that barely covered his living expenses.

With no family members or friends to turn to for assistance, and instead of seeking help through legal channels, Greer committed a fraud known as check kiting. That is, he wrote checks on one bank when there were insufficient funds in his account to cover them. To conceal the fraud, he made deposits using checks drawn on a second bank, where he maintained an account but had no money in it. The last bank to catch the fraud lost over $40,000 in less than 2 months.

Greer's kite was small compared to other kiting schemes. For example, in 1988, two individuals in New York City kited between two prominent banks. Their kite involved 15,000 checks totaling $2 billion. In another case, almost 20 banks lost over $2 million, while the perpetrator's "friends" lost $19 million.

Difficult to detect and prosecute, check kiting schemes have gained popularity in recent years. In response, more banks focus on recognizing the signs of kiting. As a result, check kiting schemes are being discovered and reported more frequently today than ever before. In fact, the number of cases reported to the FBI's Financial Institution Fraud Unit at FBI Headquarters in Washington, DC, has doubled in the past 4 years.

In order to prosecute these cases successfully, the FBI developed the Check Kite Analysis System (CKAS),[1] a computer program that helps law enforcement agencies to reduce the complexity of investigating kiting schemes and to prove the perpetrator's intent to defraud. This article defines check kiting,

describes detection methods, and explains how the FBI uses the CKAS to prosecute kiters successfully. Finally, it advises how financial institutions can stop kiting schemes before they start.

Check Kiting Defined

Check kiting is a systematic pattern of depositing nonsufficient funds (NSF) checks between two or more banks, resulting in the books and records of those banks showing inflated balances that permit these NSF checks to be honored rather than returned unpaid. In addition, other checks and withdrawals may be honored against these inflated balances, resulting in actual negative balances, to the extent that banks allow withdrawal of uncollected funds. Put simply, check kiting is accomplished by taking advantage of the float—that is, the time required for a check deposited in one bank to be physically presented for payment at the bank on which it was drawn.

Check kiting goes beyond check swapping, which involves merely exchanging checks between two or more bank accounts. When individuals devise check swapping schemes in order to create bragging rights to large account balances, they usually need not fear prosecution because the potential loss from one bank is offset by a matching inflated balance in another. Upon discovery, cooperating banks resolve the problem by returning the checks unpaid and eliminating artificially inflated balances among themselves. However, when individuals knowingly write checks against these balances to pay for purchases or other expenditures to third parties, they are committing a prosecutable offense known as check kiting.

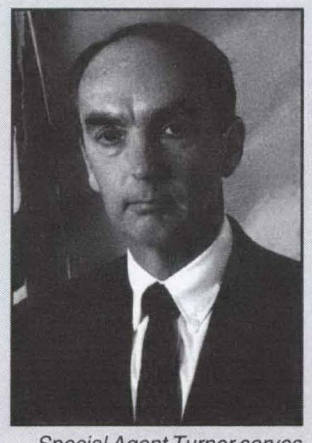
Methods of Detection

Law enforcement officials need the cooperation of financial institutions in order to identify and prosecute check kiters. Obviously, banks benefit from early detection. For this reason, most banks have made efforts to discover such schemes before experiencing a loss. Traditionally, banks use some variation of what is commonly called a kiting suspect report, a standard form that is computer-generated by virtually all banks.

These reports work because kiting is almost always associated with the same warning signals. Even the most clever kiter cannot hide the signs that can accurately signal kiting activity. Together, these signals comprise the acronym "SAFE BANK":

- **S**ignature and payee on kited checks are often the same
- **A**rea abnormalities (many out-of-area checks)
- **F**requent deposits, check writing, and balance inquiries
- **E**scalating balances
- **B**ank abnormalities (deposited checks are usually drawn on the same banks)
- **A**verage length of time money remains in account is short
- **N**SF (frequent NSF problems)
- **K**eep banks from recognizing frequency of transactions by using ATM, night drop, drive up, and other branches for deposits and withdrawals.

The first kiting signal, signature and payee the same, is an indicator most often associated with cases involving a single perpetrator. Kiters working alone often use two or more types of accounts—such as



Special Agent Turner serves in the FBI's Provo, Utah, Resident Agency.

Dr. Albrecht, a certified fraud examiner, is Director of the School of Accountancy and Information Systems, Brigham Young University, Salt Lake City, Utah.

personal, custodial, or business—and kite among them. In addition, to avoid suspicion, kiters may make a memo entry at the bottom of checks to provide justification for the increasingly large amounts of the checks. One kiter, for example, wrote checks to himself with memo entries for a trip to Spain and for the purchase of furniture, a car, and even a forklift. Such actions should raise a red flag to bank officials, as individuals rarely make checks out to themselves when making purchases—they write checks payable to the merchant.

The second signal, area abnormalities, is very common, because kiters want to allow as much float time as possible. As a result, they often use banks in different cities or regions of the country. Therefore, bank authorities should question excessive or unnecessary use of out-of-town banks.

The third indicator, frequent deposits, check writing, and balance inquiries, is perhaps the most telling sign of kiting. In order to cover themselves, kiters make frequent deposits and write numerous checks. They inquire about their bank balances often in order to understand float times and to determine whether there is "money" in their accounts to support checks.

Fourth, escalating balances also signal check kiting. Because each check must be large enough to cover the one written before it, account balances usually grow very quickly. In one case, the bank lost $1.5 million in just over a month. In another, an individual who listed his job status as "unemployed" opened an account with $10, kiting it to over $45,000 in just 2 months.

The fifth signal, bank abnormalities, means that check kiters usually make deposits with checks drawn on the same bank. In conducting normal business or other transactions, it is highly unlikely that all checks being deposited will be from the same few banks. Therefore, authorities should be wary of such deposits, suspecting kiting as the motivation for them.

> ***"When properly understood...kiting can be detected, prosecuted, and prevented."***

For example, one $2 million kite was detected when a kiter made a deposit that included numerous checks, all drawn on the same bank in which the deposit was being made. When the kiter realized he had deposited the wrong bag, he telephoned the bank and brought a substitute bag full of checks for deposit. The substitute deposit included a large number of checks, all drawn on another bank.

Many banks use the sixth signal—the average length of time money remains in an account—to determine if deposits are immediately being withdrawn. Because this may signal a kiter's taking advantage of float times, most kiting suspect reports highlight accounts where money stays in the account an average of less than 2 or 3 days.

NSF activity, the seventh signal, may or may not be present in kiting. When balances escalate dramatically, as often happens, there may be no NSF activity. Professional kiters usually understand Federal banking regulations well enough to know how long checks and deposits take to clear. However, amateur kiters often "bounce" checks because of their lack of knowledge of clearing times.

Finally, signal eight, using alternative deposit and withdrawal methods in an effort to avoid detection, is a good predictor of kiting. Unfortunately, this activity is often difficult to monitor, because most kiters avoid entering the same bank branch several times a day. Instead, they use drive-up windows, other branches, night drops, automatic teller machines, and other alternative access methods to avoid suspicion.

Banks must take full advantage of these eight signals to detect check kiting activity accurately. Kiting suspect reports should be distributed daily, and if they signal a potential kite, checks and deposits should be pulled and other kiting indicators in the "SAFE BANK" checklist investigated.

The Check Kite Analysis System

Historically, check kiting has been difficult to prosecute. This is due to its complexity, the number of documents involved, and the difficulty in proving the perpetrator's intent to defraud. However, in 1989, the FBI developed the CKAS, which uses the RBASE database software package. The CKAS has been used successfully in dozens of

CKAS EXHIBIT

Table I illustrates the use of the CKAS and is the modified version of a trial exhibit used in the previously mentioned case that involved almost 20 banks. The table summarizes the actual account balances in 13 of the banks involved. The first 7 days showed enough combined funds to cover floated checks with no potential loss to the banking system, even though several individual banks had negative daily balances. In each of the remaining 27 days, there were net combined losses, culminating in a combined loss of $1,486,586 on October 22, 1990. The exhibit together with a graph of the loss, was used to secure a successful kiting conviction in the case.

