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Stand and Deliver
Cross-Examination Strategies for Law Enforcement

By THOMAS R. STUTLER, J.D.

Photo © Phil Thompson

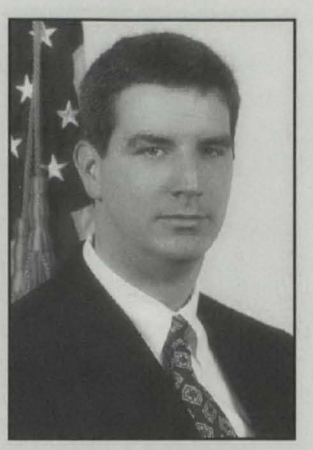
Courtroom dramas portrayed in the movies or on television often pit crafty defense attorneys against law enforcement officers who seem to have spent their entire careers on the witness stand. Their unimpeachable testimony stands up to grueling cross-examination, and the suspect goes to prison for life.

In reality, over the course of their careers, most law enforcement officers rarely testify during actual trials. Still, when they do, they are considered expert witnesses whose credibility can make, or break, a case. Knowing this, defense attorneys attempt to undermine their credibility by challenging everything from their investigative techniques to their personal belief systems.

These cross-examination strategies are not new. Yet, law enforcement officers routinely stumble on the witness stand because they do not anticipate the defense's questions. Law enforcement officers should consider five general areas before, during, and after investigations to limit the defense attorney's ability to question their findings during cross-examination.

KNOWING AND APPLYING THE LAW

Simply put, in order to enforce the law, officers need to know the law. While they will develop a better understanding of a particular law as a case progresses, officers need a solid foundation from the start. They must know the elements that constitute the law in order to obtain the evidence required to convict the



> ***"Law enforcement witnesses who display a thorough understanding...of the law garner favor with the judge, the jury, and the defense attorney."***

Formerly an assistant state's attorney in Pinellas County, Florida, Special Agent Stutler now serves in the FBI's San Francisco, California, office.

suspect. This may mean, for example, proving that a person accused of driving under the influence was impaired *while* operating the motor vehicle.

In addition, officers should note the definition and understand the effect of key words found in the text of the law. Some words change the interpretation of a statute. For instance, the law says that officers can use deadly force when faced with an imminent threat. How the courts define "imminent" can mean the difference between justified and unjustified force.

Officers can make a big mistake by confusing two little words: "and" and "or." If, for example, a law contains several elements separated by the word "and," all of the elements must be proven to obtain a conviction. Conversely, the word "or" requires that only one of the elements be proven.

Sometimes, the legal definition of a word differs from its meaning in everyday context. To the average person, the word "shall" is a fancy way of saying "will." In the law, however, it creates a duty for a law enforcement officer to act.

Knowing the law goes hand in hand with understanding its application. Some important constitutional guidelines that dictate how the police gather evidence include search and seizure laws and the *Miranda* ruling. Officers unfamiliar with the full scope of these restrictions risk seizing evidence or obtaining confessions that will be suppressed later. When in doubt, officers should consult their legal advisors or local prosecutors.

In addition to following the law, officers should adhere to departmental policy. First, department regulations usually reflect the law. Second, failure to follow proper procedures may be grounds to suppress evidence. Finally, defense attorneys try to discredit law enforcement witnesses by emphasizing that they failed to follow their departments' rules.

Every day in the field, law enforcement officers conducting criminal investigations are called upon to make quick legal decisions. These decisions are later scrutinized in the sterile environment of the courtroom. Law enforcement witnesses who display a thorough understanding and well-founded application of the law garner favor with the judge, the jury, and the defense attorney.

Judges give much more latitude and credence to the answers of these officers. Jurors generally find their evidence reliable and credible. And, defense attorneys second-guess their own cross-examination strategies instead of the officers' investigative techniques.

SEPARATING FACT FROM OPINION

Defense attorneys also may try to discredit law enforcement witnesses by blurring the line between fact and opinion. Usually, they establish the foundation for this strategy during jury selection.[1] A typical dialogue between a defense attorney and a potential juror may go something like this.

> Attorney: Do you know the difference between fact and opinion?
>
> Juror: Yes.
>
> Attorney: If I told you that the sun rises in the east and sets in the west, is that fact or opinion?
>
> Juror: Fact.
>
> Attorney: Correct. If I told you that my best friend was nicer than your best friend, is that fact or opinion?
>
> Juror: Opinion.

This exchange appears innocent but could prove damaging during the trial when the defense attorney discounts the law enforcement officer's testimony as opinion, not fact. This frequently occurs during DUI trials. If the defendant refuses to take Breathalyzer and field sobriety tests, the testimony of the arresting officer may be the prosecutor's only evidence. In such cases, the defense will argue that without corroborating tests, the defendant's condition at the time of arrest is merely the officer's opinion. With the foundation established during the selection process, jurors may find it easy to dismiss the officer's testimony.

Fortunately, officers can mitigate this defensive tactic by adhering to certain principles. First, they should work with the prosecutor during the investigation and while preparing for trial. Such a relationship usually can alleviate most of the pitfalls associated with the fact-versus-opinion defense.

Second, officers must know which statements are facts, which are opinions, and the difference between the two. Distinguishing between fact and opinion becomes particularly important on the witness stand. Although defense attorneys try to cast doubt on officers' observations by labeling them "opinion," judges often admit them as factual evidence, based on officers' training and experience. For this reason, when testifying, officers should state their opinions relating to the case as if they were facts.

Finally, and perhaps most important, even if the defense repeatedly makes them distinguish between the facts of the case and their opinions, officers should remain calm and not become defensive. They should see this tactic for what it is: the defense's attempt to discredit them by making them appear argumentative. And, if the defense attorney is right, officers should not hesitate to affirm this.

GETTING IT RIGHT ON PAPER

When searching for material to use during cross-examination, defense attorneys usually turn to the official paperwork. Law enforcement officers can prepare by reviewing their paperwork from the defense attorney's point of view. In general, all of the information contained in an investigative report can be divided into two categories: objective and subjective.

> ***"...officers should note the definition and understand the effect of key words found in the text of the law."***

Objective Information

Objective information includes such verifiable facts as the subject's address, the color of a vehicle, and the date and time of the incident. Based on the belief that it is easier to observe and document objective facts than subjective information, defense attorneys often focus on this area. After all, if officers cannot get the facts right, how can they be trusted to draw accurate conclusions? By calling attention to discrepancies in the officer's report, the defense attorney tries to convince the jurors that they cannot trust the officer's testimony.

Clearly, officers must ensure the accuracy of their reports and never include information that they have not verified. Yet, a defense attorney can trip up even the most diligent officer. For example, defense attorneys know that officers usually estimate time and distance on their reports. After verifying the exact information themselves, defense attorneys will put law enforcement officers on the stand and try to get them to estimate the numbers.

Some defense attorneys use a casual approach to elicit this information. They pretend the exact answer is not important, that the officer should merely guess. More experienced attorneys will bait officers by questioning their ability as well-trained professionals to give accurate answers. Whatever their method, their motives are clear. They want the officer to give an opinion on a fact they have already verified. By doing so, they can contradict and, in turn, discount the officer's testimony.

To avoid these pitfalls, officers should double-check all of the facts and let someone else review them for accuracy. When estimating measurements, officers should write "approximately" in the report. On the witness stand, they should be prepared to explain how they

derived these figures. And, when unsure of an answer, officers should simply respond, "I don't know."

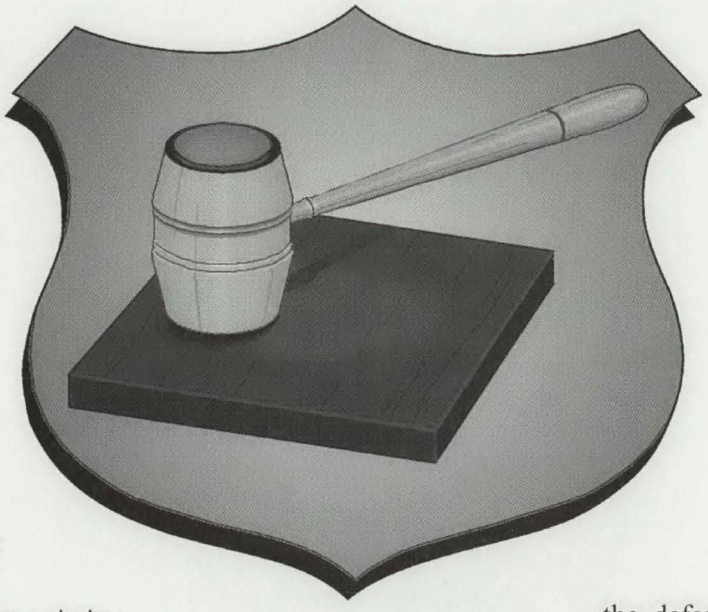
When comparing multiple documents, officers should use a checklist to make sure the answers are consistent. The difference between writing 6:01 p.m. on a supplemental report and 6:05 p.m. on the original may seem insignificant, but the defense attorney can be counted on to magnify such discrepancies in court. Because it can mean the difference in the verdict, officers should verify every piece of information, even if it requires an extra phone call or yet another trip to the communication center. Furthermore, officers who spot errors or inconsistencies before or during the trial should bring them to the prosecutor's attention.

Subjective Information

The observations an officer makes at the scene of an incident, such as the demeanor of a DUI suspect or the extent of injuries to a crime victim, constitute subjective information. Unlike the length of a skid mark, this information cannot be measured. Still, during cross-examination, the defense attorney will attempt to create reasonable doubt by showing that several conclusions could have been drawn from the same agreed-upon facts.

Subjective observations can convict criminals. The key is witness credibility, which officers can ensure through accurate report writing.

Yet, "accurate" does not mean "exact." Although it is virtually impossible to generate a written report that exactly captures all of the observations made during an investigation, the defense will try to get officers to say that it can be done. Officers who know the purposes of written reports and can explain them during cross-examination will diffuse the defense attorney's efforts.



The following facts apply to all written reports.

1. They are made at or about the time of an event for investigative purposes, and everything contained in them is accurate to the best of the officer's knowledge at the time it was written.
2. The statements of others reflect what the officer heard at the time, even though someone else might have heard otherwise or witnesses may have changed their opinions since giving their statements.
3. Reports serve as records of events so officers can speak intelligently about them later without having to recall them from memory.

Law enforcement officers can detect when defense attorneys are about to use their paperwork against them. A common method used to accomplish this involves asking several leading questions in a row, counting on the witness to answer "yes" to all of them. The first two questions might be, "You have law enforcement training, right?" and "You learned how to make a report, right?" After getting the witness into the habit of answering "yes," the defense attorney asks a question such as, "You were taught to report everything, right?" or "You were taught to be complete, right?" If the witness answers "yes" now, the defense will point to missing information on the report as an example of the officer's ineptitude. Officers who answer "no" do not fare much better. Their departments come under fire for inadequate training. Either way, the witness loses credibility with the jury.

A better way to approach these types of questions is to answer "yes" or "no" with an explanation.[2] If asked about the completeness of their reports, for example,

witnesses should explain that the reports include every possible observation that could be made at the time.

If the judge does not allow witnesses to explain their answers, the prosecution will provide the opportunity during re-direct examination. Sometimes, waiting until later to explain a previous response has distinct advantages. First, by answering only the question asked, the officer looks professional. Second, a viable explanation offered after a few minutes, or in some cases hours, in response to an issue the defense attorney thought was important usually serves to diffuse the situation and reduce the potential value to the defense. Conversely, witnesses who respond by saying they included only the important or relevant facts make the situation worse by provoking additional argument from the defense.

ANSWERING QUESTIONS HONESTLY

When jurors evaluate evidence, they naturally consider the credibility of the witness. They may not believe witnesses who contradict themselves or do not answer questions in a straightforward manner. Unfortunately, some law enforcement witnesses think they need to win a case singlehandedly. As a result, they may change their testimony to fill in the holes they perceive other witnesses have opened. In doing so, they risk losing credibility.

Moreover, defense attorneys often attempt to prove that law enforcement witnesses hold racist or sexist views that bias their investigations. The O.J. Simpson trial showed what can happen when law enforcement officers harbor these views.

It is assumed that all witnesses, law enforcement or otherwise, take the stand with their own world views. Officers need only admit that their personal views did not affect the investigation. Even if the defense attorney uses leading questions to elicit a prejudiced response, officers should honestly answer "yes" or "no" and offer an explanation.

> ***"...officers must ensure the accuracy of their reports and never include information that they have not verified."***

GATHERING INSIDE INFORMATION

On television, defense attorneys often call surprise witnesses to clear their defendants. In reality, neither the prosecution nor the defense can put a witness on the stand without the other side knowing about it beforehand. And, fortunately for law enforcement officers, there is no such thing as a "surprise defense attorney." As a result, before the trial, officers can find out who will defend their suspect and, if possible, observe that person in court. If not, they should at least attend a similar trial.

