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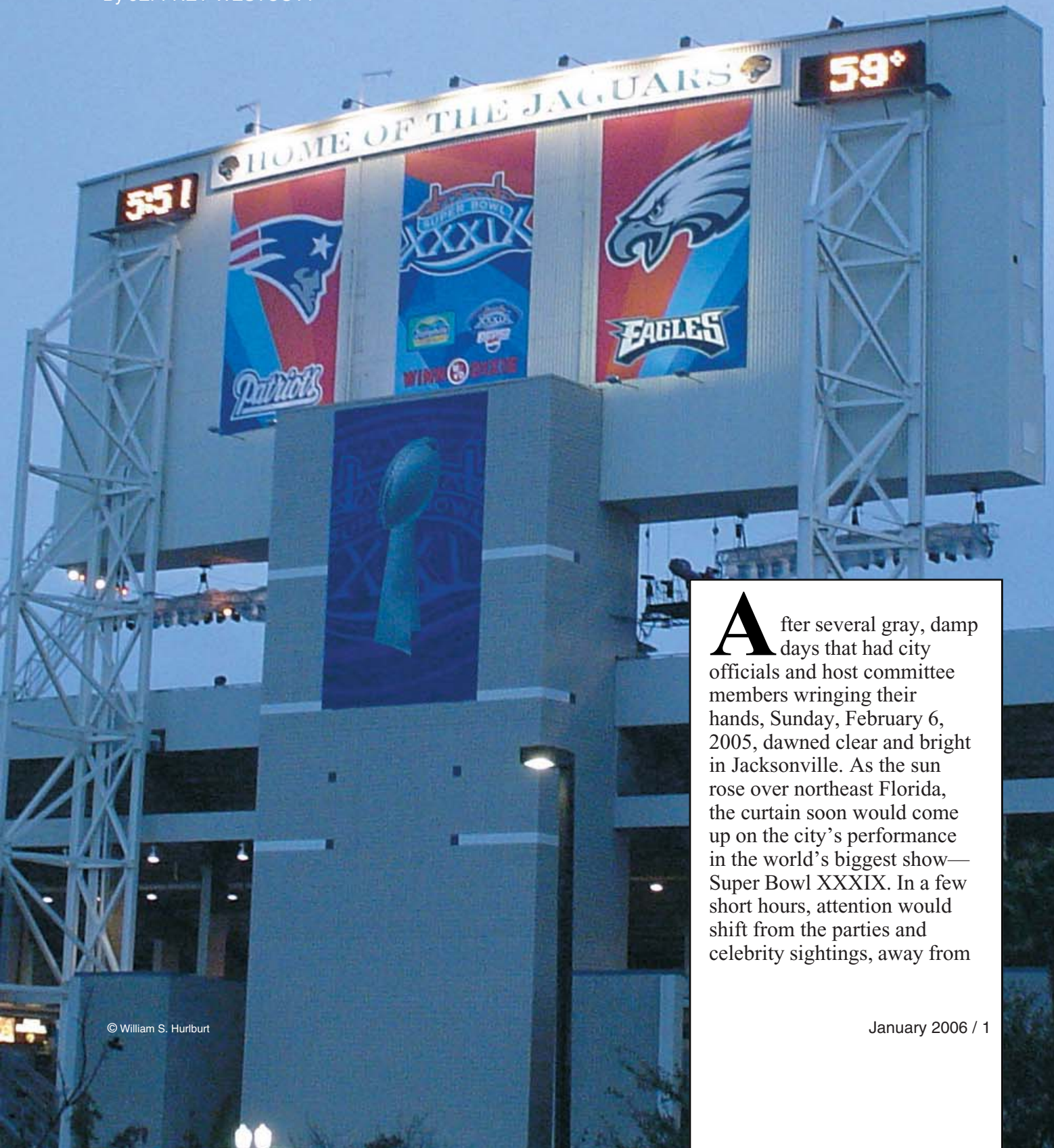
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Super Bowl XXXIX

The Successful Response of the FBI and Its Partners

By JEFFREY WESTCOTT



After several gray, damp days that had city officials and host committee members wringing their hands, Sunday, February 6, 2005, dawned clear and bright in Jacksonville. As the sun rose over northeast Florida, the curtain soon would come up on the city's performance in the world's biggest show—Super Bowl XXXIX. In a few short hours, attention would shift from the parties and celebrity sightings, away from

the lingering questions about whether Jacksonville had what it needed to host the event, and onto the game itself.

But, while the world waited for the kickoff, another equally important performance unfolded backstage. The players in this drama did not wear cleats and helmets; in fact, many of them had no unique uniforms. They included the hundreds of professionals from the FBI and more than 40 other law enforcement and public safety agencies charged with safeguarding the security of the game and the surrounding events. And, by the time the smoke from the final fireworks cleared and the last of the weary fans caught their flights out of town, the efforts of these behind-the-scenes heroes would prove a resounding success.

TEAMWORK

Building a Partnership

Representing the smallest FBI field office ever to face the responsibility for coordinating counterterrorism efforts related to such an event, agency personnel in Jacksonville knew a big job lay ahead. Fortunately, some personnel had gained pertinent knowledge. Having visited San Diego during the 2003 Super Bowl, agents from Jacksonville learned even more during their trip for the 2004 game in Houston; they went to the FBI's field office and the city's central command post, observing the joint law enforcement effort and learning from everyone they could. They left with some important ideas and also a grasp of the considerations presented by the different circumstances

in Jacksonville. Clearly, they faced a challenge and knew they had to do more with less; the FBI office in Houston devoted about 40 special agents to prepare for Super Bowl XXXVIII, more than the entire agent complement in Jacksonville.

Personnel began contacting counterparts at various FBI offices and other agencies to ensure coverage of all pertinent areas. For instance, they coordinated maritime and airspace security with the appropriate organizations, helped establish the intelligence and information teams that would be on the ground at the various Super Bowl-related venues, and worked with personnel at outside agencies and FBI Headquarters to handle other security issues. Of course, finding lodging for over 200 FBI personnel proved challenging as well.

Many agencies would become partners, including, of course, the Jacksonville Sheriff's Office (JSO). As the lead agency with the primary responsibility for overall event security, JSO was on task from the start. And, in the months leading up to the game, more than 150 attendees from dozens of agencies would crowd into the planning sessions at the Fraternal Order of Police's banquet hall to strategize, compare notes, and work out details.



Special Agent Westcott serves with the FBI's Jacksonville, Florida, office.

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...the success of Super Bowl XXXIX can be measured as much by what did not happen as by what did.

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Working Together

Because the FBI's mission would overlap those of numerous other organizations, establishing liaison with key players proved critical. As the special agent in charge (SAC) of the FBI's Jacksonville office stated, "Our mission was twofold. First and foremost, we had the responsibility to plan for—and prevent—potential acts of terrorism. Second, we had to take the lead in collecting, analyzing, and disseminating any intelligence involving potential threats to the security of the Super Bowl and the city of Jacksonville." These responsibilities would cut across FBI programs and functions and would involve SWAT teams, bomb technicians, maritime and aviation operations, and WMD specialists. To some extent, other agencies shared each of these functions and had concurrent jurisdiction. This presented no difficulties—the FBI and its partners worked together effectively.

One instance involved the cruise ships that the Super Bowl host committee had contracted to provide the minimum number of hotel rooms required by the NFL. These ships presented security challenges, including the need to conduct underwater hull searches for bombs and other hazards. Working together, the FBI and the U.S.



Coast Guard got divers from the Environmental Protection Agency in Miami—which routinely handles inspections of cruise ships and other international vessels—to handle the job with some help from JSO.

Aviation security represented another area highlighting interagency cooperation. A committee chaired by FBI and U.S. Customs and Border Protection (CBP) personnel decided to request a temporary flight restriction zone with an unprecedented 10-mile radius around the stadium (zones in previous Super Bowl cities extended only 7 miles). Better yet, after conferring with Transportation Security Administration officials in Washington, D.C., the FBI obtained a 20-mile-radius "positive control airspace" designation, which required pilots entering that zone to contact air traffic

control and identify themselves. The responsibility for implementing these restricted zones fell to the Federal Aviation Administration, and CBP handled the coordination of all federal law enforcement air assets.

Another key partner, the Florida Department of Law Enforcement (FDLE)—the state's primary investigative agency—already had a close working relationship with the Jacksonville FBI office through their combined efforts in counterterrorism. When it became clear that neither the city of Jacksonville nor the FBI had adequate space to house a multiagency command post, FDLE offered its downtown training center as a site. By the time Super Bowl week arrived, representatives from more than 30 agencies—everyone from surrounding sheriff's offices to



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firemen and Federal Emergency Management Agency (FEMA) personnel—had set up in the joint operations center (JOC) that FBI technicians had wired, secured, and equipped with high-tech telecommunications and computer gear.

Using lessons learned from past Super Bowls and working within the constraints imposed by both space and budget concerns, law enforcement personnel in Jacksonville developed a unique command structure. The city's downtown operations facility, renamed the event operations center (EOC) for the week, housed the heads of the primary public safety agencies—Jacksonville Fire and Rescue, JSO, the U.S. Coast Guard, and the FBI—and key operations personnel from a number of other city and state organizations. The lower level of the facility contained the

joint information center, where public information officers and media representatives from JSO, the FBI, and several other agencies fielded calls from the media, ensuring a unified, consistent message.

A mile to the north, at the FDLE site, the JOC served as the nerve center of the FBI's intelligence and counterterrorism mission. Out front sat "Big Blue," manned by a team from the FBI's Technical Response Unit. Big Blue served as a mobile facility affording the requisite security for the physical handling of classified documents, and it also provided a backup platform for satellite uplinks and secure communications in the event the systems in place suffered a massive failure.

