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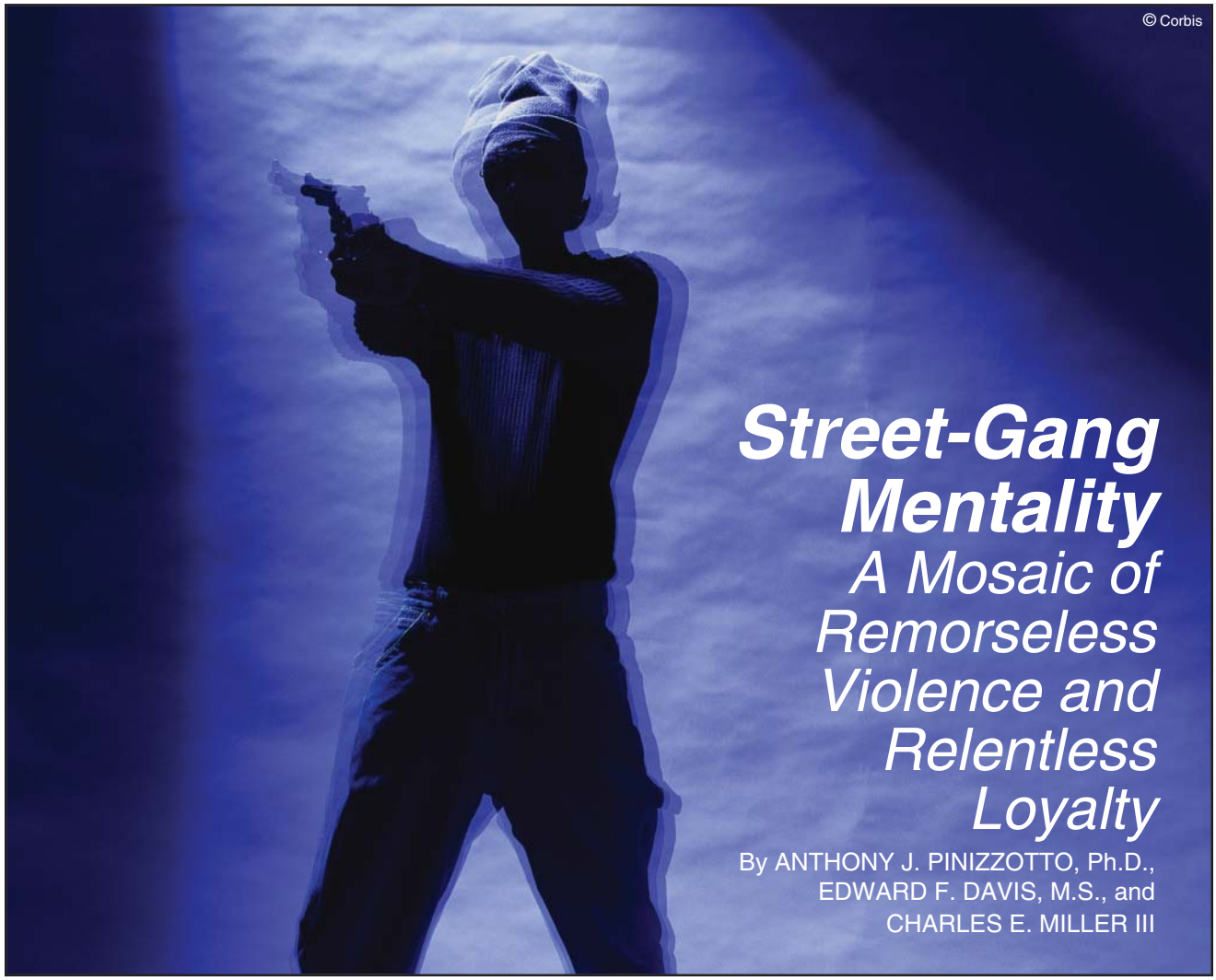

Street-Gang Mentality

A Mosaic of Remorseless Violence and Relentless Loyalty

By ANTHONY J. PINIZZOTTO, Ph.D., EDWARD F. DAVIS, M.S., and CHARLES E. MILLER III

During their more than 20 years of research on violence against law enforcement officers, the authors interviewed hundreds of offenders either housed in various prisons throughout the United States or following release from these institutions after serving their sentences. The authors found marked differences among these individuals who had killed and assaulted officers. One of these variations focused on street-gang mentality, specifically cold-blooded and remorseless behavior.[1] Among the other dissimilarities between self-admitted gang members [2] and offenders not affiliated with such groups involved the apparent motivation for assaulting the officers. The gang members either attempted to or inflicted injuries of greater severity than appeared warranted under the circumstances. They exhibited no remorse for their actions but, rather, appeared to take pride in attacking sworn law enforcement professionals. In fact, seven gang members told the authors that escape was not the motive for assaulting the officer; three admitted that they wanted to kill, not injure, the officer; and one, who could have successfully escaped, chose not to and assaulted the officer instead.

To help officers better understand gang members, the

authors share some observations from their recent study, *Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers*. The original design of their research made no attempt to identify gang members. As it progressed, however, 13 offenders admitted street-gang membership.[3] What these individuals said caught the authors' attention because of the qualitative differences of their information. The gang members' own words presented in this article offer a chilling glimpse into a lifestyle foreign to most law-abiding citizens.[4] All officers would do well to study these statements to gain insight into the minds of individuals who have exhibited cold-blooded and remorseless behavior toward those charged with enforcing this nation's laws.

Family Dynamics

"Yeah, it was like another family. You know, at the time, that was all I had to lean on. My family members wasn't there. My mom was on dope, you know, and I was staying with my auntie, and she had five other kids she had to worry about besides me. So, I made my choice to join the gang...."

All gang members lacked male role models in their households. Six never lived with their biological fathers, while seven reported their biological fathers as mostly absent from the home setting. As to the presence of their biological mothers, nine gang members stated that she lived in the home but worked full time, leaving the children unsupervised throughout much of their early childhood. The gang members often lived temporarily with various people, such as grandmothers, aunts, uncles, and friends or acquaintances of their families. The number of people residing in the households constantly changed. For example, over eight people resided in the homes where three gang members stayed, with only three being members of their nuclear families.

All but one gang member advised that one or more members of their immediate families had a criminal history or abused drugs. Nine disclosed that one or more members of

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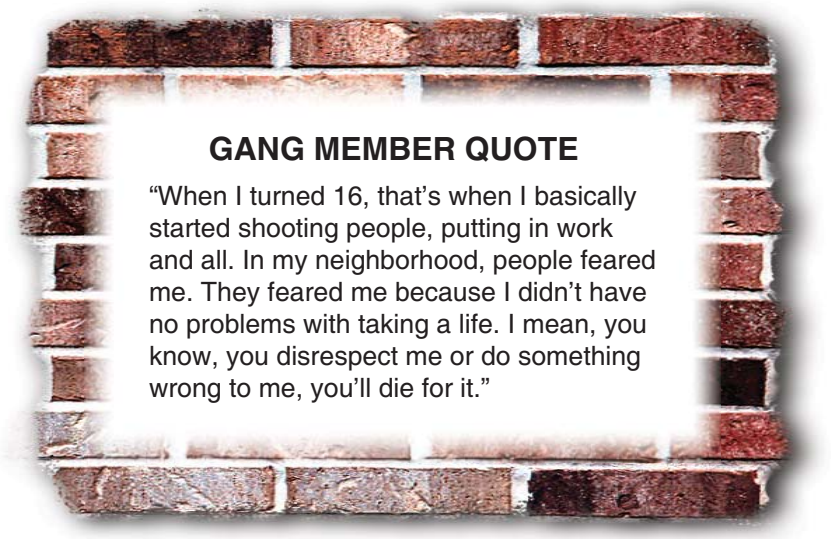
their immediate families abused alcohol, and five indicated that psychiatric problems affected one or more family members.

Most children learn to delay gratification, develop appropriate social behavior, and control aggression toward others through their interactions with well-adjusted family members and other individuals in various social arenas, such as day care and school. Parents teach children not only by what they say but, most important, by engaging in appropriate social conduct. When their children act outside the parameters of socially acceptable behavior, parents immediately correct them, thereby allowing their children to experience the negative consequences of their unacceptable actions. As children grow, develop, and move outside the family, they acquire negotiation skills and incorporate them into their social repertoire of behaviors.

Gang members fail to develop these skills because they remain within a system and structure that reinforces relying on and trusting only those individuals within their group. This reliance intensifies when they learn to see anyone outside the gang as a real and immediate threat to the group's safety and their own personal existence. In effect, the gang becomes a substitute for their family. What conventional society regards as inappropriate or unacceptable behavior that often results in punishment, gang members ignore, encourage, or recognize as adaptive for their survival on the street.



Education Levels

"I didn't need to read to sell drugs. I make more money than those people who write books." As these comments illustrate, formal education meant little and was not a goal recognized by the gangs. None of the members graduated from high school, and only two obtained a general equivalency diploma (GED) while incarcerated for assaulting an officer. None said that they read newspapers, magazines, or any type of written news material on a regular basis nor had they ever used the Internet. Moreover, the authors observed that several gang members experienced problems reading interview documents.

Criminal Activity

On average, the gang members committed their first criminal offense at the age of 9. From this first encounter, their criminal histories escalated. Five gang members had committed murders, 10 had perpetrated armed robberies, 11 had effected burglaries, and all had engaged in drug violations and weapons offenses. Also, all gang members had been confined to juvenile detention centers by the courts, and four had escaped from these facilities one or more times. Their average age at the time they joined the gang was 13. All admitted carrying weapons, including knives and handguns, at an early age and quickly learned how to effectively and efficiently use them.

Exposure to Violence

"It's a pretty violent neighborhood. A lot of drug dealers,

gangs. A lot of people getting killed in my neighborhood....” All gang members came from dysfunctional families. Each had experienced some form of verbal or physical abuse within the family setting. Outside this unit, all became the victim of at least one physical assault during their early childhoods. All grew up in neighborhoods controlled by the gang that they eventually joined. Prior to belonging to the gang, all had property taken from them by persons associated with gang activity.

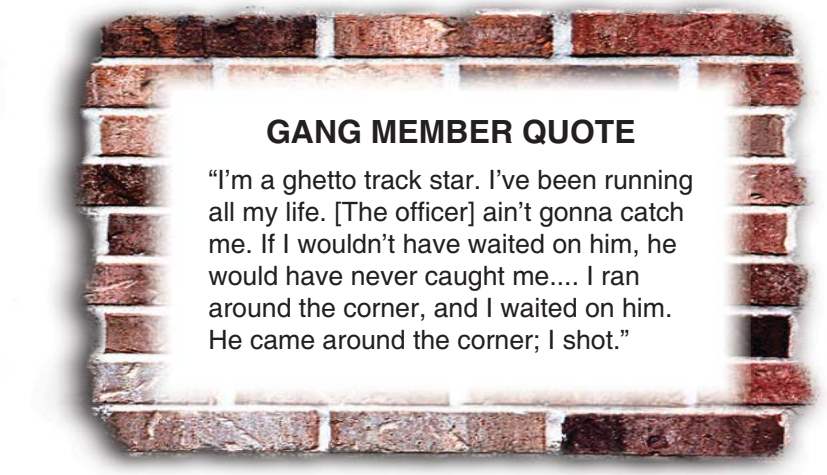
During their childhoods, three gang members were robbed at gunpoint, and all had acquaintances killed in acts of violence on the street. Several members joined the gang for physical protection. “Shoot-outs mostly every day. I mean, it was always somebody got into something with another person or some type of altercation that escalated into a shoot-out.... The guns are the problem solvers.”

