

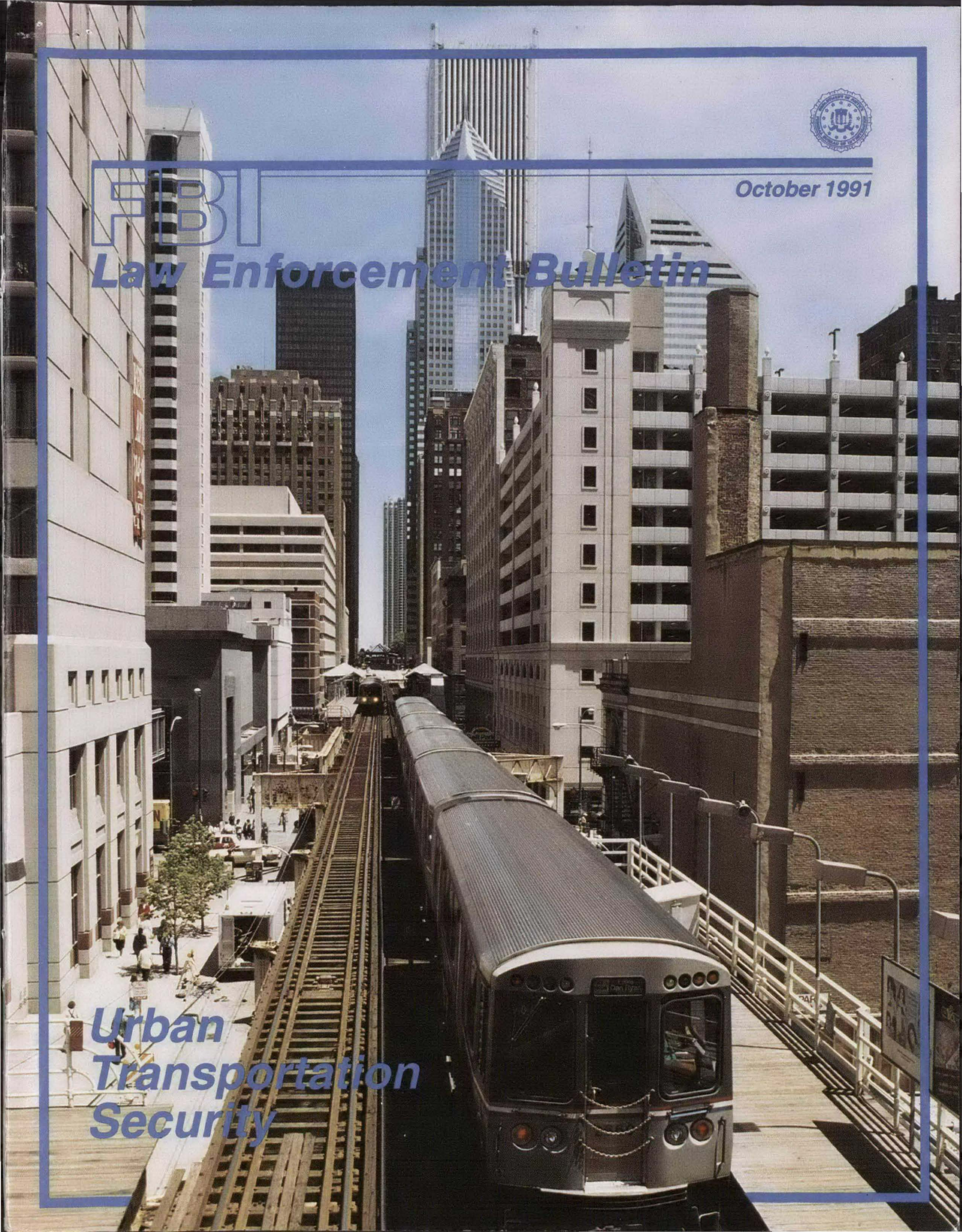


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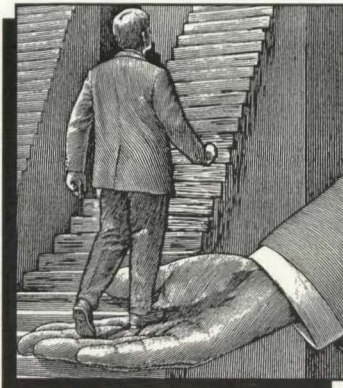
Law Enforcement Bulletin

**Urban
Transportation
Security**





Features



Page 4

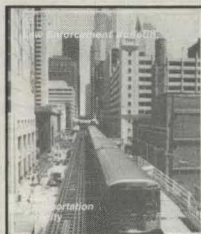


Page 20

- 1 Urban Transportation Security**
By Robert W. Dart
- 4 Developing Police Leadership**
By Paul Hansen
- 10 The Respectable Pusher**
By Jeffrey D. Lane
- 15 Taking the Bounce Out of Bad Checks**
By Vinse J. Gilliam
- 22 Effective Crowd Control**
By Steven J. Schmidt
- 26 Civil Forfeiture**
By Thomas V. Kukura

Departments

- 8 Police Practices**
By David I. Rechenmacher
- 20 Research Forum**
- 32 Legal Brief**



The Cover: Since mass transit systems are an integral part of metropolitan cities, public officials must look for ways to reduce crime and change citizen perception of this mode of transportation. See article p. 1. Cover photo courtesy of Regina Kosicki.

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William S. Sessions, Director

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Urban Transportation Security

By
ROBERT W. DART

Urban transit systems are the very lifeblood of metropolitan areas. They preserve our cities as vital commercial centers. Their lines carry citizens to and from their places of work, as well as to educational, recreational, and cultural facilities.

Unfortunately, however, many citizens perceive that their personal safety is endangered on urban transit systems because they believe that dangerous levels of crime exist in subways. For many riders, descending into the noisy, disorienting subterranean world of rapid transit increases their fear of crime.

Also contributing to the false perception of danger is the reaction of the media to incidents that occur on subways. Even though only about 5 percent of Chicago's total crime occurs on the Chicago Transit System, the media tend to publicize these crimes, while seeming to ignore these same types of crime when they occur on the streets. This action only serves to reinforce the belief that subway transit is unsafe.

Because citizens believe this to be true, and because citizen perception of security affects volume and revenue,¹ officers who police these systems must now incorporate into their normal duties the critical

task of changing citizen apprehension about using a subway transit system. Riders must not only be safe; they must also *feel* safe. Using the Chicago Transit System as a case study, this article discusses possible strategies that departments can use to reduce crime on urban transportation systems, thereby changing citizen perception.

THE PROBLEM

The Chicago Transit System (CTA) operates over 1,000 cars that transport approximately one-half million persons daily. It has over 140 stations and over 200 miles of track that are policed by the Public



Commander Dart is assigned to the Gang Crimes Section of the Chicago Police Department.

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**Riders must not
only be safe; they
must also feel safe.**
”

Transportation Section of the Chicago Police Department.

Future plans for the CTA call for an additional 9.2-mile stretch of line to connect the existing loop to Midway Airport. However, since local citizens and tourists arriving at the airport will not use a system they believe to be unsafe, the City of Chicago was confronted with the dilemma of how to police the city's public transportation system more effectively.

THE PROGRAM

To begin, officials reviewed the nature and scope of crimes committed on the transportation system. Their goals were to find possible solutions to these crime

problems, and at the same time, change the public's belief that subways were unsafe.

However, reducing the rate of crime required an organized effort—a bandaid approach would not be effective. It was necessary to reorganize totally in order to establish a program with new goals and direction. Officials wanted to make a clear commitment to the safety of the ridership.

Areas Addressed

Personnel

A primary consideration in the reorganization was how to deploy personnel efficiently. Based on studied needs, transit personnel are divided among three watches. The first shift (midnights) receives 23 percent of the personnel, the second shift (days) receives 34 percent of the personnel, and the third shift (afternoons) receives 43 percent of the personnel. In addition to patrol personnel, each 8-hour shift includes a canine unit, a tactical unit, and a crime assault team (CAT). These special units are deployed to any problem areas that need their specific skills.

Patrol squads

Because it was not effective to assign police officers to a designated stretch of track during periods of low crime or low ridership, the squad concept was born. This concept is designed around first-line supervisors (sergeants), who deploy all or part of their teams to high-crime platforms during certain times and then to other platforms during peak ridership. This enhances the citizen perception of

safety by increasing the presence of uniformed police officers.

At any given time, the transportation section has as many as 10 squads assigned to different areas of the transit system. A typical squad consists of four to six uniformed officers, two plainclothes officers, and two canine officers, who are separate from the canine units. Although users of transit systems commonly believe that plainclothes officers combat crime most effectively, riders are not at ease unless they also see uniformed officers. And, because both plainclothes and uniformed officers can make arrests, officials are able to achieve a balance of visibility and productivity.

Canine units

Canine units are also used to police the transit system. The dogs, which are donated by citizens, are given 8 weeks of intensive training in aggression, protection of their handlers, and moving safely among crowds. Canine units not only give transit users a greater sense of safety but they also reinforce positive public relations. Riders look forward to seeing their dogs and seem to take a personal interest in them.

Tactical units

Tactical units, which have the flexibility to be deployed to any situation or crime pattern, play an integral part in the effort to reduce the crime rate. These plainclothes officers can move freely through the system without arousing the suspicions of potential offenders. They observe all transit criminal activity for patterns, such as time of day, day

of week, and modus operandi. Personnel in the unit then devise a plan to address specific crime problems.

For example, thieves and pickpockets are a major problem on transit systems. Most of them ply their trade during rush-hours and during lunch times, when the subways are crowded. However, because CTA tactical units target these thieves, the problem has been greatly reduced.

Crime assault teams

The crime assault teams consist of experienced police officers who exhibit a high degree of self-discipline and are team players. They pose as ordinary transit users and wait for criminals to take advantage of their apparent vulnerability. In order to avoid a charge of entrapment, these officers react only when they have been victimized.

During the trials of these criminals, the victim/officer testifies as the complainant, and a crime assault team member testifies as the arresting officer. These two factors contribute to an extraordinarily high conviction rate in these cases.

Ordinance enforcement team

Another major problem the CTA experienced was unlicensed vendors. Prior to the new program, these illegal vendors were issued ordinance complaint forms or citations similar to traffic citations. However, because this method of enforcement provided no assurance that offenders would appear in court to answer the charge, it failed to serve as a deterrent. For this reason, illegal vendors are now arrested by

members of ordinance enforcement teams, whose primary role is to ensure that vendors comply with city ordinances. This approach has reduced the number of vendors on the platforms, allowing passengers to move freely and safely in the subway areas.

Assigning Personnel

Watch commanders use three methods to assign personnel, including Operation Impact, Operation Vacuum, and Operation Saturation. Commanders who use Operation Impact assign their officers based on ridership traffic patterns. Officers are assigned to stations that handle large numbers of riders, while those stations with fewer riders are monitored by moving police patrols.

“During the first year of the program, there was a 40-percent reduction in reported serious crime....”

Criminals tend to explore transit systems for areas where there is no police presence. Operation Vacuum enables watch commanders to withdraw uniformed officers from a specific station and deploy them to another area. The ostensibly vacant station can then become the focal point of a tactical team.

When officials want to convey the impression that police are every-

where, such as during rush-hour at busy stations, they use Operation Saturation. This operation, which may last either all or part of a shift, involves saturating particular lines with uniformed officers. It is an effective way to both deter criminals and build citizen confidence in the CTA's policing methods by conveying the impression that officers are everywhere.

CONCLUSION

Mass transit systems are an integral part of large cities, and as these cities expand in both population and size, the importance of this mode of transportation will also increase. However, if citizens refuse to use subways because they believe that they are unsafe, the full potential of the systems will never be realized. For this reason, officials must begin to look at ways to reduce crime on rapid transit systems, which will also help to change citizen perception.

The initiatives put into operation by the Chicago Mass Transit System are examples of how a concerted effort to reduce crime can work. During the first year of the program, there was a 40-percent reduction in reported serious crime, and the crime rate continues to decline. The plan has been a resounding success, with ridership on the rise again. The Chicago subway is finally becoming a safe—and popular—mode of transportation.

