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FBI Law Enforcement

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Improving Deadly Force Decision Making

By DEAN T. OLSON

As one of the most liability-prone activities in law enforcement, deadly force decision making tops the list of training priorities for many agencies. An improper shooting decision carries the potential for costly civil damage awards, criminal prosecution, strained community relations, and ruined professional and personal lives.

Improving the decisions officers make in deadly force situations bolsters an agency's employee development process and can enhance its position against claims of

negligent or inadequate training. Agencies can help officers make better decisions by employing three strategies: improving deadly force policies, training officers in survival physiology, and using dynamic training. These strategies can produce marked improvements by providing effective policy guidance to officers, enhancing their tactical skills, and increasing their confidence levels.

DEADLY FORCE POLICY

Before embarking on any effort to improve decision making, an

agency needs an effective and practical deadly force policy. Officers need to know the parameters of their authority. Since the 1985 U.S. Supreme Court decision in *Tennessee v. Garner*,¹ most law enforcement agencies have adopted restrictive policies that rely on "defense of life" as the rationale for using deadly force. The *Garner* decision mandated policy improvements by forbidding the use of deadly force against fleeing felons not threatening death or serious injury to an officer or others. Defense of life is widely interpreted as the use of



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A decision-making model can help to clarify policy and provide guidance for effective and legal deadly force decisions.

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force by law enforcement officers in the performance of their duties to protect themselves or another innocent person from death or serious injury.

However, ambiguities often exist when officers attempt to apply policy in the dynamic, unforgiving environment of the street. A decision-making model can help to clarify policy and provide guidance for effective and legal deadly force decisions.

Decision Model: The Deadly Force Triangle

The deadly force triangle is a decision model designed to enhance an officer's ability to respond to a deadly force encounter while remaining within legal and policy parameters.² The three sides of an equilateral triangle represent three factors—ability, opportunity, and jeopardy. All three factors must be present to justify deadly force.

In this model, ability means the suspect's physical capacity to harm an officer or another innocent

person. This is widely interpreted as a suspect's being armed with a weapon capable of inflicting death or serious injury, such as a firearm, knife, or club. Ability also includes personal physical capability, such as that possessed by a martial arts practitioner, a powerfully built man, or an agitated suspect on drugs.

Opportunity describes the suspects' potential to use their ability to kill or seriously injure. An unarmed, but very large and powerfully built suspect might have the ability to injure seriously or kill a smaller, less well-conditioned officer. However, opportunity does not exist if the suspect is 50 yards away. Similarly, a suspect armed with a knife has the ability to kill or seriously injure an officer but might lack opportunity if the officer has taken cover.

Jeopardy exists when suspects take advantage of their ability and opportunity to place an officer or another innocent person in imminent physical danger. For

example, a situation in which an armed robbery suspect refuses to drop a weapon when cornered after a foot pursuit would constitute jeopardy.

Trainers use decision models to help clarify deadly force policy. In training sessions, officers examine a variety of scenarios, which often draw from actual incidents, and apply the principles of the model and the agency's policy. The officers must determine if and when justification for deadly force exists. Trainers must be careful to include scenarios that both do and do not culminate in a justification for deadly force. In this way, officers learn the limitations on their use of force and make appropriate decisions.

The Necessity Criterion

Some deadly force situations are not defined clearly. Is it appropriate to use deadly force against a suspect who, for example, has the potential to inflict death or serious injury but does not pose an immediate threat? How do officers interpret policy when confronted by armed robbery suspects who respond to verbal commands to halt and remain turned away but refuse to drop weapons, to kneel or prone out, or to show their hands?

Some policies fail to address this issue. In fact, some policies assume that jeopardy does not exist until a threat is immediate. This dangerous notion forces officers to wait until a suspect overtly moves a weapon toward an officer or other innocent person before attempting to neutralize the threat.

Practical and effective policy takes into account the time lapse

between recognizing a threat and responding to it. Dynamic training exercises have demonstrated that a suspect in a deadly force confrontation can bring a weapon to bear and fire it before the officer can respond by squeezing the trigger of a weapon already drawn and aimed at the suspect.³ Quite simply, action is faster than reaction. Furthermore, police handgun rounds do not reliably incapacitate suspects immediately,⁴ and officers encounter many situations with inadequate or unavailable cover. Therefore, policies requiring officers to wait for overt movement of a weapon before taking action can place both innocent bystanders and officers in needless danger.

The concept of jeopardy must be expanded to embrace necessity as a criterion determining when deadly force can be used. In 1995, the U.S. Department of Justice (DOJ) revised its deadly force policy, defining necessity as consisting of two components—imminent danger and the absence of safe alternatives.⁵

Imminent is defined as a pending action; it does not mean immediate or instant. Under DOJ policy, necessity means that a subject can pose an imminent danger, “even if, at that precise moment, [the subject] is not pointing a weapon at an [officer].”⁶ Federal agents are not required to use or consider alternatives to deadly force in the absence of safe alternatives.

Factors affecting the ability to use safe alternatives include a suspect’s response to commands, availability of cover, time constraints imposed by the action/reaction gap, and the lack of a reliable

way to stop a threatening action instantly.⁷

Enhancing deadly force policy by including a necessity criterion provides officers with an additional decision tool. It helps them make effective decisions while maintaining the necessary balance between officer safety and the constitutional requirement of reasonableness.

Despite the best policies, however, officers still might not handle incidents involving deadly force in the best possible way. A significant cause of this problem can be traced to the physiological effects of stress in survival situations.

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Officers need to know the parameters of their authority.

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SURVIVAL PHYSIOLOGY

For many years, law enforcement trainers struggled to explain why, despite comprehensive training, officers often performed ineffectively in survival situations. They continuously revised their instruction in attempts to bridge the gap between officers’ performance on the gun range or in the classroom and their performance on the street.

Incorrect Assumptions

Unfortunately, instructors often recognized the symptoms of survival stress but commonly failed to grasp the causes. Unaware of the physiological reasons for visual

narrowing, auditory exclusion, decreased fine motor skills, and other symptoms that affect officers in life-threatening situations, trainers guessed at what methods and strategies would counter the effects of these symptoms.

Some of these guesses led to ineffective approaches. For example, the majority of law enforcement training was, and in many cases still is, conducted in the static, nonthreatening, low-stress environment of the gun range, gymnasium, or classroom, using what psychologists call closed motor skill training.⁸ Such training exercises are predictable, planned, static, and low-stress. A common example is traditional firearms qualification on the gun range in which officers fire only on command at identical paper targets that do not return fire. Techniques that look or feel effective in this type of environment often have little or no application in a stressful, dynamic, real-world environment.

The most prominent example involves the transition from the instinctive shooting style of the single-handed point, or “FBI crouch,” and modified isosceles shooting stances to the Weaver stance decades ago. Generations of law enforcement officers learned the Weaver stance—essentially a field interrogation stance in which the officer assumes a three-quarter side stance, gun side and groin bladed away from the target with the strong arm and gun hand fully extended and almost locked, stabilized and supported by the weak arm. Firearms instructors extolled the virtues of the Weaver stance as an improved shooting platform. Unfortunately, research has shown that

it is extremely difficult to assume the Weaver stance when confronted by a sudden, close threat.⁹

Why? Humans are binocular animals that process 90 percent of sensory input visually when they experience survival stress.¹⁰ During a deadly force encounter, officers instinctively and uncontrollably crouch and square off facing the threat to maximize visual input to the brain. This instinctive stance was first documented in the 1920s based on observations of soldiers in combat.¹¹ Because most deadly force encounters are sudden and close, teaching officers to use the Weaver stance made them rely on a technique ineffective for the deadly force situations they encountered.

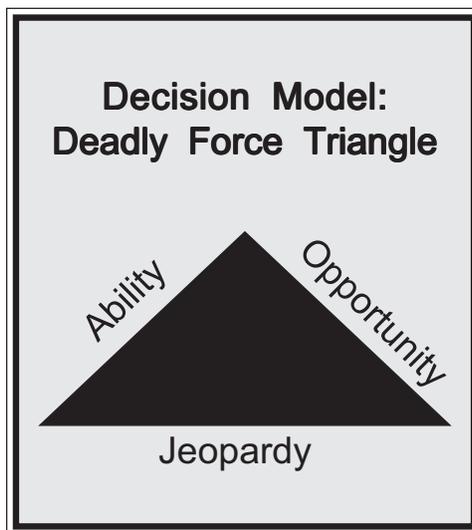
Survival Stress Management

Trainers must understand survival physiology and survival stress management techniques to help officers improve their decision-making skills in deadly force situations. According to the research, when faced with a survival situation, the human body experiences involuntary physiological reactions that affect performance of motor skills. Many of these reactions have a negative impact on officers' ability to defend themselves in life-or-death struggles.

Motor skills combine cognitive processes and physical actions to enable a person to perform physical tasks, such as firing a weapon. There are three types of motor skills—gross, fine, and complex.

Gross motor skills involve the action of large muscle groups, such as those found in the thighs, chest, back, and arms. These skills depend

on strength and improve under high-stress conditions due to the body's release of adrenaline and other hormones. Survival stress has little or no negative effect on these skills.¹²



Fine motor skills use small muscle groups, such as the hands and fingers. These skills frequently involve hand-eye coordination, such as shooting a firearm. They require low or nonexistent levels of stress for optimum performance. Fine motor skills rapidly deteriorate under survival stress conditions.¹³

Complex motor skills incorporate multiple components, often involving hand-eye coordination, timing, tracking a moving target, and balance. The Weaver shooting stance and such intricate defensive tactics as a takedown or baton come-along exemplify complex motor skills. To achieve optimal performance of these skills, stress levels must be low. Therefore, the high stress encountered in a

survival situation reduces an officer's ability to perform complex motor skills.¹⁴

During a deadly force encounter, unprepared or poorly trained officers experience a chain reaction of escalating stress that increases their heart rates. As the heart rate rises, fine and complex motor skills deteriorate rapidly, resulting in an inability to handle a weapon or assume a Weaver shooting stance, for example. The rising heart rate also triggers the body's sympathetic nervous system, which is part of the autonomic nervous system that controls breathing and other involuntary life functions. The sympathetic system secretes powerful hormones, such as adrenaline, epinephrine, and similar substances that increase heart rate and blood pressure and regulate body metabolism under life-threatening stress. The body redirects blood away from the fingers, hands, and extremities to major muscles, such as the chest, thighs, and arms. Hand dexterity and coordination drastically decline as blood vessels constrict.¹⁵

Eyesight also is affected by increased stress. The contour of the lenses of the eyes changes, making visual tracking or focusing on nearby objects, such as the front sight of a weapon, difficult or even impossible. Perceptual narrowing occurs and affects depth perception, often causing officers to fire shots low.¹⁶ Peripheral vision nearly vanishes as the field of view reduces to 12 to 18 inches. Because most threats are processed through a person's visual sense, the tremendous reduction in visual input

severely restricts the brain's ability to receive and process vital information. Research has shown that when peripheral vision decreases 70 percent, it takes a person up to 440 percent more time to react.¹⁷

If an officer's rising heart rate remains unchecked, a survival stress response called "hypervigilance" occurs. With hypervigilance, the officer freezes in place or engages in inappropriate or irrational actions in a panic or near-panic condition.¹⁸ This condition is characterized by an indiscriminate attention to inappropriate threat cues as an officer frantically searches for a way to escape the danger. Not uncommonly, officers experiencing hypervigilance might repeatedly pull the trigger of an empty weapon, misidentify innocuous items as weapons, or not see or hear innocent bystanders in the line of fire.