Work Experience

No gang members were employed in a conventional sense at the time they assaulted an officer. In addition, although none had served in the military, they often referred to themselves as a soldier or street soldier. Moreover, their gangs expected them to behave similarly to formally trained U.S. military personnel, particularly when serving as protectors. This street-soldier attitude significantly contributed to the development of the street-gang mentality. Successful service as a street soldier often led to promotions within the gang structure where titles or ranks mirrored those in the armed services as well.

Although unemployed in a traditional sense, all had specific tasks or jobs within their gangs. All participated in some way in the street sale of illicit drugs, as well as engaging in various other low-level crimes. Those who served as gang enforcers always carried weapons and stood ready to protect the drug sellers and the gang’s territory. They also enforced gang rules and regulations, imposing far more severe penalties for violating these than society would for breaking its laws. For example, society would consider a petty larceny as a minor infraction. The gang, however, would judge the same act perpetrated against another member as a major transgression, which potentially could result in serious bodily injury or death as punishment.

Lieutenants and bosses oversaw the daily operations of the gang, such as the sale of drugs and contraband, and the resolution of minor disputes among members and rival gangs. Original gangsters, founding members of the gang usually vested with overall authority above all other members, generally acted as the final authority in settling major disputes among gang members and rival gangs. Delivery men, mules, and transporters conveyed and distributed wholesale amounts of illicit drugs or other contraband from outside sources into the gang area. Burglars and creepers specialized in committing burglaries usually of commercial establishments, office buildings, and private residences. Creepers often garnered firearms for the gang, typically stealing them during daytime



residential burglaries. Drivers possessed a valid driver's license and sufficient driving skills to transport gang members to various locations for criminal activities. Specialists, generally older and more experienced members, conducted specific criminal activities for the greater benefit of the gang, such as bank and commercial robberies, along with robberies of rival gang members. Lookouts monitored the perimeter of the neighborhood and warned gang members when law enforcement or rival gangs approached. Taggers specialized in performing the gang's art work, or graffiti, both inside and outside the gang's area.

Those charged with specific responsibilities considered themselves experts in their assigned gang-related work activities. They discussed their occupations within the gang with a sense of personal pride. A reputation as a diligent worker enhanced their status in the gang and increased the amount of money they received. Bringing in more money further heightened their status, often measured by the material assets they acquired, such as the type of vehicle owned and the kind of jewelry worn. An increase in status usually heightened the level of respect on the street. This lifestyle often resulted in a cycle of continually reinforced antisocial and criminal behavior—more violence achieved more material goods, which, in turn, increased a gang member's street status and appetite for additional possessions.

GANG MEMBER QUOTE

""The police officer don't get as much work as I do. I mean, when it comes to shooting and stuff like that, I do every day, so a police officer cannot intimidate me.... And, here I am a thug on the street been shooting and killing people all my life and why am I gonna let a guy that just went through the police academy and I've been out here in the war zone all my life.... Why am I gonna have respect for him? I'm not gonna have respect for him because he's trying to stop what I'm trying to do.... So, you know, he can go ahead and do his job, but just don't go overboard. 'Cause if you go overboard, then some bullets are gonna come flying at you."

Names of Members and Their Gangs

Gang members appeared to have more pride in their gang names than in their surnames, especially if they had received them in recognition of criminal deeds or behavior. A gang name tended to increase a member's status and reputation within the group.

Some reported that they belonged to a clique, set, or subset of a nationally known gang.[5] Others stated that they belonged to local neighborhood gangs or drug crews that took their names from the streets or housing developments in the area and claimed no national affiliations. Regardless of the gang's lineage, all of the members took great pride in its name and the reputation it had on the street.

The Neighborhood

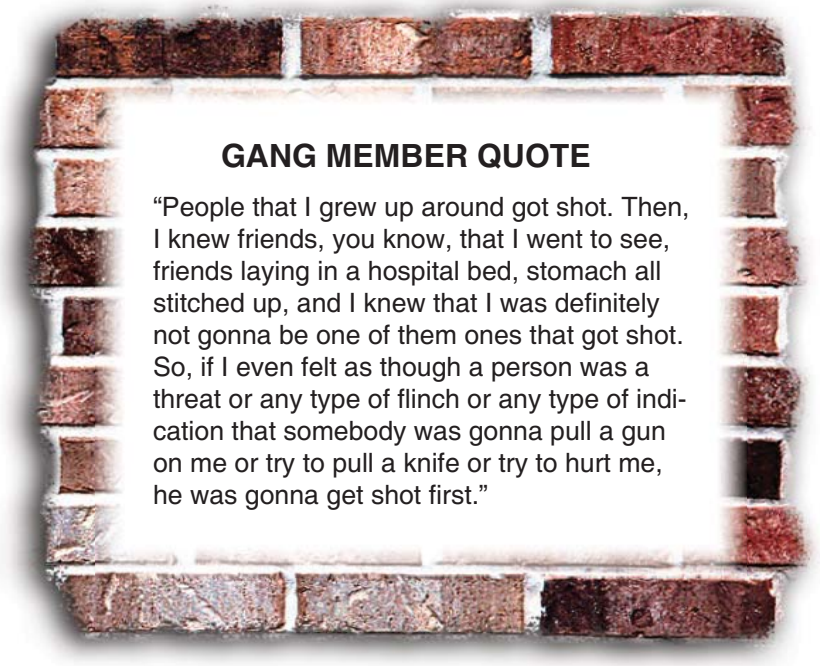
The neighborhood where the gang members grew up comprised a large part of their lives. It was where they had their first interactions with people outside the family setting and where they felt safe at an early age. When questioned as to the importance of the neighborhood, some responded—

- "My territory, my domain; I would die for it."
- "It was all I had, like family, you know."

- "It's home, nobody can violate that space."
- "It meant a lot; I felt like I was responsible, a lot of people died."
- "People I loved lived and grew up there. It meant a lot."

These statements demonstrated how important the idea of neighborhood had become for the gang members. It was their home. The authors visited some of the neighborhoods and found them run-down and heavily littered with few commercial establishments, forcing residents to travel long distances to shop for food and other necessities. While these locations did not resemble areas that most people would consider desirable, all of the gang members professed extreme pride in their individual neighborhoods. When asked what they had contributed to their neighborhoods, some replied—

- "Put us on the map and on the street. I wanted to try to keep our money in the neighborhood."
- "Schooled the kids on everything, how to steal, break in cars, and steal cars."
- "Take care of relatives and friends in time of need."
- "Go to the grocery store for the elderly. We protected everyone in our neighborhood."
- "Buy kids food and stuff, I would protect my neighborhood."



GANG MEMBER QUOTE

"People that I grew up around got shot. Then, I knew friends, you know, that I went to see, friends laying in a hospital bed, stomach all stitched up, and I knew that I was definitely not gonna be one of them ones that got shot. So, if I even felt as though a person was a threat or any type of flinch or any type of indication that somebody was gonna pull a gun on me or try to pull a knife or try to hurt me, he was gonna get shot first."

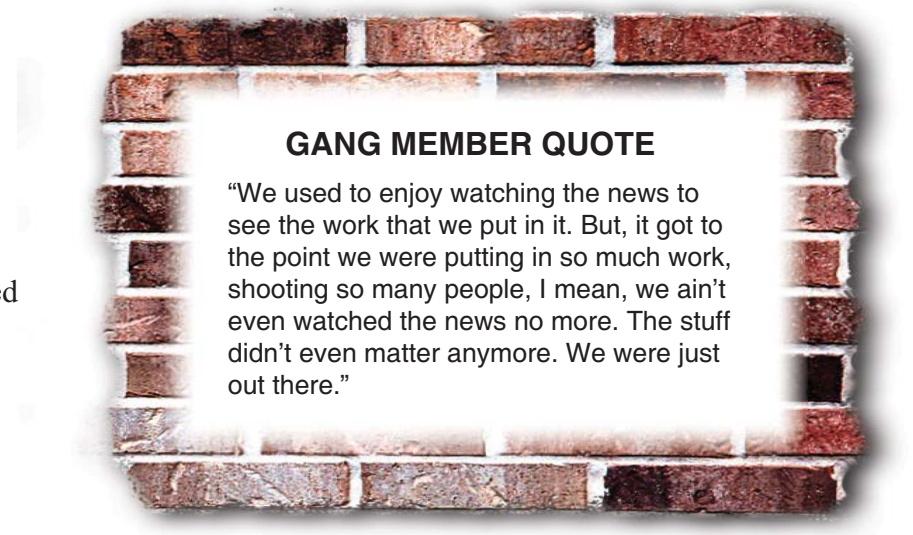
Teaching younger members of the neighborhood better ways to steal and break into cars acted as both a recruiting tool and a way to help the neighborhood residents become thieves. Protecting the neighborhood to these gang members meant keeping outsiders (rival gangs) away from the area.

All stated that rival gang members would enter their neighborhoods and show disrespect. Some defined these acts as—

- "Other drug crews tried to move in on my turf."
- "They'd come through shooting."
- "Could get killed, disrespected by attempting to sell drugs in the hood."
- "They would send people in who would tag us" (i.e., spray paint over the gang's graffiti, replacing it with some representing the rival gang).
- "They'd come through with rags hanging out of cars or even shooting. We would always retaliate."

Retaliation to the acts of disrespect helped the individual members develop a reputation as tough, both within their gang and by rival ones. Eliminating competing drug dealers from the neighborhood helped keep the local drug market open, ensuring profits for the neighborhood gang.

Often, a strange mix occurred in the gang members' responses that reflected a bizarre and fractured Robin Hood fantasy. They reported a love for their neighborhoods, a respect for the elderly who lived there, and a responsibility for the youth. Yet, they incorporated children into a gang that lived by theft and deception; they abused drugs and alcohol, rather than dealing with personal or social issues; and they employed the ultimate amount of force and violence to achieve personal gratification.



Conclusion

Gang members stated that they learned violent gang values at an early age and had them strongly and regularly reinforced. Rather than the prosocial behaviors taught in most well-adjusted families, the gangs instilled and reinforced antisocial ones that protected them from outsiders, which included the law enforcement community. In fact, the gangs not only regarded law enforcement officers as outsiders but as a threat to their survival.

The goal of every gang member was to achieve status and respect within their gangs. Respected only when feared, gang members achieved this through repeated acts of physical violence against others, who they usually viewed as outsiders. Once perceived as willing to use violence without conscience, especially when directed toward law enforcement officers, gang members obtained status.

With such a mind-set, gang members can represent a grave danger to all Americans who value a safe and productive life. They also pose an even greater threat to members of the law enforcement profession because of their lack of remorse for destroying lives and their relentless loyalty to the groups that spawned their vicious behavior. ✦

Endnotes

[1] For additional information on this concept, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, U.S. Department of Justice, Federal Bureau of Investigation, *In the Line of Fire* (Washington, DC, 1997).

[2] The FBI's National Crime Information Center defines a gang as a group that "must be an ongoing organization or association of three or more persons. The group must have a common interest or activity characterized by the commission or involvement in a pattern of criminal or delinquent conduct."

