

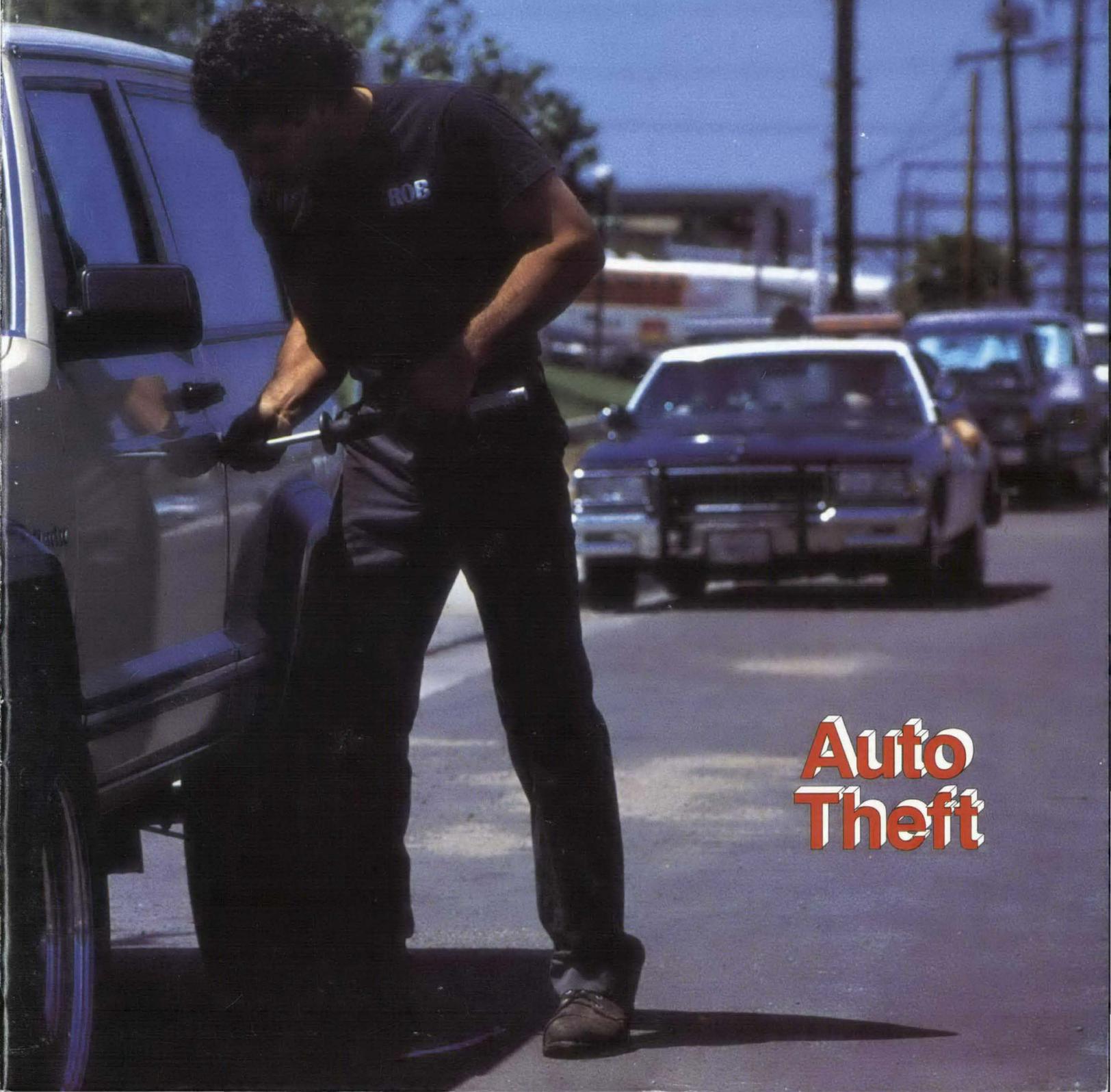
U.S. Department of Justice  
Federal Bureau of Investigation



NOVEMBER 1995

# FBI Law Enforcement

B • U • L • L • E • T • I • N



## Auto Theft



# FBI Law Enforcement

B ♦ U ♦ L ♦ L ♦ E ♦ T ♦ I ♦ N

November 1995  
Volume 64  
Number 11

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

Louis J. Freeh  
Director

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

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20535. Second-Class postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation, FBI Academy, Quantico, VA 22135.

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# Car Thieves Smell a RATT

By  
STEVEN J. CASEY



**E**arly one summer morning in San Diego County, California, an experienced car thief met with two potential buyers from a large car theft ring. Having sold cars to them before, the thief fantasized

that if he could establish a working relationship with them, they could be his ticket to the big time.

The three men talked about the deals they had made together. So far, he had sold them a T-bird, a

Mustang, an Explorer, and a Bronco. Bragging about his sophisticated techniques, the thief explained that when he steals a car from a driveway or street, he brings along some broken automotive glass and maybe an ignition lock to leave on the ground. It makes the car owner and the police think that an amateur stole the vehicle. However, he told the buyers that he really prefers stealing from dealerships because car dealers usually inventory their vehicles only once a month. By learning the inventory dates, he can hit soon thereafter, knowing that the theft probably will not be reported for the better part of a month.

Imagine the thief's surprise when the trio arrived at its destination, and he learned the true identities of the two buyers—police detectives on the San Diego County Regional Auto Theft Task Force, known as RATT. This car thief had just been bitten by a RATT.

## AN EPIDEMIC PROBLEM

Auto theft from dealers' lots, residential driveways, and city streets has been a problem of epidemic proportions in the San Diego area for years. Until recently, law enforcement had not found effective ways to address it.

In the 10-year period from 1983 through 1992, auto theft in San Diego County increased 196 percent,

from 12,099 cars stolen in 1983 to 35,923 in 1992. The total dollar loss in 1992 alone reached nearly \$210 million. Yet, at the end of that period, all of the police agencies in San Diego County combined still dedicated only 25 detectives to auto theft investigations.

Departments gave auto theft cases low priority, worked such cases only in the reactive mode, and did not provide countywide coordination, perform indepth crime analyses, or conduct long-term investigations. Even when prosecutors convicted car thieves, sentences were light, with auto thieves often sentenced to time only in a local jail.

#### **A COORDINATED RESPONSE**

Formed in mid-1992, the Regional Auto Theft Task Force was designed to respond to the rampant auto theft problem in the San Diego area. Operating under a formal

Memorandum of Understanding, the task force brings detectives and prosecutors together to address the auto theft problem. The first coordinated auto theft task force to operate in California, RATT draws its 28 detectives from 16 local, State, and Federal agencies.<sup>1</sup>

The detectives coordinate closely with three prosecutors from the district and U.S. attorney's offices to develop cases. These attorneys work exclusively on RATT's cases, providing legal advice, acquiring search warrants, and handling all post-arrest activity. Some cases, of course, warrant more participation than others, but the attorneys supply all necessary legal support of each case, from inception through prosecution.

#### **Funding**

To fund the task force, motorists in the region pay an additional

\$1 registration fee per car, as authorized by California law. This fee provides RATT with \$1.8 million per year.

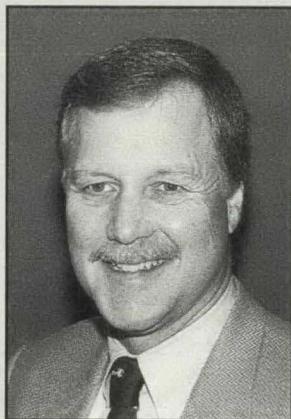
The task force also obtained a \$318,000 grant from the National Institute of Justice, a component of the U.S. Department of Justice. The grant allows RATT to educate vehicle owners about theft prevention and to hire a full-time crime analyst to assist the task force. In addition, the money provides funds for the criminal research division of the San Diego Association of Governments to evaluate and document RATT's approach and performance.

Results of the evaluation will be used to determine the most effective techniques and to share the information among agencies. One significant byproduct of this information-sharing venture will be an improved computer database that will provide more detailed information to auto theft investigators than is available now.

#### **Organization**

The task force operates countywide in four teams, each led by a sergeant from one of the participating agencies. The sergeants report to an FBI special agent with extensive experience in auto theft investigation, who directs task force operations from its undercover location in central San Diego County. An executive committee selected by the Police Chiefs and Sheriff's Association of San Diego County provides oversight for the task force.

Although task force members must be veteran detectives and make a 2-year commitment to the program, officers regard working



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on RATT as choice duty. As evidence of this, when one of the original task force detectives received a promotion and had to be replaced, 121 deputies applied for the position.

Task force members must be adept at handling long-term, proactive investigations and informant development, for these are the keys to RATT's success. Once selected, officers attend a 1-week street survival course at the FBI Academy in Quantico, Virginia.

### Strategies

Under the RATT concept, investigators combine four main strategies: Theft analysis, maintenance of an intelligence base, active liaison with other law enforcement agencies, and informant development. Theft analysis involves, for example, tracking the locations and types of vehicles stolen and monitoring the known chop shops operating in the area. In addition to using available intelligence resources, such as the California Law Enforcement Telecommunication System and the National Crime Information Center, RATT investigators also rely heavily on the rich resources of the private National Insurance Crime Bureau to maintain an auto theft intelligence base.

Active liaison with all county law enforcement agencies, other local task forces, and area probation and parole officers augments this information pool. Task force members recruit and carefully supervise informants. They attempt to infiltrate car theft rings using informants and undercover tactics to target the leaders of the organizations, rather

than merely arrest the low-level offenders after they deliver one stolen car.

### Sideline Operations

Auto theft investigations often become linked to investigations of other crimes. For example, stolen cars and drugs often go hand in hand. In addition, criminals often strip stolen cars and sell the parts.

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***As offshoots of stolen vehicle investigations, RATT detectives have arrested a number of gun runners, drug dealers, and chop-shop operators.***

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As offshoots of stolen vehicle investigations, RATT detectives have arrested a number of gun runners, drug dealers, and chop-shop operators.

Indeed, in 1994, RATT detectives even *became* chop-shop operators. They ran two car-stripping operations in borrowed warehouses during undercover operations conducted for several months. Their efforts netted 14 thieves and 21 stolen vehicles.

The task force also handles cases of tractor-trailer theft as a subset of its motor vehicle theft casework. RATT's investigations of stolen tractor-trailers revealed a

related crime problem—cargo theft. These crimes involve organized, professional thefts of tractor-trailers, including entire loads of cargo (of any type). Such thefts often do not get reported uniformly, making investigation difficult. For example, in reporting the theft of the tractor-trailer to the police, if the driver does not know the specific cargo in the trailer, it simply gets listed on the theft report as “unknown.”

Once alerted to the problem, RATT investigators hand-searched reports in Chula Vista, National City, and San Diego to determine its extent. They found that such thefts had increased 133 percent between 1989 and 1992, amounting to a \$7.1 million loss from 177 cargo thefts. The problem's severity led RATT to create the Cargo Team, comprising a sergeant and five investigators, to focus on reducing the number of cargo thefts in the area.

For the most part, RATT's Cargo Team employs the same strategies as the other components of the task force, but with some significant differences. Generally, investigators penetrate cargo theft operations the same way they penetrate auto theft rings—informants, information developed by local police, etc. Money, however, makes the major difference. An undercover investigator can buy a top-quality stolen car for \$300 to \$400. But for a stolen cargo with a retail value of perhaps \$300,000 to \$500,000, the cost can be between \$10,000 and \$20,000. Clearly, that exceeds RATT's local funding, so the task force secured supplemental funding from the FBI.

## Successes

From July 1992 to February 1995, RATT's 28 detectives recovered more than 780 stolen vehicles with a combined worth of well over \$6.8 million. Detectives made more than 300 arrests, and the team's prosecutors achieved a 100-percent conviction rate, with more than one-half the convicted defendants going to prison. The prison sentence for convicted car thieves in the San Diego area now averages more than 3.5 years. Since RATT's inception, auto theft in San Diego County has dropped 15 percent.

One of RATT's earliest high-profile targets had been a very successful drug peddler, robber, burglar, counterfeiter, and stolen weapons dealer. He specialized, however, in auto theft, car stripping, and vehicle identification number switching. RATT put him and his two partners—assault weapons suppliers who, when arrested, also were planning to rob an armored car using MAC 11s and a grenade launcher—in State prison after they pleaded guilty to all 51 counts of a grand jury indictment.

