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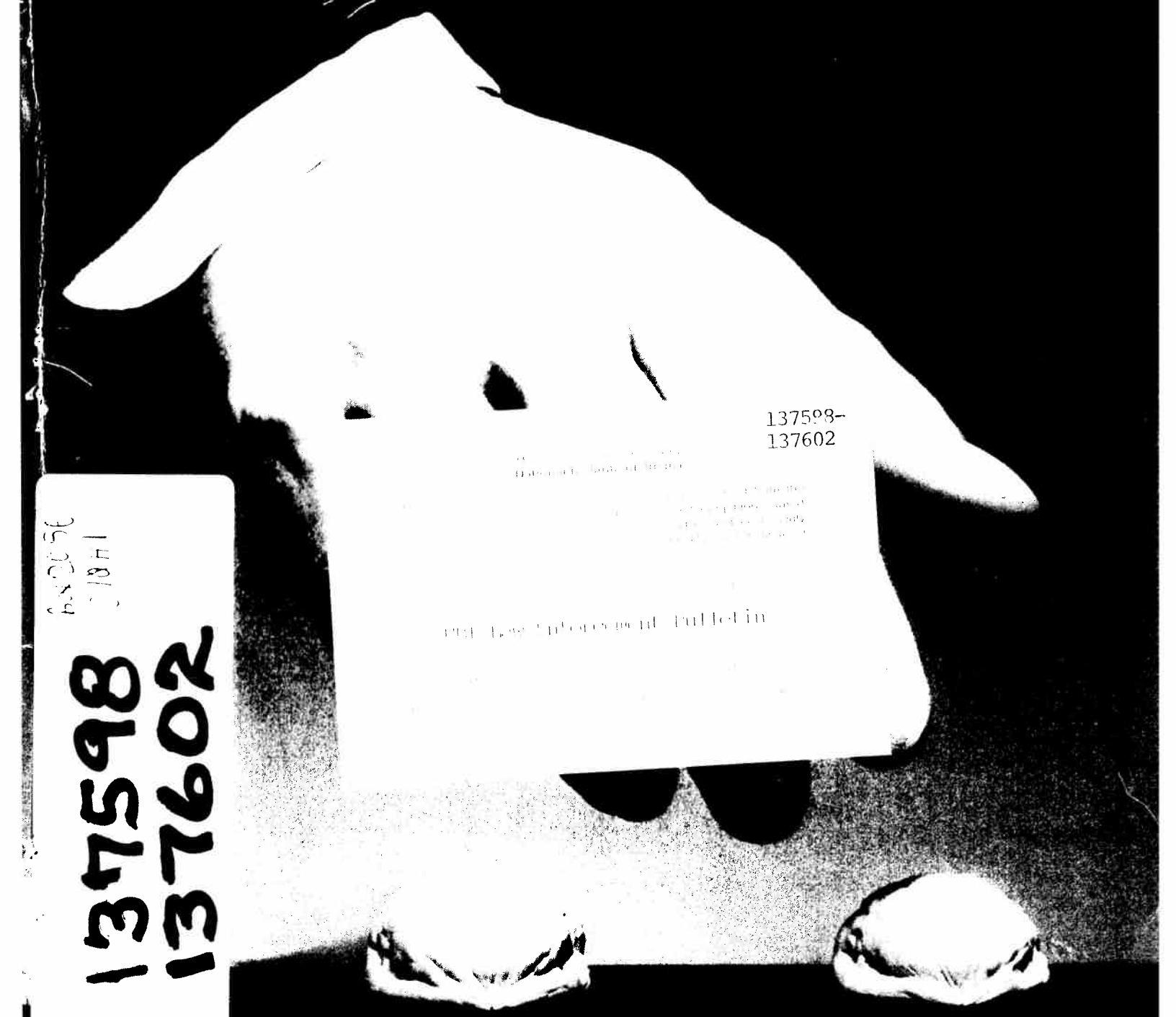

How to Con a Con

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Features

Departments

Cover: *By joining forces, police departments and financial institutions can inhibit the various scams perpetrated by con artists. See article p. 1. Photos on cover and p. 1 are courtesy R. Michael Stuckey, ©, 1992, Comstock, Inc.*

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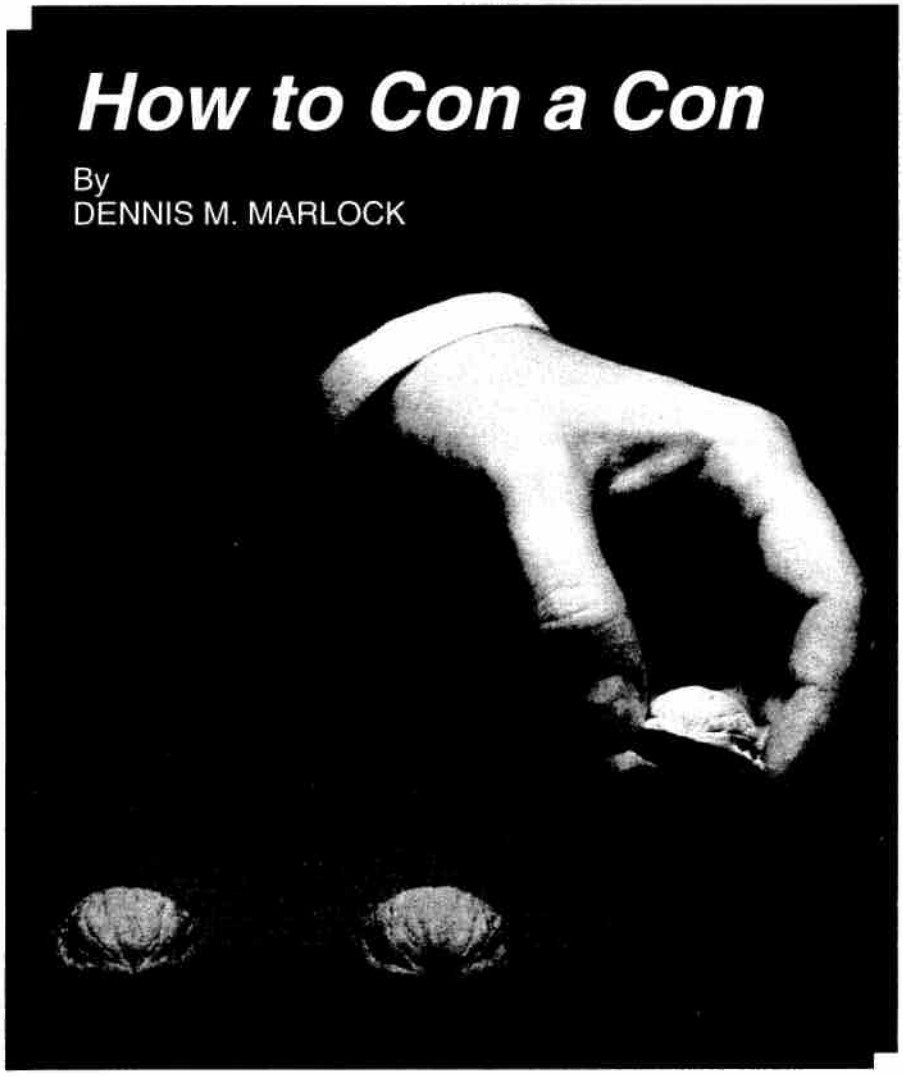
How to Con a Con

By
DENNIS M. MARLOCK



"*For the possibility will always exist, that human ingenuity in contriving fraud may go beyond any cases which have before occurred; and as new devices of fraud are invented, they must be met with new contrivances....*" —Hovenden, *Treatise on Frauds* (1825)

Prior to 1985, con artists viewed the City of Milwaukee, Wisconsin, as "a place where pigeons roost," or so it seemed. Like other communities nationwide, the prevailing public attitude concerning fraud victims was that "if people were naive, gullible, or stupid enough to be taken in, then they had it coming."

It was not surprising, therefore, that citizens frequently chose to accept culpability for their victimization and allowed these offenses to go unreported to the police. Likewise, when such reports were filed, they rarely represented an accurate portrayal of the offense.

Compounding the problem was the fact that officers taking these reports had little knowledge of the subtle differences inherent in the inexhaustible array of scams used by con artists. These officers tended to place all frauds into the generic category of "theft by trick." Of course, much to the delight of the perpetrators, this general lack of understanding assured them of unlimited wealth with little or no chance of being held accountable for their crimes.

Absent any serious law enforcement intervention, the incidence of confidence crime activity eventually became so prevalent that it prompted an all-out attempt by the department to identify, locate, and hold accountable the elusive thieves in their midst. Unfortunately, the attempt failed.

Not A Local Problem

After months of researching the criminal history records of local fraud suspects, the department realized that the bulk of Milwaukee's confidence crime problem could not be attributed to these suspects. Rather, the problem involved transient individuals who were wise enough to limit their criminal activities to three or four offenses and then move on to another location. Even when greed clouded the judgment of some con artists and they were apprehended, they frequently managed to post bond and vanish before the officers discovered their true

> ***"...citizens frequently chose to accept culpability for their victimization and allowed these offenses to go unreported to the police."***

Detective Marlock serves with the Milwaukee, Wisconsin, Police Department.

identities or the extent of their criminal activities.

This is when the department began to focus its attention on interstate con artists. Fortunately, as is often the case in law enforcement operations, the department received notice from a neighboring police agency that a bank fraud suspect in custody admitted to his involvement in several offenses in Milwaukee. After several interviews, the suspect agreed to assist in the apprehension of the individual who he purported to be "one of the most active and successful con artists in the Midwest." In the months to follow, the suspect worked with Federal agents to apprehend Alphonse Mortier, a 54-year-old man regarded by his criminal peers as being "the best of the best."

A Thief Tells All

Shortly after Mortier's conviction for grand theft in the State of Michigan, he was extradited to Milwaukee in connection with his involvement in several bank frauds. Deciding to tell all, Mortier quickly pointed out that law enforcement efforts to apprehend criminals such as himself were often ineffective primarily because the police don't really understand how the game is played.

To substantiate this claim, Mortier proceeded to tell the police what they did wrong in their investigations. One issue brought to light was the use of police radios. If police were aware of the game rules, they wouldn't use their radios when closing in to arrest a suspect. Didn't they realize that the vast majority of con artists possess sophisticated radios and closely monitor all local police transmissions?

Another case in point was the number of workhours wasted by investigating past and present bank employees, simply because the suspect knew the details about the victim's bank account. According to Mortier, con artists frequently call potential victims days, or even weeks, before the offense is committed. The purpose of these calls is to obtain details about the intended victim for future use. In Mortier's words, "You wouldn't believe what people will tell you over the phone."

Most importantly, however, the detectives discovered that they placed too much emphasis, and devoted too much time and effort, in attempting to apprehend the con artist. A much easier approach would be to remove the one thing necessary to the survival of all con artists—easy access to their victims' money.

Once deprived of their ability to obtain money from their intended victims, even the most experienced con would be forced to seek a different line of work. What, then, does a police department do to deprive a con artist easy access to potential victims?

A Program is Born

An obvious and commonly overlooked similarity among those who fall prey to the current kaleidoscope of frauds is the financial institution. Before giving money to a con artist, the vast majority of victims must first withdraw it from a bank.

Another common bond among victims is their disbelief that they were taken in by the con artist. How many times have investigators heard a victim say, "I can't believe I fell for this scam. What was I thinking?" In reality, they simply weren't thinking at all.

As all con artists know so well, the success of any scheme depends entirely on their ability to suspend—if even for an instant—the ability of their intended victim to think. As Mortier stated so succinctly, "Every one of my victims was smart enough to see through my

scam. My job was to make sure that they didn't have any time to think."

With this knowledge, the Milwaukee Police Department decided to join forces with local financial institutions. Through a series of meetings, both parties agreed to devise a method that would afford potential victims a few moments of clear thought.

What resulted from those meetings was the creation of a "cash withdrawal alert form." Drafted by the banks, such a form is given to anyone who insists on withdrawing large sums of cash at one time. The exact wording of these forms varies; however, each form briefly outlines the deceptive ways of con artists. To ensure that the customer actually reads the form, a signature line appears below the following statement:

> "I have read and understand the above statement. By signing this form, I direct this financial institution to complete my request for cash withdrawal."

This seemingly simple precaution produced immediate and impressive results. Within 2 years' time, the incidence of successfully completed frauds decreased by more than 80%. And, although confidence criminal activity continued, the majority of these offenses pertained to attempted rather than completed thefts.

Program Effectiveness

The only setback to the program's effectiveness came shortly after its implementation. Once they learned of the special cash withdrawal forms, con artists began forewarning their potential victims of their existence. Furthermore, they told their victims that such forms were just a formality and that they were to insist on withdrawing their cash. In many instances, especially those involving senior citizens, the con artist would actually accompany the victims to the bank and speak on their behalf.

To counteract this tactic, bank tellers were instructed to call a bank manager before processing any cash transaction that deviated from the customer's normal banking patterns. Both bank personnel and police investigators believed that even such a short delay would cause even the coolest of con artists to panic. More importantly, the additional safeguards worked, and soon afterwards, the program was underway at full strength.

> ***"...remove the one thing necessary to the survival of all con artists—easy access to their victims' money."***

As word of this program's effectiveness reached other jurisdictions, more and more police departments adopted it. Today, Wisconsin and Illinois operate the program statewide. With the assistance of each State's attorney general's office, law enforcement personnel are trained on confidence crime recognition and investigation techniques. The officers who receive this training then work with their respective departments and local financial institutions.