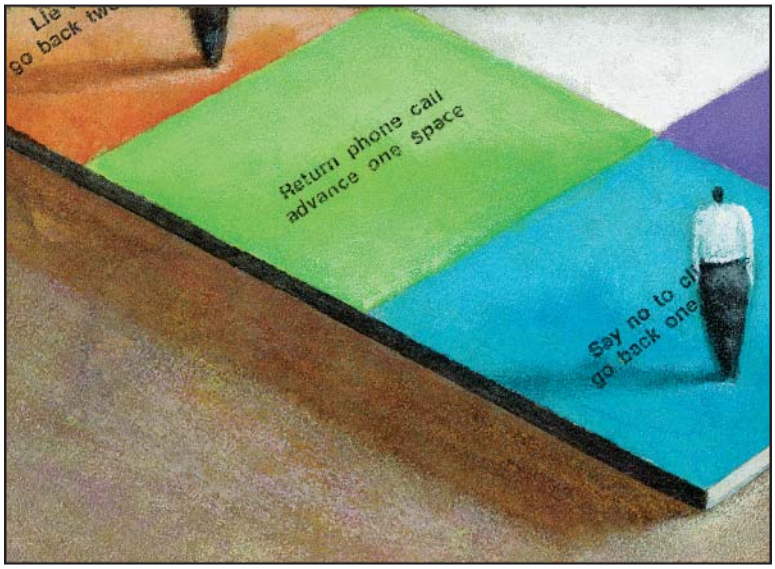
[3] All gang members were males with an average age of 20 at the time of the assault incident. However, two were over 30 and the only married gang members in the study. Eight were black, and five were white. Ten had children but never had married. The physical appearance of gang members did not differ significantly from nongang members at the time of the interviews primarily because all were incarcerated and, thus, required to maintain uniform grooming and dress standards.

[4] All gang member statements are excerpted from Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, U.S. Department of Justice, Federal Bureau of Investigation, *Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers* (Washington, DC, 2006), available from the UCR Program Office, FBI Complex, 1000 Custer Hollow Road, Clarksburg, WV 26306-0150 or by calling 888-827-6427.

[5] The authors made no attempt to confirm or disprove the gang members' self-proclaimed affiliations.

Empowerment and Accountability
Tools for Law Enforcement Leaders

By Tracey G. Gove, M.P.A.



The field of law enforcement demands the self-initiated thinking, innovation, team problem solving, and officer freedom that result from employee empowerment. Supervisors at all levels should recognize that empowering workers offers many benefits, to include decreased work-related stress, increased job satisfaction, employee involvement and contributions beyond normal expectations, enhanced commitment to the organization, and positive business outcomes.[1]

Accountability must accompany empowerment. Skilled supervisors will carefully balance both and not vest too much attention to one, thus "tipping the scale" and creating undesirable consequences. Excessive freedom may cause workers to feel alienated or confused, resulting in a loss of direction and motivation. Also harmful is unreasonable oversight, or micromanagement. Leaders able to balance the proper levels of empowerment and accountability increase employee competence, knowledge, and skills and help the organization grow.

SIGNIFICANCE FOR LAW ENFORCEMENT

Empowerment and accountability hold great importance for law enforcement officers, who possess a tremendous amount of responsibility and significantly less line-of-sight supervision than employees in most other occupations. Thus, the inherently autonomous nature of law enforcement work carries a strong need for independent decision making. Similarly, the potential consequences—including liability—of police-citizen encounters necessitate careful accountability.

Further, today's officers are highly educated in a variety of subjects and have a wealth of knowledge and diverse backgrounds. They have learned to think and make decisions independently.[2] A work environment that fails to empower these individuals will erode their motivation, direction, and self-initiation.[3] The effects of this devitalized work spirit can become exacerbated among some of the younger police officers in the current workforce who may require considerable motivation.[4]

EMPOWERMENT

Two different empowerment strategies exist. In the relational approach—likely the form familiar to most people—leaders delegate power and authority to officers who share in decision making.[5] Also, no bureaucratic red tape exists that requires officers to continually seek supervisory approval before they take action. Once power is decentralized, officers will solve problems and find innovative ways to achieve organizational goals. For example, they may have flexibility to change work hours to meet with a citizen group, select necessary equipment to complete a task more efficiently, or work in a temporary task force charged with finding ways to eradicate a specific type of repetitive crime.

> "Accountability must accompany empowerment. Skilled supervisors will carefully balance both...."

The motivational approach to empowerment involves less delegation of power and authority.[6] Rather, this strategy places more emphasis on communication, goal setting, and feedback. Praise and recognition offset stress and anxiety while impressing upon officers the importance of their contributions to agency goals.[7] Advocates of this approach believe that it will increase feelings of ownership, responsibility, capability, and commitment to organizational goals and objectives.[8]

The key to both methods is understanding that empowerment, ideally, will come as part of the overall work environment practiced at each level of management. Realistically, however, this is not always the case. Although an agency may not have an empowerment strategy per se, supervisors, especially those at the first-line rank, can formulate their own informal plans and have a genuine impact. First-line supervisors, close to the day-to-day decisions, are best suited to influence and develop officers. Any actions or decisions, however, must be appropriate for the supervisor's level of authority.

Implementing the Process

Law enforcement officers acquire skills, abilities, and knowledge through rigorous and extensive academy training, in-service and specialized courses, and on-the-job experiences that enable them to further hone expertise as they become seasoned. The empowerment process simply liberates officers and encourages them to recognize and use the power and abilities they already have gained.[9] Empowerment also follows the theory and practice of developing future leaders as those on the front lines learn valuable leadership skills. They later will use these as they receive promotion within the agency.

Those striving to empower their employees will find guidance from the situational leadership model.[10] Although primarily for directing line personnel in a variety of ways based on specific identifiable behaviors and situations, the theory has pertinent application when attempting to influence and empower others. Taken in its most basic framework, the model details a continuum of leader and follower actions that progresses through four cycles toward empowerment. It incorporates components of both the rational and motivational approaches.

Prior to implementing such a plan, leaders must ensure that officers have a complete and accurate understanding of their functions and roles and also must remain cognizant of any deficiencies or issues that arise. Leaders will need to address and correct noted shortcomings before progressing to each new cycle.

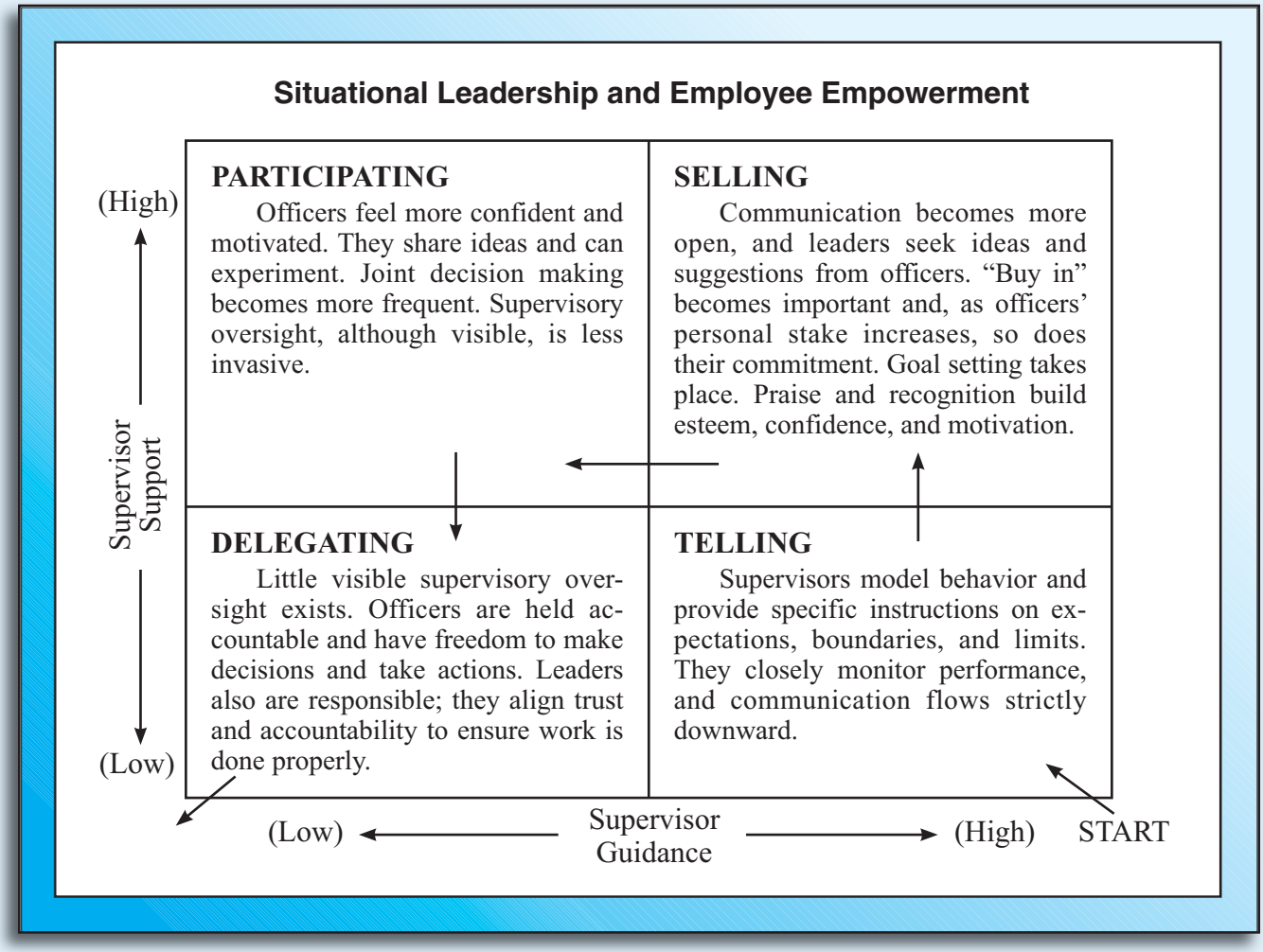
The end result moves beyond mere delegation of tasks. It culminates in confident, self-directed,

and intrinsically motivated officers. When the plan is implemented properly, officers will align their performance with learned supervisor preferences.[11] Ultimately, employees in the line and staff positions of the organization will work more closely toward the same goals.

Identifying Roadblocks

Unfortunately, some agencies will see their empowerment efforts fail for several reasons. Leaders may hold responsibility by—

- only speaking of empowerment but never actually taking steps toward implementation;[12]
- never properly training, educating, and preparing officers to accept additional responsibilities;
- relying on their position of power for identity and security and, thus, finding the empowerment process a threat to their authority and worth (both to themselves and to the organization);[13]
- disliking change and fearing risk and the unknown;[14] or
- simply not trusting officers to make knowledgeable, proper decisions without



supervisory oversight, perhaps, because they believe their way is the best and only method to accomplish the mission or reach goals.

Other times, officers resist the empowerment process, instead preferring the strict, chain-of-command, one-way decision making found in police organizations of the past. Some officers may need special attention, requiring less freedom and more oversight. This commonly occurs with new, resistant, or disgruntled officers or those having performance issues, thus temporarily requiring close monitoring. In these situations, leaders should slowly and carefully initiate the empowerment process. Their main goals will be to provide guidance and probe for independent thought by asking open-ended questions, such as "What do you think should be done?" and playing devil's advocate to stimulate thinking.

> "Empowerment... follows the theory and practice of developing future leaders...."

ACCOUNTABILITY

Much of the literature on empowerment fails to address the essentiality of holding empowered employees accountable. Failing to provide reasonable supervisory oversight can result in officer misjudgments, overconfidence, or abuse of authority. The resulting errors in police work that may occur can have disastrous consequences.

Whereas the process of empowering officers with more autonomy, power, and authority flows down the police hierarchy, accountability starts at the bottom and moves up. Empowered employees are responsible for completing tasks properly, diligently, and efficiently. As they do so while becoming more self-directed, trust builds among those overseeing them. Supervisors learn which officers use power and authority appropriately and wisely. However, if not held responsible, officers may drift and become confused or unmotivated. Empowerment requires accountability to be meaningful.

