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FBI Law Enforcement Bulletin



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Data Mining and Value-Added Analysis

By COLLEEN McCUE, Ph.D., EMILY S. STONE, M.S.W.,
and TERESA P. GOOCH, M.S.

*We are drowning in information
but starved for knowledge.*

—John Naisbitt

Law enforcement agencies, particularly in view of the current emphasis on terrorism, increasingly face the challenge of sorting through large amounts of information needed to help them make informed decisions and successfully fulfill their missions. At the same time, resources, particularly personnel, often dwindle. Described by one agency as the “volume challenge,”¹ local, state, and federal agencies alike all struggle with an ever-increasing amount of information that

far exceeds their ability to effectively analyze it in a timely fashion.

However, while these issues have surfaced, an extremely powerful tool has emerged from the business community. This tool, used by mortgage brokers to determine credit risk, local supermarkets to ascertain how to strategically stock their shelves, and Internet retailers to facilitate sales, also can benefit law enforcement personnel. Commonly known as data mining, this powerful tool can help investigators to effectively and efficiently perform such tasks as the analysis of crime and

intelligence data.² Fortunately, because of recent developments in data mining, they do not have to possess technical proficiency to use this tool, only expertise in their respective subject matter.

WHAT IS DATA MINING?

Data mining serves as an automated tool that uses multiple advanced computational techniques, including artificial intelligence (the use of computers to perform logical functions), to fully explore and characterize large data sets involving one or more data sources, identifying significant, recognizable patterns, trends, and relationships

not easily detected through traditional analytical techniques alone.³ This information then may help with various purposes, such as the prediction of future events or behaviors.

Domain experts, or those with expertise in their respective fields, must determine if information obtained through data mining holds value. For example, a strong relationship between the time of day and a series of robberies would prove valuable to a law enforcement officer with expertise in the investigation pertaining to this information. On the other hand, if investigators, while reviewing historical homicide data, noticed that victims normally possessed lip balm, they would not, of course, associate lip balm or chapped lips with an increased risk for death.

WHY USE DATA MINING IN LAW ENFORCEMENT?

The staggering increase in the volume of information now flooding into the law enforcement community requires the use of more advanced analytical methods. Because data-mining software now proves user-friendly, personal-computer based, and, thus, affordable, law enforcement agencies at all levels can use it to help effectively handle this increased flow of data.



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The law enforcement community can use data mining to effectively analyze information contained in many large data sets, even those involving written narratives (which represent a great deal of valuable law enforcement information). These may include calls for service data, crime or incident reports, witness statements, suspect interviews, tip information, telephone toll analysis, or Internet activity—almost any information that law enforcement professionals encounter in the course of their work.⁴

Not only can these data sets differ by type but they can originate from different sources,⁵ potentially giving law enforcement agencies both a more complete informational base from which to draw conclusions and the ability to identify related information in separate databases or investigations. For example, this may prove valuable in the area of illegal narcotics enforcement. The law enforcement community frequently gathers information regarding markets, trends, and patterns, while medical and social services personnel store information concerning substance use and abuse on the individual level. In instances where appropriate, the opportunity to combine these data resources can give investigators a more complete picture and can help address various narcotics

problems more rapidly, potentially saving both lives and resources.

Law enforcement agencies can consider exploring the use of data-mining applications to assist them in a variety of areas. Some examples include tactical crime analysis, deployment, risk assessment, behavioral analysis, DNA analysis, homeland security, and Internet/infrastructure protection.

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Tactical Crime Analysis

Data mining offers law enforcement agencies potential benefits in the area of tactical crime analysis. For example, because agencies can use data mining for such purposes as to more quickly and effectively identify relationships and similarities between crimes and to forecast future events based on historical behavioral patterns, they can develop investigative leads and effective action plans more

rapidly.⁶ Major case investigations, which frequently present not only large volumes of information but also demands for rapid case resolution, serve as good examples of how law enforcement agencies can benefit from data mining in this regard.

Deployment

Law enforcement agencies can use data-mining technology to help them deploy their resources, including personnel, more effectively and proactively. For instance, data mining can help them identify such key elements in a case or series of events as patterns of time and location—by forecasting future events based on this historical data, agencies potentially could anticipate strategic locations for deployment.

Data mining also allows agencies to consider multiple variables at one time and to add more weight to those considered most important to the decision at hand. For example, patrol officers, who generally respond to incidents with quick turnaround rates, may answer to numerous calls for service and effect many arrests in a relatively short amount of time. On the other hand, death investigations can require multiple officers' entire shifts just to maintain the crime scene perimeter; as a result, homicide investigators generally may handle considerably fewer

incidents and arrests. To this end, by weighing heavily such factors as the type and duration of these incidents, law enforcement agencies can develop effective deployment strategies.

By using data mining, law enforcement personnel, for purposes of analysis, also can link incidents, crimes, or changes in crime trends to other types of events in making deployment decisions. For example, an agency historically may have noticed relationships between major weather events, such as snowstorms or hurricanes, and decreases in street crimes. Also, they may have seen how the arrests of key players in organized crime or drug distribution rings seem to result in increased violence as informants are sought and identified and as new leaders emerge during reorganization. As another example, they may associate increased apprehension rates and a strong economy with decreases in property crimes.⁷ By using data mining to consider such relationships, law enforcement agencies then can deploy their personnel as they deem necessary.

Risk Assessment

Much like lenders and credit companies use data mining to great effect in assessing the financial gamble involved with lending money or extending credit to individuals or groups, law enforcement agencies can

use it to characterize the risk involved in various incidents. For example, agency personnel can explore the use of data mining to identify common characteristics of armed robberies that ended in assaults; doing so then can help identify those that may escalate into assaults in the future. Similarly, in the past, certain types of



property crimes have proven related to subsequent stranger rapes.⁸ The ability to characterize property crimes as similar to those previously associated with subsequent sexual assaults can alert investigators to focus on certain cases and develop effective action plans, perhaps preventing many similar situations from occurring in the future.

Behavioral Analysis

The behavioral analysis of violent crime represents another area with significant potential for data mining. For instance, law enforcement agencies can

use data mining to identify common behavioral characteristics in different cases. Even when not identifying a specific offender, investigators may find it possible to gain some insight into what type of offender may prove related to a particular incident. Research in this area, for example, has resulted in the use of data mining to efficiently link serious sexual assault cases based on similar offender behaviors.⁹

DNA Analysis

Law enforcement agencies also can benefit from the use of data mining when examining DNA evidence. For example, when DNA links a new suspect to an old case, investigators logically may wonder what other cases the suspect may be linked to. Given the amount of information involved, law enforcement personnel can find it virtually impossible to efficiently and completely search old case files each time they identify a new suspect. To this end, compiling DNA information into a searchable database gives law enforcement agencies a powerful tool to help identify, and potentially close, additional linked cases.

Homeland Security

Processing and gaining meaningful insight from the staggering amount of data critical to homeland security has proven difficult.¹⁰ Law enforcement agencies can use data

mining to help them face this challenge.

For instance, investigators would like to anticipate, and thereby prevent, acts of terrorism. By using data mining to identify relevant historical patterns, trends, and relationships involving terrorists, they could accomplish this objective more effectively.

Also, because data mining allows law enforcement agencies to evaluate information in varied formats and from various databases and agencies, it can enable them to effectively and efficiently analyze a wide range of information that potentially could shed light on terrorist activity. For example, by analyzing information from multiple health-related data sources, law enforcement agencies could recognize significant patterns of illness that may indicate bioterrorism activity or the use of other weapons of mass destruction.¹¹ Agencies also can use this capability to associate general crimes with terrorist activity by linking them with additional intelligence—recent information suggesting links between cigarette smuggling and terrorist financing¹² serves as a valid example.

Internet/Infrastructure Protection

The law enforcement community may find that the capability of data mining in

characterizing and monitoring normal activity, as well as identifying irregular or suspicious activity, proves applicable in the area of Internet and infrastructure protection. For example, the recognition of suspicious patterns of Web site activity not only can help in the area of traditional intrusion protection but also can serve as an important warning about the release of information. The FBI's National Infrastructure Protection Center (NIPC) recently underscored the

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Law enforcement agencies can consider exploring the use of data-mining applications to assist them in a variety of areas.

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importance of reviewing all Internet materials currently available, as well as those considered for release, for potential threats to critical infrastructure and homeland security.¹³ This warning comes as many municipal Web sites are receiving suspicious activity and interest.¹⁴ This information particularly includes that which, either on its own merits or in combination with other open-source

materials, may prove useful to entities with malicious intent.

CONCLUSION

Law enforcement agencies face an ever-increasing flood of information that threatens to overwhelm them; this will require a change in how they process and analyze data. Data-mining technology represents a powerful, user-friendly, and accessible new tool that agencies can use to help them in facing this challenge as they seek to fulfill their missions—ultimately, to ensure the safety and welfare of the public. •

Endnotes

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² The authors based this article largely on their experience with and research on the subject of data mining.

³ Bruce Moxon, "Defining Data Mining"; retrieved on April 10, 2003, from <http://www.dbmsmag.com/9608d53.html>.

⁴ Law enforcement agencies must address appropriate constitutional and legal concerns if using public source data for law enforcement purposes.

