Law Enforcement BULLETIN

Features

Departments

Managing Undercover Stress
The Supervisor's Role

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Law enforcement agencies frequently rely on undercover employees (UCEs). By infiltrating criminal organizations, UCEs gather the critical evidence needed to dismantle them. In doing so, they face an array of unique stressors, from a fear of discovery by the subjects to a lack of understanding from supervisors and peers.

Law enforcement managers who understand the nature of undercover work can help neutralize these undercover stressors. At the same time, by selecting and training the right people, monitoring their progress, and providing for full reintegration to regular law enforcement duties, managers can help their UCEs avoid the pitfalls associated with undercover activities.

THE NATURE OF UNDERCOVER WORK

Undercover assignments come in many varieties. They include everything from short-term, buy-bust scenarios to longer-term investigations lasting months or years. The essence of all cases, however, remains the same. UCEs develop relationships and eventually betray them.

UCEs establish relationships with criminal suspects and law-abiding citizens alike. Both help UCEs establish identities and make the right connections without knowing the truth about them. Many UCEs find this dual betrayal a difficult road to walk, adding to the numerous stressors inherent in undercover work. What stressors[1] do undercover agents most

frequently encounter and how can supervisors help them overcome these obstacles?

Undercover Stressors

Lack of Management Commitment

UCEs often believe that managers and supervisors lack commitment, support, and sensitivity for the nature of undercover work. Managers can prevent this misperception from crystallizing by

- bringing UCEs in on decisions that affect the course and direction of a covert investigation;

- providing bulletproof backstopping (information created to support the undercover role) and false identification prior to initiating the undercover investigation;

- assigning a control officer or contact agent who keeps UCEs well grounded

in their law enforcement identities and missions; and

- holding regular meetings with executive managers, who remain morally and ethically committed to the idea that no investigation or any amount of money is more important than the physical and emotional well-being of a UCE.

Personal Problems

Personal problems emerge during the course of daily life. Isolated and away from immediate solutions, UCEs working undercover may develop a personal crisis state of mind in response to unexpected personal problems. Maladaptive coping solutions often develop, and UCEs may begin drinking heavily or behaving promiscuously.

Supervisors can overcome this stressor by setting priorities before an investigation starts. The subjects go on vacation; they disappear and reappear. In short, they handle their emergencies. UCEs need the same

option. The persona the UCE portrays then becomes a real person who has to take care of personal business, too. Moreover, by giving the targeted suspects reason to believe the undercover operative will not always be around, case managers can enhance an undercover scenario.

Personal Relationships with Suspects

Relationships with suspects occur and can cause difficulties if not monitored. Criminal suspects have good and bad aspects to their personalities, and UCEs often see both sides. UCEs may be especially reluctant to make cases against suspects with children.

Assigning a control officer or contact agent to UCEs can go a long way toward avoiding the interpersonal difficulties frequently encountered during investigations. Responsible supervisors take steps to monitor UCEs' thoughts and feelings at regular intervals during the course of a long-term case or numerous consecutive short-term operations. UCEs who work intermittent investigations and come into the office regularly still need a designated contact person.

Overidentification with Suspects/Loss of Personal Identity

UCEs can suffer the twin undercover occupational hazards of overidentification with the suspect group and loss of identity. Supervisors should ground UCEs with the values, mission, and happenings of their agencies. Regular and, if necessary, discreet contact with co-workers and supervisors keeps

UCEs informed of the latest personal and official business affecting their agencies' daily operations.

Fear of Discovery

Whether the threat is real or imagined, when undercover officers fear discovery, they experience emotional discomfort. To defeat this stressor, law enforcement agencies must make a substantial effort to establish aliases or false identification for the officers involved in each specific operation. Some highly sophisticated criminal groups even hire private investigators or use the Internet to detect poorly conceived undercover identification. Although some law enforcement agencies cannot afford the luxury of allowing their undercover officers to slowly establish covert identities in a new community, not taking the time to do so could have deadly consequences. If UCEs live in fear after covertly targeting a dangerous criminal element in the community and relocation is not an option, managers must come up with a better investigative strategy.

Technical Difficulties

Working wired constitutes an occupational stressor unique to undercover work. Supervisors can overcome this stressor through proper training. Before the operation begins, UCEs should have the opportunity to rehearse with the equipment, under the supervision of a knowledgeable technician. Above all, UCEs should have the absolute right to veto the use of recording equipment when the operational situation dictates it.

Interagency Cooperation

Working with undercover operatives from other agencies can take a toll on the emotional well-being of a UCE. Differences in procedures, as well as objectives, often needlessly frustrate all parties. Frequent meetings of all participants, including the UCEs, before, during, and after joint operations best neutralize this stressor. A firm and clear memorandum of understanding written before the investigation begins also can eliminate areas of potential conflict.

> " *UCEs who work intermittent investigations and come into the office regularly still need a designated contact person.* "

Lack of Recovery Time

Lack of time for proper rest in order to emotionally and physically regroup frequently stresses UCEs. Proper planning in the early stages of an investigation eliminates this problem. Allowing time for recovery between encounters with targeted suspects can avert potential tragedies.

Lack of Context

Distance from home with exposure to new geographic areas and

cultures often discomforts UCEs. Effective backstopping and regular contact with their agencies can help manage this stressor. Most important, supervisors must identify, seek out, and carefully interview the person most comfortable operating in a specific operational setting before an investigation begins, rather than accepting volunteers who may prove unsuitable for the operation.

Unsuitable Roles

Any employee, regardless of background and qualifications, feels the inherent stress of an undercover role. To minimize this stressor, supervisors should not allow employees to portray individuals whose cultural, ethnic, or geographic backgrounds differ substantially from their own. UCEs must adapt—morally, ethically, and with minimal discomfort—to what their roles require. Some individuals simply do not possess the coping strategies needed to successfully portray ruthless criminals. An effective certification program can identify those individuals best suited to work undercover.

UNDERCOVER CERTIFICATION PROGRAM

Not everyone has the attributes required for undercover work, which places unique demands on its practitioners.[2] Years of experience have proven that constant deception in a hostile environment stresses even the best UCEs. Those most suited for undercover work have the resilience to overcome undercover pitfalls.

It is highly unlikely that in response to an immediate, unfolding

critical incident, a supervisor would randomly pick officers to be Special Weapons and Tactics (SWAT) team members. Historically, SWAT team members have been specially screened, tested, selected, trained, equipped, and rehearsed. Yet, undercover operatives often do not garner the same attention, despite the fact that they face critical incidents as threatening as SWAT operators.

Too often, supervisors assume that the officer whose ethnic, racial, or cultural background matches the criminal's represents the optimal officer for a particular undercover assignment. Unfortunately, this mistake frequently leads to personal and operational tragedy. Law enforcement managers can avoid this issue by using only experienced volunteers.

In addition, undercover work relies upon relationship building. New recruits have yet to develop relationships with their agencies and new law enforcement associates. Why risk a promising career by exposing a new officer to complex relationships and potential bonding with criminals?

Supervisors should conduct research to determine their agencies' undercover personnel needs and create programs to develop certified undercover operatives who have psychological attributes to meet the challenge of undercover work. Certifying—that is, formally testing, selecting, training, and monitoring—the right people to work undercover determines, to a large extent, the probable success of investigations.

Ten Most Wanted Attributes

Employees most capable of working undercover fit a certain profile and possess specific qualifications.

> "
> *...law enforcement managers...should exhaust other investigative methods before extending precious human resources in covert situations.*
> "

1) They are seasoned investigators, who volunteer to work undercover because they believe the techniques work, not because they are looking for personal glory. Additionally, these individuals are neither running toward undercover work, believing it is something it is not, nor running away from an unpleasant work assignment or life situation, believing they can find refuge in undercover work.

2) They have demonstrated perseverance and resourcefulness in the face of complex matters.

3) They are comfortable and capable of acting within their agencies' undercover policies, procedures, and guidelines.

4) They remain capable of acting on well-rehearsed

mental strategies and coping skills for operating in hostile environments while maintaining firm bonds and commitments to the missions of their law enforcement agencies.

5) They possess moral and ethical values that dovetail with their undercover missions. Officers operating in other than their true identities must conduct themselves appropriately and lawfully. The lawful use of the undercover investigative technique represents a sacred trust between law enforcement agencies and the people of a free society. If law enforcement agencies violate this trust by engaging in inappropriate undercover conduct, the public could stop supporting the use of this important technique.

6) They are highly proficient and comfortable at portraying identified roles.

7) They demonstrate high levels of self-confidence and a self-perception of effectiveness operating against specific criminal elements.

8) They are decisive people, flexible enough to work independently, yet extraordinarily capable of being team players when called upon to do so.

9) They are not situationally distracted with personal life stressors and vulnerable to anxiety or depression.

10) They have personality attributes to facilitate interaction with suspects

without incurring physical or emotional stress-related illnesses.

Psychological assessment, counseling, and realistic role-play scenarios can effectively screen undercover candidates. Newly certified undercover personnel benefit from interaction with experienced mentors and formal training opportunities prior to going operational. During undercover investigations, law enforcement-oriented mental health professionals and highly experienced undercover personnel can provide ongoing monitoring to observe and maintain UCE wellness and readiness. Control officers or contact agents who are supportive and trained to recognize stress reactions should contact UCEs at least once every 24 hours. Upon completion of the covert phase of an investigation, post-operational debriefings can ease the UCE's transition back to traditional overt responsibilities.

REINTEGRATION ISSUES

Bringing a UCE, particularly a faltering one, back into the law enforcement fold may take some creative engineering. Often, retraining opportunities aid the UCE's transition back to traditional law enforcement duties. Specifically, supervisors can have UCEs do some teaching as a component of their debriefing process. Requiring a returning UCE to provide an overview of undercover work to a new recruit class has proven a highly successful reintegration technique. The spontaneous standing ovation that usually comes at the close of the presentation can successfully, and often tearfully, reintegrate the

UCE into the law enforcement family. At the same time, it provides appropriate recognition for a job well done.

Reintegration may prove difficult because UCEs may experience problems with the issue of acceptance, often feeling separate and distanced from their fellow employees. Frequently, the UCE's feeling of alienation results from the distorted perceptions associated with highly stressful situations,

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although, sometimes, a factual basis exists. Fellow employees may resent UCEs because they get special attention. Co-workers observe what appears to be UCEs' living the good life: staying out all night, wearing expensive or exotic clothes and jewelry, spending large amounts of someone else's money, driving great cars or motorcycles, and seemingly working fewer hours than everyone else.