Similarly, officers understand that what they do matters and that others recognize their efforts. Praise and recognition reward those who fulfill goals and expectations. But, employees who fail to try or whose work is substandard meet with corrective consequences, such as retraining, less freedom, and stronger, more invasive supervisory oversight.

Accountability also sends a message to others in the organization. Those not directly affected will be watching and notice any action or inaction by the supervisor. This will set the tone for future behavior, demonstrate expectations, and establish the value of achievement, as well as the repercussions for nonperformance. Follow-through by the supervisor is crucial for advancing the empowerment process within the agency.

Establishing the Plan

Accountability begins with careful planning by the law enforcement supervisor, who establishes performance standards, measurement milestones, desired outcomes, a system for reviewing progress, and contingency planning for unexpected adversity. Officers should take part in this process and accept new responsibilities.

Communication and regular feedback prove vital, especially during the selling, or coaching, phase. As officers meet milestones and goals, supervisors must make them aware of their progress as this provides positive reinforcement and encourages further growth. And, when officers do not meet goals, this information will help them negotiate any changes they need to make.

Officers will need reinforcement to overcome the fear of making decisions and taking actions without prior approval. Supervisors must allow them time to ask any questions that may arise and must clarify anything not understood. Agencies cannot realistically hold officers accountable without a clear understanding of goals, objectives, and a means of evaluation.

Supervisors must provide adequate resources and, when feasible, extensive training opportunities to ensure that officers have the right skills.[15] They should refine or develop policies and procedures that create and clearly define a culture of empowerment as the process is continual.

Recognizing Barriers

Implementing accountability can prove challenging. Unfortunately, efforts can fail for several reasons, including—

- communication gaps or failures;
- confusion regarding expectations or goals;
- misunderstood or nonexistent means of measurement and evaluation;
- neglect of proper oversight by supervisors trying to avoid a reputation as a micromanager;
- supervisors' failure to address issues because of a fear of potential confrontation, conflict, or employee resentment, particularly in police work, where strong personalities abound; or
- inaction by supervisors afraid that taking action at an inappropriate time will backfire and result in a setback or a perception by officers of a lack of trust.

In many cases, supervisors simply fear that employees will see reasonable oversight as something sinister. Unfortunately, the word *accountability* itself often carries the negative stigma of punishment or discipline. However, once supervisors give officers authority and power, they must ensure that their employees complete work properly.

> **"...once supervisors give officers authority and power, they must ensure that their employees complete work properly."**

CONCLUSION

Only through empowerment will officers become fully engaged, motivated, and willing to follow leaders. Supervisors must carefully design and orchestrate the empowerment process. Too much freedom will result in officers feeling alienated or confused and will leave them open to guessing in uncertain situations. It also will make them vulnerable to undue influences, such as negative peer pressure and a lackadaisical work ethic.

Accountability also must exist in the right proportion. Too little may send the message that supervisors are disinterested or ambivalent. Too much may stifle independent thought and decision making.

Supervisors must create a culture where independence, innovation, and risk taking are nurtured and tempered with reasonable supervisory oversight. This venture will result in more productive officers, stronger leaders, and a law enforcement agency better prepared to support the community it serves. ✦

Endnotes

[1] Linda Honold, "A Review of the Literature on Employee Empowerment," *Empowerment in Organizations* 5, no. 4 (1997): 202-212; and James Kouzes and Barry Posner, *The Leadership Challenge* (San Francisco, CA: Jossey-Bass, 2003).

[2] Randy Sonnenberg, "The Empowerless Manager: Achievement of Success," *Journal of California Law Enforcement* 32, no. 2 (1998): 12-14.

[3] Ibid.

[4] Michael Reiter, "Empowerment Policing," *FBI Law Enforcement Bulletin*, February 1999, 7-11.

[5] Cynthia Hardy and Sharon Leiba-O'Sullivan, "The Power Behind Empowerment: Implications for Research and Practice," *Human Relations* 51, no. 4 (1998): 451-483.

[6] Ibid.

[7] For additional information, see Tracey Gove, "Praise and Recognition: The Importance of Social Support in Law Enforcement," *FBI Law Enforcement Bulletin*, October 2005, 14-19.

[8] Supra note 5.

[9] Supra note 1 (Kouzes and Posner).

[10] The author bases his model on the one presented by Kenneth Blanchard and Paul Hersey, found at *http://www.12manage.com/methods_blanchard_situational_leadership.html.*

[11] Tiffany Keller and Fred Dansereau, "Leadership and Empowerment: A Social Exchange Perspective," *Human Relations* 48, no. 2 (1995): 127-144.

[12] Supra note 2.

[13] John C. Maxwell, *The 21 Irrefutable Laws of Leadership* (Nashville, TN: Thomas Nelson, 1998).

[14] Ibid.

[15] Seth Silver, W. Alan Randolph, and Scott Seibert, "Implementing and Sustaining Empowerment: Lessons Learned from Comparison of a For-Profit and a Nonprofit Organization," *Journal of Management Inquiry* 15, no. 1 (2006): 47-58.

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Leadership Spotlight

A Simple Legacy

Our lives are shaped as much by those who leave us as they are by those who stay. Loss is our legacy. Insight is our gift. Memory is our guide.

—Hope Edelman

I tied my uncle's tie for him. It was right after I helped him put his belt through a loop he missed. He was getting ready to attend the funeral of a friend who, in fact, was many years younger than he. I had just stopped to visit after putting down my two youngest children for a nap at the old home place just down the road. We were back for a brief visit after several months of being unable to travel due to a full plate of commitments at school and work. Through these visits, I try to keep my children, and myself, in touch with our family and heritage.

As I was tying his tie, I remembered that it was my uncle who taught me the proper way to tie one over 30 years ago. I wonder if he knew that at the time he was showing me the way to get the knot just the right size, how often I would repeat that relatively simple act in my life. He probably did not, but the impact was just the same. I have worn a tie almost daily in over 20 years of law enforcement and military service. Each time I wear one, it is more than a piece of my uniform or a part of a dress code. It has been and continues to be a simple but important symbol of professionalism. Interestingly enough, just like me, few others consciously notice if a tie is worn correctly. However, it is readily apparent to all if it is askew, loosened, or missing when it should be there.

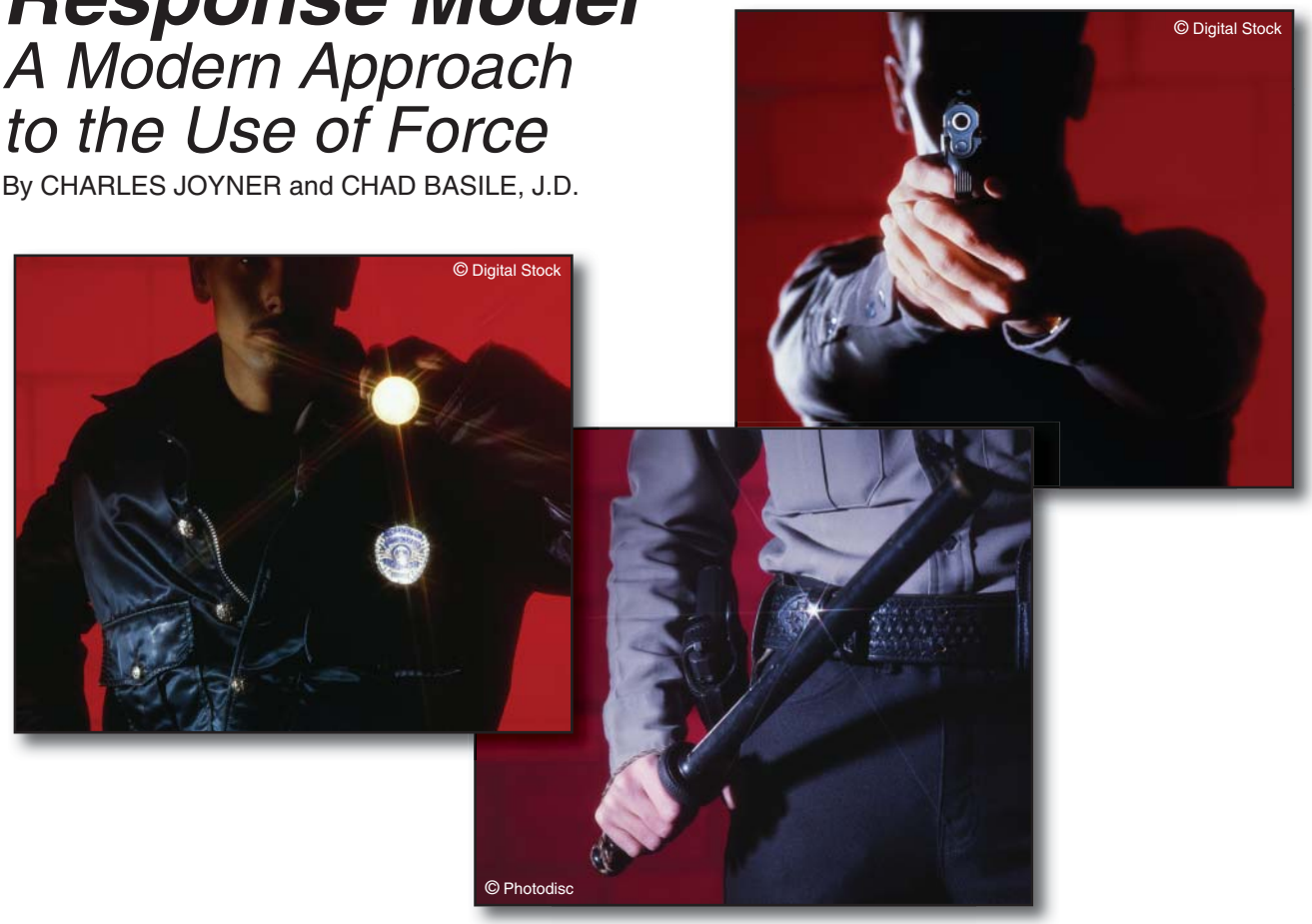
I hugged my uncle as he was leaving, knowing that it would be several months before I would have a chance to see him again. The kids and I were heading back to the pressures of school and work early the next morning. As I made the long drive back on the interstate, I reflected on the moment. The simple act of tying a tie had come full circle in my uncle's life. The one he had shown was now helping him. It is a simple yet poignant legacy. I am looking forward to the day I can teach my sons how to get that knot just right in their ties; just like their great uncle taught me. ✦

Special Agent Jeffrey C. Lindsey, an instructor and program manager in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

The Dynamic Resistance Response Model

A Modern Approach to the Use of Force

By CHARLES JOYNER and CHAD BASILE, J.D.



Running late, a high school student speeds through the school zone and is pulled over by local police officers. She refuses to sign the speeding ticket and is verbally abusive. After repeated attempts to have her sign the ticket, the officers decide to arrest her for failing to obey a lawful command. When she refuses to get out of her car, the officers attempt to physically remove her. She thwarts these efforts by tightly holding onto the steering wheel. The officers warn the student that they will use a stun gun if she does not comply. When she fails to obey, the officers use the stun gun. The officers remove the student from her car, but she strikes her head against the car door. She later claims to suffer from headaches and dizziness. Using current accepted use-of-force models, the following issues likely will arise: Was the officers' selection of this force option reasonable? Why did the officers not employ other intermediate levels of force?

THE PROBLEM

Law enforcement agencies typically examine traditional

Special Agent Joyner formerly served as supervisor of the FBI's Los Angeles SWAT team and crisis management and training programs and currently is assigned to the Los Angeles office.