One of the keys to managing survival stress is controlling heart rate.¹⁹ Research has proven that a slight increase in heart rate in response to stress stimuli improves performance. However, additional stress and increased heart rate causes rapid deterioration of performance. Cognitive skills begin to deteriorate at heart rates above 155 beats per minute (BPM), and perceptual narrowing, hypervigilance, and irrational behavior begin at 175 BPM. Officers experience full-blown hypervigilance at heart rates between 200 and 225 BPM. The optimal heart rate for combat performance is between 115 and 145 BPM.²⁰ Teaching officers stress management techniques that enable them to keep their heart rates in or near this range will help them control survival stress.

DYNAMIC TRAINING

Practice through realistic simulation offers one of the best ways to prepare officers to handle deadly force decisions. This training strategy integrates classroom instruction on policies and decision-making models with open motor skill training to enable officers to apply their knowledge in dynamic, stressful situations that approximate real life.

Purposes

Dynamic training serves two purposes in improving the decisions officers make during deadly force situations. It allows them to implement survival stress management techniques in conjunction with effective tactics and procedures in a realistic environment, and it meets higher training standards imposed by recent court decisions.

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The dynamic training technique uses role-playing scenarios that pit officers against live adversaries who think, plan, interact, move, use cover, and return fire using modified duty weapons firing simulated ammunition with marking dye. Such ammunition provides two key benefits. First, hits can be scored to rate the effectiveness of each

participant's shooting. Second, the ammunition strikes with enough force to cause pain and minor bruising; participants soon learn the value of using cover in a way that cannot be duplicated by other forms of training.

Dynamic training also addresses some judicial concerns raised by a 1993 court decision that imposed higher standards for deadly force training. In *Zuchel v. City of Denver*, the U.S. Court of Appeals for the 10th Circuit upheld a jury verdict that the City of Denver, Colorado, was deliberately indifferent to the rights of its citizens because of the inadequate deadly force training provided to its police officers.²¹ The jury found that the death of a city resident during a police shooting was due to an unreasonable use of deadly force stemming from inadequate training. The implication of the *Zuchel* decision is that traditional instruction—consisting of periodic firearms qualifications on the gun range, the use of classroom shoot/don't shoot scenarios, and other closed motor skills training strategies—does not adequately prepare law enforcement officers to make effective deadly force decisions.

To meet the higher standard imposed by the *Zuchel* decision, deadly force training also must develop decision-making skills that enable officers to avoid confrontations when possible and to minimize the escalation of force when practical. Dynamic training meets this standard. It allows officers to apply survival stress management and safety and survival tactics in an open motor skills environment within the parameters of the law and

the agency's deadly force policy. Open motor skills training—conducted in a fluid, reactive, spontaneous, stressful environment—adds realistic decision making to the instructional setting. For example, dynamic force-on-force training or a simulated deadly force encounter involves open motor skills.

Dynamic training provides another benefit: It often identifies performance deficiencies not spotted in other forms of training. One agency found that, in spite of continuous emphasis on the importance of decocking semiautomatic sidearms equipped with decock mechanisms, the overwhelming number of participants under survival stress failed to do so before reholstering their weapons following a shooting scenario. With this knowledge, trainers could take steps to address this dangerous performance issue.

Administrators and trainers seeking to use simulation-based training should be forewarned that it cannot be developed overnight. Creating a dynamic training program requires that administrators determine the agency's specific training needs, design and develop the content, and then evaluate and document the instruction.

Needs Assessment

One of the most difficult aspects of developing dynamic training can be the preparatory work that must be completed before actual training begins. Trainers should conduct a needs assessment to identify the gap between officers' actual performance and their desired performance. This evaluation might identify such deficiencies as poor teamwork or ineffective stress management in survival situations.

The needs assessment also should focus on identifying the types of threats officers likely will face so that training can be developed to address these needs. By examining an agency's use-of-force reports for the previous years, trainers can identify common force incidents and identify performance deficiencies. Other local sources of information include state crime commissions, training academies, peace officer standards and training organizations, and other area law enforcement agencies. Trainers also should consider national sources of information on threat trends, such as the Bureau of Justice Statistics and the FBI's annual summaries of law enforcement officers killed and assaulted.

Practice through realistic simulation offers one of the best ways to prepare officers to handle deadly force decisions.

Based on the specific needs identified, instructional objectives must clearly specify the learning and performance outcomes expected of participants. Each objective must state precisely what tasks participants must perform, as well as how well and under what conditions they must perform them. The participants should be informed of the objectives at the beginning of the session. The complexity or

depth of the subject matter probably will require that some classroom instruction precede the practical exercises. For example, before conducting a simulation that requires participants to use cover, instructors might lead a classroom discussion on the reasons to seek cover, the types of cover available in a variety of common situations, how to discriminate between good and bad cover, and how best to use cover.

After identifying the instructional objectives, trainers should script realistic scenarios so that participants can master practical and effective tactics that maximize control and minimize danger in survival situations. Instructors must avoid the tendency to create unwinnable scenarios. Few things destroy training efforts more than scenarios that never allow participants to succeed. This is not to say that scenarios should be designed so students cannot ever fail. Rather, if students follow proper procedures and take appropriate actions in the scenario, they can win. Research indicates that the most effective training provides participants with positive learning experiences. To optimize the learning process, training should proceed in phases designed to introduce the participants to increasingly complex and demanding tasks gradually, as their skill levels increase.²²

Training Techniques

The needs assessment will reveal specific threats and problem areas that should be addressed in the scenarios. In addition, instructors should teach officers techniques to help them respond to these threats safely and confidently.

Officers acquire confidence by practicing visualization, gross motor skills, conditioned responses to certain stimuli, and tactical breathing. As the officers acquire confidence in their ability to handle situations safely, they will be better able to control their heart rates and thus avoid negative survival responses.

Visualization

Athletes frequently use visualization to improve their performance. Likewise, officers can rehearse specific survival situations, mentally identifying threats or threat cues and using appropriate tactical responses. Visualization allows officers to prepare for and plan their individual performance through mental rehearsal. They can clarify tasks, identify potential performance problems, and choose effective tactics.

Visualization contains three components—predicting potential threat cues, programming the proper survival response, and programming back-up plans.²³ First, officers imagine what factors might indicate a threat in a specific situation. For example, a potentially armed suspect detained on foot at 3 a.m. in an apartment complex might have a bulge in his waistband, refuse to remove his hands from his pockets, or make furtive hand movements.

After identifying the potential threat cues, officers picture themselves responding to the threat by using the correct survival responses. Finally, officers plan alternative actions in case the primary response is ineffective or cannot be used.

Through visualization, officers plan simple, yet effective, strategies to respond to deadly force situations. Studies of reaction time indicate that when the number of possible responses increases from one to two, reaction time increases

Photo © K.L. Morrison



58 percent.²⁴ By mentally discarding ineffective responses in advance, officers limit their response options, which reduces reaction time.²⁵ Unfortunately, during a deadly force encounter, the gap between the suspect's action and the officer's response often is measured in milliseconds. Visualization reduces reaction time and increases the officer's chances of survival.

Gross Motor Skills

Due to the deterioration of fine and complex motor skills under survival stress, training must focus on gross motor skills whenever possible. These skills include the use of the following shooting stances:²⁶

- Single-handed point stance

- Modified isosceles two-handed stance
- Weaver stance.

The choice of shooting stance depends on the circumstances of the event.

At ranges less than 3 yards when time is minimal, officers should use the single-handed point stance. The brain recognizes that there is not enough time to acquire the target with a two-handed grip; therefore, the officer extends the weapon, or punches it out, toward the target at stomach or chest height in a one-handed grip.

Officers should use the modified isosceles two-handed stance at ranges greater than 3 yards when time allows and greater accuracy is needed. With this stance, they grip the weapon in a two-handed hold and raise it to eye level. When startled, the body instinctively activates the sympathetic nervous system, forcing the head and shoulders to square on the target to obtain the maximum visual input. The arms automatically begin to bend at the elbow and assume an isosceles position, fitting the natural strength curve of the body. The dominant foot should be to the rear.

With adequate time, distance, and cover, such as in a barricaded shooting situation, officers can use the Weaver stance. Because it is a complex motor skill, this stance can only be used when survival stress has not fully activated the sympathetic nervous system.

Stimulus-Conditioned Response

For officers to survive deadly force encounters, their responses must demand a minimal outlay of

physical or mental energy.²⁷ This quick response can be learned when training combines a stimulus—in the form of recognizing specific threats or threat cues—with a conditioned response.²⁸ Officers learn to respond automatically when the stimulus occurs. For example, upon recognizing the threat cues associated with a concealed weapon, officers might draw their weapons to engage the threat while moving to positions of cover and issuing verbal commands.

Tactical Breathing

Finally, officers can use tactical breathing to govern their survival responses. This technique helps them control their heart rates and avoid full activation of the sympathetic nervous system. By bringing more oxygen into their systems, they lower their heart rates, which improves perceptual abilities and reduces anxiety.²⁹

During training, participants' heart rates should be monitored to provide feedback about their individual stress levels as they work through the dynamic simulations. This will help them recognize the onset of survival stress symptoms and employ stress management techniques.

Evaluation and Documentation

Participants' performances during dynamic training sessions should be evaluated and documented. A simple, impartial evaluation instrument that rates participants on the performance objectives serves three functions: It gauges the participants' learning, identifies

remediation needs, and documents the instruction.

A practical rating instrument allows trainers to evaluate participants in critical skill areas quickly, uniformly, and impartially. A review of the ratings for the whole class might reveal topics that need to be addressed more thoroughly or in a different way. Trainers should give a copy of the completed rating instruments to the participants and place the originals in each participant's training file.



Videotaping all exercises provides additional feedback for participants. Showing an officer's performance on videotape eliminates complaints about the instructor's bias or misperception in rating and avoids the problem of denial if remediation becomes necessary. When officers see the mistakes they made, they can better correct the errors.

Agencies should keep detailed records of the instruction provided, including written rating instruments and videotapes of exercises. These records serve as documentation in case of a legal challenge to the effectiveness of the instruction. Well-maintained records also provide a wealth of information useful for revising and updating the training.

CONCLUSION

The primary goal of any law enforcement training is to increase officers' safety and effectiveness, for when they handle enforcement activities effectively, danger levels decrease. Proper training also reduces an agency's exposure to liability claims and expensive litigation. Clear policies that address the realities of deadly force encounters, instruction in survival physiology and survival stress management, and realistic, dynamic training exercises can improve officers' confidence levels and enhance their decision-making skills.

Law enforcement officers must make split-second life-or-death decisions. Agencies can demonstrate their concern for the rights of their citizens and the safety of their employees by preparing officers to make the best choices possible. ♦

Endnotes

¹ 471 U.S. 1 (1985).

² Exact source unknown. Author learned of model during emergency services training provided by the 3902nd Security Police Squadron, Strategic Air Command, Offutt Air Force Base, Bellevue, NE, August 20, 1984.

³ Observed by author on three different occasions with different participants during semiannual Simmunitions training conducted for the Douglas County, NE, Sheriff's Department, March-April, 1996.

⁴ Urey W. Patrick, *Handgun Wounding Factors and Effectiveness*, FBI Academy Firearms Training Unit, Quantico, VA, 1989, 16.

⁵ U.S. Department of Justice, Federal Bureau of Investigation, *Deadly Force Policy: Instructional Outline*, December 1, 1995.

⁶ Ibid.

⁷ Ibid.

⁸ E. C. Poulton, "On Prediction in Skilled Movements," *Psychological Bulletin*, vol. 54, no. 6 (1957): 467-478.

⁹ B. K. Siddle, *Sharpening the Warrior's Edge: The Psychology & Science of Training* (Millstadt, IL: PPCT Research Publications, 1995), 121.

