



FBI Law Enforcement Bulletin

June 2007
Volume 76
Number 6

United States
Department of Justice
Federal Bureau of Investigation
Washington, DC 20535-0001

Robert S. Mueller III
Director

Contributors' opinions and statements should not be considered an endorsement by the FBI for any policy, program, or service.

The attorney general has determined that the publication of this periodical is necessary in the transaction of the public business required by law. Use of funds for printing this periodical has been approved by the director of the Office of Management and Budget.

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

Editor

John E. Ott

Associate Editors

Cynthia L. Lewis
David W. MacWha
Bunny S. Morris

Art Director

Denise Bennett Smith

Assistant Art Director

Stephanie L. Lowe

Staff Assistants

Cynthia H. McWhirt
Gabriel E. Ryan

This publication is produced by members of the Law Enforcement Communication Unit, Training Division. Issues are available online at <http://www.fbi.gov>.

Internet Address

leb@fbiacademy.edu

Cover Photos

Kurt Crawford

Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

Features

**Perfect Practice
Makes Perfect**
By Douglas A. Knight

1

Only through perfect practice can officers master the shooting skills necessary to protect the citizens they serve.

**The Structured
Investigative Interview**
By Andre B. Simons
and Brian Parsi Boetig

9

Law enforcement officers can use an eight-phase structured interview that they can adapt to many police-citizen encounters.

**Religion in the
Public Workplace**
By Richard G. Schott

23

Law enforcement executives must be knowledgeable of First Amendment rights when supervising employees of different faiths.

Departments

8 Leadership Spotlight
Want to Be a Better Leader?

22 Notable Speech
Reflection and Remembrance

21 ViCAP Alert
Truck Driver Serial Killings



Perfect Practice Makes Perfect The Importance of Accurate Firearms Training

By DOUGLAS A. KNIGHT

“If you’re dealing with an officer, he’s going to have a professional manner if he’s a professional. They go to the range two, three times a week. They practice arms so they can hit anything. So, that was my object. I ain’t got no range, but I got the backyard.... I’m going to put some targets up, and I’m going to see what I can hit. After about 2 or 3 months, I was very good.”¹

“I mean, how many guys do you know that would handcuff themselves and sit in their apartment night after night thinking of ways to get out of them...? I watch you guys.... You people don’t know me as well as I know you. Like I showed you, I didn’t *feel* the cuff loosen. I *heard* it. Why? Because I trained myself to do that.”

“My biggest fear was running out of ammunition. He’s

coming at me firing, and I’ve got one or two rounds left. I was not going to get caught in that situation. Instinct took over, and I can’t even remember pulling the magazine out of my pouch.... It was so trained into me because of the training we have in the police department. Everything came together and it was done smooth. It would not have been that smooth had I not had that training.”

“Training, it saved my life; there’s no doubt about it. I think the trainers, which were our people, were excellent. They drilled us to the point where we had to wear Band-Aids on our hands. The repetitive training that they did, you can do this stuff in your sleep. The days that we were doing it, when you got home, that’s all you were thinking....”

These statements from offenders and law enforcement officers involved in violent encounters dramatically demonstrate the importance of quality, ongoing firearms training. Criminals constantly hone their shooting skills, and officers must do the same if they are to survive confrontations with these lawless members of society. To this end, officers must receive correct instruction that will enable them to acquire

superior abilities with firearms. After all, practicing the wrong techniques never will make officers competent shooters because only *perfect* practice makes perfect.

SHOOTING FUNDAMENTALS

Firearms training, particularly in the law enforcement application, includes seven basic concepts or fundamentals. Variations of these can occur but generally fall within the parameters outlined.

- 1) Trigger control: the fluid and continuous increase in pressure applied to the trigger to release the firing pin and subsequently discharge the handgun without disturbing the sights or unintentionally moving the muzzle off target. Pistol configuration does not provide the same

three-point stability of a long gun anchored to the shooter’s shoulder and stabilized with the forearm. The slightest twisting or torquing of the pistol immediately prior to discharge can significantly alter the bullet’s point of impact. Proper trigger control also includes an immediate reset of the trigger in preparation of delivering another round if necessary.

- 2) Sight alignment: the establishment of the relationship between the front and rear sights to ensure consistency of respective heights and visible light on either side of the front sight in the rear-sight notch. The focus point is the front sight viewed through the rear sight. Sight alignment never is perfect due to the constant motion of the human body, referred to as infinite weave or wobble.
- 3) Sight picture: the relationship of the acquired sight alignment and the intended target.
- 4) Grip: the connection of the handgun to the body. Proper grip makes the pistol a natural extension of the body and facilitates recoil management to keep the muzzle on target without unwanted torque or twisting.



“ ***Criminals constantly hone their shooting skills, and officers must do the same if they are to survive confrontations with these lawless members of society.*** ”

Special Agent Knight, formerly with the Firearms Training Unit, currently is assigned to the FBI’s Counterterrorism Division.

-
- 5) Stance: the body's support structure of the weapon system during shooting. Stance must have the ability to effectively adapt to conditions and circumstances presented to the shooter (e.g., cover or support).
 - 6) Breath control: the necessary breathing to keep the body charged with oxygen and minimize unwanted movement or vision distortion.
 - 7) Follow-through: the continuation of the other six fundamentals and critical for follow-up shots.

The correct application of shooting fundamentals becomes more critical as distance increases. Within 5 to 7 yards, shooting is more of a conditioned response and instinct than the precise application of refined skill. Some argue that, statistically, law enforcement officers are involved in shooting confrontations within a 10-foot radius, and, therefore, all training should be conducted within those parameters. While statistics are useful tools in capturing trends and identifying probabilities, an indisputable fact of firearms training is that once officers master shooting at 25 yards, conditioning them to shoot quicker at closer targets generally proves much easier than trying to transition them from shooting only at close

range to firing their weapons at extended distances.

With this in mind, no discussion of firearms training can be complete without referencing the significance of trigger control. Improper trigger control results in far more shooting errors than all other mistakes

**“
One of the most common errors is to allow the subconscious mind to interrupt the trigger press in an involuntary effort to realign the sights perfectly.
”**

combined. Trigger control alone can destroy the ideal contributions of the other six concepts and, therefore, is the most critical fundamental of delivering an accurate shot with a handgun. Proper trigger control enhances the ability to shoot fast *and* accurate.

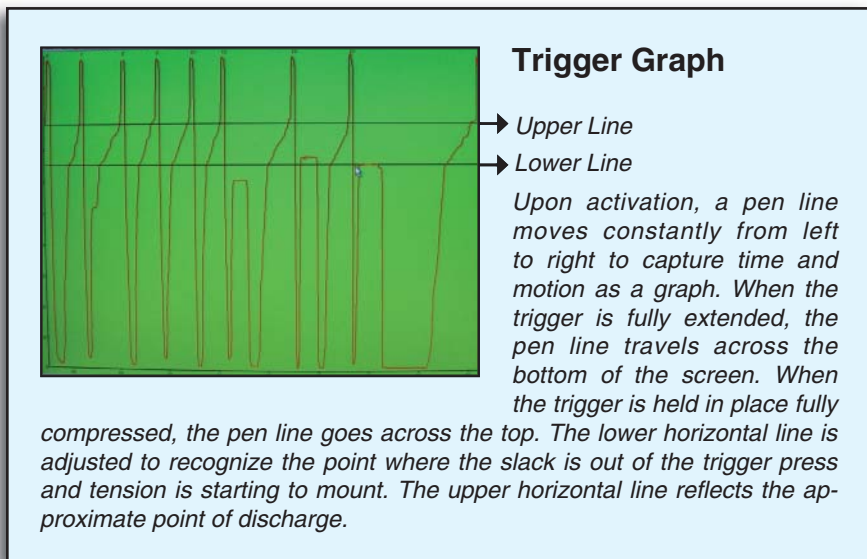
Understanding Trigger Control

What constitutes a correct trigger press? The simple answer involves pressing the trigger without disturbing the sights accurately aligned on the intended target. The detailed

answer is a smooth, steady, fluid press that consistently builds pressure and moves the trigger uniformly to the rear all the way through the range of motion from the moment the slack is out until the weapon discharges.

The trigger press must continue its travel smoothly and uniformly all the way through its range of motion until discharge, without the officer growing impatient and accelerating the press or stopping to realign the sights. The concept remains the same whether shooting fast or slow. To shoot faster, the officer simply applies more pressure to overcome the resistance quicker. Once the weapon discharges, the officer should strive to immediately reset the trigger and prepare for another shot if necessary. Time wasted with the trigger lingering to the rear and not engaged for another shot could be a matter of life and death in a violent confrontation. In lethal encounters, officers should shoot until they have stopped the threat. They must train vigilantly because they fight like they train and always must be prepared to deliver one more well-placed shot.²

Trigger control seems like a simple skill to master at face value. So, how could officers ever miss? After all, shooting accurately has only three requirements.



- 1) Line up the sights and understand that they never will be perfect due to the continuous wobble or infinite weave associated with being human.
- 2) Apply proper trigger control.
- 3) Accept and manage the recoil without anticipating and pushing on the pistol prematurely.

Diagnosing Errors

Unfortunately, diagnosing shooting errors can prove complex. In some cases, it can involve a collision between the conscious and subconscious minds. From the instant the conscious mind recognizes a perfect sight alignment or sight picture, it instinctively looks for it. Applying pressure to the trigger causes the sights to wobble and naturally drift slightly out of alignment. One of the most common errors is to allow the

subconscious mind to interrupt the trigger press in an involuntary effort to realign the sights perfectly.³

When officers stop the trigger press or dramatically slow it down as the tension starts to mount on the trigger, they must overcome the frictional resistance to get the trigger moving again. As they apply more and more pressure, searching for just enough to get the trigger in motion, they experience unwanted rapid acceleration or the infamous “jerk” as they surpass the resistance, causing the trigger to abruptly slam to the rear. Because of the compressed travel distance available with most semiautomatic pistols, not enough time and distance exists to smooth out the press, and the unintended jerk results in unwanted movement of the muzzle prior to discharge. If the muzzle unintentionally rotates 1 inch at the point of discharge, the results can be a dramatic

miss by several inches at 15 to 25 yards away.

The opposite extreme allows the subconscious solution to intervene after finding the perfect sight picture and abruptly slamming the trigger to discharge the pistol before the alignment can move again. This method may work every once in a while but never with the consistency necessary in a law enforcement application.

