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**Statement Analysis**







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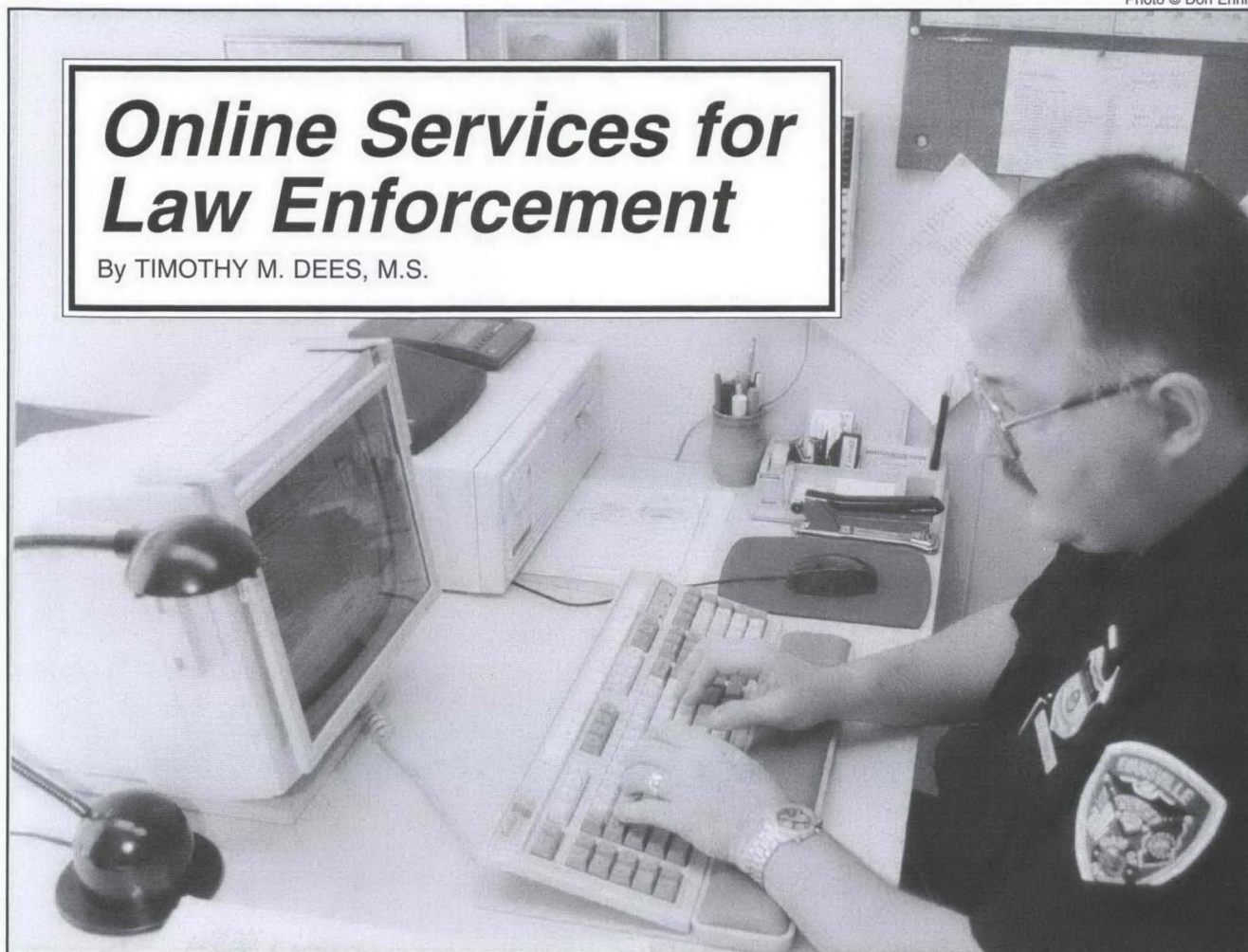
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# Online Services for Law Enforcement

By TIMOTHY M. DEES, M.S.



A small police department in the Midwest experiences difficulty with the brakes installed on its patrol cars. Officers complain of rapid brake fade, and repairs are made frequently and at substantial cost. A lieutenant from the department, who subscribes to an online service, posts the information on a forum restricted to individuals with a personal or professional interest in public safety.

Within a day, this message generates replies from officers in other parts of the country with similar problems, a writer who reviews police vehicle performance, and a

vendor of the vehicles. The lieutenant learns that due to inadequacies in the police package, the manufacturer will perform remedial repairs and upgrades at no cost—information that the local dealer who serviced the department's patrol cars did not have. The lieutenant goes to his chief with a cost-saving solution to the brake problem.

A rapist in Las Vegas, Nevada, flees after being released on bail. A lieutenant with the Las Vegas Metropolitan Police Department learns from an FBI agent that the subject has surfaced in Scotland. The lieutenant contacts a detective with the

Strathclyde Police in Scotland that he "met" in an online forum. The Strathclyde police officer locates the fugitive within a few days. Today, these same officers use the online service to facilitate a program they initiated that donates soft body armor from retired officers in the United States to those in the United Kingdom, where the items are both expensive and difficult to obtain.

As these officers have discovered, access to the online community provides law enforcement agencies with the tools they need to serve their communities more effectively. Unfortunately, many police agencies



have yet to reap the benefits that the Information Superhighway offers, often because they simply do not understand how online access can benefit them. From bulletin board systems to Internet features to commercial service providers, this article explains what is available for law enforcement agencies that get online.

### THE BASIC TOOLS

Establishing an online presence requires a computer, a modem with appropriate communications software, and a telephone line. The computer need not be a state-of-the-art model, as many online resources do not require a complex display or high processor capacity. However, taking advantage of all of the resources available online requires a computer running at least Microsoft Windows or Macintosh System 7, with a hard disk drive and at least 100 megabytes available storage

space. Computer systems with less simply cannot access as many online features.

### BULLETIN BOARD SYSTEMS

A bulletin board system (BBS) is a small online service, usually patronized by people with similar interests. One of the most basic online resources, computer bulletin boards require neither an e-mail account nor an Internet connection. Rather, to access them, users need only have their computer modems call the modem of the BBS, and the process is more or less automated from there.

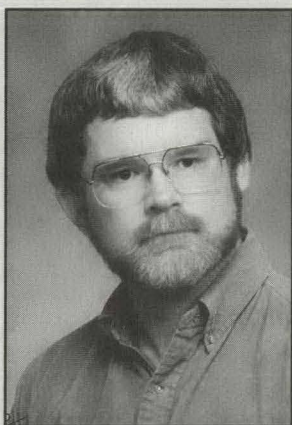
Once connected, users usually answer a series of questions about their identities to verify their need to use the system, and some BBS operators require users to pay a fee. New users get a name—sometimes their own, often a one-word alias—and a password that ensures that no one else can access their accounts.

Bulletin boards exist for hunters, collectors, political activists, hobbyists of all types, and of course, law enforcement officers. Anyone with a computer, a phone line, the appropriate software, and the desire to do so can set up a BBS, and thousands of individuals have done just that. Because many BBS sponsors run their services with out-of-pocket funds, bulletin boards can be very transitory. This can sometimes be a blessing, as some bulletin boards have been used by credit card defrauders, computer crackers,<sup>1</sup> and pedophiles to spread criminal and contraband information online.

Bulletin boards frequently have ongoing discussions of noteworthy events. Discussions take place when users read messages posted by others and either post a reply or start a new message topic, commonly referred to as a "thread." Some BBS software allows replies directly to individuals, and others allow only public postings.

System operators control who accesses their bulletin boards, and they also can monitor virtually any conversation or private e-mail they desire. Yet, because user names usually ensure anonymity, many BBS users express their opinions on issues of emotional importance to them.

In addition to sponsoring discussions, bulletin boards often maintain files for users to download, and the availability of these files is one of the biggest attractions of some systems. Many systems contain graphics files, which include clip art images, news and personal



**“...access to the online community provides law enforcement agencies with the tools they need to serve their communities more effectively.”**

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photos, and others. Some systems also allow subscribers to send messages to other bulletin boards and to connect to the Internet.

Many law enforcement agencies maintain bulletin boards as public relations tools. They may contain graphics files, software programs, text files, and message files saved, or "captured," from interesting past discussions. One of the more stable law enforcement-related bulletin boards is that of the SEARCH Group in Sacramento, California.<sup>2</sup>

### LISTSERVS

Because they require only an e-mail connection, listservs represent one of the more cost-effective methods for networking with criminal justice professionals around the world. A listserv is a type of mailing list sent to users who request it.

Sometimes, users "lurk," or simply read the message traffic passively; in other cases, they take an active role. Discussions take place as members of the listserv post questions or comments to other subscribers. Listservs also can be used to post information of interest to members, such as an upcoming training event or a job opening.

Some listservs are moderated; that is, the list owner sees each message and decides whether to send it on to the subscribers. The list owner also can edit messages before sending them.

One of the more popular law enforcement-related listservs is POLICE-L, which is run by a former New York auxiliary police officer who now serves with the Orange, Connecticut, Police Depart-

ment. Membership in POLICE-L requires that the subscriber send, by conventional mail, documentation of active or retired law enforcement status, such as an identification card. Once cleared for access, the subscriber can receive postings to the list.<sup>3</sup>

**“  
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### INTERNET FEATURES

With its vast collection of computer networks worldwide, the Internet can provide users access to a wide variety of online resources. Whether participating in an online discussion group or downloading a news article from the World Wide Web, criminal justice professionals can gather critical information from this ever-expanding database.

#### The World Wide Web

The World Wide Web (WWW) has been called the fastest-growing aspect of the Internet. The WWW is a graphically oriented network of "pages" that contain text, still and full-motion graphics, sound files, and links to other pages. These links allow users to tab or click on a line of text and instantly be sent to the page connected to that link, no matter how far away. Physical distance

is not a factor on the Internet, and it costs no more to search a Web site in Australia than it does to look at one in the user's hometown.

WWW pages are constructed using Hypertext Markup Language (HTML) and are indexed by an address called a Uniform Resource Locator (URL). These addresses, which can be simple or complex, are determined by the online service that contains them, often a commercial provider that rents space on its server<sup>4</sup> for the user's home page.

Criminal justice organizations at every level have discovered the value of the Web and have constructed their own home pages. Some states have made their criminal statutes available, and the entire U.S. Code can be accessed at <http://www.pls.com:8001/his/usc.html>.

Some local law enforcement agencies use the WWW as a community relations tool, posting photos of officers, department activities, notice of neighborhood meetings, crime prevention tips, and the like. In fact, because some of the major word-processing software packages now include HTML add-ons that translate regular text into this specialized computer language, even individuals with less-than-cutting-edge technical skills can construct their own Web pages.

Viewing WWW pages requires special software to translate the HTML code into something the user's computer recognizes. Most of the commercial online services now offer this type of software at no extra cost as part of their sign-up packages.



Unfortunately, the level and convenience of some providers' WWW access are uneven. Some services are ploddingly slow, and it may take several minutes for even a single page of graphics to transfer to the user's desktop machine. To compensate, most Internet providers have an option for accessing the bare bones of the WWW, called Lynx. Lynx is an HTML interpreter that accesses WWW pages, but displays only the text information, with a dark block where graphics images would otherwise appear.

### USENET Newsgroups

USENET is a component of the Internet that contains discussion

groups, called newsgroups, of every interest imaginable. Newsgroups work similarly to listservs, but instead of retrieving postings from their mailboxes, users invoke a newsreader, which displays the items and allows users to reply or post new messages.

There are literally thousands of newsgroups, organized in a hierarchy denoted by periods to separate the categories. Most newsgroup titles closely describe their subjects, for example, **misc.books.technical**, about books on technical topics, and **sci.space**, about outer space research. There also are very extensive "alt" hierarchies, such as **alt.law-enforcement**.

Unfortunately, a number of regular subscribers to **alt.law-enforcement** frequent the group to bash the police participants from a safe distance. This occurs because, like most newsgroups, **alt.law-enforcement** is not moderated.

Though reading the numerous postings may be time-consuming, newsgroups represent an excellent way to stay abreast of developments from a distance. And, while they may not have a great deal of useful information for police officers, they

may prove extremely useful to investigators collecting intelligence information.

Several child pornography cases have been made by monitoring USENET postings, and conversations on the groups frequented by computer crackers can provide fraud and

computer crime investigators with insight into their operations.

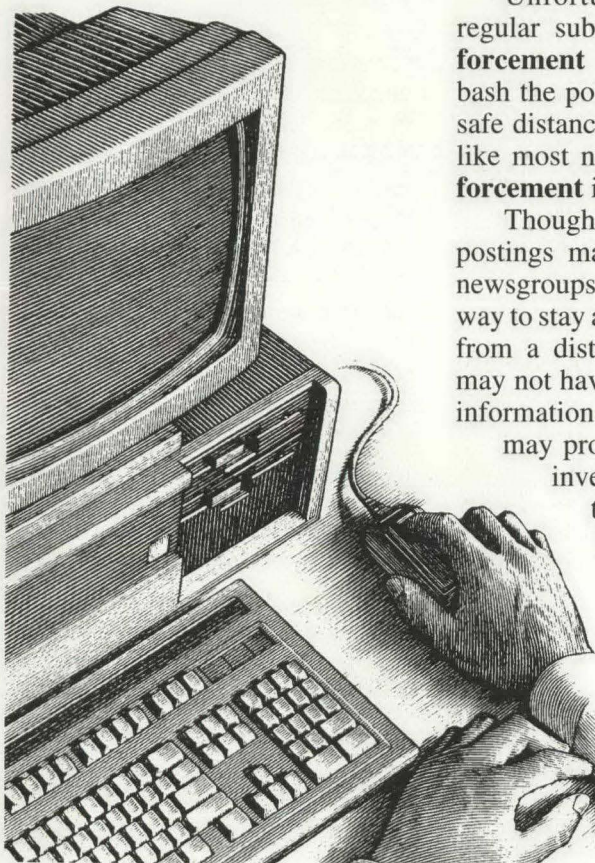
Not all online services carry newsgroups, as they require a great deal of disk space and consume other computing resources. Other services (especially some college-run providers) intentionally restrict certain newsgroups, in order to remain a family-oriented service. Internet service providers can furnish potential subscribers a list of what newsgroups they carry.