¹⁰ H. Breedlove and B. K. Siddle, "How Stress Affects Vision and Shooting," *Police Marksman*, vol. 20, no. 3, 57.

¹¹ W. E. Fairbairn and E. A. Sykes, *Shooting to Live* (Boulder, CO: Paladin Press, 1987), 39.

¹² B. J. Cratty, *Movement Behavior and Motor Learning*, 3d Ed. (Philadelphia, PA: Lea & Febiger, 1973), 207-213.

¹³ Supra note 8, 472.

¹⁴ Supra note 9, 61.

¹⁵ B. K. Siddle, *Sharpening the Warrior's Edge*, Specialized Training Course, Nebraska Law Enforcement Training Center, Grand Island, NE, March 1996.

¹⁶ Observed by author during semi-annual Simmunitions training conducted for the Douglas County, Nebraska, Sheriff's Department, March-April, 1996.

¹⁷ Ibid.

¹⁸ Supra note 9, 85.

¹⁹ Supra note 9, 49.

²⁰ Supra note 15.

²¹ *Zuchel v. City of Denver*, 997 F.2d 730 (10th Cir. 1993).

²² Supra note 9, 82.

²³ Supra note 9, 102-104.

²⁴ R. A. Schmidt, *Motor Control and Learning* (Champaign, IL: Human Kinetics, 1991), 90-105.

²⁵ Supra note 9, 82.

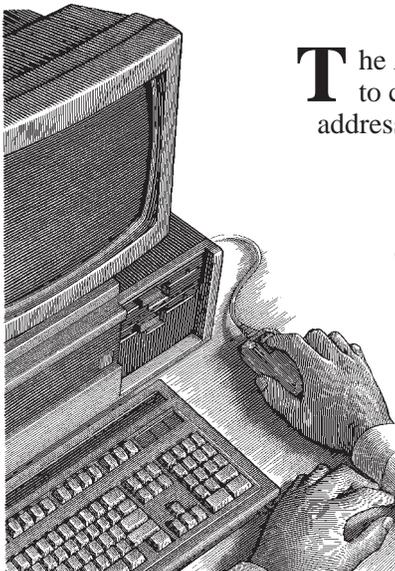
²⁶ W. White and B. K. Siddle, *PPCT Defensive Tactics Instructor Manual: Series A* (Millstadt, IL: PPCT Management Systems, 1989), 19.

²⁷ Supra note 9, 119-121.

²⁸ E. R. Guthrie, *The Psychology of Learning* (New York: Harper and Row, 1952), 23.

²⁹ Supra note 9, 104-106.

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Cyberschool

Online Law Enforcement Classes

By THOMAS DEMPSEY, M.A.

Both administrators and line officers agree that law enforcement training does not end at the police academy. Peace officer standards and training boards require that officers receive additional training every year; the courts hold departments responsible if they fail to train their officers; and citizens want well-trained officers protecting them. As a result, with the support of their commanders, officers attend in-service training to improve their skills or learn new ones.

At the same time, a growing number of police agencies have realized that education—broad-based instruction that generally teaches why rather than how—benefits their employees by providing the theoretical foundation they need to understand issues and apply learned skills to new situations. Many agencies require that their entry-level officers possess some college education; many also require undergraduate degrees for command-level positions. Generally, educational requirements increase with rank.

While they recognize the importance of education and training for their employees, police administrators faced with limited resources remain reluctant to send employees for training beyond the minimum number of hours mandated by their



state's regulatory agency. Off-site classes mean paying for travel, lodging, and meals, in addition to tuition. Even local or onsite courses mean the loss of the employee for the training period. To compensate, agencies either must pay other

employees overtime or reduce the agency's level of service to the community, a choice many administrators find hard to make.

The new watchword for educators and trainers alike is distance learning. Using means as simple as

videocassettes or as sophisticated as two-way audio and video teleconferencing systems, distance learning has become the correspondence course of the 21st century. Students can receive the training or education they need without placing too great a burden on their personal and professional lives. Distance learning may, in fact, be the only chance busy law enforcement professionals have to obtain the training they need.

Christopher Newport University in Newport News, Virginia, is home to two online educational programs—CNU ONLINE and The Mid-Atlantic Police Supervisory Institute (MAPSI)—available to law enforcement officers. CNU ONLINE is a computer-based Internet communication system that allows students to take accredited college courses and, in fact, entire degree programs without physically attending any classes.

The MAPSI gives first-line supervisors an efficient, cost-effective way to develop the administrative, leadership, and ethical skills they need to succeed in their positions. As important, they can take classes without losing valuable time from work. This article describes both of these innovative programs.

CNU COMES ONLINE

Since the fall of 1993, Christopher Newport University has offered online courses across the curriculum. One particular degree program—the bachelor of science in governmental administration—allows students to complete their studies entirely online. With concentrations in public management,

criminal justice administration, international administration, and legal studies, the governmental administration program can provide valuable education for law enforcement officers, who only need to come to campus if they choose to participate in the graduation ceremony.

The MAPSI program grew naturally from CNU ONLINE. Recognizing the benefits that newly promoted officers receive from additional education and training, chiefs from several southeastern Virginia police departments met with CNU faculty and other law enforcement executives to design an educational program for first-line supervisors. Everyone agreed that the ability to deliver the course material online was fundamental to MAPSI's success.

Six of the courses from CNU ONLINE's governmental administration major, tailored for law

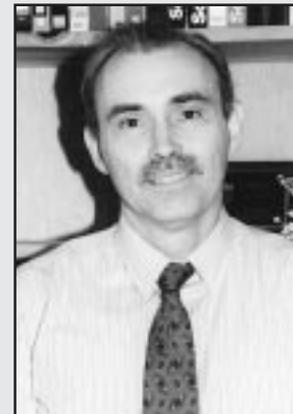
enforcement officers, provide the foundation for MAPSI. The courses address leadership strategies, human resource management, planning and evaluation, budget, ethics in government, and police organization and management.

After completing four courses, MAPSI students receive a certificate. They also can apply the 12 credits they earn toward the requirements for the bachelor of science degree in governmental administration.

COURSE STRUCTURE

CNU ONLINE and MAPSI courses allow students to complete the required work at a pace that complements their work and personal schedules. Depending on their course loads, students can complete the MAPSI program in 9 to 21 months without being absent from normal duties. Students also may complete the entire program

**“
Students can receive
the training or
education they need
without placing too
great a burden on
their personal and
professional lives.
”**



A retired police officer, Professor Dempsey serves as director for criminal justice administration at Christopher Newport University in Newport News, Virginia.



through a single semester of full-time attendance.

Four half-day Saturday workshops give MAPSI students practical information designed specifically for working police officers. Thus, although governmental administration students share classes with MAPSI students, only MAPSI students attend the workshops.

Workshop speakers cover police personnel issues, community policing concepts, and leadership strategies, to name a few. Students who cannot attend these on-campus seminars receive a videotape of the program along with the presenter's e-mail address. In the near future, the university plans to install videoconferencing equipment, which will enable experts from all over the world to engage in real-time discussions with students in different locations.

The Saturday workshops mark the only difference in course structure for MAPSI students. In all other respects, MAPSI students cover the same academic ground as governmental administration majors. In fact, they are enrolled in the

same online classes, and in the traditional classroom, they would sit side by side.

Yet, conventional approaches to education do not work in the virtual classroom. Even more so than in traditional college courses, online classes must emphasize critical thinking, independent study, and interaction among all of the students and the instructor. To do this, CNU instructors keep students interested and involved through a variety of challenging assignments, both formal and informal.

Assignments

Formal assignments generally include several group projects, as well as weekly essays, which usually are based on a reading from the textbook. Other tasks include quote analysis, in which students identify a short quotation from an assigned reading and, in two paragraphs, paraphrase it and defend or refute it using at least one outside reference. This type of exercise helps students develop analytical ability, while forcing them to express their ideas concisely. Group projects teach

students to overcome the obstacles and recognize the benefits of teamwork, a skill that serves them well outside of school.

In addition to formal assignments, students participate in online discussions using an electronic mailing list. Unlike "chat room" conversations, these discussions do not take place in real time. A chat room does exist, however, and many professors use it as a virtual office, allowing students to "visit" during specified hours. Students also may e-mail their professors or peers directly at any time.

Messages posted to the list go to the entire class, including the professor. A significant portion of the students' grades depends upon the quality and frequency of their participation in these online discussions.

To invite additional commentary, students post most of their completed assignments to the list. The class also monitors group work in progress, although the professor evaluates finished projects before posting them. Professors tailor their assignments to each student. They



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might ask working police officers to defend a policy in place in their organizations, whereas other students would discuss an issue based on their perceptions or beliefs, not on actual experience. The differences in students' backgrounds and the online format, where students remain relatively anonymous, lead to lively discussions.

Part of the ethics curriculum, for example, involves reviewing case studies, about half of which relate directly to law enforcement. What experienced police officers think constitutes ethical behavior versus what the other students believe has led to some no-holds-barred debates.

EQUIPMENT REQUIREMENTS

The CNU ONLINE and MAPSI programs use a point-and-click, Windows-based system. Students need a personal computer¹ with at least 4 megabytes of random access memory (RAM), a modem with a minimum speed of 14,400 bytes per second, communications software, and Internet navigation software.

Higher RAM allows students to run multiple applications, for instance, a word-processing program and the online communications software, simultaneously. Likewise, a higher speed modem will move the information across the Internet at a faster rate.

Students access the system by dialing either a local or toll-free number or through a commercial Internet service provider (ISP). Students within the local dialing area have almost unlimited access without an ISP, while the 800 number restricts students to 10 minutes actual online time each day. This has proven adequate for students taking a single class because they need only a short period of time to access the system and download their messages. They then can prepare responses off line, reenter the system, and upload their responses. The 10-minute limit is marginally sufficient for those students taking more than one class or for those who need Internet access for course-related research.

Accordingly, students outside the local dialing area are strongly

encouraged to obtain an ISP account with a commercial service. Many commercial Internet providers offer unlimited access for about \$25 per month. A grant from the Virginia Department of Criminal Justice allows the university to offset this expense with a tuition adjustment for MAPSI students.

ONLINE ALUMNI

Some agencies have allowed their officers to attend MAPSI full time; others, one or two classes a semester. Each semester since the program's inception in the spring of 1996, several students have taken all four courses at once. Employed by the Hampton and Newport News, Virginia, police departments, they found their time commitment to be at least comparable to a normal work schedule.

The remainder of the students, officers from the Virginia Beach, Franklin, James City County, and several additional Virginia police departments, took one MAPSI course while remaining in their full-time duty assignments. These students found the courses, coupled

In the Line of Fire

Learning from Assaults on Law Enforcement Officers

By Anthony J. Pinizzotto, Ph.D., Edward F. Davis, M.S., and Charles E. Miller III



Photo © Mark Ide

On a spring Tuesday at noon, two officers in civilian dress, both assigned to investigative work, responded to an address to search for a robbery and burglary suspect. When one officer opened a closet door during the search, he was shot in the chest by a 41-year-old female hiding inside. A struggle ensued, and the officer returned fire, striking the offender. Both the officer and the assailant were transported to the hospital. The victim officer, a 28-year-old 4-year veteran, was released after 13 days and returned to duty. The assailant, who had a prior record for robbery, burglary, and assault, is confined to a wheelchair as a result of her wounds.

This scenario depicts 1 of 40 cases examined by the authors in an attempt to answer two important questions: Why and how are officers assaulted in the line of duty? Every year, more than 50,000 law enforcement officers are assaulted, one-third of those assaulted are injured, and about 70 are killed.¹ Why do some officers die and other officers survive in substantively similar situations? No simple answers exist.

