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This publication is produced by members of the Law Enforcement Communication Unit, William T. Guyton, Chief.

Internet Address
leb@fbiacademy.edu

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Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

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Features

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Looking Inward with Problem-Oriented Policing

By TERRY EISENBERG, Ph.D., and BRUCE GLASSCOCK

For two decades, the concept of problem-oriented policing has influenced how law enforcement agencies respond to the communities they serve. Because the approach concentrates on solving problems, rather than solely responding to complaints, it offers agencies an opportunity to apply the technique to problems that exist within their organizations, as well as those occurring in their communities.

To employ the concept of problem-oriented policing (POP) to internal departmental problems in contrast to external community problems constitutes a logical, yet novel application of such a well-known policing approach. Taking into account the history, problem-solving techniques, and decision-making styles of POP, agencies may want to consider the hiring and retaining of qualified personnel as a promising area for them to apply this concept.

HISTORY OF POP

In 1979, an article appeared in a criminal justice journal that described a concept for improving policing through a "problem-oriented approach."[1] The author defined this approach as a new way of thinking about all aspects of policing, from administration to operations to personnel. Critical themes in the philosophy included the "end products" that policing produces, the need for substantive community involvement, and the complexities of effectively implementing change. The end-products theme, perhaps the most important, focused on the need to assess policing in terms of problems solved or diminished, quality of life issues, and crimes, such as panhandling, robbery, graffiti, and sexual assault.

During the 1980s, numerous law enforcement agencies throughout the United States and in other countries began a wide variety of

Dr. Eisenberg is president of a private law enforcement consultant firm in San Diego, California.

Chief Glasscock heads the Plano, Texas, Police Department.

problem-oriented policing initiatives. For example, agencies in Madison, Wisconsin; Baltimore County, Maryland; Newport News, Virginia; and London, England, applied the problem-oriented policing concept to their operational approaches.[2] At the same time, other factors propelled the POP concept forward. For example, in 1988, a law enforcement research group began an ongoing publication devoted to problem solving[3] and, in 1996, developed a computerized database, the Problem-Oriented Policing Network (POPNET), which has received over 18,000 inquiries since its inception. In 1990, the first National Problem-Oriented Policing Conference convened in San Diego, California. This conference, now known as the International Problem-Oriented Policing Conference, has continued each year since that time.

These efforts and many others, along with published literature on the topic, demonstrate that POP has become a highly visible and utilitarian policing philosophy. In contrast to community-oriented policing (COP), which has a less uniform and clearly defined quality, POP constitutes a rather easily understood concept that focuses on different end products. Whereas the main thrust of COP centers on fostering community cooperation, facilitating the work of the police, and reducing fears and tensions, POP emphasizes the measurable reduction of crime and other features of community and neighborhood turmoil.

PROBLEM SOLVING WITH POP

Although a number of different problem-solving techniques exist in POP initiatives, one of the most popular is known by the acronym "SARA." This acronym stands for scanning, analysis, response, and assessment.

Scanning identifies a problem through a variety of sources of information, such as calls for service and citizen surveys. Citizens must consider the problem as important for this phase to succeed. Next, analysis requires the thoughtful examination of the nature of the problem. Input from police personnel and residents pertaining to the problem is important, as well as the collection of data the department may have about the frequency, location, and other significant characteristics of the problem. Third, response fashions one or more preferred solutions to the problem. This step, as well as the preceding analysis step, benefits from creative deliberation, or "thinking outside the box." Input clearly should come from police personnel, but also from residents, experts, and other individuals who can address the problem thoughtfully. Finally, assessment evaluates the effectiveness of the expected solution. Agencies must evaluate the solution as objectively as possible because this step speaks to end products, the key theme in POP initiatives.

DECISION MAKING WITH POP

For personnel engaging in one or more POP initiatives, the application of the SARA problem-solving technique becomes necessary, but may not suffice for a successful problem-oriented effort. Unlike many patrol situations involving a response to a call for service where, in SARA terminology, the officer goes from scanning to response, in a POP activity, much more time exists to deal with the situation/problem, thus making the intermediate analysis step critical.

This, however, frequently conflicts with officers' past decision-making experiences. When officers start their careers, they often must embrace the value of *decisive* decision making. The ability to make decisive decisions proves just as important, perhaps even more important, than the quality of the decision itself. Right or wrong, the critical element impressed upon most new officers is that they make *some* decision and, of course, in a timely manner. Their agencies expect and excuse mistakes, if they come from the heart with good and noble intention. This decision-making style remains applicable and appropriate in most circumstances at the patrol-officer level. However, as officers move up the management hierarchy and their agencies initiate problem-oriented policing, decisiveness can become a liability.

For personnel progressing to higher rank, the nature of most positions and decisions allows for considerable deliberation. In fact, when that considerable deliberation does not take place, poor decisions often result. However, exceptions exist. For supervisors and mid-level managers occupying volatile operational assignments (e.g., drug enforcement), decisiveness remains an important quality. As a rule though, as a supervisor, mid-level manager, or executive, more time to make thoughtful decisions becomes part of the decision-making environment. More time to acquire important information essential to the quality of the decision also becomes available. Unfortunately, many officers fail to recognize this difference as their careers progress and continue to exercise the same decision-making style that they employed as patrol officers—a style that emphasized the importance of decisiveness above all else. Therefore, law enforcement managers must rethink their decision-making styles and consider that decisiveness applied in POP initiatives can become a significant impediment.

> ***...POP emphasizes the measurable reduction of crime and other features of community and neighborhood turmoil.***

INTERNAL USE OF POP

With the success that many POP initiatives have experienced when applied to external, end-product issues, it seems prudent and appropriate to also apply the concept to internal problems. Yet, little evidence exists of such application. For example, with the possible exception of the area of calls for service, none of the 41 problems cited on POPNET[4] have dealt with internal issues. Interestingly, however, during a 1987 problem-oriented policing initiative in Newport News, Virginia, the agency addressed two internal problems (automobile accidents involving city vehicles and police morale), although both clearly were peripheral to the main focus and purpose of the project (external community problems, such as thefts from vehicles in downtown parking areas and burglaries in a local apartment complex).[5]

Although it proves essential to emphasize the importance of the end product (that is, the impact of police actions on crime and other forms of social disorder), the likelihood of success with those end products is much influenced, if not driven, by the organization's internal constitution. A functionally disabled police department cannot possibly deal with the kinds of issues problem-oriented policing is designed to and capable of resolving. And, an agency experiencing significant internal strife also will be less able to successfully implement POP or POP projects. Problem-solving focusing on internal issues must not preoccupy the department's efforts and resources. Rather, an agency must attend to these issues with the kind of thoughtful deliberation imbedded in the problem-oriented policing concept and approach.

As so-called "outsiders," citizens, business leaders, and other local government officials can contribute greatly to the success of external problem-oriented initiatives. Likewise, law enforcement personnel at the rank of patrol officer can contribute significantly to the success of internal problem-solving through the use of POP. To the extent that a police department remains open to the inclusion of these individuals, the likelihood of

successful internal problem-solving increases.

Always vigilant of the end products, agencies using the POP concept may expect that better problem solving, which results in the reduction or elimination of internal issues, produce better problem solving regarding external issues. Whether the issues are internal or external, POP can facilitate effective problem solving.

A POP APPLICATION TO AN INTERNAL PROBLEM

Today, many law enforcement agencies find it difficult to hire qualified officers. Tighter labor markets (i.e., less unemployment and more jobs) and higher entry-level standards, such as educational requirements, has caused this condition. However, by employing the SARA problem-solving technique, agencies can apply a POP approach to such an internal departmental problem. After first creating a problem-solving group, or task force, to handle the initiative, agencies can begin the four-step process.

Scanning

Agencies must establish the significance of the problem and the need to solve it in the first place. In this regard, the role of the head of the agency proves critical to avoid expending a great deal of time and energy on an issue of only marginal significance while neglecting one of considerable importance.

Conditions in support of the significance of hiring difficulties could include sworn entry-level vacancies, projected retirements, and officer access to time off. Police personnel undoubtedly would agree that this issue represents a significant problem. Moreover, citizens also may recognize this issue as one of importance, although for reasons perhaps different from those embraced by police officers (e.g., responsiveness to calls for service).

Analysis

To make informed decisions, agencies should obtain data pertaining to current sworn vacancies, projected retirements, exit interviews, anticipated future staffing, reasons for premature sworn personnel departures (i.e., nonretirement attrition), sources of attrition in the recruitment and selection processes, and the number and sources of sworn applicants. Also, agencies may find additional information on comparative salaries and benefits with other departments, total time to process applicants, and recruiting techniques and resources helpful. Agencies could acquire such input from a variety of sources, including police officers, citizens, experts, other sworn personnel, and staff members of the municipality's personnel department. Finally, agencies should review literature in the field, other departments' experiences, and input from colleagues.

Response

This step, of course, would hinge directly on the preceding analysis phase. Results of this step could include—

- more effective recruiting techniques;
- additional recruitment/hiring staff;

Handling a Call	*Versus*	Solving a Problem
Call/case-driven response		Problem-driven response
Temporary/transient result		Longer lasting/permanent result
Less effort/energy required/expended		More effort/energy required/expended
Less imagination applied		More imagination applied
Limited results expected by officers		Less limited results expected by officers
Little collaboration with others		Much collaboration with others
Response driven by limited information		Response driven by much information

- removal of irrelevant selection requirements;
- increase or change in salary or benefits; and
- better cooperation with municipal personnel department staff.

Other promising responses can emerge from the analysis step. For example, if an agency has a residency requirement and the analysis step shows that viable nonresidents interested in a police career exist, the agency may consider eliminating or modifying the residency requirement.

Assessment

Agencies must allow for sufficient time to pass before drawing any assessment conclusions. However, once this occurs, the number of entry-level vacancies (i.e., the smaller/lower, the better) constitutes the key criterion agencies can employ to assess the effectiveness of implemented responses. The number of premature departures from the department (i.e., the lower, the better), the number of applicants (i.e., the higher the better), and the time to process applicants (i.e., the lower, the better) also represent important factors that agencies should evaluate.

CONCLUSION

Since the 1980s, law enforcement agencies have applied the concept of problem-oriented policing to many community problems, such as alcohol-related crimes, burglaries, graffiti, sex offenses, and trespassing. While POP has become a highly visible and utilitarian policing philosophy, the use of the SARA problem-solving technique has contributed greatly to its effectiveness. However, this technique impacts officer decision making. Because POP emphasizes solving a problem as the dominant decision-making mode, officers attaining management positions must rethink their decision-making styles learned earlier in their careers. They must consider that the appropriateness of different decision-making styles varies depending upon whether officers are responding to calls or solving problems.

> ***"The application of POP to internal departmental problems... has occurred infrequently, yet its appropriateness appears considerable."***

The application of POP to internal departmental problems, in contrast to external community problems, has occurred infrequently, yet its appropriateness appears considerable. Although focusing on the end products of policing, the application of problem-oriented policing to internal matters proves promising and deserves a wider exploration. It would seem to follow that if an agency can solve its internal problems more effectively, it can improve its ability to solve external community problems as well. Regardless of whether agencies apply problem-oriented policing to external community or internal management problems, all levels of law enforcement personnel from patrol officer to agency director will benefit from leadership development training focusing on the successful application of the POP approach. ✦

Endnotes

[1] Herman Goldstein, "Improving Policing: A Problem-Oriented Approach," *Crime and Delinquency* 25 (1979): 236-258.

[2] Herman Goldstein, *Problem-Oriented Policing* (New York, NY: McGraw Hill, 1990), 50-57.

[3] Police Executive Research Forum, *Problem-Solving Quarterly* (Washington, DC).