### Telnet and FTP Sites

Telnet, another Internet feature, allows users to access other Internet providers and use their computers as if they were connected directly. Telnet can save users money if they can connect to an Internet provider toll free; using another service might require a toll call.

For instance, the SEARCH Group recently added a telnet connection. Prior to this, users connecting to SEARCH from outside the Sacramento calling area had to pay the toll charges on a long-distance call. With a telnet connection, users can log on to their Internet service provider, type "telnet search.org" and log on to that service with the user name and password registered with SEARCH. In this way, the Internet provides toll-free, long-distance phone service.

Telnet also is helpful for users who are away from home but have access to a visitor's account or some other Internet account and want to keep up with their e-mail. Users can telnet to the system that carries their e-mail accounts, log on as usual, and proceed to read and send e-mail.





Similar to telnet is file transfer protocol (FTP),<sup>5</sup> which allows users to transfer files from one computer to another. Most FTP sites do not require that users have accounts. These sites use "anonymous" FTP. Once connected to the site and asked to enter a name and password, users can respond with "anonymous" as their names and their e-mail addresses as their passwords. An alternative to FTP, called ftpmail, sends files as e-mail for users with e-mail accounts but no FTP access.

### Gopher Servers

Gopher is a menu-driven utility that uses nested lists of choices from which users can select areas of interest. It is one of the simplest Internet utilities to use. The term "gopher" originated with its creators at the University of Minnesota, home of the Gophers athletic teams. And, just as a "go-fer" runs errands, this gopher takes an order for information, then runs and displays it.

To access a gopher server, users log on to their Internet provider, then type "gopher" at the system prompt. If gopher service is available, a list of menu options will appear on the screen. This feature makes it fairly easy to browse the gopher network, but can be frustrating, as users may have to wade through many menus before finding the one they want.

On most systems, the gopher server includes a choice of "Other Gopher and Information Servers" and/or "All the Gopher Servers in the World." Getting to this list is usually as simple as entering the number next to the listed choice and pressing the enter key. Hitting the

spacebar will lead to subsequent pages if a menu consists of more than one page.

Users also can access a particular gopher server if they know its address. For instance, by typing **gopher gopher://justice2.usdoj.gov** users can access the Department of Justice's gopher server, which, among other features, includes the complete text of articles published in past issues of the *FBI Law Enforcement Bulletin*.

**"...listservs represent one of the more cost-effective methods for networking with criminal justice professionals around the world."**

### Archie and Veronica

How do users know what files are available and where to look for them? Fortunately, semiautomated utilities, or "search engines," take away some of the headache of this process. Two of the more popular utilities for the Internet are called Archie, which searches FTP sites, and Veronica, which searches for gopher servers.

Comic book fans may recognize these names as characters from a popular series, and the names are not entirely accidental. "Archie" got its name from its similarity to the word "archive" and was one of the

first utilities of this type available. When other programmers started writing utilities, they also took names from the comic book series, including "Jughead" and "Betty," although these are not used as widely as Archie.

To get to an Archie server, users telnet to its address, then log on under the name Archie (no password required). A number of variables can be set that may streamline the search process. One particularly useful one is the set search command, which tells the server whether to take the search terms literally or merely to look for something close. At the Archie prompt, the command "set search sub" selects files that contain any part of the search term, while "set search exact" locates the exact file by name.

Once the search parameters have been set, the Archie prompt appears again. By putting the command "find" in front of any term, users can access a list of files that contain that word. These files will be sorted by server and will have the directory in which the file is found above it. To retrieve one of the files listed, users would FTP to the directory and enter the command "get" followed by the location and name of the file as listed. This file then would transfer to the user's home directory.

By contrast, using the command "whatis" followed by a term of interest will provide a list of files that includes the search term in the software description database, a text description sometimes provided by the person who posted the file. Like display ads in the yellow pages of the phone book, these descriptions



contain more information, but not every file has one.

To retrieve one of the files located by a "whatis" search, users enter the "find" command followed by the name of the file at the Archie prompt. Archie then provides a list of directories where the file is located.

Veronica works in a similar way. After selecting the Veronica menu option, users enter a search term in the window that appears. This term can be any word or words that likely will appear in the target's title or directory. A list of menu choices that meets the search criteria will result, and users can pick the menu items they want, just as they would for any other gopher menu.

## COMMERCIAL SERVICE PROVIDERS

Whether looking for full Internet access or merely an e-mail account, the fastest, most convenient, and least expensive method to get online is often via a commercial online service. Most services provide the software needed to access the system, and some allow users to employ generic communications software.

Costs usually include a set monthly fee plus a charge for online time accrued beyond the minimum covered by the fee. Long-distance charges to connect to the system sometimes apply as well. Overall, connect time can be minimized if the service allows users to perform time-consuming tasks, such as reading messages, composing replies, and writing new messages, while offline.

Due to fierce competition among service providers, nearly all offer prospective new customers a free introductory period where they are not charged for their on-line time. All of the services allow users to send e-mail to other users of that service, and most allow sending e-mail to users on other services and on the Internet.

***“Law enforcement officers cannot afford to let the information revolution pass them by.”***

Users who want only e-mail addresses should look for the most inexpensive and convenient service, as e-mail remains more or less the same from one service to another. What distinguishes the various services are their online forums and libraries.

## Forums

Forums allow members to communicate with one another in real time. Many forums have moderators or system operators who provide advice and monitor the forum for unwanted activity. Most system operators can delete offensive, obscene, or otherwise inappropriate messages or lock out a user entirely. But, in the interest of free speech, they seldom exercise this capability.

Some forums, or sections of forums, restrict access to certain

users, e.g., sheriffs and chiefs of police or sworn law enforcement officers. Members who wish to access these sections first must apply via an online form and have their status verified by the system operator.

## Libraries

Associated with forums, or sometimes located in a separate section, are file libraries, which contain software, text files, images and graphics, address lists, and almost anything else that can be contained in a computer file. The files originate from subscribers who have information they want to share.

In order to encourage these contributions, several services do not charge users to upload (copy) files from their personal computers to the library. Users who want the file pay for the connect time necessary to download it, which depends on the speed of both the user's computer modem and the online service's data connection, as well as the size of the file.

Library files have both titles and file descriptions, written by the person who posted the information. As a result, users can locate a file by subject without having to search each file individually. For example, to find information on agencies that have policies on the use of oleoresin capsicum (OC or pepper spray), a user would search the file libraries for the occurrence of such words as "OC," "oleoresin," and "pepper."

## SECURITY CONCERNS

Many potential online users get frightened away by the prospect of introducing viruses into their personal computers or networks. Still



others are concerned that a cracker or some other cybervandal will gain access to their sensitive computer data and either steal it or render it useless. Certainly, both represent valid concerns. But, just as biological viruses can be avoided, so can computer viruses. And data, like other sensitive property, can be secured against intruders.

The best protections against these kinds of invasions remain the simplest. Requiring employees to change their passwords regularly, not allowing easy-to-guess passwords (for example, names, nicknames, or birthdates), and immediately denying access to employees who leave the organization represent some basic security measures. In addition, telephone lines can be burglar-proofed by allowing only outgoing communications from that machine. Finally, a software barrier known as a "firewall" can exclude unauthorized users. Though not unbeatable, most firewalls will deter all but the most skilled and persistent invader.

Because e-mail sent over the Internet can pass through any number of computers before reaching its destination, it is, by nature, unsecure. Some skilled crackers can place packet-monitoring programs on servers that look for certain keywords and then capture files containing those keys to a file to be read later. Security-conscious users can use special software to encrypt messages so that only the intended recipient can read them.

Although outside sources threaten the security of computer systems, department employees may represent more of a threat.

Employees who bring disks from home to use on their desktop machines can infect a system just as quickly as a virus introduced over a phone line. Moreover, amateur crackers from within the department may attempt to defeat the security system just to see if it can be done. Agency administrators should institute measures to prevent these scenarios from occurring.

### CONCLUSION

Technology continues to advance rapidly, increasing the availability of computer systems to the public, while decreasing their costs. As a result, more individuals join the online community every day. While some remain content to cruise the Information Superhighway in search of conversation, others use the Internet as an avenue for their criminal enterprises.

Law enforcement officers cannot afford to let the information revolution pass them by. Instead, they can use the online resources available to gather intelligence, conduct research, exchange information, and reach out to their constituents. The tools they need may be just a keystroke or click away. ♦

### Endnotes

<sup>1</sup> This term, which refers to people who break into computer systems in an unauthorized way, is preferred to "hacker," which is a person skilled in the writing and manipulating of computer code, legitimately or otherwise.

<sup>2</sup> For information, phone 916-392-4640.

<sup>3</sup> For information, send an e-mail message to [police-1info@cunyvm.cuny.edu](mailto:police-1info@cunyvm.cuny.edu).

<sup>4</sup> A server is a central computer that users access to exchange information.

<sup>5</sup> Though printed uppercase here, transferring to an FTP site usually requires a command typed in lowercase letters.

## Wanted: Photographs



**T**he Law Enforcement staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

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

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*FBI Law Enforcement  
Bulletin*, Law Enforcement  
Communication  
Unit, FBI Academy,  
Quantico, VA 22135.



# Point of View

## Why Not Hire Civilian Commmanders?

By Joseph L. Colletti, M.P.A.

In 1828, Sir Robert Peel, the father of modern law enforcement, said, "The police are the public and the public are the police...." Over time, attempts to remove corrupt influences from American police agencies forced many law enforcement officials to adopt a paramilitary organizational structure and to reject the possibility of any civilian roles in policing. While this stance helped distance police organizations from corrupt political influences, as an unintended consequence, the police became estranged from the very communities they served.

The time has come, however, to revive Peel's notion of the police and the public as one entity, sharing common goals and desires. The community-oriented policing philosophy emphasizes focusing a law enforcement agency's talents and energies on problem solving and changing the social conditions that give rise to crime. It seeks to empower both police personnel and community members to resolve problems.

The community-oriented policing philosophy has opened the door to using civilians in key management positions as a way for departments to tap into the vast reserves of managerial expertise available in the private sector. It also fosters greater confidence and rapport with their communities and dispels the antagonistic relationships that might exist between the citizenry and the police. A civilian in upper management can serve as a bridge between the community and the department.

### Job Dimensions

To understand the role civilians can play in law enforcement agencies, one first must examine the critical functions performed by all police managers. Among other requirements, a person in the upper management of today's law enforcement organization is expected to:

- Oversee the operations of uniformed forces or technical support personnel who respond to emergencies, enforce laws, and maintain records

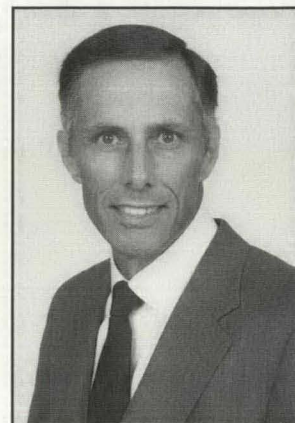
- Take command of personnel in emergencies and direct complex public safety events and special investigations
- Use discretionary authority in dealing with complaints from the public
- Ensure that reports, memoranda, and correspondence prepared by the staff are complete, accurate, and ready for the executive to sign
- Respond to difficult questions about regulations and policies.

Effective managers have good decision-making skills. They can judge alternatives and realize the ramifications of each decision. They look at long-term consequences and implications, rather than merely handle short-term crises. Their decisions are consistent with the department's mission and goals, even when those decisions might be unpopular.

Analytical skills enable good managers to identify problems and their causes and to break complex problems into components more amenable to examination. These managers recognize gaps in data and can conduct research to obtain necessary information using a variety of sources.

Upper-level managers must be able to set priorities, coordinate and schedule tasks or events logically so as to obtain the most benefit from staff and material resources, and increase efficiency. Today, these qualities exemplify a trait often referred to as "entrepreneurial."

Chief Colletti commands the Emeryville, California, Police Department.





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Above all, upper-level managers are leaders. They coordinate, delegate, and follow up on the work of subordinates. They guide and motivate people to achieve tasks and solve problems. They take initiative and do not shy away from action.

The list of managerial duties and characteristics could continue, but what is most noteworthy is a task the list does not include—making arrests. Managers are not technicians. They must have education and experience in the duties of managing a complex organization, not necessarily in the specifics of policing.

### **Use of Civilian Commanders**

Law enforcement agencies assign the title of commander, captain of police, lieutenant, or deputy chief to positions in charge of a division or bureau, with the incumbent reporting directly to the chief of police or agency head. Whether the division conducts administrative, investigative, or field work, the scope of duties and responsibilities for the commander remains essentially the same.