Special Agent Basile heads the Training Unit in the FBI's Los Angeles office.

use-of-force models for guidance in establishing their policies. Unfortunately, models employed today contain complicated language and distort the state of the law by placing the focus on the officer's actions and minimizing those of the individual initiating the resistance. Such emphasis may mislead citizens and those in the judicial system into analyzing why all possible lesser force options were not used, causing concern for officers, departments, and the public. Citizens should respect the authority and lawful commands of police officers, but, sadly, some choose to resist, forcing contacts to unnecessarily escalate into physical confrontations.

Long before the changes brought about by *Tennessee v Garner*, which crafted a new constitutional framework for the proper use of force, the U.S. Supreme Court established a history of reasonableness that guided officer conduct and offered an understanding of the difficulties and complications inherent in the profession.[1] Accordingly, the Court has provided the law enforcement community with a wide path to tread while carrying out its mission. Within the constitutional parameters established by the Court, most agencies require officers to adhere to more restrictive use-of-force policies, which, in fact, have not entirely eliminated the controversy surrounding officer-citizen encounters as evidenced by continued allegations of misuse of force. Policies often are created or expanded under intense political and public relations pressures that overwhelm the proper channels of policy formulation.

Many departments have faced civil suits for the alleged misuse of emerging less than lethal equipment, similar to the scenario at the beginning of this article. Others have responded by prohibiting the use of these tools on suspects outside specific age parameters or on those who suffer from particular medical conditions. This places an officer in an untenable position—if he misjudges a suspect's age or fails to accurately determine a medical condition, he may be placed outside of policy, focusing intense scrutiny on him and his department.[2] A common result of overly restrictive policies is an increasing reluctance to use practical law enforcement tools developed specifically to increase the safety of both citizens and officers.

Improper use of force by a few officers should not cause an automatic policy change affecting an entire agency. Before adopting a more restrictive policy, departments should consider possible ramifications of changes, such as the impact on morale, an increased need for training, the effect on future litigation, and possible confusion among officers.

TRADITIONAL MODELS

A ladder model illustrates a traditional use-of-force

continuum in which the officer has an escalating series of options available in response to a suspect's behavior. As the suspect becomes increasingly combative, the officer is permitted to climb the ladder and use a force option greater than that of the suspect.

Upon seeing the ladder analogy of use-of-force options, citizens unfamiliar with law enforcement expect an officer to climb the ladder one rung at a time until the suspect complies. It is sometimes difficult to explain to the public the need to advance to the appropriate rung based on the suspect's behavior. Further, people often mistakenly believe that an officer must attempt all other intermediate force options prior to using deadly force.

In an effort to correct these misperceptions, the law enforcement community modified the ladder model into a wheel, which typically depicts the officer in the center of a circle, or wagon wheel, of options. The wheel model allows the officer to select the most appropriate option for the situation, permitting greater flexibility. However, most officers find the wheel confusing and, instead, mentally revert to the ladder model when determining which force option to use. Additionally, jurors may question why an officer selected one force option over another. Traditional use-of-force models fail to properly represent the dynamic encounter between an officer and a resistant suspect. They also exhibit an escalation of force and fail to acknowledge the officer's overriding objective to gain compliance.

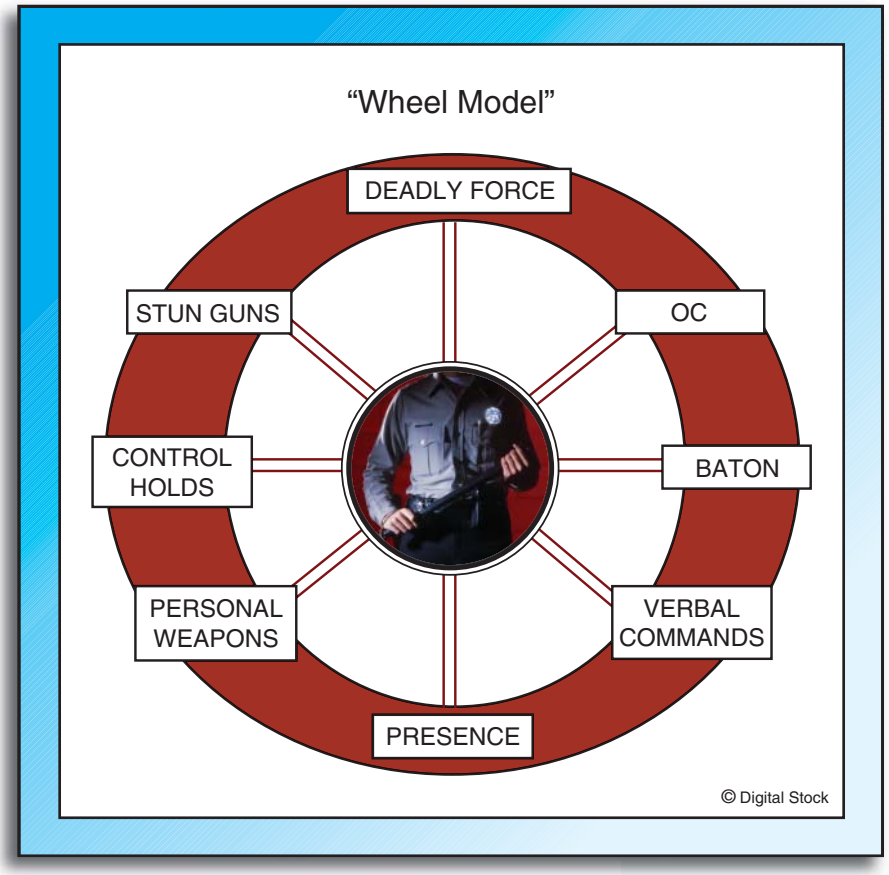
A NEW APPROACH

The solution for law enforcement agencies does not involve removing options nor adopting additional policies and restrictions. Rather, a new approach that more accurately reflects the intent of the law and the changing expectations of society can help address these issues.

When officers clearly understand a reasonable use-of-force model and receive adequate dynamic training, they are better prepared to make appropriate use-of-force decisions. Officers faced with potentially life-threatening situations need simple, clear, unambiguous, and consistent guidelines in the use of force. To this end, the dynamic resistance response model (DRRM) combines a use-of-force continuum with an application of four broad categories of suspects.

Dynamic indicates that the model is fluid. Suspects can move rapidly from one level of resistance to the next. The public must realize that situations can quickly and dangerously transition from one category to another. Officers never should assume a suspect currently complying will continue to do so. Also, they always should be prepared for an attack no matter how compliant an individual initially appears.

Resistance demonstrates that the suspect controls the interaction. A major failing among current use-of-force models is the emphasis on the officer and the amount of force used. This places officers in a weak position during accusations of excessive force as the focus is on the officer's actions, rather than on the suspect's. The DRRM emphasizes that the suspect's level of resistance



determines the officer's response and delineates suspects into one of four categories: not resistant (compliant), passively resistant, aggressively resistant, and deadly resistant.

Not Resistant

Suspects who do not resist but follow all commands are compliant. Only a law enforcement officer's presence and verbal commands are required when dealing with these individuals; no coercive physical contact is necessary.

Passively Resistant

A passively resistant suspect fails to follow commands and may be verbally abusive. He may attempt to move away from the officer, escape from the officer's grip, or flee. The suspect's actions are neutral or defensive, and the officer does not feel threatened by his actions. Appropriate responses include using a firm grip, control holds, and pressure points to obtain compliance.

Aggressively Resistant

An aggressively resistant suspect takes offensive action by attempting to push, throw, strike, tackle, or physically harm the officer or another person. To defend himself, the officer must respond with appropriate force to stop the attack. The officer feels threatened by the suspect's actions. Justified responses include the use of personal weapons (hands, fists, feet), batons, pepper spray, and a stun gun.

Deadly Resistant

A deadly resistant suspect will seriously injure or kill the officer or another person if immediate action is not taken to stop the threat. The officer is justified in using force, including deadly force, reasonably necessary to overcome the offender and effect custody. For each of the four suspect categories, officers have all of the tools in the preceding categories available. In each instance, officers constantly should give commands to the suspect when doing so does not jeopardize safety. Further, the DRRM is flexible. Departments can apply the four categories of suspects to their current use-of-force continuum and insert the tools available to officers in that particular agency.

APPLICATION

In the DRRM diagram, no resistance (compliance) is in the center of the triangle, emphasizing that as the goal of every encounter. If a suspect's resistance level places him on one of the three corners of the triangle, the officer's response (appropriate use of force) is intended to move the suspect's behavior to

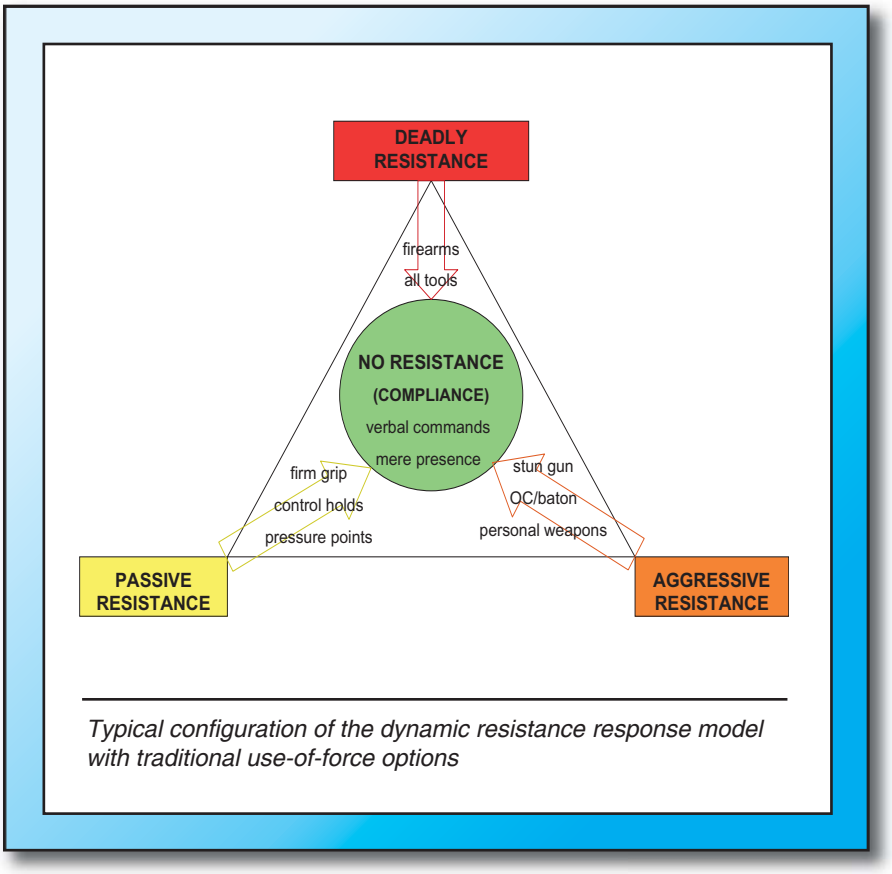
the center of the triangle and compliance. If force is used by the officer in response to the suspect's resistance level, the sole purpose of the application of force is to gain compliance.

In the scenario at the beginning of this article, the officers mentally place the driver in one of the four suspect categories. The driver resists by not obeying the instructions to sign the speeding ticket and later refuses to get out of her car. Her conduct does not rise to the level of aggressive resistance because she does not attack the officers and they do not feel threatened. In this situation, the driver is passively resistant. Therefore, based on the DRRM, the officers may use a firm grip, control holds, and pressure points to remove the resistor from her car and arrest her. Any greater use of force is not reasonable. In this example, properly trained officers can remove the resistor from her car using the appropriate force options for a passively resistant suspect.