Finding Cures

Pressing a trigger is a unique movement isolated to shooting. Few, if any, other activities require the same degree of individual effort of one finger. The human hand is genetically engineered to move the fingers together as a unit. The common, daily actions of drinking a glass of water, opening a door, answering the phone, or holding a piece of paper can effectively illustrate this.

In addition, although subtle, the application of pressure to the trigger can result in a sympathetic response from one or more of the other fingers or hand muscles that can create unwanted twisting and movement of the handgun prior to and during discharge. Moreover, the more difficult the trigger is to press, the more pronounced the sympathetic response or unwanted movement.

The most effective way to manage the natural tendency of a sympathetic response of

supporting fingers is to keep the trigger in constant, steady motion. Even if the sights wobble slightly out of alignment, the end result of bullet placement will be far more desirable by keeping the trigger in motion as opposed to interrupting the action to find the visually elusive perfect sight picture and then slamming the trigger. Pressing the trigger smoothly with an independent motion generally is more of a coordination issue, rather than strength, for most shooters.

Officers should focus on every shot and remind themselves to keep their trigger fingers constantly moving once they make the decision to shoot. This internal reminder helps transfer their intellectual intent into a desired motor action.

TRAINING APPROACHES

Training time always is a precious commodity, whether in a basic training academy environment or during designated instruction for veteran officers. Firearms training is particularly daunting because nothing is inherently natural about operating a little machine, which is what a pistol is, that prompts a small explosion every time it functions. The effective use of technological teaching aids by knowledgeable instructors can dramatically enhance the learning curve by saving time and improving the level of understanding. Experienced

officers can benefit from this technology as much as recruits.

To illustrate how these modern advances can help, the author presents a brief overview of the FBI's intensive remedial firearms training program.⁴ In use for over 10 years, Fast Track employs sophisticated firearms training technology to convey vital information in real time to new agent trainees who have failed to qualify with their service weapons within the prescribed length of time.

One-on-one instruction and total immersion in firearms training during a 2-week time frame creates a productive learning environment. Of the numerous technological advances developed for Fast

Track, the most effective and practical is the trigger graph diagnostic equipment. This technological aid saves training time in understanding and mastering trigger control, allowing more time for realistic scenario-based training.

Technology's Role

The computer-based trigger graph equipment captures the application of trigger pressure and time in an easy-to-read format that quickly conveys volumes of information about a trainee's trigger characteristics to a knowledgeable instructor. The results can be captured and played back for review or recorded on DVD for future comparison.



Dry fire with air-recoil system



Live-fire application provides capability for training with duty ammunition.



The air-recoil system, applicable for both live and dry fire, simulates recoil and resets the trigger for use in a classroom environment.

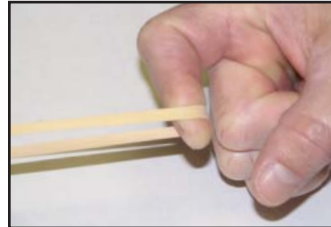
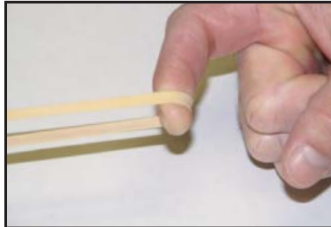
The Rubber Band Test

To determine if you can move your trigger finger independently, simply hold your hand in front of you, simulating a grip on a handgun. With the trigger finger at the proper 90-degree angle, move it back and forth, duplicating the motion of a trigger press. Try looping a firm rubber band around your finger with the pressure against the pad to simulate a firmer trigger press. Move only your trigger finger with absolutely no motion from any other finger or part of your hand. Note even the most subtle movement. Daily repetitions can help isolate and develop the unique motion of a trigger press to avoid unwanted movement during shooting.



Rubber band provides resistance representative of a trigger press.

As a training aid, it can develop independent trigger-finger movement and coordination.



Trainees can use this system in a live-fire environment with a standard duty weapon, modified with the addition of the associated instruments. They also can operate the equipment with a pneumatic air system for indoor training and unsupervised use. Live-fire practice with the equipment, in conjunction with corresponding video

input to determine the point of impact for each round, provides positive reinforcement instantaneously when the trigger press is smooth and consistent. The ability to capture and observe this correlation between the prescribed trigger press and accurate shot placement also dramatically builds the trainee's confidence.

With the aid of equipment to address the most likely culprit of poor performance, the instructor can design training to maximize effectiveness. Prior to the availability of diagnostic equipment, instructors wasted precious training time establishing that trainees understood and could demonstrate each shooting fundamental until the problem was isolated.

Proper use of the trigger graph also can help veteran officers improve their shooting skills. Firearms are a critical tool of the law enforcement profession, and lives may hinge on an officer's ability to shoot accurately. Officers do not want to perform poorly, especially in front of their peers during regular qualifications. Officers do not fail by choice. Some fail because they lack direction or knowledge. Others fail because they have allowed bad habits to creep into their process. The trigger graph equipment can help these officers improve their shooting skills by validating the contribution of proper trigger control to a well-placed shot in an easy-to-read, real-time graph format that can be captured and reviewed. The development of proper trigger control is *learned* behavior.

In marksmanship training, practice alone does not make perfect. Practicing incorrect techniques creates deeply ingrained bad habits. The trigger graph provides a method to

evaluate the quality of a trigger press that did not exist previously. Only *perfect* practice makes perfect.

Instructor's Importance

Technology never will be a substitute for the knowledge, skill, and experience of a gifted firearms instructor. However, it can greatly enhance an instructor's ability to convey the lifesaving lessons of the law enforcement profession. Technology, such as the trigger graph, gives instructors the ability to demonstrate, as well as evaluate, subtle characteristics that can have a dramatic influence on shooting performance.

Officers may only need to fire their weapons once in a lethal force encounter during their entire careers, but that one time will prove crucial. Shooting ability for a law enforcement professional can easily become a matter of life and death within seconds. To further complicate matters, shooting skills at higher levels are perishable and require regular maintenance. Therefore, knowledgeable instructors with proficient educational and interpersonal skills perform a vital role in officer safety. As pointed out in the opening statements of this article, both officers credited their firearms training as having saved their lives during violent confrontations. One officer went on to say, "I think the practicing and the repetitiveness of our

trainers saved my life. I actually thanked those guys. I went back and talked to them."⁵

CONCLUSION

The importance of accurate firearms training for law enforcement officers cannot be overstated. Superior shooting skills can be the difference between officers protecting the innocent from violent criminals or succumbing to vicious attacks by lawless individuals. In today's world of terrorists bent on causing death and destruction to U.S. citizens and property, officers may face even greater

“

The effective use of technological teaching aids by knowledgeable instructors can dramatically enhance the learning curve....

”

dangers than reigned in this nation during the outlaw era of the Old West or the gangster-ridden years of the Great Depression.

All involved in the criminal justice system must remain cognizant of the need for officers to have the appropriate time and funds to maintain the skills necessary to protect the public. Properly applied technology has the ability to

efficiently demonstrate and evaluate successful techniques that could mean the difference between life and death. Knowledgeable instructors can ensure that officers receive accurate training and do not repeatedly perform incorrect techniques. Only through *perfect* practice can officers master the shooting skills they will need to remain the stalwart guardians of peace and justice. ♦

Endnotes

¹ All statements are excerpts from Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, U.S. Department of Justice, Federal Bureau of Investigation, *Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers* (Washington, DC, 2006).

² For additional information, see Anthony J. Pinizzotto, Harry A. Kern, and Edward F. Davis, "One-Shot Drops," *FBI Law Enforcement Bulletin*, October 2004, 14-21.

³ For additional information, see Vishnu Karmakar and Thomas Whitney, *Mental Mechanics of Shooting* (Littleton, CO: Center Vision, Inc., 2001); and Bruce K. Siddle, *Sharpening the Warrior's Edge* (Belleville, IL: PPCT Research Publications, 1995).

⁴ For additional information, see Gene P. Klopff, "Fast Track," *FBI Law Enforcement Bulletin*, October 1999, 10-15.

⁵ Supra note 1.

The author gratefully acknowledges the assistance that Mr. Gary Hutchinson, an instructor in the Firearms Training Unit at the FBI Academy, provided in the preparation of this article and the guidance and unswerving support that Mr. Hutchinson always demonstrated as his mentor and world class instructor/shooter.

Leadership Spotlight

Want to Be a Better Leader? Look in the Mirror.

Know thyself. The unexamined life is not worth living.

—Socrates

The question of whether leaders are “born” or “made” often arises as we explore new ways to develop more effective leaders. Some are convinced that leaders are simply born, that genetics determine a person’s ability to become a successful leader. If that were the case, the works of renowned leadership authors, such as Ken Blanchard, Stephen Covey, and Warren Bennis, would provide nothing more than entertaining reading. Regardless of your outlook on this question, expanding your knowledge through reading literature on leadership, although a significant initiative, is just the beginning toward self-improvement.

If you want to become a more valuable leader for your organization, your first step involves taking a long, hard look in the mirror. The second step is to be completely truthful about what you see. While examining your reflection as a leader, you might find it helpful to ponder, Do people trust me? Do I treat people the way I would like to be treated? Do I keep my promises? Am I honest in my interactions with those around me? Do I lead by example? Do I make effective decisions? Am I a good listener?

This may not be a comfortable or enjoyable endeavor, especially if you are not accustomed to honest, self-reflection. Rest assured,

objective self-assessment is where becoming a more effective leader begins. How many of us have worked for people who have an “open door policy”? Yet, when you stop to see them, they hardly acknowledge your presence. They continue to respond to e-mail, answer the telephone, and barely listen to a word you have to say. Or, take the executive who promises to follow up on an issue that is important to you yet never mentions it again. Can you be honest with yourself if you have developed any of these ineffective leadership qualities? Only through candid self-reflection and assessment will you be ready to begin the journey of self-improvement as a leader.

Each day provides many opportunities to enhance our leadership skills. In a world where we are tasked to “do more with less” and address endless demands, we must take time to reflect on how we can become more successful in our leadership roles. These moments of self-examination may represent the most insightful means to becoming a great leader and successfully facing the dynamic leadership challenges of the 21st century. ♦

Michael O. McAuliffe, a special agent in the Leadership Development Institute at the FBI Academy, prepared this Leadership Spotlight.

The Structured Investigative Interview

By ANDRÉ B. SIMONS, M.A., and BRIAN PARSI BOETIG, M.S.