[4] POPNET lists 41 problems and issues that a problem-oriented policing approach has addressed: 911 abuse, alcohol-related crimes, assault/battery, auto theft, border problems, breaking and entering, burglary, calls for service, campus security, code/zoning violations, community decline, community dissatisfaction, disturbance, domestic disturbance, drag racing, drugs/narcotics, elder abuse, gangs, graffiti, health hazards, homicide, illegal dumping, juveniles, lack of communication, litter, loitering, noise, panhandling, people with mental illness, prostitution, public drinking, public safety, robbery, sex offenses, stolen property, theft, traffic, traffic safety, transients/street people, trespassing, and vandalism.

[5] John E. Eck, William Spelman, Diane Hill, Darrel W. Stephens, John R. Stedman, and Gerard R. Murphy, U.S. Department of Justice, National Institute of Justice, and the Police Executive Research Forum, *Problem Solving: Problem-Oriented Policing in Newport News* (Washington, DC, 1987), 43-44.

Police Practice

Police on Horseback
A New Concept for an Old Idea

By John C. Fine, J.D.

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Modern policing emphasizes constructive interaction between law enforcement officers and members of the public. Community policing initiatives have served as a basis for a number of enforcement innovations designed to increase the patrol officer's personal contact with citizens. In an effort to get officers out of their patrol cars, some departments have either initiated, expanded or reinvigorated equestrian units to enhance community policing efforts. An officer on horseback invites constructive community contact in its own unique way.

Background

Folklore of the frontier lawman on horseback in the American old west evokes an image of peace and justice. These peace officers on horseback ensured their townspeople security from exploitation and banditry. The sheriff or marshal had a vast territory to cover with few people to rely on for assistance. The horse not only served as a constant companion for the peace officer, but also as an ally.

That image of an officer on horseback remains a part of modern law enforcement. In the United States today, more than 600 organized mounted police patrol units form a visible pedestal and serve citizens throughout their jurisdiction.[1] These officers, like their predecessors on the frontier, still combat crime and attempt to make the community they serve safer for all its citizens and visitors.

One Department's Experience

Rockland County, New York is a 172-square mile suburban area 16 miles north of New York City, with a population of approximately 300,000. The Rockland County Sheriff's Office currently has 67 sworn full-time deputies in the police patrol division, including six full-time mounted deputies.

The mounted unit in Rockland County began in 1963 as a group of volunteers who used their own horses. In the early 1970s, the unit gained part-time certified police officers. In 1999, the sheriff of Rockland County obtained a grant to convert the part-time mounted unit to a full-time unit with six full-time and four part-time deputy sheriffs and 10 county-owned horses.

Although the cost of purchasing and maintaining a horse is less than that of a patrol car, the sheriff realized that a mounted unit could not serve for show only (e.g., parades or public relations).[2] To help reduce crime throughout the county, the sheriff assigned the mounted deputies to the highest crime areas of the county, which actually helped to reduce the crime rate as much as 90 percent.[3] These mounted officers continue to work closely with their more traditional peers (i.e., in patrol vehicles) and they develop a strong liaison with local community leaders as well.

Mounted police work today has become more complicated than merely assigning a deputy to ride within the community. Police managers must ensure mounted officers receive adequate training, to include thorough training on the proper uses of the horse as a partner and a tool to help complete their duties. Additionally, the horses also must receive obedience

training and learn how to remain calm through fires, smoke, gunfire, and even violent strikes from demonstrators.

Law enforcement managers in Rockland County formed a team of retired and current mounted officers and created a police mounted school and curriculum. The New York State Division of Criminal Justice Services adopted this program, which evolved into the National Mounted Training Group. Instructors from this group travel across the country to train mounted officers and horses in 1-week training sessions.

The Rockland County's Mounted Unit operates from a large, converted trailer in a rural section of the county, which includes an adjacent area with a stable and turnout areas for horses. A large equestrian training field offers ample space to train and exercise the horses, and surrounding woods provide additional training sites for such activities as search and rescue.

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The unit helps locate, control, and apprehend criminal suspects; manage crowds; assist with major event security; attend special public appearances; and promote neighborhood watch and area school programs. The high vantage point of the rider, coupled with how quickly and easily the horses allow them to negotiate difficult areas, such as crowded streets, proves their value as an operational asset to the department. A few horses can move a large crowd that normally would require 10 times the number of officers on foot.

Mounted units prove successful in crime prevention as well. The fact that a deputy on horseback has a better view than a deputy on foot can provide a helpful edge in many situations. Horses with mounted deputies often exceed 10 feet in height and their presence alone often can bring calm to an unruly or violent situation or even prevent crimes from occurring. In their recent routine patrols, mounted deputies in Rockland County have participated actively in a variety of calls ranging from stolen vehicles and DWIs to disorderly conduct and domestic issues. The mounted deputies carry portable radios and mobile telephones to ensure coordination and team policing and to remain in contact with their patrol supervisor and dispatchers. The deputies must rely on cooperation from other officers and coordination between agencies for the mounted patrols to remain successful.

In addition to routine patrols, the increased rapport with the public constitutes an added benefit of mounted deputies from an agency's public relations aspect. Mounted units in parades, at public events, or even while on patrol serve as excellent ways for citizens to meet and appreciate their local law enforcement. Mounted deputies can visit elementary schools and provide scheduled tours of the stables to interested groups.

Conclusion

In Rockland County, mounted patrols have become an integral part of community policing. Citizens often approach mounted deputies to touch and talk about the patrol horses. This curiosity that draws citizens toward the horses allows the mounted deputies to help establish liaison and contact with the community. Mounted units effectively can handle crowd control and public relations activities, as well as perform many traditional policing duties (e.g., apprehending criminal suspects). The mere presence of mounted officers also can deter crime, even more so than a marked police car patrolling a neighborhood.

The concept of police on horseback has changed very little since the days of the western lawman. Mounted sheriffs continue to recognize residents by name and offer citizens reassurance by patrolling the streets. Today, enhanced with modern practices, communication, and technology, officers on horseback symbolize the original concept of American law enforcement—they provide protection, denote authority, and strengthen community involvement. ✦

Endnotes

[1] National Mounted Training Group, Sparkill, NY; for further information, see http://www.nationalmounted.org/traininggroup.html; accessed 2/5/01.

[2] Rockland County estimates that the purchase cost of one horse is approximately $3,500 and the monthly cost to maintain each horse is $150.

[3] Rockland County Sheriff's Department.

Mr. Fine, former Assistant Attorney General in charge of New York's Organized Crime Task Force, currently serves as a lawyer in private practice.

Crime Data

1999 Hate Crime Statistics

According to final 1999 hate crime data in the FBI's annual publication *Hate Crime Statistics*, 12,122 law enforcement agencies in 48 states and Washington, D.C. reported a total of 7,876 bias-motivated criminal incidents to the FBI's Uniform Crime Reporting Program. Of the incidents, racial bias motivated 4,295; religious bias was associated with 1,411; sexual-orientation bias accounted for 1,317; ethnicity/national origin bias was the cause of 829; disability bias was connected with 19; and the remaining 5 incidents resulted from multiple biases.

Reported hate crime incidents involved 9,301 offenses (some incidents may include more than one offense), 66.5 percent of which were classified as crimes against persons. Intimidation was the most frequently reported hate crime against persons, as well as the most frequently reported hate crime of all offenses measured, and accounted for 35.1 percent of the total. Additionally, destruction/damage/vandalism, the most frequently reported crime against property, accounted for 28.5 percent of the total. Simple assault and aggravated assault, both crimes against persons, comprised 19 percent and 12 percent, respectively, of all offenses.

Seventeen persons were murdered in incidents motivated by hate. Racial bias motivated 9 of the murders, and sexual-orientation bias and ethnicity/national origin bias accounted for 3 deaths each. Two murders were motivated by religious bias.

Collectively, the 12,122 agencies that participated in the Hate Crime Data Collection Program in 1999 represented nearly 233 million United States residents, or over 85 percent of the nation's population. Though the reports from these agencies are insufficient to allow valid national or regional measure of the volume and types of crime motivated by hate, they offer perspectives on the general nature of hate crime occurrence.

Hate Crime Statistics, 1999, *can be found on the FBI's Internet site at http://www.fbi.gov/ucr.htm.*

Detecting Deception

By JOE NAVARRO, M.A.,
and JOHN R. SCHAFER, M.A.

The young mother leaned back and cleared her throat. Her eyes teared and her voice quivered as she explained how her baby disappeared. Her clasped hands trembled slightly and her feet pointed toward the door. Her demeanor appeared too subdued. Reluctant to call the mother a liar, the investigator asked her if she had a reason to lie. She answered, "I never lie. My mother taught me always to tell the truth." The investigator had seen and heard enough—he asked the woman to take a polygraph examination. During the postpolygraph interview, the woman confessed that she had suffocated her baby. Both her verbal and nonverbal behaviors had revealed the gruesome truth.

From heated knife blades across the tongue to electric prods, people have sought ways throughout history to test the truthfulness of others. Fortunately, researchers in criminology and psychology have identified verbal and nonverbal behaviors that detect deception in a more humane manner. Nonetheless, detecting deception remains a difficult task. In fact, multiple studies have found that lie detection, like a coin toss, represents a 50/50 proposition, even for experienced investigators.[1] Although detecting deception remains difficult, investigators increase the odds for success by learning a few basic nonverbal and verbal cues indicative of lying.

The Fundamentals

Lying requires the deceiver to keep facts straight, make the story believable, and withstand scrutiny. When individuals tell the truth, they often make every effort to ensure that other people understand. In contrast, liars attempt to manage others' perceptions.[2] Consequently, people unwittingly signal deception via nonverbal and verbal cues.[3] Unfortunately, no particular nonverbal or verbal cue evinces deception.[4]

Investigators' abilities to detect deceptive behavior depends largely on their ability to observe, catalogue, and differentiate human behavior. They must identify clusters of behavior, which cumulatively reinforce deceptive behaviors unique to the person interviewed.[5] Investigators also should learn to formulate questions to facilitate behavioral observations. The more observations investigators make, the greater the probability of detecting deception. For the most part, family members and close friends display patterns of genuine openness. For inexperienced investigators, these behavioral patterns may serve as a comparative reference for contrast with deceptive behaviors.

The Interview Setting

The ideal setting for an interview places the interviewee in a position where no obstacles, such as tables or desks, block the interviewer's full view of the subject's body. A large portion of nonverbal behaviors emanates from the lower body, not just from the hands and face. Feet that fidget or point to the door communicate discomfort.[6] If subjects sit behind a desk or table, officers should encourage them to relocate. Deceivers often use soda cans, computer screens, and other objects, both large and small, to form a barrier between themselves and investigators.[7] Objects used in this manner create distance, separation, and partial concealment—behaviors consistent with dishonesty.

The Eyes

Many investigators rely too heavily on eye contact. Research indicates that people, especially frequent liars, actually increase eye contact because they learned that investigators often gauge veracity by strong eye contact.[8] Nevertheless, eye aversion during difficult questions, as opposed to benign questions, can depict distress.

Eyes do not just see, they communicate when the brain conducts internal dialog, recalls past events, crafts answers, or processes information. Eyes also serve as a blocking mechanism, much the same way as folded hands across the chest or turning away in disagreement. When people hear or see something they disagree with or do not fully support, their eyelids tend to close longer than a normal blink. This automatic response occurs so quickly that most extended eye closures go unnoticed. By cataloging a person's baseline eye responses during nonstressful conversation, investigators can compare the eye responses with those during critical questions.

Hand or finger movement to the eyes usually follows a prolonged eye closure, further blocking out auditory or visual stimuli. Additionally, individuals who struggle with an idea or concept often blink their eyes rapidly. Rapid blinking or "eyelid flutter" signals a sensitive topic.[9] Officers carefully should observe the speaker's eyes, which can alert to the possibility of deception.

Head and Body Movements

Head movements should comport with verbal denials or affirmations. For example, an inconsistent head movement occurs when individuals say, "I did not do it" while their head subtly nods affirmatively. Investigators often miss

Special Agent Navarro serves in the FBI's Tampa, Florida, office and also serves as a member of the FBI's National Security Division's Behavioral Analysis Program.

