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# FBI Law Enforcement

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# *The Fugitive Task Force as an Alternative Organizational Model*

By MILAN L. BUHLER, M.P.A.



**T**he use of task forces in law enforcement has grown steadily over the last decade. The ability of multiagency operations to effectively investigate drug trafficking and other crimes that cross jurisdictional boundaries has led to other applications. Today, police departments across the country pool personnel and resources to address concerns from automobile theft and asset forfeiture to juvenile gangs and serial murders.

According to Bureau of Justice Assistance data, over 1,000 multijurisdictional antidrug task

forces exist in the United States.<sup>1</sup> This figure does not include operations that focus on other offenses, such as organized crime or stolen vehicles, but it does suggest the extensive use of the task force concept by law enforcement agencies and the value placed on its role in addressing widespread problems and enhancing the effectiveness of police in general.

Law enforcement agencies remain largely identical in structure, and for the most part, they use the same enforcement, investigation, and prevention techniques to fulfill their missions. At any particular

time, police departments allocate labor and resources by the necessity of addressing either acute criminal activity or a perceived problem. Therefore, law enforcement agencies often find common interests and cooperative incentives that easily suit task force formation.

Because the hierarchical structure most law enforcement agencies employ provides an adaptable and common model, most task forces adopt this same design. Although it seems practical, this approach uses features similar to most police departments (e.g., same command structure) but ignores other issues



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of organizational behavior in mixed-group settings. In order to provide for both its success and continuing existence, a task force must identify and eliminate potential negative influences, as well as promote positive ones.

### **TRADITIONAL TASK FORCE PROBLEMS**

Several factors affect the degree of success or failure task forces can achieve. Dissension among members within the unit may develop along formal (agency) and informal (personal) lines. These problems affect any group undertaking to some degree but especially those where each participating entity may represent a different type of organizational bureaucracy and culture.

First, mixing personnel from different agencies usually requires that each individual officer work with, or for, someone from another department under a common organizational structure. Although agencies may agree on equal representation in participation,

command, and control, most task forces do not necessarily function that way. Division of labor, jurisdictional focus, and personnel performance issues can destroy the equal and common aspects of the operation. Conflict among members working in a traditionally structured task force remains the most frequent problem that arises in this environment. Conflicts can occur because of unequal workloads, competition over case credit and seized assets, or alliances that develop among agencies or personnel for control or influence in the unit. Unit effectiveness eventually deteriorates as factions emerge along formal lines and informal groupings by rank, experience, and assignment.

Moreover, police departments, generally well-defined bureaucracies, are rank-oriented from their overall administrative structure to the smallest subunit. Because this style of organization works for individual agencies, it often appears equally effective in a

combined-agency setting. In fact, smaller groups from similar organizations frequently do not adjust to a larger integrated configuration; they tend to retain their individuality.<sup>2</sup>

Specifically, despite emphasis on a shared goal and administration, agency affiliation and influence may negatively impact task forces in the following ways:

- Input from governing boards and department heads can interfere with task force administration, depending upon the level at which it is made. Administrators who directly communicate with subordinate officers in a task force, or vice versa, damage the integrity and effectiveness of the unit chain of command.
- Disproportionate staffing, with one department providing more members than another, reinforces department affiliations, creates partisanship, and polarizes unit members.
- Line supervision creates its own level of competition, influence, and representation within a task force. Supervisors, like rotating commanders, can promote departmental interests as they interact with other supervisors and exert influence over subordinates.
- Despite strategic and operational agreements, multijurisdictional units function in an environment of competing interests and special agendas. Group priorities may be based on an individual jurisdictional

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demand rather than a comprehensive approach to the problem.

- Task force administration may require that members operate under different payroll, record keeping, and report format systems. For example, policies between agencies might vary regarding overtime pay after a certain amount of hours worked, causing significant inequities and conflict between officers doing the same work.

Problems in task force operations develop at many levels and range from personality differences to competition between political entities. Each problem remains distinctive but also has similarities generated by joining together organizationally unrelated individuals and otherwise autonomous groups in a specific enterprise. Yet, law enforcement agencies can avoid pitfalls commonly associated with task force operations by trying another approach.

### **A DIFFERENT APPROACH**

Several years ago, the FBI and the Utah State Department of Corrections began a task force in Salt Lake City, Utah, focusing on the apprehension of fugitives. Within a few months, the number of participating local law enforcement agencies grew from two to five with the addition of the Salt Lake County Sheriff's Office and the police departments of Salt Lake City and West Valley City. Known as the Fugitive Task Force (FTF), it included three FBI agents, three Utah Department of Corrections officers, two Salt Lake County Sheriff's

Office detectives, two detectives from the Salt Lake City Police Department, and one West Valley City Police Department investigator. In addition to supplying personnel, each department provided access to their information and record systems. The FBI served as the lead agency, furnishing administrative support and facilities.

Based on a similar operation sponsored by the FBI in Detroit, Michigan, the FTF approached fugitive apprehension under a memorandum of understanding (MOU) between participating agencies. Designed to take advantage of the combined resources of several agencies and to target fugitives

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***For the  
successful task  
force, one size  
does not fit all.***

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most likely involved in ongoing criminal behavior, the FTF also impacted unlawful activity in general. Agencies established the FTF as an umbrella fugitive operation to supplement existing individual agency efforts by providing liaison between intelligence resources, thus expanding existing investigational operations.

A year after its inception, the FTF had arrested over 700 fugitives in Utah, throughout the United States, and across international borders. Because of its innovative

approach, this unit became a model for similar groups sponsored by the FBI throughout the country and received recognition as one of the most successful task forces in coordinating and focusing efforts to pursue fugitives.

### **Administration and Design**

Administrative oversight of the FTF remained the responsibility of one FBI supervisory special agent (SSA) who dealt directly with the heads of the participating agencies. This SSA coordinated MOUs, facilitated participation, and served as the representative for the FBI—the sponsoring agency. The SSA coordinated with a second agent responsible for the division of labor and day-to-day administrative management of the group. Functionally, unit members worked on their own department's pool of arrest warrants, prioritized cases, and opened investigations within the task force.

Below this level of supervision, FTF members maintained individual responsibility for specific duties, including gathering intelligence information, tactical planning, operating computer systems, conducting surveillance, and making interstate contacts, as well as maintaining investigative caseloads, spread equally within the unit. All members were investigators who held no other formal rank in their departments. Although the FBI had administrative oversight, no supervisory positions existed within the task force. In fact, membership in the unit excluded anyone holding rank and required that an investigator transfer out if promoted while assigned.



### For Further Reading

- R. Bocklet, "DEA-State and Local Task Forces: A Body for Law Enforcement," *Law and Order*, January 1991, 272-279.
- Arnold I. Burns, deputy attorney general, address before the Southeast Region Drug Task Force Conference, Gatlinburg, TN, January 28, 1987.
- Kenneth R. Coyle, "An Implementation Study of Cooperative Law Enforcement Narcotics Control Task Forces," *Evaluating Drug Control Initiatives, Conference Proceedings*, (Washington, DC: National Institute of Justice, June 1990).
- Bill Gordon, "The W.A.N.T. Task Force," *FBI Law Enforcement Bulletin*, April 1990, 2-5.
- National Office of Drug Control Policy, Office of the President, *National Drug Control Strategy* (Washington, DC: January 1992).
- Judy O'Neal, "Performance Evaluation of the Anti-Drug Abuse Program," *Evaluating Drug Control Initiatives, Conference Proceedings* (Washington, DC: National Institute of Justice, June 1990).
- U.S. Department of Justice, Bureau of Justice Assistance, "Law Enforcement Task Force Evaluation Projects: Results and Findings in the States," April 1992.

This unusual approach to staffing was based on balancing individual workloads, group responsibilities, and agency representation. Accordingly, the combination provided an atmosphere of equal commitment and cooperation and required that each participating agency carefully select only those officers who could work in such a group situation.

Built on a participative management premise, in which everyone contributes to the decision-making process, the FTF approach limited the competitive influences of individual departments from inside and outside the unit by

allowing the group to function without the typical oversight of department administrators or immediate control of line supervisors. To address any issues of equal investment and participation, task force membership originated on a specific commitment and remained limited to those departments with a significant fugitive caseload. In addition, each individual assigned to the unit took on a specific responsibility within the task force (e.g., tactical responsibilities, surveillance duties, etc.). Judged by general group output, the task force did not compare work production between members.

### Outcome

The FTF proved successful by departing from the traditional task force format and structure. The most innovative aspect was not simply its focus on fugitives but rather the nontraditional law enforcement organizational structure it implemented. The FTF highlighted limited supervision, group achievement over individual performance, and delegation of authority on an equal basis among all unit members, not just by officer rank or agency size and jurisdiction. This particular task force worked because it allowed members to make command and administrative decisions normally delegated only to a superior. This democratic approach successfully relied on the ability of each working officer to recognize problems, determine needs, and implement courses of action. Through equal delegation of authority, task force members consistently met group goals and exceeded expectations. In this regard, the FTF not only operated successfully by conventional task force standards, but it also created an environment in which its members could function without the competitiveness, territoriality, distrust, and self-interest often inherent in other groups.

### CONCLUSION

Task force operations represent *intraorganizational* relationships in an *interorganizational* context, resulting in both positive and negative consequences. Because the working environment of a task force is determined by the relationships that exist between different participating organizations, individual behavior

becomes as much a function of department culture as of officer personality, and both interact in this multiagency context. While the formation of a task force successfully addresses several larger issues (duplication of services, coordination of effort, economies of size, etc.), it creates other smaller, discrete, organizational problems, such as disproportionate staffing, differing pay rates, and varying operational procedures by federal, state, and local agencies.

The participative management structure that worked in the

Fugitive Task Force may not succeed in all task force applications. The pursuit of fugitives does not include many of the inherently competitive and self-interest influences that drug investigation, gang suppression, and many other law enforcement endeavors contain. However, understanding the innate problems and issues that result from bringing together autonomous law enforcement agencies remains one of the most important factors in forming any multiagency unit. The time and effort spent in gathering support for a task force venture

should give equal attention to the organizational design that best fits the chosen objective, rather than assuming that one administrative structure that serves the component parts will suffice for the whole. For the successful task force, one size does not fit all. ♦

#### Endnotes

<sup>1</sup> U. S. Department of Justice, Bureau of Justice Assistance "Law Enforcement Task Force Evaluation Projects: Results and Findings in the States," April 1992, 1.

<sup>2</sup> Based on the author's experience.

