



November 2008
Volume 77
Number 11

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

Robert S. Mueller III
Director

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

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

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

Editor

John E. Ott

Associate Editors

Cynthia L. Lewis

David W. MacWha

Bunny S. Morris

Art Director

Denise Bennett Smith

Assistant Art Director

Stephanie L. Lowe

Staff Assistant

Cindy L. Blackstone

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

E-mail Address

leb@fbiacademy.edu

Cover Photo

© iStockphoto.com

Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.

FBI Law Enforcement Bulletin

Features

Seniors and Law Enforcement

By Stan Van Horn

1

Understanding seniors' influence on communities will enable agencies to provide better service to the growing elderly population.

The FBI Joint Terrorism Task Force Officer

By Brig Barker and Steve Fowler

12

FBI Joint Terrorism Task Force officers play a critical role in the war on terror.

Supreme Court Cases 2007-2008 Term

By the FBI Academy
Legal Instruction Unit

25

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

Departments

7 Focus on the Media

Proactive Media Relations

20 Unusual Weapon

Tool Card/Money Clip

10 Bulletin Reports

Intelligence and
Crime Analysis
Electronic Crime Scene
Investigation
Prison and Jail Inmates

21 Leadership Spotlight

The Puzzle of Leadership

22 Notable Speech

The Community
Policing Umbrella

17 Police Practice

Criminal Justice Students
Helping Agencies

Seniors and Law Enforcement

Providing Assistance to an Aging Population

By STAN VAN HORN



"I didn't get old on purpose; it just happened. If you're lucky, it could happen to you."

—Andy Rooney

People 65 years of age or older make up approximately 12.4 percent (36.6 million) of the U.S. population.² By 2030, this figure will rise to about 20 percent (71.5 million). By 2010, the number of citizens 85 years of age and over will expand to more than 30 percent to 5.8 million. Further, the senior population in several states will substantially outpace the national rate by 2025. They will live in assisted, unassisted, and conventional communities,

as well as shared and supported housing.³ Cities and counties throughout the United States should expect a larger elderly population and the creation of more retirement facilities in their jurisdictions.

Seniors are living much longer than former generations, and their number continues to grow. Although older adults face far lower risks of becoming victims than any other age group, they consider fear of crime as one of their predominant concerns.⁴

Research has revealed that 20 percent of elderly people report being afraid to go out alone in their neighborhood.⁵ Studies related to the phenomenon of the fear of crime show that feelings of vulnerability among seniors typically originate from their perception of safety within their own communities.⁶ Such apprehension can undermine their sense of control and present a powerful disincentive to leave their homes. "Law enforcement must understand that the fear of crime often reduces the quality of life more than the actual crime itself.... Fear of crime in extreme cases can immobilize the elderly who may shut themselves in their residences and shun all outside contacts with people."⁷

Law enforcement professionals must understand the influence these individuals will

exercise in their communities, as well as how they perceive their world. Consequently, leaders will face new challenges; a considerable amount of services and resources will be required. What will agencies need to provide to these communities? What type of training will address these concerns? How will this increased need for services affect the rest of the community? Will the crime rate in a jurisdiction rise or fall as a result of additional retirement communities? What existing or future technologies can departments utilize to provide the best service to senior citizens?

CLAREMONT, CALIFORNIA

As the retired population continues to increase in number and age, law enforcement leaders should listen to and

seriously consider the concerns of older members of their communities. In Claremont, California, a city of approximately 35,000 residents located 35 miles east of Los Angeles, people 65 years of age and older have a significant voice. City agencies recognized the influence, importance, and value of their current and growing retirement communities. To that end, they created liaison positions to Claremont's Committee on Aging, which is comprised of residents from retirement communities (Claremont has 10 within its jurisdiction) and representatives from religious organizations, senior citizen programs, colleges, and various volunteer agencies. The committee addresses the city council on a regular basis. Personnel from the police and human services departments and city council work closely with the committee to assess needs and provide information and assistance. For example, the Claremont Police Department and the Committee on Aging have developed educational programs on personal and Internet safety, fraudulent schemes, and elder abuse prevention, regularly conducting them throughout the community. These relationships and approaches have established a close bond between seniors and law enforcement personnel, creating a greater feeling of safety among elders.



**“
Law enforcement
professionals must
understand the influence
these individuals will
exercise in their
communities....
”**

Captain Van Horn serves with the Claremont, California, Police Department.

Strategic Plan and Vision

As a result of this extensive collaboration between seniors and the Claremont Police Department, the agency created a strategic plan and vision to address the increasing number of older citizens in its jurisdiction: "Through innovative, creative, and service-oriented planning, the department will find the necessary resources to carry out educational and training programs and the technology to increase the level of services to retirement communities while maintaining or increasing the level of services to the remainder of the Claremont community." The organization also established four goals.

- 1) Provide the best possible service to retirement communities in Claremont through the use of communication, education, technology, and crime prevention
- 2) Maintain an equal level of service to the nonretirement community in Claremont
- 3) Work closely with and provide support to allied social services agencies that provide assistance to retirement communities in Claremont
- 4) Identify local, county, state, and federal funding sources to continue providing the highest standard of service to all Claremont citizens, considering the increasing demands for assistance

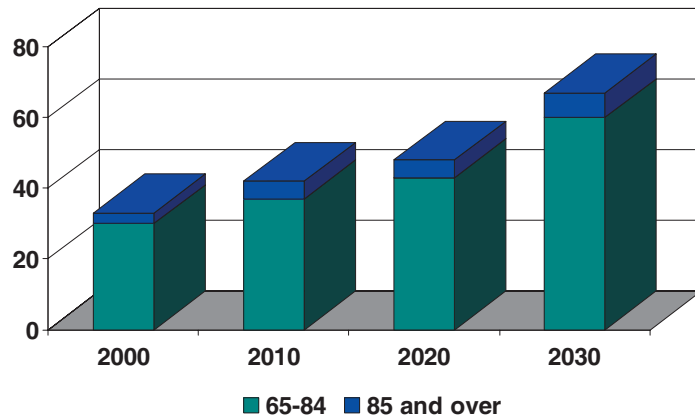
Effective Programs

The Claremont Police Department participates in a variety of programs to accomplish these goals and continues to search for others. For example, agency leaders partnered with the local U.S. Postal Service office to create a successful Senior Watch program. The agency trained delivery personnel to recognize indicators that an elderly individual living alone may be in distress. The department created and distributed a registration form for community seniors to complete that provides emergency response information in the event they need assistance. If delivery personnel observe any signs at the residence, such as mail piling up, lights left on, or doors or windows left open, that might mean the person requires help, they notify the police department,

which, in turn, sends an officer to check on the well-being of the resident. This program effectively increases the safety of seniors without significantly impacting the department's personnel shortages or budget concerns.

The department adopted two relatively new technologies to assist in providing information to seniors regarding crimes that target them or could affect their safety and security. The Neighborhood E-Watch program, launched through Claremont's Senior Computer Club, sends alerts via e-mail when such crimes occur. Additionally, Claremont uses the Code Red Alert, similar to a reverse 911 system. It allows users (e.g., police organizations) to create a list of people within the city based on a variety of demographics. For example, the

The elderly population in the United States will double by 2030



agency created a list of seniors to contact with a prerecorded message when emergency situations particularly sensitive to them occur.

The Claremont Police Department also is exploring further technologies, such as specialized equipment that monitors seniors' movements and could be used to assist in locating individuals with Alzheimer's or dementia who wander from care facilities. Additionally, security companies that supply video-monitoring systems for retirement communities could be connected to the police department, relieving the need for an officer to respond when a video observation could provide a disposition.

The Claremont Police Department has used federal grant money as an effective starting point to establish programs that, consequently, build a greater bond between seniors and the community. To secure funding sources, the agency applied for and received a federal grant based on the National and Community Services Trust Act of 1993. This grant for retired and senior service programs (RSVP) allows the usage of federal funds to engage persons 55 years of age and older in volunteer service to meet critical community needs and afford a high-quality experience for seniors. The funding enabled the department to launch its

Community Patrol program. Members wear distinctive uniforms and provide such services as preventative patrol, house checks for people vacationing out of the area, and live-scan fingerprinting for community members, as well as a variety of other services that assist the police department. The program builds a stronger rapport between seniors and law enforcement personnel and enriches the lives of the volunteers.

“The department adopted two relatively new technologies to assist in providing information to seniors....”

To provide the most effective services to the growing number of senior communities, localities must ensure that representatives from social, economic, educational, and human resources work as a team. Such a concept is similar to the community-oriented policing philosophy of a combination of traditional law enforcement, prevention, problem solving, community engagement, and partnerships to address specific needs within the community.

One example of this concept's effectiveness in Claremont involved vehicles speeding in and around a large senior community. Major north and south streets bordering the area consisted of two lanes in each direction with a posted speed limit of 40 miles per hour. Seniors were afraid to cross the streets, which caused a reduction of mobility throughout the community. Claremont's Committee on Aging shared their concerns with city officials. Based on traffic studies, a review of existing state and local laws, and a series of community meetings, Claremont created a senior zone, lowering the speed limit to 25 miles per hour and reducing the busy north-south streets to one lane in each direction. The resulting calmer traffic created a much safer and less threatening situation for seniors who, once again, cross the streets without fear of injury.