According to RATT's director, many organized crime syndicates also regularly steal cars, often for transport through Mexico to Guatemala and El Salvador. Many of the thieves steal cars in Los Angeles and San Diego and take them through El Paso, Texas, into Mexico. Others go through the San Ysidro, California, port. In San Ysidro, U.S. Customs and Immigration and Naturalization Service officials work with RATT detectives to catch the thieves.

In one such case, two Ukrainian nationals living in Seattle had been

shipping stolen cars to Russia through the Port of New Jersey, California. Tired of the hassles of shipping the cars to Russia, the pair decided instead to facilitate sales of stolen cars to Mexican buyers. They shipped seven cars to San Ysidro where—unfortunately for the Ukrainians—the cars arrived at one of several warehouses operated clandestinely by RATT. Hidden sound and video equipment recorded the transaction, and officers immediately arrested the two thieves, whose Federal prosecution is pending.

## CONCLUSION

Auto theft costs American citizens billions of dollars each year in more than just vehicle replacement and insurance payments. Investigation and prosecution expenses also factor into the high price of auto theft.

Expert car thieves work quickly and often move their stolen goods out of the local jurisdiction or even out of the country before owners can notify the police. San Diego County's Regional Auto Theft Task Force provides a way for local, State, and Federal law enforcement agencies and prosecutors to take RATT-sized bites out of the stolen vehicle trade. ♦

### Endnote

The following agencies participate in RATT: the California Highway Patrol, Border Division; the Carlsbad, Chula Vista, Coronado, El Cajon, Escondido, La Mesa, National City, Oceanside, and San Diego Police Departments; the San Diego County Sheriff's Department; the U.S. Customs Service; the Federal Bureau of Investigation; the National Insurance Crime Bureau; the San Diego County district attorney's office; and the U.S. attorney's office.

## Law Enforcement on the Internet



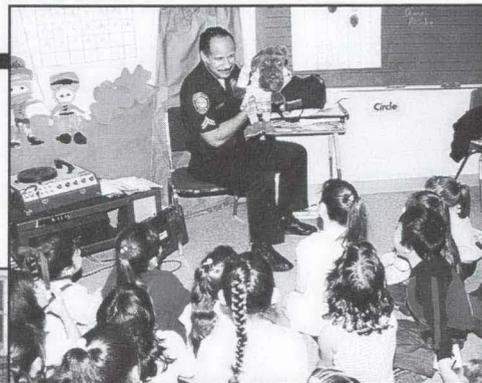
To take advantage of the many resources available on the Internet, the *FBI Law Enforcement Bulletin* has driven onto the information superhighway. We invite you to ride along by communicating with us via e-mail. Our Internet address is:

**[fbileb@justice.usdoj.gov](mailto:fbileb@justice.usdoj.gov)**

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions. Please include your name, title, and agency on all e-mail messages. Remember, **[fbileb@justice.usdoj.gov](mailto:fbileb@justice.usdoj.gov)** is our e-mail address.

# Community Policing Learning the Lessons of History

By  
JEFFREY PATTERSON



**A**n old saying holds that those who cannot remember the past are condemned to repeat it. Unfortunately, many officers seem to think the history of police work began the day they first pinned on a badge and strapped on a gunbelt. For this reason, each emerging movement in law enforcement tends to be seen as something completely new, without historical context. Such is largely the case today with community policing.

To better understand today's debate over community policing, law enforcement administrators should study their history. History

debunks the more outrageous claims made by some of the proponents of community policing and cautions against forgetting the important lessons of the past. It shows us that calls to change the way the police operate have been a constant theme from the very beginning of municipal policing. And, it reminds us that our problems today—while serious—are really nothing new.

## SIR ROBERT PEEL'S INNOVATION

The history of modern law enforcement began 166 years ago with the formation of the London Metropolitan Police District in

1829. By creating a new police force, the British Parliament hoped to address the soaring crime rate in and around the nation's capital, attributed at the time to rapid urban growth, unchecked immigration, poverty, alcoholism, radical political groups, poor infrastructure, unsupervised juveniles, and lenient judges.

The principles adopted by Sir Robert Peel, the first chief of the London Metropolitan Police, for his new "bobbies" have served as the traditional model for all British and American police forces ever since. These principles include the use of crime rates to determine the



Sergeant Patterson serves with the Clearwater, Florida, Police Department.

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effectiveness of the police; the importance of a centrally located, publicly accessible police headquarters; and the value of proper recruitment, selection, and training.

However, perhaps the most enduring and influential innovation introduced was the establishment of regular patrol areas, known as “beats.” Before 1829, the police—whether military or civilian—only responded after a crime had been reported. Patrols occurred on a sporadic basis, and any crime deterrence or apprehension of criminals in the act of committing crimes happened almost by accident.

Peel assigned his bobbies to specific geographic zones and held them responsible for preventing and suppressing crime within the boundaries of their zones. He based this strategy on his belief that the constables would:

- Become known to the public, and citizens with information about criminal activity would be more likely to tell a familiar figure than a stranger

- Become familiar with people and places and thus better able to recognize suspicious persons or criminal activity, and
- Be highly visible on their posts, tending to deter criminals from committing crimes in the immediate vicinity.

To implement fully the beat concept, Peel instituted his second most enduring innovation: The paramilitary command structure. While Peel believed overall civilian control to be essential, he also believed that only military discipline would ensure that constables actually walked their beats and enforced the law on London’s mean streets, something their nonmilitary predecessors, the watchmen, had failed to do.

#### **EARLY AMERICAN POLICING**

Meanwhile, across the Atlantic, American policing developed along lines roughly similar to those of the London police. Most major U.S. cities had established municipal police

departments by the Civil War. Like the London police force, these departments adopted a paramilitary structure; officers wore distinctive blue uniforms and walked assigned beats. However, unlike the bobbies, American officers carried guns and were under the command of politically appointed local precinct captains. Lax discipline led to abundant graft.

While the British quickly embraced the bobbies as one of their most beloved national symbols, Americans held their police in much lower esteem. “Of all the institutions of city government in late-nineteenth-century America, none was as unanimously denounced as the urban police,” wrote sociologist Egon Bittner. “According to every available account, they were, in every aspect of their existence, an un-mixed, unmitigated, and unpardonable scandal.”<sup>1</sup>

#### **REFORM AND PROFESSIONALISM**

By the turn of the century, the progressive movement began to promote professionalism in law enforcement as one of the basic components of rehabilitating municipal politics. Concern about corruption and brutality in local police forces resulted in State takeovers of some city departments and led to the creation of new State police organizations removed from the corrupting influences of local ward politics.

Reformers sought to insulate the police from political interference while retaining local government control. The International Association of Chiefs of Police

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(IACP), founded in 1893, immediately called for the adoption of a civil service personnel system and the centralization of authority in strong executive positions, which could control the politically aligned precinct captains.

Reformers also sought to change the role of the police in American society. In the 19th century, American police enforced health and building codes, secured housing for the homeless, built and supervised playgrounds for children, and even found jobs for ex-convicts. Reformers believed that these duties provided too many opportunities for political favoritism and squandered too many resources that could be better spent fighting crime. They called for the police to give up social work and concentrate on law enforcement.

But while "good government" ideals spurred the quickly emerging professional model, its real driving force was technology—the forensic sciences of ballistics, chemistry, and fingerprinting to some extent, but mostly the automobile, the telephone, and the radio. The radio-equipped patrol car allowed officers to respond to calls for service received by the police switchboard. At the same time, it took officers off the sidewalk and put them on the street, racing from incident to incident observing the crowd only from a distance.

For half a century, proponents lauded professionalism in law enforcement as the solution to the crime problem. Innovative police chiefs across the country worked to implement the professional model in their agencies, while

J. Edgar Hoover promoted professionalism through the FBI National Academy. Several major universities also established programs in professional police administration.

#### UNINTENDED CONSEQUENCES

With the passage of time, professionalism yielded some serious, unintended consequences for local police. Agencies became divided between the oldtimers and more progressive college-educated officers. Formal education contributed to higher levels of disenchantment with the more mundane aspects of the

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job. Demands for efficiency, objectivity, and autonomy led to detached, impersonal attitudes toward the community and resistance to any direction from elected political leaders.

Critics also questioned whether professionalism really was being practiced at the local level. Police departments installed civil service merit systems for hiring and promotion. They adopted a general code of ethics and formed a professional association. They supported their

practices through knowledge based on experience. But these local law enforcement agencies conducted no true scientific research, nor did they require a college degree to work in the field.

The failure of professionalism became apparent during the urban riots, assassinations, and gang violence of the last 30 years. Police, politicians, and the public alike bemoaned the ineffectiveness of crime-fighting efforts. Leaders of minority communities cited the lack of police responsiveness to their needs. Everyone agreed that the police had somehow fallen out of touch with the citizens they were supposed to serve and protect.

#### POLICE-COMMUNITY RELATIONS

One of the earliest articulations of what would later evolve into the community policing philosophy can be found in Skolnick's case study of the San Francisco, California, Police Department's Community Relations Unit. This case study also documents the first organized resistance to the basic concepts of community policing.

In 1962, the San Francisco Police Department established a specialized unit based on the concept that "police would help to reduce crime by reducing despair—by acting as a social service agency to ameliorate some of the difficulties encountered by minority group persons."<sup>2</sup> Almost from the outset, the unit found itself hampered by its ambiguous mission. Members were not sure what methods they should apply to serving which minority population.

The unit also faced the dilemma of "how to maintain its identity as a police organization and at the same time to win the confidence of the minority group population... ordinarily considered a police problem."<sup>3</sup> Eventually, the relationship of trust between the unit and the community led to formal complaints of misconduct against other police officers, sealing the unit's alienation from the mainstream of the department. The program soon perished in the politically charged environment it inadvertently helped to create.

### TEAM POLICING

In the 1970s, a new strategy emerged—team policing. Advocates of team policing recognized that "in recent years, due in part to changes in the social climate and in part to changes in police patrol techniques (more patrol cars, less foot patrol), many police agencies have become increasingly isolated from the community. This isolation makes crime control more difficult."<sup>4</sup>

The team policing concept assigned responsibility for a certain geographic area to a team of police officers who would learn the neighborhood, its people, and its problems—much like the old cop on the beat. But because authority would not be concentrated in one person, the team policing model posed less danger of corruption. Different American cities tried various forms of team policing, but none ever got beyond the limited "pilot-project" stage, and all eventually fell by the wayside.

A primary reason for team policing's failure rested with its contradiction of the basic tenets of professionalism. It placed more emphasis on long-term problem

solving than on rapid response to incidents, making quantifiable performance measurements difficult. It also crossed functional lines of authority, violating the chain of command and trespassing on the turf of detectives and other specialized units.

### COMMUNITY POLICING

Community policing is the most widely used term for a loosely defined set of police philosophies, strategies, and tactics known either as problem-oriented policing, neighborhood-oriented policing, or community-oriented policing. However, perhaps "postprofessionalism" or "neotraditionalism" would be more descriptive labels.

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***...the crime problem appears to have changed little since the Industrial Revolution drove the urbanization of Western culture in the early 1800s.***

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Like the police-community relations movement, community policing stems from a view of the police as a multifunctional social service agency working to reduce the despair of poverty. Like team policing, community policing is rooted in the belief that the traditional officer on the beat will bring the police and the public closer together. At the same time, it maintains the professional

model's support for education and research.

Instead of merely responding to emergency calls and arresting criminals, community policing officers devote considerable time to performing social work, working independently and creatively on solutions to the problems on their beats. It follows that they make extensive personal contacts, both inside and outside their agencies. All of this flies in the face of a police culture that values crimefighting, standard operating procedures, and a paramilitary chain of command.

Although supporting evidence is largely anecdotal, community policing apparently has received widespread support at the conceptual level from politicians, academicians, administrators, and the media. It also has strong intuitive appeal with the general public. Yet, community policing has encountered significant stumbling blocks at the operational level nearly everywhere it has been tried.

Indeed, not all the anecdotal evidence has been positive. In fact, community policing initiatives have been severely scaled back in two of its most prominent national settings—Houston, Texas, and New York City.