## Crime Data

### **Crime Decreases in 1997**

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

These statistics are based on a Crime Index of selected violent and property crimes submitted to the UCR Program by more than 17,000 city, county, and state law

enforcement agencies throughout the United States. The 1997 Crime Index total of approximately 13.2 million offenses represented a 2 percent decline from the 1996 total.

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

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

## **The Deterrent Effect of Three Strikes Law**

By John R. Schafer, M.A.

Since their inception, societies have attempted to control their members in one form or another. The particular behaviors that become the focus of that control can vary from one culture to another; however, the mechanisms that regulate the behavior remain constant. Essentially, punishment or the threat of punishment for social noncompliance represents the mechanism that deters individuals from engaging in deviant activity.<sup>1</sup> The penalty for unwanted behavior can take the form of legal prosecution, social sanctions, or a combination of both. Researchers have labeled this phenomenon perceptual deterrence.<sup>2</sup>

The concept of deterrence can be divided into two categories: general deterrence and specific deterrence.<sup>3</sup> General deterrence occurs when potential offenders see the consequences of other people's actions and decide not to engage in the same behavior. Specific deterrence is triggered when offenders realize the consequences of their own past behavior and decide not to commit the same acts.<sup>4</sup>

Building on the deterrence principle, three strikes laws often are seen as the answer to crime problems in America. Such laws attempt to reduce crime either by incarcerating habitual offenders or deterring potential offenders from committing future crimes. By 1997, 24 states, as well as the federal government, had enacted some form of mandatory sentencing.<sup>5</sup> Although all of these laws are referred to as three strikes laws, the provisions and enforcement of each vary greatly from state to state.

In California, for example, offenders accrue strikes when they get convicted of serious or violent felonies, and offenders with two strikes receive a third strike when they get convicted of any subsequent felony, violent or nonviolent.<sup>6</sup> As of December 1996, the state prosecuted over 26,000 offenders for their second or third strikes.<sup>7</sup>

But questions remain: Will the advent of three strikes laws deter crime, and, more important, will offenders become more likely to kill victims, witnesses, and police officers to avoid a life sentence? These questions represent important concerns as the cost of implementing mandatory sentencing laws may well include human lives in addition to monetary resources.

### **California's Experience**

The deterrent effect of three strikes laws can be measured best by examining the law's impact on crime in California, which aggressively prosecutes offenders under the provisions of the state's three strikes law. Moreover, because young adults remain responsible for the majority of the crimes, any deterrent effect of this group should significantly reduce the crime rate.

In 1996, the overall crime rate in California dropped 9.9 percent from the previous year.<sup>8</sup> In the 4 years since California enacted its three strikes law in 1994, crime has dropped 26.9 percent, which translates to 815,000 fewer crimes.<sup>9</sup> While the three strikes law cannot be given sole credit for the drop in crime, in many cases it proved an essential missing piece of the crime control puzzle. Furthermore, in the year

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prior to the law's passage, California's population of paroled felons increased by 226, as felons from other states moved to California. In the year after the law's enactment, the number of paroled felons plunged as 1,335 moved *out* of California.<sup>10</sup> Though not conclusive, this decrease may portend the deterrent effect of the state's three strikes laws.

Critics of the three strikes law cite the fact that the overall crime rate in 1996 declined nationwide and, more germane, that crime fell in states with no mandatory sentencing laws. These critics attribute the drop to demographics and cite the unusually low number of males in their mid-teens, the crime-prone years. Researchers predict that the crime rate will increase dramatically in the near future because the number of juveniles currently in their preteens far exceeds the normal demographic expectation.<sup>11</sup>

#### The Juvenile Factor

In truth, crime remains an activity for the young, particularly young men. In 1996, males under age 25 made up 45 percent of the individuals arrested in the United States for index offenses.<sup>12</sup> This group also committed 46 percent of the violent crimes and 59 percent of property crimes.<sup>13</sup> Another well-replicated study found that approximately 6 percent of all juveniles commit more than half of the crimes in the United States.<sup>14</sup>

Not surprisingly, although the overall crime rate in the United States has declined, the juvenile arrest rate for the 5-year period from 1992 to 1996 increased by 21 percent, while adult arrests rose only 7 percent during the same time period.<sup>15</sup> A more frightening statistic reveals that each generation of juvenile offenders has been more violent than the generation that preceded it.<sup>16</sup> The data suggest that a small number of young offenders commit numerous unpunished crimes because the courts, especially the juvenile justice system, provide the offenders with countless "second chances." These offenders are not

held accountable for their actions and thus are not motivated to change their criminal behavior.

In 1899, Illinois passed the first Juvenile Court Act in the United States. This act removed adolescents from the formal criminal justice system and created special programs for delinquent, dependent, and neglected children.<sup>17</sup> Over the ensuing century, juvenile justice has remained cyclical.<sup>18</sup> The cycle typically begins when a juvenile or group of juveniles commits an unusually heinous crime that evokes a public outcry. In turn, lawmakers pass stronger legislation for reform. After the tempest subsides,

society once again retreats to a position of indifference, only to be aroused by yet another reprehensible act. This cycle is punctuated by attempts to rehabilitate juvenile offenders; however, these attempts largely have failed. No evidence exists to indicate that traditional one-on-one or group psychotherapy reduces the recidivism rate.<sup>19</sup> Other variables—such as education, vocational training, social worker intervention—or any other methods tried to date have not proven effective in deterring crime.<sup>20</sup>

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**...when offenders, especially gang members, have two or more strikes, the likelihood of violence increases substantially.**  
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In short, the current juvenile justice system does little to rehabilitate or deter young offenders from a life of crime. This lack of success has frustrated the public to the point where long-term incarceration appears to be the only solution. For this reason, under the provisions of some three strikes laws, an offender could enter prison as a juvenile and, after a long sentence, be paroled as a middle-aged adult. Long prison sentences incapacitate chronic offenders during their crime-prone years and allow them to reintegrate into society when they have grown less likely to commit additional crimes.

In an effort to measure the perceived deterrent effect of California's three strikes law, the author administered an 18-question survey to all of the 604 offenders housed at Challenger Memorial Youth Center (CMYC), an all-male, residential lock-down



### Survey Questions and Responses

|   | Maybe | Yes | No  |
|---|-------|-----|-----|
| Do you agree with this statement: "Since I am going to prison for life if I get caught, I may as well kill any witness(es) because I have nothing to lose and I may go free if there is no one to testify." | 13%   | 54% | 33% |
| If you know your prison sentence would be doubled, would you commit a serious or violent crime?   | 21%   | 18% | 61% |
| Do you think someone else would commit a serious or violent crime if they knew their prison sentence would be doubled?  | 37%   | 31% | 32% |
| If you knew you would receive life in prison with the possibility of parole after serving 25 years, would you commit a serious or violent crime?  | 13%   | 17% | 70% |
| Do you think someone else would commit a serious or violent crime if they knew they would receive life in prison with the possibility of parole after serving 25 years?                                     | 31%   | 27% | 42% |
| Do you think the three strikes law will stop you from committing a serious or violent crime?  | 19%   | 35% | 46% |
| Do you think the three strikes law will stop someone else from committing a serious or violent crime?   | 19%   | 33% | 48% |

probably would not commit a serious or violent crime if they knew their prison sentence would be doubled; 70 percent said they would not or probably would not commit the crime if they knew they would receive life in prison, thus demonstrating a specific deterrent effect. By comparison, these percentages decreased to 32 percent and 42 percent, respectively, when offenders were asked if they thought someone else would commit a crime facing similar prison terms, illustrating a general deterrence effect.

facility under the authority of the Los Angeles County Probation Department, in Lancaster, California. Five hundred and twenty-three juvenile offenders chose to complete the survey over a 3-day period in March 1997.

#### The Survey

The author designed the survey to measure the offenders' experiences with the consequences of their own crimes (specific deterrence), the offenders' vicarious experiences with the consequences of other people's crimes (general deterrence), and the likelihood that the offenders would kill to avoid a life sentence. Three questions measured general deterrence, three measured specific deterrence, and one measured the offenders' intent. The data was sorted according to the following variables: race, age, education, family upbringing, offspring, and gang membership.

#### Results

The survey found that 78 percent of the offenders surveyed understood the provisions of California's three strikes law. The questions that addressed the individual components of the law demonstrated both a specific and general deterrent effect. Specifically, 62 percent of the offenders said they would not or

viewed the law in general terms, no deterrent effect existed. That is, when the question asked if offenders thought the "three strikes law" would stop them or someone else from committing a serious or violent crime, most offenders said no. These findings suggest that when offenders are confronted with the severity of their punishment in specific, personal terms, the law has a deterrent effect, but if the law is defined in general terms, the deterrent effect wanes.

In addition, the survey found that 54 percent of the offenders indicated that they would kill or probably would kill witnesses or law enforcement officers to avoid a life sentence. This figure rose to 62 percent among offenders who claimed gang membership. These findings should serve as a warning to all law enforcement officers that when offenders, especially gang members, have two or more strikes, the likelihood of violence increases substantially.

The survey also determined that race, age,<sup>21</sup> and education did not significantly impact the specific or general deterrent effect of the law. Rather, family upbringing, gang affiliation, and offspring proved the most important variables related to deterrence. The family had a positive influence on offenders, while gang affiliation produced a negative effect. Offenders raised in a home with both parents said they would be less likely to kill witnesses to avoid life

in prison and more likely to be deterred by the three strikes laws.

Interestingly, offenders with children were less likely to be deterred by the three strikes law than offenders without children. Conventional thinking would suggest that offenders with children of their own would lead more responsible lives in an effort to care for their children; however, this was not the case. One explanation for this finding is that individuals who do not foresee the consequences of their actions routinely engage in risky behavior and so become more likely to have children as juveniles.

An overwhelming majority of the offenders who responded to the survey believed that the three strikes law was not fair and that offenders should receive more than three chances. During the postsurvey discussions with the offenders, most believed that the number of chances afforded offenders should equal one more than the number of crimes for which they themselves had been convicted.

### Recommendations

In view of the findings of this study, additional data should be gathered from offenders in California, as well as other states, to determine if the results of this study are part of a greater phenomenon or specific to the offenders surveyed. If these findings hold true, the consequences of three strikes law should be explained to offenders in specific terms, in order to maximize their deterrent effect.

In addition, as more states enact and enforce three strikes laws, the number of offenders willing to use violence to escape arrest likely will increase as well. Accordingly, law enforcement officers should approach suspects with extra caution and, whenever possible, should run National Crime Information Center and criminal history checks prior to confronting suspects.