Finally, a Triad program that represents three sectors that partner to keep seniors safe from crime (public safety, criminal justice, and the senior community) has proven effective in many jurisdictions.⁸ It has two objectives: reduce crime against seniors and decrease their unwarranted fear of crime. Once communities form a Triad, they create a SALT (Seniors and Law Enforcement Together) council, a group of representatives that

implements programs and activities to achieve established objectives. SALT councils usually meet monthly, and their primary strategies focus on crime prevention and victim assistance. Triads are tailored to meet the needs of each jurisdiction. They open communication between public safety personnel and the elderly; allow seniors to voice their concerns about crime and safety; provide an avenue for active senior volunteers to help others; reduce senior isolation, a contributing factor to senior victimization; and expand law enforcement personnel capabilities within the community.⁹

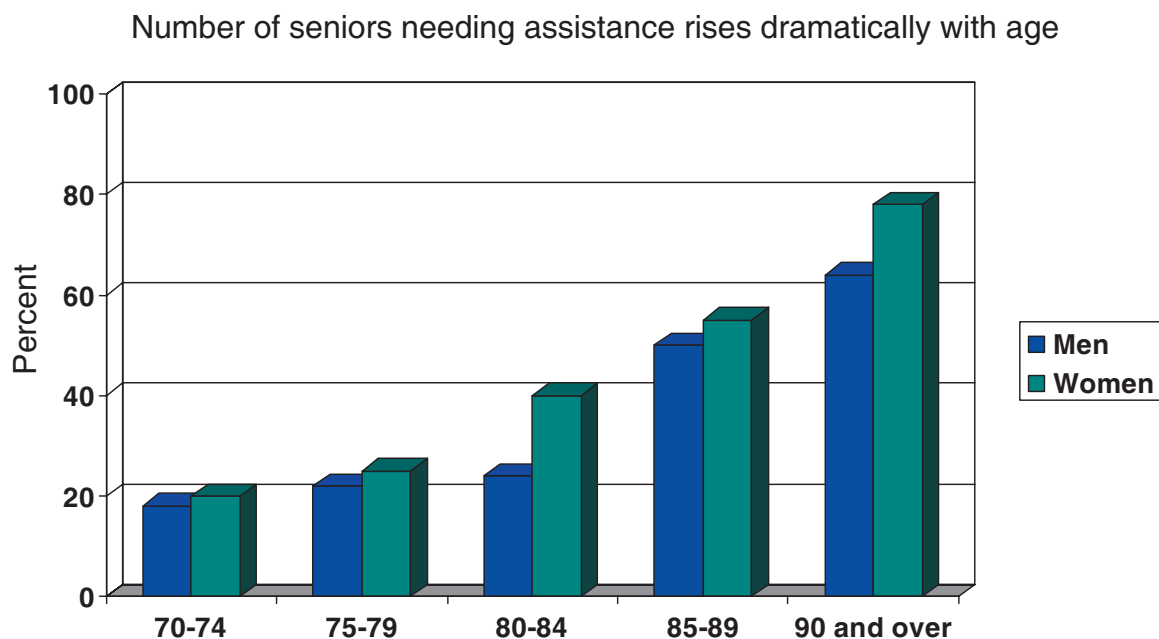
Evaluation

Once departments form relationships with the senior community and work with other local, state, and federal resources, they should evaluate the progress of their efforts. In this regard, agencies should consider several factors.

- Do they have enough money to continue the programs? Are they meeting the goal of containing budget expenses?
- Have they formed new relationships with both public and private service providers to produce enhanced services for seniors?

- Have they developed and used new technologies to ensure the safety and security of seniors?
- Have they furnished new educational and training services to seniors?
- Are local, county, state, and federal officials supporting and encouraging the growth of programs for seniors and maintaining funding for these initiatives?

The failure of any of these steps will jeopardize the success of senior programs. Agencies always should monitor the



programs and evaluate their progress and value.

CONCLUSION

Andrew Carnegie once said, "Teamwork is the ability to work together toward a common vision—the ability to direct individual accomplishments toward organizational objectives. It is the fuel that allows common people to attain uncommon results."¹⁰ Those in the law enforcement profession should maintain close contact with seniors to understand their needs and provide the best possible services. By working with local agencies and meeting with retirement community administrators and senior residents,

leaders will be able to meet the challenges that accompany the increasing number of senior communities. Forming strong coalitions, looking to the future, and thinking ahead will prime agencies for the changes before they occur. Soon, both large and small departments will face an increasing number of persons over the age of 65—they must prepare for their arrival. ♦

Endnotes

¹ Andy Rooney; retrieved from <http://www.cbsnews.com/stories/2004/03/12/60minutes/rooney/main605959.shtml>.

² U.S. Department of Health and Human Services, Administration on Aging, "A Profile of Older Americans," (Washington, DC, U.S. Government Printing Office, 2005).

³ Joint Center for Housing Studies of Harvard University, "Housing America's Seniors," (Cambridge, MA, 2000).

⁴ Melanie ter Brugge, "Fear of Crime and Design: Exploring the Linkages in a Seniors' Housing Complex" (master's thesis, Simon Fraser University, 2006); retrieved from <http://ir.lib.sfu.ca:8080/retrieve/3684/etd2328.pdf>.

⁵ Ibid.

⁶ Ibid.

⁷ M.W. Cross, "Crimes Against the Elderly: Is the Criminal Justice System Doing All We Can?"; retrieved from <http://www.fde.state.fl.us/FCJEI/SLP/SLP%20papers/Cross.pdf>.

⁸ For additional information, visit <http://www.nationaltriad.org>.

⁹ The federal government currently has more than 50 active grants for agencies to provide funding and services to senior citizens. For additional information, visit <http://www.federalgrantswire.com>.

¹⁰ <http://www.heartquotes.net/teamwork-quotes.html>

The *Bulletin's* E-mail Address

© Digital Vision



The *FBI Law Enforcement Bulletin* staff invites you to communicate with us via e-mail. Our Internet address is leb@fbiacademy.edu.

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions about the magazine. Please include your name, title, and agency on all e-mail messages.

Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.



Electronic and print media always seek opportunities to obtain photographs and videos to enhance the stories they produce. Although they often can capture visuals when law enforcement activity occurs, such as at crime scenes, motor vehicle accidents, or press conferences, some situations do not provide opportunities to gather them (e.g., cold cases, internal investigations, closed crime scenes with limited or no access, or incidents involving juveniles or protected classes). Agencies can capitalize on the media's need for photographs and videos by hosting a visual library initiative, a creative way to develop a stronger relationship with these outlets.

The Purpose

A visual library initiative provides the media with opportunities to photograph or videotape an agency's personnel performing a variety of functions at noncritical times. They can procure visuals

to use in publications and during broadcasts when unable to acquire actual ones for a current story.

Law enforcement departments have myriad opportunities to showcase programs, training activities, and various situations for this initiative. The greater the variety of visuals the media obtains, the more likely they will have appropriate pictures for specific stories with limited access. Based on resources, the agency controls the types of photo opportunities during the initiative, but input from local media will ensure the coverage of major areas for the benefit of both parties.

An Effective Plan

Once law enforcement organizations decide to establish this proactive initiative, they must carefully develop and implement a plan to ensure success. First, administrators should designate an individual to manage the program, which will need to be reviewed and updated at least annually.

Generally, the public information officer (PIO), whether a full- or part-time employee, is the appropriate person. Agencies without a PIO should assign the individual who most frequently interacts with the media.

Second, departments should identify media outlets to invite and then send formal invitations, explaining the purpose of the program, along with what items, personnel, and activities they plan to have for guests to photograph or videotape. PIOs aware of past instances where media representatives were unable to obtain pictures should try to include these in their visual library if possible. Attendees should be given time to submit suggestions for additional footage opportunities they anticipate finding valuable. If agencies cannot arrange for such requests, they should explain their inability to fulfill them.

Finally, departments should hold the program on at least two different days and times, ensuring access during both the day and night for outdoor settings. Further, although a variety of locales makes the initial set-up more complicated, it results in more realistic venues.

Valuable Visuals

The types of file footage agencies consider providing the media will vary, but certain basic visuals will benefit most outlets. Simple photographs and videos of the police chief or sheriff are crucial and should include two head shots, one with a somber demeanor. Other photographs of the leader signing paperwork at a desk or conversing with a citizen or officer provide important but nearly impossible footage for the media to procure at a moment's notice. Other simple visuals sometimes hard to obtain include dispatchers talking on the radio and

answering telephones or officers receiving a briefing before the start of their shift.

Patrol cars driven with emergency lights activated usually are fairly easy for the media to acquire and have become a highly recognizable aspect of what many people believe officers do quite often. But, access to an academy driving track can provide video of the intense training that officers and deputies must undergo before getting behind the wheel of an agency vehicle. Such video footage can prove crucial as a supplement to stories after a high-speed pursuit has occurred.

Traffic stops are another notably visible aspect of law enforcement. Agencies can arrange one at a location where drivers typically run red lights. Then, the media can use these photographs to augment future stories about a department's seatbelt usage campaign pedestrian safety, or DUI enforcement efforts.