A statewide confidence crime information network was also established so that officers could forewarn other jurisdictions of active suspects and their particular methods of operation. This information is also shared with fraud investigators nationwide.

Conclusion

Because it is highly unlikely that confidence crimes will become extinct, law enforcement must assess periodically the methods used to keep these crimes to a minimum. If not, then any recent gains in combating these crimes will be lost and will give way to past practices of ignorance, both by the police and the public.

The program outlined in this article commits a relatively small amount of agency resources in order to achieve maximum effectiveness. But, there is no doubt that many other similar programs are just waiting to be discovered.

When searching for new ways to combat fraud, it is not important that they be complicated or costly, only effective. Moreover, the success or failure to combat the inimical activities of criminals who are not constrained by jurisdictional boundaries depends entirely on a cooperative effort between the entire U.S. law enforcement community. In other words, law enforcement needs to become just as creative and organized as the criminals whose activities it hopes to curtail.✦

Police Practices

Tempe's VIPs

Agencies across the Nation face the challenge of providing effective law enforcement with limited financial resources. Many departments use volunteers to assist in certain aspects of police work, usually within the administrative function.

Traditionally, the Tempe, Arizona, Police Department employed a small staff of volunteers to file reports and to shred papers. However, when the department began seeking ways to enhance services while contending with a tight budget, one potential solution consistently surfaced—an expanded volunteer program. This led department administrators to reexamine assignments given to volunteers and to develop a new approach to the department's use of volunteers.

The reexamination eventually led to development of the Volunteers in Policing (VIP) Program. This program established new and challenging positions for individuals contributing their time and effort to the Tempe Police Department and revitalized the department's approach to volunteers.

Background

With assistance from an intern at the University of Arizona, the department identified ways to both increase the number of volunteers and to redefine their roles in the department. Managers determined that one key element for success was to treat volunteers as they would employees. In short, department administrators decided that applicants to the volunteer program should be carefully screened, given specific job descriptions, and evaluated periodically, in order to develop a sense of belonging.

In addition, administrators greatly expanded the number of jobs that volunteers could perform. The department identified 35 different areas, from data entry to photo processing, from grooming horses for a mounted police unit to scheduling citizen ride-alongs, in which volunteers could assist officers and department staff.

The Four Rs

Four elements comprise Tempe's VIP management philosophy: Research, recruitment, retention, and recognition. Each component is essential to attract and retain qualified volunteers.

Research—The department first identifies its needs and then attempts to match volunteer applicants to them. Detailed job descriptions that explain the duties expected of individuals filling positions ensure that the department gives volunteers assignments within their fields of interest.

Recruitment—Although the department consistently recruits new volunteers, most applicants come to the department as a result of recommendations from current volunteers. While some volunteers are retirees, the challenging opportunities available within the VIP program also attract younger individuals. Most new volunteers participating in this expanded program are between 25 and 40 years of age. All new applicants undergo careful screening, including polygraph tests, before

being accepted into the volunteer program.

Retention—As many administrators know, retention is often the weak link in many volunteer programs. Tempe's retention efforts include periodic formal evaluations and frequent review sessions with supervisors. The department also keeps a record of hours contributed by each volunteer so that individuals can be formally recognized for their efforts.

Recognition—Volunteers receive a newsletter and birthday and holiday cards. Two annual citywide events recognize the contributions of all civic volunteers; the police department holds two additional events each year.

Because of careful planning on the part of the department, volunteers come into the program knowing what will be expected of them, what the department will provide, and what the rewards will be. To ensure that both parties have the same understanding and expectations, supervisors interview volunteers before their final placement. The manager of the volunteer program then follows up with memos to supervisors and conferences between volunteers and their supervisors.

Results

Since the creation of the VIP program, the number of volunteers in the Tempe Police Department has increased from 3 to more than 150. These volunteers now contribute 15,000 hours to the department annually, with some services provided entirely by volunteers.

The department benefits from this expanded volunteer program in many ways. Increased numbers of volunteers greatly enhance the ability of the department to provide services to the community without increasing expenditures. Enthusiastic volunteers who enjoy their responsibilities also contribute to overall morale within the department.

Once reluctant officers now specifically request "victor" (volunteer) units to handle certain situations. The employees know that volunteers work under job descriptions and understand that they must demonstrate skills and motivation. The supervisor of the Patrol Division, for example, has seen the number of "motorist assist" volunteers increase dramatically since the creation of the VIP program.

The Motorist Assist Program is one of the most visible volunteer efforts in Tempe. During just 1 month in 1991, these volunteers responded to approximately 500 calls dealing with dead batteries or motorists locked out of their vehicles. They also help at traffic accident scenes and write civil citations for parking violations in handicap zones and fire lanes. The assistance these volunteers provide allows patrol officers to devote time to more strategic activities.

Volunteers also established new programs and greatly enhanced existing ones. A comprehensive sexual assault survival workshop, created and staffed by volunteers, has received very positive recognition in the community. Tempe's "National Night Out" Crime Prevention Program, coordinated by a volunteer, earned national recognition in 1990.

Conclusion

The Tempe Police Department bases its VIP program on matching the needs of the department to the interests of volunteers. Department administrators adhere to the philosophy that qualified citizens actively participate and remain in a dynamic program that offers challenging alternatives to traditional volunteer roles.

The results have proven very positive. Increased numbers of volunteers now assist the department in ways that were not imagined just a few years ago. In doing so, these VIPs assist the Tempe Police Department in providing enhanced services to the community without increasing costs.✦

The City of Tempe Community Relations Office submitted the information for this column.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

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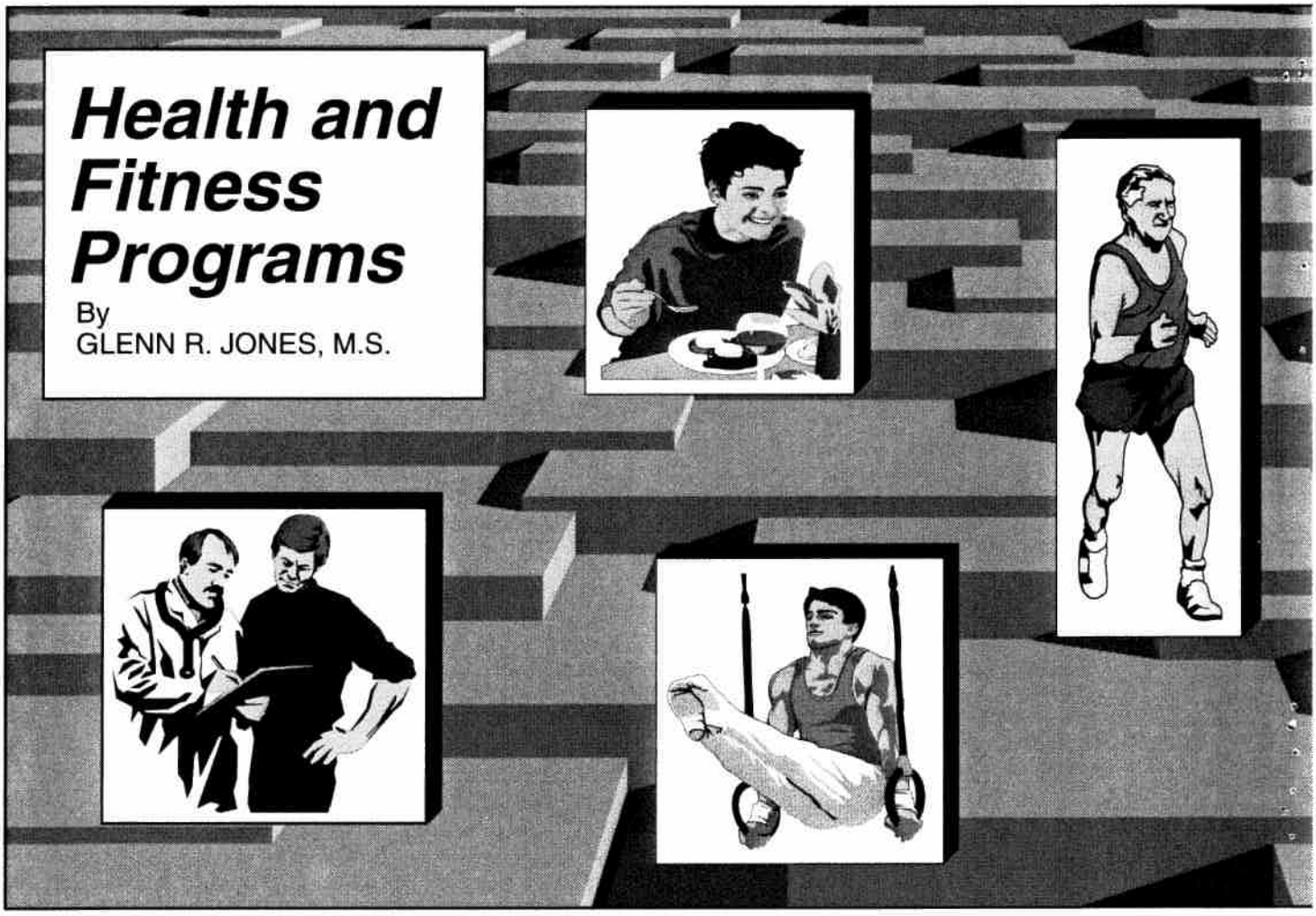

Health and Fitness Programs

By
GLENN R. JONES, M.S.

Imagine a police department that does absolutely no firearms training. Its officers would not have to demonstrate proficiency with weapons, and the department would have no standards for assessing officer performance in the use of firearms.

Such a situation is, of course, unthinkable. The ability to use firearms proficiently is an indisputable necessity in modern law enforcement. And yet, even on today's violent streets, the majority of officers never fire a weapon in the line of duty.

Physical abilities, by contrast, are called upon regularly in police work. Endurance, strength, and physical conditioning are often critical factors in determining the outcome of an encounter between officers and law breakers. Despite this, serious efforts to address the health and fitness of police officers are generally dismissed as well-intentioned but somewhat impractical. Some departments simply do not regard fitness as a critical issue.

However, there is a growing understanding that the benefits of health/fitness programs for law enforcement agencies are far more tangible and broad-based than weak excuses would indicate. Not only can a well-developed fitness program help to reduce injuries, boost morale, and foster a more effective crime fighting force, but it can also be a cost-effective component to a department's overall health care policy. The benefits of an effective and fairly administered health/fitness program for law enforcement agencies should no longer be ignored.

CURRENT STANDARDS

Because of the sheer number of departments and the lack of a universally accepted standard for health/fitness policies, it is difficult to determine the prevalence of serious health promotion programs in American law enforcement agencies. Studies attempting to gauge the status of fitness programs tend to yield confusing results due to classification inconsistencies. For example, does a policy of pre-employment physicals classify a department as having a health promotion program?

A 1988 survey of the largest police department in each State revealed that at least 22 of the responding agencies had relatively indepth health promotion programs.[1] Still, the results of this survey were somewhat relative, since no parameters were defined for an "indepth" program.

IMPLEMENTING A PROGRAM

Once a department's administration decides to develop a health/fitness program, several steps should be taken to ensure its success. First and perhaps most important, the proposal must be "sold" to two groups: 1) The city council and budget appropriators, and 2) the people who will be directly affected—the officers, and if applicable, civilian personnel.

Budget Considerations

Often, the first tactic in promoting health/fitness programs is to quote the abundance of data showing reduced health care costs and absenteeism and improved productivity and morale.[2] Although these specific goals are very compelling reasons for initiating a program, they are difficult to measure objectively. And while some effort to measure these goals should be made, departments should not rely on attaining them to *justify* a health/fitness program.

Instead, it is more reasonable for departments to justify a fitness program by arguing that a compelling interest exists in law enforcement to have officers who are healthy and fit. If this effort saves a department money in health care costs, then all the better. However, departments should not determine the success or failure of health/fitness programs by whether a cost savings results. The ultimate result should be an improved department, with employees who are healthier, personally more secure, and better able to provide effective policing services.

Personnel Considerations

It is unwise to underestimate the negative power of a disgruntled group of officers. For this reason, a significant effort should be made to ensure that a health program gains the approval of the personnel directly affected. Much of this effort will involve eliminating the "they're out to get us" attitude. Department leaders should emphasize that the intentions are not only to produce more capable police officers but also to help individuals become healthier and more physically fit.

THE PROGRAM

Health/fitness programs should ideally consist of four components: Health promotion, medical screening, exercise, and fitness assessment. Each element is important and should be considered in the framework of the overall program.

Health Promotion

Too often, departments become focused on fitness assessment and fail to provide education to assist officers in developing healthier lifestyles. But forcing an overweight, hypertensive, chainsmoker

with a cholesterol level of 350 to run a mile and do a round of situps once a year will do little to improve that individual's health. Such an officer requires assistance to change negative fitness habits and to adopt a more health-oriented lifestyle.

For this reason, exercise counseling should be included in any departmental fitness program. Ideally, departments should make available any community resources that will assist personnel in increasing health awareness. Usually, such community assistance is available at minimal or no cost to departments.