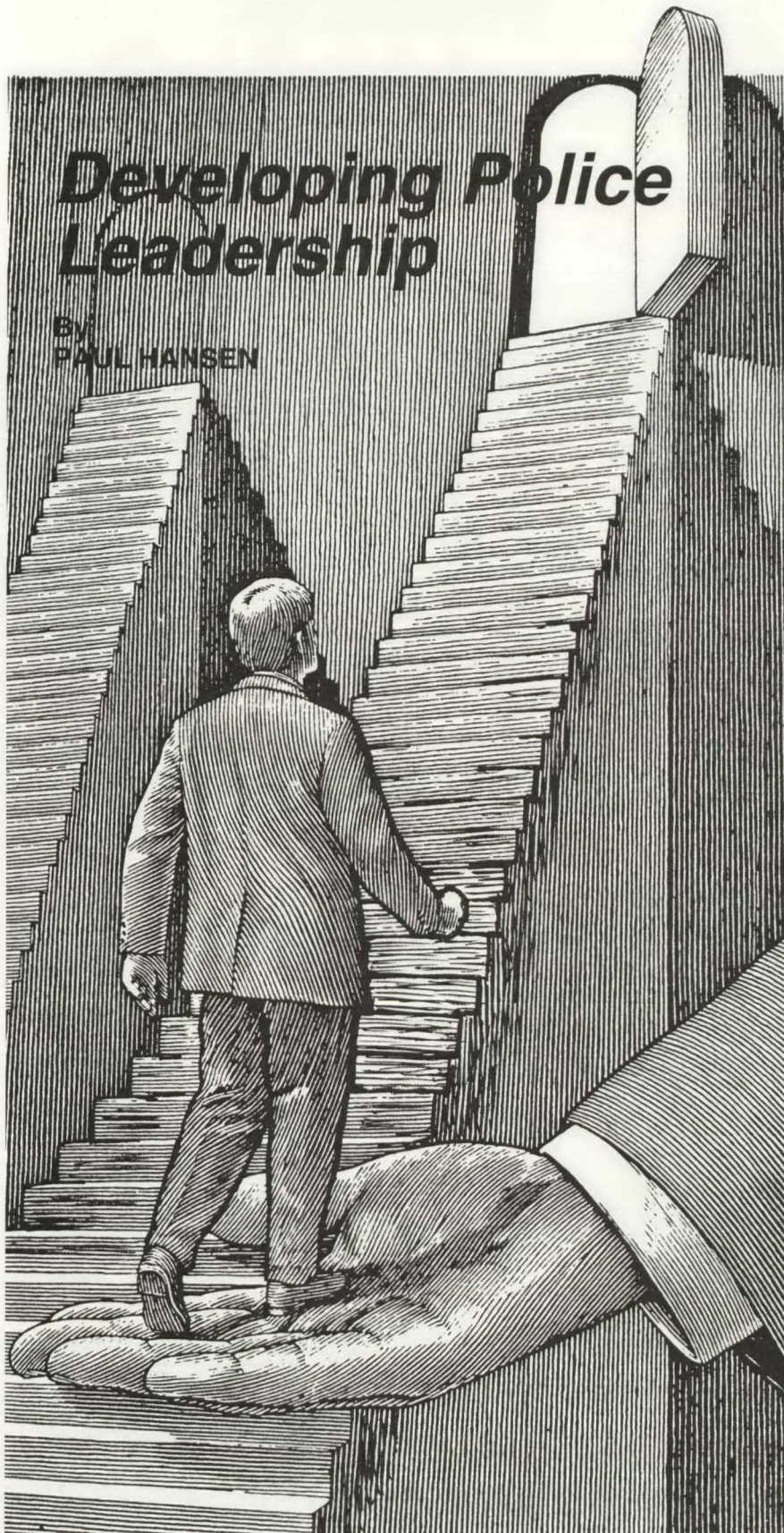
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Footnote

¹ *Policing Urban Mass Transit Systems*, U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1977.

Developing Police Leadership

By
PAUL HANSEN



Effective leadership, or the lack of it, can impact dramatically on organizations. There have been many instances when private organizations near bankruptcy, such as the Chrysler Corporation, have become more efficient, effective organizations by replacing ineffective administrations with competent, dynamic leadership. Similarly, successful military leaders have turned ineffective military units into highly effective, motivated teams.

Unfortunately, however, police departments often do not evaluate management practices until a crisis, such as a lawsuit, serious accident, or public pressure caused by misconduct or mismanagement, forces them to re-evaluate their positions. This type of crisis management in police organizations has been disruptive and costly and has even threatened the existence of some departments.

The absence of good management practices in police departments may be due, in some part, to the fact that it is difficult to measure the effectiveness of police organizations. However, a lack of measurable standards often allows ineffective organizations, including police departments, to survive without much change.

Fortunately, however, the same leadership principles and skills that turn around private organizations and military units can be used to change police organizations and motivate personnel. This article discusses how some of today's ineffective police practices evolved and what is needed to change these management practices. Various leadership styles will

also be discussed, as well as how effective disciplinary measures can be taken when necessary.

Police Leadership Practices

Certain ineffective police leadership practices that exist today evolved from two sources—the authoritarian military style of management and management practices used during and after the Industrial Revolution to control unskilled factory laborers. These autocratic practices were based on the assumption that employees were basically lazy, and leaders believed that this type of management was necessary to gain as much production as possible from the labor force.

Unethical political influences and corruption were also factors in the early development of police leadership practices. A strong chief executive was required to combat these problems. This, along with the low education level of most officers and the existence of a structure-oriented society, made the authoritarian leadership style both appropriate and effective. However, authoritative leadership practices do not meet the needs and expectations of today's better educated and more technically competent police officers.

For the most part, as society evolved, work ethics and leadership styles changed. Today, police officers are expected to function effectively in a more sophisticated society, and as a result, the education and prestige level of officers has increased significantly. Officers are not willing to accept autocratic leadership that requires them to follow orders without question. This autocratic style of management not only

causes poor morale and reduced organizational effectiveness but it also leads to the loss of quality personnel, who seek employment elsewhere rather than being subjected to ineffective, poor leadership.

Changing Leadership Practices

If police leadership is to improve, officials in the department, from the chief executive down through the chain of command, must be committed to change poor leadership practices and values.¹ They must master leadership skills, such as patience, understanding, fairness, and judgment.² Supervisors must also recognize that leadership is important to successful management, and that past practices, such as public criticism, tactlessness, and unfairness, are destructive to organizations. Instead, leaders should stress the importance of consideration, caring, and loyalty. Stressing the importance of these values produces positive results,

such as a higher degree of employee motivation and morale. This, in turn, may result in more effective organizations.

For example, loyalty, both to the supervisor and to the employee, is important. Some administrators expect loyalty from employees; yet, they fail to show loyalty to the employees. This is often demonstrated through their lack of trust or confidence in their subordinates. Some supervisors, when they receive citizen complaints about their officers, automatically assume the officers are guilty. This seriously undermines employee confidence in the supervisor's leadership ability. It also causes confusion and reduced performance in subordinates. For these reasons, supervisors must presume that employees are innocent of any wrongdoing until the facts prove otherwise.

An important step in the commitment to change leadership practices is to identify the various

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Sergeant Hansen is with the Irondequoit Police Department in Rochester, New York.

leadership styles and how they impact on employee performance. Studying leadership styles also allows supervisors to identify their personal styles of management and to make necessary changes in their management styles.

Basic Leadership Styles

There are two basic leadership styles—job-oriented and employee-oriented.³ Job-oriented leaders are primarily concerned with tasks, and they rely on the formal power structure and close supervision for task accomplishment. Conversely, the employee-oriented leader is concerned with maintaining good relations with subordinates. Tasks are delegated, and the leader is concerned with the employees' personal growth.

Although one leadership style is not clearly superior over the other, the employee-oriented leader generally promotes higher morale in subordinates. This results in lower absenteeism and fewer employee grievances. Employees of job-oriented leaders generally produce less because they are closely monitored and are not allowed to participate in decisionmaking, which results in employee dissatisfaction.

Additional Leadership Styles

In *The Managerial Grid*, authors Blake and Mouton identified five styles of leadership: Task management, country club management, impoverished management, middle of the road management, and team management.⁴ The "task management supervisor" is concerned with achieving production goals by planning, directing, and controlling subordinates' work, whereas the

"country club" management style stresses the importance of good employee relations. On the other hand, the "impoverished management" supervisor attempts to maintain organizational membership,

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The situational leader takes a commonsense approach to leadership, with the focus on the leader adapting to the follower's needs.

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while the "middle-of-the-road" manager attempts to maintain both good employee relations and production. And, the "team manager" maintains a high degree of production through integration of tasks with subordinate input and decision participation.

Of these five management styles, "team management" is considered to be the most effective. Leaders with this style of management are able to build effective teams, solve problems, resolve conflicts, and encourage employee development.

Although a leader's basic management style is important, it is equally important for the leader to adjust that style according to existing circumstances. This is referred to as situational leadership.

Situational Leadership

A good leader must be flexible, must adapt to a variety of situations, and must have the ability to

select the most effective leadership style for any given situation. While a particular leadership style may be extremely effective in one situation, it may be disastrous in another. Other times, a combination of styles may be necessary to provide the most effective leadership. The situational leader takes a commonsense approach to leadership, with the focus on the leader adapting to the follower's needs.

According to Paul Hersey, author of *The Situational Leader*, a flexible leadership style should be based on the particular employee's needs.⁵ There are four basic styles that could meet these needs, including telling, selling, participating, and delegating.

The telling style is high task and low relations oriented. This style has a greater probability of success when used with new employees who have low readiness levels because of their limited abilities and inexperience in performing tasks.

On the other hand, when dealing with experienced, motivated, or willing employees, leaders will find that the delegating style has the greatest probability of success. This allows employees to participate in decisionmaking and gives them a certain degree of independence.

Correctly analyzing where employees are in terms of readiness and the ability of leaders to remain flexible are critical to the success of situational leaders. Leaders should first evaluate where the employee is in terms of both ability and willingness to perform tasks. Based on these two factors, leaders can determine what management style would most likely be effective.

Hersey further suggests that leaders who work with groups must also remain flexible. This allows the leader to progress from group supervisor to group leader as the group's readiness level increases.

Fillmore Sanford, author of *Authoritarianism and Leadership*, also believes that leadership style should be based on the employee's level of job maturity—the employee's ability to perform a task.⁶ A new employee often lacks the training or experience to function without assistance or close supervision. As the employee matures by gaining experience and training, it is possible for the leader to move from a task-oriented management style to an employee-oriented management style. Eventually, it may be possible for the leader to simply delegate tasks to the employee.

However, the rate and degree to which employees mature varies, and not all employees will mature to the level of simply being delegated tasks. In order to choose the proper management style, then, the leader needs to assess the employee's level of maturity. Choosing the wrong management style may result in the incorrect amount of supervision.

For example, in police organizations, the performance of new officers must be monitored more closely. They generally lack self-confidence and need more feedback. Seasoned veterans, however, view this type of supervision as inappropriate because they have gained job maturity through experience.

Leadership Effectiveness

There are three leadership traits associated with leadership ef-

fectiveness—intelligence, personality, and ability.⁷ Superior intelligence affects the leader's judgment and decisiveness and allows the manager to make correct, timely decisions. Additionally, adaptable, creative, confident leaders with integrity can influence and motivate employees. Tact and diplomacy are also important to gain employee cooperation.

Also found consistently in effective leadership are three leadership dimensions: The assumption of the leadership role, the closeness of supervision, and being employee-oriented.⁸ To assume the leadership role, effective leaders need to plan, delegate, communicate, and supervise. However, close control by the supervisor may result in lower employee productivity. This lack of employee freedom can prevent necessary decisions being made at the

that the officers are expendable. This creates resentment and alienates the officers.

Disciplinary Measures

Disciplinary measures are necessary to ensure that organizational standards of performance and conduct are met. Both inappropriate discipline and the failure of management to discipline can lower employee morale and can also lead to the retention of unqualified or undesirable employees.

Some employees will not respond to positive leadership practices and motivational techniques. Sound leadership practices mandate the use of discipline only when all other reasonable courses of action have failed; however, the negative effects will be minimal if management is not indiscriminate and if the administration of punishment is

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Leaders within police departments must...shift their emphasis from employee control to employee team building....

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lowest level possible and creates a lack of employee ownership.

Additionally, the degree to which a supervisor cares about subordinates has a significant impact on leadership effectiveness. If police department organizational practices and procedures are designed to aid management at the expense of employee safety, it sends the message

fair.⁹ Supervisors must ensure that employees know what the standards are and that those standards are not being met. Employees must also be aware of what disciplinary action will be taken for continued poor performance. Leaders, however, should ensure that employee deficiencies are not the result of a lack of training.

When a leader takes disciplinary action, it should be done quickly and fairly. This is critical in order to ensure that there is as little adverse effect on organizational morale as possible. Leaders should always bear in mind that the objective is to correct performance, not to teach employees to avoid discipline.

Fairness and proper administration of the disciplinary process are also critical to avoid legitimate complaints. Leaders should also avoid the shift of focus from the issue of performance to the issue of management's fairness.

Promoting Employees

In some police agencies, administrators fail to implement a fair promotion system, while in other agencies, administrators try to circumvent systems already in place in order to promote the officer of their choice. For example, some administrators fail to promote from an existing list of qualified officers, and instead, wait for a new promotion list to be established in the hopes a particular officer will be promotable.

