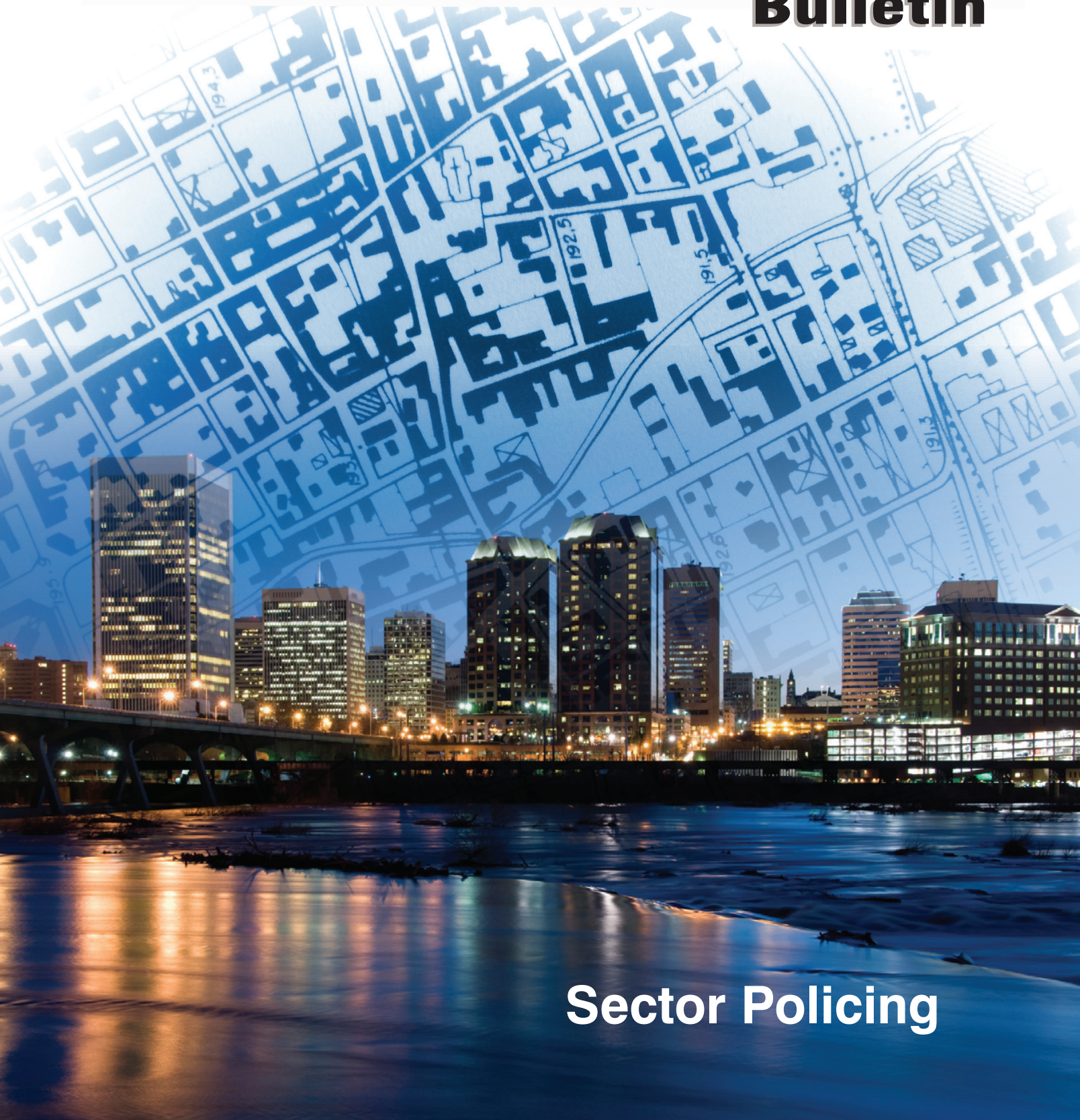
U.S. Department of Justice
Federal Bureau of Investigation

FBI Law Enforcement Bulletin

April 2010



Sector Policing

April 2010
Volume 79
Number 4

**United States
Department of Justice
Federal Bureau of Investigation
Washington, DC 20535-0001**

**Robert S. Mueller III
Director**

Contributors' opinions and statements should not be considered an endorsement by the FBI for any policy, program, or service.

The attorney general has determined that the publication of this periodical is necessary in the transaction of the public business required by law. Use of funds for printing this periodical has been approved by the director of the Office of Management and Budget.

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135.

Editor
John E. Ott

Associate Editors
David W. MacWha
Bunny S. Morris

Art Director
Denise Bennett Smith

Assistant Art Director
Stephanie L. Lowe

The Training Division's Outreach and Communications Unit produces this publication with assistance from the division's National Academy Unit. Issues are available online at *http://www.fbi.gov.*

E-mail Address
leb@fbiacademy.edu

Cover Photo
© Photos.com/shutterstock.com

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

FBI Law Enforcement Bulletin

Features

Should Sector Policing Be in Your Organization's Future?
By W. Michael Phibbs
1
Law enforcement agencies may find that transitioning to sector policing can increase the effectiveness and accountability of police functions.

Futures Orientation in Police Decision-Making Practices
By Michael Buerger and John Jarvis
14
A Canadian approach can offer an alternative to the SARA model that gave the law enforcement world a foundation it could use at the line level of policing.

Confessions and the Constitution
By Carl A. Benoit
23
Law enforcement officers must understand the implications of obtaining confessions in violation of constitutional safeguards.

Departments

8 **Perspective**
Universal Policing

12 **Bulletin Reports**
Children and Violence
Tort Cases
Public Defender Offices

19 **Notable Speech**
The Most Important Profession

21 **Unusual Weapon**
Shock Lighter

22 **Bulletin Honors**
Gurnee, Illinois

ISSN 0014-5688 USPS 383-310

Should Sector Policing Be in Your Organization's Future?

By W. MICHAEL PHIBBS, M.H.R.

To increase the effectiveness and accountability of police functions, some departments have transitioned to the sector, or zone, style of operations, sometimes also referred to as geographic, or geo, policing. Sector policing is an innovative, proactive approach to restructuring how law enforcement agencies conduct their overall crime-fighting strategies, personnel deployment, and allocation of resources to improve their effectiveness and efficiency.[1] The change from traditional methods to sector policing creates new demands on every officer at all levels by requiring enhanced creative thinking and more effective leadership and management skills.

Today's police forces have encountered changes in internal demographics. Employees now hold advanced degrees or have succeeded at other professions before entering law enforcement. Agencies also must deal with generational differences wherein younger officers demand more responsibility and opportunities for development and fast-track advancement. These individuals bring innovative ideas and need the opportunity to be heard. To help modern law enforcement organizations, the author presents some groundwork for determining if transitioning to sector

policing can provide an effective approach to handling such issues.

UNDERSTANDING THE DIFFERENCES

In traditional policing strategies, agencies assign their officers to precincts, large geographical areas with a captain or commander in charge. This approach applies a centralized command philosophy that employs a hierarchical structure with overall responsibility for the success or failure of the organization at this command level. The command and control structure resembles that developed in the military, adapting the centralized authority with leadership and decision-making functions concentrated at the top of the organization. Operations and enforcement of policies are accomplished through a hierarchal management system wherein command-level officers make decisions and give directions to subordinates subject to disciplinary action if they fail to carry them out. Over time, this style of command and control can reward managerial abilities at the expense of leadership.

In contrast, sector policing uses a divisional structure emphasizing decentralized command mechanisms that break down decision-making authority into smaller parts based on predetermined criteria and allows the individuals who have hands-on knowledge of the problems to make decisions. The sectors may be business districts, neighborhoods with similar characteristics, or simply small geographical areas.

Sergeant Phibbs serves with the Richmond, Virginia, Police Department and is a consultant with Integritas Leadership Solutions.

"...sector policing uses a divisional structure emphasizing decentralized command mechanisms that break down decision-making authority into smaller parts...."

This approach creates a flatter organizational structure with overall responsibility and accountability pushed down to the lowest functional unit led by a sector commander. When implemented correctly, this proactive, rather than reactive, philosophy encourages immediate response to problems, provides more opportunity for development and responsibility of the lower ranks, and fosters a spirit of out-of-the-box creativity. Increased employee satisfaction often becomes a welcome by-product.

PLANNING THE PROCESS

Changing to a new philosophy of policing takes courage because it can prove traumatic. Whenever agencies undertake a major alteration, they should expect a certain amount of resistance. While some employees may feel that they will lose perceived personal power, others may not want new responsibilities. Some simply may fear the unknown. Successful change requires an alignment of the culture of the organization and its new operational philosophy. Before beginning a transition to sector policing, the agency should conduct a comprehensive needs analysis at the organizational level to determine if change is even necessary and objectively identify the challenges it will face. Then,

it should answer the following questions:

- Why does the organization need to change?
- Does it have a clear understanding of sector policing?
- What is the benefit of changing to the new style?
- What are the agency's current capabilities?
- What organizational structural changes will be required?
- How will the organization evaluate the system to determine effectiveness?
- What are the training needs of the employees?
- How will the agency get buy in from the employees?
- Does it have the technological resources?
- How will it engage the employees and citizens?
- What weight will it assign to each call for service?