### MISTAKES OF THE PAST

After more than a decade of community policing experiments, several major errors become apparent when viewed against the historical context. Perhaps this explains some of the difficulties that have been encountered.

#### Lack of Planning

Although intended as an overarching philosophy, community

policing programs in many cities developed incrementally, determined more by the availability of grant funding and the need to appease certain neighborhood groups than according to any strategic management plan. As professionalism was rushed along pell-mell by technology, so is community policing being pushed forward by the uneven flow of Federal dollars. Significantly, after 50 years of reform, the distribution of police resources appears in danger of being openly repoliticized.

### **Mission Ambiguity**

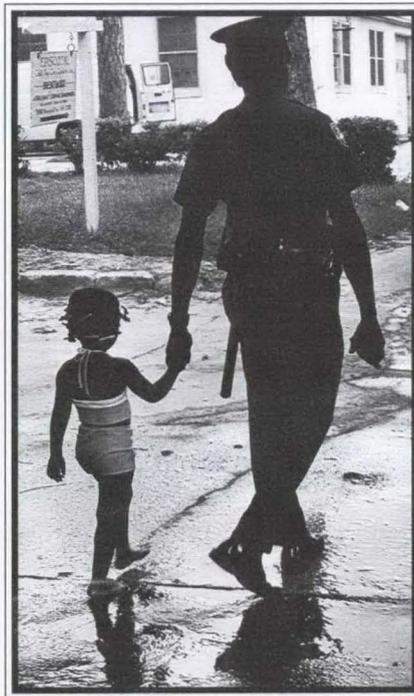
Like the members of the San Francisco Police Department Community Relations Unit, many practitioners of community policing seem unsure of who to serve and how to serve them. Approaches range from ardent neighborhood advocacy to aggressive street crime suppression. In their confusion, agencies have settled for the superficial program components—police ministrations, bicycle patrols, and midnight basketball games—that define community policing in grant applications.

### **Limited Implementation**

As with police-community relations and team policing, cities often attempt to implement community policing through small, specialized units in well-defined neighborhoods. Unfortunately, this approach often leads to the alienation of some officers and to claims that the police are ignoring other residents.

Stalled implementation can aggravate organizational conflict; the perception that community policing officers play by different rules and do not have to answer calls for service angers other officers who believe

that they do more work under more difficult conditions. It also can lead to resentment between those neighborhoods that receive the special attention of community policing and those that do not.



### **Personnel Evaluation**

Community policing advocates the evaluation of officers not on traditional indicators of performance, such as calls handled and arrests made, but on more creative, problem-solving efforts. Yet, cities have been slow to change their appraisal systems, most of which still call for traditional, quantifiable performance indicators that are irrelevant, at best, and contradictory with the community policing paradigm, at worst. Similar disparity between the nontraditional behaviors desired by top administrators and the standardized expectations of

middle management contributed to the failure of team policing 20 years ago.

### **Lack of Efficiency**

True community policing represents a highly labor-intensive approach. Foot patrol—a key component—was abandoned by prior generations because it was not a cost-effective way to deliver police services. The City of Portland, Oregon, determined that it needed to add 200 officers to its existing force of 750 to implement community policing properly. In the early 1990s, the City of Houston scrapped its equally ambitious plan when budget cutbacks forced it to lay off 655 of its 4,500 officers. The shrinking tax base in cities and public demands for leaner government allow little room for the expansion needed to make community policing effective.

### **Potential Corruption**

Two of the key elements of community policing—decentralization and permanent assignments—conflict with the professional model's prescription for controlling corruption and limiting political influence. Centralized authority was one of the first reforms called for by the IACP a century ago, and the idea of mandatory rotation of assignments followed not long thereafter. An unintended consequence of community policing may be the development of the same close personal and political ties between individual officers and citizens along their beats that historically served as the breeding ground for petty corruption and undermined management's control of the rank and file.

## Problems of Evaluation

Finally, in the absence of valid research findings, "community policing is advancing because it seems to make sense, not because it has been shown to be demonstrably superior."<sup>5</sup> Just as professionalism appeared to be the "one best way" for half a century, so now is community policing the orthodox doctrine.

However, community policing's emphasis on social work conflicts with today's conservative political climate. One of the programs that conservative legislators targeted for elimination in the 1994 crime bill was midnight basketball—a common component of community policing's outreach efforts toward underprivileged youth. Demands for less social work and more crime-fighting seem likely.

The time may have come for defenders of community policing to conduct legitimate program evaluation. Its continued status as the established dogma is now in doubt.

## LESSONS OF HISTORY

While administrators can glean much from the specific lessons of history that relate to the evolution of community policing, these lessons should be considered within the context of two somewhat more generally applicable principles. First, the crime problem appears to have changed little since the Industrial Revolution drove the urbanization of Western culture in the early 1800s. Objective measures of the true prevalence of criminal activity in our cities remain as elusive today as they were when the British Parliament began debating the "Act for Improving the Police In and Near the Metropolis" in the late 1820s.

Similarly, modern surveys of public opinion, like 18th century accounts, still have difficulty "separating fear of crime from disapproval of conduct deemed immoral or alarm at public disorder."<sup>6</sup> Nevertheless, descriptions of London's problems early in the last century would sound strikingly familiar to residents of American cities near the end of the 20th century.

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**Those who learn from history will be better prepared for the leadership challenges in the difficult times ahead.**

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Second, organizational change in police agencies has been a constant theme of academicians, policymakers, and practitioners from the very beginning—perhaps only because it is one factor among the many complex issues facing the police over which these groups can exercise some control. However, changes in policing strategies are not always determined through rigorous testing.<sup>7</sup>

Every new movement in law enforcement—from the establishment of the first organized police forces, to the reforms of the Progressive era, to community policing—has been touted, with little supporting evidence, as the one true solution to the problem of crime in society. To date, none of them has lived up to such unrealistic expectations.

## CONCLUSION

Police administrators should acknowledge that crime is a natural condition of society, not a problem to be solved, so that neither they, their personnel, their political leaders, nor the public will be deluded into unrealistic expectations by new programs. They must recognize that changes in their operations and their organizations are inevitable, but that few—if any—of these changes will be completely unprecedented journeys into uncharted territory.

Administrators should learn the lessons of history—from the conditions that led Sir Robert Peel to introduce the paramilitary structure, to the development of centralized authority, to the limited crime-fighting role advocated by the reformers, to the factors that led to the failure of police-community relations and team policing. Those who learn from history will be better prepared for the leadership challenges in the difficult times ahead. ♦

## Endnotes

<sup>1</sup> International City Management Association (ICMA), *Local Government Police Management*, 3d. ed. (Washington, DC: ICMA, 1991), 4.

<sup>2</sup> Jerome H. Skolnick, "The Police and the Urban Ghetto," *The Ambivalent Force: Perspectives on Police*, eds. Arthur Niederhoffer and Abraham S. Blumberg, 2d ed. (Hinsdale, IL: Dryden, 1976), 222.

<sup>3</sup> *Ibid.*, 222-223.

<sup>4</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police* (Washington, DC: U.S. Department of Justice, 1973), 154.

<sup>5</sup> Skolnick and Bayley, quoted in Gordon Witkin, "Beyond 'Just the Facts, Ma'am,'" *U.S. News & World Report*, August 2, 1993, 30.

<sup>6</sup> Thomas A. Reppetto, *The Blue Parade* (New York: Free Press, 1978), 6.

<sup>7</sup> Alvin W. Cohn and Emilio C. Viano, *Police Community Relations: Images, Roles, Realities* (Philadelphia: Lippincott, 1976), 3.

**Warrior Dreams: Violence and Manhood in Post-Vietnam America** by James William Gibson, Hill and Wang Publishing Company, New York, 1994.

For anyone with doubts, the bombing of the Alfred J. Murrah Federal Building in Oklahoma City provided a clear sign that something in our society had gone seriously awry. With little warning, the militia movement became front page news. Many wondered how and, more important, *why* the paramilitary movement had developed. From where did these groups emerge? How had they remained apparently undetected until they unleashed their violent hatred upon America's heartland?

Although published in 1994, prior to the Oklahoma City bombing, *Warrior Dreams: Violence and Manhood in Post-Vietnam America* provides answers from a psychological perspective to many such questions. The author identifies the paramilitary movement as the "New War," a fictional clash between members of the movement and all of the perceived enemies of society—including liberals, government officials, feminists, minorities, communists, and drug dealers, among others. However, while the war might be fictional, the violence it spawns is all too real.

The author contends that the war grew out of a need for some Americans to deal with post-Vietnam malaise, changing relations between the sexes, and uncertainty concerning the Nation's future. Against this backdrop, he offers a thought-provoking diagnosis of many of the social ills that led to the rise of the militia movement.

The book is divided into three main parts, each of which examines the paramilitary phenomenon from a different perspective. Part one describes the origins of the New War, as recounted in "war stories" from its heroes. It then explores the relationship of these war heroes with others and with society as a whole. These first chapters also depict the war as extremely violent,

fought by paramilitary warriors with a plethora of exotic weapons. The author chips through the rhetoric of the movement to find what might be its basic, unifying theme: White supremacy. He supplies interesting examples to support this theory.

Part two describes the games and social events that evolved as part of the New War. Conferences provide a forum for training and networking. Firearms competitions and war games (e.g., paintball) allow the New Warriors to play war while, at the same time, refining their combat skills for use against their enemies.

The third part tells the sad but true story of a country affected by these misguided warriors. Contrary to its myth of a defensive struggle, the paramilitary movement has produced hired killers, mercenaries, and violent white racist groups. The author details chilling, real-life examples of all three. In the book's final chapter, the author summarizes his diagnosis and outlines a prescription for change.

*Warrior Dreams* addresses a very broad and extremely complex subject, one that is particularly relevant to those charged with ensuring public safety and maintaining public order in contemporary America. The author presents the subject matter in an organized and methodical way, making it easy to understand. Police administrators, political leaders, and public policy officials will find *Warrior Dreams* well worth reading for its insight into an easily misunderstood, but obviously dangerous, segment of our society.

Reviewed by  
James J. Nolan, M.Ed.  
Hate Crime Training Coordinator  
Criminal Justice Information  
Services Division  
Federal Bureau of Investigation  
Washington, DC



## ***Deadly Secrets*** ***Violence in the Police Family***

By LONALD D. LOTT

**E**arly morning telephone calls rarely signal good news; this one was no exception. A fellow officer reluctantly disclosed that one of our officers had beaten his girlfriend badly the previous night. Although I sensed the hesitation in his voice as he briefed me on the incident, we both knew we could no longer avoid the inevitable: We would have to arrest the officer.

Arresting one of your own officers is a difficult task, especially when that officer is a friend. And, although I was saddened by the news, I was not surprised. After all, most everyone in the department knew the officer was having

domestic problems. But as I discovered a few days later, the officer's friends also knew that his domestic disputes had turned violent.

### **The Family Enigma**

Through 20 years of police work, three separate law enforcement agencies, and my own failed marriage, I have come to know intimately the innumerable family problems police officers experience. In many ways, police families resemble other families. However, in addition to dealing with the same daily frustrations that confront all families, they must cope with all of the exceptional pressures that accompany

police work. This extraordinary stress makes police officers more prone than average citizens to alcoholism, domestic violence, divorce, and suicide.<sup>1</sup>

### **Clashing Traits**

The very nature of police work teaches officers to control their emotions. They discipline their minds to remain focused in dynamic situations, no matter how bizarre or terrifying. Above all, they must prevail in the face of adversity.

Officers learn to interrogate when suspicious, to intimidate or match aggression when challenged, and to dominate when threatened.

Granted, these actions are necessary for survival and control. However, when combined with the unfavorable conditions of police work—undesirable shifts, rotating work schedules, days off spent in court, exposure to pain and suffering, and violent confrontations—even exceptional police officers can become very poor spouses, parents, and friends.<sup>2</sup>

### Law Enforcement's Response

Sadly, though numerous case studies document the susceptibility of police families to domestic problems, police officers rarely receive advice on avoiding such pitfalls. For the most part, senior officers only admonish rookies to "leave the job at work."