⁵ Law enforcement agencies, when collecting information from different sources, must decide how they will address the issue of cleaning the data, or preparing data for data-mining activities.

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¹³ National Center for Infrastructure Protection (NIPC), *Highlights, Issue 11-01*, December 7, 2001; retrieved on April 10, 2003, from <http://www.nipc.gov/publications/highlights/2001/highlight-01-11.htm>.

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Book Review

Patrol Operations and Enforcement Tactics by George T. Payton and Michael Amaral, *Criminal Justice Services, San Jose, California, 1996*.


Patrol Operations and Enforcement Tactics is a comprehensive, straightforward book involving current law enforcement activities. Both authors are experts in the fields of patrol operations, procedures, tactics, and officer survival. Besides having written numerous other related books and articles, they teach extensively at local colleges and universities and provide training for many officers throughout the United States. Each has received much recognition from peers and various professional organizations.

They comment that their book is not the "gospel of patrol operations," but when read by those with law enforcement experience,

including those aspiring for participation in academics, such readers will be impressed with the book's depth, practicality, comprehensiveness, and application to their jobs and positions. It is a well-designed and researched effort that contains experiences of frontline uniform and plainclothes officers laced with invaluable critical personal opinions.

It covers most of the latest professional techniques and methods of operation and knowledge coupled with skills for the new recruit, officers with limited experience, as well as veteran law enforcement personnel. As a book, it lends itself to the safety and survival of officers facing grave situations and assists them in enhancing the lessening of officer-induced errors and mistakes.

A snapshot of the book's content reveals a law enforcement code of ethics and a police



code of conduct, detailed preventive and selective enforcement operations, and types of patrols ranging from foot to air patrols coupled with computer-directed enforcement locations and techniques. The book also includes the use of forward-looking infrared systems on air patrols and the advantages and disadvantages of practical law enforcement communications. The authors address state and local automated networks, NCIC, and criminal justice information control, each involving enforcement operations and tactics. They also include an interesting chapter on observation and perception techniques required by officers with 17 identified and proven "attention getters" that officers should employ in detecting and catching criminals. An explanation exists to assist officers in their approach to citizens and criminals, as well as safety concerns of those officers being approached by others.

The book offers four compelling points among a wide variety of information. First, it has a major overall professional depth, practical application, and thoroughness. Next, it contains an extensive critical list of 88 questions, consisting of the who, what, when, where, how, and why of operations and tactics. These questions prove outstanding for both the experienced and inexperienced officer and can enhance patrol investigative report documentation and court testimony when applied. Third, for the promotional examination and the department entrance exam challenger, the book lists 855 study questions relevant to law enforcement operations. Finally, the book contains some useful checklist items that will help maintain an officer's effectiveness, competency, and readiness for duty. These include items officers should consider when preparing to depart their residences for duty, leaving their

locker rooms (even what officers should keep in their lockers), handling preparation requirements prior to leaving the squad room, obtaining necessary information for patrol duty, and checking out the patrol vehicle and its care prior to and after departing the garage area.

The book also covers the latest information on conducting standard and emergency high-risk vehicle stops, pursuit considerations and effective alternatives, legal and practical aspects of firearms use, safety and liability, and special studies involving police weapons and their applications. In addition, it includes planning for emergency incidents and officer safety countermeasures when confronting specific threats.

Patrol Operations and Enforcement Tactics is a valuable resource book for state and local law enforcement departments to upgrade their operating procedures and policies and their academies. It can provide material for the commissions on peace officers standards and training, departmental in-service training programs, assessment center selections and various examinations for different officer skill levels, and merit promotion boards. The book also could help those officers looking for a self-study professional enhancement that they can complete during shift breaks or at their residences and can support their specific college academic courses. It is a must read for all departmental patrol officers and investigative personnel, including supervisors and managers.

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Health Club Credit Card Theft

A National Crime Problem

By RICHARD A. BALLEZZA

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During the FBI's investigation of the Yugoslavian, Albanian, Croatian, and Serbian (YACS) commercial safe burglar groups,¹ investigators discovered a specialized theft crime problem perpetrated by some of these offenders. The crime pattern involved the theft of credit cards from the lockers of unsuspecting health club members while they exercised. Victims included both men and women. The thieves then used the stolen credit cards, sometimes within hours of the theft, to obtain cash at casinos.

An examination of this crime problem, which persists today, can help investigators understand the modus operandi (MO) of these unique credit card thieves and offer some recommendations to help prevent thefts in the future.

Overview

Beginning in the early to mid 1990s, those law enforcement agencies principally involved with investigations of criminal activity inside casinos began noticing an increase in the use of stolen credit cards to obtain cash

from the cash-advance merchants in the casinos. The interesting common denominator in these investigations was that many of the credit cards used in the scam had been stolen from health club lockers. Investigators noted that the persons caught passing the cards were primarily of Yugoslavian or Albanian descent. The thieves' chance for successfully avoiding capture was aided by the fact that cardholders often did not notice the theft of the card until they received the monthly billing statement weeks after the actual

theft. Victims would check their wallets and notice, for the first time, the credit card missing, but would be uncertain as to when or where the theft occurred. For example, a businessperson from Florida on a trip to New York stays at a hotel in Bergen County, New Jersey. The hotel recommends a local health club that the person uses for a workout. The businessperson signs in as a day-use guest, and, during that time, someone steals a credit card from the person's wallet. Afterward, the businessperson returns to Florida and, several weeks later, discovers unauthorized charges on one credit card. This represents the typical situation that confronts victims of these thefts as they report it to authorities.

Modus Operandi

Law enforcement reports, postarrest interviews, analysis of evidence obtained from search warrants, and intelligence gathering have made it possible to describe a typical health club credit card theft scenario. A group of between four to six thieves goes to a health club. At least one of them will be a member, sometimes under an alias, of the club the group targeted for locker thefts. Other coconspirators may sign in as guests of the member or may sign in on a day-use basis. These thieves also target health clubs offering 1-week free, trial memberships. While

the thieves usually do not all enter at the same time, they probably find the sign-in procedures familiar through previous surveillance. Undoubtedly, all of the thieves possess counterfeit identification in a fictitious name so as not to arouse suspicion if a health club employee asks for identification. Moreover, because guests entering health clubs also may have to sign a guest book or log, thieves often pay the nominal day-use fee in cash. They believe that health club employees keep this fee for personal use and do not record when guests come to use the facilities.

Once the thieves enter the locker room, they separate into prearranged roles. At least one person will act as a "blocker" and lookout at the main entrance to the locker room. Other thieves

will target certain lockers and will carry various "shims"—extremely thin pieces of metal cut to a small size—to "shim" open the combination padlocks on the lockers. A skilled "shimmer" can open these padlocks faster than a person who uses the combination. The shimmer may have the additional assistance of another blocker who may use the locker next to the targeted one to further screen the shimmer's efforts. The shims are so sharp that thieves usually wear bandages or pieces of tape to protect their fingers.

After opening the lock, the thieves carefully avoid disturbing the contents in the locker, looking only into the member's wallet to find any credit cards. They remove one or two of the credit cards, preferably from a wallet with many credit cards,

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The crime pattern involved the theft of credit cards from the lockers of unsuspecting health club members....

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and note the name, address, and date of birth on the driver's license, but never take any cash. They replace the wallet exactly as they found it to avoid arousing any suspicion when the member returns to the locker. Thieves normally target several lockers at the health club, and more than one person usually shims at the same time. Thieves generally steal 15 to 20 credit cards either from one health club or from multiple health clubs before moving to the next phase of the scam.

Counterfeit Identification Manufacture

The next phase involves the thieves producing counterfeit identification to match the name on the credit card. In the early vintage of this scheme, thieves most commonly made counterfeit, nonphoto New Jersey driver's licenses to use at Atlantic City casinos. They employed these nonphoto licenses as backup identification (ID) that they would show inside the casinos to tellers who requested ID before providing cash to the person holding the credit card. More recent trends involve making counterfeit, color photo driver's licenses from different states. Thieves modified their MO after the casinos became aware of the nonphoto New Jersey licenses and began requiring photo ID as backup identification. Also, the thieves expanded their target

area to include health clubs located in states without casinos. This required the thieves to manufacture counterfeit driver's licenses from many states.

The thieves always must know in advance exactly which person will serve as the "signer" inside the casino. Obviously, that same person's photo must appear on the counterfeit driver's license. Laptop computers, color

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Once the thieves enter the locker room, they separate into prearranged roles.

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scanners, and color printers have facilitated the production of such counterfeit documents.”² The thieves usually complete the matching ID within a short time and then plan their travel to the casinos. If the casinos are nearby, they generally travel by car or van. If the casino is far away, the thieves, using aliases, fly on commercial aircraft. They never use stolen credit cards to purchase airline tickets when they fly to a distant location to steal or to pass credit cards.

The Casino Connection

Before using the cards at the casinos, the thieves, now a group

of 10 to 15 people, make sure that the health club members have not reported the theft of the cards. To accomplish this, the thieves typically stop at a gas station/convenience store and buy a few gallons of gas at a self-service pump or make a small purchase at a gift shop in or near the casino.³ If a problem arises, the thieves feign any knowledge and purchase the gas or gift with cash and then destroy the card. The thieves check all stolen cards prior to entering a casino.