Whether UCEs' feelings of alienation are the result of their own misperceptions or actual resentment by overt investigative peers, undercover supervisors must

take active steps to ensure that UCEs are fully reintegrated into the organization. Ideally, this includes recognizing, debriefing, and retraining UCEs, as well as advising other members of the organization what the UCEs have accomplished.

ASSIGNMENT DURATION

The "operation duration" factor merits some discussion. Working a series of short-term operations back to back, day after day, for a few years has the cumulative effect and poses the same difficulties as working one long-term investigation for the same amount of time. Short-term UCEs should receive the same attention as those who work long-term assignments.

No specific response or any one policy can address the question, "How long should someone be allowed to work undercover?" After completing a covert operation and prior to assuming another undercover assignment, a certified UCE should have an opportunity for respite to debrief, regroup, and return to overt duties. In fact, if an effective and regimented support system regularly monitors and safeguards the operative's wellness, readiness, integrity, and personal concerns, a certified UCE can work undercover indefinitely.

Some law enforcement agencies select, train, and field a time-limited undercover team. Ten to 20 officers support each other for 1 to 2 years for the purpose of conducting all undercover and backup activity during their tours of duty. After the assignment is completed, management selects, trains, and fields a new team to take the place of the outgoing team.

CONCLUSION

The glamorous depiction of undercover work in books, movies, and popular culture does not adequately portray the harsh reality of undercover work. Experienced law enforcement managers know that many investigative techniques yield positive results, and they should exhaust other investigative methods before extending precious human resources in covert situations.

If the use of undercover investigative techniques becomes necessary, law enforcement managers must develop programs to support UCE wellness and readiness. An effective program identifies the right personnel, monitors their well-being during the course of an operation, and provides postoperational debriefing to enhance their successful transition back to overt investigative duties. The advantages gained by understanding the stressors confronting UCEs and giving undercover operatives a high level of support will go a long way to foster the necessary environment for UCEs to do their jobs and professionalize their important roles in defeating dangerous criminals. ◆

Endnotes

[1] I. John Vasquez, M.Ed., and Sharon A. Kelly, M.B.A, "Management's Commitment to the Undercover Operative: A Contemporary View," *FBI Law Enforcement Bulletin,* February 1989, 3-12.

[2] Neil S. Hibler, "The Care and Feeding of Undercover Agents," in *Police Psychology into the 21st Century,* ed. Neil S. Hibler, I. Kurke Martin, and Ellen M. Scrivner, (Hillsdale, NJ: Lawrence Eribaum Associates, Inc., 1995), 299-317.

Wanted: Photographs

The *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:

Brian Parnell, Art Director, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building 209, Quantico, VA 22135.

Empowerment Policing

By Michael S. Reiter, M.S.

The benefit of empowerment in law enforcement organizations has been the topic of many recent discussions among police managers. Most police executives would agree that employees who are trusted, allowed to make their own choices, and take responsibility for their actions will remain committed to their work and feel that they play an important part in their organizations. Community Oriented Policing (COP), today's dominant policing philosophy, is based on concepts of empowerment and teamwork. Nevertheless, organizational structures and other factors, such as individuals who resist change, stand as barriers to achieving the full benefits of empowerment and the COP movement. However, a change in organizational structure and leadership philosophy can remove these barriers to success.

THE PARAMILITARY ORGANIZATION

Paramilitary organizations have an abundance of rules and a rigid command structure. They use primarily one-way communication from the management to the line function, passing through various levels of hierarchy, with the power and decision making vested at the top. In the past, this organizational model served the law enforcement community well, partially because a large portion of police officers had served in the military and found comfort and order in this approach.

However, in paramilitary or bureaucratic law enforcement organizations, first-line supervisors often have limited authority and a narrow view of the organization. As a result, top-level supervisors become overburdened with too much to do, and other employees just wait for orders.[1] This system may result in compliant employees, but it proves inefficient and overly demanding of those in upper-level positions.

ORGANIZATIONAL DESIGN

Based on their pyramid-shaped organizational structures, typical paramilitary organizations strictly adhere to the chain of command. They also tend to address problems by growing, becoming more complex, and adding specialized units whenever new problems arise. Those new units typically require additional support personnel and more supervisors—all of which require more sets of rules, more steps for approval, and checks and counterchecks—commonly referred to as red tape. This approach creates new and more complex places to hide problems and place blame. Also, because power and privilege reside only at the top of the organization, those in the middle become lost and often question their own purpose.[2]

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The need to reduce costs has resulted in a forced flattening of the hierarchy in many paramilitary or bureaucratic organizations. In other words, middle management is shrinking. While removal of organizational layers does not automatically eliminate bureaucracy, this movement to flatten the hierarchy often increases communication by eliminating unnecessary filters of information often found in the middle levels of the organizational pyramid. The flatter a department's hierarchy, the more its leadership must trust and rely on the judgment of line-level officers, who directly provide service to the community and do the bulk of the work.

By inverting the organizational pyramid, law enforcement agencies take a bold and symbolic step toward becoming empowered. In a traditional paramilitary law enforcement hierarchy, the chief executive stands alone at the top of the organizational chart with the police officers found toward the base of the pyramid. Inverting the pyramid and placing the chief at the bottom and the police officers at the top symbolizes that the chief serves the organization and is responsible for its leadership. In this inverted pyramid organizational structure, the officers gain responsibility and the task of leadership becomes responsive to them.[3] Under such a philosophy, authority comes from within an organization, and its employees become valued because they are a contributing part of the organization, not because of the positions they hold.

THE EMPOWERED ORGANIZATION

Typical leaders of empowered organizations remain unsatisfied with the status quo and never use the phrase "because we have always done it that way." They continually seek to shift authority, control, and decision making to the individuals doing the core work of the organization.[4] As a result of encouraging innovation and placing trust and belief in employees, a sense of commitment and ownership develops that becomes evident by high performance

and a positive outlook. Trust bonds an organization together.[5] An empowered leader realizes that all else being equal, employees prefer to work in a pleasant environment over an unpleasant one. While a pleasant work environment does not always equal higher performance, employees who view their work as drudgery create a great barrier to sustained performance.

However, in every law enforcement agency, times exist when the paramilitary model is the appropriate leadership style. For example, a civil disturbance may require that a force of police officers act together in controlling a crowd. During such an incident, strict control and immediate obedience to orders would prevail over allowing employees to make their own decisions. Commanders should focus on safety, discourage risk-taking, and provide little room for experimentation in such situations.

> " An empowered leader realizes that... employees prefer to work in an pleasant environment over an unpleasant one. "

An empowered organization allows for this departure from the norm in extreme circumstances, but a paramilitary or bureaucratic organization experiences great difficulty switching to an empowered approach when circumstances dictate.

Autocratic leaders may interpret empowerment as disloyalty to their departments and consider it the abandonment of the core beliefs of the paramilitary model. Whereas empowerment emphasizes flexibility, an autocratic bureaucracy emphasizes rigid structure and adherence to the rules.

TODAY'S ENVIRONMENT

Today's culture brings instability, uncertainty, and change. Information remains paramount, and policing has become an information business. The paramilitary model worked well in a stable environment of performing largely similar tasks repetitively. However, as policing has moved from this largely stable environment to a dynamic and increasingly complex one, the paramilitary organizational model has become dysfunctional.[6]

In paramilitary organizations, officers often make decisions based on strict compliance with the rules. However, modern law enforcement agencies cannot rely on detailed sets of rules because the changing environment often causes these rules to become obsolete quickly. Thus, officers must make decisions that often conflict with existing rules. Because today's police officers are well trained and highly equipped to meet these challenges, their managers should value their judgments and decision-making abilities. Relying on detailed rules instead of the judgment of individuals may display a lack of confidence and could lower morale.

FACTORS INFLUENCING EMPOWERMENT

Generation X Police Officers

The greatest percentage of new police officers come from a group of 52 million Americans born between 1963 and 1977 referred to as Generation X.[7] Generation X police officers began their careers amidst organizational reengineering, unprecedented change, and uncertainty within their departments. They grew up in a time when society could not rely on the promises of institutions. Prior to Generation X, individuals usually achieved success by making long-term commitments to one organization and avoiding risk. Many Generation X officers watched their parents spend their careers working for one or two organizations and making great personal sacrifices, only later to become the victims of downsizing or corporate buyouts resulting in unfulfilled promises of security. Generation X police officers realize that the paternalistic organizational philosophy of "pay your dues, be patient, and you will be taken care of" has become obsolete.

Because Generation X police officers grew up in the middle of a firestorm of technology and information, they may prove better suited to the policing of the future. Only an empowered leader who allows employees to participate in decision making can motivate them and keep them from moving to those fields where empowerment has become the standard. When Generation X police officers think that their supervisors do not trust their judgment or do not put their talents to best use, most of their abilities, creativity, and intelligence lie dormant, and policing becomes just a job to them.[8] As a result, their motivation fades more quickly than any other generation's. Management of paramilitary law enforcement organizations often characterize Generation X police officers as having given up and label them underachievers.

However, Generation X police officers are not inherently lazy, arrogant, or materialistic as popularized by the media—management always should value all employees based on the skills and potential they possess. It remains the organization's responsibility to provide an environment that allows them to reach their potential. The paramilitary model of policing frequently fails in this regard.

Accreditation

The accreditation movement in law enforcement, based on standardizing rules and practices, may contribute to maintaining the paramilitary model. Accreditation efforts usually encourage autocratic leadership and bureaucratic structure and generally require strict compliance to a detailed set of rules. Rule compliance serves as the basis for awarding accreditation to applicant law enforcement agencies. Accreditation bodies require that agencies have written directives to show compliance with a specific set of standards. Administrators wishing to ensure their organization's accreditation often write detailed and voluminous sets of rules and regulations to provide unquestionable proof of compliance with the standards of the accreditation body. This overreaction further removes decision making from the line officers and sends a clear message that the agency does not trust in the judgment of its officers but rather

in sets of very detailed rules and regulations where strict compliance is expected. The emphasis of a paramilitary organization is not on people but on control, systems, and structure. While the accreditation process has many benefits, the requirement to produce detailed and voluminous sets of written rules is not one of them.