This type of leadership is demoralizing to the entire department, and it reduces organizational effectiveness. Officers soon learn that hard work, education, and good performance are not the criteria on which promotions are based, undermining everything leaders hope to accomplish. For this reason, leaders must set the highest standard of integrity possible when promoting officers.

Conclusion

In many police organizations, especially poorly managed depart-

ments, the leadership philosophy is to control the officer rather than encourage team building. When this type of leadership exists within departments, it becomes increasingly difficult to retain officers. Leaders within police departments must, therefore, shift their emphasis from employee control to employee team building, and they must involve officers at every level in decisionmaking. They must also work to develop the traits found in effective leaders, and they should study effective leadership styles.

Sound leadership knowledge and practices are critical to effective police organizations. Dynamic leadership can lead to progressive, highly successful, and innovative departments. It is only through this type of leadership that departments will meet both the demands of today and the challenges of the future.

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Footnotes

¹ James B. Lau and A.B. Shani, *Behavior in Organizations* (Homewood, Illinois: BPI Irwin, 1988), pp. 16-17.

² B.M. Bass and Roger M. Stogdill, *Handbook of Leadership* (New York, New York: Free Press, 1982).

³ R. Likert, *New Patterns of Management* (New York, New York: McGraw-Hill, 1961).

⁴ Robert Blake and Jane S. Mouton, *The Managerial Grid* (Houston, Texas: Gulf Publishing, 1964).

⁵ Paul Hersey, *The Situational Leader* (New York, New York: Warner Books).

⁶ Fillmore H. Sanford, *Authoritarianism and Leadership* (Philadelphia Institute for Research in Human Relations, 1950).

⁷ Supra note 2, pp. 75-76.

⁸ David Krech, Richard S. Crutchfield, and Egerton Ballachy, *Individual and Society* (New York: McGraw-Hill, 1962), pp. 472-473.

⁹ James Gibson, John Ivancevich, and James Donnelly, Jr., *Organizations Behavior Structure Process* (Homewood, Illinois: BPI Irwin, 1988), pp. 210-211.

Telemarketing Crime Prevention

By

DAVID I. RECHENMACHER

In dealing with residential burglaries, traditional law enforcement practices tend to be strictly reactive and do little to deter future crime. Additionally, due to fiscal constraints in many jurisdictions, this problem is compounded by the limited number of police officers available to patrol neighborhoods. And, while neighborhood watch programs are important, they can be difficult to maintain due to the high mobility of our society.

The problems of residential burglaries confront every law enforcement agency in the country. And, the Downers Grove, Illinois, Police Department, with a sworn and civilian staff of 92, is no different. However, even with a crime prevention program in place, local residents did not request any crime prevention assistance.

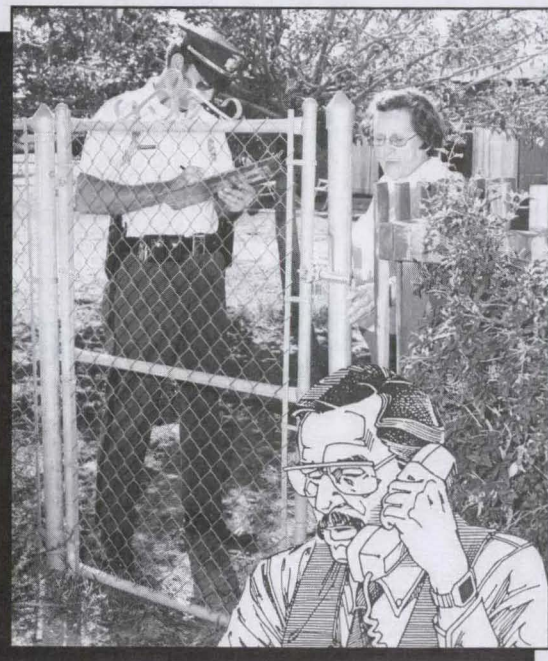
Home Security Survey

The police department determined that the best service it could provide to deter residential burglary was to offer a home security survey. The home security survey, performed by members of the department's Crime Prevention Unit, is a proactive program aimed at reducing the number of residential burglaries.

Police Practices

In the past, however, the Crime Prevention Unit performed home security surveys when requested by citizens. Unfortunately, this method resulted in only 30-40 home surveys being conducted annually, despite an area population of 46,000. It was clear that in order for the program

to be more effective, it needed to reach more residents.



Reaching the Public

As a result, in October 1988, the unit began having messages printed on all water bills forwarded to Downers Grove residents. These messages encouraged residents to call the police department to make appointments for free home security surveys. This initiative was met with a very

Telemarketing

positive response from the community and resulted in 258 home security surveys being conducted during 1989. Encouraged by the success of this initiative, the unit thought that a more-aggressive marketing campaign would deliver even better results. Therefore, in early 1990, the unit began a telemarketing program using the city telephone directory as a source for contacts.

Under this program, the Crime Prevention Unit's community support assistant telephones residents to explain the free home security survey and to make appointments to conduct the survey at a time and date convenient to the resident. During the survey, which takes approximately 1 hour, a crime prevention practitioner evaluates home security risks, such as exterior lighting and landscaping, doors, windows, and locks, and gives advice to homeowners that would make their property and

possessions less vulnerable to burglars.

Results

The telemarketing of home security surveys in Downers Grove, Illinois, has not only proved successful but it has also paid big community relations dividends for the police department and the Village of Downers Grove. In 1990, the Crime Prevention Unit completed 380 surveys and expects to perform over 400 during 1991.

Conclusion

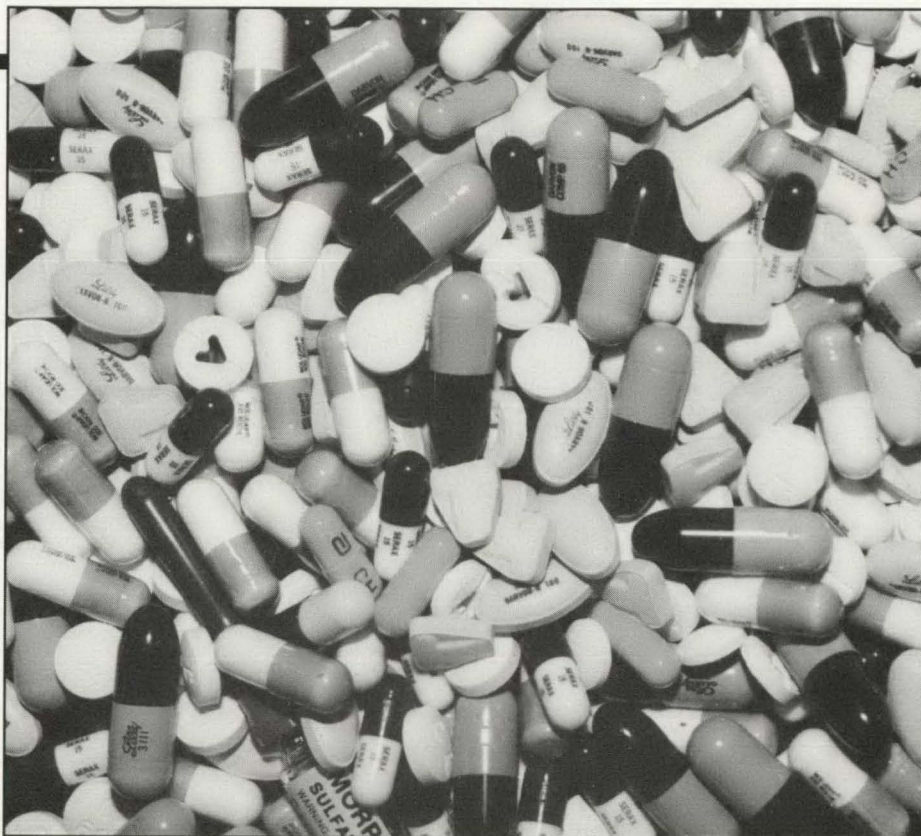
Unfortunately, the importance of adequate crime prevention is oftentimes difficult to instill in the general public until it is too late. However, if law enforcement agencies want successful crime prevention programs, they need to reach out to the citizens before the unfortunate occurrence takes place. Programs of this type are especially appropriate for departments with small crime prevention components, because instead of expensive equipment or capital outlay, they require only time and dedication.

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Lt. David I. Rechenmacher is a member of the Downers Grove, Illinois, Police Department.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

Photo courtesy of
Thomas Babicke



The Respectable Pusher

By
JEFFREY D. LANE

In November 1989, children playing in a wooded area behind their apartment complex discovered a partially decomposed body. Although an autopsy revealed that the person died of hypothermia, a contributing factor to the death was an overdose of drugs.

After a search warrant was issued, investigators found numerous empty bottles of prescription drugs from surrounding pharmacies in the victim's apartment. These labels revealed that the deceased had received drugs from the same doctor on a regular basis over an extended period of time, which most likely resulted in addiction.

Did the doctor prescribing the drugs contribute to this person's death? Were any criminal statutes violated in this case? Was this doctor a "pusher" or a "healer"?

This article discusses how Federal statutes apply to medical practitioners when they prescribe controlled substances. It also offers an overview of how law enforcement personnel should conduct investigations concerning unscrupulous medical practitioners who illegally dispense prescription drugs.

FEDERAL STATUTES

Medical practitioners are licensed by the States in which they

practice, and in order to prescribe controlled substances lawfully, they must also be registered with the Drug Enforcement Administration. According to Federal statutes, practitioners must issue prescriptions in the usual course of a professional practice, and these prescriptions must be issued for a legitimate medical purpose.¹

When patients come to them with medical problems, physicians must determine whether controlled substances are necessary to treat the problem. However, to show that prescribing the drugs was in the course of professional practice, it is essential that physicians establish

a doctor/patient relationship.² In order to establish this type of relationship, three criteria must be met:

- The patient must desire treatment for a legitimate illness or condition,
- The physician must make a reasonable effort to determine what the patient's legitimate medical needs are through physical examinations and questioning the patient about medical problems,
- There must be reasonable correlations between the drugs prescribed and the patient's legitimate medical needs.³

INVESTIGATION OF PRESCRIPTION ABUSE CASES

When abuse is suspected, there are two basic methods of investigation—undercover operations and documentary investigations (commonly referred to as “paper cases”). Both methods work, but investigators should not opt for one method over another without considering the circumstances surrounding the case. Therefore, it is necessary to conduct preliminary investigations before deciding which method to use.

Preliminary Investigation

During the preliminary investigation of suspected offenders, officers should determine what specific drugs the doctor is prescribing, the patient traffic patterns in and out of the medical office, whether the doctor conducts physical examinations,

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...law enforcement officers must [keep] legitimate drugs out of the hands of the ‘respectable pushers.’
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Agent Lane serves as the Director of Investigations, Georgia Examining Boards Division, Office of the Secretary of State, in Atlanta, Georgia.

the frequency and quantity of drugs prescribed, and whether the doctor accepts new patients. This information, which is invaluable when investigators try to develop a believable undercover scenario or decide what areas to target for pharmacy surveys, can come from several sources, including other practitioners, pharmacists, family members of patients, informants/defendants, wholesalers/distributors, other law enforcement/regulatory agencies, surveillance of suspect, and reference materials and texts.

Interviews with persons listed above can provide details concerning what specific drugs were prescribed and ordered, current investigations, practitioner history, required examinations, and the cost of a prescription for undercover purposes. Surveillance helps to determine patient traffic patterns, number of out-of-State patients, parking lot transactions, and the type of patient clientele. Reference materials help to identify drugs and determine

their legitimate uses and abuse potential.

The information developed during the preliminary investigation helps investigators to determine if further investigation is warranted, to plan successful undercover operations, and to decide what undercover scenarios might be most effective. Any undercover operation should precede the documentary investigation, because interviews and subpoenas may alert the doctor to the fact that there is an ongoing investigation.

Undercover Operation

Before undertaking an undercover operation, it is important to consult with the local prosecutor to clarify any legal questions concerning the operation. Once this has been done, and all the legal issues have been addressed, planning for the undercover office visit can continue. The undercover scenario must be plausible or the operative will be told to leave the office. Also impor-

tant to a successful undercover operation is that the operative not give a legitimate medical need for the drugs that are prescribed.

The purpose of the initial undercover operation is threefold: To obtain evidence, to gather information for future undercover visits,

drugs on a patient information form, the officer should respond by asking what, exactly, should be written.

Also, some physicians, after writing a prescription, instruct patients to go to a particular pharmacy to have it filled or to fill it in

operative should be different in gender from the first, and a different scenario might also be used. If the physician fails to prescribe drugs illegally during this visit, officers should end the undercover operation and begin a documentary investigation.