The large group of thieves now breaks into smaller teams to begin passing the cards inside the casinos. This reduces the risk of detection by casino gaming commission law enforcement authorities or by private security personnel inside the establishment.

Casinos use different merchants to provide the cash-advance service. Essentially, a card holder uses the machine by inserting or swiping the credit card and then entering the desired amount of money. The service adds a small fee to that amount and, as long as sufficient credit remains on that credit card, generates a receipt. The card holder takes the receipt to a nearby teller window where the teller has received a similar approval for the transaction. The teller matches it with the receipt handed by the customer and asks to see the credit card, as well as backup ID, before giving the requested

money, less the fee, to the customer.

The health club locker thieves who use the same service at the casino, but with stolen credit cards, do not know how much credit is available on a particular card. The thief may have to try different amounts, reducing the amount requested each time, before obtaining approval. Investigators can retrieve computerized records regarding these transactions and usually will find multiple attempts to obtain cash. Thieves may use the same card at different casinos until they reach the credit limit for that card. During this phase, the thieves maintain contact with each other through pagers and cell phones.

The Profit Split

The thieves split the profits in thirds: the person who steals the card, the one who makes the counterfeit ID, and the "signer," or the person who passes the card, each receive one-third of the profits. If a thief fulfills two of the roles, that person will get two shares. Groups of more than 10 persons using 20 to 30 stolen cards have made \$60,000 to \$100,000 in only 1 weekend in Las Vegas. Thieves involved in this criminal activity are well organized and experienced interstate criminals. After completing the scam, the thieves return to the New York metropolitan area.

Recent Trends

While stealing thousands of credit cards and reaping millions of dollars worth of currency, some thieves appeared repeatedly in the same casinos. As law enforcement became more aware of the identity of the known credit card thieves, new perpetrators, or "fresh faces," have begun to actually pass the cards in



the casinos. The known thieves usually are nearby, but not at the teller window with the conspirator who is obtaining the cash. Currently, the Yugoslavians and Albanians in these schemes appear to be using Romanians without arrest records to pass the cards. Further, even though the greater travel distance to Las Vegas can be a risk to the thieves from New York, Las Vegas offers many more casinos compared with Atlantic City and, therefore, proves enticing to the credit card thieves. Although credit cards were stolen

primarily from New Jersey and New York in the early stages of these crimes, the theft of cards from health clubs in states all across America has blossomed. In addition, more and more states are establishing casinos within their borders, and it is only a question of time before these casinos become victimized as well.

Detection Problems

Detection problems fall into three basic categories: health club, credit card company, and casino. Health club security measures vary greatly. They rarely have any videotape to record persons entering the club and, for obvious reasons, employ no closed-captioned television inside the locker rooms. Some fitness centers do not use photo membership cards to identify their members. Others merely ask members to say their four-digit number upon entering the club. Some may not require day guests or trial members to show photo identification to gain admittance to the club. Several clubs have no small, secure valuables lockers (located behind the front desk) for use by members who then, because of a lack of these type of lockers, have to store their wallets in a typical locker in an unsupervised locker room.

Credit card companies vary in their internal controls and "flags" programmed into their

computer software. One convicted thief admitted that he generally stayed away from one credit card because the company's employees monitored the use of the cards more closely and were apt to call a cardholder if unusual activity occurred, even if the card was not reported stolen. Such preventive action could derail the scam because the delay in the discovery of the theft of the card provides the thief with a greater window of opportunity to exploit whatever credit remains on a particular card.

The delay in the discovery of the theft of the card also has the detrimental spillover effect of hampering investigators as they try to find evidence of the person who used the card in the casino. Companies who operate the cash-advance service in the casinos may only keep their teller window videotapes for 1 or 2 weeks at a time before recording over them. Investigators found that in some cases, the videotaped transaction, which would clearly show who passed the stolen credit card, had been erased due to the passage of 4 to 6 weeks since the actual theft occurred. It is possible that thieves who know which cash-advance companies maintain the videotapes for the shortest period of time actually may target those companies when passing the stolen credit cards. Further, thieves

also have used the assistance of employees who work behind the teller window area while they pass the credit cards.

Countermeasures

Prospective members touring a health club consider the fitness equipment, programs, and cost of membership before deciding to join. However, they

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Thieves may use the same card at different casinos until they reach the credit limit for that card.

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also should assess the security features at the facility. The presence of the small valuables lockers, located immediately behind or next to the front desk, for the storage of a wallet and keys can reduce the chance of any credit card theft. A convicted thief advised that if the health club had those small valuables lockers near the front desk, his group did not even try to steal any credit cards from the locker room. The thieves just went to a different health club that did not use those type of lockers. Persons should ask the health club

manager how the club handles day-use guests, such as guests from local hotels or conventions or other visitors. They should determine if guests are required to show a photo ID and if the front desk makes a copy of the ID. If people already belong to a club that does not offer lockers near the front desk, they should try to get in the habit of quickly checking their wallets immediately after getting dressed before leaving the health club, making sure that all credit cards are present, particularly those cards that are toward the back of the stack of cards. If one is missing, they should immediately notify local police and the credit card company. The credit card company may be able to help police apprehend the thieves should the thieves try to use the card. The credit card company should remain especially alert for any attempt to use the card to obtain a cash advance at a casino.

In addition, the management at the health club needs to know about the theft because other members undoubtedly had credit cards stolen at the same time. If the health club has a computerized system, such as a bar-coded ID card shown on the way into the club, the manager may be able to contact other members and advise them to check their wallets.

Because a relatively small group of criminals is responsible

for the majority of this national crime problem, law enforcement agencies, particularly those that recently have made their first arrests of persons involved in these type of thefts, should contact law enforcement agencies covering Atlantic City and Las Vegas casinos. Agencies new to these scams can e-mail a color arrest photo to those law enforcement agencies having more experience with these credit card thieves. This prompt networking may help correctly identify the arrestee who could be assuming a false identity. If this contact is done quickly, the arrestee's correct identity could be known before arraignment. Also, some agencies have photos of individuals who have passed stolen cards but do not know their identities. Therefore, the recent arrest in one jurisdiction may identify the unknown suspect in another agency's theft case.

Local crime prevention officers should take time to meet with health club managers within their jurisdictions to advise them of this criminal pattern and to discuss their clubs' security measures. Police responding to any suspicious person or vehicle call in the parking lot of a health club should consider the possibility that the suspicious person or vehicle may participate in these type of thefts. Police officers should note any bandages or tape on the suspicious

person's fingers and the existence of any "shims," credit cards not in the name of the person, or a "prop" gym bag that contains dry clothing because these thieves do not exercise or shower at the targeted facility.

Conclusion

As more health clubs open and as additional states begin licensing casinos, health club credit card thieves will continue to have ample opportunity to perpetrate their interstate fraud. The enticement to make thousands of dollars will keep a steady flow of interested recruits into this unique criminal specialty.

However, small changes in the personal habits of members following workouts, along with improvements in security both at fitness centers and at the cash-advance merchants inside casinos, could help prevent thefts or, with prompt discovery of the

theft, could help thwart the successful passing of the card inside a casino. Further, increased vigilance by credit card company watchdogs looking for suspicious credit card activity coupled with enhanced networking by those law enforcement agencies principally involved in investigating crime within the casinos ultimately could lead to a dramatic reduction in profits for these interstate criminal gangs. •

Endnotes

¹ For additional information, see Richard A. Ballezza, "YACS Crime Groups: An FBI Major Crime Initiative," *FBI Law Enforcement Bulletin*, November 1998, 7-12.

² Evidence seized after execution of federal search warrants in the New York area corroborate the thieves' use of these techniques.

³ Reports have surfaced that some thieves even have a toll-free telephone number similar to those used by merchants calling to check on a particular credit card.



Credit card thieves use different thicknesses of sheet metal to cut open padlocks on health club lockers.

Police Practice \



Moving Past What to How— The Next Step in Responding to Individuals with Mental Illness

By Douglas Gentz, Ph.D., and William S. Goree

Law enforcement officers accept the need for firearms instruction before going to the range to practice what they have learned. After they have the necessary education on weapons, their training time can be more effectively spent on the range. Perhaps, training officers to improve the skills used to respond to citizens with mental illness can be enhanced with a similar approach—a high priority on practice.

Tulsa, Oklahoma, like most other communities across the country, has long experienced the difficulties of the increasing pressure on individuals with mental illness and their families as a result of state funding problems and constant changes in mental health care delivery systems.

Most of the responsibility for providing services to those seriously ill or less able to pay for services has shifted from one agency to another, sometimes more than once. Because of this challenge, the Tulsa Police Department's (TPD) apprentice police officer (APO) academy training has included a component similar to the "Memphis Model"¹ since 1988. Integrating front-line mental health professionals into the broad, multidisciplinary training given to APOs for almost 15 years has helped TPD field officers become proficient in the task of responding effectively to individuals with mental illness.