CONCLUSION

Law enforcement officers are tasked with a difficult responsibility and must make life-or-death decisions at a moment's notice. The intense public scrutiny resulting from alleged misuse of force sometimes results in unnecessary restrictions placed on the use of viable, effective tools in restraining combative suspects. Departments would better serve their officers and citizens by establishing a single use-of-force policy directly related to suspects' behavior and easier to comprehend and apply. Law enforcement agencies will significantly benefit from instituting a legally defensible use-of-force model that protects the rights of the public without decreasing the safety of officers.

Agencies that adopt the dynamic resistance response model can gain several advantages. First, the structure of the model brings every confrontation to a compliant resolution. The DRRM is based upon the obvious presumption that law enforcement officers seek no resistance (compliance) in all cases. Traditional use-of-force models guide officers into a pattern of escalation of force. Second, a resistor's behavior is placed in one of four easily recognized categories, providing more guidance to officers in the selection of the appropriate use of force. Third, the DRRM accurately focuses the initial use-of-force analysis on the resistor and better reflects the actual



Typical configuration of the dynamic resistance response model with traditional use-of-force options

events that cause a police-citizen confrontation. Most other use-of-force models first direct attention to the acts of the officer and then belatedly explore what initiated the action. Finally, the DRRM simplifies training on use-of-force options as officers can explain any encounter in a resistance—response or action—reaction equation. With appropriate training, officers have a clearer understanding of their force options, enhancing their safety and the effectiveness of the department. ✦

Endnotes

[1] *Tennessee v. Garner*, et al, No 83-1035, U.S. Supreme Court, 471 U.S. 1; 105 S. Ct. 1694: 85 L. Ed. 2d.

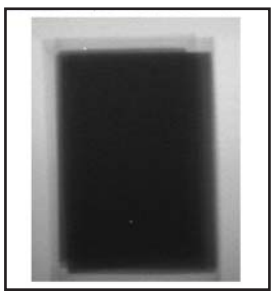
[2] The authors employ masculine pronouns throughout the article for illustrative purposes.

Special Agents Chuck Joyner and Chad Basile created the dynamic resistance response model. Contact them with questions, comments, or suggestions at charles.joyner@ic.fbi.gov*, telephone number 310-629-9662, or* chad.basile@ic.fbi.gov*, telephone number 310-345-4312.*

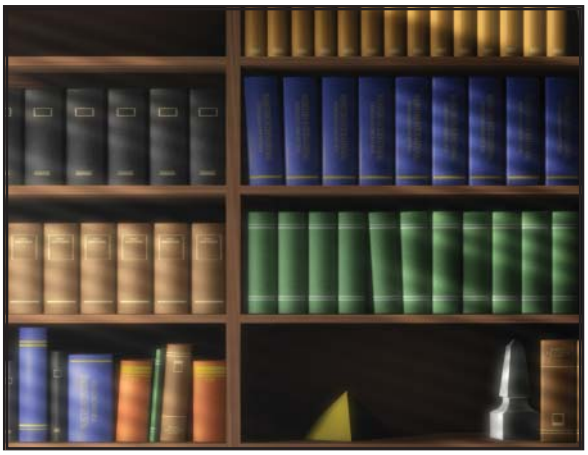
Unusual Weapon

Throwing Cards

Offenders may attempt to use the objects depicted in these photos as unusual weapons. They are regulation-size cards but made of metal. Edged on each side, these cards are designed for slashing or to be thrown at a target. These objects pose a dangerous, unexpected threat to law enforcement officers.



Book Review



Practical Police Psychology: Stress Management and Crisis Intervention for Law Enforcement *by Laurence Miller, Charles C. Thomas Publisher, Springfield, Illinois, 2006.*

Dr. Laurence Miller effectively bridges the complex and converged worlds of law enforcement and mental health. Clearly, his unique and credible knowledge enables him to author words that will ring true and familiar to both fields without, for an instant, excluding the other.

Practical Police Psychology: Stress Management and Crisis Intervention for Law Enforcement is truly a dynamic text that can serve multiple purposes. Its 304 pages, in four parts with an index, could be a field reference guide for police administrators challenged with understanding and finding solutions to critical events. It also could serve as a classroom textbook for those studying the stressful role of law enforcement officers in America and could just as well be a terrific introduction for those entering the police psychology profession. The book is organized in an easy-reading style. The reader will be able to quickly focus on singular topics of interest. References internal and external to the text are provided to help readers expand their knowledge on the topic if required.

Following a terrific forward, authored by the renowned psychologist and law enforcement leader Dr. James Sewell, chapter 1 provides an excellent introduction and overview of the text. The book then is divided into four main parts: Patrol and Community Policing, Critical Incidents and Traumatic Stress, Operational Stress and Crisis Management, and Police Administration and Family Life.

A chapter-by-chapter bibliography follows the text. This extensive reference source could be of great utility for those researching the field of police psychology.

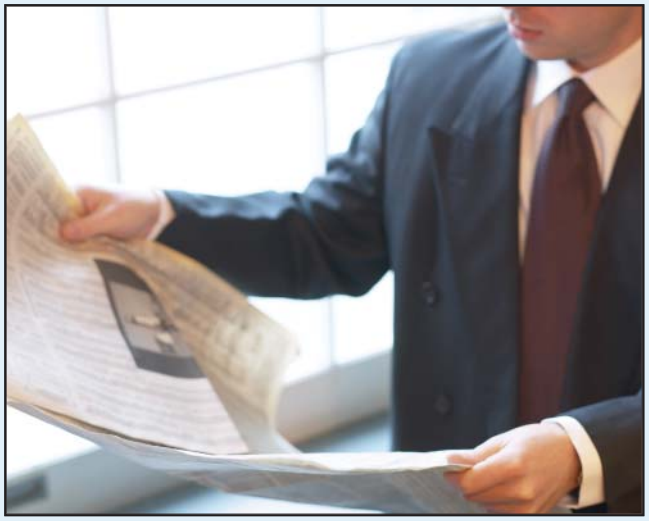
Importantly and where essential, Dr. Miller provides examples of interactive dialogue within the context of critical topics. For example, the reader will discover insights regarding appropriate communication while engaged in suicide prevention and negotiating with a subject who is mentally ill.

Readers will visit and revisit the writings contained in this fine police psychology text. Laurence Miller's credible and clearly written message stands as an operational tool for both law enforcement and mental health practitioners. *Practical Police Psychology: Stress Management and Crisis Intervention for Law Enforcement* is truly a significant contribution to this discipline.

Reviewed by
Stephen R. Band, Ph.D.
Retired FBI special agent
and former chief of the
Behavioral Science Unit
at the FBI Academy

The Community Partner Editorial
A Public Relations Strategy

By Daniel P. Hoffman



© Photos.com

Congratulations! You have just become the chief law enforcement officer for your agency. You possess a highly trained, technically proficient complement of sworn officers, as well as an exceptional civilian support staff. However, you must address a significant challenge. For the past several years, your department often has been criticized as aloof, uncaring, and out of touch with community concerns. In response, you want to cultivate a more positive image with your citizenry.

As a relatively new police chief, I faced a very similar situation. While I do not pretend to offer a magic solution for all of your agency's problems, I have developed and employed a somewhat unique, proactive strategy that has proven effective in its first 2 years of use. As my agency has done, your department also can work with your local print media to implement this technique—the community partner editorial—and enjoy the benefits it offers.

IDENTIFYING THE STRATEGY

The community partner editorial is a *pair* of companion pieces written to address the same topic of concern. As the chief law enforcement officer in your community, you should plan to serve as the primary author in these pairings. Depending on the size and layout of your local newspaper, you likely will have 500 to 750 words to address a topic that you have identified as a relevant community concern. The second editorial, of roughly equal size, will be written by another author willing to participate. This individual may be any appropriate community stakeholder, although you usually will find that higher-profile persons (e.g., a prominent business owner or director of a community service program) will prove more effective. This partnership results in a highly visible pair of related editorials, from both a local law enforcement and a supporting community entity, that will address a topic of public concern in an organized, concerted fashion.

Chief Hoffman leads the Fairbanks, Alaska, Police Department.

GETTING IT ESTABLISHED

To employ this strategy, you must actively seek out and gain cooperation from the local newspaper. Issues relating to the police, crime, and public safety are of paramount concern in any community and often provide a significant amount of a daily newspaper's coverage. And, you need to remember that *both* the media and the police must cultivate a positive relationship; each entity thrives on this partnership. As such, you may find the staff of your local newspaper quite flexible when approached with a new idea.

As a chief or sheriff who wishes to employ this strategy, you should request to meet with the publisher or editorial board. You must be willing to acknowledge some of your department's past shortcomings, particularly in the area of public communication. Once they become convinced of your sincerity in wanting to make necessary improvements, ask them to provide you with space for a periodic guest editorial so that you may address issues of public safety and community concern. If the newspaper responds favorably, take the extra step and ask for a *double* editorial slot, explaining that you wish to include companion pieces in support of your own editorials. Be sure to add that you will work with your participating partners to ensure the coordinated, timely submission of both pieces.

> **"The community partner editorial is a *pair* of companion pieces written to address the same topic of concern."**

When I had such a meeting with my local newspaper's editorial board, I was very open in discussing my motivations. I expressed that many people in the community had voiced concerns over a perceived disconnect with their police department and that I wanted to try to improve this relationship. Further, I explained that the visible pairing of these editorials would graphically illustrate that my agency was listening to and working with other stakeholders. This message represented a vital part of our overall corrective strategy. Fortunately, the editorial staff was cooperative and willing to indulge this request.

PUTTING IT INTO PRACTICE

After gaining the cooperation of the local newspaper, you then can start identifying topics—most likely one per month—that need to be addressed within your community. At times, as in the wake of a natural disaster or in the aftermath of a noteworthy criminal incident, these subjects may prove obvious. Or, perhaps, a slow pace of events in your community may allow you the luxury of using this process as a proactive planning tool. Also, as is the norm with most chiefs and sheriffs, you likely participate in countless meetings and serve on numerous advisory boards. Topics of concern and discussion that have arisen on these occasions can provide excellent source material for these newspaper editorials.

However, you also should remain flexible in your planned editorial schedule. For instance, a high-profile event in your community that necessitates your immediate response could interrupt a 2- or 3-month series of pieces that you planned to run in sequence. These situations also highlight the importance of nurturing the continuing relationship with the newspaper's staff as, when such events arise, you will feel comfortable contacting them as soon as possible to make arrangements for the piece. If you have shown responsibility and consistency in fulfilling your past editorial requirements, you should not have a problem securing the column space.

Once you have identified a topic of focus, you should immediately start thinking about an appropriate author to ask to write the

companion piece to your editorial. Do you plan to write about your department's decision to place school resource officers in area high schools? A supportive piece from your school board president or parent-teacher organization representative would be appropriate. Do you want to address a serious increase in residential burglaries? Perhaps, a companion editorial from a local homeowner's insurance company or Neighborhood Watch group could address additional crime-prevention strategies. Is a major event coming to your community, one that will strain the limited resources of your department? You should seek companion editorials from other stakeholders, showcasing the cooperative efforts being undertaken in preparation for your delivery of coordinated services.

I have yet to be turned down when making these requests. Knowing that some people are more comfortable with writing than others, I always offer to write my editorial first, providing it to the companion author for review and critique. I then let the individual know that, if they wish, they may simply "piggyback" on what I have written. In my experience, nearly all companion authors, without me asking them to do so, have sent me their completed versions for similar editorial advice and input. This process nearly always results in having two editorials written closely in concert, complementing one another.