© Los Gatos-Monte Sereno, CA Police

Investigative interviews are the most critical element of any law enforcement inquiry. Success in conducting effective and comprehensive ones improves when officers follow a structured interviewing process that provides a framework for the interview and alleviates haphazard attempts to obtain complete and accurate information.¹ Officers can use an eight-phase structured interviewing process adaptable

to many encounters between the police and citizens.

Productive investigative interviewing constitutes more than a series of questions posed by an officer to elicit a response from the interviewee. A structured investigative interview is a dynamic, conversational interaction between an officer and an interviewee with a goal of obtaining the maximum amount of accurate and relevant information while reducing the

possibility of contaminating and influencing the information provided by the interviewee or placing him under an undue amount of stress. The structured interview provides officers with a road map flexible enough to adapt to most situations they encounter, ranging from minor traffic accident investigations to complex criminal cases and sensitive administrative inquiries. The process is structured but not standardized. While



Special Agent Simons serves in the Behavioral Analysis Unit, Critical Incident Response Group, at the FBI Academy.



Special Agent Boetig is assigned to the FBI's San Francisco office.

officers should employ all of the phases of the process, they can tailor each interview to meet the needs of the officer, interviewee, and situation. With the exception of the first and last phases (preparation and critique), which do not occur in the presence of the interviewee, the phases may not always happen in the sequential order presented.

THE PROCESS

Preparation Phase

For consistent effectiveness, officers must prepare for interviews prior to conducting them. This encompasses several different categories, including strategic, tactical, operational, and legal considerations. At times, circumstances may limit the amount of preparation, but officers should try to plan as thoroughly as possible prior to

an interview. As elementary as it may appear, knowing *why* an interview is conducted provides a logical start.

Strategic preparation should involve knowing the ultimate purpose of the interview. Officers should ask themselves, "Why was this person chosen to be interviewed and what information is being sought?" Next, officers should decide who would best conduct the interview to maximize the amount of information collected. All too often, lead investigating officers handle interviews and want to participate in each one. But, strategically, the lead officer may not always be the best person to do so. This premise of selecting the best person usually appears in cases where female officers are chosen to interview female victims of sexual assault. The person selected to conduct the interview should have the

ability to develop better rapport and, therefore, maximize the collection of accurate and relevant information.

The legal preparation for an interview includes assisting in the collection of relevant information. Knowing the statutory elements of crime will help officers explore appropriate areas during the questioning phase. Without this knowledge, officers might fail to cover issues, such as intent or malice, necessary in satisfying the legal requirements or thresholds for prosecuting a criminal violation. For example, an officer responding to and investigating domestic violence incidents should understand the legal definition of domestic relationships as it relates to the applicable statute. During the interview, the officer then can inquire as to whether a relationship exists between offenders that satisfies the legal definition under the statutes. Further legal preparations consist of determining if interviews with minors require parental presence, if interviewees need *Miranda* warnings, or if interviewee benefits or protections must or can be made. Certain states and the federal government require that victims and witnesses receive information about programs and benefits available to them through both the government and private organizations that can help reduce the impact of the

interview.² Officers also should prepare to explain to interviewees about protections possibly available if they fear for their safety as a result of cooperating with law enforcement.

While the interviewee's safety is paramount, the officer's should not be compromised either. Tactical preparation for an interview should include ensuring that victims and suspects do not encounter each other. At the residence of a domestic violence incident, this distance may be as little as separating the occupants in different rooms. In an international terrorism investigation that involves complex counterintelligence operations, the distance needed for adequate security may be as large as on another continent.

While strategic and tactical preparation is critical, officers must consider operational planning because it often proves the most limiting factor in creating the ideal interview environment. The best strategy for an interview might involve having a female officer conduct it, but one may not readily be available. Therefore, operationally, a male officer will have to conduct the interview. Tactically, it might be suitable to offer a witness 24-hour police protection, but, operationally, witness security is not an option because of a lack of resources available to complete the task. Officers

have to consider the limitations of operational resources along with other preparatory factors.

This overview of the preparation phase, while not an exhaustive list of what tasks to explore prior to each interview, provides a method for analyzing preinterview preparations in different categories. Officers often will find conflict between the best strategic, tactical, operational, and legal approaches to

“
**Officers can
use an eight-phase
structured interviewing
process....**

”
conducting interviews. They always should design planning to conform to the necessary legal requirements associated with the interview. After addressing legal considerations and removing them from the matrix, they must determine the best balance for the remaining preparation categories prior to beginning the interview.

Introduction Phase

Although a seemingly simple task, introductions during investigative interviews play

an important role in setting the tone, as well as providing information critical to the efficient and accurate educing of information. During the introduction phase, officers should properly identify themselves and their agency, helping establish the legal or administrative authority they have over the case. Officers not wearing a uniform can display official credentials. In the event that an interviewee provides false information, and applicable laws permit prosecution for such an act, the presentation of credentials can help reduce the interviewee's later claims of not being convinced of the officer's official identity.

As a second task in the introduction phase, officers should provide the interviewee with the purpose or nature of the interview. This directs the focus of the interviewee to a specific topical area of inquiry. “Good afternoon. I'm John Barry, a special agent with the Georgia Bureau of Investigation. I'm here to talk with you about the death of Alan Smith.”

During some instances, an officer may not want to immediately disclose the purpose of the interview to prevent contaminating a witness' statement or to conceal the identity of sources, among other reasons. In this case, the officer should provide the interviewee with a brief description of the nature of it. For example, the officer can address

interview activities, such as questioning and duration but not necessarily the specific reason. “Hello. I’m Mike Taylor, a detective with the Statesboro Police. I’m conducting an investigation in the neighborhood, and I’d like to take a few moments of your time to ask you a few questions.” The purpose and nature of the interview are not mutually exclusive, and officers may provide both during the introduction.

Rapport Phase

Everyone has experienced the presence and absence of rapport. When a sense of connectivity and understanding exist, where empathy and disclosure occur, there is rapport. In the unfortunate circumstances where confusion, awkward silence, miscommunications, and discomfort happen, rapport is lacking. Law enforcement professionals often overlook and rush the art of establishing rapport in the investigative interviewing process. Yet, a strong rapport and connection made between the officer and interviewee can promote the free flow of information and dialogue. When a solid foundation of rapport exists, the interviewee perceives that the officer understands, appreciates, or shares common experiences or opinions. These links and connections serve as the foundation for empathy and understanding,

the precursors to trust that ultimately lead to disclosure. The trust developed helps build the interviewee’s confidence that testimonial investments are secure and that the officer will not exploit exposed vulnerabilities.

“

Rapport building serves several important purposes.

”

Rapport building serves several important purposes. First, it allows the interviewee to relax, and it diminishes fear, anxiety, or distrust. Rapport building humanizes the officer and promotes the identification of similarities between the officer and the interviewee.

Second, strong rapport building allows the officer to observe the interviewee in a nonthreatening setting where the officer can establish a baseline of normative behaviors for comparison with subsequent ones that may indicate deceptive answers when the interviewee becomes stressed. For instance, if the interviewee exhibits certain nonverbal behaviors while discussing routine, nonthreatening topics,

such as traffic patterns around the city or current weather conditions, and then changes nonverbal behaviors when questioned about the specific crime, this may indicate stress and even deception.

Third, through rapport building, the officer can begin to collect intelligence on the interviewee’s likes, preferences, opinions, and beliefs, all of which become useful information for subsequent interrogative theme development if the interviewee becomes resistant to providing truthful information. For example, an interviewee who enjoys talking about children may respond to an interrogation theme that focuses on the need for honesty to serve as a positive role model for children.

Finally, strong rapport building allows officers to relax and diminishes any anxiety they may feel as the interview commences. Many times, interviewers fail to recognize the nervousness that comes with entering into a new interaction where they have, potentially, a great deal at stake. By establishing rapport, they can reduce the anxiety, which acts as a hindrance to active listening. Many officers recognize the importance of establishing rapport as a key to promoting trust and disclosure, but they often struggle with the mechanics of how to achieve it. While

the dynamic nature of human interaction makes a “one size fits all” methodology of rapport building impractical, officers can apply certain rules. They should choose a nonthreatening topic, such as common, shared experiences to which both parties can relate, irrelevant to the primary investigative issue. For example, the officer probably should avoid talking about the perils and tribulations of law enforcement if the interviewee cannot identify with the topic. However, if both the officer and the interviewee endure traffic, enjoy the same sporting events, have children, live in the same city, or appreciate other shared experiences, the officer should mine this prime rapport-building material. If the interview occurs at the interviewee’s residence or place of employment, the officer should look for rapport-building topics in that particular environment. People typically tend to decorate space with significant objects and pictures, which provide a natural springboard for rapport-building discussions. A nonthreatening topic should allow for a free, two-way flow of information where the officer discloses personal facts, opinions, or observations. True rapport building is not a question-and-answer session but a conversation that requires the officer to make disclosures to the interviewee.

Officers need to recognize the idiosyncratic nature of rapport building—different topics will resonate with particular people and should be applied dynamically. For example, an interviewee clearly busy and in a rush will not want to chat about window treatments, but the officer still can accomplish rapport building by stating, “I understand you’re in a rush. This shouldn’t take too long.”



© Sterling Heights, Michigan Police

By acknowledging and respecting the interviewee’s needs, the officer can further enhance rapport and trust.

Using active-listening techniques can augment rapport building by demonstrating the officer’s interest and attentiveness. Through paraphrasing, the officer restates the interviewee’s words in a different way that still captures the content and essence of the message. If an interviewee says, “I’ve never felt this way...I can’t sleep or

eat,” the officer can paraphrase and reflect back by saying, “It sounds like you’re pretty upset and that it’s beginning to impact your health.”

By observing nonverbal behaviors, the officer also can subtly encourage rapport building. Mirroring the interviewee’s body language, position, and posture fosters an atmosphere of similarity and understanding. The officer also can demonstrate empathy using paralinguistics by modulating the rate, pitch, and tone of speech to match the interviewee’s. Without crossing over into mimicry, if an interviewee talks slow, the officer should try to speak at a similar pace.

Questioning Phase

Properly formatted, phrased, and sequenced questions will elicit more accurate and complete information from the interviewee than haphazardly delivered and poorly phrased ones. Phraseology is critical; the question’s format should not lead or direct the interviewee to certain answers desired by the officer. Two types provide the backbone for questioning during the investigative interview: open-ended and close-ended.

