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## ***Noble Cause Corruption and the Police Ethic***

By BOB HARRISON, M.S.

*"The City's Guardians must be gentle toward their own people but rough toward their enemies; otherwise, they will not wait for others to destroy them; they will do it themselves first."*

—Socrates  
Plato's *The Republic*

**I**n Plato's *The Republic*, Socrates and Glaucon discuss the formation of a city that embodies justice. As their dialogue builds this city, the final element involves selecting the guardians. Socrates' guardians would be keen of perception, strong enough to subdue opponents, and high-spirited in temper. At the same time, they would love wisdom and learning so they could treat their own people gently. However, the philosophers failed to address one question. Who would decide which individuals represent the guardians' own and which deserve the rough treatment of an

enemy? Today, U.S. society wrestles with the same unanswered question as its contemporary guardians, the police, attempt to interpret and enforce the law.

If the law represents an expression of moral sentiment, then police officers stand as instruments of that morality. Although appearing as paramilitary organizations, modern police agencies actually perform specific functions within communities through individual police officers' acting largely without supervision or direct control. Unlike a military unit, which operates cohesively as a team, the cop on the beat



Chief Harrison leads the Vacaville, California, Police Department.

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is left alone to make decisions regarding who goes free and who becomes subject to closer scrutiny. Society might regard the lone street cop as its single most powerful individual. Consider that the police alone are charged with depriving others of their liberty and that it is illegal to resist their authority to do so. Neither the president nor a Supreme Court justice can issue or execute a death warrant without prior review, yet police officers have the authority to employ readily available lethal weapons to protect themselves and the public they serve. In many cases, little conflict arises with regard to the propriety of police actions. Society generally recognizes the need for public safety, and few would disagree with the removal of murderers, rapists, or other violent individuals. The issue becomes more problematic when an attempt to service that desired end conflicts with the laws and regulations instituted to control the decision of who represents the “enemy” of the law.

Echoing ancient Greek dialogues, those who founded the United States as a constitutional republic in which no person or group could rise to absolute power deliberated at length on the ability of government to engage in punishing transgressors without resorting to tyranny.<sup>2</sup> James Madison, the father of the U.S. Constitution, noted the problematic issues of governance when he wrote, “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”<sup>3</sup> From Plato to the modern day, this remains a vexing problem. In a democracy, how can policing, as an institution, police itself, and how can police officers maintain an appropriate balance between governing others and controlling themselves?

In contemporary American life, officers commonly face the dilemma between following rules and

enforcing the law. Often, the result constitutes an individual utilitarianism, a sense of electing a course of action based on a self-perception of what is good for the greatest number. This personal interpretation of the law inevitably leads to questions of conduct (the means: an officer’s methods to elicit cooperation from another) versus a desired outcome (the end: apprehension of the guilty and protection of the community). For example, does an officer have the duty to infringe on an individual’s liberty for a laudable outcome? Should society excuse police officers for breaking fundamental laws, not for personal gain but to serve a greater moral imperative? Is this “noble cause corruption”<sup>4</sup> (i.e., illegal actions that violate the rights of citizens for moral considerations) an unstated norm in police conduct, or should an individual’s right to freedom from that behavior be society’s paramount consideration?

### **Policing and the Law in America**

The police are the constituted authority for the use of force within society.<sup>5</sup> Although society has recognized the need for a person or group to hold coercive power over others since ancient times, current police practices did not exist at America’s founding.<sup>6</sup> In fact, the first professional police agency in the United States, modeled after the London Metropolitan Police, was formed in New York in 1833. Interestingly, the use of the word “police” to describe society’s guardians has significant implications. For example, the word derives from the Greek *polis* and *polites*, meaning

“city/state” or “citizen.” In Scotland, the term *polis* remains in use as a formal title for an officer of the law. Perhaps Ireland has the most descriptive term for a modern police force, *garda síochána*, which translates to “guardians of the peace.” In many American communities, the police are legally entitled peace officers, an important distinction when considering the police role in the interpretation and application of the law.

Ideas from Plato and others exerted considerable influence over the education of the Anglo-European culture of America’s forebearers and shaped the law that police officers uphold today. Also, Lockean and biblical traditions had a dramatic effect on the framework of American freedom and liberty. For example, Thomas Jefferson wrote in the Declaration of Independence, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,” a passage strongly similar to John Locke’s writings that government should protect “life, liberty, and property.”<sup>7</sup> Although Jefferson did not attribute a significant influence from Locke in the development of his writings, the impact of Locke’s theories is undeniable.<sup>8</sup>

While Jefferson regarded the Bible as the ultimate source of moral guidelines,<sup>9</sup> he also readily absorbed the ideas of the Enlightenment<sup>10</sup> and of Locke’s *Essay Concerning Human Understanding*.<sup>11</sup> In 1769, after being shut out of the Virginia Assembly for his

views regarding the immorality of slavery, Jefferson sent to England for a copy of Locke’s *On Government*.<sup>12</sup> By 1773, Locke’s natural rights theories had become as commonplace for discussions as the Epistles of the apostle Paul.<sup>13</sup>

Jefferson’s foundation of Lockean individualism and moral certitude regarding the unalienable rights of the individual over that of the state inadvertently set the stage for the tension between the individual’s rights and the public good with which contemporary

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**...how can police officers maintain an appropriate balance between governing others and controlling themselves?**

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American police officers must wrestle. Locke’s intent can be interpreted to mean that the government assumes the power to decide whom to punish for transgressions to protect property and ensure safety. This inference easily can lead police officers into a dilemma of engaging in extralegal acts to serve their perceived duty to the public good. No matter how mightily society may struggle to develop a legal system that serves justice, occasions inevitably will arise where one undeniable good comes into conflict with another undeniable good, and no amount of effort,

negotiation, or goodwill can bring the two into harmony and reconciliation. Officers thrust into arbitrating between these conflicting goods may fall into corrupting the public trust to which they are sworn, not for personal gain or revenge but in an effort to fulfill a noble sentiment arising from the conflict endemic to the human condition itself.

### Societal Ends and Police Means

Imagine working as a police officer assigned to investigate the kidnapping of an 11-year-old girl. Officers have arrested a suspect who may know of the girl’s whereabouts. Unless they elicit a quick confession, the girl may die.

Under the law, the suspect has an absolute right against self-incrimination. Officers may adhere to the law and respect the rights of the suspect, or use extralegal measures to coerce the information they need to save a life. The dilemma becomes which course of action better serves the concept of Jeffersonian Happiness—that of respecting the individual arrestee’s rights or that of serving the greater good by using formal authority to ensure safety for the community.

Some police administrators would assert that no dilemma exists. Officers are sworn to uphold the law, and illegal activity can never be justified by an emotional argument to the contrary. Other administrators would focus on the act, and not the outcome, as the gauge of desired actions. If the act could not be applied in all circumstances (Immanuel Kant’s Universal Law),<sup>14</sup> it should not be performed.

Judging from his writings, John Locke also might have been caught

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on the horns of this dilemma. On one hand, he asserted that each man has a *property* in his own *person* to which no one has a right to but himself, and that the chief purpose of government is to protect that property.<sup>15</sup> For example, Locke maintained that what individuals produced through their own labors belonged to them and that the law must protect this property. At the same time, he also contended that man submits to the authority of the law to ensure that his property is protected.<sup>16</sup> According to Locke's philosophy, officers faced with this dilemma could justify harsh actions against criminals, similar to killing murderers to deter others.<sup>17</sup> Faced with the opportunity to save a life and deter the offender, officers could employ a true Lockean concept of policing to support the mandate of using any means necessary to achieve the desired end. Therefore, officers unilaterally could elect to take any measures necessary to serve the interests of society.

Further, officers who read John Stuart Mill and ascribe to a more utilitarian credo would have little trouble justifying actions that support the greater good.<sup>18</sup> Using the greatest happiness principle, these officers rationally could expect the violation of a single individual's rights (the means) to promote a greater societal end, that of happiness for the greater number of individuals. Of course, a true utilitarian view has little use for the resolution of true moral dilemmas because the rights of the individual always weigh less than those of the larger group. Mill's premise, however, amounts to no more than a

justification for any action against individuals who are different, especially if taken on behalf of the societal or cultural majority.

What, then, should police officers do when faced with violating the letter of the law in order to serve a desired moral end? American traditions formed from religious and classical philosophy affirm the principle that each individual has an innate worth and that police officers cannot descend from reasoned persuasion to aggravated coercion without losing a respect for the fundamental rights of freedom and

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***...does an officer have the duty to infringe on an individual's liberty for a laudable outcome?***

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self-determination. The noble cause corruption concept of officers' acting illegally, not for personal gain, but to fulfill moral obligations, stands as a testimony to the difficulties encountered by those entrusted with the public's safety. However, Edwin Delattre contends that ends do not necessarily justify the means and asserts that three basic considerations exist when contemplating actions intended to serve a desired end.<sup>19</sup>

- A good end cannot justify a means in a context that makes

it wrong and evil. Violations of civil liberties and laws, violations of oaths of office, and abuses of authority and power—all betrayals of public trust—are wrong and cannot be justified by any end.

- Attempts to revise regulations and rules cannot eliminate a conflict in ideals. Although revisions in the law can alter the mechanics of accountability, they cannot change elements of the human condition.
- Inflicting pain sadistically or without regret can never be excused.<sup>20</sup>

Interestingly, Delattre comments that most thoughtful people will come down on one side of noble cause corruption while expressing a sympathy and respect for those on the other side. He personally would not rule out the use of physical coercion to save a life; however, he then would immediately report his actions to his agency and resign his position of public trust.

Is Delattre's "act wrong, then resign" resolution the best officers can hope for to resolve the issue of achieving desired ends? Does the human condition render some choices as inevitable tragedies for those unfortunate enough to have to make them? Should the difficulty in arriving at a consensus regarding appropriate actions excuse those who have elected to put themselves in positions of public trust? Unfortunately, the problem of ethics in policing is not solved readily by the "silver bullet" approach. Even if

officers know what is right, that knowledge remains separate from the question of how much an individual is willing to pay to do the right thing. As appealing as it may be to satisfy the emotional dilemma by choosing the short-term solution, compelling arguments exist in favor of acting only in a manner that serves the long-term interests of society.

### Restoring the Wise Guardian

Although the dilemma of noble cause corruption appears superficially problematic, in actuality, it is not. On the surface, the issue of saving innocent lives and incarcerating those who have transgressed against society seems to constitute ample justification for acts necessary to achieve that noble end. From a relativist perspective, society's guardians could rationalize any circumstance to legitimize the brutalization of another human being. To do so, however, denies basic human rights and the concept of equality upon which police officers base their authority. Once equality and confidence in the institution of policing is eroded in the general community, the ability for government to fulfill its legitimate aims also becomes decimated.

Government refrains from coercion and intimidation to accomplish its ends because the society it serves deserves a legal system that remains consistently just. The convenient deviance from the belief that each individual has worth proves a slippery slope from which anyone concerned with justice may not be able to escape. For every

instance where a dilemma may occur regarding competing noble ends, countless examples of police misconduct under the guise of law enforcement exist. In the majority of cases, however, officers committed these acts in the name of law and order.

