



October 2000
Volume 69
Number 10

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

Louis J. Freeh
Director

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

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

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Put It in Writing *The Police Policy Manual*

By MICHAEL CARPENTER, M.A., M.A.T.

A well-written policy and procedure manual serves as the foundation of a professional law enforcement agency. The lack of current and well-written policies forces officers to rely on common sense, best guesses, and just plain luck in carrying out their duties. Police officers and their municipalities have too much authority, too much responsibility, and too much liability at stake to allow such arbitrary factors to determine how they accomplish their objectives.

A complete and well-written policy and procedure manual offers a number of advantages to law enforcement executives, supervisors, and officers. They demonstrate that the department has shown due regard in directing the actions of its employees and that officers followed approved and recognized procedures in carrying out their duties. They also show that the chief executive officer has taken a proactive stand in planning ahead for both the department and its officers

rather than waiting until after a major incident to write a policy.

A policy and procedure manual represents more than a goal-oriented planning tool that can protect officers, managers, and municipalities. It also serves as a powerful communication tool. Policies and procedures can inform department personnel of their responsibilities, outline acceptable procedures to follow, establish general performance standards, and create consistency among

employees in carrying out their numerous tasks. This becomes particularly important because police department employees work different shifts, often with little or no direct supervision. By successfully communicating expectations to each member of the department, chief executive officers take an important step in establishing accountability, responsibility, and discipline.

Finally, a written manual serves as a central repository for all department directives. This makes it easier for officers to locate the agency's most recent procedures, it provides consistency in making decisions, and it ensures a solid foundation for the professional operations of the modern-day law enforcement agency.

Designing a Manual

Although agencies should tailor manuals to meet their needs, a few components remain essential,

including the agency's mission, goals, objectives, policies, procedures, and rules and regulations. The *mission statement* gives a broad overview of the agency's purpose. It should describe in a general and brief fashion the organization's intentions and define the agency's role in the community. For example, an agency's mission statement might say:

The XYZ Police Department's mission is to safeguard the lives and property of all citizens while preserving their constitutional rights. Various responsibilities correspond with this mission. All officers will make these departmental responsibilities their own and will not allow personal feelings, animosities, prejudices, or personal relationships to influence their decisions. All officers will diligently and courteously carry out their duties and responsibilities

and will take pride in the services they provide.

Management sets ideals to give the agency direction. These *goals* give the agency something to aim for in accomplishing its mission and also act as targets for employees. Goals should represent ideals that employees may find difficult to achieve but that can measure progress. Easily attained goals cease to provide motivation, and the department should replace them. Even though it provides a general statement of broad direction or intent, a goal should offer in concrete terms the major accomplishments that management desires. Goals usually include the word "to" and follow with an action verb. They should define the results employees should achieve (the "what" and "when") but not the specific activities they should perform (the "why" and "how").

For example, a police department might set a goal to reduce daytime residential burglaries and describe it this way: "The goal for the next calendar year will be to reduce daytime residential burglaries by 15 percent by employing aggressive patrol to limit the opportunity for crimes to occur and by educating citizens to reduce the likelihood of their becoming victims."

An *objective* offers a specific statement about how to achieve the agency's goals. Objectives should specify a single key result to accomplish and set a specific completion date. These should remain consistent with organizational policies, and employees at all levels of the agency should agree upon them. Numerous examples of objectives



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exist that will help a department meet the goal of reducing daytime residential burglaries.

- The Department will organize three Neighborhood Watch groups and meet with each at least once a month.
- The Department will assign one officer as a crime prevention specialist. The crime prevention specialist will limit the opportunity for crimes to occur through education, surveys of residences and businesses, and other related crime prevention activities.
- The Department will institute a crime-plotting system that will redistribute patrols to focus on areas where burglaries are highest.

A *policy* represents an overall action plan for the agency. It should state how the agency accomplishes its mission and meets established goals. Policies take the form of general statements that the agency can apply to recurring situations. Rather than outlining a detailed procedure, policies should explain the agency's intent or philosophy and serve as a guide for informing employees why management wants them to follow a certain direction. Without policies in place, officers do not have a uniform guide for their actions. A lack of policies can result in crisis management and a lack of consistency in carrying out tasks.

For example, a departmental policy dealing with investigative procedures might specify: "The XYZ Police Department will conduct a complete and thorough

investigation into all criminal matters coming to its attention. The department will use all reasonable, practical, legal, and technical means to apprehend suspects and to collect evidence that will lead to closing the case, successfully prosecuting the offender(s), or both."

Procedures define acceptable methods of meeting the agency's policies. They generally outline a series of steps followed in a definite order, while still allowing some flexibility. For example, an agency

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might prescribe the following procedures for conducting the inventory of an impounded vehicle:

- The officer should list all personal property and vehicle accessories (radios, tape/CD players, etc.) on a Vehicle Inventory Form. The officer also should include a description of the vehicle and any obvious damage (external and internal).
- The shift supervisor (or officer in charge) will approve the form and sign it. If a tow service will store the vehicle, the operator of the service also

will sign the form. If the situation warrants, the owner/operator of the vehicle, if present, also will sign the form.

- The officer will attach the original form to the case file and give one copy to the wrecker driver. When the department releases the vehicle, the owner will receive another copy of the Vehicle Inventory Form and will sign and receive a copy of the Vehicle Release Form. The officer will put a copy of the Vehicle Release Form in the case file.

As this example illustrates, procedures are much more specific than policies but less restrictive than *rules and regulations*, which provide specific directions and allow little or no room for deviation. A rule applies each and every time a situation occurs and states what employees must or must not do. Rules and regulations generally cover situations or circumstances that can result in disciplinary action if employees violate them. For example, the department's rule regarding the acceptance of gifts might warn that employees of the department shall neither solicit nor accept any gift, gratuity, loan, or fee having any direct or indirect connection with their employment, nor shall they do so if any such connection could be reasonably inferred from the circumstances. Employees who receive any unauthorized or unlawful gift, gratuity, loan, or fee must immediately report it through the chain of command, setting forth in writing the full circumstances.

Organizing a Policy Manual

Agencies can use a number of different options to design an effective and efficient policy manual. Even though an agency's manual should reflect its individual needs and requirements, every agency should consider some common design features.

Employees will not understand or use policies that remain unavailable or inaccessible. Accordingly, all personnel should have easy access to the manual. Ideally, all employees should have their own copies. Even though it costs more to print a manual for every member of the department, the benefits far outweigh the costs. To compensate for the cost of printing an entire manual and distributing it to all personnel, some agencies may choose to break up a single manual into two or three separate sections and distribute the sections on an as-needed basis. For example, policies that deal specifically with administration would impact command officers and managers more directly than line officers. Therefore, all managers could receive copies of these policies, while other officers could read the policy at strategic points throughout the agency. Conversely, policies dealing with operations might directly impact the line officers and supervisors more than the administrative staff. As a result, all line officers could receive copies of these policies, with other employees referring to the policy at the posted locations.

In addition, the manual should serve as a working document for every officer under almost any situation. The manual should be small enough so that on-duty officers can

carry it easily. Large, heavy, or bulky manuals often collect dust on shelves or remain inside lockers when needed on the street. At the same time, the manual should be built tough. Ideally, it should have a solid cover that will not damage easily and should contain heavy-weight paper that does not tear easily. The binding should allow the agency to update pages easily. The pages also should turn freely without ripping out of the binder.

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The organization of a policy manual will depend on the individual needs of each agency. Easily recognizable dividers should clearly mark broad topic areas. The placement of the sections will depend on how often employees use them. Sections that officers use frequently should go in the front of the manual for quick reference. Officers will not use the manual if they cannot find the information quickly and easily. As a result, the manual needs a complete, but not complex, index. Arranged alphabetically for quick reference, the index also should include subheadings (e.g., the index may subdivide “Vehicles” to include “Equipment,” “Firing at or from,”

“Inspections of,” “Inventory of,” “Lockouts,” “Pursuits,” “Unmarked,”) and cross-references (e.g., the entry for “Cars” might say “See Vehicles”).

Formatting a Policy Manual

A standardized format offers several advantages, such as ease of reading, filing, retrieving, and correcting. There are many different ways of organizing policies into a standardized format. Although the style and content an agency chooses for its manual may vary, chief executive officers should consider several common features.

First, each directive should include a heading that contains the name of the department and the type of directive (e.g., general order, special order, personnel order, rule and regulation, training bulletin). The manual also should use a numbering system that identifies each separate directive for easy accessing, updating, and purging.

Several numbering systems exist. One method divides the manual into major components and assigns a group of numbers to each. For example, patrol policies might fall under the 100 block; investigative policies, the 200 block; administrative policies, the 300 block, and so on. The particular policies in each block could then follow numerically (i.e., 101, 102, 103).

Another method identifies a directive by the year issued and the chronological position of the number issued within that year. For example, the 6th general order issued in 1999 could be “GO 99-6,” while the 10th training bulletin issued in 2000 could be “TB 00-10. Whether

an agency chooses one of these systems or some variation, the method should be logical and easy to understand.

Finally, every directive should include the date of issue and a separate block that indicates the date the agency reviewed each directive. Chief executive officers should develop a system that allows for the annual review of every agency directive. In this way, the agency can revise outdated policies and

procedures (retaining the old ones in case of a lawsuit) and purge expired orders and bulletins. The dates and initials of the chief or designee on each order or directive would serve as proof of this review.

Conclusion

Municipalities, chief executive officers, and police officers must have current and detailed guidelines to follow to perform in a

professional manner. Developing and implementing a detailed, comprehensive manual, distributing it to every employee, and keeping it current allows every person in the police department to make decisions and perform their jobs consistently and professionally. Every law enforcement agency—whatever its size, location, or jurisdiction—needs a current and well-written policy manual to serve and protect the community—and itself. ♦

Crime Data

8-Year Low Reported in Serious Crime

According to preliminary data from the FBI's Uniform Crime Reporting Program, serious crime continued to fall in 1999, marking the eighth consecutive annual decrease nationwide. The figures show a 7 percent decline in reported serious crime from the 1998 totals.

Preliminary information indicates that the downward trend resulted from a 7 percent decrease in both violent and property crimes compared with figures for the previous year. Both murder and robbery registered 8 percent drops, the largest decreases in the violent crime category. Forcible rape and aggravated assault figures each declined by 7 percent from 1998. In the property crime category, burglary statistics represented the greatest reduction, 11 percent. Motor vehicle theft, larceny-theft, and arson also fell 8, 6, and 5 percent, respectively.

Law enforcement agencies in all regions reported declines in serious crime. Agencies in the West recorded a 10 percent decrease, and those in the Midwest noted a decline of 8 percent. The Northeast experienced 7 percent fewer serious crimes and the South, 4 percent less.