Medical Screening

A thorough medical screening policy is also essential to a comprehensive fitness effort. A well-implemented screening program will not only identify potential health risks but it will also reduce the legal liability on departments in the event an individual encounters serious health-related problems during exercise or in the line of duty.

In addition to being an excellent disease prevention tool, medical screening should be performed in order to determine if it is safe for an individual to participate in an exercise program and to perform the duties normally associated with law enforcement. Again, this is for the protection of both the individual and the department.

However, it is not necessary or advisable to perform a complete medical screening of all officers every year. The screening process, in fact, will probably be the most expensive component of the health promotion program and should not be overused. Therefore, good guidelines for departments to follow are:

- *For personnel 35 years of age and below*—a yearly blood pressure check and completion of a medical history questionnaire (assuming all officers underwent a thorough preemployment screening that revealed no medical problems.) A more complete screening would then be performed only if apparent risks were detected.
- *For personnel 36-49*—a thorough medical screening every 2 to 3 years, including blood work, urinalysis, mammogram for females, and stress test with EKG monitoring. Eye exams may also be considered. On off years, personnel should be screened only if a medical change has taken place or if an individual begins to complain of a specific symptom, such as chest pains.
- *For personnel 50 and above*—a complete medical screening at least every other year. During evaluations, doctors should be required to sign an opinion regarding the safety of the individual to participate in exercise and to perform job duties.

"...a well-developed fitness program [can] help to reduce injuries, boost morale, and foster a more effective crime fighting force...."

Mr. Jones is the physical fitness coordinator for the Charlotte, North Carolina, Police Department.

Exercise

Any department with a serious commitment toward health and fitness promotion should assist officers by making exercise resources readily available to them. Departments that cannot realistically provide on-site facilities may consider assisting officers with the purchase of memberships to local health clubs. However, on-site facilities offer more convenience and usually prove more cost effective in the long term.

Choosing a facility is only one of the important decisions that departments have to make concerning

an exercise program. Another important issue is whether to allow (or to the other extreme, require) officers to work out while on duty. There is no conclusive evidence that on-duty exercise programs are cost effective in terms of significantly reduced health care expenditures. However, as mentioned, cost should not be the primary concern for police departments instituting a fitness program.

Departments should adopt a plan that best fits the needs of the personnel effected. This may mean providing onduty workout time but not demanding that all employees take part. Some employees may prefer to workout on their own time and should not be forced to change their routine, as long as they pass standard departmental assessment tests. However, departments contemplating mandatory physical fitness standards should seriously consider allowing onduty workout time before the consequences of the program take effect.

Fitness Assessment

Fitness assessment is often the first component considered by administrators when designing health programs. Unfortunately, it is also the element that will cause the most dissatisfaction if not instituted fairly and after much analysis by program managers. Several important issues must be addressed when formulating the assessment program.

Who to test

Departments often attempt to ease the assessment component of the program onto officers by initially calling for voluntary participation. Typically, an incentive, such as a percent pay increase, is offered to promote participation. However, this approach usually results in a program for people who are already in shape. While this group should be commended for their efforts, they are not the population who need the most help. Therefore, it is preferable to implement the program by making everyone (including supervisors) participate, but not to penalize officers for poor performance during a reasonable initiation period.

Although officers, particularly older ones, may argue that any comprehensive fitness standard has to be "grandfathered" in, this argument is inaccurate from a legal perspective. If the proposed standard is otherwise lawful and application of the standard to senior officers is reasonable and implemented in a reasonable manner, giving adequate time for adjustment to the standard, the department should be on safe legal ground.[3]

Types of tests

Assessment protocols can be categorized as either job-related or health-related. There are important physiological, practical, and legal implications between the two that departments must consider before any type of assessment program is initiated.[4]

The vast philosophical differences between job- and health-related tests must be considered carefully before departments choose an assessment protocol. As with most other major decisions departments must make, fitness testing programs should not be considered in a vacuum but should be discussed within the framework of what will best fulfill the needs of the department and of the community.

> ***"...departments should not determine the success or failure of health/fitness programs by whether a cost savings results."***

Job-related tests

Job-related tests typically involve an obstacle course format. The activities included are intended to represent physical actions typically encountered by police officers (such as scaling fences, climbing stairs, or dragging victims.) A job-related testing format must consist of a single standard for all participants being tested. To adjust the standard in an effort to compensate for performance differences related to gender or age tends to negate the entire purpose of job-specific testing.

Because single standards may result in more test failures by females and older officers, many agencies have been discouraged from adopting job-related tests. This situation compels departments to prove that test items are, in fact, job-related and necessary.

Obtaining this proof involves an extensive validation process that can be expensive and complicated, as well as time consuming.[5]

However, standards that either impact unequally based on race, color, religion, sex, or national origin, or on account of disability and which are used as a component of employment decisions, such as hiring and promotion, must be shown to be necessary for and directly related to successful performance in the position in question.[6] Therefore, agencies that plan to use fitness test scores for any employment decision should consider contracting with a qualified consultant to validate the test.

Health-related tests

Health-related assessment protocols test an individual's overall health and fitness, without emphazing job-related tasks. The health-related fitness components test body composition, muscular strength, flexibility, muscular endurance, and cardiovascular endurance. Tests can be designed to assess these components. Protocols and standards can be attained from other departments or can be developed within the department.

Health-related tests are more useful than job-related tests for providing feedback to officers regarding potential fitness improvements and for assisting them in setting individual goals. However, results of health-related tests not directly related to job performance should not be used for making employment decisions, such as hiring, promotion, assignment, or dismissal.[7]

USE OF THE RESULTS

Perhaps the most potentially controversial aspect of health/fitness programs is the manner in which departments use the test scores. There is a very wide range of possibilities, but they generally fit into two broad themes.

> ***"...a significant effort should be made to ensure that a health program gains the approval of the personnel directly affected."***

Wellness Programs

As the name implies, wellness programs focus on the benefits to the employee and the organization of health and fitness. Such programs use measurement of fitness to assist employees in assessing their own fitness and health. These programs provide information on training and fitness and encourage employees to actively pursue health and fitness through knowledge and activity. Since no employment actions are based on assessment results, wellness programs are less likely to experience legal challenge.

Mandatory Standards

Mandatory standards are those which are used as a basis in evaluating officers for employment actions, such as pay raises, promotions, assignment, and termination. Because such standards have significant consequences, they are the most likely to face legal challenge. Consequently, mandatory fitness standards should be imposed only after considerable practical and legal scrutiny.[8]

MEASURING THE RESULTS

In measuring the effectiveness of health promotion programs, departments should consider two issues: 1) Is the program improving health and fitness among officers? and 2) is the program saving money in health care costs? Procedures for tracking progress should be built into the program from the beginning and relate directly to the program's stated objectives. Improving health and fitness is, by far, the most important objective and can be measured through tracking fitness scores, cholesterol levels, blood pressure levels, dietary trends, smoking habits, and levels of obesity. Program options can then be redirected to those areas requiring the most attention.

If possible, a database should also be established to track health care-related information, such as absenteeism, injuries, and the number of insurance and workman's compensation claims filed. While relating these factors to health promotion efforts may be difficult, any tangible positive effects that can be documented could be of tremendous value to justify a health promotion program. Again, however, efforts to improve health and fitness within departments are of value even if monetary savings cannot be demonstrated.

CONCLUSION

Police administrators are realizing the importance of improving the health and fitness levels of their officers. Health/fitness programs demonstrate a concern for officers not only as crime fighters but also as valuable employees and individuals whose fitness and well-being should be proactively cared for to some degree by their departments. Well-developed health promotion programs can also lead to reduced overall health care costs. Most importantly, however, they can increase the effectiveness and security of officers and enhance morale within law enforcement agencies.✦

Endnotes

[1] R. Boyce, "Physical Fitness/Health Promotion Questionnaire," 1989, conducted at University of North Carolina at Charlotte, Department of Health and Physical Education, Charlotte, North Carolina (unpublished).

[2] R.J. Shepard, "Current Perspectives on the Economics of Fitness and Sport with Particular Reference to Worksite Programs," *Sports Medicine*, 7, 1989, 286-309.

[3] *See Kelley* v. *Johnson*, 425 U.S. 238 (1976).

[4] J. Hogan and A.M. Quigley, "Physical Standards for Employments and the Courts," *American Psychologist*, November 1986, 1193-1217.

[5] *See Harless* v. *Duck*, 619 F.2d 611 (6th Cir. 1980); *Evans* v. *City of Evanston*, 881 F.2d 382 (7th Cir. 1989); *Zamlen* v. *City of Cleveland*, 906 F.2d 209 (6th Cir. 1990).

[6] *Id.*

[7] *See International Union, UAW* v. *Johnson Controls*, 111 S.Ct. 1196 (1991).

[8] For a detailed discussion of potential disparate impact problems in establishment of health and fitness standards for law enforcement officers, *see* Schofield, "Establishing Health and Fitness Standards: Legal Considerations," *FBI Law Enforcement Bulletin*, June 1989, pp. 25-31.

Law Enforcement Officers Killed—1991

According to preliminary national figures collected by the FBI's Uniform Crime Reports Program, the number of law enforcement officers killed in the line of duty in 1991 totaled 69. This represents four more officers slain than in the previous year and the first time since 1988 that UCR statistics recorded an increase.

Firearms continue to be the weapon most used in the slaying of officers. During 1991, handguns were used to commit 48 of the murders; rifles, 14 murders; and shotguns, 4 murders. A bomb explosion killed one officer, another was beaten with a flashlight, and one suspect intentionally struck an officer with a vehicle. Twenty-three officers were wearing body armor at the time of their deaths, and 9 were killed with their own weapons.

Disturbance calls resulted in 16 officers being killed. Another 15 officers were slain during arrest situations, including 4 while preventing robberies or apprehending robbery suspects, 3 while apprehending burglary suspects, 3 while involved in drug-related situations, and 5 while attempting arrests for other crimes.

Of the remaining officers slain, 13 were enforcing traffic laws, 10 were caught in ambush situations, 9 were investigating suspicious persons or circumstances, and 6 were handling prisoners. Law enforcement agencies cleared 65 of the 69 slayings.

Geographically, the Southern States recorded the most officers slain (29), followed by the Midwestern States with 20 and the Northeastern and Western States with 7 each. Five officers were killed in Puerto Rico, and 1 was killed in the U.S. Virgin Islands. An additional 49 officers lost their lives due to accidents that occurred during the performance of their duties.✦

Focus on Violent Crime

The FBI's Violent Crimes and Major Offenders Program

In June 1989, the FBI added crimes of violence to its list of national priorities. With this designation, the FBI devoted more resources to the investigation of violent crime. It also expanded cooperative efforts with State and local law enforcement, as well as other Federal law enforcement agencies, in an effort to reduce the increasing rate of violent crime.

Accordingly, on June 21, 1989, the FBI established the Violent Crimes and Major Offenders Program (VCMOP) by consolidating several related investigative efforts into one priority program. This reorganization enhanced the Bureau's ability to assist other agencies in combating violent crime. It also reflected the alarming nationwide increase in these types of crimes. Indeed, Uniform Crime Reports (UCR) figures for 1990 revealed the rate of violent crime for that year increased by more than 10 percent over 1989 figures.[1]

To combat the wide range of violent criminal activity effectively, the VCMOP was designated wide-ranging investigative responsibilities. While various FBI investigative units continue to handle crimes of violence—cases investigated within the Drug or Organized Crime Programs, for example, often involve elements of violence—the VCMOP devotes its resources exclusively to the growing problem of violent crime.

Four subprograms comprise the VCMOP. Each subprogram focuses upon specific aspects of violent criminal activity.

Violent Crimes Subprogram

The primary objective of the Violent Crimes Subprogram (VCSP) is to preserve human life through the prompt and effective investigation of violent crimes. Violent crimes that fall within the jurisdiction of the FBI include assassinations, kidnapings, assaults, or threats against Federal law enforcement officers and high government officials (including some family members of these officials), crimes aboard aircraft, extortions, kidnapings (general), consumer product tampering, thefts of controlled substances, drug-related homicides, bank robbery, interstate transportation of obscene matter, sexual exploitation of children, interstate transportation in aid of racketeering (ITAR), and a number of other violations wherein crimes against a person are an element.

Through aggressive enforcement of the laws and statutes governing these crimes, the goal of the VCSP is to reduce the impact of all violent criminal activity. For example, through vigorous enforcement of ITAR regulations, special agents operating within the Violent Crimes Subprogram investigate the broad range of crime problems associated with gang activity, including homicide, drug trafficking, and intimidation.

Fugitive Subprogram

The focus of the Fugitive Subprogram centers on the apprehension of State and local fugitives who travel across State lines to avoid either prosecution or confinement. This subprogram was

established to reduce crime rates, particularly those of violent offenses, by assisting State and local law enforcement agencies in apprehending criminals who flee prosecution, either interstate or internationally. The subprogram places primary emphasis on the apprehension of fugitives sought for serious or violent criminal acts, as well as those engaged in large-scale drug trafficking. In addition, the Fugitive Subprogram coordinates fugitive policy regarding all fugitives in substantive FBI investigations. Through this subprogram, the FBI also assists in the investigation of certain military desertions where aggravated circumstances exist.