If art imitates life, then the media's portrayal of many police officers as grumpy, quarrelsome, divorced alcoholics is right on target. Indeed, law enforcement seems to have institutionalized marital and family turmoil into the profession.<sup>3</sup>

### Do Unto Others

Traditionally, the police have chosen not to get involved in domestic disturbances in the general population. Unless a family fight turned violent and resulted in severe injuries, the police viewed it as a civil problem inappropriate for police attention. Often, the reluctance of law enforcement to get involved led to temporary, nonlegal remedies, designed to ease the tension between the victim and the abuser.

Responding officers might make one party leave the house for a cool-down period. Or, they might convince one partner to apologize

and promise not to repeat the behavior. As a general rule, though, officers did not take anyone into custody.

Gradually, however, lawsuits and political activism brought about a change in law enforcement's attitude toward domestic violence. Research indicated that arresting batterers reduced the likelihood of repeat violence, compared with police mediation or similar counseling-oriented intervention techniques.<sup>4</sup> In the face of this emerging empirical evidence, laws dealing with family violence took an extreme turnabout.<sup>5</sup>

Most States enacted legislation mandating police action in cases of suspected family violence. Unfortunately, although officers increasingly became involved in private citizens' family disturbances, they were less diligent in policing their own.

### Need for Specific Policy

While most law enforcement administrators claim to comply with domestic violence statutes when dealing with their own officers, they also admit to slippage.<sup>6</sup> Many agencies have no specific policy concerning the issue.

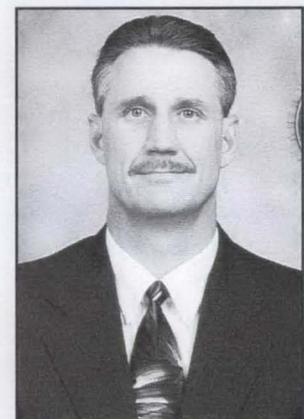
The absence of clear policy does not mean that police managers ignore domestic violence involving their officers. In fact, most agencies conduct both criminal and internal affairs investigations. To reduce possible allegations of a coverup, some agencies request outside assistance for such investigations. Still others require direct supervisory attention any time a law enforcement officer is implicated in a family disturbance.

The problem, then, is one of timing. Police departments properly handle domestic disputes when they become aware of them. Oftentimes,

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***...police officers can no longer remain silent when they believe one of their own is in trouble.***

”



*Lieutenant Lott serves in the Field Operations Division of the Turlock, California, Police Department.*

however, cases remain unreported, even though other officers may have direct knowledge of the incidents. Clearly, police administrators should focus on these cases, from both the standpoint of the officer committing the violence and those officers who know the facts but choose to remain silent.

### Keeping It a Secret

A unique culture exists in law enforcement. The dangerous nature of the job, combined with the authority to use force, creates close bonds among officers.<sup>7</sup> They depend on one another for safety and support. As a result, they develop a code of silence that excludes outsiders. Unfortunately, honoring the code or choosing to mediate their peers' crises themselves only exacerbates the problem.

Further, little research exists in the area of police family violence, even though information does exist on police officers and alcohol abuse, divorce, and suicide. Certainly, all of these indicate serious domestic problems.

The lack of pertinent information on violence in police families merely illustrates officers' reluctance to speak up when confronted with a peer's personal problems. As do members of most groups, law enforcement officers understand that they take a risk when they report another officer's misconduct. Short of actually killing someone, officers may exercise one of three options in enforcing the code: Shunning violators, revealing their inadequacies, or withholding assistance in emergencies. Often, however, whistleblowers' *fear* of reprisal serves as

sufficient punishment. Overall, the evidence does not support most officers' feeling that they literally risk their lives when they turn in their peers.<sup>8</sup>

### Breaking the Code

In a recent study, law enforcement officers attending a training and law enforcement inservice reported the prevalence of violence in their marital relationships. Approximately 40 percent of the officers

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***...police officers of all ranks may be susceptible to the risk of marital violence.***

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surveyed reported at least one episode of physical aggression during a conflict with their spouse or companion in the previous year.<sup>9</sup> These results even may be conservative, given the tendency for individuals to underreport incidents considered socially undesirable.

Although patrol officers reported somewhat higher rates of aggression, the effects of rank were statistically insignificant. In short, police officers of all ranks may be susceptible to the risk of marital violence. Furthermore, officers who reported working excessively long hours and failing to take leave had higher rates of marital aggression, suggesting that increased job

dedication may result in increased marital violence.<sup>10</sup>

Previous attempts by police to mediate family violence or to practice crisis intervention in their own families have proven unsuccessful. This means that police officers can no longer remain silent when they believe one of their own is in trouble; they must turn to others for help.

### The Administrator's Role

In the case of the officer in my own department who had beaten his girlfriend, I questioned whether we, as an organization, had faltered in assisting the officer. Several resources were available for him: A chaplain, a police psychologist, an employee assistance program, and a peer counseling program. Still, early intervention did not occur. The officer's supervisor had spoken to him and directed him to seek professional counseling, but not until he nearly had reached his breaking point.

Yet, even when police supervisors suspect officers of abuse and intervene, officers often minimize the extent of their problem and resist recommendations for treatment. Indeed, voluntary treatment programs in anger control, stress management, or conflict containment techniques usually have poor attendance records. However, because the violence tends to repeat and escalate in severity over time in a substantial number of domestic abuse cases, managers should initiate mandatory treatment programs as soon as possible after they become aware of an episode of physical aggression, even if that occurs after the officer commits a criminal act.<sup>11</sup>

### Early Detection

Early detection can prevent aggressive behavior in police families from escalating to criminal acts. Batterers can and do exhibit warning signs that may spill over into the workplace. Some symptoms of potential abuse include:

- Jealousy
- Controlling behavior
- Quick, romantic involvement
- Unrealistic expectations
- Isolation
- Blaming others for their feelings and/or problems
- Hypersensitivity
- Cruelty to animals or children
- Jekyll and Hyde personality
- History of battering
- Threats of violence
- Breaking or striking objects
- Use of force during an argument.<sup>12</sup>

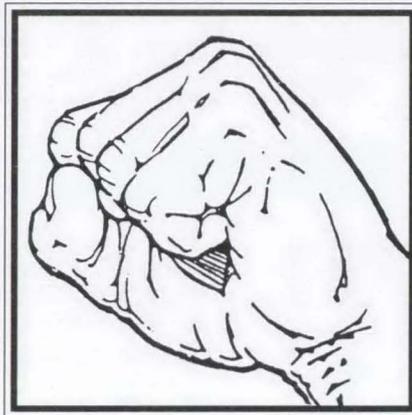
Individuals who physically or emotionally abuse their domestic partners may exhibit some of these behaviors. Three or more indicate a strong potential for physical violence. The last four behaviors almost always are seen only in batterers.

Police managers, supervisors, and coworkers should watch and listen for these indicators. Although they might not be readily observable at work, a spouse, a friend, or a neighbor may have seen or heard inappropriate behavior.

### A Change in Culture

Even if managers initiate prevention and treatment programs,

they may remain ineffectual if not supported by the general law enforcement populace. Peer pressure often compels group members to follow standards of conduct, especially in law enforcement.<sup>13</sup> Accordingly, before any meaningful intervention program can curb violence in police families, members of the law enforcement profession first must acknowledge the existence of the problem. Then, they must work together to assist coworkers through intervention. In short, they must not keep it a secret.



Police managers must establish, maintain, and enforce policies that define acceptable employee conduct and performance. Further, they must educate all employees about the nature of police violence, emphasizing detection and encouraging intervention. Finally, through their words and actions, law enforcement leaders must set an example for their employees to follow.

First-line supervisors represent just that—the first line of defense against an escalation of violence in the police family. Beyond coworkers, first-line supervisors have the most direct contact with employees

and are responsible for monitoring their work performance and adherence to policy and procedure. Therefore, law enforcement supervisors must look for indicators of employee domestic violence and be prepared to guide employees toward an appropriate intervention program.

Violence in police families affects all ranks of law enforcement, both directly and indirectly. Thus, all members of an organization, not just administrators and supervisors, must pay close attention to the signs of domestic problems in all of their coworkers—in recruits, experienced officers, patrol officers, and chiefs alike. Furthermore, all members of the force should take appropriate action at the first indication of improper domestic behavior.

### Conclusion

When law enforcement employees become involved in domestic violence, their agencies suffer the consequences, including decreased morale, inefficiency, and poor judgment among its personnel. Further, due to a perceived lack of credibility or their own biases, officers may suffer from diminished capacity to enforce domestic violence statutes in the community. Finally, agencies face increased risk of adverse publicity.<sup>14</sup>

The cost of failing to intervene in police family violence situations goes far beyond monetary losses. What is the value of a career or a family or the damage of emotional scars left by unchecked family violence?

The costs are too great to allow the enigma of violence in police families to continue. Administrators

must create and maintain an organizational climate that supports and assists affected employees. Finally, all employees must recognize the seriousness of the problem. It cannot be kept secret any longer. ♦

#### Endnotes

<sup>1</sup> D. Jackson, "Police Brutality Often Begins at Home," *Chicago Tribune*, March 29, 1991.

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<sup>6</sup> Informal survey conducted by the author at the FBI National Academy, Quantico, Virginia, April-June 1994.

<sup>7</sup> J. Skolnick and J. Fyfe, *Above the Law* (New York: Free Press, 1993), 92.

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<sup>9</sup> P. Neidig, H. Russell, and A. Seng, "Interspousal Aggression in Law Enforcement Families: A Preliminary Investigation," *Police Studies*, spring 1992, 30-38. In this study, volunteers completed a survey at an inservice training and law enforcement conference in a southwestern State. Respondents included 385 male officers, 40 female officers, and 115 female spouses. The researchers defined violent episodes as "minor" incidents, such as pushing or slapping the spouse or throwing objects, and "severe" violence, such as choking or beating the spouse or brandishing or using a weapon. Respondents reported the frequency of each incident on a scale that ranged from "never" to "more than 20 times a year."

<sup>10</sup> *Ibid.*

<sup>11</sup> P. Neidig, H. Russell, and A. Seng, "Observations and Recommendations Concerning the Prevention and Treatment of Interspousal Aggression in Law Enforcement Families," unpublished paper, June 1994.

<sup>12</sup> Adapted from the Project for Victims of Family Violence, Inc., Fayetteville, Arkansas, by the Haven Women's Center of Stanislaus County, California.

<sup>13</sup> *Supra* note 7, 110.

<sup>14</sup> *Supra* note 9, 37.

## Author Guidelines

### Manuscript Specifications

*Length:* 1,000 to 3,000 words or 7 to 15 pages double-spaced.

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

### Publication

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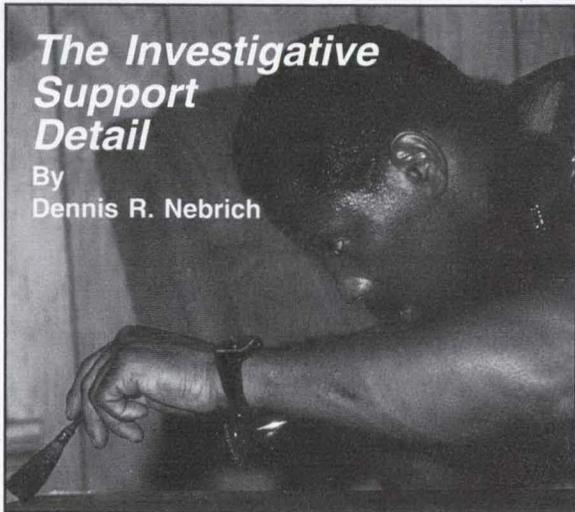
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### *The Investigative Support Detail*

By  
Dennis R. Nebrich



**A**s police departments across America embrace community-oriented policing strategies, they often receive an increased number of reports of criminal activity from citizens. Faced with growing numbers of both personal and property-related crime reports, administrators may be forced to prioritize them. Most departments choose to place a higher priority on crimes against persons and reduce services to victims of property offenses, taking into account solvability factors, as well as public and political pressure.

Since 1983, the Phoenix, Arizona, Police Department has reduced its force of property crime detectives by 32 percent, while the number of property crime reports has increased by 25 percent. In 1983, each of the six precincts in the city included at least two property detective squads; by 1990, this number had been cut in half.