Defense attorneys may differ in style and strategies, but as individuals, they usually use the same techniques and litany of questions to impeach officers. By watching defense attorneys in action, law enforcement witnesses can gather valuable information.

CONCLUSION

Ideally, cross-examination allows the prosecution and the defense to present to the jury all of the evidence allowable under the rules. Unfortunately, defense attorneys also use cross-examination to create reasonable doubt in the minds of the jurors, and despite predictable actions, they often succeed in tripping up law enforcement witnesses.

Fortunately, officers do not need a crystal ball to predict what questions defense attorneys will ask. Their tried-and-true methods include testing officers' knowledge and application of the law, questioning their observations, casting doubt on their reporting abilities, and attacking the integrity of their work. Armed with this information, law enforcement officers can defend themselves against the most cunning defense lawyer. Indeed, the right time for law enforcement officers to contemplate the defense's strategy is at the beginning of an investigation, not while they are sitting on the witness stand. ✦

Endnotes

[1] Depending on the jurisdiction and the nature of the case, investigators may not be permitted to observe jury selection.

[2] Before replying, witnesses should ask the judge if they can explain the answer they give to the attorney's question.

Bulletin Reports

Gun Ownership Survey

There are enough guns in private hands to provide every adult in America with one, according to a survey recently released by the Police Foundation. *Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use*, by Philip J. Cook and Jens Ludwig, provides details on the weapons and the demographics of their owners. Of the 192 million privately owned firearms in the United States, 65 million are handguns, 70 million are rifles, and 49 million are shotguns. Most gun owners in the survey were middle-aged, middle-class whites from rural areas. Forty-six percent of gun owners own them for protection against crime, and on any given day, 3 million adults carry a gun either on their person (1 million) or in their car or truck (2 million). To obtain a copy of the report, contact the Police Foundation at 202-833-1460.

Presale Firearm Checks

According to the Bureau of Justice Statistics bulletin, *Presale Firearm Checks* by Don Manson and Gene Lauver, presale background checks on potential handgun buyers required by the Brady Handgun Violence Act have stymied more than 186,000 illegal over-the-counter gun sales during the first 28 months. Of the 9 million applications to purchase firearms submitted from March 1, 1994, through June 30, 1996, an estimated 186,000 were rejected, an average of 6,600 per month. Over 70 percent of the individuals rejected were convicted or indicted felons. While the checks prevented these individuals from purchasing firearms legally, the data do not indicate whether they later obtained firearms through other means. Moreover, this report was written before the recent Supreme Court decision declaring unconstitutional mandatory background checks performed by state law enforcement officers. Until the National Instant Criminal Background Check System becomes operational in 1998, law enforcement agencies may continue to complete background checks voluntarily, and several police organizations have indicated a willingness to do so.

Presale Firearm Checks, NCJ 162787, can be obtained by calling the Bureau of Justice Statistics at 202-633-3047 or by accessing "What's new at BJS" on the BJS home page at http://www.ojp.usdoj.gov/bjs/

Crime Analysis

Whether they seek to link a suspect to a crime, determine criminal behavior patterns, or compile statistics for Uniform Crime Reports, police departments analyze crime data for a variety of reasons. Without an appropriate information management system, however, making sense of the data would prove impossible. The right system also can help investigators manage complex cases, give officers on the street direct access to vital information, allow intelligence-sharing between departments, and keep citizens informed.

A Police Executive Research Forum (PERF) publication, *Information Management and Crime Analysis: Practitioners' Recipes for Success*, presents an overview of crime analysis and, in individual chapters, provides examples of how different departments have used information technology to accomplish their crime analysis goals. The book is available through PERF at 1120 Connecticut Avenue, NW, Suite 930, Washington, DC 20036, 202-466-7820.

Reducing Stress

Law enforcement employees and their families face pressures unlike those confronting members of the general population. The organizational structure and culture of police departments, the dangerous nature of police work, budget cuts coupled with high community expectations, and other causes all put tremendous pressure on law enforcement families. Recognizing this, police departments throughout the country are implementing employee assistance programs to deal specifically with stress.

A National Institute of Justice report can help. *Developing a Law Enforcement Stress Program for Officers and Their Families*, by Peter Finn and Julie Esselman Tomz, examines the nature of law enforcement stress and offers guidance for agencies interested in implementing programs. The comprehensive report includes advice for planning, structuring, funding, and evaluating programs, selecting staff, establishing referral networks, and maintaining confidentiality, as well as tips for reducing the causes of stress within an organization. In addition to the extensive resources used in researching the report, a separate chapter details additional sources of information and referral. Several appendices provide sample documents from programs in place in other departments. For a copy of the report, NCJ 163175, contact the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20849-6000, phone 301-251-5500 or 800-851-3420. The report also is available on the Internet at http://www.ncjrs.org.

Bulletin Reports, a collection of criminal justice studies, reports, and project findings, is compiled by Kim Waggoner. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 209, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Emergency in the Everglades

The Recovery of ValuJet Flight 592

By RUSSELL FISCHER, M.A.

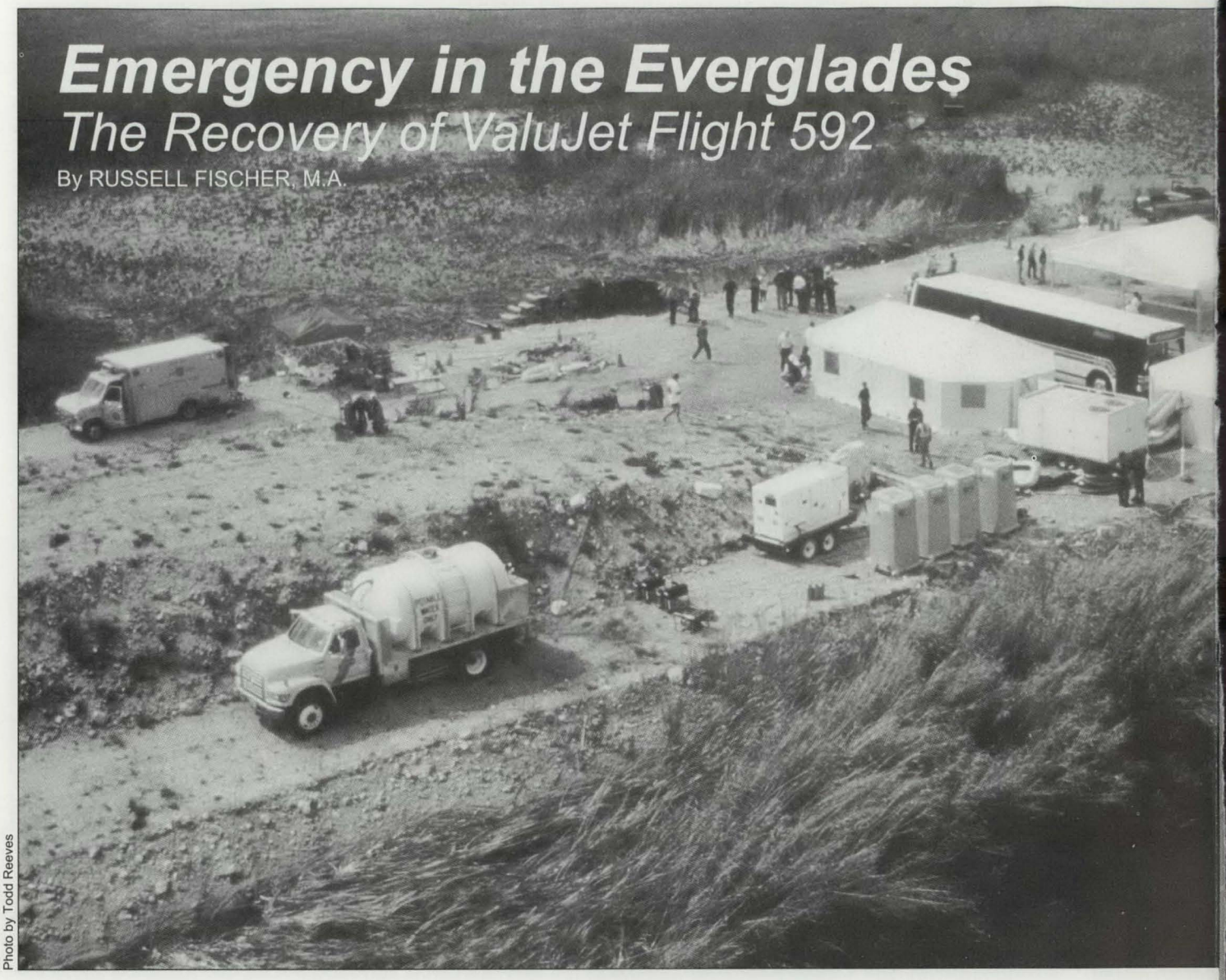


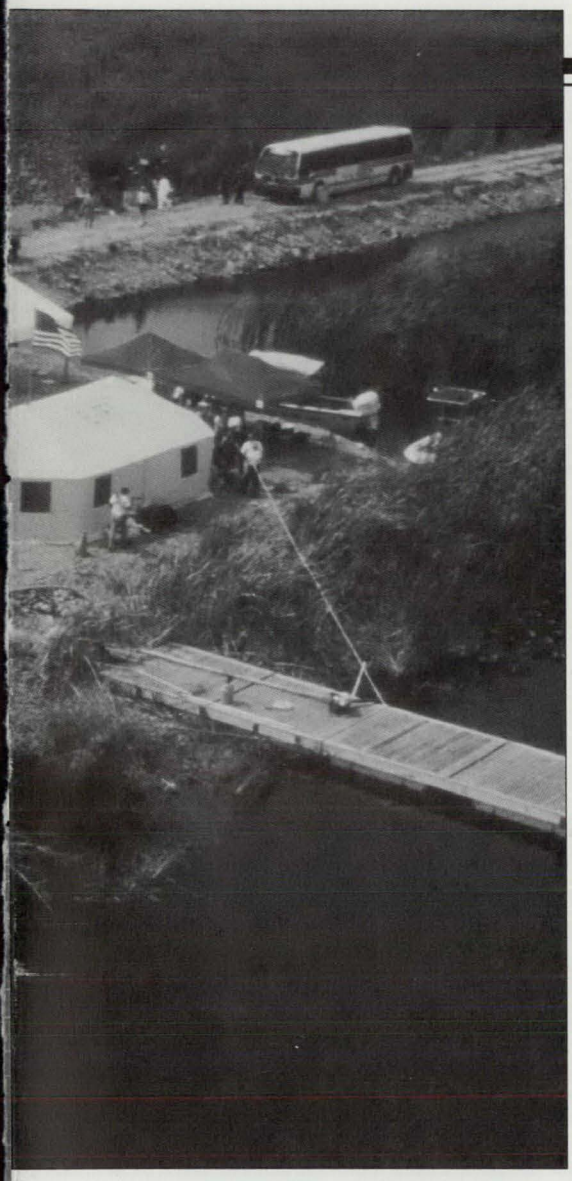
Photo by Todd Reeves

Saturday, May 11, 1996, began as many other workdays for ValuJet pilot Candalyn Kubeck and her crew. Flying a McDonnell Douglas DC 9, they left Dallas-Fort Worth Airport at 8:20 a.m. bound for Miami, the first leg of a round trip. After a stop at Atlanta's Hartsfield Airport, they landed at Miami International Airport. At 2:02 p.m., Miami's air-traffic control center cleared them for takeoff.

Shortly after taking off, as smoke filled the cabin and cockpit, Pilot Kubeck informed controllers that she needed to return to the airport. Minutes later, Flight 592 plummeted into the saw grass, muck, and underlying coral rock of the Florida Everglades. None of the 110 passengers and crew members on board survived. Pilot Kubeck's body was never recovered.

A private citizen in the area immediately notified local authorities that he had witnessed the crash of an airliner. Rescue personnel who helicoptered over the crash site described it as barely recognizable as an aircraft disaster. They could see few discernible aircraft parts and no apparent signs of life.

The desolate crash site, approximately 17 miles northwest of Miami International Airport, fell within the geographical jurisdiction of the Metro-Dade Police and Fire Rescue departments, which became



responsible for the search and recovery efforts following this aviation catastrophe. The Metro-Dade Police Department worked in concert with numerous federal, state, and local public and private agencies to accomplish this monumental task.

Initial Response

Immediately following the crash, a flurry of activity ensued. First, both police and fire department personnel established command posts. The primary command post was situated close to a main roadway that intersected a 26-mile levee. The location of the crash, however, required that a second, or forward, command post be established from which all recovery operations would be directed. This location, a 100-by-200-foot area of coral rock approximately 300 yards away from the actual crash, was chosen because the terrain presented no other immediate alternatives. It became the temporary work site for over 120 recovery workers each day.