Inside the JOC, agents, analysts, and supervisors from all major FBI components—

intelligence, investigations, legal, information technology, tactical, evidence, technical, administrative, and media—compared notes, staffed telephones, and worked closely with representatives from the more than 30 other agencies sharing the space. In one corner, a team from the National Geospatial-Intelligence Agency busied itself by generating and printing poster-sized photos and graphics of the various Super Bowl venues. The JOC had more than 150 telephone extensions, a multitude of computer workstations, and an electronic projection screen that showed an event board listing the status of any security-related incidents. Several wide-screen plasma televisions displayed local and national news channels and—on Sunday night—the game itself.

Next door to the JOC was the Intelligence Operations Center (IOC). Inside, analysts from joint terrorism task force agencies continued their work from the past months: collecting and analyzing intelligence and making appropriate dissemination decisions. By the time game day arrived, analysts had performed more than 30,000 background checks—including some 9,500 requested by the Super Bowl host committee—on volunteers, cruise ship crews, port workers, and taxi and limousine drivers. The

IOC analysts also processed dozens of real-time checks on data coming in from intelligence and information teams on the street, which comprised 120 officers from eight different agencies.

SUCCESS

The partnership's efforts proved a resounding success. As Jacksonville's SAC said, "The level of cooperation was incredible. Fortunately, we had no major incidents, but even if there had been, I am confident we had the proper infrastructure and lines of communication in place to address them."

Throughout the week, agency heads held daily meetings at the downtown EOC followed by press-availability sessions. Stories that received the most attention included a nearly tragic boating accident in which two JSO marine officers sustained serious injuries and the police pursuit of a stolen limousine that ended in a fiery crash.

Police easily handled the expected increase of incidents of disorderly conduct, pick-pocketing, and prostitution, and JSO detectives and U.S. Immigration and Customs Enforcement agents teamed up to make several arrests of individuals selling counterfeit tickets and souvenirs. The Florida Highway Patrol played a crucial role in assuring safe

passage on area highways and over the many bridges of this "river city."

Bomb technicians from the FBI, ATF, and several other agencies responded to calls concerning suspicious packages, and when a student pilot strayed into restricted airspace on Sunday morning, CBP pilots quickly escorted him out of the area and forced the student to

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Overall, law enforcement's coordinated response to this event showed what such a cooperative effort can accomplish.

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land before questioning and releasing him. SWAT, HAZMAT, and evidence response teams were able to focus the bulk of their time on training opportunities, and crisis negotiators had little to discuss except the relative strengths of the Eagles and Patriots.

The more than 3,000 members of the media did not have much to report pertaining to security and public safety, despite the thorough coverage.

Crews from the national networks fanned out across the city, capturing images of everything from U.S. Coast Guard patrol boats to bomb-sniffing dogs. Reporters from the national media shot footage at the EOC during halftime of the game and interviewed law enforcement personnel as part of a tour of the JOC.

The reports were almost uniformly positive, and they served to showcase the combined efforts of all agencies involved. As Jacksonville's sheriff told reporters, "This was the Pro Bowl of law enforcement."

CONCLUSION

Overall, law enforcement's coordinated response to this event showed what such a cooperative effort can accomplish. Fortunately, not many people—except a few cynical sportswriters—had much to comment on but the area's hospitality, golf courses, beaches, and natural beauty.

And, the combined response to the few minor incidents that did surface further proved the success of the plan. As is always the case in the behind-the-scenes world of intelligence and counterterrorism, the success of Super Bowl XXXIX can be measured as much by what did not happen as by what did. ♦



Community Oriented Public Safety The Long Beach Experience

By Cynthia Renaud, M.A., and Anthony Batts, Ph.D.

As policing continues into the 21st century, agencies worldwide plot uncharted courses in their search to provide the enduring core services expected of police organizations: reducing and preventing crime in communities. In this regard, most departments now know the community oriented public safety (COPS) philosophy, a concept that evolved out of the order maintenance theory of the 1980s and community policing concepts of the 1990s.¹ It relies upon partnerships and communication between officers and citizens. However, agencies in large urban areas—where, perhaps, the police force can number 1,500 and the citizens 500,000—find these relationships difficult to cultivate. This problem compounds itself when the city has a high level of police activity that keeps its officers in response mode. Patrol officers in such areas continually address calls for service and detectives handle exorbitantly high case loads.

The city of Long Beach, California, serves as an example. But, in spite of the obstacles, its police department, in a quest to better customer service, reduce crime, and improve quality of life, has been successfully integrating the COPS philosophy at all levels of the organization. COPS provides a way for the Long Beach Police Department to maximize resources through partnerships with community residents and other stakeholders to

provide long-term problem solving, sustain neighborhoods, and reduce crime.

CHANGE

A recent survey of Long Beach residents identified what they thought about their police department, how safe they felt in their communities, and what issues they considered most important. The top six problems, in rank order, were 1) unkempt neighborhoods, 2) drugs, 3) graffiti, 4) gangs, 5) shootings, and 6) prostitution.² This ranking illustrates the importance of quality-of-life issues among communities. Further, it delineates the two concepts of *being* and *feeling* safe. Consistent with the broken windows theory,³ citizens reported that an unkempt neighborhood with graffiti, trash strewn throughout the streets, and residents who do not take pride in their homes results in a feeling that illicit activity is afoot. Officers who can galvanize those citizens into action and help them form a community where they police their own quality-of-life issues have a measurable effect on the neighborhood and its crime rate.

Even though for years the Long Beach Police Department has focused efforts on community policing, these usually involved only a team of officers per patrol division who networked with neighborhood stakeholders and formed important relationships with citizens. As the agency



continues to embrace the COPS philosophy, a main focus is institutionalizing its practices at all levels of the organization, as well as the city of Long Beach and the city prosecutor's office. By doing so, the department will reap the most benefits possible from line-level ownership of issues and collaborative problem solving among officers, civilian employees, other city departments, the city prosecutor's office, citizens, and businesses. The agency is accomplishing its move toward departmentwide COPS practices through structural changes, training courses with all employees, and a redirection of command staff focus to support efforts at the line level.

Structural Revisions

While any organization finds structural changes painful, the Long Beach Police Department has benefitted from its recent modifications. For instance, in recognizing the importance of attacking specific community problems in a multiprong approach, the city transferred its nuisance abatement officer from a position in city hall to one within the patrol bureau of the police department. Bringing this position into the agency's chain of command affords a quicker response to issues and a better ability to share information with street officers. Another move has

involved decentralizing crime analysts from a main office downtown. Now, they work directly out of police divisions, helping officers review crime trends in their assigned areas and examine best practices for impacting those areas.

In addition, the Long Beach code enforcement and city prosecutor's offices have undergone organizational restructuring designed to emulate the four geographic police patrol divisions. A team of code enforcement personnel, including code enforcement inspectors and health inspectors, is assigned to each respective patrol division. The city prosecutor's office also has dedicated a deputy city prosecutor to each division. Now, problems, such as absentee landlords, vandalism, and drug sales, are addressed through a team approach.

To address one of the main concerns for Long Beach citizens—graffiti—the department's Gang Enforcement Section has dedicated two detectives to investigate these crimes. And, the agency has recently purchased computer software to track graffiti throughout the city. This software will provide a better, more efficient way to establish a comprehensive criminal case against vandals engaged in this activity. Further, it will provide the city prosecutor, or district attorney in more serious cases, with the evidence necessary to secure a conviction in these incidents of vandalism.

Training Courses

The training courses, conducted with all department personnel, not only have involved an explanation of the COPS philosophy but have devoted much time to working with specific tools for problem solving (e.g., crime prevention through environmental design (CPTED)) and introducing resources available to officers through other city departments and community groups (e.g., agencies with which to coordinate in addressing various quality-of-life issues). Line-level decision making is encouraged and officers are empowered to identify not only problems in their assigned areas but solutions as well.

During training, officers meet and interact with certain key stakeholders in their areas. In this way, communication is fostered and supported between police and the community. Also, officers go out into the field to see problem locations firsthand and work together to find and implement possible resolutions.

Command Staff Focus

The department continues to refocus its command staff to be more in alignment with COPS philosophies. Commanders are encouraged to facilitate and support interdepartmental communication and cooperation. They, too, work with their assigned crime analyst to understand crime trends and hot-spot areas. And, they meet with citizens to establish an open rapport. What administrators pay attention to, so will the troops. At the senior executive level, deputy chiefs will structure questions at crime statistics meetings so those answering must display knowledge of rising issues and the long-term problem-solving techniques needed to deal with them.

SUCCESS

The Long Beach Police Department has experienced success while using the COPS philosophy. One good example entails an issue with the Halbrite Bridge, which offers a pedestrian connection between Long Beach and a bordering city. Technically, it is governed by three jurisdictions and involves two different school districts, as children from Long Beach cross the bridge to attend classes in another district. Unfortunately, criminals also used it as a thoroughfare between the bordering city and Long Beach. Auto burglaries, graffiti, and noise disturbances represented problems associated with this bridge. Residents of Long Beach wanted it removed.

Patrol officers recognized this problem and took personal ownership of it. They coordinated with bordering municipalities, school districts, and community members. Destruction of the bridge proved a costly solution. Then, officers

implemented the CPTED concept. Metal gates were constructed at both ends to block access during certain times of the day and all hours of the night to prevent pedestrian traffic. Residents and school staff agreed to be responsible for the opening and closing of the bridge gates. The communities and schools at both ends are pleased with the results—the crimes and disturbances have substantially decreased.

CONCLUSION

Law enforcement agencies continue to strive toward excellence in their attempt to provide safe, orderly environments for the citizens they serve. In doing so, departments have begun to recognize the importance of involving community stakeholders in this process.