Civilian division commanders have worked in law enforcement for some time. Even though their presence is not new to the profession, many departments still might not realize the unique strengths they can bring to an agency. Unlike police officers who rise through the ranks, civilian employees typically make lateral entries into law enforcement organizations and are selected because of their special qualifications. As a result, they bring a fresh perspective to their positions and to police work. The public also might afford them a certain credibility due to their civilian background and experience.

In addition, simple economics justifies the widespread use of civilians. The cost of employing a sworn division commander significantly exceeds the expense of a civilian because of considerable differences in pay and retirement rates.

In many police agencies, civilians command the support services or administrative branches of their organizations. The highly technical aspects of

administration—budgeting and accounting for example—can be learned and perfected in the private sector and then applied efficiently to the realm of policing.

Another position in which civilian command could be advantageous is internal affairs. Rather than calling for the creation of an external review board, citizen complainants might view a civilian as being more fair and neutral than a sworn commander.

These represent a few of the many positions civilian commanders can fill. Police executives contemplating the use of civilians should consider the full range of possibilities.

### **Challenges**

Through decades of vigilance and effort, law enforcement as a whole has sought to banish political corruption and influence from its midst. As law enforcement agencies embrace the

valuable concept of hiring civilian commanders, precautions should be taken to ensure that the gains made in years past will not be compromised now. Strict hiring standards should be developed (preferably on a statewide level) and uniformly applied to all civilian applicants to avoid political intervention.

In order to perform effectively, civilian division commanders, as well as any other civilian employees, must be treated equitably and considered equal to their sworn counterparts. They should be inserted into the normal department hierarchy or rank structure. In addition, civilian commanders should be able to rotate to other division assignments, just as captains or deputy chiefs do. As second-level commanders, they should be trusted to act in the absence of the agency head, just as their sworn peers would.

Law enforcement executives who decide to bring in civilian managers will need to take steps to gain the acceptance of civilians in the police culture. It is important to emphasize that hiring civilians in no way devalues the contributions of sworn officers; it simply provides a way for the agency to take advantage of the expertise available within the community.

“

**A civilian in upper management can serve as a bridge between the community and the department.**

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## Potential Civilian Command Assignments

**D**epending on the size and needs of the agency, the following assignments exemplify some suitable posts for civilian commanders.

- Accounts Payable/Receivable
- Affirmative Action Administrator
- Audit and Inspection Program
- Budget Administration
- Code Enforcement
- Computer Systems Management
- Contract Administration
- Cost Recovery Program
- Crime Analysis
- Cultural Awareness Director
- Custodian of Records/Personnel Files
- Environmental Design Review
- Graffiti Abatement Program
- Internal Ombudsman
- Jail Management
- Neighborhood Watch/Business Watch
- Outreach Program Development
- Payroll Supervisor
- Personnel Recruiting and Selection
- Records and Communications
- Risk Management Program
- Television Programs
- Training Program Development and Administration
- Workers Compensation Administrator

Officers might worry about how hiring civilian commanders will affect promotional opportunities for sworn personnel. For example, as a cost-saving measure, some police departments in California have placed civilian commanders in management positions traditionally held by sworn personnel. This does, indeed, affect the career ladder for sworn officers within these departments. However, the effects are no greater than those of the increasingly prevalent practice of hiring upper-level sworn commanders from outside an agency. Lateral entries—sworn or civilian—bring benefits and drawbacks; police executives must weigh these carefully when making hiring decisions.

Civilian commanders need not be used solely to replace sworn commanders, however. In the Emeryville, California, Police Department, as in many other agencies, civilians have been hired to enhance the

department by providing technical or managerial skills not found within the ranks. Thirty-four percent of Emeryville's employees are civilians. They bring expertise in computers, writing, public affairs, record-keeping, communications, and other areas to support the mission of the department and to allow sworn personnel to focus on their areas of expertise—enforcement and investigation. Sworn and civilian employees at all levels complement one another, integrating their talents to benefit the agency as a whole.

A concern equal to persuading officers to accept civilians is preventing civilian law enforcement professionals from becoming co-opted by traditional police thinking. Executives must encourage civilians to maintain their unique perspectives and not lose the very strengths they bring to the organization.



## Conclusion

The traditional law enforcement agency is composed almost entirely of sworn personnel. If civilians work in an agency, they often are relegated to first-line job assignments and rarely used in supervisory or management positions.

Today, however, the paradigm is shifting. Purposeful police executive leadership is a full-time job. The contemporary police agency should include talented civilians at all levels of the organization, especially upper management. Law enforcement managers are effective because they possess certain qualities, traits, and skills, not because they have arrest powers.

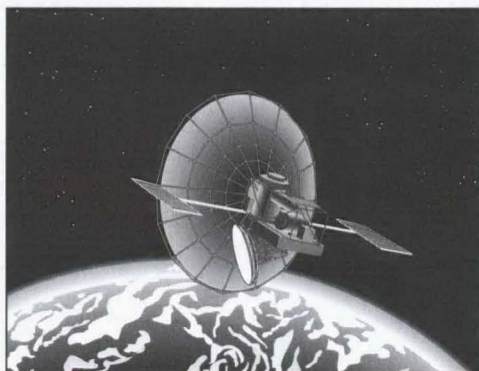
Bringing civilian division commanders into a law enforcement organization can infuse the agency with fresh thinking. Carefully chosen, qualified civilian administrators bring new ideas into an oft-closed group. What better way to foster the notions of community-oriented policing than to bring members of the community into the police department? ♦

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*For additional information concerning the use of civilians in upper management, contact Chief Colletti or Ms. Jeannie Wong, Division Commander, Administrative Services, Emeryville, California, Police Department, at (510) 596-3707.*

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## **FBITN** New Name For Satellite Training



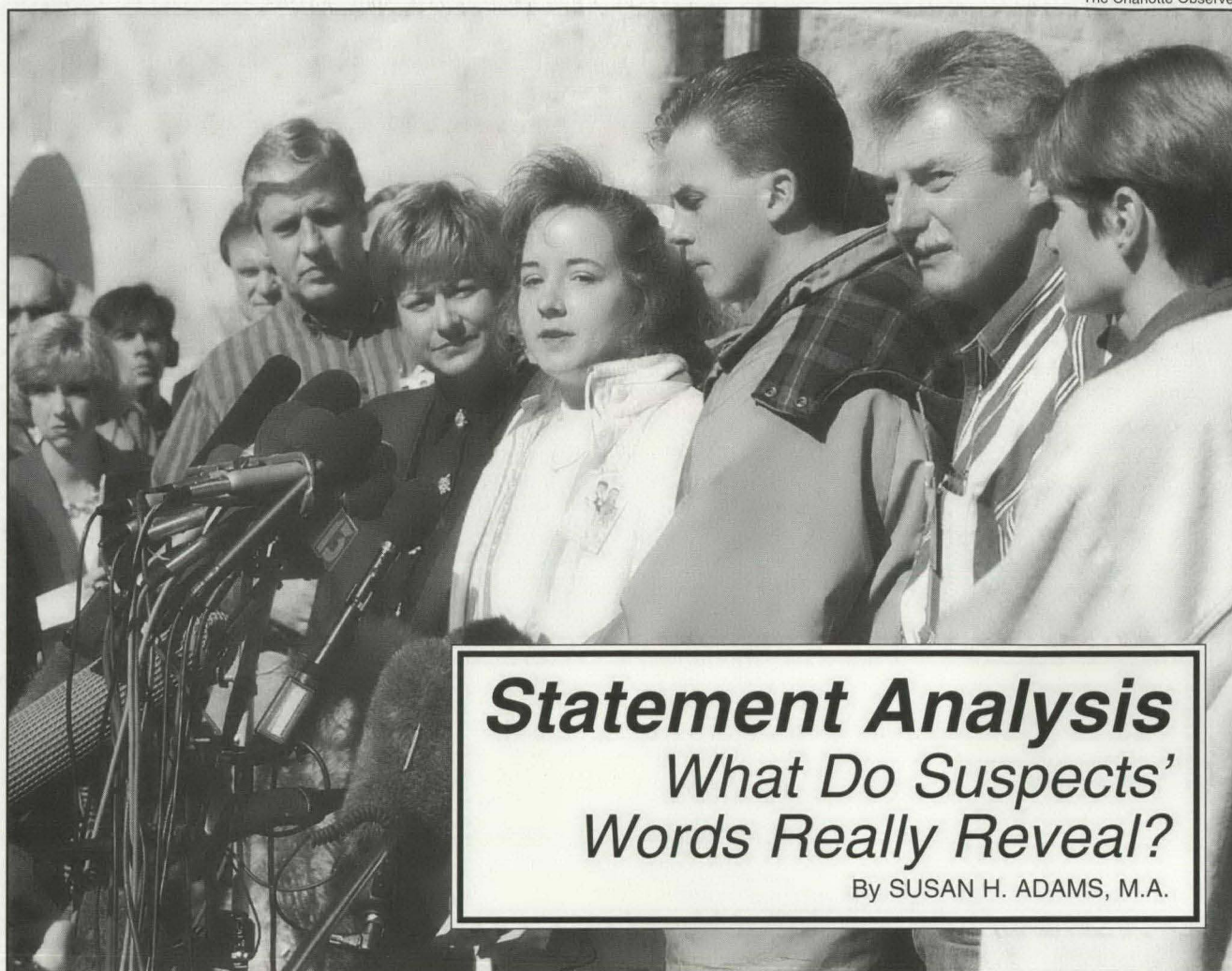
**A**s of October 1, 1996, the Law Enforcement Satellite Training Network (LESTN) will be known as the FBI Training Network (FBITN). Started over 10 years ago as a joint venture between the FBI and the

Kansas City, Missouri, Police Department, LESTN has offered hundreds of hours of training on a variety of law enforcement topics via satellite.

For the past year, however, the programs have been the sole production of the FBI from its training academy in Quantico, Virginia. The name change to FBITN reflects the FBI's and the Academy's continued dedication to training law enforcement professionals worldwide.

The next two scheduled programs for FBITN are on November 13, 1996 (Major Incident Protocol), and January 8, 1997 (Training and Technology). The satellite coordinates for these programs can be obtained from SA Tom Christenberry, FBITN Program Manager, at 800-862-7577. ♦





## ***Statement Analysis*** ***What Do Suspects'*** ***Words Really Reveal?***

By SUSAN H. ADAMS, M.A.

**S**usan Smith stood outside her burgundy sedan and released the parking brake. The car plunged down the ramp into South Carolina's Long Lake, with her sons, Michael, 3, and Alexander, 14 months, strapped into their car seats. To cover her actions, Susan told police that the boys were abducted at gunpoint, launching a nationwide search for the victims and their abductor. During the investigation, Susan tearfully told reporters, "My children wanted me. They needed me. And now I can't help them."<sup>1</sup> Yet, the boys' father, David,

who believed Susan's story, tried to reassure her by saying: "They're okay. They're going to be home soon."<sup>2</sup>

Police subsequently arrested Susan for the murder of her children. She was tried and convicted and is currently serving a life sentence in a South Carolina correctional institution.

Many investigators use a technique called "statement analysis" to discern the truth in statements like the ones given by Susan and David Smith. In statement analysis, investigators examine

words, independent of case facts, to detect deception. They also remain alert for information omitted and question why the suspect may have done so. Investigators then analyze the clues unintentionally provided by a suspect and use this insight during the subsequent interview.

In the case of Susan Smith, by analyzing the statements made by the victims' parents, one could conclude that the father believed the boys were alive and the mother knew the children were dead. The key to this deduction lies in simple English grammar, specifically, verb



tense. The father referred to the children in the present tense; the mother used the past tense. Of all times, when the "abducted" children really would need their mother, she speaks of them in the past tense, e.g., "They needed me." The children could no longer want or need her because they were no longer alive.

This article gives a brief overview of statement analysis. It examines four components of statement analysis—parts of speech (pronouns, nouns, and verbs), extraneous information, lack of conviction, and the balance of the statement.

A word of caution is warranted here. There is much more to statement analysis than what is provided in this article; space limitations preclude incorporating other statement analysis components, such as the remaining parts of speech and the numerous indicators of missing information.

Still, armed with the information presented in this article, investigators will be able to use these basic techniques to gain insight into a suspect prior to conducting an interview. By learning more about a suspect and determining whether that person is being deceptive, they have a much better chance of identifying the guilty party and gaining a confession.

### THE TECHNIQUE

Statement analysis follows a two-step process. First, investigators determine what is typical of a truthful statement, referred to as the norm. They then look for any deviation from this norm.

Truthful statements differ from fabricated ones in both content and quality.<sup>3</sup>

Although spoken words can be analyzed, investigators inexperienced in statement analysis will find it easier to begin by examining written statements. Investigators can make transcripts of oral statements. Or, even better, they can have suspects write a statement that details what they did from the time they woke up until the time they went to bed. This account provides a totally untainted version of the day's events and increases the validity of the analysis.

Statement analysis is an aid that can be used to obtain a confession; it is not an end in itself. Therefore, whenever possible, investigators should analyze the statement before interviewing the suspect.

### IMPORTANT PARTS OF SPEECH

Parts of speech form the foundation of statement analysis. To

analyze a statement, investigators first need to examine the individual parts of speech, particularly pronouns, nouns, and verbs, and to establish the norm for each. If a deviation from the norm appears, they then should ask, "Why?"