However, instead of allowing reduced resources to force a decline in services, department administrators made three important operational changes to adjust to the more austere fiscal environment and to improve service to the community. These changes consisted of reorganizing the allocation of property crime detectives to make the most of automation, centralizing the work of the six patrol precincts into two "resource bureaus," and creating a special detail to review all property

crime reports and to relieve detectives of as much of the routine paperwork as possible. Together, these measures significantly enhanced the police department's ability to respond to property crimes.

#### **AUTOMATION**

In the early 1990s, the Phoenix Police Department implemented the police automated computer entry (PACE) system. The system allows operators to enter crime reports throughout the city into a computer, which sorts the data automatically by entry codes and forwards it to the appropriate squad.

Taking advantage of this increased automation, the department reorganized its property crime detective squads to make better use of resources. In the past, the appropriate precinct supervisor initially reviewed all property crime reports and then assigned them to a detective according to beat location. By 1990, with fewer property crime detectives in each precinct, beat-oriented assignments no longer made the most efficient use of investigative personnel. Now, a separate three- or four-detective team covers each of the three squad areas in a given precinct. Each squad area covers five beats.

Incoming crime reports are forwarded to the detectives on a rotating basis. Because the rotation of calls is not tied to beat location, this system allows for a more balanced workload among detectives.

#### **CENTRALIZATION**

To enhance efficiency further, the department grouped its six precincts into two large zones, or resource bureaus. Each resource bureau is responsible for three patrol precincts and is headed by a resource commander, who reports to the operational support division commander in charge of all property crime detectives.

The resource bureaus support and respond to the needs of the team detectives in their respective squad areas. Much of this support is provided through the third component of the streamlining process, the investigative support detail.

#### **SPECIALIZED DETAIL**

When the department eliminated the initial supervisory review of property-related crime reports, it

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created a central squad to review and assign all property crime reports. The investigative support detail (ISD) became the principal component of the department's efforts to enhance its response to property-related crimes.

Primarily, the detail reviews daily property crime reports and relieves the team detectives of as much of the routine paperwork as possible. Given the volume of work—each of the two resource bureaus handles more than 50,000 reports a year—the ISD must make the most of limited resources.

### Staffing the ISD

The department integrated civilian personnel and sworn officers to form the detail. Each resource bureau developed an ISD squad consisting of two detectives and three civilian police assistants. During the selection process, administrators paid special attention to the investigative experience and motivation of each applicant.

Each police assistant is assigned primary responsibility for a specific precinct in the resource bureau. The two ISD detectives share the investigative responsibilities of the three patrol precincts and augment the investigative efforts of the team detectives.

### Assigning Cases

ISD personnel print and review daily reports from each precinct. An ISD detective and the police assistant for the respective precincts evaluate each case to gauge its solvability and to assign it to the next team detective in the rotation. The police assistant then enters the priority level and assignment information into the PACE case management system.

Cases in which an arrest already has been made by field officers are prepared for filing and immediately forwarded to the appropriate precinct. Often, these cases, titled "field cleared by arrest," require prompt attention. ISD personnel quickly must provide the county attorney's office with the information necessary

to prevent the cases from being dropped or to avert the release of suspects due to a lack of probable cause.

A detective supervisor reviews all cases assigned to each team detective. The supervisor can either approve further investigation in the case or designate it as a "no contact" report. A supervisor will assign a no contact report only to those cases found to have little or no information upon which a team detective can follow up.

Although these cases generally are assigned, detectives make no contact with the victims unless the victims, or witnesses, provide additional information to the ISD. With more than 140 cases assigned to each team detective at any given time, it is important that detectives focus on cases that have a probability of being solved.

### Checking the Status

By using case management automation, ISD personnel can provide a wide range of information to victims who call to check on the status of their reports. Police assistants can give victims the name of the team detective assigned to the case and provide updated information regarding the investigation.

If a victim has additional information, ISD personnel prepare a supplement and forward the information to the team detective. This eliminates the need for detectives to contact each victim personally.

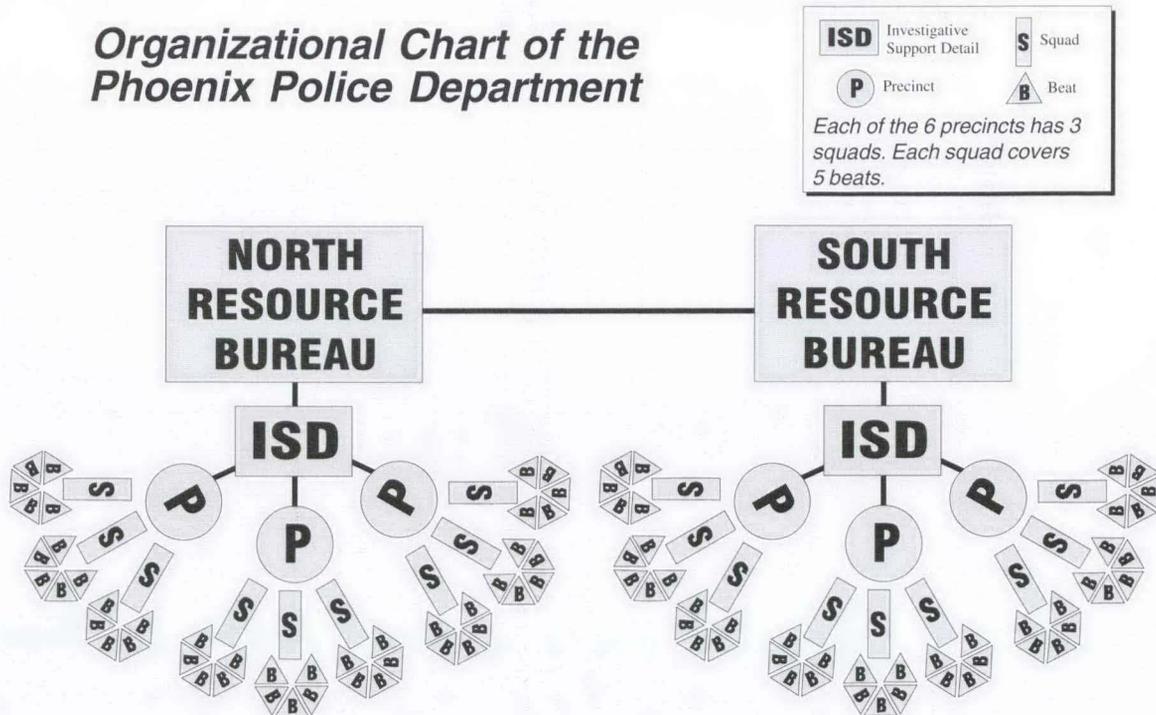
And, because ISD personnel can provide up-to-date information regarding investigations, this also relieves victims of the frustration experienced when they cannot contact their detective to discuss a case.

### Supporting Investigations

Support is literally the middle name of the investigative support detail. In addition to daily case management, ISD personnel conduct criminal history checks, research and analyze crime trends, and enter property crime reports into the National Crime Information

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**While the investigation  
of violent criminal  
activity certainly is  
important, law  
enforcement agencies  
should not neglect  
property-related crime.**  
”

## Organizational Chart of the Phoenix Police Department



Center system. The variety of services performed by the detail allows the ISD to keep pace with the ever-rising number of crime reports.

ISD personnel also belong to the PACE Users Committee, which provides a forum for users to discuss problems and suggest ways to enhance the system. Because sworn and civilian employees from every bureau in the department participate in the committee, ISD personnel can interact with their internal customers to improve and broaden the services that they provide.

### Reducing Low Priority Calls and Improving Customer Service

To reduce the number of low priority cases investigated by team detectives, the department

decided to discontinue taking reports on gasoline thefts from service stations, failure to return video tapes, and the theft of items covered by rent-to-own agreements. Victims of such offenses are encouraged to exhaust all civil actions before filing a police report.

At the same time, the investigative support detail launched programs to educate citizens and businesses about what they can do to prevent thefts. Although the overall number of property crime reports continues to rise, ISD detectives estimate that these efforts have reduced the potential increase by approximately 120 reports a month.<sup>1</sup> But just as important, by establishing ISD as a central contact point for reporting property crimes and for educating the public and businesses on measures to avoid being victimized, the

department actually has improved customer service while redirecting its investigative resources.

### CONCLUSION

Law enforcement agencies are engaged in a profound shift in the way they interact with the citizens whom they serve. For the police, one of the challenges of this change is to adjust to an increased number of reports from the public concerning criminal activity. While property-related offenses might not receive headlines or induce the same fear among the public as violent crimes, they represent a serious offense to victims and a significant problem for law enforcement agencies.

Faced with declining public outlays during the last decade, the Phoenix Police Department was forced to reduce the number of detectives devoted to investigating property crimes. But by streamlining operations

and developing innovative measures to maximize limited resources, the department actually has enhanced its response to such crimes.

While the investigation of violent criminal activity certainly is important, law enforcement agencies should not neglect property-related crime. Through enhanced automation, centralization of resources, and the creation of a specialized support detail, the Phoenix Police Department sends an unmistakable message to victims and potential offenders: We take property crime seriously. ♦

#### Endnote

Internal reports of the Phoenix, Arizona, Police Department, 1994.

*Sergeant Nebrich serves in the North Resource Bureau of the Phoenix, Arizona, Police Department.*

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# Can We Talk?

## Mediation in Juvenile Cases

By PEGGY L. CHOWN, J.D.,  
and JOHN H. PARHAM, PH.D.



In 1974, two youths in Kitchener, Ontario, Canada, went on a crime spree, robbing and vandalizing 21 homes. They paid for their crimes by visiting each of the 21 victims, apologizing for the damage they had caused, and paying restitution.<sup>1</sup> Two decades ago, this approach was considered unorthodox, even for juvenile offenders. Today, it would meet with much resistance from individuals advocating strict penalties for lawbreakers.

Yet, in several countries, including Canada, England, Finland, and even in the United States, rather than going through the traditional juvenile justice system where the basic

choice is adjudicate or ignore, young offenders are being given the opportunity to meet their victims. Together, they discuss what the offender did and why; how the offense affected the victim; and how the offender might make amends. In short, offenders and their victims are engaging in mediation.

### The Juvenile Justice System

Individuals who have experience with the juvenile justice system—including victims, witnesses, and criminal justice professionals—usually voice two major complaints. First, many believe that juveniles often get away with criminal activity. Second, victims often seem to have

no input into delinquency matters. These complaints result in disillusionment and a belief that offenders generally are not held accountable for their actions.

Crowded court calendars often mean that juvenile cases never get adjudicated. Even when adjudication results, young offenders usually receive probation. Thus, juveniles come away with very little understanding of what drove their antisocial behavior in the first place and are even less enlightened about how to change the behavior. More fundamentally, they fail to realize *why* the behavior must change. Once they have met all of the court-imposed requirements—if, in fact, there are

any—juveniles are forgotten, until the next time they commit a crime. In the meantime, juvenile crime rates continue to soar.

Yet, in many jurisdictions, tougher sanctions, resulting from society's return to a punishment mode, have resulted in overcrowded facilities and demands for increased funding for correctional institutions. Still, there simply is no reliable research to support the view that getting tough with offenders reduces juvenile crime.

Lost in the statistics and the politics lies the very purpose of the juvenile justice system and its historical vision, which is that the system should emphasize the "best interests of the child." However, this view fails to recognize that juvenile offenders create victims, and victims suffer pain and loss.

Unfortunately, these victims often feel abandoned by a complicated system that seems far removed from

the ideal of real justice. Indeed, they frequently are left in the dust and debris of a juvenile system that fails to equate accountability and/or responsibility for offenders with the victim's best interests; or worse, the system fails to consider accountability as important as administrative efficiency and fiscal conservatism. In response, the juvenile justice system must identify and use a broad range of dispositional alternatives, including mediation.

### Mediation—Not a New Concept

Mediation programs involving criminal offenders and victims currently exist in many U.S. cities, in Europe, and in Canada. The case outlined earlier represents one of the first examples of juvenile offender-victim mediation. Known as the Kitchener Experiment, or more formally, the Victim/Offender Reconciliation Project (VORP), it began as a cooperative effort between the

local probation office and several civic leaders, together with a judge who was willing to try an unorthodox approach.