Unfortunately, contemporary policing in America contains many examples of conduct detrimental to the profession and the community it serves. Because recent law enforcement studies have shown the existence of widespread perjury, brutality, and other forms of corruption, judges, attorneys, juries, and the public sometimes question police courtroom testimony.<sup>21</sup>



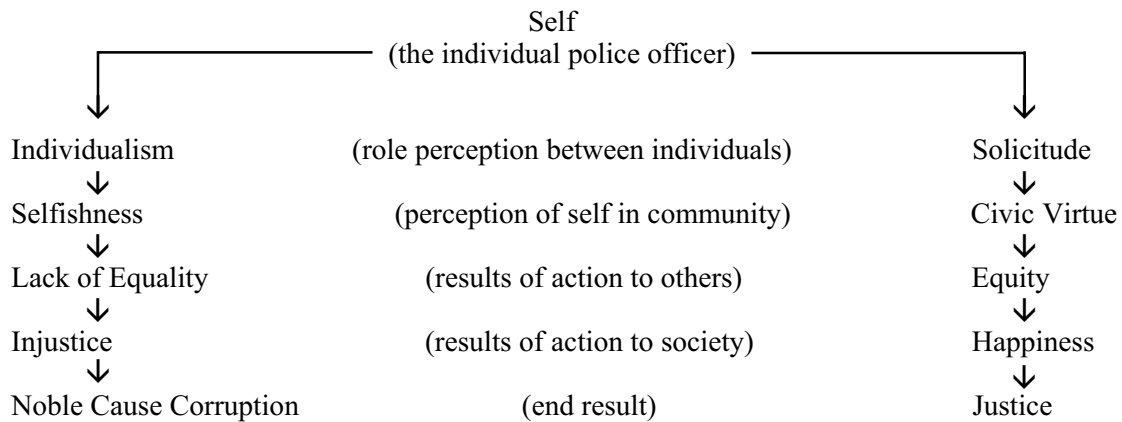
For example, in one East Coast city, the term “testilying” is a code word for police perjury to obtain a conviction. Also, excessive force for the purpose of exacting “street justice” is a problem noted in commission reports from New York to Los Angeles. In California alone, the Rodney King incident in 1991 replayed itself in 1996 in Riverside when officers used their batons

against defenseless individuals at the end of a high-speed pursuit. On both occasions, the victims received punishment without court review or a legitimate conviction for breaking the law.

When officers use unlawful means to gain a desired end, they damage the system they represent. Beyond the damage to the justice system, however, officers who engage in illegal behavior denigrate not only the uniform of the guardian but also the individual within. The eventual result to society is a loss of confidence in those charged with the protection of others, leading to a fraying of the tapestry of the culture that binds communities together.

What can be done? Socrates' assertion that education of the guardians is essential remains strongly supported by modern law enforcement scholars. A New York commission exploring tactics to combat chronic corruption in their department recommended at least 1 year of formal, general education beyond the high school level prior to police service. In California, however, of the 800 hours a new recruit spends in basic academy training, only a fraction deals with issues beyond basic skills. Most police training academies devote little classwork to the broader understanding of the police role in society at a philosophical level. Many new officers enter a culture where they are taught to perceive anyone who is not a street cop as the enemy, including top law enforcement managers. Patrolling their beats largely unsupervised, officers can easily develop a sense of being the

## Two Paths to Resolving Ethical Conflicts



An understanding of the process of resolving conflicts between individualism and the common good may be a better way to understand possible resolutions between self and others. Actions framed as noble cause corruption may arise from an individualistic perspective, versus a worldview of interdependency toward others. The individualistic path leads inevitably to a sense of selfishness when a concern for civic good is supplanted by an egocentric assessment of actions. Without respect for the worth of others, lack of equality will exist, creating a society where government actually produces injustice. The end result will involve police officers who

engage in corrupt acts with impunity and without a sense of accountability to those they serve.

However, the alternate path depicts officers who perceive others in an interdependent manner from a perspective of respect. Solicitude on a personal contact level translates to a concern for civic virtue at the community level, resulting in officers who treat others equally. Consistent equitable action translates to a general sense of satisfaction for the police, as well as for those they serve. In the end, a concern for civic virtue and happiness leads to true justice in the administration of law.

lone crime fighter—heroes left to rely on their own devices and skills to get the job done. Added to this is the fact that officers work within a system of changing policies, conflicting court rulings, and increasing scrutiny and distrust. Taken together, these factors contribute to the sense that the pedestal upon which society has placed justice is showing cracks and erosion.

Without appropriately educating its guardians regarding their roles and responsibilities to the public they serve, society could see the result of this subtle erosion in the eventual collapse of the American justice system.

And what should this education encompass? Beyond laws and procedures, the modern guardian should possess a sense of

integration with the larger fabric of American society. Moving from a sense of individualism to the Stoicism<sup>22</sup> perspective might better reflect the intent of Jefferson and others who founded the American democracy. In other words, an individual who filters events through a Stoic perspective would move from a judgment of how the world *should be* to an acceptance of events as

being a part of the natural course of humanity. It does not mean that external events will go well but that an individual accepts these events, leading toward a fulfilled life. In this paradigm, the individual's motivation and action result from an intrinsic sense of worth, rather than a reaction to extrinsic influences.

Using the Stoic, or solicitous, path over the individualistic path to design the education of police officers will move their attitudes and perspectives from seeing actions as distinct from one another to understanding the civic good from a community perspective. Officers who understand the role of the guardian would prove far less likely to shirk their duty to the longer perspective of upholding the basic tenets of the guardian.<sup>23</sup> This education remains necessary, not only when officers enter the profession but also throughout their careers.

## Conclusion

Law enforcement officers face difficult decisions on a daily basis. Sometimes situations arise that require them to weigh the laws they are sworn to uphold against the life of an innocent victim. Such incidents force officers to confront the noble cause corruption dilemma of violating fundamental laws to serve a greater moral good. Officers need all of the assistance that police managers can provide to resolve these ethical quagmires.

Without a concerted educational effort to turn the contemporary cop into Plato's "lover of wisdom," society easily can envision the increasing dissatisfaction caused by inappropriate actions by

law enforcement as a precursor to the direction of American culture itself. In constant contact with those who commit crimes, officers would do well to heed Friedrich Nietzsche's admonition that "whoever fights monsters should see to it that in the process he does not become a monster" and "when you look long into an abyss, the abyss also looks into you."<sup>24</sup> For society's sake, police officers must take a step back from the abyss to reassess who the enemies of the city are and to ensure gentle treatment of all within the city's walls. ♦

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**When officers use unlawful means to gain a desired end, they damage the system they represent.**

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## Endnotes

<sup>1</sup> Plato, *The Republic, Book II, Great Dialogues of Plato*, trans. Philip Rouse (New York: Mentor Books, 1950), 172.

<sup>2</sup> Edwin Delattre, *Character and Cops* (Washington, DC: American Enterprise Institute, 1989), 16.

<sup>3</sup> Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, No. 47, Introduction by Clinton Rossiter (New York: Mentor Books, 1961), 301.

<sup>4</sup> Supra note 2, 194.

<sup>5</sup> Supra note 2, 197.

<sup>6</sup> Plato wrote of the need for the guardians; John Locke asserted that each man had the right in the natural state to enforce conformance upon others who transgressed on his property. Kings, property owners, and appointed servants of a ruler or leader of most European cultures

have all asserted the right to enforce adherence to a stated or codified norm. In the 19th century, dissatisfaction over the use of the military in England for the role of civil government enforcement led to the creation of the modern police model.

<sup>7</sup> Fawn M. Brodie, *Thomas Jefferson—An Intimate History* (New York: Bantam Books, 1975), 145.

<sup>8</sup> Charles Maurice Wiltse, *The Jeffersonian Tradition in American Democracy* (Chapel Hill, NC: University of North Carolina Press), 45.

<sup>9</sup> *Ibid.*, 48.

<sup>10</sup> A philosophical movement of the 18th century marked by a rejection of traditional social, religious, and political ideas and an emphasis on rationalism.

<sup>11</sup> Leonard Wibberley, *Thomas Jefferson—Revolutionary Aristocrat* (New York: Franklin Watts, 1991), 40-41.

<sup>12</sup> Supra note 7, 112.

<sup>13</sup> Supra note 7, 113.

<sup>14</sup> Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), 42-45.

<sup>15</sup> John Locke, *The Second Treatise on Civil Government* (Buffalo, NY: Prometheus Books, 1986), 70.

<sup>16</sup> *Ibid.*, 69.

<sup>17</sup> *Ibid.*, 12.

<sup>18</sup> John Stuart Mill, *Utilitarianism* (New York: Prometheus Books, 1987), 16-17; Mill defines happiness, not in the hedonistic sense but as the pleasures of the intellect.

<sup>19</sup> Supra note 2, 193.

<sup>20</sup> Supra note 2, 194-195.

<sup>21</sup> Commission Report for the city of New York, July 1994, 37.

<sup>22</sup> A philosophy begun about 300 B.C., Stoicism holds that individuals should be free from passion, unmoved by joy or grief, and submissive to natural law.

<sup>23</sup> The most relevant biblical reference is Romans 13:3-4, which reads, "Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment to the wrongdoer."

<sup>24</sup> Friedrich Nietzsche, *Beyond Good and Evil*, trans. Walter Kaufman (New York: Vintage Books, 1989), 89.



# Focus on White-collar Crime

## ***The Bank Secrecy Act A Powerful Weapon for Law Enforcement***

By Gary J. Kruchten, J.D., CPA



**I**n *The Fountain Pen Conspiracy*, author Jonathan Kwitney suggests that the most powerful and untouchable criminals are not the ones who make headlines in the paper or on the evening news but those hidden in the shadows who direct the movement of vast sums of money.<sup>1</sup> Controlling the money gives them their power and allows them to flourish long after their more visible associates have gone to prison.

Most criminal activity is motivated by an inordinate desire to accumulate wealth. Consequently, an important element in the proof of almost every crime is establishing that funds were transferred illegally to the accused. Establishing who transferred the funds, to where, and by what means helps investigators prove criminal intent and often has a great impact on a jury's determination of guilt or innocence.

However, developing financial evidence can challenge investigators. The Bank Secrecy Act of 1970,<sup>2</sup> also known as the Currency and Foreign Transactions Reporting Act, represents an often-underused, but potentially very productive, source for white-collar crime investigators.

### **The Act**

The Bank Secrecy Act requires that financial institutions, private businesses, and individuals document certain monetary transactions. In doing so, they alert law enforcement to possible criminal activity. The act requires documentation in four key areas.

- Financial institutions must retain records of importance to investigators, including signature cards and checks and transactions into and out of the United States in amounts greater than \$10,000.
- Financial institutions must report any currency transactions exceeding \$10,000 within 15 days of the transaction, using a Currency Transaction Report<sup>3</sup> (CTR), form 4789.
- Any person with foreign bank or security account balances exceeding \$10,000 must file a Report of Foreign Bank and Financial Account, commonly referred to as an F-Bar, with the Internal Revenue Service (IRS) by June 30 of the year following establishment of the account.

- Individuals who transport more than \$10,000 in currency or certain monetary instruments into the United States from another country, or vice versa, must file a Currency Monetary Instrument Report (CMIR), form 4790, with the U.S. Customs Service.

To retrieve the information these reports provide, law enforcement officers can turn to the Financial Crimes Enforcement Network (FinCEN), a division of the U.S. Department of the Treasury, which serves as an information clearinghouse for federal, state, and local law enforcement agencies. Each state has one or more designated representatives, who act as official liaisons with FinCEN and access its databases to obtain information for their state agencies. At the same time, the FBI and other federal, non-Treasury Department law enforcement agencies have representatives assigned to FinCEN who do the same for investigators within their respective organizations.

### The Database

FinCEN's financial database<sup>4</sup> contains a wealth of information that law enforcement can use in any criminal investigation where the suspects have access to large sums of money. For example, investigators might discover that a subject owns hidden domestic bank, brokerage, or insurance accounts. Or, they might find information detailing when and where a suspect conducted currency transactions, descriptive information concerning the suspect, and witnesses at the financial institutions who could possibly identify the suspect.

The Currency Transaction Reports filed in the database since 1979 represent nearly 100 million individual transactions with a dollar value exceeding \$5 trillion.<sup>5</sup> Each of these CTRs provides the source data for millions of records relating to individual currency transactions. Specifically, information from the CTR not only alerts investigators to transactions exceeding \$10,000, but it also can identify the individuals involved and provide their social security

numbers, addresses, and businesses or professions. Other information revealed includes the date, time, location, and description of each transaction, as well as the bank employee completing the form.

The Currency Monetary Instrument Report identifies individuals transporting more than \$10,000 in or out of the United States and reveals their passport numbers, home addresses, type of monetary instruments used, and the date and place the individuals left or entered the United States. Finally, the F-Bar pinpoints the name, address, and account number for the foreign bank where an account exceeding \$10,000 was established, the date the account was opened, and the individual or organization who opened it.