Community Oriented Policing

The COP movement is a profession-specific example of empowerment theory. COP embraces many of the concepts of the empowerment model and values people over most other elements in the organization. Empowerment in COP not only allows line officers to solve problems but also gives them the trust and involvement of the entire community. The police and community partnership found in COP is clearly antibureaucratic and should be the focus of every law enforcement leader.

However, the paramilitary organizational design represents a powerful detriment to the COP philosophy. No sets of written rules exist that can systemize and manage what some police departments have accomplished through COP initiatives. Trust and risk are inherent in most of those successful programs. The best achievements from COP initiatives often happen when an officer does something not covered in any written rules and that has never been done before. Practitioners know that "thinking outside the box," a concept that the paramilitary model punishes, remains critical to COP. Many police leaders today remember the old sergeant who illustrated the embodiment of the paramilitary model and believed officers were not paid to think, just to do what they were told.

EMPOWERED LEADERSHIP PHILOSOPHY

Trust is the essence of leadership in an empowered organization. Empowered leaders push decision making down to the officer level because they have confidence in their officers' abilities and believe that many decisions are best made at that level. Innovation

> " **Trust is the essence of leadership in an empowered organization.** "

and creativity normally include some level of risk. Leaders automatically do not punish failures because risk remains inherent, and failures provide valuable learning experiences. All learning involves some failure.[9] This does not suggest that leaders should permit failure in all arenas of policing.

In professions such as law enforcement, failure can result in different consequences. For example, an after-school program for at-risk juveniles with low participation can have much different consequences than an unjustified use of deadly force. Creativity, innovation, and experimentation become appropriate in law enforcement only in those areas where the ramifications of failure do not place the safety or welfare of the community or organization at risk. Empowerment philosophy easily adjusts to those narrow areas of policing that require structure and strict rule compliance, providing leaders make the rules and their purpose well known.

Leaders must focus on rewards and not discipline, and they should encourage dissonant information and individual opinions. Additionally, they should consider hiring employees from divergent backgrounds and viewpoints as a strength. Hiring employees with similar backgrounds and experiences encourages organizational inbreeding that hampers creativity and innovation.[10] Above all, law enforcement executives must start by embodying empowerment dynamics in themselves. While empowerment can grow spontaneously, sparked by enlightened leaders at any level of the organization, it must do so covertly if management does not offer full support.[11] In these circumstances, any substantial failure based upon empowerment likely will result in harsh punishment.
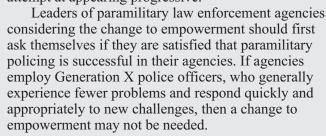
CASUALTIES OF THE TRANSITION

Empowerment can evoke a mixed response in some agencies where autocratic leadership remains at the core of the organizational culture. In such organizations, some police officers may not want increased autonomy and may find comfort in high structure and

predictability. Yet, others will test the limits of their authority. Because organizational cultures vary within departments, each transition will present different risks, problems, and successes.

Empowerment may not work for every law enforcement agency. In a government where autocratic leadership remains the norm, empowerment may be a dangerous undertaking that threatens the system and its most basic beliefs. Leaders who consider this transition must differentiate between courage and suicide. Only those who can appreciate the benefits of success and the losses of failure should attempt such a transition. While leaders can apply empowerment techniques in any organization, it becomes an all-or-nothing choice of how an organization views its people; otherwise, empowerment risks being a leadership fad in a cosmetic attempt at appearing progressive.[12]

Leaders of paramilitary law enforcement agencies considering the change to empowerment should first ask themselves if they are satisfied that paramilitary policing is successful in their agencies. If agencies employ Generation X police officers, who generally experience fewer problems and respond quickly and appropriately to new challenges, then a change to empowerment may not be needed.

CONCLUSION

Trusting today's educated, independent, and innovative police officers to make the best decisions and take responsibility results in higher performance, greater commitment, and a sense of ownership in the organization. This methodology may be the only way to keep police officers of the future stimulated. Police officers do not want to spend the best days of their lives in a career that denies their abilities and talents. They would like to think of themselves as actors in the system rather than being helplessly acted upon. As a result, empowered police officers make real differences in improving communities.

Law enforcement organizations that value conformity, consistency, and compliance to the rules ignore the changing and unpredictable environment found throughout organizations today. By trying to play by rules designed for past problems, the paramilitary model is simply too inflexible to serve the future of policing. One effective way leaders can make decisions for solving new problems is to trust in the judgment of the police officers who can solve them in a way that no set of rules or rigid command structure can attempt.

Leaders face immense challenges relative to the future of policing. Leaders that implement an organizational design and philosophy that encourage trust and enhance officers' judgment and skills will provide an environment conducive to the type of innovation, commitment, and personal satisfaction necessary to address the problems of the future. The empowerment policing model can help achieve greater successes in the next century of policing. ✦

Endnotes

[1] G. Pinchot, "Creating Organizations with Many Leaders" in *The Leader of the Future,* ed. F. Hesselbein, M. Goldsmith and R. Beckard, (San Francisco: Jossey-Bass, 1996), 27.

[2] P. Block, *The Empowered Manager* (San Francisco: Jossey-Bass, 1987), 20-62.

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[5] W. Bennis and B. Nanus, *Leaders: The Strategies for Taking Charge* (New York: Harper and Row, 1985), 153.

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[7] B. Tulgan, *The Manager's Pocket Guide to Generation X* (Amherst, MA: HRD Press, 1997), 3.

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[9] Supra note 5, 75.

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[11] P. Senge, "Leading Learning Organizations" in *The Leader of the Future*, ed. F. Hesselbein, M. Goldsmith and R. Beckard, (San Francisco: Jossey-Bass, 1996), 42.

[12] P. Hersey and K. Blanchard, *Management of Organizational Behavior: Utilizing Human Resources* (Englewood Cliffs, NJ: Prentice-Hall, 1993), 176.

Neighborhood Watch

A Leadership Challenge

By THOMAS E. BAKER, M.S., M.Ed.,
JANE P. BAKER, M.S., and RALPH ZEZZA

NEIGHBORHOOD CRIME WATCH

We immediately report all SUSPICIOUS PERSONS and activities to our Police Dept.

"**E**xperience and research reveal that 'community institutions are the first line of defense against disorder and crime....' Thus, it is essential that the police work closely with all facets of the community to identify concerns and find the most effective solutions. This is the essence of community policing."[1]

Frequently implemented under community-oriented policing plans, Neighborhood Watch programs have received much attention over the past 10 years. However, experts rarely discuss the steps that lead to their successes. Many police departments have implemented Neighborhood Watch programs with much success; however, some have difficulty initiating and sustaining the groups. Unfortunately, this proves particularly true in those communities that most need assistance. Middle-class communities, with the least to fear, seem to sustain the effort. On the other hand, low-income communities have a difficult time maintaining community-based groups, even in the presence of severe crime rates.[2]

Indeed, developing programs and maintaining community participation in Neighborhood Watch programs remain difficult leadership challenges. The average life expectancy of a Neighborhood Watch group is rather short, and the program itself, problematic. The most successful watches recruit new members a few times a year.

Ongoing recruitment nurtures the program by involving new, motivated members. These fresh individuals replace those who feel they no longer need to participate because they either have become disenchanted with the program or feel their concerns have been addressed.

Despite the difficulties associated with establishing a successful community program, experts rarely discuss the steps that lead to success. Although police agencies interested in obtaining specific details on starting a group can do so easily, material on broad leadership issues, such as group dynamics and maintenance techniques, remain undeveloped areas. Such information would help organizers facilitate and maintain these successful supporting programs. In short, communities need information on how to maintain Neighborhood Watch programs, not just on how to start them.

Without citizen trust and cooperation, police officers work in an information vacuum and lack the criminal intelligence needed to perform their basic duties. Identifying the fundamental causes of crime depends, to a great extent, on citizens who make observations and report illegal activity. Police executives must reward these efforts and take appropriate steps to encourage continued citizen support and cooperation.

The philosophy of shared community crime prevention holds great promise but requires a great deal of leadership on the part of both the citizens and the police. Some administrators approach those programs involving citizen participation with apprehension and caution. Those police leaders, concerned with power and control, may be the most reluctant to support citizen involvement. They may fear loss of control over their departments more than they fear the actual level of crime.

FIVE STEPS FOR SUCCESS

Adequate preparation, planning, and training for citizen involvement can reduce confusion and create opportunities for better communication and increased cooperation. To achieve some degree of success, departments need to consider five steps during the development and maintenance of Neighborhood Watch programs. Without the proper foundation, the programs become disorganized. These steps set the stage for enhanced participation, cooperation, and retention of Neighborhood Watch members.

First Step: Plan Strategies

In the first step toward community involvement, organizers should develop strategies for dealing with

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crime patterns and form appropriate community and police intervention strategies. A well-constructed strategic plan may ease some of the anxiety and fear associated with community participation. Problem-oriented policing and crime-specific planning remain essential to the tactical planning process. These also will help minimize costly mistakes and enhance the opportunity for a successful collaboration between citizens and police departments.

In many cases, police departments blame citizen apathy for the failure of Neighborhood Watch programs. However, more often than not, the lack of appropriate planning, group maintenance, and support activities causes the failure. Crime prevention initiatives tend to disintegrate when police leaders fail to provide timely, ongoing guidance and support to citizens.

Second Step: Train Officers

Neighborhood Watch programs require well-trained crime prevention officers to assist citizens. These officers must possess the expertise, training, and personal qualities to successfully initiate and maintain a crime prevention program. Departments must carefully select these officers, who will provide specialized training to citizens. Crime prevention officers need motivation, perseverance, creativity, and enthusiasm in their assignments. They will become role models for the department's crime prevention initiatives and have considerable impact on the success of Neighborhood Watch programs.

Third Step: Assess Community Needs

The third step involves an effective assessment of community attitudes and opinions concerning police services and specific Neighborhood Watch programs. All too often, officers assume that they are performing effectively without surveying citizens. Fortunately, many progressive departments attempt to measure, evaluate, and improve their quality of service by seeking input from the community.