To answer a growing need, the TPD resolved to go beyond refresher classes for incumbent officers and, instead, committed to developing an advanced mental health response officer school. The school was designed to help police and mental health professionals work in a collaborative partnership as both instructors and students.²

THE GUIDING PRINCIPLE

The guiding principle for the school's development, the "operational triangle," represents a model the TPD has used for many years to instruct APOs. The foundation of the operational triangle is safety. Ensuring safety is the first step in all interactions between officers and citizens. Only after this is established and maintained should an officer focus on using communication skills to form an effective relationship with a subject. Officers first must have a safe environment before they can apply interpersonal skills directed toward possible problem solving.

Once officers establish a state of safety, they are tempted to move directly to problem solving. Yielding to this temptation means skipping the middle section of the triangle and, often, results in ineffectiveness. Increasing officers' confidence in their abilities to effectively use interpersonal communication skills improves the likelihood that they will incorporate each section of the operational triangle.

Over the last 20 years, the law enforcement profession has made huge strides in raising officers' awareness and competence in the areas of citizen and officer safety. Agencies should devote attention to increasing officers' awareness of the essential step between safety and problem solving. These human relation skills, like officer safety skills, improve with practice. Enhanced interpersonal skills will amplify the ability of officers to project a powerful influence with citizens they serve, especially those with mental health issues.

THE INSTRUCTIONAL OBJECTIVE

The school's mission is to assist people in need of mental health services in a way that secures the safety of all concerned, respects the dignity of the person in need of attention, and increases the chances of a good outcome with mental health service providers following the law enforcement contact. This statement defines the instructional objective of maximizing the time spent conducting collaborative cross training between law enforcement officers and mental health professionals

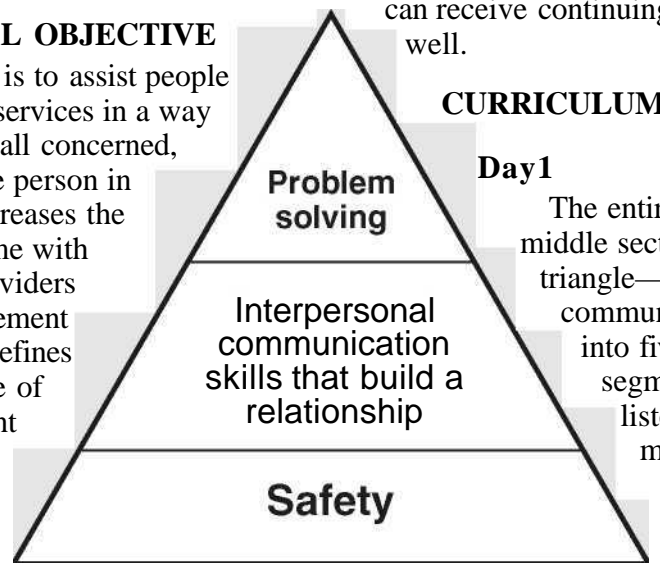
most likely to have direct contact with individuals in need of mental health services. Minimal time expended on reviewing mental health knowledge (e.g. facts, diagnostic categories, mental disorder descriptions) in lecture-type presentations allows instructors to spend more time on practical applications of interpersonal communication and intervention skills.

CURRICULUM DEVELOPMENT

Various departments of the TPD and the mental health community designed the school's 40-hour curriculum in the spring of 2002 over a

6-month period. Classes are limited to 20 police officers and 5 mental health professionals. Attendees are divided into smaller groups composed of four officers and one mental health professional with a TPD special operations team crisis negotiator acting as facilitator/instructor because of this person's experience and expertise.

Upon completion of the school, sworn law enforcement graduates earn department certification as advanced mental health response (AMHR) officers. Further, mental health professional graduates are certified AMHR responders and can receive continuing education credits as well.



The entire first day centers on the middle section of the operational triangle—effective interpersonal communication skills—divided into five segments. The first segment reviews basic active listening, then focuses on more advanced verbal concepts in the second segment. Both are followed by an exercise requiring students

to use active listening skills, as well as the additional verbal skills, in a role-play situation where an observer evaluates performance and provides feedback.

The third segment concentrates on nonverbal components of communication followed by an exercise requiring students to deliberately add the nonverbal component to the rapport-building process. The relationship between autonomic (i.e., involuntary) nervous system arousal levels (degree of physical and psychological tension) and the ability to effectively use interpersonal communication skills also is discussed. Instructors

emphasize that functioning effectively from the bottom level of the operational triangle (safety) requires a relatively higher level of autonomic arousal. Functioning effectively from the middle section (interpersonal communication skills aimed at rapport building) requires a relatively lower level of autonomic arousal. Instructors also examine potential safety problems inherent in negotiators lowering their arousal levels enough to engage in rapport building. A subsequent exercise helps attendees review and practice a simple relaxation technique that leads to a decrease in arousal level.

Next, students receive a lesson on understanding, appreciating, and applying the idea that power can be divided into two subtypes: authority and influence. In this model, *authority* is the ability to make things happen by force, while *influence* gets its power from the strength of a relationship. The tactics of authority strategies range from a uniform presence to deadly force interventions. Authority strategies generally call for functioning from the bottom or top level of the operational triangle. Influence strategies focus on the rapport established with a subject and call for functioning from the middle of the operational triangle. The lesson concludes with a very challenging role-play exercise requiring students to demonstrate both authority and influence strategies in the context of a simulated possible emergency order of detention (EOD) call.³

Day 2

The second day consists of a field trip to a local juvenile inpatient facility that receives individuals taken into protective custody under an EOD. Presentations and practical exercises are

given later on various topics, such as psychotropic medications, chemical dependency, and bipolar disorder.

Day 3

One of the most valuable experiences, according to students, is a "virtual hallucination"⁴ exercise. Each group member listens to a short, commercially produced audiotape simulating the experience of auditory hallucinations while being interviewed by group members. Presentations on the medications and illnesses commonly seen regarding homeless individuals follow this exercise.

Next, the Tulsa Mental Health Association, a panel of mental health consumers, and their family members lead a presentation and open panel discussion to humanize the school's objectives. Following the discussion is a presentation of the "third criteria," which provides an option for EOD subjects to be taken into protec-

tive custody if they have a history of serious mental illness, currently demonstrate worsening symptoms, and it is reasonably believed that treatment will prevent a progressively more debilitating mental impairment. Clearly, the option proves a very positive choice in some situations and, in others, may provide fertile ground for disagreement between police officers, mental health professionals, and individuals with mental illness.

Day 4

Because mental health consumers often are incarcerated, students tour the county jail's diversion program. The program seeks to appropriately identify and provide a basic level of care for persons with mental illness while in the



Training Curriculum

Day 1

- Active Listening Skills
- Advanced Verbal Concepts
- Nonverbal Components
- Autonomic Nervous System
- Arousal Levels
- Interpersonal Communication Skills
- Power Subtypes

Day 2

- Juvenile Inpatient Facility Tour
- Psychotropic Medications
- Chemical Dependency
- Bipolar Disorder

Day 3

- “Virtual Hallucination”
- Schizophrenia
- Open Panel Discussion
- The “Third Criteria”

Day 4

- County Jail’s Diversion Program Tour
- Suicide Intervention
- Developmental Disabilities
- Dementia

Day 5

- Personality Disorders
- Violence and Threat Assessment
- Role-Playing Scenario
- Evaluation

facility. Because health professionals and police officers have different experiences and perceptions regarding suicidal subjects, students also hear a presentation on suicide prevention. Mental health professionals often are more aware of the passive, depressive symptoms that develop gradually over time. In most cases, when officers have contact with a suicidal subject, the person likely has shifted to an angry, ambivalent, and possibly violent state of mind, which calls for an alert approach.

Next, attendees complete a practical exercise to use polished interpersonal skills, combined with information from the presentation, to intervene with a suicidal subject in a role-play

scenario. Observations on safety, interpersonal skills, and problem solving follow each scenario. The day ends with presentations on developmental disabilities and dementia.

Day 5

On the final day, the TPD’s psychologist presents a lecture on personality disorders followed by a presentation and open class discussion on violence and threat assessment. A final practical exercise challenges students to apply skills and knowledge gained throughout the week. Nonclass member mental health professionals are recruited from the community to role-play the parts of mental health consumers in a

variety of scenarios. Instructors provide observations and feedback to each student on safety issues, interpersonal skills, and problem solving throughout the course of the exercise.

Finally, all class members and crisis negotiators participate in an evaluation and discussion session. Although the school's organizers place a very high priority on small group practical exercises, students usually feel that even more time in future classes should be dedicated to practical application activities. Further, one student suggested that a standing committee composed of selected graduates of the school, crisis negotiators, other appropriate mental health professionals, and Tulsa Police Department administrators be formed and meet quarterly to advise on ongoing changes in the community's mental health environment.

CONCLUSION

Two interwoven key factors have contributed to the success of the advanced mental health response officer school. First, the inclusion of mental health professionals as students and instructors helps build a collaborative partnership between law enforcement professionals and individuals in the mental health care system. Equally important is the decision to place a higher value on how to intervene with individuals with mental illness than on academic presentations about mental health knowledge.

The small group exercises accomplish three very important functions. First, they help students polish their interpersonal communication skills in the context of interacting safely and effectively with individuals with mental illness. Second, both a police and a mental health perspective are

present. Finally, and perhaps most important, officers and mental health professionals are together in a cooperative educational setting that encourages the development of positive, personal relationships and a genuine appreciation for the differences and similarities in both jobs. Combining all of these factors helps ensure that law enforcement officers receive the best possible training to respond effectively to individuals with mental illness.