Like the National Crime Information Center database, or any other computerized source of information, not every inquiry into FinCEN produces useful information. However, a positive search can save hundreds of hours of investigative time. For example, several years ago, federal agents in the Midwest investigated a substantial money-laundering case involving the proceeds from the sale of cocaine. Investigators used wiretaps and surveillance and invested many hours into the investigation to identify the financial institution and the accounts the subjects used to

transfer millions of dollars in illicit drug proceeds. Later in the investigation, the agents contacted FinCEN and obtained, in a very short period of time, the same information. Had they contacted FinCEN earlier they could have saved substantial investigative time and resources. Still, in cases such as this, where surveillance or other investigative techniques have linked suspects with a particular financial institution, contacting FinCEN in order to review CTRs or other reports can establish the identity of suspects and reveal other vital information.

### Conclusion

The mission for any criminal investigation remains to gather evidence that will establish the truth

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of the matter. Yet, many crimes, particularly white-collar offenses, require that investigators follow a long, complex trail of large currency transactions to gather critical evidence. Fortunately, the Bank Secrecy Act of 1970 requires the documentation of certain financial transactions, and the Financial Crimes Enforcement Network serves as a clearinghouse for the reports that provide evidence of these transactions.

Currency Transaction Reports, Currency Monetary Instrument Reports, and Reports of Foreign Bank and Financial Accounts can help investigators identify individuals who handle large sums of money both in the United States and abroad. In doing so, they may uncover the fruits of illicit activity. Although criminal kingpins historically have hidden behind their low-level associates, investigators can use the resources of the Bank Secrecy Act to bring these offenders out of the shadows and into the light of justice. ♦

#### Endnotes

<sup>1</sup> Jonathan Kwitney, *The Fountain Pen Conspiracy* (New York: Alfred A. Knopf, Inc., 1973).

<sup>2</sup> Title 12, U.S.C. § 1829(b), October 6, 1970; regulations for the act are found at 31 C.F.R., § 103, et seq.

<sup>3</sup> Casinos must file a similar report, known as a Currency Transaction Report by Casinos.

<sup>4</sup> FinCEN has access to a number of databases, which fall into three general categories: financial, commercial, and law enforcement. The financial database contains information required by the Bank Secrecy Act, as well as IRS form 8300, Reports of Cash Payments Over \$10,000 Received in a Trade or Business; the commercial database retrieves information from such sources as Dun and Bradstreet and Lexis-Nexis and provides a variety of personal and business information, including addresses, real estate transactions, and business affiliations; the law enforcement database draws information from a number of state and federal law enforcement agency databases. FinCEN also maintains its own database to log inquiries it receives and to record the results of its database searches in order to share the information with other agencies.

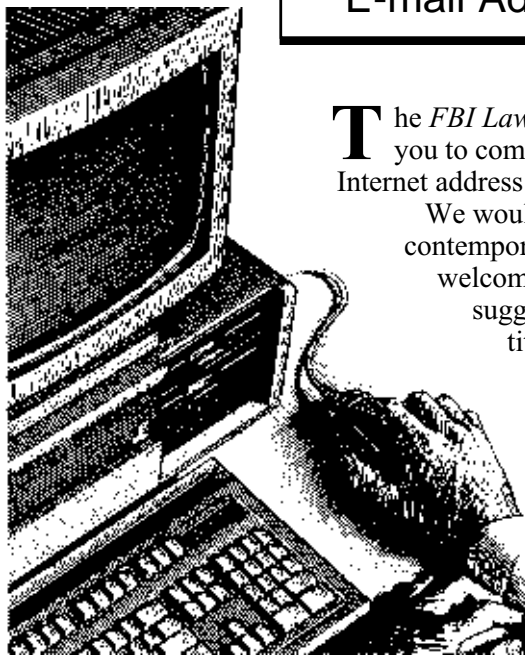
<sup>5</sup> FinCEN financial database.

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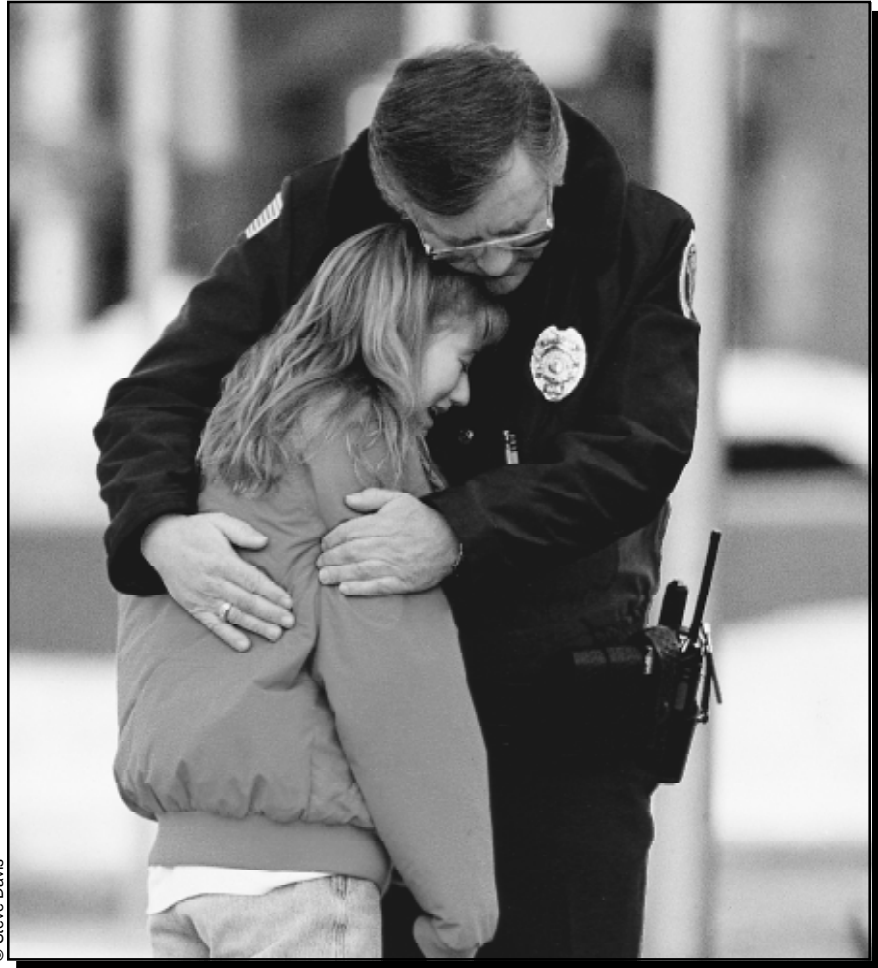
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Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.

# Preferred Protocol for Death Notification

By BRIAN J. SCOTT



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“I have some very bad news to tell you. Your son was involved in an automobile accident and was killed.” No law enforcement officer ever wants to say these words to a parent. However, although tragic and emotionally charged, death notifications remain one of the most important nonenforcement functions that officers perform. While most officers hope they never will have to deliver such a message, they should prepare themselves for the possibility.

Survivors remember the moment of death notification for the rest of their lives, sometimes with pain and anger if handled

improperly. Surviving family members never get over the tragedy; they simply continue their lives with the event now a part of their personal histories. Accepting death when it results from natural causes is difficult enough. However, sudden, unexpected deaths from suicides, homicides, or fatal accidents can overwhelm the surviving family.

Experts have found that the officer's role in delivering the death notification greatly affects the direct level of devastation and distress suffered by the receivers. Moreover, the stress of the situation impacts not only the loved ones but the messenger, as well. Officers can

lessen the negative, stressful impact on themselves and the receivers of such painful news by following some simple, yet proven, procedures.<sup>1</sup>

## KNOWING WHAT TO EXPECT

Individuals learning of the death of a loved one may react in many ways as profound emotions surface. Denial, anger, hysteria, fainting, physical violence, shock, indifference, amnesia, and hostility represent typical responses. Some variables that affect the type and degree of reaction include the intensity of the event (i.e., accidental

versus violent death), the survivor's capacity to comprehend what has happened, and the survivor's equilibrium, or ability to deal with a traumatic situation.

Even when survivors do not exhibit an immediate response, officers must consider the death notification process a crisis. Most survivors find themselves numb and unable to understand what they should do next. Some survivors have said that they felt as if the event was a dream and not really happening. Others said they felt as if they were floating outside their bodies watching the events unfold or described themselves as going crazy and losing control.<sup>2</sup> These emotions are normal and survivors need to express them, but because survivors do not understand these feelings, they become fearful. They need a calm and reassuring authority figure to help them restore control over their lives and make such decisions as naming a supportive individual to contact or selecting a

funeral home. Law enforcement officers can help survivors meet these needs through humane, patient, professional, and compassionate communication.

### **MAKING THE NOTIFICATION**

Officers should follow a basic plan when making death notifications. First, they should obtain as much information as possible about the victim and the circumstances surrounding the death. Next, they should decide how they will present the information and what they will say. Finally, they should notify the survivors in person, never over the telephone, and as soon as possible.

### **Gathering All of the Information**

First, officers should ascertain as much information as possible about the victim, including the deceased's name, age, address, and marital status. Then, officers should gather critical details about the incident in order to answer the

survivors' immediate questions and concerns. Officers who were present at the scene can provide valuable information to notifying officers. By providing such details, officers can help family members accept the loss of their loved one. Finally, officers should know who the survivors can contact for further information (e.g., hospital, coroner's office, or officers assigned to the case).

### **Deciding Who Takes the Lead**

Because survivors may experience severe emotional or physical reactions, including hostility toward the notifiers, at least two officers or one officer and a civilian (e.g., a religious representative, family physician, medical examiner, or close friend) should notify the next of kin. Also, experienced notifying officers have found that a female-male team often proves beneficial, especially when dealing with multiple survivors of both sexes.

Before arriving at the survivors' location, the notifying team should decide who will speak first and what they will say. If either of the notifiers knows the family, that individual should take the lead in the conversation.<sup>3</sup>

### **Delivering the News**

Once officers have positively identified the deceased and know the preliminary details surrounding the death, they should notify the survivors as expeditiously as possible. First and foremost, officers must notify survivors in person, never by telephone. Moreover, officers never should broadcast



*Officer Scott serves with the Burlington, Wisconsin, Police Department and the Wisconsin State Fair Police.*

“  
***...sudden,  
unexpected deaths  
from suicides,  
homicides, or fatal  
accidents can  
overwhelm the  
surviving family.***  
”

## Death Notification Overview

- Always make the notification promptly and in person.
- Always try to have a two-person notification team.
- Always make the notification in private and with the receiver seated.
- Always remember that shock is a medical emergency.
- Always refer to the victim by name.
- Always offer to contact a support person and stay with the survivor until that person arrives.
- Always use clear, plain language.
- Always provide the next of kin with the procedures for obtaining the victim's personal effects; never deliver these items at the time of notification.
- Always be compassionate.

details of such incidents over the radio due to the existence of monitoring scanners. During such grievous moments, surviving loved ones need a human presence to help them cope with the shock and proceed with the necessary arrangements. If the next of kin resides outside their jurisdiction, officers should contact local authorities to assist with the notification.

Notifying officers should identify themselves, present their credentials, and ask to enter the residence. Officers never should make death notifications on the doorstep. Officers should have the survivors sit down and then verify that they are addressing the intended receiver (e.g., parent, spouse, or other emergency contact). Officers should offer to tell children separately if the adult receiver wishes.

If at the survivor's place of employment, officers should ask to speak to the supervisor and determine the availability of the individual they need to notify. Officers should not divulge details regarding the purpose of their visit. They should ask the employer to provide

a private area for the notification. Officers should offer to transport survivors home or to the hospital or coroner's officer to identify or view the victim.

While medical facilities generally have established procedures and trained staff to handle these situations, notifying officers may assist by finding a private, quiet area and seating the survivors. Officers should have the attending physician, in a clean uniform, available to address any medical issues, including restrictions concerning physical contact with or the condition of the body, which may affect the survivors' decisions to view the deceased. Officers must realize that denying survivors the act of viewing the deceased is not an act of kindness. Most survivors want to see their loved ones; officers should allow this if possible.