Table I

Summary of Account Balances

Date	Bank Balance	Float	Actual Balance
09/04/90	$1,088,882	$ 342,963	$ 745,869
09/05/90	1,144,356	400,312	744,044
09/06/90	1,332,041	674,150	657,891
09/07/90	1,480,415	718,900	761,515
09/10/90	1,146,706	667,450	479,256
09/11/90	1,221,262	950,198	271,064
09/12/90	975,272	714,000	261,272
09/13/90	1,103,395	1,271,000	- 167,605
09/14/90	1,286,637	1,358,850	- 72,213
09/17/90	589,195	681,000	- 91,805
09/18/90	785,519	866,965	- 81,446
09/19/90	593,645	750,165	- 156,520
09/20/90	571,043	725,950	- 154,907
09/21/90	533,091	717,000	- 183,909
* * *	* * *	* * *	* * *
10/22/90	664,414	2,151,000	-1,486,586

bank fraud cases and has, thus far, withstood all challenges in jury trials.

Investigators working suspected check kiting cases should secure—through proper legal channels—copies of checks, deposit slips, and bank statements from all the accounts they believe the suspect is using. While these documents will be used to substantiate the case, the bank statements alone should contain all the information needed to determine if kiting has occurred and whether a particular offense is prosecutable.

Investigators need only enter the date each check was deposited, the check amount, and the date the check cleared the issuing bank. The CKAS program then calculates the length of time each check spends in float, and in turn, the amount of money in float. Therefore, by subtracting the amount in float from the bank's perceived balance, the CKAS determines the true account balance, whether positive or negative.

Whether the kite involves 2 accounts or 20, the CKAS looks at the *combined* effect on the banks affected by the kite. That is, even if 2 or 3 banks out of a total of 10 being used show negative actual balances, and thus potential losses, sufficient funds may exist in the other banks to cover the floated checks. In this case, then, there would be no loss to the banking system, although individual banks may show losses because of "forced interest-free loans." Loss of revenue alone, however, does not usually meet the intent-to-defraud criteria required for criminal conviction. In order for this to occur, the combined banking system must suffer a loss, either real or potential, resulting from the kiter's use of falsely inflated balances.

Preventing Kiting

An unwritten rule of etiquette seems to exist among bankers regarding what they can ask about a deposit and when they can place holds. In an effort to prevent kiting, some geographical banking areas have adopted restricted policies regarding depositors' use of uncollected funds. They also place holds on deposits for the maximum time limit allowed by Federal regulations. However, in other geographical areas, depositers receive immediate credit for all deposits, and kites can be more easily perpetrated.

> ***"The CKAS has been used successfully in dozens of bank fraud cases and has...withstood all challenges in jury trials."***

While, ultimately, only banks themselves can prevent check kiting from occurring, law enforcement officers can help by encouraging banks to place restrictions on deposits. If banks are not willing to restrict access to funds on all deposits, they should learn and carefully monitor the eight kiting signals and restrict access in questionable accounts.

Deciding when to deny immediate access to funds is a cost/benefit tradeoff between customer service and kiting losses. Banks that fear offending or losing customers may learn the hard way that failure to place holds on accounts and/or monitor kiting systems places them at high levels of risk.

Conclusion

Check kiting is on the increase, both in terms of the number of incidents and dollars lost. However, banks can prevent losses by denying immediate access to deposited funds and by attempting to identify the "SAFE BANK" indicators of kiting. When possible, law enforcement personnel should encourage financial institutions to take such actions.

When kiting does occur, active prosecution should take place. Using the CKAS, the FBI has successfully obtained criminal convictions of check kiters. As a result, fear of criminal prosecution now faces kiters whose predecessors relied upon the complexity of their schemes to discourage overwhelmed investigators and prosecutors. When properly understood, however, kiting can be detected, prosecuted, and prevented.✦

Endnote

[1] Special Agent Johnny Turner, Provo, Utah, Resident Agency, and Special Agent Daniel D. Dubree, New York City Field Office, developed the Check Kite Analysis System, in conjunction with the Technical Services Division, FBI Headquarters, Washington, DC. Law enforcement agencies interested in the Check Kite Analysis System may contact the nearest FBI field office.

GOTCHA!

Campus Crime Prevention Program Earns High Marks

By Thomas E. Utz, M.A.

College students generally have more on their minds than security and crime prevention. They may leave their valuables unattended or allow strangers access to restricted areas. And, when they do...Gotcha!

For the past 5 years, the Towson State University Police Department has worked to decrease crime on campus and to improve the crime prevention awareness and attitudes of the students and faculty with a program called "Gotcha." Under this program, uniformed officers of both the patrol division and the K-9 section search the campus for security or safety violations, such as open or unlocked doors or valuables left unattended. Once found, the officers leave key-shaped "Gotcha" cards at the scene of the infraction.

The cards say: "If this had been an actual 'Rip Off,' you would have been a statistic. Don't give a thief an opportunity to rip you off. Lock it up!" The cards also have spaces for officers to identify the applicable security/safety violation, such as "your door unlocked," "your valuables left in plain view," or "equipment not secured." A blank space allows officers to make additional comments.

Plainclothes officers direct another aspect of the Gotcha Program. They test the university community's security awareness by attempting to get students and faculty to give them access to restricted or secure areas, which have no trespassing warnings clearly posted at all entrances. If admitted, the officers identify themselves and discuss how the individual should handle the situation differently in the future. They also explain the importance of security and crime prevention, as well as the campus community's role in each.

Increasing student awareness of the program's goals remains a top priority of the department, because each school year brings a new class of students to campus. This requires officers to conduct crime prevention and security awareness seminars throughout each school year.

Results

The Gotcha Program has successfully decreased crime on campus. Students and faculty are more security conscious, and their increased interaction with the police has made them more willing to provide information on crimes that do occur. This cooperative effort between the police and the community led to the department's recovery of almost $50,000 in stolen property in calendar year 1992. In addition, the department's crime prevention section, which sponsors the program, has been honored with the Governor's Annual Crime Prevention Award every year since the award's inception in 1985.

Conclusion

The Gotcha Program reflects the Towson State University Police Department's commitment to protect and serve the campus community. It has become a critical tool in the fight against crime on campus. Furthermore, it reminds students and faculty that they are the "key" to successful crime prevention. The "Gotcha" test may be the most important exam students take all year. ✦

Corporal Utz serves with the Towson State University Police Department, Towson, Maryland.

Point of View

Law Enforcement and the Deaf Community

By
Robert D. Jones

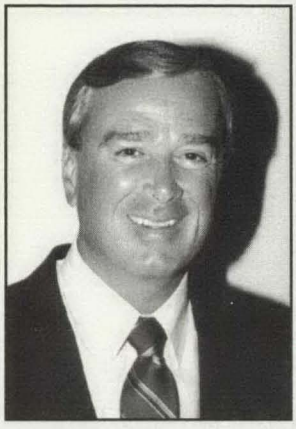
As police departments across the country embrace community policing, citizens are learning more and more about crime prevention and self-help techniques to reduce the risk of being criminally victimized. Yet, with all of its efforts, law enforcement may be unintentionally shortchanging a segment of the population that can benefit from their programs and services. I am speaking of those individuals who are deaf or hard of hearing.

Recently, while I was preparing for a sexual assault prevention seminar, an auxiliary police supervisor approached me and inquired about the class and how it was presented. I told him that I taught this seminar to women from college age to senior citizens as part of an overall crime prevention program.

After a few minutes, he asked if I would be willing to teach this seminar to a group of women who are deaf or hard of hearing. My immediate reaction was that I couldn't possibly do it. After all, I did not sign, so how could I instruct the class? The officer, however, assured me that communication would not be a problem.

I knew that this officer signed and that he served as the department's liaison to those in the community who are deaf or hard of hearing. But, I didn't know the reasons why, so I asked. The officer then told me about his experience several years ago. While on patrol, he met several deaf people and couldn't communicate with them, which just didn't make him feel right. After all, these were American citizens, people he was sworn to protect and serve, and he couldn't really do so because of the communication barrier.

After listening intently to this officer talk about his experience and signing, I, too, began to feel uneasy. But, could I really teach the Deaf properly if I couldn't communicate with them?