For additional information, contact Captain Tracie Crocker, Tulsa Police Department, at 918-596-1105 or Tcrocker@ci.tulsa.ok.us. •

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Agencies should devote attention to increasing officers' awareness of the essential step between safety and problem solving.

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Endnotes

¹ For more information, visit the Memphis, Tennessee, Police Department's Web site at www.memphispolice.org

² The authors acknowledge Chief David Been whose interest, involvement, and insistence on excellence in officer response to individuals in the mental health system ensured the development and implementation of this school. They also acknowledge retired Tulsa, Oklahoma, Police Officer Charles V. Miller who served as the first special operations

crisis negotiator team leader, as an academy instructor, and as the major influence that prepared officers to receive, and crisis negotiators to provide, the most valuable portion of the training that takes place in this school.

³ An EOD occurs when individuals need treatment because they are considered a danger to themselves or others.

⁴ *Virtual Hallucination*, Janssen Pharmaceuticals, April 1997, cassette.

Dr. Gentz provides psychological counseling, consulting, and training for Tulsa, Oklahoma, Police and Fire Department employees.

Sergeant Goree currently is a field supervisor and the special operations crisis negotiator team leader for the Tulsa, Oklahoma, Police Department and formerly served as the department's training supervisor.

The Bulletin Honors

The Alaska State Troopers Memorial

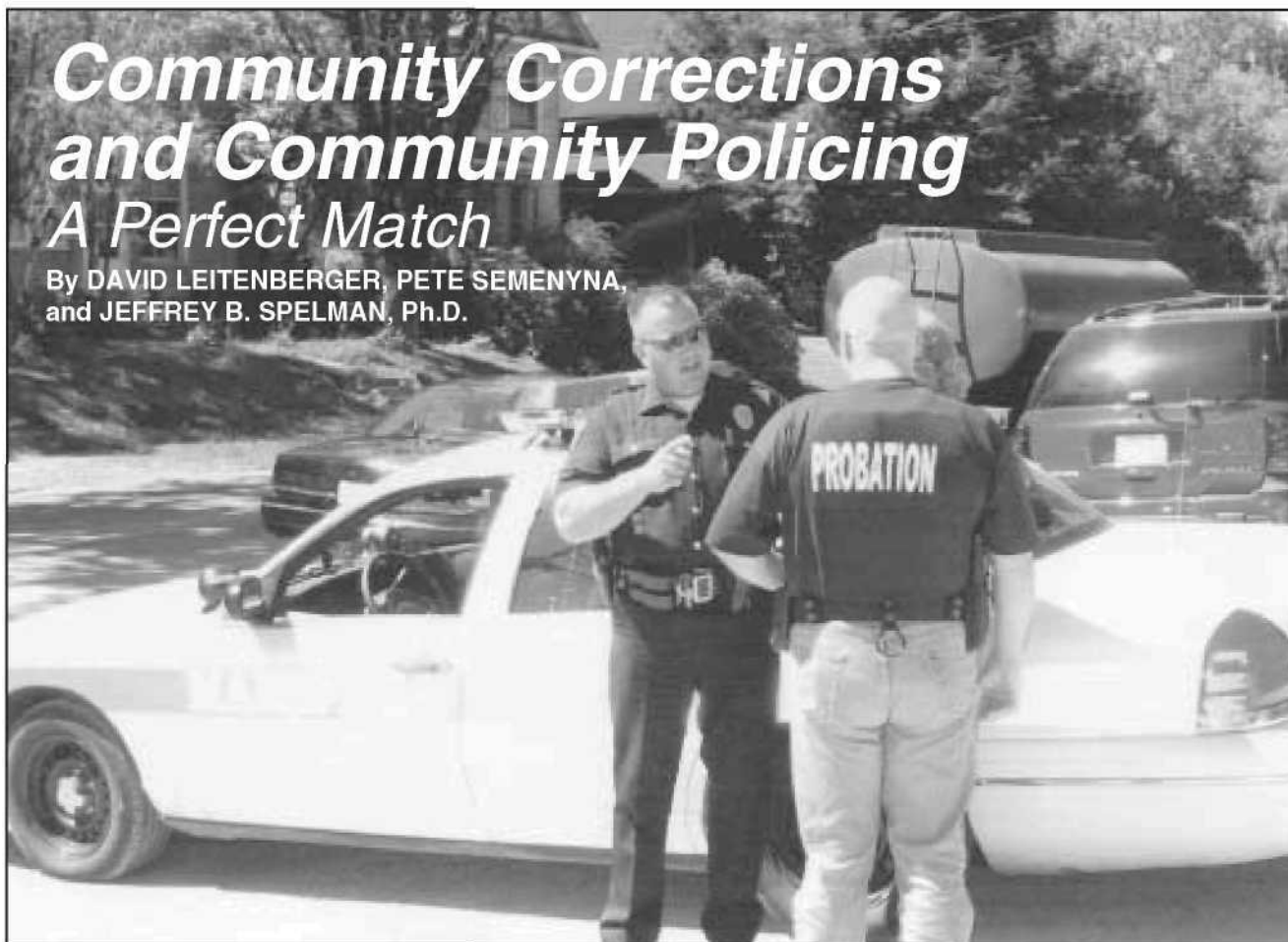
The Alaska State Troopers present this law enforcement memorial located in Anchorage, Alaska, in front of the agency's Scientific Crime Detection Laboratory. This statue was formally dedicated on June 9, 1986, to law enforcement officers who have lost their lives in the line of duty. It consists of a bronze figure of a police officer, identified on his name plate as "A Friend," holding a small girl in his arms and standing on a black marble pedestal containing individual name plates for each of the officers killed in Alaska since statehood.



Nominations for ***The Bulletin Honors*** should include at least one color 5x7 or 8x10 photograph (slides also are accepted) of a law enforcement memorial along with a short description (maximum of 200 words). Contributors should send submissions to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

Community Corrections and Community Policing *A Perfect Match*

By DAVID LEITENBERGER, PETE SEMENYNA,
and JEFFREY B. SPELMAN, Ph.D.



Cooperation between criminal justice agencies can draw on the strengths of all entities involved to effectively accomplish common objectives. In Richland County, Ohio, community corrections and community policing have formed a partnership that has seen enhanced corrections efforts, as evidenced by a reduced number of new crimes by convicted offenders under adult supervision services within the county.

Partnership and Enhanced Supervision

Enacted on July 1, 1996, Ohio Senate Bill 2, also known as the "truth-in-sentencing" law, eliminated indeterminate sentences¹ and parole in Ohio in favor of a system of determinate sentences² and post-release control (PRC),³ or supervision of an offender after the completion of a court-ordered sentence. This focus on PRC challenged the criminal justice community to develop new

community-oriented corrections programs. Richland County formed a community corrections board, composed of citizens and representatives from the court system, law enforcement agencies, local government organizations, social service agencies, and victim services, to study current supervision and treatment methods and criminal offender profiles in Richland County to determine how best to safely and effectively supervise correctional clients in the community.

In response to this need for enhanced community supervision standards, in 1998, officers from the Richland County Adult Probation Office initiated a partnership with officers of the Richland County Sheriff's Department, the Mansfield Police Department, the Mansfield Adult Probation Department, and the regional office of the State Parole Authority. Interest in community corrections and community policing cooperation began with the idea that collaboration might compliment the power of each office, thus increasing public protection.

This new partnership made possible the intensive supervision program (ISP), which employs electronic monitoring bracelets that allow any police or

corrections officer equipped with a drive-by or hand-held unit to identify and closely monitor offenders. This program also uses a system of sanctions and incentives and follows a step-down and step-up approach (a decrease or increase of controls, depending on client behavior). Not only does the ISP offer more effective surveillance and safer communities but it also allows officers to identify clients that may need treatment or other services.

The ISP improved in 2001 with the implementation of the first felony reentry court in Ohio, a partnership between Richland County and state authorities. Out of this partnership came the creation and incorporation of a single set of community

supervision standards that became applicable to all persons under adult supervision in Richland County, whether subject to county community control or state probation, parole (for those sentenced prior to July 1, 1996), or postrelease control.

Under these standards, participants must seek and maintain employment, obey curfew, make restitution to victims, submit to frequent random drug and alcohol testing and maintain treatment requirements, avoid bars and high drug-trafficking locations, refrain from carrying cell phones or pagers, and shun gang or other criminal associations. Officers enforce these conditions through a more flexible supervision system in which they monitor clients on a 24-hour-per-day,



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Mr. Semenyna serves as supervisor of the Richland County, Ohio, Adult Court Services.



Dr. Spelman is an assistant professor at Ashland University in Ashland, Ohio.

MONTHLY MINIMUM SUPERVISION STANDARDS

	<u>Home Visit</u>	<u>Office Visit</u>	<u>Other</u>	<u>Treatment</u>	<u>Total</u>	<u>Drug Tests</u>
Intensive	3/mo.	1/mo.	1/mo.	2/mo.	6+/mo.	8+/mo. (2/week)
High	2/mo.	1/mo.	1/mo.	1/mo.	5+/mo.	4/mo. (1/week) & 1 R/mo.
Medium	1/mo.	1/mo.	1/mo.	1/mo.	4+/mo.	1/mo. & 2 R/mo.