> **"** *Neighborhood Watch programs require well-trained crime prevention officers to assist citizens.* **"**

At the same time, needs assessments lay the foundation for defining goals, setting objectives, and developing work plans. More important, needs assessments rally citizen interest and focus on crime prevention initiatives. For example, the community may identify significantly different issues from those of the police. The police may be concerned with the drug problem while citizens may focus on the possibility of child abduction and molestation. Because citizens tend to perceive or fear crimes that may not, in reality, present a problem, providing local crime statistics may help determine community needs. In addition, addressing overlapping areas of interest may enhance rapport and citizen support.

Fourth Step: Select and Train Volunteers

The identification and selection of an appropriate watch coordinator remains one of the most important initial decisions. Although all neighborhood participants usually volunteer for the positions, watch leaders need to possess excellent leadership, organizational, and time-management skills because they will have an enormous impact on the enthusiasm for, and success of, the program.

Police leaders should provide thorough training for Neighborhood Watch programs. Departments should offer training periods more than once and at convenient times in order to provide all block leaders an opportunity to attend. In return, the block leaders ultimately will become primary trainers of the Neighborhood Watch members. Clearly, watch administrators should not underestimate the necessity of an adequate training program for volunteers. The training process strengthens the program and helps guard against confusion, poor decisions, and costly mistakes.

Fifth Step: Develop Meaningful Projects

Unfortunately, members often lose interest after a crisis ends or the Neighborhood Watch has addressed their primary concern. Citizens need involvement that satisfies

and rewards. Moreover, they possess unique skills, interests, and material resources—such as home computers, cellular phones, or citizen band radios—that may be used by the group. Others may express an interest in repairing playground equipment, painting over graffiti, or perhaps developing a picnic area for children or elderly residents. Leaders should survey the members' interests and abilities, encourage creativity, and allow them to create opportunities for involvement. This approach will help maintain interest, motivation, and community pride.

One activity leaders might encourage is publishing an anticrime newsletter, which can provide crime prevention tips, local crime news, citizen recognition, and information on community events. A Neighborhood Watch newsletter becomes an excellent way to inform the neighborhood about crime trends that may affect them. Keeping citizens informed of accurate information may reduce their fear of crime.

ESTABLISHING THE TONE

Neighborhood Watch leaders should not underestimate how the tone of the meetings will impact the participation and retention of group members. Leaders must ensure that everyone gets treated with respect and that inappropriate behavior will not be tolerated.

Some individuals can dominate meetings by talking incessantly and interrupting others. Leaders must ensure that everyone has an opportunity to speak without interruption and should not tolerate

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> **Steps to a Successful Neighborhood Watch Program**
>
> 1. Plan strategies
> 2. Train officers
> 3. Assess community needs
> 4. Select and train volunteers
> 5. Develop meaningful projects

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inappropriate remarks or sarcasm. The meeting tone should encourage positive interaction, respect for diverse opinions, and active listening. Establishing a positive, respectful tone will enhance interaction and the possibility of accomplishing goals.

Meetings must not linger on discussions that do not lead to problem-solving solutions. Productive meetings encourage those in attendance to participate further. Neighborhood Watch leaders and members should leave meetings glad they attended and feeling inspired to continue their participation.

Credibility Gap and Retention

Police officers must actively listen to community concerns, suggestions, and complaints. Departments then must be prepared to intervene appropriately. Failure to do so creates a credibility gap for those community members who have voiced concerns. If the program does not address citizens' concerns, apathy and disintegration of the Neighborhood Watch program will follow. Moreover, group members may conclude that the police department is not concerned. Therefore, police involvement becomes especially important when the

department can easily and inexpensively implement remedial action. Citizens evaluate the work accomplished by attending meetings and participating in crime prevention activities. Citizens want to see their concerns addressed and their continued participation may hinge on the accomplishments they see.

Additionally, crime prevention officers must help citizens define and set reasonable goals and then support the achievement of those goals. The accomplishment of one goal enhances mutual cooperation and progression to another one. When leaders address the concerns of citizens and treat them as partners in crime prevention, interest remains high and participation continues.

Police and Citizen Roles Defined

The relationship between citizens and crime prevention officers increases qualitatively with the clear definition of respective roles. "The motivated citizen works with, rather than for, the crime prevention officer, who is much more a resource available to the citizen than the reverse. Within lawful limits, citizen crime prevention activities are in no way directed by police. The one cannot be subservient to the other; instead, both

must collaborate as partners. Thus, where citizen participation strategies are correctly developed, there is no need for conflict over the issue of program control."[3]

When watch administrators define roles in early planning stages, conflict decreases. When roles are not clearly defined, confusion and mistrust can develop, and program members may lose interest. Police officers need a specific agenda for each meeting and should encourage citizens to voice their concerns.

Group Dynamics

One of the most difficult tasks of implementing a successful neighborhood-oriented policing philosophy involves meeting the expectations of diverse community groups. Officers who participate must understand basic leadership principles and group dynamics.

Group members may attend meetings for numerous reasons. Some attend to address safety concerns, discuss crime trends, or share personal problems, while others may have a social agenda. Some come with the hope of solving specific neighborhood problems that have not been addressed through other avenues or approaches.

The amount of cohesiveness among group members determines the level of cooperation and communication within the group and ultimately helps achieve specific goals. The number of members and the leader's style influences the cohesiveness of informal groups. Small, informal work groups with strong leaders historically prove the most effective.

FOUR STAGES OF GROUP DEVELOPMENT

Police leaders tend to become discouraged in the initial stages of Neighborhood Watch programs. They often comment on group member apathy or anger, which is the most difficult part of starting a Neighborhood Watch program. Police officers need to overcome these initial feelings and listen to the group's complaints. If officers remain patient, these problems should dissipate.

> *Citizens evaluate the work accomplished by attending meetings and participating in crime prevention activities.*

Participating officers need to recognize when group members are ready to venture out into the community. It may take some time for the members to gain this confidence, but without it, they may be unwilling to participate in projects.

Some of the members' insecurities may result from inadequate training and preparation. Police leaders and the watch coordinator must continually assess group members' confidence and their ability to perform tasks and achieve objectives.

Group development has four stages: 1) forming, 2) storming, 3) norming, and 4) performing. Neighborhood groups that achieve highest productivity levels move through each of these stages. The duration of each stage depends on group leaders, group members, and task complexity.[4] Watch organizers must first form the proper foundation, or the group may not evolve beyond its initial stages. Therefore, Neighborhood Watch leaders must monitor their groups, clear up misunderstandings, and avoid rushing through developmental stages.

The Forming Stage

In the *forming* stage, Neighborhood Watch groups usually are disorganized. Members may demonstrate anxiety and insecurity about the structure of the group. At this point, they depend on police leadership to provide useful information and ease tensions. Organizers should use this period to get acquainted and set a positive tone for future group meetings. Because watch members are not yet ready to address community objectives, leaders should concentrate on an effective orientation and training program. These activities will help provide the basic foundation for a successful group.

The Storming Stage

The *storming* stage often involves a struggle for power. Conflict among members for recognition and influence still exists. As members learn to confront others constructively, they may even challenge police leaders during this
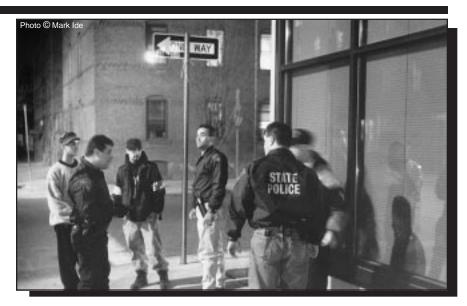
stage. This early period of development establishes how members will handle conflict in the future. The group must evolve through these difficulties to achieve independence and successfully accomplish goals during this state; however, they are not yet ready to work effectively on their own. Neighborhood Watch leaders should remain steadfast and listen to all complaints. Crime prevention officers should not become defensive because this will lead to citizen criticism and poor communication.

Officers should avoid becoming discouraged with a neighborhood group's performance. Active listening skills and patience should continue during this stage to enhance communication. Cooperation helps the members move forward in the process of group development.

Police leaders must encourage individuals to pursue a positive path and put aside personal issues in favor of community interests. This opportunity also helps members accept their share of responsibility for the direction of the group. This should move the group to the next stage.

The Norming Stage

The *norming* stage can be characterized by the development of team cohesion. By this point, the group members have survived a period of testing, have resolved conflicts, and have bonded enough to work together closely. Members should feel more confident and ready to accomplish modest tasks and objectives. Cohesion and confidence will greatly impact the success of the group and its work.

Watch leaders must monitor the progress of their group. Moving too quickly to the performing stage may create frustration and group incohesiveness. Patience, active listening, open communication, and understanding enhance the possibility for successful transition.

The Performing Stage

The *performing* stage is team-oriented; leaders should have established roles, and members should be ready for higher levels of cooperation and performance. In other words, the group, now a team, pulls together to accomplish major goals and objectives.[5] However, this stage does not end the process. Members must continue to evaluate their satisfaction and take corrective measures to keep the program successful. During this stage, members of productive Neighborhood Watch groups feel empowered and secure enough to address concerns and make meaningful changes.

The climate of trust that reduces tension, fear, or anxiety in the forming and storming stages will assist in the transition to the norming and performing stages of development. Positive communication, accurate information, and the reduction of rumors remain essential during all stages in order to encourage positive group development.

CONCLUSION

The shift in philosophy to neighborhood-oriented policing requires mutual trust and a reliance on citizen participation. Neighborhood Watch programs can help build a bridge to the community that serves as the foundation for mutual respect and successful crime prevention initiatives. Working with Neighborhood Watch programs requires exceptional leadership skills and a great deal of patience; however, the rewards should prove considerable.

The success of a Neighborhood Watch program directly relates to the department's commitment to

establish a strategic plan, train the participants, and encourage open communication within the community. Yet, starting a Neighborhood Watch program may prove less difficult than maintaining citizen interest and participation. Leaders first must define the group's mission in order to establish direction. Next, by assessing and articulating community needs, they can sustain the program's direction. Finally, they should redirect the members to new goals and objectives once they complete a specific mission. Indeed, citizens who participate in crime prevention programs must have adequate support and opportunities to help implement positive changes in their communities.

In short, in order to succeed, Neighborhood Watch programs require planning, dedication, and motivated leadership, coupled with enhanced citizen support of police agencies. Those departments that maintain these essential ingredients will build a solid program that combats crime and addresses citizens' concerns. ✦

Endnotes

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[4] B.W. Tuckman, *"*Development Sequence in Small Groups," *Psychological Bulletin* 63 (June 1965): 6.