Commander Jones heads the Administrative Services and Training Division of the Elmhurst, Illinois, Police Department.

Teaching the Deaf

I finally agreed to conduct the seminar after the officer again assured me that communicating with the class would not be a problem. Because the old adage "trust me" rang loud and clear in my mind, I still felt apprehensive. How would the class ask me questions? If they write out their questions, how will others know what was asked? Then, if I answered through an interpreter, would the other participants be lost? Yet, because I already agreed to teach the seminar, I worked out the necessary details with the officer.

Forty-two women registered for the seminar, although I told the officer to limit the class to 40 participants. I later learned that more than 100 women had been turned away.

On the day of the seminar, a local newspaper reporter showed up to cover this *unique* story. So, before the media, a full house of participants, and some interested officers from my department, I began my presentation.

Because the professional interpreters told me to do my normal presentation, I covered all the materials in the usual manner, and surprisingly, I didn't encounter any problems. I did have to stop, however,

during the presentation to answer many questions. But, the interpreters kept up every step of the way. The seminar progressed as previous ones, although at times, I moved too close to the audience and blocked the participants' view of one of the interpreters. And, I sometimes positioned myself so that those who were lip reading couldn't read my lips. When this happened, however, an interpreter kindly reminded me to step back.

As the seminar progressed, I realized that these people were intently focused on my every word. They asked well-thought-out, to-the-point questions. As I listened to them, I realized that individuals who are deaf or hard of hearing do not have the same contact with the police as other citizens. In fact, the police may be turning a "deaf" ear to them.

A Need to Listen

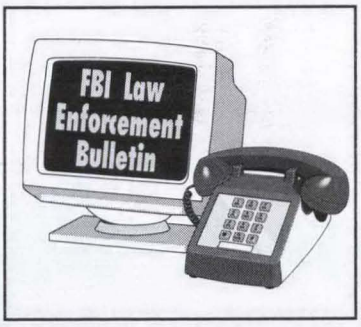
My limited involvement with the Deaf community through this seminar was both enlightening and informative. But it also made me aware that law enforcement may be failing to meet the needs of citizens who are deaf or hard of hearing, a situation that increases their vunerability and one that shouldn't continue.

Many police departments have equipped their communication centers with telecommunication devices for the deaf (TDD) systems in recent years. But, is this enough? Not really.

The Deaf community needs direct and equal access to all the services provided by law enforcement—crime prevention, victim/witness assistance, property identification, and security surveys, to name a few. Such assistance will go a long way in helping them to protect themselves and to feel more secure. And, if prevention efforts do not reach *all* citizens, then departments fall short in delivering quality police service.

The responsibility for improving communication with the Deaf community rests with law enforcement. Everyone in the department must work toward meeting this responsibility—from patrol officers through the ranks to the chief of police. The Deaf community is calling...is law enforcement listening?✦

Dial Law Enforcement



Law Enforcement is now available via three computer dial-up services. Authorized law enforcement practitioners and related professionals who have a personal computer and a modem can access, download, or print current issues of *Law Enforcement* in their own homes or offices by contacting these services. Those interested in obtaining information regarding these services should dial the following numbers directly:

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  (916) 392-4640
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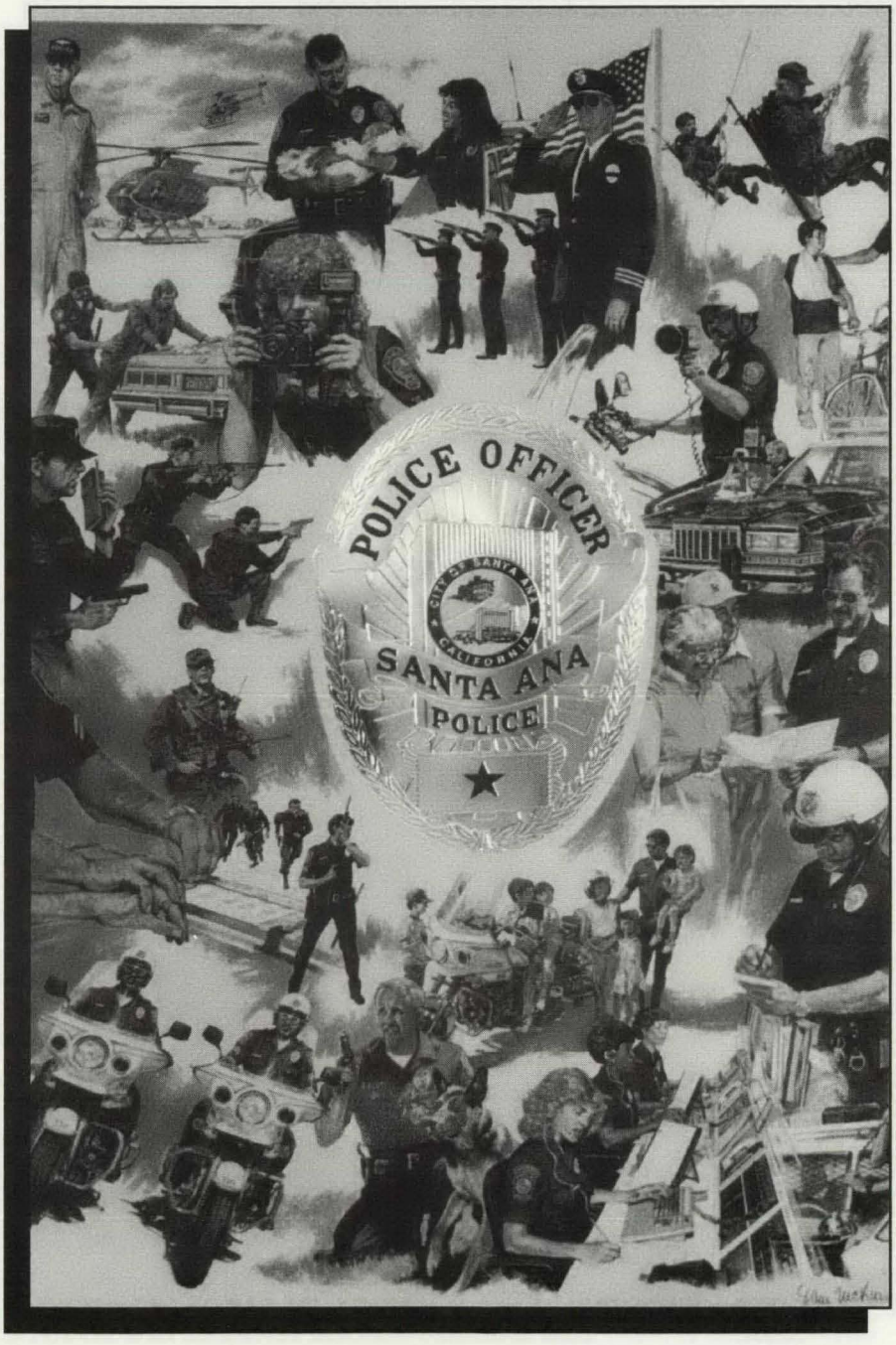
Community-Oriented Policing
A Blend of Strategies

By
PAUL M. WALTERS, J.D.



Artwork © Sam McKiur

Throughout the country, law enforcement personnel debate the virtues of traditional policing versus crime prevention through problem solving. On the one hand, the traditional approach to policing emphasizes swift police response to incidents. On the other hand, the more proactive approach of problem-oriented policing stresses the long-term benefits of crime prevention.

Although both of these approaches have merit, the reality is that with the complex crime problems facing society today, law enforcement administrators need to synthesize the two strategies into a comprehensive response to crime. Both approaches—swift police response to incidents and disorder and problem-oriented policing—are critical to serving communities in a balanced manner. The combination of these two law enforcement strategies provides an even more dynamic form of law enforcement—community-oriented policing (COP).

This article discusses community-oriented policing and how to achieve a balance between the two strategies used in this type of policing. It also discusses how to implement such a plan.