Open-ended Questions

Nearly every investigative interviewing questioning phase should begin with an open-ended question that prompts the

interviewee to produce a narrative response, rather than a yes, no, or short answer. Much like an essay test, the open-ended question provides interviewees an opportunity to speak in full sentences and tell their story. “Would you please tell me what happened?” or “Will you describe everything that you witnessed?”

As the interviewee begins to comply with the open-ended question, officers must resist the urge to jump in with additional questions. Interruptions during narrative responses are one of the most common errors during the interviewing process.³ Officers should only provide minimal encouragers, such as “Go on,” or “Tell me more,” to keep the person talking. Using open-ended questions is the most effective manner to retrieve the maximum amount of information without tainting or influencing the response because minimal verbal interaction or prompting by the officer occurs beyond the initial request.

Open-ended questions are the logical starting point for both investigative interviews where officers know little about the case and where they have intimate, detailed knowledge. For example, a citizen goes to a police station to file a complaint. Without any foresight on the citizen’s issue, officers generally start an interview by

saying, “Tell me why you have come here today?”

Even if they are relatively certain of what a particular person might contribute to an investigation, they should begin by posing open-ended questions to avoid contaminating or leading the witness’ responses. Close-ended questions will permit officers to home in on specific information not provided during the interviewee’s narrative response.

“

Nearly every investigative interviewing questioning phase should begin with an open-ended question....

”

Close-ended Questions

Interviewing officers usually will need to clarify information provided by interviewees during their narrative responses. Answers to close-ended questions typically are shorter and address specific information requested by the officers.

- “Did you see any strangers in the area last night?”
- “What time do you typically arrive at work?”

- “Were you home all day?”
- “How fast were you traveling when you hit the telephone pole?”

Close-ended questions can be categorized in several fields. Identification questions help clarify specific information. For example, “What color was the robber’s hat?” specifically seeks to identify a color and not solicit a narrative response. This close-ended identification question could have appropriately followed an open-ended question asking the witness to describe the hat. If the witness provided a thorough description but failed to address the color of the hat (“a wool hat that covered the top of his head and ears”), the close-ended question assists in identifying the specific details of color.

Selective, or multiple choice, questions present more than one option from which the witness may choose an answer. For example, “Was the victim crossing the street or standing on the corner?” Selective questions help narrow the focus of a question to specific answers. They also are useful when trying to establish specific elements of a crime or an incident, but they can prove limiting if officers do not provide the correct answer as one of the available choices. In the example above, the victim may not have been crossing the street or standing on the

corner but, rather, walking on the sidewalk.

Finally, close-ended questions can require a simple yes or no response. While informative at times, yes or no questions may not provide sufficient detail to explain the answer. For example, “Do you know the victim?” is a yes or no question. While the response may be yes, it provides insufficient investigatory detail. If the witness only learned of the victim’s identity after the incident occurred, answering in the affirmative when queried by the officer about knowing the victim provides little useful information. Additionally, research has identified a higher tendency toward acquiescence by interviewees, answering the question how they believe they should answer and not necessarily with what they actually think or know as fact.

Indicator Questions

The most overlooked question that officers fail to ask an interviewee suspected of committing a crime is, “Did you do it?” Perhaps, out of fear that it will damage rapport or, perhaps, due to its provocative nature, officers rarely ask this vitally important question that occasionally produces an admission. While open- and close-ended questions are designed to elicit data or information from the interviewee, officers can use

indicator questions to evaluate an interviewee’s level of truthfulness or deception. These are not asked to solicit a factual response but, rather, permit the officer to assess the answer for particular responses against likely ones. Examples of indicator questions include—

- “Do you know why I’m here to interview you today?”
- “What should happen to the person who did this?”
- “Does the person who did this deserve a second chance?”
- “Would you be willing to take a polygraph examination? What do you think the results will be?”

Inappropriate Phraseology

The phrasing of questions often can prove counterproductive or contaminate a witness’

response. Therefore, the officer should avoid certain types of questions that lead the interviewee by revealing or providing information within the context of the question (“Was the car a green sedan?”). An easily influenced interviewee who knowingly or subconsciously wants to please the officer may answer in the affirmative without having any true knowledge of the car’s color. A less suggestive approach would involve an open-ended question, such as “Describe the car.”

Officers should refrain from asking compound questions, those phrased to cover more than one topic in a single inquiry. For example, “Do you know the victim, and does he work with you?” The compound question might be too cognitively overloading and cause witnesses to misinterpret, forget, or

© Los Gatos-Monte Sereno, CA Police



inadvertently only answer portions of the question. Furthermore, if they answer the entire question with a single response of yes, officers cannot be sure if the response was meant for both answers or just one part.

Finally, officers should avoid lagging-order questions, which are those they ask during the interview that correspond to an earlier response given by the interviewee but is incompatible with the current line of questioning or flow of the interview. Lagging-order questions often occur after an appropriately asked open-ended question when an officer is too eager to continue questioning or wants to begin verifying information, rather than listening to the interviewee's entire narrative response. For example, during a narrative response, a witness may mention a person named Tom and then continue to speak for an additional 5 minutes. Once the narrative response ends, officers sometimes follow by saying, "You mentioned a man named Tom. Could you tell me more about him?" This is an appropriate question, and it certainly is a better tactic than interrupting when the witness first mentioned Tom. But, it is inappropriately sequenced. Rather than maintaining the natural flow, pace, and timing of the interview by having the witness continue after concluding the narrative response, the

officer brings the witness all the way back to the beginning of the statement to further identify the information provided earlier. The lagging-order question could prohibit further elaboration on the current topic in which the witness may naturally provide the information sought without any investigatory prompting. Officers should ask such a question after the witness has given all narrative responses, and they are returning to the statement to verify the details.

“

Simply addressing each phase of the structured interview will not ensure success....

”

Verification Phase

The verification phase has two purposes: to ensure the accuracy of the interviewee's statement and to prompt further recall. First, the officer should repeat the interviewee's entire statement to the interviewee to prevent inaccuracies in the officer's memorialization of the interview that could occur because of misinterpretations, biases, interruptions, poor

active-listening skills, or accents or other language barriers. During this phase, the interviewee can make corrections to the officer's version of the statement.

Next, the officer should prompt further recall from the interviewee during this phase. While rehashing the statement, the interviewee will have the opportunity to add additional information. Recollection can be enhanced when the interviewee is not actively engaged in speaking but, instead, listening to the officer.

At the conclusion of questioning or after a phase of questioning, the officer then can engage in the verification phase. All too often, officers attempt to immediately clarify each sentence or individual answer that an interviewee provides. This proves counterproductive to effective questioning because open-ended questions will solicit narrative responses, and the verification process will hamper the free-flowing nature of the responses and the interviewee's cognitive thought processes. Once an interviewee has provided the statement or has finished giving information on a particular topical area, officers have an opportunity to engage in the verification phase. They might begin the process by explaining the value of the information provided and the importance of ensuring the accuracy

of the notes taken. Next, they should explain the verification process to the interviewee, encouraging the person to interrupt to correct, clarify, or add information. “The information you have provided throughout our conversation is so important to our investigation. I want to ensure that I have accurately interpreted and recorded what you have told me. What I’d like to do is go back through your entire statement as I have recorded it. While I’m doing this, I may develop additional questions to ask you. Also, I want you to stop me at any time to correct, clarify, or add information because that is exactly what this process is designed for you to do.” With each correction or addition, officers should revert to the appropriate questioning phase.

Universal Inquiry Phase

The universal inquiry phase gives officers an opportunity to solicit additional information from the interviewee that they may have overlooked. It also allows interviewees an unrestricted opportunity to provide additional information that they deem important but had not been asked about or had not been able to expand upon during the interview. Essentially, the universal inquiry is a final endeavor to acquire information from the interviewee. The officer can present it in a succinct

but effective manner by saying, “If you were in my shoes as the investigator of this case, is there any additional information that you would want to know that I have not asked you about during our interview?” The officer should use dialogue that engages the interviewee more than what results with a simple, uninterested, “anything else?”



© Los Gatos-Monte Sereno, CA Police

The interviewee can provide case-related or noncase-related information during the universal inquiry phase. Case-related includes any information directly correlated to the inquiry conducted. The universal inquiry may generate additional case-specific information that the officer either overlooked or did not develop. Conversely, the interviewee may provide noncase-related information on a topic that was not the focus of the inquiry. Officers should not discourage the interviewee from providing noncase-related

information for two reasons. First, all information is important in an era of intelligence-led policing because it may serve as the predicate for other criminal, counterterrorism, and national security investigations, as well as assist in the recruitment and development of informants. Second, the universal inquiry will provide insight to officers on topical areas interviewees considered critical, relevant, or important simply because they disclosed this information without a specific solicitation for it. Officers should capitalize on this opportunity to establish greater rapport with interviewees by expressing a genuine concern for input.

Departure Phase

After completing all of the previous phases of the interview process, officers should begin the departure phase. They should not begin this phase prematurely because it clearly signals the end of the interview. Interviewees may be reluctant to provide additional information or to elaborate on what they previously provided because of an innate feeling of closure.

The departure phase establishes the foundation for mutual recontacting by interviewees or officers. While exchanging telephone numbers and addresses for postal delivery or e-mail, officers should inquire about



© Sterling Heights, Michigan Police

any restrictions associated with recontacting the interviewee, such as at particular times or telephone numbers not to call. Interviewees may not want to be contacted at work, home, or other locations for security, privacy, or other reasons; officers should discuss these restrictions with them.

Quite often, officers provide witnesses and victims with business cards and request that they contact them with any additional information they might recall. The business card exchange has become so commonplace in corporate relationships that it almost rings with insincerity. Providing a business card is not discouraged, but it only slightly enhances the likelihood of a witness recontacting the officer. Witnesses have several reasons for not communicating with law enforcement officers after interviews. First, most citizens underestimate the importance of

the statements they provided as witnesses and victims; physical evidence and suspect confessions are perceived as more valuable. Next, most people believe that the police are thorough in conducting investigations. Even if they remember something not disclosed during the interview, they may assume that the police have obtained the same information elsewhere and, therefore, do not recognize the importance of providing it to law enforcement. Once interviewees leave, they likely will ruminate for several hours or even days over the exchange of dialogue and information that occurred. Much akin to the verification process, this replaying of information may prompt further recall of details not provided during the interview. This new information may or may not be relevant to the investigation, but, without it, officers cannot assess its potential.

Furthermore, while officers already may have acquired the information from different sources, receiving it from other independent witnesses can help corroborate or confirm it.