### Pronouns

Pronouns are parts of speech that take the place of nouns. Common examples of personal pronouns include I, me, you, he, she, we, they, and it. In statement analysis, particular attention should be given to the personal pronouns "I" and "we" and all possessive pronouns, such as my, our, your, his, her, etc.

#### *The Pronoun "I"*

Investigators have noted that truthful people give statements using the pronoun "I," which is first person, singular. Any deviation from this norm deserves close scrutiny, for it could be an indication that the person is not totally committed to the facts in the statement and,

***“Statement analysis provides investigators with vital background data and details about relationships to explore during the interview process.”***



*Special Agent Adams teaches statement analysis as part of interviewing and interrogation courses at the FBI Academy.*



therefore, is not telling the whole truth.

The following written narrative begins with a clear commitment, then shows a definite lack of commitment:

"I got up at 7:00 when my alarm went off. I took a shower and got dressed. I decided to go out for breakfast. I went to the McDonald's on the corner. Met a man who lives nearby. Talked with him for a few minutes. I finished breakfast and drove to work."

The first four sentences of the statement match the norm of first person, singular—the use of the pronoun "I"; the next two sentences show deviation, because this pronoun is missing from the statement. What caused the writer to stop using the pronoun "I"?

Any change in the use of pronouns is significant, and at this point, investigators should realize that the statement now becomes devoid of personal involvement. Could there be tension between the writer and the man mentioned in the statement? During the interview, investigators should draw out specifics about this relationship to determine if this part of the narrative is really true or if the writer omitted information.

#### *I versus We*

Because using the first person, singular pronoun is the norm for truthful statements, investigators need to look for a lack of the pronoun "I" and overuse of the pronoun "we," which is first person, plural. The following version of a teenager's account when asked to relate

what he did on Saturday evening illustrates the norm:

"I met four friends at the movie theater, watched a movie, then stopped to get something to eat with them. We had a few drinks at the bar on the way home. I stayed until just after midnight. I drove home...."

The following version of the same account, when contrasted with the above statement, indicates deviation from the norm:

"We all met at the movie theater, watched a movie, then stopped to get something to eat. We had a few drinks at the bar on the way home. We stayed until just after midnight. We each drove home...."

***In statement analysis,  
investigators examine  
words, independent  
of case facts, to  
detect deception.***

Because the second statement contains only "we," instead of the expected norm, which uses mostly "I," the investigator should wonder why there is no individual involvement. Perhaps the teenager hopes to conceal something or at least to avoid sole responsibility for some act.

#### *The Pronoun "We"*

In speech and the written word, linguists consider the shortest way

to say something as the easiest and clearest way to communicate. The pronoun "we" is a short, clear way to describe one's self and others after proper introductions have been made. "We" also denotes togetherness; it indicates a relationship between persons.

Omission of the pronoun "we" is significant, particularly when the individuals are spouses. In the following versions of an account of events given by a husband, the first statement indicates the norm; the second one denotes deviation:

"My wife and I were invited to a neighbor's 50th birthday party. We arrived at the party a little late. The party was still in full swing when we left for home."

\* \* \*

"My wife and I were invited to a neighbor's 50th birthday party. My wife and I arrived at the party a little late. The party was still in full swing when my wife and I left for home."

The second statement reveals distance between the husband and his wife. Once the husband introduces his wife into the statement, using the pronoun "we" is the shortest way to communicate. Yet, the husband avoids this word. Why? Perhaps because there is no "togetherness" in the relationship.

If later that night the wife is murdered, and the husband, when recounting the day's activities, provides a statement devoid of the pronoun "we," investigators questioning the husband should focus on the couple's relationship. If the husband admits to marital problems, but vehemently denies any involvement in



the death, investigators may clear him as a suspect, barring contrary evidence. However, if the husband responds that the couple was very close, investigators should be wary, because statement analysis reveals otherwise.

A shift from "they" to "we" also is significant, for it reveals personal involvement. In white-collar crime cases, the guilty person who denies complicity may find it difficult to keep the pronoun "we" out of a statement completely. In such instances, investigators need to search the entire written statement for "we." Then, during the interview, they should focus on the transaction described with "we." This pronoun indicates that the writer was involved.

Another example of this shift in the use of pronouns often can be found in alleged rape reports. In the following two statements taken from rape reports, the focus is on the pronoun "we":

"He forced me into the woods,"

versus

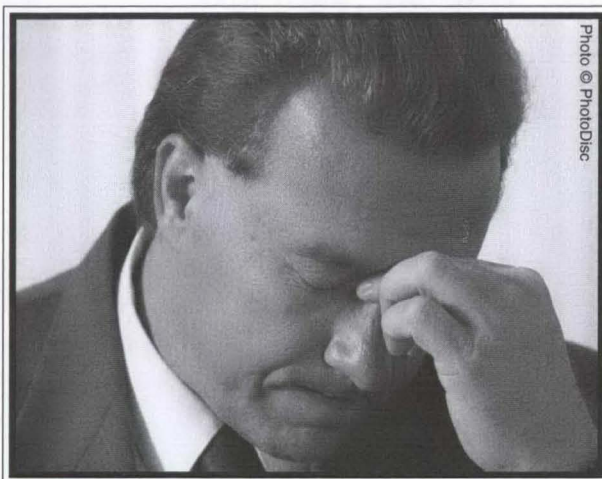
"We went into the woods."

The first statement represents the norm. The second statement, which contains the pronoun "we," is a deviation from the norm.

Veteran rape investigators are alert to the sudden appearance of the pronoun "we" in a victim's statement. From their experience interviewing rape victims, they have normed the rape victim to use the pronouns "he" and "I," not the

pronoun "we," to describe the assailant and herself.

Because the pronoun "we" denotes togetherness, the investigator reading "we" in an alleged rape



statement should ask if the victim knew the assailant and if they were together before the rape occurred. If the victim denies this, there is reason to believe the statement is a fabrication.

In reports of an abduction, the use of the pronoun "we" also can indicate that the victim may not be telling the whole truth. For example, a young woman who reported that she had been abducted at a shopping center provided the following written statement:

"I parked and started getting out of my car when a white male about 200 pounds, 6 feet tall approached me and told me to get in the car or he would hurt me. He then got in the back. I got in the front and began to drive. He told me to drive west on the highway. He

asked me if I had any money. I told him no. We drove for about an hour. During that hour, he hit me repeatedly on the right side of my face. When we got to the exit, I told him I had no gas. He got mad and told me to get off the exit. We went straight off the exit for about 4-5 miles. He told me to turn down the first street on my left. We went down it about 1/4 of a mile. He told me to stop. He opened the door, put both feet out, hit me, and took off walking quickly. He took off to the east of where I was parked. After that, I took off and lost sight of him."

Investigators experienced in statement analysis would question the truthfulness of the above declaration. A true abduction statement, when normed, includes phrases like "He forced me to drive..." or "He made me get off at the exit...." Traumatized victims who are telling the truth do not use the pronoun "we" to describe assailants and themselves.

Investigators concluded that the above statement revealed deception. When interviewed, the woman subsequently confessed that no abduction occurred. She was, in fact, with a man she knew.

#### *Possessive Pronouns*

Possessive pronouns, i.e., my, our, your, his, her, and their, reveal the attachment that the writer or speaker acknowledges toward a person or object. A suspect will



change the pronoun, or drop the pronoun completely, when opting not to show possession or admit association with a particular object or person. For example, "I was cleaning *my* gun. I was putting *my* gun away. *The* gun discharged."

This person, wanting to disclaim ownership of the gun that discharged (either accidentally or intentionally), stopped using the possessive pronoun "my." It no longer was his gun, under his control; it became *the* gun.

Another example can be found in a written statement made by a person whose home burned to the ground:

"I left *my* house right after breakfast to join my friends at the track for the day.... I drove back to *my* house, made a few phone calls, then went out to dinner with Stan Thompson.... Stan dropped me off at *my* house around 10:00. After I changed my clothes I left *the* house to spend the night at my cousin Tom's. Around midnight we heard fire engines and got up to see what was going on."

In this account, after the writer consistently used the pronoun "my" to describe his house, he omitted the pronoun the last time it was mentioned. Was it because the house burned down, and it was no longer his house? If so, then this change should have occurred much later, after midnight, when the writer learned that the house was burning.

Based on the statements made, investigators should question why the switch in references occurred the

last time the writer was in the house. Was it because the writer had spread accelerant on the floor of the house? Was the writer already giving up possession because he had set the fire? Just as arson investigators try to discover if valuable possessions have been removed from a house prior to a fire, those skilled in statement analysis look for the exact point at which the owner stops taking possession by failing to use the pronoun "my."

**“  
Statement analysis  
is an aid that can be  
used to obtain a  
confession; it is not  
an end in itself.  
”**

### Nouns

Nouns denote persons, places, and things. Yet, nouns take on different meanings, depending on the individual.

When examining the words used by a suspect, the investigator needs to note any changes, because a "change of language reflects a change in reality."<sup>4</sup> If suspects substitute a different word after using one word consistently, they telegraph the fact that something in their lives has changed. Although language changes can occur with any part of speech, they are observed more frequently with nouns.

In a statement written by a suspect in a homicide investigation, a significant change in noun usage

occurred. A young man shot his wife in the face with a shotgun. The woman died instantly, and the husband claimed the shooting was accidental. Investigators asked the man to write a statement of the events that occurred during the day of the shooting. The husband wrote a detailed statement, using the noun "wife" seven times to refer to his wife. He then wrote:

"...I lost control of the gun. I sensed that the barrel was pointing in *Louise's* direction and I reacted by grabbing at the gun to get it back under control. When I did this the gun discharged. It went off once and I looked over and saw blood on *Louise's* face."

What caused the husband to start using "Louise," his wife's first name? Did this occur at a significant point in the narrative?

Prior to this point, investigators had normed the husband as using the noun "wife." When the spouse went to church with her husband, she was "my wife." When she later called to her husband, she was "my wife." But when the barrel of the gun was pointing in her direction and when there was blood on her face, two critical points in the statement, the spouse was no longer referred to as "my wife." She became Louise.

Investigators have determined that perpetrators find it nearly impossible to admit to harming a family member. The husband in this case could not admit that he had killed his wife. He removed the family relationship by substituting the name "Louise."

The husband also failed to introduce Louise to the reader. After



using the noun "wife" seven times, the name "Louise" suddenly appears. The reader does not know for certain who Louise is. It only can be assumed that Louise is the wife, but the husband gave no proper introduction, such as "my wife, Louise."

The norm for healthy relationships is a proper, clear introduction. But in tumultuous relationships, introductions often are confusing or missing completely. The lack of a proper introduction most likely indicates a poor relationship between the husband and his

wife. Knowledge of this prior to the interview could assist investigators in uncovering the truth.

### Verbs

Verbs express action, either in the past, present, or future. In statement analysis, the tense of the verb

## The Mechanics of Statement Analysis

**I**nvestigators can conduct a preliminary mechanical review of a written statement by completing the following steps:

1. **Pronouns:** Circle all pronouns; indicate missing pronouns in the margin
2. **Verbs:** Underline all changes in verb tense
3. **Nouns:** Underline changes in language
4. **Extraneous information:** Highlight information that does not answer the question asked, e.g., What happened? or What did you do since you got up this morning?
5. **Lack of conviction:** Bracket any words that indicate lack of conviction
6. **Balance of statement:** Divide statement into before, during, and after and check the balance

An example of a statement analyzed by an investigator appears below.

<p>missing I</p> <p>missing I</p>	<p>The evening started out normally. I closed up after all the customers had left. I worked the late shift last night because I had an appointment during the day. I counted the money and filled out a deposit slip. I was the last one out so I set the alarm and locked the doors. I Drove to the First National Bank to make my deposit. I usually park right next to the night deposit box. I Got out of my car and headed to the deposit box. A tall man approaches, a white guy around 6'2", [I think.] He comes out of nowhere and tells me to drop the bag. Nothing like this has ever happened to me before. I am very careful about where I park and whether anyone is around. I dropped the bag and froze right where I was. The man grabbed the bag and ran into the shadows. [That's basically what happened.]</p>	<p>Before: 12 lines (54%)</p> <p>During: 9 lines (41%)</p> <p>After: &gt; 1 line (5%)</p>
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is of utmost importance. When analyzing statements, investigators need to concentrate on the tense of the verbs used. In a truthful statement, the use of the past tense is the norm, because by the time a person relates the event, it has already occurred.

For example, the following statement typifies the norm:

*"It happened Saturday night. I went out on my back deck to water the plants. It was almost dark. A man ran out of the bushes. He came onto the deck, grabbed me and knocked me down."*

The next statement shows deviation from the norm:

*"It happened Saturday night. I went out on my back deck to water the plants. It was almost dark. A man runs out of the bushes. He comes onto the deck, grabs me and knocks me down."*

The shift to present tense is significant, because events recalled from memory should be stated by using the past tense. The change to present tense could indicate deception. Knowing this, an investigator interviewing the victim of the second statement is forewarned that the account may be fabricated.

The use of past or present tense also is significant when referring to missing persons. In such cases, the norm is to describe the person in the present tense, as in, "I just pray that Jenny is all right."

When children are missing, in the parents' hearts and minds, the children remain alive, sometimes long after the point of reason. As

evidenced in the Susan Smith case, use of past tense almost immediately after the alleged abduction showed a significant deviation from the norm.