The end product should accurately reflect the present capabilities and weaknesses to enable a comparison of the gaps that exist with the anticipated future functions and needs of the organization. Because the restructured agency will be fundamentally different, advanced planning is necessary to prepare the employees to make the transition as smooth as possible. What may be fairly radical changes will test the leadership and management abilities at lower levels. Two essential considerations in the planning process involve an understanding of the implementation strategy and process and a determination of the needs of skill gaps in supervisor development.

> ***"Successful change requires an alignment of the culture of the organization and its new operational philosophy."***

If switching to sector policing was a well-thought-out decision and, in fact, needed, then the justifications should be self-evident. Open communication can help alleviate resistance. Employee forums can provide an excellent vehicle to discuss the reasons for the change and allow a cascading message through the organization to explain the anticipated outcomes. Further, a forum affords employees the opportunity to voice their issues and concerns back to their leaders. Once the gears of change have begun to turn, the agency must inform employees of time tables and give them progress reports. Keeping people advised of changes helps to encourage buy in because if employees develop a perception of being kept in the dark, they can become disengaged and resentful. When transitioning to sector policing, officers need to know what is expected of them, both in terms of new responsibilities and accountabilities and how the new approach directly impacts them.

Sector Boundaries

Creation of sector boundaries is of paramount consideration. Determining the number and type of service calls for the areas will allow for an accurate staffing analysis for personnel deployment. Giving each specific call a weight of priority can provide the information needed during the initial determination of sector staffing. A careful examination of the calls for service can influence the schedule that officers work. The data will show when and where officers are most needed, thereby enabling the organization to adjust individual shift staffing accordingly. After the first year, it should evaluate the number of calls for service that each sector receives against the overall call volume to ensure efficiency across the agency. In theory, every officer should handle roughly the same weighted equivalent of calls for service.

If a significant imbalance in calls occurs, the organization has two options: 1) realign the boundaries of the sectors or 2) shift officers from one area to another. Both have positive and negative consequences. In practice, however, it proves easier to move officers to another zone than to redraw sector boundaries. Shifting officers can have political implications when community groups and government officials learn that their sector officers are being transferred to another location. Obviously, this demonstrates the importance of creating boundaries with care and staffing them properly from the beginning.

Shifting the number of officers among the areas also varies the span of control at the sector and precinct levels. Optimal span of control for any direct supervisor is five to eight subordinates. If each sector has six shifts and each shift has one first-line direct supervisor who oversees between five to eight people, one location may have as few as 30 officers while another may have 48 assigned, yet both remain within acceptable span-of-control limits. This end result of some zones having more officers assigned than others reinforces the need for decentralized decision-making authority at the lower levels. Assigning the same number of people to each sector will create imbalances with some areas understaffed based on call volume. Such a situation almost certainly will result in morale problems and less than adequate policing.

© Photos.com

Operational Sustainability

Continuity of operations sounds simple. However, most operations resemble assembling a jigsaw puzzle, and nothing goes as planned. In sector policing, continuity of operations is essential for overall effectiveness and efficiency in the precinct, which can have many sectors assigned. The precinct is a location for the administrative office of the sector commander and a place where officers report. Because sector commanders are judged on successes or failures only within their individual sectors, they must recognize the potential "silo" effect of becoming solely focused on what is occurring inside their areas without staying aware of what takes place outside them. Sector commanders who fixate on their own zones can become blind to situations arising in neighboring ones that may be about to impact theirs. Instead, they should take a proactive stance and look at the issues affecting neighboring locales so they can create strategies to get ahead of the problems before they reach them. Precinct commanders who understand this can devise individual crime-fighting strategies and initiatives to develop a spirit of cooperation, rather than competition, among sectors. Uncoordinated sector strategies, no matter how outstanding, when folded into an overall precinct strategy may conflict.

The ability to lead and develop continuity of operations at the precinct level is essential, and if not established at the outset, a piecemeal approach can develop. The successful precinct commander needs to have the skills of a mid-level mediator when looking at the overall picture, thus ensuring continuous communication between the sectors and the continuity of overall long-range strategies and short-term tactics. The most effective sector commanders understand the interlocking connections between adjoining zones and, thus, willingly share data. All sectors and precincts should exchange data and information to determine crime patterns that cross both

boundaries and would necessitate the development of initiatives from multiple sectors. One of the most important actions a precinct commander performs is obtaining and coordinating additional resources to help sector commanders when situations arise that the areas cannot handle themselves.

Clearly, the greatest impact in the transitioning will be on the command and control function of the organization. Sector policing creates new challenges and calls for competence in leadership and management skills at lower levels. The change from a centralized to a more decentralized structure requires that the traditional precinct and sector commanders receive training in management and leadership techniques to help them design the operational theories, long-range strategies, short-term action plans, and targeted development of personnel that will effect positive change. While good management sets the processes and procedures for efficiency, good leadership positively influences people and enhances overall effectiveness.

Through the decentralization process, responsibility and accountability are being pushed down to the sector level. Many organizations never have entrusted such obligations to officers at the lower levels. This requires individual maturity and the ability to conduct critical self-assessment. Identified deficiencies should not be considered a sign of weakness but an anticipated condition of the changeover and an opportunity for professional development throughout the organization.

> ***"Determining the number and type of service calls for the areas will allow for an accurate staffing analysis for personnel deployment."***

As to sector leadership, creating a vision does not guarantee success, but failure to have a vision will ensure that it does not happen. Sector commanders will have the opportunity to make bold changes that immediately impact their areas. The implementation of these must proceed in the context of the overall vision of the sector; strategy and tactics are the vehicles to realize success. Creation of an overall vision and mission statement sets the tone for what the commander wants to accomplish and should be forward thinking while still accounting for the individuality of the sector. A cookie-cutter approach that does not consider the unique characteristics and variable nature of the areas will prove counterproductive. A well-thought-out vision will create a clear line of sight to direct the frontline officers' actions toward meeting the goals and help ensure the overall long-term success of the sector. Constant and open communication will create synergy between the vision and the goal-setting efforts and develop a spirit of collaboration.

Situational Awareness

Because sectors are different, their commanders must analyze the current state of their areas and create a profile that can identify the challenges, opportunities, resources available, officer capabilities, and responsibilities for specific tasks. Based on the sector profile, commanders can devise a map for such metrics as long-, medium-, and short-term goals and augment them with initiatives and action plans that contain well-thought-out and interlinked steps.

Sector commanders can benchmark initial conclusions and use them as a baseline metric to judge effectiveness and efficiency of overall strategies and timetables. These benchmarks allow the commanders to create an overarching vision listing essential tasks that they must complete and provide a

guide for reaching goals. All plans should have flexibility built in to deal with unanticipated problems. During this phase, SWOT (strengths, weaknesses, opportunities, and threats) analysis should be included to show the strengths and weaknesses of the sector and allow the commanders to maximize their opportunities and remedy the threats.[2] Many organizations fail to understand what can constitute a threat. In sector policing, anything beyond the zone constitutes the outside environment. For example, because of the pressure to perform at the sector commander level, these leaders will want to recruit highly skilled officers to gain an advantage. This can happen because, as with most human beings, officers want to work for leaders who create and communicate a clear vision of what they want to accomplish and how they intend to get there. Effective sector commanders prevent such losses by not only creating a vision for their areas but also developing their personnel to fill individual skill gaps and helping them attain their career aspirations.

Effectiveness as a sector commander requires competency as both a leader and manager. Such individuals must understand the SWOT system and how to properly implement it when developing a long-range strategy for overall crime prevention, along with realistic short-term goals and action steps to address immediate concerns. Successful sector commanders employ more strategic development and rely less on tactical implementation. Traditionally, officers promoted to the second level of supervision would have great responsibility to implement effective tactics. Now, however,

© Photos.com

they should distance themselves from hands-on operation and delegate that authority to the first-line supervisor. For sector commanders, their principle task centers on using data and other empirical information to develop a strategic plan for their area, with the main function becoming crime management. The individual shift supervisor reporting to the sector commander has responsibility for time management and the overall effectiveness and efficiency of day-to-day operations.

IMPLEMENTING GOALS AND ACTION PLANS

The assessment and implementation process involves identifying the strengths, opportunities, and weaknesses of the organization.[3] While most commanders can point out strengths and opportunities, identifying weaknesses proves difficult. Weaknesses could include the officers who have a half-hearted commitment to the goals and the community's unwillingness to get involved. Effective leadership and two-way communication can overcome both.

Creative Thinking

Sector commanders should capitalize on the knowledge of all personnel. The ability to effectively change is limited only by the imagination and dedication of the officers assigned to the sector. As the organization pushes down responsibility to meet goals to the lower levels, opportunities for officers to think outside the box increase.

During the implementation phase, short-term objectives, initiatives, and action plans must be used as a scorecard against the long-term strategic goals. Initiatives could include a targeted crime trend, officer training, and steps toward community involvement, and all can be going on at the same time. The key is to have a specific measure to determine the degree of success for each initiative at

the end of the specified period. Sector commanders should employ the SMART (specific, measurable, attainable, realistic, and timely) process in creating short-term goals.[4] Action plans can be further broken down into action steps that list the who, what, and when of responsibilities and become a metric for accountability.