An officer may encourage a recontact by stating, "I know that after we end this interview, I'll think of more questions I should have asked you. Also, it is perfectly natural that you will recall more details, think of topics we did not discuss, or have questions for me. What I'd like to do is call you in 2 days, and we can discuss any additional information you recall. Even if the information seems minor or irrelevant to you, it may be crucial to our investigation." Officers rarely recontact interviewees, but the attempt will more likely solicit additional information than the impersonal passing of a business card.

Critique Phase

The interview critique ensures a thorough and complete interview and helps improve performance during future ones. While the critique phase can range from an informal review by the officer to a highly critical peer or supervisory evaluation, officers should remember to perform it. When evaluating an interview, the officer and other reviewers should assess the effectiveness of each of the previous seven steps. For example, in the preparation step, reviewers

could examine if the location of the interview was comforting or distracting (operational), safe (tactical), or more productive than another location (strategic). Did the officer introduce himself and make it clear to the interviewee the purpose or nature of the interview? Was an appropriate amount of time spent building rapport? Was the rapport effective? Did the officer employ active-listening techniques? Were questions delivered haphazardly? Did the officer contaminate the interview with too much additional information? Were any cognitive interview techniques used? Was all information verified? Did the officer employ the universal inquiry phase and conduct follow-up questions on all information received? Was the stage set for a recontact between the officer and interviewee? Did the officer use techniques during this interview that proved highly effective? Were certain techniques distracting to the officer or interviewee? Are there topical areas that need to be explored immediately or in the future with the witness that the officer did not clear up or address in the interview? What improvements can the officer make to increase the effectiveness of future interviews?

BIOGRAPHICAL DATA

While officers know the importance of obtaining an

interviewee's personal and biographical information, *when* to ask for it presents particular challenges. Do officers request personal information at the beginning of the interview or toward the conclusion? In this age of identity theft, how do officers overcome resistance to providing this important information?

“

***Asking for
biographical data
at the beginning of
the interview may
hinder rapport
building....***

”

The minimum biographical information officers should obtain during an interview includes the person's full name with correct spelling, date of birth, residential address, telephone number, and social security number. Requesting additional, optional biographical data may entail the interviewee's driver's license and cell phone numbers, occupational and employment information, e-mail address, place of birth, passport number, and scars/marks/tattoos. Asking for biographical data at the

beginning of the interview may hinder rapport building, reminding the interviewee of the officious nature of the interaction. Further, the interviewees frequently perceive such questions as invasive. Officers should prepare to encounter an interviewee's resistance to providing their personal information and respond appropriately. If officers determine a need to obtain biographical data early on, then they should begin with the caveat that the request is routine, necessary for the report, and vital to ensuring that the interviewee is correctly matched with the information the person provides. Also, officers may suggest that obtaining accurate biographical data will ensure that other officers seeking to obtain the same information will not unnecessarily or repeatedly contact the interviewee.

Biographical data, on occasion, may provide material that the officer can use as a rapport-building tool. For example, by requesting the interviewee's place of birth, the officer may discuss that city or state and share personal experiences involving travel to that area. If officers request biographical data in an overly serious, officious, or dramatic manner, they will stunt rapport. If they solicit it in a more conversational, relaxed manner, then they can stimulate rapport. Officers may decide to collect biographical data at

the conclusion of the universal inquiry phase of the interview after establishing rapport and after the willing disclosure of information has previously been ascertained and demonstrated by the interviewee. Following the universal inquiry phase, requesting biographical data creates a seamless transition into the departure phase and the mutual exchange of contact information. To request biographical data in the departure phase, officers could state, "I'd like to exchange information with you, so we can reestablish contact. But, before I do, I need to get a few more details to complete my report." Because they express a willingness to provide their own telephone and contact information, the interviewee may follow the example and feel more comfortable doing the same.

STRUCTURED, NOT STANDARDIZED

This eight-phase process provides the structure for conducting an effective investigative interview. To successfully apply this approach, officers should understand that structured interviews are not standardized—each one will take on dynamics and directions of its own. While officers should address all eight phases, they may initiate certain ones at different, logical points of the interview. For example, while in the questioning phase of an interview,

the interviewee may broach a topic suitable for additional rapport building.

The objectives of the verification and universal inquiry phases exemplify the fluid nature of the structured interview. Each phase is designed to solicit additional information from the witness. If the verification phase prompts further recollections and information by the witness, the officer should revert to the questioning phase to collect the most accurate and complete information that then will be verified and may spawn even more data to question and verify.

Simply addressing each phase of the structured interview will not ensure success—recognizing the need to return to previous phases and follow through with the appropriately sequenced additional phases will. If officers generate additional information during the universal inquiry phase, they should adequately question the witness about it, verify it, and ask yet another universally probing question. Failure occurs if officers simply question the witness about the new information and neglect to verify it and probe for more information. While this can become time consuming, it is critical to effective interviewing.

CONCLUSION

Investigative interviews are a crucial part of any law enforcement inquiry. Using this

eight-phase structure will guide law enforcement officers in conducting professional, thorough, and complete interviews. They can adapt this flexible process to any interview, according to the particular needs of the officer, interviewee, and situation. To effectively employ this method, officers should remember that structured interviews are not standardized and initiate each phase at practical times during the interview. Supervisors, training personnel, and officers can improve their skills by using a structured interviewing process. ♦

Endnotes

¹ The authors use the term *officer* throughout the article to encompass the entire gamut of law enforcement officers, including police officers, deputy sheriffs, troopers, investigators, and agents. They employ masculine pronouns for both officers and interviewees or witnesses for illustrative purposes. Research consistently has identified the lack of structure during interviews as a major impediment to obtaining complete and accurate information. See, R.P. Fisher, R.E. Geiselman and D.S. Raymond, "Critical Analysis of Police Interview Techniques," *Journal of Police Science and Administration* 15 (1987): 177-185; G. Gudjonsson, *The Psychology of Interrogations, Confessions, and Testimony* (New York, NY: Wiley, 1992).

² The Victim and Witness Protection Act of 1982, Victims' Rights and Restitution Act of 1990, Victims of Child Abuse Act of 1990, and Victim Rights Clarification Act of 1997 are several examples of U.S. federal victim rights acts.

³ R.P. Fisher, "Interviewing Victims and Witnesses of Crime," *Psychology, Public Policy, and Law* 1, no. 4 (1995): 732-764.

ViCAP Alert

Truck Driver Serial Killings



Victim Jennifer Whipkey

In the beginning of 2004, law enforcement officers across the United States identified a pattern of homicides involving the killing of prostitutes who worked in and around truck stops. These killings have taken place over a number of years and initially involved the states of Oklahoma, Texas, Arkansas, Mississippi, Pennsylvania, and Indiana.

Over the last 3 years, the FBI and local and state law enforcement agencies have met for joint case consultations, resulting in the identification of several truck driver suspects. Time lines have been compiled on 45 suspects to date, with several more in progress. These time lines, which cover

the entire United States, are available to departments that have rape and homicide victims meeting the following description: prostitutes working from truck stops, hitchhikers, transients, stranded motorists, unidentified dead bodies, and any other victims at risk where the suspect is likely to be a long-haul truck driver.

In the early morning hours of Saturday, May 25, 2002, Memorial Day weekend, Jennifer Whipkey was at the Adelphia Restaurant and Nightclub in Deptford, New Jersey. She needed a ride home and either got one or started walking toward Clarksboro, New Jersey, around 3:20 a.m.

On Sunday morning, May 26, 2002, Jennifer's body was discovered in a wooded area near a truck stop and motel off Interstate 295 in West Deptford, New Jersey. She had been stabbed, strangled, and redressed. This recovery site is within 5 miles from the club, near Route 42, which is a direct route to Philadelphia, Pennsylvania; Interstate 295 N/S; and Atlantic City, New Jersey. Her murder remains unsolved.

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all crime analysis units, officers investigating crimes against persons, and missing persons units. Any agency with information on the Jennifer Whipkey case may contact Detective Grant Worrell, West Deptford, New Jersey, Police Department at 856-853-4599, x162, or Detective Langdon Sills, Gloucester County, New Jersey, Prosecutor's Office at 856-384-5604. Any agency with victim or suspect information for the truck driver serial killings ongoing investigation may contact Crime Analyst Jayne M. Stairs of the Violent Criminal Apprehension Program (ViCAP) at 703-632-4168 or jstairs@leo.gov. ♦

Notable Speech

Reflection and Remembrance

By Hugh E. Lovell

This evening, I am humbled by the privilege and honor bestowed upon me to address you. Our purpose here is one of reflection and remembrance. Reflection to take time to review the performances of our fellow officers who have been tragically and without warning taken away from us. Remembrance of those families that have been cheated and deprived to remember the love, care, and happiness they once knew and shared with their departed loved one.

Losing a loved one is not easy to overcome from the perspective of those placed in such a position. Those left behind lose the wind beneath their wings and sometimes drift aimlessly. Fellow officers miss the presence of their fallen hero and their source of inspiration, advice, mentoring, professionalism, camaraderie, laughter, and peculiar mannerisms.

Today, some of us continue to weep and mourn their loss, as well as miss them. Let us neither mourn nor miss them too long for “weeping may endure for the night, but joy comes in the morning.” The joy is in the knowledge that those gallant men and women died in the pursuit of what they loved doing best—selflessly protecting the lives of every one of us and creating a safe and secure environment in which all citizens can go about their daily business in peace.

Law enforcement is amoebic in nature; so are societies. As such, we, as practitioners, must adapt to keep pace with the changes because change, my fellow officers, is the only constant factor in life. Therefore, it is incumbent upon us to find ways and means and devise systems to stem the ever-increasing tide of crime and criminal activities. We also must try our utmost best to engender a feeling of camaraderie among ourselves by looking out for

one another and being kind, trustworthy, respectful, and understanding, thereby upholding the ideals of this honorable institution.

It is common knowledge that the problems and challenges faced by law enforcement officers are similar throughout the world, and it is mandatory that we share our thoughts and ideas to fight this scourge of crime and criminal activities within our respective jurisdictions. Let us be our brothers’ keeper and a bundle of sticks that cannot be broken. For “united we stand and divided we fall.” We cannot afford to fall because anarchy will reign to the detriment of our nations.