In many respects, the findings in this survey are not surprising. The family unit in America has

deteriorated slowly over the past few decades. Many children grow up in broken homes with few, if any, role models to teach them right from wrong, much less instill them with the courage to make morally correct decisions. Indeed, gang rituals have replaced family traditions; gang violence has replaced family values. Thus, crime prevention strategies that target entire families and intervene early, combined with swift and sure punishment for law-breakers, including aggressively enforced three strikes laws, may produce the greatest deterrent effect.

### Conclusion

Many offenders who have been through the criminal justice system repeatedly have learned through experience that the punishment for their actions is not severe enough to deter them from reaping the rewards of future criminal acts. Juvenile offenders learn the same lesson at an age that may make them destined for a life of crime. Yet, the results of a survey of a group of juvenile offenders in California suggest that when young criminals face specific, long-term sanctions for repeated offenses, they may be deterred from committing future acts. Thus, strictly enforced three strikes laws may break the cycle of crime that often begins early in a youth's life.

Scholars and practitioners alike continue to debate whether criminals are products of their genes or their environments. Those who believe criminals are born advocate incarceration as a means of incapacitation, while those who think criminals are made favor rehabilitation. The continuing controversy of whether the purpose of incarceration is for rehabilitation or incapacitation will continue for some time to come. Until this debate is resolved, offenders, at least in states with three strikes legislation, will have fewer opportunities to prey on innocent victims. ♦

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**In the 4 years since California enacted its three strikes law in 1994, crime has dropped 26.9 percent....**  
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### Offender Demographic and Socioeconomic Data

| Category                                    | Number | Percent |
|---|--------|---------|
| <b>Sex</b>                                  |        |         |
| Male  | 523    | 100     |
| Female                                      | 0      | 0       |
| <b>Age</b>                                  |        |         |
| Under 10                                    | 2      | .4      |
| 11 to 14                                    | 36     | 7       |
| 15 to 17                                    | 375    | 72      |
| 18 to 20                                    | 105    | 20      |
| Over 20                                     | 5      | 1       |
| <b>Race</b>                                 |        |         |
| White                                       | 49     | 9       |
| African American                            | 118    | 23      |
| Hispanic                                    | 323    | 62      |
| Asian                                       | 23     | 24      |
| Other                                       | 10     | 2       |
| <b>Education</b>                            |        |         |
| Elementary school                           | 9      | 2       |
| Middle school                               | 97     | 19      |
| Some high school                            | 348    | 67      |
| High school diploma/<br>general equivalency | 62     | 12      |
| Some college/<br>technical school           | 7      | 1       |
| College degree                              | 0      | 0       |
| <b>Children</b>                             |        |         |
| Yes   | 131    | 25      |
| No  | 392    | 75      |
| <b>Gang Membership</b>                      |        |         |
| Yes   | 273    | 52      |
| No  | 250    | 48      |
| <b>Family Upbringing</b>                    |        |         |
| Both parents                                | 245    | 47      |
| Single parent                               | 227    | 43      |
| Other                                       | 51     | 10      |

#### Endnotes

<sup>1</sup> Robert F. Meier and Weldon T. Johnson, "Deterrence as Social Control: The Legal and Extra-legal Production of Conformity," *American Sociological Review* 42 (1977), 292-304.

<sup>2</sup> Daniel S. Nagin and Raymond Paternoster, "The Preventive Effects of the Perceived Risk of Arrest: Testing an Expanded Conception of Deterrence," *Criminology* 29, no. 4 (1991): 561-587.

<sup>3</sup> Raymond Paternoster and Alex Piquero, "Reconceptualizing Deterrence: An Empirical Test of Personal and Vicarious Experiences," *Journal of Research in Crime and Delinquency* 32 (August 1995): 252-286.

<sup>4</sup> The concept of deterrence also includes certainty and swiftness of punishment. For a more in-depth review of the literature, see Raymond Paternoster, "Decisions to Participate in and Desist from Four Types of Common Delinquency: Deterrence and the Rational Choice Perspective," *Law and Society Review* 23, no. 1 (1989): 7.

<sup>5</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, "Three Strikes and You're Out: A Review of State Legislation," Research in Brief (Washington, DC, September 1997), 1.

<sup>6</sup> California Penal Code, Section 1170.12.

<sup>7</sup> Supra note 5.

<sup>8</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 1996* (Washington, DC: Government Printing Office, 1996), 70.

<sup>9</sup> Attorney General Dan Lungrin, press release no. 97-072, July 31, 1997.

<sup>10</sup> Ibid.

<sup>11</sup> John J. Dilulio, Jr., "Arresting Ideas: Tougher Law Enforcement Is Driving Down Urban Crime," *Policy Review* 74 (Fall 1995): 5.

<sup>12</sup> The FBI classifies the following crimes as index offenses: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Supra note 8, 214.

<sup>13</sup> Supra note 8, 214.

<sup>14</sup> M.E. Wolfgang, R.M. Figlio, and T. Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972), 67.

<sup>15</sup> Supra note 5, 213.

<sup>16</sup> James Wootton and Robert O. Heck, "How State and Local Officials Can Combat Violent Juvenile Crime," *The Heritage Foundation, State Background*, no. 1097/S, October 28, 1996, 2.

<sup>17</sup> Anthony M. Platt, *The Child Savers* (Chicago: University of Chicago Press, 1978), 9.

<sup>18</sup> William E. Thornton, Jr. and Lydia Voigt, *Delinquency and Justice* (New York: McGraw Hill Inc., 1992), xxv.

<sup>19</sup> Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York: Vintage Press, 1980), 247.

<sup>20</sup> Ibid.

<sup>21</sup> This survey did not examine differences by age, which may have a deterrent effect when offenders consider the likelihood they will be transferred to adult court for prosecution.

# Preserving Police History Benefits for the Present and the Future

By PHILLIP D. SCHERTZING, M.A.



In a memorable scene from the film *Amistad*, former president John Quincy Adams (played by Sir Anthony Hopkins) eloquently lectures the justices of the U.S. Supreme Court on the importance of a sense of history and familiarity with American ancestors. To understand ourselves as a nation, he argues, we must remember that “who we *are*, is who we *were*.” This same message applies to American law enforcement agencies as they prepare for the 21st century.

While broad histories concerning the evolution of law enforcement in the United States exist, voids remain in the historical

records of hundreds of individual departments—from small rural village police or county sheriff’s offices to large metropolitan or state police forces. Furthermore, it is not uncommon today for young law enforcement officers to shrug when asked about their departments’ origins, past leaders and heroes, proudest traditions, or greatest accomplishments. At the same time, students, journalists, and interested citizens who inquire about their local police agency’s history often are disappointed by the lack of useful references. Such evidence of apathy or ignorance about their own history seems especially ironic for semimilitary organizations that

claim to promote professionalism, esprit de corps, and community service.

As the late speaker of the house Thomas P. “Tip” O’Neil was known to say, “All politics is local.” The same holds true for history—at least the history that proves meaningful for the average person. People feel a stronger connection with a past that includes familiar names, places, and events. Certainly, local law enforcement institutions profoundly have influenced the history of every city, county, and state in the nation. Therefore, it seems worthwhile to preserve and communicate the history of every agency.





*Inspector Schertzing serves as assistant division commander for the Michigan State Police's Emergency Management Division in Lansing.*

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**The way a department handles its own history points to its organizational maturity.**  
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Many law enforcement leaders already have discovered how a small investment in preserving their department's past can yield significant benefits. An appreciation for a police agency's unique history and traditions can help promote a sense of cohesion and common purpose within the agency, provide its leaders with useful lessons and perspectives for future direction, and foster positive public relations.

## **WHY HISTORY MATTERS**

### **History Promotes Unity**

Across the country, law enforcement administrators struggle to implement clear and meaningful vision statements to fulfill their public safety mandates and guide their departments into the future. Yet, as the 20th century slips into history, American law enforcement agencies sometimes seem more disabled by internal fragmentation and discord, as well as interagency turf battles, than empowered by any unifying vision.

Spurred by rapid and continuing developments in technology, in addition to changes in organizational structure, legislation, labor relations, and public demands, many police agencies have become highly bureaucratic, specialized, and diverse. Competition for scarce resources, ambiguous or multiple missions, and parochial interests divide sworn officers from civilian support staff, uniformed officers from detectives, labor from management, road patrol from corrections officers, and headquarters staff from field officers. Veteran officers have trouble relating to rookies, and the expanding pool of retired police personnel often feels forgotten or unappreciated by those still in active service. With equal employment opportunity in law enforcement largely a phenomenon of only the last three decades, officers who served as pioneers for their race or sex in the police profession often feel ignored by outdated police traditions and historical literature.

Further, in this technological age, police work has become more depersonalized. Patrol officers complain about “chasing the radio,” while citizens fault the police for being unresponsive and unfamiliar. The recent trend toward community policing represents at least a partial effort to reclaim some of the traditional, close relationship between the beat officer and the community.<sup>1</sup>

In light of these concerns, law enforcement leaders face serious challenges when trying to achieve unity, harmony, and a common vision within their departments and with their communities. Vision statements suggest looking ahead, but clear vision requires perspective.

The 19th century English theologian John Henry Cardinal Newman believed that “essential unity” comes from a common history and common memories.<sup>2</sup> An organization can make progress only when it protects the vital elements of its past and maintains continuity with the vision of its founders. By constantly reaffirming its past successes, an organization furthers its current aspirations.

In short, history and traditions represent “intangibles” that stimulate a police organization's spirit and unity.<sup>3</sup> Educating officers about their department's heritage can promote a positive organizational culture and help officers identify with their department's mission.

### **History Teaches Lessons**

History also provides many lessons for law enforcement leaders who wish to avoid falling prey to



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the old adage that those who forget the past are condemned to repeat it. While such current issues as community policing, gang violence, drug abuse, computer crime, road rage, and domestic terrorism certainly remain serious concerns, history demonstrates that many of today's problems have been faced, in some form and to some degree, before.<sup>4</sup>

Yet, a combination of factors that seems inherent in most police agencies hampers the ability to learn from history. First, police agencies face a rapid turnover of personnel. Many officers can retire relatively young—often after only 20 or 25 years of service, and in our mobile society, young officers may jump from one department to another several times in the pursuit of better pay or career opportunities. At the top, a revolving door of leadership occurs as chiefs and sheriffs are ousted or move on to more lucrative positions. Thus, a wealth of tested experience that can help solve current problems continually drains away.

Many of the World War II and Korean War veterans who led police departments through the turbulent 1960s and early 1970s have retired. Even the wave of returning Vietnam veterans who worked the streets as young officers in those years have begun to draw pensions. What they learned about handling major civil disorders may have been incorporated within departmental policies and procedures, but who will provide historical context when it comes time to implement those policies during future crises? Without a comprehensive, user-friendly

historical archive or resource, old mistakes may be repeated.