Cities nationwide reported decreases in serious crime. Those with populations of 25,000 to 99,999 registered an 8 percent drop, and cities with over 500,000 inhabitants showed the smallest decrease with 6 percent. Compared with 1998 figures, suburban counties reported an 8 percent decline, and rural counties noted a 7 percent decrease.

For the complete preliminary annual *Uniform Crime Report* press release, access the FBI's Web site at <http://www.fbi.gov>.

Sex Offender Registration Enforcement A Proactive Stance to Monitoring Convicted Sex Offenders

By Bernard C. Parks, M.P.A., and Diane Webb



A high-risk sex offender, previously convicted of child molestation and forcible rape, has additional child molestation charges against him dismissed when a new victim refuses to testify.

An admitted pedophile's residence overlooks a playground, and neighbors report that he often sits in his parked vehicle, partially obscured by tinted windows, and watches local children playing nearby.

Officers observe a convicted sex offender trying the doorknobs of residences in a local neighborhood.

What new charge allows law enforcement officers to intervene in such incidents? All three individuals failed to register as sex offenders in Los Angeles, California. With the implementation of the Federal Violent Crime Control and Law Enforcement Act of 1994,¹ all 50 states must establish sex offender registries.² While California has had sex registration laws in effect since the 1940s and, as a result, has documented over 84,000 convicted sex offenders, the act elevated the penalty for failing to register as a sex offender to a felony, making punishment for this crime more severe. Moreover, if the previous sex crime was a felony, the subsequent failure to register became a felony with a mandated prison term.³

California courts consistently have upheld the concept that sex offender registration promotes the state's interest in controlling crime and preventing recidivism in sex offenders.⁴ They also hold the

opinion that sex offenders pose a continuing threat to society and require constant vigilance.⁵ The California State Legislature, in enacting Penal Code Section 290, found and declared that “sex offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest.”⁶

Sex offender registration provides law enforcement with a unique means of determining an offender’s activities and whereabouts. No other type of criminal must appear at the local police station and provide detailed information about their residence and work addresses, type of cars they drive, or other personal identifiers. California law requires that sex offenders give this information to law enforcement within 5 working days of their move into, out of, or within each jurisdiction. Registrants also must update this information annually, within 5 working days of their date of birth. California law also requires that offenders who have convictions in other states for crimes registerable in California register upon relocating to California.

Although laws exist to require convicted sex offenders to register, many do not. The California Department of Justice estimates that over 5,000 convicted sex offenders have never registered. What can law enforcement do to combat this problem?

THE REACT APPROACH

To capitalize on the increase in punishment for failing to register as a sex offender and to use this mandatory registration as an effective crime prevention tool, the Los Angeles Police Department formed the Registration Enforcement and Compliance Team (REACT) in 1997 to monitor the over 8,000 registered sex offenders within its jurisdiction.⁷ In addition, REACT investigates and presents for criminal filing cases of sex offenders who fail to comply with registration requirements. REACT units also gather information on sex offenders that often proves useful

for other law enforcement entities. Specifically, REACT—

- compiles information on offenders’ past crimes and modus operandi, thereby providing sexual assault detectives valuable leads in solving current sex crimes;
- records and investigates notifications of offenders moving into the Los Angeles area;
- notifies other law enforcement agencies when local offenders move to their areas and provides information on those offenders’ criminal histories; and
- responds to citizen notifications of offenders not complying with registration requirements, which assures the public that the department continually monitors registered sex offenders within its boundaries, thereby reducing the fear of crime.

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Working with Parole and Probation Departments

Increased monitoring of sex offenders fosters greater cooperation between law enforcement and other criminal justice agencies charged with supervising these individuals during probationary or parole terms. For example, periodic REACT-initiated contacts with subjects on parole for past sex crimes increase the number of unannounced checks and aid parole officers burdened with large caseloads. This additional monitoring often uncovers violations of release conditions and fulfills California appellate court decisions concerning the purpose of sex offender registration.⁸

Recent REACT contacts with parolees include a twice-convicted child molester, who targeted kindergarten-age girls. The parolee assured officers that he could manage his sexual attraction to children. Although he complied with registration requirements, REACT officers initiated surveillance due to the severity of his past crimes and propensity to re-offend. Within days, officers observed the parolee slowly driving by an elementary school playground.

This violation of a parole condition prohibiting him from going near a school sent the parolee back to prison.

In addition, during a REACT field compliance check, officers discovered a parolee conversing online with a number of females, attempting to arrange meetings with them. He represented himself as a sports figure associated with a major league baseball team. This deceptive ploy proved similar to the events leading up to his last conviction for forcible rape.

Although currently in compliance with registration requirements, the intentional misrepresentation of his occupation violated his parole conditions and resulted in his return to prison.

Partnering with Other Agencies

REACT also works closely with its counterpart in the California Department of Justice, the Sexual Predator Apprehension Team (SPAT). This team accompanies REACT units in periodic field compliance checks of the addresses of registered sex offenders. While ensuring compliance with sex offender registration requirements, such field enforcement efforts also illustrate to sex offenders the deep commitment that the law enforcement community has to devoting additional attention to them and their activities.

Cooperative efforts with other agencies also leads to finding unregistered sex offenders. REACT units encounter these “slip through” individuals on a regular basis. Because it takes significant investigative work to collect evidence that proves offenders were convicted originally of a registerable offense and knew of the registration requirement, REACT officers depend on the cooperation of many members of the criminal justice profession.

REACT officers often must examine various sources, such as court records, parole and probation reports, and the sex offender registries of other law enforcement agencies, to document the offenders’ knowledge of registration requirements. Material that

reveals an acknowledgment of specific requirements can include court records from the original sex crime conviction, paperwork maintained by correctional institutions, or formal registration requirement notices signed by offenders at the conclusion of court proceedings or prior to their release from incarceration. Thorough investigative efforts pay off when officers bring previously unknown offenders into compliance through updated registration. Additionally, law enforcement and the community it serves benefit from

knowing the location and activities of convicted sex offenders.

In a recent REACT-initiated case involving a convicted child molester from another state, the offender, knowingly in violation of probation conditions that prohibited him from residing in the same household with a female juvenile, fled his home state and brought the child with him to California. The investigation by the REACT unit proved that he knew he had to register in California. After completing a California

prison sentence, he will return to his home state to face the probation violation.

CONCLUSION

Sex offender registration provides valuable information for law enforcement agencies. The monitoring of sex offenders combined with enforcing registration requirements provides agencies with an extremely useful tool for protecting the public from recidivist sex offenders. To fully capitalize on this helpful instrument, agencies must update and verify sex offender registries on a continuing basis.

The Los Angeles Police Department created the Registration Enforcement and Compliance Team to detect and monitor convicted sex offenders who reside within its jurisdiction. The REACT units have shown how law enforcement, working in conjunction with other criminal justice agencies, can keep convicted sex offenders from preying on unsuspecting victims. ♦

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Endnotes

¹ 42 U.S.C. § 14071.

² For additional information, see Alan D. Scholle, "Sex Offender Registration: Community Notification Laws," *FBI Law Enforcement Bulletin*, July 2000, 17-24.

³ California's "three strikes" provisions allow for the doubling of the 16-month, 2- or 3-year sentences for failure to register. With a third serious felony conviction, hence the "three strikes," the offender who fails to register with local law enforcement can receive a sentence of 25 years to life.

⁴ *People v. Monroe*, 168 Cal. App. 3d. 1205, 1215:215 Cal Rptr. 51 (1985).

⁵ *People v. Castellanos* 21 Cal. 4th 785 (1999).

⁶ Preamble to Penal Code Section 290, uncodified.

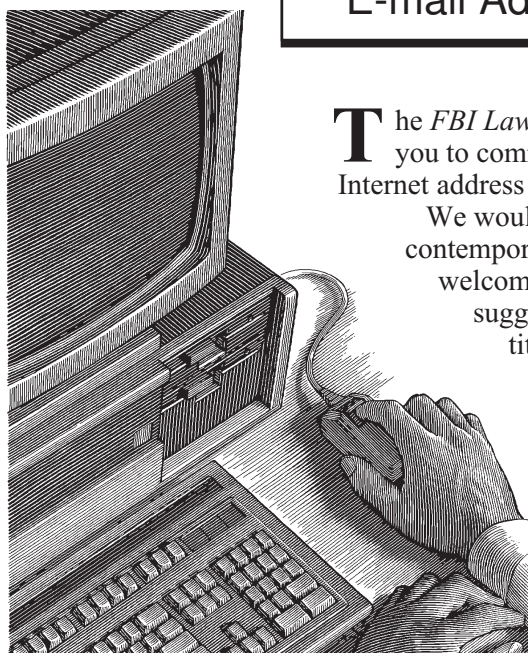
⁷ The Los Angeles Police Department created REACT following a training seminar conducted by the California Department of Justice

regarding field compliance checks of convicted sex offenders. The police department formed the units from existing personnel and resources.

⁸ According to the California Penal Code, "the purpose of Section 290 (sex offender registration) is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the legislature deemed them likely to commit similar offenses in the future." See, e.g., *Barrows v. Municipal Court*, 1 Cal 3d. 821, 825 (1970).

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Nationwide Application of the Incident Command System Standardization is the Key

By MICHAEL D. CARDWELL and PATRICK T. COONEY

In response to the devastating 1970 brushfire season in Southern California, a consortium of local, state, and federal fire agencies developed the Incident Command System (ICS). The consortium, called FIRESCOPE,¹ sought to design a system to facilitate the smooth interface of multiple agencies to respond effectively to sudden overwhelming threats.

ICS existed for nearly 10 years before the law enforcement community began to study and embrace the concept.² Some local agencies around the country, including both law enforcement and fire, discovered ICS through their interaction with the U.S. Forest Service, which had been one of the original FIRESCOPE participants and played a major role in the development of ICS.³ Eventually, the National Interagency Incident Management System (NIIMS) adopted the FIRESCOPE ICS concept.⁴ It has taken hold in many fire agencies coast-to-coast, as well as in a few nonfire disciplines, most notably the U.S. Coast Guard.⁵ Adoption of ICS continues to spread. In fact, the National Fire Academy, administered by the Federal Emergency Management Agency, teaches the concept and both the National Fire Protection Association and the National Wildfire Coordinating Group employ ICS. In the states of California⁶ and New York,⁷ laws mandate its use by all disciplines of local and state emergency response agencies.