Special Agent John R. Schafer is assigned to the FBI's Lancaster, California, resident office and also serves as a member of the FBI's National Security Division's Behavioral Analysis Program.

inconsistencies between the spoken word and nonverbal behavior.[10]

When people feel comfortable, they tend to mirror the head movements of the person with whom they converse. An unwillingness to mirror the investigator's head movements or other gestures could indicate discomfort, reluctance to cooperate, or, possibly, deceit.[11]

Truthful people tend to lean forward as they converse; liars tend to move away.[12] Therefore, if speakers lean backward when telling their version of events, the statement likely involves some deception or reluctance to provide information.

Mouth and Breathing

People who attempt to conceal information often breathe faster taking a series of short breaths followed by one long deep breath.[13] This irregular breathing pattern can tip investigators to speakers' increased anxiety levels. Additionally, stress often causes a dry mouth, resulting in repeated clearing of the throat, cracking of the voice, or jumping of the Adam's apple (laryngeal cartilages).[14] Likewise, a tense mouth with pursed lips may represent extreme distress and signify that speakers literally restrain themselves emotionally, verbally, and physically.

Hands and Arms

Confident people usually spread out in an area. Less secure people tend to occupy less space, fold their arms, and interlock their legs.[15] Similarly, a person whose lips, hands, or fingers tremble or who hides their hands may exhibit low confidence, although these characteristics do not guarantee deception.

A liar rarely points a finger or emphasizes with hand gestures.[16] Finger pointing or hand movements exude confidence—qualities liars usually lack. The finger-pointing cue usually does not apply to actors or politicians because they train themselves to appear confident during public appearances. Also, liars rarely display steepling—fingertips touching each other forming a triangle with both hands, which, symbolically, represents assurance of thought or position.[17]

> ***"The more observations investigators make, the greater the probability of detecting deception."***

Liars often slouch in chairs feigning comfort. Liars may even yawn repeatedly reinforcing the appearance of relaxation, even boredom. In addition, yawning during stressful situations or spreading out on a couch or chair when circumstances call for tension and discomfort portends deception.[18]

Liars often keep their hands motionless and draw their arms close to their bodies into a position as if "flash frozen." In many cases, speakers' knuckles turn white as they clutch the armrest.

Verbal Cues

Liars prefer concealing the truth rather than fabricating an entirely fictitious story.[19] With concealment, the liar only needs to avoid revealing untrue information.[20] In other words, the liar conveys the truth up to the event he wants to hide. At this point, the liar uses a "text bridge" to gloss over the concealed activity.[21] After crossing this sensitive area, the liar again relays the truth. The use of text bridges alerts the investigator to a topic that may require closer examination.

Text bridges enable the speaker to fast forward through time connecting salient events without discussing the included activities. For example, if a man says, "After I took a shower, I ate breakfast." The listener assumes that the man disrobed, turned on the water, got into the shower, washed his body with soap, rinsed the soap off his body, shampooed his hair, rinsed his hair, turned off the water, got out of the shower, and dried himself with a towel. Someone reluctant to tell the truth often uses this same technique to gloss over sensitive topics. For example, a person reports the following: "I left the house to go to work, and when I returned home, I found my wife lying in a pool of blood." The text bridge "when I returned home..." should alert investigators to missing information. Investigators should examine, in detail, the man's activities from the time he left the house until the time he returned. The interview should

not proceed until the speaker adequately explains his activities. Some commonly used text bridges include "I don't remember...," "the next thing I knew...," "later on...," "shortly thereafter…," "afterwards...," "after that...," "while...," "even though…," "when…," "then…," "besides…," "consequently…," "finally…," "however...," and "before...."

Stalling tactics, such as asking the investigator to repeat the question, provides additional time for deceivers to think up an appropriate answer. Liars typically ask investigators to repeat questions without realizing that honest conversations do not require the restatement of questions.[22] Other stalling phrases include "It depends on what you mean by that," "Where did you hear that?" "Where's this information coming from?" "Could you be more specific?" or "How dare you ask me something like that."[23] The phrases "Well, it's not so simple as yes or no," or "That's an excellent question," also provides speakers with additional time.

Research shows that guilty people often avoid using contractions.[24] Instead of saying, "It wasn't me," liars will say, "It was not me," to ensure the listener clearly hears the denial. Additionally, liars euphemize to avoid reality.[25] Likewise, responses such as, "I would never do that," "Lying is below me," "I have never lied," or "I would never lie," or, "I would never do such a thing" should alert investigators to the possibility of deception. Other statements such as: "to be perfectly frank...," "to be honest...," "to be perfectly truthful...," or "I was always taught to tell the truth," often intend to deceive.

Making a positive statement negative provides the liar with the quickest, easiest answer to an accusation. For example, the investigator asks, "Did you steal the money?" The person responds, "No, I did not steal the money." The guilty person responds quickly to avoid the impression of a delayed answer.[26] A variation of this technique occurs when a person answers "yes" or "no" immediately, but the explanation comes more slowly because the liar needs time to construct an answer.[27]

> ***...people have sought ways throughout history to test the truthfulness of others.***

Deceptive people rarely include negative details in their explanation of events, unless, of course, the story concerns delayed or canceled plans.[28] Truthful people reference the negative as well as the positive events in their stories.

Silence makes many people uncomfortable.[29] Liars usually continue speaking until they confirm that the listener accepts their version as the truth. If investigators stare patiently in silence unconvinced, the deceitful person likely will reveal information, not in response to questions but rather to fill the silence.

Conclusion

Investigators who learn and routinely employ basic nonverbal and verbal skills during interviews gain valuable insights into the veracity of the person interviewed; however, if unpracticed, these skills deteriorate over time. The more skilled behavioral observations investigators make, the more accurately they can form an opinion as to the truthfulness of the speaker. However, no matter how skilled the investigator, the fact remains that no particular nonverbal or verbal behavior, in and of itself, indicates deception.

Investigators cannot prevent people from lying but, at least, they can observe and catalog behaviors that indicate, but do not necessarily conclude, deception. The only certain method of discerning the truth relies on the corroboration of the known facts independent of the information provided by the person interviewed.[30] ✦

Endnotes

[1] Paul Eckman, *Telling Lies: Clues to Deceit in the Marketplace, Politics, and Marriage* (New York: W. W. Horton and Co., 1985), 287 citing M. O. Sullivan, P. Eckman, and W. V. Friesen, *Journal of Nonverbal Behavior* 12 (1988): 203-15.

[2] David J. Lieberman, *Never Be Lied to Again* (New York: St. Martin Press, 1988), 41.

[3] Sigmund Freud, *Fragments of an Analysis of a Case of Hysteria-Collected Papers V. 3* (New York: Basic Books, 1905), 94.

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[5] Supra note 1, 80.

[6] David Lewis, *The Secret Language of Success: Using Body Language to Get What You Want* (New York: Galhad Books, 1955), 221.

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[8] R. E. Exline, J. Thibaut, C. B. Hickey, and P. Gumpert, *Visual Interaction in Relation to Machiavellianism and an Unethical Act*, citing R. Christie and F. L. Geis, eds., *Studies in Machiavellianism*, (New York, NY: Academic Press, 1970), 53-75.

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[12] Supra note 2, 23.

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[14] Supra note 2, 54 and note 9.

[15] Supra note 2, 14.

[16] Supra note 2, 24.

[17] Supra note 2, 198.

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[19] Supra note 1, 29.

[20] Supra note 1, 20.

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[23] Supra note 2, 46.

[24] Supra note 2, 30.

[25] Supra note 2, 28.

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[27] Supra note 2, 35.

[28] Supra note 2, 43.

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[30] J. Reid Meloy, "The Psychology of Wickedness: Psychopathy and Sadism," *Psychiatric Annals* 27:9 (September 1997): 630-33.

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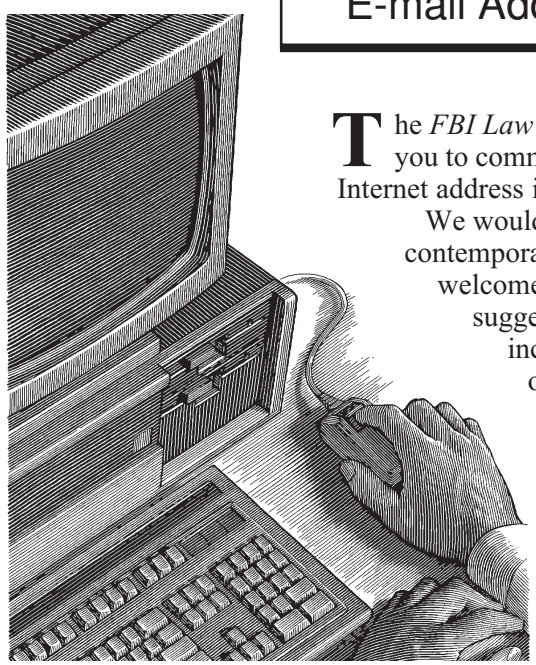

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Bulletin Reports

Vietnamese Youth Gang Involvement

A study in the city of Westminister in Orange County, California, funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), examined factors related to gang involvement by Vietnamese American youth. This Fact Sheet summarizes findings from the study's final report, *Cultural Explanations for Vietnamese Youth Involvement in Street Gangs*.

Research indicated that noncultural explanations are more predictive of gang involvement than cultural explanations. Contrary to popular belief, the study found that Vietnamese youth who reject their Asian identity and find it difficult to adopt an American identity are not more likely than other Vietnamese youth to become involved with gangs. The results of this study did not support the belief that gang involvement is a way for youth to obtain an identity when it is difficult to obtain it through family and social environments. In fact, the study did not fully support any of the cultural or noncultural hypotheses. Instead, researchers identified two main factors that predict Vietnamese youth gang involvement: progang attitudes and exposure to gangs in the neighborhood. Four predictors were found to influence the development of progang attitudes: negative school attitude, family conflict, poor social integration (i.e., a generalized sense of alienation), and perceived benefits of gang membership.

These findings suggest that while services focusing solely on cultural identity issues may have benefits, they will not be effective in preventing or reducing gang involvement by Vietnamese youth. Instead, services should focus on improving youth attitudes about school, reducing feelings of alienation, and modifying perceptions that gangs are beneficial to their members. Furthermore, services will prevent gang involvement if they address family conflict and provide some buffer against the influence of neighborhood gangs.

The final report, *Cultural Explanations for Vietnamese Youth Involvement in Street Gangs* (prepared under OJJDP grant number 95-JD-FX-0014), is available on-line from the Juvenile Justice Clearinghouse at *http://www.ojjdp.ncjrs.org/pubs/gang.html#180955* or by telephone at 800-638-8736.

Victim Issues for Parole Boards

Victim Issues for Parole Boards, a videotape and discussion guide produced by the Office of Justice Programs, shares the perspectives of victims and parole board members about the value of victim participation in the parole decision making process. It features examples of how several states have made special efforts to increase victim participation. The videotape also addresses how parole board members can remain objective and strike a balance between the victim's input and desires and other available and relevant information. It is designed to help parole board members recognize the concerns of crime victims in the parole process; understand how parole boards can benefit from victim participation; and determine the balance required among the needs of inmates, victims, and the community. For copies of this discussion guide (NCJ 180109) and additional information, contact the Office for Victims of Crime Resource Center at 800-627-6872 or access its Web site at *http://www.ncjrs.org*.

Juvenile Justice

Assessing Alcohol, Drug, and Mental Disorders in Juvenile Detainees provides information on a study of delinquent youth called the Northwestern Juvenile Project (NJP). Mental health professionals believe that a high percentage of youth involved in the juvenile justice system have alcohol, drug, and mental (ADM) disorders, but little empirical data exist to support their contention. Since 1995, NJP researchers have been examining ADM disorders among delinquent youth held in Chicago's Cook County Juvenile Temporary Detention Center. A longitudinal component, funded in part by the Office of Juvenile Justice Prevention, was added to this study in November 1998. This Fact Sheet describes the goals and current status of the NJP, suggests some preliminary findings, and discusses their implications for the juvenile justice system. To obtain a copy of this Fact Sheet, contact the National Criminal Justice Reference Service at 800-851-3420 or access its Web site at *http://www.ncjrs.org*.