### EXTRANEOUS INFORMATION

Extraneous information in a statement also can provide clues to deception. A truthful person with nothing to hide, when asked the question, "What happened," will recount the events chronologically and concisely. Any information given that does not answer this question is extraneous.

“

***Statements contain a wealth of information far beyond what the suspect or alleged victim intends to communicate.***

”

People involved in crimes may feel the need to justify their actions. In such cases, the information in the statements will not follow a logical time frame or will skirt what really happened. They also may include more information than is necessary to tell the story. In such instances, investigators should scrutinize this extraneous information and question why this person felt the need to include it.

For example, in a homicide investigation involving a young woman shot by her husband, the husband told police officers that he was cleaning his gun when it accidentally discharged. Investigators then asked the husband to write a statement about his actions on the day he shot his wife. He provided a detailed statement, writing at length about the rust on his gun and a previous hunting trip. He failed, however, to describe fully his activities on this specific day. The amount of extraneous information prompted the investigator to view the husband as a suspect.

### LACK OF CONVICTION

Another important factor in statement analysis is a person's lack of conviction. When analyzing a statement, investigators should note if the person feigns a loss of memory by repeatedly inserting "I don't remember" or "I can't recall."

They also should look to see if the person hedges during the narrative by using such phrases as "I think," "I believe," "to the best of my knowledge," or "kind of." These phrases, also called qualifiers, serve to temper the action about to be described, thereby discounting the message before it even is transmitted.<sup>5</sup> Clearly, the person giving the statement is avoiding commitment, and warning bells should ring in the investigator's ears.

The following is a transcript of an oral statement of a college student who reported that a man broke into her apartment at 3:30 a.m. and raped her. A statement regarding such a traumatic experience should



## Statement Analysis in Specific Crimes

To conduct statement analysis for a specific crime, investigators first should determine what is the norm. Any deviations from this norm may indicate involvement in the crime.

<b>Crime</b>	<b>Norm</b>	<b>What to Look For</b>	<b>Deviation from Norm</b>
<b>Missing Persons:</b>	"Jenny is such a wonderful daughter."	A verb in past tense soon after the disappearance	"Jenny was such a wonderful daughter."
<b>Arson:</b>	"...drove back to my house...went out for dinner, returning to my house...left my house...."	The lack of possessive pronouns <i>before</i> property is burned	"...drove back to my house went out for dinner, returning to my house...left the house...."
<b>White-collar Crime:</b>	"...they invested...they purchased...they financed...."	The use of the word "we" to describe transaction	"...they invested...they purchased...we financed...."
<b>Abduction, Rape:</b>	"He forced me into the car...."	The use of the word "we" for assailant and self and the language used ("got" versus "forced")	"We got into the car...."

brim with conviction, which this statement clearly lacks.

"He grabbed me and held a knife to my throat. And when I woke up and I was, I mean I was really asleep and I didn't know what was going on, and I kind of you know I was scared and I kind of startled when I woke up, You know, You know I was startled and he, he told, he kept telling me to shut

up and he asked me if I could feel the knife."

It is important to consider the phrase, "I kind of startled when I woke up." Certainly, this is not a normal reaction for a woman who awakens in the middle of the night to see an unknown man at her bed and to feel a knife at her throat. The word "terrified" more appropriately comes to mind. Using the words "kind of startled" shows a

gross deviation from the expected normal reaction of terror.

Another example of lack of conviction can be found in a written statement given by a relative of a woman who mysteriously disappeared. Investigators asked the missing woman's sister-in-law to recount the activities that took place on the weekend of the disappearance. After claiming memory lapses and showing a general lack



of specificity, the sister-in-law ended her statement with:

"...that was about it. These were my actions on the weekend to the best I can recall."

Any investigator reading the above statement should seriously question whether the events were described accurately and completely.

### **BALANCE OF THE STATEMENT**

A statement given by a suspect or an alleged victim should be examined by investigators for overall balance. Statements should be more than just a series of details. They need to sound like an account of the event.

A truthful statement has three parts. The first part details what was going on before the event occurred; it places the event in context. The second part describes the occurrence itself, i.e., what happened during the theft, the rape, the fire, etc. The last part tells what occurred after the event, including actions and emotions, and should be at least as long as the first part.

The more balanced the three parts of the statement, the greater the probability that the statement is true.<sup>6</sup> A statement containing the same number of lines in the before, during, and after parts, i.e., 33 1/3 percent in each part, indicates truth, although some degree of variation from perfect balance can be expected.

If any part of a statement is incomplete or missing altogether, then the statement is probably false. The following breakdown of a statement written by a man whose home

burned shows a deviation too great from the balanced norm. The man provided a 56-line account of what happened that day, divided as follows:

BEFORE the fire:  
33 lines - 59.0%

DURING the fire:  
16 lines - 28.5%

AFTER the fire:  
7 lines - 12.5%.

**“  
Parts of speech  
form the foundation  
of statement  
analysis.  
”**

Investigators concluded that the above distribution indicates deception, because the three parts of the statement are clearly out of balance. The “before” section is too long and the “after” section is too short.

Examination of the statement revealed that in the first part, the writer provided too much information totally unrelated to the fire. This signaled the investigators to ask themselves, “Is the writer stalling or trying to justify his actions?”

Also, the statement contained sparse information on what happened after the fire and lacked any indication of emotion. There was no sign of anger, shock, or sense of loss. The writer, who showed no concern about the consequences of the fire, ultimately confessed to setting it.

### **CONCLUSION**

Statements contain a wealth of information far beyond what the suspect or alleged victim intends to communicate. Fortunately, investigators can use this information to their benefit.

Statement analysis provides investigators with vital background data and details about relationships to explore during the interview process. It also can determine whether the intent of the statement is to convey or to convince, that is, to convey the truth or to convince through deception.<sup>7</sup> Armed with this knowledge, investigators can enter the interview room with increased confidence to identify the perpetrator and gain a confession. ♦

#### **Endnotes**

<sup>1</sup> *The Washington Post*, November 5, 1994, A15.

<sup>2</sup> *The Washington Post*, July 26, 1995, A7.

<sup>3</sup> Udo Undeutsch published this hypothesis in German in 1967. It also was reported in “The Development of Statement Reality Analysis,” *Credibility Assessment*, ed. John C. Yuille (The Netherlands: Kluwer Academic Publishers, NATO ASI Series, 1989). The Germans generally are credited with the advancement of statement analysis for investigative purposes. German psychologists devised a system to assess the credibility of statements made by children in child abuse cases. Called criteria-based content analysis, the technique became mandated in German courts in 1954 in cases involving a disputed allegation of sexual abuse of a child.

<sup>4</sup> Avinoam Sapir, *Scientific Content Analysis (SCAN)* (Phoenix, AZ: Laboratory of Scientific Interrogation, 1987), 52.

<sup>5</sup> Walter Weintraub, *Verbal Behavior in Everyday Life* (New York, NY: Springer Publishing Co., 1989), 13.

<sup>6</sup> Don Rabon, *Investigative Discourse Analysis* (Durham, NC: Carolina Academic Press, 1994), 17.

<sup>7</sup> *Ibid.*, 35.



## Focus on Information Resources

### **The Violent Gang and Terrorist Organizations File**

By Peter F. Episcopo and Darrin L. Moor



*The World Trade Center bombing*

**B**oth the World Trade Center bombing and the Oklahoma City tragedy stand in testament to the formidable threat to U.S. citizens and property posed by international and domestic terrorists. The horror of such incidents reinforces the need for law enforcement to know the identities and operations of terrorist groups within this country.

Similarly, over the last several years, law enforcement has encountered an increasing number of organized criminal groups that are actively involved in drug trafficking, money laundering, political corruption, and even contract murders. Moreover, the number of youths involved with these gangs is staggering. According to the FBI's Uniform Crime Reporting Program, killings by juvenile gang members increased 500 percent between 1980 and 1994, making this one of the fastest-growing crimes in the United States.<sup>1</sup>

Gangs even have infiltrated U.S. institutions once thought to be immune. Firmly entrenched in correctional facilities, they now search for a foothold in the military.<sup>2</sup> Indeed, many large gangs have nationwide followings, and some groups have worldwide memberships in structures resembling organized crime families.

As they search for new markets in which to operate, these groups export their corruption to smaller towns, which often have limited resources. Unfortunately, unlike many of their larger counterparts, small-town police departments usually do not have a database from which they can retrieve information to help them identify and, in turn, combat the acts of gang and terrorist group members.

The Violent Gang and Terrorist Organizations File (VGTOF) was designed to help law enforcement do just that. Implemented in October 1995 as a component of the National Crime Information Center (NCIC), it acts as a pointer system, identifying known members of violent gangs and

terrorist organizations and facilitating the exchange of information. By alerting law enforcement officers to potentially dangerous subjects, the VGTOF enhances their safety. In short, the VGTOF provides every U.S. law enforcement agency access to valuable information on a growing crime problem that threatens the safety of officers and citizens in an increasing number of communities.

The VGTOF consists of two major classifications: the Group Reference Capability (GRC) and Group Member Capability (GMC). The GRC provides information on terrorist groups and gangs, while the GMC identifies individual members.

To be included in the VGTOF, terrorist groups and gangs must meet the definitions ascribed to them by NCIC.<sup>3</sup> Similarly, individuals must meet certain criteria, which positively identify them as members of a terrorist group or gang.<sup>4</sup> After verifying and



documenting that these conditions have been met, law enforcement agencies can enter the appropriate data into the VGTOF.

### **Establishing a Group Record**

Procedures for entering information into NCIC vary. In some states, a control terminal agency, such as the state police, maintains the system for the entire state. In others, individual agencies can enter their own data. Whatever their state's policy, law enforcement agencies that encounter individuals belonging to an organization meeting the NCIC definition of either a violent gang or terrorist group first must establish a group record.

In addition to a special NCIC code that corresponds to each group, the GRC contains what is known as essential identifying data. That is, only traits generally associated with this group that would help identify its members and activities are entered. For a group record, these would include such items as what members wear, how they communicate (hand signals, graffiti), and the types of crimes they commit.

So that querying departments can obtain additional information, the primary agency<sup>5</sup> enters its name, as well as a point of contact. The GRC also includes other agencies that can provide additional details about the group.

Gang and terrorist activity varies across the United States, making the local affiliates of a national gang or terrorist organization unique. For this reason, the VGTOF will accept numerous records for groups sharing the same name. As a result, agencies across the country can contribute records for their own homegrown versions of such organizations as the Los Angeles-based Bloods and Crips.

### **Establishing an Individual Record**

With a group record established, law enforcement agencies can enter records on individuals who have met the entry criteria and have a known association with a violent gang or terrorist organization. Using the GMC, agencies enter mandatory identifying data,

including the individual's name, sex, race, and group affiliation, and, if possible, such optional information as height and weight; eye and hair colors; date and place of birth; and marks, scars, and tattoos.

A miscellaneous field allows agencies to enter caution indicators, that is, information about group members that would serve as a warning to other officers. This might be the fact that the person carries a particular weapon or has threatened to kill police officers. Because details such as these are vital to officer safety, agencies entering data into the VGTOF should "pack the record" with as much pertinent information as possible.

Another field in the GMC allows agencies to associate group members with a particular vehicle.<sup>6</sup> In this way, officers who request NCIC checks on vehicles that they stop can determine if the vehicles have ties to gang or terrorist activity.

Individuals may have more than one record if they are known members of a particular gang or terrorist organization that operates in several jurisdictions. In these cases, an inquiry will result in a multiple-record

response, indicating which agencies have identified that person as a member of a gang or terrorist group.

### **Maintaining, Auditing, and Expanding the System**

Agencies entering data into the VGTOF must update the records they establish and delete any information that is no longer valid. Furthermore, agencies must maintain documentation to support every entry, which is important for a number of reasons.

First and foremost, an agency that pronounces an individual guilty by mere association with a gang or terrorist group without concrete proof opens itself up to litigation. In addition, NCIC policy requires biannual audits by the FBI's Criminal Justice Information Services Division. During these reviews, auditors check agency records for accuracy and backup documentation.

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The VGTOF currently contains entries for 445 groups and 180 individuals. As agencies become more familiar with the system, these numbers will grow.

### Conclusion

Not long ago, terrorist attacks were thought to happen only in other countries. As recent events indicate, the United States is not immune to acts of violence committed by both foreign and domestic foes. Likewise, gangs that a few years ago were associated only with large cities now are invading suburban and rural neighborhoods nationwide.

As their reach extends, gangs and terrorist organizations threaten an increasing number of Americans. Fortunately, a concerted effort by all levels of law enforcement can even the odds in the fight against gangs and terrorists. By using the Violent Gang and Terrorist Organizations File to share information with their colleagues across the nation, law enforcement agencies large and small will be able to quickly identify and safely apprehend the members of these dangerous criminal groups. ♦

### Endnotes

<sup>1</sup> U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Program, *Crime in the United States 1980-1994* (Washington DC: Government Printing Office, 1980-1994).

<sup>2</sup> Gregory Vistica, "'Gangstas' in the Ranks," *Newsweek*, July 24, 1995, 48.

<sup>3</sup> See U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, National Crime Information Center, *Technical and Operational Update 94-2*, "Violent Gang and Terrorist Organizations File."