Neither the birth of ICS among Southern California's wildland fire agencies nor its slow adoption by law enforcement is surprising. Fire agencies in Southern California face unique challenges every summer when hot, dry Santa Ana winds make suppression of vegetation fires in foothill communities nearly impossible, with frequent loss of lives and millions of dollars in property. Hence, it proves natural that a highly efficient interagency emergency response system evolved among these agencies.



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Deputy Chief Cooney oversees operations for the Fire and Rescue Branch of the California Governor's Office of Emergency Services in Sacramento.

Fortunately, law enforcement generally does not face emergencies of such enormous scale; police agencies seldom must provide such extensive mutual aid to each other. As a result, many law enforcement managers understandably view their emergency response systems, often developed in isolation from one another, as effective.

However, the 1984 Los Angeles Olympics and subsequent events, both planned and spontaneous, stimulated progressive law enforcement leaders to search for more efficient ways to integrate not only allied police agencies but also other disciplines, such as fire and emergency medical services, at the scene of a crisis. While an individual agency's protocols and procedures may have worked well for years in a vacuum, the need for some standardization quickly becomes apparent when agencies must integrate their resources rapidly during the response to a major

incident. It is no longer sufficient for an agency to develop and maintain a locally successful emergency response plan; such plans also must be compatible with those of surrounding jurisdictions and other disciplines, as well.

This became tragically apparent one hot, windy afternoon in Oakland, California, in 1991. In a few hours, the Tunnel Fire in the East Bay Hills destroyed 3,000 homes and took the lives of a police officer, a firefighter, and 25 civilians. To call the Tunnel Fire chaotic is, at best, an understatement. The Oakland Fire Department was overrun immediately by this rapidly escalating vegetation fire. Responding mutual aid resources became overwhelmed, as well.

Activation of the statewide Fire and Rescue Mutual Aid System brought in hundreds of additional fire engines and other fire fighting resources to assist, but the raging fire also routed many of these units.

The losses proved staggering. The development of a cohesive management organization was hours behind the rapidly expanding disaster. Fire units, law enforcement agencies, municipal water department personnel, emergency medical services, and other public safety agencies could not coordinate their efforts in time to significantly limit the destruction.

The 1991 Oakland disaster was not just a fire problem. Law enforcement, public works and utilities, the National Guard, health and safety services, and relief agencies encountered crushing difficulties. None of these organizations shared a common organizational system or compatible command structure. The Tunnel Fire pointed out the need for a common emergency management system throughout local and state government for use by all agencies with a first-responder role associated with public safety. As a result, in 1993, California enacted legislation establishing the Standardized Emergency Management System and mandating the use of FIRESCOPE (NIIMS) ICS for disaster management.⁸

THE CASE FOR NATIONAL STANDARDIZATION

As the rapid movement of large numbers of emergency response resources around the country becomes more common, a nationally standardized interdisciplinary emergency management system has become highly desirable. In fact, the possibility that terrorists might unleash weapons of mass destruction on American soil makes the necessity of quickly and efficiently integrating

multidisciplinary resources from local, state, and federal agencies unprecedented. Emergency planners across the nation must decide not only which system to use as the standard, but also how much deviation from that standard is acceptable.

Clearly, law enforcement leaders must be able to modify any management system to accommodate local operational and political realities. However, to the extent that any standard system changes significantly, it loses its value as a tool to integrate dissimilar agencies with minimal confusion and uncertainty.

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In practice, some agencies have made a wide range of modifications, yet retained the Incident Command System title. In truth, the organizational charts of some examples resemble the original FIRESCOPE model in title alone. Furthermore, problems and conflicts during some incidents indicate that fundamental ICS management concepts either are missing or not functioning as designed. Therefore, to avoid such difficulties, agencies should follow the basic ICS design.

ICS BASIC MANAGEMENT CONCEPTS

Eight basic management concepts—modular organization, unified command, manageable span-of-control, common terminology, consolidated action plans, comprehensive resource management, integrated communications, and predesignated incident facilities—contribute to the success of the Incident Command System.⁹ When effectively applied in concert with each other, these concepts provide the basis for an effective and coordinated response to an emergency.

Modular Organization

ICS divides organizational responsibilities into five functions: command, operations, planning, logistics, and finance/administration, with each section subdivided to address various specific tasks. This basic organizational framework remains integral to ICS. Emergency response plans that do not incorporate this standardized five-part organization are not ICS, regardless of their titles.

The modular building blocks of ICS allow the organization to expand rapidly as the response to an incident escalates and to shrink as the crisis subsides. Only necessary elements of the ICS organization are actually staffed, depending on the nature and scope of the incident. Only in the largest and most complex operations would the full ICS organization be staffed.

Unified Command

In this day and age, few large emergencies involve only one agency; most are multidisciplinary

and even multijurisdictional. The built-in ability for multiple agencies to coordinate their efforts for the common good while maintaining their autonomy, authority, and jurisdiction represents one of the most appealing aspects of ICS.

Under the unified command concept, each organization that has legal jurisdiction over a significant portion of an incident can participate in the command structure. ICS provides a separate interface for assisting or mutual-aid agencies that have no legal responsibility. Therefore, representation in a unified command depends on the location of the incident (whose turf is involved) and the nature of the incident (which disciplines are necessary to resolve the problem).

Unified command functions by collocating the leaders of these agencies at a single incident command post where they discuss objectives, select strategies, plan operations, and make the most efficient use of available resources. This is accomplished by consensus, not by a committee process. In other words, unified command participants must bring to the table a willingness to cooperate; they do not have to agree on every detail, but they must be willing to acknowledge each other's authority, communicate freely, consider each other's goals and priorities, and assist each other to the fullest extent possible.

Manageable Span-of-control

Key to the proper application of modular organization, this concept functions as a way to avoid overwhelming any one individual with

so much responsibility that effectiveness suffers. Established ICS guidelines for span-of-control range from 1:3 to 1:7, with 1:5 being the norm. As the organization develops for any given incident, managers constantly must apply this concept by dividing responsibilities and assigning additional personnel as necessary to maintain an efficiently supervised organization. Similarly, as an event winds down, managers must consolidate responsibility and eliminate positions as they become unnecessary, promptly demobilizing parts of the organization no longer needed.

Common Terminology

The ability to communicate effectively with each other proves fundamental to any successful operation. The necessity of working with unfamiliar people and organizations combined with the stress of an unexpected emergency strains effective communication. ICS mitigates this problem by providing

certain common definitions of organizational functions, resources, and facilities. Likewise, personnel must communicate in "clear text," eliminating codes, acronyms, and other jargon not universally understood.

Consolidated Action Plans

Every incident requires some sort of an action plan. Obviously, complex events of long duration require more elaborate planning. ICS provides a structured planning process in which managers develop lists of both tactical objectives and available resources, prioritize the objectives, and then assign resources to accomplish each objective in order of priority. When available resources become exhausted, managers must decide to either order additional resources or allow low priority objectives to wait. Consolidated action planning considers not just the tactical objectives but the logistical needs of the ICS organization, as well. In a unified command, objectives and

Where to Find Reference Material

Agencies searching for ICS reference material must use caution to solicit from sources that have not altered the system substantially. Sources for bona fide FIREScope/NIIMS ICS manuals, forms, and training supplies include the FIREScope office located in Riverside, California, (<http://firescope.oes.ca.gov/>); the National Fire Academy in Emmitsburg, Maryland, (<http://www.usfa.fema.gov/nfa/>); and the National Wildfire Coordinating Group in Boise, Idaho, (<http://www.nwccg.gov>). Also, the California Governor's Office of Emergency Services publishes a law enforcement adaptation of FIREScope ICS.¹³

strategies incorporated in the action plan should adequately address the policies and priorities of each agency sharing legal jurisdiction over the incident.

Comprehensive Resource Management

Efficient resource management stands as a hallmark of ICS. This is accomplished by employing standardized terms and definitions (common terminology), using a mandatory initial check-in procedure, tracking the status of each resource, and promptly reporting changes in resource status. The staff tracks the status of each resource after initial check-in and logs it as either “assigned” (already assigned a task), “available” (ready and waiting for an assignment), or “out of service” (not assigned and not available, such as a vehicle that needs repair or personnel who must rest). Because wasted time represents a major frustration for emergency workers, the ability to accurately assess what resources are available and put them to work without delay constitute a major benefit of ICS. While many organizations may do this well, standardization of the process will facilitate interagency coordination when an emergency arises.

Integrated Communications

More than any other ICS management concept, integrated communications requires prior planning. Coordination of frequency-sharing agreements, acquisition of compatible radio hardware, and installation of extra telephone lines and emergency generators represent

just some of the steps that agencies may have to take to accomplish key inter- and intraorganizational communication during an emergency.

Predesignated Incident Facilities

This concept involves identifying locations and facilities before disaster strikes that agencies can use for many of the standardized ICS organizational functions. Common ICS terminology defines such incident facilities as an incident command post, incident base, staging areas, helibases, and other locations. If necessary, agencies must

**“
...problems and
conflicts...indicate
that fundamental
ICS management
concepts either
are missing or
not functioning
as designed.
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establish agreements to use convenient buildings, as well as determine methods of contacting responsible parties, obtaining keys, and even positioning supplies, prior to an actual critical incident.

THE GROWING USE OF ICS

Largely as a result of its adoption by the U.S. Forest Service, National Park Service, Bureau of Land Management, and U.S. Fish and Wildlife Service, ICS has proven

successful during incidents as diverse as wildland fires, floods, volcanic eruptions, earthquakes, hazardous materials incidents, multicasualty accidents, and airplane crashes. Agencies also have employed ICS for the successful resolution of numerous planned events, such as political conventions, championship professional sports events, and visiting dignitaries.

INTERFACING WITH NONUSERS

The system retains its usefulness, even when working with agencies that have not embraced ICS. For example, contingency plans for response to a terrorist incident in California involve the immediate assimilation of the ranking on-scene FBI official into the unified command process. Although the FBI represents the lead federal agency during the crisis phase of the response,¹⁰ local agencies still must respond effectively with local resources, likely unassisted, for the first crucial hours. Nonetheless, agencies should include FBI supervisors in the unified command as early as possible, primarily due to the probability of federal adjudication of such cases.

Once significant FBI resources begin to arrive and the FBI establishes a command post (historically dividing the FBI’s response into command, operations, and support groups),¹¹ coordination with the local agencies’ incident command post would include collocation and exchanging counterparts in critical positions. In this way, local and state agencies continue to employ

ICS while accommodating the FBI's traditional command post and joint operations center structure.¹² Agencies should seek to develop similar arrangements with other federal agencies that do not use ICS yet, such as the National Transportation Safety Board during the response to transportation accidents.