Day-to-Day Operations

Working with and through the first-line supervisors is not only imperative for effective day-to-day management of the sector but also for development of the organization's future leaders. Even though sector commanders have complete responsibility for their areas, they cannot be available all of the time and must trust their first-line supervisors to have the skills and desire to meet the goals of the sector. The abilities of sector commanders to accomplish goals are directly related to those of their subordinate leaders to lead and manage. Decisions must be made according to the level of direct autonomy that first-line supervisors have for taking such actions during their shifts. In a simple formula, the amount of unrestricted control over the operations of the officers can be directly compared with the level of freedom that first-line supervisors have to make decisions.

As an example, when personnel from different sectors are assigned to report to the same shift, does the sector commander relay orders through the first-line supervisor or go directly to the officers assigned? In the first case, the sector commander entrusts that the first-line supervisor accurately and timely notifies the shift officers about the orders. When multiple sector commanders give different orders, the possibility exists for the first-line supervisor to show loyalty to one sector over another and not give equal priority to the directives. Conversely, in the latter situation, if the sector commander gives orders directly to the officers and bypasses the first-line supervisor, the commander can hold the officers directly accountable for the results; however, the first-line supervisor may not be able to accurately plan and implement time management duties. How orders are delivered and officers are held accountable reiterates the author's original suggestion: organizations should carefully think through the decision to change to sector policing and complete a thorough plan of the implementation process.

> ***"The abilities of sector commanders to accomplish goals are directly related to those of their subordinate leaders to lead and manage."***

CONCLUSION

Sector policing has great potential for law enforcement agencies seeking to provide increased effectiveness in crime-fighting strategies and better development of community relationships, as well as providing opportunities for challenging and developing their officers. Before beginning any major change in operational philosophy, they should undertake an in-depth realistic analysis to show the amount of organizational preparation needed. Then, opportunities for success will be understood within the context of changing from one organizational philosophy to another, initiated with a clear understanding of the impact on the organizational structure and processes necessary to carry out the endeavor.✦

Endnotes

[1] The views expressed in this article reflect those of the author and should not be considered as representing an official position of the author's employing agency.

[2] For additional information, see Randy Garner, "'SWOT' Tactics: Basics for Strategic Planning," *FBI Law Enforcement Bulletin*, November 2005, 17-19.

[3] The author adapted information in this section from *Essentials of Strategy* (Boston, MA: Harvard Business School Press, 2006) 22-23, 151.

[4] Garner, 18.

Perspective

Universal Policing
Counterterrorism Lessons from Northern Ireland

By Justin Schoeman

Over the past several hundred years, ongoing conflicts have occurred in Northern Ireland between members of the Catholic and Protestant communities. This feud, most recently known as The Troubles, has evolved from a local religious clash to an insurgency movement against Northern Ireland and British authorities. The Police Service of Northern Ireland worked closely with the British military to end escalating violence in the region. The relationship between these two bodies developed from the police supporting the military and vice versa. With the use of counterinsurgency tactics, the government of Northern Ireland worked with the Catholic community and members of the insurgency to compromise on dividing issues.[1]

Lessons learned from counterinsurgency efforts in Northern Ireland incorporate fundamental principles both universal to people across the globe and capable of cutting through cultural lines. Therefore, they could be applied to similar battles in Iraq and Afghanistan. The Northern Ireland authorities successfully phased out British conventional military to allow for police supremacy, creating a police force that the people of Northern Ireland perceived not only as legitimate but one that addressed grievances within the disgruntled community as well.

History

The struggle in Ireland dates back as far as 1691 when the British military defeated Irish General Patrick Sarsfield and continued to occupy Ireland. This loss was the last organized resistance to English rule in Ireland; the new opposition involved conflict waged without rules and by irregular methods.[2] As Ireland remained under British rule for hundreds of years, the feud between the Protestants and the Catholics became extremely bitter. The Irish Catholics felt marginalized due to

the closeness between the Protestants and the British government. Random acts of violence between Catholics and Protestants continued as the years passed. In May 1921, the Government of Ireland Act divided Ireland into the six predominantly Protestant counties of Ulster in the north and the remaining 26 primarily Catholic counties in the south. Northern Ireland was created as an "Irish Free State" with British dominion status, falling short of complete sovereignty.[3]

Increase in Hostility

In the late 1960s, the tipping point of Catholic hostility emerged. Police harassment, exclusion from public service appointments, and the refusal of Catholic political representatives in parliament increased the community's sense of alienation. From this impression of isolation originating from the government, including the Royal Ulster Constabulary (RUC), the Provisional Irish Republican Army (PIRA)—an offshoot of the Irish Republican Army (IRA)—organized itself into a paramilitary organization to defend the Catholic minority's civil rights and to unite Ireland. Protestant and Catholic paramilitary groups clashed in the streets of Northern Ireland using terrorist tactics, killing hundreds of innocent victims. In response, the British military attempted to crack down on the militant groups by conducting house-to-house searches and establishing internment-holding facilities for potential PIRA members. These approaches caused the perceived pro-Protestant British military to lose more legitimacy, resulting in additional PIRA recruits. The cycle of violence continued throughout Ireland with shootings and then bombings in Belfast, Derry, Birmingham, and Dublin. The violence came to a dramatic pause after Protestants and members from the political arm of the IRA and the British government signed the 1998 Good Friday Agreement. This political ceasefire ended a majority of the paramilitary violence in Northern Ireland by adopting political concessions agreeable to all parties.[4]

> "Police agencies and militaries…must work together to better fulfill their joint mission."

From 1969 to 1998, approximately 3,251 deaths resulted from terrorist activity during The Troubles. An overwhelming number of those killed were civilians, including more than 50 children under 14 years of age. Over 30,000 people were injured or maimed.[5] The British Army sustained a total 719 deaths from The Troubles in Northern Ireland during the same period. An analysis of the soldiers' deaths illustrated the type of terrorist activity undertaken by the IRA/PIRA. While operating within a sympathetic locality, the IRA/PIRA could choose their targets and operate at an advantage over the British Army. This advantage could only be overcome with training and the cooperation of the RUC. Due to terrorist activity, 176 members of the British Army were considered murdered by the IRA/PIRA (24.4 percent of all fatalities). Many of these soldiers, part-time members of the Ulster Defence Regiment, were killed on their way to and from work. Casualties that resulted from direct operational contact with the enemy only accounted for 26.2 percent of the total. A majority of the British Army's casualties were caused by bombs, land mines, and booby-trap devices.[6]

Identification of Roles

Police agencies and militaries have very different roles when dealing with insurgencies.

Therefore, the two units must work together to better fulfill their joint mission. Based on experiences in Northern Ireland, British Royal Marine Colonel Mike Page stated that the military mission during the infancy of counterinsurgency events should involve stabilizing the area and preparing for the police, a civilian corps, to take a primary role in securing the community. As the violence within the community subsides and the police become ready to cope with the environment, a political process should be set in place to address the problems that originally stimulated the insurgency. While police strength evolves, the military should begin to play a supporting role. Toward the end of the counterinsurgency campaign, the military's presence within the community must terminate or become almost nonexistent. Ensuring cooperation between the police and the military throughout the course of the counterinsurgency campaign and phasing out military operations as irregular warfare progresses into police-type incidents proves essential to developing a reasonable end state for the mission.

Belfast City Hall © Photos.com

Resolutions

One of the main reasons The Troubles occurred in Northern Ireland involved the Catholic community's perception of the police as illegitimate. The Good Friday Agreement in 1998 resulted in the organization of the Independent Commission on Policing, which sought to review the Police Service of Northern Ireland and make recommendations on how to improve the police force. After the analysis, the commission made 175 recommendations that would make police services more transparent, accountable, and representative of the Northern Ireland community. The Historical Enquiries Team, a policing group organized to reexamine all of the deaths that occurred as a result of the security situation in Northern Ireland between 1969 and 1998, attempted to bring closure to the families of those killed during The Troubles. A Human Rights Body was formed to review police training and policies, ensuring the preservation of human rights principles. To distance itself from the British (a major point of friction) and mirror the Northern Ireland populous, the RUC changed its name and reformed into the Police Service of Northern Ireland (PSNI) in 2001 and mandated that approximately 50 percent of the police force to include Catholics. These and other PSNI programs brought the battle-fatigued community and police services closer together, resulting in fewer acts of violence.

To address grievances and public complaints, the PSNI initiated internal police service programs, along with external groups, to guarantee unbiased and fair law enforcement. Programs started by the police entailed the adoption of a Policing Board of Northern Ireland and a District Policing Partnership. Although these programs review different policing issues, they oversee police actions. Further, the PSNI created the Ombudsman's Office to review use-of-force issues and shooting incidents.[7] One concern evaluated by the Ombudsman's Office involved the use of an incapacitating spray during riot events to control crowds as a less lethal option in the use-of-force criterion.

Conclusion

Religious groups in Iraq or Afghanistan model those of Northern Ireland. Each community has internal friction in which one or two parties feel

marginalized. Citizens in every community in the world want not only a stable and secure place to live but to be treated fairly as well. Counterinsurgency efforts should follow the successful Northern Ireland example by phasing out the military's presence as stability increases and establishing a legitimate civilian police service—one that is transparent, fair, and unbiased and addresses the community's needs.✦

Endnotes

[1] Colonel Mike Page, speech to the U.S. Marine Corps University Command and Staff College (Quantico, VA, February 22, 2008).

[2] Tom Geraghty, *The Irish War* (Baltimore, MD: Johns Hopkins University Press, 2000), xxii.

[3] BBC History, *Northern Ireland: The Troubles*, "The Road to Northern Ireland, 1167 to 1921," *http://www.bbc.co.uk/history/recent/troubles/overview_ni_article_01.shtml* (accessed June 24, 2009).