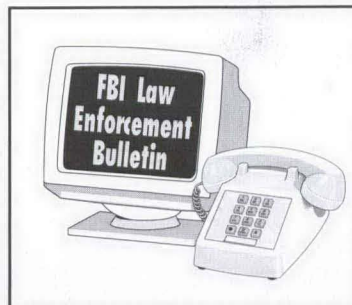
<sup>4</sup> Ibid.

<sup>5</sup> The primary agency is the first agency to enter a record for a particular group. Once established, the record can be canceled only by this agency.

<sup>6</sup> Vehicles must meet the criteria outlined in "Violent Gang and Terrorist Organizations File," National Crime Information Center, *Technical and Operational Update 94-2*, Criminal Justice Information Services Division, Federal Bureau of Investigation, 24.

*Mr. Episcopo and Mr. Moor serve as training instructors in the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia. For additional information on the VGTOF and/or a list of reference codes, contact the Communications Unit, Programs Support Section, Criminal Justice Information Services Division, FBI, Clarksburg, West Virginia 26306, 304-625-2823. Requests for training should be directed to the Education/Training Services Unit at the same address.*

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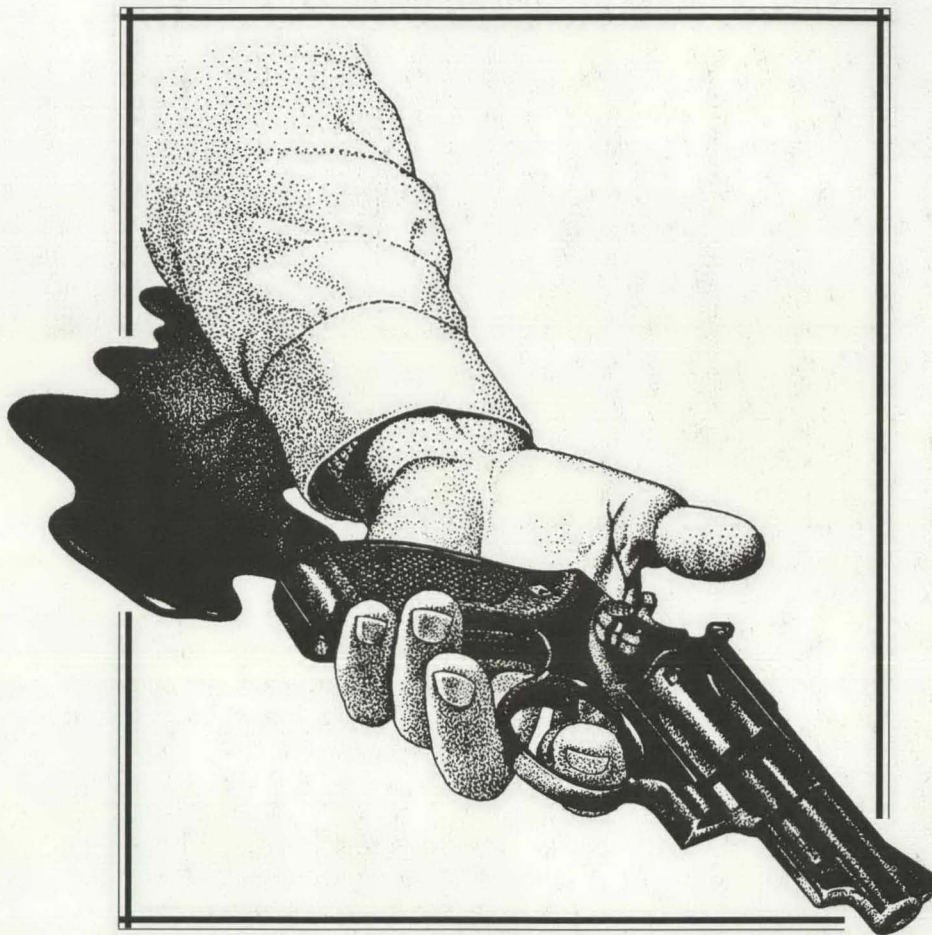
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# Preventing Police Suicide

By THOMAS E. BAKER, M.S.  
and JANE P. BAKER, M.S.



**D**oes being a police officer increase the risk of suicide? During 1994, a record 11 New York City police officers committed suicide; only two officers were killed by criminals that year. Two homicides and 11 suicides—at that rate, police

officers are killing themselves faster than they are being killed by criminals.<sup>1</sup>

The research on police suicide is limited. Most of the studies on police deaths have addressed police killings and assaults committed by criminals. The available studies on

police suicide generally focus on the number of suicides, the methods employed, the impact of having service weapons readily available, and the occupational factors that seem to contribute to the high suicide rate among officers.<sup>2</sup>

One research study found that the suicide rate among police officers was three times higher than that of the general population.<sup>3</sup> In addition, an unpublished research report recently found that the police suicide rate now has doubled.<sup>4</sup>

Answers concerning police suicide have been elusive, and many issues remain unclear. But researchers may have been asking the wrong questions. Rather than dwelling on the rates and the means of suicide, perhaps analysts should ask what kind of support systems within police departments could have intervened before those officers took their own lives.

## Overcoming Obstacles to Intervention

Typically, when police officers experience serious, long-term emotional problems that can lead to suicide, two reactions occur that hinder the helping process. First, everyone—from the affected officers to friends and co-workers to the department's hierarchy—initially denies that a problem exists. Second, even when a problem eventually is acknowledged, the affected officers often resist seeking help for fear of losing their jobs, being demoted, or having their personal problems exposed for public ridicule. These common systemic reactions must be overcome before any successful intervention can take place.



Many officers feel that referral to a mental health professional would mean the loss of their jobs. Police supervisors have a similar value system and, because of this belief, they often fail to take the appropriate action. As a group, police officers and supervisors often have protected those officers experiencing depression and denied the existence of any problems. However, such an obvious cover-up does a disservice to affected officers by denying them the help they need.

As noted, troubled officers usually resist seeking help. Officers fear that if help is sought, employment and economic security will be threatened. This myth can be dispelled through departmental policy and the approach supervisors use when dealing with potential suicides.

Education on depression and suicide should be implemented for all personnel. Officers who receive assistance might even develop into better officers. They should be informed that seeking help does not mean the end of a career, but the start of improving a new career. Asking for help signals strength, not weakness, and that must form the foundation of any prevention program.

A suicide prevention program can work only if members of the department feel free to take advantage of it. Police administrators and supervisors must play a nonpunitive role. They must communicate to officers four clear messages: 1) Seeking help will not result in job termination or punitive action; 2) all information will be respected and kept confidential;

3) other ways exist for dealing with a situation, no matter how hopeless it seems at the time; and 4) someone is available to help them deal with their problems. Police training and departmental policy, as well as the everyday examples set by police leaders, must communicate these four messages consistently.

### **Recognizing the Warning Signs**

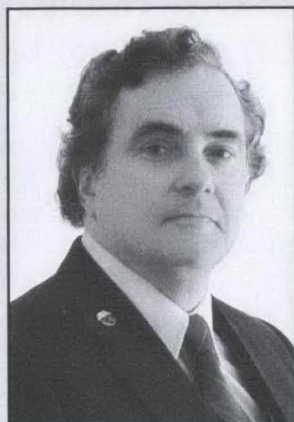
Identifying at-risk officers is the first step toward helping them. Is there any common pattern to be found in police suicidal behavior? In truth, any member of the department could become depressed and commit suicide under certain circumstances. However, a long trail of evidence typically leads to the final act. Many suicidal people have mixed feelings about dying and actually hope to be rescued. About 75 percent give some kind of notice of their intentions.<sup>5</sup> If recognized and taken seriously, these early warning

signs make prevention and intervention possible.

Typically, multiple problems plague suicidal police officers, so supervisors should look for a cluster of warning signs. These might include a recent loss, sadness, frustration, disappointment, grief, alienation, depression, loneliness, physical pain, mental anguish, and mental illness.

The strongest behavioral warning is a suicide attempt. Generally, the more recent the attempt, the higher the risk factor for the officer. Police training officers need to incorporate education about suicide warning signs as a regular part of the department's mental health program.

When officers fail to perform at the optimal level for an extended period of time, the problem could be related to a major depressive episode. Clinicians agree that depression often plays a major role in



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suicide.<sup>6</sup> While anyone can have an occasional gloomy day, people dealing with depression suffer from a deeper, long-term malaise.

Depression is a mood disorder that can be characterized as a person's overall "climate" rather than a temporary "weather condition." Significant depressive episodes last for at least two weeks. During this time, a person might experience changes in appetite or weight; altered sleep patterns and reduced psychomotor activity; reduced energy levels; feelings of worthlessness or guilt; difficulty thinking, concentrating, and making decisions; and recurrent thoughts of death or suicide. Finally, this person might plan or attempt to commit suicide.<sup>7</sup> Behaviors such as exhibiting persistent anger, responding to events with angry outbursts, or blaming others over minor events should be considered indicators of possible distress.

### **Assessing the Problem**

Supervisors or managers should schedule interviews with officers who appear depressed, sad, hopeless, discouraged or "down in the dumps." During this interview, the supervisor should check the officer's body language, look for sad facial expressions, and be alert to a flat mood. The officer might complain of feeling down, not having any feelings at all, or being anxious. Complaints about bodily aches and pains might be reported to cover the officer's true feelings.

The twin feelings of hopelessness and helplessness indicate a high risk of suicide. Officers who think and speak in these terms feel that

their lives are devoid of hope, or they see themselves as unable to meaningfully alter their situations. When they reach this point, they often take action. The finality of suicide might be seen as a technique to restore feelings of former strength, courage, and mastery over the environment.<sup>8</sup> Supervisors should listen carefully for expressions of these feelings.

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***Identifying at-risk officers is the first step toward helping them.***

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Suicidal officers might have negative influences in their personal lives as well. Supervisors should look for histories that might include suicidal behavior, mental illness, chronic depression, multiple divorces, and alcoholism. Losses in an officer's life, drug abuse patterns, and stress overload also contribute to the problem. Older officers might experience physical problems or face impending retirement and feel that they will become socially isolated.<sup>9</sup> Such physical and social losses can generate the destructive feelings of hopelessness and helplessness.

### **Taking Action**

Most people have mixed emotions about committing suicide, and suicidal feelings tend to be episodic,

often coming and going in cycles. Troubled officers want to be rescued, but do not want to ask for assistance or know what specific help to request. This state of confusion actually works to a supervisor's advantage because suicidal officers want a strong authority figure to direct their emotional traffic and make sense of the confusion. Therefore, supervisors should quickly assure suicidal officers that support and assistance is available.

The situational leadership style that applies here is one of directing and telling. Officers in a suicidal state of mind are open to suggestion and are likely to respond to directions. Supervisors must use their positions of authority to tell officers what action they expect. Further, supervisors should demand that officers respond to their directions.

It is important for supervisors to ask specifically whether officers are having thoughts of hurting themselves. Many find it difficult to ask such a basic question, but it must be done. Officers who indicate that they are having suicidal thoughts must not be left alone. All threats must be taken seriously. Other people might not have heard their pleas for help.

Supervisors should plan their intervention so that it leads to a professional referral. The specific methods of intervention must be thought out as carefully as possible in order to avoid violence directed inward or outward at other employees. Without careful planning, officers confronted by supervisors could react unpredictably. Because their thought processes are garbled, they could strike out at co-workers,



supervisors, or family members, resulting in a homicide followed by suicide. Even if that does not occur, a real danger of suicide exists at the point of intervention.

Supervisors should refer officers to a certified mental health professional, even setting appointments and making arrangements for the officers to be there. The department's responsibility does not end there, however. Supervisors should monitor the situation to ensure that officers are evaluated and receive continued support and counseling.

## CONCLUSION

The research clearly indicates that being a police officer increases

the risk of suicide. Appropriate intervention can occur during a specific time frame, but within the police culture, denial often delays assistance.

Police officers throughout the ranks must stop pretending that the problem of police suicide does not exist or that it will go away. Someone must break the silence of denial and take action. With further research, innovative prevention programs, and proactive training, officers' lives can be saved. ♦

### Endnote

<sup>1</sup> W. Bratton, "We Don't Want to Lose You," *Spring 3100* 57 (1994), 12-13.

<sup>2</sup> See, for example, J.M. Violanti, J.E. Vena, and J.R. Marshall, "Disease Risk and Mortality Among Police Officers: New Evidence and

Contributing Factors," *Journal of Police Science and Administration* 14 (1986), 17-23; and K.O. Hill and M. Clawson, "The Health Hazards of Street Level Bureaucracy: Mortality Among the Police," *Journal of Police Science* 16 (1988), 243-248.

<sup>3</sup> Ibid., Hill and Clawson.

<sup>4</sup> J.M. Violanti, "The Mystery Within: Understanding Police Suicide," *FBI Law Enforcement Bulletin* 2 (1995), 19-23.

<sup>5</sup> E.A. Grollman, *Suicide: Prevention, Intervention, Post Intervention* (Boston: Beacon Press, 1988).

<sup>6</sup> American Psychiatric Association, *DSM IV Diagnostic and Statistical Manual on Mental Disorders* 4th ed. (Washington, DC: Government Printing Office, 1994).

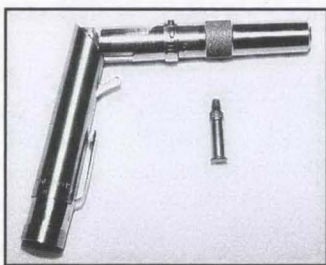
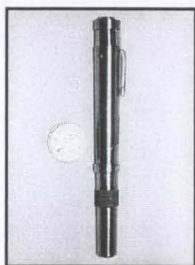
<sup>7</sup> Ibid.