The community oriented public safety concept has given the Long Beach Police Department a means to provide improved service to its 500,000 residents. The diverse and multifaceted customer base it serves needs to be part of the process that brings this agency's policing into the 21st century. Creating partnerships between police, other city departments, and citizens is the beginning of the move toward community oriented governance and shared ownership of issues by all those involved in the process. The result can only be a better, safer community in which to live, work, and play. ♦

Endnotes

¹ For additional information, see David Allender, "Community Policing: Exploring the Philosophy," *FBI Law Enforcement Bulletin*, March 2004, 18-22.

² Brenda Vogel, Allan Abrahamse, and Gregory Robinson, "Long Beach Voices" (January 2004).

³ For additional information, see James Q. Wilson and George L. Kelling, "The Police and Neighborhood Safety: Broken Windows," *Atlantic Monthly* 249 (March 1982): 29-38.

The authors gratefully acknowledge the help of Sergeant Paul Gallo, Long Beach, California, Police Department, in the preparation of this article.

Lieutenant Renaud is the director of the Long Beach, California, Police Academy.

Dr. Batts is chief of the Long Beach, California, Police Department.

Joel Patrick Courtney



Various mug shots of Joel Courtney. The one on the left is from 1985 when Courtney pleaded guilty to sexual abuse in Washington County. The one in the middle is 6 years later when Courtney was picked up again in Washington County. The one on the right is from Courtney's arrest in New Mexico on kidnapping and rape charges in November of 2004.

ViCAP Alert

attempted to rape a 22-year-old college student described as a white female, 5 feet 3 inches, 115 pounds, with blonde hair and blue eyes. He forced the victim into his vehicle (a red Honda Civic) at knifepoint around 6:00 p.m. while she was walking down the street. He tied her up with her shoelaces, drove to a parking lot, and sexually assaulted her. He is currently incarcerated, awaiting trial on these charges.

Joel Patrick Courtney currently is incarcerated in Albuquerque, New Mexico. The FBI's Violent Criminal Apprehension Program (ViCAP) Unit and the Corvallis, Oregon, Police Department are seeking information from all homicide, sex offender, and cold case units on cases in which Joel Patrick Courtney may be involved.

Courtney is a white male with a DOB of 6/02/1966. He has a goatee, wears two earrings in each ear, and is the suspect in the abduction and possible homicide of Brook Carol Wilberger of Corvallis, Oregon. She was abducted while working outside of an apartment complex on the morning of 5/24/2004 between 10:30 and 11:00. She was a 19-year-old college student, 5 feet 4 inches tall, 119 pounds, with blonde hair and blue eyes. She is presumed dead.

The FBI is conducting an extensive investigation on Joel Courtney. It is believed that he is a serial sex offender and killer. The FBI has identified three additional victims that Courtney may have sexually assaulted and killed within Oregon. He is inclined to abduct white females, 15 to 25 years of age, with blonde hair and blue eyes, in an outside setting.

On 11/30/2004, Courtney was arrested in Albuquerque, New Mexico, after he abducted and

Although Courtney grew up in the Portland, Oregon, area, he has moved extensively during his adult life. There is a high possibility that he has assaulted other victims in the following areas: Albuquerque, New Mexico (7/1994-8/1994, 8/1997, and 11/2000); Anchorage, Alaska (1989-1992); Beaverton, Oregon (1986-1992); Bernalillo, New Mexico (5/1995-8/1997); Cape Canaveral, Florida (5/2001-3/2003); Cocoa Beach, Florida (5/2001-9/2002); Grants, New Mexico (9/1995); Pensacola, Florida (5/2001); Portland, Oregon (1980-1989, 1993, and 2004); and Rio Rancho, New Mexico (6/1996-2004). In addition, he is known to have traveled to Mexico via Arizona.

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all homicide, sex offender, and cold case units regarding cases in which Joel Patrick Courtney may be involved. Anyone having cases similar to the described modus operandi with the suspect's DNA evidence should contact Crime Analyst Vicki McRoberts, Corvallis, Oregon, Police Department at 541-766-6989 or Crime Analyst Ken Whitla of the ViCAP Unit at 703-632-4254. The Corvallis Police Department maintains a DNA profile for the suspect. ♦

International Special Events

By JAMES A. MCGEE, M.S.

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The Summer Olympic Games ceremoniously concluded on August 29, 2004, in the heart of Athens, Greece. The culmination of the event was celebrated as testimony to peace and world unity. In retrospect, what factors were employed to ensure a safe and secure athletic contest? This question requires a close examination of the measures taken to address an international special event.¹ It also reveals the necessity to begin security preparations early, well before the occurrence, allowing adequate time to address potential

training requirements, exercise emergency response capabilities, and implement appropriate corrective actions. Multiagency and multinational cooperation, coordination, and communication are critically important pieces of the security equation.

The environment for terrorism changed dramatically throughout the world after Greece was awarded the 2004 Summer Olympic Games in 1997. In fact, the tragic events of September 11, 2001, redefined the role and responsibilities of the U.S. government (USG) when addressing special

events in foreign countries, and the threat of terrorist attacks against U.S. citizens and interests escalated. The risk of deadly aggression during special events increased as the capability of mass media improved, allowing live broadcasts on a worldwide scale. Further, an elevated tendency for terrorist groups to resort to acts of violence and the continued proliferation and accessibility of weapons of mass destruction (WMD) contributed to the threat as well.

Terrorist attacks extended geographically during the

months leading up to the opening ceremonies for the 2004 Summer Olympic Games. The escalation of tension due to the war in Iraq and the bombings in Istanbul, Turkey, and Madrid, Spain, raised concerns in Athens. Under the direction of the U.S. Department of State (DOS), unprecedented security measures were employed to prevent a terrorist attack against the Olympic Games.

Historically, the FBI fulfills a fundamental role during USG involvement with special events management, including all of those potentially requiring federal assistance. The FBI's function in special events is defined within numerous statutes and presidential directives. These authorities, combined with the FBI's responsibilities in combating terrorism, provide the predication for FBI commitment.

The Olympic Games represent the clearest example of a special event given the international participation and broad-based viewing audience. Such a scene provides the perfect stage for a terrorist seeking global recognition and a platform to voice political demands. A less obvious example of a special event includes the trial of Timothy McVey, accused and convicted of the April 19, 1995, bombing of the Alfred P. Murrah federal building in Oklahoma City, Oklahoma. Such a setting also represents

an active target for terrorist attack by individuals sympathetic to antigovernment ideologies who seek an opportunity for mass media recognition.

DOMESTIC SPECIAL EVENTS

FBI involvement in special events is generally within the continental United States (CONUS). Given the complexities associated with security preparations and logistics, it is important to understand the protocols in place that provide direction when addressing a domestic special event before examining the enhanced challenges associated with addressing international ones.

Each special event is evaluated in terms of size, threat, significance, duration, location, attendance, media coverage, dignitaries, and viewing

audience. The FBI assigns a special event readiness level (SERL) to those that require counterterrorism (CT) support. The SERLs are divided into four categories. SERL I events require the full support of the USG and significant predeployment of USG CT response assets. The Olympic Games fall within this category. Until the 2004 Olympics in Athens, this designation applied to Olympic Games occurring only within the United States. The 2004 Summer Olympics demonstrated the need to expand this designation to international special events.

SERL II events are of lesser magnitude but still require augmentation of CT response assets. Political conventions, presidential inaugurations, and economic summits fit within this category.

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Each special event is evaluated in terms of size, threat, significance, duration, location, attendance, media coverage, dignitaries, and viewing audience.
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Special Agent McGee serves in the FBI's Jackson, Mississippi, office.

SERL III and IV events require minimal USG agency support and, frequently, receive adequate support by state and local resources. Most special events fall within one of these two categories. Examples include Super Bowls, high-profile trials, the Indianapolis 500, the Goodwill Games, and World Trade Organization conferences.

Presidential Decision Directives (PDD) 39 and 62 designate the FBI as the lead federal agency for crisis management and intelligence related to terrorism during domestic special events. Additional authorities are delegated to the Federal Emergency Management Agency (FEMA) regarding consequence management (the first response to a terrorist incident and the follow-on efforts to preserve life) and coordination. The U.S. Secret Service is designated the lead agency for security design, planning, and implementation.

PDD 62 further defines and establishes a special event category of national special security events (NSSE), which require enhanced federal planning and protection. The FBI generally categorizes NSSEs as SERL I or II. Further, PDD 62 promotes interagency cooperation and coordination in CT planning and execution by delegating a shared lead federal agency designation among the

FBI, FEMA, and the U.S. Secret Service. This assignment reduces interagency confusion regarding who is in charge and promotes communication between the agencies.

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The Olympic Games historically have been an attractive target for terrorist attack.

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INTERNATIONAL SPECIAL EVENTS

DOS is the designated lead U.S. foreign affairs agency. The Bureau of Diplomatic Security (DSS) within DOS conducts protective security overseas. DSS security responsibilities closely mirror the role of the U.S. Secret Service in the domestic arena.

The CIA is the designated lead USG agency for collection and dissemination of intelligence in the foreign environment. Similar to the role of the FBI when addressing a domestic special event, the CIA coordinates with various other intelligence agencies, as well as the FBI.

During international special events, the U.S. Department of Defense (DOD) fulfills the role normally occupied by FEMA in domestic ones. In addition to consequence management, DOD provides crisis response capabilities. This differs from the domestic environment where DOD participation is limited to areas of safety and security. The statutory restriction referred to as *posse comitatus* prevents DOD from performing law enforcement CT actions inside the United States. Within CONUS, federal law enforcement CT response is the jurisdiction of the FBI. Within the foreign environment, the FBI has responsibility for postcrisis terrorism investigations. This authority extends to include the FBI's role in terrorism prevention and precrisis terrorism investigations that possibly could dismantle a plot focused on a foreign special event. It also consists of the FBI's extensive CT, crisis management and response, and intelligence capabilities.

2004 SUMMER OLYMPIC GAMES

For centuries, the city of Athens has been the crossroad between Europe and the Middle East. Greece traditionally embraces aspects of European and Middle Eastern cultures that, in many instances, find their origins in ancient Greece.