LAYING A FOUNDATION

Before departments can successfully implement community-oriented policing, managers must

lay a foundation by ensuring that a high level of police credibility exists within the community. To accomplish this, all police response to community needs—whether reactive or proactive—must meet the most stringent standards of discipline and professionalism. Police administrators can ensure that their officers respond in this manner through careful personnel selection and training, especially in the area of police discretion.

When officers continually conduct their duties in a highly professional manner, managers can allow a wide latitude of officer discretion. However, maintaining wide latitude, while continuing to enjoy the respect and cooperation of the community, requires that each officer be personally accountable for the highest standards of professional behavior. If any officer fails in this regard, all officers suffer the consequences of low community confidence in the police.

Citizen confidence in the police sets the stage for instituting the two police strategies embodied in community-oriented policing—response to incidents and problem-oriented policing. Neither strategy takes precedence over the other, and neither can be fully successful without the other. Clearly, the combination of both strategies helps law enforcement achieve its goals by synthesizing two different approaches.

COP STRATEGIES

Response to Incidents

Response to incidents (R2I) requires law enforcement officers to react to crimes or emergency incidents. In order to promote citizen confidence in the police, officers should swiftly respond to any such incidents and establish and maintain control over the situation.

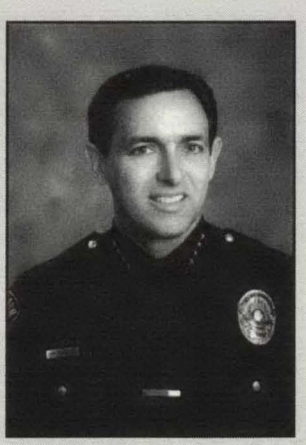
R2I also requires officers to respond proactively to crime patterns. This is accomplished through such tactics as directed patrol, targeted identifications, etc.

However, if police administrators do not carefully manage the R2I strategy, their departments can quickly be overwhelmed by community demands. In order to manage increased calls for police service, administrators need to monitor demand and then research as many creative ways as possible to respond to these calls.

There are many ways to respond to calls for assistance that do not require the immediate dispatching of an officer in a patrol car. Other, less expensive responses may satisfy the request just as effectively. In fact, only a small percentage of calls require urgent police response. For example, many departments dispatch officers to burglary scenes to take a report. At the same time, they dispatch a technician to the scene to collect evidence. A more efficient way to handle such calls is to have an officer take a telephonic report and dispatch the technician to the scene to collect evidence.

Another way to better serve jurisdictions using the R2I strategy is to invest in current technology in such areas as communications, information, case management and analysis, and transportation. Current technology may include automated mug systems, records management and retrieval systems, automated aging systems, and mobile data terminals. Department managers must then use all their resources, both technological and human, in a balanced way that produces not just activity but also results—results that they can measure against their mission statements.

"Citizen confidence in the police sets the stage for instituting the two police strategies embodied in community-oriented policing...."



Chief Walters heads the Santa Ana, California, Police Department.

Managing the limited resources of departments to respond effectively to both incidents and calls for service, while producing the greatest advantage for their communities, requires managers to make informed, professional decisions. And, while managers must ensure that officers can respond rapidly to incidents—using the R2I strategy—they cannot rely on this strategy alone. Instead, they must balance the R2I strategy with the problem-solving strategy—problem-oriented policing.

Problem-Oriented Policing

At the heart of the problem-oriented policing (POP) approach is the concept that police must be more responsive to the *causes* of crime, rather than merely dealing with the results of crime. Maintaining neighborhood safety can be more beneficial to the community than merely treating isolated neighborhood problems. This approach represents a significant shift in how both the public and the police view the role of law enforcement in the community.

Problem-oriented policing is a proactive, decentralized approach to providing police services designed to reduce crime and disorder, and by extension, the fear of crime. Department heads achieve this by assigning officers to specific neighborhoods on a long-term basis. Long-term involvement between the officers and neighborhood residents fosters the development of credible relationships based on mutual trust and cooperation. It also allows a high-level exchange of information between citizens and police officers, as well as mutual input concerning policing priorities and tactics for specific areas of the community.

Problem-oriented policing also distributes police services more effectively across the community and targets high-crime areas for problem-solving approaches that allow law enforcement to define and deal with the causes of crime. This helps to neutralize the undue influence of special interest groups that can be the recipients of preferred services when no system of community-based priorities exists.

ACHIEVING A BALANCE

Officials can achieve a balance between R2I and problem-oriented policing by applying the differential police response (DPR) tactic. DPR involves the analysis of demand patterns made on the department by members of the community. After analyzing the demand patterns, officials then develop alternatives to traditional police responses—alternatives that provide improved community police services at a lower cost than traditional rapid response.

For example, if officers must frequently respond to an alarm located in a business establishment, a pattern develops. Once managers determine that a pattern exists, they can personally contact the owners of the business to determine whether there is a design problem or a defect of some type that causes the alarm to sound. This would eliminate the need for officers to respond repeatedly to the same alarm.

Once law enforcement agencies expand their range of possible responses to community needs,

managers should allocate resources to ensure the best and most comprehensive effect in the community. For this system to work, officers need to understand the comprehensive approach and act in ways that support their departments' missions. When a balance between R2I and problem-oriented policing exists, police managers can implement the community-oriented policing strategy.

IMPLEMENTING COMMUNITY-ORIENTED POLICING

Implementing community-oriented policing requires both time and a substantial effort. The Santa Ana, California, Police Department took the following steps to institute the strategy.

First, department administrators implemented community-oriented policing within the context of the city's commitment to total quality management. Then, they developed a task force of civilians and officers from all ranks to address community-oriented policing. This task force helped to guide the full implementation of this philosophy throughout the entire department. Members of the task force reviewed organizational structure, performance evaluation and reward systems, recruiting and training practices, and deployment strategies.

The next step was to create a police stakeholders task force, chaired by the chief and composed of representatives from the department and other related city agencies and community groups. This task force reviewed the criteria and values by which police functions and services to the community are evaluated in the context of community-oriented policing.

To enable swift response to emergency needs, the department installed a state-of-the-art, computer-aided dispatch system and analyzed community information in order to anticipate and prevent crime and emergencies. At the same time, the department trained all departmental personnel in community-oriented policing. They then evaluated the community-oriented policing test areas within the department's jurisdiction and made recommendations for possible applications to other areas of the jurisdiction.

> ***"Implementing community-oriented policing requires both time and a substantial effort."***

Finally, the architectural design of a new police department facility, which was already scheduled to be built, reflected the central functions, values, and vision of community-oriented policing. This facility represents the commitment of department administrators to the community-oriented policing strategy.

For example, unoccupied desks are available on the first floor of the facility for members of the community who work temporarily with department members to solve problems occurring within specific neighborhoods. This simple feature highlights the department's commitment to community-oriented policing.

The new facility also includes a conference room that seats 250 individuals. This will allow community members a meeting place to discuss problems they experience in their particular neighborhoods.

CONCLUSION

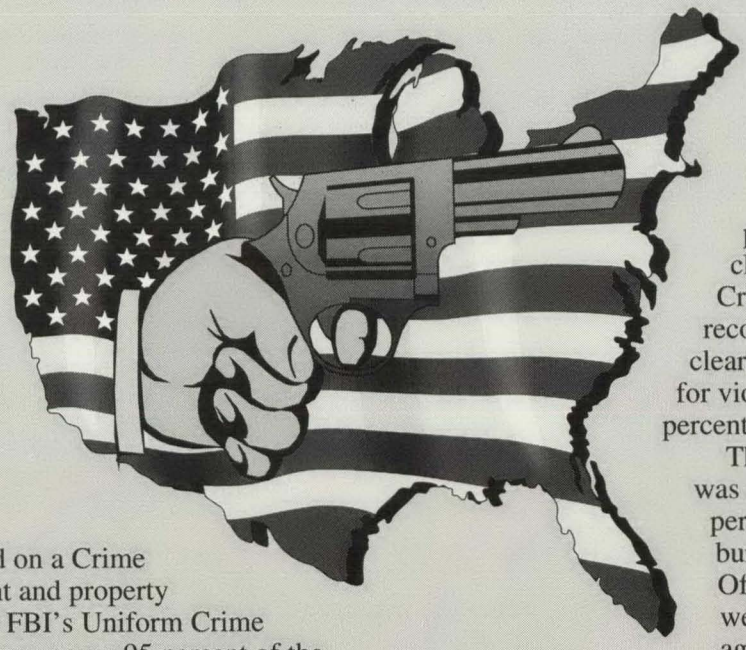
Today's police managers must resolve new problems within their communities through cost-effective, innovative ways. Community-oriented policing offers an interesting possibility to departments nationwide.