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Crime Data

Crime Decreases in 1997

According to FBI Uniform Crime Reporting (UCR) final 1997 reported crime statistics, violent crime totals decreased 3 percent and property crime totals declined 2 percent from 1996 levels. By offense, the violent crimes of murder and robbery each decreased 7 percent in 1997, while aggravated assault was down 1 percent and forcible rape showed a slight decline. Property crime decreases included 3 percent for motor vehicle thefts and 2 percent each for burglary and larceny-theft incidents.

These statistics are based on a Crime Index of selected violent and property crimes submitted to the UCR Program by more than 17,000 city, county, and state law enforcement agencies throughout the United States. The 1997 Crime Index total of approximately 13.2 million offenses represented a 2 percent decline from the 1996 total.

Overall, cities experienced a 3 percent decrease, while crime increased by 1 percent in rural areas. Regionally, the south had 40 percent of the reported crime in 1997; the west, 24 percent; the midwest, 22 percent; and the northeast, 15 percent.

Complete crime information is contained in the FBI's *Crime in the United States, 1997*, which is available on the FBI's Internet site at **http://www.fbi.gov.**

The Killers Among Us: An Examination of Serial Murder and Its Investigation *by Steven A. Egger, published by Prentice Hall Inc., Upper Saddle River, NJ, 1998.*

The Killers Among Us seeks to elucidate information about the relatively rare and elusive phenomenon of serial murder. The author, a criminal justice professor and former homicide investigator, attempts to provide readers with an understanding of what law enforcement officers know about the phenomenon of serial murder, what they think they know, and what they simply do not know, by reducing the "blackhole of misinformation" erroneously created through the propagation of numerous myths.

The book is divided into four sections. Section 1 offers an overview of existing serial murder literature. Definitional issues, estimates on the number of serial killers, and the motivational factors behind serial murder receive extensive coverage. This section also offers sociological, psychological, biological, and cultural explanations in an effort to familiarize the reader with numerous theoretical explanations for this behavior. The author attacks serial murder mythology by criticizing and clarifying reports commonly attributed to serial murderers and their crimes. For example, media portrayals often depict serial murderers as "mutants from hell" who do not behave like the average citizen. These fallacies become more apparent in the second section of the book through an examination of four in-depth case studies. The author presents social, familial, attitudinal, and other life events for Ted Bundy, John Wayne Gacy, Henry Lee Lucas, and Kenneth Bianchi. The author astutely closes this section with a cross-case analysis that demonstrates the killers' similarities and differences.

From a law enforcement perspective, sections 3 and 4 contain insightful and useful investigative information. Section 3 dissects the seven obstacles surrounding serial murder investigations and delineates the pros and cons of the most common responses to these problems. Section 4 outlines the future of serial murder and proposes a research and policy agenda for addressing this issue.

The author clearly achieves his objectives, especially in the areas of investigating and responding to serial murders and describes each of the obstacles commonly encountered during the course of an investigation. Foremost among these obstacles is "linkage blindness," a term previously coined by the author to denote the lack of communication between various agencies. The failure to commit to an investigation and effectively manage information, as well as the tendency to submit to media pressure, receives exceptional coverage and provides insight for law enforcement personnel attempting to overcome these investigative obstacles.

The Killers Among Us also offers an excellent commentary on law enforcement agencies' responses to serial murder cases. The author presents 14 different tactics, ranging from task forces to psychics, with references on their use, either successfully or unsuccessfully, in prior investigations. This discussion might significantly benefit investigators trying to determine the most appropriate response in relation to the nature of the case, personnel, financial resources, and other limitations unique to their jurisdictions.

The Killers Among Us appeals to a diverse audience, ranging from college students to seasoned homicide investigators. With its comprehensive, insightful approach, the book can give any reader a greater appreciation for, and an accurate understanding of, the serial murder phenomenon.

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The FBI's Critical Incident Stress Management Program

By VINCENT J. MCNALLY and ROGER M. SOLOMON, Ph.D.

Line-of-duty shootings; death, suicide, or serious injury of co-workers; multi-casualty homicides; and hostage situations exemplify critical incidents that often leave law enforcement officers feeling an overwhelming sense of vulnerability or lack of control.[1] The FBI recognizes that two-thirds of officers involved in shooting incidents may experience significant emotional reactions. Typical responses include a heightened sense of danger; flashbacks and nightmares; intrusive imagery and thoughts; anger; guilt; sleep difficulties; withdrawal; depression; and stress symptoms. These represent *normal reactions to abnormal situations*.

In the 1970s, when little was known about critical incident trauma, about 70 percent of police officers who used fatal force left law enforcement within 5 years.[2] Even today, the failure to resolve issues associated with critical incidents often leads to a variety of negative cognitive and behavioral patterns. Some law enforcement officers may overreact to perceived threats; others may underreact to clearly dangerous situations. Some officers resign or retire prematurely, while others become disciplinary problems or develop increased absenteeism. Burnout, stress-related illnesses, posttraumatic stress disorder, and substance abuse often result from unresolved issues stemming from traumatic incidents.

CRITICAL INCIDENT INTERVENTIONS

The FBI has a responsibility to help its employees constructively handle the emotional aftermath of critical incidents. Accordingly, the Employee Assistance Unit developed the Critical Incident Stress Management (CISM) Program to safeguard and promote the psychological well-being of FBI employees following traumatic experiences. While agents always have received training, firearms, and body armor to help them physically survive critical incidents, they now can obtain the tools they need to help them survive the emotional aftermath of such events.

The CISM Program provides FBI employees with a confidential method of mitigating the adverse effects of the incidents and promoting positive resolution. Team members are drawn from the Employee Assistance Unit, FBI chaplains, the FBI peer support team, and mental health professionals with expertise in police psychology and trauma. Although all CISM team members do not have legally sanctioned privileged communication, interventions are considered confidential by policy. Moreover, all FBI team members receive training on the importance of maintaining confidentiality and supporting their fellow employees without judging or losing respect for them.

The program offers a continuum of interventions and services, which provides both immediate and long-term support. These include defusings, critical incident stress debriefings, family outreach, manager support, referrals

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and follow-up services, eye movement desensitization and reprocessing treatments, and postcritical incident seminars.

Defusings

After initial investigative issues (e.g., conducting preliminary interviews and taking statements) have been handled, the CISM team will convene a defusing.[3] This informal small group or individual discussion with involved personnel begins a few hours after the incident. These 30- to 40-minute interventions promote normalization, reduce tension, and determine future needs.

Critical Incident Stress Debriefings

After the initial defusing occurs, the next level of intervention involves a critical incident stress debriefing (CISD),[4] a structured group discussion for all involved personnel that takes place as the emotional impact sets in.

Depending on personnel needs, logistical considerations, and legal issues (e.g., waiting until investigative statements have been taken), the CISD usually occurs within 24 to 72 hours after the incident.

The CISD promotes normalization and recovery by having involved personnel discuss such issues as their roles in the incidents, their thoughts during the events, their emotional reactions, and the stress symptoms they experienced. In addition to educating these employees about coping strategies, the CISD enables CISM team members to determine who may benefit from referrals for further care and to plan for other follow-up support.

Peer or One-on-one Support

Following the debriefing, the CISM team may meet individually with the employees involved in the incident. Often, a team member who has experienced a similar critical incident will provide the

one-on-one support. Peer guidance proves particularly effective in helping FBI personnel normalize their reactions to the trauma. This support has tremendous credibility coming from a fellow employee who has "been there."

Family Assistance

In the law enforcement profession, an employee's most vital support system, the family, often remains neglected. Individuals adversely affected by critical incidents bring the trauma home to their families.[5] The CISM team provides debriefings for family members as a group and one-on-one to help them cope with their reactions to a family member's involvement in a critical incident.

Manager Support

The CISM team consults with managers about their roles in supportively handling the emotional aftermath of critical incidents. Managers must coordinate communication, timetables for crisis services, appropriate ongoing interventions, and other support programs. FBI experience has shown that recovery occurs more rapidly when concerned managers actively nurture their employees following a traumatic event. Moreover, additional traumatic stress may result when employees perceive managers as distant or insensitive.

Additionally, managers must remember that critical incidents, especially those involving death or serious injury to coworkers, can significantly impact the entire office. Appropriate and timely intervention by both managers and the CISM team can minimize the negative consequences for office personnel and others affected by the incident.

Referrals and Follow-up Services

For many individuals, defusings, debriefings, and one-on-one support lead to closure and resolution of the traumatic incident. Through this assistance, the traumatic incident is processed and becomes integrated; specifically, negative emotions, thoughts, and images fade. The individual retains what is useful, learns from the incident, and resolves the event.

> **"...stress-related illnesses...and substance abuse often result from unresolved issues stemming from traumatic incidents."**

However, for others, these interventions represent only a beginning. The intense physiological and psychological arousal of a critical incident can impair their information-processing mechanisms. Consequently, information taken in during the trauma (e.g., sights, sounds, emotions, sensations, and beliefs) can be "frozen" in the brain and not processed normally.[6] Rather than fading, these sensory impressions can continue to intrude, resulting in flashbacks, nightmares, intrusive thoughts, and other posttraumatic symptoms.[7] A central component of the trauma can be negative, irrational self-beliefs having to do with an individual's participation in the event (e.g., "It's all my fault...I'm still not safe...I'm helpless"). At this point, referral to mental health professionals with specialized experience and training becomes necessary.

Eye Movement Desensitization and Reprocessing

Eye movement desensitization and reprocessing (EMDR) is a component of the FBI's integrated response to critical incidents. A therapeutic method that must be administered only by mental health professionals trained in the procedure, EMDR frequently accelerates the treatment of trauma. Reportedly, EMDR stimulates the brain's natural information-processing mechanisms, allowing the "frozen" traumatic information to be processed normally and achieve integration.[8] Negative images often fade; negative emotions subside. Irrational thoughts give way to appropriate, adaptive thoughts and interpretations (e.g., "I did the best I could...I survived and I am now safe...I can exercise control"). With EMDR, an individual discards what is not useful (e.g., irrational thoughts, distressing emotions, intrusive images), retains what is useful, and learns from the event, as the following hypothetical example illustrates.