"...I believe you will quickly begin to experience benefits similar to the ones I have encountered."

ENJOYING THE BENEFITS

Hopefully, your local newspaper will agree to provide you with sufficient column space to run a periodic pairing of editorials. If so, and you start actively planning your monthly editorial calendar, I believe you will quickly begin to experience benefits similar to the ones I have encountered.

Demonstration of Community Partnerships

When readers in your city, town, or county see an editorial authored by you with a supporting piece written by another stakeholder, it sends two concurrent, powerful messages. First, the public sees your awareness of the issue and that you cared enough to take the time to address it in a community forum. Second, through the pairing of an appropriate partner, they come to realize that their police department is not operating in a vacuum but, rather, actively working with others in the community to address issues and solve problems.

Improved Communication with Stakeholders

Another distinct advantage of employing this strategy is that, as you obtain the participation of your editorial partners, you are engaging a wide variety of community members. When you identify a topic of concern that needs to be addressed, the partner-editorial format forces you to think about others affected by the issue and who would be an appropriate partner to help focus on it. Through this engagement, you will find yourself talking with those members of the community whom you may have had little contact with in the past. Additionally, you will find that these stakeholders are usually flattered when asked to work with the police, resulting in enhanced relationships.

Protection from Unwarranted Criticism

Another significant benefit derived from the use of the partner editorial lies in the principle of "safety in numbers." When a police department works by itself or, perhaps, launches an initiative on its own, it may face criticism from those who ask why efforts are not being directed elsewhere.

However, when you collaborate with other prominent individuals or organizations in your community and then present your plans with the visible support of these partners in the media, critics will prove less likely to attack.

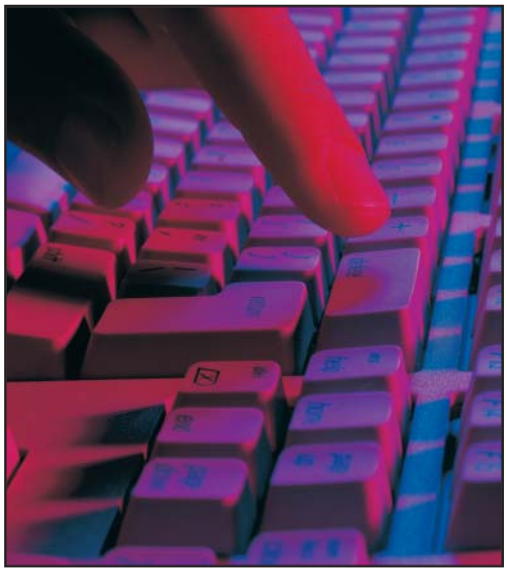
Enhanced Perception

This strategy also provides you the opportunity to look ahead, identifying oncoming issues of public concern *before* they happen. When you address these issues in collaboration with a community partner, your citizens will see that you are working proactively with others to address upcoming problems, rather than just waiting to respond to the aftermath. This will further build the community's confidence in your leadership and enhance the professional reputation of your agency.

CONCLUSION

The use of the community partner editorial can present you with an effective method to build communication within your agency's jurisdiction and to enhance your department's reputation with the public. By and large, most people support their local police departments. As these citizens go about their daily lives, they want—and need—to believe that the officers in their communities have their best interests at heart. When they see their local police chief or sheriff actively collaborating with other stakeholders to address issues of community concern, it reaffirms for them that the police are living up to their mission and responsibilities. Likewise, they are more likely to feel that officers rightly have the public's trust. ✦

The *Bulletin's* E-mail Address



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

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

Search Incident to Arrest in the Age of Personal Electronics

By MICHAEL J. BULZOMI, J.D.

Ingrained early in law enforcement professionals' training and reinforced throughout their careers is the authority to conduct a thorough search of an arrestee incident to a lawful arrest. Over 30 years ago in *United States v. Robinson*,[1] the U.S. Supreme Court held that law enforcement officers may search an arrestee and items within the arrestee's possession incident to an arrest. The Supreme Court determined that the interests of officer safety and preservation of evidence outweigh the arrestee's privacy interests, rendering such searches reasonable under the Fourth Amendment.

The search incident to arrest doctrine appears simple on its face; however, today's technology complicates the matter, presenting officers with unique challenges. Today, it is not uncommon for officers to come across an array of personal electronic devices (cellular telephones, pagers, mp3 players, flash drives, personal digital assistants, and laptop computers) while conducting a search incident to arrest. These devices include electronic storage capabilities, and evidence of criminal activity may be found within the information stored on them. This article addresses the scope of the authority to search incident to arrest within the context of the electronic technology encountered today.

THE AUTHORITY TO SEARCH INCIDENT TO ARREST

The authority of law enforcement officers to conduct a warrantless search incident to a custodial arrest has long been

recognized. The Supreme Court in *United States v. Robinson*,[2] explained that a case-by-case justification for searching an arrestee is not required for a search incident to arrest to be reasonable under the Fourth Amendment. This means that officers do not need some level of suspicion or probable cause that a search will be productive. All that is necessary is a lawful custodial arrest. In *Robinson*, Officer Richard Jenks, a 15-year veteran of the District of Columbia Metropolitan Police Department, observed Robinson driving a 1965 Cadillac. Officer Jenks, as a result of an encounter with Robinson 4 days earlier, was aware that Robinson was driving despite having his license recently revoked. Officer Jenks decided to pull over the vehicle and arrest Robinson because he was now facing jail time.

Once Robinson was placed under arrest, Officer Jenks initiated a search of his person. He felt something in Robinson's coat pocket but could not discern what it was and decided to retrieve the object, a cigarette package. Officer Jenks could tell that the package did not contain cigarettes but was uncertain as to what was in it. Officer Jenks opened the package and discovered gelatin capsules of heroin, which was admitted into evidence at Robinson's trial resulting in his conviction.

The Court of Appeals for the District of Columbia Circuit reversed Robinson's conviction, holding that the heroin introduced in evidence had been obtained as a result of a search that violated the Fourth Amendment. The appeals court found that the search of the cigarette package was not justified as a search incident to arrest because there was no need to search Robinson for weapons based on the underlying offense that led to this arrest. Also, search for evidence was not justified because there would not have been any evidence of such a crime (driving without a valid driver's license) on Robinson's person.

The Supreme Court reversed the appeal, concluding that the search was reasonable under the Fourth Amendment as incident to a lawful custodial arrest. The Court stated that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment. This exception is divided into two phases. The first is that a search may be made of the arrestee's person by virtue of the lawful arrest. The second is that a search may be made of the area within the control of the arrestee.

The Court further stated that the authority to search an arrestee, incident to a lawful custodial arrest, while based upon the need to disarm and discover evidence, does not depend on what a court later may decide was the probability in a particular arrest situation that weapons or evidence, in fact, would be found upon the person of the suspect. Further, such a

> ***"The courts have allowed extensive searches of information stored in the written medium discovered during searches incident to arrest."***

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

search is not limited to evidence of the crime a person is arrested for but includes evidence of any crime.

The Court explained that a custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; because that intrusion is lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest that establishes the authority to search. The Court held that in the case of a lawful custodial arrest, a full search of the person and the area within the arrestee's immediate control is a reasonable search under the Fourth Amendment.

PLACE AND TIME LIMITS ON AUTHORITY

The Supreme Court has limited the spatial scope of the search incident to arrest to the area within the arrestee's immediate control.[3] This is generally limited to the area within which the arrestee could gain possession of a weapon or destroy evidence and is commonly referred to as the lunge area. The search of this area is permitted even when the defendant is in handcuffs or officers have otherwise restricted the arrestee's movement.[4]

In addition, consistent with the underlying rationale of the search incident to arrest, the Supreme Court has held that the search of the area within the arrestee's immediate control must be conducted contemporaneous to the arrest. In *United States v. Chadwick,*[5] law enforcement officers found a footlocker in the area where the accused had been arrested. Officers removed the footlocker and took it back to the police station to be searched. The Court held that "once officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest."[6] In such cases where an item is found near the arrestee and the arrestee is no longer present or the item has been seized and removed from the scene of the arrest, a search warrant would be required before a lawful search of the property could be made.

> ***...the spatial scope of the search incident to arrest [is limited] to the area within the arrestee's immediate control.***

The time limits are less burdensome for officers when items to be searched are immediately associated with the arrestee. For example, in *United States v. Edwards*,[7] the Supreme Court found that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention."[8] In *Edwards*, the clothes of the arrestee were searched for evidence of the crime the accused had been arrested for after the accused had been incarcerated in the local jail. The Court reasoned that as long as the administrative process incident to the arrest and custody had not been completed, a search of effects seized from the subject's person is still incident to the arrest and, therefore, permissible.

ELECTRONIC TECHNOLOGY

With the fundamental principle of the search incident to arrest as described above as the backdrop, officers must now apply this principle to the myriad of electronic gadgets discovered when making arrests. Lower courts have addressed the lawful scope of the search incident to arrest with respect to

electronic technology, such as pagers and cellular telephones, and have relied upon *Robinson* to guide their determination of the reasonableness of law enforcement actions in retrieving stored information within devices carried by the arrestee.[9] The extent to which these principles extend to electronic devices that have the capacity to store massive amounts of information, as opposed to an item like a wallet or briefcase, is questionable.

Pagers

In *United States v. Chan*,[10] the District Court of the Northern District of California denied Chan's motion to suppress information obtained from the activation of a pager's memory found as the result of a search incident to Chan's arrest. Chan was arrested as part of a DEA buy-bust operation involving heroin. Chan's coconspirator, Ma, was in a hotel room with a DEA undercover agent when he made a call to page an unknown individual, later determined to be Chan. Chan returned the page by phoning the room and received instructions concerning the delivery of the heroin. Chan was told to bring one package of cigarettes to the motel parking lot where Ma would wait for him. Ma left the room and later returned with a bag of heroin. Agents observed Chan delivering the heroin to Ma in the parking lot as instructed and subsequently arrested him.

A pager was found on Chan subsequent to a search incident to his arrest. The memory of the pager was activated and the motel room phone number and room number were observed stored in the memory. The retrieval of this information was challenged by Chan as an unlawful search under the Fourth Amendment.

Chan claimed that the pager is a container that requires a search warrant to open. The district court found that the general requirement for a warrant prior to the search of a container does not apply when the container is seized incident to an arrest.[11] Given that the search of the pager's memory was conducted contemporaneous to the arrest, the search was determined to be reasonable.[12]

Cellular Telephones

Cellular telephones are another electronic device regularly found on the person of the arrestee or within the arrestee's immediate control. *United States v. Finley* examines treatment of cellular telephones within the context of searching incident to arrest.[13] In August 2005, DEA agents and officers from the Midland, Texas, Police Department observed the purchase of methamphetamine by two males in a van at a truck stop in Midland, Texas. The purchaser, a police cooperative, paid for the methamphetamine with marked currency. A traffic stop of the van was made approximately 5 miles from the truck stop. The van was searched and the marked bills were recovered, as well as methamphetamine and drug paraphernalia in a pill bottle

with the name Finley on its label.

Finley was the name of one of the two males who had occupied the van and was subsequently arrested. A cellular telephone was taken from Finley during a search incident to his arrest. Finley and his coconspirator were transported to the coconspirators home, which officers were searching pursuant to a search warrant. During the search of the home, the memory of the cellular telephone found on Finley was searched to include telephone activity information and text messages. Several text messages appeared related to narcotics use and trafficking. This information later was used in court against Finley who was found guilty of possession with intent to distribute methamphetamine.

