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# FBI Law Enforcement Bulletin

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# ***Criminal Investigative Failures*** ***Avoiding the Pitfalls***

By D. KIM ROSSMO, Ph.D.



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**A**s one of the most commonly depicted characters in novels, films, and television shows, the police detective solves complex criminal investigations through deductive skills, high-tech forensics, specialized computer programs, hard work, and luck. In these fictional accounts, good wins, evil loses, and justice triumphs. But, in the real world,

investigations do not always turn out that way. Sometimes, the case stays open, the criminal remains at large, and justice is denied.

Failures in the criminal investigative process can have serious consequences. Unsolved crimes, unsuccessful prosecutions, unpunished offenders, and wrongful convictions bring the criminal justice system into

disrepute. In addition, with the cost of some major investigations climbing into the hundreds of thousands, even millions, of dollars, wasted efforts can prove extremely expensive.

Most investigators, however, are competent, dedicated professionals who want to solve their cases and arrest the right people. So, what causes a major crime investigation to fail or a

criminal prosecution to focus on an innocent person? The answer lies primarily in the subtle hazards or traps that can make the process go awry. Some of the brightest scientists, judges, and detectives have fallen victim to these pitfalls. No one is immune. Researchers in the fields of cognitive psychology, forensic statistics, intelligence analysis, law, and the philosophy of science, however, have suggested some possible explanations, often grouping them into the three areas of cognitive biases, probability errors, and organizational traps. Like cascading failures in airplane crashes, an unsuccessful investigation often has more than one contributing cause.

To fully examine these pitfalls, the *FBI Law Enforcement*

*Bulletin* presents this article in two parts. The first covers cognitive biases that can lead to criminal investigative failures and some strategies that can combat their occurrence.

## COGNITIVE BIASES

### Perception and Memory Limitations

People do not objectively survey their worlds. Rather, their experiences and expectations influence the decoding of sensory input (imperfect at best<sup>1</sup>). Individuals view the world through different lenses, a filtering process that creates mind-sets.<sup>2</sup> Quick to form but resistant to change, mind-sets, while neither good nor bad, serve a purpose that under certain conditions can

become problematic. Because perception is based on both awareness and understanding, humans often perceive what they expect to, thereby making premature conclusions dangerous. Communication becomes doubly subjective as it involves two people. What the speaker means, what that person says, what the listener hears, and how that individual interprets the communication may not be the same. Subjective words, such as *tall*, *young*, *likely*, and *dangerous*, have various meanings depending on the situation and the experiences of the speaker and the listener.

What individuals remember depends upon what they believe.<sup>3</sup> The brain does not objectively record data. Instead, memories are subjective interpretations, rarely reinterpreted even when circumstances change. New information becomes assimilated with old, which has more influence on the new than vice versa. Because people tend to remember positives and forget negatives, investigators may become ensnared in belief perseverance wherein they place more weight on evidence that supports their hypothesis than on clues that weaken it.<sup>4</sup> Remaining impartial and open-minded is the best way to accurately assess new information.

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*Dr. Rossmo, a former detective inspector in charge of the Vancouver, British Columbia, Police Department's Geographic Profiling Section, is currently a research professor and director of the Center for Geospatial Intelligence and Investigation in the Department of Criminal Justice at Texas State University in San Marcos.*

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nine items in their conscious memories at one time.<sup>5</sup> Information stored in long-term memory can be difficult to recall, and investigators may easily forget details irrelevant to their investigative theory, particularly in a complex case. Even if the information later becomes important, it can remain lost because of a failure to develop the neural pathways necessary for retrieval.<sup>6</sup>

### Intuition

Most cognitive functioning occurs outside conscious awareness, including perception, information processing, memory, and some methods of decision making.<sup>7</sup> Humans employ two types of decision making, the intuitive and the rational.<sup>8</sup> Intuition falls between the automatic operations of perception and the deliberate processes of reasoning. Often misunderstood, intuition is not a paranormal ability or a form of extrasensory perception. Although it operates at a below-consciousness level, intuition still is based on normal sensory input.<sup>9</sup>

Argentinean race car driver Juan Fangio had an interesting intuitive experience during the 1950 Monaco Grand Prix.<sup>10</sup> Braking as he exited a tunnel instead of maintaining speed for an upcoming straightaway, Fangio, unlike many other drivers, avoided a serious accident that

had occurred around the next corner. Why had he braked? After much thought, Fangio figured out what had happened. Spectators invariably watched the race cars roar out of the tunnel, alerted by the echoing thunder of their engines. On the second lap, however, they were

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looking the other way, watching the accident scene. Fangio had fleetingly observed a change in the color of the area of the stands in his peripheral vision. A normally light section from people's faces had become dark from the hair on the back of their heads. Fangio, concentrating on his driving, only noticed this change at a below-consciousness level. But, at racing speeds, change meant risk, and Fangio automatically braked. Intuition helped him avoid the accident and win the race.

Automatic and effortless, intuition also is fast and powerful

and learned slowly.<sup>11</sup> Because of its implicit nature, intuition is difficult to control or modify, can be influenced by emotion, and often is error prone. Typically, intuition involves the use of heuristics (cognitive shortcuts). By contrast, reasoning is slow and effortful, vulnerable to interference, and easily disrupted. But, it is flexible and controllable and can overrule intuition.

Different situations require different types of judgment.<sup>12</sup> With unreliable and incomplete data or under chaotic and uncertain conditions, intuitive decision making is preferable. Such situations occur in street policing or on the military battlefield. However, individuals certainly do not intuitively fill out their income tax returns. Therefore, with reliable and adequate data and time for proper analysis, reasoning produces the best results. Complex and rule-bound tasks, such as major investigations or courtroom prosecutions, require careful analysis and sound logic.

### Heuristics and Biases

Clear and rational thinking does not come easily. People sometimes exhibit limited rationality in the face of life's complexities because the brain is not wired to deal effectively with uncertainty. Individuals, therefore, employ



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heuristics—rules of thumb that substitute simple questions for more complex ones—that typically operate at an intuitive level and work well most of the time.<sup>13</sup> Under certain conditions, however, heuristics can lead to cognitive biases, mental errors resulting from simplified information processing.<sup>14</sup> Like optical illusions, cognitive biases are consistent and predictable and can result in distorted judgments and faulty analyses. To add to the problem, research has shown a poor correlation between confidence and accuracy. Past a certain point, increased information leads to greater confidence in the analyses but not necessarily greater accuracy.

Psychological researchers have identified many heuristics and biases. Some of these can prove particularly problematic for criminal investigators.

#### *Anchoring*

The anchoring heuristic refers to the strong influence of the starting point or first approximation on the final estimate.<sup>15</sup> The prevailing situation and the information available at the time determine the first approximation. Limited or incorrect data will skew the starting point, jeopardizing the path to a correct conclusion. Unfortunately, many murder cases first appear to be something other than what they are.

#### *Tunnel Vision and Satisficing*

Tunnel vision (or incrementalism) develops from a narrow focus on a limited range of alternatives. “It results in the [police] officer becoming so focused upon an individual or incident that no other person or incident registers in the officer’s thoughts. Thus, tunnel vision can result in the elimination of other suspects who should be investigated. Equally, events



that could lead to other suspects are eliminated from the officer’s thinking.”<sup>16</sup> Satisficing is the selection of the first alternative that appears good enough. These heuristics might work well for simple errands, such as buying a hammer, but they are ill suited to the task of solving complex investigations.

The murder of an attractive 23-year-old female whose

2-year-old son was the only witness can illustrate these hazards.<sup>17</sup> Detectives received a tip regarding a man who, for the next year, became their investigative focus. After a covert operation to obtain further incriminating information, they finally arrested him. At the trial, the judge quickly threw out most of the prosecution’s evidence, calling the covert operation misconceived. The charges were withdrawn, and the man was released. One detective later commented, “Maybe the team got an *idée fixe*. Maybe they got stuck thinking it had to be [him]. No one dared to challenge that thinking until it got to the judge. But, it’s a terrible mess.”<sup>18</sup> Several years later, enhanced DNA from the victim’s clothing pointed toward a psychopath now detained indefinitely in a secure hospital.<sup>19</sup>

#### *Availability*

Availability refers to the ease by which previous examples come to mind.<sup>20</sup> People make judgments based only on what they remember, not on the totality of their experiences. They can recall recent and vivid events easily but find disagreeable events difficult to remember. Individuals use the availability heuristic for determining how common or likely something is. Limited experience, therefore, can result

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in incorrect estimates of likelihood. The availability heuristic proves particularly problematic in investigations of rare crimes, such as child sex homicides.

#### *Framing*

The presentation of information influences its interpretation. Called framing, this implies that information always is understood within a context.<sup>21</sup> An artificial or inappropriate context, however, can distort understanding. Dramatic examples of framing often take place in the courtroom, where opposing legal counsel present and argue variant positions on the particular events in dispute.

#### *Representativeness*

People often estimate the likelihood of an event by recalling a comparable incident and assuming the likelihood of the two are similar. This representativeness heuristic is partly prompted by the urge to categorize everything. Similarity in one aspect, however, does not imply similarity in others. For many years, Ted Bundy and his crimes drove the public's image of the typical serial killer case—sexual murders of women committed by an intelligent and mobile white male. But, not all serial murders are sex driven, and not all victims are female. Many serial murderers are nonwhite and below

average in intelligence, and most commit their crimes within their home metropolitan area.<sup>22</sup>

#### **Cause and Effect Biases**

Perceptions of cause and effect are susceptible to several mental biases. Crime linkage could be undermined if an investigator fails to differentiate internal (psychological) from

***“Under certain conditions, however, heuristics can lead to cognitive biases, mental errors resulting from simplified information processing.”***

external (situational) causes of behavior when examining offender modus operandi. The level of force used by a rapist, for example, may be contingent on the degree of victim resistance.

The identity fallacy holds that big events must have big causes. Conspiracy theories often are rooted in this belief. Many have found it difficult to accept that a loner like Lee Harvey Oswald, using a \$21.45 rifle (\$12.78 for the rifle plus

the cost of the scope), could assassinate John F. Kennedy, the president of the most powerful nation in the world. Instead, it remains more psychologically comfortable to believe in complicated conspiracy theories.