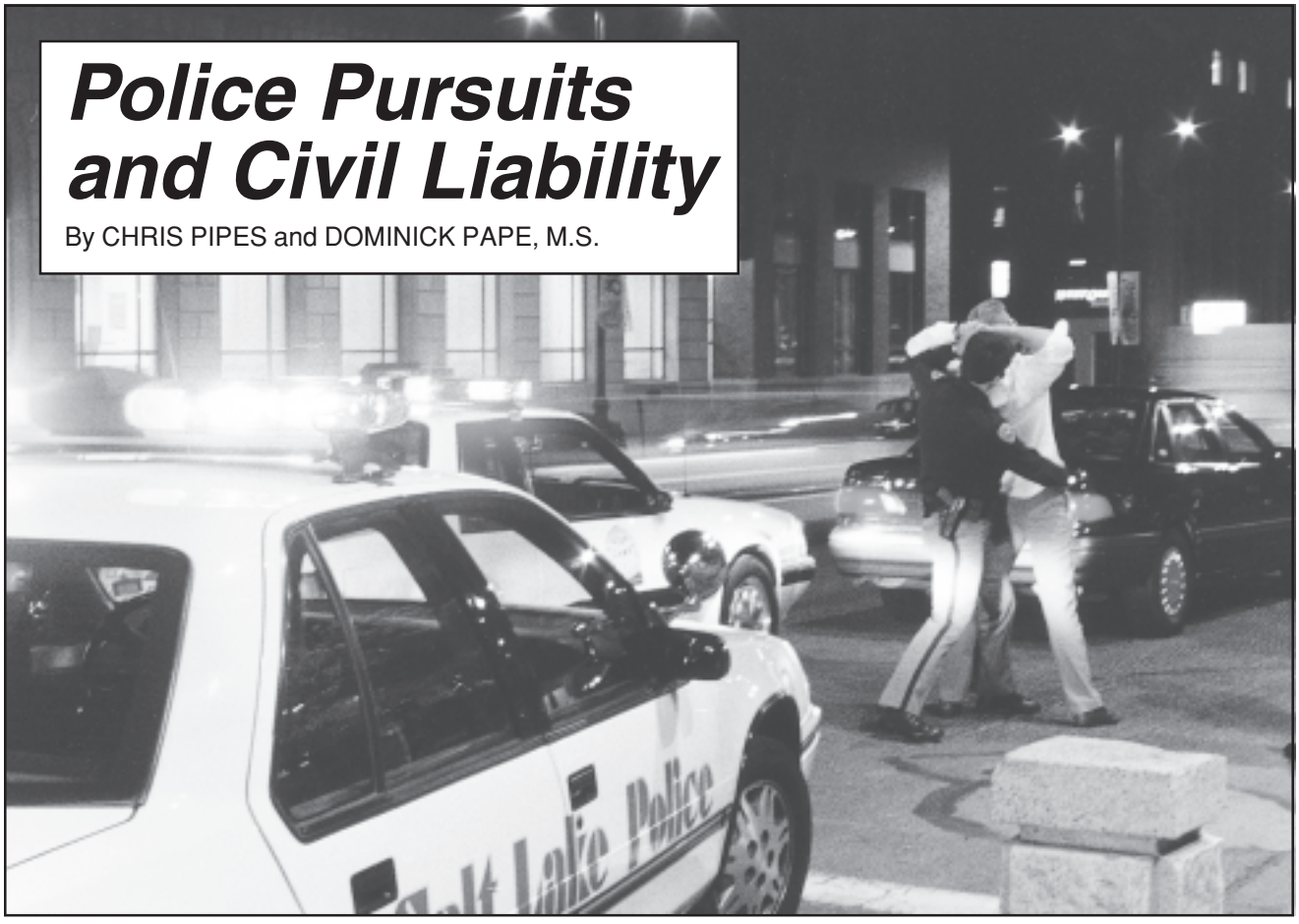
Eyewitness Evidence

Eyewitness Evidence: A Guide for Law Enforcement produced by the National Institute of Justice presents information for the collection and preservation of eyewitness evidence. It represents a combination of the best current, workable police practices and psychological research. The *Guide* describes practices and procedures that, if consistently applied, will tend to increase the overall accuracy and reliability of eyewitness evidence. While not intended to state legal criteria for the admissibility of evidence, the *Guide*, instead, sets out rigorous criteria for handling eyewitness evidence that are as demanding as those governing the handling of physical trace evidence. In short, it outlines basic procedures that officers can use to obtain the most reliable and accurate information from eyewitnesses; it is not meant as a substitute for a thorough investigation by law enforcement personnel. For a copy of the *Guide* (NCJ 178240), contact the National Criminal Justice Reference Service at 800-851-3420 or access its Internet site at *http://www.ncjrs.org.*

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 209, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Police Pursuits and Civil Liability

By CHRIS PIPES and DOMINICK PAPE, M.S.



As many as 40 percent of all motor vehicle police pursuits end in collisions[1] and some of these result in nearly 300 deaths each year of police officers, offenders, or innocent third party individuals.[2] Because many police pursuits result in accidents and injuries, agencies and officers become subjects of civil lawsuits. Initiated in state or federal courts, these lawsuits have resulted cumulatively in case law that directs law enforcement agencies to develop pursuit policies. The U.S. Supreme Court recently issued a ruling that has changed the threshold of negligence before an agency or officer can be held liable, which will impact police agencies across the United States.[3]

Because of the critical nature of police pursuit situations, chief executive officers (CEOs) of law enforcement agencies must establish an appropriate policy governing the actions of their personnel during such incidents. In doing so, CEOs first must consider the constraints and allowances set forth by state and federal statutes and court decisions applicable within their jurisdiction. They must create a policy that balances the need to apprehend offenders in the interests of justice with the need to protect citizens from the risks associated with police pursuits. Additionally, the policy must protect the financial interests of the community based upon potential losses of taxpayer dollars following successful litigation against the agency as a result of law enforcement actions deemed inappropriate by the courts. Adopting a policy similar to that of another agency does not easily resolve the CEO's dilemma because a variety of philosophies exists among the pursuit policies of law enforcement agencies. U.S. federal courts have reviewed numerous police pursuit cases using different standards of conduct and the courts routinely have reviewed the agency's pursuit policy before rendering a decision. The policy, or lack of same, could

impact the outcome of a civil action.

LITERATURE REVIEW

The published literature regarding police pursuit is voluminous, and individual studies focus on a variety of elements associated with the issue.[4] Some experts categorize pursuit policies as either restrictive or judgmental where, in the former case, the officer may only pursue given the existence of certain well-defined criteria, or, in the latter, where the officer may decide whether or not to pursue based upon certain factors.[5] Other experts prefer to label judgmental policies as discretionary, and further subdivide restrictive policies into two categories—restrictive and discouraging.[6] They define a restrictive policy as one that places only certain restrictions on the judgments of officers, and a discouraging policy as one that severely cautions against or prohibits pursuits except in extreme circumstances.[7]

One study discussed four factors that police officers and supervisors must consider when making the decision to pursue or to continue or terminate pursuit: the nature of the violation (e.g., traffic offense, felony); the characteristics of the area (e.g., freeway, commercial, residential); traffic conditions (e.g., congested or not congested); and weather conditions (e.g., wet or dry).[8] Among both officers and supervisors, the nature of the offense represented the most important variable involved in the decision to pursue, followed by the level of traffic congestion.[9] The study focused on the attitudes of the officers and supervisors independent of the actions that those individuals actually took in observance of policies in conflict with their personal beliefs.[10]

Other research describes the attitudes of the public with regard to police pursuit and some conclude that the public overwhelmingly supports pursuits for serious criminal offenses.[11] The data also suggest that public support for police diminishes proportionate to the seriousness of the offense, especially when the public is educated about the dangers of pursuit.[12]

Another study used data gleaned from interviews with prison inmates that attempted to describe attitudes toward police pursuit from the offenders' perspectives.[13] These findings concluded that the average individual who makes the decision to flee is a male in his mid-20s, and that few differences exist between the thoughts going through the minds of those offenders who eventually escaped and those who law enforcement captured.[14]

Lawsuits stemming from police pursuits allege civil rights violations pertaining to Title 18, Section 1983, U.S. Code. Traditionally, suits allege violations of the Fourth and Fourteenth Amendments. Police pursuits relate to the Fourth Amendment as to the citizens' rights against unreasonable seizures. The Fourteenth Amendment relates to citizens' right to treatment by governmental entities that is fundamentally fair.

DISCUSSION

Relevant Court Cases

Brower v. County of Inyo

The respondents in this case, which involved the use of police roadblocks to stop a fleeing vehicle, "allege the police acting under color of law, violated Brower's Fourth Amendment rights by effecting an unreasonable seizure using excessive force. Specifically, the

Commander Pipes serves with the Odessa, Texas, Police Department.

Special Agent Pape serves with the Florida Department of Law Enforcement.

complaint alleges that respondents placed an 18-wheel truck completely across the highway in the path of Brower's flight, behind a curve, with a police cruiser's headlights aimed in such fashion as to blind Brower on his approach."[15] The U.S. Supreme Court ruled in favor of Brower, which led many police agencies to restrict the use of roadblocks to stop fleeing vehicles. In its brief, the U.S. Supreme Court identified to the law enforcement community its interpretation of a seizure as it pertains to police pursuits. *Brower v. County of Inyo* states a seizure occurs "when there is a governmental termination of freedom of movement through means intentionally applied."[16]

Brower v. County of Inyo concerns an instance in which police activity brought about an intended result. The courts have rejected Fourth Amendment claims when action by the police during a pursuit brings about unintended results. Thus, third-party victims are not able to bring Fourth Amendment claims alleging unreasonable seizure arising from an action taken by police.

City of Canton, Ohio v. Harris

In its ruling in *City of Canton, Ohio v. Harris*, the U.S. Supreme Court dealt with another arena that directly affects law enforcement agencies and the duty to train employees.[17] Although this case did not involve a police pursuit, many subsequent cases involving pursuits mention it. The Court held that "the inadequacy of police training may serve as the basis for 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact."[18]

Galas v. McKee

The U.S. Court of Appeals for the Sixth Circuit examined the issue of whether police agencies can use police pursuits to apprehend traffic violators. In *Galas v. McKee*, the court reviewed a case based in Nashville, Tennessee involving the police pursuit of a 13-year-old traffic violator.[19] On March 16, 1983, Officer McKee of the Metropolitan Nashville-Davidson County Police Department, observed a vehicle exceeding the speed limit. Officer McKee gave chase, which, at times, reached 100 miles per hour, on a police motorcycle. The pursuit culminated when the vehicle left the road and crashed. The driver sustained serious and life-long injuries. The district court ruled in favor of the police officer and the police department. The parents of the driver appealed the decision. The court of appeals held the following: "We conclude that the minimal intrusion on a traffic offender's Fourth Amendment right occasioned by the officers participation in a high-speed pursuit does not outweigh a longstanding police practice which we consider essential to a coherent scheme of police powers...the use of high speed pursuits to apprehend traffic violators is not unreasonable and, thus, not violate of the Fourth Amendment."[20] Clearly, officers may engage in high-speed pursuits as an acceptable method to apprehend traffic violators. The court further reviewed the department's policy concerning traffic violators and police pursuits and held that, "The policy provides, at most, that officers may pursue, that is, follow, suspects. The policy of following traffic offenders who refuse to obey an officer's directive to pull to the side of the road does not infringe on the right to life."[21] This court affirmed the use of police pursuits to capture traffic violators.