A combination of problem-oriented policing and the response to incidents—community oriented policing—offers a comprehensive and balanced approach to maintaining high levels of safety and security throughout neighborhoods. However, in order to ensure effectiveness, managers need to adapt the strategy to the changing demands of their jurisdictions.

All police managers must continue to review their department's effectiveness, plan new and better ways to accomplish their mission, verify the appropriateness of new methods, and take the initiative to make continuous improvements in all police activities. Only through continued evaluation and adjustment can police departments maintain the utmost effectiveness. ✦

Crime Data

Crime in the United States—1992



Final 1992 crime statistics, published in the FBI's *Crime in the United States—1992,* show that an estimated 14.4 million offenses were reported to law enforcement agencies across the Nation. This total represents an average of 5,660 crimes for every 100,000 U.S. inhabitants.

The statistics, based on a Crime Index of selected violent and property offenses reported to the FBI's Uniform Crime Reporting (UCR) Program, cover 95 percent of the population. Over 16,000 law enforcement agencies submitted data for 1992, and estimates are included for nonreporting areas.

Volume of Crime

Overall crime reported in 1992, as measured by the Index, was 3 percent lower than in 1991, which represents the first annual decline since 1984. The number of offenses, however, was 4 percent higher than in 1988 and 19 percent above the 1983 total.

Collectively, violent crime increased by 1 percent during 1992. The number of property crimes, however, declined 4 percent overall.

Except for the West, all regions in the Nation showed decreases in the number of offenses reported from 1991 to 1992. The Northeast registered a 6-percent decline; the Midwest, a 5-percent decline; and the South, a 3-percent decline. The West showed a less-than-1-percent increase.

Cities and suburban counties, like the Nation as a whole, each experienced a 3-percent decline in the number of Crime Index offenses reported. Rural counties registered a 1-percent decrease.

Crime Clearances

Law enforcement personnel nationwide cleared 21 percent of the Crime Index offenses recorded in 1992. The clearance rate was 45 percent for violent crimes and 18 percent for property crimes.

The highest clearance rate was for murder, at 65 percent; the lowest for burglary, at 13 percent. Offenses where offenders were all under 18 years of age resulted in 20 percent of the overall Crime Index clearances, 13 percent of the violent crime clearances, and 23 percent of the property crime clearances.

Arrests

During 1992, law enforcement personnel made an estimated 14 million arrests for all crimes other than traffic violations. The highest arrest counts were for driving under the influence, 1.6 million; larceny-theft, 1.5 million; and simple assault and drug abuse violations, each 1.1 million.

The total number of arrests in 1992 declined less than 1 percent from the previous year. Overall Crime Index arrests dropped 2 percent. Arrests for violent crimes rose by 2 percent, while property crime arrests declined 3 percent.

Of those arrested in 1992, 45 percent were under the age of 25, 81 percent were male, and 68 percent were white. Larceny-theft was the offense that resulted in the most arrests of persons under the age of 18, while adults were most often arrested for driving under the influence.

Violent Crimes

The total number of violent crimes (murder, forcible rape, robbery, and aggravated assault) reported to law enforcement during 1992 exceeded 1.9 million offenses, for a rate of 758 for every 100,000 U.S. inhabitants. This represents a 1-percent increase from the 1991 total.

Both murder and robbery registered declines of 4 percent and 2 percent, respectively. However, forcible rape was up 2 percent, and aggravated assault showed a 3-percent increase.

Data on weapons show that firearms were used in 31 percent of all murders, robberies, and aggravated assaults. Personal weapons (hands, fists, feet, etc.) were used in another 31 percent.

Murder—Murder counts for 1992 totaled 23,760, a 4-percent drop from the record-setting 1991 level. Firearms were used to commit approximately 7 of every 10 murders.

Based on supplemental data, 78 percent of the murder victims were male, and 88 percent were persons 18 years of age or older. By race, 50 of every 100 victims were black, and 48 were white.

Almost 50 percent of the murder victims were related to or acquainted with their assailants. Among female murder victims, 29 percent were killed by husbands or boyfriends.

> **"Overall crime reported in 1992, as measured by the Index, was 3 percent lower than in 1991, which represents the first annual decline since 1984."**

Data show that of the 25,180 murder offenders, 90 percent were male, and 86 percent were over 18 years of age. Fifty-five percent of the offenders were black, and 43 percent were white.

Forcible Rape—Forcible rapes reported to law enforcement in 1992 totaled 109,062. In Uniform Crime Reports, the victims of forcible rape are always female, and in 1992, an estimated 84 of every 100,000 females in the country were reported rape victims.

Robbery—In 1992, law enforcement agencies recorded 672,478 robberies, with robberies on the streets and highways accounting for 56 percent of the total. The monetary value loss was estimated at $565 million. Bank robberies resulted in the highest average loss, $3,325 per offense; convenience store robberies the lowest, $402.

Strong-arm tactics were used to commit 40 percent of all robberies, and firearms were used in another 40 percent. Comparison of the 1991 and 1992 robbery totals revealed that those committed with firearms were up by 2 percent. All other weapon categories showed decreases.

Aggravated Assault—With a total of 1,126,974 reported offenses, aggravated assaults comprised 58 percent of the violent crimes reported in 1992. Blunt objects or other dangerous weapons were used in 31 percent of these offenses. Assaults by firearms accounted for 25 percent of the total, while those involving personal weapons, such as hands, fists, and feet, accounted for 26 percent. Knives and cutting instruments were used in the remainder of the offenses.

Property Crimes

The estimated property crimes total in 1992 was 12.5 million offenses, for a rate of 4,903 for every 100,000 U.S. inhabitants. Total dollar losses due to property crimes (burglary, larceny-theft, and motor vehicle theft) were estimated at $15.2 billion, or $1,217 per reported offense.

All property crimes showed decreases in 1992. Burglary was down 6 percent, while larceny-theft and motor vehicle theft each declined 3 percent.

Burglary—Law enforcement received reports of 3 million burglaries, of which 2 of every 3 were of residences. According to a special UCR study, 1 of every 3 residences in the United States will be burglarized at least once during a 20-year period.

Sixty-nine percent of all burglaries involved forcible entry, and the offenses were evenly divided

between day and night. Burglary victims suffered losses estimated at $3.8 billion.

Larceny-theft—Larceny-thefts accounted for 63 percent of all property crimes reported in 1992. In addition, this crime, with an estimated total of 7.9 million offenses, comprised 55 percent of the Crime Index total.

Thefts of motor vehicle parts, accessories, and contents made up the largest portion (37 percent) of reported larcenies. Nationally, total losses were estimated at $3.8 billion, with the average value of property stolen at $483 per incident.

Motor Vehicle Theft—Over 1.6 million motor vehicles, or an average of 1 in every 120 registered vehicles, were reported stolen in 1992. Eighty percent of these motor vehicles were automobiles. The estimated monetary loss was nearly $7.6 billion, for an average of $4,713 per vehicle.

According to a special UCR study, there is a 9-percent chance that car owners will have their vehicles stolen at least once in a 10-year period. In addition, the likelihood of having a car stolen increases in direct proportion to the number of vehicles owned.

Arson—Of the 102,009 arson offenses reported in 1992, structures were the most frequent targets, comprising 54 percent of the total. Residential property was involved in 59 percent of the structural arsons during the year.