A previous study, *Killed in the Line of Duty*,² scrutinized felonious killings of law enforcement officers, but by nature, it omitted a crucial perspective—that of the victim officers. In the continuing search for the best ways to prepare officers to face danger in the line of duty, *In the Line of Fire: Violence Against Law Enforcement* focuses on the survivors and presents extensive information on the victim officers, the offenders, and the incidents that brought them together in a potentially deadly mix.³

THE STUDY

Over a 3-year period, the authors examined 40 incidents selected from 625 closed cases submitted by local, state, and federal law enforcement agencies. Selection criteria included the size and type of the victim's agency, the type of assignment the officer was working at the time of the assault, and the region of the country in which the officer worked. The selected cases occurred between 1987 and 1994 and included 52 law enforcement officers and 42 offenders.

After choosing cases for the study, the authors gathered as much information as possible about each incident in order to elicit specific, useful responses during interviews. They reviewed the departments' case files, which included offense reports, statements made by assisting officers, witnesses, and offenders, and later, other documentation provided by the victim officers, such as reports, performance ratings, newspaper articles, and police radio transmissions. Interviews of the surviving victim officers focused on their background, family structure, law enforcement training, preassault behavior and experience, conditions at the time of the assault, and description of the incident.

The authors also reviewed and evaluated pertinent information obtained from law enforcement and correctional records on each offender. Interviews of

the offenders focused on seven areas: background, family structure, attitudes toward authority, criminal history, weapons training and use, description of the incident setting, and perspective on the incident.

To protect the victim officers and their departments from unwanted attention and to encourage them to be as candid as possible, the authors granted anonymity to the study participants. Similarly, the offenders and the penal institutions that housed them were granted anonymity.

THE FINDINGS

The sample for this study was small and not scientifically random; therefore, results should not be generalized. Nevertheless, the wealth of data the study presents on the officers, the offenders, and the incidents that brought them together can provide insight for administrators evaluating their departments' policies, training, and procedures, as well as for individual officers evaluating their own daily practices.

The Officers

The 52 officers who agreed to participate in the study realized that their actions would come under intense scrutiny. They set aside their personal concerns and shared their information and insight, hoping to help their colleagues prevent serious injury or death during a line-of-duty assault.

Demographics

The victim officers in the study were predominantly male (88 percent), married (62 percent), white (90 percent), and college educated (58 percent). They averaged 5 feet 9 inches tall, 186 pounds, 33 years of age, and 8 years of law enforcement service. This description closely resembles that of the officers killed in the line of duty from 1986 through 1995.

Behavioral Characteristics

The demographic descriptions of the assault survivors were not the only factors

First Aid: A Matter of Life and Death

In a case not used in the study, the victim officer reported that while working in uniform during the midnight to 8 a.m. tour of duty, he responded to a suspicious person call. While questioning an individual at the scene, a confrontation developed and the officer's throat was cut from ear to ear. He protected himself from further injury by shooting his assailant.

In response to his call for help, numerous officers responded to the crime scene, but none of these officers attempted to provide any sort of first aid to the victim. The injuries were so severe that he was placed in a patrol vehicle and transported to a hospital. A physician was the first person to render first aid through the single act of placing his hand over the wound to stop the bleeding.

The victim officer reported that first aid training was conducted at the academy but not supported by subsequent in-service instruction. He stated that if he had responded to a similar situation, he would not have administered first aid and did not think to self-administer a compress to stop the flow of his own blood. The lack of training placed this officer's life in serious jeopardy.

that mirrored the characteristics of officers killed in the line of duty; the officers also shared many behavioral traits. To develop a behavioral profile of the victim officers, the authors reviewed the available written documentation and observed and evaluated the behavior and comments of victims during the interview process. Following the agreement of anonymity with the officers, the authors could not contact the officers' peers or supervisors, so these observations could not be validated independently. Nevertheless, the recorded behavioral characteristics offer some telling clues about the victim officers.

One frequently mentioned adjective was "hard-working." These officers sought to be the best cops possible, and they often took risks to achieve this objective. For many, being the best meant producing the most arrests, traffic citations, and reports. One officer, named "officer of the month" prior to his assault, described taking shortcuts to increase his productivity. For example, he often served warrants alone. He never requested backup, never advised the dispatcher of his plan or location, and never expected to be shot by the individual he attempted to arrest.

Nineteen officers studied were assaulted when they unilaterally took action in response to a situation. Would the outcomes have been different if help had been available? No one can say for sure. Nevertheless, such high-risk behaviors demonstrate that some hard-working officers might be ignoring rules established for their safety. The real question is whether boosting productivity statistics merits the risks involved.

If risk taking got them into trouble, the will to survive kept these officers alive. The authors observed a tremendous determination to live in virtually all of the officers interviewed. One officer said she was determined to survive so that her parents, who lived 700 miles away, would not be notified of her death by a telephone call. An officer shot in a dirty,

trash-filled building refused to die in such a place. He used his shoestrings as tourniquets to stop the bleeding from serious arm and leg wounds, made his way out of the building, and found a citizen to call for help.

Another officer suffered a severe bullet wound directly below his eye. After being unconscious for an unknown period of time, he concentrated on observing his breath in the cold night air, believing that as long as he focused on breathing he would continue to live. Nearly blinded, he stuck the thumb of his weak hand into his wound and held it there to control the bleeding while he held his weapon in his strong hand.

Without a portable radio to call for help, the officer struggled approximately 300 yards to his patrol unit to summon aid.

These officers walked, crawled, and limped away from the scenes of their assaults. They refused to give up. They were survivors.

The Offenders

The victim officers in the study possessed a preconceived image of the kind of person they considered likely to assault them. The data

suggest, however, that no singular profile exists of an individual who would assault, attempt to kill, or actually kill a police officer. Officers' preconceived ideas of the assaulter profile were of little value in securing their personal safety.

To paint the clearest possible picture of the assaults and the people involved, the authors interviewed the offenders. Of the 42 offenders interviewed, 38 were still in prison at the time of the interview. The authors met with the remaining four offenders, who had been released from prison, in their local communities.

Demographics

The offenders were generally male (93 percent), young (average age 27 years), nonwhite, single, and high school educated. Compared to the victim officers, the offenders were younger, less likely to have

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families, and less educated. Physically, the average offender was 5 feet 9 inches tall and weighed 170 pounds, a stature similar to that of the victim officers.

Authors asked the offenders to describe their family status and history. None of this information was corroborated with other family members. According to the offenders, their mothers were the most significant figures in their families; yet, 43 percent reported that their natural fathers had been present most of the time. They frequently reported hostile and aggressive relationships with both the dominant male and female members of the household. Over one-half of the assaulters said that their families solved problems by arguing, shouting, and initiating physical violence.

While the earlier study of police killers demonstrated parallel findings on family composition, the assaulters tended to report less instability in family caretaking and less physical and psychological abuse within the family than did the killers. Also, although most assaulters considered their preadult economic status to be marginal or lower, most of the killers in the earlier study considered their economic status to have been at least average or comfortable.

Criminal History

The self-reported average age at which offenders committed their first crime was 11. For more than two-thirds of the offenders, this crime was larceny-theft. Across the board, they reported weapons violations with greater frequency than any other crime. The criminal histories of these offenders coincide with the predominant incarcerating offenses of all convicted felons.⁴ Twenty-four of the 42 offenders reported having been involved in shooting incidents (either firing or being fired upon) prior to the assault under study. Notably, 21 percent of the offenders reported having attempted to assault a police officer in the past.

Some of the offenders can best be described as street combat veterans, based on the frequency of

their involvement in exchanges of gunfire with other criminals and police. In 8 of the 40 incidents examined, offenders used more than one weapon, including knives and blunt objects, as well as hands, fists, and feet, but firearms were by far the weapons of choice in the incidents studied. Fifty of the 52 officers were assaulted with firearms, and availability was the overriding factor in weapon choice.

When questioned about their preferred method for carrying a handgun on their persons, 36 percent of the offenders reported carrying the weapons in the groin area. One-half of these felt this area was most overlooked by law enforcement personnel who conduct searches. When in a vehicle, 50 percent of the offenders carried their handguns directly on their persons. Over one-fourth of the offenders reported carrying a second weapon, usually a handgun,

at least part of the time, with the expressed intent of using it against a law enforcement officer or anyone else who removed their primary weapon. Clearly, the offenders' familiarity, proficient use, and methods of carrying and concealing handguns should be considered when agencies develop procedures for approaching and searching suspects.

Alcohol or Drug Use

Among the offenders studied, 62 percent were using drugs, alcohol, or both at the time of the incident. Simultaneous use of drugs, usually cocaine, and alcohol was most common. One offender described the effect of drugs on his behavior:

“Heroin makes you feel invincible; cocaine makes you feel defensive and somewhat paranoid. Drugs do not hinder your ability to use a firearm.⁵ They make you quicker to shoot. When you're on drugs, you're irritable and cranky and may be quicker to use a gun.”

This offender, involved in an armed robbery interrupted by a police officer, indicated that he did not necessarily intend to hurt the officer, just to avoid capture. If captured, he knew he would be unable to

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satisfy his need for more drugs, which motivated the robbery in the first place.

Offenders' Perspectives on the Incidents

While the opinions of the offenders are highly subjective and suspect, the manner in which an offender perceives a particular event emerged as an important issue. Although their perceptions might not be completely accurate, they based their actions on those perceptions.

The authors asked the offenders to describe the assault circumstances and to assess the victim officers involved in the study. Sixty-five percent of the

offenders said the attack on the victim officer was impulsive, unplanned, or opportunistic. One-third (13) of the offenders stated that nothing the officers could have done would have prevented the attacks.

The offenders reported a variety of intentions at the time of the assault, including to

- Escape or avoid arrest, 38 percent
- Kill the victim officer, 19 percent
- Frighten the officer, 14 percent
- Wound the officer, 7 percent
- Immobilize the officer, 2 percent.⁶

Potential Threats from Passengers

While patrolling in her cruiser at about 4 a.m. on a fall Thursday morning in a large city, a 29-year-old officer was stopped by a citizen who reported the theft of his father's car. She was advised that the car would contain several occupants, including an Hispanic male reportedly carrying a firearm. Shortly after broadcasting the theft, the officer spotted the vehicle, which was occupied by one female and two male suspects. Stopping the vehicle, the officer observed a white male passenger exit the car and attempt to leave the scene. She detained him, frisked him for weapons, and, finding him clean, let him go. The officer then ordered the Hispanic male from the car, requested identification, and conducted a body search, which revealed possession of a hunting knife.

While the suspect was being placed under arrest for carrying a concealed weapon, a struggle ensued. As the officer and her assailant wrestled on the ground, he attempted to grab her weapon. Unable to obtain it, the man called to

his female companion to go to the vehicle and retrieve his gun. The 29-year-old accomplice brought the gun to the assailant, and as both the officer and perpetrator got to their feet, the man threatened to kill the officer if she did not relinquish her weapon. Instead, she drew her revolver, and while she exchanged gunfire with the offender, he shot her once in the left arm with a .25-caliber semiautomatic weapon. The officer, who was wearing a protective vest, returned fire with her .357-magnum revolver, striking the assailant in the abdomen, leg, and pelvis. The offender continued to fire at the officer but without further effect. The two perpe-

trators then fled the scene, and the officer radioed that she had been shot.

The officer later reported that she had not viewed the female passenger as a threat. The female offender reported that she had intended to disarm the officer prior to the start of the shooting. Even though she was just 2 feet away from the officer when firing began, the officer had paid no attention to her and issued no commands.



In all but one case examined, the offender attacked first. Thirty-one percent of the offenders believed the officer was surprised by the attack. Nineteen percent of the offenders described the officer as capable or professional, while an equal number said the officer seemed unprepared or indecisive in the face of the attack.