To the wives, husbands, children, mothers, fathers, and siblings of all those heroic men and women, I say thanks for giving them to us. You, as well as the people and, by extension, the nation, have benefitted immensely from their services. May God continue to bless you with good health, strength, wisdom, knowledge, understanding, and guidance to do the things that would have made your dearly departed loved one proud. ♦

*Assistant Superintendent
Lovell of the Trinidad and
Tobago Police Service
delivered this speech
on July 26, 2006, at the
National Law Enforcement
Officers Memorial in
Washington, D.C.*



Religion in the Public Workplace Regulation and Accommodation

By RICHARD G. SCHOTT, J.D.

© Stockdisc



Law enforcement is a unique occupation in many ways. The majority of law enforcement officers wear a uniform while working; many have grooming standards and conduct regulations to which they must adhere; some have sworn to uphold laws with which they do not necessarily agree. For example, the federal Free Access to Clinic Entrance, or FACE, law criminalizes attempts to interfere with a woman's access to an abortion clinic.

Enforcing the laws also is, by its very nature, a job requiring continuous staffing—24 hours a day, 7 days a week, 365 days a year. These unique aspects of the profession sometimes cause personal conflicts with individual employees' religious beliefs. For example, what happens when a uniformed patrol officer feels it is a religious duty to violate the department's ban on lapel pins by wearing a Christian cross lapel pin or when a group of Muslim male officers

violate a department's "no facial hair" policy by growing beards as required by their religion? What about the captain who refuses to assign officers to maintain order at the sight of an abortion clinic protest because his Catholic faith frowns upon abortion? Finally, how should a department handle a potential scheduling nightmare when its officers raise objections to shift assignments conflicting with their Sabbaths or days of worship? This article addresses

these issues and raises awareness of the myriad legal provisions that should govern handling them.

FIRST AMENDMENT: FREEDOM OF RELIGION

Because law enforcement entities necessarily are part of federal, state, or local governments, they must adhere to constitutional limits and mandates, as well as to relevant legislation relating to religion. In a recent First Amendment freedom of speech case involving an assistant district attorney, the U.S. Supreme Court pointed out that the First Amendment invests *public* employees with certain rights.¹ Therefore, law enforcement executives must be mindful of the First Amendment's freedom of religion² provision when

dealing with employees of different faiths.

Uniforms/Grooming Standards

Uniforms are almost as much a part of the law enforcement culture as they are a part of the military culture. As such, policies and restrictions regarding the wearing of them are almost universally upheld. When a department has strict rules concerning the adornment of its uniform, an individual's ability to display a religious item on it may be curtailed. While the assertion of a First Amendment-protected religious right raises the legal bar for law enforcement departments in these cases,³ courts typically find little sympathy for those individuals who find themselves in this predicament. In *Daniels*

v. City of Arlington, Texas,⁴ George Daniels, a 13-year veteran of the police department challenged his department's refusal to allow him to wear a small, gold cross pin on his uniform. Daniels wore the pin "as a symbol of his evangelical Christianity"⁵ while working in a plainclothes position with the department, and he continued to wear it after reassignment to a uniformed position. The police department in Arlington, as part of its general orders, had a uniform policy that read "No button, badge, medal, or similar symbol or item not listed in this general order will be worn on the uniform shirt unless approved by the police chief in writing on an individual basis."⁶ Daniels requested specific allowance, pursuant to this general order, to wear the cross pin on his uniform from the police chief at that time. The chief refused permission but offered several possible accommodations to resolve the situation, including 1) wearing a cross ring or bracelet instead of the pin; 2) wearing the pin under his uniform shirt or collar; or 3) transferring to a nonuniformed position where he would be allowed to wear the pin on his shirt.⁷ Daniels declined all of the possible solutions and was fired for insubordination. In upholding his dismissal for violating the



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

**“
...the Supreme Court
typically has afforded a
great deal of deference
and latitude when it
comes to the internal
administration, including
grooming policies,
of law enforcement
departments. ”**

uniform policy, the Fifth Circuit Court of Appeals confirmed the district court's determination that "[a] police officer's uniform is not a forum for fostering public discourse or expressing one's personal beliefs."⁸ Rather, the appellate court concluded that "[a] police department does not violate the First Amendment when it bars officers from adorning their uniforms with individual adornments, even when those decorations include symbols with religious significance."⁹ In reaching this conclusion, the court pointed out that the "no-pins policy serve[d] a legitimate governmental purpose in the context of uniformed law enforcement personnel, and Daniels undoubtedly ha[d] myriad alternative ways to manifest this tenet of his religion."¹⁰

While law enforcement agencies may not receive the almost unbridled deference from courts that the military gets when restricting uniform adornments,¹¹ the Supreme Court typically has afforded a great deal of deference and latitude when it comes to the internal administration, including grooming policies, of law enforcement departments. In a 1976 case before the Supreme Court,¹² a law enforcement agency's regulation of hair styles worn by its male members was at issue. Though not challenged on religious grounds, the Court's

reasoning for upholding the restriction against the Fourteenth Amendment¹³ liberty challenge often is cited in First Amendment cases.¹⁴ Namely, the Court recognized that "[t]he promotion of safety of persons and property is unquestionably at the core of the state's police power, and virtually all state and local governments employ

“
...the First Amendment will not allow a law enforcement officer to refuse a lawful order to carry out an assignment because it conflicts with his religion.
”

a uniform police force to aid in the accomplishment of that purpose. Choice of organization, dress, and equipment for law enforcement personnel is a decision entitled to the same sort of presumption of legislative validity as are state choices designed to promote other aims within the cognizance of the state's police power."¹⁵ The Court went on to say that the choices regarding uniform issues, grooming standards, and equipment issuance "may be based on a desire to make police officers readily identifiable to

the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself,"¹⁶ and that either of those justifications is sufficient to withstand Fourteenth Amendment scrutiny.

While recognizing that courts generally afford wide latitude to law enforcement executives in running their departments, there is no proverbial rubber stamp when it comes to internal policies. Several police departments have or have had policies restricting male officers from wearing facial hair of any kind. Because certain religious faiths expect or require males to grow beards, these restrictions have been challenged based on First Amendment grounds. Because of religious principles involved, restrictions must withstand exacting scrutiny.¹⁷ Some policies have not stood up to the exacting scrutiny.

In *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*,¹⁸ two devout Sunni Muslim police officers challenged the Newark, New Jersey, Police Department's requirement, in place since 1971, that male officers shave their beards. The officers challenged the restriction on a First Amendment basis because "[t]he refusal by a Sunni Muslim male who can grow a beard...is a major sin."¹⁹ In their challenge to the beard ban, the officers pointed out that the department

made exemptions for medical reasons, typically because of a skin condition called folliculitis barbae, but refused to make exemptions based on religious beliefs.²⁰ The department attempted to withstand the challenge to its no-beard policy, even in light of the medical exemptions, by contending that it wanted to “convey the image of a ‘monolithic, highly disciplined force’ and that ‘[u]niformity [of appearance] not only benefit[ed] the men and women who risk their lives on a daily basis, but offer[ed] the public a sense of security in having readily identifiable and trusted public servants.’”²¹ The department also asserted that “permitting officers to wear beards for religious reasons would undermine the force’s morale and esprit de corps.”²² The Third Circuit Court of Appeals rejected the department’s arguments and struck down the no-beards provision as applied to the Muslim officers. The Third Circuit determined that because the department granted exemptions for nonreligious reasons but would not grant an exemption based on religious grounds, heightened scrutiny of the denials was triggered. The court concluded that the policy simply could not withstand that scrutiny. It is worth noting that the court only applied the heightened scrutiny standard because the exemption had been

made based on secular (medical) reasons. The department’s stated reasons for denying the religious exemption request did not satisfy heightened scrutiny. It is arguable that safety concerns—for example, the need for achieving a snug fit when wearing a gas mask—would satisfy the heightened scrutiny applied in this situation. However, these same safety concerns

“

When scheduling issues arise, what certain employees want (or think is required) is examined on a case-by-case basis.

”

may dictate against *any* exemptions being made to the facial hair restriction, and it was only because of the previous exemption that heightened scrutiny was applied to the denial of the subsequent, religion-based exemption request.

Job Performance/ Assignments/Scheduling

Challenges to certain assignments based on those assignments conflicting with religious ideals rarely are successful. When a challenge does succeed, it is typically because

of statutory provisions, such as those found in Title VII of the Civil Rights Act of 1964, and not because of any obligation imposed upon employers by the Constitution. When an FBI agent lost his job because of his refusal to fulfill an assignment that conflicted with his religious beliefs, the Seventh Circuit Court of Appeals pointed out that “[a]fter *Employment Division v. Smith*,²³ any argument that failure to accommodate [the agent’s] religiously motivated acts violates the free exercise clause of the *First Amendment* is untenable.”²⁴ The appellate court then went on to address the challenge from a statutory standpoint.

The Supreme Court’s *Employment Division v. Smith*²⁵ decision concerned the denial of state unemployment benefits to individuals who lost their jobs because of their ingestion of peyote for sacramental purposes at a ceremony of their church.²⁶ The use of peyote was in violation of Oregon state law,²⁷ which led to job termination and the subsequent denial by the state of unemployment benefits. The affected church members argued that the denial was in violation of their First Amendment rights. In its holding against the challengers, the Supreme Court pointed out that the “free exercise of religion means, first and foremost, the right to believe and profess

whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all ‘governmental regulation of religious *beliefs* as such.’”²⁸ However, the court went on to point out that its decisions “have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’”²⁹ Likewise, the First Amendment will not allow a law enforcement officer to refuse a lawful order to carry out an assignment because it conflicts with his religion.³⁰

Denials of employee requests to have certain days off or to work particular shifts based on religious faith also are frequently challenged. These requests do not have to be honored based on any constitutional obligation for the same reasons employers are not required to allow employees to refuse certain assignments. The employee may be more successful making this request based on certain statutory language contained in Title VII, rather than on any affirmative obligation imposed by the First Amendment.³¹

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an

employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s religion.³² This antidiscrimination statute also contains a reasonable accommodation provision, placing an affirmative duty on employers to reasonably accommodate an employee’s or prospective



employee’s religious observance or practice as long as doing so does not create any undue hardship for the employer.³³ It is from this standpoint that many employment practices are challenged as unlawful discrimination.