FBI Capabilities

FBI Laboratory Division provides technical and scientific response and forensic support to investigations involving hazardous materials, including WMD. In addition, it offers the capability to disrupt explosive devices and perform forensic examination of explosives in postblast situations. The Laboratory Division also renders expertise in processing crime scenes.

Engineering Research Facility (ERF) supplies technical support for secure and nonsecure communications, computer hardware and software, and feasibility assessments for proposed command post sites.

Critical Incident Response Group (CIRG) provides subject-matter expertise in CT tactics, crisis management, hostage negotiation, logistics, and behavioral analysis.

FBI Headquarters offers language specialists, intelligence analysis, and activation of the Strategic Information and Operations Center (SIOC) in support of the special event.

FBI Cyber Division evaluates emerging cyberthreats and performs forensic examination of digital evidence.

FBI Counterterrorism Division provides financial and administrative support.

Renowned as the birthplace of democracy and philosophical academia, Greece is home to a proud people well aware of their role in the development of Western civilization and world history.

The Olympic Games historically have been an attractive target for terrorist attack. This is best exemplified by the infamous hostage crisis during the 1974 Summer Olympics in Munich, Germany, and the Centennial Park bombing during the 1996 Summer Olympics in Atlanta, Georgia. In the shadow of the ancient Acropolis, unprecedented security efforts were employed to ensure a safe and secure Olympic

Games. FBI preparations were coordinated with the USG interagency community, as well as Greek authorities. Ultimately, the FBI established a fully operational command post adjacent to the U.S. embassy in Athens and prestaged crisis response assets at three strategic locations prepared to deploy, with the consent of Greek authorities, in the event of a terrorist act.

In the wake of September 11, 2001, and the war in Iraq, the 2004 Summer Olympics demonstrated the necessity for a coordinated USG approach to Olympic security. This coordination extended beyond the participating USG agencies and

included representatives from the international community, security professionals from corporate sponsors, and, most important, authorities from the host country, in this case Greece.

The broad-based USG security umbrella extends beyond the traditional concerns of physical security and protective services associated with venue site security, transportation, and credentials. Security concerns also include collection, analysis, and dissemination of intelligence and proactive investigations concerning credible and specific information relevant to the upcoming event. During the Athens

Olympics, the FBI routinely reviewed volumes of information looking for any link or indication that the Olympic Games were mentioned as a target for terrorist attack. An FBI-generated intelligence report, including information potentially relevant to the Olympic Games, was disseminated within the USG intelligence community on a quarterly basis, escalating to monthly, then weekly, and, finally, daily during the event.

Operating in a foreign environment requires host nation authorization, which extends to the number of anticipated USG personnel present during the event. This covers accreditation, diplomatic immunity, and appropriate legislation that allow USG representatives to function in the host nation.

Concept of Operations

The development of a concise concept of operations (CONOP) is critical in the early stages of planning for a special event. The CONOP must clearly articulate a mission statement consistent with the situation, appropriate response authorities (approved by the host nation), and individual agency jurisdictions and capabilities. It should identify available assets and their capabilities, as well as an execution time line and scheme of operations, highlighting all critical junctions leading up to

and through the special event. An assessment of host nation CT capabilities is mandatory, includes varied stages of preparation, and should be conducted several years prior to the special event.

Training Phase

Training represents the first initiative in assessing host country CT capabilities. Specialized training, using subject matter experts with real-world

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Agencies must consider these sensitivities when developing exercise scenarios.

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experience, proves invaluable. Training can be conducted in the host country or the United States. In-country training results in more personnel available to attend the seminars, but, on the other hand, training within the United States provides host country representatives the opportunity to visit and use state-of-the-art USG facilities. In addition, host country representatives may be eligible to attend one of the three International Law Enforcement

Academies (ILEA) located in Budapest, Hungary; Bangkok, Thailand; and Gaborone, Botswana. Each ILEA provides a variety of law enforcement training to the international community.

None of these training options will adequately reach all of the personnel who require instruction. The train-the-trainer concept is encouraged so host country representatives can return and extend the training to personnel within their individual agencies. The FBI provides a wide array of training in various law enforcement disciplines. Ranging from computer crimes to terrorism crime scene investigations, FBI subject-matter experts assist with training relevant to special event preparedness. The training phase should end approximately 1 year prior to the beginning of the event, which allows emphasis on exercises, the second phase of special event preparedness.

Exercise Phase

Exercises constitute a critical mechanism for testing capabilities and can be conducted in a variety of formats, which assist with focusing on specific areas of preparedness and response. In the foreign environment, diplomacy is needed to develop the coordination necessary to conduct multiagency and multinational

exercises. Sensitivities exist between agencies and even more so between nations when potential inadequacies or limited capabilities may be exposed. Agencies must consider these sensitivities when developing exercise scenarios. Ultimately, the host nation will decide exercise parameters and participants.

The table top exercise (TTX) allows interagency decision makers to meet in one location and openly discuss the variables and options available in response to numerous scenarios. Many times, the TTX may be the first time multi-agency executives meet to discuss a coordinated response to a crisis, and it is an excellent preliminary exercise, allowing decision makers the opportunity to test individual agency standard operating procedures and memoranda of understanding (MOUs) between each other prior to the actual event.

The command post exercise (CPX) tests command and control and can be expanded to evaluate all aspects of command, control, communication, coordination, and information and intelligence flow and dissemination (C4I). The ideal setting for the CPX is inside the event's designated location for the multiagency command post. The FBI refers to this location as the joint operations center (JOC), and it includes

representatives from each affected agency participating in the special event. The JOC includes multiagency decision makers assigned to a command group and prepared to make coordinated critical decisions.

The large-scale field training exercise (FTX) validates all aspects of crisis response and consequence and crisis management. It requires a significant commitment by participating agencies to adequately test



relevant capabilities. Scenarios closely portray an actual crisis, and all elements of crisis response are activated and tested. First responders are dispatched to the incident, and medical facilities exercise mass casualty contingencies. Expertise in handling a hazardous material incident, an explosive device, and a WMD are tested and evaluated. Appropriate personnel staff command posts, and lessons learned from previous TTXs and CPXs assist decision

makers while they evaluate the circumstances associated with the FTX scenarios.

The need to conduct a dress rehearsal proves fundamental to special event preparations. A smaller event that occurs prior to the special event should be identified. In this case, each agency will implement the same security preparations planned for the upcoming major special event. Command posts will be staffed and response assets prestaged in the same configuration anticipated during the major event, which will allow fine-tuning of protocols internally and between agencies. Radio communications, emergency response routes, and associated logistics can be finalized in preparation for the larger event. If a lesser event is not available, an FTX will provide the adequate setting. The dress rehearsal serves as a final opportunity to precisely adjust CT capabilities prior to the special event.

Although training and exercises provide valuable insights regarding host nation CT capabilities, agencies must ensure that the host nation is not overly saturated with them. During large multinational events, the host nation will be inundated with training and exercise options from various participating countries. The organization of a multinational working group can assist in

FBI Mission Statement—2004 Summer Olympic Games

Under the direction of the FBI on-scene commander (OSC) and in direct coordination with the U.S. ambassador to Greece, the FBI will perform crisis response and management in the event of an act of terrorism. FBI participation will be incumbent upon appropriately established legal authority, procedures, and coordination between the U.S. government (USG) and the government of Greece (GOG). In the event of an act of terrorism that impacts on the lives of U.S. citizens and U.S. interests, the FBI will assume jurisdictional lead agency responsibility for crisis response and management concurrent and in coordination with the GOG. The FBI OSC, upon notification of a terrorist incident in which the USG has been requested to assist, will assume oversight of crisis management and investigative responsibilities, determine a strategy for crisis mitigation, and marshal the appropriate FBI resources as directed by the nature and circumstances of the terrorist incident.

developing a compendium of proposed training and exercise options for the host country. Exercises should conclude at least 6 months prior to the beginning of the special event. After the completion of all training and exercises, the original vulnerability and threat assessments should be updated and reflect improved CT capabilities by the host country.

Operational Phase

The operational phase is the final step prior to the actual event. Success during this phase depends largely upon solid relationships developed during the training and exercise phases between USG subject-matter experts and their host country counterparts. A secure partnership based upon mutual trust with the host nation and a combined objective to achieve

a safe and secure special event proves paramount. Such a partnership is best represented by embedding USG subject-matter experts with their counterparts from the host nation during the special event time frame. From a U.S. perspective, this configuration of USG CT assets provides first-response capability to a crisis situation, promotes a timely assessment of the incident, and delivers CT capabilities of the USG, if requested. On the other hand, from the host country's perspective, this embedded capability enhances on-scene expertise and brings to bear potential equipment previously unavailable. Such an embedded arrangement is solely dependent upon the permission of the host country.

Deployment of FBI resources to an overseas environment is an enormous task

requiring significant logistical support. Securing airlift capabilities, in-country transportation, adequate lodging, communication frequencies, command post locations, staging areas, and country clearance for all incoming personnel requires a minimum of 3 years of pre-planning before the special event. The FBI is well suited for this mission based upon frequent international deployments in support of criminal and terrorism investigations. FBI resources available for deployment provide diverse capabilities with extensive experience in the foreign environment. The FBI's Laboratory, Engineering Research Facility (ERF), Critical Incident Response Group (CIRG), Headquarters (FBIHQ), Cyber Division, and various field offices contribute to the resource requests.

FBI field offices furnish rapid deployment team (RDT) assets to international special events. The RDTs are pre-designated, stand-alone, mobile field offices capable of deploying to any location. Once in place, the RDT can provide adequate resources to augment an ongoing investigation. During the 2004 Summer Olympics in Athens, the RDT in Los Angeles deployed to Greece, the first such deployment in a precrisis mode and in support of an international special event.