Finley appealed his conviction contending, among other things, that the telephone activity information and text messages retrieved from the cellular telephone should not have been used against him as they were seized in violation of the Fourth Amendment.

The Fifth Circuit Court of Appeals found that Finley had standing to challenge the retrieval of the cellular telephone call records and text messages as he had an expectation of privacy in the contents of the cellular telephone. However, the appeals court determined that the search was lawful as within the scope of a lawful search incident to arrest.

Finley conceded that the seizure of the cellular telephone was lawful as consistent with the search incident to his arrest. However, he argued that the search of the phone itself was an unlawful search of a closed container requiring a search warrant. The appeals court disagreed, holding that officers were permitted to search Finley's cellular telephone pursuant to his arrest for the purpose of preserving evidence and discovering weapons and instruments of escape. The appeals court further advised that this search authority includes searching closed containers on the arrestee's person and those within the arrestee's reach.[14] Furthermore, consistent with the Supreme Court's ruling in *Edwards*, as the cellular telephone in this case was found on the person of the arrestee and not in the area around the arrestee, the search of the phone need not have occurred contemporaneously to the arrest or at the time of arrest but simply incidentally to the arrest or later at the police station as time permitted. The appeals court opined that the fact that the cellular telephone was not searched immediately after the custodial arrest did not change the validity of the search. Finley's conviction was upheld.

Reasonableness

The courts have allowed extensive searches of information stored in the written medium discovered during searches incident to arrest. This includes

the searching of the entire contents of an arrestee's wallet,[15] photocopying the contents of an address book seized during a search incident to arrest and found on the person of the arrestee,[16] and examining the contents of a brief case located near the arrestee.[17] Whether this degree of thoroughness allowed in the finite paper context would apply to searching the massive amount of data that can be stored virtually within such devices as personal digital assistants, laptops, and zip drives is dubious. If law enforcement officers can search traditional containers and seize the paper within, an argument exists that the electronic storage devices should be treated the same. However, it must be remembered that any search under the Fourth Amendment must be reasonable. The vastly different storage capacities and the fact that it may take days to examine the contents of electronic storage devices as opposed to a few moments to photocopy the contents of a wallet may lead courts to steer away from traditional search incident to arrest principles. Furthermore, enhanced privacy protections, such as the use of passwords, also should be considered when addressing the reasonableness of searching without a warrant. Given the uncertainty in this area, proceeding with a search warrant when possible for the more complex electronic storage devices is advisable.

STATUTORY PROTECTIONS AFFORDED COMMUNICATIONS

Further complicating this area is the applicability of statutory protections afforded wire and electronic communications at the federal and state level.[18] The statutory provisions generally prohibit "intentionally intercept[ing]...any wire, oral, or electronic communication" unless the intercept is authorized by court order.[19] To understand what it means to intercept a communication, a person must examine the relevant statutory definitions. Interception means "the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device."[20] An electronic communication is "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system...but does not include...any wire or oral communication...."[21] Thus, intercepting an electronic communication means acquiring the transfer of data simultaneous with the original transmission of the data. Electronic storage means "any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof...."[22]

> ***Congress modified the definition of wire communication to...ensure identical treatment of stored electronic and wire communications.***

According to these definitions, the term intercept would not apply to electronic communications when they are in electronic storage.[23] On the other hand, the use of a clone pager to simultaneously receive the transmission from the pager's service provider to the target pager is an interception of a communication and, thus, subject to extensive statutory oversight and requires an extensive court order. However, the courts have determined that accessing electronic messages transmitted to the device is not an interception of a communication within the meaning of electronic surveillance statutes.[24]

Prior to Congress amending the electronic surveillance statute in 2001, the definition of wire communication included

any stored wire communication.[25] Accordingly, the retrieval of stored voice mail was regarded as an interception of a wire communication, requiring a court order consistent with Title III. However, Congress modified the definition of wire communication to remove the reference to its stored form and included language in other provisions to ensure identical treatment of stored electronic and wire communications.[26] Accordingly, if a cellular telephone is seized incident to arrest and officers determine there is stored voice mail, officers must proceed consistent with the mandates of statutory protections afforded stored wire and electronic communications *if* the acquisition of the stored communication occurs via a provider of an electronic communication service, as opposed to simply having access through the device itself.[27]

CONCLUSION

Technology continues to progress and present challenges to officers in applying the constitutional limitations that protect the privacy rights of all citizens. As the popularity and storage capacity of electronic devices increase, prior to examining the contents of the electronic storage device, officers may consider the old adage "when in doubt, get a warrant." ✦

Endnotes

[1] 414 U.S. 218 (1973).

[2] Ibid.

[3] *Chimel v. California*, 395 U.S. 752 (1969).

[4] *New York v. Belton*, 453 U.S. 454 (1981); *United States v. Nohara*, 3 F.3d 1239 (9th Cir. 1993) (search of bag valid as contemporaneous to arrest even when defendant under control and in handcuffs at the time of the search).

[5] 433 U.S. 1 (1977).

[6] *Id.* at 15.

[7] 15 U.S. 800 (1974).

[8] *Id.* at 803.

[9] *See United States v. Reyes*, 922 F. Supp. 818, 833 (S.D.N.Y. 1996) (holding that accessing numbers in a pager found in bag attached to defendant's wheelchair within 20 minutes of arrest falls within search incident to arrest exception); *United States v. Chan*, 830 F. Supp. 531, 535 (N.D. Cal. 1993); *United States v. Lynch*, 908 F. Supp. 284, 287 (D.V.I. 1995); *Yu v. United States*, 1997 WL 423070, at *2 (S.D.N.Y. Jul. 29, 1997); *United States v. Thomas*, 114 F.3d 403, 404 n.2 (3d Cir. 1997) (dicta). *See also United States v. Ortiz*, 84 F.3d 977, 984 (7th Cir. 1996) (same holding, but relying on an exigency theory).

[10] 830 F.Supp. 531 (N.D. Cal., 1993).

[11] *See Belton*, 453 U.S. at 460-61, 101 S. Ct. at 2864.

[12] *See also United States v. Ortiz*, 84 F.3d 977 (7th Cir. 1996); *United States v. Lynch*, 908 F. Supp. 284 (D. Virgin Islands 1995).

[13] 477 F.3d 250 (5th Cir. 2007).

[14] Citing *New York v. Belton*, 453 U.S. 454, 460 (1981).

[15] *See*, e.g., *United States v. Castro*, 596 F.2d 674, 676 (5th Cir. 1979); *United States v. Molinaro*, 877 F.2d 1341, 1347 (7th Cir. 1989).

[16] *See United States v. Rodriguez*, 995 F.2d 776, 778 (7th Cir. 1993).

[17] *See*, e.g., *United States v. Johnson*, 846 F.2d 279, 283-84 (5th Cir. 1988); *United States v. Lam Muk Chiu*, 522 F. 2d 330, 332 (2d Cir. 1975).

[18] Title III of the 1968 Omnibus Crime Control Act (18 U.S.C. 2510-2522) establishes rules and procedures governing electronic surveillance. In 1986, Congress passed the Electronic Communications Privacy Act (ECPA) in the face of technology not covered originally in Title III.

[19] 18 U.S.C. §§ 2511(1)(a).

[20] 18 U.S.C. §§ 2510(4).

[21] Unlike the definition of wire communications, electronic communications do not include any electronic storage of such communication [s]. *See* 18 U.S.C. § 2510(1) (definition of wire communication). 18 U.S.C. § 2510(12).

[22] 18 U.S.C. § 2510(17).

[23] One court concluded that the search of a pager seized incident to arrest implicates Title II of the ECPA (18 U.S.C. 2701-2711), which governs access to and dissemination of information within the possession of an electronic service provider. *See United States v. Reyes*, 922 F. Supp. 818 (S.D.N.Y. 1996). In *Reyes*, the court concluded that retrieving messages from within a pager constitutes accessing stored communications within the meaning of Title II. However, it further concluded that obtaining a search warrant, as required by the statute, was not necessary because an exception to the warrant requirement existed. *Reyes* at 837.

[24] *Supra* note 9.

[25] Section 209 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

[26] 18 U.S.C. § 2703.

[27] *Supra* note 22.

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

The Bulletin Notes

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

Sergeant Kinzer

Ranger Fisher

Sergeant David Kinzer of the Fayetteville, West Virginia, Police Department and U.S. Park Ranger Randy Fisher of the National Park Service responded to a report of a man contemplating suicide on a tall bridge. While state troopers closed the bridge to traffic, Ranger Fisher and Sergeant Kinzer calmly negotiated with the individual who would not allow them to approach him. After approximately 20 minutes, they persuaded the man to speak with his girlfriend on a cellular phone that Ranger Fisher had placed on the pavement. When the individual tried to retrieve the phone, Sergeant Kinzer and Ranger Fisher quickly apprehended and subdued him before he could reach the guardrail. The despondent man had thrown himself out of his girlfriend's car after an argument and walked to the bridge to kill himself.

Lieutenant O'Keeffe

Early one morning, Lieutenant Kevin O'Keeffe of the Beaverton, Oregon, Police Department was off duty in his home and smelled smoke. After walking outside, he noticed the glow of flames blocks away. Quickly, he drove to the source of the glow and saw that the rear of a residence was engulfed in flames. Banging on the door, he woke a woman who said that her wheelchair-bound husband was stranded in bed at the rear of the house. Together with a neighbor, Lieutenant O'Keeffe entered the burning residence and rescued the disabled man.

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 209, Quantico, VA 22135.

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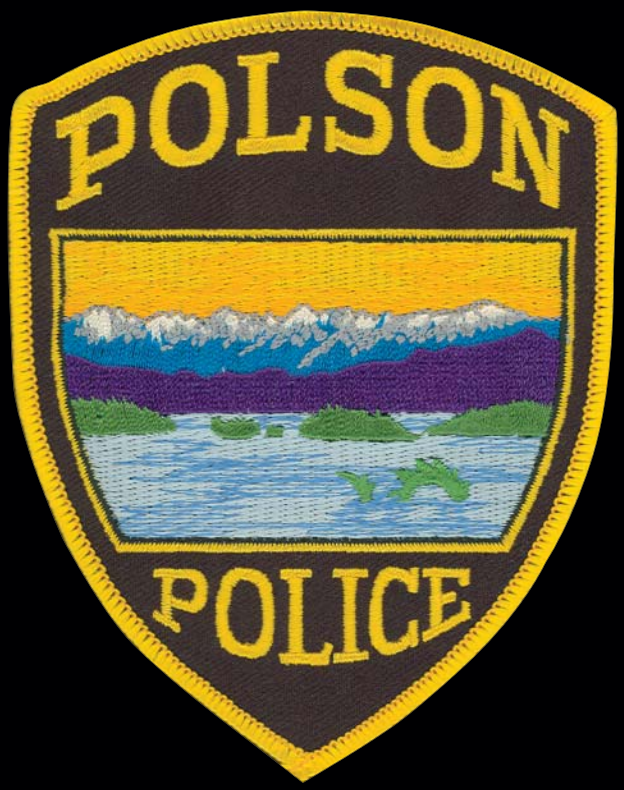
Patch Call

The patch of the Magnolia, Arkansas, Police Department features a depiction of Southern Arkansas University and symbols representing the four major industries—oil, chemical, aluminum, and timber. The magnolia blossom is symbolic of the city itself.



Polson, Montana, is located on Flathead Lake, the largest natural freshwater lake west of the Mississippi River. The patch of its police department features this body of water, the snow-capped Mission Mountains, and the Flathead Lake Monster.