A similar program combined the resources of the Exeter and Devon, England, police and the local probation and social services departments to form the Exeter Joint Services Youth Support Team. One of the goals of the Exeter program was to divert juvenile offenders from the existing criminal justice system, and more specifically, from the courts.

Using a "structured system of cautioning"<sup>2</sup> that punished victims according to their offenses, the team developed a reparation plan that first contemplated voluntary monetary restitution to the victim, but subsequently introduced the idea of mediation.<sup>3</sup> The program provided a meaningful opportunity for offenders to make amends and to meet the needs of victims. Unlike the VORP program in Canada, which involved postconviction restitution, the Exeter program required mediation and reparation prior to any court appearances. In general, experts believe that the most effective juvenile offender-victim mediations take place shortly after the offense, while the memories of the parties involved are still fresh.<sup>4</sup>

A burgeoning prison population in the late 1970s prompted Finland to try mediation. Finland's program emphasized the process of mediation and worked to increase "understanding and tolerance among people within the community."<sup>5</sup> Typical agreements involved restitution or in-kind compensation and the offender's written promise not to engage in the offending activity again.



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Eventually, juvenile mediation made its way to the United States. One approach, the Victim Offender Mediation Program, began in Albuquerque, New Mexico, in 1987 as a combined public and private sector venture. Initially, most cases were referred for mediation at the preadjudication, or diversion, stage. Today, the juvenile court also refers cases for mediation at the postadjudication level.<sup>6</sup>

According to a survey conducted by the Prisoners and Community Together Institute of Justice in Valparaiso, Indiana, more than 32 programs in the United States provide some type of victim-offender mediation.<sup>7</sup> Other sources identify many more.<sup>8</sup> One thing is clear, though. Despite the limited amount of information available on mediation programs, their numbers continue to grow.

### Why Mediate?

Some experts suggest that in order to impress upon juvenile offenders that society takes their crimes seriously, all offenders should face criminal court proceedings. However, there simply are not enough courts and prosecutors to pursue that approach. Juvenile courts already are overcrowded, even though they hear only a fraction of all delinquency charges.

Indeed, the number of courts and prosecutors needed to adjudicate every juvenile case would be staggering. According to the FBI's Uniform Crime Reports (UCR), in 1992, juveniles<sup>9</sup> accounted for 16 percent of the total arrests of individuals who ranged in age from 10 to 21, or almost 2 million violations. They accounted for about 29

percent of total index crimes.<sup>10</sup> In other offenses, which include those that many would not consider criminal acts—such as running away, vagrancy, and breaking curfew—juveniles accounted for 13 percent. In many urban areas, juveniles commit nearly one-half of all reported crimes.

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***...there simply is no reliable research to support the view that getting tough with offenders reduces juvenile crime....***

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Even these statistics do not reflect the total number of crimes committed by juveniles, however. UCR records only the number of crimes formally reported and documented. In fact, in many jurisdictions, when juveniles commit crimes, arresting officers commonly handle them without filing reports. Instead, they might take juveniles to their parents, arrange for some form of restitution, or make some other informal arrangement.

Furthermore, many victims of juvenile crime do not report the incident to police because they believe that nothing will be done, or because they choose to handle it alone. Often, then, informal dispositions concerning delinquent activity amount to conciliation or a form of informal mediation, occurring without the sanctions of the judicial system and

outside any organized strategy for alternative dispute resolution.

Jurisdictions with juvenile courts usually handle only serious crimes or repeat offenders. Many jurisdictions do not have separate juvenile courts; often, juvenile cases emanate from probate or domestic relations courts, which do not place much emphasis on juveniles. The result simply is that many thousands of juvenile cases are handled too informally, are diverted to a variety of programs, or are just ignored.

A 1985 study<sup>11</sup> indicated that depending on the crime, juveniles were charged (a process known as petitioning) in 51 to 63 percent of all reported cases involving nonstatus crimes. Of those, only 58 to 66 percent were adjudicated. Replacing the percentages with numbers gives reason for concern. For every 100,000 offenses, at best, only 63,000 will be petitioned, and of those, only 41,580 will be adjudicated. These numbers probably are much worse today, particularly in urban areas, where a deluge of cases overrun inadequate juvenile court systems.

Law enforcement officers around the country can corroborate the seriousness of the problem. Although officers arrest many juveniles for increasingly serious crimes, the offenders seldom, if ever, attend juvenile court.

Society insists that offenders be held responsible for their past acts, but does not necessarily want them to pay a fine or be incarcerated. For some, responsibility may mean saying, “I’m sorry,” and/or undergoing some type of rehabilitation program. But typically, most juvenile offenders go unpunished, and debate continues over the

efficacy of rehabilitation programs now in use.

### A Modest Proposal

Because most juvenile delinquency consists of relatively minor offenses such as property crimes and minor assaults,<sup>12</sup> and because the standard juvenile justice system does a poor job of controlling juvenile crime and addressing victims' needs, it seems reasonable to look to mediation as a workable approach to satisfy the interests of society, the victim, and most important, the young offender. There is merit in having a mediation program as part of every juvenile court and probation system. Rather than simply dismissing a case, the arresting officer or the prosecutor can offer eligible offenders the option of mediation with victims before the case goes to court. All first-time offenders accused of minor offenses can be given the opportunity to participate in victim-offender mediation on a strictly voluntary basis.

Of course, the cooperation of victims remains critical. If a victim adamantly refuses to meet with a juvenile, the case must proceed along the standard adjudication/diversion path. Similarly, if the juvenile will not admit to the offense or otherwise refuses mediation, the case must proceed in the usual way. As a practical point, however, the courts should not dismiss any case unless, of course, the evidence, or lack thereof, indicates dismissal. Juveniles who expect to have their charges dismissed have no incentive to participate in mediation.

Either paid staff or volunteers, with appropriate training, can act as

mediators. Most important, both the victim and the offender must agree on the mediator. Both parties also should agree on the mediation setting, usually a neutral location. Sometimes, particularly if the offense involves property damage, meeting at the scene of the crime might prove beneficial. Having offenders see the damage they have caused could be a powerful educational and rehabilitative or reparative tool.



During mediation, each party must be allowed to speak frankly and fully. When the victim and the offender freely discuss the causes and effects of the offender's act and ways for the offender to make amends to the victim, they may take a major step toward preventing future offenses.

A mutually acceptable restitution or reparations agreement should include a timetable for completion. If offenders fail to fulfill the requirements in the allotted time, their cases are remanded to the adjudication stream, and the judge decides appropriate restitution. Furthermore, offenders who fail to see the mediation process to a mutually acceptable

conclusion also must face the judge. However, when offenders successfully complete mediation and reparations, the court no longer has jurisdiction over them.

### Unlimited Potential

Although many jurisdictions base the decision to adjudicate on whether the offense is a misdemeanor or a felony, mediation has been used successfully for both. Mediation most often involves instances where the primary victim is an individual, rather than the State. Consistently using mediation in these types of cases would make juveniles eligible for mediation in 83 percent of index crimes and 50 percent of the nonindex crimes. In 1.2 million cases, then, mediation could be offered.

Though it seems rather optimistic, this projection actually might be quite conservative. For example, variations of mediation could be used in other crimes, such as drug abuse or drunk driving. In addition, some assaults and even some arsons could be candidates.<sup>13</sup>

Most studies reveal that successful mediation depends on its voluntary nature. In a study of 1,153 mediation cases, 91 percent of the crime victims and 81 percent of the offenders responded that they voluntarily participated in mediation. An agreement was reached in 95 percent of the cases where both the victim and the offender were willing participants.<sup>14</sup> Thus, applying these percentages to the 1.2 million cases eligible for mediation means that more than 900,000 cases might be settled without involving the courts in full adjudication.

Restitution increasingly is becoming a part of settlements in both adjudications and mediations. In several programs, a significantly greater number of mediation participants completed their restitution payments than those in nonmediated groups. Albuquerque had a 93-percent versus 69-percent completion rate, while Minneapolis had a 77-percent versus 55-percent completion rate for mediated and non-mediated groups respectively.<sup>15</sup>

### A Word of Caution

The benefits of mediation must be weighed against its costs. First, referring cases for mediation may not reduce the caseload handled by the traditional juvenile justice system. As more cases enter mediation, cases that have been handled in various other ways will make their way into the juvenile courts.

The financial cost of mediation varies with the structure of mediation schemes. Because the process can be quite time-consuming, costs can be high, especially in jurisdictions where paid staff members handle mediations. Yet, mediators need not be expensive professionals; rather, they should be people who possess sufficient understanding of the procedures and parameters of the program. Overall, mediation stands as a cost-efficient means of disposing of many cases.

### Conclusion

The success of programs in place around the world testifies to the fact that mediation works, at least on a small scale. Now it is time to implement mediation in larger urban areas to see how these programs

function under the different pressures and cultures found there.

Juvenile crime and violence are on the rise, and the traditional juvenile justice system often leaves behind victims dissatisfied with the adjudication process, juveniles who never are held accountable for their behavior, and citizens frustrated with a system that cannot control delinquency. By contrast, successful mediation programs provide offenders and victims with a positive image

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**...it seems reasonable to look to mediation as a workable approach to satisfy the interests of society, the victim, and most important, the young offender.**  
”

of the system. The victim and the offender walk away from the process feeling better than when the normal steps are taken by the juvenile justice system.

Mediation provides increased attention to each young offender, while allowing victims to express their feelings and to understand better why the offense was committed against them. Finally, mediation likely is the most efficient means of achieving restitution and other forms of reparations, not only to the victims but to society as well.

Why mediate? Why not? ♦

### Endnotes

<sup>1</sup>D. Peachey, "The Kitchener Experiment," in *Mediation and Criminal Justice: Victims, Offenders and Community*, ed. M. Wright and B. Galaway (London: Sage, 1989), 16; H. Zehr, ed., *The VORP Book: A Resource of the National Victim Offender Reconciliation Resource Center* (Valparaiso, Indiana: 1982), 22.

<sup>2</sup>J. Veevers, "Pre-Court Diversion for Juvenile Offenders," *Mediation and Criminal Justice: Victims, Offenders and Community*, ed. M. Wright and B. Galaway (London: Sage, 1989), 69.

<sup>3</sup>*Ibid.*, 70.

<sup>4</sup>*Ibid.*, 77.

<sup>5</sup>H. Karkkainen, "Treatment of Delinquent Youth in Finland," *Child Welfare* 68 (1989): 186.

<sup>6</sup>M. Umbreit, "Juvenile Offenders Meet Their Victims: The Impact of Mediation in Albuquerque, New Mexico," *Family and Conciliation Courts Review* 31, (1993): 92.

<sup>7</sup>U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Victim-Offender Mediation in the Juvenile Justice System* (Stillwater, OK: Oklahoma State University 1990), 1.

<sup>8</sup>S. Hughes and A. Schneider, "Victim-Offender Mediation: A Survey of Program Characteristics and Perceptions of Effectiveness," *Crime and Delinquency* 35(2) (1989): 218.

<sup>9</sup>For purposes of this discussion, "juvenile" means anyone under age 18, although the legal definition varies throughout the country.

<sup>10</sup>U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States*, (Washington, DC: U.S. Government Printing Office, 1992), 27. Index crimes as classified by the FBI's Uniform Crime Reports include murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson.

<sup>11</sup>U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Court Statistics 1985* (Pittsburgh: National Center for Juvenile Justice 1988).

<sup>12</sup>U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States*, (Washington, DC: U.S. Government Printing Office, 1992).

<sup>13</sup>M. Umbreit and R. Coates, *Victim Offender Mediation: An Analysis of Programs of Four States of the U.S.* (Minneapolis: Minnesota Citizens' Council on Crime and Justice, 1992), 8.

<sup>14</sup>*Ibid.*, 10-11.

<sup>15</sup>Supra note 13, 20.

## Bulletin Reports

### *Publication for Preschoolers*

A publication released by the National Crime Prevention Council (NCPC) will help police officers who work with preschool children to deliver constructive, prevention-oriented messages that teach personal safety skills. The publication also can be used to help children build a stronger base for resisting pressure to get involved in drugs, violence, and other crimes as they grow up.