Four of the offenders admitted membership in street gangs and exhibited a street gang mentality. Two of them were paid \$50 to kill the next drug enforcement officer who entered a particular area. Regardless of whether the gang members were arrested, they still would receive status and respectability within the gang. In describing the contract shooting of the officer, one offender recounted the officer begging for his life and offering money as compensation. The offender reportedly responded,

“We don’t want your money, we want your life.” He and a fellow gang member then shot the officer seven times and left him for dead. All four of the gang members interviewed exhibited this type of cold-blooded, remorseless mentality.

The Situations

To understand the incidents fully, the authors thoroughly assessed the circumstances surrounding the assaults. This assessment included the type of call being handled, the location, the modes of transportation used by officers and offenders, the environment, and the weapons used.

Of the 40 cases examined, 50 percent involved responses to disturbance calls, 20 percent occurred while officers investigated suspicious persons or circumstances, and 18 percent happened during traffic stops or pursuits. Sixty percent of the assaults took place on a road or in an alley. Eighty percent of the officers and nearly half of the offenders arrived at the scene in motor vehicles. In more than 75 percent of the incidents, the assault occurred at the same location as the initial encounter between the offenders and the officers.

Most assaults occurred at nighttime, with 62 percent between the hours of 6 p.m. and 6 a.m. One-fourth of the assaults occurred between noon and 6 p.m. The timing of the assaults raises visibility as a possible issue warranting safety training attention. In some instances, officers also had to contend with fog, rain, total darkness or only partial lighting during the assaults. While these environmental factors did not precipitate the attacks, they did affect the officers’ ability to respond effectively.

The authors also examined the principal weapons used by both parties in the assaults. As noted, offenders used firearms, mainly handguns, to assault 50 of the 52 officers in this study. Some also struck officers with blunt objects or cut them with knives. All of the victim officers were armed with handguns; three also had

Surprise Assault from Bystander

On a spring Friday evening at approximately 9 o’clock, a 26-year-old uniformed officer and his partner were patrolling in their marked police car when they observed a vehicle run a stop sign and pulled it over. During the stop, a man approached the scene on foot from an alley. Observing the traffic stop in progress, the man opened fire with a 9-millimeter semiautomatic handgun. The victim officer, who was wearing a protective vest, was hit several times in the lower leg. Neither officer was aware of the offender’s presence until the shots were fired.

Fleeing the scene, the 18-year-old assailant disposed of the weapon. Several witnesses identified the gunman, and officers later arrested him at his residence. Apparently angry over a recent controversial court verdict, the assailant was using drugs at the time of the assault and reportedly had set out to attack a police officer. He had a prior criminal history. The wounded officer, who had 2 years of service, returned to duty after 7 days of hospitalization and 4 months of rehabilitation.

personally owned shotguns and one was armed with a submachine gun. Forty percent of the officers fired their weapons. None of the victim officers had rifles, chemical agents, or tasers. Seven officers were disarmed and had their firearms used against them. Offenders firing handguns hit their intended targets 91 percent of the time; officers, 41 percent. It should be noted, however, that the offenders fired first in most cases. With shotguns, the offenders fired with 43 percent accuracy and the officers with 100 percent accuracy.⁷

In most situations, the victim officers initially perceived that they were dealing with minor offenders who were reluctant to go to jail. The offenders, on the other hand, were fighting for their lives and their freedom. Approximately two-thirds of the officers reported having no indication of the impending attack. Only after being injured seriously did some of them realize they were engaged in life-and-death struggles, not just minor physical altercations.

RECOMMENDATIONS

Several significant issues related to officer safety emerged from the authors' analysis of these incidents. The full report recommends policy and training reviews in such areas as use of force, traffic stops, and searches.⁸

Use of Force

During the assaults, the officers in the study generally recalled what *not* to do and when *not* to use force, but some had difficulty recalling when the use of force was an appropriate, timely, necessary, and positive decision. Some had problems recalling their agencies' deadly force policies and determining when to progress to the next level of force, and many officers experienced great difficulty recognizing the point at which they actually were fighting for their lives.

Prepare to Be Attacked

When a 40-year-old sergeant left the police station at noon to have lunch one fall Tuesday, he monitored a call concerning a holdup alarm at a bank approximately four blocks away. He notified dispatch that he would respond, even though the dispatcher called back to inform him that the alarm was accidental.

Entering the vestibule area near the front door of the bank, he observed an individual dressed in a suspicious manner. Upon turning and seeing the uniformed sergeant, the suspect began firing a .25-caliber semiautomatic handgun. The 14-year veteran officer then retreated from the bank and sought protection behind his vehicle. The assailant pursued the sergeant, continuing to fire as he did so. The officer's return fire struck the offender twice. The officer was not injured in the incident.

In later interviews, the officer expressed shock at what transpired. He expected the offender to flee, not pursue him. None of his prior training had prepared him for the possibility of being pursued and attacked after taking cover.

Clearly, agencies should review their use-of-force policies to ensure that all elements of the policy are clearly articulated and easily understood. Further, officers should be tested regularly to ensure their proper recall of the policy, and trainers should stress positive aspects of the policy, especially the proper time to use deadly force, while not overemphasizing the negative aspects, such as when not to shoot.

The victim officers in this study also reported that repetitive safety training reflecting real-life circumstances enabled them to survive potentially lethal situations. In contrast, they believed training that reinforced improper procedures or was deficient in some element could endanger officers.

Traffic Stops

This study and the 1992 study of officers killed both serve as reminders that traffic stops—tasks frequently viewed as routine and repetitive—pose a potentially grave threat to officers. Few officers

considered that someone they stopped for a minor infraction of the law would consider taking their lives in an effort to escape. The officers' desire to produce statistics, whether internally or externally motivated, sometimes caused them to take safety-related short-cuts, such as failing to inform dispatchers of their actions. In addition, officers rarely considered the physical surroundings when they chose to make traffic stops. Finally, on very hot days, officers were more reluctant to wear their soft body armor.

In light of the high risk of traffic stops, departmental enforcement policies should include sections dealing with officer safety. These sections should address proper selection of a stop location, required notification of the police dispatcher, and required wearing of soft body armor. Where two-officer units are employed, departments should ensure that the responsibilities of each officer are clearly established and understood. Departments also should review policies that allow officers to bring the driver of a stopped vehicle back to the police car.

Searches

Searches proved to be problematic for several reasons with severe consequences. Officers experienced problems remaining focused while conducting searches, often because of their perceived need to gain physical control of the offender. In addition, when they recovered items of contraband during a search, the officers' attention often shifted to making an arrest. This caused them to overlook weapons that could then be used against them.

Concerns over contracting communicable diseases, such as AIDS, often superseded officers' concerns for immediate physical safety. They also expressed displeasure at searching the groin area of male subjects, and while they would pat down this area on the outside of the clothing, they were reluctant to go into the subject's clothing there. Several offenders, aware of the officers' reluctance, reported that the groin area was normally where they secreted weapons and contraband. Male officers expressed

similar hesitation at thoroughly searching female subjects for fear of complaints. In the absence of written directives regarding this practice, the officers were unsure when thorough searches would be justified.

To overcome these problems, proper training should simulate realistic situations, including procedures for searches conducted during the day, at night, under low levels of lighting, in residences and other locations, and with resisting subjects. Departments should establish a core policy governing the proper search of all persons arrested for violations of the law. Prisoners should be searched thoroughly by each officer accepting responsibility for custody of the prisoner. Such a policy should also address thorough searches of police vehicles at the beginning of duty tours, especially if cars are used on a rotating basis. Administrators should ensure adequate supplies of proper

safety equipment—especially for officers who regularly arrest and transport drug law violators—to reduce officer concerns about searching offenders who present an offensive or questionable appearance.

CONCLUSION

This study clearly shows that an arrest for an apparently minor infraction of the law might well result in a felonious assault against a police officer. All members of a law enforcement agency, from administrator through patrol officer, must be aware of the risks and actively prepare for them. Administrators must devise policies and provide the types of training and equipment that address the safety needs of their officers. They must also ensure that seemingly unrelated policies or procedures, such as the system of rewards for performance, do not unwittingly undermine officer safety. Similarly, officers must use all of the resources available to them to ensure their own safety, as well as that

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Several offenders...reported that the groin area was normally where they secreted weapons and contraband.
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Behavioral Descriptors

Behavioral Characteristics of Officers Killed	Behavioral Characteristics of Officers Assaulted
<ul style="list-style-type: none"> • Friendly to everyone • Well-liked by community and department • Tend to use less force than other officers felt they would use in similar circumstances • Hard-working • Tend to perceive duties as more public relations than law enforcement • Service-oriented • Use force only as last resort • Do not follow all of the rules, especially in regard to arrests, confrontations with prisoners, traffic stops, and waiting for available backup • Feel able to read people and situations and will drop guard as a result • Tend to look for good in others • Laid-back and easygoing 	<ul style="list-style-type: none"> • Friendly • Hard-working • Service-oriented • Willing to use force when justified • Do not follow established rules and procedures, especially in regard to arrests, traffic stops, and calling for or waiting for available backup • Feel able to read situations or persons and will drop guard as a result • Survivors <p style="text-align: right;">Source: In the Line of Fire</p>

of their partners, innocent bystanders, and the subjects they encounter. In order to serve and protect the community, law enforcement officers must first be prepared to protect themselves. ♦

Endnotes

¹ U.S. Department of Justice, Federal Bureau of Investigation. *Crime in the United States* (Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, 1994).

² U.S. Department of Justice, Federal Bureau of Investigation. *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers* (Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, 1992).

³ For the complete report, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller, *In the Line of Fire: Violence Against Law Enforcement* (Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, and the National Institute of Justice, 1997). This research was funded in part by a National Institute of Justice grant and

earned the University of Virginia's Jefferson Award for significant research in 1997.

⁴ Bureau of Justice Statistics, *Felony Sentencing in the United States, 1992* (Washington, DC: U.S. Department of Justice, 1996).

⁵ This statement reflects the personal opinion of the offender and is not supported by clinical data.

⁶ The remaining offenders gave no specific answer to the question.

⁷ One officer fired a shotgun once from a distance of 30 feet.

⁸ Other areas addressed in the report include waiting for backup, use of handcuffs, off-duty performance, postassault trauma, and post-incident recovery.

Dr. Pinizzotto and Mr. Davis serve as instructors in the Behavioral Science Unit of the Training Division at the FBI Academy in Quantico, Virginia. Mr. Miller serves as an instructor in the Education/Training Services Unit of the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia.

DNA Profiling Advancement

In October 1997, correctional officer Iran Shuttlesworth was convicted of the kidnaping and first-degree sexual assault of a Milwaukee woman. As they do in many crimes, examiners from the FBI Laboratory had compared the suspect's DNA to that of a semen stain found on the victim's clothing.

At the trial, an examiner testified that the FBI had identified Shuttlesworth as the source of the semen stain.

This case represents a major breakthrough for DNA evidence. Although recognized as the genetic blueprint for an individual, in the past, DNA tests could do no more than show that an individual could not be excluded as a possible source of an evidence stain. Sometimes the odds of another person in a given population having the same DNA were astronomical; nevertheless, scientists could not positively link a specific person with a particular evidence stain.