CONCLUSION

Terrorist attacks, transportation accidents, natural disasters, and political and sporting events bring unseen burdens to public safety agencies. These incidents can cause agencies to flounder or succeed based on the amount of preparedness and cooperation among the various entities called upon to deal with such crises. For over 30 years, many emergency response agencies have turned to the Incident Command System to help them establish a cooperative effort that can handle critical situations. However, some agencies have found that the systems they developed did not match those created by allied agencies, even though the systems originated from the same ICS concept.

With the need for the ability to integrate multidisciplinary resources from local, state, and federal agencies increasing, emergency response planners must consider using a standard system and encouraging as little deviation from that standard as possible. While local agencies must have the ability to modify the system to meet their individual needs, they also must understand the importance of minimizing these changes to ensure compatibility with other



organizations. Agencies must work together to ensure that their ability to successfully integrate their emergency response systems remains as certain as their commitment to the safety of the American public and their personnel who must face the dangers of a sudden threat. ♦

Endnotes

¹ FIRESCOPE (Fire Fighting Resources of California Organized for Potential Emergencies) is a cooperative effort involving all agencies with fire fighting responsibilities in California; available from <http://firescope.oes.ca.gov/>; accessed June 27, 2000.

² Jerome C. Ringhofer, *Technology Transfer: Law Enforcement Application of the Incident Command System* (Sacramento, CA: Commission of Peace Officer Standards and Training, Command College, 1986).

³ Ibid.

⁴ *National Interagency Incident Management System—Information and Guides* (Boise, ID: Boise Interagency Fire Center, 1983), Executive Summary, 1.

⁵ *Incident Command System* (USCG COMDTINST 16471.1, 1996); and *Incident Command System* (USCG COMDTINST 3120.14, 1998).

⁶ California Government Code § 8607.

⁷ *Establishing a Management System for Emergency Response* (New York, NY: Governor's Executive Order No. 26, 1996); available from <http://www.nysemo.state.ny.us/ics/exorder.htm>; accessed June 30, 2000.

⁸ Senate Bill 1841, leading to California Government Code §8607.

⁹ *Law Enforcement Incident Command System (LEICS) Field Operations Guide* (San Bernardino, CA: San Bernardino County Sheriff's Department, 1986), Section I, 7-19.

¹⁰ *United States Policy on Counterterrorism* (Washington, DC: Presidential Decision Directive 39, 1995).

¹¹ *Weapons of Mass Destruction Incident Contingency Plan (WMDICP)* (Washington, DC: Department of Justice, Federal Bureau of Investigation, 1998).

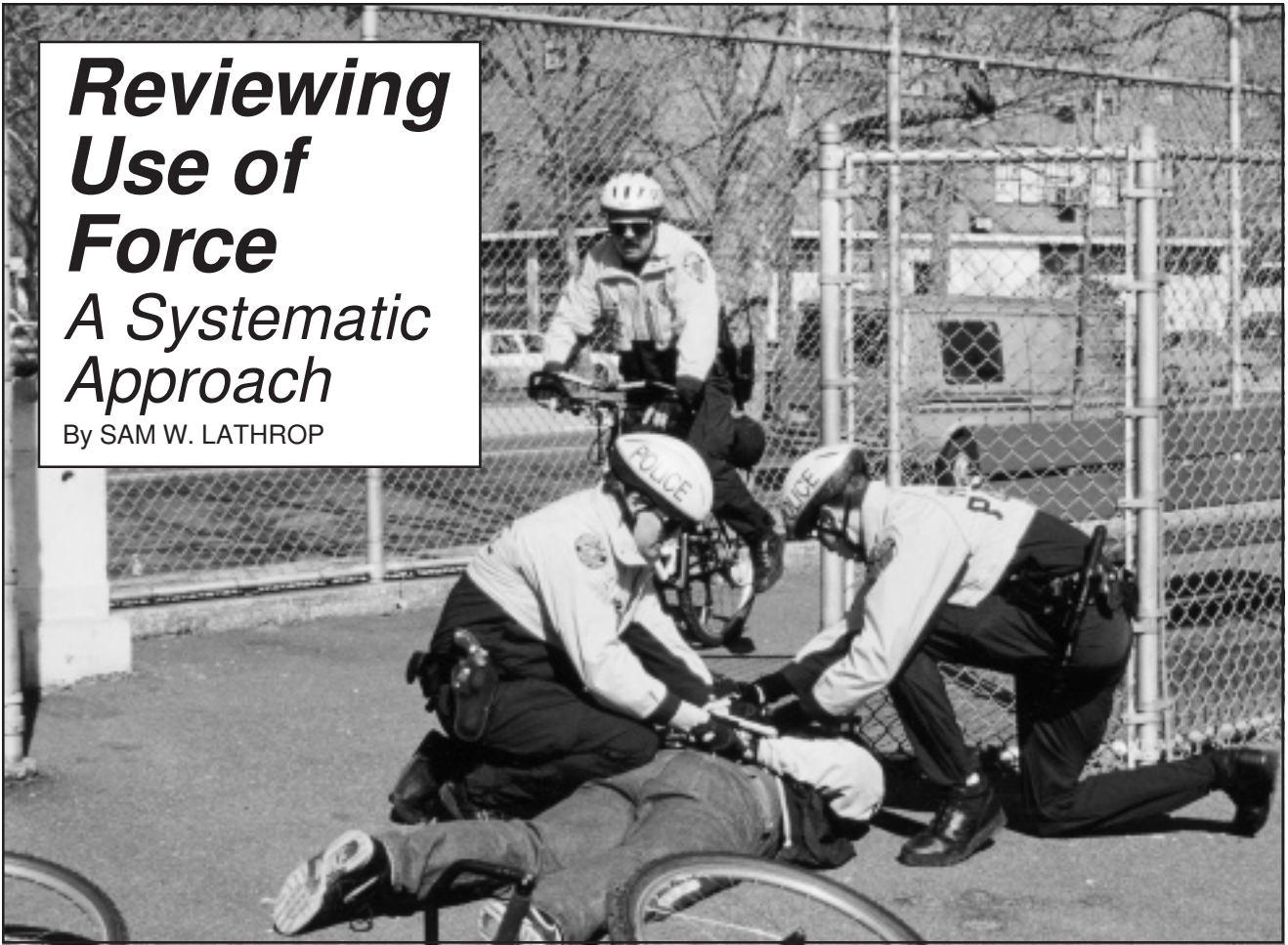
¹² *Local Planning Guidance on Terrorism Response* (Sacramento, CA: Governor's Office of Emergency Services, 1998). For additional information, see Robert A. Martin, "The Joint Terrorism Task Force: A Concept That Works," *FBI Law Enforcement Bulletin*, March 1999, 23-27.

¹³ *Law Enforcement Guide for Emergency Operations* (Sacramento, CA: Governor's Office of Emergency Services, 1998).

Reviewing Use of Force

A Systematic Approach

By SAM W. LATHROP



"The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

—Graham v. Connor,
490 U.S. 386-397 (1989)

With more and more frequency, law enforcement agencies across the country are asked to scrutinize their officers' use of force. The requests for use-of-force review may come from many different venues. A citizen complaint, an administrative inquiry, or a training method represent some of the vehicles that may transport a request for use-of-force review. In order to accomplish this task efficiently and thoroughly, law enforcement administrators may find a guide to systematically review officer reports useful.

If administrators plan to hold their officers to a specific standard

of review, they must share these standards in advance so that their officers may use them as a guide for event documentation. Administrators must make the review standards as clear and concise as possible to help their officers make informed and effective decisions. Dividing officer activity into three distinct areas that officers must address in their actions, as well as in their reports, gives officers a structured format to follow. Moreover, situations that require police use of force to gain and maintain control have a before, a during, and an after, which can constitute the three areas for systematic review.

ONE DEPARTMENT'S SYSTEM

In the state of Wisconsin, a Disturbance Resolution Model¹ addresses these three areas. The first, identified as approach considerations, deals with the before part of the conflict. The second centers on the during part and includes intervention options and force option continuum. The final area, or after segment, involves follow-through considerations.

The Beloit, Wisconsin, Police Department has implemented this three-step systematic approach, along with evaluation criteria, to use-of-force review. The department has used this procedure on all use-of-force incidents for several years and has found it a successful review tool.

Approach Considerations

The approach considerations segment of the review process includes several areas that officers should consider before the conflict occurs. *Decision making* examines the question of legal justification. Do the officers have the legal right to be where they are and doing what they are doing? If not, critics may regard any use of force as excessive.² *Desirability* covers enforcement supply and demand. Do the officers have adequate resources to deal successfully with the disturbance?

Tactical considerations deal with the officers' abilities to assess threat potential and determine if they can employ safe and efficient tactics to gain control. Do the officers have prior knowledge of the subjects? Do they have a tactical

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Officers must use only the level and amount of force reasonably necessary to accomplish a law enforcement objective.

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Captain Lathrop commands the patrol division of the Beloit, Wisconsin, Police Department.

plan? Are they familiar with the surroundings?

The final phase of approach considerations, *tactical evaluation*, involves how the officers determine the amount or type of threat posed, and how the officers interpret and perceive the threat. Subject body language and level of resistance or tension, as well as officer/subject factors, such as sex, age, and physical size, illustrate tactical evaluations.

Intervention Options

Once officers have satisfied the approach considerations aspect, they proceed to the intervention options part of the review process. This is the actual use-of-force stage, or the during part of the conflict. Officers must use only the level and amount of force reasonably necessary to accomplish a law enforcement objective. In *Graham v. Connor*,³ the Supreme Court ruled that officers can apply force only in a “reasonably objective” manner. The factors that generally

determine objectively reasonable use of force include the severity of the crime at issue, the suspect's imminent threat to the safety of officers or others, and the suspect's active resistance or attempt to evade arrest by flight.⁴

Force Option Continuum

Officers choose intervention options from a force continuum, a use-of-force guide that progresses from the least amount of force to the greatest amount of force. Many different types of a force option continuum exist. Every law enforcement agency should establish one that fits their needs and use it as part of the review process.⁵ The Beloit Police Department uses the state of Wisconsin Force Option Continuum.⁶

The first level on this force continuum is *presence*. The mere presence of an officer, in uniform or in a marked patrol vehicle, constitutes a type of force. It also can include an officer's authoritative attitude and demeanor.

Next comes *dialog*. What officers say and how they say it proves crucial. Officers should ensure that all communication has failed before using other force options. Did the officers attempt to calm the conflict and generate compliance with good tactical communication? Or, did the officers escalate the conflict by lack of tactical communication skills?

Empty-hand control represents the third level of this force choice continuum. In Wisconsin, this also includes oleoresin capsicum (OC or pepper) spray. At this point, the continuum becomes “hands-on.” For example, this level includes a range of actions, from a simple escort position, or firm physical grasp, to an active hand or foot strike.