The responsibilities of the FBI in the area of fugitive apprehension increased in the early 1980s with the passage of the Parental Kidnaping Prevention Act. Previously, the Department of Justice (DOJ) and the FBI lacked authority in domestic relations controversies, unless convincing evidence existed that an abducted child was in danger of serious bodily harm. However, in response to this act, DOJ modified its parental kidnaping policy and eliminated the requirement for this type of evidence. As a result, the FBI now treats parental kidnaping cases in the same manner as other fugitive cases. During the 1991 fiscal year, the FBI resolved over 1,200 cases involving parental kidnapings.

Government Reservation Crimes Subprogram

The Government Reservation Crimes Subprogram encompasses theft of government property, as well as crimes on Indian reservations or property where the U.S. Government has jurisdiction. These properties include approximately 430 major Department of Defense installations, numerous civilian agency buildings and sites, national parks and recreation areas, more than 256 Indian reservations, and approximately 70 Federal penitentiaries and correctional facilities.

The Government Reservation Crimes Subprogram concentrates on the investigation of violent crimes, as well as the theft of weapons, explosives, and drugs.

"Working closely with other law enforcement agencies, the FBI seeks to reduce public anxiety ...by significantly reducing the occurrence of all violent criminal activity."

The subprogram also focuses on other crimes, such as irregularities in Federal penal institutions and Selective Service Act violations, where the United States Government is, or may be, a party of interest.

Interstate Theft Subprogram

In 1990, property crimes accounted for 87 percent of all reported crime in the United States.[2] To combat the criminal networks that commit this kind of illegal activity, the Interstate Theft Subprogram (ITS) focuses on the investigation of three major areas related to property crime: Theft from interstate shipment, interstate transportation of stolen motor vehicles, and interstate transportation of stolen property.

Because large criminal enterprises underwrite much of the crimes of violence and property in the United States, the FBI devotes extensive investigative resources to the dismantling of these organizations. In 1990, the ITS handled just over 22,000 investigative matters. Through the third quarter of the 1991 fiscal year, that number rose to over 32,000.

Conclusion

Crimes of violence and the activities of major criminal offenders threaten the safety and economic well-being of entire communities. In response, the FBI identified violent crime as a national priority and established the Violent Crimes and Major Offenders Program to further concentrate resources in combating these types of criminal activity. Working closely with other law enforcement agencies, the FBI seeks to reduce public anxiety concerning these most feared types of crimes by significantly reducing the occurrence of all violent criminal activity. ✦

Endnotes

[1] Uniform Crime Reports Program, *Crime in the United States (1990)*, United States Department of Justice, Federal Bureau of Investigation, Washington, DC, 1991.

[2] Ibid.

Written by Andrew DiRosa, Office of Public Affairs, Federal Bureau of Investigation.

Book Review

FULCRUM Guide to Public Safety Software *by Timothy F. Hasson, The FULCRUM Group, Schwenksville, Pennsylvania, 1991, 215-287-0703.*

Public safety managers are often asked to identify computer programs that would automate some aspect of their work environment or upgrade an existing computer system. When faced with this responsibility, where should managers begin?

One place might be the *FULCRUM Guide to Public Safety Software*. This guide provides a comprehensive listing of mainframe, minicomputer, and microcomputer software available to public safety agencies, including emergency management, emergency medical services, law enforcement, public safety communications, and fire departments. Most of the more than 350 software programs identified in this guide were specifically designed for public safety agencies. However, programs that may be useful for public safety applications, although they were not designed specifically with these agencies in mind, are also included.

Software applications in this guide are categorized according to the main function or task they perform, such as accounting, computer-aided dispatch, or scheduling. Specific programs are then listed alphabetically within each category. Each software listing contains a description of the software, including the following information: Current version number, release dates of the current and initial versions, type of computer equipment for which the software was designed, general operating system requirements, additional equipment or hardware requirements, and the vendor's name, address, and telephone number.

Although each software title is listed only once within the text, the author accounts for the versatility of software packages by providing appendices that organize the programs and vendors in the following ways:

- Comprehensive alphabetical listing of software titles
- List of cross-referenced software application programs for each category
- Alphabetical listing of vendors and the software that is available from them
- Chart of operating systems to identify easily which programs use a particular operating system
- List of additional sources of information.

The task of identifying appropriate vendors who offer software packages that meet an agency's needs can become an overwhelming responsibility. By reviewing a guide such as this, managers can save time that could be better spent on the more important issues in selecting software—feature and price comparison, vendor support, and contract procedures. This guide provides a good starting point for managers faced with this responsibility and is a valuable resource in the software acquisition process.

Reviewed by
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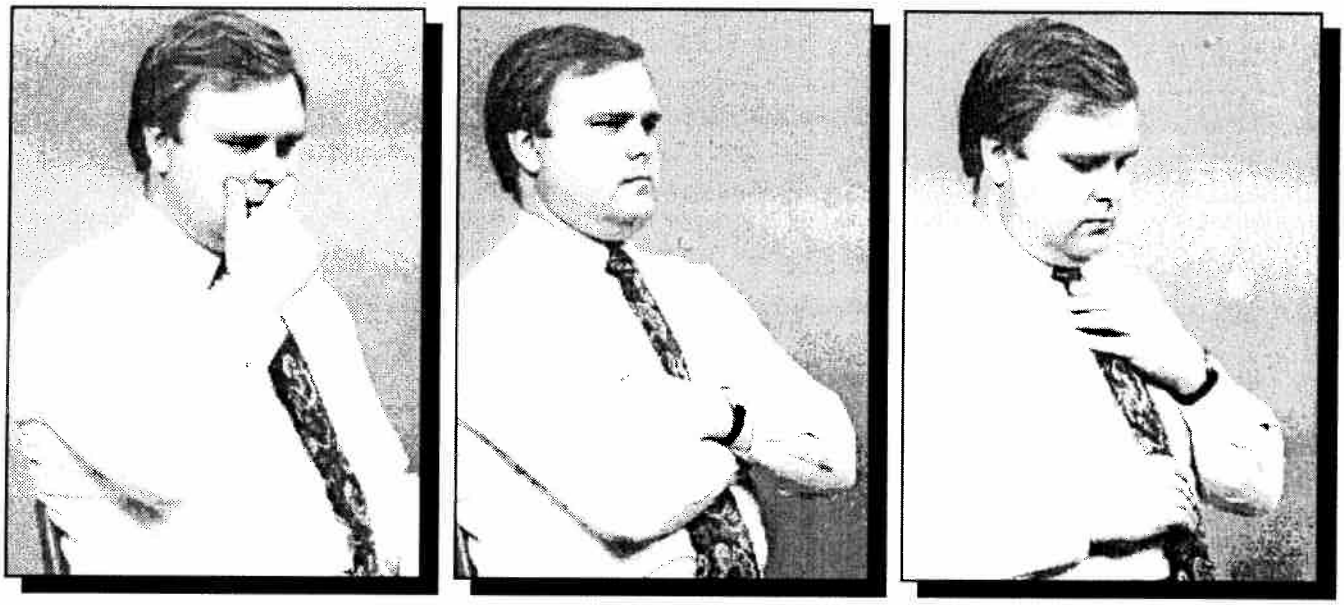


Nonverbal Communication

Can What They Don't Say Give Them Away?

By
CHARLES G. BROUGHAM

Today, one of the most important skills necessary to conduct an effective interview is the ability to understand and interpret nonverbal communication. As Voltaire once said, "Words were given to man to enable him to conceal his feelings." With this thought in mind, this article discusses the various forms of nonverbal behavior. It also details the steps that an interviewer should take to examine nonverbal behavior successfully during an interview.

BACKGROUND

Throughout history, people have been aware of nonverbal communication. In fact, as long ago as 900 B.C., one observer wrote the following description of a liar on a piece of papyrus: "He does not answer questions, or gives evasive answers; he speaks nonsense, rubs the great toe along the ground, and shivers, he rubs the roots of his hair with his fingers."[1]

More contemporary findings indicate that people have not changed much in 3,000 years.[2] In 1948, a polygraph examiner named John Reid observed that subjects reacted differently when giving truthful answers as opposed to when they supplied deceptive ones. As a result of his observations, Reid developed the behavioral analysis interview. During these interviews, Reid observed the criminal's verbal and nonverbal behavior, focusing on how the subject reacted during questioning. He then recorded the answers and nonverbal behavior, such as eye contact, posture, and attitudes. Reid concluded that a subject's behavior during an interview could reveal truthfulness and/or deception.

NONVERBAL BEHAVIOR

Usually, people exhibit certain constant, spontaneous, and involuntary behaviors when interviewed under stressful conditions. Body

> ***"...people exhibit certain constant, spontaneous, and involuntary behaviors when interviewed under stressful conditions."***

Sergeant Brougham is a member of the Special Functions Division of the Chicago, Illinois, Police Department.

movements (kinesics), body positions (proxemics), facial expressions, physiological symptoms, and paralanguage reflect these nonverbal behaviors. Interpreting a subject's nonverbal behavior properly could possibly point investigators toward new leads, and hopefully, toward a successful resolution of an ongoing case.

Kinesics—Body Movements

The human body is one of the best sources of nonverbal communication, primarily because it is the least controllable nonverbal channel. A calm, emotionless face, along with active arms, hands, legs, and feet, is a distinctive feature of deception. For example, when witnesses or suspects deceive, they lean forward less and move their legs and feet significantly more than when they are truthful.

Additionally, such gestures as pounding one's fists or stomping one's feet reinforce verbal messages. Gestures may sometimes even replace words, such as when individuals nod their heads up and down in lieu of the verbal response "yes."

Hands and arms are also expressive features and often provide critical insight into a person's feelings. Most notable are folded arms. If someone's arms are folded loosely, it may be indicative of relaxation. However, when arms are folded firmly and high across the chest, this may signify refusal or defiance. If this gesture is difficult to interpret, the interviewer should look at the subject's hands to see if they are relaxed or fist-like.

Hand movements, in which the hands are rotated at the wrists, usually indicate uncertainty. When a person is being deceptive, these hand movements decrease and are replaced by shrugs. Additionally, rubbing one's palms is considered a gesture of expectation, while strumming or tapping the fingers is indicative of nervousness and is often associated with deceit. A person making a hand-to-chest gesture is generally recognized as sincere and honest, while a person making a hand-to-mouth gesture is communicating self-doubt or may be lying.

Truthful persons tend to gesture away from their body, while liars tend to gesture toward themselves. It has also been found that grooming gestures and clothing adjustments that keep the hands busy may allow the subject a delay in answering questions and allow release of pent-up anxiety. However, although these tendencies are observed easily, they should be considered as only part of a subject's overall assessment.

Proxemics—Personal Distance

In general, Americans have an intimate zone of approximately 6 to 18 inches from the body and a personal zone of about 18 inches to 4 feet. When an interviewer creates a high level of anxiety for a psychologically normal person by invading this personal space, it becomes increasingly more difficult for the subject to lie.[3]

Successful interviewers create a high level of anxiety by beginning an interview at a comfortable distance while discussing general information. Then, the interviewer moves closer to the subject during questioning and backs off during desired responses. This practice results in the desired effect of mentally programming an individual to cooperate with the interviewer's line of questioning.

Facial Expressions

People have long noticed that the halves of a person's face are not quite identical. One eye may sag a bit, or one nostril may be slightly larger. Such facial asymmetries

become even more pronounced when a person makes a facial expression. Almost invariably, parts of one side of the face will move differently—one side of the mouth or one eye may droop more than the other, or one nostril may flair more.

When facial expressions are spontaneous, muscle movements tend to be about the same on both sides of the face. But, when muscle movements are deliberate, such as when a subject is deceitful, the muscles on the left side of the face move more than those on the right.[4] An astute observer may be able to use these facial asymmetries and expressions as clues to determine whether a person is being sincere.

This difference between spontaneous and deliberate facial expressions seems to be due to how the brain regulates facial muscles. Spontaneous facial movements bypass the brain's cognitive centers. But, when some people consciously move a part of their faces, the signals to move the muscles go through the cortex, the part of the brain that makes conscious decisions. The part of the cortex that is involved in this process appears to have stronger ties to the left side of the body; hence, the greater movements of facial muscles on the left.[5]

In addition to asymmetrical facial indicators, the face can also reveal some very good clues when combined with other nonverbal behavior. For example, when an individual is being deceptive, internal stress will cause the eye-blink rate to increase significantly from one blink every few seconds to one to two blinks per second. Internal stress may also cause the eyes to open wider than normal. Avoiding direct eye contact or looking away can provide additional clues to indicate deception.

Physiological Symptoms

When most people lie, a myriad of physiological changes takes place in the body. These changes include perspiration, flushing or paleness of skin, an increase in the pulse rate, and the appearance of veins in the head, neck, and throat.

> ***"In general, humans experience few problems or anxieties when they speak the truth."***

Dry mouth and tongue, excessive swallowing, respiratory changes, licking of lips, thickened speech, and stuttering may also occur.[6] During the interview, any of these indicators should be noted.

Paralanguage

There are times during an interview when what the subject says is less important than how it is said. Paralanguage involves the examination of how a person speaks and of all the characteristics of the voice, except the words. When properly analyzed, variations among the following characteristics can indicate deception:

- Pitch—the highness or lowness of tone
- Loudness
- Rate of speech
- Quality—the sound of the voice
- Special vocalizations—crying, laughing, belching, and especially "breakers" (Breakers, such as a quivering voice or stuttering, are interuptions in speech usually caused by a lack of control or insecurity.)
- Space fillers—"uh-uh" and "um."[7]

When suspects are deceptive, they will be less fluent and will stutter more. Their answers will also be less plausible, longer, and contain more fillers and more broken and repeated phases.