Some 13 miles from the primary command post, the forward post marked the midpoint of the levee, which was accessible by driving along a very narrow, single-lane, coral-rock roadway. On three separate occasions during the recovery period, the drivers of vehicles traveling to the forward command post lost control of their vehicles and careened into the Everglades. A one-way trip took over an hour from the nearest access point and considerably longer if the trip was made by a vehicle other than a car. Ultimately, helicopters and boats transported personnel and supplies to this command post. This method proved a more timely and safe alternative.

During the initial response, police commanders also established a perimeter at various locations around the site to prevent unauthorized access. A police dive team helicoptered to the site to search for survivors; their only way into the muck was a crater that the jet had made upon impact. Fire department personnel also started preliminary search and support efforts. Simultaneously, Metro-Dade Police Department homicide supervisors, in tandem with employees from the medical examiner's department, outlined their plan for recovering human remains and personal effects, a laborious process that would last for 29 days.

As the last moments of daylight faded away on the day of the crash, a host of federal, state, and local public safety agencies and private sector groups who had responded to the crisis held organizational meetings to discuss their courses of action. Later that night, members of the National Transportation Safety Board (NTSB) "Go Team" arrived in Miami from Washington, DC. As the lead investigators, they gathered participating agencies together the next morning to announce their strategy for completing the investigation.

The vice chairman of the NTSB, together with the designated lead investigator, described in detail the process used to investigate aircraft crashes, which includes forming various committees, each with its own independent fact-finding assignment. Of the many committees routinely established in such matters, police administrators and recovery personnel interacted most frequently with representatives from the aircraft systems and structures committee, who reconstructed the aircraft from recovered wreckage. Additional committees included operations, human performance, maintenance records, power plant, and weather, among others.

Integrated Recovery Plan

The time-consuming recovery process, which required the expertise and cooperation of numerous organizations, began with a methodical search of the crash site, an area encompassing several hundred square yards. To accomplish this task, officers from the homicide bureau divided the crash location into four quadrants labeled A through D, respectively. With the 100-foot impact crater at the intersection of the quadrants, a series of wooden poles bearing flags placed along each axis marked the four areas to be searched.

Search team members traveled by air boat from the forward command post to the crash site. Like athletes in a relay race, when one group returned from its search, a second deployed. This repetitive and systematic use of personnel—who walked in line formation physically retrieving remains, belongings, and aircraft parts—ensured that personnel would be in the field conducting searches at all times. The number of individuals involved also allowed for recuperative time, extended shifts, and days off.

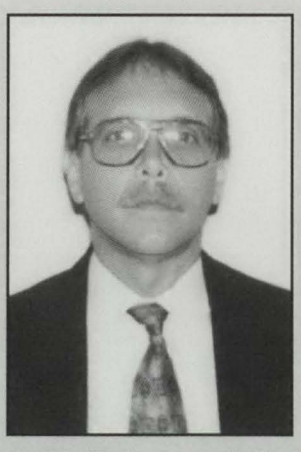
Each search group consisted of two teams of 12, with each person tasked with specific responsiblities. Members of each team included:

- Two homicide detectives, who supervised the recovery, packaging, and documentation of all items
- One crime scene technician, who photographed and documented all recovered items
- One medical examiner, who provided on-site review and further documentation of human remains
- One dive supervisor, who coordinated search patterns for the team's six divers
- One safety officer, who scanned the terrain for any hazards, including snakes, alligators, or any other visible environmental dangers.

Search teams comprised officers from Metro-Dade and other police departments, as well as employees from area public safety agencies. All team members had experience in their areas of responsibility, and many came from tactical units.

In addition to their responsibilities as members of the search team, employees from the medical examiner's department performed numerous other duties, including identifying the victims, notifying their next of kin, and passing on their belongings. According to Florida state statutes, employees from this office determine the cause of death in accident cases and perform any autopsies and laboratory examinations deemed necessary in the public interest. To help medical examiner's department staff complete their important mission, Metro-Dade officers provided the necessary supplies and arranged for the delivery and transportation of human remains and personal effects to the medical examiner's department. Ultimately, staff members positively identified 67 individuals from Flight 592.

The Metro-Dade Fire Department played a critical role in the recovery effort. As a nationally recognized Urban Rescue Task Force sponsored by the U.S. Department of State and the Federal Emergency Management Agency, the department has valuable experience with disaster response and a wealth of specialized equipment at its disposal. In addition to providing



"Like athletes in a relay race, when one group returned from its search, a second deployed."

Captain Fischer serves in the Criminal Investigations Division of the Metro-Dade Police Department, Miami, Florida. He supervised operations at the forward command post during the ValuJet recovery effort.

medical and safety-related support, the fire department furnished and set up an air-conditioned tent system, constructed docks for safe passage for air boats and larger vessels, and acquired and distributed food and water (later facilitated by volunteers, including the Red Cross, the Salvation Army, and private donors).

Air boats provided the only means of access to the crash site. State Wildlife Officers provided 2-seat models, and a private businessman volunteered large, tour-type air boats capable of seating 30 to 40 people. Police teams used these large boats to conduct their primary recovery efforts.


Photo by Todd Reeves

"...no one could enter the crash site without first donning disposable Tyvex suits, rubber gloves, face masks, and eye protection."

Safety Issues

A variety of safety issues came into play during the recovery effort. The hazardous nature of the site, in terms of aircraft fluids and fuels that saturated a relatively confined area, posed special safety challenges. At the same time, the presence of rapidly decaying human tissue in concert with the bacteria already living in the environment presented significant health hazards.[1] Members of the Field Epidemiology Survey Team from the University of Miami School of Medicine took samples on the surface and in the underlying muck at regular increments following the crash. Their analysis indicated that bacteria of human origin increased in number during the week following the crash due to decomposition of human remains, warm temperatures, and rich organic growth factors. Based on the team's findings, no one could enter the crash site without first donning disposable Tyvex suits, rubber gloves, face masks, and eye protection.

When returning from the field, personnel exited the air boats and moved to a decontamination center. At this makeshift center, fire rescue personnel spray-washed them with a chlorine solution before helping them remove their disposable garments, which workers deposited into biohazardous-trash containers. From here, individuals entered one of two air-conditioned tents to rest and recover. The restrictive nature of the clothing, combined with 85-90 degree heat and humidity made the risk of dehydration very high, and recovery team members were instructed to drink plenty of fluids. Moreover, supervisory personnel strictly monitored the amount of time workers spent physically walking among the saw grass and muck. Radio communication with the recovery relay teams was maintained, and an air boat loaded with medical supplies and personnel stood ready to deal with any medical emergencies that might occur.

Weather, in the form of fast-developing and fast-moving lightning storms, presented a unique challenge. The storms, which arose almost every afternoon, were monitored via regular reports from the National Weather Service and portable lightning meters kept on site. The canvass tents erected to serve as command and supply and food service and relaxation stations could not shield against sudden high winds and lightning from low thunderstorms. Therefore, two

"Police teams used [air boats] to conduct their primary recovery efforts."

passenger buses stationed within the confines of the forward command post area provided safe haven from the storms, which proved extremely problematic during the early part of the recovery effort. In fact, despite 12-14-hour-long days, workers logged a total of only 11.5 hours of actual recovery time in the field during the first three days because of the weather.

State wildlife officers had predicted correctly that animals and reptiles indigenous to the area would flee from the site subsequent to the crash and the spillage of tons of toxic fluids from the aircraft and, therefore, would not pose a threat to recovery personnel. Still, alligators and snakes did approach the command post from an adjacent area of the Everglades unaffected by the crash. Most left the scene after satisfying their curiosity. State wildlife officers removed those that persisted. Insects did not pose a problem due to the use of various repellents and the fact that everyone (with the exception of security officers) left the area before dark.

It became abundantly clear that sanitary conditions at the forward command post could deteriorate rapidly without an efficient plan to address them. On a daily basis, refuse associated with hundreds of disposable meals from breakfast, lunch, and dinner, along with at least 1,000 drink containers, had to be removed from the levee command post in a manner similar to the way in which it arrived: by boat, helicopter, or more rarely, by truck. Police trainees regularly removed trash from the site.

Outside contractors performed numerous essential tasks. One firm disposed of hundreds of contaminated disposable garments, gloves, and towels daily. Another supplied and serviced portable lavatory facilities. A third transported gasoline to the site to fuel boats and generators.

Finally, the mental health of the workers at the site represented a concern for all of the agencies involved. Many organizations, including the police department, the fire department, and the Red Cross, provided crisis counselors for anyone who expressed a need.

Managing the Crisis

Police operations subsequent to the initial crisis and assessment stage transitioned to establishing a management system capable of fulfilling a number of critical tasks. Metro-Dade's director appointed an incident commander to manage the police department's entire support operation. Support functions included maintaining security in and around the crash site, providing logistical support (equipment, transportation, and communication), distributing food, and conducting interagency liaison.

The department's homicide bureau established a separate and distinct system to manage the accident scene and recover human remains and personal possessions. Supervisory personnel integrated their mission through close and regular liaison with those of police department support personnel and the many public safety, government, and private sector organizations involved in the overall process.

Recordkeeping

Operation managers developed a computer database in which they regularly entered information

critical to the recovery. Using a laptop computer, they recorded every detail from personnel assignments and daily roll-call announcements to supply acquisition and inventory. As a result of keeping accurate and detailed records beginning with the day of the crash, it became relatively easy to complete an after-action report and to respond quickly and accurately to requests for information. Similarly, the database provided a means for the department to track expenses.

Media Relations

The insatiable desire of the news media to obtain timely and regular information in catastrophes of this type required specialized responses from the agencies involved. Understandably, disasters are newsworthy and generate an inordinate amount of media attention, not only from the local media, but from national and international journalists as well.

Within minutes of the ValuJet crash, journalists mobilized their resources and responded en masse to the primary command post to report the specifics of the crash. Using cellular phones as their principal mode of communication, both journalists and recovery team personnel competed for open cell lines, which were in short supply. To compensate, the fire department supplied a satellite telephone system, which guaranteed open lines and a secure means of communication for all rescue workers.

By the day after the crash, 27 news satellite trucks, as well as a multitude of other vehicles and personnel, were stationed near the operations center.

In addition to media representatives from the NTSB and the fire department, the Metro-Dade Police Department responded to media requests the first week with a 12-person staff, then reduced the number to 3. Although the NTSB held daily press briefings, news organizations directed a multitude of requests for additional information to virtually any available participant in the investigation and recovery effort.

> ***"...the police department, the fire department, and the Red Cross provided crisis counselors for anyone who expressed a need."***

The Metro-Dade Police Department's Media Relations Section was besieged with requests for interviews and live updates. And the number of one-on-one interview requests intensified after the recovery team located and retrieved the aircraft's two black boxes.

Media interest has continued beyond the termination of the recovery efforts. Citing the Freedom of Information Act, journalists continue to request reports, photographs, and videotapes that pertain to the crash, but the department finds its regular media relations staff can adequately meet these requests.

Other Considerations

During long, labor-intensive operations, money may become an important factor. Exactly who is, or should be, responsible for recovery costs for the ValuJet crash has yet to be determined, and the Metro-Dade Police Department has had to assume numerous expenses. By working with government officials and legislators on all levels, as well with insurance company and other private sector executives, police administrators may discover alternate means to finance recovery efforts for major disasters. Until then, departments with limited funds may have to enter into mutual-aid agreements with local jurisdictions to obtain the resources they need.

Conclusion

Public safety agencies have an obligation to protect lives and property and to maintain order. Critical incidents can occur at any time and may take the form of a variety of disasters. They will continue to test the preparedness of police administrators.

The crash of ValuJet Flight 592 into the Florida Everglades taxed the resources and abilities of the Metro-Dade Police Department and the numerous other agencies that worked tirelessly alongside them. But together they rose to the occasion as they unearthed what little remained of a fallen aircraft and its 110 occupants. ✦

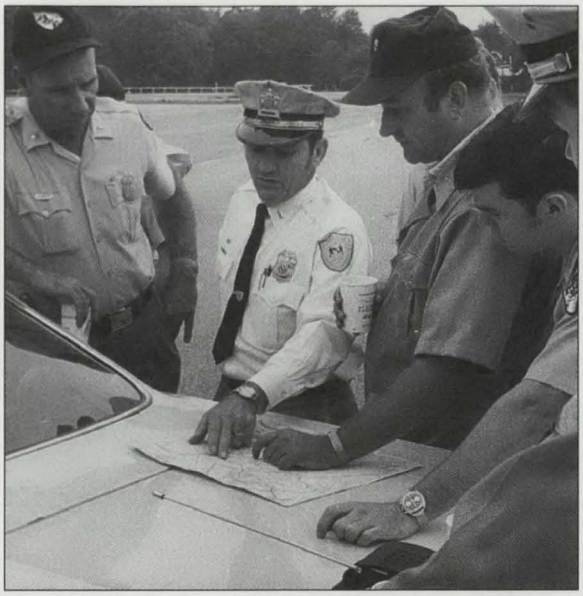
Endnote

David Taplin and Sherri L. Porcelain, *ValuJet Flight 592 Air Crash Microbial Risks to Recovery Team Health/Safety Report*, May 21, 1996.