The next level covers *intermediate weapons*, including impact weapons such as a baton. Officers employ such weapons to incapacitate dangerous subjects who have refused to obey other commands or tactics.

Finally, the last level of the force choice continuum—*deadly force*—denotes the intentional use of a firearm or other instrument resulting in a high probability of death. Behavior that has caused, or imminently threatens to cause, death or great bodily harm to an officer or other individuals justifies the use of deadly force by an officer.⁷

During the review process, evaluators examine the force used or threatened against the officer and compare it to the force choice the officer employed. Evaluators can use the continuum as a guide to judge whether an officer’s force

choice was appropriate, ineffective, or excessive.

While reviewing use-of-force incidents, evaluators should remember that officers have some latitude in deciding to use force. First, officers do not have to apply each force option to find the right force choice. Officers should discard force choices they deem inappropriate or ineffective and skip to the force choice that will accomplish control of a subject. Generally, officers should escalate up the

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Officers should document the application of restraints and the use of safety locks on handcuffs.

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continuum to gain control and de-escalate to an appropriate level to maintain control. The escalation usually involves officers going one level above the force displayed at the time in order to gain control of a situation.

In addition, force choice options are individual in nature based upon the training, knowledge, skills, and abilities of the officers involved. Two officers, in similar events, may choose different force options. This remains acceptable as long as their perceptions of the threat and the force they used

against that threat prove reasonable and justified.

Follow-through Considerations

Officers can spoil the best approach and intervention considerations by poor or nonexistent follow through. Aftercare of a subject remains an officer’s responsibility. Failure to provide it is unacceptable. Failure to document it denies officers credit for good work. Follow through begins the moment officers have established and maintained control of a situation and contains several aspects.

Stabilizing

Stabilization usually becomes the first aspect of follow through. In this phase, officers apply restraints, if appropriate. Officers should document the application of restraints and the use of safety locks on handcuffs.

Monitoring

Officers should physically check and ask the subject about injury and provide any medical care up to their level of training. Officers should procure additional emergency medical services if the need exceeds their ability to care for the subject. After a conflict where officers use force, such humane actions can help to rebuild the subject’s self-esteem. It also shows that officers use force as a professional tool and not a personal vendetta.

Searching

Officers should search the subject and the scene as needed. Most use-of-force practitioners agree that

searching should follow, not precede, handcuffing.

Escorting

As officers escort the subject from the point of control and handcuffing to a designated location, such as a patrol vehicle, they should note the subject's level of mobility. For example, if officers employed a baton to control an actively resisting subject, but the subject walked unassisted to the patrol unit, this becomes a valuable observation that officers should capture.

Transporting

Sometimes the arresting officer transports the subject. Other times, another officer may assist with transportation. Officers should include in their report who transports the subject and any noteworthy activity that occurs during the transport.

Transferring

Transferring the subject to another officer or agency and removing restraints is the last step in follow-through considerations. Officers should document when they have completed their contact with the subject and transferred their care of the subject to another officer or agency.

Evaluator Judgment and Findings

To obtain a complete picture, evaluators must examine a use-of-force incident in its entirety. By dividing the incident into three separate categories of before the use of force, the use of force itself, and after the use of force, evaluators can

view the totality of the circumstances. After such a review, they can make informed decisions on the appropriateness of the force used.

When the evaluators have reviewed the officers' reports, they can render findings on the use of force and make their findings specific to each use of force. To maintain consistency in all use-of-force

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cases, they can divide these findings into five different categories—

1) *Trained and Justified:* The officer employed use of force that was a trained technique recognized and authorized by the employing agency. According to agency policy, the force used was permissible to accomplish a lawful objective.

2) *Not Trained but Justified:* The officer employed use of force that was *not* a trained technique recognized by the employing agency. However, according to agency policy, the force used was permissible to accomplish a lawful objective.

3) *Trained but Not Justified:*

The officer employed use of force that was a trained technique recognized and authorized by the employing agency. However, in the opinion of the evaluator, the force used was not permissible according to agency policy.

4) *Not Trained and Not Justified:*

The officer employed use of force that was *not* a trained technique recognized and authorized by the employing agency. Further, in the opinion of the evaluator, the force used was not permissible according to agency policy.

5) *Dynamic Application:*

Although infrequently used, this designation has an important distinction. For example, an officer uses a trained and justified technique—a knee strike targeted at the subject's lower abdomen. As a result of the dynamic application of this technique (the aggressive resistance and movement of the subject), the officer instead strikes a target area not trained or approved, such as the subject's head. The officer documents exactly what occurred and notes any injuries that resulted. In this case, the evaluator could render a finding of "dynamic application."

CONCLUSION

Use of force has become an ever-increasing area of concern for law enforcement professionals and

the public they serve. To minimize this apprehension, the law enforcement community should establish not only firm guidelines on the use of force, but also on the method it employs to evaluate the effectiveness and judiciousness of such actions.

The Beloit, Wisconsin, Police Department has developed a review process for use-of-force incidents that has helped its officials evaluate these events and, more important, helped its officers understand the purpose and professional

employment of this crime-fighting tool. By creating standards and advising its officers of these standards, the department has made the difficult task of use-of-force review a fair and efficient process. ♦

Endnotes

¹ "Demonstrate Defensive and Arrest Tactics," *Wisconsin Department of Justice Training Guide* (1997), 13.

² *Ibid.*, 14.

³ *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L.Ed. 2d 433.

⁴ *Supra* note 1, 4.

⁵ For additional information on force option continuum, see Roy Roberg, John Crank, and Jack Kuykendall, *Police & Society*, 2d ed., (Los Angeles: Roxbury Publishing Company, 2000), 315-317. For an example of a model use-of-force policy, including force option continuum, contact the International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center, 515 North Washington Street, Alexandria, VA 22314-2357; telephone: 800-THE-IACP; or <http://www.theiacp.org/pubinfo>.

⁶ *Supra* note 1, 10.

⁷ "Use of Force by Wisconsin Law Enforcement Officers: Basic Concepts," *Wisconsin Department of Justice Training Guide* (1997), 120.

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The Leadership Challenge by James M. Kouzes and Barry Z. Posner, published by Jossey-Bass Publishers, San Francisco, California, 1995.

Past works on leadership have sometimes been dry and uninspiring. In contrast, *The Leadership Challenge* is captivating and informative. The authors condense years of research on the topic of leadership into a well-organized, easy-to-read, jargon-free text. In fact, each section can serve as a reference to a specific area of leadership, making the book more like a handbook, or, in the authors' words, a "field guide." Research and practical examples that do not bog down the reader in statistical formulas or complicated charts and graphs back the principles set forth in the book.

Although not specifically aimed at law enforcement, the book presents leadership principles that remain universal and applicable to all occupations, especially to the rapidly evolving field of law enforcement. As the authors point out, leaders are visionaries and activists who demonstrate leadership skills when given the opportunity. Law enforcement officers face such opportunities daily. For example, within the department, leaders set an example for others by the way they perform their duties, wear their uniforms, and treat the public. Outside the department, such programs as community-oriented policing lend themselves to innovative leadership initiatives that may come from the chief or patrol officers or any position in between. In fact, the authors provide a compendium of leadership skills, traits, and examples that open readers' eyes to their potential as leaders regardless of their job descriptions or what level they may occupy in the rank structure.

Several of the authors' principles may seem contrary to traditional policing philosophies. For example, the authors maintain that everyone can and should become leaders in given situations, and they cite several examples in which productivity and quality rose as employees received more authority and responsibility. This seems to contradict traditional policing, where departments have hierarchical structures, and power and authority

flow down from the top. But as the authors point out, "We become the most powerful when we give our own power away."

The notion of leadership versus management also goes against the grain of some traditional policing philosophies. Typically, police administrators have thought of themselves as managers of their department's resources and have given little thought to being leaders. Yet, the two terms are not mutually exclusive; an administrator can be both an effective manager and a good leader. And, as *The Leadership Challenge* makes clear, administrators should first and foremost be good leaders.

Police agencies must strive to incorporate leadership principles into their organizations, and their hiring and promotion practices should reflect the high priority they place on leadership qualities. They can accomplish this by including an exercise from the book into assessment centers for promotion. By requiring applicants to write about their personal-best case of leadership, assessors can evaluate real-life examples of a person's leadership potential. Too many assessments focus on the applicant's ability to complete paperwork and handle problem employees while failing to assess the skills needed to truly lead an organization.

The Leadership Challenge outlines the skills needed to develop a person's leadership potential and presents practical and easy-to-follow guidelines for implementing them. The authors provide their five practices of leadership (Challenging the Process, Inspiring a Shared Vision, Enabling Others to Act, Modeling the Way, and Encouraging the Heart) as guideposts to follow on the way to meeting the leadership challenge. But the authors point out that "first you must believe that a leader lives within each of us." After finishing the book, readers *will* believe that leaders do indeed live within them.

Reviewed by
Louis A. Dirker, Jr.,
Chief

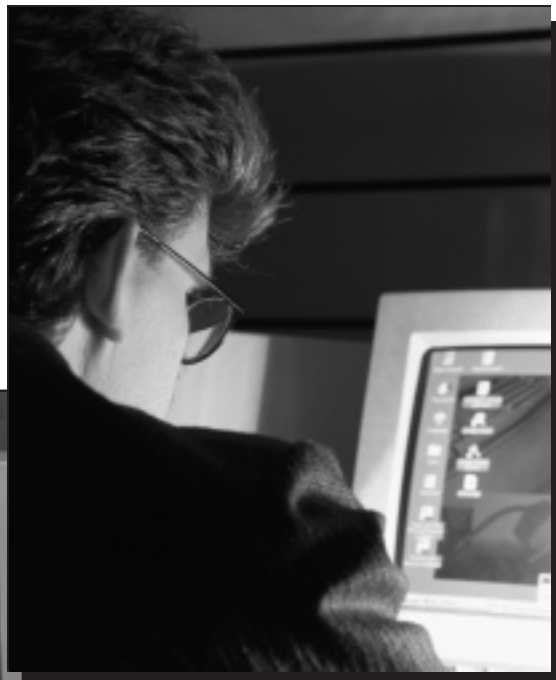
Cuyahoga Falls, Ohio, Police Department

Protecting Children on the Electronic Frontier

A Law Enforcement Challenge

By MATT PARSONS

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Parents serving in the U.S. military would never leave their children alone in a strange neighborhood. They would not allow them to stroll through an adult bookstore, let them wander aimlessly on a busy street, or permit them to have secret meetings with strangers. In the past, they could count on sentries at the entrances to their assigned bases to provide a barrier to exclude those not suitable for access. Today, however, these

parents face a risk to their children lurking right in their own homes—the Internet. This modern technology allows those who target children to bypass the gates and guards and enter homes to interact with unsuspecting youngsters via their computers.