Note: R= random drug testing

7-day-per-week basis; have 33 percent of their contacts with clients during evenings and weekends; and make sufficient contacts with treatment providers, employers, and appropriate government agencies.

Cooperation and Success

The interaction between corrections and police officers has served the enhanced supervision in Richland County well; their assignments facilitate this important relationship. Community police handle specific clients; this contact enhances police familiarity with supervised offenders and allows them to take an active part in supervision. Likewise, corrections officers generally supervise offenders in the police department zone where they reside; consequently, they already have considerable knowledge of both the citizenry

and the neighborhood of their assigned zone. Assigning community police and corrections officers in this way helps them to work together effectively.

Officers from each agency involved also meet regularly to share information. This information sharing has helped community police officers to investigate and solve crimes, to identify clients with community supervision status and unique supervision conditions, and to recognize persons who have absconded from community supervision. Likewise, information sharing assists community corrections officers. They more quickly become aware of clients and others with outstanding arrest warrants, local gang involvement, specific crime problems, and criminal associations.

The cooperation between community corrections and

community policing has made the partnership a success. For example, the Richland County Community Policing and Community Corrections Partnership Program received the 1999 Governor's Award of Excellence of the state of Ohio. This award honors a partnership that has seen lower crime rates for the citizens it serves through the ISP and great success in its major joint operations.

Statistics seem to support the assertion of Richland County authorities that unified supervision programs result in lower crime rates. Local crime statistics released by the Richland County Sheriff's Office for 2000 and 2001 showed a 4.5 percent reduction in violent and property crime within its primary policing jurisdiction and a 13 percent reduction in Madison Township, served jointly by the Richland

County Sheriff's Office and the Mansfield Police Department with a special emphasis on the police-corrections partnership. Data furnished by the Richland County Court Services Department indicated that in 2000, the Richland County ISP case failure⁴ rate was 8.5 percent, well below the 37 percent new arrest average for a 1-year period for ISP programs.⁵

Teams of community policing and community corrections officers have conducted four major joint operations since 1999 with great success. These four operations and their results after the first 3 years include Sam and Charles Night Out, in which joint inspections of local bars resulted in the arrests of over 143 violators; Lights Out, in which joint searches for curfew violators found over 211 persons on probation status in violation of curfew (these curfew violations have since decreased); Fugitive Surveillance, in which joint searches for clients of the ISP, electronic monitoring, or house arrest programs who have absconded from supervision resulted in 252 arrests; and Day and Night Ride Along, which involved a total of 2,625 joint visits of client homes or places of employment.

Future Expectations

In 2002, corrections officers joined police officers to perform

many new community policing initiatives. Local criminal justice administrators would like to increase the number of participating agencies in these programs. Some examples include bicycle patrols, park-and-walk patrols, public speeches, and crime prevention training. Another partnership initiative now in the planning stages, a fugitive response unit, aims to capture specific violators who present a high risk of violence to the community.

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***...cooperation began
with the idea that
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Richland County also wants to expand its partnership and operations into neighboring cities and counties. For example, officers have teamed up with Ashland County's police, municipal court probation, and state officers to help identify probationers and parolees from Richland County who have been patronizing Ashland County bars to avoid detection by authorities.

Conclusion

Effectively and safely supervising correctional clients in the community can prove difficult for criminal justice agencies. Drawing on the strengths of both community corrections and community policing, this unique partnership in Richland County, Ohio, has successfully addressed this challenge. For other localities willing to unite corrections and police officers in this regard, such cooperation can help provide effective offender supervision and a lower crime rate in their communities. •

Endnotes

¹ In an indeterminate sentencing system, a judge sets a minimum and a maximum amount of time for an offender to serve; the exact length of the sentence is largely dependent on parole.

² In a determinate sentencing system, a judge sets a fixed sentence prescribed by law.

³ Postrelease control is mandatory or discretionary, depending on the type of offense or felony level.

⁴ Offender arrests or violations of supervision rules.

⁵ Joan Petersilia and Susan Turner, U.S. Department of Justice, National Institute of Justice, *Evaluating Intensive Supervision Probation/Parole: Results of a Nationwide Experiment* (NCJ 141637) (Washington, DC, 1993), 5.

Bulletin Reports

Drugs

The Office of Community Oriented Policing Services (COPS) presents *An Evaluation of the COPS Office Methamphetamine Initiative*, a COPS-funded study conducted by the Institute for Law and Justice and 21st Century Solutions that evaluates COPS' first six methamphetamine grants. The COPS office provided funding to agencies in six cities (Phoenix, AZ; Salt Lake City, UT; Dallas, TX; Oklahoma City, OK; Little Rock, AR; and Minneapolis, MN) to combat the production, distribution, and use of methamphetamines. These grants encouraged law enforcement agencies to respond to methamphetamine problems with advanced technologies and creative problem-solving strategies. This evaluation focuses on the histories of the methamphetamine problems in these cities and includes detailed process evaluations of each grant's implementation. This report provides insight into the ways in which these agencies responded to their methamphetamine problems and should be of great interest to those dealing with similar drug problems in their jurisdictions. This publication is only available electronically at <http://www.cops.usdoj.gov/default.asp?Open=True&Item=848>.

Victims

When Your Child Is Missing: A Family Survival Guide provides parents with helpful insights into what families should do when a child is missing. This Office of Juvenile Justice and Delinquency Prevention (OJJDP) guide was written by parents and family members who have experienced the disappearance of a child. It contains their advice about what to expect when a child is missing, what needs to be done, and where to go for help. It also explains the roles that various agencies and organizations play in the search for a missing child. This guide is available from the National Criminal Justice Reference Service at 800-851-3420 and can be accessed electronically at <http://ojjdp.ncjrs.org/pubs/missingsum.html#170022>.

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.)

The Discovery Process and Personnel File Information

By RICHARD G. SCHOTT, J.D.



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Law enforcement agencies go to great lengths to ensure that they hire individuals of good character and with backgrounds containing no, or minimal, negative information. In this regard, police employers are no different from other employers: they hope to hire people who will present the fewest personnel issues with which to deal. However, law enforcement employers have another important reason to screen potential hires, and to ensure that their employees conduct themselves in a manner consistent

with their positions of trust. A single lie can taint an officer's credibility forever and render the officer virtually useless as a courtroom witness. An example is the recent release of several convicted defendants in a sweeping drug investigation in Tulia, Texas. Texas Judge Ron Chapman concluded that the investigator involved in the case had "falsified reports, misrepresented the nature and extent of his investigative work, and misidentified various defendants during his investigation."¹ As a result, all 38 convictions in the

case likely will be vacated. It is hard to imagine the officer involved ever testifying as a prosecution witness again after this finding.

The reason officers with credibility problems lose their viability as witnesses is based on the constitutional principle that every criminal defendant in this country is entitled to a fair trial.² The notion of due process, or fundamental fairness, is a basic right guaranteed by the Fifth and Fourteenth Amendments of the Constitution.³ This article examines how the due process clause

impacts the judicial discovery process and adversely affects police officers with credibility problems.

The Discovery Process in General

The goal of the American criminal justice system is to allow the truth to prevail. One way that courts endeavor to find the truth is through pretrial discovery. During discovery, the prosecution and defense disclose to each other certain evidence they intend to use at trial. With such disclosure, the parties can prepare in advance to test that evidence through cross-examination or expert testimony, ensuring that the judge or jury hears all sides of the case before they decide guilt or innocence. Avoiding trial by surprise is a surer route to the truth.

Although "there is no general constitutional right to

discovery in a criminal case,"⁴ criminal procedure rules dictate the type of information that must be shared by the adversaries in any criminal proceeding. For example, Rule 16 of the Federal Rules of Criminal Procedure outlines what material the government shall provide to the defense and, likewise, what material the defense shall provide to the government.⁵ However, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence⁶ are silent regarding information relating to the credibility of witnesses, including law enforcement witnesses. This is where the notion of "fundamental fairness," or due process,⁷ comes into play.

From *Napue* to *Brady*

In 1959, the U.S. Supreme Court decided the case of *Napue v. Illinois*.⁸ In the case, a witness falsely testified at trial that he

had received no consideration in return for his testimony. In fact, he had received consideration from the state, but the prosecutor did nothing at trial to correct the falsehood. *Napue* was convicted of murder, but appealed his conviction when he discovered the false testimony. Not surprisingly, the Supreme Court decided that the government's use of false evidence at trial violated the due process clause of the Fourteenth Amendment. It did not matter to the Court that the falsehood related only to the credibility of the government's witness. The Court emphasized that the "truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."⁹ This recognition of the importance of witness credibility set the stage for a series of Supreme Court decisions regarding the government's obligations concerning witness credibility during discovery.