Depictions of officers performing forensic work, such as fingerprinting and casting shoe impressions, and engaging in tactical operations (e.g., rappelling, conducting defensive tactics drills, or handling arrest scenarios) also offer great visual value. Agencies can permit and easily organize photography of specialized vehicles and equipment, such as armored cars/trucks, ballistic shields, or a cache of weapons, at no cost. The slamming of a jail cell door can produce dramatic footage for news stations to play during reports involving arrests and convictions. Further, doors that have signs with the words *internal affairs*, *interrogation room*, or *juvenile* will help set the scene on stories where no access is possible.

Additional Considerations

The visual library initiative supplements but does not substitute for effective proactive stories

“
Agencies can capitalize on the media's need for photographs and videos by hosting a visual library initiative....
”

with the media. Extending an invitation to the media to conduct stories at regularly scheduled field training exercises, major operations, firearms qualifications, SWAT training, and community events will provide in-depth coverage that educates citizens on important aspects of law enforcement and community policing. Such stories also present opportunities to improve media relations, resulting in minimal additional work for the agency.

Any visual library initiative must include a candid discussion of the media's ethical use of visuals. Media outlets often save photographs and videos shot for a previous story and reuse them, which can result in the pictures not matching the current topic (e.g., an officer is arrested for stealing two bags of marijuana from an evidence locker, but, during the news report, the television station shows a tabletop full of cocaine confiscated in a major drug bust earlier in the year). Moreover, photographs or videos from a visual library or file footage never should identify a specific officer not involved in a case or incident nor should they mislead the public regarding the scope of a situation or operation. All photographs and videos not taken for a specific story should be labeled as such, a common practice at most media outlets.

Conclusion

Although the media certainly prefers to have current and immediate access to law enforcement activities to obtain photographs and videos, this is not always possible. A visual library initiative represents a proactive effort by law enforcement to advance and, in some cases, improve relationships with the media. By developing an effective plan to implement such a program, organizations can help ensure that appropriate visuals will enhance news stories. Law enforcement agencies, media outlets, and the public all can benefit. ♦

Special Agent Boetig is assigned to the FBI's Counterterrorism Division.

Ms. Parrish is an instructor in the Law Enforcement Communication Unit at the FBI Academy.

Wanted: Photographs



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

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

Art Director
*FBI Law Enforcement
Bulletin*, FBI Academy
Law Enforcement
Communication Unit
Hall of Honor
Quantico, VA 22135

Intelligence and Crime Analysis

The Police Foundation and the Office of Community Oriented Policing Services have released a new resource for law enforcement executives and analysts. *Integrated Intelligence and Crime Analysis: Enhanced Information Management for Law Enforcement Leaders* explores the disconnect that often occurs between crime and intelligence analysis. It draws heavily from the practitioners, policy makers, and researchers who participated in a 2-day forum supported by the Office of Community Oriented Policing Services and convened by the Police Foundation. The report examines ways that departments can encourage information sharing between crime analysts and the special units that typically manage criminal intelligence. It offers an integrated analysis model recommended by the forum participants and a list of resources that analysts and executives may find useful in implementing such an approach. The document identifies the key challenges limiting criminal intelligence sharing, the aims of the integrated analysis model, and the way that law enforcement organizations, both large and small, can work toward the new intelligence-led policing paradigm. The publication is available online at <http://www.policefoundation.org/doc/library.html> and at <http://www.cops.usdoj.gov>.

Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition

The National Institute of Justice has released the second edition of its *Electronic Crime Scene Investigation: A Guide for First Responders*. Because computers and other electronic devices are being used increasingly to commit, enable, or support crimes against persons, organizations, or property, this document is intended for first responders who may have the responsibility of protecting, recognizing, collecting, and preserving electronic evidence at the scene. The first chapter profiles the types of electronic devices commonly encountered and includes a general description of each type and the potential evidence that each may harbor. Chapter 2 lists the investigative tools and equipment recommended for collecting, packaging, and transporting electronic evidence. Chapter 3 focuses on securing and evaluating the crime scene and outlines the steps necessary to ensure the safety of all persons while protecting the integrity of all evidence, whether traditional or electronic. Chapter 4 provides guidelines for documenting the scene, whereas chapter 5 covers evidence-collection procedures. Chapter 6 then addresses procedures for packaging, transporting, and storing electronic evidence. The concluding chapter provides guidelines for the forensic examination of electronic evidence by 14 crime categories. An informative glossary completes the guide (NCJ 219941), which can be obtained from the National Criminal Justice Reference Service's Web site at <http://www.ncjrs.org>.

Prison and Jail Inmates

The Bureau of Justice Statistics has released two reports relative to prison and jail inmate populations. *Prison Inmates at Midyear 2007* furnishes data on prisoners under jurisdiction of federal or state correctional authorities on June 30, 2007, collected from the National Prisoner Statistics series. This annual report describes changes in the prison population during the first 6 months of 2007 compared with those from calendar years 2000 through 2006. It details the incarceration rates for prisoners sentenced to more than 1 year by jurisdiction, the number of incarcerated males and females, and the number of prisoners admitted into and released from federal and state jurisdiction. The bulletin also offers data on the total number of inmates held in custody in prisons or jails on June 30, 2007. It provides estimates of the custody population by gender, race, and age and includes the custody incarceration rates for these groups, along with the number of noncitizens and individuals under age 18 held in custody. Highlights revealed that between January and June 2007, the prison population rose 1.6 percent (or 24,919 prisoners) compared with a 2 percent increase during the first 6 months of 2006. The number of prisoners sentenced to more than 1 year increased 1.7 percent between December 31, 2006, and June 30, 2007, or at about the same rate as the total number of prisoners under jurisdiction. Between 2000 and 2007, the number of inmates in custody in prisons or jails rose by 367,200. Male inmates (315,100) accounted for 86 percent and females (52,100) made up the remaining 14 percent.

The companion piece, *Jail Inmates at Midyear 2007*, presents data on numbers of jails and jail inmates at midyear 2007 and analyzes patterns of growth from 2000 through 2007. This report includes data on rated capacity of jails, percent occupied, and amount added. It provides estimates of admissions to jails and details the volume of movement among the jail population. This bulletin includes total numbers for jail inmates by gender, race, and Hispanic origin, as well as counts of jail inmates by conviction and confinement status. Specifically, the total rated capacity of local jails at midyear 2007 reached 813,502 beds, up from an estimated 677,787 beds at midyear 2000. At midyear 2007, jail jurisdictions (173) with an average daily jail population of 1,000 or more inmates accounted for about 6 percent of all jail jurisdictions and about 52 percent of the jail inmate population. At midyear 2007, the 50 largest jail jurisdictions held about 29 percent (or 227,901 inmates) of the nation's jail population. Complete versions of both *Prison Inmates at Midyear 2007* (NCJ 221944) and *Jail Inmates at Midyear 2007* (NCJ 221945) are available at the National Criminal Justice Reference Services's Web site, <http://www.ncjrs.org>.

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

The FBI Joint Terrorism Task Force Officer

By BRIG BARKER, M.J.A., and STEVE FOWLER

© Brian Boetig



During his briefing, the case agent provided details of the operational plan.¹ “We intend to arrest 12 people in this nationwide sweep. Task force members in different time zones will execute warrants simultaneously. The FISA coverage will remain in place until we have all subjects in custody.” He went on to cover individual duty assignments, surveillance operations, and interview and interrogation strategies.

Next, the FBI assistant special agent in charge spoke to the roomful of investigators. “Tomorrow, you will disrupt a major terrorist cell that has homegrown roots. Because of your efforts, citizens across the country will be safer, and people radicalized through recruitment in prisons will think twice before planning attacks in this community. Good luck.”

What may appear to be a standard FBI counterterrorism operation actually is quite

different. The case agent running this complex multiple-subject investigation is a local detective assigned to the FBI Joint Terrorism Task Force (JTTF) who has spent 2 years as a task force officer (TFO). Not only did he manage the 1-year investigation but he now will lead the overall disruption plan that most likely will have implications all over the globe. The detective’s chief attended monthly investigative briefings at the FBI office, and eight other officers

from his department will take part in the planned disruption activities the next day. This is the new counterterrorism world where sharing of information goes deep and often involves significant participation from both state and local agencies.

History of JTTFs

The JTTF concept started in 1979 when the New York City Police Department recognized the value of integrating agencies at multiple levels to defeat an ever-increasing number of bank robberies. From there, JTTFs began playing an important role in thwarting terrorist activities and disrupting potential attacks domestically. From the beginning, the concept has remained simple: to establish a close-knit unit able to handle the numerous complexities inherent in a counterterrorism investigation.² JTTFs continue to mesh the benefits each agency can provide in a conglomerate task force setting.