Regardless of the location, officers should relay the death notification in clear, direct, and understandable terms. Officers should begin by stating, "I have some very bad news to tell you" or something similar. This statement gives

survivors a crucial opportunity to prepare for the shock. After all, the presence of police officers already has alerted them to the possibility of a problem. Next, officers should explain what happened, avoiding such vague expressions as "passed away...was lost...didn't make it." Instead, they should use plain language, such as "Your wife was involved in a train accident and was killed" or "Your brother had a heart attack at his work and died." While officers would like to soften the news with a more indirect approach, they must realize that it only makes the situation more confusing, and worse, may imply a false sense of hope. Typically, survivors appreciate a compassionate, yet direct explanation. Also, officers always should refer to the victim by name, never by such terms as "body" or "corpse." Finally, officers should answer any questions—including where the body is located, how it will be released and transported to a funeral home—and whether an autopsy is needed, as fully and in as much detail as possible. If survivors ask questions to

which officers do not know the answer, officers should admit their lack of knowledge and offer to find out.

During the notification process, officers never should offer false hope, try to talk the survivors out of their grief, impose their own religious beliefs, or say they understand how the survivors feel, unless they have experienced a similar incident. Further, many survivors have indicated that an appropriate expression of condolence similar to "I'm sorry this happened" proves more helpful than such intended comforting statements as "It was God's will" or "She led a full life."

Most important, officers always should allow ample time to provide information, support, and direction to survivors. They never

should notify the survivors and then leave. This confuses most survivors and makes them feel abandoned. Officers can help survivors begin to move through the grieving process by providing some immediate direction, such as offering to contact a friend or family member, and staying with the survivor until this individual arrives.

Notifying officers never should bring any of the deceased's clothing or other personal effects with them at the time of the notification. Because survivors need time to accept the victim's death, immediately seeing tangible reminders of the deceased can prove devastating. Survivors often require several days or even weeks before they can accept the victim's belongings, but eventually they may want all of them.

Therefore, officers should let survivors know how to recover these belongings. Many departments store these items until survivors can accept them. Most important, officers never should store or subsequently deliver these belongings in trash bags. Officers should remain sensitive to the survivors' feelings and use boxes, paper wrapping, or other more appropriate containers.

### **INSTITUTING FOLLOW-UP CONTACT**

Depending on the survivors' emotional state, officers may want to wait a few days before providing information concerning benefits available to families of homicide victims through victim compensation funds. Most states have these programs and administer them through their offices of attorneys general. Funded by fines and penalties paid by criminals, these programs include compensation for murder-scene cleanup, counseling services, funeral and burial expenses, and loss of financial support for the family of the deceased. While these funds never can erase the painful memories of the incident, they can assist in the survivors' recoveries and help ease financial burdens.

Officers should keep survivors notified of the progress of the case, if the death resulted from violence. Officers should advise these survivors of their right to file a victim impact statement, which assists the court in sentencing the perpetrator in the event of a conviction. Officers also should inform survivors of any support groups or counseling services available in their

#### **Victim Assistance Resources**

- Office for Victims of Crime (OVC)  
U.S. Department of Justice  
810 7th St., NW  
Washington, DC 20531  
202-616-3574  
<http://www.ojp.usdoj.gov/ovc>
- Mothers Against Drunk Drivers (MADD)  
P.O. Box 541688  
Dallas, TX 75354-1688  
800-438-MADD  
<http://www.madd.org>
- National Organization for Victim Assistance (NOVA)  
1757 Park Rd., NW  
Washington, DC 20010-2101  
202-232-6682 or 800-TRY-NOVA  
<http://www.try-nova.org>



## Bereavement Resources

- **American Association of Suicidology:** for family and friends of a suicide victim; National headquarters: 4201 Connecticut Ave., Suite 30, NW, Washington, DC 20008; for local chapter referrals, call 202-237-2280; <http://www.suicidology.org>
- **Compassionate Friends:** for parents who have lost a child and surviving siblings; National headquarters: P.O. Box 3696, Oak Brook, IL 60522-3696; for local chapter referrals, call: 630-990-0010; <http://www.compassionatefriends.org>
- **The Dougy Center:** for children ages 3-12 and teens who have lost family members; P.O. Box 86852, Portland, OR 97826; 503-775-5683, <http://www.dougy.org>
- **Alliance for Children and Families:** a bereavement counseling referral network; 11700 West Lake Park Drive, Milwaukee, WI 53224; 800-221-2681 or 414-359-1040; <http://www.alliance1.org>
- **Fernside, A Center for Grieving Children:** for children ages 3-17 who have lost family members; 2303 Indian Mound Ave., Cincinnati, OH 45212; 513-841-1012; <http://www.fernside.org>
- **Parents of Murdered Children and Other Survivors:** for surviving family and friends of victims of violent crime; National headquarters: 100 East 8th St., Suite B-41, Cincinnati, OH 45202; for local chapter referrals, call: 513-721-5683
- **AAARP Widowed Persons Service:** a support service for persons who have lost a spouse; National headquarters: 601 E St., NW, Washington, DC 20049; for local chapter referrals, call: 202-434-2277; <http://www.aarp.org/griefandloss/organizations.html>

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Resources obtained from R. Moroni Leash, *Death Notification, A Practical Guide to the Process* (Arkansas City, KS: Gilliland Printing, 1994), 253-256; and Kenneth Doka and Joyce Davidson, eds., *Living with Grief: Who We Are, How We Grieve* (Hospice Foundation of America, 1998).

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communities and encourage survivors to contact the employee assistance program where they work.

### CONCLUSION

Law enforcement officers often enter their profession to help others and improve life in their communities. Bringing tragic and painful news to the citizens they have sworn to protect and serve stands as one of the most difficult tasks any officer has to face. However, established procedures and guidelines can help officers handle death notifications in a professional, compassionate, and sensitive manner.

Knowing the reactions that survivors may exhibit upon learning of a loved one's death, obtaining crucial information about how the death occurred, and deciding ahead of time how they will deliver the painful news provide officers with a plan that can lessen the distress for the receivers and for themselves. Officers also should remember that the courage and strength of character they need to face the daily challenges of their profession include not only physical bravery but also emotional fortitude and compassionate resolve, especially in handling death notifications. ♦

### Endnotes

<sup>1</sup> The author gratefully acknowledges the Crime Victim Assistance Division of the Iowa Department of Justice and Concerns of Police Survivors for their invaluable assistance. Officers may want to contact the Association for Death Education and Counseling in Hartford, CT, at 860-586-7503 or at its Web site, <http://www.adec.org>, for additional information.

<sup>2</sup> R. Moroni Leash, *Death Notification, A Practical Guide to the Process* (Arkansas City, KS: Gilliland Printing, 1994), 97-115.

<sup>3</sup> David W. DeRevere, Wilbert A. Cunningham, Tommy Mobley, and John A. Price, *Chaplaincy in Law Enforcement: What It Is and How to Do It* (Springfield, IL: Charles C. Thomas, 1989), 54.



# Police Practice

## ***The STARS Program Students Traveling and Arriving Safely***

By Dennis Bridges

© Virginia M. Fitzpatrick



“**G**et in; hurry. Don’t worry; I know your parents.” An unknown adult male uttered these words in an attempt to lure a fifth-grade girl into his pickup truck near a Fresno, California, elementary school last year. Fortunately, the youngster screamed and ran, prompting the suspect to speed away. The next day’s local newspaper recounted the young girl’s brush with danger and related four previous attempted abductions of young students. The article also noted several recent incidents involving students robbed of their backpacks at gunpoint.

These high-profile incidents of students accosted as they traveled to and from school garnered a good deal of media coverage that marred an overall reduction of crime and disorder in the Fresno school system for the 1997/98 school year. Even though the Fresno Unified School District has nearly 80,000 students and Fresno a population of over 400,000, the Fresno Police Department could not allow even a small number of such incidents to continue unchecked.

Further, a review of the department’s activity logs revealed several other types of troubling off-campus encounters, including adult men exposing themselves to students or talking to them in sexually suggestive or threatening ways. The department decided on a cooperative, proactive effort—modeled on an existing collaborative alliance involving the police, the probation department, and the school system—to decrease these threats to the community’s children as they travel to and from school.

### **THE MODEL COLLABORATIVE EFFORT**

Since 1993, the Fresno Police Department, the Fresno County Juvenile Probation Department, and the Fresno Unified School District have instituted police-probation teams at each of the area’s eight high schools and six middle schools to reduce juvenile crime and improve school safety. Previously, these three agencies, although usually dealing with the same “problem” students, engaged in minimal collaboration. For example, school staff would summon police officers to the campus when crimes occurred. Officers would make arrests or issue citations as appropriate and send their reports to the probation department, which would make recommendations to the juvenile court and supervise assigned probationers. Over time, the need to work together became apparent and led to the creation of the police/probation/school alliance and the formation of police-probation teams on school campuses.

These teams consist of a police officer and probation officer sharing an office on school campuses. However, the partnership involves much more than simple colocation. The team becomes an integral part of the campus environment by forming bonds with students and forging professional working relationships with school staff members. Each team provides uniform patrol, holds citation hearings, supervises students on probation, imposes informal probation sanctions, and investigates crime. The school district provides office space, furniture, telephones, shared funds for a computer, and parking for a patrol car. During the first 5 years of this program, crime on school campuses declined at an unprecedented rate. For example, the number of guns discovered on Fresno high school campuses dropped

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98 percent, from 49 in the 1992/93 school year to only 1 in 1997/98; batteries against teachers went down 71 percent, from 55 to 16; and the number of arrests of nonstudents for loitering on or around school campuses decreased 91 percent, from 986 to 89, over the 5-year period. With these successes as a foundation, the police/probation/school alliance used the police-probation team concept as a model to tackle the problem of safeguarding students going to and from school.

### **THE STARS PROGRAM**

The approach to increasing off-campus student safety began with a simple theory—the more people actively looking out for children as they walk to and from school, the better. Based on this premise, the police/probation/school alliance developed the Students Traveling and Arriving Safely Program (STARS). It encompasses seven core components and actively involves not only police, probation, and school district personnel but also parents, students, neighborhood residents, firefighters, city employees, and other volunteers.

#### **Parent Patrols**

Parents, wearing distinctive vests while walking or driving their vehicles (clearly marked with STARS magnetic placards), patrol the streets near schools, looking for suspicious individuals or vehicles. These volunteers do not take enforcement action or place themselves in danger. They use their personal cellular telephones to contact police or school-issued radios to contact school staff when necessary.

#### **Student Awareness**

Students themselves must become aware of the dangers they may encounter when traveling to and from school. Police personnel teach students to walk with other students when possible, remain alert for suspicious vehicles and individuals, take safe routes instead of shortcuts, and report suspicious activity to school officials or police. The training also encourages students to pay attention to the well-being

of fellow students. Also, students provide a great portion of the necessary feedback about the STARS Program to school officials and the police.

#### **Safe Houses**

Several years ago in an effort to expand its public service role in the community, the Fresno Fire Department created the program A Friend Is Waiting. The program involves residents offering their homes as a place of safety for children who are in distress or danger until police arrive. A distinctive decal in the front window identifies the residences as safe houses. Fire stations and commercial operations also act as safe houses. The police department screens all volunteers and members of their households or businesses before the fire department designates the locations as safe houses.

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**Students themselves must become aware of the dangers they may encounter when traveling to and from school.**

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#### **City Employees**

Fresno municipal employees, such as sanitation workers and bus drivers, routinely drive in neighborhoods around schools. They receive training to act as “eyes and ears” for police, who instruct them to report any suspicious activity. Demonstrating intergovernmental cooperation, Fresno’s 500 local postal carriers also receive this training and actively participate in the program. Additionally, city bus drivers receive radio broadcasts of suspects and suspect vehicles involved in crimes against schoolchildren, which significantly increases the chances of locating these individuals.

#### **Citizens on Patrol**

The police department deploys its highly successful Citizens on Patrol through school neighborhoods during peak student travel times. For the past 2 years, the department has offered graduates of its 16-week Citizen’s Police Academy an additional 5-week training course in first aid, defensive driving, communication procedures, and other police nonenforcement skills. These uniformed volunteers, often retired individuals, drive marked patrol cars (older,

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out-of-service police vehicles equipped with amber instead of red and blue overhead lights) and assist police officers through such activities as directing traffic at accident scenes, patrolling parks and shopping malls to deter crime, and helping with the STARS Program. The volunteers take no enforcement action but report suspicious activity via their police radios. The program has proven so effective that the department has included additional depreciated patrol vehicles in its annual budget. Discretionary funding from the local city council and donations from the community have provided other equipment and supplies for the program.