> **"As many as 40 percent of all motor vehicle police pursuits end in collisions...."**

Fagan v. City of Vineland

The U.S. Court of Appeals for the Third Circuit in *Fagan v. City of Vineland* reviewed a police pursuit, which resulted in the injury of several persons and the death of three others.[22] The court argued this case once, and then chose to reargue the case again to review the standard applied to police pursuits. On March 6, 1988, an officer with the City of Vineland, New Jersey, Police Department was on patrol when a vehicle with a t-top roof drove by. The car, which held several passengers, was not speeding, but a passenger in the vehicle was standing up through the roof. The officer intended to stop the vehicle to issue a warning concerning the person standing up and hanging out of the

roof. At this point, no violation or crime had occurred. When the officer activated his overhead lights to stop the vehicle, it began to pull away from the officer at speeds between 35 and 40 miles per hour. The vehicle failed to stop at several stop signs and began to increase in speed. A sergeant was notified and could have terminated the pursuit. In fact, the sergeant requested that the dispatch center contact the officer to find out why the officer was pursuing the vehicle. The officer never responded. The vehicle then increased its speed to between 70 and 80 miles per hour. Another officer attempted to block an intersection but the vehicle continued past the officer. The vehicle ran a red light and collided with a pickup truck resulting in a major crash. Two occupants in the pickup truck and one in the vehicle the officer had pursued were killed.

A federal civil lawsuit was initiated against the officers and the Vineland Police Department, including the chief of police. The plaintiffs argued that "the City and Police Chief violated section 1983 and the Fourteenth Amendment by following a policy of not properly training and supervising police officers in the conduct of high speed pursuits, and by following a policy of not enforcing the pursuit guidelines."[23] The lower court ruled in favor of the city and the police officers. The appeals court in *Fagan v. Vineland* reversed the judgment against the city stating, "A municipality can be liable under section 1983 and the Fourteenth Amendment for failure to train its police officers with respect to high speed automobile chases, even if no individual officer participating in the chase violated the Constitution."[24]

The complete Third Circuit reargued the case under *Fagan v. Vineland* on only one issue.[25] The issue dealt with the legal standard to be applied to police pursuits. The majority ruled that the appropriate standard describes police behavior that "shocks the conscience." The dissenting opinion called for a lesser standard—"reckless or callous indifference." This latter standard, of course, represents a much lower threshold. The dissenting

opinion was extensive in attempting to justify this lower standard in police pursuit cases. The majority, however, concluded that the police conduct in this case did not "shock the conscience" and ruled in favor of the police.

State courts have applied different standards in reviewing police pursuit cases. The Appellate Court of Illinois in *Nelson v. Thomas*[26] and *Urban v. Village of Lincolnshire*[27] referred to "wilful and wanton conduct." The Court of Appeals of Georgia in *Wilson v. City of Atlanta*[28] and *Thompson et al. v. Payne*[29] considered "whether, officer's act of pursuing suspect's vehicle was performed with requisite regard for safety of all persons." The District Court of Appeals of Florida in *Porter v. State Department of Agriculture* asked "if defendant's conduct creates foreseeable 'zone of risk' that poses general threat of harm to others and whether it was foreseeable that defendant's conduct would cause specific injury that actually occurred."[30] Clearly, prior to *Fagan*, federal courts had no clear direction from state courts in defining the standard by which to judge police behavior during pursuits.

County of Sacramento v. Lewis

In the U.S. Supreme Court decision in *County of Sacramento v. Lewis,*[31] the Court has clarified the federal standard that must be met by plaintiffs who allege police misconduct during vehicle pursuits. The Court held that "the issue in this case is whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high speed automobile chase aimed at apprehending a suspected offender. We answer no, and hold that in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation."[32]

On May 22, 1990, Sacramento County sheriff's deputies responded to a call regarding a fight. After handling the call, a

motorcycle with a driver and a passenger approached the officers at a high rate of speed. The officers attempted to stop the motorcycle, but the driver chose to flee. A high-speed pursuit commenced with the vehicles reaching speeds of 100 miles per hour in a residential neighborhood. The pursuit ended when the motorcycle crashed. Unable to stop, the police vehicle ran over the passenger, who died at the scene. The district court ruled in favor of the police. The court of appeals reversed the decision based upon the standard of deliberate indifference. That court based its decision, in part, on the fact that the deputy violated his agency's general order concerning police pursuits. The Supreme Court held that the failure of the deputy to adhere to his agency's pursuit policy was irrelevant. This ruling, in effect, has given police agencies more protection from federal civil litigation generated by police pursuits.

Research and Review of Several Policies

Formal studies reflect that the general public believes police pursuits remain necessary for the apprehension of persons suspected of committing serious offenses, and that the need for pursuit to capture any offender should be balanced against the risk of danger to the innocent public.[33] These findings are consistent with the directives set forth in nine pursuit policies reviewed by the authors. Four of the agencies' policies and the IACP model policy can be characterized as judgmental, allowing pursuit for any offense as long as the danger to the officers and public created by the pursuit does not outweigh the necessity to capture the offender.[34] Three of the policies can be described as restrictive, based upon Alpert's definition[35] allowing pursuits only in the cases of felonies (one policy) or in the case of serious violent felonies (two policies).[36] One agency policy, of the West Midlands Police of Birmingham, England,[37] takes into account police driver proficiency as indicated by level of completion of a hierarchy of available driving courses. Depending upon current conditions and the seriousness of the offense, drivers who obtain advanced driving grades may pursue. All other drivers may pursue only in the event of serious, violent offenses.[38]

The Pennsylvania State Police, which has a "pursuit continuum" similar in many ways to the force continua that are components of many department use of force policies, characterizes another novel approach by an agency.[39] The Pennsylvania State Police Continuum provides clear direction for the consideration of supplementary tactics including the use of stop strips, roadblocks, induced stops, rolling roadblocks, ramming, and firearms.

Apparently few, if any, studies exist that attempt to determine if an offender, in deciding whether or not to flee, takes into account any chase prohibitions placed on officers by their agency's policy. Unfortunately, the often-heard argument against a restrictive policy states that once the members of a community learn that a local agency's policy prohibits pursuit except in the event of felonies, officers will suffer an increase in the number of offenders who choose to flee. While the empirical evidence in support of, or rebuttal against, this argument is insufficient, the anecdotal evidence suggests that such policies do not result in a change in the number of suspects who choose to flee.[40]

CONCLUSION

In *County of Sacramento v. Lewis*, the Supreme Court clearly defined the standard to be met when considering the liability of police agencies associated with vehicle pursuit. This standard is a much higher benchmark than previous rulings. However, this should not cause complacency.

Chief executive officers of every law enforcement agency must promulgate a written vehicle pursuit policy that provides clear guidance for that agency's officers. Such policy should include, at minimum, statements that officers will not continue pursuit once the risk of danger to the officer and public created by the pursuit exceeds the

potential danger to the public should the suspect remain at large. Also, officers assessing the danger must consider the nature of the violation committed by the offender, as well as environmental conditions such as type of area, weather, and level of traffic congestion. Further, based upon the characteristics of the particular agency, the area it encompasses, and the people it serves, CEOs may desire to restrict pursuit to cases in which the offender has been involved in serious offenses. Additionally, CEOs also must heed state statutes and state-level court decisions applicable within their jurisdiction. Finally, although civil lawsuits likely will continue to be filed, CEOs can protect their agencies by proactively reassessing their agency's pursuit policy and providing adequate training regarding the policy and motor vehicle pursuit in general. ✦

Endnotes

[1] R. G. Dunham, G. P. Alpert, D. J. Kenney, and P. Cromwell, "High-Speed Pursuit: The Offenders' Perspective," *Criminal Justice and Behavior*, (March 1998): 30-45; C. Eisenberg and C. Fitzpatrick, "An Alternative to Police Pursuits," *FBI Law Enforcement Bulletin*, August 1996, 16-19.

[2] Supra note 1 (Eisenberg and Fitzpatrick).

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

[4] The authors of this article reviewed pursuit policies of eight agencies, as well as the model policy of the International Association of Chiefs of Police (IACP). For an example of a model police pursuit policy, contact the IACP National Law Enforcement Policy Center, 515 North Washington Street, Alexandria, VA 22314-2357; telephone 800-THE-IACP; Web site: *http://www.theiacp.org/pubinfo/*.

[5] G. P. Alpert, "A Factorial Analysis of Police Pursuit Driving Decisions: A Research Note," *Justice Quarterly*, June 1998, 348-359.

[6] H. Nugent, E. F. Connors, J. T. McEwen, and L. Mayo, *Restrictive Policies for High-Speed Police Pursuits*, (Washington, DC: Institute of Law and Justice, Inc., 1988).

[7] Ibid.

[8] Supra note 5.

[9] Supra note 5.

[10] Supra note 4. All of the policies reviewed by the authors, as well as the model IACP policy, advised personnel of the environmental factors when making decisions related to pursuit.

[11] J. M. MacDonald and G. P. Alpert, "Public Attitudes Toward Police Pursuit Driving," *Journal of Criminal Justice* 26 (1998), 185-194.

[12] Ibid.

[13] Supra note 1, (Dunham, Alpert, Kenney, and Cromwell).

[14] Supra note 1, (Dunham, Alpert, Kenney, and Cromwell).

[15] *Brower v. County of Inyo*, 109 S.Ct. 1378 (1989).

[16] Ibid.

> ***"CEOs can protect their agencies by proactively reassessing their agency's pursuit policy...."***

[17] *City of Canton, Ohio v. Harris*, 109 S. Ct. 1197 (1989).

[18] Ibid.

[19] *Galas v. McKee*, 801 F.2d 200 (1986).

[20] Ibid.

[21] Ibid.

[22] *Fagan v. City of Vineland*, 22 F.3d 1296 (C.A. 3 1994)(*en banc*).

[23] *Fagan v. City of Vineland*, 22 F.3d 1283 (1994).

[24] Ibid.

[25] *Fagan v. City of Vineland*, 22 F.3d 1296 (1994).

[26] *Nelson v. Thomas*, 668 N.E.2d 1109 (1996).

[27] *Urban v. Lincolnshire*, 651 N.E.2d 683 (1995).

[28] *Wilson v. City of Atlanta*, 476 S.E.2d 892 (1996).

[29] *Thompson et al. v. Payne*, 453 S.E.2d 803 (1995).

[30] *Porter v. State Department of Agriculture*, 689 So.2d 1152 (1997).

[31] *County of Sacramento v. Lewis*, S.Ct. No. 96-1337 (1998); available from *http://www.findlaw.com*; accessed on November 7, 2000.

[32] Ibid.

[33] Supra note 11.

[34] "Operation of Sheriff's Office Vehicles," *Erie County Sheriff's Office General Orders Manual*, (unpublished, 1990), 1-6; "Emergency Vehicle Response/Pursuit," Marion County Sheriff's Office (unpublished, 1992), 1-10; "Police Pursuits, Legal Intervention, Roadblocks, Pennsylvania Police Pursuit Reporting System, and Pursuit Analysis," *Pennsylvania State Police Department Directives*, (unpublished 1996), 1-21; E. M. Sweeney, "Vehicular Pursuit: A Serious and Ongoing Problem," *Police Chief,* January 1997, 16-21; "Vehicular Pursuits," *Washington State Patrol Regulation Manual* (unpublished, 1999), 50-58.

[35] Supra note 5.

[36] "High Speed Pursuits," *City of Chesterfield Police Department General Orders Manual*, (unpublished, 1995), 1-5; "Vehicle Pursuit, Stop, Emergency Response, and Surveillance Driving," *Florida Department of Law Enforcement Policy Manual* (unpublished, 1999), 1-5; "Emergency Vehicle Operation/ Vehicle Pursuit," *Odessa Police Department General Orders Manual* (unpublished, 2000), 1400-1406.

[37] "Pursuit Policy," *West Midlands Police Departmental Directives* (unpublished, 1998), 1-12.