Today, the JTTF's mission is to "investigate acts of terrorism that affect the U.S., its interests, property and citizens, including those employed by the U.S. and military personnel overseas."³ JTTFs now exist in more than 100 cities nationwide, with one in each of the FBI's 56 field offices. Throughout the country, they consist of over 3,600 personnel, of which approximately 59 percent are special agents, 24

percent are state and local law enforcement officers, and 17 percent are professionals from other government agencies, including the Department of Homeland Security, Transportation Security Administration, and Department of Defense.⁴

State and local agencies have a significant presence on the JTTFs. From the outset, officers use and further develop their knowledge of investigative techniques, report writing, counterterrorism and national security matters, and the federal prosecutorial system. They continue to progress as they practice what they have learned. Some JTTFs assign seasoned FBI special agents to work with new TFOs, overseeing their paperwork and case management. As they gain experience, TFOs work more autonomously,

eventually making strategic counterterrorism case decisions on their own.

Beneficial Partnership

Multiple agencies working together increase dialogue, improve relationships, and maximize information sharing. In fact, a report by the U.S. Department of Justice, Office of the Inspector General, found that 77 percent of JTTF members rated "information sharing at meetings" as good to excellent.⁵ Given a new sense of collaboration, JTTFs can have a substantial impact on the war on terror. They have proven successful in thwarting numerous terrorist plots in the United States and providing an effective venue for local officers to assist in the mission of national security.



Special Agent Barker is assigned to the FBI's Tulsa, Oklahoma, office.



Officer Fowler of the Vallejo, California, Police Department is assigned to the joint terrorism task force of the FBI's Sacramento, California, office.

The FBI benefits from having officers assigned to JTTFs. Its efforts are enhanced by additional personnel with street-level experience and knowledge of local jurisdictions.

Police departments also benefit from having an officer assigned to a JTTF. TFOs often undergo extensive specialized training, gain additional investigative experience, and manage complex JTTF investigations during their tenure. In addition, they have other opportunities for professional development through temporary assignments to FBI Headquarters and overseas duties. Eventually, they gain full clearances and receive U.S. Marshall special deputization.

Typical Day for a TFO

During any day on the job, officers may confront unique challenges. Other times, however, they will face a fairly routine schedule.

8:15 a.m.

The TFO arrives at the FBI office.

9 a.m.

The officer meets with the FBI supervisor regarding a local Qaeda investigation in which the TFO is the primary case agent. The officer advises the supervisor that he and an FBI special agent will interview a potential informant at 1 p.m.

The supervisor advises that he sees other international terrorism cases in the area related to the investigation and that an informant would be helpful in discerning the significance of the connections.

11 a.m.

The TFO reviews evidence from a recent search warrant and discovers a picture of a known affiliate of a terrorist currently in custody in another country. He sets a lead to an FBI office overseas regarding potential travel through Egypt by the subject.

“

The assignment of an officer to the JTTF proves beneficial to both the FBI and the police agency.

”

12:30 p.m.

The officer meets with the assisting FBI special agent in preparation for the 1 p.m. interview. They talk about approaches and follow-up options.

1 p.m.

The TFO and the agent meet with the potential informant. The individual advises them that he is meeting the next day

with three people that he believes are involved in illegal drug activity. They request the person's cooperation, and he agrees.

2:30 p.m.

The officer writes a report on the meeting and attaches appropriate paperwork to request having the informant monitor tomorrow's meeting with the individuals. The TFO contacts his department's dispatch and advises of the anticipated presence of JTTF personnel in the vicinity of the informant's meeting.

3:30 p.m.

The TFO attends a weekly squad meeting wherein personnel provide briefings regarding significant investigations. The officer requests and receives the assistance of three other agents for the source's meeting the next day.

5 p.m.

The officer conducts a drive-by surveillance of a terrorism subject's residence and notes the license plate of a new vehicle parked in the driveway. The TFO provides the information to dispatch.

Of course, TFOs have other taskings, duties, and assistance requirements while on the JTTF. During a crisis situation, they will work long hours, conduct numerous surveillances, and attend many meetings.

To perform these duties, TFOs often receive access to a government-issued vehicle and other necessary equipment.

Departmental Considerations

Because the JTTF TFO represents the department, police agencies should carefully evaluate who they assign. Historically, departments have sent their most competent officers. Doing so greatly enhances the JTTF, as well as the safety of the public. When making this important decision, agencies should consider several questions.

- Does the benefit of the officer's departure from the department outweigh the cost?
- Should the individual serve on a full- or part-time basis? In the latter case, a lack of continuity and "face time" at the JTTF can present problems. Often, the case work moves fast, and those that work together become close-knit.
- Will the officer have any difficulty obtaining a clearance? And, if not, the department probably will benefit from having a member of the command staff secure one.
- How much potential terrorist activity currently takes place in the department's jurisdiction? Sometimes,

the agency learns this only after someone in its command staff has obtained a clearance.

- Is this particular officer the best fit for the assignment?

Overall, these considerations serve only as guidance. The department probably would benefit from an in-person meeting with the local JTTF supervisor. This individual would be the officer's frontline manager and could answer many questions about the JTTF.

Transition to the New Assignment

TFOs often go through phases while adjusting to the new assignment. They will find that international terrorism cases involve paperwork and

report writing similar to that encountered in police work, but will notice a higher volume because of the global nature of the investigative activities and the exponential increase of information sharing within the intelligence community. Nevertheless, officers should successfully transition with some mentoring.

During the transition phase, typically about 1 year, TFOs will undergo background checks (unless already completed) and a counterintelligence-focused polygraph examination. As they become more involved in investigations, they will receive increasingly open access to the FBI facility with appropriately issued security badges, beginning with temporary ones at the



outset. Initially, they may work domestic terrorism cases that do not require the security clearances necessary for international terrorism investigations. Upon receiving their clearances, officers will gain full access, similar to that of any other JTTF agent, to all cases.

Conclusion

The assignment of an officer to the JTTF proves

beneficial to both the FBI and the police agency. The department has a real-time representative involved in the local war on terror, while the FBI has an officer with street-level experience involved in thwarting local terrorist cells within the community. As a result, both parties more effectively can achieve their goal: detecting and disrupting terrorist networks in a given community, thus keeping the citizens they serve safe. ♦

Endnotes

¹ For illustrative purposes and to maintain clarity, the authors employ masculine pronouns in examples throughout the article.

² Robert Martin, "The Joint Terrorism Task Force: A Concept That Works," *FBI Law Enforcement Bulletin*, March 1999, 23-27.

³ http://www.usdoj.gov/usao/nd/homelandsecurity/homelandsec_jtjf.html

⁴ FBI National Academy course, "Counterterrorism Strategies: Understanding and Responding to the Threat."

⁵ <http://www.usdoj.gov/oig/reports/plus/e0507/results.htm>

FBI Law Enforcement Bulletin Author Guidelines

Length: Manuscripts should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced) for feature articles and 1,200 to 2,000 words (5 to 8 pages, double-spaced) for specialized departments, such as Police Practice.

Format: Authors should submit three copies of their articles typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered, along with an electronic version saved on computer disk, or e-mail them.

Criteria: The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. It generally does not publish articles on similar topics within a 12-month period or accept those previously published or currently under consideration by other magazines.

Because it is a government publication, the *Bulletin* cannot accept articles that advertise a product or service. To ensure that their writing style meets the *Bulletin's* requirements, authors should study several issues of the magazine and contact the staff or access <http://www.fbi.gov/publications/leb/leb.htm> for the expanded author guidelines, which contain additional specifications, detailed examples, and effective writing techniques. The *Bulletin* will advise authors of acceptance or rejection but cannot guarantee a publication date for accepted articles, which the staff edits for length, clarity, format, and style.

Submit to: Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Hall of Honor, Quantico, VA 22135; telephone: 703-632-1952; fax: 703-632-1968; e-mail: leb@fbiacademy.edu.



Administrative Solutions Criminal Justice Students Helping Agencies

By Harry R. Hueston, Ph.D.

Law enforcement leaders face various administrative and operational issues on a daily basis, ranging from budget concerns to the use of force, as well as recruitment and retention problems. Frequently, they search for additional resources that cost nothing yet will provide critical solutions to complicated concerns.

Internship programs have proven a valuable tool in many criminal justice agencies.¹ Historically, the topic of students as interns or research assistants has been studied in police literature since the 1970s. Students have worked in a variety of capacities in prisons, courts, law enforcement agencies, and probation departments for the past 30 years.² Research has shown that interns can be a win-win proposition for both the organization and the student when used properly. Agencies gain highly trained researchers at no monetary expense.³ They also have an opportunity to observe the students' skills in several areas, which

can help leaders determine if the interns would fit into the organization. At the same time, students garner real-life work experiences and receive practical training on the daily operations and problems facing a department. Using internship programs as a model, law enforcement leaders can expand interactions with college and university faculty members to consider using students to research solutions to administrative issues that challenge agencies.

Getting Started

The criminal justice program at West Texas A&M University established a student internship program in 1975 that works with all criminal justice agencies in the Texas Panhandle region and beyond. Building on that history of success, a faculty member contacted three local law enforcement leaders to explore the possibility of students assisting them in researching any administrative

concerns.⁴ The chiefs were eager to investigate this type of project to discuss ideas and ask questions about how the students would perform. After determining which project could fit into a 16-week semester, the faculty member and chiefs defined a research agenda for the students. It would begin with identifying the problem, reviewing literature (using a variety of academic and practical applications), developing and testing solutions, locating other departments that have handled similar issues, and presenting the final report of their findings to the appropriate chief.