During the operational phase, the CONOP evolves into a concise operations order (OPORD). Individual agency orders should be compiled into an overall USG response plan. Each agency's OPOORD consists of a statement describing the situation and mission and an execution time line highlighting all personnel movements, opening and closing ceremonies, and any other noteworthy occurrences during the special event. The OPOORD also describes the administrative and logistical support pertinent to the deployment, including detailed information regarding initial mobilization of assets, staging elements, response, and disengagement. Additionally, the OPOORD provides a meticulous description of command, control, and communication contingencies.

The OPOORD is supported by multiple annexes to include relevant MOUs and a post-investigation team plan that is activated in the event of a crisis to establish a forward command post at the crisis site.

The FBI command post generates daily situation reports. Versions are available for dissemination to other USG agencies, as well as corporate security directors. Any release of data to the host nation or other international partners falls under the purview of the CIA.

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Special event preparedness tests all aspects of counterterrorism readiness.

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After-Action Report

Following the culmination of the special event, each involved internal FBI entity provides an after-action report (AAR), a critical review of the special event's planning and execution strategies. The AAR acknowledges tactics that worked and identifies procedures to be corrected or changed for future special events. All

USG agencies with roles and responsibilities in the special event complete an AAR as well.

No amount of special event preparedness can anticipate every potential CT contingency. Ultimately, something will happen that tests the security of the event. Fortunately, in Athens, the most serious disruption involved the men's marathon when a spectator physically accosted one of the race participants. These glitches in security are inevitable, but the lessons learned are an important part of the final AAR.

CONCLUSION

Special event preparedness tests all aspects of counterterrorism readiness. The ability to identify, recognize, and correct these vulnerabilities while preparing for a special event is of immeasurable long-term value. The complications increase exponentially when addressing an international special event—both domestic and international ones have unique requirements and vulnerabilities. Host nation capabilities, combined with international relations and diplomacy, are critical when assessing USG involvement. During the 2004 Summer Olympic Games in Athens, Greece, the USG inter-agency partnership, international community, Greek government, and Hellenic society came together and embraced the

Crime Mapping: New Tools for Law Enforcement, Irvin B. Vann and G. David Garson, Peter Lang Publishing Company, New York, New York, 2003.

Geographic information systems (GIS), commonly referred to as crime mapping, are becoming indispensable crime-control tools for law enforcement executives. With the advent of inexpensive desktop computers and user-friendly mapping software, employing crime maps as a way to evaluate intelligence data, develop strategies, deploy personnel, and monitor crime trends is crucial for effective law enforcement.

Authors Irvin B. Vann and G. David Garson have written a comprehensive, easy-to-read guide on crime-mapping essentials. They make several salient points about the effectiveness of crime mapping and the ease with which agencies can prepare crime maps. The first two chapters introduce crime-mapping basics, common terminology, and the varieties of crime maps. The authors succinctly explain how to build spatial databases and interpret data output. Chapter 3 details how to manage crime with GIS through specific types of maps. Some of the examples include displaying drug-free school zones by creating 1,000-foot buffer zones, integrating problem-oriented and community policing, and allocating resources.

Chapter 4 explains spatial models that concentrate on specific situations, such as the relationship between convenience store robberies and actual store locations. Another example involves displaying burglary locations to known burglars' residences. This type of modeling is imperative to situational crime prevention. The authors also describe multivariate analysis, which constitutes the most compelling part of the book. Because crime often is linked to environmental and

demographic conditions, building a multivariate model allows crime analysts to examine the relationship between specific crimes (e.g., auto theft, homicide, robbery, and burglary) and social, demographic, or environmental conditions (e.g., poverty, unemployment, the elderly, young adults 16 to 24, abandoned houses, and vacant lots). Multivariate analysis represents the key to designing successful situational crime prevention programs because a solution depends on a thorough analysis of the precursors to the problem.

Chapters 5 and 6 discuss how crime mapping influences decision making. This includes a review of the SARA (Scanning, Analysis, Response, and Assessment) model of problem solving and New York City's Compstat and Philadelphia's Crimestat processes, which serve as two outstanding examples of how crime mapping represents one part of a larger crime-control process. The book concludes with a discussion about social policy and how crime maps may have unintended consequences, such as the right to privacy because many police departments upload their maps to the Internet for community use.

The book is replete with actual experiences from various law enforcement organizations throughout the country, including large and small departments, municipal and county police agencies, and sheriff's offices. It offers an excellent reference section for additional reading and an appendix of law enforcement Web sites with crime maps. The book is an excellent supplement to any academy text or management course on crime-control strategies, community policing, situational crime prevention, and problem solving.

Reviewed by
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Notes for the Occasional Major Case Manager

By GARY ROTHWELL, DPA



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Day-to-day administrative responsibilities consume the time of most law enforcement managers, causing them to lose touch with the tactical and strategic aspects of criminal investigations. Many do not directly respond to crime scenes and seldom manage investigations. Further, they may find that previous supervisory training rarely addressed such situations. This holds especially true in the

thousands of agencies that only occasionally encounter major crimes.

To this end, a brief reacquaintance with basic investigative concepts will help managers react to these incidents with increased confidence by knowing what to do initially, as well as through familiarity with case management practices that enhance opportunities for investigative success. To coordinate investigations, managers can

use these fundamental approaches seldom addressed in formal training and often forgotten or overlooked in actual operations. Measures include initial-response organizational tasks and investigative principles that can contribute to a successful outcome.

ORGANIZATIONAL TASKS

Anecdotes and experience appear to indicate that errors happen more often at the outset

of criminal investigations than at any other time. This dilemma frequently occurs if investigators fail to ensure order at crime scenes or neglect to create it in their own approaches to investigations. Therefore, managers should ensure that investigators accomplish the following tasks early in an investigation.

Secure the Crime Scene

Supervisors should anticipate that a scene is not protected prior to their arrival, then take measures to secure it as soon as possible. This means clearing it of unnecessary personnel and identifying and interviewing all individuals previously present to determine whether they were involved in or witnessed the crime, as well as if and how they may have contaminated or altered the scene. This step proves especially important with emergency medical personnel, firefighters, and coroners; managers should ensure that their personnel determine not only what these first responders did while inside the scene but also what they saw that may have changed before police arrival. Securing the scene includes establishing a perimeter, with uniformed personnel if possible, to limit entrance to and exit from the area to authorized personnel and keeping a record of those persons who access it. When establishing the perimeter,

managers should make sure it is sufficiently comprehensive—evidence often is missed because examined areas were too constricted.

Deploy Sufficient Personnel

Nearly all agencies face lean budgets and limited staffs. However, few things can slow down an investigation as quickly as assigning an insufficient number of personnel to perform investigative tasks in a timely manner. Managers should ensure the allocation of an adequate amount of officers to simultaneously conduct several investigative functions. Generally, at least four should cover scene security, evidence processing, witness interviews, and case supervision. The location and complexity of

the crime scene, number of witnesses, and other factors can affect workforce requirements. Therefore, managers should err on overstaffing, relieving any unnecessary personnel when needed, and consider assistance from other agencies if necessary.

Establish Command and Investigative Structures

Managers should choose an individual, not necessarily an investigator, with sufficient authority to secure and allocate personnel and resources to facilitate the investigation and remain in charge. Further, supervisors immediately should assign a lead investigator who serves many purposes, such as providing a conduit through which investigative data is

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Police managers sometimes lose sight of basic concepts of conducting major investigations.

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assimilated and leads are assigned to appropriate personnel. Information rapidly loses value when no one views the big picture and coordinates the gathering of additional pieces of the investigative puzzle. Managers should consider requesting assistance from on-site clerical, media relations, and other support personnel in addition to investigators and uniformed officers. The greatest investigative structure, however, becomes ineffective without adequate means of documenting investigative actions—especially in cases involving multiple jurisdictions. Various agencies employ countless systems. In general, managers should establish a predominant manner of case reporting and ensure that reports quickly are completed and provided to the lead investigator.

Establish a Command Post

A command post, a known location to reliably contact supervisory and lead investigative personnel, should be in relative proximity to the major scene of operations and have sufficient resources, such as telecommunications and clerical support. Far too often, especially in rural areas, some agencies do not establish a command post, leaving investigators to operate, literally, on the trunks of their cars. This results in little cooperation

with or coordination from those officers in charge of the case. Further, a command post ensures that adequate and thorough communication occurs between all personnel involved.

Determine What Occurred Before Investigators Arrive

Determining what happened before law enforcement arrives often proves easier in theory than practice. But, securing the

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The neighborhood canvass constitutes one of the most productive investigative tools.

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crime scene through interviewing people present before their arrival accomplishes most of this task. Investigators should take nothing for granted; managers must ensure that investigators interview those individuals whose jobs require them to volunteer information, as well as locate and question witnesses who departed the area. Most important, investigators need accurate knowledge of “who did what” before police involvement.

Conduct a Neighborhood Canvass

The neighborhood canvass constitutes one of the most productive investigative tools. Even the most calculated of crimes cannot overcome the free will of humans. When crimes occur, somebody usually saw something, and, often, those witnesses only tell their stories if asked. Managers should ensure that investigators conduct neighborhood canvasses, which rarely are too large but frequently too constricted. The canvass should extend far enough to encompass any reasonable expectation of useful information from witnesses, and investigators should make as many attempts as necessary to contact them. Even after accomplishing this task, managers should consider recanvassing an area because reluctant witnesses may only speak out upon repeated questioning.

INVESTIGATIVE PRINCIPLES

No comprehensive manual exists for every investigative contingency. However, managers can use certain established principles to guide them in successfully overseeing a case.

Be a Supervisor

Supervisors should let the investigators investigate. Often, with minimally established

investigative structures and command posts or extremely limited personnel, supervisors personally become involved in tasks, such as critical interviews and evidence searches. In so doing, they lose their managerial perspective, are unable to see the case comprehensively, and become difficult for subordinates to contact for decisions. Supervisors should slow down, remember their roles as managers, and facilitate the work of investigating officers rather than try to do their jobs for them.