A male rescue worker at the bombing of the Federal Building in Oklahoma City felt guilty over not finding some missing limbs of one

Examples of Line-of-Duty Critical Incidents

- Experiencing the death or violent traumatic injury of a co-worker, spouse, or family member

- Taking a life, or causing serious injury, in a line-of-duty situation

- Experiencing the suicide of a co-worker, spouse, or family member

- Surviving a major natural disaster or man-made catastrophe (e.g., bombing)

- Witnessing/handling multiple fatalities

- Participating in high-speed pursuit that ends in tragedy

- Participating in Special Weapons and Tactics (SWAT) operations, where dangers are present

- Negotiating with a hostage taking/barricaded suspect

- Observing an act of corruption, bribery, or other illegal activity by a co-worker

- Facing suspension and/or threat of dismissal

victim. He felt he had not completed his mission. Also, he felt guilty that it had taken several days to recover another victim that had been visible but inaccessible. He experienced intrusive images of the scenes, which evoked significant distress. Given debriefings and counseling, the worker still experienced intrusive images and feelings of guilt. Two months after the incident, he received EMDR. During treatment, the worker realized that no one had ever found the missing limbs and that he had done all he could. Applying EMDR to the second situation involving the delayed recovery, the worker realized that the victim was dead, not calling for help, and that the rescuers had other priorities. He then stated that not only had he done the best he could but that he and his fellow rescuers had done a good job. His guilt was alleviated.

Research indicates that after three 90-minute sessions of EMDR, 84 to 100 percent of individuals who had posttraumatic stress disorder (PTSD) due to a single traumatic episode no longer met the criteria for PTSD.[9] Consistent with this research, the FBI has found EMDR to be effective when used with individuals exhibiting symptoms of posttraumatic stress stemming from a specific event.

Most important, only mental health professionals should administer EMDR. While critical incident stress debriefings and defusings illustrate crisis intervention strategies, EMDR constitutes treatment, which requires education and skill to administer. Therefore, mental health professionals must have appropriate training in EMDR, as well as knowledge and experience in working with trauma.

Postcritical Incident Seminar

Critical incident recovery can prove a lengthy and complex process. Even after initial acceptance and resolution of an incident, negative reactions can resurface. Once individuals confront their vulnerability and mortality, they must learn to live with that reality. Going through a traumatic incident is like crossing a road and losing one's naivete with no possibility of crossing back.[10] To minimize long-term difficulties, the CISM team members and employee assistance personnel make follow-up contacts. Also, they offer referrals for additional help as needed.

To promote resolution and provide follow-up support, the FBI initiated a postcritical incident seminar (PCIS). Employee assistance staff members invite employees who have experienced a critical incident to a 4-day seminar to discuss their reactions in a safe, protective, and confidential environment. Also open to the spouses of employees involved in traumatic events, the seminar usually includes between 15 and 25 individuals. Through sharing their experiences with others, participants receive peer support, which helps normalize their reactions. They also learn

about trauma and coping strategies to facilitate healing and recovery. Additionally, peer support training permits participants to offer constructive interpersonal support in the future to fellow employees who may experience critical incidents.

The PCIS allows participants experiencing difficulty to access professional services in a safe environment. Participants can work voluntarily one-on-one with clinicians who specialize in law enforcement issues, posttraumatic stress disorder, and EMDR. Often the vehicle that moves individuals who are "stuck" in resolving their incidents, PCIS can be illustrated by the following example.

While attending a PCIS, an agent experienced distress from a seemingly minor incident.[11] During the surveillance of a suspected drug dealer, a high-speed chase ensued. The suspect, realizing he was being followed, drove at speeds in excess of 100 miles per hour. He eventually pulled over, got out of his vehicle, and approached the agent. The agent identified himself, and the suspect surrendered upon command.

Despite the positive outcome, the incident still bothered the agent. At the PCIS, the agent talked about this incident and realized his fear stemmed from the accumulation of several past incidents. These included Vietnam experiences, two air disasters, and several hostage negotiations. The agent recognized the connection between the surveillance and these other situations where he faced his own mortality. With EMDR, further discussion, and peer support, the agent resolved

these cumulative stress issues. Over the past 2 years, follow-up contact has revealed that these gains remain stable.

The PCIS commonly deals with issues of vulnerability resulting from such situations as the trauma of witnessing a partner's being shot, grief stemming from the sudden death of a loved one, guilt from having to use fatal force, or the horror that comes from working with mass casualties following a bombing or airline disaster.

> **The program offers a continuum of interventions and services, which provides both immediate and long-term support.**

Since 1986, the FBI has conducted 37 of these seminars with 900 participants. Many of those who have attended a PCIS volunteer to assist others who experience critical incidents. Valuable resources because they have experienced such incidents, these employees and spouses provide enlightened interpersonal support to their peers following traumatic events. The FBI believes that no better individuals exist to offer support than those who have experienced, and emotionally worked through, similar events.

The One-two Punch

The combination of eye movement desensitization and reprocessing with the postcritical incident seminar has led to rapid recovery in FBI employees experiencing posttraumatic stress from single-episode trauma. Although EMDR generally proves effective in one to three 90-minute sessions, the FBI's experience shows that the therapeutic gains occur even more rapidly when EMDR is used within the context of the PCIS.

Though EMDR does not work for everyone, the FBI's experience with single-episode trauma reveals that a 30- to 40-minute session results in a significant reduction of posttraumatic reactions. The safe atmosphere, peer debriefing, and educational information initiate a positive working-through process, which prepares the employee for further intervention using EMDR.

Similarly, employing EMDR soon after a critical incident stress debriefing or a one-on-one session, as a "one-two punch," has been found to be helpful for personnel suffering from single-episode trauma who have a stable support system.[12] The CISD or one-on-one structure facilitates an understanding of the impact of the event and provides support and guidance toward adaptive resolution.

EMDR appears to have a very powerful and rapid effect after such intervention, perhaps because of this initial processing. Not a one-time therapy procedure, several EMDR sessions may be needed to resolve the incident. Therefore, follow-up contact remains essential.

Most important, EMDR following a CISD or one-on-one session, or used within the context of a postcritical incident seminar works best for individuals experiencing acute symptoms from a specific incident who have stable support systems and living situations. Though EMDR is applicable for complex posttraumatic stress reactions or symptoms due to cumulative stress, a more thorough preparation and assessment should be completed before initiating EMDR. Further, because EMDR sometimes can open up other emotional issues and stimulate unresolved traumas, it should be administered by a trained clinician who can determine the appropriateness of the therapy. Follow-up contact proves essential to ensure treatment effects remain stable and to deal with other emotional issues that may arise.

This one-two punch has led to an enhanced role for peer support personnel by increasing their interaction with mental health professionals. Under the supervision of a clinician, peers often help prepare employees for the EMDR session by discussing the impact of the incident, debriefing employees following the treatment, and providing follow-up contact.

Peers report a greater sense of satisfaction because of their closer involvement in the healing process. Clinicians appreciate the peer assistance because the initial preparation can save time. The close working relationship between clinicians and peers has led to earlier intervention than conventional referral can afford, which ultimately benefits the affected employee.

CONCLUSION

The FBI's Critical Incident Stress Management Program offers a continuum of integrated confidential services beginning immediately following an incident and extending to long-term, follow-up support. Along with immediate interventions (e.g., defusings, critical incident stress debriefings, peer support, and referrals), the CISM program provides long-term, follow-up contact through the postcritical incident seminar. Also, eye movement desensitization and reprocessing, a therapeutic method for the treatment of trauma, is an integrated component of the FBI's response to a traumatic incident. Whether assisting employees in coping with the emotional aftermath of such events as the bombing of the Federal Building in Oklahoma City or the TWA Flight 800 crash in New York, the FBI has demonstrated its commitment to a comprehensive approach to critical incident stress programs.

These intervention methods may prove helpful to other law enforcement agencies faced with similar situations. The safeguarding of law enforcement personnel cannot stop at providing officers with only the weapons and equipment to fight crime but must include giving these brave men and women the strategies for coping with the emotional aftermath of traumatic events that occur all too frequently in their profession. ◆

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[8] Supra note 5; see also F. Shapiro and R.M. Forrest, *Eye Movement Desensitization and Reprocessing: The Breakthrough Therapy* (New York: Basic Books, 1997); F. Shapiro and R.M. Solomon, "Eye Movement Desensitization and Reprocessing: Neurocognitive Information Processing," in *Innovations in Disaster and Trauma Psychology*, ed. G.S. Everly (Ellicott City, MD: Chevron Publishing, 1995), 216-237; R. M. Solomon and F. Shapiro, "Eye Movement 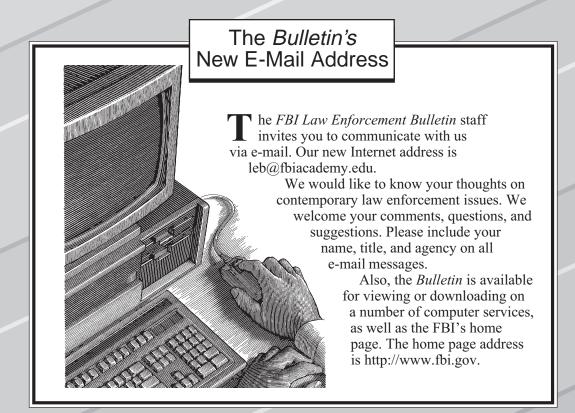Desensitization and Reprocessing: An Effective Therapeutic Tool for Trauma and Grief," in *Death and Trauma*, ed. C. Figley, B. Bride, and M. Nicholas (Washington, DC: Taylor and Francis, 1997), 231-248.

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[10] Supra note 1.

[11] Permission granted by the FBI agent to disclose this example.

[12] J.T. Mitchell and R.M. Solomon, *CISM and EMDR*, paper presented at the Fourth World Congress on Stress, Trauma, and Coping in the Emergency Services Professions, Baltimore, MD, April 5, 1997.

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Due Process and Deadly Force
When Police Conduct Shocks the Conscience

By JOHN C. HALL, J.D.