The length of the undercover operation, as well as how soon the undercover operative can repeat a visit, depends on the type of drugs the operative receives. The information gathered during the preliminary investigation will help investigators make a decision on how frequent the visits should be. For example, if the doctor is running a "diet" practice and prescribes amphetamines, the operative may only be able to go in once every 30 days, the usual time period diet pills are prescribed. Other doctors may give another 30-day supply after only 2 weeks.

If, on the other hand, the physician prescribes pain pills, the undercover operative may be able to go in more often. This type of medication is prescribed more frequently than diet pills or sleeping pills.

Documentary Investigation

Officers should pursue a documentary investigation when the preliminary investigation reveals that there is little chance of a successful undercover operation, the physician accepts no new patients, or if the undercover operation fails to produce evidence of the physician's guilt. However, even when the undercover operation does produce evidence, it is still important to document the investigation with interviews, patient records, pre-

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Prescription drug abuse is a serious problem that is sometimes overlooked.

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and to determine whether to continue the investigation. During the initial undercover visit, investigators should determine whether examinations are given, the kind of questions asked by the doctor, and whether the physician tries to establish a doctor/patient relationship. A minimum of two people is necessary to conduct this visit to the physician's office. (One to act as a patient; the other to monitor any recording equipment and to serve as backup.)

Recording undercover visits provides the best evidence, because taped conversations reveal that the doctor knows that the drugs being prescribed are not for legitimate purposes. Also, if the physician requires the "patient" to state a legitimate reason for needing drugs, the investigator can direct the conversation to show that the physician is merely trying to appear legitimate. For example, if the doctor requests that the undercover officer write a legitimate reason for the

another area of town to avoid suspicions. These types of interchange are an indication of the lack of a legitimate doctor/patient relationship, and having these conversations recorded strengthens the case against the physician.

Once a physician issues an illegal prescription to one operative, other undercover investigators should make appointments with the same physician. However, too many new "patients" may arouse suspicion. Doctors who operate illegally will be wary of undercover operatives and may attempt to weed them out by questions and examinations. Several operatives who make a minimum of two to three successful visits each will show an abusive practice, establish multiple counts, and corroborate that the physician is dispensing drugs indiscriminately.

If no drugs are prescribed illegally during the initial undercover visit, a second operative should visit the physician. This

scriptions, prescription data, and expert witness reports.

A documentary investigation is a five-step process, with each step building upon the preceding step. For this reason, investigators should complete the steps in proper sequence. They should:

- 1) Survey pharmacies within certain geographical boundaries to obtain prescription data,
- 2) Organize the prescription data,
- 3) Obtain and review patient records,
- 4) Interview patients, and
- 5) Obtain expert witness reports/testimony.

Survey area pharmacies

In order to obtain data and information about a physician's prescribing patterns, investigators should survey all pharmacies that are located within an established geographical target area. Investigators should also review all prescriptions issued by the physician during a particular time span, such as 1 or 2 years. Knowing the length of time the doctor has kept certain patients on addictive medications helps to establish a pattern of abuse.

Pharmacists can be either of great value or a hindrance to the investigation. Their information contains details and knowledge to which only they are privy. However, because pharmacy income is directly tied to the prescriptions from the doctors in the area, some pharmacists will inform them

of current investigations. Because the interview of only one pharmacist has caused some doctors to close their practices immediately, investigators should weigh this factor heavily when conducting the investigation.

Some pharmacists will not allow investigators to review the prescriptions, making it necessary to obtain subpoenas or search warrants. Other pharmacists will provide investigators with computer printouts of the requested information. If there is a problem with a particular pharmacist, the State Medical Board or Pharmacy Board may be able to assist investigators.

Investigators should record the information found on the prescription forms in an organized

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format for future reference. Of particular interest are the date the prescription was issued to the patient, the drug name, drug dosage, total amount prescribed, and the prescription number.

Perhaps the most important piece of information found on the prescription form, aside from the drug and quantity, is the prescription number. This is usually a four-to eight-digit number found either on the container label of the drug or on the prescription form. Each pre-

scription has a separate number that investigators can use to prepare search warrants or identify particular prescriptions in court. This number also assists investigators in finding a specific prescription among thousands.

Organize the prescription data

After investigators contact all the pharmacies in the target area for prescription information, the data should be organized to help investigators concentrate on the blatant cases. The prescriptions should be put in alphabetical order by the patient's last name, and then each patient's prescriptions should be placed in chronological order. By doing this, investigators immediately know what drugs each patient received, the quantity, and how frequently the drug was prescribed. Organizing the data also reveals dangerous drug combinations and helps investigators to determine which patients should be interviewed later.

Since many "patients" go to numerous pharmacies to avoid detection, a computerized data base is helpful for recording and organizing all the data collected. Once the information is entered into the data base, it can be sorted in a variety of ways that will reveal patterns or other clues to investigators. For example, a profile will show which pharmacy filled the majority of the prescriptions. This information is important if investigators suspect a conspiracy between the doctor and pharmacist.

In some cases, the prescription data, coupled with expert witness

testimony, can establish probable cause for a search warrant to obtain patient records from the physician's office. If this is not the case, investigators should interview the doctor's patients to determine whether a doctor/patient relationship existed. These interviews, along with the other information obtained up to this point in the investigation, should be sufficient to obtain a search warrant.

*Obtain and review
patient records*

Investigators should thoroughly review all of the patient records to pinpoint inconsistencies and document the fact that the physician prescribed drugs illegally. For example, a patient may have been receiving an amphetamine, supposedly to lose weight. If, however, this patient had a history of hypertension, with dangerously high blood pressure recorded on the day of the doctor's visit, an amphetamine prescription would be inappropriate because amphetamines tend to further elevate the blood pressure. In addition, the patient's recorded height and weight may show there was not a legitimate need for a diet medication.

Patient records that do not document patient histories, physical exams, laboratory tests, consultations, or referrals are also an indication that a legitimate doctor/patient relationship did not exist. On the other hand, some physicians keep thorough patient records in order to appear legitimate. Patient interviews and expert witness reviews help refute this false documentation.

Interview patients

Investigators should interview patients to determine as much as possible about whether the doctor establishes a doctor/patient relationship before prescribing drugs. For

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data collected.**
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example, one physician assigned six patients per examining room for cursory examinations, and investigators were later able to interview these patients to corroborate the lack of a legitimate doctor/patient relationship. When witnesses learn that they are not the focus of the investigation, they will oftentimes cooperate with investigators. Investigators can then subpoena these witnesses to testify at trial.

*Obtain expert witness
reports/testimony*

Expert witnesses may include physicians, dentists, medical school professors, pharmacology professors, or other professionals who can testify to the proper legal procedures needed to practice medicine. These witnesses may give expert opinions concerning drug tolerance and addiction. They may testify about the appropriateness of the time period the drugs were prescribed and what

the law requires with regard to the usual course of professional practice.

It is important for investigators to inform expert witnesses that their review may require them to testify in court. If they are not aware of this from the beginning, they may be hostile or uncooperative on the witness stand. It is also important that investigators give expert witnesses copies of the original records so that important evidence is not altered in anyway.

When this last step of the investigation is complete, investigators should discuss the case with their local prosecutors. They can troubleshoot any problems before the grand jury hears the case and arrest warrants are issued.

CONCLUSION

Prescription drug abuse is a serious problem that is sometimes overlooked. This may be a result of a lack of interest or a lack of knowledge on the part of investigators, who are unsure about how to pursue such an investigation.

However, law enforcement officers must dedicate themselves to the problem of drug abuse, not only where hard drugs are concerned but also by keeping legitimate drugs out of the hands of the "respectable pushers." By doing this, they will bring to the forefront a problem that has, in the past, been largely ignored.

LEB

Footnotes

¹ 21 USC 802, 21 CFR 1306.02 (b).

² U.S. Drug Enforcement Administration Bulletin issued by the Associate Chief Counsel, 1987.

³ Supra, note 1.

Taking the Bounce Out of Bad Checks

By
VINSE J. GILLIAM

Today, banking officials estimate that about 1 percent of the 50 billion checks written in the United States each year are returned due to nonsufficient funds (NSF). This figure translates into approximately 500 million NSF checks annually, 1,369,860 daily, 57,075 per hour, or roughly 15 every second.

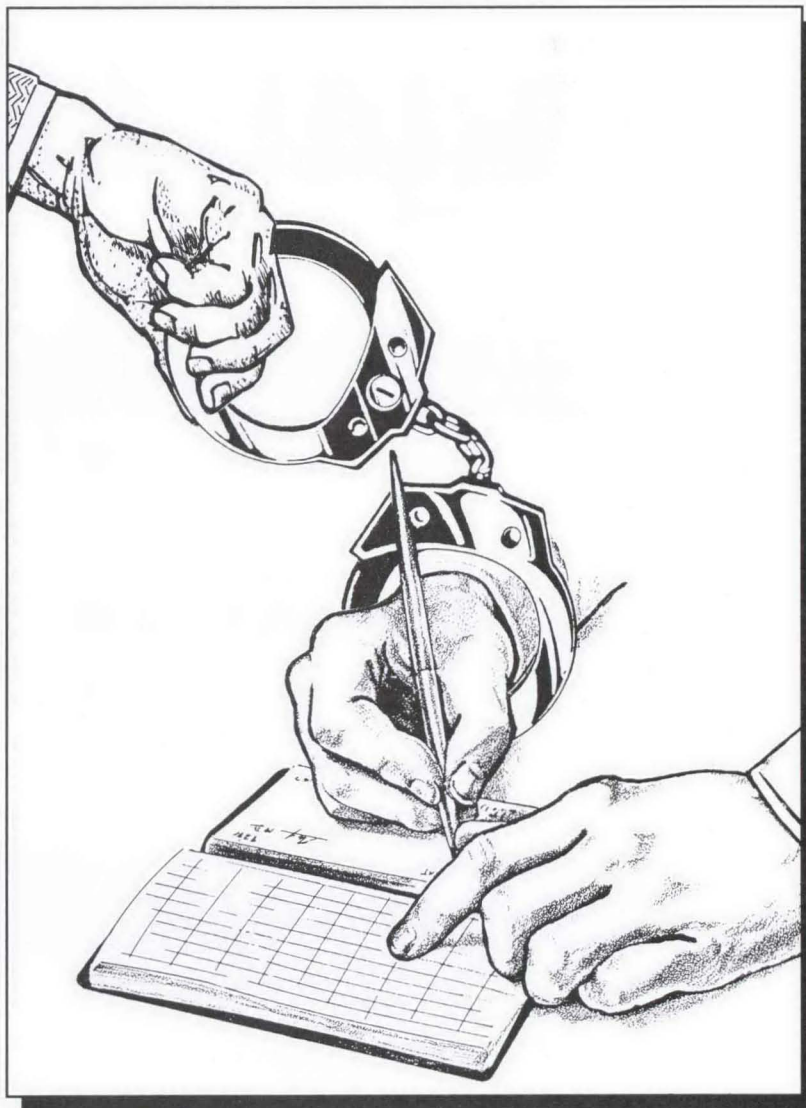
In many jurisdictions, NSF checks are so numerous that the problem overwhelms local law enforcement agencies. The sheer volume also restricts the type of NSF checks that can be investigated and prosecuted effectively.

Traditionally, only those individuals who are prolific or pass NSF checks for large dollar amounts are pursued. And, restitution is available only for those victimized individuals or businesses that are included in the criminal prosecution or are able to pursue a civil remedy successfully. As a result, many victims simply stop submitting NSF checks to local law enforcement agencies.

In Ventura County, California, conservative estimates have placed the business community's losses due to NSF checks at more than \$3 million per year. In a non-

cash-carrying society, accepting checks for goods and services has become a requirement for conducting business. However, when an accepted check marked "NSF" is

returned by the bank, the business incurs a double loss—one for the purchased item and another for the cost of trying to obtain restitution. As a result, businesses are forced to



raise prices in an attempt to cover their losses, thereby passing the cost of NSF checks on to the customer. This article will address how Ventura County, California, attacked the pervasive problem of NSF check writers successfully.

The Restitution/Diversion Program

In order to combat effectively the NSF check problem in Ventura County, the district attorney's office established an NSF Check Restitution and Prosecution Unit, which became operational in February 1986. This unit, staffed with one district attorney investigator, two investigative assistants, and four collections officers, formulated and operated a unique restitution/diversion program.

Ventura County's NSF Check Program begins with processing all NSF and account-closed checks directly into the district attorney's office, using an official complaint form. Then, in each case, a decision

is made as to whether the offense is a felony or misdemeanor.

Cases involving felony conduct are referred directly to the appropriate law enforcement agency for investigation, and if possible, returned to the district attorney's office for prosecution. If the NSF check constitutes a misdemeanor offense, it is earmarked for deferred prosecution and restitution efforts.