In 1963, the U.S. Supreme Court decided that constitutional due process guarantees the accused the right to discover exculpatory evidence in the possession of the government. Exculpatory evidence is any evidence that is favorable to the accused and material to either guilt or punishment. In *Brady v.*



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

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...constitutional due process guarantees the accused the right to discover exculpatory evidence in the possession of the government.
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Maryland,¹⁰ John Brady was convicted of first-degree murder and sentenced to death. Brady testified at his trial about his participation in the crime, but stated that his companion was the actual murderer. Before trial, Brady requested statements provided to the government by the companion. The government delivered some statements, but failed to provide the statement in which the second individual admitted actually killing the victim.

Brady learned of the existence of this statement after he was convicted and sentenced to death. The Supreme Court decided that Brady's conviction should stand, but that he was entitled to present his accomplice's statement in an effort to avoid the death sentence. The court found that "suppression [of evidence] by the prosecution... violates due process where the evidence is material *either* to guilt or to punishment...."¹¹ The well-known obligation of the government to provide the defense with exculpatory evidence, or "*Brady* material," came from this landmark decision.

Extending *Brady* to Impeachment Material: *Giglio* and *Henthorn*

As noted previously, the Supreme Court recognized in the *Napue* case that guilt or innocence of an accused may turn on the credibility of witnesses at

their trial. Given the importance of witness credibility, it was a short step for the Supreme Court to take to decide that due process requires the government to disclose to a defendant information regarding witness credibility prior to trial. The Court took that short step in *Giglio v. United States*.¹²

**“
Upon receipt of this
information, the
prosecutor must
decide whether
disclosure is required,
or should be reviewed
by the presiding judge.
”**

In *Giglio*, the assistant U.S. attorney (AUSA) who presented the case to the grand jury made a promise of leniency to a key witness. The prosecuting AUSA was unaware of the promise. The witness testified at trial that he had not received anything (including the promise of leniency) for his testimony. After being convicted, Giglio appealed, arguing that the promise to the witness should have been revealed to the jury for their consideration of his credibility. Based on its decision in *Napue*,¹³ the Supreme Court found that the

information regarding the earlier promise should have been revealed to the defense.¹⁴

The *Brady-Giglio* requirement that the government disclose to the defense any information regarding the credibility of witnesses obviously extends to police officers called by the government to testify. What type of information contained in personnel files of law enforcement officers is required to be released to the defense pursuant to *Brady-Giglio* and the due process requirement of fundamental fairness?

The Ninth Circuit Court of Appeals confronted this issue in *United States v. Henthorn*.¹⁵ Donald Gene Henthorn was convicted of conspiring to import and possess cocaine with intent to distribute and for travel in interstate and foreign commerce in aid of racketeering enterprises. Prior to his trial, Henthorn's attorney asked the prosecution "to produce the personnel files of all law enforcement witnesses whom it intends to call at the trial...for evidence of perjurious conduct or other like dishonesty, in camera, to determine if those portions of the officers' personnel files ought to be made available to the defense counsel for impeachment purposes."¹⁶ The government objected, saying "it had no obligation to examine the personnel files absent a showing by the defendant that they contained information material to

his defense."¹⁷ The district court denied Henthorn's request because he had not identified specific wrongdoing on the part of the law enforcement witnesses.

The Ninth Circuit Court of Appeals reversed the district court decision and remanded the case. The appellate court found the government to be "incorrect in its assertion that it is the defendant's burden to make an initial showing of materiality. The obligation to examine the files arises by virtue of the making of a demand for their production."¹⁸

It should be noted that the initial request for records does not obligate the government to turn over information contained in law enforcement witness personnel files. Rather, the request merely obligates the government to review the files. The files, or information contained therein, "need not be furnished to the defendant or the court unless they contain information that is or may be material to the defendant's case."¹⁹ Ironically, following remand to the district court, it was determined that the files contained nothing bearing on Henthorn's case. In fact, they contained numerous commendations, but nothing indicating dishonesty or perjurious conduct.²⁰

In light of *Henthorn*, many prosecutors and law enforcement agencies implemented procedures to ensure compliance with the notion of fundamental fairness required by due process. For

example, in 1996, the attorney general issued a U.S. Department of Justice (DOJ) policy regarding the disclosure of potential impeachment material for all DOJ investigative agencies. The policy obligated each investigative agency *employee* to inform prosecutors of potential impeachment material as early as possible prior to providing a



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sworn statement or testimony in any criminal investigation or case. Putting this obligation on the investigative agency employee relieves government prosecutors from searching for such material. It does not, however, change the fact that locating and producing material evidence contained in a law enforcement witness' personnel file is the obligation of the entire government prosecution team. When the investigative agency employee notifies the prosecutor of potentially incriminating material, his duty has been

fulfilled.²¹ It is then incumbent upon the government attorney to determine whether the information should be provided to the defense or reviewed by the judge presiding over the matter to make that determination.

Because the parameters of potential impeachment information are not easily identifiable, the DOJ policy gives concrete guidance regarding the type of information that investigative agencies must provide to prosecutors. The following must be disclosed:

- substantiated allegations—any finding of misconduct demonstrating bias or lack of candor or truthfulness;
- pending investigations or allegations—any credible allegation of misconduct that reflects upon the truthfulness or possible bias of the employee who is the subject of a pending investigation;
- criminal charges—any past or pending criminal charge against the employee; and
- allegations that are unsubstantiated, not credible, or have resulted in exoneration—when the allegations (unsubstantiated, not credible, or which resulted in exoneration) can be said to go to the truthfulness of the employee, even they must be revealed to the prosecutor under certain circumstances.

Upon receipt of this information, the prosecutor must decide whether disclosure is required or should be reviewed by the presiding judge.

Limitations on Discovery

Naturally, judges or jurors who consider the testimony of witnesses should be aware of issues affecting credibility. There are, however, limits on what defendants (and subsequent triers-of-fact) are entitled to learn about law enforcement witnesses, notwithstanding the fact that the information relates to the witnesses' veracity.

Even when information exists that clearly could be considered *Brady* material, due process may not require its disclosure. For example, in *Pennsylvania v. Ritchie*,²² the U.S. Supreme Court stated that "[e]vidence is material only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome."²³ Determining this materiality is vital because, as the Court reiterated in *Ritchie*, "the government has the obligation to turn over evidence in its possession that is both favorable to the accused and *material* to guilt or punishment."²⁴ Of course, the difficult question is determining

what information is reasonably probable to change the result of a proceeding. In fact, after the preceding discussion in the *Ritchie* case, the Supreme Court ruled that Ritchie was entitled to a remand so that the file in question could be "reviewed by the trial court to determine whether it contain[ed] information that probably would have changed the outcome of his trial."²⁵ This

“
**...locating and
producing material
evidence contained in
a law enforcement
witness' personnel file
is the obligation of the
entire government
prosecution team.**
”

difficulty in determining just what is "material to guilt or punishment" has caused many investigative agencies to err on the side of caution and at least provide potentially material information to prosecutors so that they (and possibly the judge *in camera*) can make the final decision as to dissemination.²⁶

Another factor affecting whether potential *Brady* material concerning a law enforcement witness is discoverable has to do

with the time element involved. The Ninth Circuit Court of Appeals has examined when impeachment material becomes stale. In *Harrison v. Lockyer*,²⁷ Jewel Harrison was charged with attempted armed robbery, possession of a firearm by a felon, assault with a firearm, and discharging a firearm at an occupied motor vehicle. Harrison sought discovery of police department records for impeachment information regarding his arresting officer, including records of complaints involving events occurring more than 5 years before the incident at issue, and all documents in another officer's personnel file.²⁸

Relying on California evidentiary statutes,²⁹ the trial court denied discovery of records predating the incident by more than 5 years. Harrison appealed, contending that the 5-year cutoff violated his due process rights to a fair trial. Based on a decision of the California Supreme Court from an analogous case questioning the constitutionality of the 5-year cutoff,³⁰ the Ninth Circuit Court of Appeals held that "despite the statutory cutoff, citizen complaints against officers are subject to disclosure if they are 'exculpatory.'"³¹ The statutory 5-year cutoff, however, was not deemed unconstitutional.

While examining the statute at issue in the state case,³² the California Supreme Court

addressed whether the prosecution has an obligation to retain evidence (including impeachment material in an officer's personnel file) for an indefinite period of time. Citing the fact that "[m]any if not most law enforcement agencies have a policy of routinely destroying citizen complaints after 5 years,"³³ the court held that "[a] law enforcement agency's destruction of a citizen's complaint violates a defendant's right to due process only when the complaint's exculpatory value to a particular criminal case is readily apparent before its destruction."³⁴ In allowing the destruction of 5-year-old records except in the "readily apparent" situation, the California Supreme Court acknowledged that "after 5 years a citizen's complaint of officer misconduct has lost considerable relevance."³⁵ Law enforcement agencies should consider these issues of timeliness and materiality when deciding what, if any, information to purge from employee personnel files.

Ramifications of Nondisclosure

The Supreme Court relied on the constitutional provision of due process in rendering its *Brady* decision. If the requirement of disclosing information material to a defendant's guilt or innocence, or his sentencing, is violated, the government has violated that defendant's

constitutional right to a fair trial. The denial may result in a conviction being overturned, a sentence being vacated, the prosecution having to conduct a second costly and time-consuming trial, or the decision to pursue a different remedy against the aggrieved defendant. The constitutional violation also may have severe consequences for the law enforcement officer who intentionally withholds *Brady* material.