Focus on Preparation

Incident Command Systems for Law Enforcement

By T.W. Conner



During the early morning hours of September 10, 1993, on a remote stretch of highway west of Phoenix, Arizona, the driver of a commercial bus lost control of the vehicle. As the bus rolled onto its side, the force tossed passengers around like rag dolls and threw some from the vehicle. Responding officers from the Arizona Department of Public Safety (DPS) found passengers with various injuries strewn throughout the crash scene.

Quickly assessing the magnitude of the emergency, DPS officers set in motion the Incident Command System (ICS). In doing so, they established a central point of command from which to direct ground and air ambulances, provided a contact for the many news media representatives converging on the area, monitored the condition of the crash victims, collected witness statements, and kept track of the equipment involved in the emergency. ICS became vital to coordinating the response among the many agencies that assisted the DPS following the collision.

Background

At one time, public safety agencies tackled emergencies on a case-by-case basis with every resource they could muster. In times of real crisis, they called on neighboring jurisdictions for help. Then, in the early 1970s, as huge brush fires ravaged Southern California, local agencies throughout the area entered into mutual-aid agreements to pool resources with neighboring jurisdictions. Thus, the genesis of the Incident Command System came from the need to manage the response of participating agencies, and the fire service became the vanguard for emergency scene management.

In the years that followed, ICS remained primarily the forte of fire services. Recently, however, law enforcement officials across the country have come to appreciate the value of a coordinated response to emergencies.

Benefits

Vehicle collisions, pursuits, officer-involved shootings, natural disasters, and civil disturbances represent only a few of the incidents for which an agency can employ ICS. Whether they require the response of one agency or many, critical incidents become more manageable with ICS.

Under those circumstances involving multiple jurisdictions, ICS allows agencies to provide a singular response. As a planning tool, ICS designates in advance the specific duties of all participants. Perhaps more important, it determines who will be in charge at the scene.

The public expects and deserves cooperation between agencies on the scene of an emergency, without jurisdictional disputes. Formalized agreements—whether between in-house participants or among other agencies—set the stage for integrated communication, centralized staging of resources, and the comprehensive management of those resources once deployed.

ICS also eliminates "ten codes," which usually differ from agency to agency and can snarl interagency communication. Instead, agencies use common terms to promote understanding and improve response times. Finally, ICS provides a manageable span of control for the incident commander, who can

provide overall scene management rather than become bogged down by details better delegated to subordinates.

Components

ICS simplifies the management of critical incidents by organizing the response into modules. Anyone in the agency, from the chief to the patrol officer, can implement ICS into its full configuration. The individual who initiates the ICS response usually assumes command on the scene, at the emergency command center, or at the field command post and becomes the incident commander. Unless formally relieved, the incident commander remains in charge and provides a single point of contact.

The incident commander oversees the entire operation through sectors, or branches, which provide a manageable span of control. Sectors can be collapsed, expanded, or added as needed during a specific incident. Others may not be needed at all for an emergency limited in scope or duration.

> **"By incorporating lessons learned from past incidents, agencies can develop comprehensive manuals to guide them through future emergencies."**

For example, sectors often are designated logistics, operations, personnel, and intelligence. ICS deployment during a large-scale vehicle crash would not require the services of the intelligence sector. However, other sectors, such as traffic control, hazardous materials cleanup, or media liaison, may become necessary. Personnel officers would assist at the scene or follow up at the hospital. Operations staff would coordinate equipment needs, such as ambulances, tow trucks, and fire department resources.

Sector leaders keep the incident commander apprised of their sectors' actions and needs, allowing the incident commander more easily to match resources to existing conditions or anticipate future demands. Checklists ensure that sector leaders complete essential tasks during the emergency. Given the demands placed on personnel at the scene, sector leaders easily could overlook a possible resource or legal or departmental requirement.

Sectors, or component parts within sectors, usually vary from department to department. More important than the number and type of sectors is the capability of the agency to respond to various emergencies under a dedicated set of plans that may include allied agencies.

While not essential in all deployments, the emergency command center (ECC) generally works in concert with ICS. It also may be a distinct function under the ICS umbrella. Typically, the ECC is housed in one department's command center or another centrally located site, but it can be located anywhere practical; even the trunk of a patrol car can serve as the ECC. Commanders from every agency involved in the incident should staff the ECC.

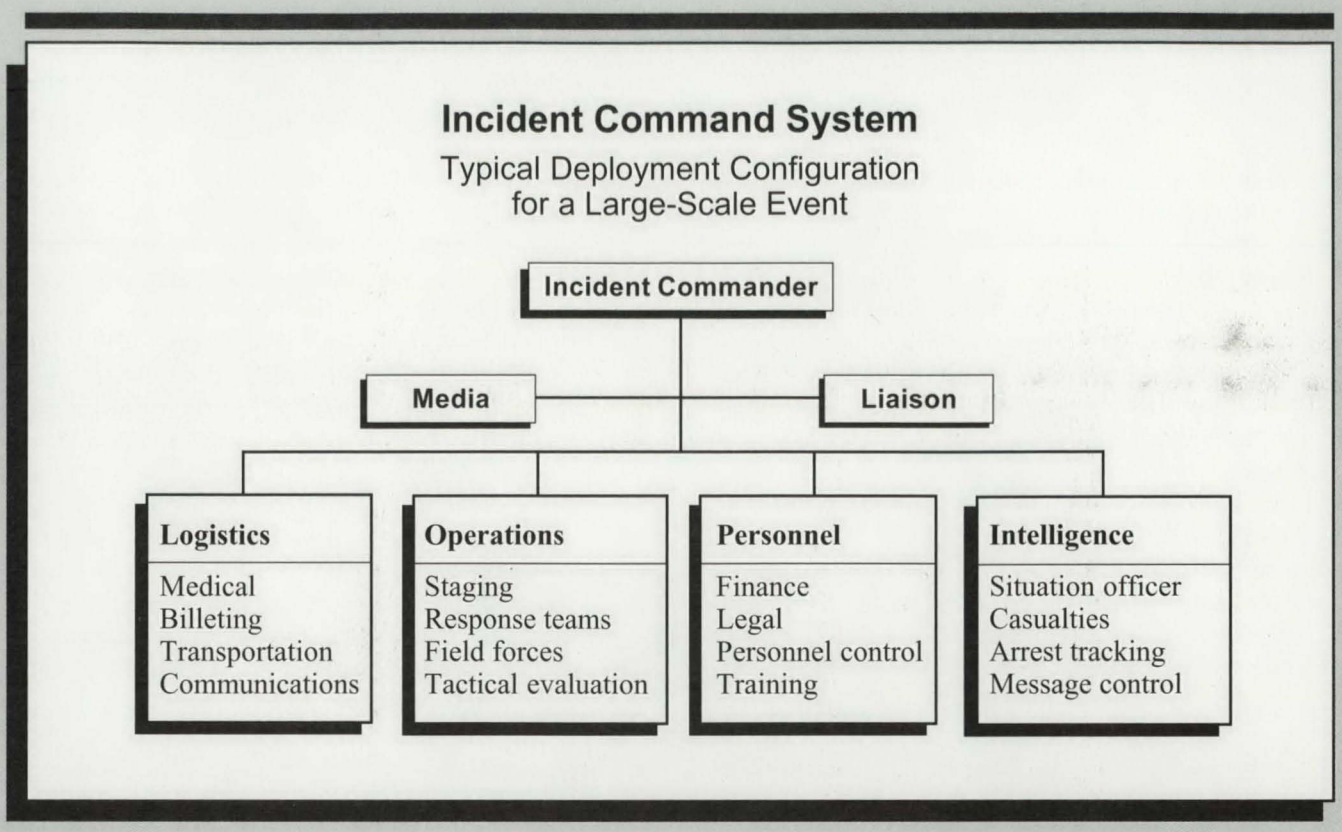
Response Levels

The Arizona Department of Public Safety uses ICS daily under many different circumstances. Three levels of response dictate what resources to commit to each incident. Level I incidents require that one or two officers resolve minor traffic accidents, make arrests, or conduct light crowd control.

Level II incidents require the assistance of three or more officers. They usually involve several agencies and may cross jurisdictional boundaries. Examples include collisions that result in road closures or evacuations.

Level III incidents involve three or more officers from multiple shifts, require support from other bureaus, districts, or agencies, and demand a significant response to contain, control, and recover from the emergency. Bombings and riots represent two types of Level III incidents.

Situations classified as Level II or III require the use of an incident report log. By keeping accurate records, the DPS can evaluate its response and improve its performance for future critical incidents. The log also provides documentation that might be needed later in court.



Administration

The Arizona Department of Public Safety developed an ICS manual to accommodate the diversity of emergency issues encountered each year. Designed to be used by officers on the scene, the manual contains information officers need to coordinate and control critical incidents.

For example, the manual covers statutes that articulate legal precedents and remove impediments to the agency's response. To illustrate, agencies can call the Federal Aviation Administration (FAA) and request that all unnecessary aircraft be removed from the scene of a critical incident. For this reason, the ICS manual contains a copy of the applicable statute, as well as the protocol for enlisting the FAA's assistance.

An actual event emphasizes the need to address such contingencies. During a recent incident in Los Angeles, media helicopters interfered with the apprehension of armed bank robbers and drew their fire, worsening an already-hazardous situation. By incorporating lessons learned from past incidents, agencies can develop comprehensive manuals to guide them through future emergencies.

In addition to the ICS manual, a separate document, known as a standing plan, outlines the appropriate response to events or civil emergencies that the agency encounters less often or can prepare for in advance. Examples of uses for the standing plan include crowd control at large concerts, sporting events, and civil demonstrations.

Training

The DPS' comprehensive training program begins at its training academy with a 4-hour block of instruction. Table-top exercises test students' knowledge of ICS procedures and illustrate how they might perform during an emergency.

A more reliable indicator of performance comes later, however. Both announced and surprise disaster drills test the readiness and response capabilities of DPS employees and those from other agencies. Ironically, just 3 weeks before the bus crash, Phoenix public safety employees—including police, fire, and emergency medical services personnel—staged a simulated bus collision to test their preparedness. This training greatly enhanced the agencies' response capabilities when the real crash occurred.

Civilian employees who, by virtue of their assignment within an agency, become involved with emergency response should not be overlooked for training. Dispatchers, crime scene technicians, and logistical support employees represent integral components of the total ICS response. Like their sworn counterparts, they also should participate in drills to ensure their ability to handle emergencies.

Administrators who need additional assistance with training or any other aspect of ICS can turn to other agencies for guidance. Most state police and large municipal departments use some form of ICS. Other potential sources include local fire departments, the National Fire Academy, state emergency management agencies, and the Federal Emergency Management Agency.

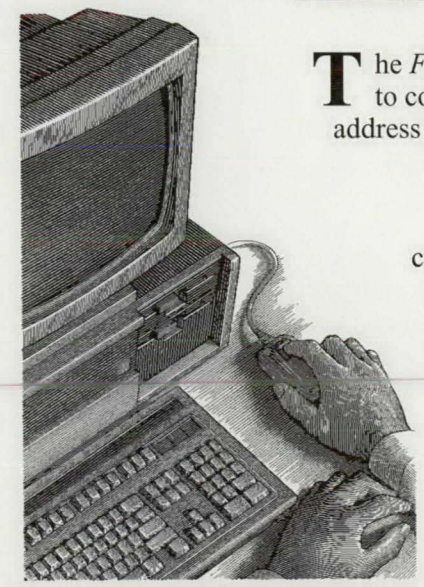
Conclusion

The Incident Command System is a simple yet highly effective method of preparing for critical incidents. It promotes a coordinated response to emergencies with appropriate resources by providing a central point of communication, command, and control. Periodic disaster training prepares emergency responders in advance. Meticulous recordkeeping keeps investigations on track and provides an easy way to evaluate agencies' response.

At any given time, public safety officials somewhere in the world are coordinating the on-scene activities of an emergency. Labor, facilities, equipment, and communication are among the myriad issues they must consider to mitigate and control such incidents. When seconds count, Incident Command Systems allow agencies to handle emergencies quickly and confidently. ✦

Captain Conner serves with the Arizona Department of Public Safety in Phoenix.