In the ongoing effort to keep up with technology and the new threats posed by a potentially international criminal element, the Naval Criminal Investigative Service (NCIS)¹

Computer Investigations and Operations Department prepared and deployed a compact disk in September 1999 containing two programs designed to prevent and deter computer crime. The first focuses on the on-line safety concerns of Department of the Navy personnel and families living outside the United States, while the second educates Navy and Marine Corps leaders about the proliferation of child pornography on computer networks.

Both programs fall under the NCIS computer crime prevention program, which has as its motto “a bit of prevention is worth a gigabyte of cure.”²

SAFEKIDS

Safekids is a computer crime prevention initiative specifically designed to provide on-line safety information to Navy and Marine Corps children and families living overseas who may not understand the issues, pitfalls, and dangers associated with the Internet. While military families living overseas face many challenges, NCIS wants to ensure that online activity need not result in an added or unknown danger for these families. To that end, Safekids provides information for children in the 4th through 9th grades and suitable, related information for parents.

With over 110,000 U.S. dependent students in more than 238 Department of Defense schools in 15 locations around the world, providing support proves a logistical challenge. Key to meeting this challenge is an e-mail account established at NCIS Headquarters in Washington, DC. NCIS encourages adults and children who have questions or who receive disturbing online messages to send an e-mail to safekids@ncis.navy.mil. NCIS special agents monitoring the account evaluate and then forward these e-mails to the closest NCIS field element for response directly to the senders. NCIS recognizes that not all messages will contain criminal information. However, in cases requiring attention, agents will forward the e-mail to the appropriate response element in the overseas

military community for resolution or intervention by a family advocacy representative, the military chaplain, or other appropriate local agency. NCIS stresses that the e-mail account is for law enforcement assistance and referral only and provides no technical support.

The Safekids compact disk contains several programs aimed at children and their parents. The presentations include an introduction, a section for children, a segment on what parents should look for, and a resource component that gives parents some tools to protect their children.

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Safekids is a computer crime prevention initiative specifically designed to provide on-line safety information to...families living overseas....

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Introduction to Safekids

A short introduction includes the theory, target, and point of the effort and operates on two main premises. First, children are frequently the reason that families adopt new technology, and because of the reliance on technology in the military, Navy and Marine Corps children may experience more exposure than mainstream American youngsters. Second, because of deployment

schedules, military families living outside the United States may become single-parent based more often, and the “electronic babysitter” may present yet another challenge to an unsuspecting parent becoming acclimated to a new culture. Thus, Safekids acts as an on-line recourse for military families—even though a Navy or Marine Corps family lives outside the United States, they can remain in touch with law enforcement resources.

For Kids Only

An in-school presentation directed toward children in the 4th to 9th grades, For Kids Only discusses ethics, personal responsibility, privacy, and other subjects that youngsters need to know when using the Internet, including inappropriate types of communications and school violence. The program provides scenarios of what children should do if problems arise as well as resources and points of contact. Safekids developers coordinated information points and instructional techniques with professional educators and included a variety of discussion topics.

- Privacy—what kinds of information should children keep private? Children encounter the issue of privacy and understand that they should talk to their parents before supplying personal information, sending photos, or agreeing to meet any on-line contacts.
- Pitfalls—how they can get themselves in, and out of, trouble on-line. Youngsters learn that exploring the

Internet can be just as fun (or dangerous) as exploring a new land.

- Personal Web page considerations—what and what not to include. Children discover that if they do not want everyone in the world knowing something about them, they should not put it on the Internet.
- Facts or folklore—even though criminals use the Internet, youngsters find out that they can still “surf.” They also learn that just because something is on the Internet, it may not be true.

Information for Parents

This presentation for parents, caregivers, and other responsible adults addresses what online concerns they should have, including warning signs, such as unusual vocabulary or activity associated with the computer; fundamentals of chat rooms, software piracy, virus prevention, and the illegality of child pornography and how offenders use it against children; violence online, such as hate crimes and threatening communications; and personal privacy concerns, such as the development of personal Web pages. In addition, the parent’s presentation provides some proactive tips to prevent unpleasant events from happening, including controlling Internet access in their homes and ensuring that their children know their rules for communicating in chat rooms, and lists additional on-line resources.

Besides providing information on how to contact law enforcement,

Safekids educates parents, teachers, and children on how to help law enforcement if they become aware of a suspicious situation. For example, an individual solicits a personal meeting with a child while communicating in a chat room. If the solicitation occurs in a manner to avoid the parent’s knowledge or the meeting is imminent, they should contact their local NCIS office, military authorities, or local police immediately. On the other hand, if no immediate danger or other serious safety issue exists,

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the Internet....**
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but a child or parent has a question or concern about an online communication, they should forward it to the Safekids account, ensuring that they include their location and how best to contact them directly. NCIS also advises them, while waiting, not to delete anything from the computer and to save disks, tapes, and any related media.

Finally, the parent’s version includes a discussion about survey-type questionnaires proliferating

across the Internet. These surveys ask, in some instances, dozens of very personal questions of children, which are then returned or forwarded to others. These surveys provide a chilling insight into the scope of vulnerability and target selection now available to sexual predators playing off the trusting nature of innocents.

Parents’ Posse

The Posse is designed as an aid to law enforcement. In the days of the Wild West, American lawmen frequently formed a posse, made up of willing, capable volunteers, to help pursue desperados. In the computer age, law enforcement still needs assistance from willing, capable citizens. In some respects, the best line of defense may start at home.

This aspect of the program, created at the recommendation of the Department of Defense schools, provides parents, often less computer savvy than their children, with some of the tools they need to protect their families. The Posse demonstrates—

- how to find and look at history files;
- how to restrict World Wide Web access;
- the fundamentals of Internet browsers;
- the basics of chat rooms and messaging software; and
- how to copy, move, and delete files.

The Posse provides basic information and advises parents that other sources of information exist

on their computers. It recommends that through some cursory review, parents may decrease the chances that their children will become victims. Parents also learn that while some information on the Internet may appear inappropriate, simple, reasonable explanations may exist that justify its presence, and they should explore further before jumping to any conclusions.

Moreover, the presentation provides some general suggestions for prospective Posse members, including knowing the software on their computers, asking their children to show them what it does and how it does it, and checking for viruses when downloading from the Internet. It cautions parents that if they do not fully understand what they are doing in the subdirectories or areas referred to, they should not delete, rename, or otherwise change any file or configuration setting on

their computers. Obviously, parents cannot become computer experts overnight, but by reducing some of the intimidation factor, parents can learn how to get involved. For most military families, the days of claiming to be computer illiterate are nearly over. The Posse can show parents that while the online threats have become broader, the collective ability to meet them has increased substantially.

On the Web

NCIS has posted abbreviated versions of the Safekids presentations on its Web site, <http://www.ncis.navy.mil>. Also available on-line is a text file to produce a handout designed for parents and educators. It summarizes the Safekids initiative, defines common computer terms, identifies some resources for parents, and provides other information, such as an insert

discussing the Parents' Posse. NCIS has included a shareware search utility, which will scan a hard disk for images and display them on the screen, and easy-to-follow downloading instructions.

CHILD PORNOGRAPHY: IT'S NOT JUST DIRTY PICTURES

During the past several years, NCIS has noted an increase in cases involving the possession of child pornography. Other criminal issues, ranging from spouse and child abuse to drug possession, computer intrusion, and sexual assault, frequently accompany these matters. As NCIS has pursued these cases, it has determined that many military personnel view the possession of this type of material as nothing serious. Many leaders seem unaware that these offenses are prosecutable under the Uniform Code of Military Justice, as well as federal law, and

Dangers on the Electronic Frontier

Child pornography: Predators frequently use images depicting the sexual exploitation of children in an attempt to lure children into participating in this type of activity.

Unauthorized disclosure: While the capability exists to share information quickly, users must remember that e-mail is not a secure means of communication.

Harassment/stalking: The Internet provides access to many people, and many sites provide details about these individuals. Receiving a distressing message from an unknown sender can prove traumatic, especially for children.

Hate crimes and violence: The Internet provides the opportunity for everyone who has a personal opinion, regardless of content, to spread their message. Recent tragic events in the United States illustrate how disturbed individuals can use this medium to post their philosophy and to communicate with those who agree by linking them together through e-mail, chat rooms, or hyperlink.

that federal sentencing guidelines call for substantial confinement for possession, or other related areas, of child pornography.

To raise awareness of this issue and combat its spread, NCIS, in close cooperation with the Armed Forces Center for Child Protection and Naval District Washington Trial Service Office, has prepared a companion to the Safekids presentation, *Child Pornography: It's Not Just Dirty Pictures*. This presentation provides information on the problem; the current environment; applicable definitions; types of child molesters, child pornography, and collectors; uses of child pornography; victim-related information; and legal recourse.

While the presentation contains a significant amount of information compiled from a variety of sources, it has no images depicting the sexual exploitation of children. It concludes with three recommended actions/goals: educate command personnel, coordinate with law enforcement when suspicions arise, and adjudicate. The presentation stresses that child pornography constitutes more than an issue of dirty pictures; those who purvey this material represent worthy targets for law enforcement and the judicial process.

USES AND EFFECTS

Although the Safekids program has existed for only a year, recipients of the training have praised the effort. So far, NCIS has implemented the program in Japan, Italy, and Hawaii, with excellent results, and will continue to implement it in other areas around the world.

NCIS has shared the program with the Air Force Office of Special Investigations and the Army Criminal Investigation Division for review and evaluation. NCIS also has provided it to the Australian Federal Police, Maryland State Police, and local law enforcement agencies and will continue to support requests for the program.³

“
...through some cursory review, parents may decrease the chances that their children will become victims.
”

CONCLUSION

The Internet, with all of its benefits, presents new dangers to families everywhere. However, military families may prove more vulnerable. With a spouse deployed for extended periods of time, the remaining parent faces many challenges, including adapting to new cultures if based abroad and attempting to keep the home environment as normal as possible. Add to these difficulties a hidden danger in the technology thought to provide some degree of comfort, and military families can become easy targets for Internet predators.

The Computer Investigations and Operations Department of the Naval Criminal Investigative

Service developed a tool to help Navy and Marine Corps families deal with the potential risks associated with using the Internet. NCIS created the Safekids program to help these families understand this new technology and reduce their likelihood of falling victim to online dangers. Through such efforts, not only military families but many others can learn ways of safeguarding their loved ones, particularly their children, from the unscrupulous and sometimes deadly individuals who peruse the Internet for criminal purposes. ♦

Endnotes

¹ A worldwide federal law enforcement organization, NCIS protects and serves the members of the Navy and Marine Corps and their families. NCIS currently has approximately 1,600 employees in over 150 locations around the globe, including aboard ships.