[4] BBC History, *Northern Ireland: The Troubles*, "The Road to Northern Ireland, 1963 to 1985," *http://www.bbc.co.uk/history/recent/troubles/the_troubles_article_08.shtml* (accessed June 24, 2009).

[5] Geraghty, v.

[6] Ron Austin, "British Army Fatal Casualties—Ulster Troubles, 1969-1998," *http://goliath.ecnext.com/coms2/gi_0199-3300357/British-Army-fatal-casualties-Ulster.html* (accessed June 24, 2009).

[7] Superintendent Gary Gracey (PSNI), speech to the U.S. Marine Corps University Command and Staff College (Quantico, VA, February 21, 2008).

Special Agent Schoeman serves in the Leadership Development Unit at the DEA Academy.

The *Bulletin's* E-mail Address

© Digital Vision

The *FBI Law Enforcement Bulletin* staff invites you to communicate with us via e-mail. Our Internet address is *leb@fbiacademy.edu*.

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions about the magazine. Please include your name, title, and agency on all e-mail messages.

Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is *http://www.fbi.gov.*

Children and Violence

Children's Exposure to Violence: A Comprehensive National Survey discusses the National Survey of Children's Exposure to Violence sponsored by the Office of Juvenile Justice and Delinquency Prevention and supported by the Centers for Disease Control and Prevention. Conducted between January and May 2008, it measured the past-year and lifetime exposure to violence for children age 17 and younger across several major categories: conventional crime, child maltreatment, victimization by peers and siblings, sexual victimization, witnessing and indirect victimization (including exposure to community violence and family violence), school violence and threats, and Internet victimization. This survey is the first comprehensive attempt to measure children's exposure to violence in the home, school, and community across all age groups from birth to age 17, as well as the cumulative exposure to violence over the child's lifetime.

The survey confirms that most children are exposed to violence in their daily lives. More than 60 percent of those surveyed were exposed to violence within the past year, either directly or indirectly (as a witness to a violent act; by learning of a violent act against a family member, neighbor, or close friend; or from a threat against their home or school). Nearly one-half of the children and adolescents surveyed were assaulted at least once in the past year, and more than 1 in 10 were injured in an assault; 1 in 4 were victims of robbery, vandalism, or theft; 1 in 10 suffered from child maltreatment, including physical and emotional abuse, neglect, or a family abduction; and 1 in 16 were victimized sexually. More than 1 in 4 witnessed a violent act, and nearly 1 in 10 saw one family member assault another. Multiple victimizations were common: more than one-third experienced 2 or more direct victimizations in the previous year, more than 1 in 10 experienced 5 or more direct victimizations in the previous year, and more than 1 in 75 experienced 10 or more direct victimizations in the previous year.

Reports of lifetime exposure to violence were generally about one-third to one-half higher than reports from the past year, although the difference tended to be greater for less frequent and more severe types of victimization. For example, more than 3 times as many respondents reported being victims of a kidnapping over their lifetimes as did in the past year. Nearly 7 in 8 children who reported being exposed to violence during their lifetimes also reported being exposed to violence within the past year, which indicated that these children were at ongoing risk of violent victimization. The reports of lifetime exposure also indicated how certain types of exposure change and accumulate as a child grows up.

To obtain the complete report (NCJ 227744), access the National Criminal Justice Reference Service's Web site at *http://www.ncjrs.gov.*

Tort Cases

The Bureau of Justice Statistics bulletin *Tort Bench and Jury Trials in State Courts, 2005* discusses tort cases concluded by a bench or jury trial in a national sample of jurisdictions in 2005. Topics include the types of tort cases that proceed to trial, the differences between tort cases adjudicated by judges and juries, and the types of plaintiffs and defendants represented in tort trials. The report also covers plaintiff win rates, punitive damages, and the final award amounts generated in tort trial litigation. Finally, trends are examined in tort trial litigation in the nation's 75 most populous counties, based on comparable data in 1996, 2001, and 2005. The report showed that together, bench and jury trials accounted for an estimated 4 percent of all tort dispositions in 2005. Punitive damages were sought in 9 percent of tort trials with plaintiff winners. The median punitive damage award was $55,000. In the nation's 75 most populous counties, the number of tort trials declined by about one-third between 1996 and 2005. The complete document (NCJ 228129) can be accessed at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov*.

Public Defender Offices

The Bureau of Justice Statistics has released *Public Defender Offices, 2007—Statistical Tables*. This document examines offices that provide representation for indigent defendants through a salaried staff of full-time or part-time attorneys employed as direct government employees or through a public, nonprofit organization. Public defender offices are categorized according to whether they are principally funded and administered at the state government level, the county level, or through a combination of state and county government. Topics include public defender office staffing, caseloads, expenditures, and standards and guidelines used by the nearly 1,000 public defender offices found across 49 states and the District of Columbia.

Findings showed that in 2007, 964 public defender offices across the nation received nearly 6 million indigent defense cases. Half of all state-based public defender offices had formal caseload limits in place in 2007. Misdemeanor cases accounted for about 40 percent of all cases received by state-based public defender offices and about 50 percent of the cases received by county-based offices. For additional information, access the complete report (NCJ 228538) at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov.*

Futures Orientation in Police Decision-Making Practices

The Promise of a Modified Canadian Model

By MICHAEL BUERGER, Ph.D., and JOHN JARVIS, Ph.D.

© shutterstock.com

Law enforcement officers are the guardians of the past. Whether out of personal proclivity or as a result of being immersed in the police subculture, their cognitive maps of American culture are flash frozen, an instant in time that encompasses a mythical past. They enforce laws created by legislatures who hold similar visions. At best, those laws reflect a past set of social circumstances and expectations. At worst, they embody a knee-jerk reaction to a crisis du jour long since subsided.

The inherent instability of a chief executive's position means that a futures orientation cannot be vested in a single person. Although individual leadership is important, the entire law enforcement agency must be infused with a futures orientation. As a guide, the experience of community policing indicates that the most successful approach may be a covert one. Massive publicity that spoke to public concerns without addressing those of the officers often accompanied attempts to establish community policing. The result was raised expectations in one constituency and resistance in others.[1] To avoid a repeat of that phenomenon, the first steps toward creating

a futures orientation need to be practical, not exhortational.

In this case, being practical means recognizing both the possibilities and the limits of what can be done with police resources. Also, being practical requires developing more than just a conceptual vocabulary that describes the outcomes but, rather, defines intermediate action steps—both processes and results—in language meaningful to the officers who will make these happen.

Broadly speaking, the desired effect is not all that different from the changes sought by the community-policing movement. The task involves changing the police mind-set from that of a fraternity of protectors operating outside the community to one of a network of community-building agents integrated into the criminal justice system.

Leaders must develop a means to break out of the confinement of the immediate and instill a capacity for both recognizing and consciously seeking the small trends of change occurring within their areas. Effective officers always have done this as part of the creation of cognitive maps they call "street sense"; some have specialized in narrow interests, such as burglars and robbers, while others have developed a broader vision. But, these cognitive maps traditionally have resided in the individual. Law enforcement agencies rarely have developed the means to tap into the collective understanding of patrol officers and detectives, resulting in the fragmentation of institutional memory.[2]

> ***...being practical means recognizing both the possibilities and the limits of what can be done with police resources.***

The organizational response generally has been to invest the analytical power in special units, crime analysis, or crime mapping. Although they need not be, these functions tend to be centralized with command-level officers as the primary recipients of the work. Individual officers or units can request specific analyses to supplement local investigations or problem-solving efforts. Moreover, some departments encourage officers to engage in their own crime mapping and crime analysis to augment their cognitive maps of their assigned, or beat, areas.

The difficulty in centralized functions of this nature is that they can process only that data routinely archived by the agency, including traditional crime reports and, perhaps, 911 data. Most other information remains ephemeral, resident in the memories of individual officers and small units but not accessible beyond the precinct boundaries. It also is vulnerable to absence (e.g., sick days, vacations, court attendance, and training assignments) and extinguished by transfer or retirement except in the rarest of circumstances. Yet, it is this information—not data, but information—that holds the greatest promise for developing anticipatory policing: that which positions itself to shape the immediate future, rather than to react to it.

Innovation fatigue is a real obstacle to creating change in law enforcement organizations. Rather than introduce a new term, such as *anticipatory policing*, it would be better to work within the existing law enforcement vocabulary. Problem-oriented or problem-solving policing is the most intuitive to officers at the line level and provides a logical framework for blending a futures approach with a familiar and reasonable accepted conceptual framework. As an example, the authors explore a Canadian approach that offers an alternative to the

SARA (scanning, analyzing, responding, and assessment) model that gave the law enforcement world a foundation it could use at the line level of policing.[3]

THE MODEL

Clients, analysis, partners, response, and assessment make up CAPRA, which holds some promise for infusing futures thinking into policing. With a slight modification of this Canadian perspective to include information, the new acronym CIAPRA represents a second-generation model for problem solving. Such an approach lends itself well to a futures orientation on a small scale, a foundation upon which to build subsequent layers as an officer's career progresses.