Second, police agencies are notoriously reluctant to admit failures or blunders. Before police agencies can learn from the past, they must recognize and acknowledge that mistakes, embarrassments, and growing pains prove inevitable in any organization. No one likes criticism or adverse publicity, but

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***...every law enforcement agency can begin now to save the past.***

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no police department honestly can claim to have a perfect record. The way a department handles its own history points to its organizational maturity. Historical “puff pieces” filled with propaganda and denial lack credibility; they do the department, and the public, a great disservice.

#### **History Fosters Positive Public Relations**

The public wants and deserves an honest, balanced, accurate accounting of how their police have served them over the years. They have invested considerable financial and moral support in their law enforcement agencies. In return, every department bears a responsibility to legitimate that investment. Tremendous public support and

respect accrue when that responsibility is accepted, while a failure to set the record straight invites trouble.

Every major department has its critics, eager to advance their own personal or political agendas by publishing exposés. Whatever the merit of their views in specific cases, are they the proper custodians of police history? Whether in its official history or new employee orientations, a department can admit frankly to past mistakes without diminishing its broader history of professional progress and noble, public service—a story that otherwise would remain untold.

While the potential value of preserving a police agency's history and traditions may seem clear, it may prove no easy task. Many challenges and obstacles present themselves.

#### **CHALLENGES AND OBSTACLES**

To begin with, history is a very broad subject, with many different levels or categories of interest. Some people want to be titillated by bizarre or unsolved criminal cases from bygone years. Others prefer to collect old patrol cars, uniforms, badges, or patches. Looking up old photographs or personnel files of ancestors who served with the police department provides fascination for many, while scholarly researchers may want to read administrative histories or learn how police tactics and procedures have evolved. Therefore, achieving broad appeal with sufficient scope and balance in a historical record or display remains difficult.



Second, much history has already been lost. Due to lack of climate-controlled storage space or funding, damage from flood or fire, normal deterioration, routine purging, or lack of interest or foresight, vast amounts of old records and artifacts no longer exist. The transition to a paperless office may leave fewer historical records for future generations. Paper documents can survive for hundreds of years, but even the best computer disks, CD-ROMS, and magnetic tapes deteriorate in one to three decades.<sup>5</sup>

In human terms, as well, the passing years have taken their toll. Many American police agencies have reached the century mark. Their original members have long since passed away, and the memories of the few surviving veterans who experienced policing in the early decades of this century have dimmed with age. If their stories were not preserved through written memoirs or recorded personal interviews, the organizational culture has been deprived of the rich nutrients of folklore and anecdote.

Perhaps the most unfortunate reality remains that usually only the largest law enforcement agencies can afford the time, staff, budget, or space to implement a historical archive or museum. The vast majority of police agencies in the United States are relatively small and often underfunded. In these days when resources are limited and agencies must justify every expenditure to a governing body, historical preservation efforts may be necessarily pushed low on the scale of priorities.

Yet, despite these very real challenges and obstacles, every law enforcement agency can begin now to save the past. To do so, the department's executive leadership must make a commitment to preserving history, while developing an organized plan.

#### **SAMPLE APPROACHES**

Examples of police agencies' saving and sharing their history exist across the country. Recognizing that artifacts and old photographs put a human face on history and

help people connect with the past, the Ingham County Sheriff's Department in southern Michigan designed an impressive historical display in its front lobby. Visitors and department members can view photographs of nearly all of the former sheriffs dating back to the 1840s, and a display case shows off old photos, uniform items, and other memorabilia. The Maryland State Police headquarters compound includes a full-fledged departmental museum with regular hours and group tours. Using modern technology to communicate their histories to a broader audience, dozens of police agencies have established Internet Web sites or home pages, which include historical narratives and images.

Important anniversaries often provide the impetus for historical preservation efforts. The Onondaga County, New York, Sheriff's Department marked its bicentennial in 1994 with a historical publication and special public events. The International Association of Chiefs of Police launched a program to begin preserving its history on the occasion of its centennial anniversary in 1993. To observe the 100th Anniversary of the Lansing, Michigan, Police Department in 1993, the wife of a retired deputy chief published an illustrated history book and made a number of public slide-show presentations, complete with artifact displays.

Although a relatively large agency (2,200 sworn officers and 750 civilians), the Michigan Department of State Police cannot afford a full-time historian or archives unit in the existing political and

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economic climate. Yet, the department's leadership has long recognized that history and traditions represent vital elements for socializing and orienting all departmental members into the organizational culture. How to expand that process beyond the standard instruction on departmental history and organization given to each new recruit class presented a challenge.

The department's 75th anniversary in 1992 provided the motivation for a renewed official commitment to reviving the department's rich historical heritage. The director appointed a committee of both sworn and civilian members to publish an updated yearbook and organize a number of special events. Celebrations that year included an open house and family picnic for all active and retired department members, press conferences, displays of artifacts, and public tours of state police facilities. Crowds of parade-goers thrilled to see troopers wearing vintage uniforms and riding on horseback or in restored patrol vehicles, including a 1937 Ford Model A, a 1940 Harley-Davidson motorcycle, and a 1975 Plymouth Fury.

Committee members also compiled oral histories by videotaping interviews with the department's oldest retired officers. Using this material along with old photographs and film clips, the committee produced a historical documentary video, published several historical booklets and articles, and made presentations to local service clubs and historical societies. A local entertainer composed and sang "Blue Diamonds" for a modern public relations video of the same

name in honor of the department's anniversary.

The campaign generated enthusiasm and pride within the department and fostered positive public relations. None of these efforts could have succeeded without the commitment and active support of the department's top leadership.

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***Important anniversaries often provide the impetus for historical preservation efforts.***

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#### RECOMMENDATIONS

In recent years, an increasing number of law enforcement leaders have acted to save and share their department's history. Others lack guidelines for how to proceed or wish to expand their historical preservation programs. The following suggestions may spark new ideas to match the department's needs, goals, and resources. Departments interested in preserving history could

- appoint a committee or qualified individual to pursue a historical preservation campaign. If using on-duty personnel presents a problem, retired officers or family members may have the time, talent, and enthusiasm for such a project.
- survey existing records, documents, photographs,

films, and artifacts to determine what remains and what has yet to be recovered or saved. Historical preservation or research grants may be available from the government or from private foundations. Retirees and their families may donate scrapbooks and memorabilia, and local newspaper clipping files may also yield valuable material.

- collect oral histories through video- or audiotaped interviews with retired officers and other key figures. The American Association of State and Local History publishes guides for collecting oral history, and college media departments may help with the technical aspects.
- publish a comprehensive, illustrated, official department history book, covering a broad range of topics and including first-person anecdotes and memoirs, as well as a bibliography of official archives and other sources for further research. Local journalists, graduate students, history professors, or historical society members may agree to assist with the research and writing involved.
- publish annual reports and also periodically publish department yearbooks with photos of all personnel. Executive meeting minutes, departmental policies and organizational charts, and other official reports or memoranda also may have significant historical value.



- produce a historical documentary videotape or slide program, which can be broadcast on local access television channels or shown at public presentations.
- establish and keep updated a departmental Web site or home page on the Internet, including a concise historical segment.
- publish a retiree newsletter, arrange annual retiree banquets or golf outings, and invite retirees to special events and ceremonies or even informal coffee meetings.
- establish a departmental museum, if possible, or assemble a permanent or rotating display of historical photographs, artifacts, and other memorabilia in public areas of the police facility. Local public historical museums also may agree to display temporary exhibits on local police history.
- celebrate special anniversaries and events with open houses, departmental picnics, press conferences, and special displays. Restored vintage patrol cars (antique car buffs may donate them) and officers in vintage uniforms (using reproductions to preserve originals) prove sure hits at parades and fairs.
- observe Police Week with dignified ceremonies to honor the department's fallen officers; maintain a permanent memorial in the department's lobby, including photographs

of fallen officers and narrative accounts of their sacrifices.

- formally educate and orient all new employees regarding the department's history, traditions, and organizational culture.

### CONCLUSION

Preserving the proud historical heritage of a law enforcement agency represents an effective means for uniting and motivating today's highly specialized and diverse work forces. History establishes benchmarks and context for setting goals and developing vision statements, provides useful lessons for police executives, and helps link the police agency with the community it serves.

Every agency is limited by the staffing and resources it can devote to historical preservation, but many helpful resources and creative methods remain available. The efforts law enforcement agencies make today to restore and perpetuate their history and traditions can inspire current employees, while endowing a lasting legacy for future generations. ♦

### Endnotes

<sup>1</sup> J. Patterson, "Community Policing: Learning the Lessons of History," *FBI Law Enforcement Bulletin*, November 1995, 8.

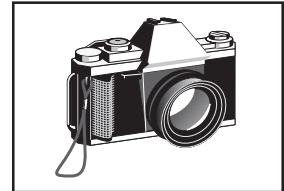
<sup>2</sup> See, J.H. Newman, *An Essay on the Development of Christian Doctrine* (London: Longmans, Green & Co., 1920).

<sup>3</sup> William Westfall, "The Leader as Visionary," unpublished paper presented to the Michigan State Police Command Officers Conference, October 1997.

<sup>4</sup> Supra note 1, 5.

<sup>5</sup> L. Tanglely, "Whoops, There Goes Another CD-ROM," *U.S. News & World Report*, February 16, 1998, 67-68.

## Wanted: Photographs



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

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

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



**The New Ethnic Mobs: The Changing Face of Organized Crime in America** by William Kleinknecht, published by The Free Press (Simon and Schuster), New York, New York, 1996.

The faces, makeup, sophistication, and worldwide activities of organized ethnic criminal groups have changed since the days when law enforcement associated only the Mafia with organized crime. Using greater cultural appreciation, foreign language usage, and sophisticated penetration techniques, law enforcement must handle the new challenges posed by these increasingly violent groups.

*The New Ethnic Mobs* provides more than just a growing list of organized crime in America. The author presents a detailed, historical view of each major emerging group (e.g., Asian, Russian, Italian, black, and Caribbean) and describes their current activities. This book is an updated, comprehensive study of the evolving underworld of the 21st century. Law enforcement must prepare for the globalized syndication, now underway, of criminal groups connected by strong ethnic ties (Chinese), large numbers (black gangs), sophistication (Russian), and drug-related violence (all of the above). With more formal education and financial resources than their street gang ancestors, these criminals use increasingly sophisticated means, including the Internet and cryptography, to ply their trades.

The author discusses specific, active, illicit groups in the United States—from Chinese Triad and Tong activity to the Italian La Cosa Nostra's demise from the pedestal of traditional organized criminal power. Additionally, the author describes the growing 21st century global, ethnic, and criminal alliances between various street gangs. These powerful new organizations have diverted law enforcement's attention from the Mafia, allowing time for it to regroup. At the same time, the author criticizes

those who grandly pronounce the Italian Mafia dead due to recent federal convictions of top leaders.