Illusory correlations can prove misleading on several levels. Events may appear correlated when, in fact, they are not. And, even if they are connected, correlation does not always equal causation. The relationship may be spurious or caused by an intervening event. For instance, in a series of burglary rapes on the south side of a city, police theorized that the offender stalked his victims from a local superstore where all of the women had shopped. However, this superstore, the only one in the city, was so large that most people living in the area had gone there. Living on the south side, therefore, influenced both shopping and victimization patterns. There was no direct connection between the two, and their relationship was strictly spurious. As it turned out, the offender found his victims by prowling residential neighborhoods at night, looking through windows for women living alone.

#### **Biases in Evaluation of Evidence**

Problems with physical evidence usually result from misinterpretation, not from the

actual analysis. A police shooting in Alexandria, Egypt, after the First World War provides an intriguing example that also illustrates the risk of ignoring context.<sup>23</sup> During a foot pursuit, a police officer shot a robber who refused to halt (permissible under the law at the time). The criminal escaped but was later found dead. The officer stated he had fired only once. During the postmortem examination, however, the local doctor discovered two bullet wounds, one entering the front of the robber's left thigh and still lodged in the leg muscle, and the other entering the back and exiting the abdomen. The doctor concluded, "He was shot twice.... First from the front at

rather long range, secondly in the back—probably after he had fallen on his face."<sup>24</sup> Based on these findings, the officer was arrested and charged with murder. Fortunately, Sir Sydney Smith, the famous professor of forensic medicine, examined the robber's clothing and considered context—the influence of body position and posture. The officer had told the truth. The single shot had entered the robber's back, penetrated his torso, exited his abdomen, and entered his front thigh, which was lifted high while he was running. Smith tested his theory by reconstructing the shooting using a dummy and the robber's clothing and later confirmed it by exhuming the subject's body.

This represents a classic case of interpretation error involving physical evidence.

Confirmation (or verification) bias constitutes a type of selective thinking whereby individuals notice or search for evidence that confirms their theory while ignoring or refusing to look for contradicting information.<sup>25</sup> Efforts to only verify and not falsify a hypothesis often fail. After all, a single item of refuting data (e.g., DNA exclusion) can outweigh a mass of evidence against a suspect. The components of confirmation bias include failure to seek evidence (e.g., a suspect's alibi) that would disprove the theory, failure to use such information if found, failure to consider alternative hypotheses, and failure to evaluate evidence diagnosticity.

Sometimes, data that appears to support one theory (or suspect) actually has little diagnostic value because it also equally applies to other theories (or suspects). For example, during the trial of a man accused of murdering a 9-year-old neighbor, the prosecutor suggested that his failure to attend the child's funeral was evidence of consciousness of guilt.<sup>26</sup> Defense counsel argued that his attendance could just as easily been adduced as *indicative* of guilt because detectives typically try to identify those who attend a murder victim's

### Strategies to Help Avoid Investigative Failures

- Ensure managerial awareness of these problems through case study-based training.<sup>32</sup>
- Encourage an atmosphere of open inquiry, ensuring investigative managers remain impartial and neutral.
- If possible, defer reaching conclusions until sufficient data has been collected.
- Consider different perspectives and encourage cross-fertilization of ideas, thereby avoiding tunnel vision.
- Organize brainstorming sessions and seek creativity, rather than consensus.
- Ensure that investigative managers willingly accept objections, doubts, and criticisms from team members.

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funeral in the hope that the killer shows up.<sup>27</sup> The man was convicted but later exonerated through DNA testing. A public inquiry found that the man's "failure to attend the funeral or funeral home was worthless evidence and ought not be have been admitted.... The leading of this evidence demonstrated that the prosecution sought to squeeze every drop out of the information available to them, to support their case."<sup>28</sup> In other words, the evidence had no diagnosticity.

Studies have shown vivid information has more influence than abstract data.<sup>29</sup> Personal accounts carry more weight than statistical information, even though the latter is compiled from many personal accounts. The vividness of eyewitness descriptions often overwhelms other information. For instance, authorities have pursued major investigations based on graphic allegations from "victims" of organized satanic cults and "eyewitnesses" seeking attention.

Investigators often fail to account for the absence of evidence, something that can prove quite important under certain circumstances. In Sir Arthur Conan Doyle's *Silver Blaze*, Inspector Gregory asks Sherlock Holmes, "Is there any point to which you would wish to draw my attention?" Holmes replies, "To the curious incident of the

dog in the nighttime." Gregory says, "The dog did nothing in the nighttime." Holmes responds, "That was the curious incident." Holmes meant that the dog would have barked at a stranger. Because he did not, the culprit was likely a member of the household.

Finally, impressions remain even after the initial evidence they were based on is discounted.<sup>30</sup> Often termed the "curse of knowledge," this can lead to contrived theories that

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***Events may appear correlated when, in fact, they are not.***

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people cling to in the face of no evidence to support them. Such convoluted ideas violate Occam's razor, also known as the "Principle of Parsimony." It states that when more than one possible explanation exists for an event, it is best to choose the simplest (i.e., the one with the fewest assumptions) and to avoid making the situation more complicated than necessary. Investigators should adopt Occam's razor, an important guiding principle in science, to their profession. Complex

theories make for interesting mystery novels but have limited value in the real world.

## CONCLUSION

"I'm not sure I agree with you 100 percent on your police work, there, Lou."<sup>31</sup> Perhaps, real investigators can learn from fictional ones who rarely jump to conclusions. While often a plot device to help heighten suspense, the identity of the offender becomes known only at the end of the story. This offers the important lesson of keeping all options open. After all, the wrong mind-set and a limited organizational approach undermines the potential benefits of advanced forensic techniques, comprehensive criminal databases, and highly skilled police personnel. By recognizing cognitive biases and employing strategies to counter their influence, law enforcement agencies can take steps to avoid investigative failures.

Part two of this article will focus on probability errors and organizational traps. It also will offer recommendations and additional strategies for avoiding these hazards. ♦

## Endnotes

<sup>1</sup> For interesting examples of change blindness in visual perception, see J.K. O'Regan and A. Noë, *Experience Is Not Something We Feel but Something We Do: A Principled Way of Explaining Sensory Phenomenology, with Change Blindness and Other Empirical Consequences*,



paper presented at the Association for the Scientific Study of Consciousness meeting, Brussels, Belgium, June 2000; retrieved on December 30, 2001, from <http://nivea.psycho.univ-paris5.fr/ASSChtml/Pacherie4.html>.

<sup>2</sup> R.J. Heuer, Central Intelligence Agency, Center for the Study of Intelligence, *Psychology of Intelligence Analysis* (Washington, DC, 1999).

<sup>3</sup> S. Begley, "People Believe a 'Fact' That Fits Their Views Even if It's Clearly False," *Science Journal*, February 4, 2005, sec. B, p. 1.

<sup>4</sup> Supra note 2; and D.L. Schacter, *The Seven Sins of Memory: How the Mind Forgets and Remembers* (Boston, MA: Houghton Mifflin, 2001).

<sup>5</sup> Supra note 4 (Schacter); and G.A. Miller, "The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information," *The Psychological Review* 63 (1956): 81-97.

<sup>6</sup> Lateral thinking ("thinking outside the box") is one way to help prevent the mental "rust" that can limit a person's mental abilities.

<sup>7</sup> Supra note 2.

<sup>8</sup> D. Kahneman, "A Perspective on Judgment and Choice: Mapping Bounded Rationality," *American Psychologist* 58 (2003): 697-720.

<sup>9</sup> D. Myers, *Intuition: Its Powers and Perils* (New Haven, CT: Yale University Press, 2002).

<sup>10</sup> K. Ludvigsen, *Juan Manuel Fangio: Motor Racing's Grand Master* (Sparkford, England: Haynes Publishing, 1999).

<sup>11</sup> Supra note 8.

<sup>12</sup> T.A. Stewart, "How to Think with Your Gut," *Business 2.0*, November 2002.

<sup>13</sup> D. Kahneman, P. Slovic, and A. Tversky, eds., *Judgment Under Uncertainty: Heuristics and Biases* (Cambridge, MA: Cambridge University Press, 1982).

<sup>14</sup> A particular heuristic does not actually have to be right most of the time because if it promotes survival, it will be passed on through natural selection; see D.M. Risinger and J.L. Loop, "Three Card Monte, Monty Hall, Modus Operandi and 'Offender Profiling': Some Lessons of

Modern Cognitive Science for the Law of Evidence," *Cardozo Law Review* 24 (2002): 193-285. While a street officer's intuition sometimes may be wrong, it still is unwise to ignore; see A.J. Pinizzotto, E.F. Davis, and C.E. Miller III, "Officers' Perceptual Shorthand: What Messages Are Offenders Sending to Law Enforcement Officers?" *FBI Law Enforcement Bulletin*, July 2000, 1-6; and "Intuitive Policing: Emotional/Rational Decision Making in Law Enforcement," *FBI Law Enforcement Bulletin*, February 2004, 1-6.

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<sup>15</sup> Small deviations in the starting position can become large ones over time. In Poe's *The Gold Bug*, a code written on a scrap of parchment contains directions to a buried chest. To find it, the searchers must shoot a bullet through the left eye of a skull nailed to a tree limb, then measure 50 feet out along a line from the trunk through the point where the shot hit. They initially dig in the wrong place because they drop a gold beetle (substituted for the bullet) through the skull's right eye; this error causes them to miss the chest by several yards. The distance between the left and right eye sockets is less than 3 inches, but this short offset is magnified more than 10 times when measured out 50 feet; see E.A. Poe, *The Complete Tales and Poems of Edgar Allan Poe* (New York, NY: Vintage Books, 1975), 66-67.

<sup>16</sup> P. de C. Cory, *The Inquiry Regarding Thomas Sophonow* (Winnipeg, MB: Queen's Printer, 2001), 37.

<sup>17</sup> P. Britton, *The Jigsaw Man* (London, England: Bantam Press, 1997).

<sup>18</sup> J. Sweeney, "Why the Police Hunters Took Aim at Stagg," *The Observer*, September 18, 1994, p. 21.

<sup>19</sup> R. Cowan, "DNA Points to Sex Killer in 1992 Murder," *The Guardian*, November 10, 2004.

<sup>20</sup> A. Tversky and D. Kahneman, "Availability: A Heuristic for Judging Frequency and Probability," *Cognitive Psychology* 5 (1973): 207-232.

<sup>21</sup> A. Tversky and D. Kahneman, "The Framing of Decisions and the Psychology of Choice," *Science* 211 (1981): 453-458.