The additional element of information transforms the process from simple problem analysis to baseline intelligence gathering. Requiring officers to identify clients of a particular action moves them beyond the simple tactical view. Similarly, the partners element broadens the perspective of responsibility and capacity. It takes the solution out of the exclusive domain of the police and complicates the process of crafting one at the same time. Adding information to this mix should nudge the effort even further, as databases and repositories of knowledge exist outside the small core of those actors most affected by the problem. Pushing officers beyond the familiar channels of law enforcement thinking will lead to a new awareness of the depths of community resources and the multiple intervention tactics that might be brought to bear upon a problem.

> ***"Leaders must develop a means to break out of the confinement of the immediate and instill a capacity for both recognizing and consciously seeking the small trends of change...."***

Four critical elements of the CIAPRA model can be expanded. First, clients would include stakeholders who have a positive or negative influence and those possibly disenfranchised, such as targets of police action.[4] Second, information needed would cover two primary questions: Where to obtain it? and How to develop it if not readily accessible? Third, analysis, at least initially, would involve the driving forces behind the problem, guardianship issues, possible points of intervention, impact of such intervention (e.g., changes in recent times and trajectory of these), unintended consequences, means of mitigating them, and realistic expected outcomes in light of the intervention and its consequences and mitigation. And, finally, partners would include resources and limitations, as well as motivations and inhibitors.

Implementing Methods

CIAPRA assessments must be built into the regular calendar and stress the officer's role as the center of an information-gathering network. While quarterly assays are useful, officers should attend to the process in real time, adding observations about changes as they are made. The first round can identify the main players in the officers' beats and include legitimate citizens and knowledgeable informants on the fringe of the criminal element.

Shift supervisors should emphasize and facilitate ongoing interaction among officers working the same beat area in different time frames. For example, the main players likely will have some variation by time of day, and the officers' own observations certainly will prove diverse. The process of comparing information will build a more comprehensive understanding of the beat for all officers, regardless of whether they work rotating assignments or steady shifts.

Agencies will need to develop a metric for assessing officers' work. They must discover when officers are—

- doing a good job;
- just providing lip service;
- adopting a "this too shall pass" attitude; or
- attempting to meet the new demands but encountering difficulties through a lack of skills or an intuitive understanding of the concepts.

Supervisors will know their own people well enough to make these distinctions, assuming the supervisors themselves are on board with the program. In the initial stages, upper-level command staff may need to encourage supervisors, as well as line officers, to give the process a fair hearing.

Active or passive resistance should be relatively easy to detect as the quality of information developed will be inferior to that done by enthusiastic and willing participants. The task of distinguishing between resistance and unskilled but good-faith attempts at compliance will be more difficult.

The first few training endeavors cannot be expected to produce uniformly successful results; each round of CIAPRA assessments should be considered as an iterative learning experience, further refining the process. CIAPRA can be built into recruit training or agency orientation, but retraining or reorienting serving officers may prove difficult. It will be necessary to develop a new training regimen to assist those who seem to be trying to do a good job but not succeeding. In short, merely setting up the scheme will not be sufficient. Instead, agencies must build in a structure that makes visible use of the officers' efforts, an intelligence bank.

How supervisors elect to manage the new CIAPRA requirements probably will vary by personality. For instance, some may mandate individual assessments and nothing more. Others may elect to make CIAPRA a group exercise. And, some supervisors may coordinate their squad's efforts with those of other personnel who cover the same area on different shifts or days.

Developing Applications

Using the information developed productively at the beat and precinct level will pose the greater challenge. CIAPRA as a training guide or a problem-solving template is task focused and finite. In other words, the exercise has an end. As an

The Future of Policing

The FBI actively explores the future of policing through the Futures Working Group (FWG), a partnership between the agency and the Society of Police Futurists International (*http://www.policefuturists.org*). The mission of the FWG is to promote innovation through the pursuit of scholarly research in the area of police futures to ethically maximize the effectiveness of local, state, federal, and international law enforcement bodies as they strive to maintain peace and security in the 21st century. Members have completed projects on such topics as the use of augmented-reality technology, neighborhood-driven policing, homeland security, policing mass casualty events, and the future of policing. As part of the FWG, the Futurists in Residence program, operational since 2004 and housed within the Behavioral Science Unit of the FBI Academy, affords researchers and practitioners an opportunity to conduct original research.

The Model

intelligence-gathering tool or a futures perspective, it is open-ended and subject to constant revision, which goes against the grain of the operational expectations of incident-based policing.

The first round will establish a baseline, but, without follow-up, it simply will be an exercise without utility. The organizational challenge will be to maintain consistency, to repeat the process on a quarterly basis, and to have all officers participate. It also will be an agency responsibility to put the information developed to some visible use.

Sharing Information

Quarterly CIAPRA assessments at the beat level will not be uniform nor lend themselves to traditional computer databases. Much of the beat-level interpretations will be intuitive, nonlinear, and narrative. Making links between reports and across time will be a human endeavor, not a computerized one.

Each collection of CIAPRA reports will vary according to the observations made by the officers and their individual writing styles. Agencies can preserve the raw material as a text file or a bound volume, but may find it more useful to invest in text-analysis programs for distilling what inevitably will become huge libraries over time.

In the worst-case scenario (where no useful archiving and retrieval process is developed), a residual, if unstructured, archive still will reside in the human memory of the officers. The greater the amount of purposive interaction and sharing, the greater the probability that the information will be retrieved when the need arises.

CONCLUSION

CIAPRA is not the only model for developing a futures orientation throughout all levels of law enforcement agencies. It does have the advantage of tapping into elements of the police culture that are in place. To be successful, however, it will need to be properly managed, not only at the onset but consistently into the future.✦

Endnotes

[1] U.S. Department of Justice, Federal Bureau of Investigation, Bernard H. Levin and Richard W. Myers, "A Proposal for an Enlarged Range of Policing: Neighborhood-Driven Policing (NDP)," in *Neighborhood-Driven Policing Proceedings of the Futures Working Group*, ed. Carl Jensen III and Bernard H. Levin (January 2005), 4-9, *http://futuresworkinggroup.cos.ucf.edu/publications/Vol1-NDP-FWG.pdf* (accessed August 10, 2009).

[2] Lawrence Sherman, *Evidence-Based Policing* (Washington, DC: Police Foundation, 1998), 5.

[3] John Eck and William Spelman, *Problem Solving: Problem-Oriented Policing in Newport News* (Washington, DC: Police Executive Research Forum, 1987).

[4] Society as a whole (a given, as in "everything we do is for the community") as an answer alone is so bland and attenuated as to be useless and, therefore, should be discouraged by supervisory review.

Dr. Buerger, a former police officer, is an associate professor of criminal justice at Bowling Green State University in Ohio and a member of the Futures Working Group.
Dr. Jarvis serves in the FBI Academy's Behavioral Science Unit and heads the Futures Working Group.

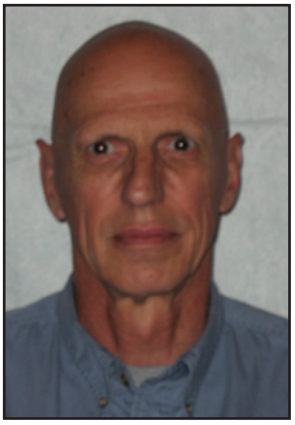
The Most Important Profession

By Bob Prout, Ph.D.

Law Enforcement Training Building, Alexandria Technical College, Alexandria, Minnesota

It is an honor to be the guest speaker for the first graduating class from the new Law Enforcement Training Building. Three weeks ago, I had the privilege of teaching the ethics section to law enforcement students in St. Cloud. I asked them to name the most important job in the United States. Forty-five percent of the students listed law enforcement. Forty-five percent got it right. Today, my hope is the 140 law enforcement students in this Alexandria Technical College graduating class believe that law enforcement is the most important job in the United States.

Why is law enforcement the most important profession in the United States? Ask yourself this question, What happens if a large group of police officers don't report for duty? History has answered that for us. In 1919, the Boston police strike lasted only 1 day. The city of Boston was plunged into civil chaos. President Wilson branded the walkout "a crime against civilization." In 1969, Montreal police went on strike, and anarchy took place. During the first day, 8 banks were robbed, 100 shops were looted, and there were sniper attacks and rioting resulting in 3 million dollars of property damage. Thirty-five years ago this month,



Dr. Prout, a former Ohio state trooper, currently is department chair and director of the Criminal Justice Graduate Program at St. Cloud State University in St. Cloud, Minnesota. He delivered this speech on July 24, 2009, at the Alexandria Technical College Peace Officer Graduation.

Baltimore police went on strike, and the results were similar to what happened in Boston and Montreal. When law enforcement stops, civilized society stops. Other professions are of limited significance when civilized society stops. This is why I believe law enforcement is the most important profession in the United States.

You'll be working for the people, and you will be entrusted with great responsibility. The Michigan State Police recognizes this, and its maxim is "you must constantly stop to consider how your decisions will influence people." You'll have the power to protect people; you will have the power to kill people. You'll have the power to help people; you will have the power to injure people. You'll have the power to take away the freedom of the very people you work for. I know of no greater responsibility. You will be on the front lines. You will be the most visible representative of government.

> **"When law enforcement stops, civilized society stops."**

Another very important profession is the United States Armed Forces. When law enforcement and the military do not function, many people revert to their primitive natures. Sir Winston Churchill's view was correct when he stated that the story of the human race is war. History shows us that civilized society crumbles without strong law enforcement and without a strong military.