[38] The number of the sample of agency policies revealed here is not large enough to be statistically valid as an indicator for which types of policies are most prevalent, nationally or internationally.

[39] "Police Pursuits, Legal Intervention, Roadblocks, Pennsylvania Police Pursuit Reporting System, and Pursuit Analysis," *Pennsylvania State Police Department Directives* (unpublished, 1996), 1-21.

[40] Supra note 11.

This article represents the analysis and conclusions of the authors, who are solely responsible for its content, and does not represent the position of the Florida Department of Law Enforcement or the Odessa, Texas, Police Department.

Focus on Performance

The Effects of Sleep Deprivation

By Glory Cochrane, M.S.

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Unfortunately, when it comes to sleep, shift workers face the harsh reality that most people do not function well when they work at night and sleep during the day. Shift work upsets the intricate network of interrelated clocks and schedules that keep the human body functioning efficiently. Circadian rhythms, or a person's sleep/wake cycle, is one factor that controls a person's internal network of clocks and schedules. Some experts believe that if a person disrupts this cycle, other routines (e.g., when a person gets hungry) also get off cycle.[1]

The average person gets 8 hours of sleep for every 16 hours they are awake. Thus, individuals exist in a daily equilibrium in which a relatively small amount of sleep loss causes increased sleepiness. Continued reduction in sleep results in a larger sleep debt and individuals can cope with this sleep deficit in different ways. When the sleep debt reaches a threshold where internal coping behaviors (e.g., the ability to physically stay awake or alert) become overwhelmed, sleep will be imminent.[2]

Research has shown that while sleep loss has negative effects on three basic areas—motor performance, cognitive function, and mood—it has the strongest effect on mood and weakest on motor functions.[3] Total deprivation of under 45 hours left subjects better able to cope with simple and brief tests of cognitive function. With partial deprivation, subjects did best on complex, short, cognitive tests, which suggests that attention span is the parameter most degraded by partial sleep deprivation. All subjects did better on shorter motor control tests versus longer ones.

Regardless of the level of deprivation, any loss of sleep can have varying effects on an individual's ability to deal with common day-to-day situations. For police officers, such episodes can have catastrophic results, such as motor vehicle accidents, shootings, inappropriate use of force, or general improper attitudes.[4]

The Problem

Similar to other law enforcement agencies, managers at the Albuquerque, New Mexico, Police Department (APD) must contend with scheduling officers who work the night, late afternoon, and evening shifts for daytime court appearances. Unfortunately, due to varying schedules, attending court deprives officers of sleep. Oftentimes, officers who work the night shift may have four or five court appearances scheduled throughout the day, which leaves little time for sleep, much less family life or social activity. Traditionally, court schedules revolve around the hours set by each judge and the convenience of the offender. Although the APD has made several attempts to offer alternatives, the problems still persist.[5]

A growing concern exists over sleep problems related to shift work and the increased liability law enforcement agencies face. The Wellness Unit of the APD evaluated the impact of shift work on the sworn members of its department. Shift work can have varying effects on the environmental, familial, social, and work life of a police officer.

The Study

A private healthcare consulting firm, practicing primarily in integrated lifestyle management and

pharmacology, designed and validated a sleep survey for the APD. Participant's answers were based on a Likert-type scale.[6] During the department's annual mandatory advanced training, the APD Wellness Unit administered the instrument to identify the incidence of sleep deprivation and how it affects its officers.

Of the 843 total sworn officers employed by the APD, the unit received a response rate of approximately 54 percent (459), which consisted of 409 male and 50 female officers ranging in rank from patrolman second class to deputy chief. All sworn members of APD work four 10-hour shifts with approximately 10 different starting times. Rather than rotating shifts, APD officers bid for a shift every 2 years, according to seniority.

Members of the Wellness Unit assigned officers to one of three categories based on the starting time of their shift. The three categories included officers who began their shifts between 6:30 a.m. and noon, 12:01 p.m. and 6 p.m., and 6:01 p.m. and midnight.

> **"...any loss of sleep can have varying effects on an individual's ability to deal with common day-to-day situations."**

In addition to regular work hours, officers can sign up each month for contract duty for overtime pay.[7] Currently, APD's policy stipulates that officers cannot work more than 40 hours of overtime during a 2-week pay period. Therefore, in 1 week, an officer could work 40 regular hours, 40 hours of contract overtime, plus any regular overtime. However, tracking of the contract overtime has proven problematic for the APD. Because officers report overtime separately from their regular work hours, their immediate supervisors often find it difficult to accurately calculate the number of hours an officer actually worked during a pay period. The officer's immediate supervisor must approve any contract overtime and hand deliver an approval slip to the individual coordinating the contract overtime. However, at no time does the contract overtime interface with an officer's regular working hours. The contract overtime coordinator generates a monthly report of overtime used; however, this usually occurs after a supervisor can correct a problem. A recent review of the contract overtime report revealed that some officers work as much as 16 to 21 hours during a 24-hour period.

Findings

Except for the questions involving demographics, officers answered each question based on their own perceptions. The consulting firm calculated the results with the findings from the sample with an error rate of plus or minus 5 percentage points at the 95 percent confidence level.

Results indicated that fatigue proves prevalent among APD officers with night shift personnel suffering the most adverse effects followed by the officers working late afternoon and evenings. Contrary to literature on sleep deprivation, the results of this study showed the sex of the officer was not a factor.[8] Survey administrators instructed officers to consider questions that refer to "daytime" activities as whenever their "day" might be. Results showed mandatory and voluntary overtime hours worked by officers as the primary causes for fatigue.

Issues involving mandatory hours affecting officers centered around court schedules, with night shift officers primarily affected. Voluntary overtime work mainly involved contract overtime.

Results of the survey raised numerous concerns. First, numerous officers from each shift indicated that they have driven drowsy at some point—16 percent of night shift officers, 12 percent of swing shift, and 2 percent of day shift. Fourteen percent of night shift officers reported "very often" having trouble remembering, compared to 10 percent of swing shift and 5 percent of day shift. In addition, 11 percent of night shift officers reported "very often" dozing off during daytime activities, versus 2 percent of swing shift and 1 percent of day shift officers.

Night shift officers reported a greater degradation in their ability to easily handle minor irritation with

8 percent reporting their ability as poor compared to 1 percent of each of swing and day shift. This finding may prove relevant to other studies that have reported that officers who work more overtime hours have a greater number of complaints filed against them.[9]

Results also indicated that the effects of fatigue extend beyond the work environment to family and social life. Thirty-two percent of night shift officers rated their "ability to accomplish things" as fair to poor, compared to 19 percent of swing shift and 13 percent of day shift. Night shift officers also rated their "ability to enjoy family or social life" much worse than their peers working the swing or day shift. However, swing shift officers rated their relationship with their spouse or partner as poor more often than the other shifts. More notable, night shift officers rated themselves significantly lower in physical aspects. When asked "how healthy you feel," 10 percent of night shift officers responded poor, compared to 2 percent of day shift officers and none in the swing shift. In addition, 10 percent of night shift officers rated themselves poor in the area of how they feel physically, compared to 1 percent of swing shift officers and 2 percent of day shift officers.

"...police managers should consider generating a guideline that limits the number of hours an employee can work to 16 hours within a 24-hour period."

Recommendations

Because of the negative effects of sleep deprivation over successive days and the greater liability for a police department and its city, managers must consider limiting the number of hours an officer can work within a 24-hour period and setting a maximum limit of hours per week.

Based on research conducted, police managers should consider generating a guideline that limits the number of hours an employee can work to 16 hours within a 24-hour period.

Further, managers should consider—

- devising an overtime time sheet that officers must submit in conjunction with their regular time sheet to allow immediate supervisors to assess and handle excessive overtime before it becomes a problem;
- soliciting better cooperation from the district courts in devising better-suited court schedules for night shift officers;
- offering classes that guide officers on how to cope with shift work, recognize and understand the symptoms and effects of sleep deprivation, and avoid the problems associated with it;
- ensuring classes and other opportunities (e.g., training, firearms ranges, and physicals exams) are available to officers working the night shifts;
- allowing the department repair shops (e.g., automobile, radio) to remain open later to allow night shift officers access either before or after their shift;
- keeping all work areas freshly painted, clean, and bright, which can promote heightened alertness, better moods, and increased productivity;
- ensuring vending machines throughout the department offer an assortment of healthy products (e.g., juice and low-fat or natural snacks);
- increasing contact with night shift workers; and
- videotaping mandatory meetings to allow night and swing shift employees to view them on their regular shifts.

Conclusion

As with any law enforcement agency faced with providing 24-hour service, scheduling and working swing shifts remain commonplace. However, many mangers do not realize the hidden, potential problems associated with working these shifts.

Managers must recognize these risks and offer alternatives that can help employees become better acclimated to shift work. Additionally, to help their employees better cope with such assignments, they must help their personnel understand the causes,

effects, and cures of sleep deprivation resulting from working these unnatural shifts. In doing so, police managers will ultimately provide a safer environment for their department employees and the public they serve. ✦

Endnotes

[1] M. Saborin, "Asleep at the Switch," *Occupational Health and Safety* (1998): 21-33.

[2] W. Dement, "Catastrophic Sleep Episodes: Why Do They Happen?" (paper presented to the Senate Appropriations Committee on the Findings and Recommendations of the National Commission on Sleep Disorders Researchers, Washington, DC, November 1992).

[3] J. J. Pilcher, and A. Huffcutt, "Effects of Sleep Deprivation on Performance: A Meta-analysis," *Sleep*, no. 19 (4): 318-326.

[4] For additional information of the effects of shift work, see M. Simpson and S. Richbell, "British Policing and the Ottawa Shift System: Easing the Stress of Rotating Shifts," *FBI Law Enforcement Bulletin*, January 2000, 19-26.

[5] For example, the APD suggested assigning a full-time officer to handle the court scheduling, tried to set a primary "court day" for its officers, and requested evening or Sunday court.

[6] The Likert technique presents a set of attitude statements that asks subjects to express agreement or disagreement typically based on a five-point scale. Each degree of agreement is given a numerical value from one to five. Thus, a total numerical value can be calculated from all the responses.

[7] Officers volunteer to work overtime for department contracts with local businesses, such as grocery stores, banks, and other retail stores.

[8] G.A. Kerkhof, "Inter-individual Differences in the Human Circadian System: A Review," *Biological Psycholgy*, no. 20 (1985): 83-112; and Martin Moore-Ede, *The 24-Hour Society* (Reading, Massachusetts: Adison-Westley Publishing, 1993).

[9] Brian Vila, *Tired Cops: The Importance of Managing Police Fatigue* (Washington, DC: Police Executive Research Forum, 2000).

Ms. Cochrane serves as a wellness coordinator for the Albuquerque, New Mexico, Police Department.

APD SLEEP SURVEY 1998-1999

How often do you experience the following . . .