<sup>22</sup> D.K. Rossmo, *Geographic Profiling* (Boca Raton, FL: CRC Press, 2000).

<sup>23</sup> S. Smith, *Mostly Murder* (New York, NY: Dorset Press, 1959).

<sup>24</sup> Ibid., 62.

<sup>25</sup> P. Stelfox and K. Pease, "Cognition and Detection: Reluctant Bedfellows?" in *Crime Science: New Approaches to Preventing and Detecting Crime*, eds. M.J. Smith and N. Tilley (Cullompton, England: Willan Publishing, 2005), 191-207.

<sup>26</sup> K. Makin, *Redrum the Innocent* (Toronto, ON: Viking, 1992).

<sup>27</sup> F. Kaufman, Ontario Ministry of the Attorney General, *The Commission on Proceedings Involving Guy Paul Morin: Report* (Toronto, ON, 1998).

<sup>28</sup> Ibid., 34.

<sup>29</sup> Supra note 2.

<sup>30</sup> Supra note 2.

<sup>31</sup> Chief of Police Marge Gunderson in the 1996 film *Fargo*.

<sup>32</sup> Supra note 16.

*Over the course of his 21-year policing career, the author worked assignments in organized crime intelligence, emergency response, patrol, and crime prevention. His interest in the subject of criminal investigative failures originates from various unsolved major crime cases for which he has consulted. Currently, he is working on a book on the topic. He thanks those detectives who willingly discussed what went wrong in their investigations and dedicates this article to them.*

### **LEO Roars into the Future SmartPass Software No Longer Required**

By Lesley G. Koestner



brandXpictures

Users asked for it, and LEO has delivered. Law Enforcement Online (LEO) will implement a new authentication method. With an end-to-end encrypted tunnel, the SSL System enables, controls, and secures the extended enterprise with innovative identity-driven access gateways.

#### **The SSL System**

To provide anytime, anywhere secure information sharing among law enforcement officials, LEO will migrate its users to a clientless virtual private network (VPN) solution. The existing VPN solution requires V-ONE SmartPass or client software installed on end-users' systems. Client software poses a number of issues for the end users that ultimately prevents them from accessing the network. As a remedy, LEO has created the SSL Solution to help those law enforcement entities that have encountered difficulties due to VPN SmartPass conflicts.

LEO—a global, virtual, and private network provided by the FBI to all levels of the law enforcement, criminal justice, and public safety communities—is an anytime, anywhere system for secure dissemination of sensitive but unclassified (SBU) information.<sup>1</sup> LEO provides its members a free, state-of-the-practice, secure, Internet-based communications network. Accordingly, members use LEO to support investigative operations, send notifications and alerts, and remotely access a wide variety of law enforcement and intelligence systems and resources.

Continued enhancements to LEO improve the functionalities of the system's tools and provide the most advanced services and applications to its members. LEO maintains a 24-hour, 7-day-a-week help desk to assist with membership needs. Such customer-oriented service, combined with state-of-the-practice technologies, helps fulfill the FBI's mission to provide immediate dissemination of SBU information across agency boundaries.

#### **Membership Requirements**

LEO is limited to persons duly employed by a law enforcement, criminal justice, or public safety organization and whose position requires secure communication with other agencies.<sup>2</sup> As an information-sharing forum, LEO encourages all members to contribute information in their area of expertise. To request a membership application or obtain additional information, contact the LEO Program Office at 202-324-8833, 202-324-3364 (fax), or [leoprogramoffice@leo.gov](mailto:leoprogramoffice@leo.gov). ♦

#### **Endnotes**

<sup>1</sup> For additional information about LEO and the services it offers, see Lesley G. Koestner, "Law Enforcement Online: Facing the Challenges of Katrina," *FBI Law Enforcement Bulletin*, February 2006, 1-6.

<sup>2</sup> The LEO Program Office must be notified immediately upon separation of a member from an agency.

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*Special Agent Koestner serves in the LEO Operations Unit, Law Enforcement Services Development and Liaison Branch, of the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia.*

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# Leadership Spotlight

## *The Need for Emotional Intelligence in Leadership*

*"Emotions, like germs, are easily transmissible. The trick is passing and receiving the right ones."*

—Stacey Coino

**P**olice officers face challenges and stresses every day that are unique to the law enforcement community. Additionally, new hires within our law enforcement agencies are more educated, diverse, and willing to challenge authority. Effective leadership is needed now more than ever. However, leaders today must possess more than skills and tactical expertise and more than a strategic vision. Law enforcement leaders require a high level of emotional intelligence (EI).

Leaders must develop healthy relationships and manage conflict while achieving productive goals. To accomplish this mandate, leaders need emotional intelligence skills to build, maintain, and strengthen partnerships within and outside their organizations. Research has found that too many law enforcement agencies select officers for leadership positions based on a philosophy of being in the right place at the right time, rather than devoting the proper resources to identify and develop individuals who demonstrate leadership potential. The ability to recognize officers who have strong emotional intelligence skills will help in the future identification, selection, and development of law enforcement leaders.



R. H. Humphreys found that leadership is an emotional process where leaders display emotions in an effort to stimulate emotions from others. Emotions and moods impact our thinking and even the decisions we make and ultimately generate an attitude that we display through behavior and habits.

Because emotions and moods are so contagious, the prevailing attitude of an organization is usually a reflection of its leadership.

Warren Bennis found that emotional intelligence was more important for success than any other asset, including intelligence (IQ) or technical expertise. Daniel Goleman and Cary Cherness suggested that as much as 90 percent of a leader's success is due to emotional intelligence, and they believed that the higher the position, the more important emotional intelligence becomes. If emotional intelligence is the sine qua non of leadership, as some scholars say, then law enforcement agencies should begin promoting the development of emotional intelligence competencies through the efficient delivery of high-impact training and development. ♦

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*Dr. Timothy Turner, a special agent in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.*

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# Field Training Issues for Administrators

By RICHARD W. BEAVER



© Mark C. Ide

*If everybody is thinking alike,  
somebody isn't thinking.'*

—General George S. Patton

**F**ield training administrators would do well to heed General Patton's advice. After all, they must fulfill many roles to ensure that the newly appointed recruits in their agencies receive the best coaching from the highest caliber law enforcement officers available. These administrators face a variety of challenges, including maintaining the integrity of the field training program, overseeing their trainers, and

selecting the appropriate personnel to fill these positions. Such responsibilities require a great deal of thought, flexibility, and creativity for administrators to effectively lead such a crucial component of any law enforcement organization.

## **MAINTAINING PROGRAM INTEGRITY**

Effective administrators have many issues to consider when implementing or





Administrative Lieutenant Beaver serves as the field training administrator with the Cleveland County, North Carolina, Sheriff's Office.

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***Effective administrators have many issues to consider when implementing or revising a field training program.***

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revising a field training program. A strong, integral, and cohesive operation requires a solid foundation. When implementing a new program, it is worth the extra time and effort it takes to build a stable base. If an enterprise is put together too quickly, it may have too many holes that then will take a lot of time to fill. A strong foundation includes a well-designed field training manual, written objectives, standardized evaluation guidelines, motivated field training officers, and leaders willing to keep the program up-to-date and to never compromise its integrity. Such administrators prove invaluable because the worst enemy of a strong field training program is complacency, a disease that will put every area of the venture at risk. It will eat away at the foundation, making even the strongest program too weak to

be effective. If the administrators become infected, everyone down to the newest recruit also will succumb to the illness.

Most agencies have a training program in place, but it may need revising. This can pose a sometimes difficult, but not impossible, task. It may involve reassigning personnel, appointing line-level officers to a committee for brainstorming, or completely dissolving the present program, which may sound like a major undertaking but may prove the best option if existing problems continually reoccur. While dealing with current complications makes revising the program a bit more difficult, the extent of these obstacles should determine which option will best suit the needs of the organization. Whichever one an agency chooses should allow the administrator the greatest flexibility in eliminating past

problems and addressing future ones before they arise.

Finally, to ensure the integrity of the program, administrators should periodically review their manuals regarding changes in law, procedures, and training issues. A field training manual functions under the same principle as a standard operating procedure handbook: it needs constant updating and revising. The field manual is a working document that administrators cannot neglect if it is to remain an effective instrument. They should keep the words *update* and *eliminate* firmly in mind, updating new issues and revising those that need changing and eliminating outdated concerns or those no longer needed.

## **OVERSEEING FIELD TRAINING OFFICERS**

Of all the roles field training administrators must fulfill, overseeing their field training officers (FTOs) ranks among the most important. Serving as an example of effective leadership and ensuring that recruits receive proper training can prove extremely challenging.

### **Train the Trainers**

FTOs should attend an accredited field training officer course and first-line supervisor school as soon as possible. Such instruction will give them a foundation to begin building on and a working knowledge of

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*what* to apply. Administrators within their agencies will give FTOs direction on *how* to apply those acquired skills. This helps FTOs understand what is expected of them, which, in turn, helps them explain to recruits what they expect of these new officers. A program will not successfully function and thrive if FTOs are given a manual and told to “go to it.” This leaves no room for growth and creates a breeding ground for negative issues to infect the initiative. Without proper directives and adequate knowledge of them, FTOs will not train recruits uniformly. While each FTO can develop an individual style of teaching, all must adhere to the program’s guidelines, which will help eliminate variances in training.

### **Encourage Ideas**

Administrators and FTOs need to operate from the same guidelines, but different ideas are part of what makes the infrastructure of the training program work. Administrators should solicit new ideas from FTOs. After all, they are in the field and administrators usually are not. FTOs have first-hand knowledge of issues and circumstances that arise in the field. Administrators should listen to new ideas and encourage FTOs to get involved in finding solutions. Such actions help boost morale by giving FTOs a

sense of accomplishment and a feeling of making a difference. This, in turn, sets an example for them to follow for future leadership roles and opportunities. Moreover, it will make the program stronger, enhance its reliability and integrity, and foster a cooperative style of leadership.

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***Serving as an example of effective leadership and ensuring that recruits receive proper training can prove extremely challenging.***  
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### **Meet Regularly**

Administrators should meet with their FTOs on a regular basis to discuss ideas, problems, and other issues appropriate for inclusion in an open environment. Open meetings provide an opportunity to identify trainers who sincerely want the operation to excel by the attitude they display toward the recruits and the program. But, these venues do not offer an appropriate environment to discuss personnel issues concerning individual trainees. Instead, administrators should address these concerns

with FTOs privately to avoid the possibility of biasing other trainers’ opinions of recruits before they have the opportunity to prove themselves or correct their performance.