You've had some excellent instruction at Alexandria Technical College that has prepared you to enter the profession of law enforcement. Remember, I said, "You have had some excellent instruction that has prepared you to *enter* the profession of law enforcement." At this point, you should have the feeling of how little you know. This is normal because the more we know, the more we realize how little we know. Be hard on yourself, or you won't learn and improve. Remember, you'll never have all of the answers; you will never be perfect, and you will make mistakes. See your law enforcement license as a license to learn. A good police officer loves learning.

However, a few years of experience will create a dangerous time for you. Once you do a job year after year, it tends to get commonplace. This happens in most professions, and it's no different in law enforcement. But, in police work, becoming lackadaisical can get you or someone else seriously injured or killed. However, you can get injured in another way, too. You'll see so much of the seamy side of life that your spirit can get injured. If you feel cynicism creeping in, don't you forget that you have the most important job in the United States.

Last week, I talked with several former law enforcement officers. I asked them how they felt *after* they left police work. They said that they felt as if they had dropped off the face of the earth. One said, "One day I was 'in the know,' and the day after I left police work, I felt like I was a 'nobody.'"

Many of my former students who were police officers and resigned or retired too soon tried to get back into law enforcement. They told me to tell you to not lose sight of how important your work is. They said to tell you that the fact that you can retire doesn't mean that you should. They said, "Tell them not to retire too soon. Tell them that they have the most important job in this country."

We don't recognize the most important things that happen in our lives as they are happening. We tend to think that more important things will

happen. But, many times, more important things don't happen. You may feel that after you leave police work that police work was the most important thing that you ever did in your life. If you leave too soon, you will regret that decision until the day you die.

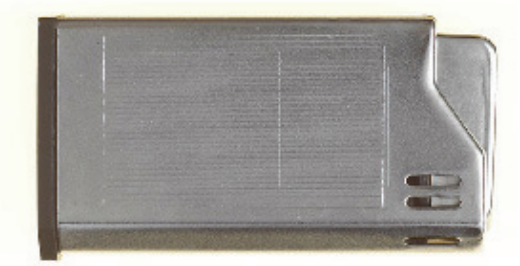
I commend you for choosing the profession of law enforcement. You will be part of that "thin blue line" that protects us and our way of life. *Remember* that you have the most important job in the United States. *Remember* that the more you know, the more you know how much you don't know. *Remember* that good police officers love to learn. *Remember* that most police officers who quit law enforcement or who retired too soon regretted their decision. You remember these things because these are important things to remember.

I congratulate you on your decision to be a law enforcement officer. You are entering a calling that protects our way of life. I thank you for your upcoming service to the most important profession in the United States.✦

Unusual Weapon

Shock Lighter

Although this metal device looks like a lighter, it is marketed as a prank and delivers a mild shock when the user tries to light the flame. Law enforcement officers should be aware that offenders may attempt to use this shock lighter.



Bulletin Honors

The Guardian

Gurnee, Illinois, Police Department

Near the main entrance to the Gurnee, Illinois, Police Department is *The Guardian*, presented by the Gurnee Police Citizen's Police Academy Alumni Association. The statue features an officer holding the hand of a small boy on his left; to his right, a young girl is trying to get his attention. It honors men and women of the Gurnee Police Department and all law enforcement officers in general for their service and sacrifice in protecting others.

The *FBI Law Enforcement Bulletin* seeks submissions from agencies who wish to have their memorials featured in the magazine's **Bulletin Honors** department. Needed materials include a short description, a photograph, and an endorsement from the agency's ranking officer. Submissions can be mailed to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135, or e-mailed to *leb@fbiacademy.edu*.

Confessions and the Constitution

The Remedy for Violating Constitutional Safeguards

By CARL A. BENOIT, J.D.

© shutterstock.com

Law enforcement officers investigating criminal activity within the United States have increasing amounts of technology to assist them in identifying those responsible for criminal conduct. Advances in DNA collection and testing, automated fingerprint identification, and a multitude of forensic techniques are only a few examples of the scientific tools available to the modern criminal investigator.[1] However, despite all of the physical evidence collected in a particular case and all of the scientific analysis used to tie an individual to the commission of a crime, one nonscientific technique continues to play an important role in the investigation and prosecution of criminal activity: the confession. Confessions made to law enforcement officers continue to hold significant importance within the criminal justice process. Law enforcement officers seek to obtain confessions from individuals suspected of criminal activity even when the physical, scientific, or other evidence against an individual is overwhelming. Criminal defendants, faced with the possibility that their confessions may be used by the prosecution at trial, seek to keep their confessions out of

court through legal challenges. Both parties recognize the continued influence of the words uttered by criminal defendants on a judge or a jury. There is something powerful in the words that describe the particular events, as well as the thoughts, actions, emotions, or motives, that would otherwise remain hidden and undiscovered from any scientific or forensic test. In 1961, U.S. Supreme Court Justice Felix Frankfurter made the following statement about confessions that still rings true today:

> Despite modern advances in the technology of crime detection, offenses frequently occur about which things cannot be made to speak. And where there cannot be found innocent human witnesses to such offenses, nothing remains—if police investigation is not to be balked before it has fairly begun—but to seek out possibly guilty witnesses and ask them questions, witnesses, that is, who are suspected of knowing something about the offense precisely because they are suspected of implication in it.[2]

It is when the police officer "seek[s] out possibly guilty witnesses and ask[s] them questions"[3] that the law surrounding confessions must be considered. Because confessions and interrogations are such a recognized and longstanding tool in law enforcement, articles about all aspects of the topic abound. Less frequently addressed, however, is a discussion of the legal effect of obtaining a confession in violation of constitutional safeguards. Because obtaining a confession can implicate different constitutional rights, answering this question involves identifying the particular constitutional safeguard involved—typically a right found within the Fourth, Fifth, or Sixth Amendments to the U.S. Constitution—and then understanding the remedy that each provision imposes for a violation.

In recent years, the U.S. Supreme Court decided three cases that involved confessions obtained in violation of constitutional safeguards. And, in each of these cases, the Supreme Court has made one thing clear: the Constitution imposes different remedies for different violations. Law enforcement officers must be aware of these issues and can find guidance in these Supreme Court cases involving confessions. Armed with this information, law enforcement officers can properly understand the implications of obtaining confessions in violation of constitutional safeguards.

"…one nonscientific technique continues to play an important role in the investigation and prosecution of criminal activity: the confession."

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

The Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…."[4] Expressly contained within its first sentence, the Fourth Amendment's prohibition against unreasonable searches and seizures are familiar terms to law enforcement

officers. What is less clear from the text, however, is the remedy the Fourth Amendment imposes for a violation of its protections. While the Fourth Amendment stands silent on this point, the U.S. Supreme Court has not stood mute. Beginning in 1914, the Supreme Court created a remedy for violations of Fourth Amendment rights—the remedy of suppression.[5] This remedy, however, was limited to the federal government and its agents until 1961 when, in *Mapp v. Ohio*,[6] the Supreme Court held that the states were required to suppress evidence obtained in violation of the Fourth Amendment.

The Suppression Remedy

The judicially created remedy of suppression (also called the exclusionary rule), as defined by the Supreme Court, can be easily stated: evidence obtained in violation of the Fourth Amendment is excluded from use at trial. While there are many exceptions and limits to this general rule[7] (beyond what will be covered within this article), the application of this rule to evidence is well understood in law enforcement circles. And, while the suppression remedy applies more commonly to physical or tangible items, the rule's application clearly encompasses confessions. This became clear in 1963 when the Supreme Court ruled that verbal evidence obtained in violation of the Fourth Amendment is subject to the remedy of suppression. This rule, established in *Wong Sun v. United States*, has come to be known, and very nearly defined, by the phrase "fruit of the poison tree."[8] If a proper understanding of the Fourth Amendment rule of suppression requires a more formal definition, then *Wong Sun* provided that as well.

> **"…verbal evidence obtained in violation of the Fourth Amendment is subject to the remedy of suppression."**

> We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."[9]

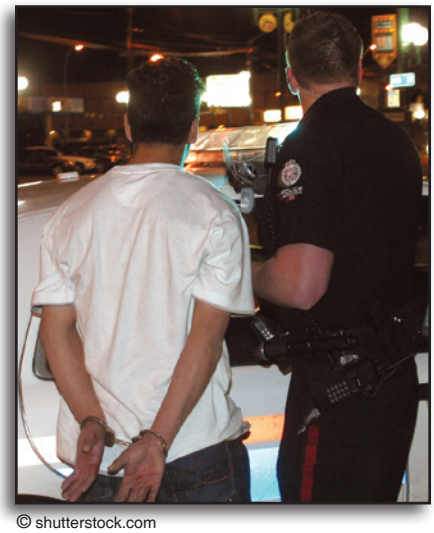
Thus, for purposes of the Fourth Amendment exclusionary rule, suppression is not necessarily automatic: to order the suppression of evidence, including a confession, a court is required to determine if the evidence in question was obtained in violation of the Fourth Amendment and then determine whether anything occurred that may have cleansed the evidence from this violation. The 2003 case of *Kaupp v. Texas*[10] best illustrates the application of the remedy of suppression to a confession.