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There are three provisions in the U.S. Constitution that are relevant to the use of force by government officials: the Fourth Amendment, the Eighth Amendment, and the Due Process Clause. By its explicit terms, the Fourth Amendment prohibits unreasonable searches and seizures. Accordingly, the U.S. Supreme Court has held that within the context of arrests or other seizures of persons, the use of deadly force by police officers must be "objectively reasonable, in light of the facts and circumstances confronting [the officers]...judged from the perspective of a reasonable officer on the scene...rather than with the 20/20 vision of hindsight."[1] The Eighth Amendment explicitly prohibits "cruel and unusual punishments." Because of this explicit text, the Supreme Court has held that the Eighth Amendment governs the use of force appropriate for maintaining control of convicted prisoners and has framed the issue as "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."[2] But while the texts of the Fourth and Eighth Amendments have assisted the courts in deciding the scope of their applications, the same cannot be said of the Due Process Clause.

As stated in the Fifth and Fourteenth Amendments, the Due Process Clause prohibits the federal and state governments, respectively, from depriving any person of "life, liberty, or property, without due process of law." The U.S. Supreme Court has frequently noted the generalized nature of the due process guarantee, and in a recent decision, cautioned that the "guideposts for responsible decision making in this unchartered area are scarce and open-ended."[3] Accordingly, the Court's decisions have limited its application to those circumstances where there is no other "explicit textual source of constitutional protection against a particular sort of intrusive governmental conduct...."[4]

The critical nature of law enforcement decisions regarding the use of deadly force demands the clearest possible guidance with respect to the legal standards controlling the officers' actions. A lack of clarity, particularly in circumstances that are tense, uncertain, rapidly evolving, and fraught with danger, can lead to excesses of caution or zeal—to the detriment of an officer's legitimate concerns for safety or of the citizen's right to be free from an unconstitutional use of force by the police. Recent court

> " ...the due process standard gives considerable deference to an officer's judgment in high-stress and fast-moving situations. "

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decisions provide significantly more guidance not only as to *when* the Due Process Clause is applicable, but also as to *what* kinds of government conduct are likely to rise to the level of a due process violation. This article focuses on those two issues.

The Supreme Court historically has held that the concept of due process embodies both procedural and substantive rights. Simply described, procedural due process "protects against arbitrary takings" by government, while substantive due process protects against "government power arbitrarily and oppressively exercised."[5] As used in this article, the term "due process" refers to the substantive protections.

WHEN DOES THE DUE PROCESS STANDARD APPLY?

To determine *when* the due process standard is the appropriate measure of government conduct, it is first necessary to engage in a process of elimination. Because the Fourth Amendment governs the use

of deadly force relating to arrests or other seizures of persons, and the Eighth Amendment governs the use of deadly force against convicted prisoners; it may be stated as a general principle that due process governs deprivations of life, liberty or property that fall outside the boundaries of those two amendments. Recent Supreme Court refinements to the definition of seizures have simplified the task of deciding whether and when Fourth Amendment protections have been triggered. At the opposite end of the spectrum, the clearly discernible circumstances of conviction and imprisonment provide a relatively bright line for defining the boundaries of Eighth Amendment application. By this process of elimination, the Due Process Clause is potentially applicable to police use of deadly force in two general circumstances: 1) incidents where no Fourth Amendment seizure has occurred; and 2) incidents that occur during the interval between Fourth Amendment seizures and Eighth Amendment imprisonments (i.e., pretrial detentions).

Nonseizure Cases

The Supreme Court defines a Fourth Amendment seizure as "...a governmental termination of freedom of movement through means *intentionally* applied."[6] Given the definition's emphasis on intent with respect to both the object and the means, courts have concluded that neither *unintended terminations of freedom of movement* (e.g., the unintentional shooting of a hostage)[7] nor *intended terminations of freedom of movement brought about through unintended means* (e.g., police pursuit of a suspect that ends with the intervention of an unexpected and unintended factor)[8] fall within the parameters of the Fourth Amendment. In such cases, due process, not the Fourth Amendment, is the standard by which the constitutionality of the police action will be measured.

Pretrial Detentions

While recent case law simplifies the task of deciding whether a Fourth Amendment "seizure" has occurred, the task of deciding when the seizure ends and pretrial detention begins has proven a more troublesome one. Some courts focus on the initial act of seizure and conclude that the seizure phase is over once the arrestee is no longer in the custody of the arresting officer.[9] At least one court has taken the view that an arrestee's "...confinement to the detention cell at the police station changed his status from an arrestee to that of a pretrial detainee."[10] Other courts apply a "continuing seizure" concept and consider the first appearance before a magistrate or the filing of formal charges as the dividing line.[11] The

distinction is not merely academic. The application of the Fourth Amendment to the use of deadly force by officers can lead to a different conclusion than if the Due Process Clause is applied.

An illustrative case is *Brothers v. Klevenhagen*,[12] in which officers used deadly force to prevent the escape of a suspect who was being transported from one jail facility to another. The U.S. Court of Appeals for the Fifth Circuit applied the due process standard, holding that "...*after* the incidents of arrest are completed, *after* the [suspect] has been released from the arresting officer's custody, and *after* the [suspect] has been in detention awaiting trial for a significant period of time...." the Fourth Amendment no longer applies. Applying the due process standard, the court concluded that the use of deadly force to prevent the escape of a pretrial detainee was not unconstitutional. It is significant that the suspect had been arrested for theft, and that, at the time he was shot, he was not believed to be armed or otherwise dangerous. Had the court applied the Fourth Amendment standard for preventing the escape of suspects as interpreted by the Supreme Court in *Tennessee v. Garner*,[13] it is unlikely that the use of deadly force could have been justified to prevent the escape in the absence of "probable cause to believe that the suspect pose[d] a significant threat of death or serious physical injury to the officers or others."[14]

WHAT IS THE DUE PROCESS STANDARD?

From the earliest cases interpreting the Due Process Clause, the Supreme Court has emphasized the high purpose of its protections "...to secure the individual from the arbitrary exercise of the powers of government...."[15] Focusing on the standard of "arbitrariness," the Court has rejected the notion that the due process guarantee imposes liability "whenever someone cloaked with state authority causes harm...;"[16] rather, "only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.' "[17]

> **The U.S. Supreme Court has frequently noted the generalized nature of the due process guarantee....**

To further define what may be viewed as "arbitrary in the constitutional sense," the Supreme Court has characterized the due process standard for almost fifty years as prohibiting those abuses of government power that "shock the conscience."[18] The Court's most recent refinement of this concept came in *County of Sacramento v. Lewis*.[19] Although not a use-of-force case *per se*, the Court's explanation and application of the due process standard are relevant to use-of-force cases.

Lewis was the passenger on a motorcycle being pursued by officers for speeding. In the course of the pursuit, the motorcycle tipped over, dumping Lewis onto the high-

way, where he was struck and killed by the pursuing police car. A lawsuit brought against the officers and the department under Title 42 U.S. Code, Section 1983, alleged violations of Lewis's Fourteenth Amendment due process right to life. The trial court granted summary judgment to the officers and the department on the grounds that the plaintiff failed to point to any case in existence at the time of the alleged misconduct by the officers to support the view that Lewis had a due process right in the context of high-speed police pursuits.

The U.S. Court of Appeals for the Ninth Circuit reversed the trial court's grant of summary judgment, concluding that the law regarding police liability for death or injury caused by an officer during the course of a high-speed chase was clearly established at the time of the events leading to Lewis's death. The appellate court then determined that the appropriate due process standard for measuring an officer's culpability in these circumstances is "deliberate indifference or reckless disregard" for a person's right to life or personal safety. That decision was appealed to the Supreme Court.

The Supreme Court agreed with the appellate court that police liability could arise from injuries or death resulting from a high-speed chase but held that the court had erred in applying a "deliberate indifference or reckless disregard" standard to the facts of the case. Reiterating the view that "negligently inflicted harm is categorically beneath the threshold of constitutional due process," the Court agreed that in some circumstances,

deliberate indifference might shock the conscience (e.g., in the context of failing to provide medical care to prison inmates).[20] However, with the observation that deliberate indifference that shocks in one environment may not do so in another, the Court suggested that the concept must be limited to circumstances when actual deliberation is practical. For example, the Court explained that even within the setting of a prison or jail, claims of inadequate medical care must be viewed differently from claims that officers used excessive force in response to a violent disturbance. In the latter case, the Court emphasized, "...a much higher standard of fault than deliberate indifference has to be shown...."[21]

Analogizing the prison riot scenario with other instances where officers are compelled to act quickly, the Court noted:

> "Like prison officials facing a riot, the police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty is to restore and maintain lawful order, while not exacerbating disorder....They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made in haste, under pressure, and frequently without the luxury of a second chance."[22]

The Court held that in such circumstances, "...only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience necessary for a due process violation...."[23] Accordingly, the officer's decision to engage in and continue the high-speed chase—even if it "offended the reasonableness held up by tort law or the balance struck in law enforcement's own codes of sound practice..."—did not shock the conscience.[24]

> *...deliberate indifference that shocks in one environment may not do so in another....*

The impact of the *Lewis* decision on use-of-deadly force cases is already being seen. For example, in *Medeiros v. O'Connell,*[25] police officers attempted to arrest a suspect who, an hour earlier, had stolen a car and had shot and wounded a salesman in the process. Following a brief pursuit, the suspect lost control of the car and landed in a ditch. He ignored commands to surrender and fired several shots at an officer. The officer did not return fire because of risks posed to a school van approaching from the opposite direction. The suspect commandeered the van, taking the driver and two students hostage. Another pursuit ensued, during which the suspect continued to fire shots at the officers, while the officers continued to hold their fire out of concern for the safety of the hostages.

Eventually, the officers forced the van to a stop by pinning it against a guard rail with their vehicles. As the officers approached the van, the suspect continued to fire at them. They returned fired, killing the suspect. Unfortunately, one of the police bullets ricocheted and fatally wounded one of the students.

A Title 42 U.S. Code Section 1983 lawsuit was filed against the officers by the parents of the deceased student, alleging violations of the Fourth and Fourteenth Amendments. The trial court granted summary judgment to the defending officers on the Fourth Amendment claim, holding that the unintentional shooting of the student did not constitute a "seizure."

Without deciding the Fourteenth (Due Process) Amendment claim, the court granted summary judgment on the grounds that the officers were entitled to qualified immunity. The U.S. Court of Appeals for the Second Circuit concurred in the judgment regarding the Fourth Amendment claim but held that the trial court should have addressed the due process claim before deciding the qualified immunity issue. The appellate court then turned to the due process claim.