*Cops Helping Kids: Teaching Preschoolers Violence Prevention and Safety* provides suggestions for law enforcement officers about the most effective ways to communicate with very young children. It contains reproducible handouts and take-home materials for more than a dozen activities that help officers to introduce themselves, build rapport, and convey prevention messages. The activities address such concerns as bullies, inappropriate touches, medicines versus drugs, and danger from strangers. They also cover what to do if separated from parents, how to call for help in emergencies, and how to avoid danger from guns and other weapons.

*Cops Helping Kids* can be purchased from the NCPC. To obtain a copy, write the NCPC, 1700 K Street, NW, Second Floor, Washington, DC 20006-3817, or call (202) 466-6272.

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

### *Criminal and Juvenile Justice Videotapes*

The National Criminal Justice Reference Service (NCJRS) has available for purchase more than 60 videotapes on topics of interest to the law enforcement profession. Current audiovisual topics include community and crime prevention (11 listings), corrections (7 listings), courts/sentencing (8 listings), drugs (16 listings), juvenile justice (9 listings), law enforcement (8 listings), and victims (3 listings).

To obtain a list of the NCJRS videotape resources, call 1-800-851-3420 and press option 2 to speak with an NCJRS publications specialist. The price of some videotapes includes postage and handling charges.

### *Prison Health Costs*

A publication of the National Institute of Justice, *Managing Prison Health Care and Costs*, examines several approaches developed by prison administrators to manage health care and health care spending for inmates. All examples described in the publication are from State and Federal prisons, but many could be applied to jails as well. The information presented offers insight into what can be done to rein in prison health care costs, which have risen faster than other correctional costs.

To place an order for this publication (NCJ 152768), write the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20849-6000, or call 1-800-851-3420.

## **Corrections Standards Manuals**

The American Correctional Association (ACA) has published four new standards manuals—*Standards for Electronic Monitoring Programs*, *Standards for Adult Community Residential Services* (3d ed.), *Standards for Adult Correctional Boot Camp Programs*, and *Standards for Juvenile Correctional Boot Camp Programs*. Each set of standards addresses the areas of general administration, fiscal management, personnel, training and staff development, case records, information systems and research, building and safety codes, safety and emergency procedures, rules and discipline, reception and orientation, classification, and release.

Orders for any standards manual can be placed by phoning 1-800-825-2665. Those calling from outside the continental United States should dial (301) 206-5059.

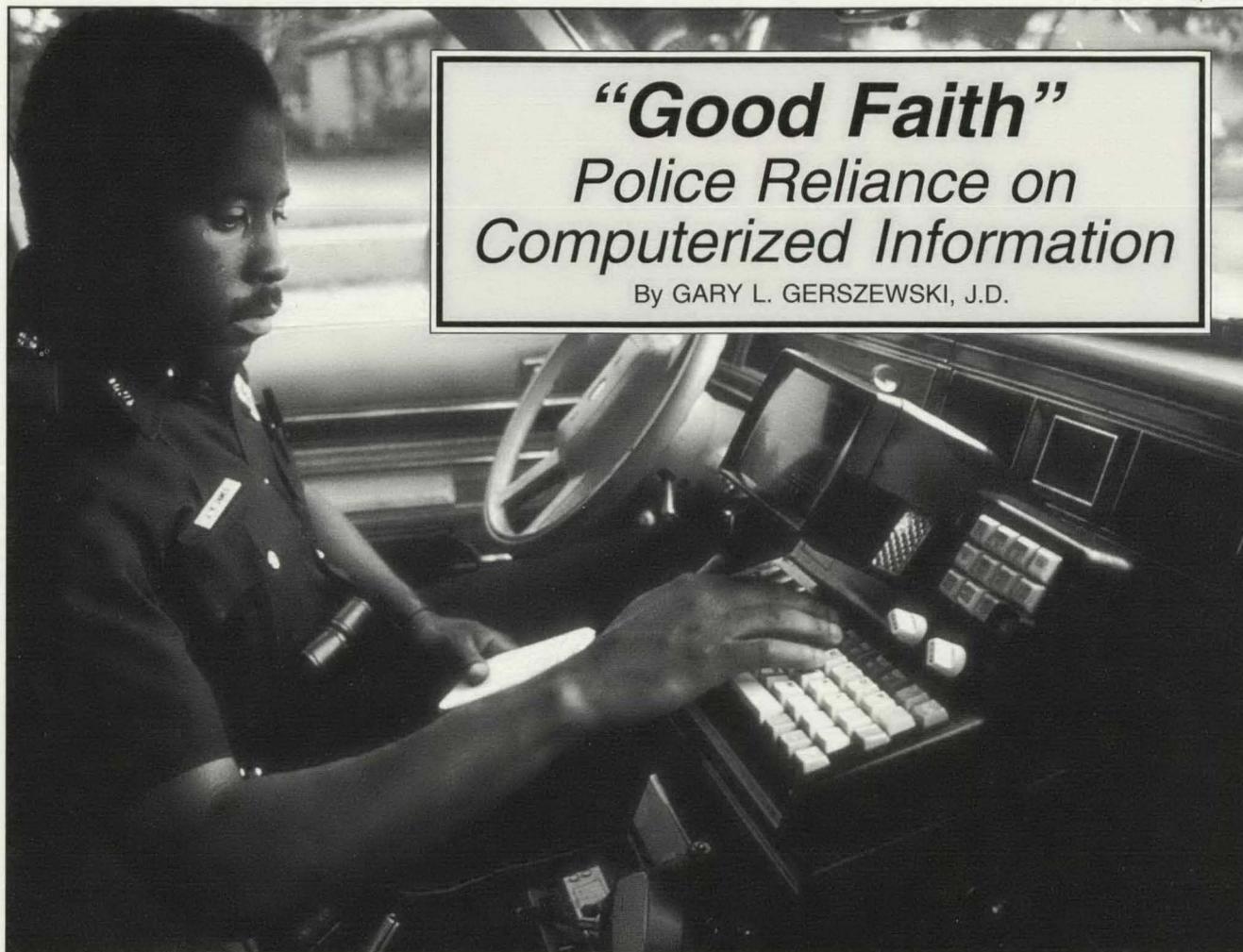
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## **“Good Faith”** *Police Reliance on Computerized Information*

By GARY L. GERSZEWSKI, J.D.

**I**n the early morning hours, on a lonely stretch of highway, a police officer accesses a computerized database to verify information provided by the driver of a vehicle stopped for speeding. Based on the results of this inquiry, the officer arrests the driver because of an outstanding warrant.

Three months earlier, however, a records clerk for the officer's department mistakenly failed to remove from the computer a previous entry that indicated an arrest warrant had been issued for the driver. Will evidence seized by the officer

pursuant to the arrest based on inaccurate computerized information be covered by the “good faith” exception to the exclusionary rule?<sup>1</sup>

During its most recent term, the Supreme Court expanded the scope of the “good faith” exception to the exclusionary rule as it applies to court personnel responsible for maintaining information in a computerized database.<sup>2</sup> Though the decision did not create a “good faith” exception for mistakes made by police personnel with similar responsibilities, language contained in the Court's opinion might be viewed as a possible invitation to one.

This article suggests that the Court's possible extension of a “good faith” exception for police clerical personnel depends on the ability of law enforcement to establish an environment worthy of such an exception. It examines the basis of the “good faith” exception in general<sup>3</sup> and then its application specifically to data entry personnel.

### **ARIZONA V. EVANS**

In January 1991, an officer of the Phoenix Police Department observed Isaac Evans driving the wrong direction on a one-way street.

The officer stopped Evans and asked him to produce his driver's license. Evans responded by advising the officer that his license had been suspended.

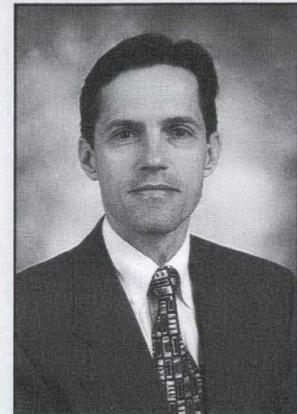
The officer conducted a computerized records search using the computer terminal in his patrol car, which confirmed the suspension. The inquiry also indicated that there was an outstanding misdemeanor arrest warrant for Evans.

Based on this computer-generated information, the officer took Evans into custody and discovered a bag of marijuana while conducting a search incident to the arrest. Subsequently, the court informed the police that the warrant had been quashed 17 days earlier.

Evans moved to suppress the marijuana, arguing that the arrest and subsequent search were illegal because the warrant had been quashed. Evans also argued it would be inappropriate for the court to apply the "good faith" exception in this case because it was police error that invalidated the arrest.

At the suppression hearing, testimony revealed that a rare clerical oversight by a court clerk resulted in the erroneous computer information. Following lower court disagreement as to whether the evidence should be suppressed, the U.S. Supreme Court agreed to consider the case to determine "whether the exclusionary rule requires suppression of evidence seized incident to an arrest resulting from an inaccurate computer record, regardless of whether police personnel or court personnel were responsible for the record's continued presence in the police computer."<sup>4</sup> However, before discussing the Supreme

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...the Supreme Court expanded the scope of the 'good faith' exception...as it applies to court personnel responsible for maintaining information in a computerized database.  
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Special Agent Gerszewski is a legal instructor at the FBI Academy.

Court's decision in *Evans*, the rationale for the exclusionary rule merits a brief review.

## THE EXCLUSIONARY RULE

### Social Costs

The Court's previous ruling in *United States v. Leon*<sup>5</sup> held that the purpose of the exclusionary rule would not be served by excluding evidence seized pursuant to a search warrant issued by a magistrate that subsequently was determined by a reviewing court to be unsupported by probable cause. *Leon* examined the very purpose of the exclusionary rule and balanced its rationale against "[t]he substantial social costs exacted by the exclusionary rule...that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains."<sup>6</sup> The decision evidenced the Court's view that an "unbending application of the exclusionary sanction to enforce the ideals of governmental rectitude would impede unacceptably the truth-finding functions of the judge and jury."<sup>7</sup>

### Purpose

The Court in *Leon* reaffirmed that the exclusionary rule is a judicially created remedy designed to deter police misconduct.<sup>8</sup> Moreover, because the exclusionary rule is a creation of the Court and not specifically mandated by the Constitution, its application in a particular case is an issue separate from whether a constitutional right has been violated by law enforcement.

Accordingly, *Leon* concludes that "[t]he deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent conduct which has deprived the defendant of some right,"<sup>9</sup> and that it was not expected, "and should not be applied, to deter objectively reasonable law enforcement activity."<sup>10</sup> Because the officers' actions in obtaining the search warrant were completely reasonable under the fourth amendment, the Court concluded that there was no inappropriate police conduct that could be deterred. The majority surmised that the only likely deterrent effect of

excluding evidence under the circumstances would be to make officers less willing to do their duty in the future.<sup>11</sup>

### **“Good Faith” Exception**

The Court in *Leon* identified three specific reasons why application of the exclusionary rule against the conduct of judges and magistrates would be inappropriate. First, the exclusionary rule was created to deter police misconduct rather than to sanction the errors of judicial officers. Second, there was no evidence to suggest that judges and magistrates are inclined to ignore or subvert the protections guaranteed by the fourth amendment. Third, and most important, there was no basis for believing that the exclusion of evidence would have a significant deterrent effect on issuing judges or magistrates.<sup>12</sup>

In assessing the third factor, the Court noted that judges and magistrates are not part of the “law enforcement team,”<sup>13</sup> and as such, do not have any stake in the outcome of any particular criminal investigation. Because of this, the threat of exclusion of evidence is unlikely to have any significant deterrent effect upon them.

### **Application of *Leon* to Clerical Personnel**

The Court in *Evans* rejected a “reflexive application of the exclusionary rule,”<sup>14</sup> which would automatically require exclusion in cases of a constitutional violation. Even though the arrest of *Evans* was based on erroneous computer information, the Court ruled that the evidence seized pursuant to his arrest was admissible. The Court

found support in *Leon* for “a categorical exception to the exclusionary rule for clerical errors of court employees”<sup>15</sup> because:

- 1) The exclusionary rule was designed to deter police misconduct, not mistakes by employees of the court
- 2) No evidence was offered to suggest that court employees are inclined to ignore the fourth amendment or that “lawlessness among these actors requires the application of the extreme sanction of exclusion,”<sup>16</sup> and

“

***‘With the benefits of more efficient law enforcement mechanisms comes the burden of corresponding constitutional responsibilities.’***

”

- 3) Court employees are not likely to be affected significantly by the exclusion of evidence in any particular case because they are not members of the law enforcement team.