Start with Initial Information

Many times, investigators may jump to conclusions, resulting in negative consequences when those initial presumptions do not pan out. Other times, they may not know what happened or how they should proceed. Managers can avoid the former problem and address the latter by acting on initial information and proceeding outward in a logical manner.

In most cases, the crime scene can tell much about a case. Forensic science capabilities improve daily, increasing the quantity and quality of useful physical evidence. Often within the scene, a victim, alive or dead, can provide information that indicates motives, opportunities, and identities

of those responsible. Investigators can glean such information, commonly known as victimology, through time lines of victims' activities prior to the crime, their interpersonal relationships, and a myriad of other aspects unique to them that, consequently, are distinctive to the perpetrator. Further, investigators should interview anyone present prior to or



during police involvement, verifying their stories. These initial witnesses frequently have critical information, may be involved in the crime themselves, and are difficult to identify and locate once they leave the scene.

Prioritize Leads

Personnel constraints and sound judgment dictate that investigators prioritize leads and pursue those with the most potential first. This does not mean dismissing lower-order

leads; investigators should cover all viable ones. They should not prematurely disregard witnesses, quickly dismissing their accounts as irrelevant or limiting questions to "Did you see what happened?" Rather than asking a witness *if* they saw anything, investigators should ask them *what* they saw, noting witnesses who fail to notice anything unusual.

Verify Everything

One of the most common errors investigators make involves projecting themselves as the perpetrator and rejecting leads because *they* would not act in a certain way in similar circumstances. Countless investigators have explained away leads by stating, "The suspect wouldn't have done that," only to find out later that the suspect *did* exactly that. Investigators should not erroneously prejudge forensic evidence, particularly wounds or weapons, and ignore conflicting information because of preconceived assumptions about causes of death or comparable conclusions. While investigators must draw inferences from preliminary observations, they should avoid making ironclad assumptions about the nature of physical evidence until qualified experts verify the opinions. In addition, investigators should authenticate witness information whenever possible without

taking shortcuts; they should follow any lead chain back to its original source.

Do It Now

The passage of time diminishes the availability of both physical evidence and individuals' recall of information. For example, if an investigator delays checking a dumpster until tomorrow morning, overnight sanitation crews may empty it tonight, taking key evidence. Investigators quickly should pursue hunches. If a witness "just isn't right," and investigators want to search the individual's vehicle or home for evidence, they should do so, if legal means are available, before any evidence can be hidden or destroyed.

Recognize the Obvious

Television crime shows and movie mysteries with elaborate plot twists leave viewers in suspense until a surprise ending when investigators identify the suspect and establish guilt. Such performances have conditioned citizens; real criminal investigations rarely follow such a pattern. Most of the time, a perpetrator is identified early in an investigation. Usually, only a limited number of people have both the motive and opportunity to commit a certain offense, thus, evidence tends to point

toward a particular suspect. Unfortunately, many people perceive criminal acts as more complex than they really are. English theologian William of Occam recognized this human tendency in medieval times and put forth *Occam's Razor*: "The simplest of two or more competing theories is preferable, and explanations for unknown phenomena should first be

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Nearly all agencies face lean budgets and limited staffs.

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attempted in terms of what is already known.”¹ This essentially means that the least complicated explanation of an event is usually the correct one. Investigators should remember this principle and not venture into far-fetched theories until more likely scenarios are examined and eliminated.

Avoid Tunnel Vision

Although Occam's Razor encourages one to look closely at the simplest explanation first, investigators must avoid

becoming myopic. It is tempting to fixate on a particular theory of a case and ignore or dismiss evidence and information contradictory to it. In fact, the outset of an investigation often is too early to theorize at all. Instead, supervisors should ensure that investigative bases are covered while implementing fundamental concepts of logic and common sense as a guide.

CONCLUSION

Police managers sometimes lose sight of basic concepts of conducting major investigations. By addressing some fundamental elements of an investigative response along with a few principles to facilitate a successful case, supervisors can ensure more effective results in their agencies. These measures are not exhaustive or comprehensive, nor do they guarantee a solution to a crime. Rather, they represent a framework for implementing inherent managerial and investigative skills that may provide occasional major case managers with a bit of confidence when they find themselves wondering what step they should take next. ♦

Endnotes

¹ *The American Heritage Dictionary of the English Language*, 4th ed., s.v. "Occam's razor."



The Family and Medical Leave Act Impact on the Law Enforcement Employer

By RICHARD G. SCHOTT, J.D.

In 1993, Congress passed and President Bill Clinton signed into law the Family and Medical Leave Act (FMLA).¹ It was enacted to address the concern that people were sometimes losing their jobs when they missed work due to a serious illness or family crisis. The law is undoubtedly popular with the 50 million employees who have used its provisions during the past 12 years.² Conversely, some employers view the legislation as a strain on efficient day-to-day

operations of the workplace, a burden on other workers who must compensate for absent co-workers, and a vehicle of abuse for some employees who manipulate it for personal time. There may be some reality in each of these conflicting perceptions of the FMLA. This article outlines the major provisions of the FMLA and illustrates how they impact the law enforcement employer.

The FMLA entitles eligible employees to a minimum of 12 weeks unpaid leave during any

12-month period because of their own serious health condition; to care for certain family members who have a serious health condition; or because of the birth of a child (and for the care of the child), or the placement of a child for adoption or foster care.³ As self-explanatory as this language seems, disputes often arise over the meaning of certain terms used in the FMLA. For example, who are the eligible employees entitled to benefits? What is a serious health condition? For which

family members can an employee take FMLA leave to provide care? How must FMLA leave be taken? The common theme that emerges when answering these questions is that when it passed the FMLA, Congress did not intend to cause a hardship on employers who could not afford to be without employees for up to 3 months during a 1-year period.

WHAT EMPLOYEES ARE ELIGIBLE?

To balance the interests of the employer in maintaining a set workforce and the personal situations of employees, there are limitations on the eligibility for FMLA leave. For employees to invoke protection under the FMLA, they must work for an employer to whom the provisions of the act apply. There usually is no guesswork

involved in this determination for the law enforcement agency. While a private employer only is governed by the FMLA when it is “engaged in commerce [and] employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year,”⁴ the FMLA applies to all public agencies. A public agency is defined as “the government of the United States; the government of the state or political subdivision of a state; or an agency of the United States, a state, or a political subdivision of a state, or any interstate governmental agency.”⁵ The only exclusion from the FMLA for a public agency is if the employee invoking the act is “employed at a worksite at which [the] employer employs less than fifty employees if the total

number of employees employed by that employer within 75 miles of that worksite is less than fifty.”⁶ Because for this calculation a state or political subdivision of a state constitutes a single public agency, and, therefore, a single employer (for example, a state, a county, a city, or a town is a single employer), this calculation usually does not relieve even the smallest law enforcement agencies of compliance with the FMLA. As a result, the crucial factor determining whether a law enforcement agency employee is entitled to FMLA coverage is the status of the individual employee.

Eligible employees are individuals who have been employed for at least 1 year by the employer, and for at least 1,250 hours of service with such employer during the previous 12-month period.⁷ In attempting “to balance the demands of the workplace with the needs of families,”⁸ Congress stipulated that workers only become eligible for FMLA coverage after being employed for 1 year. Additionally, the 1,250 hours-of-service provision serves to exclude part-time and seasonal workers from FMLA coverage. It would seem that determining the number of hours worked by someone would simply be a matter of mathematics. However, calculating the number of service hours expended for an employer can be complicated.



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

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...Congress stipulated that workers only become eligible for FMLA coverage after being employed for 1 year.

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Law enforcement employers must consider factors, such as time spent on leave, time spent on call, and time spent training when determining whether an employee has worked the requisite number of hours.

When Congress enacted the FMLA, it directed courts to use the “legal standards established under section 207 of this title”⁹ to determine whether an employee had met the hours of service requirement.¹⁰ The Supreme Court long ago pronounced that work for purposes of the Fair Labor Standards Act (FLSA) (and, by reference, hours of service for the FMLA)¹¹ means “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer...”¹² This definition should be considered when calculating whether leave, being on call, and training sessions constitute time spent working for a law enforcement employer.

Leave

Simply stated, neither paid nor unpaid leave is included in any calculation of hours of service under the FMLA. In *Plumley v. Southern Container, Inc.*,¹³ the U.S. Court of Appeals for the First Circuit was presented with an FMLA eligibility dispute. The legal issue resolved by the court was

whether an employee had met the hours of service eligibility requirement contained in the FMLA. The court heeded the standard of *Tennessee Coal, Iron & R.R. Co.*¹⁴ while delving further into whether leave time fit its criteria. The court relied on the Black’s Law Dictionary definitions of *employment* and *work* in concluding that “only those hours that an employer suffers or permits an employee to do work (that is, to exert effort, either physically or

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...the 1,250 hours-of-service provision serves to exclude part-time and seasonal workers from FMLA coverage.