### **Trust the FTOs**

Some managers and line supervisors have a hard time delegating. Once they have given FTOs an assignment, administrators must allow them to do the job. Finding the correct way to operate can help avoid crossing the fine line between staying on top of issues and micromanaging. While several factors come into play, the most important is the style of leadership.

If administrators place too many constraints on them, FTOs never will learn to lead and develop managerial skills, thereby causing undue morale problems. Administrators should lead, guide, and direct FTOs but, at the same time, allow them to flourish in developing their own leadership styles. They should train FTOs to recognize a potential hurdle or problem, analyze why it is there, and find a solution by using their common sense, style, ingenuity, and skills. This can instill a sense of confidence and accomplishment when FTOs successfully handle a real-life situation by themselves. It also tells them that the administrator trusts their decisions.

Administrators should accompany FTOs in the field periodically to assist with training issues. This demonstrates that they have an active interest in the FTOs, the recruits, and the program. Participating in different types of training scenarios, including vehicle stops, building searches, and arrest procedures, gives administrators the chance to see firsthand how FTOs are developing as leaders and how the program is being taught and administered.

### **Enforce Accountability**

To keep the integrity, reliability, and the foundation of a program strong, administrators must hold FTOs accountable for what and how they teach and for completing all necessary documentation. The training process involves a great deal of

paperwork. When not properly completed, it can cause significant problems later. Administrators should ensure that FTOs properly document performance on all reports, evaluations, and written and oral tests, as well as completing the appropriate records relative to problem areas, strengths and weaknesses, and other training concerns. Administrators should not overload FTOs with paperwork but, rather, ensure that documentation and checklists exist for each area of training.

In addition, administrators should make sure that performance progress reviews are clearly written. While the FTO who compiled the notes may understand them, others who follow may not, which can lead to confusion. Moreover, if an officer becomes involved in

a lawsuit a few years later, the court could subpoena the training records. If the administrator or FTO cannot discern what the reports say due to incomplete or poorly written notes, serious consequences could result. Complete, accurate, and proper records should remain a primary concern of all administrators and FTOs because adhering to properly written guidelines on documentation, accountability, and promotional standards forms the support beams for the foundation and the walls of an effective field training program.

### **SELECTING APPROPRIATE PERSONNEL**

Placing the right people in the right places will help preserve the integrity of the program. This sounds elementary but can prove invaluable. For example, appropriate personnel will greatly reduce the risk of liability issues in the areas of inadequate or improper training. Administrators should look for officers who have a genuine concern about these. Such employees try to stay abreast of training issues and legal decisions that will affect training. Administrators well versed in these areas are fully aware of the consequences that can arise.

Administrators should consider many qualities when choosing suitable training



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officers. Self-motivated, professional employees who have a positive attitude toward their agency usually make the best field trainers. To help other administrators select quality personnel, the author offers his PEARL model. This acronym stands for professionalism, ethics, adaptability, recruitment, and leadership. Agencies also can apply the method to other types of promotional processes.

### **Professionalism**

Professionalism constitutes the first trait in the PEARL model. Applying it to law enforcement standards, professionalism can be summed up as consistency and proficiency in attitude, character, appearance, and actions. Officers live and work on different levels. Those who apply the higher standards and work ethics to their careers represent the ideal field trainers for a law enforcement agency.

Candidates should have a proven track record of proficiency in job performance. Operating with minimal supervision, making ethically sound decisions, keeping a positive attitude, and solving problems appropriately comprise the most outstanding traits of professionalism. In addition, when officers present themselves professionally, they create a credible image that people notice immediately. These officers know that they do not have a second

chance to make a first impression. Officers possessing these characteristics give recruits solid role models to emulate. Other qualities that demonstrate professionalism include honesty, trustworthiness, creativity, and fairness.

### **Ethics**

Ethics, the second attribute in the PEARL model, play a part in every aspect of law enforcement. Candidates' work, personal, and off-duty ethics

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***Placing the right people in the right places will help preserve the integrity of the program.***

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should carry a lot of weight in the promotional process. Those who consistently make morally correct decisions in every area of their lives can become positive influences on their fellow officers and on those under their tutelage.

### **Adaptability**

The third characteristic, the ability to adapt, can prove invaluable for an FTO. The ability to adapt to new people with different types of personalities and

to new and diverse ideas while staying focused on the task at hand are crucial aspects to look for in choosing the right person.

Agencies spend a considerable amount of time training new recruits. Many officers do not like having an FTO in the patrol vehicle for hours at a time, especially when the trainer has to constantly watch, talk, train, and monitor what the recruit does at all times. So, FTOs must be able to reconcile potentially conflicting situations. They also must have the ability to adapt to continue the training started by another FTO because most programs run in phases. Moreover, an FTO able to adapt to new directives and orders and teach them to others with minimal coaching can prove priceless to a program administrator.

### **Recruitment**

The fourth component in the PEARL model is recruitment. A promotional process for a new or an existing field training program makes the procedure fair and integral and ensures that the agency chooses the best of the best while following proper written guidelines. The choices can have no appearance of being prejudiced or biased in any way. There always will be some who are unhappy that they were not chosen. But, by following ethical and written guidelines in the promotional process, the



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agency can easily defend and justify its choices should the need arise.

For fairness and selection of the best candidate, administrators should use a standardized application process. When a position becomes available, it should be posted with a list of qualifications and a sign-up sheet for those interested. Candidates should submit a letter of interest to the administrator by a certain date. This will help preserve the integrity of the process by eliminating the “buddy system.” After the posting, a background should be done on each candidate. Some major issues to consider include—

- past work history, performance, self-initiated activities, and education;
- the ability to associate and communicate well with others; and
- disciplinary actions within a specified time frame and the nature of each, as well as substantiated or exonerated citizen complaints.

#### *Oral Interview Board*

No magic number exists for how many people should sit on an oral interview board. The members can vary from line-level to command-staff personnel. Usually, officers above the rank of captain do not

participate because, at most agencies, they make the final decision. Using personnel from within the organization, along with some from other departments, helps to preserve the integrity of the process. This gives an outside, unbiased opinion from those not readily familiar with the candidate.

Members of the board should have a standardized list of questions that they ask all of the applicants. This will help

#### **Tips for Field Training Administrators**

- Send FTOs to accredited training
- Solicit new ideas from FTOs
- Meet regularly with FTOs
- Allow FTOs to do their job
- Hold FTOs accountable

ensure the fairness of the oral interviews. Liability issues can arise when candidates do not receive the same questions and opportunities to answer. Videotaping the interviews for future reference can prove helpful, especially if the scoring is very close or the board needs to defend its choices.

The oral interview board will observe each candidate’s appearance, command presence, verbal skills, personality traits, and nonverbal gestures, as well

as acquire a general knowledge of the interests of the applicant. This gives the board an idea of the candidate’s demeanor that will surface while training a new recruit. Board members should include ethically based questions. These portions of the videotaped interviews will show a candidate’s nonverbal gestures and demeanor when making an “on-the-spot” decision based on morals.

Each member of the board should have an evaluation sheet, customized to fit the agency’s needs, to grade the candidates. Departments can approach the grading in a number of ways. The best is to keep it as simple as possible, such as a number system that members can easily total. The evaluation sheet should include a comments section for members to record strengths and weaknesses, as well as likes and dislikes, about each candidate.

#### *Written Test*

The recruitment process should include a written, job-specific test tailored to the agency’s individual needs and requirements. It should contain questions that relate to state law, search and seizure, elements of crimes, report writing, and liability issues, as well as ones that cover specific topics from its field training and standard operating procedures manuals.

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After the written tests have been graded, the board should meet again to compile the scores and evaluations from the oral and written screening. Then, the board should choose the top few candidates and submit the results to the command staff or agency head for final approval.

### Leadership

The final aspect of the PEARL model involves determining the leadership qualities that a candidate possesses. Administrators should ask themselves two questions.

- 1) Does this candidate have a vision for the future needs of the agency?
- 2) Will this candidate be instrumental in implementing the changes that will better the organization?

A true leader has a vision and the desire to try and implement new ideas that will help the training program grow and function efficiently. Administrators usually can separate employees who have self-centered motives. Most agencies have employees who tend to naturally attract others. These people seem to have an innate ability to inspire, an invaluable trait for an FTO. They can motivate others to see a vision and to assist in implementing it and the necessary changes for the betterment of the organization. This type of leader earns,

not expects because of rank or position, the respect of others.

Multitasking and self-motivation represent two more important characteristics for FTOs to possess. Due to the amount of duties and the nature of their responsibilities, FTOs should be able to function while juggling several tasks without losing track of any. They never should have to be reminded of what to do or how to accomplish an assignment.

***“For fairness and selection of the best candidate, administrators should use a standardized application process.”***

One last important issue concerning leadership involves the ability to effectively communicate. Because a comprehensive training manual covers a great deal of information, FTOs must communicate well to help recruits learn. Also, when FTOs need to conduct counseling sessions for poor performance, they must make recruits understand what they did wrong and offer them ways to improve. Furthermore, FTOs must effectively communicate ideas to the program

administrator or command staff concerning training and personnel issues.

### CONCLUSION

Field training administrators face many challenges in their capacity as leaders of an important component that supports the overall mission of their agencies. Maintaining the integrity of the training program, overseeing the officers who coach recruits, and choosing the best employees for that role can be a heavy burden but also a rewarding experience. Seeing recruits fresh from the academy gain real-life knowledge from highly motivated trainers can make these challenges worthwhile.

For help in selecting field training officers, administrators can use the PEARL model. While not a fail-safe method because of human behavioral factors that can arise for a variety of reasons, it can become a useful tool in implementing or revising a strong and integral field training program. Adhering to standards and guidelines, without compromising, can help agencies, administrators, and officers maintain the integrity of the law enforcement profession. ♦

### Endnotes

<sup>1</sup> [http://en.thinkexist.com/quotation/if\\_everybody-s\\_thinking\\_alike-somebody\\_isn-t/12218.html](http://en.thinkexist.com/quotation/if_everybody-s_thinking_alike-somebody_isn-t/12218.html)

## Book Review

**Handbook on Firesetting in Children and Youth**, edited by David Kolko, Academic Press, San Diego, California, 2002.

The *Handbook on Firesetting in Children and Youth* represents an outstanding collaboration among the world's top experts on children and fire. It is so well-written that readers might forget that this work is for professionals in law enforcement, firefighting, education, and social work to enhance their abilities to detect, interdict, and treat juvenile firesetters.