At this point, the unit prepares and sends letters to NSF check writers, giving them the opportunity to make full restitution and pay a \$25 administrative fee for each NSF check. If these individuals fail to respond to the first letter, a second letter is sent. This letter, in addition to requesting full restitution and a \$25 administrative fee for each NSF check, states that the addressee must attend a 4-hour diversion class for which there is a \$40 fee.

Check Diversion Class

The NSF check diversion class, similar to existing classes for

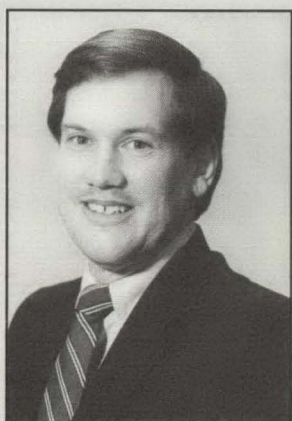
traffic and alcohol offenders, emphasizes prioritizing resources, value orientation, and how to balance a checkbook accurately. Its curriculum, reviewed and approved by the county's personnel department, is taught by certified private instructors.

Since the inception of the NSF Check Program, a total of 1,422 individuals have attended the diversion class. The success of this educational segment can be demonstrated best by the fact that fewer than five of the class participants continued to write NSF checks and were criminally prosecuted.

Restitution Funds

All restitution funds received directly from NSF check writers as a result of the letters are deposited through the county auditor's office. The victim merchants then receive restitution via a county warrant issued by this office. Handling restitution in this manner serves as a deterrent and prevents the NSF Check Unit from issuing a warrant for the bad check writer's arrest unnecessarily.

If the NSF Check Unit is unable to obtain restitution, the district attorney investigator evaluates the case and makes a decision regarding criminal prosecution. Where criminal prosecution is supported, the investigator completes the necessary followup and prepares the case for filing. This eliminates the need to refer the case back to the local law enforcement agency. If criminal prosecution is not possible, the NSF check is returned to the victim merchant, and the district attorney's small claims advisor assists the



Mr. Gilliam is a Senior District Attorney Investigator with the Ventura County, California, District Attorney's Office.

“The NSF Check Program has largely eliminated the NSF check problem for law enforcement in Ventura County.”

merchant with obtaining a civil judgment.

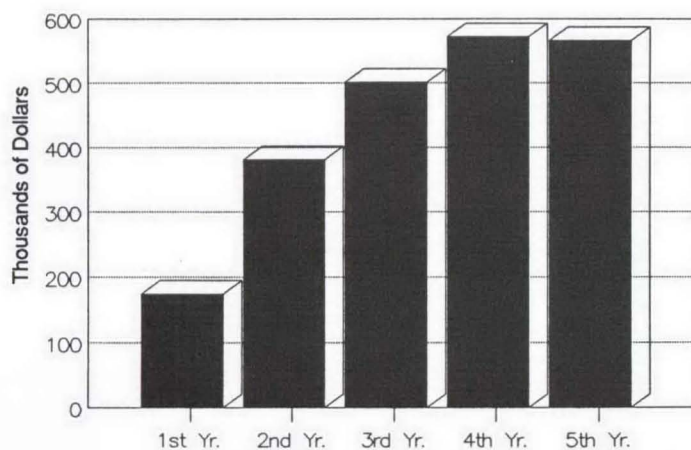
Goals and Objectives

Ventura County's NSF Check Program targeted four primary goals and objectives. The program:

- Provides a central clearing-house for all NSF/account-closed checks
- Establishes a deferred restitution/prosecution program that allows NSF check writers the opportunity to pay restitution in lieu of prosecution
- Ensures timely prosecution of NSF check writers who failed to make full restitution, and
- Is self-sufficient based on administrative and diversion fees collected from the NSF check writers.

At first, enabling legislation authorized the Ventura County District Attorney's Office, along with six other district attorney's offices, to institute this program as a 1-year pilot project.¹ However, at the conclusion of the pilot project, the program's results were so noteworthy that the California Legislature amended the legislation to allow the district attorney in each of California's 58 counties to establish similar deferred prosecution programs. The continued success of the Ventura County NSF Check Program throughout the first 5 years of operation has proved that it provides a viable and cost-effective way to attack the spiraling NSF check problem.

Figure 1
Restitution to Victim Merchants



Program Successes

During the program's first 5 years of operation, 3,811 individuals and merchants submitted 53,748 NSF and account-closed checks to the NSF Check Unit. These NSF and account-closed checks were written by 14,515 different people. During the same period, the NSF Check Unit collected and returned over \$2,195,500 in restitution on over 25,400 checks to local victim merchants. Each year, the amount of restitution to victim merchants has steadily increased. (See fig. 1.) During 1990, restitution averaged \$47,000 monthly.

Of the 53,748 NSF and account-closed checks submitted to the NSF Check Unit, followup investigation has been completed on a total of 48,412 checks. Fifty-two percent (25,174) of the investigated checks were cleared by the check writer making full restitution

through the diversion component of the NSF Check Program. However, 32 percent (15,492) of the investigated checks were not cleared, and the check writers failed to participate in the diversion phase of the program. As a result, felony and misdemeanor arrest warrants were issued against these 1,700 individuals. To date, 738 of these offenders have been apprehended and successfully prosecuted. The sentences imposed in these cases have ranged from probation and restitution on all checks to a 5-year-8-month term in State prison. Court-imposed restitution in these cases represents an additional \$713,300.

The remaining 15 percent (7,262) of the checks submitted to the NSF Check Unit were referred to the appropriate law enforcement agency for investigation or returned to the victim merchants because either: 1) The check did not meet the

criteria for the NSF Check Program, 2) the NSF Check Unit was unable to obtain voluntary restitution from the NSF check writer, or 3) criminal charges could not be initiated because the criminal intent to defraud could not be proven beyond a reasonable doubt.

Costs vs. Revenue

Due to the lack of resources, the Ventura County Board of Supervisors approved the creation of the NSF Check Program on the condition that the program would be self-supporting through fees obtained from those NSF check writers who elected to participate in the diversion program. On the average, the NSF Check Unit collects \$14,300 in fees each month, while its monthly operating expenses have averaged \$12,600. (See fig. 2.)

Like any new business, the operating expenses during the program's first year exceeded the revenue collected. However, the 5-year average indicates that the revenue received from the restitution/diversion fees surpassed the program's operating expenses by 13.2 percent. This surplus allows the district attorney's office to donate over \$100,000 to the Ventura County general fund to help supplement other county programs.

Benefits to Law Enforcement

The NSF Check Program has largely eliminated the NSF check problem for law enforcement in Ventura County. Because the district attorney has county-wide jurisdiction, all NSF and account-closed checks can be collected, combined, investigated, and prosecuted by one

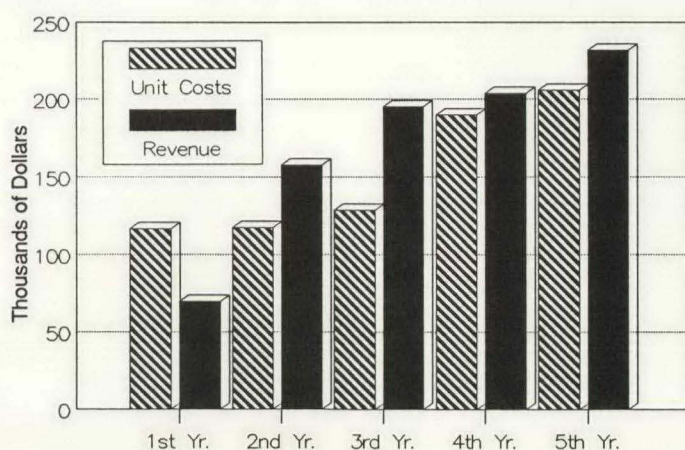
agency. Police and sheriff's personnel no longer have the burden of spending valuable hours deciding which checks are worthy of criminal investigation, determining if other agencies have similar NSF checks from the same person, and deciding which agency should conduct the investigation. Now, local law enforcement can devote additional resources to other white-collar crimes, such as check and credit card forgeries and computer frauds. Only felony NSF check cases are referred to local law enforcement agencies for followup investigation.

The NSF Check Program has also saved deputy district attorneys countless hours of court and case review/preparation time. If restitution had not been obtained, thousands of additional court cases, both criminal and civil, would have been processed through the criminal justice system. The additional expenses associated with the filings of these cases would have amounted to hundreds of thousands of dollars.

Public Information

A continuous public information campaign was initiated for the NSF Check Program with a twofold purpose: 1) To inform the business community of the existence of the NSF Check Program, and 2) to capitalize on the deterrent effect of the NSF Check Program by making potential NSF check writers aware of the consequences of writing a bad check. To help meet these goals, the NSF Check Unit developed a handbook for businesses, which includes information on the following topics:

Figure 2
Unit Costs vs. Revenue Collected



- NSF Check Program guidelines
- Safeguards against taking a bad check
- Steps to follow when accepting checks
- How to identify forged/counterfeit checks
- What to do with a bad check
- NSF check report, and
- Suggested Ventura County check policy.

The NSF Check Unit also designed NSF check warning signs and distributed them to local merchants. These warning signs alert customers to the fact that passing a bad check with the intent to defraud is a crime. The customer is also put on notice that the business reports NSF check writers to the district attorney's office. Merchants who have posted these warning signs in their front windows or next to their cash registers have reported a marked decrease in the number of NSF checks received from their clientele.

In addition, district attorney staff members routinely address business and community groups in an effort to inform them about the benefits of participating in the NSF Check Program. Regular press releases and annual reports are also distributed to increase citizen awareness and to deter potential NSF check writers. Copies of the NSF handbook, NSF check warning signs, and NSF check reports are also available at all Chamber of

Commerce offices and local law enforcement stations.

NSF Check Roundup

In a continuing effort to deter potential NSF check writers, the Ventura County District Attorney's Bureau of Investigation conducted a

covery for many victims, as well as educating the public on these crimes. Because local law enforcement has been relieved of the task of investigating NSF checks, detectives have been able to reallocate more of their investigative resources to check and credit card

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...the NSF Check Program...is completely self-supporting and operates at no cost to local taxpayers or participating victim merchants.

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NSF check round-up in March 1990. Over a 2-day period, 15 teams of district attorney investigators made a concerted effort to execute a substantial portion of the outstanding felony and misdemeanor NSF check warrants. At the conclusion of the roundup, 29 suspects had been arrested or had surrendered to the court. The publicity surrounding the NSF check roundup also had a positive impact on the number of checks cleared in subsequent months by NSF check writers submitting voluntary restitution to the NSF Check Unit.

Conclusion

The success achieved by the Ventura County District Attorney's NSF Check Restitution and Prosecution Unit has far exceeded its original goals. The business community has shown overwhelming support, and the proactive stance has allowed a timely financial re-

forgeries and other types of white-collar crimes.

However, the most innovative and impressive part of the NSF Check Program is the fact that it is completely self-supporting and operates at no cost to local taxpayers or participating victim merchants. This factor makes the Ventura County NSF Check Program one of the few criminal justice programs that is cost-effective and revenue offset. The large dollar amount of restitution returned to victim merchants, coupled with the fact that the entire program is financed by the NSF check writers, makes this a truly innovative government program that should be encouraged and supported, especially in this time of shrinking resources.

LEB

Footnote

¹ The creation of this program was made possible by the passage in 1985 of Senate Bill 1108, which created California Penal Code Sections 1001.60 - 1001.67.

Research Forum



Photos courtesy
of Joseph Fiorino

McGruff Robot Teaches Kids *Results of a Springfield, Missouri, Pilot Program*

Once considered a science fiction fantasy, robots are now becoming an integral part of the instructional curriculum in some schools. A growing body of knowledge suggests that children learn more readily when they are allowed to manipulate concrete objects before moving to abstract concepts.¹ The use of robots is well-suited for engaging children with a tangible object that reinforces positive concepts and ideas.

Three elementary schools in Springfield, Missouri, were chosen as sites for an innovative program that includes a robotic version of McGruff, the crime dog. In the program, McGruff, assisted by a police officer, delivers safety messages to children and interacts

with them in order to convey a positive safety theme. The results, gauged by a survey conducted in three of the participating schools, have proved the program's effectiveness.

The Robot

The McGruff robot is approximately 4 feet tall and weighs 60 pounds. Every effort has been made to give the robot human traits. The computerized interior is hidden by clothing, the arms move up and down, the head rotates, the eyelids open and shut, and the mouth can be manipulated by remote control to indicate various facial expressions and to give the appearance of speech. The actual voice is that of the operator, via a

two-way wireless system that allows the robot to appear to listen and respond to questions and comments from the audience. Speakers are mounted on the robot's legs. In addition to the remote voice, a cassette player is also mounted in the robot so that various safety jingles and other messages can be played.