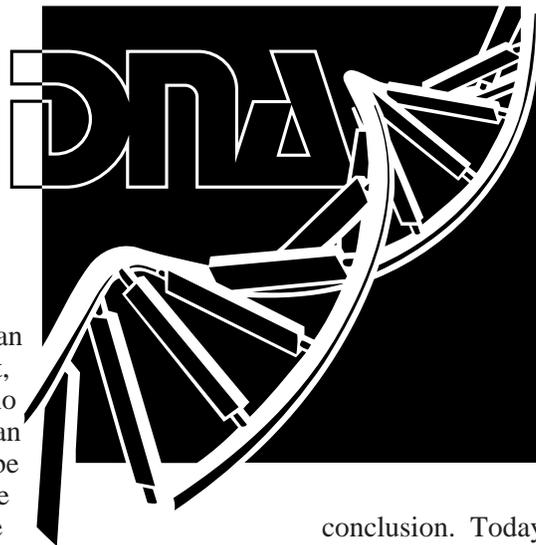
Improved profiling techniques, as well as an unparalleled statistical base, provide the framework for this scientific breakthrough. In a process known as Restriction Fragment Length Polymorphism (RFLP) typing, FBI scientists generate DNA profiles from six sites, or loci, on the DNA molecule. These loci provide enough information to compare with the DNA profiles from evidence stains

and declare a match. Experts then compare the matching profile to various population groups and calculate the likelihood of selecting an individual from the population with a similar profile. If that number proves exceedingly rare, the suspect can be named as the source of the evidentiary stain. The ability to

do so testifies to the FBI's statistical methods. In addition, improvements in RFLP typing have allowed the FBI to examine six loci in less than 2 weeks, a process that once took more than three times that long and involved only four sites. Moreover, once DNA testing required relatively large stains with high-quality DNA, and it took weeks to reach a

conclusion. Today, however, FBI scientists can type DNA from the back of a postage stamp, the shaft of a hair, and the end of a cigarette in a matter of days. Over a decade of research paved the way for the FBI's ability to match suspects to evidence stains.

Now the equivalent of molecule fingerprints, DNA profiles have indeed proven to be valuable investigative tools. As the FBI Laboratory continues to develop innovative technologies and share its expertise with criminal justice professionals worldwide, it takes great strides in bringing offenders to swift and sure justice, while clearing innocent individuals and protecting crime victims. ♦



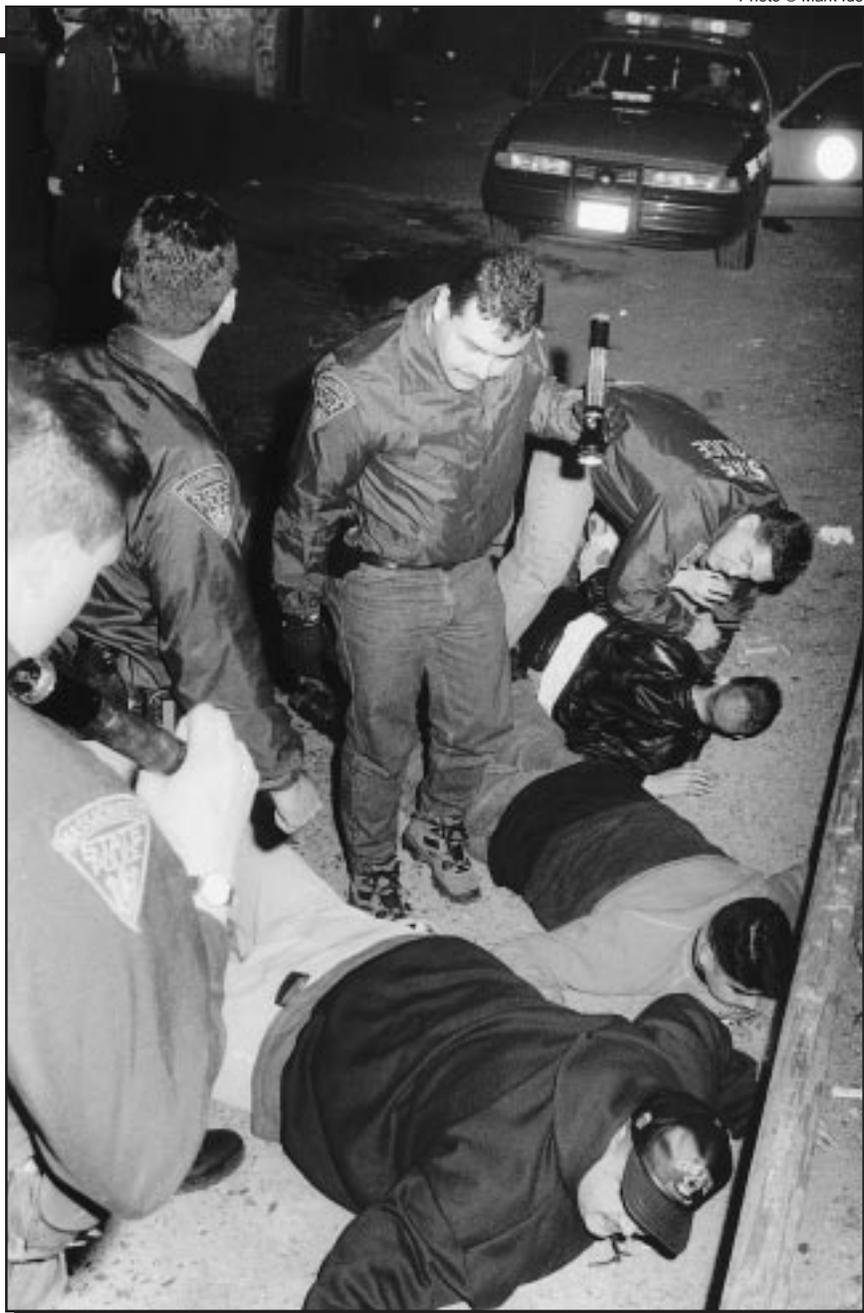
Combating Gangs

The Need for Innovation

By LISA A. REGINI

The skyrocketing crime rate of the past few decades has forced policy makers to adopt innovative anticrime strategies to combat this increase. Law enforcement officials realized that greater community involvement was necessary if anticrime initiatives were to be successful. A factor contributing to this involvement is how a given neighborhood perceives the effectiveness of law enforcement and the viability of anticrime efforts. To lessen the gap between law enforcement and the community it serves, a renewed emphasis was placed on the investigation and prosecution of quality-of-life crimes.¹

There may be no greater factor contributing to a neighborhood's blight than the presence of an organized criminal street gang. As graphically described by the California Supreme Court in a recent case, one community had become an "urban war zone," and a 4-block neighborhood within this community was described as "an occupied territory" where "...murder, attempted murder...vandalism, arson, and theft are commonplace...[and where] area residents have had their garages used as urinals...and even their vehicles turned into a sullen canvas of gang graffiti."²



Communities throughout the country have implemented policing strategies aimed at addressing their criminal street gang problems, hoping to improve the quality of life in a local neighborhood and the community as a whole. These strategies often include the use of long-existing provisions such as loitering

ordinances and injunctions. Many complex constitutional issues arise when these measures are used to combat gang activity. This article examines recent decisions by the Illinois Supreme Court, which found a gang loitering ordinance unconstitutional and the California Supreme Court, which upheld the



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

“
An alternative to combating criminal street gang activity through a general ordinance is to use a carefully tailored injunction that targets specific behavior.
”

use of an injunction to target gang conduct that creates a “public nuisance.”

CRIMINAL STREET GANG LOITERING ORDINANCES

The Chicago Experiment

In 1992, the Chicago City Council held hearings to address the problems gang members were causing in local communities. Community residents testified that gang members loiter as part of a strategy to establish turf, recruit new members, and intimidate rival gangs and members of the local community. As a result of these hearings, the city council enacted the Gang Congregation Ordinance.³ This ordinance provided that:

Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and

remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

The ordinance further provided that it is an affirmative defense to an alleged violation if none of the individuals observed by the officer and ordered to disperse are members of a criminal street gang. Violations of the ordinance are punishable by a fine and up to 6 months’ imprisonment. The ordinance contained a preamble, discussing the concerns that led to its creation, as well as definitions of key terms, such as “loiter” and “criminal street gang.” The authors of the statute left it to the discretion of the police department to enact policy guidelines on enforcing the ordinance.

Once the ordinance enforcement began, numerous defendants attacked the constitutionality of the ordinance. The result of these challenges was a consolidation of approximately 70 cases for consideration by the Illinois Supreme Court in *City of Chicago v. Morales*.⁴ In

this case, the City of Chicago requested that the Illinois Supreme Court reverse a lower court determination that the ordinance was unconstitutional. The lower court held that the ordinance was unconstitutional on several grounds, including that it was unconstitutionally vague, overbroad, and in violation of the First Amendment.⁵ In rejecting the city’s request, the Illinois Supreme Court concluded that the ordinance violated due process of law because it was unconstitutionally vague and lends itself to arbitrary enforcement.⁶ Because the court found the ordinance to be a violation of due process, it declined to reconsider the other findings by the lower court.

Quality-of-Life Statutes and Ordinances

Policing strategies aimed at addressing quality-of-life issues in public areas are not new. To address quality-of-life issues, state legislatures historically have provided law enforcement with a variety of tools such as statutes and ordinances addressing vagrancy and loitering, juvenile curfew laws, and ordinances prohibiting prostitution and aggressive panhandling. The issue often raised with such measures is their ability to survive a constitutional challenge. For example, statutes prohibiting vagrancy and loitering historically have been popular tools for maintaining public order and confer a broad amount of discretion to officers when making enforcement decisions.

The continued viability of such provisions was severely questioned when the U.S. Supreme Court invalidated a vagrancy ordinance in

Papachristou v. City of Jacksonville.⁷ The ordinance permitted an officer to arrest "...rogues and vagabonds, or dissolute persons who go about begging...[and] persons wandering or strolling around from place to place without any lawful purpose or object."⁸ The U.S. Supreme Court concluded that the ordinance was unconstitutionally vague because it failed to provide adequate notice of the proscribed conduct and did not define the criminal behavior adequately, thus encouraging discriminatory and arbitrary enforcement.

The constitutionality of the gang loitering ordinance was analyzed by the Illinois Supreme Court within the legal framework of such decisions as *Papachristou*, which address similar legislative enactments designed to target undesirable behavior. Like many of its predecessors, this ordinance was found to violate due process.

Due Process Challenge of Vagueness

Adequate Notice

Fundamental to the notion of due process is the requirement that a statute provide people of reasonable intelligence an opportunity to distinguish between lawful and unlawful conduct and thus not require them to speculate as to whether certain conduct is prohibited.⁹

As a result of cases such as *Papachristou*, courts routinely have held that broadly worded vagrancy and loitering statutes that do not target other, unlawful conduct are unconstitutional because they fail to provide adequate notice of the proscribed behavior.¹⁰ Relying on this

guidance, the Illinois Supreme Court concluded that the gang loitering notice failed to identify the illegal conduct adequately and made normally innocent activities appear criminal.¹¹

The gang loitering ordinance permitted police officers to order anyone to leave the area whom they reasonably believed to be a criminal street gang member loitering in a public place with others. The term loiter was defined as "to remain in any one place with no apparent purpose." The court concluded that the ordinance did not adequately define the criminal behavior and included innocent conduct, like stepping inside a doorway to avoid inclement weather.

Photo © Mark Ide



The court also rejected the government's argument that the additional element of loitering with a criminal street gang member made the ordinance constitutional. The government's argument maintained that the combination of these two elements brought the ordinance within other decisions that previously upheld loitering statutes and sufficiently informed citizens as to what is forbidden. Examples of

statutes that have survived constitutional scrutiny include loitering to solicit a lewd or unlawful act¹² and loitering in an unusual manner under circumstances that warrant alarm.¹³ The court rejected the government's contention that vagueness would be cured by the additional element of the officer's reasonable belief that one of the persons is a gang member. The court noted that even if an officer has knowledge that an individual is a gang member, there is no requirement that other individuals loitering with the gang member have such knowledge.¹⁴

Arbitrary Enforcement

The second inquiry in the vagueness challenge is whether a statute defines the proscribed behavior sufficiently so that it does not encourage arbitrary and discriminatory enforcement. The U.S. Supreme Court has expressed concern with legislative provisions that fail to provide adequate guidelines to law enforcement and thus "impermissibly delegate basic policy matters to policemen...for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."¹⁵ The Illinois Supreme Court concluded that the gang loitering ordinance's ambiguous language fostered arbitrary and discriminatory enforcement.