Attempted deception will also cause the subject to become nervous. This nervousness often results in a high voice pitch, more "breakers," a slower rate of speech, longer hesitation before answering, and less volunteered information.

Exceptions

It should be noted that exceptions to these applications exist. For example, people who are under the influence of drugs or alcohol, professional or habitual criminals, and people exhibiting antisocial behavior may not exhibit normal nonverbal behavior.

CONDUCTING THE INTERVIEW

Over the years, certain guidelines and tactics have been developed for interviewers to follow in order to conduct a successful interview. Most importantly, the interviewer must be thoroughly familiar with the case and must have specific

objectives for the interview. And, unless the subject is friendly, the interview should be conducted in an area unfamiliar to the subject, preferably in a small room with the windows and blinds closed. It is also important to remove all distracting objects, such as pictures. The subject's chair should be comfortable and should be lower than the interviewer's chair. Both chairs should be approximately 2 feet apart and should face each other.

In order to monitor and interpret a subject's nonverbal communication successfully, the interview should begin with small talk. This builds rapport with the subject and provides an opportunity to observe the person's truthful body language. The interviewer should then pace the individual's verbal behavior by concentrating on and examining the subject's verbal responses. In most cases, this will provide the interviewer with a frame of reference from which to work.

Next, the interviewer should assess the subject's nonverbal behavior by concentrating on gestures, facial expressions, and posture while listening to verbal responses. For example, when people truthfully answer "yes" or "no" to a question, they usually shake their head up and down or from side to side, either subtly or with exaggeration. However, when individuals answer questions in a deceptive manner, their heads usually do not move.

It is important to note that these observations are generalities. Before determining deception, an interviewer should observe a subject's nonverbal responses when telling the truth. This allows each subject's verifiable nonverbal responses to be calibrated accurately.

Interviewers can also ensure a greater level of success if they consider the subject's behavior in light of the general population, closely examine the subject's own behavior, and compare clusters of the subject's behaviors and their rate of repetition. Interviewers should also have an idea of the subject's frame of reference and should always reserve judgment until after the interview.

CONCLUSION

In general, humans experience few problems or anxieties when they speak the truth. But, when people lie, the mind and body send out involuntary signals that, when properly interpreted, can indicate deception. The "language" of nonverbal behavior is complex and dynamic. And, although a good deal of time, effort, and practice is necessary to become proficient at the technique of reading nonverbal behavior, the investment can be beneficial and very rewarding. ✦

Endnotes

[1] Daniel Goleman, "Can You Tell When Someone Is Lying To You," *Psychology Today*, August 1982, 17.

[2] Ibid.

[3] Ibid.

[4] Daniel Goleman and Jonathan Freedman, *What Psychology Knows That Everyone Should* (Lexington, Massachusetts: Lewis Publishing Company, 1981).

[5] Ibid.

[6] Arthur S. Aubry and Rudolph R. Caputo, *Criminal Interrogation*, 3d. ed. (Springfield, Illinois: Charles C. Thomas, 1980).

[7] Robert Harrison, "Use of Non-Verbal Clues to Detect Deception," *Law and Order*, September 1986, 58

Police Officer Safety Video

The New York City Transit Police Department developed a video to promote police officer safety. By filming the video, the department strives to create a safer environment for officers and the public.

The 30-minute program includes messages from more than 30 well-known film personalities, sports figures, and other celebrities who remind officers that they have a responsibility to their families, the public, and themselves to wear safety vests, drive carefully, use seat belts, and be courteous. Each of the segments lasts 10 to 15 seconds.

The video tape, which features over 100 such safety messages, is now available free of charge to Federal, State, and municipal law enforcement agencies throughout the Nation. The video can be used to reinforce safety themes and the importance of safety to officers. Individual messages can also be edited onto departments' existing training videos for use during roll calls.

Agencies may request the complimentary VHS video by writing on department stationery to Leslie J. Kaslof, New York City Transit Police Department, P.O. Box 1312, Bronx, New York 10471-0620.

Bulletin Reports

TAPIC Reports

The Technology Assistance Program (TAP) of the National Institute of Justice (NIJ) develops standards, tests equipment, and issues reports about products and equipment used by law enforcement personnel. Through the TAP Information Center (TAPIC), law enforcement can obtain published equipment performance reports that document test results. TAPIC also issues consumer product lists (CPL) of equipment that comply with NIJ standards.

CPLs are currently available on police body armor and metallic handcuffs. Models not included in the consumer product lists were either not tested or were tested and failed to comply with the standard.

TAPIC also issued a bulletin on the results of tests conducted by the Michigan State Police on 1991 patrol vehicles. This bulletin provides a synopsis of major test results, including vehicle dynamics, acceleration and top speed, braking, and fuel economy.

CPLS and bulletins published by TAPIC are updated periodically. To obtain current CPLs or updated reports issued by the Technology Assessment Program, write or call TAPIC, Box 6000, Rockville, MD 20850, 1-800-248-2742. In Maryland and the metropolitan Washington, DC, area, the number is 1-301-251-5060.

Crime Prevention Booklet

A new booklet from the National Crime Prevention Council (NCPC) sets out step-by-step instructions for people to organize their blocks or neighborhoods against crime, violence, and drugs. *Getting Together to Fight Crime* explains what people in all neighborhoods can do to work together to fend off crime.

The booklet starts with the basic issues and takes the reader through the planning and program steps to build successful action plans. It explains ways to overcome fear and reluctance of citizens, shows how to look for resources to support local programs, and tells what public service groups can provide experience and encouragement.

Copies of the booklet can be obtained by writing NCPC Distribution, ATTN: Getting Together, 1700 K Street, N.W., Washington, DC 20006-3817.

Drug-free Public Housing

The Police Executive Research Forum (PERF) published a monograph that addresses the drug problems found in public housing developments. *Tackling Drug Problems in Public Housing: A Guide for Police* suggests realistic means for improving conditions by providing vital information on how the police, public housing staffs, and residents can work together to make the public housing environment drug-free.

The book provides background material about the organization and operations of public housing, including governing policies and rules, management priorities, and legal and fiscal constraints that affect day-to-day operations. It helps the police to understand local public housing authorities in order to foster better working relationships. Then, it offers a strategy to use this information to help solve persistent drug-related problems.

Copies of Tackling Drug Problems In Public Housing: A Guide for Police *can be obtained from the Police Executive Research Forum, 2300 M Street, N.W., Suite 910, Washington, DC, 1-202-466-7820.*

Point of View

Customized Code of Ethics

By
Colleen A. Fitzpatrick

People choose law enforcement careers for a variety of reasons, but if asked, most admit that they become police officers because they "want to make a difference." In accordance with their personal values and beliefs, these men and women want to do something for the common good. So, to be able to do this, they select a profession that society not only finds acceptable but one also steeped in rules and guidelines (laws) that govern their actions.

Laws serve as formal written rules of society. They define behaviors accepted by society and those that society believes to be wrong. And, the basis for laws depends on the value system of the society that develops them. As Pollock-Byrne succinctly states in her book, *Ethics in Crime and Justice*, "The law serves as a written embodiment of society's ethics and morals."[1]

Ethics, on the other hand, can be defined as a "...set of standards or codes, developed by human reason and experience by which free, human actions are determined as humanly right or wrong, good or evil."[2] Like the law, the attitudes of a society also shape its ethics. However, unlike laws, ethical standards are rarely written, which leaves them open to interpretation. And, a police officer's responsibilities include not only enforcing the law but also exercising the power of discretion when doing so. Renowned scholar Edwin Delattre writes in his book, *Character and Cops: Ethics in Policing*, "Police are granted discretion because no set of laws and regulations can prescribe what to do in every circumstance."[3]

Given the fact that laws, ethical standards, and the power of discretion govern police behavior, it is imperative that police officers take their roles seriously and readily adopt a code of ethics. Like the laws they enforce, every police officer's action rests on the fragile balance of the rule of law and the rights granted to citizens by the U.S. Constitution.

Unfortunately, at times, some police officers fail to maintain this balance. They adopt an us vs. them attitude, which can lead to the misuse of police powers. In addition, loyalty to the brotherhood of police officers perpetuates this attitude, and an underlying code of silence prevents others from divulging any infraction of rules and regulations.

This is where ethical management becomes critical. Unbeknownst to many administrators, their behavior sets the moral tone for their departments. Police leaders communicate department standards through their actions or by their silence, for failure to correct inappropriate behavior gives the department's endorsement to such behavior. Therefore, management must take steps to improve and encourage ethical behavior.

Lieutenant Fitzpatrick serves with the Manchester, Missouri, Police Department.

Many department administrators endorse the Law Enforcement Code of Ethics adopted by the International Association of Chiefs of Police. This code not only serves as a guideline for professional behavior but also advances the standards essential for any profession.

However, the vague language of the code prevents it from fulfilling its intended purpose. The code embodies the "spirit" of law enforcement—the ideal, not necessarily the reality. Instead, what each agency, and each police officer, needs is a more realistic and "human" code, one that develops the true "professional"

desired by law enforcement. This does not imply that the current code of ethics has no place in today's society. It merely means that a more specific code must be developed and understood by all who choose law enforcement careers.

Therefore, each agency should adopt a customized code of ethics, one that relates to the department's mission and goals. According to James Owen, who states in his book, *Essentials of Management: Ethical Values, Attitudes, and Actions*, a code of ethics customized for each department provides "...quick and clear-cut ethical criteria for day-to-day actions, as well as the determinations of the ethicalness of such actions."[4] Along with agency mission statements, goals, and objectives, a departmental code of ethics serves to promote legal, ethical, and moral police behavior.

Most departments have ethical guidelines in place that are addressed in their rules and regulations. But, a customized code of ethics clearly sets the parameters of conduct allowed in an organization. Such a code further defines acceptable and unacceptable conduct.

Accordingly, once management establishes a code of ethics for the department, it must then take the necessary steps to promote and encourage ethical behavior. This can be done by adhering to the following guidelines:

- Establish realistic goals (If employees cannot attain the goals established, they may use any means available to accomplish them)
- Set the moral tone by serving as an example
- Present a clear picture of desirable behavior
- Discipline violators (Employees should be aware that unacceptable behavior has its consequences)

"...a departmental code of ethics serves to promote legal, ethical, and moral police behavior."

- Create an evaluation system (Management should periodically question how an accepted practice or a particular behavior fits into the department's ethical picture)
- Provide a mechanism by which department personnel can report aberrant behavior (Employees need to know that there is an avenue available to them if they observe actions that could destroy the department's ethical standard)
- Train managers in business ethics
- Be committed to ethical principals
- Be patient (Don't assume that the system will fail when faced with a difficult ethical situation)
- Be proud (Encourage and praise employees. Pride is a reflection of how managers feel about their agencies)
- Be courageous (Sometimes making an ethically sound decision is the most difficult. Managers should not be afraid to stand by their choices)

Management is a means of getting people to work toward common goals. Unfortunately, ethical problems can easily delay the attainment of these goals. Therefore, police managers should develop a customized code of ethics for their departments and set an example of ethical behavior for their subordinates to follow.✦

Endnotes

[1] Jocelyn M. Pollock-Byrne, *Ethics in Crime & Justice* (Pacific-Grove, California: Brooks/Cole Publishing Company, 1989), p. 54.

[2] James Owen, "Age-Old Ideal, Now Real," in *Essentials of Management: Ethical Values, Attitudes, and Actions*, ed. James S. Bowman (Port Washington, New York: Associated Faculty Press, 1983), p. 41.

[3] Edwin J. Delattre, *Character and Cops: Ethics in Policing* (Washington, DC: American Institute for Public Policy Research, 1989), p. 45.