Which emerging 21st century criminal group should law enforcement scrutinize the most? The author believes that Chinese gangs have emerged as the organizations to watch. They possess numerous overseas members, strong ethnic ties, cultural secretiveness, business sophistication, violence, and a lack of respect for outside authority. Additionally, the author believes that with strong central leadership and greater unity, large black street gangs could become a formidable, national criminal threat after the year 2000.

Readers will appreciate the book's documented, historical analysis of each criminal group and the author's articulation of powerful, new, ethnic-based criminal organizations, regardless of whether they agree with the author's reasoned conclusions. In fact, according to the author, "The view, then, is hardly optimistic for the nation. Tomorrow's chief racketeers will not be Italian, Chinese, black, Hispanic, or Russian. They will be all of the above. Even more than today, organized crime will be a diffuse threat that challenges law enforcement from a host of different nationalities, regions and activities."

*The New Ethnic Mobs* presents a sophisticated collection of updated research into emerging criminal groups. For law enforcement officers, it offers an exhortation to update priorities, review investigative strategies, and adapt training to a changing criminal environment. This book offers excellent information for investigators of any organized crime activity.

Reviewed by  
SSA Norman C. Couns  
Investigative Training Unit  
FBI Academy  
Quantico, Virginia



### ***Police Enforcement of Traffic Laws A Cost-Benefit Analysis***

By John Moffat and Philip Salzberg, Ph.D.



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**L**aw enforcement remains an essential component of traffic safety. Traffic laws serve many purposes—primarily to discourage unsafe driving and to remove those drivers who pose a hazard from the roads. By reducing such violations, fewer motor vehicle accidents may occur.

Effective traffic enforcement depends on the allocation of sufficient manpower and resources. However, traffic duties must compete with other police tasks for funding, as limited budgetary allocations often tilt toward property crimes and violent criminal activities. Additionally, the media attention to criminal activity commands public interest.

Police budget decisions often reflect the assumption that the public remains more concerned about intentional criminal acts than about the accidental property damage and injury resulting from motor vehicle collisions (i.e., the police should focus on catching the criminals rather than writing speeding tickets). Thus, it remains difficult for a police agency, with a finite budget, to assign resources to the prevention of motor vehicle violations.

This assumption, however, fails to take into account the fact that the amount of damage, pain, and suffering caused by traffic law violators involved in

collisions far exceeds that of criminal acts. To a degree, the public has become accustomed to traffic collisions and accepts these losses as normal.

Furthermore, it seems that experts often do not take into account the relative costs and benefits of traffic versus criminal enforcement. Societal costs of traffic collisions are very high. A key consideration when discussing the cost/benefit of traffic law enforcement remains the fact that it generates revenue for a jurisdiction—whereas general crime enforcement usually does not.

Those administrators who make police manpower assignments often ignore the revenue implications of traffic law enforcement. Police agencies do not directly receive the revenues derived from such enforcement; instead, these proceeds typically are placed into the city's general fund account. A police chief easily can shift an officer from traffic to general duties with no impact on the police budget. However, a direct loss of revenue to the city's general account would occur, due to the loss of revenue generated from the tickets that the officer would have written. In many cases, the revenue from the tickets issued would have fully recovered the costs associated with keeping this officer in the field. While the assignment shift has

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no effect on the police budget, it has the same negative effect on the general fund as hiring a new employee because of the loss of revenue from the citations.

An important empirical question arises concerning the amount of revenue generated by traffic enforcement. If the revenue from traffic citations received and retained by a jurisdiction equaled or exceeded that jurisdiction's cost of putting a traffic officer on the road, the issue of diverting resources from crime to traffic could become moot.

### The Study

The authors conducted the study in Spokane, Washington. The Washington Traffic Safety Commission funded a full-time traffic officer dedicated to traffic law enforcement in one corridor of the city. With the assistance and cooperation of the Spokane Police Department and Spokane Municipal Court, the authors used a system to track the citations from the individual officer to the municipal court in order to identify the citation revenue received by the court and retained by the city. Periodically, the police departments sent copies of the written citations to the Washington Traffic Safety Commission where the authors entered information from these citations into a database. After 3 to 4 months, the authors sent a listing of citation numbers and driver's names from each batch of citations to the court. There, employees retrieved case dispositions, fine assessments, and fine payments from the court record system for a 1-year period and entered these items on the citation listing. The authors then entered these data into their database and further analyzed the information to determine the fine revenue amounts received by the city.

### The Results

The data obtained for this research project showed a total of 1,055 citations issued for the time period of July 1995 through June 1996. In 47 (4.5 percent) of the cases, no fines were assessed because

the courts either dismissed the citation or found the driver not guilty. The remaining 1,008 citations were assessed an average of \$100.30 in penalty fines, totaling \$101,107. At the time the authors examined the court records, the court had received \$66,022 in fine revenues leaving \$35,085 of the total assessments outstanding. The average amount of revenue received per citation written was \$62.58, based on all citations, including those that courts dismissed or found the defendant not guilty.

Washington State splits the traffic fines and forfeitures three ways. They allocate the first \$10.00 to the State Administrator for the Courts. The local jurisdiction retains 52 percent of the balance and the State Public Safety and Education Account receives the remaining 48 percent. Using this distribution formula, the city of Spokane yielded a total of \$29,089.84 in revenue during the 1-year study period.

Additional revenue was likely received after the time that the authors examined the court records because of time payments being made by the drivers or through collections. Many of the court records indicated that the driver had made partial payment of the total amount assessed.

The authors believe that the citation data analyzed for this study represent a substantial underestimation of the actual productivity of this traffic officer. Problems with incomplete reporting of activity appear as the major distortion to the data.

Discussions with supervisory personnel from the Spokane Police Department, as well as other experts, indicate that the *minimum* expected productivity of a traffic officer is 10 citations per work shift, regardless of other duties, such as responding to emergencies, testifying in court, conducting crash investigations, or providing motorist assistance. Police managers report that common daily production averages are between 12 and 15 citations.

The authors estimate officers work approximately 230 days per year (adjusting for holidays, vacation

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**...experts often do not take into account the relative costs and benefits of traffic versus criminal enforcement.**

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leave, sick leave, and training days); thus, the 1,055 citations issued during the 1-year study represent an average productivity of 4.6 citations per day. The reasons for this low productivity level remains unclear. The Spokane Police Department believes that many of the citations issued during the course of this project may not have been copied and forwarded to the study investigators due to administrative oversights.

The authors estimated, from the resulting study data, the revenue generated by a traffic enforcement officer who attained minimal productivity. A workload output of 10 citations per day at an average of \$62.58 revenue per citation issued and 230 work days yield a total annual revenue of \$143,934. Using the established formula, \$62,885.68 would be the amount retained by a city in Washington State. This amount may vary depending on the different types of traffic violations issued by individual officers.

In addition to the method used by the authors in this study, another approach can be used to estimate the average revenue productivity of an individual traffic officer. For example, analysts can take the gross income to a municipal court from traffic tickets, reduce that by the amount forwarded to others, and divide the remaining value by the number of citations issued. This provides an average income (per ticket) that administrators can apply to known or predicted productivity numbers for individual officers.

In addition to the statistics produced, this research project also revealed several tangible benefits that may accrue from having a traffic officer on patrol. These include the general crime deterrence value of extra police visibility in a community. Additionally, in larger cities, most general patrol officers remain tied up handling calls for service. Traffic officers, on the other hand, can usually drop what they are doing and respond immediately to emergencies.

Also, in many cities, police staffing is set to handle the average workload of calls for service. In a crisis, major emergency, or even during a large

special event, police often cannot handle the additional workload. Administrators must bring in extra officers from other jurisdictions, or pay their officers overtime.

## Conclusions

This study revealed that the revenue produced by a traffic enforcement officer exceeds the cost of putting an officer on the road. Although costs certainly vary among different jurisdictions and salary of the individual officer, the authors estimate that the cost for an individual officer in Spokane was \$57,000, including the components of salary, benefits, equipment, vehicle, and support services. The authors estimate that this cost could range from \$50,000 to \$70,000 per year, which compares favorably with the estimated revenue of \$63,000 that the jurisdiction would retain.

As shown, costs and revenues roughly balance each other and traffic enforcement essentially pays for itself. Thus, city policy makers facing the budgetary issue of

diverting police resources from traffic law enforcement to crime should carefully examine the revenue considerations, including other minor costs not mentioned, such as additional court caseload.

The presence of personnel dedicated to traffic law enforcement provides many intangible benefits to a city. These personnel act as an on-duty reserve, become instantly available, remain self-funding, and provide the extra manpower available to respond to emergencies. Police administrators should consider traffic law enforcement as an effective use of police manpower that contributes to public safety at no additional costs. ♦

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*Mr. Moffat, a retired captain from the Seattle Police Department, currently serves as the Director of the Washington Traffic Safety Commission in Olympia, Washington. Dr. Salzberg serves as the Research Director of the Washington Traffic Safety Commission in Olympia, Washington.*

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...the revenue  
produced by a traffic  
enforcement officer  
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on the road.  
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## ***GHB: Grievous Bodily Harm***

By JOHN S. ASANTE

*After drinking some GHB at a party in the desert, a teenage boy began frothing blood, collapsed, and subsequently died.<sup>1</sup>*

*A former disc jockey slipped GHB into young women's drinks then raped and took pornographic photographs of them.<sup>2</sup>*

*A high school student drank only two sodas while dancing at a local club but came home complaining of a severe headache and nausea and died later that night from cardiac arrest.<sup>3</sup>*

**W**hat drug caused these tragedies? A hypnotic, anesthetic agent, gamma-hydroxybutyrate (GHB) has drawn considerable media attention for its recent rise in illicit use. Since 1990, party and nightclub attendees have abused GHB for its euphoric and sedative effects, while body-builders have misused it as an unproven anabolic steroid.<sup>4</sup> Additionally, police officers have linked GHB and such similar drugs as Rohypnol with sexual assault cases throughout the country.<sup>5</sup> In

numerous incidents, suspects have slipped GHB into unsuspecting individuals' alcoholic beverages and then sexually assaulted the victims while they were unconscious or immobilized by the drug.

### **History**

Although found in minute amounts in the human brain and other bodily tissues, GHB's exact physiological role remains unknown.<sup>6</sup> Researchers first produced GHB in Europe and later tested it for use as a short-term surgical



Officer Asante serves with the Redmond, Washington, Police Department.