Citing the Supreme Court's decision in *Lewis* for the proposition that when officers face high-tension situations, neither negligence nor an intermediate level of fault such as deliberate indifference is enough to impose constitutional liability, the appellate court found that the officers' actions in firing at the suspect did not reflect a purpose to harm the hostages and, therefore, did not shock the conscience.

Quite the contrary, the court noted: "The heroic and selfless conduct of the troopers in this case

is the very opposite of conduct that could be said to shock the conscience....The conduct of the troopers was not merely constitutionally acceptable, it was objectively admirable."[26]

A similar result was reached in *Schaefer v. Goch*,[27] where police officers unintentionally shot and killed a woman while she was being held hostage by her husband during an armed standoff. Special Response Team officers attempted to execute an arrest warrant on Jerry Nieslowski, who reportedly had earlier threatened patrons of a bar with a shotgun. Locating the suspect at his residence, the officers first attempted to enter the house by stealth in light of information that the suspect was a military man, that he was very strong, and that he had previously been a suspect in a murder investigation.

When that attempt failed, the officers battered open the front door and entered the house. Inside, they confronted Jerry, who fired at them with a shotgun, striking the ballistic shield one of the officers carried. The officers then retreated from the house and established a perimeter.

Shortly thereafter, the suspect's wife, Kathy, walked out the front door of the house onto the porch. She ignored the shouts of several officers to "get down" and reentered the house. Moments later, she again walked onto the front porch, but this time she responded to the officers' instructions and got down on her hand and knees. At that moment, Jerry stepped out the front door carrying a shotgun, took hold of Kathy's hair or shoulder and began pulling her to her feet and back toward the door.

The officers identified themselves and ordered the suspect to show his hands and put down the gun. When he did not drop the gun, the officers began shooting, striking and fatally wounding both Jerry and Kathy. The officers' subsequent statements differed as to whether the shotgun was pointed at one of the officers during these movements.

A law suit was filed by Kathy's parents against one of the officers and the police department under Title 42 U.S. Code, Section 1983, alleging violations of both the Fourth Amendment and the Due Process Clause. The Fourth Amendment claim was based on the argument that a "seizure" occurred when the officers ordered Kathy to get down and she complied. The trial court granted summary judgment in favor of the defendants, and the United States Court of Appeals for the Seventh Circuit affirmed. Agreeing with the lower court's decision that no Fourth Amendment seizure of Kathy occurred, the appellate court observed:

"...the fact that Kathy was temporarily immobile does not necessarily mean that her freedom of movement was terminated. The officers were in no position to stop her from reentering the house had she chosen to do so....Even more importantly...the officers were not in a position to stop Jerry from taking physical control of her himself."[28]

With respect to the due process claim, the appellate court cited the Supreme Court's decision in *Lewis* and concluded that "...the officers' decision to fire does 'not inch close enough to harmful purpose' to shock the conscience...."[29] The court dismissed the dispute over whether the suspect was pointing the shotgun at one of the officers at the time they fired their guns, explaining that "[g]iven the high-pressure, life-and-death nature of the standoff, the officers were not required to wait until [he] actually pointed his shotgun at them...The situation was fluid, uncertain, and above all dangerous, and the officers' decision to shoot, regrettable though its results turned out to be, does not shock the conscience."[30]

Although *Brothers v. Klevenhagen*[31] was decided prior to the *Lewis* decision, it provides an illustration of how the due process standard would apply to the use of deadly force against an escaping pretrial detainee. Brothers was being transported in a vehicle from one jail to another following his arrest for auto theft. During transportation, he was handcuffed and his legs were restrained. Upon arrival at their destination, the officers got out of their car to check their

weapons when they noticed that Brothers had freed himself from restraints and was running toward an open gate that was in the process of closing. The officers repeatedly shouted for Brothers to stop, and when he ignored their commands and attempted to crawl under the closing gate, they began shooting. Brothers died from gunshot wounds.

A lawsuit was filed under Title 42 U.S. Code, Section 1983, against the officers and the department alleging that the use of deadly force to prevent the escape of an unarmed, nondangerous suspect was unconstitutional under the Fourth Amendment. The trial court rejected that argument and granted summary judgment to the defendants. Affirming the grant of summary judgment, the U.S. Court of Appeals for the Fifth Circuit held that due process, not the Fourth Amendment, applies to pretrial detainees and that the officers' actions in using deadly force to prevent the escape of a pretrial detainee did not violate the due process standard.

The court observed that the officers fired at Brothers only after he ignored their commands to stop and continued to flee. The court concluded:

> "It is apparent that the deputies fired at Brothers only as a last resort to prevent the escape. It is also apparent that if they had not fired upon him, Brothers would have escaped. The deputies did not act maliciously or sadistically or in an attempt to inflict punishment but rather followed a constitutional policy that permits deadly force only when

necessary to prevent an immediate escape."[32]

The focus on the motivation of the officers in this case fits with the Supreme Court's language in *Lewis* that "...only a purpose to cause harm *unrelated to the legitimate object*...will satisfy the element of arbitrary conduct shocking to the conscience necessary for a due process violation."[33]

CONCLUSION

The Supreme Court's decision in *County of Sacramento v. Lewis* continues a theme established in other Supreme Court decisions where the issue has been the constitutionality of an officer's decisions that were necessarily taken under circumstances that are "tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."[34] Just as with the Fourth or Eighth Amendment standards, the due process standard gives considerable deference to an officer's judgment in high-stress and fast-moving situations. The Court distinguishes between those instances when there are "extended opportunities to do better" and those "[w]hen unforeseen circumstances demand an officer's instant judgment...." In the latter instance, "even precipitate recklessness fails to inch close enough to harmful purpose" to shock the conscience.[35] ◆

Endnotes

[1] *Graham v. Connor*, 490 U.S. 386, 396-397 (1989).

[2] *Ingraham v. Wright*, 430 U.S. 651 (1977); *Whitley v. Albers*, 475 U.S. 312, 320-321 (1986).

[3] *Albright v. Oliver*, 510 U.S. 271, 272 (1994).

[4] *Graham v. Connor*, 490 U.S., at 395.

[5] *See, e.g., Daniels v. Williams*, 474 U.S. 327, 331 (1986).

[6] *Brower v. County of Inyo*, 489 U.S. 593, 596-597 (1989).

[7] *See, e.g., Landol-Rivera v. Cosme*, 906 F.2d 791 (1st Cir. 1990); *Medeiros v. O'Connell*, 150 F.3d 164 (2nd Cir. 1998); *Rucker v. Harford County*, 946 F.2d 278 (4th Cir. 1991), *cert. denied*, 502 U.S. 1097 (1992); *Schaefer v. Goch*, 153 F.3d 793 (7th Cir. 1998); and *Ansley v. Heinrich*, 925 F.2d 1339 (11th Cir. 1991).

[8] *County of Sacramento v. Lewis*, 118 S. Ct. 1708 (1998).

[9] *See, e.g., Powell v. Gardner*, 891 F.2d 1039 (2nd Cir. 1989); *McDowell v. Rogers*, 863 F.2d 1302 (6th Cir. 1988).

[10] *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294 (E.D. N.C. 1989).

[11] *Henson v. Thezon*, 717 F. Supp. 1330 (S.D. Ill. 1989); *Justice v. Dennis,* 834 F.2d 380 (4th Cir. 1987) (*en banc*).

[12] 53 F.3d 452 (5th Cir. 1994).

[13] 471 U.S. 1 (1985).

[14] *Id.*

[15] *Bank of Columbia v. Okely*, 17 U.S. 235 (1819); *Hurtado v. California*, 110 U.S. 516, 527 (1884).

[16] 118 S. Ct., at 1717 (1998).

[17] *Id.*, at 1716.

[18] *Rochin v. California*, 342 U.S. 165, 172-173 (1952).

[19] 118 S. Ct. 1708 (1998).

[20] *Id.*, at 1718.

[21] *Id.*, at 1720.

[22] *Id.*

[23] *Id.*, at 1711-1712.

[24] *Id.*, at 1721.

[25] 150 F.3d 164 (2nd Cir. 1998).

[26] *Id.*, at 170.

[27] 153 F.3d 793 (7th Cir. 1998).

[28] *Id.*, at 797.

[29] *Id.*, at 798.

[30] *Id.*

[31] 28 F.3d 452 (5th Cir. 1994).

[32] *Id.*, at 457.

[33] 118 S. Ct., at 1711-1712.

[34] *Graham v. Connor*, 490 U.S. 386, 396 (1989).

[35] 118 S. Ct., at 1720 (1998).

The Bulletin Notes

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

Officer Meadows

Officer Bronson

Officers Steve Meadows and Kenneth Bronson of the Bibb County Board of Education Campus Police Department in Macon, Georgia, responded to the scene of a gunfight between two rival gangs. The shooting started as a nearby local high school dismissed over 1,000 students. Officer Meadows responded on his police mountain bike and stopped the gunfight. Officer Bronson rode his bike over 4 miles and arrived as backup before any patrol vehicles. Both officers arrested three gang members and recovered two handguns. Because of the swift and courageous actions of Officers Meadows and Bronson, no students were injured.

Investigator Clay

Officer Graham

After observing a bright glow in the night sky, Investigator William Clay and Officer Jason Graham of the Goldsboro, North Carolina, Police Department decided to investigate the situation. Upon arriving at the location, they found a residence engulfed in flames. After both officers began pounding on the windows and doors, one occupant came out of the house. The officers entered the house and found another occupant, who was disabled and still in bed, and carried this individual to safety. The quick, unselfish actions of Investigator Clay and Officer Graham saved two lives.

Patrolman Lott

Morgantown, West Virginia, Police Department Patrolman Charles Lott saved two individuals in separate incidents only weeks apart. First, he observed a serious accident involving a motorcycle and an automobile. After calling for assistance, he assessed the cyclist's injuries and found a torn artery in the victim's leg. Officer Lott applied pressure to the artery until paramedics arrived. Two weeks later, Officer Lott was directing traffic around a flooded road when he saw a young man walk into the raging water and disappear. Officer Lott waded into the water and pulled him to safety. Without Officer Lott's prompt and selfless actions, the cyclist would have bled to death, and the young man would have been pulled into a large culvert under the road and drowned.