In its decision, the Court expressly declined to determine whether evidence should be suppressed if police personnel are responsible for the error,<sup>17</sup> even though that decision was not necessary to determine the issue addressed in *Evans*. This action by the

Court may be viewed as a step toward extending the “good faith” exception created in *Evans* to law enforcement personnel. Whether the Court in future decisions creates such an exception may depend on several important considerations.

### **OTHER CONSIDERATIONS**

#### **Computers’ Threat to Personal Liberty**

*Evans* involves much more than simply a new application of the “good faith” exception. It is a case that illustrates the dangers presented by computer technology, which will weigh heavily in any future consideration of a “good faith” exception for police clerical personnel.

While the Court’s decision in *Evans* was based on a 7-2 majority, five Justices expressed concern about the threat to personal liberty posed by computer technology. Their opinions reflect an awareness of the potential problems relating to the automation of law enforcement records. Because these five Justices form a majority of the Court, the potential impact of their views cannot be ignored.

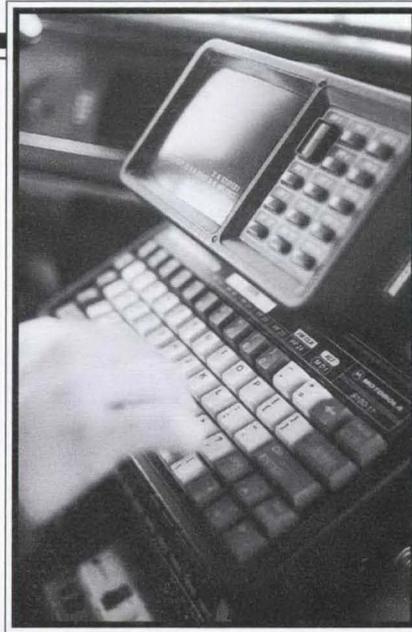
The two dissenting Justices expressed their belief that the Court’s decision ignored “the reality that computer technology has changed the nature of threats to citizen’s privacy over the past half century.”<sup>18</sup> They noted that the FBI’s National Crime Information Center (NCIC) alone contains over 23 million records that are accessible to “approximately 71,000 federal, state and local agencies.”<sup>19</sup> They concluded that given the magnitude of the potential risk associated with the computerization of arrest warrants,

the exclusionary rule was the only mechanism available to curtail the type of error that led to the arrest of Evans.

Three of the Justices who voted with the *majority* in *Evans* acknowledged the validity of the concerns expressed by the dissent but nonetheless sided with the majority because the decision was specifically limited to a court employee's departure from established procedures, which is not the kind of error to which the exclusionary rule should apply.<sup>20</sup> These Justices cautioned, however, that they would not apply the "good faith" exception in situations where officers relied "on a recordkeeping system, their own or some other agency's, that has no mechanism to ensure its accuracy over time and that routinely leads to false arrests."<sup>21</sup> Noting that such unjustified reliance would not constitute objectively reasonable conduct, the Justices commented:

The police, of course, are entitled to enjoy the substantial advantages this technology confers. They may not, however, rely on it blindly. With the benefits of more efficient law enforcement mechanisms comes the burden of corresponding constitutional responsibilities.<sup>22</sup>

Two of those same three Justices joined in a separate concurring opinion to express an even stronger view about the potential problems of computerization. They opined that while the exclusionary rule historically had applied only to the misconduct of police agencies, the expanded reliance on computerized records by every arm of government might someday present them



with the question of whether that rule should be extended to government as a whole and not merely to law enforcement.

The purpose of this expanded application would be to maintain what they described as an "acceptable minimum limit"<sup>23</sup> on the number of false arrests that could result from increased reliance on computer records. While concern about the dangers of computer technology will be an important issue to the Court in considering the expansion, it is not the only problematic issue for law enforcement.

### ***Leon* and Its Application to Police Personnel**

Because *Leon* addresses the actions of non-police personnel, the factors the Court developed were tailored specifically to assess conduct that can be categorically described as non-law enforcement in nature. This framework is not particularly well-suited to the creation of a categorical "good faith" exception for police clerical personnel.

For instance, the first two factors of the "good faith" exception—

the historical purpose of the exclusionary rule and the inclination of a group to ignore or subvert the fourth amendment—serve to identify distinctions between the conduct of law enforcement and non-law enforcement personnel. They do not recognize distinctions between, for instance, street patrol officers and data entry clerks who work for the department. However, the third most important factor identified in *Leon* may enable law enforcement to establish an environment that will satisfy the Court that a "good faith" exception should be made for police clerical personnel, not as a categorical matter but on a case-by-case basis.

### **Systemic Deterrent Effect**

The crucial question the Court must address in considering a "good faith" exception for police is, "Would the likelihood of exclusion have a significant deterrent effect on police personnel responsible for a computer error?" Deterrence is, after all, the ultimate purpose of the exclusionary rule.

In that regard, a police agency might contend that a single clerical employee is so far removed from the law enforcement function that the rule would have no impact on them. However, it is likely that clerical personnel would be presumptively considered by the Court to be part of "the law enforcement team," and as such, would be subject to the "systemic"<sup>24</sup> deterrent effect of the exclusionary rule as it relates to future conduct.<sup>25</sup> With this consideration in mind, the agency might wish to focus its attention on an aspect of the exclusionary rule that, under the *Leon* analysis, seems to have been

discounted, that is, the effect that the exclusionary rule already has had on the policies and practices of law enforcement.

### CREATING A "WORTHY" ENVIRONMENT

Justice Blackmun noted the following in *Leon*:

...the scope of the exclusionary rule is subject to change in light of changing judicial understanding about the effects of the rule outside the confines of the courtroom...it is incumbent on the Nation's law enforcement officers, who must continue to observe the Fourth Amendment in the wake of today's decision, to recognize the double-edged nature of that principle.<sup>26</sup>

Although these comments were intended to serve as a warning to law enforcement, they emphasize Justice Blackmun's view that the purpose of the rule is not to redress individual past wrongs but to affect the future conduct of law enforcement as a community. Considering this view, if a police agency previously had taken reasonable steps to ensure the accuracy of its computerized records based on the threat of exclusion, would the exclusion of evidence be justified if erroneous information was maintained in a particular database as a result of an understandable human error?<sup>27</sup>

It could be argued that there would be no misconduct to be deterred in the future and that the mere threat of exclusion had served the purpose of the exclusionary rule by altering the conduct of the agency before the fact. Under such

circumstances, the Court might recognize that the department's actions in attempting to safeguard its computerized information had created a "worthy" environment for the application of a "good faith" exception. With this in mind, law enforcement must be prepared to demonstrate that the exclusionary rule has retained its vitality by creating an incentive for police managers to examine the manner in which law enforcement collects, maintains, and uses computerized data.

**“...the dangers presented by computer technology...will weigh heavily in any future consideration of a 'good faith' exception for police clerical personnel.”**

### RECOMMENDATIONS

In order to create a worthy environment for an expansion of the "good faith" exception for errors by police personnel in the use of computerized data, law enforcement managers need to follow three important guidelines. They should: 1) Establish appropriate safeguards to ensure the accuracy of the database; 2) continually monitor and assess the accuracy of records obtained from other agencies; and 3) enact policies to verify independently information received as a result of an inquiry by an officer. ♦

### Endnotes

<sup>1</sup> This article addresses the exclusionary rule. It does not consider various issues related to the civil liability of the officer or the department.

<sup>2</sup> *Arizona v. Evans*, 115 S.Ct. 1185 (1995).

<sup>3</sup> For an earlier discussion of the good faith exception to the exclusionary rule, see Robert A. Fiatal, "The Judicial Preference for the Search Warrant," *FBI Law Enforcement Bulletin*, July 1986, pp. 21-30.

<sup>4</sup> *Arizona v. Evans*, *supra* at 1189.

<sup>5</sup> 468 U.S. 897 (1984).

<sup>6</sup> *Id.* at 907.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 919.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 920.

<sup>12</sup> These same factors were applied in *Illinois v. Krull*, 480 U.S. 340 (1987). The Court ruled that the purpose of the exclusionary rule would not be served by excluding evidence that officers had seized pursuant to an Illinois statute, which was later declared to be unconstitutional.

<sup>13</sup> *United States v. Leon*, *supra* at 917.

<sup>14</sup> *Arizona v. Evans*, *supra* at 1192.

<sup>15</sup> *Id.* at 1194.

<sup>16</sup> *Id.* at 1193.

<sup>17</sup> *Id.* at 1194, n.5.

<sup>18</sup> *Id.* at 1197 (Stevens, J., dissenting).

<sup>19</sup> *Id.* at 1199 (Ginsburg, J., dissenting).

<sup>20</sup> *Id.* at 1194 (O'Connor, J., concurring).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1195 (O'Connor, J., concurring).

<sup>23</sup> *Id.* at 1195 (Souter, J., concurring).

<sup>24</sup> *United States v. Leon*, *supra* at 917.

<sup>25</sup> Information known to clerical personnel could well be imputed to the officer on the street as part of the "collective knowledge/collective ignorance" rule. *Ott v. State*, 600 A.2d 111 (Md. 1992) (citing *United States v. Hensley*, 469 U.S. 221 (1985)).

<sup>26</sup> *United States v. Leon*, *supra* at 928 (Blackman, J. concurring).

<sup>27</sup> For example, some courts have recognized that there may be some legitimate basis for a delay in removing warrant information from a computerized database. These courts have noted that it is the burden of the government to establish the reason for the delay. *State v. Moore*, 614 A.2d 1360 (N.J. Super. A.D. 1992); *Ott v. State*, *supra*.

*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.*

## 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. Law Enforcement also wants to recognize their exemplary service to the law enforcement profession.



Special Agent Williams

While off duty, Special Agent Larry Williams of the Georgia Peace Officer Standards and Training Council was talking to an acquaintance outside a convenience store when two masked men approached from behind the building and ordered them inside.

One of the men was armed with a sawed-off shotgun; the other had a 6-inch hunting knife. Once inside the store, Special Agent Williams, who was unarmed, knocked the shotgun out of the gunman's hands. When the man lunged for the weapon, Special Agent Williams struck him. During the confrontation, the gun fired, wounding the man in the face. Special Agent Williams then wrestled the knife away from the other subject, who had been kept at bay by another customer. Special Agent Williams suffered multiple knife wounds during the struggle, but was able to hold the subjects at the scene until deputies from the Fannin County Sheriff's Office and other law enforcement personnel arrived. The wounded subject was transported to a local hospital and later was placed into custody. The other subject was taken into custody at the scene. A third suspect—who sped away from the scene during the encounter—was arrested the following day.



Officer Salava



Officer Schofield

Officers Kathy Salava and Tracey Schofield of the Pinellas Park, Florida, Police Department were investigating a complaint at a local shopping mall when a mall security guard advised them that a man had collapsed in a department store restroom. The officers immediately proceeded to the restroom where they found an unconscious elderly man lying on the floor. The officers saw that the victim was bleeding from the head and that his face was turning blue. They also observed heart tablets on the floor. Officers Schofield and Salava initiated CPR and continued their resuscitation efforts until paramedics arrived and were able to get the victim's heart beating on its own. The quick, decisive actions of Officers Salava and Schofield saved the victim's life.

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ISSN 0014-5688

Washington, D.C. 20535

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## Patch Call



To portray its historic past, the Lancaster, Ohio, Police Department patch features Civil War General William Tecumseh Sherman, who was born in Lancaster in 1820. In the background is Mt. Pleasant, the site of an Indian village, and the Sherman House, one of the town's oldest existing structures and a memorial museum. The two sets of four stars represent Sherman's final military rank.



The patch of the Village of Briarcliff Manor, New York, Police Department features an American Indian, a Revolutionary War soldier, and the Briarcliff Rose, more commonly known as the American Beauty Rose, which is believed to have been first cultivated in the village. The two rivers referenced in the motto are the Hudson and the Pocantico Rivers.