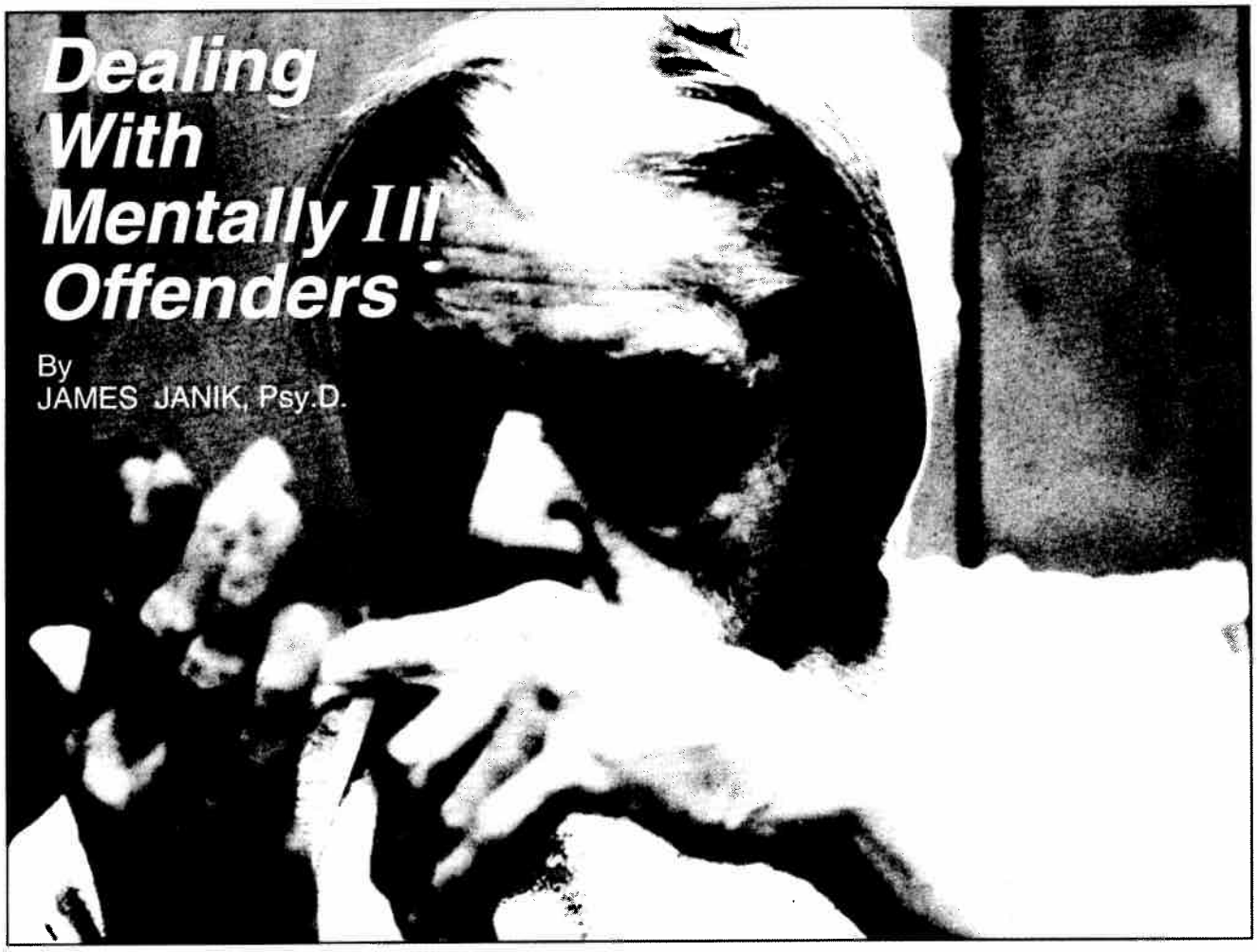
[4] Supra note 2, pp. 44-45.

Point of View is a forum for law enforcement professionals to suggest recommendations to improve police work. Submissions for this department should be typed, double-spaced, and forwarded to Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

137601

Dealing With Mentally Ill Offenders

By
JAMES JANIK, Psy.D.



Daily, problems associated with mentally ill offenders confront law enforcement personnel around the Nation. The residual effects of hospital deinstitutionalization, cuts in public assistance, rising unemployment, and a decline in low-income housing, to list a few factors, elevate the mentally ill population to the fastest growing segment in local jails nationwide.[1]

Yet, these same factors establish roadblocks for officers to obtain proper treatment for mentally ill offenders. Overburdened, understaffed, and underfunded community health clinics often cannot respond properly to emergencies that the police bring them, and many hospital emergency rooms are ill-equipped to handle the sometimes violent, intoxicated, or antisocial mentally ill offenders.

Fortunately, solutions exist for the problems posed to law enforcement by these individuals. This article discusses both the problems and some potential solutions regarding the increasing involvement of law enforcement with the mentally ill. Reflecting the complexity of the issues involved, the problems, as well as the suggested solutions, address the wide range of challenges facing the criminal justice system.

Police Interaction with the Mentally Ill

For the most part, the mentally ill commit misdemeanor crimes, such as trespassing (rummaging for food), loitering in stores (for warmth or protection from the weather), indecent exposure (because they are denied access to public restrooms), theft of service (not paying for a cab ride), or a "dine and dash" (failing to pay a dining bill). As the range of these offenses indicates, mentally ill offenders usually

come into conflict with the law when attempting to fulfill a personal need. Further, they are most likely to be arrested when engaged in behavior harmful to themselves rather than criminal behavior.[2]

In addition, police interaction with the mentally ill often occurs during responses to domestic dispute calls, the seriousness of which are frequently compounded by substance abuse. Rarely classified as routine, domestic calls can escalate without warning and represent some of the most dangerous calls for law enforcement officers.

Complicating the potential explosiveness of domestic disputes is the fact that the mentally ill often do not appreciate their own diminished capacity. They may fear or rebel against those who appear to ignore their wishes, those who compel them to attend treatment sessions, or those who force them to take medications with undesirable, and sometimes disorienting, side effects. Perceiving themselves as helpless, mentally ill offenders are prone to threaten physical harm in order to intimidate others from approaching them.

Unable to discern these threats as empty, many officers respond by asserting their authority. While this approach usually restores the peace, mentally ill offenders, desperate to assert themselves in situations in which they feel hopeless, often do not respond as expected to such assertions of authority.

Further, mentally ill offenders often exercise poor judgment by taunting police officers in public or in front of other offenders. Officers, in turn, fear that the actions of the mentally ill will encourage others to test the limits of the officers' ability to control them. Thus, situations involving the mentally ill can easily escalate, possibly resulting in physical altercations. This, in part, may explain why the police arrest the mentally ill more frequently than "non-mentally disordered" persons who commit similar offenses.[3]

Although the mentally ill still comprise a small portion of the total police workload—less than 10 percent of all encounters—they often absorb a disproportionate amount of police time, either in efforts to convince family or friends to look after mentally ill offenders or because these offenders reenter the system repeatedly.[4] Arresting officers realize that mentally ill offenders should not be held responsible for their actions at the time of a crime. However, often the only way officers can be sure that perpetrators get psychiatric assistance is to file criminal charges, thus keeping individuals in custody until the courts can direct disposition.

Police Response: Current Standards

Few departments prepare police officers to manage mentally ill offenders.[5] In turn, these officers, generally inadequately trained in using alternatives to incarceration, become frustrated when dealing with the mentally ill. They fail to accomplish the dual goal of helping the mentally ill individual, while at the same time responding to pressure from citizens and area businesses to "do something about this." They become further discouraged at being held responsible for a problem that they have not been trained to solve; one they believe professionals in other fields should handle.

> ***"The issues associated with the mentally ill and the criminal justice system defy easy answers and quick solutions."***

Dr. Janik is a psychological consultant to several law enforcement agencies in Illinois and chairs the Committee on Police Psychology, Illinois Association of Chiefs of Police.

In addition, law enforcement officers often find it difficult to cope with the statutory requirements for confidentiality and privilege that impede quick resolution of problems during a crisis. Officers who seek consultation from specialists

treating a subject may be surprised to find that these professionals will not advise them on how to treat their patients. Indeed, standard codes of medical conduct generally prohibit psychiatrics, psychologists, and social workers from even acknowledging that a subject is their patient.

Treatment Alternatives

Most hospitals prefer not to get involved in the diversion of mentally ill offenders who refuse treatment, since admitting these individuals as involuntary patients occupies considerable staff time in both paperwork and court appearances. The recent U.S. Supreme Court ruling in *Zinermon* v. *Burch* may create another barrier to treatment.[6] In the ruling, the Court held that all patients must be "competent" to sign themselves voluntarily into a mental hospital. Because of this ruling, patients who are marginally competent may have to be admitted involuntarily and have their treatment validated by the courts.

Further, many facilities provide limited space for police referrals, as well as prohibitive financial requirements and restrictive, complicated, admissions procedures. Statistics reveal, for example, that in Buffalo,

New York, during 1990, hospital emergency rooms refused admittance to nearly one-half of the mentally ill individuals referred to them by police.[7]

In Illinois, the Department of Mental Health and Developmental Delays (DMHDD) consistently takes the position that State or Federally funded community mental health centers cannot be forced to accept either parolees or mentally ill offenders.[8] Many treatment centers claim that these populations can be dangerous to staff and other patients and fear that these patients may promote gang activities, steal, or sell drugs on the premises.

The DMHDD hopes to address the resulting void in treatment opportunities by contracting with 10, 24-hour evaluation sites in local hospitals. These sites cannot decline assessment to anyone not charged with a crime. The sites also make it possible for officers to return to their assignments more quickly. And, they expedite the diversion of mentally ill individuals into treatment programs.

Unfortunately, though, this approach suffers from several significant limitations. A restricted number of short-term beds exist statewide, and these sites cannot accept mentally disturbed individuals charged with crimes. In addition, officers who refer subjects to the sites must be reasonably sure that such individuals could be involuntarily hospitalized, if necessary.

In Los Angeles, officers responding to calls that involve the mentally ill may contact their Mental Evaluation Unit for assistance. The unit advises officers on the psychiatric history of offenders, coaches them on how to de-escalate potentially explosive situations, and refers officers to appropriate mental

health facilities. The unit also has the option of assuming full control of cases. Currently, the Mental Evaluation Unit receives about 600 calls per month.[9] Several municipalities around the Nation have established similar programs, including Rochester, New York, Birmingham, Alabama, Galveston, Texas, and Fairfax, Virginia.[10]

The Mentally Ill in Police Detention

In Illinois, approximately 290 municipal police lockups are available to detain individuals for 48 hours or less. However, the Illinois Governor's Task Force on Mentally Ill and Mentally Retarded Offenders found that in 70 percent of the municipal lockups in the State, officers did not receive training on the treatment of mentally ill offenders.[11] The task force also determined that 40 percent do not provide close supervision for these inmates. One-third of the lockups have no policy to transport detainees to more appropriate medical facilities, and nearly one-quarter have no agreement with agencies to provide such services in-house. Three-quarters of the lockups do not have mental health professionals on call for emergencies, and fewer than 10 percent have special procedures in place to manage inmates with mental disabilities.

To compound the situation, the mentally disturbed often find themselves housed with abusive criminals. As any detention officer knows, this mix in jails and holding pens can prove very volatile. Mentally retarded or troubled individuals, physically weak detainees, passive homosexuals, juveniles charged as adults, aged inmates, and those whose actions make them targets of revenge or taunting from other arrestees are very susceptible to the problems of overcrowding found in many facilities. Further, those detainees who have previously suffered physical or sexual abuse, combat veterans, and others suffering from Post-Traumatic Stress Disorder generally respond poorly to incarceration.

> ***"...mentally ill offenders are prone to threaten physical harm in order to intimidate others from approaching them."***

This stress of incarceration impacts increasingly on the lower socioeconomic mentally ill who have little access to therapy, few treatment alternatives, and nominal social support. Unfortunately, some inmates attempt suicide to escape the rigors of being housed with abusive inmates.

Costs

The current approach places an enormous strain on community resources. Annually, the cost of incarceration alone for an "average" detainee ranges from $11,333 to $18,557 per bed. Communities spend an additional 9 percent on medical services provided to the mentally ill while they are incarcerated.[12] The total cost for recidivists must include not only the loss of tax revenue to the community but also the loss of property due to the commission of crimes and the risk of injury and death to victims. Added to these costs are expenditures in resources as departments and courts add arrests to criminal records and as troubled individuals are transferred to appropriate mental health facilities and evaluated for legal competency.

Incarceration of the mentally ill further intensifies jail overcrowding. Seldom do the mentally ill qualify for personal recognizance bonds, and as a result, their jail stays average four to six times longer than other inmates.[13] While releasing increased numbers of "mainstream" offenders through low bonds partially addresses the problem of overcrowding, each of these released inmates commits an estimated average of 187 crimes per year, costing an additional $430,000 annually.[14]

Recommendations

Because of the complex legal, social, and liability issues surrounding police treatment of the mentally ill, law enforcement managers should develop comprehensive strategies for dealing with individuals who have mental disabilities. However, in an era of budgetary restraint, police administrators must understand that it is not necessary to increase financial outlays to improve treatment systems for mentally ill offenders. Resources need only be reorganized.

Improved communications between the law enforcement and mental health communities would certainly be a positive first step toward improving the current system. To do so, police managers should establish regular contact with community health administrators and request that mental health officials assist departments in developing comprehensive approaches to dealing with the mentally ill. Since a cooperative effort would benefit all sides—by eliminating overlapping efforts, by reducing the cases of recidivism that tax both police and community health resources, and by providing better overall treatment—collaboration could prove tremendously effective.

Within this framework, specific initiatives should include:

- Reciprocal training arrangements between law enforcement officers and mental health workers
- Legal training to community mental health centers regarding general criminal justice procedures, preparation of testimony, and issues of confidentiality
- Establishing 24-hour treatment facilities with *no* decline options for either assessment or treatment
- Increasing the opportunity for treatment of the mentally ill while incarcerated (Trained personnel should promptly assess the medical and psychiatric state of arrestees. Detention centers should provide the mentally ill separate housing or arrange for them to be transferred to facilities with appropriate treatment options)

By working together, police departments and community health services provide each other immeasurable assistance. Combined efforts not only result in better care for mentally disturbed offenders but also establish the framework for cooperation in developing proactive care for the mentally ill in general.

> **"...police managers should establish regular contact with community health administrators...."**

Conclusion

The issues associated with the mentally ill and the criminal justice system defy easy answers and quick solutions. Undoubtedly, many necessary improvements in current approaches remain outside the relatively limited scope of law enforcement. Elected officials and courts on the Federal, State, and local levels must address statutory issues and implement changes where necessary.