² Matt Parsons, “Crime Prevention and the Electronic Frontier,” *FBI Law Enforcement Bulletin*, October 1998, 7-10.

³ To obtain further information about the program, system requirements, and request procedures, agencies should contact NCIS Headquarters, Computer Investigations and Operations Division, 716 Sicard Street, SE, Suite 2000, Washington, DC 20388, or access the NCIS Internet site at <http://www.ncis.navy.mil>.

A former Buffalo, New York, police officer, Special Agent Parsons now serves with the Computer Investigations and Operations Department of the U.S. Naval Criminal Investigative Service in Washington, DC.

Sixty-five years ago this month, FBI Director John Edgar Hoover introduced the *FBI Law Enforcement Bulletin* to the criminal justice community in a letter that appeared in the October 1935 issue. Three years earlier, in October 1932, the Bureau of Investigation began publishing a magazine titled the *Fugitives Wanted by Police Bulletin*. The publication marked the first time a list of fugitives had been compiled and disseminated on a nationwide basis. In 1935, when the Bureau of Investigation became the Federal Bureau of Investigation, the publication changed its format to include articles regarding advances in police science and was renamed the *FBI Law Enforcement Bulletin*. Director Hoover's letter and the cover of that issue are shown below.

The Federal Bureau of Investigation has always welcomed every opportunity to assist law enforcement officials and to encourage a comprehensive and enthusiastic cooperation among those engaged in combating crime.

Many facilities of the FBI have been made available to law enforcement agencies throughout the country; the assistance offered by the Identification Division, the Technical Laboratory, and through the preparation of crime statistics are well known.

The FBI has published, each month, the *Fugitives Wanted by Police Bulletin*, in which has appeared information concerning fugitives and articles pertaining to scientific crime detection or matters which might otherwise be of interest and assistance to the peace officer. Believing that the FBI can be of further aid to the law enforcement officer, the scope of the *Fugitive Bulletin* is being broadened to provide, not only a means of making nationally known the fugitives

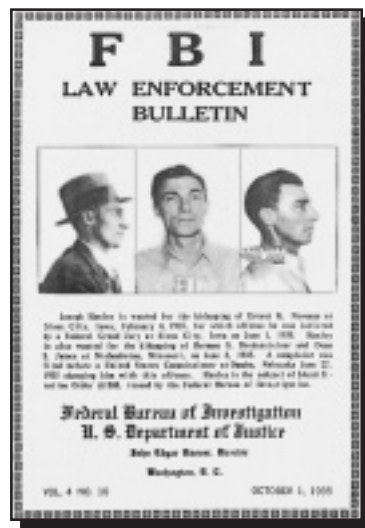
wanted by law enforcement agencies, but a national periodical of interest and value in the field of law enforcement.

In keeping with the extension of content, the name of the *Fugitives Wanted*

by *Police Bulletin* has been changed, with this issue, to the *FBI Law Enforcement Bulletin*. It is intended that this publication should provide a clearinghouse for police officials regarding successful police methods, a medium for the dissemination of important police information, and a comprehensive literature pertaining to the scientific methods in crime detection and criminal apprehension.

It is hoped that the *FBI Law Enforcement Bulletin* will serve in making available, to law enforcement officers everywhere, subject matter of interest to them and of aid to progressive law enforcement.

John Edgar Hoover
FBI Director
October 1935



Defining Disability Under The Americans with Disabilities Act

By THOMAS D. COLBRIDGE, J.D.



The Americans With Disabilities Act (ADA)¹ was enacted to protect qualified people with disabilities. The first article in this series² focused on the requirement that a claimant under the ADA be otherwise qualified for the position, and able to perform the essential functions of the job, with or without reasonable accommodation by the employer. This article discusses the ADA concept of disability.

The statute defines a disability in three distinct and unique ways

that broaden its impact in the workplace. For purposes of the ADA, disability means having a physical or mental impairment that substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.³

Physical or Mental Impairment

The first definition of a disability is “a physical or mental impairment that substantially limits one or more of the major life activities of

such individual.”⁴ A great amount of legal debate has centered around the terms “physical or mental impairment,” “substantially limits,” and “major life activities.”

The Equal Employment Opportunities Commission (EEOC), the body charged with enforcing the ADA, has defined a “physical or mental impairment” as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of the major body systems⁵, or any mental or psychological disorder such as mental

retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.⁶ In its interpretive guidance, the EEOC notes that it does not consider physical characteristics (eye and hair color, height, weight and muscle tone within normal ranges) as impairments.⁷ Similarly, predispositions to illness, pregnancy, and personality traits (poor judgment and quick temper) are not disabilities unless resulting from a psychological disorder.⁸ Advanced age is also not a disorder, according to the EEOC, although medical conditions associated with advanced age would be.⁹

Homosexuality and bisexuality are not disabilities under the ADA.¹⁰ The statute also excludes the conditions of transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance abuse disorders resulting from current illegal drug use.¹¹

Alcoholism and Drug Addiction

Alcoholism and drug addiction are difficult issues under the ADA. Congress recognizes that employers must have the authority to ensure that their workplaces remain safe and efficient. Therefore, the ADA expressly states that employers may prohibit the use of illegal drugs and the use of alcohol in the workplace,¹² and require that employees not be under the influence of drugs or alcohol while working.¹³ In addition, an illegal drug user and an alcoholic may be held to the same

job qualification standards, and the same standards of job performance and behavior as all other employees, even if their poor performance or behavior is related to their drug use or alcoholism.¹⁴ The ADA also permits drug testing in the workplace.¹⁵

Current drug use, either on or off the job, is not protected by the ADA.¹⁶ Consequently, employers do not violate the ADA when they refuse to hire an applicant, or discipline or fire employees currently using illegal drugs, when they act on the basis of that use. Current drug use is not limited to use on the day of the employment action. For example, employees' admissions of drug use in the weeks and months prior to discharge are sufficient indication of recent involvement in drug-related misconduct to justify their discharge.¹⁷ As EEOC interpretive guidance makes clear, current use means the use of drugs that has "occurred recently enough to indicate that the individual is

actively engaged in such conduct."¹⁸ Consequently, even if employees can show that they were drug-free at the time the employer acted, the ADA offers no protection if the employer can show the decision was made on the basis of the employees' current use of drugs.¹⁹

Past drug use is considered a disability and protected by the ADA. If employees are rehabilitated or in a rehabilitation program, currently do not use illegal drugs, and can perform the essential functions of the job held or desired,²⁰ employers have a duty to accommodate the employees. The accommodation may be to provide additional sick leave or vacation time to attend rehabilitation programs, or provide a flexible work schedule.

Unlike the illegal use of drugs, the use of alcohol is not a crime, and therefore, treated somewhat differently under the ADA. Simple use of alcohol away from the job site cannot be the basis for an adverse employment action. However,

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...disability means a physical or mental impairment that substantially limits one or more major life activities....

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Special Agent Colbridge is a legal instructor at the FBI Academy.

recovering alcoholics are considered disabled and should be accommodated if they can perform the essential functions of the job.²¹

The treatment of drug and alcohol abuse under the ADA can be summarized as follows: the ADA draws a distinction between employer actions based on an employee's status as a *past* drug user or alcoholic, which may be prohibited, and employer actions based upon the behavior of the employee, which likely are not. An employer need not tolerate insubordination, disruptive behavior, or illegal acts by recovering alcoholics or *past* drug users, even if their behavior is due to their addiction.²²

Major Life Activities

Assuming applicants or employees are impaired, they still are not protected by the ADA unless that impairment impacts a "major life activity."²³ The EEOC has adopted the definition of a major life activity from the Rehabilitation Act of 1973—basic activities that the average person in the general population can perform with little or no difficulty.²⁴ Examples of major life activities include caring for oneself, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning, working, sitting, standing, lifting, and reaching.²⁵

The Supreme Court recently held that major life activities under the ADA are not limited to only those that have a daily impact on a person's life, or to those that affect a person's public or economic activities. Consequently, an activity as private in nature as reproduction

is a major life activity for purposes of the ADA.²⁶

The Substantial Limitation Requirement

On the whole, the courts and the EEOC have little trouble deciding if people are impaired for purposes of the ADA, and whether that impairment impacts a major life activity. However, the ADA does not protect all people with an impairment that affects a major life activity. It only protects those whose impairment "substantially limits" a major life activity.²⁷ This substantial limitation requirement has proven more troublesome for employers, the EEOC, and the courts.

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...employers may...require that employees not be under the influence of drugs or alcohol while working.

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The EEOC defines a substantial limitation as the inability to perform a major life activity that the average person can perform or a significant restriction in the condition, manner, or duration of the performance of an activity as compared to the average person.²⁸ Factors to consider are the nature, severity, and expected duration of the impairment, as well as the permanent or long term impact of the impairment.²⁹ Under this definition, temporary, nonchronic

impairments of short duration such as broken bones, sprains, concussions, or appendicitis are not substantially limiting. However, an impairment of relatively short duration (e.g., a broken leg that heals in weeks) can have a major, long term impact (e.g., the broken leg heals improperly, resulting in permanent loss of function).

In *Bragdon v. Abbott*,³⁰ the Supreme Court emphasized that the ADA requires only a substantial limitation on a major life activity, not a complete inability to perform it. In *Bragdon*, it was argued that HIV infection did not substantially limit the major life activity of reproduction because conception and childbirth are still possible for infected women. The Court found, however, that the public health risks (e.g., HIV infection of the male partner and child), additional legal considerations (e.g., state prohibitions on sexual activity by HIV infected persons) and economic burdens (e.g., health, insurance, and long-term care costs) attendant to childbirth by an HIV infected woman are sufficient to limit this major life activity.³¹

The Court made it clear in *Sutton v. United Air Lines, Inc.*³² that the ADA's requirement that a disability substantially limit a major life activity must be judged on a case-by-case basis. This individualized analysis is necessary because the impact of a disability will differ from person to person. The Court noted that the protections of the ADA depend on whether a person is, in fact, substantially limited by an impairment, not on the name or diagnosis of the impairment.