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**Investigators  
have called GHB  
a ‘stealth drug’  
due to the  
difficulty in  
detecting its  
use.**  
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anesthetic. However, the drug never grew in popularity due to its lack of painkilling properties.<sup>7</sup>

In the early 1980s, GHB emerged in U.S. health food stores as a “natural” aid to bodybuilding, weight loss, and sleep.<sup>8</sup> After a rash of illnesses and adverse effects, including nausea, uncontrolled shaking, coma, and even death, the Food and Drug Administration (FDA) took GHB off the market in 1990.<sup>9</sup> Except for research purposes, GHB is not approved for any use in the United States. Although possession of GHB is not illegal under federal law, the Food, Drug, and Cosmetic Act prohibits its sale and manufacture. Recently, several states have enacted legislation classifying GHB as a Schedule I drug,<sup>10</sup> and 27 states, particularly California, Texas, Georgia, and Florida, have documented the illicit distribution of GHB.<sup>11</sup>

### Effects

The human body rapidly absorbs and metabolizes GHB. Peak concentration in the blood occurs

20 to 60 minutes after oral ingestion, but users can feel the effects in as little as 5 to 15 minutes.<sup>12</sup> Physical symptoms begin unpredictably, differ from user to user, and depend on the quantity consumed. At very low doses, GHB users report feeling effects similar to those associated with alcohol—euphoria, a reduction of social inhibitions, calmness or giddiness, and slight hallucinations. Acute GHB toxicity and a feeling of extreme intoxication easily can develop at higher dosages. Reported manifestations include dizziness, nausea, vomiting, weakness, seizures, loss of peripheral vision, confusion, agitation, hallucinations, slowed respiration, unconsciousness, and coma.<sup>13</sup> Moreover, no antidote exists for a GHB overdose, and medical treatment is restricted to supportive care, such as mechanical ventilation.<sup>14</sup>

### Availability and Domestic Production

Individuals can obtain GHB in a variety of ways. Several firms

based in the United Kingdom, Mexico, and South Africa sell high-quality GHB directly over the Internet. Additionally, several U.S. companies produce kits containing all of the necessary chemicals for producing GHB. Users order the noncontrolled substances through the mail and then combine them to produce GHB. However, the FDA has determined that clandestine domestic laboratories produce the great majority of GHB, accounting for the recent surge in illicit use in the United States.<sup>15</sup>

GHB requires only two ingredients—gamma-butyrolactone (a solvent sometimes used in paint removers, engine degreasers, and textile work) and a strong base (such as sodium or potassium hydroxide). For relatively little cost, manufacturers can obtain both from chemical supply houses. They can use a large pot, bowl, or even a bathtub to mix the two substances to produce GHB. Sometimes, manufacturers add hydrochloric acid or vinegar to help neutralize the caustic end product.

Individuals interested in making GHB can obtain instructions through underground magazines and over the Internet. Several Web sites even provide different techniques that help optimize yields. However, these instructions often prove incomplete, incorrect, and oftentimes unsafe, leading to varying degrees of GHB purity. For example, poorly manufactured GHB may contain high levels of unneutralized sodium hydroxide. Ingestion of such a caustic liquid is akin to drinking drain cleaner and can have horrible consequences, as illustrated in the example of the



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teenage boy who died after consuming GHB at a party in the desert.

### Methods of Abuse

GHB usually appears as a colorless, odorless, slightly salty liquid, or less commonly, as a white powder.<sup>16</sup> Users may offer GHB at parties by the capful, teaspoonful, dropperful, or unmeasured swig.

As illustrated in the example of the former disc jockey, individuals using GHB for sexual assault purposes commonly mix the drug directly into their victims' drinks because alcohol greatly magnifies GHB's effect. Due to GHB's slightly salty taste, such beverages as margaritas, long island ice teas, sweet liqueurs, or tart fruit juices help mask the flavor.<sup>17</sup>

### Difficulties in Detection

GHB presents a number of problems in its detection both in the field and in laboratory examinations. As a clear, colorless liquid, it can be combined readily with water, alcohol, or a host of other common liquids and placed in any number of generic bottles. Investigators have found the liquid stored in plastic water bottles, sport bottles, mouthwash and shampoo containers, milk jugs, and small glass vials. Moreover, no field test currently exists for detecting GHB, but several groups are working on a solution to this dilemma.

GHB in the body presents an even greater problem. The body processes GHB in a manner similar to alcohol; it converts the drug almost completely into carbon dioxide within hours. Most state medical examiners cannot detect GHB

through standard drug tests.<sup>18</sup> With routine screening largely unavailable in the United States, GHB detection relies heavily on the training and skill of the investigator, as illustrated in the example of the high school student who died from cardiac arrest. The student had no history of drug or alcohol use, and routine drug tests revealed no signs of either. Alert investigators, however, had specific tests for GHB run on some of the student's previously

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***GHB usually appears as a colorless, odorless, slightly salty liquid, or less commonly, as a white powder.***

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obtained blood serum and discovered a high level of the drug. Investigators speculated that someone had slipped GHB into the student's drink.<sup>19</sup>

### Investigative Considerations

Investigators have called GHB a “stealth drug” due to the difficulty in detecting its use. In most states, only specialized testing can confirm GHB in blood or urine, and investigators may have to specifically request these tests. However, several signs exist that may alert investigators to the use of GHB or a similar substance.<sup>20</sup>

A feeling of extreme intoxication after only one or two drinks represents a common symptom reported by rape victims drugged with GHB. Friends or witnesses, such as waitresses, may describe the victim as getting “giddy” or wildly drunk after consuming an unusual beverage or after accepting a drink from a stranger. These same witnesses may even see the victim leave the club or party assisted by the suspect. Further, anecdotal evidence suggests that many victims become unconscious for approximately 4 hours before abruptly “snapping back.” An unexplained lapse in memory for this amount of time also might suggest GHB use.

Additionally, investigators should look for GHB paraphernalia in a suspect's residence or vehicle. While the presence of precursory chemicals, such as gamma-butyrolactone, represents an obvious tip-off, the suspect also may have computer printouts, articles, or books on GHB. Further, boxes or shipping labels from chemical suppliers may indicate that the suspect used a mail-order kit to make GHB at home. If investigators suspect GHB, they should collect any suspicious containers, such as water bottles or other unlabeled receptacles. If at all possible, they also should retrieve the glass or container from which the victim drank.

Moreover, if investigators suspect the use of GHB, they should try to obtain a urine sample from the victim as quickly as possible. If the victim ingested the drug in the previous 5 to 7 hours, a blood test could reveal the presence of GHB, even if the victim has died.

Although most state toxicology laboratories cannot routinely screen for GHB, investigators can submit the sample to a specialized laboratory capable of performing the analysis.

Investigators must bear in mind that the victim may not recall many of the facts regarding the incident because the drug causes unconsciousness. At the same time, victims of sexual assaults involving GHB often experience psychological trauma resulting from not knowing exactly what the suspect did to them while they were unconscious.<sup>21</sup> Investigators should provide victims with immediate professional counseling or refer them to an experienced rape treatment center.

#### Future Developments

To date, only 11 states have criminalized GHB possession, most

recently, California.<sup>22</sup> Taking note of the resurgence of GHB, the FDA has renewed its warning that GHB remains an unapproved and potentially dangerous drug that cannot be legally marketed, sold, or manufactured in the United States. While it is still not illegal to possess GHB on the federal level, the DEA and several congressional representatives actively are considering placing GHB on the list of controlled substances.

On the educational front, knowledgeable rape treatment professionals encourage law enforcement officials to advise citizens never to leave their drinks unattended and to refuse drinks offered by strangers. Moreover, police and community leaders should consider promoting a concept similar to the designated driver where individuals assign a sober friend the task of ensuring their

safety before going out to clubs, bars, or parties.<sup>23</sup>

#### Conclusion

Gamma-hydroxybutyrate will continue to present a serious challenge to law enforcement as its popularity grows. Its relatively low cost, ease of manufacture, and difficulty in detection continue to fuel its abuse. The quality and availability of GHB testing methods should continue to improve and expand as more and more agencies begin to address the problem. Also, additional legislation to make the possession of GHB illegal should help law enforcement authorities confront the problem from all sides.

Until then, continued education on GHB will help both investigators and the public become better at recognizing and combating its use and proliferation. Working together, police officers and the communities they serve can reduce these tragic early deaths and heinous assaults resulting from the illicit use of such drugs as GHB. ♦

#### Endnotes

<sup>1</sup> Debra Rosenberg, "Death of the Party," *Newsweek*, October 27, 1997, 55.

<sup>2</sup> KABC-TV 7 Eyewitness News, "Disc Jockey Sentenced in Rape Case," August 6, 1997.

<sup>3</sup> Christine Gorman, "Liquid X," *Time*, September 30, 1996, 64.

<sup>4</sup> Centers for Disease Control and Prevention, "Gamma-hydroxybutyrate Use—New York and Texas, 1995-1996," *Journal of the American Medical Association* 277 (1997): 1511.

<sup>5</sup> National Institute on Drug Abuse, "Rohypnol and GHB" *NIDA Infofax* 021.

<sup>6</sup> Gantt P. Galloway, et al., "Gamma-hydroxybutyrate: An Emerging Drug of Abuse that Causes Physical Dependence," *Addiction* 92, no. 1 (1997): 89-96.

| GHB Overview          |  |
|-----------------------|--|
| <b>Chemical</b>       | Gamma Hydroxybutyric Acid  |
| <b>Street Names</b>   | Cherry Menth, Easy Lay, Gamma 10, GBH, Georgia Home Boy, GHB, G-Juice, Great Hormones, Grievous Bodily Harm, G-Riffick, Liquid E, Liquid X, Salty Water, Scoop, Soap, Somatmax, Vita-G |
| <b>Appearance</b>     | Colorless, odorless, slightly salty liquid or white powder   |
| <b>Administration</b> | Oral ingestion   |
| <b>Cost</b>           | \$5-\$20 per dose (capful or ounce)  |

<sup>7</sup> Ibid.

<sup>8</sup> Centers for Disease Control and Prevention, "Multistate Outbreak of Poisonings Associated with Illicit Use of Gamma-hydroxybutyrate," *Journal of the American Medical Association* 265 (1991): 447-448.

<sup>9</sup> John Henkel, "Gym Owner Jailed for GHB Sales," *FDA Consumer*, April 1997, 34.

<sup>10</sup> Under the federal Controlled Substances Act, regulated drugs are divided into categories, known as schedules, according to their effects, medical use, and potential for abuse. Schedule I drugs, such as heroin and LSD, have unpredictable effects, including severe psychological or physical dependence or death; have the highest potential for abuse; and have no currently accepted medical use in treatment. Some are legal for limited research use only.