### **School District Personnel**

Staff, teachers, student safety assistants, and parent volunteers position themselves at the perimeter of the school grounds as students arrive and leave school. They not only observe events occurring on school property but also watch nearby streets for possible problems. School staff members lend vests and school radios to the participating parent volunteers.

### **Police Officers**

Police officers give special attention to the streets near schools, as well as to school and city bus stops, at the beginning and end of the school day. Officers also make safety presentations to parents, students, city departments, and civic groups to encourage program participation.

### **Start-up Costs**

Once the alliance brought together these seven elements, it set out to ensure that the community did not view this new approach to off-campus student safety as a temporary program but rather as an ongoing collaborative effort. Also, the alliance knew that the program could not become dependent upon funding sources. If that happened, the alliance would need to focus on budgetary concerns instead of its primary mission of child safety. Therefore, the alliance implemented the STARS Program with

minimal start-up costs and virtually no ongoing costs. The program requires only a minimum of law enforcement staff time for training parent patrols, school staff members, city and postal workers, and students. Also, equipment such as parent patrol vests and magnetic car placards require minimal investments, which can be offset with donations from civic organizations and parent clubs or through purchases by interested volunteers.

### **Community Support**

Partly because of the cost-effectiveness of the program but mainly because this effort increases child safety, the alliance easily enlisted the support of city employees, postal workers, school staff members, and parents. Moreover, school staff members played a key role in informing students and their parents about the program and the opportunity to participate, as well as identifying groups of parents interested in forming parent patrols. Officers assigned to each school's neighborhood provided training and informative handouts to the volunteers, students, and teachers at presentations arranged by school staff members.

Representatives of each of the seven components introduced the STARS Program to the community at a news conference. Local television stations and the leading

local newspaper delivered upbeat reports on this new communitywide effort and expressed their support for the program. Positive exposure continues through news releases announcing success stories or publicizing the program's growth. This media attention replaces the previously negative coverage given to the attempted abductions and armed robberies of students.

Moreover, while the Fresno Police Department had a lead role in this safety effort, the school district accepted responsibility for generating and managing staff, student, and parent involvement. Because the school district has over 90 schools, the police department could not possibly administer the program each day at every school.

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## Program Assessment

Representatives from school student bodies, parent groups, and the police/probation/school alliance regularly meet to assess the effectiveness of the program and make any suggested improvements. These representatives also work together to recruit volunteers to become part of the parent patrols or make their homes available as safe houses. This assessment process keeps the joint efforts strong and united in their goal to increase the safety of the community's children as they travel to and from school. Moreover, this collaboration of multiple work groups, parents, students, and other volunteers does not view itself as a short-term effort but as a renewed commonsense approach to ensuring the well-being of Fresno's schoolchildren.

## CONCLUSION

For the past 5 years, the Fresno Police Department, the Fresno County Probation Department, and the Fresno Unified School District have collaborated successfully to dramatically decrease crime and increase on-campus student safety. Now, with minimal start-up costs and virtually no ongoing expenditures, they have employed the same multiagency approach to keep students safer as they travel to and from school by creating the Students Traveling and Arriving Safely Program. While the program involves public safety agencies and the school system, the true stars of the program are the schoolchildren and the concerned citizens who give their time and efforts. Such committed involvement sends a clear message to the criminals who prey on students and to the schoolchildren themselves that the students' welfare is of paramount concern to the entire community.

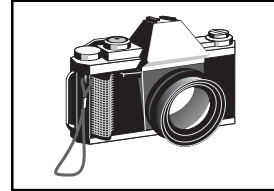
Other law enforcement agencies may have encountered similar problems in their communities and need to find cost-effective solutions. They may want to consider bringing together local organizations and work groups, providing appropriate training, and creating a similar synergistic effort for the safety of their communities' schoolchildren. ♦

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*Lieutenant Bridges serves with the Fresno, California, Police Department.*

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## Wanted: Photographs



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

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

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# Self-directed Work Teams

By STEPHEN M. RAMIREZ, M.S.



In 1829, after 7 years of failed efforts, Robert Peel finally succeeded in creating the London Metropolitan Police.<sup>1</sup> As has often been the case throughout history, individuals of vision who innovate and create what others think has no value must suffer through the birth of that vision. Peel's years of persistence led to a professional police force in which the public and police work together to address the community's public safety and security concerns. Yet, along with Peel's vision of community-based policing came the paramilitary organizational structure that he adopted.

Community Policing and Problem Solving (COPPS) represents today's version of Peel's vision. Although just as Peel's model did, COPPS has its detractors, most law enforcement agencies recognize its value. Unfortunately, many police organizations have become top-heavy and reactionary. The hierarchical, authoritarian management system inherent in most police agencies has become a roadblock on the journey toward innovative, problem-solving policing.

Organizations that discover how to tap their employees' commitment and capacity to learn at all levels can excel in the future.<sup>2</sup> The

current law enforcement climate demands that police agencies become learning organizations; they must be proactive and adopt a holistic, or "systems thinking," approach to problem solving. Yet, when departments become compartmentalized, subcultures can develop along such job functions as management, patrol, and other specialties, limiting communication, problem solving, and learning.<sup>3</sup>

The ability to innovate in both the technical and organizational arenas remains crucial to effectiveness.<sup>4</sup> When law enforcement organizations operate ineffectively, communities suffer. Centralized,

hierarchical management structures do not support fast-paced innovation. Decentralized, nonhierarchical organizations dedicated to the well-being and growth of employees, as well as to success, do support learning and innovation.<sup>5</sup> A study known as the Hawthorne experiment proved that when management pays attention to employees, productivity increases.<sup>6</sup> Thus, when employees have a say in the workplace, motivation and productivity rise. Unfortunately, law enforcement's management structure does not support high employee involvement in workplace decisions. In contrast, self-directed work teams do.

### **SELF-DIRECTED WORK TEAMS**

A self-directed work team consists of a group of highly trained individuals with the responsibility and authority for completing a well-defined project.<sup>7</sup> Self-directed work teams are not temporary. They represent a new way of doing business in which top management basically leaves the teams alone as long as they meet or exceed established goals. This autonomy takes full advantage of all of the team members' talents, skills, abilities, ideas, and experiences.<sup>8</sup> Executives of team-based organizations retain their authority over strategies, but the teams assume control over tactics.<sup>9</sup>

Self-directed work teams usually are responsible for a work process that delivers a product or service to a customer.<sup>10</sup> Law enforcement's customers include not only the communities they are sworn to serve but also the

nation, which suffers from the effects of crime and social decay in communities.

### **THE VALUE OF SELF-DIRECTED WORK TEAMS**

In today's dynamic environment, self-directed teams possess many advantages. With the freedom to make decisions and act on them, self-directed work teams can identify opportunities, find solutions, and implement actions quickly, thus giving their organizations greater flexibility.<sup>11</sup> Police departments that support effective community policing and problem solving must remain flexible.

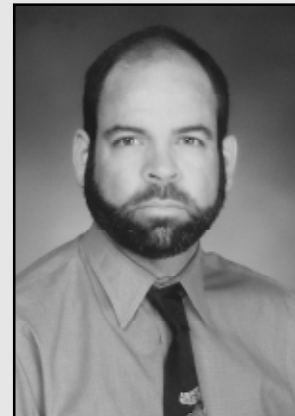
Self-directed work teams represent an important part of an organization's overall strategy for a number of reasons. First, those closest to the work know best how to perform and improve their jobs. Second, most employees want to feel "ownership" in their jobs, that they are contributing to the organization in a meaningful way. Finally, the autonomy teams enjoy provides

opportunities for empowerment that individual employees usually do not have.<sup>12</sup> The empowerment employees feel motivates them to perform and increases customer satisfaction.<sup>13</sup> In a law enforcement agency, this translates into identifying and resolving community problems. Ultimately, law enforcement's customers, community residents, feel safe and secure because they are.

### **PREPARING FOR SELF-DIRECTED WORK TEAMS**

Self-directed work teams are not ends in themselves; instead, they represent the means by which agencies achieve other organizational goals.<sup>14</sup> As such, the implementation of a self-directed team-based management structure should be tied to clear organizational needs. Thus, during the first step in the planning process, senior management must analyze the agency's current and probable organizational needs,<sup>15</sup> attempting to answer the following questions:

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**Self-directed work teams take advantage of employees' talents, skills, abilities, ideas, and experiences.**  
”



*Chief Ramirez leads the St. Mary's University Police Department in San Antonio, Texas.*

1) Is the agency as efficient and effective as it needs to be to succeed over the next decade?

2) What level of employee involvement does the agency have currently?

3) Would more commitment and involvement from employees improve the agency's effectiveness?

The answers to these questions will help senior management determine whether and how self-directed work teams would help the agency achieve its goals.<sup>16</sup> Perhaps more important, senior leaders must assess honestly their ability to master and apply the hands-off leadership style that self-directed work groups require. Indeed, in order for self-directed teams to succeed, the senior leadership of the agency must commit to and support the concept<sup>17</sup> and make sure that the organization's policies, procedures, and culture do, as well. If self-analysis indicates an organizational need and readiness, then implementation may begin.<sup>18</sup>

## IMPLEMENTING SELF-DIRECTED WORK TEAMS

The implementation process includes the selection of teams and members, as well as the training of those members. An "environmental scan," which includes surveys, focus groups, and other information-gathering techniques, can identify what the agency's customers expect and help management determine what teams they should create.<sup>19</sup> For example, holding focus groups in the community helped the St. Mary's University Police Depart-

ment discover that residents did not fully appreciate or understand what the department does. Deciding the community and the department would benefit from increased communication and interaction, the department established a work team to design and manage a bimonthly newsletter, "Code 3." Containing everything from crime prevention tips to information on new department programs to guest columns by members of the community, the newsletter keeps residents informed and increases interaction between the department and the community.

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***One survey of self-directed work teams discovered that inadequate training proved the greatest hindrance to effective team performance.***

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## Designing the Team

Depending on the size of the agency, a steering committee may oversee the design process. The steering committee should include senior managers, police union leaders, functional or human resource managers, and line leaders. Management expert Stephen R. Covey points out that the working system in the United States focuses on individualism, not synergy and team work.<sup>20</sup> The members of the steering committee must overcome this mind-set and break free from myopic thinking.

After deciding what teams the agency requires, the steering committee focuses on determining how the teams will function. This means deciding what management and administrative responsibilities the team will perform;<sup>21</sup> establishing roles and responsibilities for team leaders, members, facilitators, and technical support members; and designing the work-flow process. The work-flow process includes everything from meeting schedules to evaluation procedures. After designing the team and establishing work flow, the committee can begin recruiting and selecting team members.

## Selecting Team Members

The steering committee can use various instruments to assess and select team members. In a large department, application forms and personal references can yield basic information on candidates but cannot provide enough information on those elements of ability and attitude that represent critical requirements for effective team membership. Thus, the steering committee must devise other methods to determine whether employees possess the ability to make decisions and assume responsibility for the complete work product.

Three methods include targeted interviewing, cognitive ability tests, and technical skills test. Targeted interviews attempt to reveal if candidates have the general skills and personality that match the team requirements. Cognitive ability and technical skills tests use a written examination to pinpoint more specialized skills.

## Training the New Team

Even the most sophisticated selection instruments cannot guarantee the success of the team, and the management of any organization never should turn over managerial responsibilities to a group unprepared to communicate effectively, resolve conflicts, or solve problems.<sup>22</sup> One survey of self-directed work teams discovered that inadequate training proved the greatest hindrance to effective team performance.<sup>23</sup>

Training should help team members develop technical, administrative, and interpersonal skills.<sup>24</sup> Managers should follow a few key principles when designing and implementing team-based training programs. First, the curriculum should reflect the uniqueness of each team's needs. A modular approach with custom-made units, or modules, can provide the right training at the appropriate time. Modules can be basic and interchangeable or specialized for one team only. Next, during training, the whole team should work together to understand and improve their relationships and processes. Allowing team members to attend separate training sessions would forgo this important interaction. Finally, relatively short, but frequent, training sessions that spread the learning process over time prove more effective than longer sessions that attempt to teach students everything all at once.<sup>25</sup>

## CONCLUSION

Self-directed work teams take advantage of employees' talents, skills, abilities, ideas, and experi-

ences. As a result, they represent the most advanced form of worker empowerment and can help police agencies more effectively reach their organizational goals.