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mentally) for which that employee has been hired and is being paid by the employer can be included as hours of service within the meaning of the FMLA.”¹⁵ While employees are on leave, even if paid leave, they are not exerting physical or mental effort for their employer.¹⁶

On Call

The nature of law enforcement often requires those

providing this essential public service to be considered on call. Agencies often have duty officers/agents who act as a first contact for periods of 12 hours, 24 hours, or even a week at a time. Unless called to respond to an actual incident, it is unlikely that time spent on call will be credited toward the 1,250 hours of service required for FMLA entitlement. The U.S. Supreme Court has held that whether an on-call employee is working during this time “depends on the degree to which the employee may use the time for personal activities.”¹⁷ In *Birdwell v. City of Gadsden*,¹⁸ this Supreme Court principle was interpreted in the context of law enforcement employment. In *Birdwell*, a group of city police department detectives argued that they were entitled to compensation pursuant to the FLSA¹⁹ for a week that they spent on call. The detectives were not required to remain at the police station, but they could not leave home unless they provided a forwarding number or owned a beeper. They testified that those who did not own beepers could not participate in outdoor activities, such as hunting or fishing; that none of them could leave town or go on vacation; that they could not go on family outings without taking two cars because of the possibility of being called to duty; and that they could not drink alcohol

during the entire time period.²⁰ Despite the restrictions, the Eleventh Circuit Court of Appeals found that the detectives' on-call time was not work time.²¹ The Eleventh Circuit panel reached this conclusion based on an extensive review of other circuit court decisions applying the Supreme Court test²² to a myriad of circumstances.²³ It is obvious from this review that unless a department puts severe restrictions on officers substantially interfering with their personal lives, on call time simply will not be included in the computation of hours of service for FMLA eligibility.

Training

The law enforcement occupation also requires recurrent training for many of its personnel. For example, sworn officers must maintain proficiency with firearms during their careers and, thus, attend training to do so and also are expected to attend seminars and in-services to further hone their skills. Likewise, support personnel regularly attend conferences and training sessions to keep current in their areas of expertise.

Time spent by employees training to maintain their proficiency or to do their job better will count toward hours of service to their employers. The determination that time spent training should be credited to the employee's hours of

service is based on the conclusion that the employer accrues the benefits of its employees' training.²⁴

WHAT IS A SERIOUS HEALTH CONDITION?

Exactly what constitutes a serious health condition can be difficult to determine. While the FMLA provides seemingly clear standards,²⁵ "[t]he inquiry is necessarily extremely factually-intensive and often requires

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...neither paid nor unpaid leave is included in any calculation of hours of service under the FMLA.

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human resources personnel or individual supervisors with no medical training to make medical judgement calls about, for example, whether an employee is 'incapacitated' by an illness, or whether the employee is undergoing a 'regimen of continuing treatment.'"²⁶ For this reason, "the majority of FMLA cases turn on the issue of whether the employee or an immediate family member was

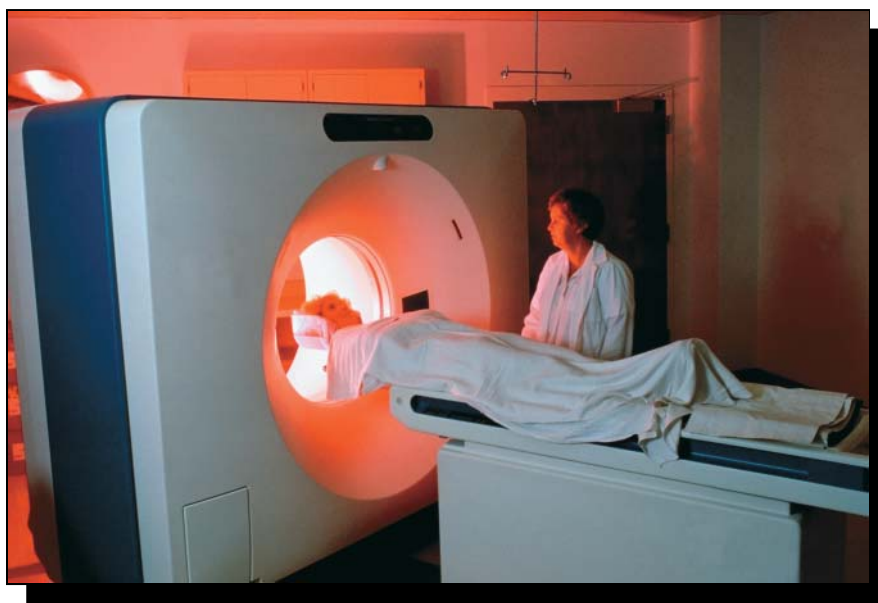
suffering from a 'serious health condition.'"²⁷

While the FMLA defines the term *serious health condition* as an illness, injury, impairment, or physical or mental condition that involves A) inpatient care in a hospital, hospice, or residential medical care facility, or B) continuing treatment by a health care provider,²⁸ relevant federal regulations provide much greater detail in explaining whether certain conditions satisfy the statute's definition. For example, the phrase *continuing treatment by a health care provider* is expounded upon in the regulations. It can include a period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than 3 consecutive calendar days. Incapacity may be caused by a chronic serious health condition. One such chronic serious health condition is "one which may cause episodic rather than a continuing period of incapacity (examples include asthma, diabetes, and epilepsy)."²⁹ Employers should note that absences for such chronic conditions qualify for FMLA leave even though the employee does not receive treatment from a health care provider during the absence and even if the absence

does not last more than 3 days. This would apply to asthmatics who may be unable to report to work because of the onset of an asthma attack or because their health care provider has advised them to stay home when the pollen count exceeds a certain level.³⁰

Another serious health condition involving continuing treatment by a health care provider is described as a “period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.”³¹ The employee or family member must be under the continuing supervision of a health care provider but not necessarily be receiving active treatment. Examples provided for this type of condition include Alzheimer’s, a severe stroke, and the terminal stages of a disease.³²

Chemotherapy or radiation treatments for cancer, physical therapy to help with severe arthritis, and dialysis to treat kidney disease are considered continuing treatment by a health care provider because they constitute “multiple treatments...for a condition that would likely result in a period of incapacity of more than three consecutive calendar days” if the treatments were not performed.³³ These types of treatments do not require an actual absence of 3 consecutive days,



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and, yet, they constitute the continuing treatment aspect of the definition for a serious health condition.

The regulations also provide guidance on conditions which ordinarily will not satisfy the FMLA definition of a serious health condition. Physical, eye, and dental examinations are not considered treatment for purposes of the act’s second definition of a serious health condition.³⁴ Likewise, “[c]onditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not ‘serious health conditions’ unless inpatient hospital care is required or unless complications develop.”³⁵ Finally, unless complications arise,³⁶ a common cold, the flu, earaches, an upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia

problems, and periodontal disease are additional examples of conditions that are not considered serious health conditions that qualify a person for FMLA leave.³⁷

The regulations recognize that substance abuse may be a serious health condition, provided certain conditions are met. The guidance points out, however, that FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Absence from work because of employees’ use of the substance, rather than for treatment, does not qualify for FMLA leave.³⁸

Given the complicated nature of the definitions within the FMLA, it is incumbent upon law enforcement employers to consult medical professionals

or legal counsel when confronting the issue of whether a certain condition meets the requirement of being a serious health condition for FMLA leave eligibility.

WHO IS A SPOUSE, PARENT, AND SON OR DAUGHTER?

The FMLA allows employees to take leave to care for certain family members with a serious health condition. Specifically, an employee is entitled to leave to care for “the spouse, or a son, daughter, or parent, of the employee” with such a condition.³⁹ As self-explanatory as these terms appear, the FMLA and related federal regulations provide guidance for applying the definitions in various contexts. The statute simply defines spouse as “a husband or wife, as the case may be.”⁴⁰ The corresponding regulation goes further, finding the term to mean “a husband or wife as defined or recognized under state law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.”⁴¹ Making the determination whether employees are entitled to leave to care for their spouses will require familiarity with the employer’s respective state law regarding marriage.

The term *son or daughter* is defined in the FMLA as a

biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.⁴² The corresponding regulation provides parameters to gauge whether the son or daughter is incapable of self-care because of a mental or physical disability.⁴³ The regulation further

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...it is unlikely that time spent on call will be credited toward the 1,250 hours of service required for FMLA entitlement.

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instructs that a biological or legal relationship is not required for someone to be considered an employee’s son or daughter because “[p]ersons who are ‘in loco parentis’ include those with day-to-day responsibilities to care for and financially support a child.”⁴⁴ This determination is necessarily governed by the factual circumstances in a given situation.

The term *parent* is set forth in the FMLA to mean “the

biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.”⁴⁵ As when the employee is the person who is in loco parentis for a child, there needs to be no biological or legal relationship between the employee and the person who was in loco parentis when the employee was a child for the employee to now use FMLA leave to care for this parent.⁴⁶ Conversely, the term *parent* does not include parental in-laws.⁴⁷

HOW MUST FMLA LEAVE BE TAKEN?

Because eligible employees are entitled to up to 12 workweeks of leave in 1 year pursuant to the FMLA, agreement between the employer and employee over how best to take the leave may be challenging to reach. It is important for the employer to know exactly what the FMLA requires of the leave when dealing with the requesting employee. First, FMLA leave is not necessarily paid leave. When Congress drafted the FMLA, it was sensitive to the potential hardship its provisions would put on employers. Doing without an employee for upwards of 3 months creates a void that must be filled during the absence. The statute sets out to “balance the demands of the workplace

with the needs of families,”⁴⁸ all the while doing it “in a manner that accommodates the legitimate interest of employers.”⁴⁹ Toward that goal, the FMLA does not require employers to create additional paid leave for an employee taking leave pursuant to its provisions. The employee may elect or the employer may require that accrued paid vacation leave, personal leave, family leave, or medical or sick leave be substituted for any part of the 12-week period of leave guaranteed by the FMLA.⁵⁰ However, the employer is not required to provide paid sick leave or paid medical leave in any situation in which the employer does not normally provide such paid leave.⁵¹ In other words, while the FMLA mandates time away from work for certain situations, it does not mandate that employers deviate from their leave-accrual or leave-usage policies.