While the ordinance was found to be unconstitutional, the Illinois Supreme Court did not suggest that these deficiencies could not be cured by developing a more precise definition of the proscribed behavior, as well as safeguards to prevent arbitrary and discriminatory

enforcement. For example, would an ordinance prohibiting gang members from loitering with the intent to harass or intimidate others survive constitutional challenge?

An alternative approach to combating criminal street gang activity is to use a carefully tailored injunction that targets specific behavior. The U.S. Supreme Court opined that injunctions have some advantages over statutes “in that they can be tailored by a trial judge to afford more precise relief than a statute where a violation of the law has already occurred.”¹⁶ However, the Court also recognized that injunctions carry a potential of censorship and discriminatory application because they are “the product of individual judges rather than of legislatures.”¹⁷ In upholding the issuance of an injunction against a criminal street gang in *Gallo v. Acuna*,¹⁸ the California Supreme Court referenced the advantage of the injunction—the ability to seek a more precise, or surgical, remedy.

CRIMINAL STREET GANG INJUNCTION

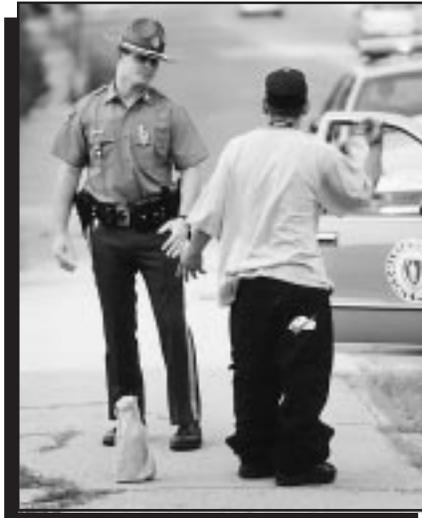
The California Experiment

Officials in several California cities implemented a program to address the problem of criminal street gangs in specific neighborhoods after recognizing the destruction they can cause in a specific, often-clearly defined neighborhood. Several municipalities have used civil injunctions to abate gang activity under the theory that ongoing gang activity is a public nuisance.¹⁹

The judicial remedy of an injunction is a preventive measure to guard against future injury by

requiring a party to refrain from doing or continuing to do certain acts. Before a court will grant this relief, the requesting party must demonstrate that unless the injunction is granted, it will continue to suffer irreparable harm, and remedies at law are inadequate.²⁰ While it is beyond the scope of this article to delineate the differing jurisdictional requirements for the issuance of injunctions, the following discussion addresses the government’s authority to prohibit, or enjoin, certain gang activities that constitute a public nuisance.

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Authority to Issue the Injunction

Many of the acts that are targeted within a criminal street gang injunction are punishable as criminal offenses. Generally, injunctive relief is not deemed to be appropriate if its purpose is merely to enjoin the commission of a criminal act *per se* because such a remedy would effectively punish criminal activity without providing for due process.²¹ However, the mere fact that the

order targets conduct that is punishable as a criminal offense does not preclude a finding that an injunction is appropriate. The conduct that the order targets is not necessarily the criminal activity but, rather, the *nuisance* created by the cumulative effects of many acts, some of which may be criminal.²²

Abating a Public Nuisance

Using an injunction to abate a public nuisance is perhaps the most common use of this form of judicial relief. The term “nuisance” is generally regarded as interference with the use and enjoyment of property, as well as interference with personal interests, such as being subjected to a pattern of acts that are offensive or harmful.²³ A public nuisance affects a community or neighborhood as a whole. While the concept of a public nuisance exists within common law, most jurisdictions have enacted statutes superseding common law definitions.²⁴ When seeking an injunction to abate the ongoing nuisance created by a criminal street gang, the government must ensure that it identifies conduct covered by the definition of nuisance. To support its claim, it is imperative that the government secure the cooperation of neighborhood residents by obtaining signed declarations that describe the conditions they are forced to endure. In *Gallo v. Acuna*, the court recognized that gang members:

Congregate on lawns, on sidewalks, and in front of apartment complexes at all hours of the day and night. They display a casual contempt to notions of law and

order and decency—openly drinking, smoking dope, sniffing toluene, and even snorting cocaine laid out in neat lines on residents’ cars.²⁵

The court concluded that the conduct of the gang members as described by law enforcement and community residents met the definition of a public nuisance.²⁶

Targeting Specific Conduct: Post-Acuna Injunction

Relying on the *Gallo v. Acuna* decision, authorities in Los Angeles, in August of 1997, successfully enjoined members of a criminal street gang from engaging in a number of activities, including:

- Standing, sitting, walking, driving, gathering, or appearing anywhere in public view with any two or more named defendants or known 18th Street Gang members, but not including when all individuals are within a dwelling unit.
- Selling, possessing, or using, without a prescription, any controlled substance or related paraphernalia, including but not limited to, rolling papers and pipes used for illegal drug use or riding a bicycle to facilitate any of the foregoing activities
- Acting as a lookout, whistling, yelling or otherwise signaling with a flashlight or “walkie talkie” or riding a bicycle or other means to warn other person[s] of an approaching law enforcement officer
- Harassing, intimidating, or threatening the peace or safety

of any person by the use of vulgar or abusive language, whether 1) in retribution for any past complaint or to prevent a future complaint about Defendants’ gang and nuisance activities, or 2) for any other purpose; or

- Urinating or defecating in public or any place open to public view.²⁷

“**Several municipalities have used civil injunctions to abate gang activity under the theory that ongoing gang activity is a public nuisance.**”

Recognizing that this order has not yet been challenged, it is illustrative of the types of behavior the government has attempted to enjoin.

POTENTIAL FIRST AMENDMENT CHALLENGES

Gang members targeted by an injunction may allege that it impermissibly infringes on their constitutionally protected rights. Due to the nature of the conduct targeted in the injunction, the gang members likely will allege unconstitutional interference with their right of association and freedom of speech and that they have been denied due process.

Right of Association

The injunction in *Gallo v. Acuna* prohibited gang members from gathering, walking, and otherwise associating with one another in the specified area.²⁸ The lower California court held that this prohibition violated First Amendment principles guaranteeing individuals the right of association.²⁹ The California Supreme Court disagreed.

The U.S. Supreme Court has recognized a limited right of association but specifically has rejected the proposition that the First Amendment affords absolute protection to associations. The U.S. Supreme Court identifies two forms of associations entitled to First Amendment protection: 1) those with intimate value, and 2) those that are instrumental to the expression of First Amendment values.³⁰

Intimate Association

The U.S. Supreme Court has held that inherent in the Constitution is the right to “attend the creation and sustenance of a family—marriage, the raising and education of children...and cohabitation with one’s relatives.”³¹ Implicit in this is the need to maintain intimate associations, meaning those characterized by their relative smallness, the high degree of selectivity in decisions to begin and maintain affiliation, and the seclusion from others in critical aspects of the relationship.³²

Expressive Association

The Constitution also is said to protect associations whose members are joined together to pursue “a wide variety of political, social,

economic, educational, religious, and cultural ends.”³³ Such associations are afforded protection because their existence is essential to the expression of speech, religious principles, and political views.

Application to Criminal Street Gangs

Based on the above U.S. Supreme Court guidance, the court in *Gallo v. Acuna* stated: Without minimizing the value of the gang to its members as a loosely structured, elective form of social association, that characteristic is in itself insufficient to command constitutional protection within the circumscribed area of Rocksprings.³⁴

The court assumed that the gang members may share common views and feel connected by the association and that even some members may be related, but rejected the notion that this brought them within the definition of intimate association or that the gang was engaged in expression that furthered First Amendment interests. Furthermore, the court noted that the prohibition only extended to the 4-block target area (Rocksprings) and applied only during those hours of the day in which most of the criminal and intimidating conduct occurs.³⁵

Furthermore, assuming there are First Amendment associational interests implicated by the criminal street gang injunction, such interests arguably are outweighed by the compelling interests of the government in abating the ongoing nuisance created by the gang’s conduct. This goal is not achievable by using significantly less intrusive means.³⁶

Infringement on Free Speech

The government may seek to enjoin conduct that includes some form of speech. For example, the injunction may address harassing, intimidating, or threatening others, including using abusive language. Attempts by the government to place restrictions on speech carry a presumption of unconstitutionality. However, courts have recognized that not all forms of speech are protected and that even if they are, there may be instances where the interests at stake are sufficiently compelling to permit the application of reasonable restrictions.

Photo © Mark Ide



In the criminal street gang injunction, the government may seek to enjoin the use of so-called “fighting words,” meaning words “which by their very utterance tend to incite an immediate breach of the peace.”³⁷ Targeting such speech likely would not violate the First Amendment if the restrictions are designed to address threatening speech that carries with it a threat of group force or retaliation because

such speech likely would not be deemed protected.³⁸

A heavy burden is imposed on the government if it seeks to restrict such expression as the use of verbal and hand signals gang members use to identify themselves. The U.S. Supreme Court has recognized that injunctions can place content-neutral restrictions on protected speech as long as the injunction affects no more speech than necessary in order to serve the government’s interest.³⁹ Restrictions that target harassing speech and speech designed to intimidate likely would survive challenge because the goal is to address a form of communication and its threatening message and not the content of the communication itself.⁴⁰

If the restriction is content based, a more stringent standard is applied, requiring the government to show that a compelling interest is at stake and that the restriction has been narrowly drawn to achieve that end.⁴¹ Rarely will the First Amendment be found to tolerate a content based restriction on speech.⁴² Whether the proposed restriction is content neutral or content-based is a fact sensitive inquiry and would depend on the expression targeted. It is likely that a court would perceive a restriction that seeks to prohibit the expression of gang identity to be content based. The ability of such a restriction to survive challenge is doubtful because it would be difficult to show that merely restricting individuals from identifying their gang membership would diminish the more significant nuisance caused by the gang’s conduct.

Due Process

In *Gallo v. Acuna*, the defendants raised a due process challenge not unlike that levied against statutory measures addressing conduct similar to that named in the injunction. The defendants claimed that the measure violated due process as being over broad and ineffectual because of vagueness. The contention that the injunction is overbroad is contrary to its very definition—a remedy that is narrowly crafted and surgically applied to a specific, target area against individuals who are informed beforehand of the government’s efforts. Further, its terms reach only those specified in the order and do not extend to third parties. As stated by the court in *Acuna*:

Like the injunction in *Madsen*, the trial court’s interlocutory decree here does not embody the broad and abstract commands of a statute. Instead, it is the product of a concrete judicial proceeding prompted by particular events—inimical to the well-being of the residents of [the target area]—that led to a specific request by the city for preventive relief.⁴³

A provision can be sufficiently specific and clear but still violate due process if it reaches conduct beyond that necessary to address the significant governmental interests at stake. The conduct the government seeks to prohibit would thus have to be linked clearly to the existence of the nuisance. The participation of the residents of the targeted area is critical because it will be through their declarations, along with the collection of

criminal history information on the subjects, that this nuisance link can be established.