The Survey

Two hundred and ninety-one elementary students who participated in the McGruff Program at three elementary schools were surveyed. The majority (230) were 7- or 8-year-old children in the second grade. Forty-eight students surveyed were 9 years of age.

The questionnaire consisted of 14 close-ended questions concerning McGruff's appearance and the message the robot presented. The students were asked to respond on a 5-point Likert scale from "yes" to "no" with responses of "somewhat," "maybe," and "a little" as options between the two extremes.

Examples of survey questions include: "McGruff and the police officer have helped me understand how to prevent crimes"; "I will do what McGruff says so that I will be safe"; and "I want McGruff to come back and visit my school again." Other questions asked students to rank what they liked most/least about the robot.

Two hundred and thirty-two (80 percent) of the students said they liked to listen to McGruff. Eighty-five percent said they understood McGruff's message

about avoiding drugs and strangers. Seventy-seven percent responded that McGruff's safety message was factual, credible, and provided information in a straightforward manner.

Two hundred and sixty-three students (90 percent) believed McGruff and the officer effectively explained the consequences of being careless about safety. Almost 80 percent (232 students) believed that McGruff made the police officer's message clearer and easier to understand.

The majority of the children (88 percent) believed that McGruff sincerely cares about them, and 91 percent of the students responded that they were not afraid of the robot. In fact, 86 percent expressed a desire to have McGruff return for another visit.

When asked what they did not like about the robot, the majority (54 percent) of students said there was nothing they did not like. Fourteen percent said that if they had to choose something to improve, it would be the robot's clothing.

Significantly, when general positive and negative reactions were cross-tabulated, it became apparent that younger students were more receptive to the McGruff robot. Half of the 7 year olds demonstrated affection to the robot by hugging him; only 13 percent of the 9 year olds were willing to hug the robot. Forty-two percent of the 7 and 8 year olds said they were not afraid of the robot, while a significantly lower number (15 percent) of the 9 year olds responded that they were not afraid.

"...the McGruff robot...is an ideal 'teacher' to reinforce positive themes concerning crime, safety, and the dangers of drug abuse."



Conclusion

This survey, while admittedly focused on students from one geographic/social perimeter (a midwest, midsize city), reinforces earlier research that indicates students absorb more information concerning abstract concepts when tangible objects are used to instruct. Because the McGruff robot is a familiar symbol of safety to children, he is an ideal "teacher" to reinforce positive themes concerning crime, safety, and the dangers of drug abuse.

While children watch and listen to McGruff and the officer, they internalize positive safety messages, whether consciously or subconsciously. The jingles are

infectious and easy to remember. Combining words, music, and actions, the robot reinforces important messages that not only help children to make correct choices but also help to instill a positive foundation concerning safety and crime.

LEB

Footnote

¹ H. Barnett and J. Belter, "The Language of Robots," *Computer-Reading & Language Arts*, Spring 1984, pp. 35-37.

Information in this Research Forum is based on a survey conducted by Edna Bell, Ph.D., an Associate Professor, and Debra McDowell, an Assistant Professor, at Southwest Missouri State University in Springfield, Missouri.



Effective Crowd Control

By
STEVEN J. SCHMIDT

While small to midsized departments may be located in areas where the problem of crowd control is virtually nonexistent, there could be times when they have to police large groups of people during special local events. There are also times when smaller cities that border large municipalities must deal with the overflow of people attending an event in that municipality.

For example, Covington, Kentucky, currently has 91 sworn officers to police a population of 50,000. But, because Covington is separated from Cincinnati, Ohio, by only the Ohio River, the Covington Police

Department must prepare for overflow crowds that are generated by special events held in Cincinnati. And, because police managers must regard even peaceful crowds as having riot potential, planning is critical to effective crowd control.¹ This article discusses exactly what areas of concern should be addressed when planning for crowd control and how police managers should approach the task.

PLANNING FOR CROWD CONTROL

A step-by-step plan is important to effective crowd control. In order to ensure a well-policed event, police managers should prepare ahead of time for any conceivable problems.

Personnel

To plan for effective crowd control, police managers should consider what personnel resources are available. For example, a traffic division with officers who are experienced in traffic flow is invaluable. Also invaluable when planning for crowd control is a police auxiliary, which could help in areas where sworn officers are not needed. In extreme cases, the National Guard can be used as additional resources.

Other personnel resources to draw from include officers from neighboring police departments, the fire department, the public works department, the Red Cross, and citizen band radio clubs. Private businesses, such as bus companies, are also sometimes willing to lend equipment to assist in crowd control. Buses make effective barricades to block intersections.

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A step-by-step plan is important to effective crowd control.
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Lieutenant Colonel Schmidt is the Assistant Chief of Police of the Covington, Kentucky, Police Department.

Advance Notification

Another important task when planning for a special event is to notify businesses and residents in the affected area of how much disruption they can expect. Ground rules should be discussed ahead of time so that there are no misunderstandings during the event. Also, if public transportation is expected to be disrupted, alternate routes should be designated prior to the event, and fire and ambulance personnel should be contacted to determine checkpoints for rapid access routes.

Traffic Control

Traffic control is important to policing any major event. “No parking” areas should be designated and posted before the event. Officials should advertise these restrictions through the media and through flyers sent to residents and businesses in the affected areas.

Officials should also contract with a wrecker service to tow ve-

hicles parked in restricted areas. Because special events often place unusual demands on wrecker services, they should be given advance notice of what to expect. It is also important to choose an impoundment location and agree on the release procedure.

Command Posts

Command posts are an integral part of any special events operation. Department personnel should determine how much space they need for the post, the amount of parking space available in the areas being considered, and whether the locations have land lines for communication purposes. Officials should also make provisions for a remote dispatch location. If officers have more than one channel on their radios, this could be as simple as switching to a secondary channel for the event and using a portable radio with a charger.

If an event lasts more than 8 hours, food, coffee, and soft drinks

should be available in the command post for officers who work the detail. Police managers should also make arrangements to clean the post after use, especially if the space was loaned to the department by a local business.

Assignments

All officers who work the event should receive clear, written instructions about the assignment. For example, a map of the event area should be prepared, showing its parameters, with all checkpoints clearly marked. If a specific checkpoint is one of "no-access under any circumstance," the officer assigned to that checkpoint should be aware of that stipulation ahead of time.

Officials should also prepare a contingency personnel plan in the event officers who are assigned to work the event call in sick. And, there should be additional flexibil-

ity in the assignments in order to cover holes in the perimeters that even the most careful planner may overlook.

Also a consideration when planning for personnel is whether a meal break will be necessary for the officers. Although extra teams are sometimes required to relieve officers, if enough officers are assigned to the teams, half the team can be relieved at a time.

Equipment

Extra equipment should always be available during large events. Police managers should ensure that extra radios, flashlights, batteries, and handcuffs are stored at the command post. When planning for extra equipment, police managers should also consider whether there will be special transportation needs. All-terrain vehicles (ATV) and golf carts that local businesses may loan to the department could

prove invaluable. Officers can use ATVs to check unpaved areas and police managers can use golf carts to get to checkpoints if the size of the crowd does not permit using an automobile.

Special Considerations

Officials should make every effort to keep large events free of alcohol. If this is impossible, either through legal means or simple reasoning, managers should document problems arising from the use of alcohol to argue for alcohol-free events in the future.

If officials are successful in banning alcohol consumption during the event, it is important to publicize this fact. All coolers taken into the event area should be checked for alcohol, and dumpsters should be available at the perimeters to dispose of any confiscated liquor.

The Perimeter

Police managers should decide ahead of time what the perimeter of the event site will be and then publicize this perimeter. Officials should bear in mind that if the perimeter is too large, it will be difficult to control the crowd, and the officers would have too large an area to police. The perimeter should be checked thoroughly for any gaps that would allow lapses in security. Specific areas should be blocked, including intersections and checkpoints.

It may also be prudent to block off parking lots inside the perimeter. If a large amount of pedestrian traffic is expected following the event, the mixture of automobiles and pedestrians could prove danger-



"To plan for effective crowd control, police managers should consider what personnel resources are available."

ous. Controlling the parking lots allows the bulk of the pedestrian traffic to leave the perimeter first. Cars can then leave in stages, minimizing the likelihood of either a pedestrian/automobile accident or total gridlock.

THE EVENT

Before

Except for the officers who need to start their shift earlier in order to remove cars parked in restricted areas or to block off critical areas, officers working the detail should assemble about 1 hour before the event. During this time, police managers can hold a final briefing with the supervisors and discuss any necessary changes. They can also ensure that all officers are using the correct radio channel and give directions for ending the detail.

Just prior to the start of the event, officers should again check the restricted area for possible problems. It is much easier to resolve problems before the crowds begin to arrive than to deal with both problems and crowds.

During

The majority of the officers should position themselves at the perimeter of the event. By keeping the majority of the officers where the spectators pass, the perceived numbers advantage remains with the police. It also makes it easier for police managers to know the location of their officers. And, although most of the officers involved in controlling the crowd will be on foot, mobile units should also be

available to respond to critical incidents that occur within or around the perimeter.

The number of officers working together in a group will vary with the situation, but no officers

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***Police managers
should keep detailed
records of the planning
stages....***
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should work alone. Also, if possible, officers from a plainclothes unit should mingle with the crowd. Not only can plainclothes officers spot violations more easily than uniformed officers, but they also can make quick arrests that minimize any disruptions to the crowd.

Any person arrested during the event should be quickly removed from the crowd and transported away from the area by officers who are specifically assigned this duty. This minimizes the loss of personnel who are working the actual event.

When the event ends, stragglers sometimes remain. To counter this problem, floodlights that can be borrowed from the local fire department should be concentrated on the areas in which spectators are likely to congregate. This serves as a signal that it is time to leave. Officers should also scan the area for any remaining spectators as they leave their posts to return to the command post.

After

The hours following the end of an event are busy for patrol officers. If possible, officials should schedule additional patrol units to work until things return to normal. Because no major event can be kept completely alcohol and drug free, patrol units may have to deal with fights, injuries, and accidents that occur among the spectators.²

All officers should report to the command post before going off duty. This allows officials to record overtime and check the records for accuracy, as well as recover any equipment that has been loaned out.

Police managers should keep detailed records of the planning stages, and they should compile a list of recommended changes for policing the next event. They should also write formal letters of appreciation to any person outside the department who donated equipment or assisted in some other manner.

CONCLUSION

Policing an event that generates large crowds is a major undertaking that requires extensive planning. Police managers must follow a step-by-step plan that ensures that the crowd is controlled with the fewest number of problems possible. A well-developed, well-executed plan results in events that are safe to police officers, visitors, and the community.

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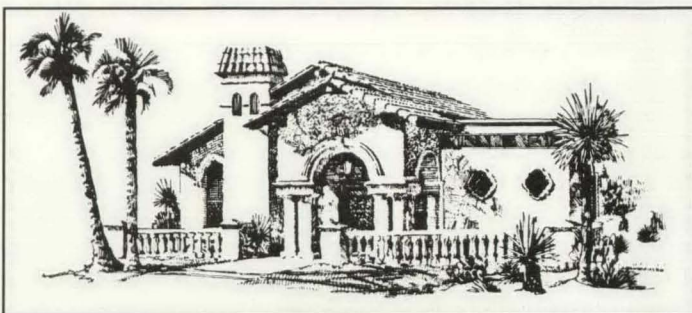
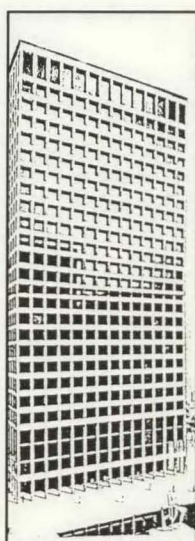
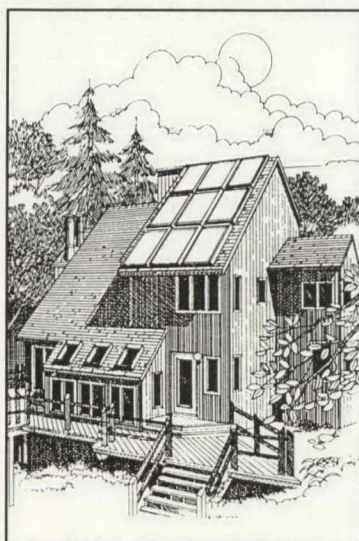
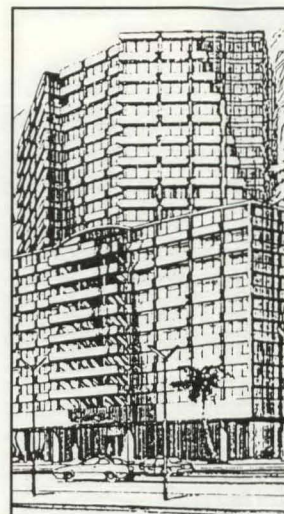
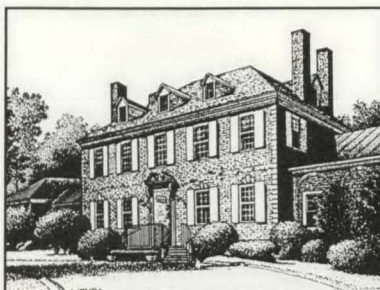
Footnotes

¹ Richard A. Berk, *Collective Behavior* (Dubuque, Iowa: William C. Brown Co., 1974).