<sup>8</sup> P. Bonafacio, *The Psychological Effects of Police Work* (New York: Plenum Press, 1991).

<sup>9</sup> J. Schwartz and C. Schwartz, *The Personal Problems of the Police Officer: A Plea for Action*. (Washington, DC: Government Printing Office, 1991), 130-141.

## Unusual Weapon

### Concealed Pistol



**T**his unusual pistol is available for sale at some retail gun stores. When closed, the weapon is no larger than a felt-tipped pen or

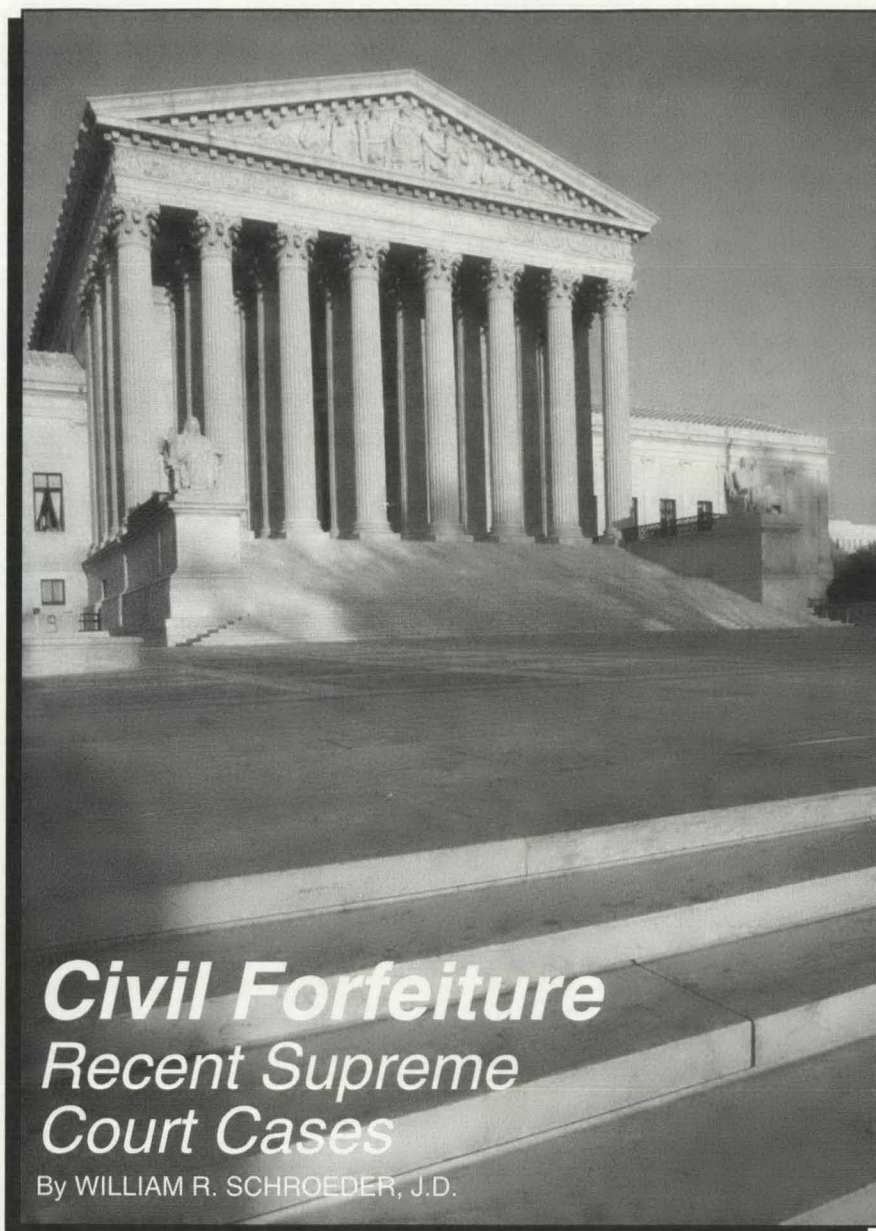
laser pointer and has very similar characteristics to the latter. The weapon features a rotating safety, located immediately behind the barrel. The trigger remains concealed until the weapon is in the bent, ready-to-fire position. The single-shot pistol is available in a variety of calibers and comes with a black nylon carrying case. During personal searches, law enforcement and corrections personnel should be alert for such seemingly innocuous items. ♦

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*Submitted by Chief Jeffrey D. Herrman of the  
Ottawa, Kansas, Police Department.*

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## ***Civil Forfeiture Recent Supreme Court Cases***

By WILLIAM R. SCHROEDER, J.D.

**O**n February 12, 1996, the Attorney General of the United States issued a directive that urged all federal prosecutors and agents of the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and Immigration and Naturalization Service (INS) to reinvigorate their efforts in using asset forfeiture as a law enforcement tool. The Attorney General sought this

additional commitment because asset forfeiture has proven to be one of the most effective methods available in the continuing battle against major drug traffickers, organized crime figures, and their criminal organizations. As the Attorney General pointed out in the directive, the failure to attack the economic infrastructure of criminals and their organizations seriously limits the effect that any prosecution of these

criminals would have on improving the safety and welfare of the American public.<sup>1</sup>

A decline in the use of asset forfeiture by federal law enforcement over the past 2 years prompted this reinvigoration effort. Although a number of factors contributed to this decline, the loss of asset forfeiture's effectiveness in addressing serious crime and criminals is not one of them.

The forfeiture of property stifles the goals of those who, motivated by greed, engage in criminal activity. Forfeiture takes the profit out of crime, deprives the criminal of the money essential to finance future criminal conduct, and works to dismantle the financial underpinnings of the criminal organization.

This article discusses two recent Supreme Court cases affecting the use of civil forfeiture. The first case addresses one of the major reasons for the downward spiral in the use of asset forfeiture—the concern over double jeopardy. The second case addresses another issue that has contributed to the decline—the perception that civil forfeiture is unfair.

### **Double Jeopardy**

One major reason for the decline in asset forfeiture has been the concern that its use may bar subsequent criminal prosecution. Civil forfeiture, unlike its criminal counterpart, involves procedures that allow pre-trial seizure of assets, requires a relatively low burden of proof on the part of the government, and is not contingent on an owner's conviction. These factors lead to the basis for the concern—whether the combination of criminal prosecution and civil forfeiture may be



successive punishment for the same crime, in violation of the Double Jeopardy Clause of the fifth amendment.

In the past 2 years, a significant number of opinions issued by the courts focused on this dilemma.<sup>2</sup> Two lower court rulings, in particular, led to the Supreme Court decision regarding double jeopardy discussed in this article. An adverse decision by the Court could have freed hundreds of drug dealers across the United States, required the return of millions of dollars of ill-gotten gain,<sup>3</sup> and prevented the future use of one of the most important law enforcement tools available to attack the organizational infrastructure of criminal cartels.

### Lower Court Holdings

In September 1994, the U.S. Court of Appeals for the Ninth Circuit reversed a forfeiture order against various properties valued at approximately \$1 million that had been seized from convicted methamphetamine dealers.<sup>4</sup> The court found that the civil forfeiture of drug proceeds and property used in money laundering,<sup>5</sup> which followed the dealers' convictions on drug trafficking and money laundering charges, constituted "punishment" under the Double Jeopardy Clause of the fifth amendment.<sup>6</sup>

The court based its finding in large measure on two recent Supreme Court decisions, one involving double jeopardy and the other involving the Excessive Fines Clause of the eighth amendment.<sup>7</sup> Both of these cases involved findings by the Court that certain government civil sanctions, despite the "civil" label, could constitute

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*Special Agent Schroeder is chief of the Legal Forfeiture Unit, Office of General Counsel, at FBI Headquarters.*

punishment under the Constitution and, therefore, require greater protections. The Ninth Circuit panel reasoned that because the civil forfeiture action was the second punishment imposed for the same offense, the Double Jeopardy Clause required them to reverse the forfeiture order and return the property.<sup>8</sup>

In the other case, decided by the U.S. Court of Appeals for the Sixth Circuit, the government and Guy Ursery had agreed to settle a forfeiture action filed against his residence after the Michigan State Police discovered marijuana and marijuana-growing paraphernalia at the residence.<sup>9</sup> After the property, which had been used to facilitate the unlawful distribution of a controlled substance, was forfeited under federal drug laws,<sup>10</sup> Ursery was convicted of manufacturing marijuana and sentenced to 5 years' imprisonment. The appellate court reversed Ursery's conviction,<sup>11</sup> concluding that the Double Jeopardy Clause of the fifth amendment protects against

multiple punishments and prohibits the government from punishing twice for the same offense.<sup>12</sup>

### Supreme Court Finds Civil Forfeiture Is Remedial, Not Punitive

In *United States v. Ursery*,<sup>13</sup> a decision filed on June 24, 1996, the U.S. Supreme Court resolved the concern over double jeopardy in favor of law enforcement. The Court consolidated the two lower court cases for purposes of its opinion and, in an 8-to-1 ruling, demonstrated a strong consensus regarding the role of civil forfeiture in law enforcement.

In reversing both lower court decisions, the Supreme Court ruled that the government could use, in combination, the criminal law to prosecute someone and the civil forfeiture laws to confiscate that person's property, even where both actions were based upon the same underlying criminal offense. The Court held these "in rem civil forfeitures are neither 'punishment' nor



criminal for purposes of the Double Jeopardy Clause."<sup>14</sup> In its analysis, the Court reviewed "a long line of cases [in which the] Court has considered the application of the Double Jeopardy Clause to civil forfeitures, consistently concluding that the Clause does not apply to such actions because they do not impose punishment."<sup>15</sup> The Court concluded that for over 50 years, in rem forfeiture has been found to be a remedial sanction, distinct and different from other potentially punitive in personam civil penalties, and does not constitute a punishment under the Double Jeopardy Clause.<sup>16</sup>

In 1984, the Supreme Court established a two-stage analysis to determine whether a forfeiture was punishment under the Double Jeopardy Clause or was remedial in nature and not subject to the multiple punishment prong of the clause. This analysis focused on whether Congress intended to establish a civil remedial sanction and whether, despite such intent, the civil forfeiture was so punitive in purpose or effect that its application constituted punishment.<sup>17</sup> Because nothing in its decisions had replaced this traditional understanding,<sup>18</sup> the Court used this same two-staged analysis and concluded that the civil forfeiture actions in question were remedial.

In the first stage of its analysis, the Court found "there was little doubt" that the laws involved in the forfeiture actions in question were intended by Congress to be civil actions, distinct from criminal sanctions in personam.<sup>19</sup> The Court supported this finding with the fact that Congress incorporated the in rem procedures of the customs

laws, which target the property rather than the owner and include procedures for administrative forfeiture actions.<sup>20</sup>

The finding that Congress intended the civil forfeitures in these cases to be in rem actions established a presumption that they do not implicate double jeopardy. The Court noted that when Congress has intended a forfeiture action to be civil and, therefore, remedial, only the "clearest proof" that it is "so punitive either in purpose or effect" will overcome the presumption that double jeopardy does not apply.<sup>21</sup>

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In the second stage, the Court found little evidence that the forfeitures under these statutes were so punitive, in form or effect, to render them punishment. The Court stated that the most significant factor in reaching this conclusion was that such civil forfeitures serve important nonpunitive goals. The important goals of civil forfeiture include encouraging property owners to take greater care in managing their property, ensuring that owners will not permit their property to be used for

illegal purposes, and ensuring that "persons do not profit from their illegal acts."<sup>22</sup>

### **Forfeiture of Jointly Owned Property Upheld**

Another reason for the decline in the use of asset forfeiture is the troubling perception that civil forfeiture can be unfair. This perception is based, in part, on the fact that a civil forfeiture of property can be obtained against an owner who was not involved in or aware of the criminal activity in which the property was involved.

In *Bennis v. Michigan*,<sup>23</sup> the Supreme Court examined such a forfeiture action under the light of constitutional scrutiny and upheld the confiscation. In *Bennis*, the Court found that a state forfeiture law that permitted forfeiture of property from an owner who was unaware of its illegal use by another in lawful possession of the property did not offend the constitutional rights of that owner.

Detroit police had arrested John Bennis after observing him engaged in a sexual act with a prostitute in his car, which was jointly owned by Bennis and his wife. After Bennis was convicted of gross indecency, the state had the car declared a public nuisance and abated (forfeited) under state law.<sup>24</sup>

The Circuit Court of Wayne County rejected the wife's challenge to the forfeiture on the grounds that she was innocent of any wrongdoing and that she had no knowledge her husband would use the vehicle to violate the law. Subsequently, on appeal, the Michigan Supreme Court upheld the forfeiture, finding that the state law did not provide for



an innocent owner defense, and therefore, the state did not need to prove the owner knew or agreed that the car would be used illegally.<sup>25</sup>

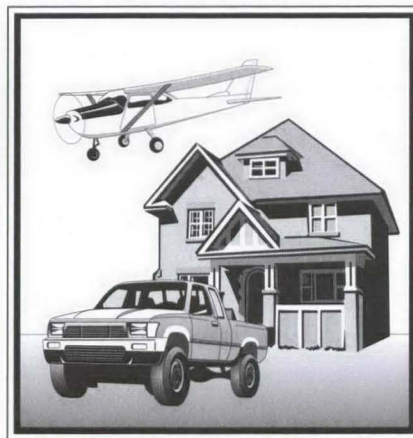
The U.S. Supreme Court reviewed the case in order to determine whether Michigan's forfeiture of the vehicle deprived the wife of her interest in the car without due process in violation of the 14th amendment, or if it amounted to a taking of her interest for public use without compensation in violation of the fifth amendment, as incorporated by the 14th amendment. The Court affirmed the decision of the Michigan Supreme Court and upheld the forfeiture.