Children playing with matches and lighters take a much greater toll on American lives than hurricanes and tornadoes combined. According to the FBI's Uniform Crime Reports, arson ranks as the leading crime for juvenile arrests. This behavior, the one common point of reference for most adult serial arsonists, often is misunderstood and typically overlooked, a situation that many of the contributing authors attribute to a general lack of awareness in their own fields and among the public at large. This book provides an important first step in changing that status.

This multidisciplinary book contains 17 chapters, including historical and developmental perspectives on children and fire; research and studies on the problem; fundamentals of fire investigation; tips and techniques for interviewing juveniles, assessing firesetting behavior, and taking a firesetting history; clinical assessment, safety education, and skills training; cognitive-behavioral interventions; and juvenile justice. No matter where along the continuum of professions that intersect this problem readers may lie, they will find substantive material in this book that they can put to use immediately to enhance their abilities to respond to incidents of child or adolescent firesetting.

The most salient lesson of the book is that fireplay, a multidisciplinary problem, requires teamwork to address. Neither law enforcement nor firefighting professionals working alone possess the ability to interrupt the progression of juvenile firesetters. Firefighters can douse the flames and police can arrest the offenders, but a high degree of escalating recidivism occurs that requires the intervention of other disciplines to stop. Therefore, educators, social workers, and mental health experts must join these public safety professionals to understand the bigger picture and work together to address it. According to research, most children think the difference between a "good" fire and a "bad" one is merely the size of the flame. Young children do not understand that a candle flame can become a five-alarm blaze in just a few minutes. Professionals who deal with these children must have the tools to assess whether a child burned down the family home due to mere experimentation with matches or because of serious underlying problems. For instance, when children intentionally start fires on their beds, this might indicate the presence of abuse.

More than just an academic treatise, the handbook contains copious appendices where readers will find examples of interview protocols, screening and assessment instruments, checklists for parents and caregivers, directories of recommended resources for intervention, outlines for training and program development, and even materials for mounting a public awareness campaign about this issue and its impact on communities. Contributing authors use research, program statistics, and decades of experience working directly with firesetting youth to shatter long-held myths, such as the one alleging that firesetters also



are bedwetters and exhibit cruelty to animals alongside their interest in fire. The addition of this kind of material, along with summaries of the most significant related research, descriptions of the best practices for all of the affiliated disciplines, and chapters that capture the current state of the field, make this a book that the practitioner will rely on for years to come.

The handbook has received solid praise from the fire research and education communities and has become a textbook in college and graduate-level criminal justice courses.

This is an important book for fire professionals, arson investigators, and those who work with children and fire, as well as anyone serious about staying current on the emerging topic of juvenile firesetting.

Reviewed by  
Michael Yon

Project Director  
Kids in Danger Project of the  
Massachusetts Coalition for  
Juvenile Firesetter Programs  
Westport Point, Massachusetts

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## ***Police Volunteers and Ethics***

By Carol Schmidt, M.S.

**T**oday, the public has become more actively involved with their local law enforcement agencies. With staffing shortages, departments have welcomed the extra resource that volunteers offer as a partial solution to some of their needs.<sup>1</sup> But, the increase in citizens volunteering with law enforcement agencies has added to the issues raised concerning those individuals who exercise authority and their ethical standards. How do law enforcement volunteers fit into this discussion?

The Clearwater, Florida, Police Department has had a successful volunteer program for several years and can offer some answers that may assist other agencies. Starting with about 12 steady volunteers nearly 10 years ago, the department now has 84 dedicated individuals who have proven their worth in countless ways. They have assisted citizens in potentially life-threatening situations, observed and reported crimes in progress that resulted in arrests, and assisted officers with many tasks. Based on the national average hourly value of a volunteer's time of \$17.19 in 2003,<sup>2</sup> the department calculated that the 14,426 hours their volunteers contributed equated to \$247,991. While this represents a remarkable demonstration of community support, it also illustrates the need for consistent oversight, comprehensive training, and well-developed guidelines that can help volunteers thrive in the law enforcement environment.

### **Advantages of a Volunteer Program**

From an administrator's point of view, the use of volunteers offsets expenses without lowering the accomplishments of the agency. Volunteers do not replace sworn officers or any paid positions; instead, they enhance the quality of service that the organization can provide to its community.

Agencies use volunteers in numerous ways, from administrative tasks to assisting officers on the street. Administrative volunteers can help with data entry, filing, supply distribution, and many other office duties. Patrol volunteers can augment sworn officers in nonhazardous situations, such as parking enforcement, ordinance violations, traffic control, and special events.

From their viewpoint, volunteers gain a high sense of purpose by helping to keep their community safe and contributing to the agency's mission. They come to the law enforcement arena with different agendas and various backgrounds. Their reasons include looking toward a career in law enforcement, improving their promotional potential in their civilian jobs by volunteering, socializing with like-minded individuals, and giving back to their community. What they all have in common is a very high regard for law enforcement. Many other organizations need volunteers, but these citizens want to be involved in law enforcement. They also possess a variety of skills that they have acquired throughout their lives. Given adequate training, a friendly work environment, and a strong sense of belonging, volunteers can become extremely loyal and help the agency achieve its goals and objectives. To this end, they should reflect the organization's high professional standards.

### **Ethics and the Volunteer**

Because volunteers can range in age from 18 to 90, they bring many different experiences, beliefs, and standards to the agency. Those with little life experience may not have a mature sense of ethics, whereas retired volunteers may have well-developed morals. This highlights the need for straightforward guidelines and a code of ethics adhered to by all personnel in the agency. Moreover, the department's culture will exemplify the ethical standards for volunteers.

Of course, law enforcement members have learned through advanced education and training what is necessary to be involved in the

### **Code of Ethics of the Clearwater Police Department**

- As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all men to liberty, equality, and justice.
- I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
- I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
- I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession, law enforcement.

profession. They hold themselves to a higher standard of ethics than do most others in society. Volunteers have not had the same training, but their exposure to departmental personnel will influence how they conduct themselves. And, their training should bring them to the high caliber of ethics held by the agency.

Each department has a similar code of ethics for its members, and the same should hold true for volunteers. Differences in the performance of an officer compared with that of a volunteer will exist, but the rest of the code, such as accountability and responsibility, will apply. For example, volunteers must understand the importance of confidentiality and integrity. The public has the right to security and privacy; therefore, volunteers must remember

to never improperly divulge information. In addition, they must behave in a manner that does not discredit the agency. As with officers, volunteers also should pursue the never-ending process of personal and professional development. This does not mean that they must sacrifice reflexivity as individuals. Their own personal ethics also will guide them.

#### **Volunteers and the Agency**

All members of the agency must deal consistently with volunteers. If favoritism occurs, animosity will develop among the volunteers and lessen the integrity of the organization in their eyes. Everyone should be governed by the same set of rules. Sometimes, rules have to bend, but, if

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they break, it will reflect on all of those connected with the agency.

It is important to know as much about the volunteer as possible to make sure that the person's ethics meet the agency's standards. During the processing of new volunteers, the department can obtain information from criminal histories, background checks, and interviews that will supply an initial idea of their ethical practices. During training, the agency should stress its moral standards, values, and ethics. As new volunteers associate with other volunteers and employees, the department can determine if their ethics will blend with those of the agency.

Volunteers do not have the same constant contact with the law enforcement organization that officers have, so what they see and hear on one occasion may influence their perceptions of officers and the way they respond to the agency's ethical standards. As volunteers have more contact with the members of the department, they will come to understand how the organization operates. This process may take a little longer than with paid employees because volunteers may have less frequent exposure to agency personnel.

### **Volunteers in Action**

Once trained and issued a uniform, identification card, equipment, and vehicle, volunteers begin their foray into the community representing the agency. Sometimes, this leads volunteers to think that they have more authority than they do. Therefore, the department should monitor new volunteers for signs of their venturing beyond the guidelines. Examples would include stopping a vehicle for speeding or trying to move trespassers, rather than notifying officers of the situation. Such actions could compromise a volunteer's safety,

a primary factor, but they also could generate complaints. Volunteers can curb such behavior by working in pairs and remembering that they serve as the "eyes and ears" of the agency.

Sometimes, volunteers do not realize that their actions could pose an ethical consideration. For example, they might show political preferences by wearing campaign buttons or conduct personal errands while patrolling. Being in uniform and stopping to buy alcohol on the way home, for instance, would not reflect well on the volunteer program or

the agency. Although they may have done this many times while employed with other businesses, they must realize that they wear a uniform and represent the police department.

Volunteers must understand that they cannot use their positions for personal gain. They are expected to adhere to certain recognized principles and practices in the conduct of their public lives. They should know that their private lives also will be affected as they become

part of the law enforcement family and the public sees them in uniform. Volunteers also should not accept gratuities, including food and beverages.<sup>3</sup> Sometimes, these temptations result from the interaction between society and the law enforcement community and not the individual volunteer. Specific, written guidelines can assist them in making decisions about their actions and in conducting themselves appropriately.

The law enforcement culture also should assume some of the responsibility for creating the environment that will either encourage or discourage ethical values. As they do law enforcement officers, citizens will scrutinize volunteers' actions, whether done in public or private. Volunteers must understand that they cannot abuse the authority of the uniform but have to display the highest degree

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**Each department has a similar code of ethics for its members, and the same should hold true for volunteers.**

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of honesty, loyalty, and integrity to the agency and the community that they represent. It is paramount for all volunteers to realize that the program is only as effective as the individual performing the task. Instilling a sense of team spirit can help maintain the ethical standards of the agency whether volunteers work alone or in groups.

### Conclusion

Law enforcement agencies should ensure that all members, paid employees or volunteers, are aware of the attitudes and actions expected of them. With this knowledge, all personnel will have a clear perspective of their responsibilities according to the ethical standards of their organizations.

The Clearwater, Florida, Police Department has had a successful volunteer program for nearly 10 years. By expecting the same exacting

standards from its volunteers that it does from its paid personnel, the department has maintained the integrity of the profession while welcoming the support of these dedicated citizens who have enhanced the level of service it provides to the community it serves. ♦

### Endnotes

<sup>1</sup> For additional information, see the Volunteers in Police Service (VIPS) Web site, <http://www.policevolunteers.org>.