Still, law enforcement can work to improve current practices. The steps suggested here provide departments with a good general plan to improve treatment of mentally ill individuals who become involved with the criminal justice system. Increasing levels of contact between law enforcement and the mentally ill make new strategies necessary to ensure effective and fair treatment of mentally ill offenders, which safeguard the rights and interests of the community. ✦

Endnotes

[1] P. Frieberg, "Better Services Urged for Mentally Ill Criminals," *Monitor*, March 1991, 29.

[2] National Alliance for the Mentally Ill (NAMI), "Care of the Seriously Mentally Ill," *NAMI Reports*, 1990, Washington, DC.

[3] M. Heaps and C. Suter, *Mentally Retarded and Mentally Ill Offender Task Force* (Springfield, Illinois: Illinois Planning Council on Developmental Disabilities, 1988.)

[4] L. Teplin, "Managing Disorder: Police Handling of the Mentally Ill," *Mental Health and Criminal Justice* (Beverly Hills, California: Sage Publications, 1984.)

[5] J. Porter and C. Terril, *Progress Report on the Mentally Retarded and Mentally Ill Offender Task Force Recommendations* (Springfield, Illinois: Illinois Planning Council on Developmental Disabilities, 1990), 7.

In Illinois, police officers statewide formerly received only a 2-hour academy training class entitled "Law Enforcement and the Disabled," which addressed the handling of persons with vision, hearing, and mobility impairments, as well as the mentally ill and mentally retarded. This training recently has been expanded to include a 4-hour course entitled "Dealing with Variant Behavior," and there are proposals to expand the training further to include an 8-hour course, based on the Police Executive Research Forum's (PERF) guidelines, "Managing Persons with Mental Disabilities."

[6] *Zinermon* v. *Burch*, 110 S.C. 975 (1990).

[7] Supra note 2

[8] Supra note 5.

[9] P. Finn and M. Sullivan, "Police Response to Special Populations," *Issues and Practices in Criminal Justice*, U.S. Department of Justice, Washington, DC, 1987: 7.

[10] Ibid.; supra note 3.

[11] Supra note 3.

[12] Illinois Criminal Justice Information Authority (1990), *Trends and Issues 90*, Springfield, Illinois.

[13] Supra note 3.

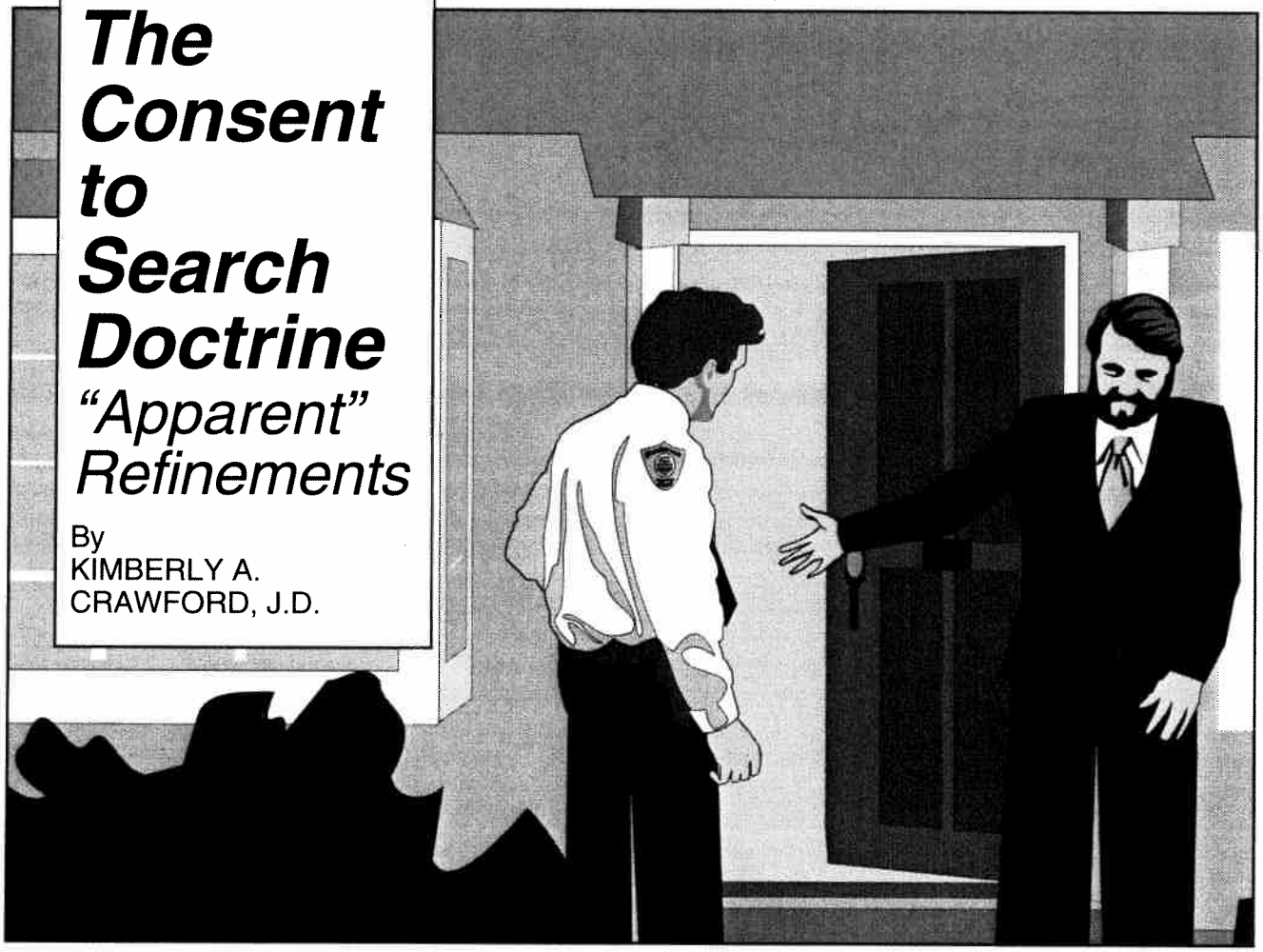
[14] E. Zedlewski, "Making Confinement Decisions," *Research in Brief*, National Institute of Justice, 1987.

137160R

The Consent to Search Doctrine

"Apparent" Refinements

By
KIMBERLY A.
CRAWFORD, J.D.



Since the Supreme Court decided *United States* v. *Matlock*[1] in 1974, consent as an exception to the fourth amendment warrant requirement has been a fairly well-settled doctrine. Following *Matlock*, only a few questions pertaining to consent searches remained unresolved. Recently, the Supreme Court took steps to answer those few remaining questions.

Specifically, the Court decided the cases of *Illinois* v. *Rodriguez*[2] and *Florida* v. *Jimeno*,[3] which resulted in "apparent" refinements in the consent to search doctrine. *Illinois* v. *Rodriguez* recognized the concept of apparent authority in consent to search cases; *Florida* v. *Jimeno* defined the scope of consent searches as what is apparently reasonable. This article focuses on these recent cases, looks at how lower courts are interpreting them, and offers recommendations on a consent issue that remains unresolved.

APPARENT AUTHORITY

In *Illinois* v. *Rodriguez*,[4] police officers were called to the home of Dorothy Jackson, where Jackson's daughter, Gail Fischer, met them. Fischer, who showed obvious signs of a recent beating, advised the officers that her boyfriend, Edward Rodriguez, assaulted her earlier that day. Fischer further advised that Rodriguez was currently asleep in their apartment.

When asked, Fischer agreed to go with the officers to the apartment in order to unlock the door. Once on the scene, Fischer unlocked the door with a key she took from her purse and gave the officers permission to enter. Inside the apartment, the officers not only found Rodriguez asleep in the bedroom but they also observed a substantial quantity of cocaine and drug paraphernalia in

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> ***"...'apparent' refinements in the consent to search doctrine do not excuse failures to know the law or to develop the facts."***

plain view. Rodriguez was arrested, and the drugs were seized.

Rodriguez was charged with possession of a controlled substance with intent to deliver. However, he moved to suppress all the evidence on the grounds that Fischer had no authority to consent to a search of his apartment.

At a subsequent suppression hearing, it was discovered that at the time of the search, Fischer no longer lived in the apartment. Rather, Fischer and her two children moved out of the apartment almost 1 month prior to the search and took most of their belongings with them.

Furthermore, testimony at the hearing revealed that Fischer's name was not on the lease, she did not contribute to the rent, and Rodriguez did not know that she had a key to the apartment. Based on these facts, the trial court held that Fischer had no authority to consent to a search of the apartment and granted Rodriguez' motion to suppress. After State court appeals were exhausted,[5] the U.S. Supreme Court granted review.[6]

On review, the Supreme Court reiterated its earlier decision in *Matlock* and held that authority to consent to a search depends "on mutual use of the property by persons generally having joint access or control for most purposes...."[7] Applying the facts in *Rodriguez*, it became clear that Fischer did not have mutual use, joint access, or control over the apartment, and therefore, did not have authority to consent to the search. However, the Court continued its analysis and considered a question left unresolved in *Matlock*, that is, "Is a consent valid if, at the time of the search, police wrongly but reasonably believe that the consenting party possesses common authority over the premises?" Answering this question in the affirmative, the Supreme Court recognized as valid the concept of "apparent authority."

FOURTH AMENDMENT REASONABLENESS STANDARD

In accepting the concept of "apparent authority," the Supreme Court simply stayed in keeping with its earlier fourth amendment interpretations. Recognizing that the fourth amendment prohibits only *unreasonable* searches and seizures,[8] the Court has repeatedly held that law enforcement officers do not have to be correct or certain in order to comply with the amendment, they merely have to be reasonable.

For example, officers who arrest an individual do not have to be correct or certain in their belief that the individual committed a crime, their belief simply has to be reasonable.[9] Moreover, when officers apply for a search warrant, they do not have to convince a magistrate that they certainly will find evidence or contraband on the premises, they simply have to persuade the magistrate that there is a reasonable belief that such items will be found.[10]

The Court in *Rodriguez* found no justification to depart from this reasonableness standard when determining whether an individual has sufficient access and control over premises to give a valid consent to search.[11] If it is reasonably apparent that the individual giving consent has the authority to do so, then the fourth amendment protections have been satisfied.

MISTAKES OF FACT AND LAW DISTINGUISHED

The concept of apparent authority allows law enforcement officers to use good judgment and common sense when determining an

individual's authority to consent. It does not, however, relieve officers of their obligation to know the law or to ask questions and develop information with respect to a consenting individual's access and control over the property searched. The following cases support this requirement.

Knowledge of the Law

In *United States* v. *Whitfield*,[12] FBI special agents were called to investigate the disappearance of $43,000 from a Brinks, Inc., storage facility. A surveillance camera located in the facility revealed that on the night of the disappearance, defendant Maurice Whitfield was working as a janitor in the facility and that he violated company rules by entering a vault without being escorted. The tapes also showed that Whitfield bent down briefly over a cart from which the money disappeared. Because Whitfield had not reported for work since the disappearance, agents went to his residence in an effort to locate him.

Whitfield's mother, Farrie Whitfield, met the agents at the door of his residence. Mrs. Whitfield advised the agents that her son was not home at the time and she did not know when he would return.

The agents then determined that Mrs. Whitfield owned the home, that her son did not pay rent, and that his bedroom door was unlocked. Concluding that the mother had sufficient access and control over her son's room to give a valid consent, the agents then asked Mrs. Whitfield for permission to search the room. Although unwilling to sign a consent form, Mrs. Whitfield voluntarily consented to a search of the room.

During the ensuing search of the bedroom, agents discovered $16,000 in the pockets of four jackets hanging in the closet. Maurice Whitfield turned himself in 3 days later and was charged with the theft.

Whitfield moved to suppress the evidence obtained from his room on the grounds that his mother did not have authority to consent to the search. Using the Supreme Court's rationale in *Rodriguez*, the trial court held that the agents reasonably believed that the mother had the requisite authority, and therefore, ruled the search was valid.

On appeal, however, the U.S. Court of Appeals for the D.C. Circuit reversed the trial courts's ruling and found that the agents were mistaken on both the law and the facts.

> **"...a reasonable mistake of fact could result in a valid consent, but not a mistake of law, regardless of how reasonable it was."**

In doing so, the court made a distinction between mistakes of law and mistakes of fact, holding that a reasonable mistake of fact could result in a valid consent, but not a mistake of law, regardless of how reasonable it was. The court stated that "*Rodriguez* thus applies to situations in which an officer would have had a valid consent to search if the facts were as he reasonable believed them to be."[13]

On the other hand, if an officer correctly discerns the facts but incorrectly applies the law, the "apparent authority" rule from *Rodriguez* presumptively would not apply.[14] Because the agents correctly believed that the mother owned the house where Whitfield lived free of rent, but incorrectly concluded that she had the lawful authority to consent to a search of her son's room, the agents made a mistake of law that was not excused under the concept of apparent authority.[15]

Knowledge of the Facts

Just as mistakes of law are not justified under the concept of apparent authority, failures to develop the available facts are similarly unexcused. The following cases involving landlord consents serve as examples.

The landlord in *People* v. *Kramer*[16] entered the apartment in question after his tenant, Kramer, fell 3 months behind in the rent. While inside, the landlord discovered several plants, which he believed to be marijuana. Responding to the landlord's telephone call, police arrived on the scene and were met outside the apartment by the excited landlord, who told police that he had "found something in an apartment." Without determining what the landlord discovered or what authority he retained over the apartment, officers entered the premises and seized the plants.