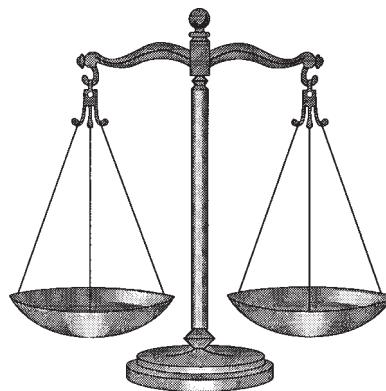
In *Sutton*, the Court also settled the question whether the limitations imposed on a person by a disability should be judged with or without considering the effect of mitigation of the impairment through the use of medications, assistive, or prosthetic devices. The Court ruled that such mitigation must be considered. For example, individuals with poor vision who wear eyeglasses should be assessed for ADA protection on the basis of their corrected vision, not their uncorrected vision.³³

A large number of employees seeking ADA protection base their claim on a substantial limitation on the major activity of working. Working is one of a number of major activities that the EEOC and the courts have identified under the ADA. However, the EEOC views claims of limitations on working as claims of last resort. The commission states in its guidance that working limitations should only be considered if no other major life activity is substantially limited by the claimant's disability.³⁴

Employees are not substantially limited in the major activity of working if their disability merely prevents them from doing a single specific job. Instead, employees must be prevented from performing an entire class of jobs, or a broad range of jobs in different classes in the geographical area that the disabled individuals have access.³⁵

For example, a person with a minor vision problem that prevents him or her from being a commercial airline pilot, is not substantially limited in the major life activity of working because the position of copilot or pilot for a noncommercial

airline would still be available. The minor vision problem is a bar to only one specialized job (commercial airline pilot) rather than from an entire class of jobs, and therefore, would not be considered a substantial limitation on the major life activity of working.³⁶ On the other hand, a person with a back injury that prevents him or her from performing heavy labor tasks would be substantially limited in the major life activity of working because he or she cannot perform an entire class of jobs involving heavy exertion.³⁷



A Record of an Impairment

The ADA also defines a disability as having a "record" of a physical or mental impairment that substantially limits a major life activity.³⁸ Congress included this provision to ensure that people who have suffered from disabilities in the past are judged not on that past record (i.e., educational, medical, or employment records), but on the basis of their present ability to do the job. For example, an employer

may not refuse to hire applicants solely because they have a history of cancer if the applicants are otherwise qualified and able to perform the essential functions of the job.³⁹

In order for the applicant or employee to be protected under this provision, the impairment of record relied upon by the employer must be, or have been, substantially limiting as defined in the ADA. Although an employer or agency may classify a person as "disabled" under another statute (i.e., a disabled veteran or an individual on disability retirement), that does not mean that the person is automatically classified as disabled under the ADA.⁴⁰ At the same time, being classified as "totally disabled" under another statutory scheme also does not automatically mean a person cannot perform the essential functions of any job, and therefore is not entitled to ADA protection.⁴¹

Regarded as Having an Impairment

The ADA also defines a disability as being regarded as having a disability.⁴² This definition of disability is included in the ADA to ensure that applicants and employees are judged on the basis of actual ability, not mistakes or misconceptions. It recognizes that "society's myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment."⁴³

The courts and the EEOC have dealt with three broad categories of discrimination under this definition of a disability. The first category covers situations involving people

who have a disability that does not substantially limit any major life activity, but are treated as if they are substantially limited by their employer. An example would be individuals with high blood pressure who are transferred to less strenuous positions because the employer fears they will have a heart attack if kept in the same position.⁴⁴

The second category of cases under this definition is exemplified by cases where employees have an impairment that is only substantially limiting because of the attitudes of others. The EEOC explains this category with the example of the store clerk who has a facial scar who is transferred to a lower paying stock room job by his or her employer because of negative customer reactions to the disfigurement.⁴⁵

The third category involves cases where the employer mistakenly believes employees have disabilities when, in fact, they are not disabled. An example is an employee who is fired because of an unfounded rumor that he or she is infected with HIV.⁴⁶

Conclusion

To be protected by the provisions of the ADA, individuals must demonstrate that they are otherwise qualified for the position held or sought; can perform the essential functions of the job held or desired, with or without reasonable accommodation; and that they are disabled as defined in the act. The definition of a disability under the ADA is very broad. It includes not only a physical or mental impairment that substantially limits a major life

activity, but also a record of such an impairment, or being regarded as having such an impairment. Once individuals satisfy these prerequisites, they are protected from employment discrimination based upon a recognized disability. ♦

“

...the ADA requires only a substantial limitation on a major life activity, not a complete inability to perform it.

”

Endnotes

- ¹ 42 USCA § 12101, *et. seq.*
- ² Thomas D. Colbride, “The Americans with Disabilities Act,” *FBI Law Enforcement Bulletin*, August 2000, 26-31.
- ³ 42 USCA § 12102(2).
- ⁴ 42 USCA § 12102(2)(A).
- ⁵ 29 CFR § 1630.2(h)(1). See this regulation for a complete listing of the body systems that the EEOC considers major.
- ⁶ 29 CFR § 1630.2(h)(2).
- ⁷ 29 CFR § 1630, App., 1630.2(h).
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ 42 USCA § 12211(a).
- ¹¹ 42 USCA § 12211(b).
- ¹² 42 USCA § 12114(c)(1).
- ¹³ 42 USCA § 12114(c)(2).
- ¹⁴ 42 USCA § 12114(c)(4).
- ¹⁵ 42 USCA § 12114(d).
- ¹⁶ 42 USCA § 12114(a). A “drug” is a controlled substance as defined in the Controlled Substances Act (21 USCA § 812); see 42 USCA § 12111(6)(A) and (B). The “illegal use of drugs” includes the use, possession, or distribution of drugs as defined by the Controlled Substances Act (21 USCA § 801 *et seq.*), but does not include the use of a drug

under a doctor’s supervision or authorized by the Controlled Substances Act; see 42 USCA 12114(6)(A).

¹⁷ *Collings v. Longview Fibre*, 63 F.3d 828 (9th Cir.1995), *cert. denied*, 116 S. Ct. 711 (1996).

¹⁸ 29 CFR § 1630, App. 1630.3.

¹⁹ *Supra* note 11.

²⁰ 42 USCA § 12114(b).

²¹ *Conley v. Village of Bedford Park*, 2000 WL703806, (7th Cir. Ill. 2000).

²² 29 CFR § 1630.16(b)(1)-(6); *Newland v. Dalton*, 81 F.3d 904 (9th Cir. 1996)(claim under the Rehabilitation Act of 1973); *Williams v. Widnall*, 79 F.3d 1003 (10th Cir. 1996).

²³ 42 USCA § 12102(2)(A).

²⁴ 29 CFR § 1630, App., 1630.2(i).

²⁵ *Id.*

²⁶ *Bragdon v. Abbott*, 118 S. Ct. 2196 (1998).

²⁷ *Supra* note 22.

²⁸ 29 CFR § 1630.2(j)(1)(i) and (ii).

²⁹ 29 CFR § 1630.2(j)(2).

³⁰ *Supra* note 22.

³¹ *Supra* note 22, 2206.

³² 119 S. Ct. 2139 (1999).

³³ *Id.*

³⁴ 29 CFR § 1630, App., 1630.2(j).

³⁵ 29 CFR § 1630.2(j)(3)(i).

³⁶ 29 CFR § 1630, App.,1630.2(j).

³⁷ *Id.*

³⁸ 42 USCA § 12102(2)(B).

³⁹ 29 CFR § 1630, App., 1630.2(k).

⁴⁰ *Id.*

⁴¹ *Cleveland v. Policy Management Systems, et al.*, 526 U.S. 795 (1999); *Sheehan v. Marr*, 207 F.3d 35 (1st Cir. 2000).

⁴² 42 USCA § 12102(2)(C).

⁴³ *School Board of Nassau County v. Arline*, 480 U.S. 273 at 284 (1987) (action under the Rehabilitation Act of 1973); *Murphy v. United Parcel Service, Inc.*, 119 S. Ct. 2133 (1999); *Sullivan v. River Valley School District*, 194 F.3d 1084 (10th Cir. 1999).

⁴⁴ 29 CFR § 1630, App., 1630.2(l); see also *Murphy v. United Parcel Service, Inc.*, *supra* note 42.

⁴⁵ *Supra* note 44.

⁴⁶ *Supra* note 44.

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 their exemplary service to the law enforcement profession.



Officer Hyatt



Officer Leija

Officers Ron Hyatt and Jose Leija of the Austin, Texas, Police Department responded to a 911 call from an employee at a daycare center. A male subject had entered the daycare and ordered an employee to call the police. When the officers arrived at the daycare, Officer Hyatt approached the front of the building, made contact with the employee, and observed the suspect holding a butcher knife to the throat of a 22-month-old child. Officer Leija positioned himself outside a daycare window behind the suspect. When Officer Hyatt ordered the subject to drop the knife, the suspect began to cut the child's throat. Almost simultaneously, Officer Hyatt fired

his weapon at the suspect, who released the child, and Officer Leija fired, shattering the window. Officer Leija moved through the shattered window, grabbed the child, and moved him to safety as Officer Hyatt handcuffed the suspect. The child survived the wound, which narrowly missed the carotid artery, and received 40 stitches. The quick response by Officers Hyatt and Leija under extremely stressful conditions saved the child's life.



Sergeant Adams



Officer Christian



Officer Delong



Officer Stephens

In the early morning hours, Sergeant Kenneth Adams and Officers Jeffrey Christian, Forest Delong, and James Stephens of the Ashland, Kentucky, Police Department responded to a structure fire and found a 4-year-old girl leaning out of a second-story window. The room and the hallway behind the child were fully engulfed in fire, blocking rescue efforts. Officer Delong assisted Sergeant Adams in scaling the side of an adjoining building. Sergeant Adams crossed the roof and leaned out over the side of the building near the trapped child, where he encouraged the child to leap successfully into his out-reached arms. Officers Christian, Delong, and Stephens entered the burning building to search for other trapped victims. Officer Stephens removed the child's grandfather twice from the burning structure, and entered a third time on an unfounded report that a police officer was down inside the building. Officers Christian and Delong searched the building until forced out by heat and smoke. The child received second- and third-degree burns on her back and legs and has undergone several surgeries. By placing their own lives in danger, Sergeant Adams and Officers Christian, Delong, and Stephens saved the lives of several individuals.

**U.S. Department of Justice
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001**

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

**Official Business
Penalty for Private Use \$300**

Patch Call



The Laguna Beach, California, Police Department patch depicts the historic lifeguard tower at Main Beach, with coastal hills as a backdrop. The tower is enclosed in an artist's palette with paint brushes, symbolizing the scenic Southern California city that is home to world-renowned art festivals and the Pageant of the Masters.



The patch of the Borough of Union Beach, New Jersey, Police Department features the Borough's logo with its established date of 1925. It depicts the area's beautiful waterfront, which includes sunbathing, swimming, boating, and fishing opportunities.