### "Innocent Owner" Defense

Citing a long and unbroken line of cases holding that an owner's interest in property may be forfeited by reason of the property's use, even though the owner was unaware of that use, the Court concluded that the issue is "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced."<sup>26</sup> The Court relied on the rationale of earlier decisions to find that even though Mrs. Bennis did not know her car would be used illegally, its forfeiture by the state did not offend the Due Process Clause of the 14th amendment.<sup>27</sup> The holdings of the earlier cases cited by the Court have generally been based on the concept that in a civil forfeiture it is the property itself that is being held accountable for its illegal use and thus the "innocence" of the owner is not relevant.

In its decision, the Supreme Court noted that the innocence of an owner has almost uniformly been rejected as a defense to forfeiture.<sup>28</sup>

Additionally, the Court has consistently upheld the forfeiture of property from owners "without guilt" because such laws furthered "the punitive and deterrent purposes" of the legislature in enacting laws that "may have the desirable effect of inducing them (owners) to exercise greater care in transferring possession of their property."<sup>29</sup> The Court answered the fifth amendment "taking" question raised by *Bennis*



by finding that the government may not be required to compensate an owner for property that has been acquired through a civil forfeiture action.

The Court, in reaching its conclusion, noted that civil forfeiture imposes an economic penalty on illegal use that is neither unconstitutional nor unfair. The Court balanced the increased responsibility for property owners against the need to deter criminal conduct and decided in favor of law enforcement. In this regard, civil forfeiture is no different than other laws based on important public interest precepts.

Civil forfeiture of property serves both remedial and deterrent

purposes that are distinct from any punishment that may result from criminal prosecution of the owner. Such forfeitures help prevent future illegal use and impose an economic disincentive, rendering the behavior unprofitable.

### Conclusion

The decision by the Court in *Ursery* permits federal and state law enforcement to resume the seizure and forfeiture of property under the civil procedures without fear that such action will bar subsequent prosecution of the owner. It also provides a clear signal that the Supreme Court recognizes and supports the strong "nonpunitive goals" of civil forfeiture that serve law enforcement in combating crime.

The significance of *Bennis*, however, lies more in the rationale employed by the Court than in the outcome.<sup>30</sup> It was a precursor to the Court's analysis in *Ursery* and returned the historical perspective of in rem forfeiture actions that seemed to have been changed in *Austin v. United States*.<sup>31</sup>

The *Bennis* decision should not be seen, however, as an unqualified justification for forfeiture where the owner is known to be innocent of any wrongdoing. In *Bennis*, an associate justice in a concurring opinion warned that "[i]mproperly used, forfeiture could become more like a roulette wheel employed to raise revenue from innocent but hapless owners whose property is unforeseeably misused, or a tool wielded to punish those who associate with criminals, than a component of a system of justice." He noted that the Constitution assigns to states and federal agencies



that use the forfeiture tool the primary responsibility for avoiding that unwanted result.<sup>32</sup> Failure to use this authority consistent with its purpose could result in legislative disapproval.

The seizure of property from one who is truly innocent does not serve the goals of civil forfeiture, i.e., taking the profit out of crime and acting as a deterrent to future criminal activity. In fact, Congress has provided an innocent owner exception to most federal civil forfeiture laws that would, under similar facts, have allowed Bennis to recover her interest in the car by showing her lack of knowledge of the intended illegal use of the vehicle by her wayward husband, and her lack of consent to that usage.<sup>33</sup>

As a result of these Supreme Court decisions, law enforcement is constitutionally permitted to use civil forfeiture, undeterred by double jeopardy concerns, to seek out and confiscate the ill-gotten gains of criminals and to dismantle their criminal organizations. Both federal and state law enforcement agencies working together will be able to use civil forfeiture to effectively take the profit out of crime and deter future criminal conduct motivated by greed. ♦

#### Endnotes

<sup>1</sup> Memorandum from Janet Reno, Attorney General, Louis J. Freeh, Director, FBI, and Thomas Constantine, Administrator, DEA, to all U.S. Attorneys, and others, dated Feb. 12, 1996.

<sup>2</sup> See, e.g., *United States v. Tilley*, 18 F.3d 295 (5th Cir.) cert. denied, 115 S.Ct. 573 (1974) (forfeiture of drug proceeds does not constitute punishment); *United States v. Baird*, 63 F.3d 1213 (3d Cir. 1995) (administrative forfeiture does not implicate the Double Jeopardy Clause).

<sup>3</sup> *United States v. \$405,089.23 in U.S. Currency*, 56 F.3d 41 (9th Cir. 1995) (dissent from order rejecting rehearing en banc).

<sup>4</sup> See *United States v. \$405,089.23 in U.S. Currency*, 33 F.3d 1210 (9th Cir. 1994).

<sup>5</sup> See 21 U.S.C. §881(a)(6) (forfeiture of property constituting or traceable to drug proceeds) and 18 U.S.C. §981(a)(1)(A) (property involved in money laundering).

<sup>6</sup> "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. U.S. Constitution, Amend. V.

<sup>7</sup> See *United States v. Halper*, 490 U.S. 435 (1989) (civil fine imposed for filing false medical claims following criminal prosecution on charges stemming from the same false claims could violate the Double Jeopardy Clause as a second punishment); *Austin v. United States*, 509 U.S. 602 (1993) (civil forfeiture of real and personal property under federal drug laws constitutes punishment for purposes of the eighth amendment and may violate the Excessive Fines Clause).

<sup>8</sup> The Ninth Circuit denied a request by the Department of Justice (DOJ) for a rehearing en banc. In an unusual step, seven of the circuit judges filed a written dissent to the denial of the rehearing, disagreeing with the analysis and judgment of the other judges, stating that any departure from Supreme Court precedent upholding the remedial purpose served by civil forfeiture should be undertaken by the Supreme Court and not by the circuit court. See *United States v. \$405,089.23 in U.S. Currency*, 56 F.3d 41 (9th Cir. 1995).

“  
...the innocence of  
an owner has  
almost uniformly  
been rejected as a  
defense to  
forfeiture.”

<sup>9</sup> *United States v. Ursery*, 59 F.3d 568 (6th Cir. 1995).

<sup>10</sup> 21 U.S.C. §881(a)(7) (forfeiture of real property used to commit a drug felony).

<sup>11</sup> The district court denied Ursery's claim that the criminal conviction and sentence was a second punishment for the same drug offense in violation of double jeopardy.

<sup>12</sup> See *Witte v. United States*, 115 S.Ct. 2199 (1995); *United States v. Dixon*, 509 U.S. 688 (1993).

<sup>13</sup> *United States v. Ursery*, 116 S.Ct. 2134 (1996).

<sup>14</sup> Id. at 2149.

<sup>15</sup> Id. at 2140.

<sup>16</sup> Id. at 2142. See, e.g., *Various Items of Personal Property v. United States*, 282 U.S. 577 (1931) (civil forfeiture is an action in rem against the property and no part of the punishment for the criminal offense that involves a prosecution in personam against the person).

<sup>17</sup> See *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984).

<sup>18</sup> "In sum, nothing in *Halper*, *Kurth Ranch*, or *Austin*, purported to replace our traditional understanding that civil forfeiture does not constitute punishment of the purpose of the Double Jeopardy Clause." Id. at 2146-2147.

<sup>19</sup> Id. at 2147. The laws under examination were 21 U.S.C. §§881(a)(6) and (a)(7) and 18 U.S.C. §981(a)(1)(A).

<sup>20</sup> "Congress specifically structured these forfeitures to be impersonal by targeting the property itself." Id. at 2147. The Court noted other mechanisms indicating Congress' intent that such actions be civil, including the shifting burden of proof in a civil forfeiture action once the government has shown probable cause that the property is forfeitable. Id. at 2147.

<sup>21</sup> Id. n. 3, at 2148.

<sup>22</sup> Id. at 2148. Secondly relevant to its conclusion were the following: Civil in rem forfeiture has not historically been regarded as punishment; there is no requirement that the government show scienter in order to prove the property is forfeitable; these forfeitures act as a deterrent to future criminal conduct, which serves civil as well as criminal goals; the fact that a forfeiture statute has some connection to a criminal violation does not show that a proceeding is criminal. Id. at 2149.

<sup>23</sup> 116 S.Ct. 994 (1996).

<sup>24</sup> Michigan Comp. Laws Ann., §600.3801, 600.3805, 600.3810(2).

<sup>25</sup> Michigan law provides that "proof of knowledge of the existence of the nuisance on the part of the defendants or any of them, is not required." Mich. Comp. Laws Ann. §600.3815(2).

<sup>26</sup> *Bennis v. Michigan*, at 1000 (citing *J.W. Goldsmith Jr. Grant Co. v. United States*, 254 U.S. 505 at 511).

<sup>27</sup> See *The Palmyra*, 12 Wheat 1 (1827) (forfeiture of a ship used as privateer without the conviction of the owner); *Van Oster v. Kansas*, 272 U.S. 465, 47 S.Ct. 133 (1926) (upholding the forfeiture of a car from an owner who had entrusted the vehicle to another who then used it to transport liquor in contravention of Kansas law); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S.Ct. 2080 (1974) (upholding the forfeiture of a lessor's interest in a yacht used by the lessee to transport one marijuana cigarette in contravention of the laws of Puerto Rico).

<sup>28</sup> *Bennis v. Michigan*, at 998 (citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, at 683); 686 and 687-688.

<sup>29</sup> *Calero-Toledo v. Pearson Yacht Leasing Co.*, at 686, 688.

<sup>30</sup> The rationale used by the Court in *Bennis*, however, undermines the foundational basis for the constitutional "innocent owner" defense that began appearing in federal appellate court decisions shortly after *Calero-Toledo v. Pearson Yacht Leasing Co.* was decided. See, e.g., *United States v. One 1973 Buick Riviera Automobile*, 560 F.2d 897, 900-01 (8th Cir. 1977) ("...the Court may have left open the possibility of an innocent owner raising a due process claim based on his innocence in certain narrow factual situations").

<sup>31</sup> See *Austin v. United States*, at 616 ("In none of these cases did the Court apply the guilty-property fiction to justify forfeiture where the owner had done all that reasonably could be expected to prevent the unlawful use of his property.").

<sup>32</sup> Justice Thomas, in his concurring opinion in *Bennis*, observed that it was not always clear what property could be forfeited under various forfeiture statutes. As a result, the limits of the law should be applied strictly, adhering to historical standards for determining whether specific property is "used" illegally.

<sup>33</sup> See, e.g., 21 U.S.C. §881(a)(4)(C) ("No conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner."). One notable exception is the authority to forfeit property that has been used in an interstate gambling business. See 18 U.S.C. §1955(d), but it is the official policy of the FBI not to seize property for forfeiture from innocent owners.



## The Bulletin Notes

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



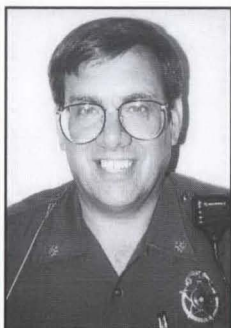
Officer Kochell

While off-duty, Officer Martin A. Kochell of the Richmond, Virginia, Police Department observed smoke pouring from a nearby apartment building. He ran into the hallway of the building and was met by the resident superintendent, who informed Officer Kochell that the young female occupant might be still inside. After feeling the exterior door to determine if the fire had spread to the front room, he decided to enter from the rear of the apartment. Driven back twice by heavy smoke and flames, Officer Kochell located the unconscious and badly burned victim on his third attempt. He then carried her out of the building and collapsed. Officer Kochell was treated for smoke inhalation and released. The young woman was rushed to an area hospital in critical condition but is now recovering from her burns.



Officer Diaz

When Highway Patrol Officer Juan Diaz, Jr., of the Suffolk County, New York, Police Department arrived at the scene of an accident, he saw a vehicle that had crashed into a utility pole and overturned. The vehicle had come to rest upside down near a burning utility pole and was surrounded by live, downed power wires. Informed by bystanders that the driver was trapped inside, Officer Diaz immediately ran to the car and discovered a young woman crying for help. Working his way through the fire and live wires, Officer Diaz successfully reached the woman, pulling her to safety moments before the transformer exploded.



Sergeant Jurick

Sgt. Kenneth T. Jurick of the Peters Township, Pennsylvania, Police Department responded to a report of three young children stranded in the rushing waters of a rain-swollen creek. Upon arriving at the scene, Sergeant Jurick saw a young girl in midstream holding onto a tree that had fallen across the creek. The other two children were standing nearby, unable to make their way to shore. Sergeant Jurick jumped into the creek, which had risen 5 feet over its usual 12-inch depth. He took hold of the girl with one hand and guided the two children to the safety of the shore. The three children were treated for minor bruises and abrasions and released to their parents.



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