<sup>11</sup> *Supra* note 4.

<sup>12</sup> *Supra* note 8.

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *Supra* note 4.

<sup>15</sup> Food and Drug Administration, "FDA Reissues Warning on GHB," *FDA Talk Paper*, February 18, 1997, T97-10.

<sup>16</sup> Detective Trinka Porrata, Los Angeles, California, Police Department, telephone interview by author, January 1998.

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

<sup>18</sup> Pat Friel, Toxicologist, Washington State Toxicology Laboratory, telephone interview by author, December 1997.

<sup>19</sup> *Supra* note 3.

<sup>20</sup> *Supra* note 16.

<sup>21</sup> Gail Abarbanel, director, Santa Monica-UCLA Rape Treatment Center, telephone interview by author, January 1998.

<sup>22</sup> Illinois, Georgia, Hawaii, Louisiana, Nevada, and Rhode Island have placed GHB into Schedule I. California and Florida have assigned GHB as Schedule II (such drugs as morphine and codeine with a high potential for abuse, severe psychological or physical dependence, and restricted medical use). Alaska and Tennessee categorize GHB as Schedule IV (such drugs as phenobarbital and diazepam with a low potential for abuse, limited psychological or physical dependence, and accepted, supervised medical use). New Jersey has outlawed GHB possession, but has not scheduled the drug. Texas, Massachusetts, Michigan, Nebraska, and Virginia have GHB legislation pending.

<sup>23</sup> *Supra* note 21.

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# Constitutional Authority to Regulate Off-duty Relationships

## Recent Court Decisions

By MICHAEL J. BULZOMI, J.D.

Photo © Mark Ide



In recent years, a number of court cases have involved law enforcement employees who have faced departmental actions due to charges of nepotism or improper off-duty sexual activity. These employees have challenged departmental actions based on these charges on the grounds that the department is violating their First Amendment freedom of association. This article reviews two court decisions involving antinepotism

rules and three cases involving the authority to regulate off-duty sexual activity. The article concludes with a discussion of departmental prerogatives to conduct internal investigations of alleged sexual misconduct.

### General Principles

The Supreme Court recognizes that an individual has a fundamental liberty interest in being free to enter into certain intimate or private

relationships. First Amendment freedom of association “protects those relationships, including family relationships, that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctively personal aspects of one’s life.”<sup>1</sup> However, freedom of association is not an absolute right.



The government as a sovereign faces many hurdles in restricting an individual's freedom of association. In its capacity as an employer, however, the government has far broader powers. As an employer, the government's interest in "achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest...to a significant one."<sup>2</sup> That is why it is not necessarily unconstitutional for the government to restrict an employee's First Amendment rights when it is acting as an employer.

When government actions are challenged by employees, the courts generally apply one of three standards of review. The most burdensome standard of review is called "strict scrutiny." This standard requires the government to prove that there are compelling reasons for the action taken. An intermediate standard of review is a balancing test where the interests of the individual are measured against the interests of the government. A third standard of review called the "rational basis" test is considerably more deferential to the governmental employer and merely requires the government to show that a legitimate rational objective existed for the action taken. The court determines which of these standards of review will apply based on the constitutional importance of the employee's rights implicated by the government action.

#### **Antinepotism Rules**

Public employers, concerned with public perception, may conclude that allowing two spouses to work together will give the

appearance of favoritism or corruption and decide on the imposition of anti-nepotism rules. Two cases recently examined First Amendment challenges to antinepotism rules. The first case entails the demotion of an employee. The second case discusses the loss of employment by one spouse.

The case of *McCabe v. Sharret*<sup>3</sup> involved the secretary to a police chief. Following her marriage to a police officer in the same department, she was transferred to a clerical position which involved less responsibility and more menial tasks. The chief explained that the transfer was prompted by a fear that the secretary's marriage "would undermine her loyalty to him and her ability to maintain the confidentiality of his office."<sup>4</sup> The secretary sued asserting a violation of her right to freedom of association guaranteed by the First Amendment.

In ruling in favor of the chief, the United States Court of Appeals for the Eleventh Circuit, began its analysis by setting forth a three-part

test that requires the employee to demonstrate that 1) the asserted right is protected by the Constitution; 2) the employee suffered an adverse employment action because she or he exercised the asserted right; and 3) the adverse employment action was taken in such a way as to infringe the constitutionally protected right. The court applied this test and found that the plaintiff met the first two requirements—her right of intimate association was protected by the First Amendment, and she suffered an adverse employment action because of her marriage.

In regard to the application of the third prong of the test, the court failed to endorse a single analytic scheme and instead proposed three approaches for determining whether the secretary's transfer impermissibly infringed upon her fundamental right to marry. The first approach balanced the employee's interest, as a citizen, against the state's interest, as an employer, in promoting efficiency.

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



The court found that the employer's interest weighed more heavily when the challenged employment action closely served the interest of workplace efficiency. The court noted that the secretary had access to confidential material such as internal affairs files, and that spouses tend to possess a higher degree of loyalty to their marital partners than to their supervisors and often discuss workplace matters with each other. Based on these facts, the court decided that the police chief's concerns about confidentiality were objectively reasonable and that the secretary's transfer was necessary to preserve the confidentiality of the office.

The second approach focused on "a public employee's right to harbor certain political beliefs and on how exercising that right affects the performance of governmental functions by affecting employee loyalty."<sup>5</sup> Under this analysis, the court found that the secretary's intimate affiliation with a police officer employed by the same department categorically disqualified her from effective performance of her job in the same manner that a political affiliation might disqualify her. Even in applying a strict scrutiny analysis, the court found that transferring the secretary because of her marriage was "necessary to serve the compelling interest of preserving the effective functioning of the...police chief's office."<sup>6</sup>

Because all three possibilities came to the same result, the court did not decide which one was most appropriate. It did, however, affirm summary judgment for the police chief, holding that any

constitutional burden was justified by the government's interest in "promoting the efficiency of the public services it performs through its employees"<sup>7</sup> regardless of which analysis applied. The *McCabe* court has determined that intimate association, though protected, may be the basis for job demotion, transfer, or reassignment, if that relationship is deemed harmful to the inner workings of the department, in this case, the chief's office.

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**...the secretary's intimate affiliation with a police officer employed by the same department categorically disqualified her from effective performance of her job...**  
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In *Parks v. City of Warner Robins*,<sup>8</sup> the U.S. Court of Appeals for the Eleventh Circuit applied the rational basis test in determining whether the city's antinepotism policy permissibly infringed upon an employee's First Amendment association rights. This case was brought by two officers who had joined the Warner Robins Police Department within two weeks of each other. One eventually became a sergeant in the special investigative unit, and the other a captain in the criminal investigative unit.

Their subsequent engagement created a problem under the city's antinepotism ordinance, which prohibits municipal employees in supervisory positions from working in the same department. The couple was informed by their chief that if they got married, the less senior of the two would have to leave the force.

The wedding was postponed and the couple sued the city under 42 U.S.C. Section 1983 on grounds that the antinepotism policy denies the fundamental right to marry protected by the due process clause of the 14th Amendment, infringes upon the right of intimate association implicit in the First Amendment, and violates the equal protection clause of the 14th Amendment because it has a disparate impact on women.

The court reasoned that while there is a fundamental right to marry protected by the due process clause, the test for any regulation of that right depends on whether it significantly interferes with the decision to marry. The court found that the city's no-spouse policy did not substantially interfere with the right to marry because the terminated spouse could still work in another department or outside the municipal government. While the policy may place increased economic burdens on certain city employees who wish to marry one another, the policy does not forbid them from marrying. Since the policy does not directly and substantially interfere with the fundamental right to marry, it is subject to rational basis scrutiny rather than strict scrutiny. Therefore the policy did not violate

the Due Process Clause since it is rationally related to a legitimate government interest<sup>9</sup>.

The court cited a number of interests advanced by the city in support of the policy, including: 1) avoiding conflicts of interest between work-related and family-related obligations; 2) reducing favoritism or even the appearance of favoritism; and 3) preventing family conflicts from affecting the workplace.<sup>10</sup> The court found that alleviating supervisors from having to decide whether to exercise their discretionary power to hire, assign, promote, discipline, or fire their relatives is rationally related to the practical, utilitarian goals advanced by the city. Thus, the policy was valid under the due process clause. The court also found that the policy did not infringe upon the plaintiffs' First Amendment right of intimate association since the policy neither ordered individuals to marry nor directly interfered with the right to marry.

Finally, the court rejected the equal protection claim that the antinepotism policy has a disparate impact on women. Pointing out that proof of discriminatory intent is necessary for an equal protection claim, the court observed that disparate impact "is insufficient to prove discriminatory intent,"<sup>11</sup> which was not shown to be the basis for the city's policy.

### Regulating Off-duty Sexual Activity

In *Briggs v. North Muskegon Police Department*,<sup>12</sup> a federal district court held that the dismissal of a married police officer for living with another man's wife was a violation of the officer's privacy and associational rights. The court concluded that the police depart-



ment did not have a legitimate interest in the sexual activities of its officers unless the activities affected job performance.

However, other courts have found that off-duty sexual activity can affect job performance. In *Oliverson v. West Valley City*,<sup>13</sup> a married city police officer allegedly had sexual relations with women other than his wife. The relations included sexual intercourse and sodomy. The officer alleged that the sexual acts were consensual, performed in private, non-prostitutional or commercial, and heterosexual. The female participants were unmarried adults and the

conduct occurred during non-duty hours. The officer was suspended for 30 days without pay and the suspension was noted in his employment file for "violations of the law of the State of Utah" and "commission of any crime relating to public morals and decency or other laws involving moral turpitude." The officer sued the city for violating his

First Amendment right of association and challenged the constitutionality of the Utah adultery statute.

The city contended that the officer's conduct, which became public, severely damaged public confidence in the police department. It should be noted that the females involved were all members of the West Valley City Police Explorer Post sponsored by the city to aid the development of young people.

The *Oliverson* court held that adultery was neither a fundamental right nor implicit in the concept of ordered liberty, and refused to strike down Utah's statute criminalizing adultery. The city's motion for summary judgment was granted. Thus a police officer's extramarital affair was not protected where the state had a law criminalizing adultery and the intimate relationship affected the public's perception of the department.

The public's perception of a police department is not the only factor in determining the ability of a department to regulate an officer's

off-duty activities. The next case involves internal issues not known by the public and conduct that did not violate a state law.