In *McMillian v. Johnson*,³⁶ Walter McMillian sued the sheriff, an investigator for the district attorney, and an Alabama Bureau of Investigation agent for, among other allegations, withholding exculpatory and impeachment evidence during his murder trial. In deciding whether the law enforcement officials were entitled to qualified immunity from the lawsuit for a constitutional violation, the Eleventh Circuit Court of Appeals recognized that "[i]nvestigators satisfy their obligations under

Brady when they turn exculpatory and impeachment evidence over to the prosecutor."³⁷ Because this type of information had not been provided to the prosecutor in the case, the three individuals were not entitled to qualified immunity. Rather, the relevant case law "clearly established that an accused's due process rights are violated when the police conceal exculpatory or impeachment evidence."³⁸ When officers intentionally withhold *Brady* material from the prosecutors with whom they work, they are clearly subjecting themselves to personal liability for violating a defendant's constitutional rights to due process.

Related Issues Concerning Release of Personnel File Information

A defense attorney in a recent drug conspiracy case made an interesting request for information. In *Kallstrom v. City of Columbus*,³⁹ a group of undercover police officers involved in a federal investigation of a violent gang in Columbus, Ohio, objected to the release of personal information contained in their departmental personnel files. Unfortunately, by the time of their suit against the city of Columbus, the information had been released to the attorney. Consequently, the officers sought compensatory damages and an injunction to prevent further dissemination of their

personal information. It should be noted that the attorney who received the information from the city did so pursuant to a request under the Ohio Public Records Act,⁴⁰ not as part of the discovery process involved in the criminal trial. Nevertheless, the officers claimed that the city of Columbus violated their rights to privacy as guaranteed by the Fourteenth Amendment of the Constitution.

The Sixth Circuit Court of Appeals, while refusing to provide the officers with a "blanket prohibition against the future release of information contained in their personnel files,"⁴¹ did rule that a party could avoid disclosure of highly personal information if releasing the requested private information would place "an individual at substantial risk of serious bodily harm, possibly even death, from a perceived likely threat,"⁴² and the court determines that the individual's privacy interest outweighs the public's need for disclosure.⁴³ Clearly, the requirements of *Brady* and due process do not require the release of highly personal, nonmaterial information relating to police officers.

Conclusion

Law enforcement officers take an oath to support the U.S. Constitution.⁴⁴ If an officer fails to provide information favorable to a criminal defendant—regarding either guilt or sentencing—that officer has

violated the defendant's right to due process. Information reflecting upon the credibility of a government witness is information that a defendant is entitled to have his trier-of-fact (whether judge or jury) consider. This rule applies when the government witness is a law enforcement officer. Officers who intentionally withhold information that

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”**

affects their credibility deprive defendants of their constitutional right to due process. No matter how destructive to the prosecution, or personally embarrassing the information may be, it must be disclosed at least to the government prosecutor. Only then can the prosecutor determine whether the information should be disseminated to the defense or reviewed by a judge *in camera* for making that determination.

Clearly, law enforcement agencies are justified in going to great lengths when they conduct extensive background checks on prospective employees. Hiring someone only to discover later

that the person is not a viable witness would be both frustrating and costly. It is equally important to provide training to current employees so that they understand the potentially far-reaching ramifications of a bad decision that affects their credibility. That single mistake in judgment will affect them for their entire law enforcement career. •

Endnotes

¹ Lee Hockstader, "For Tulia, 'It Feels So Good': Texas Inmates Freed After Four Years in Prison on Suspect Charges," *The Washington Post*, June 17, 2003, p. A1.

² U.S. CONST. amend. VI ensures that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...."

³ U.S. CONST. amend. V, which pertains to the federal government, prohibits the deprivation of life, liberty, or property without due process of law. U.S. CONST. amend. XIV provides, "...nor shall any State deprive any person of life, liberty, or property, without due process of law."

⁴ *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977).

⁵ All states have rules dictating their discovery process similar to those found in the federal system.

⁶ Rule 402 of the Federal Rules of Evidence provides that "[a]ll relevant evidence is admissible," while "[e]vidence which is not relevant is not admissible."

⁷ *Supra* note 3.

⁸ 360 U.S. 264 (1959).

⁹ 360 U.S. at 269.

¹⁰ 373 U.S. 83 (1963).

¹¹ *Id.* at 87 (emphasis added).

¹² 405 U.S. 150 (1972).

¹³ *Supra* note 8.

¹⁴ 405 U.S. at 155.

¹⁵ 931 F.2d 29 (9th Cir. 1991), *cert. denied*, 503 U.S. 972 (1992).

¹⁶ *Id.* at 30.

¹⁷ *Id.*
¹⁸ *Id.* at 31.
¹⁹ *Id.*
²⁰ *United States v. Henthorn*, 985 F.2d 575 (9th Cir. 1992) (unpublished opinion).
²¹ *See, e.g., McMillian v. Johnson*, 88 F.3d 1554 (11th Cir. 1996), *cert. denied*, 521 U.S. 1121 (1997).
²² 480 U.S. 39 (1987).
²³ *Id.* at 57, citing *United States v. Bagley*, 473 U.S. at 682 (opinion of Blackmun, J.).
²⁴ *Id.* at 57 (emphasis added).
²⁵ *Id.* at 58.
²⁶ *See, e.g.,* the DOJ's policy discussed in this article regarding the sharing with government prosecutors of potential impeachment information.
²⁷ 316 F.3d 1063 (9th Cir. 2003).

²⁸ *Id.* at 1065.
²⁹ Cal. Evid. Code Sects. 1043 and 1045.
³⁰ *City of Los Angeles v. Superior Court*, 52 P.3d 129 (Cal. 2002).
³¹ *Supra* note 27 at 1066.
³² *Supra* note 30.
³³ *Supra* note 30 at 135 (citing *People v. Jackson*, 920 P.2d 1254 fn. 10 (Cal. 1996)).
³⁴ *Supra* at 135-136 (citing *California v. Trombetta*, 467 U.S. 479, 488 (1984)).
³⁵ *Supra* at 135.
³⁶ *Supra* note 21.
³⁷ 88F.3d at 1567.
³⁸ *Id.* at 1569.
³⁹ 136 F.3d 1055 (6th Cir. 1998), *on remand*, 165 F. Supp. 2d 686 (S.D. Ohio 2001).

⁴⁰ Ohio Rev. Code Section 149.43. The Ohio General Assembly subsequently amended this law to limit access to peace officer records. The amendments took effect in December 1999.
⁴¹ 136F.3d at 1067.
⁴² *Id.* at 1064.
⁴³ *Id.* at 1064-1065.
⁴⁴ U.S. CONST. art. VI.

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.

Crime Data

Law Enforcement Fatalities, 2002

In the year 2002, 147 law enforcement officers across the nation were killed in the line of duty, well below the decade-long average of 165 deaths annually and a major drop from 2001, when 230 officers were killed (including 72 officers in the September 11 attacks).

According to preliminary figures released by the National Law Enforcement Officers Memorial Fund (NLEOMF) and the Concerns of Police Survivors (COPS), the states that suffered the most fatalities were Texas (15), South Carolina (9), California (8), North Carolina (7), Maryland (6), New York (6), Arizona (5), Florida (5), Illinois (5), and Missouri (5). The figures also include 10 federal law enforcement fatalities.

Of the 147 officers killed during 2002, 55 were shot to death, 44 died in automobile accidents, 14 were struck by automobiles while on duty outside their vehicles, 8 succumbed to job-related illnesses, 7 died in motorcycle accidents, 7 were killed in aircraft accidents, 3 drowned, 2 were struck by a train, 2 were beaten to death, 2 were stabbed to death, 1 was killed in a bomb-related incident, 1 was killed by a falling object, and 1 was killed in an accident involving a horse. Fourteen of the officers were women, which tied the record high total set in 1998 for female officer deaths.

Additional information is available through the NLEOMF Web site at <http://www.nleomf.com/media>.

The Bulletin Notes

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



Sergeant Baker



Deputy Nettles



Deputy Swetich

Responding to a call of alleged trespassers and a strong odor of propane gas in a vacant house, Sergeant Sam Baker and Deputies James Nettles and Jaime Swetich of the White Pine County, Nevada, Sheriff's Office arrived at the house. The individual who reported the information advised that he had turned off the propane gas, but when

returning from calling the sheriff's office, someone had turned the gas on again. After the deputies shut off the gas, a cursory search of the house located two men huddled in the basement. The young men were not breathing but still had light pulses. The young men were taken outside where their breathing returned to normal before other emergency personnel arrived. It was determined that the two young men were intent on committing suicide, but the quick and decisive actions of Sergeant Baker and Deputies Nettles and Swetich saved their lives.



Officer Tuckman

Early one morning, while refueling his vehicle, Officer Earl Tuckman of the Kenilworth, Illinois, Police Department witnessed smoke billowing from a nearby home. Officer Tuckman rushed to the burning establishment and was able to wake up the sleeping mother, father, and three children. Once making sure the family was safe from the fire, Officer Tuckman helped the family secure lodging for the evening and remove personal effects from the home. Officer Tuckman's courage and compassion helped save the lives of an entire family and helped them cope with their tragedy.

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