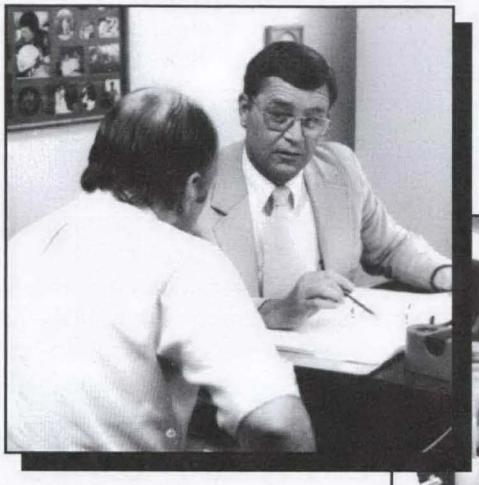
The average dollar loss for reported arsons was $16,649, a substantial increase from the 1991 average of $11,980. Large losses resulting from arsons committed during the Los Angeles riots greatly influenced the 1992 average.

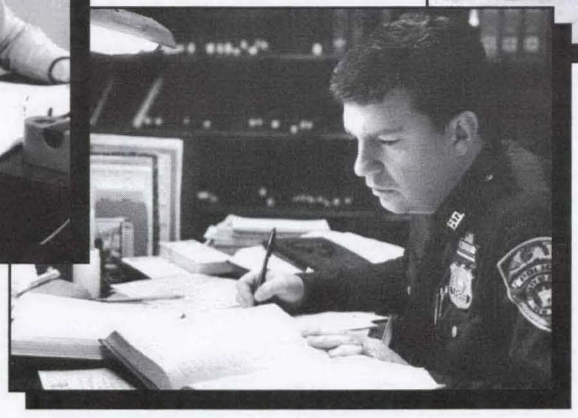
Of the arsons cleared, 42 percent involved only young people under age 18. This represents a higher percentage of juvenile involvement than for any other Index offense. ✦

Source: Crime in the United States—1992, *Uniform Crime Reporting Program, Federal Bureau of Investigation, Washington, DC.*

Hiring Standards
Ensuring Fitness for Duty

By
DANIEL L. SCHOFIELD, S.J.D.





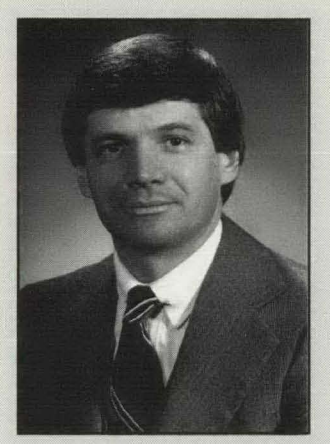
Constitutional and statutory principles impact on the hiring standards established by law enforcement agencies. Courts recognize the need for hiring standards that effectively ensure officers possess the physical, educational, emotional, and integrity qualifications to handle the challenges and stresses inherent in law enforcement employment.

This article specifically discusses the legal defensibility of the following hiring standards: 1) Physical fitness testing; 2) educational requirements; 3) psychological testing; 4) polygraph examinations; and 5) criminal history assessments. The general conclusion reached is that law enforcement administrators have considerable managerial prerogatives under State and Federal law to implement hiring standards and procedures to ensure officers are competent and fit for duty.

Physical Fitness Testing

The recent passage of the Americans with Disabilities Act[1] (ADA) and the Civil Rights Act of 1991[2] (CRA of 1991) makes it imperative that law enforcement agencies carefully identify the essential functions of police work and develop physical fitness standards and tests based on those functions. Under the ADA, employers may not refuse to hire or discharge a qualified individual with a disability because of that disability, unless that person, with or without a reasonable accommodation, is unable to perform the essential functions of the job.[3]

The CRA of 1991 prohibits employers from adjusting (or "norming") test scores for employment-related tests based on race, color, sex, religion, or national origin.[4] This provision may render illegal many currently used physical



Special Agent Schofield is the Chief of the Legal Instruction Unit at the FBI Academy.

> ***"...State and Federal laws afford law enforcement administrators considerable latitude to implement reasonable job-related hiring standards...."***

fitness programs and tests with different standards or passing scores for men and women.[5]

Neither of these statutes requires law enforcement agencies to hire or retain persons who are physically unable to perform the job. They do, however, raise many difficult questions regarding the legal defensibility of physical fitness tests for law enforcement employment.

Accordingly, in March 1993, the FBI Academy hosted a working conference of personnel specialists, physical testing experts, and attorneys for the purpose of recommending legally defensible and operationally effective physical standards for law enforcement. A comprehensive report sets forth the findings and conclusions of this conference.[6]

The report concludes that Federal statutory requirements can be met by establishing physical standards that are job-related and consistent with business necessity and that the following simulative, content-based task test is a legally defensible fitness standard for law enforcement:

1) The person taking the test must complete a 1/4-mile course consisting of a series of 20- to 40-yard runs/sprints interspersed with the events described below.

2) The course includes a 5- to 6-foot wall climb, a 4-foot horizontal jump (may be done while running), a stair climb (six steps up, six steps down), the drag of a 160- to 170-pound dummy for 50 feet, and another run/sprint in a different direction. No specific order or frequency of events was established, but all events should appear at least once.

3) At the conclusion of the course, the applicant must dry fire the service weapon five times with both strong and weak hands.

The report also suggests that an additional 1.5-mile run may be legally defensible as a measure of extended endurance in departments that can demonstrate that such extended endurance is a needed physical ability for successful performance of an essential function.

The report recommends that the passing time for completing the test be determined by each agency, based on the levels of performance required of its employees. The passing times should not be adjusted for age or gender.

Because all physical abilities needed to perform law enforcement duties are not tested in this recommended task test, departments may choose to test such areas as vision, hearing, manual dexterity, flexibility, reflexes, and weight/body composition separately. However, under the ADA, tests that involve medical questions or inquiries about disabilities may be given only after an offer of employment is extended.

The report concludes that the recommended task test is legally defensible as applied to both applicants and incumbent employees and encourages its use in that fashion. Yet, it counsels caution in applying the standards to incumbents unable to meet the passing standard in the absence of a medically sound period of time in which incumbent employees may regain the needed level of fitness.

Educational Requirements

Under Title VII of the Civil Rights Act of 1964,[7] courts have afforded law enforcement organizations considerable latitude to adopt reasonable educational hiring standards that do not *unnecessarily* disadvantage groups of applicants based on their race, color, national origin,

religion, or sex.[8] As a general rule, selection standards with a legally significant disparate impact must be justified by a showing of "business necessity."[9] Unlike written tests that are developed and administered by the employer, educational requirements that are largely in the control of the applicant have been upheld, even though there was no empirical validation study to prove their "business necessity" for law enforcement employment.

For example, in *Davis* v. *City of Dallas,*[10] the U.S. Court of Appeals for the Fifth Circuit upheld as job-related a hiring standard for police officers of 45 semester hours of college credit with at least a C average at an accredited college or university, even though the requirement had a disparate impact on minorities. The court noted that educational requirements for police officers have been consistently sustained by the courts because law enforcement is a profession with a high degree of risk and public responsibility.

The court also added that under Title VII, employers bear a correspondingly lighter burden to show that employment criteria are job-related where the job requires a high degree of skill and the economic and human risks involved in hiring an unqualified applicant are great.[11] Thus, the *Davis* court concluded that empirical evidence is not required to validate the job-relatedness of the educational requirement.[12]

The U.S. Court of Appeals for the Seventh Circuit in *Aguilera* v. *Cook County Police and Corrections Merit Board*[13] used a similar rationale in concluding that educational standards for police officers must only meet the test of "reasonableness."[14] The court stated that EEOC guidelines for validating selection procedures do not have the force of law and that their exacting criteria are more applicable to tests made and scored by employers than to educational degrees that are awarded by schools that are independent of the employer.[15]

> **"...Federal statutory requirements can be met by establishing physical standards that are job-related and consistent with business necessity...."**

Psychological Testing of Applicants

Psychological testing for law enforcement positions is not legally required as a matter of Federal law.[16] However, this type of testing is generally a lawful option for police administrators if the psychological evaluation is job-related and the results are not disclosed in a manner that violates legitimate privacy interests.

Three recent Federal court decisions have ruled on the legality of psychological testing for law enforcement positions. In *Koch* v. *Stanard,*[17] the U.S. Court of Appeals for the Seventh Circuit ruled that applicants for the Chicago Police Department, who were denied positions because they failed a psychological test, were not constitutionally entitled to an opportunity to contest the judgment that they would not make good officers.