² Adrian F. Aveni, "The Not-So-Lonely Crowd: Friendship Groups in Collective Behavior," *Sociometry*, vol. 40, No. 1, January 1977, pp. 96-99.

Civil Forfeiture Real Property Used in Drug Trafficking

By
THOMAS V. KUKURA, J.D.



The U.S. Department of Justice has determined that a crucial component of effective drug law enforcement is the forfeiture of real property used to facilitate illicit drug trafficking. It was not until 1984 that Congress, in 21 U.S.C. Section 881(a)(7) of the Controlled Substances Act (CSA), authorized the civil forfeiture of real property used or intended to be used to facilitate drug trafficking.¹

This article discusses recent court decisions involving both Federal and State investigations where the Federal forfeiture of real property has provided law enforcement with an important additional

weapon to fight the war on drugs. Specifically, the article addresses the following three legal issues:

- 1) How courts define real property subject to civil forfeiture,
- 2) What evidence law enforcement must produce to establish that real property *facilitated* drug trafficking, and
- 3) The circumstances under which the "innocent owner defense" will defeat law enforcement's ability to forfeit real property.

Knowledge of the way Federal courts have addressed these three issues is essential to law enforcement officers contemplating the forfeiture of real property for violation of 21 U.S.C. Section 881(a)(7).

REAL PROPERTY SUBJECT TO CIVIL FORFEITURE

The range of real property subject to civil forfeiture under Section 881(a)(7) is very broad and includes unimproved land, as well as improvements built on land, such as residences,² restaurants, apartment buildings,³ office buildings,⁴ athletic clubs,⁵ and taverns. In addition, real property used to manufac-

ture, grow, store, conceal, deliver, receive, or process illicit drugs, as well as property used as a meeting place to negotiate drug trafficking, is potentially subject to forfeiture.

There is also significant case authority that Section 881(a)(7) allows for the forfeiture of an entire tract of land, even though only a portion of the land is used in violation of the statute. For example, *United States v. Reynolds*⁶ involved a 30-acre tract of land on which only the house, driveway, and swimming pool had been used to facilitate the distribution of cocaine. The U.S. Court of Appeals for the Fourth Circuit upheld the forfeiture of the entire 30-acre tract, finding that "Congress expressly contemplated forfeiture of an entire tract based upon drug-related activities on a portion of the tract."⁷

In a similar case, *United States v. Santora*,⁸ the defendant's real property consisted of approximately 26 acres bisected by a road that had been taxed as two separate parcels. However, the property's deed described it as a single undivided tract. On one side of the road was a 5-acre parcel on which a home, barn, and several outbuildings were located. The balance of the property, all of which was unimproved, was on the other side of the road.

Following a State investigation, a Federal forfeiture action was initiated against the defendant's real property, based on the distribution of small amounts of cocaine to an undercover officer on four separate occasions. All of the cocaine sales occurred on the smaller portion of the property. The owner attempted to characterize the property as two tracts of land and argued that only

the smaller portion of the property, where the cocaine sales actually occurred, could be forfeited.

The Fourth Circuit Court of Appeals rejected the defendant's argument and ruled that "the whole of any lot or tract of land" must be determined from the duly recorded instruments and documents filed in the county offices where the property is located and not simply from the tax records. Thus, the court held the entire 26-acre parcel was subject to forfeiture.⁹ In this regard, law enforcement officers should carefully research county land records to help determine the exact extent of property subject to forfeiture.

EVIDENCE IN CIVIL FORFEITURE CASES

The forfeiture of real property must be based on a showing of probable cause that the property was used or intended to be used to commit or to facilitate a felony drug violation. A Federal forfeiture action against real property is often initiated based on evidence gathered

during a joint Federal/State criminal investigation or during an independent State criminal investigation. A conviction of the owner in either Federal or State court can serve as the necessary probable cause to initiate civil forfeiture against a parcel of real property, if the violation leading to conviction involved the use of that property.

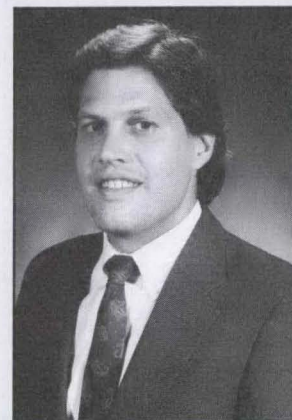
For example, the U.S. Court of Appeals for the Second Circuit decided that a civil forfeiture of real property pursuant to Section 881(a)(7) may be based on illicit drug activity resulting in a State conviction.¹⁰ In that case, undercover New York City police officers entered a five-story building with a street-level storefront and several residential apartments. Once inside, the undercover officer purchased several vials of crack from the owner, who was subsequently convicted in State court.

Approximately 1 year later, the New York City Police Department and the Drug Enforcement Administration (DEA) determined

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...forfeiture...must be based on a showing of probable cause that the property was used or intended to be used to commit or to facilitate a felony drug violation.

”



Special Agent Kukura, Drug Enforcement Administration, is a legal instructor at the FBI Academy.

that the storefront, operating as a restaurant, was actually a lucrative crack cocaine distribution point. The court noted that the property owner's earlier State court drug conviction *alone* provided sufficient probable cause for forfeiture of the owner's property.

subject to civil forfeiture "even if its owner is acquitted of—or never called to defend against—criminal charges."¹² In this regard, the Supreme Court stated in *Various Items of Personal Property v. United States* that "it is the property which is proceeded against, and by resort

clear connection between real property and a drug felony.

Case Accounts

One of the first cases to interpret the "facilitation" provision was *United States v. 124 East North Avenue, Lake Forest, Illinois*.¹⁵ In this case, the government's complaint alleged that the property was used for a 6-month period to facilitate the sale and delivery of cocaine as follows:

- 1) The telephone at the residence was used *regularly* to negotiate the sale of cocaine;¹⁶
- 2) The owner used an electronic paging device to be contacted at the property regarding cocaine sales;
- 3) The owner used the property as the only location where he would be contacted by telephone regarding the sale of cocaine; and
- 4) The owner arranged to use the property as a location for the delivery of approximately 5 kilograms of cocaine.

The court held that the facts alleged in the complaint were sufficient to constitute probable cause to believe the defendant's property facilitated the violation of Federal drug laws. The court highlighted the "intent" to deliver 5 kilograms to the property and the regular use of the telephone at the property to negotiate the sale of cocaine as providing a "sufficient nexus between the alleged illegal activity and the defendant property."¹⁷ Importantly, the court noted that an isolated use of a telephone in a home

"...there is a judicial willingness to interpret the 'facilitation' provision broadly to permit forfeiture whenever law enforcement establishes a clear connection between real property and a drug felony."

Despite the owner's argument that his State conviction did not support forfeiture because he had filed a notice of appeal, the court found that the trial transcript of the State criminal proceedings provided probable cause that the defendant's property was used for an unlawful purpose.¹¹

It is important to note that if the owner's State conviction had been overturned, civil forfeiture of his property would not be precluded. Unlike criminal forfeiture cases, conviction for the underlying criminal activity is not a prerequisite for the civil forfeiture of real property.

Civil forfeiture is an *in rem* proceeding against the property that has been involved in some violation. *In rem* refers to any legal proceeding directed solely against property. The property is the defendant. Therefore, real property is

to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate....The forfeiture is no part of the punishment for the criminal offense."¹³

A Clear Connection Required

The provision in Section 881(a)(7) for the forfeiture of real property that "facilitates" drug trafficking has spawned considerable litigation and some judicial disagreement. The litigation and extent of disagreement centers on the degree of connection or "nexus" that must be shown between drug trafficking and the property to be forfeited.¹⁴ However, all courts agree that the connection must be more than merely incidental or fortuitous. As the following cases illustrate, there is a judicial willingness to interpret the "facilitation" provision broadly to permit forfeiture whenever law enforcement establishes a

to discuss a drug sale might not be a sufficient basis to subject the home to forfeiture.¹⁸

In another case, *United States v. Real Property and Residence*,¹⁹ the owner arranged for and directed a 10-kilogram cocaine delivery, which occurred on the driveway of his residence. A court-authorized interception of the owner's telephone conversations prior to the transaction demonstrated his insistence that the deal take place on familiar territory at his home. The court upheld the forfeiture since "...a portion of the defendant property, the driveway, served as the planned site of a ten kilogram cocaine delivery."²⁰

A different result was reached in *United States v. Certain Lots in Virginia Beach*,²¹ where a government informant contacted the property owner and requested a drug transaction be consummated at the owner's home. The owner at first refused and only upon the informant's insistence agreed to use his home as the transaction site. A Federal district court did not uphold forfeiture, because the necessary "substantial connection" between the illegal activity and the defendant property did not exist sufficiently to prove facilitation. The court found that the owner merely allowed the government informant to meet him there, and then only as a result of the informant's insistence.²²

In *United States v. Schifferli*,²³ the U. S. Court of Appeals for the Fourth Circuit found a substantial connection between a dentist's office building and his drug offenses, and therefore, permitted forfeiture of the office building and property

on which it was located. Facts in the case indicated the dentist used his office over 40 times during a 4-month period to write illegal prescriptions. In upholding the forfeiture, the court broadly interpreted the "facilitation" requirement by noting that it is irrelevant whether the property's role in the crime is indispensable.²⁴

In another case, the U. S. Court of Appeals for the Eighth Circuit upheld the forfeiture of a residence, finding that it was substantially connected to illegal drug activity because a 2-ounce purchase of cocaine occurred at the residence

"...law enforcement officers should carefully research county land records to help determine the exact extent of property subject to forfeiture."

and law enforcement officers found \$12,585 in a pocket of a sportscoat hanging in a closet intermingled with \$250 in official government funds that had been used in previous undercover purchases of cocaine.²⁵ Cocaine, drug scales, and weapons were also found in the residence. The court upheld the forfeiture, even though the quantity of the drug actually involved was "relatively small."²⁶

The U. S. Court of Appeals for the 11th Circuit found probable cause to believe a residence and the surrounding property facilitated the importation of cocaine where evidence indicated the property was used to negotiate and plan the importation of cocaine.²⁷ The co-conspirators met several times on the defendant's property and discussed the details of their plan. They also traveled from the residence to inspect a proposed landing site for the aircraft used to transport the cocaine.²⁸ The court ruled the real property was forfeitable, even though it was not used or intended for use as a delivery or storage site for cocaine.²⁹

As the above cases reveal, courts have broadly interpreted the plain language of the facilitation provision of Section 881(a)(7). However, law enforcement's use of this provision should be tempered by reason and fundamental fairness, because an overzealous use of the facilitation provision to forfeit real property could produce adverse public opinion or court decisions, which could spawn more restrictive legislation.³⁰ It is, therefore, recommended that law enforcement agencies adopt a policy that limits the civil forfeiture of real property to cases where there has been a substantial use of the real property to facilitate a drug felony violation as opposed to a remote or incidental use.³¹

THE "INNOCENT OWNER" DEFENSE

Section 881(a)(7) provides for an "innocent owner" defense to forfeiture where property owners can

establish their lack of knowledge or consent to the drug trafficking. Once the government establishes probable cause that property facilitated drug trafficking, the burden shifts to owners of the property to prove by a preponderance of the evidence that they did not know of or consent to the underlying illegal conduct. This statutory defense is available to any person with a recognizable legal or equitable interest (i.e., standing) in the property, such as an owner, spouse of the owner, or lienholder.