Following the disappearance of 14-year-old Destiny Thetford on January 13, 1999, investigators learned that her 19-year-old half-brother, Nicholas Thetford, had a sexual relationship with her and that both were seen together on the day Destiny went missing. On January 26, 1999, Thetford and Robert Kaupp went to the sheriff's office to be questioned about the disappearance. Kaupp was cooperative during the interview and released. Thetford, after a long interview and failing his third polygraph examination, eventually admitted to stabbing Destiny and hiding her body in a drainage ditch. Thetford also implicated Kaupp in the crime. After obtaining a written statement from Nicholas, detectives sought an arrest warrant for Kaupp. Their request for a warrant was

denied.[11] Undeterred, three detectives and three uniformed officers went to Kaupp's house between 2 and 3 a.m. on the morning of January 27 to "get [Kaupp] in and confront him with what Thetford ha[d] said."[12] Kaupp's father allowed the police officers into the home, and Kaupp was located asleep in his bedroom. Kaupp was told, "we need to go and talk," to which he replied, "OK," before he was handcuffed and escorted from his home into a waiting police car, wearing only boxer shorts and a T-shirt.[13] He then was brought to the scene where Destiny's body was recently located, kept there for between 5 to 10 minutes, driven to the police station, placed in an interview room, unhandcuffed, and read his *Miranda* rights. After initial denials, he admitted his involvement in the crime but denied any role in the murder. Kaupp also provided investigators with a signed statement.[14]

Prior to his trial, Kaupp moved to suppress the oral and written statements he made to investigators on the morning of January 27, claiming that the confession was the result of his unlawful arrest. The trial court denied the motion and ruled that Kaupp was not placed under arrest prior to making the admissions. Kaupp was convicted of murder and sentenced to 55 years. The Texas Court of Appeals upheld the conviction, and the Court of Criminal Appeals denied review of the case.[15] Kaupp appealed to the U.S. Supreme Court.

According to the Supreme Court, the admissibility of Kaupp's confession turned on the issue of whether Kaupp's confession was the product of an illegal arrest. The state did not claim to have probable cause to arrest Kaupp when the officers went to Kaupp's home the morning of January 27, but asserted that Kaupp was not arrested until after he gave the confession. According to the state, Kaupp consented to the encounter with the officers when he said, "OK," and was taken from his bedroom. The facts, however, did not support the state in either position. In essence, the Court held that the events of the morning of January 27—from being woken up in his bedroom, being handcuffed, being transported to the police station, and being given *Miranda* warnings—led to the conclusion that Kaupp was arrested. According to the Court, no "reasonable person in [Kaupp's] situation would have thought he was sitting in the interview room as a matter of choice, free to change his mind and go home to bed."[16] Because Kaupp was arrested without probable cause to support the arrest, this Fourth Amendment violation required suppression of the product of the unlawful arrest—the confession—unless the state could prove the confession was an "act of free will [sufficient] to purge the primary taint" of the unlawful seizure.[17] In this regard, the Court noted that factors to consider include observance of *Miranda*, the length of time between the arrest and the confession, the presence of intervening circumstances, and the level of misconduct.[18] The Court observed that only one of the above factors was present—the application of *Miranda*—to favor the prosecution.[19] No substantial time passed between the arrest and the confession, and there was no allegation by the state that any significant intervening event occurred between the arrest and confession.[20]


© shutterstock.com

The Court determined that

the application of *Miranda* warnings, standing alone, was insufficient to cleanse Kaupp's statement from the illegal arrest.[21] The Court remanded the case to the state court of appeals. On remand, the state admitted that it was unable to point to any facts that would remove the taint from the unlawful arrest.[22]

The *Kaupp* case provides a simple example of the application of the suppression remedy. Kaupp was seized in violation of the Fourth Amendment when he was arrested without probable cause. The product of that unlawful seizure was the confession that Kaupp gave following his unlawful arrest. Because there was insufficient evidence that any events intervened between the unlawful seizure of Kaupp and the confession made by Kaupp to cleanse the statement from the Fourth Amendment violation, the confession was inadmissible.[23]

The Fifth Amendment

The Fifth Amendment to the U.S. Constitution, as it relates to the taking of confessions, provides that "no person…shall be compelled in any criminal case to be a witness against himself."[24] In *Miranda v. Arizona*,[25] the Supreme Court held that the environment present in the setting of a custodial interrogation was so coercive that confessions obtained from a person under these circumstances were presumed to be coerced unless specific warnings were provided and a waiver was obtained. This rule was developed primarily to protect the person's Fifth Amendment privilege against self-incrimination. According to *Miranda*,

> ***…a statement obtained in violation of* Miranda *procedures cannot be used by the prosecution in its direct case….***

if the warning and waiving procedures are not followed when a person is in custody and subject to interrogation, any statement obtained is inadmissible in the prosecution's case in chief. Thus,

> The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation, unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.[26]

If a statement obtained in violation of *Miranda* procedures cannot be used by the prosecution in its direct case, what is the effect on physical evidence located as a result of such a statement? The Supreme Court answered this question in 2004.

Samuel Patane came to the attention of a police officer and a detective who were investigating Patane for separate offenses. Both law enforcement officers went to Patane's home together, the police officer to investigate Patane's violation of a temporary order of protection and the detective to investigate whether Patane, a convicted felon, illegally possessed a pistol. After arriving at the residence and speaking to him, Patane was arrested for violating the order of protection. The detective began advising him of his *Miranda* rights, but did not get past the right to remain silent because Patane interrupted him, claiming that he knew his rights. The advice of rights was never completed.[27] The detective then questioned Patane about the pistol, and, though initially reluctant to discuss the gun, Patane said, "I am not sure I should tell you anything about the [handgun] because I don't want you to take it away from me."[28] The detective persisted in light of this response. Patane admitted that the pistol was in his bedroom and gave the detective permission to take the gun. The detective found and seized the pistol. After his indictment charging him

as a felon in possession, Patane sought suppression of the pistol.[29]

The district court suppressed the gun,[30] determining that the officers lacked probable cause for the arrest and the pistol was a fruit of the unlawful arrest. The Tenth Circuit Court of Appeals, while reversing the district court on the issue of probable cause, suppressed the gun on the grounds that it was the fruit of Patane's unwarned statement.[31] The case was then appealed to the U.S. Supreme Court.

The issue before the Supreme Court was "whether a failure to give a suspect the warnings prescribed by *Miranda v. Arizona* requires suppression of the physical fruits of the suspect's unwarned but voluntary statements."[32] To resolve the question of the admissibility of the gun and whether its suppression was required by the exclusionary rule, the Court first determined what constitutional right was implicated. Because the circuit court of appeals held that Patane was lawfully arrested based on probable cause, there was no Fourth Amendment violation. What was clear to the Supreme Court, however, based on the uncontested facts, was that the detective obtained Patane's statements without properly advising Patane of his rights pursuant to *Miranda v. Arizona*. Thus, the legal issue for the Supreme Court focused on the application of the Fifth Amendment to the statements Patane made while in custody.

According to Justice Thomas, writing for the majority of the Supreme Court, the core protection of the Fifth Amendment is its prohibition of "compelling a criminal defendant to testify against himself at trial," and the Fifth Amendment "cannot be violated by the introduction of nontestimonial evidence obtained as a result of voluntary statements."[33] There was no claim that Patane's statements about the pistol were made involuntarily in violation of the Fifth Amendment. But, the Court has provided protection of Fifth Amendment rights beyond the core protections. In this regard, Justice Thomas noted that the Supreme Court has created certain rules designed to protect the Fifth Amendment's privilege against self-incrimination, including the procedures set forth in the *Miranda* decision. According to Justice Thomas,

> …in *Miranda*, the Court concluded that the possibility of coercion inherent in custodial interrogations unacceptably raises the risk that the suspect's privilege against self-incrimination might be violated. To protect against this danger, the *Miranda* rule creates a presumption of coercion, in the absence of specific warnings, that is generally irrebuttable for purposes of the prosecution's case in chief.[34]

Because the *Miranda* rule provides protections that go beyond the "actual protections of the Self-Incrimination Clause," the Court noted that statements obtained without compliance

with *Miranda*, unlike statements that actually violate the Fifth Amendment, can be used in certain situations because they do not violate the Fifth Amendment.[35] For example, "statements taken without *Miranda* warnings (though not actually compelled) can be used to impeach a defendant's testimony at trial."[36] According to the Court, the failure to give *Miranda* warnings by itself does not violate a suspect's Fifth Amendment rights. A violation of *Miranda* may occur only when the suspect's unwarned statement is introduced at trial, and the proper remedy for such a violation is the exclusion of the unwarned statement.[37] Accordingly, "the nontestimonial fruit of a voluntary statement… does not implicate the Self-Incrimination Clause" because the "admission of such fruit presents no risk that a defendant's coerced statements (however defined) will be used against him at a criminal trial."[38] Finally, the Court determined that there was no reason to apply the remedy of suppression to the pistol by noting that it had previously decided not to apply suppression to mere failures to give *Miranda* warnings.[39] Finding that the Glock pistol should not be suppressed, the Supreme Court reversed the decision of the court of appeals.[40]

The *Patane* case provides a straightforward application of the *Miranda* rule to statements and also highlights the distinction between the Fifth Amendment and *Miranda*. In the case, there was no argument that Patane's statement was involuntary or coerced—which would have been a violation of the Fifth Amendment. Neither the officer nor the detective compelled Patane to make a statement about the pistol. Their only omission was in questioning Patane without finishing the required warnings and obtaining a waiver. Patane's statement—unwarned but otherwise voluntary—was not obtained in violation of the Fifth Amendment. According to the Court in *Patane*, the full and complete remedy for the unwarned statement is the exclusion of the statement from the prosecution's direct case. The exclusion of the statement fully protected Patane's Fifth Amendment rights. The nontestimonial evidence—the pistol—obtained as result of Patane's unwarned statement was not the product of a constitutional violation and, therefore, was admissible.