	Very often	Sometimes	Not often	Never
Feeling Drowsy when driving a car				
Day Shift	2	43	44	11
Swing Shift	12	48	35	6
Graveyard	16	52	28	5
Department (collective)	8	46	38	8
Dozing off during daytime activities				
Day Shift	1	19	47	32
Swing Shift	2	20	36	42
Graveyard	11	30	46	13
Department (collective)	4	22	44	30
Waking up in the morning feeling refreshed, ready to go				
Day Shift	25	47	23	5
Swing Shift	23	43	31	4
Graveyard	10	39	40	11
Department (collective)	20	44	3	6
Having trouble remembering things				
Day Shift	5	41	41	12
Swing Shift	10	34	47	9
Graveyard	14	36	42	8
Department (collective)	9	38	43	10
Your ability to accomplish the things you need to				
Day Shift	16	70	12	1
Swing Shift	21	60	19	0
Graveyard	13	55	30	2
Department (collective)	17	65	18	1
	Excellent	**Good**	**Fair**	**Poor**
How you feel physically				
Day Shift	12	55	30	2
Swing Shift	8	70	20	1
Graveyard	10	51	29	10
Department (collective)	11	58	28	4
Your general mood				
Day Shift	16	67	15	1
Swing Shift	13	71	13	2
Graveyard	4	53	37	6
Department (collective)	12	65	20	3
You ability to handle minor irritations easily				
Day Shift	9	67	23	1
Swing Shift	16	58	25	1
Graveyard	10	46	36	8
Department (collective)	11	60	27	3
Your personal relationship with your spouse or partner				
Day Shift	27	75	13	1
Swing Shift	33	68	17	2
Graveyard	22	60	30	5
Department (collective)	27	70	18	2
Your ability to concentrate during the day				
Day Shift	10	75	13	1
Swing Shift	12	68	17	2
Graveyard	5	60	30	5
Department (collective)	10	70	18	2

Day Shift N = 226 Swing Shift N= 113 Graveyard N= 120 Department (together) N= 459

Book Review

How To Do Financial Asset Investigations: A Practical Guide for Private Investigators, Collections Personnel, and Assets Recovery Specialists by Ronald L. Mendell, 2nd Edition, Charles C. Thomas, Publisher, LTD., Springfield, Illinois, 2000.

The success of money laundering, public corruption, and most economic crime investigations depends largely upon the ability of the criminal investigator to track the ownership trail of money and other assets away from the crime or the criminal. Successful tracing often provides the evidence of criminal intent, identifies otherwise-unknown accomplices, and may lead to the seizure and forfeiture of property constituting illegal proceeds. To successfully trace money and property, the investigator must know how to uncover hidden assets, how to identify ownership interests often camouflaged by changes in the form and nature of the ownership, and how to accurately unravel cleverly disguised control over, and interest in, property.

How to Do Financial Asset Investigations serves as a practical primer for investigators to identify and locate assets. Although this book primarily targets private investigators and collection specialists involved in uncovering information relative to collection on a judgment or a debt, because of the similarities in the techniques used to uncover hidden assets, criminal investigators will find this book helpful as well. Spouses attempting to hide marital assets in divorce proceedings and debtors transferring property to frustrate collection efforts often use techniques similar to those employed by criminals laundering their illegal profits or by government officials hiding bribe payments. The common interests shared by criminal investigators and collection specialists in these contexts serves as the need for a comprehensive financial investigation that will disclose the identity, location, and value of assets owned or controlled by an individual or business.

This 191-page book begins with an explanation of "basic identifiers" needed to conduct a financial investigation. The author includes chapters on basic and advanced information sources for conducting financial investigations on individuals as well as businesses, including a section on piercing the corporate veil, and discusses the effective use of information brokers (i.e., companies that provide database services for a fee). Additionally, the author includes frequent references to the use of on-line and electronic resources to identify the availability of records, such as tax liens, state motor vehicle records, real estate records, and change of address information.

Each of the 13 chapters includes a brief introduction and summary of the objectives presented in that chapter. The author also provides forms that the investigator may find helpful in organizing financial information, as well as a chapter suggesting ways to record and report the information collected. Each section is easy to read and contains specific examples, including practical suggestions from the author on how to use the information or sources identified

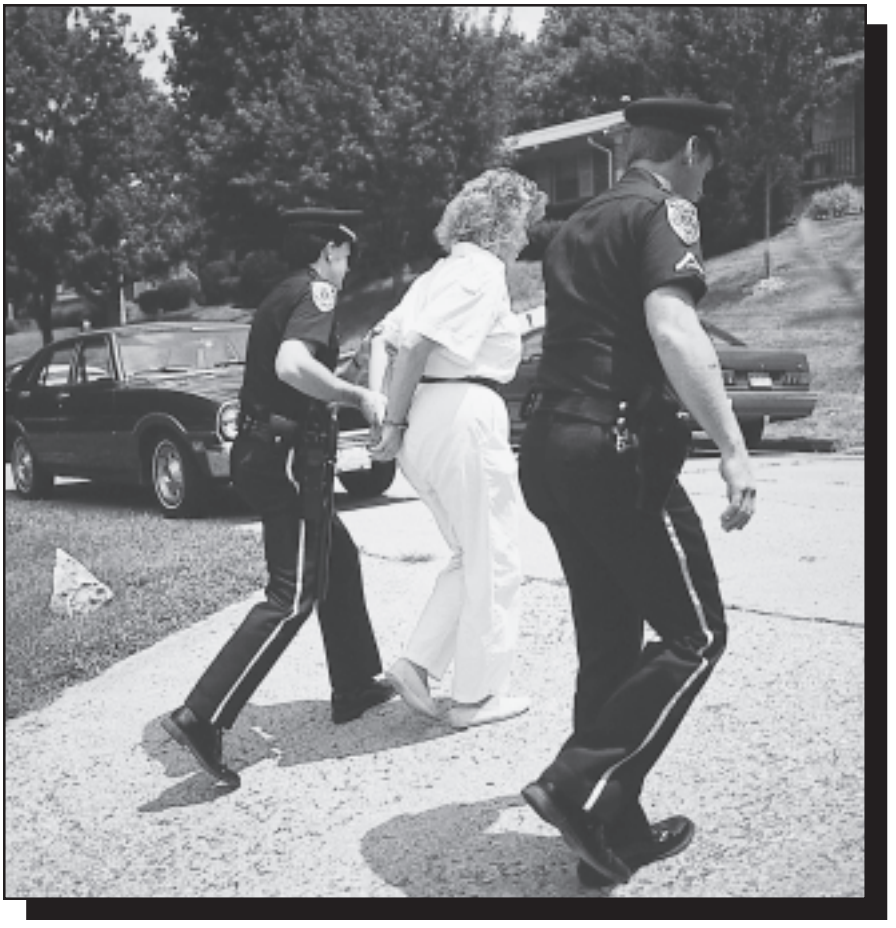
Conducting successful financial investigations in today's global economy requires the criminal investigator to remain constantly aware of the methods criminals employ to hide assets and disguise control over wealth. In an arena where organized criminal activity generates enormous illegal profits, which criminals use to expand their reach and influence of their organizations, financial investigations have become a keystone to successful prosecutions and indispensable to asset forfeitures. *How To Do Financial Asset Investigations* serves as an excellent resource for investigators involved in conducting such investigations.

Reviewed by
William R. Schoeder
Law Enforcement Consultant
Woodbridge, Virginia

The Sixth Amendment Right to Counsel

Application and Limitations

By KIMBERLY A. CRAWFORD, J.D.



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According to the Supreme Court of the United States, both the Fifth and Sixth Amendments to the U.S. Constitution afford individuals the right to counsel under certain circumstances. The right to counsel derived from the Fifth Amendment protection against compelled self incrimination was introduced by the Supreme Court in *Miranda v. Arizona*,[1] and has received an abundance of attention from both the media and the courts. As a result, the Fifth Amendment right to counsel is well known to the public and to law enforcement officers who routinely contend with the *Miranda* rule.

The right to counsel contained in the Sixth Amendment, however, has been the topic of far less litigation and, though significant, has received less attention from the media, law enforcement policy makers, and trainers. This article examines the Sixth Amendment right to counsel and considers its application to and limitations on law enforcement investigations.

The Attachment of the Sixth Amendment

The Sixth Amendment provides a list of protections available to the accused in "all criminal prosecutions."[2] The list includes, among other protections, the right to the assistance of counsel. The primary purpose of the Sixth Amendment is to ensure a fair *prosecution*. Thus, the Supreme Court has held that the protections of the Sixth Amendment, including the right to counsel, do not apply at all stages of a criminal investigation.[3] Rather, the Sixth Amendment rights attach once the government has committed itself to the prosecution of the case by the initiation of adversarial judicial proceedings.

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

> ***"...protections of the Sixth Amendment, including the right to counsel, do not apply at all stages of a criminal investigation."***

Prior to the initiation of adversarial judicial proceedings, no Sixth Amendment right to counsel exists[4] and law enforcement officers conducting an investigation may continue their efforts unrestrained by the Sixth Amendment right to counsel. However, once adversarial judicial proceedings have begun, "whether by way of formal charge, preliminary hearing, indictment, information or arraignment,"[5] the accused has the right to the assistance of counsel at all *critical stages* of the prosecution.

Critical Stages

Once the prosecution has begun, the Sixth Amendment does not guarantee the accused unfettered access to an attorney. Rather, the Supreme Court has held that the accused has the right to the assistance of counsel at all "critical stages" of the prosecution.[6]

Except for the initial appearance[7] in court, during which the accused is simply advised of the charges and constitutional rights, all adversarial court proceedings have been determined to be critical stages in the prosecution.[8] Court proceedings, however, are typically the responsibility of prosecutors, not law enforcement officers, and, thus, are beyond the scope of this article. For law enforcement purposes, the two aspects of criminal investigations that have been determined to be critical stages in the prosecution are post-attachment line-ups[9] and the "deliberate elicitation" of information from the accused.[10]

Lineups

In *United States v. Wade*,[11] the Supreme Court held that the potential for prejudice posed by suggestive lineups and the need to preserve the ability of the defense to conduct effective cross-examinations at trial necessitated the finding that post-attachment lineups are critical stages in the prosecution. Consequently, once the Sixth Amendment right to counsel has attached, the accused and defense counsel have the right to be notified of an intended lineup concerning the charged offense and, the lineup cannot be conducted absent the presence of defense counsel or an intelligent waiver executed by the accused.

Deliberate Elicitation

In *Brewer v. Williams*,[12] the Supreme Court held that any attempts on the part of the government to deliberately elicit information from *accused*[13] individuals regarding the crimes they have been charged with are considered critical stages in the prosecution and must be conducted in compliance with the Sixth Amendment. The definition of "deliberate elicitation" that has emerged from the Supreme Court is much broader than the definition of "interrogation" that is used for purposes of applying the *Miranda* rule.

For purposes of *Miranda*, only reasonable efforts to gain incriminating information carried out by known government actors are considered interrogation. Thus, covert attempts to acquire statements from custodial subjects, whether conducted by cellmate informants working on behalf of the government or by undercover law enforcement officers, do not violate the rule in *Miranda*.[14] For Sixth Amendment purposes, however, any attempts, other than passive listening,[15] to gain incriminating information from an accused regarding crimes charged, whether overt or covert, are deemed deliberate elicitation and will require a waiver or the presence of counsel.

Crime Specific

It is important to note that lineups and the deliberate elicitation of incriminating information from an accused invoke Sixth Amendment protection only if they relate to the specific crimes levied against the accused. In other words, the Sixth Amendment right to counsel is crime specific.

Over the years, there has been considerable debate in the courts over the scope of the Sixth Amendment protections. In *McNeil v. Wisconsin,*[16] the Supreme Court held that the invocation of the Sixth Amendment right to counsel was "offense specific." Many lower courts interpreted the "offense specific" language of the Supreme Court as extending the Sixth Amendment protections to crimes charged and all other closely related offenses arising out of the identical factual event.[17] Consequently, an individual accused of a robbery could receive the protections of the Sixth Amendment during the investigation of an assault that occurred during the charged robbery.

Recently, in *Texas v. Cobb,*[18] the Supreme Court considered once again the scope of the Sixth Amendment and clearly limited the protections to the specific crimes charged. Raymond Cobb was a 17-year-old accused of burglarizing the home of Lindsey Owings. At the time of the burglary, the home was occupied by Owings' wife and 16-month-old daughter. When Owings returned from work he found the house burglarized and his wife and daughter missing. After receiving a report of the burglary and disappearances, the police conducted an investigation and eventually questioned Cobb regarding the incident. At the time of the questioning, Cobb was incarcerated on an unrelated offense. After being advised of and waiving his *Miranda* rights, Cobb admitted to the burglary but denied any knowledge of the whereabouts of the woman and child.

Cobb was indicted on the burglary charge and invoked his Sixth Amendment right to counsel. After being freed on bond, Cobb confessed to his father that he had killed the woman and child. Cobb's father reported his son's confession to the police, and a warrant was obtained for the arrest of Cobb on charges of murder. Following his arrest, Cobb was advised of his *Miranda* rights, and he waived those rights.