The chiefs and faculty member met with the students for several class sessions. During the first class, the chiefs presented their topics. Then, the

students identified what project they wanted to research. In the second class, the students met with the chief who had the particular issue they chose. The last meeting involved preparing a project time line and research agendas and covered any departmental administrative paper work (e.g., temporary identification cards and training on equipment).

A total of 15 students participated in the program. Three groups consisted of five senior-level students, and each selected a chairperson following the first meeting with their assigned chief. The chairperson delegated specific tasks, such as gathering published literature and national research on the topic and identifying area departments that had dealt with the same issue, to others in their group.

Survey for Sheriffs and Chiefs

Thank you for taking your time to answer this short survey. The purpose is to ask for your input on evaluating the academic skills of the student involved in a recent project in your department. Feel free to add anything that would help me in preparing our future students for similar projects. Please return the survey in the enclosed self-addressed, stamped envelope. Thank you.

1. Were your students prepared to research, write, and present you with a finished product that meets your expectations? (Please provide some examples.)
2. In your opinion, did the students work as a team? Did they cooperate with you? Were they consistent in meeting your deadlines?
3. What suggestions do you have to improve this project in the future (e.g., longer period of time to conduct the research, more interaction with the class prior to assigning the project, more academic preparation for the type of finished product you expected)?
4. Would you be interested in using criminal justice students in future research projects in your department? If yes, please give me a brief description of these projects so I can begin to prepare my students in future classes.

Thank you for your time and effort in improving our students in our criminal justice program at West Texas A&M University.

Identifying Projects

Chief Bobby Griffin of the Canyon, Texas, Police Department needed to justify the creation of three additional police officer positions. He provided his group of students with direction in designing their research project, including staffing information in relation to population size obtained from FBI data, other jurisdictions in the Texas Panhandle, and the Texas Police Chiefs Association. Using Chief Griffin's suggestions, the students expanded their research into other areas.

Chief Shawn Burns of the West Texas A&M University Police Department wanted to implement a physical fitness program. The chief and a sergeant met with their group to review the findings from a nationally renowned fitness institute. The sergeant worked with the students in developing their research agenda, including finding police departments locally, statewide, and nationally that recently implemented physical fitness requirements. In addition, the students broadened their research to include human resource concerns under the Texas A&M University system and labor law and medical issues.

Chief Deputy Dave Thurman of the Randall County, Texas, Sheriff's Office needed to determine whether to keep a portable radar trailer. He decided that the students needed to physically run radar in several locations to assess the effectiveness of the trailer. After the students received the necessary training to properly handle a portable radar gun, they created a schedule that covered several locations during various times of the day and week to ensure the monitoring of traffic. The students also researched other law enforcement operations throughout the nation that use portable radar trailers.

Each chief regularly contacted their students over the next 5 weeks to ensure that they were meeting expectations, as well as the deadline, for their class research. The groups completed their final project the last week of the semester and met with their assigned chief to formally present their findings and recommendations.

Analyzing Results

Once the students completed their project, the faculty member requested that each chief grade their students on the final work. In addition, each chief received a survey to determine the project's success. Each responded and stated that their students were prepared, focused, and asked insightful questions. The chiefs thought the students worked well as a research team and cooperated with them, as well as members of their departments. While the

overall results were positive, the chiefs mentioned some particular observations. Two responded that the students exceeded expectations. In one group, the chief wanted students to better explain their conclusions. All of the chiefs thought highly of this initiative and favored incorporating other topics for future research. Concerns will be addressed in the university's criminal justice program prior to starting another project.

The students also received a survey to rate this type of effort. Each stated that they learned a great deal, and most felt that their classes had prepared them for this type of undertaking. However, a few expressed their interest in having more statistical skills when analyzing their research data. All of the students indicated their willingness to do another project and believed that this was one of the best classes they had experienced at West Texas A&M University.

“

**Research has
shown that interns
can be a win-win
proposition....**

”

Conclusion

Law enforcement administrators face various challenging issues while leading their organizations. Solutions often require many hours of researching, writing, and validating. The potential use of educationally qualified students from a local college or university may provide leaders with another resource to assist them in addressing complex issues. Students who assisted chiefs in the Canyon, Texas, Police Department; the West Texas A&M University Police Department; and the Randall County, Texas, Sheriff's Office provided valuable information upon which critical decisions have been made in law enforcement operations. This project also gave the departments an opportunity to recruit officers. Perhaps, other leaders will find this type of resource helpful as well.⁵ ♦

Endnotes

¹ For additional information, see Charles N. Wilson, "New Vision: Criminal Justice Education for Students," *FBI Law Enforcement Bulletin*, March 1997, 20-24.

² Eric Assur, Celia Goldger, and Lucinda Ross, "Student Interns: Are They Worth the Bothers?" *Federal Probation*, June 1999, 59-62.

³ Kevin Dale, "College Internship Program," *FBI Law Enforcement Bulletin*, September 1996, 21-25.

⁴ The law enforcement administrators identified in this article were two police chiefs and a sheriff's deputy chief; therefore, the author refers to them as *chief* throughout the article for illustrative purposes.

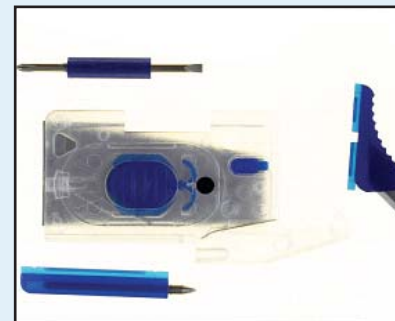
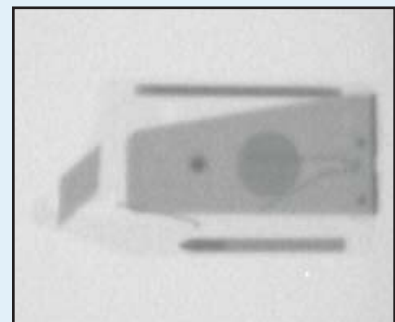
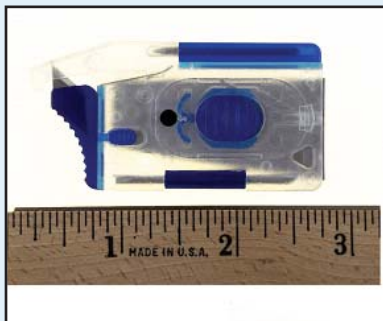
⁵ For more information on students used in other projects, see Harry Hueston, "A Collaboration That Worked—Cops/Students," *Los Angeles Community Policing*, April 2004, 1-5.

Dr. Hueston, a retired police chief, is an associate professor of criminal justice at West Texas A&M University in Canyon.

Unusual Weapon

Tool Card/Money Clip

These photos depict what appears to be a money clip. Actually, it stores a blade, two screwdrivers, and a flashlight. Law enforcement officers should be aware of the possible threat of this object.



The Puzzle of Leadership

The people's capacity to achieve is determined by their leader's ability to empower.

—John C. Maxwell

During my career, in various places and times, I have heard officers say that their department's morale is low or that their agency is having significant problems with morale. These comments always trigger in me the rhetorical question, Is morale the responsibility of the entire department, or is morale an individual issue?

Morale may be defined as “the emotional or mental condition of a person or group with respect to confidence, cheerfulness, discipline, and willingness to perform assigned tasks.”¹ While the organization's top executives do have a significant role in establishing and sustaining positive morale, I believe every member of the agency has the responsibility of morale. Many times we want to blame others for our discontent. Certainly, it is easier to blame others than to deal with our own issues.

Yet, when we fail to deal with our own issues, they are exacerbated over time and can lead to serious, chaotic, or disastrous events. Let us not forget that morale has the root word *moral*. Morality relates to the means in which individuals deal with the good and bad of their own character or ethical behavior.

Leaders are responsible for morale, and every member of your agency has the potential

to be a leader. Within the community, your officers are a representation or extension of the sheriff or chief. How is their morale? Do your officers portray a positive or negative image of your department as they interact with the community and each other?

Leaders realize that successfully building a puzzle requires completing it one piece at a time. We often look at a unit or division as a whole when, in reality, we should evalu-

ate it piece by piece, person by person. As leaders, we always should look for the opportunity to be a mentor or coach. We should spend time with officers who truly are teachable and willing to make a difference. We should not hesitate to deal convincingly with problem officers. However, leaders also should take the time to look for opportunities to teach or create a positive influence in less

than stellar performers. If leaders coach and mentor effectively, they can make a positive difference with their officers, agencies, and communities.

¹ *The American Heritage College Dictionary*, 3rd ed., s.v. “morale.”

Captain Allen Brandon of the York County, South Carolina, Sheriff's Office prepared this Leadership Spotlight.



©Shutterstock.com

Notable Speech

The Community Policing Umbrella

By Carl R. Peed

If you conduct a search about Sir Robert Peel on the Internet, you will learn that he was a 19th century British prime minister considered to be the father of modern policing. While some may not know his name, many in law enforcement are familiar with his words. “The police are the public and the public are the police; the police are only members of the public who are paid to give full-time attention to duties, which are incumbent on every citizen in the interests of community welfare and existence.”