The *Bulletin's* Internet Address



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Grant Writing

By ROLAND REBOUSSIN, PH.D.
AND CYNTHIA J. SCHWIMER

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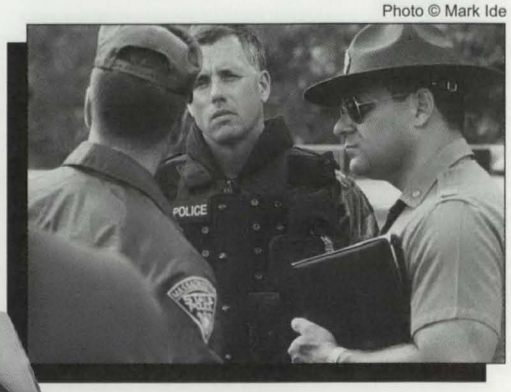

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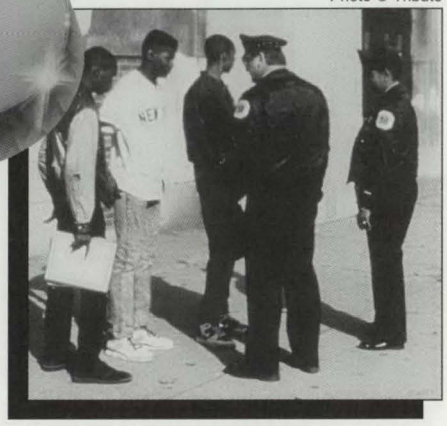
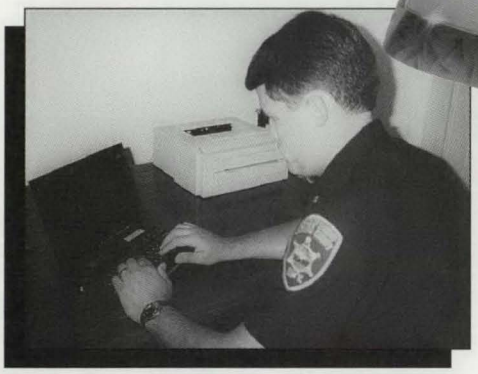




Recently, administrators in the West Virginia State Police Bureau of Criminal Investigations (BCI) had a problem they needed money to overcome. BCI wanted to form a task force with the Bureau of Alcohol, Tobacco and Firearms (ATF) to combat drug and firearm trafficking in the eastern panhandle of the state. So, BCI sent ATF a concept paper describing a grant proposal for a joint task force. Because ATF could not fund the project, it sent the concept paper, with a recommendation, to the Bureau of Justice Assistance (BJA), one of the primary law enforcement fund granting agencies in the U.S. Department of Justice (DOJ). BJA realized the merits of the plan and decided to fund the project with a discretionary grant.

Meanwhile, BCI had been working with the Governor's Office of Criminal Justice and Highway Safety, the state Byrne formula grant[1] office, to obtain equipment needed for the task force: vehicles, laptop computers, and two-way radios. When the two grants were awarded, BCI and ATF were able to proceed with a highly successful joint task force.

How did this happen? Not by accident. All law enforcement agencies, both small and large, can obtain grant money to support new and innovative efforts in police operations. But grants rarely seek out a department. Rather, agencies must stay abreast of what is available from the various sources and investigate the best ways to secure funding for their proposals.

This article explains the basic types of grant opportunities available to state and local law enforcement agencies. It discusses ways that agencies can learn about grant opportunities and then suggests

methods departments can follow to prepare a quality proposal.

TYPES OF GRANTS

Formula Grants

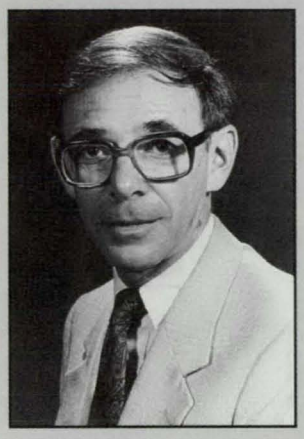
Formula, or block, grants are awarded by the federal government to the states. In turn, the states make subawards to state and local government entities. They are called formula grants because they are appropriated to the states based on certain established formulas, which may take into account such factors as population and crime rates. This is the type of grant that funded the equipment needs for the joint BCI-ATF task force.

Discretionary Grants

Discretionary grants, by contrast, are awarded at the *discretion* of the awarding agency. Generally, a law enforcement agency applies directly to the appropriate federal office to be considered for discretionary funding. This is the type of grant awarded directly to BCI by the Bureau of Justice Assistance for the joint task force.

FEDERAL GRANT MONEY

Federal money to support law enforcement programs is disbursed both directly from offices within the federal government and through offices at the state level. The lead federal funding agency for law enforcement programs is DOJ's Office of Justice Programs (OJP). Eight offices within OJP make grants available to law enforcement agencies. To win grants from these offices, agencies should tailor their proposals to meet one of the following program areas.



Dr. Reboussin serves as Research Program Manager with the Behavioral Science Unit at the FBI Academy.

Ms. Schwimer is the Acting Comptroller, Office of Justice Programs, U.S. Department of Justice, in Washington, DC.

Bureau of Justice Assistance

The Bureau of Justice Assistance (BJA) is the primary grant funding arm for law enforcement agencies. BJA makes formula grants to the states from the Byrne Memorial Fund and also makes discretionary grants to individual agencies.

Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) also provides significant funding to law enforcement agencies. As the name implies, OJJDP focuses on operational programs and research explicitly designed to prevent and control crime committed by juveniles.

Bureau of Justice Statistics

The Bureau of Justice Statistics (BJS) collects, analyzes, and disseminates statistics for the entire criminal justice system. This office can serve as an invaluable source of information for departments requiring specific data to include in a grant proposal. BJS also makes discretionary grants to state governments to encourage states to develop systems designed to collect, analyze, and disseminate statistical information related to criminal justice issues.

Office for Victims of Crime

The Office for Victims of Crime provides both formula and discretionary funding to states to support victim compensation and assistance programs. These funds may be used for a multitude of victim assistance activities, such as maintaining victim coordinator positions in U.S. attorneys' offices and other federal law enforcement agencies. This office also grants funds for training victim/witness coordinators, parole and probation officers, and other federal law enforcement personnel who provide services to victims. In addition, funding can be obtained to prepare,

publish, and disseminate handbooks for use by victim/witness coordinators, DEA agents and other federal law enforcement agency employees, and pay for medical examinations of victims of sexual assault occurring on federal property to obtain evidence of a crime.

National Institute of Justice

The National Institute of Justice (NIJ) sponsors research and evaluation projects devoted to new approaches and technologies for combating crime. NIJ focuses on research-oriented, rather than operational, projects.

Drug Courts

Drug Courts, an office within OJP, provide funding to components of state and local governments and to tribal courts that offer specialized services, treatment, and continuing judicial supervision for nonviolent offenders with the potential for rehabilitation. Drug Courts support these efforts throughout the country by making discretionary awards to state and local agencies.

Violence Against Women

This program office within OJP administers funding to state and tribal governments to help develop and strengthen effective law enforcement and prosecution strategies that address violent crimes against women. The office makes both formula and discretionary awards to further these causes.

Corrections Program Office

Another OJP office, the Corrections Program administers state grants for traditional and alternative correctional facilities, including boot camps, by making formula and discretionary awards available. OJP directs these funds primarily to state correctional facilities.

> ***"The first step for administrators pursuing a specific funding grant is to read the solicitation carefully and follow the instructions exactly."***

COPS Office

The Office of Community-oriented Policing Services (COPS) is a relatively new office within the Department of Justice that exists separately from OJP. The COPS office makes grants primarily to help agencies hire and deploy new officers.

For More Information

To receive more information about programs funded by these offices, agency administrators can contact the DOJ Response Center.[2] Before deciding on a particular grant to pursue, however, agencies should obtain a copy of the *Catalog of Federal Domestic Assistance*. This catalog not only includes detailed information about DOJ grant programs but also discusses nearly 1,400 federal grant opportunities.[3]

Law enforcement administrators can find reference copies of the catalog at their local libraries. The catalog also is available on CD-ROM and diskettes, as well as a computerized bulletin board and database maintained by the General Services Administration that permits automated searches of various types. For example, agencies could search the database (known as the Federal Assistance Program Retrieval System, or FAPRS) for a list of all federal agencies that make awards on such subjects as combating gangs or hiring police officers.[4]

Agencies should contact the DOJ Response Center for information on grant opportunities available through the COPS office.

STATE GRANT MONEY

At the state level, the office of the governor generally houses contact points for law enforcement-related grants. At a minimum, each state has a contact point for the Byrne formula grants. Byrne grants represent the single largest source of law enforcement-related funding Congress makes available to states by a set formula. Byrne formula funding is awarded to the states primarily through the Bureau of Justice Assistance.

Some state offices that administer Byrne grants are referred to as state planning agencies, a name held over from the era of Law Enforcement Assistance Administration (LEAA) grant funding. During the 1970s, state planning agencies served as the conduits for LEAA funding to the states. Today, however, these agencies may be known by different names in different states. In West Virginia, for example, the Governor's Criminal Justice and Highway Safety Office administers Byrne funding grants.

Whatever their names, the state offices represent good places for agency administrators to begin to familiarize themselves with grant language and procedures. To start the process, administrators should contact the appropriate state funding office and ask to speak with a law enforcement representative.

PREPARING A GRANT PROPOSAL

Agency administrators can improve their chances of success by following certain guidelines when preparing a grant proposal. While following these suggestions will not guarantee the approval of a funding request, it should give an agency an added advantage when applying for funding.

The first step for administrators pursuing a specific funding grant is to read the solicitation carefully and follow the instructions exactly. Administrators should call the grant agency's contact person if they do not understand certain points or areas on the solicitation forms.

Administrators should complete all of the forms, fill in all of the blanks, and allow enough time to get all of the required departmental signatures. (Using blue ink for the signatures will more readily identify the original application.) If at all possible, administrators should plan to submit their proposal before the due date to reduce the risks that a minor bureaucratic delay will scuttle the entire grant request.

Administrators should carefully follow the format specified in the solicitation for the organization and narrative content of the proposal. Responses should be double-spaced and typed in a reasonably sized font.

Where applicable, graphs and charts should be included to help communicate ideas and present data. Administrators should write in clear and understandable English, not jargon. Acronyms and technical terms should be used sparingly and explained within the text. When writing the narrative, administrators should use short, active sentences. The narrative should clearly

- state the problem
- outline what the agency proposes to do
- explain why and how the proposal will help to solve the problem
- describe how the agency will evaluate the program's effectiveness, and
- document all facts and figures cited in the proposal.

Administrators should request sufficient funds to fully administer the program. However, they should be careful to request funds only for expenses resulting from the project they are proposing, not for any normal organizational costs of the agency. Administrators should use the budget forms supplied in the solicitation and make sure that the budget items are reasonable, necessary, allowable, and that the numbers all add up correctly.

Finally, administrators should forward the completed proposal to two or three readers for suggestions and comments before sending it in. Again, because this process takes time, administrators should strive to complete the draft well before the stated deadline.

Administrators interested in submitting a proposal for a project that lies somewhat outside of the granting organization's program plan should submit an 8-10 page concept paper *before* completing a formal application. Granting organizations are very proficient at spotting applications that do not fit the parameters of their program plans.

ACCESSING THE GRAPEVINE

Agency administrators can use a number of methods to keep track of the often-bewildering array of grant opportunities that exists at any given time. Agency administrators who already have a concrete proposal in mind should contact the

state and federal grant offices that cover the applicable program area and ask for a copy of their current program plan. This plan provides a current list of topics and projects for which proposals are being solicited, as well as specific instructions and forms to use in applying for a grant. To locate the appropriate office at the federal level, administrators can contact the DOJ Response Center.

Once administrators locate the appropriate office, they should identify the person responsible for programs in their state or region. They should call and discuss their proposal and explain why their agency requires outside funds to implement it. Administrators also should talk with the representative about any plans for future grant solicitations and new programs. If a granting office is receptive to an agency's idea, the idea may appear in a future plan or solicitation.

In the West Virginia example cited earlier, the state police did not call a granting agency and ask them what kinds of projects they were funding; rather, state police investigators had an idea for a particular project and inquired whether that particular project could be funded. Most often, this is the desired approach.

Agency administrators also may ask their state funding agency whether any departments in their vicinity currently receive funding from state or federal sources. Administrators should talk to these departments about how the grant process has worked for them.

Likewise, administrators should stay in touch with their counterparts in other agencies throughout the community. OJP offices encourage proposals that involve more than one law enforcement agency or include a law enforcement agency working with related community agencies, such as the local prosecutor's office, the courts, or social service agencies.