In *Henery v. City of Sherman*,<sup>14</sup> a City of Sherman police officer became involved in an extramarital relationship with a city dispatcher. The dispatcher was the wife of a sergeant in the same department. The adulterous officer had recently ranked first on a city civil service list, making him eligible for promotion to a sergeant's position, which had come open. Shortly thereafter, a sign appeared on a department bulletin board and in the departmental mailboxes of most police officers that stated: "If you can't trust another officer with your wife, how can you trust him with your life?"<sup>15</sup> Before making the promotion decision, the chief ordered an investigation into the validity of rumors regarding the officer's relationship with the wife of another officer.

After confirming the existence of the affair, the chief decided to pass over the officer and award the promotion to an officer who had scored lower on the promotional exam. The chief cited the affair as the sole reason for passing over the officer, claiming that "the officer would not command respect and trust from rank-and-file officers," and that promoting him would "adversely affect the efficiency and morale of the department."<sup>16</sup> The officer appealed the decision to the Firemen and Police Officers' Civil Service Commission of the City of Sherman.

At the hearing, the chief admitted that the officer was very

qualified for the sergeant's position. The chief acknowledged he had never before passed over a candidate for promotion based on infidelity, and that there was no written rule in the department's manual or in state law authorizing him to deny the promotion due to the affair. The chief however, believed that the affair would have affected the officer's ability to lead in the department, and would have been disruptive. As evidence that the affair was disruptive, the chief pointed to

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***The city contended that the officer's conduct, which became public, severely damaged public confidence in the police department.***  
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the rumors and innuendo among officers, the sign posted on the bulletin board, and the emotional distress suffered by the husband of the woman involved. The chief also commented on the importance of trust that officers must have in each other in order to serve the public. He went on to say that this trust no longer existed between this officer and other officers of the department. The Commission upheld the denial of the promotion.

The officer then appealed the Commission's decision. The case

eventually came before the Texas Supreme Court which held that the officer's private, adulterous sexual conduct, was not protected by the Federal or Texas Constitutions. The United States Supreme Court denied the appeal.<sup>17</sup>

### **Departmental Prerogative to Investigate**

The cases discussed thus far have all involved intimate associations that actually existed. The next case examines the extent of potential liability if the alleged intimate association being investigated is found not to have occurred. In that regard, the U.S. Court of Appeals for the Sixth Circuit held that a clearly established constitutional right was not violated when a police department conducted an investigation into the marital sexual relations of a police officer accused of sexual harassment.

In *Hughes v. City of North Olmsted*,<sup>18</sup> a police officer and his wife brought a Section 1983 action against the City and various police officers alleging that an investigation violated their constitutional rights to privacy and freedom of association. The department had conducted an internal affairs investigation as a result of the following allegations: 1) that the officer had sexually harassed coworkers; 2) that he had dated a gang member's mother; and 3) that he had bragged to women while on duty that he maintained an open marriage and a "swinging" lifestyle. During the investigation the officer was interviewed and informed of his departmental rights. The officer denied all the allegations and

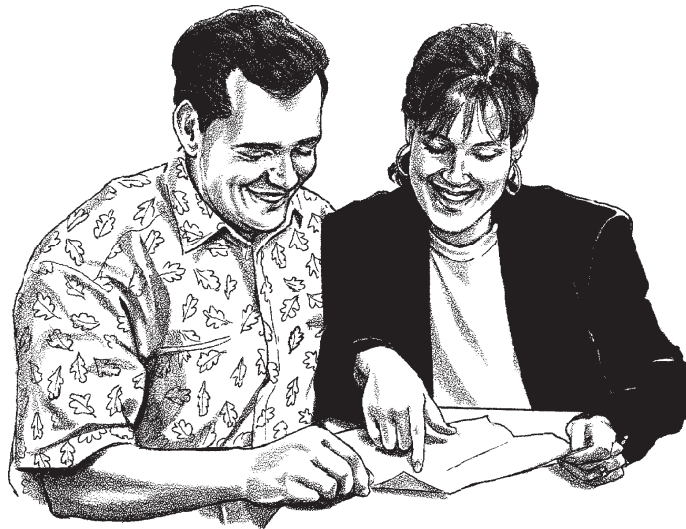
gave permission for his spouse to be interviewed concerning the allegations.

Based on the investigation, the department concluded that the allegations of sexual harassment and improper conduct were unsubstantiated. Thus, the department's files concerning the investigation were destroyed. Defendants moved for summary judgment and the district court granted summary judgment to the City, but denied summary judgment to the individual defendants.

On appeal, the defendants argued that the district court erred in finding that they were not entitled to qualified immunity. They claimed that they were entitled to qualified immunity because they did not violate a clearly established constitutional right. The court advised that qualified immunity provides that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."<sup>19</sup> "Whether an official may prevail in his qualified immunity defense, depends upon the objective reasonableness of [his] conduct as measured by reference to clearly established law."<sup>20</sup>

The court found that the individual defendants should have been granted qualified immunity because

there was no evidence that the internal police investigation of the sexual harassment charges violated a clearly established constitutional



right. The court noted that the Supreme Court has not definitively answered the question of whether the Constitution prohibits a state or its actors from regulating private consensual sexual behavior of adults, even though constitutionally guaranteed rights of free association and privacy have been found in several provisions of the Constitution.<sup>21</sup>

The court concluded that the police department did not have a legitimate interest in the sexual activities of its officers unless the activities affected job performance. However, due to the accusations against the officer, the department's investigation was reasonable. The court noted that the department would have been derelict in its duties and possibly could have violated federal law had it ignored the

claims of sexual misconduct against the officer.<sup>22</sup> Under the circumstances, the questions posed by the department in its investigation

were justified because they concerned the sexual harassment allegations. Also, the conduct being investigated in this case had the potential to severely affect job performance. Additionally, the court advised that it did not condone the questioning of the officer's wife about the status of her marital relationship, but concluded that a reasonable person in the investigator's position would not have known that they were intruding on a privacy or associa-

tional right. Therefore, the Sixth Circuit reversed the district court's decision as to the individual defendants.

Police agencies are expected to investigate allegations of employee wrongdoing. In fact, in many instances they are required to do so. The First Amendment is not an impediment to conducting reasonable investigations into an officer's intimate affairs when managers reasonably believe the officer's relationship adversely affects departmental interests as discussed in the above case.

### Conclusion

Law enforcement organizations may have the constitutional authority to regulate an employee's off-duty associational activities including off-duty sexual conduct



when it involves a supervisory/subordinate relationship, and associations that impact adversely on employees' ability to do their job or otherwise materially impairs the effectiveness and efficiency of the police department. All personal decisions affecting associational freedom should be carefully tied to such demonstrably legitimate law enforcement interests. Other relevant factors in determining if a particular association can be constitutionally regulated are: 1) employee morale; 2) the need for personal loyalty between officers and/or supervisors; 3) officer integrity; 4) potential conflict of interest in operational matters; 5) the potential for favoritism in supervision and management; 6) the need to minimize corruptive

influences; and 7) the need for public trust. In view of the complexities of First Amendment law, it is recommended that a departmental legal advisor be consulted before any actions are taken that may implicate an employee's First Amendment rights. ♦


**Endnotes**

- <sup>1</sup> See Board of Dirs. V. Rotary Club, 481 U.S. 537 (1987) at 545.
- <sup>2</sup> See Board of Comm'rs, Wabaunsee Cty. v. Umbehr, 116 S. Ct. at 2348 (citing Waters, 511 U.S. at 675).
- <sup>3</sup> 12 F.3d 1558 (11th Cir. 1994).
- <sup>4</sup> Id. at 1560.
- <sup>5</sup> Id. at 1567.
- <sup>6</sup> Id. at 1572.
- <sup>7</sup> Id.
- <sup>8</sup> 43 F.3d 609 (11th Cir. 1995).
- <sup>9</sup> Id. at 615.
- <sup>10</sup> Ibid.

- <sup>11</sup> Id. at 617.
- <sup>12</sup> 563 F.Supp. 585 (W.D. Mich. 1983), *aff'd*, 746 F.2d 1475 (6th Cir. 1984)
- <sup>13</sup> 875 F.Supp. 1465 (D. Utah 1995).
- <sup>14</sup> 928 S.W. 2d 464 (Sup. Ct. Texas), *cert denied*, 17 S. Ct. 1098 (1997).
- <sup>15</sup> Id. at 465.
- <sup>16</sup> Ibid.
- <sup>17</sup> *Henery v. City of Sherman*, 117 S. Ct. 1098 (1997).
- <sup>18</sup> 93 F.3d 238 (6th Cir. 1996).
- <sup>19</sup> Id. at 240.
- <sup>20</sup> Id. at 239.
- <sup>21</sup> Id. at 241-42.
- <sup>22</sup> Id. (citing *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 72-73 (1986)).

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

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# The Bulletin Notes

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



Deputy Cook

While off duty, Deputy Timothy F. Cook of the Warren County, Iowa, Sheriff's Office observed two vehicles collide head-on and burst into flames. Deputy Cook immediately sent his passenger in his car for help and ran to the vehicles. He observed that the driver and only occupant of one car was dead. However, three occupants of the other car were trapped. With

assistance from others who stopped, Deputy Cook pulled two of the occupants to safety before the flames made it impossible to rescue the third. Deputy Cook displayed the highest degree of law enforcement professionalism in placing himself in danger to save the lives of two individuals.



Officer Lathan

Officer Scott B. Lathan of the North Bend, Oregon, Police Department responded to a report of a man clinging to his canoe in the cold water of Coos Bay. The North Bend Fire and Rescue and the U. S. Coast Guard were in the process of responding. Accompanied by an Explorer Scout, Officer Lathan arrived at the location and discovered that the 45-year-old

victim had become separated from the canoe and was in imminent danger of drowning. Officer Lathan immediately dove into the water and pulled the man to shore. The Explorer Scout administered first aid for exposure. Officer Lathan's quick response and disregard for his own safety led to the successful rescue of the man.



Officer Smith

While off duty at his residence, Officer John Smith of the Camden, Tennessee, Police Department heard gunshots nearby. While his wife called for police assistance, Officer Smith obtained his service weapon and ran outside. He observed a fellow officer

lying on the ground at the rear of his patrol vehicle. The severely wounded officer informed Officer Smith that the suspect he had stopped had obtained his service weapon. At that moment, Officer Smith looked up and saw a male pointing a handgun at him through the rear window of a pickup truck parked in front of the wounded officer's patrol car. Officer Smith opened fire and the suspect sped away. Officer Smith obtained the truck's license information from the wounded officer and radioed it to the dispatcher. Officer Smith then administered first aid to the wounded officer until rescue personnel arrived. Without Officer Smith's courageous, prompt intervention, his fellow officer would not have survived the attack.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.