In Peel’s principles, we find the foundation of modern-day community policing. In his timeless writing, we find the essence of what it means to police a democratic society. Although Peel lived more than a century ago, his words continue to challenge all of us in law enforcement to keep a laser focus on our relationship with the citizens we serve every day. At the COPS (Community Oriented Policing Services) office and in thousands of community policing agencies across the country, we use the word *partnership* to describe this indispensable relationship between the community and law enforcement. Partnership is central to modern-day policing because it recognizes a basic truth—law enforcement cannot do it alone.

The safety of our streets, schools, neighborhoods, and nation depends upon the actions of many who, as Peel wrote, “are paid to give full-time attention to these duties, as well as those who simply want to be safe and free from fear.” Partnerships help us build trust with the community and each other—federal, state, local, and tribal law enforcement agencies. While partnerships are vital to policing, they must be purposeful and directed toward improving quality of life. This leads to another essential element of community policing, problem solving.

Problem solving seeks to reduce problems by addressing their immediate underlying causes. Much information on the nature of those causes can be gathered through the use of problem-solving models, such as the SARA process, which includes scanning, analysis, response, and assessment. Many of these key tools also can be used in the criminal intelligence arena. Problem solving, like partnerships, can guide intelligence-led strategies by providing a framework for gathering, assessing, and analyzing data.

This brings me to the final aspect of community policing, organizational transformation. Leadership and organizational structures must support and reward innovations in community partnership and problem solving. Organizational changes should include aligning recruitment, training, performance evaluation, and technology to support the fundamental principles of community policing. If community policing is truly going to be institutionalized and embraced, we must do more than just say that we are proactively serving

Director Peed heads the U.S. Department of Justice’s Office of Community Oriented Policing Services. He delivered this speech during opening remarks at the National Intelligence Sharing Summit in Washington, D.C., on November 27, 2007.



the community. We must build organizations that do it. Partnership and problem solving will not occur spontaneously within our agencies. These two vital aspects of modern-day policing will only happen if we nurture them in our departments and officers.

There are many strategies and tactics to address threats to public safety: broken windows, zero tolerance, Compstat, hot spots, situational crime prevention, and third-party and intelligence-led policing. Each of these tools is viable and has an appropriate place in our arsenal against crime and terror.

Intelligence-led policing (ILP), in particular, is a useful strategy that can help law enforcement agencies better prepare for and prevent serious violent crime and acts of terror. ILP can take advantage of the partnerships built through community policing by leveraging the trust between citizens and law enforcement. It also can be informed by the problem-solving processes and benefit from the organizational transformation inherent in community policing. Put simply, ILP is not just consistent with community policing but it fits well under the community policing umbrella. As Dr. David Carter writes in *Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies*, “ILP is a new dimension of community policing, building on tactics and methodologies developed during years of community policing experimentation.”

After many years in law enforcement and nearly 7 as the director of COPS, I have yet to see a successful and sustainable crime-reduction strategy consistent with our democratic values that fails to build partnerships with citizens and

embrace problem-solving principles. Make no mistake—policing becomes less effective and more likely to drive a wedge between law enforcement and the public when conducted outside a comprehensive community policing framework.

Community partnership and problem solving in policing are not relics of the Victorian age or a bygone era. They were not buried with Peel when he died in 1850. They are as modern as the war on terror and as current as today’s headlines. And, they are annually recognized through various recognitions and awards.

Staff Sergeant Walter Kreitlow, a Florida law enforcement investigator in his civilian life, wrote, “Our community policing goal here is to establish a better relationship between the community and the police, so the community isn’t afraid to go to

the police to report crime.” Sergeant Kreitlow has served in Iraq, training members of the Iraqi police force.

Another statement of community policing principles comes from Lieutenant General David Barno, the former commander of combined forces in Afghanistan. “Our personnel are assigned to and responsible for specific geographic areas and they continually operate in those areas. This allows them to develop and maintain relationships

with local leaders and the local community. As a result, our people are gaining a greater knowledge and understanding of those areas, and they get much better information on how the bad guys operate.”

While the thoughts of Sir Robert Peel once were imported to the United States from England, it is quite clear from these quotes that the United States now exports community policing to those

“
**These two vital
aspects of
modern-day policing
will only happen
if we nurture them
in our departments
and officers.**
”

parts of the world desperate for democracy and the rule of law. Community policing is equally vital in long-established democracies now struggling with the terrorist threat. After visiting the tragic scene of the 2005 London bombings, the BBC quoted Los Angeles, California, Police Department Chief Bill Bratton, "In dealing with serious international crime, you need to focus on the community. If police do not have relationships with the communities in a city as ethnically diverse as London, the game is over; we always will be playing catch-up." Commenting on the same terror attack, Sir Ian Blair, the commissioner of Britain's Metropolitan Police, said, "It is not the police; it is not the intelligence services that will defeat terrorism. It is communities that will defeat terrorism." Confronting homegrown extremism in Canada, Royal Canadian Mounted Police Assistant Commissioner Mike McDonnell stated, "Like other types of law enforcement, fighting...radicalization must involve community policing."

These quotes illustrate that around the world, law enforcement is recognizing the importance of community policing. I began this speech with Peel's words, and I would like to close with his words—words that should echo in our minds for as long as we do this kind of work. "The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it."

In fighting crime and securing our homeland, many approaches will be tried; many strategies and solutions will be offered. That is a good thing because we must remain vigilant and always resist the complacency that shadows any long struggle. Nevertheless, as we constantly seek to make our communities safer and more secure, we must hold on to those fundamentals that we know work. We must maintain an unflinching concentration on the immediate causes of the problems we seek to solve, partner with those who can best help us solve them, and align our organizations to better combat those things that most threaten the domestic tranquility of our nation. ♦

Wanted: Notable Speeches

The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered. An electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

Editor, *FBI Law
Enforcement Bulletin*
FBI Academy
Law Enforcement
Communication Unit
Hall of Honor
Quantico, VA 22135
telephone: 703-632-1952,
e-mail: leb@fbiacademy.edu



In the most recent term, the U.S. Supreme Court decided several cases of interest to law enforcement. One case addressed the applicability of the exclusionary rule to the seizure of evidence during a search incident to a constitutionally sound arrest but one which violated a state statute. Another case addressed the timing of the attachment of the Sixth Amendment right to counsel. Also of interest to the law enforcement community is the Supreme Court's decision interpreting the Second Amendment. This article includes a synopsis of these cases in

addition to a summary of cases of interest to law enforcement that the Supreme Court has agreed to consider next term.



© Comstock Images

DECIDED CASES

Virginia v. Moore, 128 S. Ct. 1598 (2008)

This case considered whether a police officer violates the Fourth Amendment by making an arrest based on probable cause but prohibited by state law and, given the status of the arrest in light of state law, whether evidence seized incident to that arrest should be suppressed. Two police officers stopped a vehicle driven by David Moore, who they believed was driving with a suspended license. After determining that Moore's license was,

in fact, suspended, the officers arrested Moore for the misdemeanor offense. The officers searched Moore incident to his arrest and discovered 16 grams of cocaine and cash on his person. Moore was convicted of possessing cocaine with intent to distribute. He appealed his conviction, arguing that because under the Virginia statute he should have received a summons as opposed to being placed into custody, the search conducted by the officers incident to his arrest was unlawful and the evidence should have been suppressed. The state court disagreed with Moore, and he was convicted.¹ However, on appeal, the Virginia Supreme Court agreed with Moore and concluded that the search violated the Fourth Amendment.² The U.S. Supreme Court agreed to hear the case.³

The U.S. Supreme Court unanimously overturned the Virginia Supreme Court, holding that as the officers had probable cause to arrest Moore, the search incident to arrest also was lawful.⁴ The Supreme Court viewed the state statute calling for the issuance of citations for minor offenses as opposed to a full-blown arrest as a function of state law. The Court reiterated that an arrest, even for a minor crime, is reasonable within the meaning of the Fourth Amendment when the officer has probable cause to

believe a crime has been committed in the officer's presence. The Supreme Court stated,

We reaffirm against a novel challenge what we have signaled for more than half a century. When officers have probable cause to believe that a person has committed a crime in their presence, the Fourth Amendment permits them to make an arrest, and to search the suspect in order to safeguard evidence and ensure their own safety.⁵

The fact that the state of Virginia opted to exclude the offense at issue from the category of arrestable offenses within the Virginia criminal code did not render the officers' actions unreasonable under the Fourth Amendment. As stated by the Supreme Court, "The arrest rules that the officers violated were those of state law alone, and as we have just concluded, it is not the province of the Fourth Amendment to enforce state law."⁶



© Comstock Images

Rothgery v. Gillespie County, Texas, 128 S. Ct. 2578 (2008)

In *Rothgery*, the Supreme Court reaffirmed what it previously held and what an "overwhelming majority of American jurisdictions understand in practice: a criminal defendant's initial appearance before a judicial officer, where he learns of the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."⁷

Officers arrested Rothgery without a warrant, charging him with being a felon in possession of a firearm. In fact, Rothgery never had been a felon. However, when making the arrest, the arresting officer had relied on an erroneous record indicating that Rothgery was a convicted felon. Promptly after the arrest and pursuant to state law, the officers brought Rothgery before a magistrate judge. The judge reviewed the arresting officer's probable cause statement and determined that probable cause existed for the warrantless arrest. The magistrate then informed Rothgery of the charges against him, and Rothgery requested the appointment of counsel. The magistrate informed Rothgery that the appointment of counsel would delay his bail determination and, therefore, his release from jail. Rothgery then waived his

right to counsel, bail was set, and Rothgery was released. Prosecutors were not aware of Rothgery's arrest nor were they present during the appearance before the magistrate.