The possession of bare legal title, however, may be insufficient to establish such standing.³² Because people engaged in drug trafficking often attempt to disguise their interest in property to prevent forfeiture by placing title in another's name, law enforcement officers investigating drug trafficking should look behind the formal title to determine whether the record title

legal title by one who does not exercise dominion and control over the property is insufficient to establish standing to challenge a forfeiture. The court found the claimant lacked standing to contest the forfeiture because: (1) He presented no documentary evidence regarding his finances or payments with respect to the purchase of property; (2) he could not remember how much he had contributed or borrowed from others; and (3) there was no record to support his claim that he had paid the property taxes on the land for at least 2 years.³⁴

Courts have also held that a fugitive from justice does not have standing to contest a forfeiture action. For example, the 11th Circuit Court of Appeals ruled that a fugitive who had been indicted for drug trafficking and was residing in Colombia was precluded from contesting the forfeiture of his estate located in Miami, Florida.³⁵

forfeiture by establishing that the illegal drug activity took place on their property without their consent.³⁷ Courts that recognize lack of consent alone as a sufficient basis for the "innocent owner" defense nevertheless require owners to prove they did all that reasonably could be expected to prevent illegal activity after learning of it.³⁸

For example, the "innocent owner" defense based on a lack of consent was rejected by the U. S. Court of Appeals for the Second Circuit in a case involving the forfeiture of a six-story, 41-unit apartment complex that the court characterized as "a veritable anthill of drug activity."³⁹ The court found that the owner who asserted a lack of consent did not prove he did all that reasonably could be expected to prevent the illegal activity.

From December 1986, through May 1988, New York City police received complaints of drug trafficking in 24 of the 41 apartments and determined that the common areas of the building were littered with crack vials and other paraphernalia and that lookouts were constantly posted in front of the building. Law enforcement officers were able to produce evidence of numerous unsuccessful attempts to contact the owner about these drug problems through telephone calls, letters, and discussions with the superintendent of the building. In June 1988, several arrests were made at the apartment complex. While the owner admitted visiting the apartment complex on approximately 100 occasions and speaking with the superintendent on a weekly basis, he claimed he had no idea that

“

...for an 'innocent owner' defense...owners of the property [must] prove by a preponderance of the evidence that they did not know of or consent to the underlying illegal conduct.

”

owner is a "strawman"³³ set up to conceal the true owner.

In a recent case illustrating this "strawman" concept, the U. S. Court of Appeals for the 11th Circuit held that possession of mere

Some courts hold that claimants must establish *both* lack of knowledge *and* lack of consent to avoid the forfeiture,³⁶ while others hold that owners with knowledge of drug activity may nonetheless avoid

drug transactions were occurring on the premises until the June 1988, arrests, at which time he instructed the superintendent not to accept rent from the tenants arrested and called his lawyer. The court denied the "innocent owner" defense, reasoning that the owner either knew of the drug activity before June 1988, and did nothing to stop it, or that his response after learning of it was inadequate.⁴⁰

CONCLUSION

The civil forfeiture of an entire tract of land where the whole tract or just a portion of the tract has facilitated drug trafficking is a powerful weapon in the war on drugs. The government must establish probable cause that the property has facilitated and/or is intended to facilitate a felony drug violation.

Owners of real property can successfully assert an innocent owner defense only if they can prove lack of knowledge or consent to the illegal activity subjecting the property to forfeiture. Early coordination between the various investigative agencies and the U. S. Attorney's Office is a strategic necessity in any investigation that may potentially lead to the forfeiture of real property.⁴¹

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act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."

It should be noted that in 1978, Congress, in 21 U.S.C. Section 881(a)(6), authorized the civil forfeiture of real property that is traceable to the proceeds of drug trafficking. Also, real property is subject to criminal forfeiture under 21 U.S.C. Section 853.

² *United States v. Lots 12, 13, 14, and 15, Keeton Heights*, 869 F.2d 942 (6th Cir. 1989).

³ *United States v. All Right, Title and Interest*, 901 F.2d 288 (2d Cir. 1990).

⁴ *United States v. Schifferli*, 895 F.2d 987

F.2d 490 (7th Cir. 1990).

¹⁵ 651 F.Supp. 1350 (N.D. Ill. 1987).

¹⁶ The use of a telephone to arrange or otherwise facilitate a drug felony violation is itself a felony violation under 21 U.S.C. Section 843(b).

¹⁷ *Supra* note 15, at 1352-54.

¹⁸ *Id.* at 1353.

¹⁹ 921 F.2d 1551 (11th Cir. 1991).

²⁰ *Id.* at 1556.

²¹ 657 F.Supp. 1062 (E.D. Va. 1987).

²² *Id.* at 1065.

²³ 895 F.2d 987 (4th Cir. 1990).

²⁴ *Id.* at 990-91.

²⁵ *United States v. Premises Known as 3639—2nd St., N.E., supra* note 14.

²⁶ *Id.* at 1096.

²⁷ *United States v. Approximately 50 Acres of Real Property*, 920 F.2d 900 (11th Cir. 1991).

²⁸ The property used as a landing strip was a separate parcel of property owned by the same claimant and was also forfeited under the authority of Section 881(a)(7).

²⁹ *Supra* note 27, at 903.

³⁰ Possible constitutional challenges to disproportionately severe forfeitures were raised in *United States v. Real Estate Known as 916 Douglas Ave., supra* note 14; and *United States v. Livonia Road*, 889 F.2d 1258 (2d Cir. 1989).

³¹ For example, see DEA's policy statement in *Drug Agents' Guide to Forfeiture of Assets* (rev. 1987). (Available from U.S. Department of Justice, Drug Enforcement Administration.)

³² *United States v. Real Property at 5000 Palmetto Drive*, 928 F.2d 373 (11th Cir. 1991).

³³ The term "strawman" is used to denote one who holds title in name only or is a nominal owner.

³⁴ *United States v. Lot 111-B, Tax Map Key 4-4-03-71(4)*, 902 F.2d 1443 (9th Cir. 1990).

³⁵ *United States v. One Parcel of Real Estate Dade County, Fla.*, 868 F.2d 1214 (11th Cir. 1989).

³⁶ *Supra* note 34.

³⁷ See, e.g., *United States v. 141st Street Corp. by Herch*, 911 F.2d 870 (2d Cir. 1990).

³⁸ *Id.*

³⁹ *Id.* at 877.

⁴⁰ *Id.* at 880.

⁴¹ For more expansive discussions of forfeiture concepts, see *Drug Agents' Guide to Forfeiture of Assets* (rev. 1987) (Available from the U.S. Department of Justice, Drug Enforcement Administration); *Asset Forfeiture: Law, Practice, and Policy* (vols. I & II) (Available from the U.S. Department of Justice, Asset Forfeiture Office); and David B. Smith, *Prosecution and Defense of Forfeiture Cases* (1991).

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

“...conviction for...criminal activity is not a prerequisite for the civil forfeiture of real property.”

(4th Cir. 1990).

⁵ *United States v. Parcel of Land With Building App. And Imp.*, 928 F.2d 1 (1st Cir. 1991).

⁶ 856 F.2d 675 (4th Cir. 1988).

⁷ *Id.* at 676.

⁸ 866 F.2d 1538 (4th Cir. 1989).

⁹ *Id.* at 1540-43.

¹⁰ *Supra* note 3.

¹¹ *Id.* at 292.

¹² See *United States v. Property Ident. As 3120 Banneker Dr. N.E.*, 691 F.Supp. 497 (D.D.C. 1988). For a discussion of the various legal procedures available to initiate the seizure of real property, see Landman and Hieronymus, "Civil Forfeiture of Real Property under 21 U.S.C. 881 (a)(7)," *Michigan Bar Journal*, February 1991, pp. 176-177.

¹³ 282 U.S. 577, 581 (1931).

¹⁴ Three Federal circuit courts have held that the government must show the real property had a "substantial connection" to a drug felony. See *United States v. Parcel of Land and Residence at Emery Street*, 914 F.2d 1 (1st Cir. 1990); *United States v. One Parcel of Real Estate Located at 7715 Betsy Bruce Lane*, 906 F.2d 110 (4th Cir. 1990); *United States v. Premises known as 3639—2nd St. N.E.*, 869 F.2d 1093 (8th Cir. 1989). However, another court rejected the "substantial connection" test and required only that the real property had "more than an incidental or fortuitous connection to the crime." See *United States v. Real Estate Commonly Known as 916 Douglas Avenue*, 903

Footnotes

¹ 21 U.S.C. Section 881(a)(7) subjects to forfeiture:

"All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit or facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of any owner, by reason of any

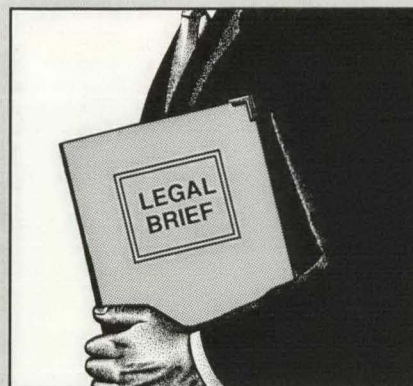
Legal Brief

County of Riverside v. McLaughlin U.S. Supreme Court Decision

On May 13, 1991, the U.S. Supreme Court decided in *County of Riverside v. McLaughlin* that the U.S. Constitution requires a judicial determination of probable cause within a prompt period of time following warrantless arrests. In effect, the Court established a maximum 48-hour period, including intervening holidays and weekends, in which persons arrested without a warrant are entitled to a probable cause determination.

The Court stated that a 48-hour standard recognizes the existence of some unavoidable delay following the arrest caused in transporting arrested persons, handling bookings and late-night bookings when no magistrate is readily available, and having the arresting officer present, who may otherwise be occupied with other duties. In its decision, the Court noted, "[A] jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement."

The Court cautioned, however, that a probable cause determination held within 48 hours could be found to be unreasonable if the delay was for the "purpose of gathering additional evidence to justify the arrest...motivated by ill will against the arrested individual, or delay for delay's sake." The Court also stated that if the probable cause determination is delayed beyond 48 hours, the "burden shifts to the government to



"In effect, the Court established a maximum 48-hour period...in which persons arrested without a warrant are entitled to a probable cause determination."

demonstrate the existence of a bona fide emergency or other extraordinary circumstance."

County of Riverside v. McLaughlin may require some law enforcement organizations to modify their post-warrantless arrest practices to ensure that a mechanism exists for a judicial determination of probable cause within 48 hours of a warrantless arrest. This constitutional requirement for a prompt judicial determination of probable cause only applies where the arrested person remains in custody. It is advisable for law enforcement organizations to coordinate all such judicial determinations with the appropriate prosecuting attorney.

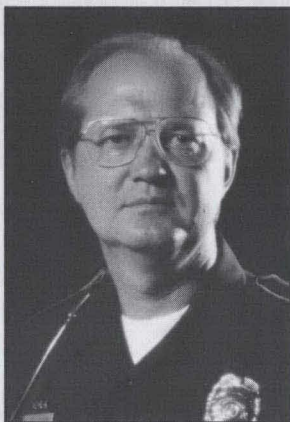
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This legal brief was written by Special Agent Jeffrey Higginbotham, J.D., who is a legal instructor at the FBI Academy.

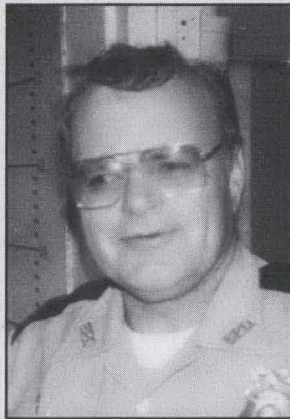
The Bulletin Notes

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.

When Officer Merrill Finlayson of the American Fork, Utah, Police Department was dispatched to a residential fire, he arrived to find the home fully engulfed in flames. He quickly established verbal contact with an elderly couple trapped inside and guided the 83-year-old woman to safety. However, when her 79-year-old husband collapsed, Officer Finlayson crawled through the burning home and pulled the unconscious man to safety.

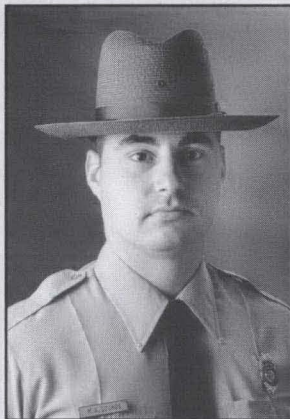


Officer Finlayson



Officer Patten

While on routine patrol, Officer Alvertie C. Patten of the Bucksport, Maine, Police Department came upon an accident scene in which a workman for the telephone company had been knocked unconscious after coming into contact with charged power lines. With the assistance of another worker, Officer Patten administered CPR and revived the severely injured victim. The victim, who received electrical burns to both his hands, face, and neck, was then transported to a hospital for treatment.



Officer Loukos

One night, during his patrol, North Carolina Wildlife Enforcement Officer Mike Loukos responded to the report of a man drowning in an area river. The man, who had been hunting with a companion, was attempting to retrieve their boat, which had slipped its moorings, when the currents carried him downstream. Upon determining that the rescue boat was still some time away, Officer Loukos removed his gear and plunged into the river in search of the victim. After a 30-minute search in the dark of night, Officer Loukos located the man, who had been in the frigid water for about 3 hours. He then used his flashlight to direct the rescue boat to them.

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