The implementation of work teams requires a change in organizational philosophy from hierarchical authoritarianism to self-direction. Senior management must support and deliver the directive for

this organizational culture shift. With a strong commitment and adequate planning, police leaders can ensure that the movement to self-direction becomes a harbinger of the future. ♦

### Endnotes

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<sup>8</sup> R.Y. Chang and M.J. Curtin, *Succeeding As a Self-managed Team* (Irvine, CA: Chang, 1994), 5.

<sup>9</sup> *Supra* note 7 (Owens), 54.

<sup>10</sup> R. Wellins, W. Byham, and J. Wilson, *Empowered Teams: Creating Self-directed Work Groups That Improve Quality, Productivity, and Participation* (San Francisco: Jossey-Bass, 1991), 3.

<sup>11</sup> *Ibid.*, 10-13.

<sup>12</sup> *Ibid.*, 12.

<sup>13</sup> *Supra* note 7 (Owens), 56.

<sup>14</sup> *Supra* note 10, 83.

<sup>15</sup> *Supra* note 7 (Owens), 56-60.

<sup>16</sup> *Supra* note 7 (Owens), 56-57.

<sup>17</sup> *Supra* note 7 (Piczak and Hauser), 83-84.

<sup>18</sup> *Supra* note 7 (Owens), 56-57.

<sup>19</sup> *Supra* note 10, 83.

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<sup>25</sup> *Supra* note 22, 65.

## Author Guidelines

### Manuscript Specifications

*Length:* 2,000 to 3,500 words or 8 to 14 pages.

*Format:* All manuscripts should be double-spaced and typed on 8 1/2- by 11-inch white paper. All pages should be numbered, and three copies should be submitted for review purposes. When possible, an electronic version of the article saved on computer disk should accompany typed manuscripts.

### Publication

*Basis for Judging Manuscripts:* Manuscripts are judged on the following points: Relevance to audience, factual accuracy, analysis of information, structure and logical flow, style and ease of reading, and length. Favorable consideration cannot be given to an article that has been published previously or that is being considered for publication by another magazine. Articles that are used to advertise a product or a service will be returned to the author.

*Query Letters:* Authors may submit a query letter, along with a detailed one- to two-page outline before writing an article. This is intended to help authors but does not guarantee acceptance of the article.

*Author Notification:* Receipt of manuscript will be confirmed. Notification of acceptance or rejection will be sent following review. Articles accepted for publication cannot be guaranteed a publication date.

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### Submission

Authors may contact the police training coordinator at the nearest FBI field office for help in submitting articles, or manuscripts may be forwarded directly to: Editor, *FBI Law Enforcement Bulletin*, Law Enforcement Communication Unit, FBI Academy, Quantico, VA 22135.



## Book Review

**Business and Crime Prevention**, edited by Marcus Felson and Ronald V. Clarke, *Criminal Justice Press, New York, 1997*.

During the 1960s, police agencies in the United States became seriously involved in crime prevention programs. However, the relationship between the business community and law enforcement agencies has not been as successful in reducing business-related crimes. The police and the business community have reacted to crime using different perspectives that, in turn, have stifled progress in reducing business-related crimes.

In more recent years, with the popularization of community policing, many police departments have prioritized crime prevention. Even after emphasizing this issue, some agencies still have not taken a serious look at the problems of crimes against businesses. Community policing efforts regularly center on residential communities and neighborhood problems. Varying police support can negatively affect the business community professionals in their efforts to protect themselves against crime, and in some cases, the criminal justice system has abandoned businesses in a political effort to control only those crimes that more directly affect the general public (i.e., voters).

*Business and Crime Prevention* is an edited text that has successfully gathered several pertinent articles from crime prevention experts. These articles directly affect the manner in which criminal justice and business professionals view crime problems facing the business community today (e.g., crime prevention techniques).

In the introduction, the editors demonstrate the need for cooperation among criminologists, business chief executive officers, and practicing business managers. If criminologists and business leaders join hands in this effort to reduce crime, "both fields will be served, as will society."

This text will benefit criminologist and business professionals, as well as police executives

and crime prevention specialists. Today, police executives and managers are held to a much higher standard regarding basic job knowledge. To achieve success, executives and managers must remain well-versed on all police-related topics, from domestic violence to the Fair Labor Standards Act to less lethal use-of-force options to crime prevention.

*Business and Crime Prevention* summarizes some of the most important studies and contemporary thoughts on these crimes. It presents up-to-date information with real-world implications and covers tips on how law enforcement agencies can build improved relationships with businesses. This text attempts to instruct businesses how to protect themselves against crime and addresses the various ways that law enforcement can respond to their needs. The book details the business industry's perspective on crime prevention, giving a clearer understanding of what factors motivate businesses and why. Most businesses do not stress crime prevention; they remain more interested in their profit and loss ratio. For this reason, many police agencies encounter problems when trying to motivate business owners to develop crime prevention strategies. This book reveals the impact of technology on crime and business, delves into business liability issues, as well as the insurance industry and its affect on crime prevention, and addresses the private security sector and its effects on business crime prevention.

This text seeks to bridge the communication gap between criminologists and the business community, resulting in benefits to their relationship. Criminal justice professionals interested in keeping abreast of the information curve are strongly encouraged to make this book a part of their libraries.

Reviewed by  
Chief Kenneth Sissom  
Merriam Police Department  
Merriam, Kansas



## Investigative Detentions How Long Is Too Long?

By JAYME S. WALKER, J.D.

The “seizure” of a person has been defined by the U.S. Supreme Court as governmental interference with a person’s freedom of movement through means intentionally applied.<sup>1</sup> An officer making an arrest must have probable cause, while an investigative detention only requires reasonable suspicion. The degree of interference with a person’s liberty interest defines the type of Fourth Amendment seizure that has occurred. The greater the police

interference with a person’s liberty interest, the greater the factual predicate an officer must have to believe that an offense has been committed.

In *Terry v. Ohio*,<sup>2</sup> the U.S. Supreme Court stated that “in determining whether the seizure and search were unreasonable our inquiry is a dual one—whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the

interference in the first place.”<sup>3</sup> This article reviews case law,<sup>4</sup> in which courts specifically have addressed the question of the duration of an investigative detention in determining whether a seizure has become a *de facto* arrest and focuses on detentions of persons or items taken from the immediate possession of a person. The focus of courts’ analyzing such cases includes the actual duration of the detention, the actions taken by the officers in the case, the actions taken by the subject in the case, the actions the officers could have taken in the case, and how diligently the officers pursued their investigation. Absent the existence of probable cause, if a *de facto* arrest has occurred, or an item is taken from the immediate possession of a person on a nontemporary basis, the seizure will be found to be unreasonable. Detentions of items not in the immediate possession of a person or made at the border are beyond the scope of this article.<sup>5</sup>

### U.S. SUPREME COURT CASES

The Supreme Court has addressed the issue of the duration of an investigative detention most directly in *United States v. Place*,<sup>6</sup> and *United States v. Sharpe*.<sup>7</sup> In *Place*, the Court concluded for the first time that officers temporarily could detain luggage for exposure to a trained drug detection dog on the basis that there was a reasonable, articulable suspicion that the luggage contained contraband. Officers observed Place acting suspiciously in the ticket line at the Miami airport and approached him. The police asked to see Place’s

ticket and asked him if he would allow them to search his checked luggage. The officers noticed that the address tags on Place's bags did not match. While Place consented to a search, the officers decided not to search the bags because of the imminent departure of Place's flight. Further investigation by the officers revealed that neither address listed on the luggage tags existed and that Place had given the airline a third address. The officers called ahead to DEA agents at LaGuardia Airport and told them what they had learned about Place.

When Place arrived in New York, two agents approached him and began to ask him questions. Place told the agents that he knew they were cops the minute he saw them, and that in Miami, he had been surrounded by police who had searched his bags. After Place refused to consent to a search of his bags, the agents told him that they were detaining them. The agents gave Place a phone number where he could reach one of the agents. Place left the airport. The agents took the bags to be sniffed by a trained drug dog at Kennedy Airport. The drug dog alerted to the presence of contraband inside one of the bags 90 minutes after the agents had taken the bags from Place. The agents obtained a search warrant, opened the bag to which the dog had alerted, and found cocaine inside.

The U.S. Supreme Court addressed a number of issues in *Place*, including whether *Terry* principles could be applied to the warrantless seizure of luggage. The Court concluded that "when an officer's observations lead him reasonably to

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Ms. Walker serves as a legal instructor and attorney for the DEA at the FBI Academy.

believe that a traveler is carrying luggage that contains narcotics, the principles of *Terry* and its progeny would permit the officer to detain the luggage briefly to investigate the circumstances that aroused his suspicion, provided that the investigative detention is properly limited in scope.”<sup>8</sup>

The Court also discussed how long the item was detained, stating that the brevity of the seizure is an important factor in concluding whether a seizure can be justified on mere reasonable suspicion.<sup>9</sup> In evaluating the 90-minute detention, the Court stated that “[t]he length of the detention of respondent’s luggage alone precludes the conclusion that the seizure was reasonable in the absence of probable cause.”<sup>10</sup> The Court also indicated that “in assessing the effect of the length of the detention, we take into account whether the police diligently pursue their investigation.”<sup>11</sup> The Court concluded that the agents failed to diligently pursue their investigation because they knew when Place would arrive at LaGuardia and they did not arrange for additional

investigation at that location despite having the time. In the final analysis, even though the Court found the 90-minute detention of Place’s luggage without probable cause sufficient to render the seizure unreasonable, the Court declined to adopt an outside limitation on the duration of an investigative detention. The Court chose to leave the duration of a detention of property taken from a person’s immediate possession to be determined on a case-by-case basis.<sup>12</sup>

Two years after *Place*, the U.S. Supreme Court again addressed the question of the duration of an investigative detention in *United States v. Sharpe*.<sup>13</sup> In *Sharpe*, a DEA agent, while patrolling a coastal road in an area under surveillance for suspected drug trafficking, noticed a car and a truck with a camper shell traveling in tandem. The agent also noticed that the truck appeared to be heavily loaded and the windows were covered with cloth. The agent followed the vehicles for about 20 miles and decided to call the highway patrol for assistance in making an investigative stop. After

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a highway patrol officer caught up to the procession of vehicles, the truck and car turned and drove 55 to 60 miles per hour down a campground road where the speed limit was 30 miles per hour. After the vehicles returned to the highway, the officer motioned for the car driver to pull over. The agent radioed local police for additional help and remained with the stopped car while the officer continued on and eventually pulled over the truck.

Shortly thereafter, two backup officers arrived at the car's location. The agent then drove to the scene of the stopped truck, arriving approximately 15 minutes after the officer had pulled it over. After the truck driver refused the agent's request to search the vehicle, the agent went to the rear window of the camper, where he smelled marijuana. He opened the camper and found marijuana inside.

In determining whether the stop was reasonably related in scope to the circumstances that justified it, the Court stated that while it may sometimes be difficult to distinguish between an investigative stop and a *de facto* arrest, there is "no rigid time limitation on *Terry* stops."<sup>14</sup> One highly relevant factor in assessing a detention's duration is "whether the police diligently pursued a means of investigation that was able to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases, the court should not indulge in unrealistic second guessing."<sup>15</sup>

The Court concluded that the agent in *Sharpe* pursued the investigation in a reasonable manner. During the detention of the truck driver, the agent obtained the assistance of local police to continue the detention of the occupants of the car. Upon arrival of the local police, the agent immediately went to the location of the stopped truck. Once there, the agent proceeded to look at the driver's license and papers and, immediately after being denied consent to search, went to the back of

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the truck to see whether the vehicle was overloaded. The court further explained that while the agent proceeded to expeditiously conduct the investigation, the delay in the case was caused by the truck driver's continuing on after the car had been pulled over.<sup>16</sup>

#### **How Long Is Too Long?**

In both *Place* and *Sharpe*, the U.S. Supreme Court provided guidance regarding how to assess whether an investigative detention is too long. Lower courts consider a number of factors in determining

whether an investigative detention has become a *de facto* arrest, or, in the case of an item taken from the immediate possession of a person, a nontemporary seizure. In some cases, courts have found that the duration of an investigative detention, standing alone, transformed the detention into one requiring the existence of probable cause. In other cases, courts have determined that while the investigative detention was not too long, the detention became a *de facto* arrest for other reasons and, therefore, required probable cause.