Thereafter, Rothgery made several unsuccessful requests for court-appointed counsel. Six months after his arrest and initial appearance, Rothgery was indicted for possession of a firearm by a felon and rearrested with an increase in bail, which he was unable to post. Rothgery remained in jail for 3 weeks, during which time he was finally appointed an attorney. The attorney was able to confirm that Rothgery was not a convicted felon, and the charges were dismissed.

Rothgery then brought suit under Title 42, U.S. Code, section 1983, alleging his civil rights were violated when he was denied his Sixth Amendment right to counsel following his initial appearance. The Fifth Circuit Court of Appeals affirmed the lower court's decision to dismiss the suit, stating that the Sixth Amendment right to counsel did not attach at the initial appearance because the prosecutors were not aware of or involved in either the arrest or the appearance before the judge.⁸

The U.S. Supreme Court vacated the judgment of the lower federal court and remanded the case for further proceedings.⁹

The Court, referring to previous rulings, stated, "The right to counsel guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which the defendant is told of the formal accusations against him and restrictions are imposed on his liberty."¹⁰ More specifically, the Court expressly stated that attachment of the Sixth Amendment right to counsel does not hinge on whether a prosecutor is aware of or involved in the initial proceeding.



© Comstock Images

***District of Columbia v. Heller,*
128 S. Ct. 2783 (2008)**

In 1975, the District of Columbia passed the Firearms Control Regulation Act. This statute generally prohibited the possession of handguns within Washington, D.C. According to the act, the registration of a handgun was prohibited, and it was a crime to carry an unregistered handgun within the

District of Columbia.¹¹ In addition, the District of Columbia law required residents to keep any lawfully owned firearms unloaded and disassembled or secured by a trigger-lock device.¹²

Dick Heller was a special police officer authorized to carry a handgun while on duty within the District of Columbia. Heller also was a resident of the District of Columbia. Heller attempted to register a personally-owned handgun that he sought to keep at this home. Heller's request for a handgun permit was denied by District officials. After his request was denied, Heller filed suit in the U.S. District Court for the District of Columbia.¹³

In district court, Heller claimed that the District laws barring the registration and possession of handguns within a person's home violated the Second Amendment. Heller claimed that the Second Amendment protected an individual right to bear arms. The district court ruled against Heller, stating that it "reject[ed] that there is an individual right to bear arms separate and apart from service in the Militia."¹⁴ Because Heller did not claim that he was a member of any militia, the court ruled that Heller had no claim under the Second Amendment and dismissed the suit.¹⁵ Heller appealed to the Court of Appeals

for the District of Columbia Circuit.

The court of appeals ruled in favor of Heller.¹⁶ The court held that an individual right to bear arms was protected by the Second Amendment and the District's ban on handguns and the requirement that firearms within the home be maintained in a nonfunctional manner violated the Second Amendment.¹⁷ The District of Columbia appealed this decision to the Supreme Court. The Supreme Court agreed to decide whether certain provisions of the District's law "violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes."¹⁸ This case marked the first occasion since 1939 in which the Supreme

Court addressed the Second Amendment, and it presented the Supreme Court with the first opportunity to address the full import of the Second Amendment since it was ratified in 1791.

The plain meaning of the text of the Second Amendment was at the heart of the Supreme Court's analysis. The Second Amendment to the U.S. Constitution provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

In analyzing the text of the Second Amendment, the Supreme Court noted that its language is divided between a prefatory clause and an operative clause. According to the

Court, the prefatory clause does not limit the operative clause, it only "announces a purpose."¹⁹ The Court noted that the portion of the operative clause that proclaims "the right of the people" appears three times within the Bill of Rights.²⁰ According to the Court, in each instance where the phrase occurs, it "unambiguously refer[s] to individual rights, not 'collective' rights, or rights that may be exercised only through participation in some corporate body."²¹

The Court then addressed the phrase "keep and bear Arms." The Court explored the plain meaning of the words within this phrase and concluded that "the most natural reading of 'keep Arms' in the Second Amendment is to have weapons."²² By considering its plain meaning, the Court concluded that the Second Amendment secures an individual's right to possess a weapon without having to demonstrate that it is necessary to preserve the force of a militia.

The prefatory clause to the Second Amendment reads, "A well regulated Militia, being necessary to the security of a free state...." The Court considered this clause in light of the operative clause to determine whether the two fit together to create an individual right to bear arms. According to the Court, the two clauses are clearly



linked and consistent with one another when the purpose of the Second Amendment, as set out in the prefatory clause, is understood. According to the Court, the framers of the Constitution and the Bill of Rights believed that a militia was necessary to the preservation of a free state. Second, it was believed that securing an individual right to bear arms was necessary to preserving the force of a militia. As stated by the Court,

[H]istory showed that the way tyrants had eliminated a militia...was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents.²³

The Second Amendment thus preserved the militia through its guarantee of the individual right to bear arms. According to the Court, the Second Amendment could be rephrased to read, "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."²⁴

Once the Court established that the Second Amendment protected an individual right to bear arms, the Court ruled that "the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home

operable for the purpose of immediate self-defense."²⁵

The Supreme Court did caution that its decision did not create an unlimited right on the part of individuals to possess guns. According to the Court:

Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.²⁶

In addition to restrictions, such as those described above, the Supreme Court also commented that limitations may be placed on the types of weapons that an individual may possess. According to the Court, "[the] Second Amendment does not protect those weapons not typically possessed by law abiding citizens for lawful purposes, such as short barreled shotguns."²⁷ Weapons that are considered "dangerous and unusual" may also be prohibited.²⁸

The Court recognized the toll that violence extracts on society and the purpose behind many laws that restrict the possession of firearms. While expressing sensitivity to these concerns, the Court noted that

"the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home."²⁹

CASES FOR NEXT TERM

The Supreme Court has agreed to hear a number of cases of interest to the law enforcement community next term. These include the four cases presented here.

© Comstock Images



***State v. Johnson*, 170 P.3d 667 (2007), cert. granted, *Arizona v. Johnson*, 128 S. Ct. 2961 (2008)**

This case concerns the extent to which a law enforcement officer may engage in a limited search or "Terry frisk"

for weapons during a consensual encounter with a subject when the officer lacks suspicion of criminal activity but suspects the subject may possess a weapon.³⁰ In this case, officers from the Oro Valley Police Department in Arizona pulled over a vehicle based on an insurance-related suspension. The officers testified that they had no reason to suspect the occupants of the car were engaged in criminal activity at the time the stop was initiated.³¹ One officer engaged Lemon Johnson, a passenger in the backseat of the vehicle, in conversation hoping to elicit information about gang activity in the area after she observed indicia of possible gang membership on the part of Johnson. The officer asked Johnson to step out of the car to talk with her. Once out of the vehicle, the officer asked him to turn around, at which time, she conducted a limited search or “frisk” for weapons in light of her observations about possible gang affiliation. The officer testified that at the time of the search for a weapon, she did not suspect that Johnson was involved in criminal activity.³²

During the frisk, the officer discovered a handgun. A subsequent search revealed marijuana. Johnson was charged with possession of a weapon by a prohibited possessor and possession of marijuana. Johnson’s

motion to suppress the evidence was denied, and he was subsequently convicted.³³ On appeal, the Arizona Supreme Court overturned his conviction holding that the evidence derived from the search should be suppressed as it was the fruit of an unlawful search.³⁴ The Arizona Supreme Court stated, “When an officer initiates an investigative encounter with a passenger that was consensual and wholly unconnected to the original purpose of the routine traffic stop of the driver, that officer may not conduct a *Terry* frisk of the passenger without a reasonable cause to believe ‘criminal activity may be afoot.’”³⁵ The Supreme Court granted certiorari to determine whether in the context of a motor vehicle stop for a minor offense, a limited search of a passenger for weapons may be conducted in the absence of suspicion of criminal conduct.