In another case, *Daley* v. *Koch,*[18] the U.S. Court of Appeals for the Second Circuit ruled that a police officer candidate, who was rejected because a psychologist found that he had shown "poor judgment, irresponsible behavior and poor impulse control," did not have a mental condition that Congress intended to be considered as a handicap under Federal law. The court noted that being perceived as unsuitable for the particular position of police officer because of those traits does not render one handicapped under Federal law.[19]

In a third case, *Klotsche* v. *City of New York,*[20] a Federal district court sustained the rejection of an applicant for appointment as a patrol officer because his psychological tests and interviews indicated "the presence of personality traits incompatible with the demands and stresses of law enforcement employment."[21]

Notwithstanding these cases, the decision of whether and how to use psychological testing should be based on the correlation of such tests to job performance. For example, the Supreme Court of New Jersey in the case of *Matter of Vey*[22] cautioned that while the use of psychological tests to predict or evaluate employee job performance is a recognized part of the American workplace, such tests "...are only as good as their correlation to actual job performance."[23] In this case, a candidate for appointment as a police officer was found to be mentally unfit to perform police duties based on a

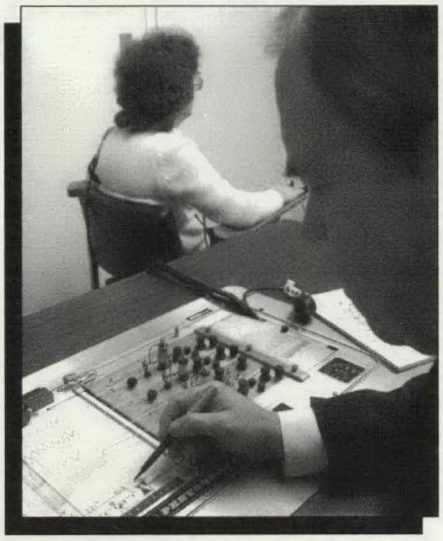
psychological test, which identified a variety of seemingly unremarkable personality traits and then concluded that they demonstrated a below-average potential.

The court, relying on State civil service law, ruled that the law enforcement agency had the burden of establishing the job validity of its psychological tests by producing "...evidence of a correlation between such nonpathological test results and actual job performance."[24] The *Matter of Vey* case illustrates the importance of ensuring that a psychological test is validated as an accurate predictor of performance as a police officer *before* it is used as a basis for deciding that a particular applicant is psychologically unfit.

Preemployment Polygraph Examinations

Polygraph examinations as a component of the hiring process must be reasonably conducted to be constitutional, but may also be subject to more restrictive State laws. For example, in *Woodland* v. *City of Houston,*[25] the U.S. Court of Appeals for the Fifth Circuit ruled that the constitutionality of preemployment polygraph testing depends on a balancing of the police department's interest in preemployment testing against the applicant's privacy interest. The court also noted that factual questions relevant to this balancing test include the intrusiveness of the particular questions asked during the polygraph test and whether there were any abuses of privacy.

In *Anderson* v. *City of Philadelphia,*[26] the U.S. Court of Appeals for the Third Circuit upheld the constitutionality of preemployment polygraph testing by concluding that it is not "...irrational to believe that the polygraph has utility in connection with the selection of law enforcement officers."[27] Conceding that the use of polygraph testing is a debatable issue, the court nonetheless



concluded "...that in the absence of a scientific consensus, reasonable law enforcement administrators may choose to include a polygraph requirement in their hiring process without offending the equal protection clause."[28]

The court found polygraph testing to be rationally related to the legitimate purpose of selecting better officers because:

> "The main flaw of polygraph testing in the employment screening context, overexclusiveness through generation of false positive results, is not a problem of constitutional significance where, as here, the test of constitutionality is whether the relative quality of the final group selected might possibly be higher than that of the group selected if the polygraph were not used."[29]

The court also found it rational to believe the polygraph produced fuller, more candid disclosures by applicants on the department's "Personal Data Questionnaire" which, in turn, provided useful background information for selecting qualified law enforcement officers.

Finally, the court rejected the claim that the applicants who failed the polygraph were "branded as liars" in violation of due process. The court noted that even if the polygraph results were viewed as stigmatizing, the fact the department kept the polygraph results confidential and undisclosed meant that an applicant's liberty interest was not implicated.[30]

In *O'Hartigan* v. *State Dept. of Personnel,*[31] the Supreme Court of Washington ruled that the State patrol constitutionally refused to consider an applicant for a word processor position who had refused to submit to a polygraph examination required of all applicants. The court noted that if hired, she would have been privy to highly confidential and extremely sensitive matters, such as investigative reports and employee disciplinary records, and that the State has a legitimate interest in providing its citizens with law enforcement agencies free of corruption and secure in their employees' access to sensitive information.

The court found the scope of disclosure required by the questions asked during the polygraph examination was no greater than needed to meet the goal of hiring employees with integrity. At the same time, the

court cautioned that limits and guidelines to avoid "standardless, boundless inquiries" need to be set in order for the actual administration of a polygraph test to be constitutional.[32]

Finally, the court rejected the claim that testing only law enforcement applicants and not applicants for other government jobs constitutes a violation of equal protection. The court found "...a valid reason for treating law enforcement job applicants differently due to the sensitive information accessible to employees (even nonofficers), and the unique potential dangers inherent to compromised intelligence during ongoing criminal investigations and other law enforcement activities."[33]

Criminal History Assessments

Employers are generally afforded considerable latitude under Federal law to consider criminal history and past criminal conduct to determine an applicant's fitness for law enforcement employment. In that regard, the U.S. Supreme Court in *New York Transit Authority* v. *Beazer*[34] upheld a general policy against employing persons in "safety sensitive" jobs who used drugs, including persons receiving methadone maintenance treatment for curing heroin addiction.

The Court ruled that even if the policy had a disparate impact on minorities that established a prima facie case of discrimination under Title VII of the Civil Rights Act of 1964, the rule is "job-related" to the legitimate employment goals of safety and efficiency for "safety sensitive" positions.[35] The Court also rejected an equal protection objection to the policy, finding the policy rationally related to the general objectives of safety and efficiency.[36]

State law may limit the extent to which criminal history can be used as a basis to deny employment for a law enforcement position. For example, in *Tharpe* v. *City of Newark Police Department*,[37] a New Jersey appellate court interpreted State law as generally permitting the disqualification of an applicant from law enforcement employment based on an arrest 7 years earlier for possession of a small amount of marijuana, even though that arrest was unsupported by conviction and resulted in a conditional discharge.

> ***"Polygraph examinations...must be reasonably conducted to be constitutional, but may also be subject to more restrictive State laws."***

However, the court cautioned that the circumstances surrounding any such arrest should be considered because "...the fact of an arrest, standing alone, may have no persuasive force in assessing an applicant's qualifications."[38] Because such arrests might be based on a misidentification or constitute a trivial and isolated event in an otherwise unblemished life, the appropriate inquiry should be whether the circumstances surrounding the arrest "adversely relate" to law enforcement employment. The court said, "...consideration should be given to the nature and seriousness of the offense charged, the surrounding circumstances, the date of the offense and the individual's age at the time, whether the offense alleged was an isolated incident, and any evidence of rehabilitation."[39]

In *Sandlin* v. *Criminal Justice Standards & Training Commission*,[40] the Supreme Court of Florida ruled that a pardoned felon, who sought certification as a law enforcement officer, was entitled under State law to consideration to determine if he possessed sufficient good character required of law enforcement officers. While the commission has broad discretion under State law to certify a pardoned felon for a law enforcement position, it may also refuse to do so if it deems the pardoned felon to be of bad character, a poor moral risk, or an otherwise unfit appointee. In that regard, the court concluded the commission may take into account the facts of any pardoned convictions and also give weight to State legislation that establishes a general policy against certifying convicted felons or persons with a criminal history incompatible with law enforcement employment.[41]