#### **Investigative Detention Too Long**

In *Place*, the U.S. Supreme Court found that the 90-minute detention of *Place*'s bag was sufficient on its own to render the seizure unreasonable. In *United States v. Puglisi*,<sup>17</sup> the U.S. Court of Appeals for the Eleventh Circuit found the 140-minute detention of a bag belonging to an airline traveler too long. In *Puglisi*, a DEA agent observed *Puglisi* arrive in Atlanta following a flight from Ft. Lauderdale. *Puglisi* made eye contact with the agent, then walked further down the concourse, turned, and looked at the agent. After *Puglisi* checked in for his connecting flight to Las Vegas, the agent obtained the ticket *Puglisi* had used to check in for his flight and retrieved his airline reservation record. The record indicated that *Puglisi* had reserved his one-way flight at 1 o'clock that morning, had left no call-back number, and had paid for his ticket. The agent approached *Puglisi* as he stood near an information counter and began to talk with him. The agent learned



that the name on Puglisi's ticket and driver's license did not match. While Puglisi agreed to be frisked, during which the agent found nothing, he refused to consent to a search of his checked bag. The agent wrote down the bag claim number and left the area, approximately 4 minutes after initially approaching Puglisi.

Using the claim check number copied from Puglisi's ticket folder, the agent found the bag and, at 9:17 a.m., instructed an airline employee to remove the bag from the cart it was on. The agent took the bag to Puglisi and asked him again if he would consent to a search. Puglisi refused to let the agent search the bag, at which point the agent detained the bag, told Puglisi he would be letting a drug dog sniff it, and watched Puglisi board his flight. The agent took the bag to the police office and called for a drug dog. Because the dog handler had to drive to pick up the dog and then drive to the airport, the dog did not arrive at the airport until 11:27 a.m. Ten minutes later, the dog alerted to Puglisi's bag. By this time, 140 minutes had elapsed from the time that the agent initially had seized the bag from the luggage cart. Upon obtaining a search warrant, the agent opened the bag and found cocaine inside. He placed the defendant under arrest later the same afternoon.

Puglisi moved to suppress the cocaine found in his bag. The trial court denied Puglisi's motion and found him guilty after a bench trial. On appeal, Puglisi argued, among other things, that the agent's continued possession of his bag required probable cause because it

constituted an unlimited seizure. The appellate court agreed with Puglisi's argument, stating that "140 minutes, combined with the intrusiveness on Puglisi's right to possession of the bag, rendered this seizure unreasonable under the standards set forth in *Terry* and *Place*."<sup>18</sup> Other courts faced with investigative detentions that have exceeded 90 minutes based on reasonable suspicion of an individual or items seized from an individual generally have held such seizures to be unreasonable.<sup>19</sup>



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### Investigative Detention Reasonable

In *Sharpe*, the U.S. Supreme Court found that the detention of Sharpe for 20 minutes, given the existing circumstances, did not constitute a *de facto* arrest made without probable cause and did not violate the Fourth Amendment. In most cases involving investigative detentions lasting only a few minutes, courts will not find the duration of the detention to be unreasonable.<sup>20</sup> Difficult questions arise, however, with investigative detentions that

last longer than a few minutes but are less than the 90 minutes discussed by the Court in *Place*.<sup>21</sup>

For example, in *United States v. Frost*,<sup>22</sup> the U.S. Court of Appeals for the Third Circuit concluded that an 80-minute detention of an airline passenger's suitcase did not constitute an unreasonable seizure. In *Frost*, two detectives observed Frost deplane from a Ft. Lauderdale flight. He carried no luggage and had bulges in the pockets of his jeans. He went into a rest room for only 15 seconds, exited, and looked around as if attempting to notice whether he had been followed. He persistently tugged down on his T-shirt as if trying to conceal something he carried and had an object in his back pocket that appeared to be cigarette rolling papers.

When detectives decided to approach Frost, he became increasingly nervous as the conversation with the detectives continued, and he contradicted himself in his responses to their questions. The detectives asked Frost what the bulges were in his pockets. Frost voluntarily reached into his pockets and pulled out rolls of cash in mostly tens and twenties, totaling over \$3,000. At 5:27 p.m., the detectives asked Frost to accompany them 1,500 feet to the airport police station. Frost agreed to go while one of the detectives went to get his suitcase. At 5:40 p.m., the detective arrived at the station with the suitcase. Frost identified the suitcase as his, claimed he did not know how a padlock got on it, and refused to consent to a search of the bag. At 5:55 p.m., the detectives told Frost that they were going to have a dog sniff the bag. At 6 p.m., the detectives

called for a drug dog, checked Frost's identification, and told him that he could go. A few minutes after Frost left, the drug dog arrived and subsequently alerted to the cash from Frost's pockets but not the suitcase. The officers obtained a search warrant and found cocaine during their search of Frost's bag.

Frost pled guilty after the trial court denied a motion to suppress the cocaine discovered in his bag. On appeal, Frost argued, in part, that the 80 minutes the detectives took to have his luggage inspected by a drug sniffing dog was too long and exceeded the limits of an investigative detention.

The appellate court distinguished the *Frost* case from *Place* by noting that the 90-minute delay in *Place* resulted from a lack of diligence by the police in failing to arrange to have a drug dog in place at La Guardia, knowing that a subject they suspected of having contraband would be arriving from Florida, and to communicate to Place what they were going to do with his luggage and how he could get it back. The *Frost* court found that in contrast to the actions of the agents in *Place*, the actions of the detectives in *Frost* were diligent in summoning the dog and giving Frost receipts for his items and instructions on how to retrieve them. In addition, the court believed 1 hour to transport a drug dog to the airport at 6 p.m. was reasonable.<sup>23</sup>

### **Investigative Detention Becomes a *De Facto* Arrest**

In *Florida v. Royer*,<sup>24</sup> the U.S. Supreme Court held that during the approximately 15 minutes that elapsed from the time detectives

approached Royer in the airport until the discovery of drugs in his suitcase, an arrest without probable cause had occurred. In *Royer*, detectives observed Royer's appearance, luggage, and mannerisms and decided to watch him more closely. Royer purchased a one-way ticket to New York and put name tags on his bags that contained the name "Holt" and "La Guardia."

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**...the duration of an investigative detention may...make it a de facto arrest, which, if made without probable cause, is unreasonable.**  
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The detectives approached Royer and asked if he would speak with them. Royer handed his ticket and driver's license to the detectives. The detectives noted that the ticket bore the name "Holt" and the driver's license the name "Royer." The detectives kept the ticket and license as they continued talking to Royer, who became more visibly nervous as the conversation continued.

The detectives asked Royer to come with them to a small room 40 feet away. Royer went with the detectives without responding. The detectives retained Royer's ticket and driver's license. One of the detectives, without Royer's consent, retrieved Royer's bags from the

airline and brought them to the room. The detectives asked Royer if he would consent to a search of the bags. While Royer said nothing in response, he took out a key and unlocked one of the suitcases, in which the detectives found marijuana. Royer claimed to not know the combination to the lock on the second suitcase but stated that he did not have a problem if the detectives opened the bag. The detectives opened the bag, found more marijuana inside, and arrested Royer.

In discussing the nature of the detective's conduct in *Royer*, the Supreme Court stated that "[i]t is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure."<sup>25</sup> The Court agreed that the bounds of an investigative stop had been exceeded by the "confinement" that went beyond a limited restraint as permitted by *Terry* and that, therefore, Royer's consent to a search of the bag was tainted.<sup>26</sup> The Court found that:

What had begun as a consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions. The officers had Royer's ticket, they had his identification, and they had seized his luggage. Royer was never informed that he was free to board his plane if he so chose, and he reasonably believed that he was being detained. At

least as of that moment, any consensual aspects of the encounter had evaporated, and ...[a]s a practical matter, Royer was under arrest.<sup>27</sup>

Significantly, the Court characterized the actions of the officers as more intrusive than necessary and pointed out that if the officers had returned Royer's ticket and driver's license and told him he was free to leave, that "might have obviated any claim that the encounter was anything but a consensual matter from start to finish."<sup>28</sup> Additionally, the Court noted that there was no indication that security or safety concerns prompted the officers to move the location of the encounter to the office.

## CONCLUSION

This article has addressed the role of the duration of an investigative detention of a person or an item taken from the immediate possession of a person in determining whether it has become a *de facto* arrest requiring probable cause. While the U.S. Supreme Court has refused to adopt an outside limit on the duration of an investigative detention, a number of conclusions regarding this issue can be made. First, the duration of an investigative detention may, standing alone, make it a *de facto* arrest, which if made without probable cause, is unreasonable. Second, while *Place* does not state that a detention cannot last longer than 90 minutes, courts deciding cases involving investigative detentions of 90 minutes or more have generally found them to be unreasonable in the absence of probable cause. Third, and in keeping with *Place*, the two most

frequently examined questions by courts when assessing the duration of an investigative detention are how diligently the police pursued their investigation and what information is given to subjects regarding the detention of any items taken from their possession. The reasonableness of the duration of an investigative detention is dependent upon the steps taken by the police to quickly confirm or dispel the suspicion that initially justified the detention. With respect to whether the police acted with diligence, courts have found the following factors significant: whether the questions



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asked were related to the justification for the detention;<sup>29</sup> the number of people or items involved in the detention;<sup>30</sup> whether the police immediately called for a drug dog;<sup>31</sup> the length of the delay in waiting for a drug dog;<sup>32</sup> subjects claiming that they do not know each other;<sup>33</sup> returning the subject to the scene;<sup>34</sup> tracking down the subject's misleading stories;<sup>35</sup> the subject's evasive answers to questions;<sup>36</sup> the officer awaiting backup while alone late at night with belligerent subjects;<sup>37</sup> computer problems during a

registration check;<sup>38</sup> whether the officers knew of the subject's arrival in advance;<sup>39</sup> and the length of delay resulting from officers awaiting the arrival of officers with specialized experience.<sup>40</sup> Finally, even if the duration of an investigative detention is short, it may be invalid if other factors exist that make it a *de facto* arrest, and there is no probable cause. ♦

## Endnotes

<sup>1</sup> *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989).

<sup>2</sup> 392 U.S. 1 (1968).

<sup>3</sup> *Id.* at 19-20.

<sup>4</sup> Some states have statutes that address the permissible length of a detention. *See, e.g.*, DEL. CODE ANN. tit. 11 § 1902 (1998); WIS. STAT. § 968.24 (1998). *See also* Dix, *Nonarrest Investigatory Detentions in Search and Seizure Law*, 5 Duke L.J. 849 (1985) (a comprehensive discussion of investigative detention issues).

<sup>5</sup> *See, e.g.*, *United States v. Van Leeuwen*, 397 U.S. 249 (1970) (parcel); *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985) (border).

<sup>6</sup> 462 U.S. 696 (1983).

<sup>7</sup> 470 U.S. 675 (1985).

<sup>8</sup> 462 U.S. 696, 706 (1983).

<sup>9</sup> *Id.* at 709.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> This statement also applies to the temporary detention of persons. In *Place*, the Court stated that "when the police seize luggage from the suspect's custody, we think the limitations applicable to investigative detentions of the person should define the permissible scope of an investigative detention of the person's luggage on less than probable cause." *Id.* at 708-09.

<sup>13</sup> 470 U.S. 675 (1985).

<sup>14</sup> *Id.* at 685.

<sup>15</sup> *Id.* at 686-87 (citations omitted).

<sup>16</sup> *Id.*

<sup>17</sup> 723 F.2d 779 (11th Cir. 1984).

<sup>18</sup> *Id.* at 783.