In addition, a number of private, state, regional, and federal-level newsletters provide information about law enforcement grants. Although these newsletters draw much of their information from public sources, they can help streamline information-gathering for busy administrators interested in keeping up on grant developments.

Law enforcement officers attending the FBI's National Academy program at Quantico, Virginia, now can take a non-credit course about grants, offered jointly by the FBI and the Office of Justice Programs. The course serves as an introduction to the program development and budgetary issues of grant writing. Since the OJP staff members teaching the course are involved closely with the grant process, the course provides students a unique opportunity to network with individuals directly responsible for grant disbursal, as well as with other students who will be writing their own grant requests.

The National Criminal Justice Reference Service (NCJRS) is another valuable source of information for funding available at the federal level. Specifically, an agency can request that NCJRS put it on the mailing list for proposal solicitations and other information, and the agency will thereafter receive all solicitations disseminated by OJP and the COPS office. Administrators can access the NCJRS Website at http://www.ncjrs.org or contact NCJRS via electronic mail at askncjrs@ncjrs.org. They also can direct-dial the NCJRS electronic bulletin board at 301-738-8895.[4]

Agencies may find that when they receive grant solicitations from NCJRS or other sources, they have

Alabama
Department of Economic & Community Affairs, 334-242-5100
Alaska
State Troopers, 907-269-5082
Arizona
Criminal Justice Commission, 602-542-1928
Arkansas
Department of Finance and Administration, 501-682-1074
California
Office of Criminal Justice Planning, 916-324-9166
Colorado
Division of Criminal Justice, 303-239-4442
Connecticut
Office of Policy and Management, 860-418-6210
Delaware
Criminal Justice Council, 302-577-3466
District of Columbia
Office of Grants Management & Development, 202-727-6554
Florida
Bureau of Community Assistance, 850-488-8016
Georgia
Criminal Justice Coordinating Council, 404-559-4949
Hawaii
Office of the Attorney General, 808-586-1151
Idaho
Department of Law Enforcement, 208-884-7040
Illinois
Criminal Justice Information Authority, 312-793-8550

State Contacts for Byrne Formula Grants

Indiana
Criminal Justice Institute, 317-232-2561
Iowa
Governor's Alliance on Substance Abuse, 515-281-3788
Kansas
Criminal Justice Coordinating Council, 913-296-0926
Kentucky
Justice Cabinet, 502-564-7554
Louisiana
Commission on Law Enforcement, 504-925-3513
Maine
Department of Public Safety, 207-877-8016
Maryland
Governor's Office of Crime Control & Prevention, 410-321-3521
Massachusetts
Committee on Criminal Justice, 617-727-6300
Michigan
Office of Drug Control Policy, 517-373-2952
Minnesota
Office of Drug Policy & Violence Prevention, 612-296-0922
Mississippi
Department of Public Safety, 601-359-7880
Missouri
Department of Public Safety, 573-751-4905
Montana
Board of Crime Control, 406-444-3604
Nebraska
Commission on Law Enforcement & Criminal Justice, 402-471-3416
Nevada
Office of Criminal Justice Assistance, 702-687-5282
New Mexico
Department of Public Safety, 505-827-3420
New Hampshire
Office of the Attorney General, 603-271-1297
New Jersey
Department of Law and Public Safety, 609-292-5939
New York
Division of Criminal Justice Services, 518-457-8462
North Carolina
Governor's Crime Commission, 919-571-4736
North Dakota
Office of the Attorney General, 701-328-5500
Ohio
Governor's Office of Criminal Justice Services, 614-466-7782
Oklahoma
District Attorneys Training & Coordinating Council, 405-557-6707
Oregon
Department of State Police, 503-378-3720
Pennsylvania
Commission on Crime and Delinquency, 717-787-8559
Puerto Rico
Department of Justice, 809-725-0335
Rhode Island
Governor's Justice Commission, 401-277-2620
South Carolina
Office of Safety and Grants, 803-896-8708
South Dakota
Governor's Office of Operations, 605-773-6313
Tennessee
Office of Criminal Justice Programs, 615-741-3784
Texas
Office of the Governor, 512-463-1806
Utah
Commission on Criminal and Juvenile Justice, 801-835-1031
Vermont
Department of Public Safety, 802-244-8781
Virginia
Department of Criminal Justice Services, 804-786-1577
Virgin Islands
Law Enforcement Planning Commission, 809-774-6400
Washington
Department of Community, Trade & Economic Development, 360-586-0665
West Virginia
Office of Criminal Justice & Highway Safety, 304-558-8814
Wisconsin
Office of Justice Assistance, 608-266-7282
Wyoming
Division of Criminal Investigation, 307-777-7181
American Samoa
Department of Legal Affairs, 011-684-633-4163
Commonwealth Northern Mariana Islands
Criminal Justice Planning Agency, 011-670-664-4550
Guam
Governor's Office, 011-671-472-8931

a limited time before the deadline to draft and submit a proposal. Administrators can take various steps to help ensure that their agencies receive advance notice of the types of solicitations becoming available. The most effective method is to keep in contact with those "in the know," namely the state and federal officials who announce projects for which the agency may be interested in applying in the future.

Administrators also can obtain the *Federal Register*, which publishes, for comment, grant solicitations before they are finalized by federal grant offices. Because reading through this massive document can be an enormous undertaking, administrators may find it preferable to review on a regular basis the Federal Assistance Program Retrieval System database, which contains a section featuring abstracts pertaining to upcoming grant solicitations from recent issues of the *Federal Register*.

CONCLUSION

In an era of reduced public funding and heightened public demand for services, law enforcement agencies have been forced to explore ways, as the now familiar expression goes, to do more with less. But, in their drive to reduce costs, administrators may be ignoring a viable way to fund needed projects without adding to departmental fiscal concerns.

For many years the federal government has been awarding grants for worthwhile projects designed to combat crime at the local and regional levels. Today, numerous offices both at the federal and state level administer grant programs that can assist law enforcement agencies to fund necessary projects.

To take full advantage of the funding opportunities that exist, law enforcement administrators should become familiar with the offices and programs that make funding available. Once the mystery is removed and the process seems less intimidating, administrators should consider responding to a solicitation, developing a proposal and submitting it. They have little to lose, while their agencies and communities may have much to gain.✦

Endnotes

[1] The Edward Byrne Memorial State and Local Law Enforcement Assistance Program, created by the Anti-Drug Abuse Act of 1988, provides funds to improve the functioning of the criminal justice system at the state and local levels.

[2] The DOJ Response Center can be contacted by dialing 800-421-6770.

[3] *The Catalog of Federal Domestic Assistance* can be ordered by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or charged by telephone by dialing 202-512-1800.

[4] More information about FAPRS may be obtained by writing to the General Services Administration/MVS, Federal Domestic Assistance Catalog Staff, Reporters Building, Room 101, 300 7th St, SW Washington, DC 20407, or by calling 202-708-5126.

[5] Modem should be at least 9600 baud and set at 8-N-1.

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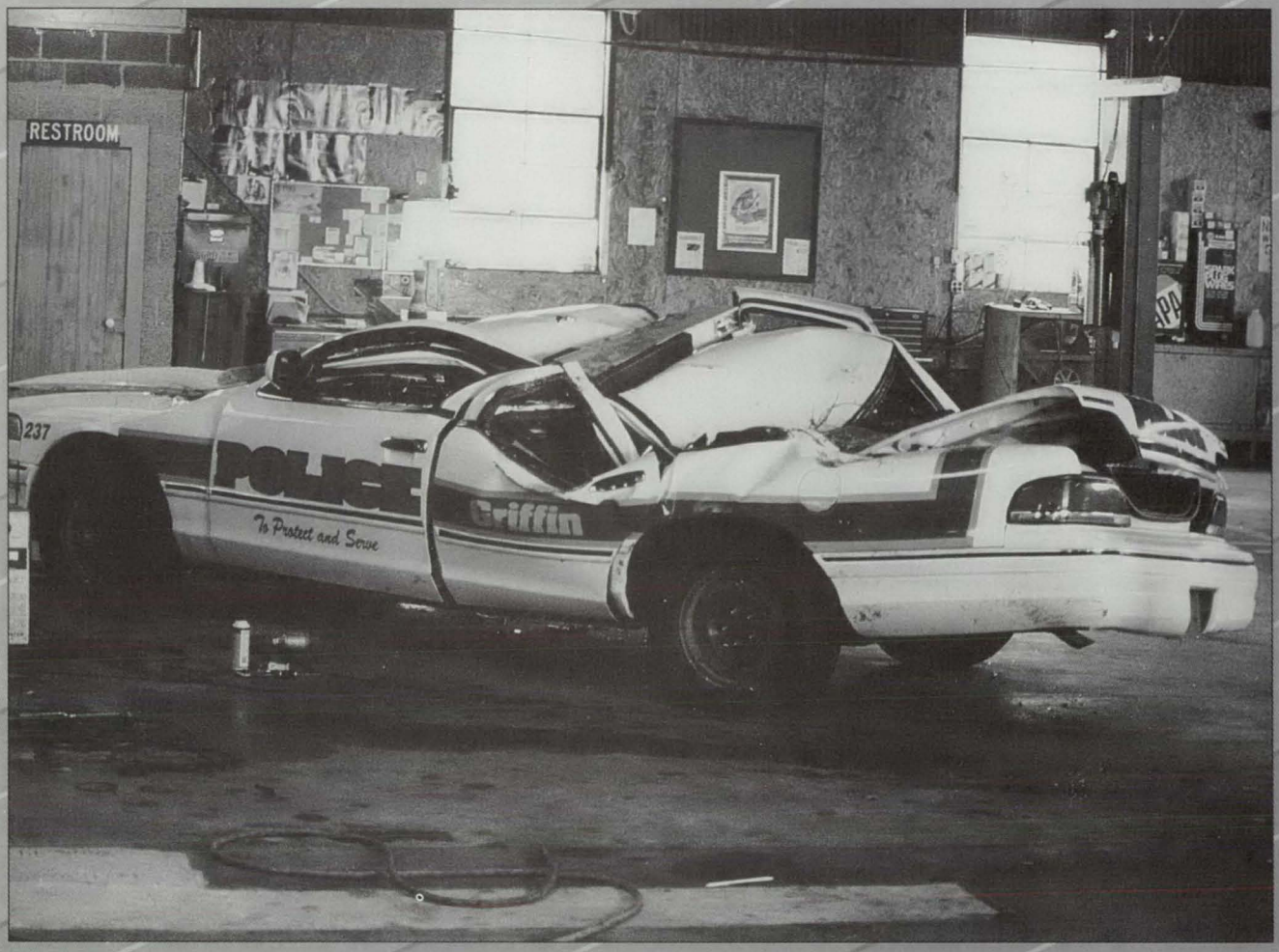


A Close Shave

Officer William Stewart of the Griffin, Georgia, Police Department responded to a report of wires down during a series of storms that followed Hurricance Opal in October, 1995. Within seconds after Officer Stewart left his vehicle to check the area, an intersection near several oak trees over 100 years old, a tree toppled onto it. Officer Stewart was unhurt except for being brushed by some of the tree's limbs. The local fire department's Jaws of Life had to be used to retrieve Officer Stewart's briefcase and personal gear. The totaled vehicle is shown in the photo above.

If you have a poignant, humorous, or interesting photograph that you would like to share with other readers, please send it to: Brian Parnell, FBI Law Enforcement Bulletin, *Law Enforcement Communication Unit, Quantico, VA 22135.*

The Inevitable Discovery Exception to the Exclusionary Rule

By EDWARD M. HENDRIE, J.D.

This article presents an overview of the exclusionary rule and then discusses in detail the nevitable discovery exception to that rule. This exception allows evidence to be admitted, even though it was seized in violation of the Constitution. Most constitutional rights, by their terms, do not provide as a remedy the exclusion of evidence at trial. For example, the Fourth Amendment prohibits the government from conducting unreasonable searches or seizures but does not expressly provide for the exclusion of evidence if the government violates that prohibition. Prior to the adoption of the exclusionary rule, courts usually admitted items into evidence that were seized in violation of the Fourth Amendment.[1]

The Exclusionary Rule

In order for the rights listed in the Constitution to have substance, there must be enforceable remedies imposed on the government for violations of those rights. In 1914, the U.S. Supreme Court, in the landmark case of *Weeks* v. *United States*,[2] introduced the exclusionary rule as a remedy for violations of the Fourth Amendment.[3] The *Weeks* Court felt that the only effective way to enforce the Fourth Amendment right to be secure from unreasonable searches and seizures was to adopt a rule that evidence seized in violation of the Fourth Amendment could not be used by the government against a defendant at trial. The *Weeks* Court further stated that a court should not sanction illegal government conduct by admitting into evidence the fruits of that illegal conduct. Later, in *Silverthorne Lumber* v. *United States*,[4] the Supreme Court not only prohibited introducing into evidence those items directly seized during an illegal government search but also any evidence indirectly derived from that search.