Employers also should be aware that FMLA leave does not always have to be taken all at once. Rather, it may be taken intermittently or on a reduced leave schedule when certain circumstances exist. Intermittent leave is taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is when an employee’s usual number of working hours in a workweek, or number of hours in a workday, are reduced.⁵²

For FMLA leave to be taken on an intermittent or reduced leave schedule basis following the birth or placement of a child for adoption or foster care, the employer must agree. The employer’s agreement is not required, however, when the mother has a serious health condition in connection with the birth of the child or when the newborn child has a serious health condition.⁵³



Intermittent or reduced schedule leave is also available to care for certain health conditions. Because there must be a medical need to take leave in this fashion, agreement of the employer is not required.⁵⁴ Rather, the standard enabling its use is that the medical need “can best be accommodated through an intermittent or reduced leave schedule.”⁵⁵ Furthermore, “[e]mployees needing intermittent FMLA leave or leave on a reduced

schedule must attempt to schedule their leave so as not to disrupt the employer’s operations.”⁵⁶ This type of planning may be possible in some situations, such as when leave is to be taken several days at a time spread over 6 months for chemotherapy treatments; but not possible in others, such as when a pregnant employee takes intermittent leave for periods of severe morning sickness.⁵⁷

CONCLUSION

For some employers, complying with the different requirements of the myriad of employment laws may seem as complicated as navigating a minefield. Unlike their private sector counterparts, public law enforcement employers must not only comply with both federal and state statutory guidelines but with Constitutional provisions as well. This article has addressed some of the more challenging aspects of the Family and Medical Leave Act. Reference to these provisions will help the employer recognize what the FMLA requires of it and, possibly more important, when providing a service linked directly to our nation’s security, what the FMLA does not require of it. In determining this, it is worth noting that Congress attempted to craft the FMLA in a way that would be satisfactory to both employees and employers.

While nothing in the FMLA prohibits employers from providing more benefits than is required, all employers to whom the FMLA applies must comply with its minimum mandates. ♦

Endnotes

- ¹ 29 U.S.C. § 2601, *et seq.*
² Cindy Skrzycki, "Lobbyists Play Tug of War Over Family Leave," *The Washington Post*, April 26, 2005, p. E1.
³ 29 U.S.C. § 2612.
⁴ 29 U.S.C. § 2611.
⁵ 29 U.S.C. § 203(x).
⁶ 29 U.S.C. § 2611.
⁷ *Id.*
⁸ 29 U.S.C. § 2601(b)(1)
⁹ 29 U.S.C. § 207 is part of the FLSA of 1938.
¹⁰ 29 U.S.C. § 2611(2)(C).
¹¹ *Supra* note 9.
¹² *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944).
¹³ 303 F.3d 364 (1st Cir. 2002).
¹⁴ *Supra* note 12.
¹⁵ *Supra* note 13 at 370.
¹⁶ Military leave could be considered a caveat to the blanket exclusion of leave time being included in the computation of hours of service. The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 requires that people reemployed under its provisions be given credit for any months and hours of service they would have been employed but for the military service in determining eligibility for FMLA leave. For an in-depth discussion on the USERRA and its effect on law enforcement employers, see L. Baker, "Serving Their Country and Their Communities," *FBI Law Enforcement Bulletin*, July 2005, 25-32.
¹⁷ *Birdwell v. City of Gadsden*, 970 F.2d 802 (11th Cir. 1992), citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 138 (1944).
¹⁸ *Id.*
¹⁹ *Supra* notes 9 and 11 (hours of service for the FMLA determined by FLSA's work hours standard).

²⁰ *Supra* note 17 at 808.

²¹ *Id.* at 810.

²² *Skidmore v. Swift & Co.*, cited in note 17, *supra*.

²³ For example, in *Bright v. Houston Northwest Medical Center Survivor, Inc.*, 934 F.2d 671 (5th Cir. 1991) (en banc), the plaintiff was on-call during all off-duty time, he could not become intoxicated, was required to be reachable by beeper, and was required to arrive at the hospital within approximately 20 minutes of being

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...all employers to whom the FMLA applies must comply with its minimum mandates.
”

called. Bright was bound by these restrictions for 11 months, had no days off, and took no vacations. While acknowledging that these severe limitations made the plaintiff's job undesirable and perhaps oppressive, the en banc court ruled the on-call time was not working time under the FLSA.

²⁴ See, e.g., *Rich v. Delta Air Lines, Inc.*, 921 F.Supp. 767 (N.D. Georgia 1996).

²⁵ 29 U.S.C. § 2611 defines the term *serious health condition* as an illness, injury, impairment, or physical or mental condition that involves A) inpatient care in a hospital, hospice, or residential medical care facility, or B) continuing treatment by a health care provider.

²⁶ Stephanie L. Schaeffer, *Causes of Action Under the Family and Medical Leave Act for Unlawful Termination*, 14 Causes of Action Second Series 85 (2004), at p. 34.

²⁷ *Id.*

²⁸ 29 U.S.C. § 2611.

²⁹ 29 C.F.R. § 825.114(a)(2)(iii)(C).

³⁰ 29 C.F.R. § 825.114(e).

³¹ 29 C.F.R. § 825.114(a)(2)(iv).

³² *Id.*

³³ 29 C.F.R. § 825.114(a)(2)(v).

³⁴ 29 C.F.R. § 825.114(b).

³⁵ 29 C.F.R. § 825.114(c).

³⁶ The U.S. Department of Labor issued an Opinion Letter in 1996 clarifying that the examples provided in 29 C.F.R. § 825.114(c) can constitute, under certain circumstances, a serious health condition. This followed federal court opinions holding that certain illnesses are not serious health conditions even when all criteria listed in the regulations are met because they were specifically excluded from coverage. See, e.g., *Brannon v. OshKosh B'Gosh, Inc.*, 897 F.Supp. 1028, 1036 (M.D. Tenn. 1995).

³⁷ *Supra* note 35.

³⁸ 29 C.F.R. § 825.114(d).

³⁹ 29 U.S.C. § 2612(a)(1)(C).

⁴⁰ 29 U.S.C. § 2611(13).

⁴¹ 29 C.F.R. § 825.113(a).

⁴² 29 U.S.C. § 2611(12).

⁴³ 29 C.F.R. §§ 825.113(c)(1) and 825.113(c)(2).

⁴⁴ 29 C.F.R. § 825.113(c)(3).

⁴⁵ 29 U.S.C. § 2611(7).

⁴⁶ 29 C.F.R. §§ 825.113(b) and 825.113(c)(3).

⁴⁷ 29 C.F.R. § 825.113(b).

⁴⁸ 29 U.S.C. § 2601(b)(1).

⁴⁹ 29 U.S.C. § 2601(b)(3).

⁵⁰ 29 U.S.C. § 2612(d)(2)(A) & (B).

⁵¹ 29 U.S.C. § 2612(d)(2)(B).

⁵² 29 C.F.R. § 825.203(a).

⁵³ 29 C.F.R. § 825.203(b).

⁵⁴ 29 C.F.R. § 825.203(c).

⁵⁵ 29 C.F.R. § 825.117.

⁵⁶ *Id.*

⁵⁷ 29 C.F.R. § 825.203(c)(1).

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

The Bulletin Notes

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



Officer Holt



Officer Stivers

Officers Steven Holt and David Stivers of the Lonoke, Arkansas, Police Department responded to a fire at a 2-story residence. Upon arrival, they observed heavy smoke pouring from the structure and determined that a male occupant remained trapped inside. The officers immediately entered and searched intensely for the man before locating him and carrying him to safety. Then, Officers Holt and Stivers helped fire department personnel contain the blaze. The heroic actions of these two officers saved this man's life.



Chief Deputy Meredith



Major Campbell



Investigator Hamm

During a thunderstorm, Chief Deputy Harry Meredith, Jr., Major Kit Campbell, and Investigator Royce Hamm from the Beaufort County, North Carolina, Sheriff's Office responded to an emergency call involving three swimmers that were missing in a nearby river. While navigating their boat in high winds and driving rain, the three officers raced for several miles, relying on a compass and their knowledge of the river to stay in safe water, before Investigator Hamm spotted a hand emerging from the water. Chief Deputy Meredith maneuvered the boat as close to the victims as possible while the other two officers threw flotation devices to the two men (sadly, the third victim drowned before the officers' arrival), pulling one of them to safety. The other man was exhausted, close to drowning, and unable to hold onto the rescue device. Officers Hamm and Campbell reached into the water and pulled him into the boat. The brave, selfless actions of these three officers saved the lives of these men.

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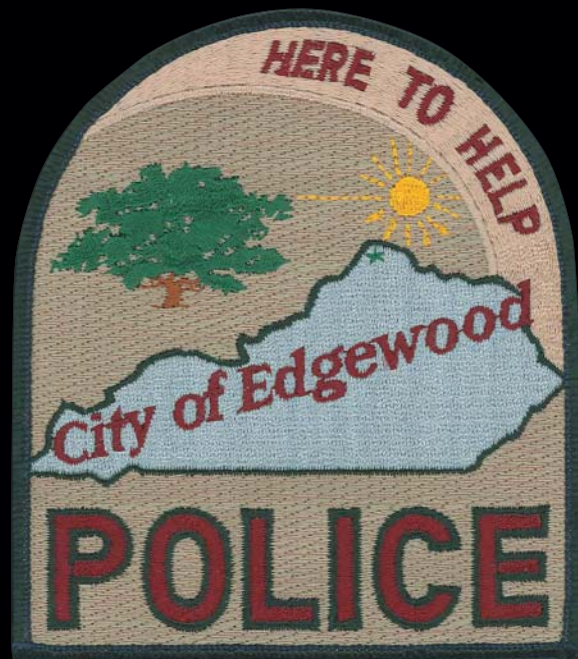
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Patch Call



The patch of the Price City, Utah, Police Department depicts the beautiful high-desert mesas and formations surrounding the city. Also featured is a representation of the state with a star indicating the relative position of Price.



The patch of the Edgewood, Kentucky, Police Department features a tree; a silver representation of the state, signifying the high quality of Kentucky living; and the sun, indicating the bright future of Edgewood and its people. The banner at the top represents the main road in the city with the agency's motto: "Here to Help."