> ***"Prior to the initiation of adversarial judicial proceedings, no Sixth Amendment right to counsel exists...."***

Cobb admitted to the police that Mrs. Owings confronted him as he was attempting to remove a stereo from the home, that he stabbed her to death with a knife he had brought with him, and that he took her body into the wooded area behind the house to bury her. When he returned to the house, he saw the baby sleeping on its bed. He took the baby into the woods and laid it near the mother. He then obtained a shovel and dug a grave between the two. Before Cobb had put the mother's body in the grave, the child awoke and began stumbling around, looking for her mother. When the baby fell into the grave, Cobb put the mother's body on top of her and buried them both. Cobb subsequently led police to the grave.

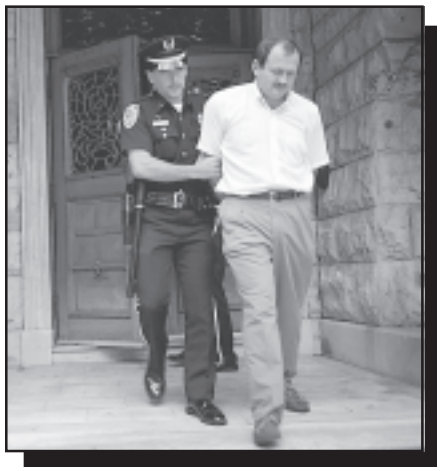
After a trial, during which Cobb's confession was admitted and evidence obtained from the grave site was introduced, Cobb was convicted of capital murder for murdering more than one person in the course of a single criminal transaction[19] and sentenced to death. Cobb subsequently appealed his conviction on the ground that the interrogation that followed his arrest on the murder charges violated his Sixth Amendment right to counsel. The defense argued that the Sixth Amendment right to counsel, which had attached and had been invoked with respect to the burglary charges, precluded any attempts by the police to deliberately elicit information from Cobb about the "factually related" murders. The Court of Criminal Appeals agreed that the murders were "factually interwoven with the burglary" and, therefore, Cobb's Sixth Amendment right to counsel had attached on the capital murder charge even though he had not been charged with the offense at the time of the interrogation. Cobb's conviction was reversed and the case was remanded for a new trial. The Supreme Court of the United States granted review.[20]

In *Cobb*, a majority of a divided Supreme Court made clear its view regarding the scope of the Sixth Amendment protection. In the first paragraph of its opinion, the Court stated "[t]he Texas Court of Criminal Appeals held that a criminal defendant's Sixth Amendment right to counsel attaches not only to the offense with which he is charged, but to other offenses 'closely related factually' to the charged offense. We hold that our decision in *McNeil v. Wisconsin* meant what it said, and that the Sixth Amendment right is 'offense specific.'"[21]

The Supreme Court recognized that, because some criminal statutes are so similar, the definition of an "offense" cannot necessarily be "limited to the four corners of a charging instrument."[22] Rather, the Court announced its intent to apply a definition it had conceived in another context. In *Blockburger v. United States*,[23] the Court explained "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."[24]

Applying the "*Blockburger* test" to the case at hand, the Supreme Court noted that, at the time of the confession in question, Cobb had been indicted for the burglary but had not been charged in the murders. After reviewing the Texas Penal Code, the Court concluded that each offense required proof of at least one fact that the other did not and, therefore, were not the same offenses under *Blockburger*. Thus, the interrogation did not violate Cobb's Sixth Amendment right to counsel and the confession was admissible.

When law enforcement officers find themselves investigating an individual who has already been charged with an offense, concerns regarding the Sixth Amendment can be assuaged by reviewing the criminal statutes and applying the *Blockburger* test. If each crime requires proof of at least one additional fact, the crimes are not the same for purposes of the Sixth Amendment.



Invocation of the Sixth Amendment Right to Counsel

Once the Sixth Amendment right to counsel has attached, law enforcement officers may deliberately elicit information from the accused or require participation in a lineup regarding the crime charged as long as they comply with the dictates of the Sixth Amendment by either having defense counsel present or by obtaining an intelligent waiver of the right to counsel from the accused. Once the Sixth Amendment right to counsel is *invoked*, however, officers may not seek future waivers unless the accused initiates the contact.[25]

Unlike an invocation of the right to counsel under *Miranda*, which must be clear and unequivocal,[26] an invocation of the Sixth Amendment right may be unintentional. The Supreme Court has held that there are two ways for an accused to invoke the Sixth Amendment right to counsel. The first way, which is easily discernable, requires the accused to reject an officer's attempt to obtain a waiver. In other words, if an officer attempts to comply with the requirements of the Sixth Amendment by seeking a waiver of the right to counsel prior to a critical stage and the accused refuses the request for a waiver, the Sixth Amendment right to counsel has been invoked.

The second method of invoking the Sixth Amendment right to counsel is much less obvious. In *Michigan v. Jackson*,[27] the Supreme Court held that an accused who requests or accepts the appointment of counsel at the initial appearance in court has indicated a desire to deal with the government only through counsel and, thus, has invoked the Sixth Amendment right to counsel. Accordingly, an accused who claims indigency and requests court appointed counsel for the purpose of providing legal assistance during future court proceedings has unwittingly invoked the Sixth Amendment protections. Once invoked, the protections cannot thereafter be waived at the officer's provocation.

Policy Considerations

Understanding the differences between the *Miranda* rule and the Sixth Amendment right to counsel is critical to the development of functional law enforcement policies and successful prosecutions. Policies should reflect the underlying purpose of each constitutional protection.

The *Miranda* rule was created to relieve what the Supreme Court felt was the inherent coercive environment of all *custodial interrogation*. Therefore, *Miranda* applies regardless of the topic of interrogation but is limited to interrogations that occur while the subject is in custody. Because the Sixth Amendment was designed to ensure a fair prosecution, its protections are crime specific but remain in effect whether the subject is in custody or not.

Law enforcement agencies should be careful to craft policies that reflect these differences. An interrogation policy that extends *Miranda* protections beyond the confines of custody or fails to take advantage of the crime specific nature of the Sixth Amendment protections is needlessly restricting the legitimate efforts of officers.

Moreover, following the Supreme Court's decision in *Cobb*,[28] agencies should not be reluctant to engage in creative charging. If there is probable cause to believe that one individual has committed numerous crimes, agencies can charge that individual, secure their arrest, and proceed with the prosecution on one crime, thereby allowing continued investigation of other separate offenses unhampered by Sixth Amendment protections.

A very effective investigative technique that can be employed in this fashion is the cellmate informant. Because cellmate informants do not violate *Miranda*,[29] the only right to counsel concern is that of the Sixth Amendment. The inmate who has been charged with only one offense can be questioned by a cellmate informant, either a prisoner working at the direction of law enforcement or an undercover officer, regarding any uncharged offenses. Applying the *Blockburger* test announced by the Supreme Court in *Cobb*, a cellmate informant could be used against an inmate suspected of a kidnaping-murder as long as only one charge has been initiated.

> ***"...Sixth Amendment... protections are crime specific but remain in effect regardless of the issue of custody."***

Conclusion

The Sixth Amendment unquestionably affords important protections to individuals accused of crimes. The protections apply primarily to the prosecution of cases and have only limited application to criminal investigations.

The *Blockburger* test announced by the Supreme Court in *Cobb* clearly delineated the scope of the Sixth Amendment protections to crimes charged. This limitation reflects the attitude of a majority of the Court that "the ability [of the government] to obtain uncoerced confessions is not an evil but an unmitigated good."[30] Because the Court recognizes that the Constitution does not negate society's interest in securing convictions by obtaining voluntary confessions, law enforcement agencies should ensure that those same interests are not contradicted by overly restrictive agency polices, practices, or training. ✦

Endnotes

[1] 384 U.S. 436 (1966)

[2] The Sixth Amendment provides: "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." U.S. Const. amend. VI.

[3] *Kirby v. Illinois*, 406 U.S. 682 (1972).

[4] *See*, e.g., *United States v. D'Anjou*, 16 F.3d. 604 (CA 4 1994).

[5] *Id*. at 689.

[6] *Moore v. Illinois*, 434 U.S. 220 (1977).

[7] *United States v. Mendoza-Cecelia*, 963 F.2d. 1467 (CA 11 1992).

[8] Supra note 3.

[9] *United States v. Wade*, 388 U.S. 218, 18 L.Ed.2d. 1149 (1967).

[10] *Brewer v. Williams*, 97 S. Ct. 1232 (1977).

[11] Supra note 3.

[12] 97 S. Ct. 1232 (1977) (more commonly known as "the Christian Burial Speech Case").

[13] Until the subject has been accused through the filing of formal charges or by

making the initial appearance in court, the Sixth Amendment simply does not apply.

[14] *Illinois v. Perkins*, 496 U.S. 292 (1990).

[15] *Kuhlmann v. Wilson*, 477 U.S. 436 (1986).

[16] 111 S. Ct. 2204 (1991).

[17] *See*, *Texas v. Cobb*, 121 S. Ct. 1335 (2001) fn.1.

[18] *Id*.

[19] *See*, Texas Penal Code Ann. § 19.03(a) (7) (A) (1994).

[20] 120 S. Ct. 2245 (2000).

[21] 121 S. Ct. at _____ (2001) (citations omitted).

[22] *Id*. at _____.

[23] 284 U.S. 299 (1932).

[24] *Id*. at 304.

[25] *Michigan v. Jackson*, 106 S. Ct. 1404 (1986).

[26] *Davis v. United States*, 114 S. Ct. 2350 (1994).

[27] 106 S. Ct. 1404 (1986).

[28] 121 S. Ct. 1335 (2001).

[29] *Illinois v. Perkins*, 496 U.S. 292 (1990).

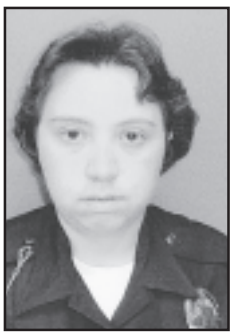
[30] 121 S. Ct. at _____.

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 their exemplary service to the law enforcement profession.

Officer O'Toole



Officer Rieson

Officer Dupke

While at his residence, off-duty Officer Patrick O'Toole of the High Point, North Carolina, Police Department heard screams coming from down the street. As he stepped outside, he saw smoke and flames coming from a neighbor's house. Officer Kim Rieson, heading home after her shift, happened on the scene at the same time as Officer O'Toole. The officers ran to the back door and forced their way into the burning residence where they found a small unconscious child who Officer Rieson carried outside to safety. As responding Officer Greg Dupke arrived on the scene, Officer O'Toole went back into the house where he found a mother and another child in a bedroom. He carried the child out first and returned into the burning structure a third time to rescue the mother. The heroic actions of these officers saved the lives of a mother and her two daughters.

Officer Rizutto

Officer Frank Rizzuto of the New Orleans, Louisiana, Police Department responded to a call of an attempted suicide and found a man had jumped into the Bayou in an attempt to drown himself. Upon his arrival, Officer Rizzuto immediately jumped into the water and swam toward the subject in an attempt to rescue him. As Officer Rizzuto approached, the man began to struggle and resist the rescue efforts. As the two approached the shore, Officer Rizzuto reached a rescue rope and was able to safely pull the distraught individual out of the water. This officer's lifesaving assistance foiled an attempted suicide.

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

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Patch Call

The center of the patch of the Elkins, West Virginia, Police Department depicts West Virginia's state seal. The logo is indicative of the Seneca Indian trail, which passes through the City of Elkins.

The patch of the town of East Hampton, Connecticut, Police Department features the American and Connecticut flags. It also has the American bald eagle prepared for peace and combat as signified by the olive branch in one claw and arrows in the other. The bell is shown because the town, also referred to as Belltown, was once the bell manufacturing center of the world.