Uniforms/Grooming Standards

In the *Daniels v. City of Arlington, Texas* case,³⁴ the uniform policy challenged by Daniels prohibited the adornment

of the police uniform with any button, badge, medal, or similar symbol or item unless approved by the police chief in writing on an individual basis. It is easy to envision how this policy could be applied in a discriminatory manner. For example, if the chief allowed an officer of one religious sect to wear an emblem of his faith but flatly refused to allow an officer of another faith to display his faith’s emblem, there would appear to be discrimination based on religion in violation of Title VII. In *Booth v. Maryland*,³⁵ for example, a facially neutral grooming policy was challenged under both the First Amendment and under federal statutes.³⁶ At issue in the case was the Maryland Department of Public Safety and Correctional Services’ grooming policy and its application to certain correctional officers. The challenger was a uniformed correctional officer who wanted to wear his hair in dreadlocks, in violation of the challenged regulation, to conform with his Rastafarian religious beliefs.³⁷ After ruling out his First Amendment argument, the Fourth Circuit Court of Appeals addressed the statutory challenge to the regulation prohibiting the dreadlock hairstyle. The appellate court remanded the case, acknowledging that if the department applied its facially neutral grooming policies in an uneven manner, a statutory violation may have occurred.³⁸

Specifically, the plaintiff alleged that a Jewish employee and a Sikh employee both had been granted religious exemptions to the questioned grooming policy in the past but that his request for exemption had been denied because of his particular religion.³⁹ If, unlike the preceding situation, a department made no exception for any religious symbol, it would be difficult to attack the policy as being applied in a discriminatory manner; and, therefore, the same arguments used to support the policy from constitutional attack should withstand the discrimination attack under Title VII. For this reason, courts entertain more reasonable accommodation challenges to grooming and uniform standards than they do straightforward discrimination challenges. For example, the reasonable accommodation provision was used as one basis of challenge in *Daniels*.⁴⁰ The Fifth Circuit ruled against Daniels, finding that “Daniels failed to respond to the police chief’s *reasonable* offers of accommodation”⁴¹ and that the only accommodation proposed by Daniels was *unreasonable* and an undue hardship for the city.⁴²

Job Performance/ Assignments/Scheduling

Title VII, particularly its reasonable accommodation aspect, also has been used by law enforcement employees to

argue that they are entitled to refuse certain assignments or to receive preference when scheduling issues arise. In *Endres v. Indiana State Police*,⁴³ Benjamin Endres, Jr., an Indiana State Police employee, refused to report for a new duty assignment at a gambling casino. The assignment occurred because the state police designated some

“
...the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one that the employee suggested.
”

of its officers as Indiana Gaming Commission agents. Those agents’ duties included certifying gambling revenue, investigating complaints from the public about the gaming system, and conducting licensing investigations for the casinos and their employees.⁴⁴ Upon being assigned to a particular casino, Endres notified the state police that he was willing to enforce general vice laws at casinos but that providing the aforementioned specific duties required

of the gaming commission agent position would violate his religious beliefs because he would be facilitating gambling itself.⁴⁵ As an accommodation to his religious beliefs, he asked for a different assignment and was denied. He was subsequently fired for insubordination when he failed to report for work. After first acknowledging that “assignment to this position *because of* (rather than in spite of or with indifference to) [Endres’] religious beliefs would violate the Constitution,”⁴⁶ the Seventh Circuit Court of Appeals addressed the reasonable accommodation aspect of Title VII.

In ruling that the state police was not required to afford its employee such an accommodation, the court went to great lengths in explaining its decision.

Endres contends that [title VII] gives law enforcement personnel a right to choose which laws they will enforce, and whom they will protect from crime. Many officers have religious scruples about particular activities: to give just a few examples, Baptists oppose liquor, as well as gambling; Roman Catholics oppose abortion; Jews and Muslims oppose the consumption of pork; and a few faiths (such as the one at issue in *Smith*) include hallucinogenic

drugs in their worship and, thus, oppose legal prohibitions of those drugs. If Endres is right, all of these faiths, and more, must be accommodated by assigning believers to duties compatible with their principles. Does [Title VII] require the state police to assign Unitarians to guard the abortion clinic, Catholics to prevent thefts from liquor stores, and Baptists to investigate claims that supermarkets misweigh bacon and shellfish? Must prostitutes be left exposed to slavery or murder at the hands of pimps because protecting them from crime would encourage them to ply their trade and, thus, offend almost every religious faith?⁴⁷

The court's answer, of course, was a resounding no for logical reasons. First, "[j]uggling assignments to make each compatible with the varying religious beliefs of a heterogenous police force would be daunting to managers and difficult for other officers who would be called on to fill in for the objectors."⁴⁸ Second, the court recognized that "[i]t is difficult for any organization to accommodate employees who are choosy about assignments; for a paramilitary organization the tension is even greater."⁴⁹ Finally, "agencies such as police

and fire departments, designed to protect the public from danger may insist that *all* of their personnel protect *all* members of the public—that they leave their religious (and other) views behind so that they may serve all without favor on religious grounds."⁵⁰ Based on these reasons, the Seventh Circuit concluded that "Endres ha[d] made a demand that it would be unreasonable to require any



police or fire department to tolerate,"⁵¹ and, thus, his firing was lawful.

When scheduling issues arise, what certain employees want (or think is required) is examined on a case-by-case basis. One instructive case for law enforcement agencies is *Beadle v. Hillsborough County Sheriff's Department*.⁵² Aston Beadle was a member of the Seventh Day Adventist Church who became a member of the Hillsborough County, Florida, Sheriff's Detention Department after completing the required 11-week

training period at the Corrections Recruit Academy. Beadle, as a Seventh Day Adventist, did not engage in secular labor during his Sabbath—a period lasting from sundown Friday to sundown Saturday.⁵³ Beadle did not notify his employer of this restriction until he had completed the academy and was scheduled to work during the time frame that conflicted with his religious beliefs. Responsible for securing the safety of the Hillsborough County prison, the Detention Department naturally operated 7 days a week, 24 hours a day, year round. To satisfy this staffing need, the department employed a "neutral, rotating shift system."⁵⁴ Beadle requested permanent days off in deviation of the department's scheduling system. The department rejected this request but did notify Beadle that he was free to arrange for voluntary shift swaps with other employees. To assist in this effort, the department provided Beadle with a roster sheet and allowed him to advertise his need for swaps during daily roll calls and on the department's bulletin board. Further, the department allowed Beadle to request the use of sick days, vacation time, and compensation time if he was not able to arrange for shift swaps.⁵⁵ On one occasion when Beadle was unable to swap shifts and his request for leave was denied,⁵⁶ he simply failed

to report to work. On another occasion, “Beadle abandoned his post during the middle of his shift, leaving two other deputies alone to supervise an area of dangerous inmates.”⁵⁷ Ultimately, Beadle was fired over this attendance/performance issue. When Beadle challenged his termination as a violation of Title VII, the Eleventh Circuit Court of Appeals had to decide whether the sheriff’s department had satisfied its obligation to reasonably accommodate Beadle.

The appellate court first noted that the phrases *reasonably accommodate* and *undue hardship*⁵⁸ are not defined in the language of Title VII, and, “[t]hus, the precise reach of the employer’s obligation to its employee is unclear under the statute and must be determined on a case-by-case basis.”⁵⁹ Next, the court pointed out that the “Supreme Court has provided some guidance by generally defining ‘undue hardship’ as any act that would require an employer to bear greater than a ‘de minimus cost’ in accommodating an employee’s religious beliefs.”⁶⁰ Additionally, the Supreme Court has “stated that compliance with Title VII does not require an employer to give an employee a choice among several accommodations nor is the employer required to demonstrate that alternative accommodations proposed by

the employee constitute undue hardship. Rather, the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one that the employee suggested.”⁶¹ Applying these guidelines to the matter before it, the Eleventh Circuit found that the sheriff’s

“**Various courts have analyzed different factors when determining whether certain accommodations are reasonable or, conversely, when they impose an undue hardship on the employer.**”

department had done all it was required to do under Title VII.

As stated in the *Beadle* opinion, an employer’s obligation to reasonably accommodate an employee must be determined on a case-by-case basis.⁶² Various courts have analyzed different factors when determining whether certain accommodations are reasonable or, conversely, when they impose an undue hardship on the employer. Among those factors

have been the length of time involved in the desired accommodation;⁶³ the availability of replacements, depending on the amount of advance notice given by the employee seeking the accommodation;⁶⁴ the cost of hiring additional employees;⁶⁵ the cost of paying premium wages for overtime;⁶⁶ the difficulty in securing qualified replacements for specialized skills;⁶⁷ the effect on workforce morale of anticipated or actual complaints of favoritism from other employees;⁶⁸ and the number of employees requiring religious accommodations at one time.⁶⁹ It is obvious from a review of the various factors that courts must look to the nature and size of individual employers (or departments) to determine whether a possible accommodation is reasonable or poses an undue hardship.

CONCLUSION

Often, people say that religion and politics are delicate subjects. The situation truly can become volatile when the workplace is added into the mix. The First Amendment gives people the freedom to engage in religious expression in this country. Title VII prohibits religious discrimination and requires employers to provide reasonable accommodations for religious reasons. Because governmental employers are required to abide by both the Constitution and the

Civil Rights Act of 1964 (and, therefore, Title VII contained in that legislation), law enforcement agencies need to be familiar with the provisions of each. This article has illuminated some of the contentious issues disputed between employers and their individual employees, all in the name of religion. ♦

Endnotes

¹ *Garcetti v. Ceballos*, 126 S. Ct. 1951, 1959 (2006) (emphasis added.)

² U.S. Const. amend. I, in pertinent part, states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

³ For a broader discussion of uniform issues and the various legal challenges asserted and standards applied to tattoos, grooming standards, and other forms of body art (such as piercings), see L. Baker, “Regulating Matters of Appearance,” *FBI Law Enforcement Bulletin*, February 2007, 25-32.

⁴ 246 F.3d 500 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 347 (2001).

⁵ *Id.* at 501.

⁶ *Id.*

⁷ *Id.* at 501-502.

⁸ *Id.* at 502-503, quoting Judge Terry R. Means, U.S. District Court for the Northern District of Texas (unpublished opinion).

⁹ *Id.* at 507.

¹⁰ *Id.* at 505.

¹¹ In *Goldman v. Weinberger*, 106 S. Ct. 1310 (1986), a commissioned officer in the U.S. Air Force who was an Orthodox Jew and ordained rabbi, contended that the Air Force’s restriction on his wearing a yarmulke while in uniform violated his First Amendment right to religious expression. In upholding the Air Force’s ban on the yarmulke, the Supreme Court acknowledged that its review of military

regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society.

¹² *Kelley v. Johnson*, 96 S. Ct. 1440 (1976).