Kramer later moved to suppress the plants, contending that because

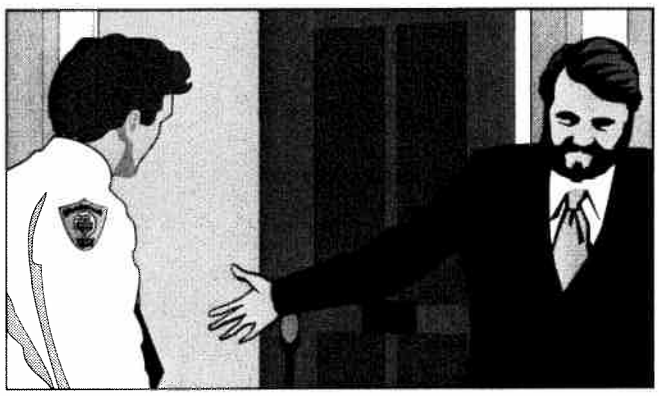
his lease was still in effect, the landlord had no authority to consent to a search of his apartment. In response, the government argued that the officers were reasonable in their belief that the landlord, who was in the process of retaking the apartment, had lawful access and control over the premises, and therefore, the consent was valid.

Although the trial court agreed with the government and refused to suppress the plants, an Illinois appellate court reversed. In doing so, the court noted that the officers who conducted the search simply implied that the landlord had access and control over the premises. Since no questions were asked and no facts were developed, the court concluded the apparent authority rule from *Rodriguez* did not apply.

The court further cautioned that "police officers may not always accept an invitation to enter premises. Even if the consenter claims to live on the premises, the officers must make further inquiry if the surrounding circumstances would raise a doubt of that claim."[17] Because landlords do not typically have authority to consent to the search of a tenant's premises,[18] the court reasoned that there should have been some doubt in these officers' minds, and several questions should have been asked before relying on the landlord's consent.

For example, the officers should have questioned the landlord's right of access under the terms of the lease, the frequency of the landlord's access, and what, if any, steps the landlord had taken to evict the tenant. Because these questions were not asked, the officers' belief that the landlord could consent to a search was unreasonable.

A case in contrast is *People* v. *Smith*.[19] In *Smith*, officers looking for a murder suspect contacted the suspect's landlord to determine his whereabouts. The landlord advised that he had not seen his tenant in some time and that the tenant was more than 1 month behind in the rent.



The following month, the officers contacted the landlord for an update and learned that the suspect's rent was now 2 months in arrears, the premises appeared abandoned, and the landlord intended to enter and clean the premises that day. Officers subsequently obtained the landlord's signature on a consent to search form, entered the premises, and found evidence of a murder and robbery.

Smith moved to suppress the evidence and argued that because he had not been legally evicted, the landlord had no authority to consent to the search of his apartment. The trial court rejected this argument and denied the motion to suppress. On review, an Illinois appellate court affirmed the trial court's decision and held that the officers were reasonable in their belief that the landlord had authority to consent to the search.

A major distinction between the *Kramer* and *Smith* cases is that in *Kramer*, the officers simply implied that the landlord had the authority to consent. In *Smith*, however, the officers contacted the landlord on at least two occasions prior to the search, and on each occasion, asked questions and developed information that led them to believe that the landlord had authority to consent to the search.[20] Because the officers in *Smith* made the effort to discern the facts prior to obtaining a consent to search, their conclusion that the landlord had authority to consent was reasonable and any mistake of fact was excusable under the apparent authority concept.

APPARENT SCOPE

The second case decided by the Supreme Court that resulted in an "apparent" refinement in the consent to search doctrine was *Florida* v. *Jimeno*.[21] In *Jimeno*, a law enforcement officer stopped Jimeno for a traffic violation. The officer had been following Jimeno because he had previously overheard him setting up what appeared to be a drug deal over a public telephone.

Once stopped, the officer informed Jimeno that he had commit-

ted a traffic violation and that the officer had reason to believe that there were drugs in his car. The officer then asked Jimeno for consent to search the vehicle.

Jimeno indicated he had nothing to hide and gave the officer permission to search. On the passenger side of the car, the officer found a folded brown paper bag. Inside the bag, the officer discovered a kilogram of cocaine.

After being charged with possession with intent to distribute cocaine, Jimeno successfully moved the trial court to suppress the evidence on the grounds that his consent to search the car did not extend to containers inside the vehicle. Although the trial court's decision to suppress the evidence was upheld by a Florida appellate court[22] and the Florida Supreme Court,[23] it was ultimately reversed by the U.S. Supreme Court.

The Supreme Court first reiterated the premise that the "touchstone of the Fourth Amendment is reasonableness."[24] With this premise in mind, the Court held that the scope of a consent search is what is apparently reasonable.

Specifically, the Court found that the "standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"[25] Applying this standard, the Court concluded that it was reasonable for the officer to believe Jimeno's general consent to search his car included the bag lying on the floor of the car. Because the bag fell within the apparent scope of the consent, the search was reasonable.

The Court's decision in *Jimeno* places the burden on the consenting party to put explicit limits on the scope of a consent search. According to the Court, the "scope of a search is generally defined by its expressed object."[26] Therefore, without more, a general consent to search a car for drugs would reasonably permit an officer to look in any container within that car that might bear drugs. Any limitations on the apparent scope of that consent would have to be specifically placed by the person giving consent.

As in the past, it remains important for law enforcement officers to obtain a voluntary consent to search that is effectively documented. Of course, the best documentation would be a signed consent form. If, however, the consenter refuses to sign a consent form, officers should ensure that the exact wording of the request to search and the individual's subsequent consent are documented and preserved within a written report.

> **"...the scope of a consent search is what is apparently reasonable."**

The exact language of a consent is very important to the court eventually tasked with determining the apparent scope of the consent.

SPECIFIC CONSENT TO SEARCH LOCKED ITEMS

Following *Jimeno*, a question with respect to consent searches that has not been definitely resolved by the courts pertains to the law enforcement officer's ability to search locked items. Does consent to search an area authorize the search of a locked container within that area? The Court in *Jimeno* suggested that the answer to this question is no.

In *Jimeno*, the Court distinguished the case under consideration from the earlier State case of *State* v. *Wells*.[27] In *Wells*, the State court held that consent to search a car did not authorize officers to pry open a locked briefcase found in the trunk.

Finding the situation presented in *Wells* to be far different than that presented in *Jimeno*, the Supreme Court noted that "it is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk...."[28] From this language, it would appear that a general consent to search an area would not authorize the search of locked containers or compartments located within that area.

As a practical matter, it is recommended that officers deal with locked containers found within an area being searched under consent in the following fashion. First, officers who locate a locked item during a consent search should momentarily stop the search and ask the consenter for the key or combination. Then, if the key or combination is voluntarily given, it would undoubtedly be considered an extension of the general consent to search.[29] If, on the other hand, officers are denied the key or combination, they would now be alerted to

an explicit limit on the authority to search.

A caution to be considered by law enforcement officers when asking for a key or combination is that all consents to search must be voluntary. Therefore, officers asking for these items should be careful that their words or actions do not coerce the consenter's compliance.[30] Moreover, officers should carefully and fully document the circumstances surrounding the consent to ensure the Government can prove the voluntariness of both the original consent and any subsequent extension of that consent.

CONCLUSION

The apparent refinements in the consent to search doctrine that resulted from the Supreme Court's decisions in *Rodriguez* and *Jimeno* simply make the law enforcement officer's job a little bit easier. Now, instead of worrying about what technicality might be brought up later to refute the validity of a consent to search, officers can rely on their well-developed investigative skills and common sense to determine who has the authority to consent to a search and what is the scope of that search. If that determination is reasonable, the search will be valid under the fourth amendment.

Officers are reminded, however, that these "apparent" refinements in the consent to search doctrine do not excuse failures to know the law or to develop the facts. Such failures would be unreasonable, and the resulting search would be contrary to the fourth amendment reasonableness requirement. ✦

Endnotes

[1] 415 U.S. 164 (1974).

[2] 110 S.Ct. 2793 (1990).

[3] 111 S.Ct. 1801 (1991).

[4] 110 S.Ct. 2793 (1990).

[5] The Appellate Court of Illinois affirmed the trial court's decision, and the Illinois Supreme Court denied the State's Petition for Leave to Appeal, 537 N.E.2d 816 (1989).

[6] *Illinois* v. *Rodriguez*, 110 S.Ct. 320 (1989).

[7] *Rodriguez*, 110 S.Ct. at 2797, citing *United States* v. *Matlock*, 415 U.S. 164 at 171, n. 7.

[8] U.S. Const. amend. IV reads in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...."

[9] *Hill* v. *California*, 91 S.Ct. 1106 (1971).

[10] *Illinois* v. *Gates*, 103 S.Ct. 2317 (1983).

[11] In *Rodriguez*, the Court made the following statement:

"It is apparent that in order to satisfy the 'reasonable' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government—whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement—is not that they always be correct, but that they always be reasonable...We see no reason to depart from this general rule with respect to facts bearing upon the authority to consent to a search." 110 S.Ct. at 2800.

[12] 939 F.2d 1071 (D.C. Cir. 1991).

[13] *Id.* at 1074.

[14] The court in *Whitfield* found it unnecessary to base its ruling on the agents' mistake of law. Rather, the court concluded that the agents' failure to develop the facts was sufficient to negate the government's apparent authority argument. *Id.*

[15] *Id.*

[16] 562 N.E.2d 654 (Ill. App. 4 Dist. 1990).

[17] *Id.* at 657.

[18] The *Kramer* court stated: "We note that common authority justifying a third party consent to search is not to be implied from a property interest such as that of a landlord; rather, it rests on mutual use of the property by persons generally having joint access or control...The consenter here, because he was merely a landlord, generally would be considered to lack authority to consent to the search." *Id.* at 657-58.

[19] 561 N.E.2d 252 (Ill. App. 4 Dist. 1990).

[20] The government in *Smith* argued that the rental property in question was abandoned. The court concluded that it was reasonable, based on the information developed, to conclude that the property had been abandoned and that the landlord had authority to consent to the search at issue. *Id.*

[21] 111 S.Ct. 1801 (1991).

[22] *State* v. *Jimeno*, 550 So.2d 1176 (Fla. 3d DCA 1989). In upholding the trial court's decision, the court established a *per se* rule that consent to search an area does not include sealed containers within that area.

[23] *State* v. *Jimeno*, 564 So.2d 1083 (Sup. Ct. Fla. 1990).

[24] 111 S.Ct. at 1803.

[25] *Id.* at 1803-4.

[26] *Id.* at 1804.

[27] 539 So.2d 464 (Sup. Ct. Fla. 1989), aff'd on other grounds, 111 S.Ct. 554 (1990).

[28] *Id.*

[29] *See, e.g., People* v. *Cooney*, 286 Cal.Rptr. 765 (Cal. Super. 1991), where consent to search a house was obtained from a murder suspect. During the search, a padlocked closet was located. The key to the padlock was obtained from the suspect and the closet was searched. Evidence located within the closet was later suppressed by the court. In doing so, the court indicated that providing the key, if voluntarily done, would have been an extension of the original consent. However, because the government failed to establish that the key was voluntarily given, the extension of the original consent was invalid.

[30] Typically, courts look at all the circumstances surrounding a consent when determining voluntariness. For example, courts often look at the age and mental condition of the consenter, the coerciveness of the atmosphere at the time the consent was obtained (i.e., were weapons drawn, threats implied, or options given?), and the manner in which the request was made. For a complete discussion of consent issues, *see* McLaughlin, "Search by Consent," *FBI Law Enforcement Bulletin*, 46-47, December 1977-June 1978.

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

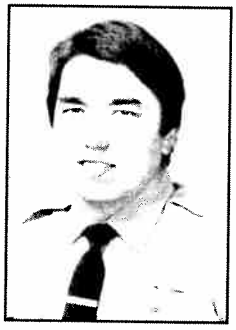
The Bulletin Notes

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

While on special assignment in East Los Angeles, Deputies Daniel Batanero, Isaac Gonzalez, and Boyd Zumwalt of the Los Angeles, California, Sheriff's Office came upon a carload of gang members preparing to commit a drive-by shooting. Observing the deputies, the suspects immediately fired upon them and then sped away. The deputies pursued the vehicle, exchanging gunfire with the gang members. When the suspects' car collided with another sheriff's vehicle that joined the pursuit, the gang members' car rolled onto its roof and burst into flames. As live ammunition inside the burning vehicle exploded, Deputies Batanero, Gonzales, and Zumwalt worked to save those who, moments before, had fired upon them. Because of the deputies' actions, four of the youths were saved.

Deputy Batanero

Deputy Gonzalez



Deputy Zumwalt

After arriving at the scene of a fire at a multi-family dwelling, Officer John Quinn of the Muscatine, Iowa, Police Department was advised by residents that others could still be inside. Officer Quinn entered the building and located an elderly man at the bottom of a flight of stairs. As the flames intensified, Officer Quinn picked up the semi-conscious victim and carried him to safety.

Officer Quinn

Nominations for ***The Bulletin Notes*** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short writeup (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Production Manager, *FBI Law Enforcement Bulletin*, Room 7262, 10th and Pennsylvania Ave., NW, Washington, DC 20535.

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