<sup>2</sup> <http://www.independentsector.org>

<sup>3</sup> For additional information, see Mike White, "The Problem with Gratuities," *FBI Law Enforcement Bulletin*, July 2002, 20-23; Mike Corley, "Gratuities: There Is No Free Lunch," *FBI Law Enforcement Bulletin*, October 2005, 10-13.

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*Officer Schmidt is in charge of the volunteer program of the Clearwater, Florida, Police Department.*

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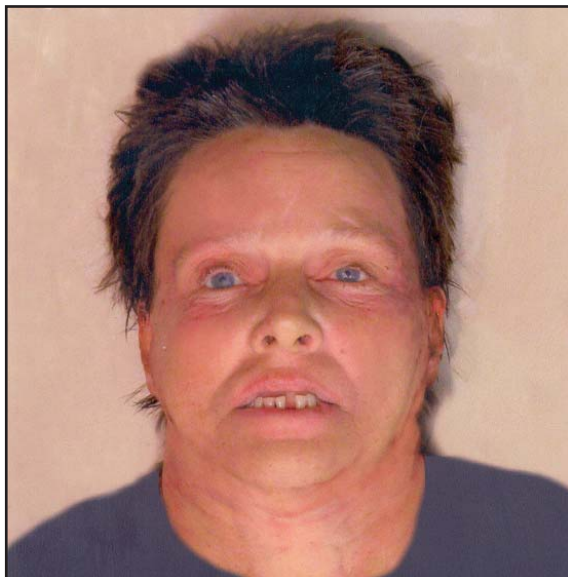
## Crime Data

### *Identity Theft, 2004*

Estimates from the National Crime Victimization Survey (NCVS) revealed that in 2004, 3.6 million households, representing 3 percent of those in the United States, discovered that at least one member had been the victim of identity theft (unauthorized use or attempted use of existing credit cards or other accounts, such as checking, or misuse of personal information to obtain new accounts or loans or to commit other crimes) during the previous 6 months. The households most likely to experience this crime earned \$75,000 or more per year, were headed by persons aged 18 to 24, and were located in urban or suburban areas. These findings represent 6-month prevalence estimates and are drawn from interviews conducted from July to December 2004 for the NCVS. Other highlights included the following: credit card theft was the most common type of identity theft; 3 in 10 households experiencing any type of identity theft discovered it by noticing missing money or unfamiliar charges on an account—almost 1 in 4 were contacted by a credit bureau; and estimated losses resulting from identity theft totaled about \$3.2 billion.



## ViCAP Alert



*Unidentified  
Deceased Victim*

**O**n January 11, 2004, at approximately 11:30 p.m., this victim was last seen walking along the 1400 block of State Highway 5 in Melissa (Collin County), Texas. The victim was wearing dark-colored clothing, and she was walking along an unlit portion of the highway when she attempted to cross the road in front of an oncoming vehicle. The victim was struck and killed by the passing vehicle. No charges have been filed against the driver of the vehicle; however, this white female victim remains unidentified.

### **Victim Examination**

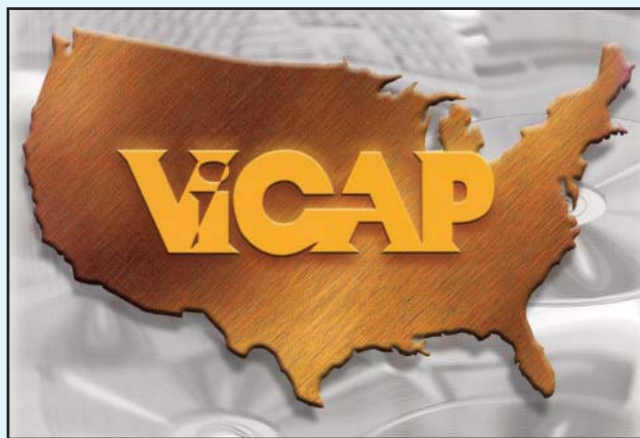
An examination of the victim rendered the following information. She was a white female, approximately 40 to 60 years old, 5 feet 3 inches to 5 feet 5 inches tall, 155 to 170 pounds, with short salt-and-pepper gray hair and light blue eyes.

The victim was missing all of her upper teeth, as well as a single lower tooth (tooth #24). There is no evidence that the victim wore dentures, indicating that she may have been homeless or a transient. The victim's fourth toes were shortened and webbed. No scars or tattoos were identified on the body.

The victim was wearing blue jeans, white tennis shoes, and a dark-colored jacket and sweater over a blue T-shirt, which had the inscription "Jefferson Missouri 2001 Final Four State Championship, Columbia, Missouri." The inscription refers to a basketball tournament. The victim's NCIC number is U300005558.

### **Alert to Law Enforcement**

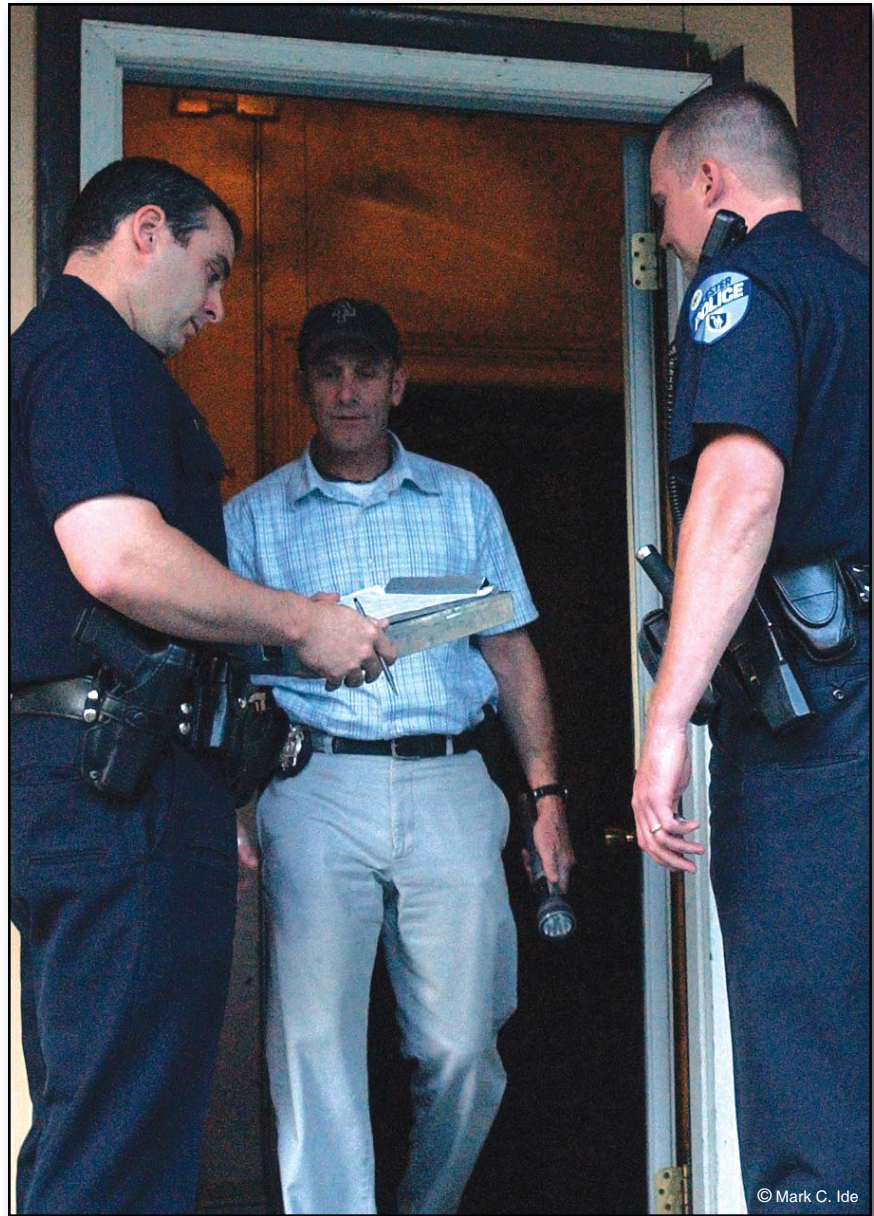
Law enforcement agencies should bring this information to the attention of all missing persons and crime analysis units. A dental chart is available, and the victim's DNA will be registered with the FBI Laboratory, National Missing Persons DNA Database. Any agency with a missing person case that may match this unidentified victim may contact Sergeant Kyle Babcock of the Melissa, Texas, Police Department at 972-838-2033 or [kbabcock@cityofmelissa.com](mailto:kbabcock@cityofmelissa.com) or Crime Analyst Lesley Buckles of the FBI's Violent Criminal Apprehension Program (ViCAP) at 703-632-4179 or [lbuckles@leo.gov](mailto:lbuckles@leo.gov). ♦



# Knock and Announce Violations No "Cause" to Suppress

By RICHARD G. SCHOTT, J.D.

**O**n August 27, 1998, at 3:35 p.m., approximately seven Detroit police officers executed a search warrant for narcotics and weapons at the home of Booker T. Hudson, Jr. Although the officers shouted "police, search warrant" upon their arrival, they waited only 3 to 5 seconds before entering. When asked why they did not wait longer before entering, an officer testified that he was concerned for the officers' safety, noting that he had been shot at numerous times when executing similar warrants. Upon entering the home, the officers found Hudson sitting in a living room chair; at least five other men and women were found running throughout the house. During the ensuing search, the officers located and seized cocaine, a loaded revolver, and cash. They discovered some of the evidence on the chair where Hudson had been seated or close to it. He subsequently was



charged with possession of less than 50 grams of cocaine with intent to deliver<sup>1</sup> and possession of a firearm during the commission of a felony.<sup>2</sup> The trial court held that the failure to

comply with the knock and announce requirement caused the evidence discovered during the search to be suppressed. When the decision to suppress the evidence was overruled by the



Michigan Court of Appeals (and the Michigan Supreme Court let that decision stand), Hudson was convicted of possession of less than 25 grams of cocaine and acquitted of the firearm charge. When the Michigan Court of Appeals denied the appeal of his conviction (and the Michigan Supreme Court again left that decision intact), Hudson appealed the decision to allow the evidence to be used against him to the U.S. Supreme Court.<sup>3</sup> The Court agreed to hear the case and to rule on whether suppression of the evidence is the appropriate remedy for knock and announce violations that precede the execution of valid search warrants. This article outlines the evolution of the knock and announce requirement of the Fourth Amendment, discusses the principles of the exclusionary rule and

inevitable discovery, and analyzes the Supreme Court's decision in *Hudson v. Michigan*<sup>4</sup> in light of the aforementioned doctrines.