As discussed earlier in the context of the loitering ordinance, due process challenges also involve claims that a provision is unconstitutionally vague because it fails to provide people with advance notice

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An injunction that is narrowly tailored to address the conduct creating the nuisance and supported by ...evidence should survive a vagueness challenge.
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of the proscribed behavior and lends itself to arbitrary and discriminatory enforcement. An injunction that is narrowly tailored to address the conduct creating the nuisance and supported by declarations and other evidence should survive a vagueness challenge. The nature of the injunction itself argues against vagueness because it addresses specific conduct by named individuals who have been provided notice before its enforcement⁴⁴ and given an opportunity to appear in court to challenge the government’s request.

CONCLUSION

To combat the escalation of crime, especially the problems presented by criminal street gangs,

many policy makers in the law enforcement community have turned to innovative strategies, such as civil injunctions and new ways to use old statutory provisions. Challengers to these approaches often raise claims that the government is interfering with constitutionally protected rights. Yet, the Constitution does not permit every person the unfettered right to do as he or she wants. As stated recently by the California Supreme Court in enjoining certain conduct of a criminal street gang:

Liberty unrestrained is an invitation to anarchy. Freedom and responsibility are joined at the hip. Wise accommodation between liberty and order always has been, and ever will be, indispensable for a democratic society.⁴⁵

This judicial support for the use of an aggressive approach to combat gang activity certainly is not an invitation for the government to act without restraint. It does illustrate, however, that the courts recognize the government’s responsibility to assist those who are truly suffering—the residents in those small neighborhoods decimated by the activities of local street gangs. ♦

Endnotes

¹ For a discussion on the resurgence of investigation and prosecution of quality of life crimes see William J. Bratton, *The New York City Police Department’s Civil Enforcement of Quality-of-Life Crimes*, J.L. & Pol’y 447 (1995).

² Chicago Municipal Ordinance, 8-4-015(c)(1), the Gang Congregation Ordinance, 6/17/92.

³ *People v. Acuna*, 929 P. 2d 596, 601 (Cal. 1997), cert. denied, 117 S. Ct. 2513 (1997).

⁴ 1997 WL 638789 (Ill. 10/17/97) (No. 80479, 80485, 80668).

⁵ *City of Chicago v. Youkhana*, 660 N.E.2d 34 (Ill. 1995).

⁶ *Morales* at 63892.

⁷ 405 U.S. 156 (1972).

⁸ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 157 (1972), citing Jacksonville Ordinance Code §26-57.

⁹ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) (“[all persons] are entitled to be informed as to what the State commands or forbids”); and *Kolender v. Lawson*, 461 U.S. 352 (1983).

¹⁰ *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 92 (1965) (antiloitering ordinance found to be unconstitutionally vague because it allowed a person to “stand on a public sidewalk only at the whim of any police officer”).

Examples of other antiloitering statutes found to be unconstitutional include *Powell v. Stone*, 507 F.2d 93 (9th Cir. 1974); *Ricks v. District of Columbia*, 414 F.2d 1097 (D.C.Cir. 1968); and *People v. Berck*, 300 N.E.2d 411 (N.Y. 1973).

¹¹ *City of Chicago v. Morales*, 1997 WL 638789, 638794, and *Papachristou* at 163.

¹² *People v. Superior Court*, 758 P.2d 1046 (Cal. 1988).

¹³ *State v. Ecker*, 311 So. 2d 104 (Fla. 1975); and *Bell v. State*, 313 S.E. 2d 678 (Ga. 1984).

¹⁴ *Morales* at 638796, citing *Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997) for proposition that “actual knowledge on part of the defendant of other party’s gang membership status [is necessary] in order for injunction to pass scrutiny under the vagueness doctrine.”

¹⁵ *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972); and *Kolender v. Lawson*, 461 U.S. 352 (1983).

¹⁶ *Madsen v. Women’s Health Center*, 114 S.Ct. 2516, 2524 (1994).

¹⁷ *Id.* at 2524 and 2539, quoting the dissenting opinion of J. Scalia.

¹⁸ 929 P.2d 596 (Cal. 1997).

¹⁹ For a practical discussion of the process of obtaining a criminal street gang injunction, see Jeffrey R. Cameron, M.P.A., and John Skipper, “*The Civil Injunction - A Preemptive Strike Against Gangs*,” *FBI Law Enforcement Bulletin*, November 1997, 11-15.

²⁰ *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486 (9th Cir. 1996).

²¹ *U.S. v. Dixon*, 509 U.S. 688 (1993) (Supreme Court determined that prosecution of the defendant for violation of a court order and subsequent, second prosecution for engaging in the conduct that was the basis of the court order was barred by the Double Jeopardy Clause; the Supreme Court noted that the use of a court

order to prevent the commission of a criminal act was unusual). *In re Debs*, 158 U.S. 564 (1895).

²² *Airlines Reporting Corp. v. Barry*, 825 F.2d 1220, 1222 (8th Cir. 1987) (“No court, state or federal, is barred from enjoining activity that causes or threatens injury to property merely because the activity, in addition to being tortious, is a violation of the criminal law”).

²³ *International News Service v. Associated Press*, 248 U.S. 215 (1918).

²⁴ *Gallo v. Acuna*, 929 P.2d 596, 603 (Cal. 1997) (“The public nuisance doctrine is aimed at the protection and redress of *community* interests and, at least in theory, embodies a kind of collective ideal of civil life, which the courts have vindicated by equitable remedies since the beginning of the 16th century”).

²⁵ *Id.* at 601.

²⁶ *Id.* at 604. The California Court of Appeals struck down several provisions of the original injunction as impermissibly infringing on constitutional rights. The Court did, however, uphold several provisions, such as: a) trespassing or encouraging others to trespass on private property; b) blocking egress and ingress to public sidewalks or any driveways in the target area; c) discharging any firearm; d) demanding entry into any residence; e) littering in public; and f) urinating or defecating in a public place or anywhere open to public view. *Gallo v. Acuna*, 40 Cal.Rptr.2d 589, 592-600 (Cal. App. 6 Dist. 1995).

²⁷ See *People v. 18th Street Gang*, No. Bc175684 (L.A. Superior Court 1997), Government’s Notice of Motion and Motion for Injunctive Relief to Abate a Public Nuisance. In the 11/12/97 edition of *USA Today*, success of the government’s efforts in abating the activities of the 18th Street Gang in Los Angeles were discussed in an article titled “Injunction Quashes L.A. Gang.”

²⁸ The defendants were enjoined from: standing, sitting, walking, driving, gathering or appearing anywhere in public view with any other defendant...or with any other known “VST” (Varrío Sureño Town or Varrío Sureño Treces) or “VSL” (Varris Sureño Locos) member. *Gallo* at 608.

²⁹ See *Gallo v. Acuna*, 40 Cal. Rptr. 2d 589 (Cal. App. 6 Dist. 1995).

³⁰ See *Roberts v. United States Jaycees*, 468 U.S. 609 (1984); and *Dallas v. Stranglin*, 490 U.S. 19 (1989).

³¹ *Roberts v. United States Jaycees*, 468 U.S. 609, 619 (1984).

³² *Id.* at 620.

³³ *Id.* at 622.

³⁴ *Acuna* at 608-609.

³⁵ *Id.* at 609. See also *Madsen v. Women’s Health Center*, 114 S.Ct. 2516, 2530 (1994) (“First Amendment [protection] does not extend to joining others for the purpose of depriving third parties of their lawful rights”).

³⁶ See *Roberts v. United States Jaycees* at 623 (limitations may be imposed on expressive associations without violating the First Amendment where the government can demonstrate that compelling interests are at stake); and *Madsen v. Women’s Health Center*, 114 S.Ct. 2516, 2528-2529 (Supreme Court upheld noise restrictions on protestors near abortion clinics as the order burdened no more speech than necessary to ensure the health and well-being of patients but struck down a restriction on “images observable” as restricting more speech than necessary).

³⁷ *R.A.V. v. St. Paul*, 505 U.S. 377 (1992); and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

³⁸ The *Acuna* case is instructive to the extent that the court upheld the prohibition enjoining defendants from “intimidating, annoying, harassing...residents of Rocksprings...known to have complained about gang activities. *Acuna* at 613, quoting paragraph a) of the injunction.

³⁹ *Madsen v. Women’s Health Center*, 114 S. Ct. 2516, 2525 (1994). The Supreme Court also distinguished this case from cases involving statutes that have the effect of restricting speech, stating that “if this were a content-neutral, generally applicable statute, instead of an injunctive order,...we would determine whether the time, place, [and] manner regulations were ‘narrowly tailored to serve a significant governmental interest.’ ” *Madsen* at 2524, quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

⁴⁰ *Madsen* at 2524.

⁴¹ *Id.*

⁴² *R.A.V. v. St. Paul*, 505 U.S. 377 (1992).

⁴³ *Acuna* at 610.

⁴⁴ *Id.* at 612-614.

⁴⁵ *Id.* at 603, quoting *Kovacs v. Cooper*, 336 U.S. 77, 89 (1949).

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

The Bulletin Notes

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



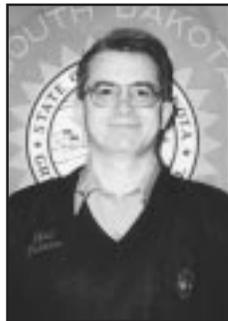
Officer Cousar

Officer Anthony Cousar of the Sumter, South Carolina, Police Department responded to a report of a motor home that apparently had run out of gas in the middle of the road. He directed traffic at the scene while the driver of the motor home tried to start its engine. As the engine finally started, a small explosion occurred and a fire broke out at the only exit from the motor home. While other officers at the scene tried to extinguish the fire, Officer Cousar and a civilian pulled the driver out through a window. When he learned the driver's 10-year-old granddaughter still was inside, Officer Cousar ran through the flaming motor home and carried her out. As he left the vehicle, his trousers caught on fire. He immediately put out that fire, and although he sustained first-degree burns on his legs, he still assisted the other officers at the scene in controlling the motor home fire until the fire department arrived.

Officer Cousar's quick thinking saved two lives and prevented injury to the occupants of the motor home.



Officer McMahon



Officer Johnson

While on patrol during the early hours of a frigid winter morning, Officers Scott McMahon and Chad Johnson of the Watertown, South Dakota, Police Department spotted a van that was running while attached to a vehicle dolly in a parking lot. When they approached, they found a man on his hands and knees pinned between a pickup truck and the dolly by his head and shoulders. Although still conscious, the man had a cut on his forehead and was suffering from hypothermia. The outside temperature was -17 degrees with a wind chill factor of approximately -30 degrees. The man told the officers he had been positioning the dolly to carry the pickup truck, but the

tongue of the dolly, which was attached to the van, popped loose, dropping the dolly onto his face and pinning him to the icy parking lot. He said he had been trapped for approximately 30 minutes. Officers McMahon and Johnson pushed down on the tongue of the dolly to relieve the pressure on the man's face while calling for an ambulance and assistance from the fire department. They continued to hold down the dolly and covered the man with blankets to conserve his body heat until more officers and the fire department arrived. The fire department used air-lift equipment to raise the pickup truck and extricate the trapped man. He was transported to a local hospital and treated for the facial wound and hypothermia. Without the vigilance and assistance of Officers McMahon and Johnson, the man surely would have died from exposure to the extremely cold temperatures.

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Patch Call



The patch of the Beaufort, South Carolina, Police Department depicts the city's seal. Pictured in the seal are a few of the scenic attractions for which Beaufort, founded in 1711, is known, such as an antebellum house, an old church, and the local bay.



The West Fargo, North Dakota, Police Department patch features wheat, a wagon, a bull, and Interstates I-94 and I-29. The wheat and wagon represent the local Red River Valley as the breadbasket of the world and the gateway to the west. The bull symbolizes West Fargo's large stockyards.