> **"...courts generally will not suppress evidence that has been seized illegally if the government can establish that the evidence inevitably would have been discovered lawfully."**

Special Agent Hendrie, Drug Enforcement Administration, is a legal Instructor at the FBI Academy.

Originally, the exclusionary rule announced in *Weeks* did not apply to the states because at that time the Supreme Court limited the application of the Fourth Amendment to the Federal Government. Then, in 1949, the Supreme Court decided *Wolf* v. *Colorado,*[5] wherein the Court applied the Fourth Amendment to the states through the Fourteenth Amendment due process clause. The Court considered the prohibition against unreasonable searches or seizures to be a right basic to a free society and implicit in the concept of ordered liberty. The *Wolf* Court, however, did not view the exclusionary rule as a necessary component of due process and refused to apply the exclusionary rule to the states as a remedy for a violation of the Fourth Amendment.[6]

In 1961, the Supreme Court decided *Mapp* v. *Ohio,*[7] which in part overruled *Wolf* and applied the exclusionary rule to the states. The *Mapp* Court viewed other remedies, such as criminal sanctions, as being ineffective in ensuring compliance with the Fourth Amendment.[8] Although the *Mapp* Court stated that the exclusionary rule was an essential part of both the Fourth and Fourteenth Amendments, subsequent Supreme Court decisions have abandoned that position. For example, in *United States* v. *Leon*[9] the Supreme Court stated that "[t]he Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its commands and purposes makes clear that using fruits of a past unlawful search or seizure 'works no new Fourth Amendment wrong'"[10] In *United States* v. *Calandra,*[11] the Supreme Court stated:

> The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim....Instead, the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable search and seizures: 'The rule is calculated to prevent, not to repair.'...In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.[12]

Although the exclusionary rule most often is applied to violations of the Fourth Amendment, it has been applied to other constitutional violations as well.[13]

The Supreme Court consistently has recognized that the inflexible application of the exclusionary rule would generate disrespect for the law and impede the administration of justice.[14] With that in mind, and because the exclusionary rule is not considered a constitutionally required remedy, courts have carved out a number of exceptions and limitations to the rule, where to otherwise apply the rule would go beyond the limited goal of simply deterring illegal police conduct.[15] For instance, most courts will not suppress evidence found during an illegal search when the evidence is also located through some independent lawful means.

In *Segura* v. *United States,*[16] officers illegally entered the defendant's premises without a warrant. The Supreme Court ruled that the evidence seen in plain view during the illegal entry should not have been suppressed because it ultimately was seized later during the execution of a valid search warrant. The warrant was based on information independent of the information acquired during the illegal entry.

The Inevitable Discovery Exception

What if illegally located evidence was not found during a subsequent legal search as it was in *Segura* but would have been discovered if an independent legal search had been conducted? Under the inevitable discovery exception to the exclusionary rule, courts generally will not suppress evidence that has been seized illegally if the government can establish that the evidence inevitably would have been discovered lawfully.[17] The inevitable discovery exception is similar to the independent source exception. However, where the independent source exception requires that the evidence actually be obtained legally, the inevitable discovery exception requires only that the evidence hypothetically would have been seized through some legal means.

Although lower courts have long recognized the inevitable discovery exception, the U.S. Supreme Court first recognized the exception in the Court's 1984 *Nix* v. *Williams*[18] decision. The defendant, Robert Williams, actually had two trials on the same charge reviewed by the Supreme Court. The first decision was *Brewer* v. *Williams*[19] and the second was *Nix* v. *Williams*.

Brewer* v. *Williams

In the *Brewer* decision, the Supreme Court examined the following facts. On December 24, 1968, 10-year-old Pamela Powers accompanied her parents to the Des Moines, Iowa, YMCA to watch her brother compete in a wrestling match. Pamela went to the washroom and never returned. Robert Williams, a recently escaped mental hospital patient, was a resident of the YMCA. A 14-year-old boy helped Williams open his car door and saw him put a large bundle with two legs sticking out of one end into the car.[20]

> ***...because the exclusionary rule is not considered a constitutionally required remedy, courts have carved out a number of exceptions and limitations....***

Subsequently, a warrant was issued for Williams' arrest. Two days later, Williams surrendered himself to the Davenport police and was arraigned on the warrant. Williams' attorneys and the police agreed that the police would not interrogate Williams during the drive from Davenport to Des Moines. In addition, Williams' attorneys advised him not to talk to the police. During the trip to Des Moines one of the detectives gave Williams the now famous "Christian burial speech." The detective stated:

> I want to give you something to think about while we're traveling down the road.... Number one, I want you to observe the weather conditions. It's raining. It's sleeting. It's freezing. Driving is very treacherous. Visibility is poor; it's going to be dark early this evening. They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is. That you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way into Des Moines, I feel we could stop by and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas Eve and murdered. And I feel we should stop and locate it on the way rather than waiting until morning and trying to come back out after a snow storm and possibly not be able to find it at all.[21]

After a brief exchange with Williams, the detective told him: "I do not want you to answer me. I don't want to discuss it any further. Just think about it as we're riding down the road."[22] After traveling approximately 100 miles, Williams began talking and eventually led the detectives to the location of Pamela Powers' body. Williams later was convicted at trial of first-degree murder.

In *Brewer*, the Supreme Court ruled that the statements made by Williams should have been suppressed because they were taken in violation of Williams' Sixth Amendment right to counsel, which attaches at the inception of adversarial judicial proceedings against a defendant.[23] After attachment of the

right, a suspect may not be interrogated without a valid waiver or the presence of counsel. The Supreme Court ruled that the Christian burial speech was designed to elicit an incriminating response from Williams, therefore, it constituted interrogation. In addition, even though Williams had been warned no fewer than five times of both his right to remain silent and his right to counsel, the Court held that a valid waiver of counsel requires that the state prove not merely that the defendant comprehended that right but also that he intended to relinquish it.[24]

Nix v. *Williams*

With his conviction overturned, Williams was retried and convicted a second time; this time the prosecutor did not use Williams' statements. However, Williams contested his second conviction as well. He argued that the illegally obtained statement led police to Pamela Powers' body and that additional evidence found on the body was used to convict him. Williams claimed that evidence was derived from the statement and should have been suppressed as fruit of the poisonous tree.

The State of Iowa argued that the body inevitably would have been discovered, and therefore, the evidence was properly admitted at trial. The United States Court of Appeals for the Eighth Circuit ruled that, in order to have the benefit of the inevitable discovery exception, the state was required to prove by a preponderance of the evidence that the officers did not act in bad faith when eliciting the statements from the defendant. Because the state


Photo © Mark Ide

failed to meet that burden, the Court granted Williams' petition for a writ of *habeas corpus* and ordered that he be released unless the State of Iowa commenced a new trial within 60 days.[25]

The U.S. Supreme Court, in *Nix* v. *Williams,* reversed the decision of the Court of Appeals and ruled that the government was not required to prove a lack of bad faith by the officers in order to successfully invoke the inevitable discovery exception. The Court simply required that the prosecution establish by a preponderance of the evidence that the body inevitably would have been lawfully discovered.

The Court did not think that a police officer would purposely engage in illegal conduct in the hope that the evidence would be admissible under the inevitable discovery doctrine, because an officer would rarely, if ever, be in a position to calculate whether the evidence sought inevitably would be discovered. Even if an officer were to foresee the lawful discovery of the evidence, he would have little to gain from taking any dubious shortcuts to obtain the evidence. The Court determined that the societal costs of a good faith requirement far outweighed any possible benefits.

The *Nix* Court viewed the exclusionary rule as a drastic and socially costly remedy because it often results in obviously guilty persons going unpunished for their crimes.[26] The Court disapproved of suppressing evidence that inevitably would have been lawfully discovered because that would undermine the adversary system by putting the state in a worse position than it would have occupied if there had been no illegal police conduct.[27]

The inevitable discovery exception ensures that the remedy of the exclusionary rule is limited to putting the prosecution in the same position that it would have been in if there had been no illegal police conduct. The *Nix* Court found that, had the search not been called off because Williams had led the police to the body, the body inevitably would have been discovered by the search party within three to five hours anyway.

Under the inevitable discovery doctrine, it is not sufficient to allege that the evidence *could* have been found in a lawful fashion if some hypothetical events had occurred. It must be shown that the evidence inevitably *would* have been discovered.[28] It is not necessary, however, to establish absolute certainty of discovery; it is only required that the government establish the inevitability of discovery by a preponderance of the evidence.[29]

Active Pursuit of an Independent Investigation

In order to successfully assert the inevitable discovery exception,

some courts require that the prosecution demonstrate that the police were in the process of actively pursuing a lawful investigation that would have led inevitably to the discovery of the evidence at the time that the evidence was illegally obtained.[30] Those courts are concerned that merely establishing what would have been the routine of the police, without establishing that alternative lawful investigative procedures were in fact actively being followed, would reduce the inevitable discovery doctrine to pure speculation.[31]

For example, in *United States* v. *Wilson,*[32] the United States Court of Appeals for the Fifth Circuit found that evidence discovered in a hotel room waste basket pursuant to an illegal search should have been suppressed, even though the resident gave valid written consent to search the room after the evidence was seized. The court did not apply the inevitable discovery exception because the officers did not request consent until after the illegal search, and there was no indication that the police actively were pursuing a substantial alternative line of investigation at the time of the unlawful search.

Other courts, however, do not require that the police actively be pursuing a lawful line of investigation at the time of the illegal search in order to successfully assert the inevitable discovery doctrine.[33] In *United States* v. *Zapata,*[34] the United States Court of Appeals for the First Circuit refused to adopt the active pursuit requirement. The court held that unlawfully seized evidence will be admissible ". . . so long as 1) the lawful means of its discovery are independent and would necessarily have been employed, 2) discovery by that means is in fact inevitable, and 3) application of the doctrine in a particular case will not sully the prophylaxis of the Fourth Amendment."[35] The court held that a large duffel bag containing 25 kilograms of cocaine found in the trunk of the suspect's car inevitably would have been discovered during an inventory of the vehicle conducted after its impoundment.[36] The inventory of the vehicle was not being pursued actively by the police at the time of the initial illegal search. The court found that whether legal means of discovery are underway at the time of the illegal search is relevant to, but is not a requisite of, the inevitable discovery doctrine.[37]

> **"....it is only required that the government establish the inevitability of discovery by a preponderance of the evidence."**

In *United States* v. *Silvestri,*[38] the United States Court of Appeals for the First Circuit held that evidence seized during an illegal search should not be suppressed when that evidence inevitably would have been found during the execution of a subsequently obtained valid search warrant, even though the police did not begin the process of obtaining the warrant until after the illegal search.

The court determined that requiring the police to be in the process of actively pursuing a contemporaneous and lawful alternative investigation, on the facts in that case, would put the prosecution in a worse position than it would have been had the police not conducted the illegal search.[39] The court believed that active pursuit should not be required where a subsequent search warrant is actually issued, and it is based upon probable cause that existed prior to the illegal search. The court stated that requiring active pursuit would only be appropriate when a search warrant is the basis of the inevitable discovery argument and a subsequent warrant is not obtained.

One court, on the other hand, has applied the inevitable discovery doctrine even though there was neither an independent line of investigation actively being pursued nor a valid search warrant subsequently obtained. In *Martin* v. *Delaware,*[40] the Delaware Supreme Court applied the inevitable discovery doctrine to allow the admission of evidence that was seized pursuant to an illegal search of a hotel room. Although there was an ongoing murder investigation in another state at the time of the illegal search, the police were not actively seeking, and in fact, never obtained, a search warrant for the hotel room. A Delaware State Police detective testified that although a search warrant was never acquired, he would have obtained a warrant before searching the hotel room had the Cincinnati police not already searched the room without a warrant.

In *Murray* v. *United States*,[41] the police made no effort to obtain a search warrant until after the illegal search. In applying the independent source exception, the U.S. Supreme Court was concerned with whether the illegal search prompted the police to obtain the warrant but expressly refused to adopt a rule requiring the government to prove that the police actively were seeking the warrant at the moment of the illegal search.[42]


Photo © K.L. Morrison

Inevitable Discovery by Private Parties

Some courts not only do not require active pursuit of an alternative legal means of discovery at the moment of the illegal search, but they do not even require that it be law enforcement officials who are hypothesized to be the ones who inevitably would have discovered the evidence. For instance, in *Tennessee* v. *Williams,*[43] the Tennessee Court of Criminal Appeals ruled that evidence relating to a body, to which the police were led by the defendant's illegally obtained confession, was properly admitted at trial, because the body inevitably would have been found by a local farmer as soon as it began emitting odors of decomposition. The farmer testified that he passed by the site where the body was found five or six times per week.