In *Adams* v. *County of Sacramento*,[42] a California appellate court upheld a State law provision that barred anyone convicted of a felony from employment as a peace officer, despite the expungement and setting aside of that prior conviction. The court interpreted the State preclusion from law enforcement employment as not the kind of penalty or disability that is eliminated by expungement. The court also noted

that the provision against employment of convicted felons as peace officers was designed "...to assure, insofar as possible, the good character and integrity of peace officers and to avoid any appearance to members of the public that persons holding public positions having the status of peace officers may be untrustworthy."[43]

Conclusion

The court decisions surveyed in this article support the general proposition that State and Federal laws afford law enforcement administrators considerable latitude to implement reasonable job-related hiring standards to ensure law enforcement officers possess the physical, educational, emotional, and integrity qualifications to perform the essential functions of law enforcement. However, because of the potential for more restrictive State laws, it is recommended that a legal advisor review the legal defensibility of all hiring standards *before* they are implemented. ✦

Endnotes

[1] 42 U.S.C. sec. 12101 (1990).
[2] 42 U.S.C. sec. 2000e, *et. seq.* (1991).
[3] 42 U.S.C. sec. 12101, *et. seq.*
[4] 42 U.S.C. sec. 2000e - 2(1) (1991).
[5] For a discussion of how "normed" standards might still be defended in height/weight assessments, affirmative action programs, and voluntary physical fitness programs, *see* John Sauls, "The Civil Rights Act of 1991—New Challenges for Employers," *FBI Law Enforcement Bulletin,* September 1992.
[6] A copy of this report can be obtained by mailing a written request to the FBI Academy, Legal Instruction Unit, Quantico, Virginia 22135, Attention: Fitness Report.
[7] 42 U.S.C. sec. 2000e, *et. seq.* (1991).
[8] *See, e.g., Castro* v. *Beecher,* 459 F.2d 725 (1st Cir. 1972); *Morrow* v. *Dillard,* 412 F.Supp. 494 (D.C. Miss. 1976); and *United States* v. *Buffalo,* 457 F.Supp. 612 (W.D.N.Y. 1978).
[9] *See Wards Cove Packing Co.* v. *Antonio,* 109 S.Ct. 2777 (1988).
[10] 777 F.2d 205 (5th Cir. 1985), *cert. denied,* 106 S.Ct. 1972.
[11] *Id.* at 213.
[12] *Id.* at 215. The court endorsed the lighter burden of proof set forth in *Spurlock* v. *United Airlines, Inc.,* 475 F.2d 216 (10th Cir. 1972).
[13] 760 F.2d 844 (7th Cir. 1985), *cert. denied,* 106 S.Ct. 237.
[14] *Id.* at 847.
[15] *Id.*
[16] It may be necessary to delay the psychological or polygraph testing of applicants for law enforcement positions until at least a conditional offer of employment is made. This is because the ADA prohibits medical examinations or inquiries about the existence, nature, or severity of a disability, unless an offer of employment, which may be conditional upon the results of the medical examination, has been extended. 42 U.S.C. sec. 12112(c).
[17] 962 F.2d 605 (7th Cir. 1992).
[18] 892 F.2d 212 (2d Cir. 1989).
[19] *Id.* at 215.
[20] 621 F.Supp. 1113 (S.D.N.Y. 1985).
[21] *Id.* at 1116.
[22] 591 A.2d 1333 (Sup. Ct. N.J. 1991).
[23] *Id.* at 1336.
[24] *Id.* at 1338.
[25] 940 F.2d 134 (5th Cir. 1991).
[26] 845 F.2d 1216 (3d Cir. 1988).
[27] *Id.* at 1223.
[28] *Id.* at 1225.
[29] *Id.* at 1223.
[30] *Id.* at 1222.
[31] 821 P.2d 44 (Sup. Ct. Wash. 1991).
[32] *Id.* at 49.
[33] *Id.* at 50.
[34] 440 U.S. 568 (1979).
[35] *Id.* at 587, n. 31.
[36] *Id.* at 592.
[37] 619 A.2d 228 (N.J. 1992).
[38] *Id.* at 230.
[39] *Id.* at 231. *See also, Delehant* v. *Board on Police Standards,* 839 P.2d 737 (Ore. App. 1992), holding it permissible to consider criminal record that was not expungeable under State law in determining fitness for law enforcement employment.
[40] 531 So.2d 1344 (Sup. Ct. Fla. 1988).
[41] *Id.* at 1347.
[42] 235 Cal. App. 3D 872 (Calif. 1991).
[43] *Id.* at 881.

Law enforcement officers of other than Federal jurisdiction who are interested 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.

Wanted: Photographs

The *Law Enforcment* staff is always on the lookout for dynamic, law enforcement-related photos to accompany and accent the various articles that appear in the magazine. We are interested in photos that depict the many aspects of the law enforcement profession discussed in the magazine and illustrate the numerous tasks and challenges law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer color prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as *Law Enforcement* does not accept responsibility for prints that may be damaged or lost. Send your photographs to:

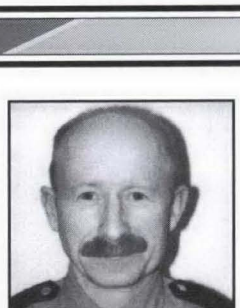
John Ott, Art Director,
FBI Law Enforcement Bulletin, J. Edgar Hoover F.B.I. Building, 10th and Pennsylvania Avenue, NW, Washington DC, 20535.

The Bulletin Notes

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

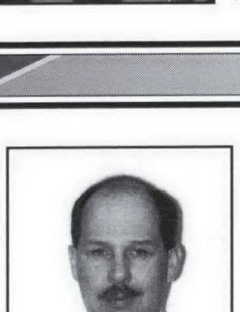
Deputy Chris Scott of the Monroe County, Florida, Sheriff's Office responded to an area marina, where a woman had reportedly slipped and hit her head while boating with her family. Deputy Scott found the victim unconscious and began administering CPR, with the assistance of a bystander. Although revived several times, the victim relapsed into unconsciousness. Deputy Scott continued to administer CPR until paramedics arrived. The victim was then transported to a health care facility where she received further treatment for her injury.

Deputy Scott

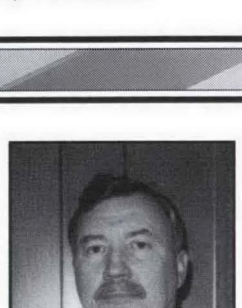


While conducting an investigation outside a women's shelter, Alaska State Trooper Daniel Donaldson heard a woman inside screaming that her baby was burning. After a resident finally opened the locked entrance, Trooper Donaldson rushed upstairs to the smoke-filled room. Unable to see, he crawled around and found a crib, which he removed from the room. After realizing the crib was empty, Trooper Donaldson reentered the room to search for the child, who he spotted close to the source of the blaze. Soon after rescuing the badly burned child, the baby went into convulsions. Trooper Donaldson then revived the child with mouth-to-mouth resuscitation.

Trooper Donaldson



Lieutenant Schafer



Officer McGroarty

Lt. Frank Schafer, Jr., and Officer Jack McGroarty of the Essex County, New Jersey, Police Department responded to a report that two youths had fallen through the ice of an area lake. Immediately upon arriving at the scene, Officer McGroarty entered the frozen water to chest level, while holding a rescue rope. Lieutenant Schafer, tied to the end of the rope, broke through 2-inch-thick ice for 50 feet to reach one of the boys. After Officer McGroarty pulled Lieutenant Schafer and the youth to shore, the two officers rescued the other boy. Both victims were transported to a nearly hospital, treated for hypothermia, and released.

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Federal Bureau of Investigation

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Patch Call

The patch of the Lake Havasu City, Arizona, Police Department depicts the famous London Bridge, which was brought from England and reassembled. "Havasu" is an Indian term for "blue water," appropriate for a city located on the eastern shore of a lake that is part of the Colorado River system.

Law Enforcement is looking for a variety of colorful and distinctive patches from law enforcement agencies around the United States and the world. Please send your patch and a brief heraldry to the Assistant Art Director, *FBI Law Enforcement Bulletin*, Room 7262, 10th and Pennsylvania Ave., NW, Washington, DC 20535.