© Comstock Images



***United States v. Herring*, 492 F.3d 1212 (11th Cir. 2007), cert granted, *Herring v. United States*, 128 S. Ct. 1221 (2008)**

The Supreme Court also agreed to decide whether the Fourth Amendment requires the suppression of evidence seized following a search that occurred incident to arrest when the arrest was based on erroneous information provided by another law enforcement agency. Before the Court is the question of whether the exclusionary rule should apply when police personnel are at fault when an arrest occurs that should not have occurred and contraband is discovered during the search incident to the arrest. In *Arizona v. Evans*,³⁶ the Supreme Court ruled that the purpose of the exclusionary rule is not served when court personnel are the source of the error but expressly declined to hold that the same result should occur when the error is attributable to police personnel.³⁷ In *Herring*, the Eleventh Circuit Court of Appeals concluded that the purpose of the exclusionary rule would not be furthered in the case at hand given there was no indication of any malicious or willful conduct on the part of the police, as the arrest was the result of negligent records handling by personnel within the agency.³⁸ Other federal courts, as well as state supreme courts,

are divided on this issue; some concluding that evidence seized as a result of police clerical error should be suppressed.³⁹

© Comstock Images



***State v. Gant*, 162 P.3d 640 (2007), cert. granted, *Arizona v. Gant*, 128 S. Ct. 1443 (2008)**

This case places the parameters of a search of a vehicle following the arrest of a recent occupant of the vehicle before the Supreme Court. In this case, Gant was arrested moments after he stepped out of his vehicle. He was handcuffed and placed in the back of a patrol car. Officers then searched the passenger compartment of the vehicle and discovered a weapon and a plastic bag containing cocaine.⁴⁰ The Arizona Supreme Court distinguished this case from the

U.S. Supreme Court's ruling in *New York v. Belton*,⁴¹ concluding that the warrantless search of Gant's car was not lawful. The Arizona Supreme Court reasoned that as the arrestee was secured (handcuffed) and in the custody of law enforcement (in the back of the patrol car), the justifications for the search incident to arrest—the need to preserve evidence and maintain officer safety—did not exist.⁴² The Supreme Court agreed to hear this case to determine whether the Fourth Amendment requires officers to articulate facts and circumstances indicating a threat to their safety or the possibility of the destruction of evidence to justify a search of a vehicle incident to the arrest of the occupant or recent occupant of the vehicle.

© Comstock Images



***Callahan v. Millard County*, 494 F.3d 891 (10th Cir. 2007), cert. granted, *Pearson v. Callahan*, 128 S. Ct. 1702 (2008)**

In this case, the Supreme Court will address the lawfulness of a warrantless entry by police officers into a house following a drug deal participated in by an informant who was invited into the home by the subject and then signaled officers to enter the home once the drug deal was consummated. The case raises the question of whether consent to allow the informant into the home extends to police officers that the informant thereafter summons. In a civil lawsuit filed by the resident of the home against the police who made the entry, the Tenth Circuit Court of Appeals denied qualified immunity despite the fact that other federal circuits had recognized a “consent once removed” doctrine, permitting the informant to give consent to enter once he was inside the home.⁴³ Despite this other precedent, the Tenth Circuit concluded that the occupant's right to be free from this type of warrantless entry by law enforcement was clearly established. ♦

Endnotes

¹ *Moore v. Commonwealth of Virginia*, 146 S.E.2d 74, 45 Va.App. 146 (2005).



² *Moore v. Commonwealth of Virginia*, 636 S.E.2d 395, 272 Va. 717 (2006).

³ *Commonwealth of Virginia v. Moore*, 128 S. Ct. 28, 168 L.Ed.2d 805 (2007).

⁴ *Commonwealth of Virginia v. Moore*, 128 S. Ct. 1598, 170 L.Ed.2d 559 (2008).

⁵ 128 S. Ct. at 1608.

⁶ *Id.*

⁷ *Rothgery v. Gillespie County, Texas*, 128 S. Ct. 2578, 2592 (2008).

⁸ *Rothgery v. Gillespie County, Texas*, 491 F.3d 293 (5th Cir. 2007), *aff'd* 413 F.Supp. 2d 806 (W.D.Tex. 2006).

⁹ *Rothgery v. Gillespie County, Texas*, 128 S. Ct. 2578 (2008), on remand, 537 F.3d 716 (5th Cir. 2008), vacating 413 F.Supp. 2d 806.

¹⁰ 128 S. Ct. at 2581.

¹¹ D.C. Code §7-2501.01.

¹² D.C. Code §7-2501.02.

¹³ *Parker, et al v. District of Columbia*, 311 F.Supp.2d 103 (D.C. 2003).

¹⁴ *Id.* at 109.

¹⁵ *Id.*

¹⁶ 478 F.3d 370 (D.C. Cir. 2007) (Heller was one of six plaintiffs who challenged the D.C. law. Because Heller was the only plaintiff who actually applied for a handgun permit, the other plaintiffs were eventually dismissed from the action by the time the case reached the Supreme Court).

¹⁷ *Id.*

¹⁸ 128 S. Ct. 645 (2007).

¹⁹ 128 S. Ct. 2783 (2008).

²⁰ *Id.* at 2790.

²¹ *Id.*

²² *Id.* at 2792.

²³ *Id.* at 2801.

²⁴ *Id.* at 2789.

²⁵ *Id.* at 2821-2822.

²⁶ *Id.* at 2816-2817.

²⁷ *Id.* at 2815-2816.

²⁸ *Id.* at 2836.

²⁹ *Id.* at 2822.

³⁰ See *Terry v. Ohio*, 392 U.S.1, 88 S. Ct. 1868 (1968) (the Supreme Court recognized that the Fourth Amendment permits officers to engage in an investigative or temporary detention based on reasonable suspicion that the individual detained is engaged in criminal activity and to conduct a limited search or "frisk" for weapons if the officer has a reasonable suspicion the individual possess a weapon).

³¹ *State v. Johnson*, 170 P.3d 667, 669-670 (2007), *cert. granted*, 128 S. Ct. 2961 (2008).

³² *Id.* at 670.

³³ *Id.* at 670-671.

³⁴ *Id.*

³⁵ *Id.* at 674, quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

³⁶ *Arizona v. Evans*, 514 U.S. 1 (1995).

³⁷ *Id.* at 15, fn 5.

³⁸ *United States v. Herring*, 492 F.3d 1212, 1217-1218 (11th Cir. 2007).

³⁹ See e.g., *United States v. Santa*, 180 F.3d 20 (2nd Cir. 1999) (principle in *Arizona v. Evans* applied when arrest was made pursuant to a warrant that had actually been recalled but, due to

clerical error, had not been removed from the system); *United States v. Southerland*, 486 F.3d 1355 (C.A.D.C. 1997) (officers relied on information within database that arrestee's license had been suspended when in fact it was not. Court concluded that handgun found during search following arrest was admissible); *Hoay v. State*, 71 S.W.3d 573, 348 Ark. 80 (2002) (exclusionary rule to apply if the wrongful arrest was due to law enforcement personnel as opposed to court personnel); *White v. State*, 989 S.W.2d 108 (Texas 1999) (exclusionary rule applicable where law enforcement personnel failed to remove recalled warrant).

⁴⁰ 162 P.3d 640, 641 (2007).

⁴¹ 453 U.S. 454 (1981). The Arizona Supreme Court viewed Belton as addressing the specific issue of the permissible scope of a search of a vehicle incident to arrest and not the "threshold question whether the police may conduct a search incident to arrest at all once the scene is secure." *Gant* at 642-643.

⁴² *Id.* at 643.

⁴³ See *Callahan v. Millard County*, 494 F.3d 891, 896 (10th Cir. 2007). For cases referring to "consent once removed" following entry by an undercover officer see *United States v. Pollard*, 215 F.3d 643 (6th Cir. 2000); *United States v. Diaz*, 814 F.2d 454 (7th Cir. 1987); *United States v. Bramble*, 103 F.3d 1475 (9th Cir. 1996). For an extension of "consent once removed" to include informants, see *United States v. Paul*, 808 F.2d 645 (7th Cir. 1986); *United States v. Yoon*, 398 F.3d 802 (6th Cir. 2005). In addition, the Supreme Court asked that the parties in this case brief whether the Court's decision in *Saucier v. Katz*, 121 S. Ct. 2151 (2001) establishing a two-step qualified immunity determination, should be overturned.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

The Bulletin Notes

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



Deputy Streibel

Deputy Aron Streibel of the Owyhee County, Idaho, Sheriff's Office responded to a woman's residence after she called from her neighbor's house to report that something was wrong with her family. When Deputy Streibel arrived, he briefly spoke with the young woman, noting that she was sick and incoherent. He immediately requested emergency and fire assistance before entering her residence to help three adults and two children outside. He then went back in, located a 6-month-old baby under a pile of blankets in a bedroom, and rescued the child. Deputy Streibel and the victims received treatment for carbon monoxide poisoning at a local hospital.



Officer Tiger

Officer John Tiger of the Clinton Township, New Jersey, Police Department responded to a residence for a report of a 7-month-old female in cardiac arrest. Upon arrival, he found the front door locked. Officer Tiger then approached the rear of the house, where he met with an au pair who had gone outside to make contact with him and accidentally locked the back door. Quickly, Officer Tiger forced entry into the residence and found the baby, who normally breathes through a tracheotomy tube with the help of an oxygen tank, blue in color. Apparently, the tube had become blocked. With the use of a bag-valve mask, Officer Tiger conducted rescue breathing until the arrival of paramedics, who cleared the baby's airway with a suction device and installed a new tracheotomy tube. The child began improving and was transported to a local hospital.

Wanted: Bulletin Notes

The *FBI Law Enforcement Bulletin* seeks nominations for the **Bulletin Notes**. Nominations should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.

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

[illegible]

03/07