#### **FOURTH AMENDMENT PRINCIPLES**

##### **Reasonableness and the Knock and Announce Requirement**

The Fourth Amendment to the Constitution provides people the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."<sup>5</sup> Part of the reasonableness inquiry is to determine whether the execution itself of a particular search was reasonable. The execution of a search warrant typically begins with law enforcement officers making entry into the location to be searched. To be

deemed reasonable, officers are required to knock and announce prior to their entry unless there is a reason to dispense with this requirement. The Supreme Court has recognized that failing to knock and announce (and lacking a valid reason not to) amounts to an unreasonable search and, thus, an unconstitutional one.<sup>6</sup> In *Wilson v. Arkansas*,<sup>7</sup> however, the Supreme Court made clear that the knock and announce constitutional requirement is not absolute but, rather, that "countervailing law enforcement interests" could make knocking and announcing unnecessary.<sup>8</sup> Cited as legitimate reasons to dispense with knocking and announcing were if the searching officers would be facing "a threat of physical violence"; having "reason to believe that evidence would likely be destroyed if advance notice were given"; or when advance notice "would enable [a] prisoner to escape."<sup>9</sup> This last potential exception points out that the knock and announce requirement applies to all entries—whether the purpose once inside is to search the location or to arrest someone.

The underlying rationale for the requirement to give notice prior to making entry makes this across-the-board application logical. The requirement is designed to maintain the sanctity of a person's home. The



*Special Agent Schott is a legal instructor at the FBI Academy.*

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***Part of the reasonableness inquiry is to determine whether the execution itself of a particular search was reasonable.***

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sanctity of the home should be safeguarded regardless of whether it is a person or an object to be seized that is the reason for law enforcement's entry.

Protecting the sanctity of a person's home was the justification for the common law knock and announce rule that was incorporated into the reasonableness inquiry of Fourth Amendment analysis. As the early cases recognized, entry was going to be made. Knocking and announcing prior to entry merely provided the owner with the chance to comply before damage was done to his dwelling. In his *Wilson*<sup>10</sup> opinion for a unanimous Supreme Court, Justice Clarence Thomas borrowed at length from a 1603 English court case.

"Common law courts long have held that 'when the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors..., for the law without a default in the owner abhors the destruction or breaking of any house (which is for the habitation and safety of man) by which great damage and

inconvenience might ensue to the party, when no default is in him; for perhaps he did not know of the process, of which, if he had notice, it is to be presumed that he would obey it.'"<sup>11</sup>

The opinion goes on to stress that no precise language is required during the announcement/demand to comply, merely language that communicates to the owner that the officer is acting under proper authority.<sup>12</sup>

***Protecting the sanctity of a person's home was the justification for the common law knock and announce rule....***

The recognition in *Wilson* that sometimes entry would be permitted without first knocking and announcing did not contemplate that there are any blanket exceptions to the knock-first requirement. Just 2 years after *Wilson*, the Supreme Court struck down the notion that a category of such "blanket exceptions" exists. Ironically, at issue in *Richards v. Wisconsin*<sup>13</sup> was the unannounced entry of law enforcement following a magistrate's denial of their

request for a so-called no-knock warrant for drugs. Although there was conflicting testimony as to whether the officers identified themselves before entering the search location, the state supreme court assumed as fact that the officers did *not* knock and announce. The Wisconsin Supreme Court found this assumption to be irrelevant as it affirmed a state-recognized blanket exception to the knock and announce requirement for drug search warrants not affected by *Wilson*.<sup>14</sup> The U.S. Supreme Court struck down the notion that blanket exceptions to the constitutional knock and announce rule exist. It did so, however, while affirming the state supreme court decision that the no-knock entry in this particular situation was warranted. The Court instructed that each situation has to be examined independently, without generalizations attached to certain categories of evidence. Justice John Paul Stevens, writing for a unanimous Court, expressed that "in each case, it is the duty of a court confronted with the question to determine whether the *facts and circumstances of the particular entry* justified dispensing with the knock-and-announce requirement."<sup>15</sup> Justice Stevens further articulated that "to justify a 'no-knock' entry, the police must have a reasonable suspicion that knocking and announcing their



presence, *under the particular circumstances*, would be dangerous or futile or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.”<sup>16</sup> Based on this reasoning, it is interesting to note that while the issuing magistrate was not satisfied in advance that the officers had articulated justification for dispensing with knocking and announcing, and thus for receiving a no-knock warrant, the justification did exist at the time of the warrant’s execution. While a number of states authorize no-knock warrants, the Court’s holding in the *Richards* case demonstrates that “a magistrate’s decision to not authorize a no-knock entry should not be interpreted as removing the officers’ authority to exercise independent judgment concerning the wisdom of a no-knock entry at the time the warrant is being executed.”<sup>17</sup> By the same token, because the reasonableness of the officers’ decision must be evaluated as of the time they make entry, other states have ruled that a magistrate has no authority to abrogate the knock and announce requirement and, thus, do not allow for no-knock warrants.<sup>18</sup>

### **Reasonableness and the Delay**

Because the beginning premise is that law enforcement officers must knock and announce before making entry to

search or arrest, the next issue to address is what is required after knocking and announcing. Stated differently, how long are they then required to wait before making entry? Because the sanctity of the home is at the foundation of the knock and announce requirement, it stands to reason that time must be given to allow the property owner to maintain its sanctity by complying with law enforcement’s demand and inviting a peaceful entry.

“  
**...time must be given to allow the property owner to maintain its sanctity by complying with law enforcement’s demand and inviting a peaceful entry.**  
”

The Supreme Court has recently addressed this issue in *United States v. Banks*,<sup>19</sup> when it considered whether a 15- to 20-second delay before making entry, after knocking and announcing, satisfied the Fourth Amendment’s reasonableness requirement. In reversing the Ninth Circuit Court of Appeals, the Court determined that an analysis based on the totality of

the circumstances<sup>20</sup> dictated the appropriate length of delay, not a rigid four-part test espoused by the appellate court. Noting that the evidence subject to seizure by virtue of the warrant in *Banks* was easily disposable cocaine, as opposed to a piano, the 15- to 20-second delay was reasonable, while a similar delay would not suffice in all cases.<sup>21</sup>

Because it found no constitutional violation in the execution of the search warrant in *Banks*, the Supreme Court did not rule on the appropriate remedy had there been a violation of the knock and announce requirement. The Ninth Circuit Court of Appeals, on the other hand, had ruled earlier that suppression was appropriate because of the violation, even though a valid warrant had been obtained.<sup>22</sup> The appropriate remedy for a knock and announce violation was unclear until recently when the Supreme Court addressed the issue in *Hudson v. Michigan*.<sup>23</sup>

### **SHOULD FAILURE TO KNOCK AND ANNOUNCE CAUSE SUPPRESSION?**

#### **The Exclusionary Rule**

The exclusionary rule was created by the Supreme Court in 1914 as the appropriate remedy when a search violative of the Fourth Amendment produced physical evidence sought to be

introduced against the victim of the unconstitutional search. In *Weeks v. United States*,<sup>24</sup> the Supreme Court confronted the issue when a U.S. marshal entered the home of Fremont Weeks without a warrant or any other legal basis and seized physical evidence. The Supreme Court ruled that the Fourth Amendment violation made the evidence inadmissible in the resulting criminal case against Weeks because “[i]f letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.”<sup>25</sup> The *Weeks* decision made clear that the newly created exclusionary rule only applied to evidence unconstitutionally obtained by federal government agents, not to evidence unconstitutionally obtained by state government actors.<sup>26</sup>

The exclusionary rule was made applicable to state and local law enforcement officers when the Supreme Court decided *Mapp v. Ohio*<sup>27</sup> in 1961. Until then, state courts determined the appropriate remedy when nonfederal law enforcement executed an unconstitutional search or seizure. Not

everyone in the state judiciary, or in the general public for that matter, believed that exclusion of valuable evidence was beneficial to society. Therefore, prior to 1961, not every state had a state equivalent of the federal exclusionary mechanism. In *Mapp*, the Supreme Court expressed its view that the exclusionary rule had to be applicable to federal and state prosecutions to “close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse”



of the basic right to be free from unreasonable searches.<sup>28</sup> Justice Tom Clark, writing for the majority, recognized a flaw with some states' refusal to adopt an exclusionary rule—that “no man is to be convicted on unconstitutional evidence.”<sup>29</sup> That principle would be hollow indeed if it were possible to be convicted based on unconstitutionally obtained evidence

in some courtrooms but not in others. Finally, Justice Clark pointed out that the decision to apply the exclusionary rule across the board “gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.”<sup>30</sup>

### Inevitable Discovery

The *Weeks* and *Mapp* cases both dealt with unconstitutional, warrantless searches. No claim was made by the government in either case that the evidence seized somehow would have been discovered without the constitutional violation. It was not until 1984 that the Supreme Court recognized the “inevitable discovery” exception to the exclusionary rule.<sup>31</sup> Simply stated, the exception allows illegally obtained evidence to be used in a prosecution if the government is able to convince the judge that the evidence ultimately would have been discovered absent the violation. The logic in the inevitable discovery exception is that while the government should not profit from its illegal activity, neither should it be placed in a worse position than it otherwise would have occupied absent the illegality.<sup>32</sup> This is certainly an argument for the

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government to make when the only constitutional taint to evidence obtained pursuant to a search warrant is that the executing officers failed to comply with the knock and announce requirement of the Fourth Amendment. It logically can be argued that the search was going to occur, so the evidence would have been constitutionally obtained mere moments later than it was recovered. This was the situation in the Detroit case set forth in detail at the beginning of this article and the case that presented the U.S. Supreme Court the opportunity to rule whether suppression is the appropriate remedy when evidence is obtained pursuant to a valid warrant but where the knock and announce requirement was violated.