¹³ U.S. Const. amend. XIV, § 1, in pertinent part, states “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

¹⁴ See, e.g., *Daniels v. City of Arlington, Texas*, *supra* note 4; *U.S. Department of Justice, I.N.S., Border Patrol, El Paso, Texas v. Federal Labor Relations Authority*, 955 F.2d 998 (5th Cir. 1992); *INS v. FLRA*, 855 F.2d 1454 (9th Cir. 1988).

¹⁵ *Supra* note 12, at 1445-1446.

¹⁶ *Id.* at 1446.

¹⁷ *Supra* note 3.

© Stockdisc



¹⁸ 170 F.3d 359 (3rd Cir. 1999), *cert. denied*, 120 S. Ct. 56 (1999).

¹⁹ *Id.* at 360.

²⁰ *Id.*

²¹ *Id.* at 366 (quoting from appellant’s brief).

²² *Id.* at 366.

²³ 110 S. Ct. 1595 (1990).

²⁴ *Ryan v. U.S. Department of Justice*, 950 F.2d 458, 461 (7th Cir. 1991) (emphasis added).

²⁵ *Supra* note 23.

²⁶ *Id.* at 1597.

²⁷ *Id.*, referring to Ore.Rev.Stat. § 475.992(4) (1987).

²⁸ *Id.* at 1599 (emphasis in original) (quoting *Sherbert v. Verner*, 83 S. Ct. 1790, 1793 (1963)).

²⁹ *Id.* at 1600 (quoting *United States v. Lee*, 102 S. Ct. 1051, 1058, n. 3 (1982) (J. Stevens, concurring in judgment)).

³⁰ *Ryan, supra*, note 24.

³¹ See, e.g., *Beadle v. Hillsborough County Sheriff’s Department*, 29 F.3d 589 (11th Cir. 1994).

³² 42 U.S.C.A. § 2000e-2.

³³ 42 U.S.C.A. § 2000e(j).

³⁴ *Supra* note 4.

³⁵ 327 F.3d 377 (4th Cir. 2003).

³⁶ 42 U.S.C.A. §§ 1981 and 1983.

³⁷ *Supra* note 35, at 379.

³⁸ While the statutory challenge in *Booth* was not based on a Title VII violation, the appellate court allowed the case to continue while recognizing that the challenge could have been brought under Title VII.

³⁹ *Supra* note 35, at 380-381.

⁴⁰ *Supra* note 4, at 506.

⁴¹ *Id.* (emphasis added).

⁴² *Id.*

⁴³ 349 F.3d 922 (7th Cir. 2003), *cert. denied*, 124 S. Ct. 2032 (2004).

⁴⁴ *Id.* at 924.

⁴⁵ *Id.*

⁴⁶ *Id.* (citing *Personnel Administrator of Massachusetts v. Feeney*, 99 S. Ct. 2282 (1979)).

⁴⁷ *Id.* at 925.

⁴⁸ *Id.*

⁴⁹ *Id.* at 926 (quoting *Ryan v. U.S. Department of Justice*, 950 F.2d 458, 462 (7th Cir. 1998)).

⁵⁰ *Id.* (emphasis in original) (citing *Rodriguez v. Chicago*, 156 F.3d 771 (7th Cir. 1998) (C.J. Posner, concurring in judgment)).

⁵¹ *Id.* at 927.

⁵² 29 F.3d 589 (11th Cir. 1994), *rehearing en banc denied*, 40 F.3d 391 (11th Cir. 1994), *cert. denied*, 115 S. Ct. 2001 (1995).

⁵³ *Id.* at 590.

⁵⁴ *Id.* at 591. The system, as explained in FN 2 of the opinion, assigned employees to work one of three overlapping

9.6-hour shifts each day. The day shift was from 7:00 a.m. until 4:36 p.m.; the evening shift was from 3:00 p.m. until 12:36 a.m.; and the midnight shift was from 11:00 p.m. until 8:36 a.m. Each deputy received 2 consecutive days off during the week. Work assignments rotated forward (i.e., day to evening; evening to midnight) every 2 months, while days off rotated backward (i.e., Friday-Saturday to Thursday-Friday; Thursday-Friday to Wednesday-Thursday) every 28 days.

⁵⁵ *Id.*

⁵⁶ *Id.* The department acknowledged that it did not always approve Beadle's requests for use of leave because the jail was understaffed and the granting of some

of these requests could have jeopardized jail security.

⁵⁷ *Id.*

⁵⁸ *Supra* note 33.

⁵⁹ *Supra* note 52, at 592 (citing *United States v. City of Albuquerque*, 542 F.2d 110, 114 (10th Cir. 1976), *cert. denied*, 97 S. Ct. 2974 (1977)).

⁶⁰ *Id.* (citing *Trans World Airlines, Inc. v. Hardison*, 97 S. Ct. 2264 (1977)).

⁶¹ *Id.* (citing *Ansonia Board of Education v. Philbrook*, 107 S. Ct. 367, 371 (1986)).

⁶² *Supra* note 59.

⁶³ *See, e.g., Padon v. White*, 465 F.Supp. 602 (S.D. Tex. 1979).

⁶⁴ *See, e.g., Willey v. Maben Mfg., Inc.*, 479 F.Supp. 634 (N.D. Miss. 1979),

Wangness v. Watertown School District No. 14-4 of Codington County, S.D., 541 F. Supp. 332 (D.S.D. 1982).

⁶⁵ *See, e.g., Brener v. Diagnostic Center Hospital*, 671 F.2d 141 (5th Cir. 1982).

⁶⁶ *See, e.g., Trans World Airlines, Inc. v. Hardison*, 97 S. Ct. 2264 (1977).

⁶⁷ *See, e.g., Reid v. Memphis Pub. Co.*, 521 F.2d 512 (6th Cir. 1975).

⁶⁸ *See, e.g., Draper v. U.S. Pipe & Foundry Co.*, 527 F.2d 515 (6th Cir. 1975); *Murphy v. Edge Memorial Hospital*, 550 F.Supp. 1185 (M.D. Ala. 1982).

⁶⁹ *See, e.g., E.E.O.C. v. Blue Bell, Inc.*, 14 Fair Empl. Prac. Cas. (BNA) 1013, 1976 WL 13383 (W.D. Tex. 1976).

Subscribe Now



U.S. GOVERNMENT
PRINTING OFFICE
KEEPING AMERICA INFORMED

Order Processing
Code:
3491

Easy Secure Internet:
bookstore.gpo.gov

Toll Free: 866 512-1800
DC Area: 202 512-1800
Fax: 202 512-2104

Mail: Superintendent of Documents
PO Box 371954
Pittsburgh, PA 15250-7954

YES, please send _____ subscriptions to the **FBI Law Enforcement Bulletin**. (FBIEB) at \$53.00 each (\$74.20 foreign) per year. Price includes regular shipping and handling and is subject to change. The total cost of my order is _____.

Check method of payment:

Personal name _____ (Please type or print)



Company name _____

Street address _____

Check payable to *Superintendent of Documents*

SOD Deposit Account —

VISA MasterCard Discover/NOVUS American Express

(expiration date)

Thank you for your order!

City, State, Zip code _____

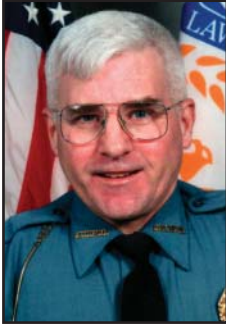
Daytime phone including area code _____

AUTHORIZING SIGNATURE _____

03/07

The Bulletin Notes

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



Sergeant Peden



Officer Alexander



Officer Dickson

Late one night, Sergeant James Peden, Officer Hank Alexander, and Senior Police Officer Greg Dickson of the Athens-Clarke County, Georgia, Police Department responded to a stabbing incident. Upon arrival, they found that the victim had suffered multiple stab wounds in the chest. The three officers delivered first aid, applied pressure to the wounds, performed CPR, and elevated the man's feet to maintain blood pressure in his torso. Then, one officer drove the ambulance to the hospital to allow the emergency medical personnel to administer aid to the victim while en route.



Officer Greer

Officer Joseph Greer of the Castalia, Ohio, Police Department responded to a fire at a residence. Upon arrival, he found thick smoke coming from the house. An elderly woman standing outside advised Officer Greer that her disabled daughter was still inside. Immediately, he entered the smoke-filled residence and located the victim in her bed, unable to get out. Officer Greer lifted her into a wheelchair and removed her from the house before the fire department arrived.

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

U.S. Department of Justice
Federal Bureau of Investigation
FBI Law Enforcement Bulletin
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Periodicals
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

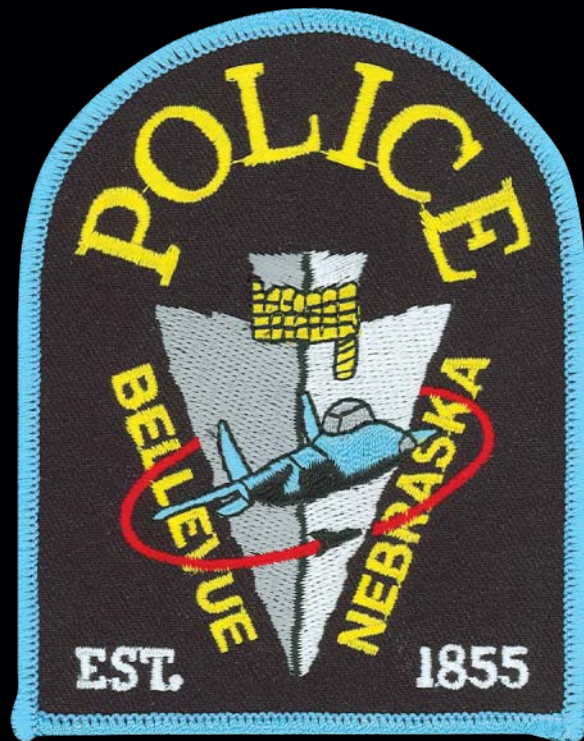
Official Business
Penalty for Private Use \$300



Patch Call



The patch of the Burton, Michigan, Police Department features the city's veteran's memorial, which serves as the centerpiece of the annual Memorial Day festivities that honor those who have made the ultimate sacrifice. Burton, which borders Flint, became a city in 1972.



The city of Bellevue, Nebraska, recognizes that its history has evolved from "arrows to aerospace." The patch of its police department shows an arrowhead behind an F-15 fighter. The arrowhead honors Bellevue's past as a fur trading post and a Native American agency. The fighter depicts not only the city's future but its long-standing relationship with the U.S. military.