In addition, the United States Court of Appeals for the Eleventh Circuit, in *United States* v. *Hernandez-Cano,*[44] held that the district court should not have excluded illegally seized evidence where the evidence inevitably would have been discovered by an airline employee. The airline employee was in the process of searching a bag believed to contain illegal drugs or explosives when a police officer, who was watching the search over the airline employee's shoulder, reached into the bag and seized a bundle that turned out to contain cocaine. The court ruled that the drugs inevitably would have been found by the airline employee. The court determined that to limit the application of the inevitable discovery exception to hypothesized police conduct would thwart the purpose of that exception, which is simply to avoid placing the government in a worse position than it would have been had there been no illegal search.

Inevitable Discovery of Primary Evidence

Some courts have limited the application of the inevitable discovery doctrine to allow only the introduction of evidence obtained indirectly from illegal police conduct.[45] Those courts have excluded primary evidence obtained directly from illegal police conduct, regardless of whether it inevitably would have been seized lawfully later. For instance, in *New York* v. *Stith,*[46] the Court of Appeals of New York reversed a lower court decision that had approved the introduction in evidence of a gun, which inevitably would have been found during a subsequent inventory search of a vehicle. The *Stith* court refused to apply the inevitable discovery exception to the gun because it was obtained directly from an illegal police search. The *Stith* court limited the application of the *Nix* decision to indirect evidence. In *Nix*, the body, which inevitably would have been found, was indirectly located through an illegal statement. The *Stith* court reasoned that to expand the inevitable discovery exception to include evidence obtained directly from an illegal search would encourage unlawful searches in the hopes of justifying them later.[47]

Most courts, however, do not find the distinction between direct and indirect evidence to be relevant when determining whether the inevitable discovery exception should apply.[48] In fact, the U.S. Supreme Court, in *Murray* v. *United States,* found it "strange" to distinguish between primary and indirect evidence when deciding whether to apply the independent source exception.[49] The Court found that such a distinction would produce results bearing no relation to the policies of the exclusionary rule.

CONCLUSION

The primary purpose of the exclusionary rule is to deter illegal police conduct by excluding from evidence the fruits of that conduct. The exclusionary rule puts the government in the same position it would have been had there been no illegal conduct in the first place.

The inevitable discovery exception ensures that the exclusionary rule does not go beyond that limited goal of deterring illegal police conduct by allowing into evidence those items that the police would have discovered legally anyway. ✦

Endnotes

[1] *See Weeks* v. *United States,* 232 U.S. 383, 386 (1914).

[2] 232 U.S. 383 (1914).

[3] Prior to the *Weeks* decision, 27 states had passed on the applicability of the exclusionary rule, 26 of those states refused to adopt the rule. *See Wolf* v. *Colorado,* 338 U.S. 25, 29 (1949).

[4] 251 U.S. 385 (1920). *But see United States* v. *Havens,* 446 U.S. 620, 624 (1980) which rejected the statement in *Silverthorne Lumber* that illegally seized evidence ". . . shall not be used at all." The *Havens* Court allowed the use of illegally seized evidence for impeachment of a defendant.

[5] 338 U.S. 25 (1949).

[6] The period between the *Weeks* decision in 1914 and the *Wolf* decision in 1949 saw 47 states review the applicability of the exclusionary rule. 16 states adopted the rule, and 31 states rejected the rule. *See Wolf,* 338 U.S. at 29.

[7] 367 U.S. 643 (1961).

[8] *Id.* at 651-52.

[9] 468 U.S. 897 (1984).

[10] *Id.* at 906, quoting *United States* v. *Calandra,* 414 U.S. 338, 354 (1974).

[11] 414 U.S. 338 (1974).

[12] *Id.* at 347-48, quoting *Elkins* v. *United States*, 364 U.S. 206, 217 (1960).

[13] *See, e.g., Massiah* v. *United States,* 377 U.S. 201 (1964) (A post indictment statement deliberately elicited from a defendant by a government informant is inadmissible because it is a violation of the defendant's Sixth Amendment right to counsel, even though the Sixth Amendment does not expressly provide exclusion of evidence as a remedy for a violation).

[14] *Leon*, 468 U.S. at 907-08.

[15] *See Rakas* v. *Illinois,* 439 U.S. 128 (1978) (If the police did not violate the defendant's personal constitutional rights, he would lack standing to object to the admission of the resulting illegally obtained evidence.); *United States* v. *Leon,* 468 U.S. 897 (1984) (If evidence is seized under the authority of an invalid warrant, it will not be suppressed if a reasonable officer acting in good faith would have relied on the warrant.); *Wong Sun* v. *United States*, 371 U.S. 471 (1963) (If the evidence is so attenuated from the illegal conduct of the police that it cannot be said that it was obtained from the exploitation by the police of that illegal conduct, then the evidence will not be suppressed.); *United States* v. *Calandra,* 414 U.S. 338 (1974) (The exclusionary rule is inapplicable at grand jury hearings.); *I.N.S.* v. *Lopez-Mendoza,* 468 U.S. 1032 (1984) (The exclusionary rule is inapplicable at civil deportation hearings.); *United States* v. *Janis,* 428 U.S. 433 (1976) (The exclusionary rule is inapplicable at civil tax hearings.); *United States* v. *McCrory*, 930 F.2d 63, 69 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 1037 (1992) (Evidence seized in violation of the Fourth Amendment may be used at sentencing).

[16] 468 U.S. 796 (1984). *See also Murray* v. *United States*, 487 U.S. 533 (1988).

[17] *See generally* Martin J. McMahon, Annotation, *What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution,* 81 ALR FED. 331 (1987 & Supp. 1995).

[18] 467 U.S. 431 (1984).

[19] 430 U.S. 387 (1977).

[20] *Id.* at 390.

[21] *Id.* at 392-93.

[22] *Id.* at 393.

[23] *Massiah* v. *United States,* 377 U.S. 201 (1964).

[24] *Brewer,* 430 U.S. at 404.

[25] *Williams* v. *Nix,* 700 F.2d 1164 (8th Cir. 1983), *rev'd*, 467 U.S. 431 (1984).

[26] *Nix,* 467 U.S. at 442, 443.

[27] *Id.* at 447.

[28] *Tennessee v. Carpenter,* 773 S.W. 2d 1,6-7 (Tenn. Crim. App. 1989).

[29] *Nix,* 467 U.S. at 444. *See also Florida* v. *Ruiz,* 502 So. 2d 87 (Fla. Dist. Ct. App. 1987), *citing United States* v. *Brookins,* 614 F.2d 1037, 1042 (5th Cir. 1980) (both *Ruiz* and *Brookins* applied a "reasonable probability" standard).

[30] *See, e.g., United States* v. *Hernandez-Cano,* 808 F.2d 779, 784 (11th Cir. 1987), *cert. denied,* 482 U.S. 918 (1987); *United States* v. *Cherry,* 759 F.2d 1196, 1204-06 (5th Cir.1985), *cert. denied,* 479 U.S. 1056 (1987); *Nebraska* v. *Evans,* 389 N.W. 2d 777, 781-84 (1986).

[31] *Id; see also Illinois* v. *Campbell*, 514 N.E. 2d 241, 245-46 (Ill. App. Ct. 1987).

[32] 36 F.2d 1298, 1304-05 (5th Cir. 1994).

[33] *See, e.g., United States* v. *Thomas,* 955 F.2d 207, 210 (4th Cir. 1992); *United States* v. *Boatwright,* 822 F.2d 862 (9th Cir. 1987).

[34] 18 F.2d 971 (1st Cir. 1994).

[35] *Id.* at 978.

[36] In order for an inventory search to be valid, it must be conducted in accordance with standardized agency procedures and any discretion exercised by an officer must be according to standard agency criteria based on something other than suspicion of criminal activity. *See Colorado* v. *Bertine,* 479 U.S. 367, 375-76 (1987). *See also United States* v. *Woody,* 55 F.3d 1257, 1270 (7th Cir. 1995) (Evidence seized during search of glove compartment inevitably would have been discovered during subsequent inventory search of vehicle after impoundment).

[37] *Zapata,* 18 F.3d at 978 n.6.

[38] 787 F.2d 736 (1st Cir. 1986).

[39] *Id.* at 742.

[40] 433 A. 2d 1025 (Del. 1981), *cert. denied*, 454 U.S. 1151 (1982).

[41] 487 U.S. 533 (1988).

[42] *Id* at 540 n.2.

[43] 784 S.W.2d 660, 663-64 (Tenn. Crim. App. 1989).

[44] 808 F.2d 779, 782-84 (11th Cir. 1987), *cert. denied,* 482 U.S. 918 (1987).

[45] *See, e.g., United States* v. *$639,558.00,* 955 F.2d 712, 718-21 (D.C. Cir. 1992).

[46] 506 N.E.2d 911, 914 (1987).

[47] *Id.* at 914, *citing Oregon* v. *Crossen,* 536 P.2d 1263, 1264 (Or. Ct. App. 1975).

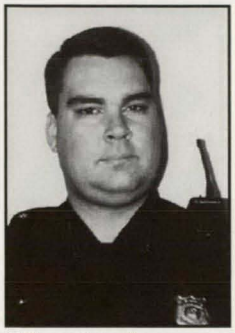
[48] *See, e.g., United States* v. *Zapata,* 18 F.3d 971, 979 n.7 (1st Cir. 1994) (". . . no fewer than seven other circuits have approved application of the inevitable discovery rule in primary evidence cases . . ."); *Colorado* v. *Burola,* 848 P.2d 958 (Colo. 1993); *Massachusetts* v. *O'Conner,* 546 N.E.2d 336, 339 (Mass. 1989).

[49] 487 U.S. 533, 541 (1988).

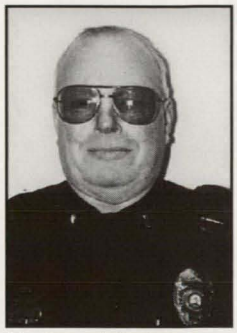
Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

The Bulletin Notes

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

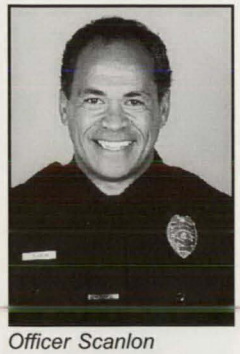


Officer Schultz



Lieutenant Jackson

While on patrol in the early morning hours, Officer Kevin Schultz of the Millington, Tennessee, Police Department observed a passenger vehicle traveling at a very high rate of speed. Concerned that the vehicle was moving too fast to negotiate an upcoming 90-degree curve, Officer Schultz activated his emergency equipment in an attempt to stop the car. However, the vehicle continued on at speeds exceeding 100 miles-per-hour. After being advised via radio to terminate the pursuit, Officer Schultz observed that the vehicle had spun around and was facing the wrong direction in the roadway. When Officer Schultz approached the car on foot, the driver attempted to run him over before racing away. Officer Schultz began trailing the speeding vehicle, which was now missing its left rear wheel. At this point, Officer Schultz was joined by Lieutenant Glen Jackson of the same department and both followed the speeding vehicle in a non-emergency mode. Suddenly, the officers heard a loud explosion as the vehicle crashed and burst into flames. After advising the fire department of the crash, Officer Schultz and Lieutenant Jackson pulled the driver from the burning wreckage, spraying him with a fire extinguisher while carrying him to safety. Officer Schultz was later treated for burns to his face and hands and released.



Officer Scanlon

Returning from the shores of Monterey Bay, off-duty officer Lester Scanlon of the Bay Area Rapid Transit Police Department in Oakland, California, drove by an oceanfront area where a crowd was beginning to form. Officers from the Pacific Grove Police Department had just arrived on the scene where a kayaker struggled in the rough surf, unable to get back into his kayak. Assessing the urgency of the situation, Officer Scanlon quickly donned his wetsuit, paddled his surfboard toward the rapidly tiring kayaker, and rendered assistance until ocean rescue divers and Coast Guard units arrived. The victim was then transported to a local hospital where he was treated for hypothermia and released. Through his quick and decisive actions, Officer Scanlon saved the kayaker from drowning.

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Patch Call

The patch of the Cleveland, Mississippi, Police Department features cotton and a towboat, as well as the Book of Knowledge and its flame. The cotton represents one of the major crops grown in the area, the towboat symbolizes the Mississippi River and its commerce, and the Book of Knowledge and its flame are included because the City of Cleveland is home to Delta State University.

The City of Martinsburg, West Virginia, Police Department patch features the City of Martinsburg Seal. The Seal was designed in 1953 for the City's 175th birthday celebration. Depicted on the Seal are a pioneer, a cornucopia, a gateway, a plow, and the book of knowledge and its flame. The images represent the city's pioneer and agricultural heritage, as well as the city's proximity to the Shenandoah valley.