### **The *Hudson v. Michigan* Decision**

When accepting the petition to hear *Hudson v. Michigan*,<sup>33</sup> the Supreme Court recognized that state and federal courts expressed divergent views on whether violations of the knock and announce requirement should result in the suppression of evidence. The Michigan Supreme Court<sup>34</sup> and the federal Seventh Circuit Court of Appeals<sup>35</sup> had found suppression inappropriate; while the Maryland Court of Appeal,<sup>36</sup> the Arkansas Supreme Court,<sup>37</sup> and the Sixth,<sup>38</sup> Eighth,<sup>39</sup> and Ninth

(in *Banks*<sup>40</sup>) Circuits in the federal system had ruled suppression an appropriate remedy. In *Hudson v. Michigan*<sup>41</sup> the U.S. Supreme Court ruled that suppression of evidence obtained during the execution of a search warrant where a violation of the knock and announce requirement had occurred was inappropriate. In a 5 to 4 majority opinion authored by Justice Antonin Scalia, the Court noted

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***All law enforcement officers take an oath to uphold the Constitution of the United States and not complying with the mandate to knock and announce violates that oath.***

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that suppression of evidence “has always been [the Court’s] last resort, not [its] first impulse”<sup>42</sup> because of the societal costs associated with suppressing evidence.

Scalia’s opinion also pointed out a lack of causal connection between the failure to knock and announce and the discovery of the evidence in Hudson’s home. This was the case, of

course, because the officers had a valid search warrant to search the home.<sup>43</sup> In other words, the evidence was to be inevitably discovered in spite of the violation.

Finally, the Court turned its attention to the deterrence value in suppressing the evidence. Responding to Hudson’s challenge that without suppression there will be no deterrence of knock and announce violations, Scalia noted multiple flaws in the argument. First, exposure of the individual who violates the constitutional knock and announce requirement to civil damages serves as a deterrent. Second, the majority noted that “[a]nother development over the past half-century that deters civil-rights violations is the increasing professionalism of police forces, including a new emphasis on internal police discipline,”<sup>44</sup> as well as the “increasing evidence that police forces across the United States take the constitutional rights of citizens seriously.”<sup>45</sup> Moreover, the Court pointed out that a repeated “[f]ailure to teach and enforce constitutional requirements exposes *municipalities* to financial liability.”<sup>46</sup> This municipal liability is in addition to the exposure the individual officer faces when violating the constitutional rights of citizens.

It is worth noting that the decision in *Hudson* was passed by the slimmest majority (with

Chief Justice Roberts, Justice Thomas, and Justice Alito concurring in its entirety, while Justice Kennedy concurred with Parts I, II, and III of the opinion but wrote a separate opinion concurring in the judgment). Meanwhile, Justice Breyer wrote a strongly worded dissenting opinion joined by three other Justices (Stevens, Souter, and Ginsburg). Most important to the dissent was its disagreement with the majority's view that suppression was not needed to deter future knock and announce violations. Rather, Justice Breyer indicated that the "holding will seriously undermine deterrence in knock and announce cases."<sup>47</sup> In his view, "[o]fficers will almost always know *ex ante* that they can ignore the knock and announce requirement without risking the suppression of evidence discovered after their unlawful entry."<sup>48</sup> Clearly, there is disagreement among the members of the Supreme Court regarding the current state of law enforcement and its professionalism (or lack thereof) in this country.

The other emphasis in the dissent is that the knock and announce violation is inseparable from the search itself. While the majority concluded that there was no causation between the violation and the discovery of evidence, the dissent opined that the illegal entry and the subsequent search constituted



one event and the improper entry tainted the entire search. Therefore, according to the dissent, the doctrine of inevitable discovery is not applicable in this situation, and none of the evidence discovered during the search should be admissible.

## CONCLUSION

The requirement in this country for law enforcement officers to knock and announce before making entry is a very important matter. Indeed, the "requirement protects rights and expectations linked to ancient principles in our constitutional order."<sup>49</sup> It should go without saying that the *Hudson* "decision should not be interpreted as suggesting that violations of the requirement are trivial or beyond the law's concern."<sup>50</sup> All law enforcement officers take an oath to uphold the Constitution of the United States<sup>51</sup>

and not complying with the mandate to knock and announce violates that oath. This alone should serve to deter knock and announce rule violations. Additionally, constitutional violations give rise to costly lawsuits that could result in individual liability for the violator. Furthermore, law enforcement departments must continue to demonstrate that they are staffed by police professionals and that all violations of law are dealt with accordingly. In spite of other consequences flowing from a knock and announce violation, the Supreme Court has now ruled that suppression of evidence acquired by virtue of a valid search warrant, but preceded by a knock and announce violation, does not have to be one of them. While individual states may decide to legislate suppression as an appropriate remedy for knock and announce



violations, the *Hudson* decision makes clear that the Constitution does not require the suppression. ♦

#### Endnotes

- <sup>1</sup> Mich. Comp. Laws Ann. § 333.7401(2)(a)(iv) (West 2001).
- <sup>2</sup> Mich. Comp. Laws Ann. § 750.227b (West 2004).
- <sup>3</sup> The statement of facts and procedural history were presented in an Amicus Curiae Brief submitted by the U.S. Solicitor General to the U.S. Supreme Court in support of the state of Michigan.
- <sup>4</sup> 547 U.S. (2006). See 2006 WL 1640577.
- <sup>5</sup> U.S. CONST. Amend. IV.
- <sup>6</sup> *Wilson v. Arkansas*, 514 U.S. 927 (1995).
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.* at 934.
- <sup>9</sup> *Id.* at 935-936.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.* at 931-932, quoting *Semayne's Case*, 77 Eng.Rep. 194, 195-196 (K.B. 1603).
- <sup>12</sup> *Id.* at 932.
- <sup>13</sup> 520 U.S. 385 (1997).
- <sup>14</sup> *Id.* at 388-390.
- <sup>15</sup> *Id.* at 394 (emphasis added).
- <sup>16</sup> *Id.* (emphasis added).
- <sup>17</sup> *Id.* at 396.
- <sup>18</sup> *Id.* (See, for example, *State v. Arce*, 730 P.2d 1260 (Ore. App. 1986), *State v. Bamber*, 630 So.2d 1048 (Fla. 1994)).
- <sup>19</sup> 540 U.S. 31 (2003).
- <sup>20</sup> *Id.* at 41.
- <sup>21</sup> *Id.*
- <sup>22</sup> *United States v. Banks*, 282 F.3d 699 (9th Cir. 2002).
- <sup>23</sup> *Supra*, note 4.
- <sup>24</sup> 232 U.S. 383 (1914).
- <sup>25</sup> *Id.* at 393.
- <sup>26</sup> *Id.* at 398.
- <sup>27</sup> 367 U.S. 643 (1961).
- <sup>28</sup> *Id.* at 654-655.
- <sup>29</sup> *Id.* at 657 (emphasis added).
- <sup>30</sup> *Id.* at 660.
- <sup>31</sup> *Nix v. Williams*, 467 U.S. 431 (1984).

<sup>32</sup> *Id.* at 443. See also, *Murray v. United States*, 487 U.S. 533, 537 (1988) (making reference to the almost indistinguishable notion of an "independent source" for the illegally obtained evidence).

<sup>33</sup> 125 S. Ct. 2964 (2005).

<sup>34</sup> *People v. Stevens*, 597 N.W.2d 53 (Mich. 1999), cert. denied, 528 U.S. 1164 (2000); *People v. Vasquez*, 602 N.W.2d 376 (Mich. 1999).

<sup>35</sup> *United States v. Langford*, 314 F.3d 892 (7th Cir. 2002), cert. denied, 540 U.S. 1075 (2003).

<sup>36</sup> *State v. Lee*, 821 A.2d 922 (Md. 2003).

<sup>37</sup> *Mazepink v. State*, 987 S.W.2d 648 (Ark.), cert. denied, 528 U.S. 927 (1999).

<sup>38</sup> *United States v. Dice*, 200 F.3d 978 (6th Cir. 2000).

<sup>39</sup> *United States v. Marts*, 986 F.2d 1216 (8th Cir. 1994).

<sup>40</sup> *Supra*, note 22.

<sup>41</sup> *Supra*, note 4.

<sup>42</sup> *Hudson v. Michigan*, 547 U.S. at \_\_\_\_ (2006). See 2006 WL 1640577 (page 4).

<sup>43</sup> *Id.* See 2006 WL 1640577 (page 5).

<sup>44</sup> *Id.* See 2006 WL 1640577 (page 12).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* (emphasis added).

<sup>47</sup> *Id.* See 2006 WL 1640577 (Breyer, J., dissenting, page 24).

<sup>48</sup> *Id.* (emphasis added).

<sup>49</sup> *Id.* See 2006 WL 1640577 (Kennedy, J., concurring, page 1).

<sup>50</sup> *Id.*

<sup>51</sup> U.S. CONST. art. 6 provides, in pertinent part, that "all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

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

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## Wanted: Notable Speeches

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

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

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## The Bulletin Notes

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



Officer Liford

While off duty enjoying a river fishing trip with a family member, Officer Matthew Liford of the Columbus, Ohio, Division of Police heard a man yelling for help. He went to investigate and, as he approached the area, noticed that a boat had capsized. He then saw two elderly men in the deep water. One was holding onto the hull of the vessel, but the other in the middle of the river was exhausted from swimming after their gear. Officer Liford entered the water and pulled the stranded boater, who was starting to sink, into his boat. Then, he swam to the man holding onto the capsized vessel and helped him to safety as well. The actions of Officer Liford prevented a tragic situation.



Officer Madden

While on patrol, Officer Joseph Madden of the Decherd, Tennessee, Police Department heard the impact of a car crash approximately a block away and immediately responded. Arriving at the scene, he observed a head-on collision involving a county sheriff's patrol car. Officer Madden immediately opened the door of the cruiser and found the deputy unconscious and bleeding from the mouth. Further, he noticed the air bags on fire. Disregarding his own safety, Officer Madden entered the vehicle, cut the air bag off the steering wheel, and removed the deputy from the mangled car. In the process, he received burns on his fingers, palm, and right arm.

The brave, selfless actions of Officer Madden saved the life of the deputy, who suffered burns, lacerations, and a concussion.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.



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## Patch Call



Nacogdoches is the oldest town in Texas and has been occupied by American Indians, French explorers, and Spanish and Mexican settlers. The patch of its police department features an Indian chief and the state seal surrounded by all nine flags, including those of the state of Texas, the United States, Spain, France, and Mexico, that have flown over the city during its history.



The patch of the Hopewell Township, New Jersey, Police Department features a depiction of the 1776 crossing of the Delaware River by General George Washington and his troops. Reflecting the opinion of many people, the patch refers to this event, along with the subsequent surprise attack on Hessian troops in Trenton, as the turning point of the American Revolution.