<sup>19</sup> *See, e.g.*, *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051 (9th Cir. 1994) (125-minute detention was unreasonable); *United States v. Codd*, 956 F.2d 1109 (11th Cir. 1992) (detention of subject for 2 1/2 hours was unreasonable); *United States v. Scales*, 903 F.2d 765 (10th Cir. 1990) (6 1/2-7-hour



detention of bag prior to dog alert was unreasonable); *United States v. Cagale*, 849 F.2d 924 (5th Cir. 1988) (90-minute detention of bag prior to dog alert was unreasonable); *Moya v. United States*, 761 F.2d 322 (7th Cir. 1984) (3-hour detention of bag prior to dog sniff was unreasonable); *United States v. Sanders*, 719 F.2d 882 (6th Cir. 1983) (3-hour detention of subject and luggage while agents obtained dog to sniff bag was unreasonable). Cf. *United States v. Hodoyan-Palacios*, 993 F. Supp. 789, 793 (S.D. Cal. 1998) (2-hour detention found reasonable. The court stated that "Governmental agents rarely confront such a high-level dangerous situation where an alleged assassin of a large criminal organization presents such an immediate potential threat to public safety and welfare."); *United States v. \$28,980.00 in U.S. Currency*, 786 F. Supp. 899 (D. Ore. 1990) (90-minute detention not unreasonable).

<sup>20</sup> See, e.g., *United States v. Simpson*, 992 F.2d 1224 (D.C. Cir. 1993) (10-minute detention was reasonable); *United States v. Bell*, 892 F.2d 959 (10th Cir. 1989) (5-minute detention was reasonable); *United States v. Hanson*, 801 F.2d 757 (5th Cir. 1986) (5-10-minute detention was reasonable).

<sup>21</sup> In the following cases the duration of the detention was found to be reasonable: *United States v. Villa-Chaparro*, 115 F.3d 797 (10th Cir. 1997) (43-minute detention); *United States v. McCarthy*, 77 F.3d 522 (1st Cir. 1996) (75-minute detention); *United States v. Vega*, 72 F.3d 507 (7th Cir. 1995) (62-minute detention); *Allen v. City of Los Angeles*, 66 F.3d 1052 (9th Cir. 1995) (24-minute detention); *Baker v. Monroe Tp.*, 50 F.3d 1186 (3d Cir. 1995) (15-minute detention); *United States v. White*, 42 F.3d 457 (8th Cir. 1994) (80-minute detention); *United States v. Bloomfield*, 40 F.3d 910 (8th Cir. 1994) (1-hour detention); *United States v. Robinson*, 30 F.3d 774 (7th Cir. 1994) (20-minute detention); *United States v. Medina*, 992 F.2d 573 (6th Cir. 1993) (30-60-minute detention); *United States v. McFarley*, 991 F.2d 1188 (4th Cir. 1993) (38-minute detention); *United States v. Withers*, 972 F.2d 837 (7th Cir. 1992) (15-20-minute detention); *United States v. Glover*, 957 F.2d 1004 (2d Cir. 1992) (30-minute detention); *Courson v. McMillian*, 939 F.2d 1479 (11th Cir. 1991) (25-minute detention); *United States v. Hooper*, 935 F.2d 484 (2d Cir. 1991) (30-minute detention); *United States v. Mondello*, 927 F.2d 1463 (9th Cir. 1991) (30-minute detention); *United States v. Nurse*, 916 F.2d 20 (D.C. Cir. 1990) (20-30-minute detention); *United States v. Winfrey*, 915 F.2d 212 (6th Cir. 1990) (10-15-minute

detention); *United States v. Sullivan*, 903 F.2d 1093 (7th Cir. 1990) (45-minute detention); *United States v. Tavolacci*, 895 F.2d 1423 (D.C. Cir. 1990) (10-15-minute detention); *United States v. Cooper*, 873 F.2d 269 (11th Cir. 1989) (35-minute detention); *United States v. Teslim*, 869 F.2d 316 (7th Cir. 1989) (25-minute detention); *United States v. Hardy*, 855 F.2d 753 (11th Cir. 1988) (50-minute detention); *United States v. Knox*, 839 F.2d 285 (6th Cir. 1988) (30-minute detention); *United States v. Rutherford*, 824 F.2d 831 (10th Cir. 1987) (1-hour detention); *United States v. Alpert*, 816 F.2d 958 (4th Cir. 1987) (50-minute detention); *United States v. Quinn*, 815 F.2d 153 (1st Cir. 1987) (25-minute detention); *United States v. Erwin*, 803 F.2d 1505 (9th Cir. 1986) (45-minute detention); *United States v. Davies*, 768 F.2d 893 (7th Cir. 1985) (45-minute detention); *United States v. Borys*, 766 F.2d 304 (7th Cir. 1983) (75-minute detention); *United States v. Ogden*, 703 F.2d 629 (1st Cir. 1983) (30-40-minute detention); *United States v. Bautista*, 684 F.2d 1286 (9th Cir. 1982) (10-12-minute detention); *United States v. Richards*, 500 F.2d 1025 (9th Cir. 1994) (detention of slightly over 1-hour); *United States v. Borrero*, 770 F. Supp. 1178 (E.D. Mich. 1991) (70-minute detention); *United States v. Campbell*, 627 F. Supp. 320 (D. Alaska 1985) (57-minute detention). Cf. *United States v. Acosta-Colon*, 157 F.3d 9 (1st Cir. 1998) (30-minute detention too long where no investigatory action pursued by officers to confirm or dispel their suspicion); *United States v. Babweh*, 972 F.2d 30 (2d Cir. 1992) (40-minute detention too long); *United States v. Kennedy*, 573 F.2d 657 (9th Cir. 1978) (45-minute detention too long); *United States v. Jennings*, 468 F.2d 111 (9th Cir. 1972) (30-minute detention too long); *State v. Kirby*, 744 P.2d 146 (Kan. Ct. App. 1987) (30-minute detention too long).

<sup>22</sup> 999 F.2d 737 (3d Cir. 1993).

<sup>23</sup> *Id.* at 742.

<sup>24</sup> 460 U.S. 491 (1983).

<sup>25</sup> *Id.* at 500.

<sup>26</sup> *Id.* at 501. Other courts also have found detentions of arguably reasonable duration to be unreasonable because they had become *de facto* arrests for which no probable cause existed. See, e.g., *United States v. Obasa*, 15 F.3d 603 (6th Cir. 1994); *Peterson v. City of Plymouth, Minn.*, 945 F.2d 1416 (8th Cir. 1991); *Minnesota v. Blacksten*, 507 N.W.2d 842 (Minn. 1993) (detention for over 1-hour became a *de facto* arrest).

<sup>27</sup> *Id.* at 503.

<sup>28</sup> *Id.* at 504.

<sup>29</sup> See, e.g., *United States v. Davies*, 768 F.2d 893 (7th Cir. 1985); *United States v. Bautista*, 684 F.2d 1286 (9th Cir. 1982). Cf. *United States v. Babweh*, 972 F.2d 30 (2d Cir. 1992); *United States v. Kennedy*, 573 F.2d 657 (9th Cir. 1978).

<sup>30</sup> See, e.g., *Baker v. Monroe Tp.*, 50 F.3d 1186 (3d Cir. 1995); *United States v. Ogden*, 703 F.2d 629 (1st Cir. 1983).

<sup>31</sup> See, e.g., *United States v. Villa-Chaparro*, 115 F.3d 797 (10th Cir. 1997); *United States v. Bloomfield*, 40 F.3d 910 (8th Cir. 1994); *United States v. Glover*, 957 F.2d 1004 (2d Cir. 1992); *United States v. Tavolacci*, 895 F.2d 1423 (D.C. Cir. 1990); *United States v. Hardy*, 855 F.2d 753 (11th Cir. 1988).

<sup>32</sup> See, e.g., *United States v. Villa-Chaparro*, 115 F.3d 797 (10th Cir. 1997); *United States v. Bloomfield*, 40 F.3d 910 (8th Cir. 1994); *United States v. McFarley*, 991 F.2d 1188 (4th Cir. 1993); *United States v. Glover*, 957 F.2d 1004 (2d Cir. 1992); *United States v. Nurse*, 916 F.2d 20 (D.C. Cir. 1990); *United States v. Tavolacci*, 895 F.2d 1423 (D.C. Cir. 1990); *United States v. Hardy*, 855 F.2d 753 (11th Cir. 1988); *United States v. Quinn*, 815 F.2d 153 (1st Cir. 1987); *United States v. Borys*, 766 F.2d 304 (7th Cir. 1983).

<sup>33</sup> See, e.g., *United States v. Knox*, 839 F.2d 285 (6th Cir. 1988).

<sup>34</sup> See, e.g., *United States v. Medina*, 992 F.2d 573 (6th Cir. 1993).

<sup>35</sup> See, e.g., *United States v. Robinson*, 30 F.3d 774 (7th Cir. 1994).

<sup>36</sup> See, e.g., *United States v. Robinson*, 30 F.3d 774 (7th Cir. 1994); *United States v. Richards*, 500 F.2d 1025 (9th Cir. 1994).

<sup>37</sup> See, e.g., *United States v. Robinson*, 30 F.3d 774 (7th Cir. 1994).

<sup>38</sup> See, e.g., *Courson v. McMillian*, 939 F.2d 1479 (11th Cir. 1991).

<sup>39</sup> See, e.g., *United States v. Hooper*, 935 F.2d 484 (2d Cir. 1991); *United States v. Alpert*, 816 F.2d 958 (4th Cir. 1987); *United States v. Campbell*, 627 F. Supp. 320 (D. Alaska 1985). Cf. *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051 (9th Cir. 1994); *Moya v. United States*, 761 F.2d 322 (7th Cir. 1984).

<sup>40</sup> See, e.g., *United States v. Winfrey*, 915 F.2d 212 (6th Cir. 1990).

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

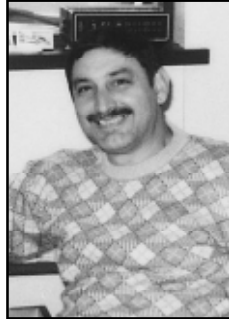
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# The Bulletin Notes

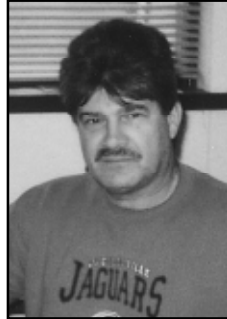
Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their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



Parole Agent Collins



Parole Agent Pagano



Parole Agent Gerardi

On their way to make an arrest, Agents Robert Collins, Harry Pagano, and John Gerardi of the Pennsylvania Board of Probation and Parole witnessed a car spin out of control on a slippery, wintry road, roll over several times, and finally rest upside down on the shoulder of the road. Agents Collins and Pagano approached the car while Agent Gerardi called the

Lycoming County Emergency Services Center. Agent Pagano dropped to his stomach in the fuel-drenched mud and observed the unconscious driver hanging upside down in his seat belt, gasping for breath and bleeding from his ear. Agent Pagano turned off the ignition, cradled the victim to soften his fall, unhooked the seat belt, and lowered the victim onto the inverted roof. After determining that the victim was breathing regularly, Agent Collins applied a compress to stop the loss of blood from the victim's head injuries. After medical technicians arrived, the agents assisted the state police by lighting flares and directing traffic around the accident scene. The actions of these agents clearly went beyond the call of duty.



Sergeant Stefanski



Detective Baird

Sergeant Lawrence A. Stefanski of the Oswego, Illinois, Police Department was dispatched to a pond in Oswego, Illinois, where two youths had fallen through the ice. One boy, 60 feet from the shore, was crying and screaming. The other boy, about 10 feet farther away, assured that he was okay and able to keep himself afloat. Oswego Police Department's Detective Dwight Baird arrived, and both officers broke through the 2-inch-thick ice using their hands, forearms, elbows, and chests. The officers reached the closest boy just as he went completely under the water. Sergeant Stefanski grabbed the boy's coat and then went under the water. He resurfaced

and, with two broken ribs, swam to shore with the boy holding onto his neck. Detective Baird tied an extension cord around his waist, swam to the second boy, and grabbed him. Both Detective Baird and the boy were pulled ashore by other officers and paramedics. Due to Sergeant Stefanski's and Detective Baird's acts of heroism, two young lives were saved.