> **"The Sixth Amendment protections only apply at certain critical stages…."**

The Sixth Amendment

The Sixth Amendment to the U.S. Constitution guarantees that "[i]n all criminal prosecutions, the accused shall…have the Assistance of Counsel for his defence."[41] To protect this right, the Supreme Court has held that a defendant is entitled to have counsel present at certain critical stages, including postindictment interactions between the defendant and the government.[42] The Sixth Amendment protections only apply at certain critical stages—after the filing of a formal charge (in federal procedure an Indictment of Information) or after a court appearance on the charge. And, because the right applies to the crimes that are the subject of the formal charges or court appearance, it is said to be crime specific.[43] Once the Sixth Amendment right to counsel attaches to the defendant on a particular charge, statements deliberately elicited from a defendant by the government may not be used at trial unless counsel was present when the statement was made or unless the defendant properly waived his Sixth Amendment right. But, does a Sixth Amendment violation prohibit the prosecution from using a defendant's statements for impeachment

purposes? The Supreme Court answered this question in 2009.

In January 2004, Rhonda Theel and Donnie Ray Ventris went to the home of Ernest Hicks likely because they learned that Hicks carried large amounts of cash. One or both killed Hicks, took $300 and his cell phone, and fled in his pickup truck.[44] Theel and Ventris were arrested and charged with various crimes for these acts. Theel pleaded guilty to robbery and agreed to testify against Ventris. Prior to his trial, a police informant was placed in the holding cell with Ventris. After the informant engaged Ventris in conversation by telling Ventris that he looked like he had "something more serious weighing on his mind," Ventris confessed to the informant that he had "shot this man in his head and chest" and stolen some property from him as well.[45] At his trial, Ventris took the stand and blamed Theel for both the robbery and murder.[46] The prosecution, over the defendant's objection, was permitted to call the cell-mate informant to testify to the prior statement Ventris made about the murder. The jury acquitted Ventris of murder, but convicted him of burglary and robbery charges. Ventris appealed his conviction. The Kansas Supreme Court held that the statement made by Ventris to the cell-mate informant was not admissible at trial for any reason, including impeachment, and reversed the conviction.[47] The state appealed to the U.S. Supreme Court.

The Supreme Court agreed to hear the appeal to determine "whether a defendant's incriminating statement to a jailhouse informant, concededly elicited in violation of Sixth Amendment strictures, is admissible at trial to impeach the defendant's conflicting statement."[48] The Court began the opinion by noting that while the Sixth Amendment's core protection is "the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare a defense for trial,"[49] the right extends further. Also included in the Sixth Amendment is the right to have an attorney at certain "critical interactions between the defendant and the State," including "the deliberate elicitation by law enforcement officers (and their agents) of statements pertaining to the charge."[50] According to the Court, which assumed that Ventris's Sixth Amendment right was violated when he engaged in a conversation by the cell-mate informant, the question is the scope of the remedy to be imposed for the violation. Here, the Court noted that "excluding tainted evidence for impeachment purposes is not worth the candle."[51] This is so because the interests safeguarded by excluding the evidence for impeachment purposes are "outweighed by the need to prevent perjury and to assure the integrity of the trial process."[52] Thus, while the violation should prevent the state from using the evidence affirmatively, it should not shield the defendant from his contradictions or untruths.[53]

© shutterstock.com

The Court considered the possibility that because the unlawfully obtained statement could be used for impeachment purposes, there is incentive for police officers to obtain the statement in violation of the Sixth Amendment. To this end, the Court believed that police officers have significant incentive to comply with the Constitution because "statements lawfully obtained can be used for all purposes…." Even though there may be some incentive to try to obtain impeachment material, the Court finds that this potential benefit is too speculative and not weighty enough to

overcome the cost of permitting a defendant to commit perjury unchallenged.[54] Accordingly, the Court held that the "informant's testimony, concededly elicited in violation of the Sixth Amendment, was admissible to challenge Ventris's inconsistent testimony at trial" and reversed the judgment of the Kansas Supreme Court.[55]

The *Ventris* case also provides a clear application of the Sixth Amendment to a confession obtained in violation of its protections. It is important to note here that the Court accepted the premise that the comments by the jailhouse informant amounted to an interrogation of Ventris. Because Ventris's Sixth Amendment rights had attached by virtue of his indictment, no statement about the pending charge could be deliberately elicited from Ventris unless he had counsel present or if he was advised of his Sixth Amendment rights and voluntarily waived them. Because the questioning by the cell-mate informant was assumed to amount to deliberate elicitation and because Ventris's counsel was not present at that time and Ventris had not waived his Sixth Amendment rights, the statement was taken in violation of the Sixth Amendment, and the informant was prohibited from testifying during the prosecution's direct case. However, once Ventris took the witness stand and testified in contradiction to the statements he made to the informant, the prosecution was entitled to use the statements to impeach Ventris's testimony. If Ventris did not take the witness stand, the prosecution would not have been able to introduce the testimony of the informant.

> ***…investigators should ensure that confessions obtained comply with the Constitution's demands.***

Conclusion

The cases discussed in this article describe the different costs imposed for obtaining a confession in violation of the safeguards found within the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution. In light of the continued importance of confessions to the successful prosecution of criminals, investigators should ensure that confessions obtained comply with the Constitution's demands. In doing so, investigators can ensure that confessions obtained can be fully and affirmatively used to their fullest potential by the prosecution.✦

Endnotes

[1] Jim Markey, "After the Match: Dealing with the New Era of DNA," *FBI Law Enforcement Bulletin*, October 2007, 1-4.

[2] *Culombe v. Connecticut*, 367 U.S. 568 (1961).

[3] *Id.*

[4] U.S. CONST. Amend IV.

[5] *Weeks v. United States*, 232 U.S. 383 (1913).

[6] *Mapp v. Ohio*, 367 U.S. 643 (1961).

[7] Exceptions and limitations to the application of the suppression remedy include standing (*Rakas v. Illinois*, 439 U.S. 128 1978); good faith reliance on a search warrant (*United States v. Leon*, 468 U.S. 897 (1984); attenuation (*Wong Sun v. United States*, 371 U.S. 471 (1963); and independent source and inevitable discovery (*Murray v. U.S.*, 487 U.S. 533 (1988). *See also Hudson v. Michigan*, 547 U.S. 546 (2006) (Suppression not required for when search warrant executed in violation of knock and announce rule); and *Virginia v. Moore*, 553 U.S. 164 (2008) (Suppression not required for an arrest made in violation of state statute but constitutionally permissible).

[8] 371 U.S. 471 (1963).

[9] *Id.* at 487, 488.

[10] 538 U.S. 626 (2003).

[11] *Kaupp v. State of Texas*, 2001 WL 619119 (Tex. App.- Hous. (14 Dist.)) (Unpublished opinion).

[12] *Kaupp v. Texas*, 538 U.S. 626, 628 (2003).

[13] *Id.* at 629.

[14] *Id.* at 628, 629.

[15] *Id.* at 629.

[16] *Id.* at 632.

[17] *Id.*

[18] *Id.* at 633.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Kaupp v. State of Texas*, 2004 WL 114979 (Tex.App.Hous. (14 Dist.)) (Unpublished opinion).

[23] Events that a court should consider in this regard are set forth in *Brown v. Illinois*, 422 U.S. 590 (1975).

[24] U.S. CONST. Amend V.
[25] 384 U.S. 436 (1966).
[26] *Id.* at 445.
[27] *United States v. Patane*, 542 U.S. 630, 634-635 (2004).
[28] *Id.* at 635.
[29] *Id.*
[30] If the arrest of Patane was in violation of the Fourth Amendment, then both his statement and the gun would have been subject to suppression.
[31] *Id.* at 635-636.
[32] *Id.* at 634, 635.
[33] *Id.* at 637.
[34] *Id.* at 639 (Citations omitted).
[35] *Id.*
[36] *Id.*
[37] *Id.* at 641. According to the Court, "the Self-Incrimination Clause contains its own exclusionary rule."
[38] *Id.* at 643.
[39] *Id.* at 644. *See Oregon v. Elstad*, 470 U.S. 298 (1985) and *Michigan v. Tucker*, 417 U.S. 433 (1974).
[40] *Id.*
[41] U.S. CONST. Amend. VI.
[42] *Massiah v. United States*, 377 U.S. 201 (1964).
[43] *Texas v. Cobb*, 532 U.S. 162 (2001).
[44] *Kansas v. Ventris*, 129 S. Ct. 1841, 1843 (2009).
[45] *Id.* at 1843.
[46] *Id.*
[47] *State of Kansas v. Ventris*, 285 Kan. 595 (2008).
[48] *Id*. at 1843.
[49] *Id.* at 1844-1845 (quoting *Michigan v. Harvey*, 494 U.S. 344, 348 (1990)).
[50] *Id.* at 1845. The Court noted that the State conceded that a Sixth Amendment violation occurred and the Court did not rule that this "concession was necessary." It accepted the concession as the law of the case.
[51] *Id.* at 1846.
[52] *Id.* (quoting *Stone v. Powell*, 428 U.S. 465, 488 (1976)).
[53] *Id.*
[54] *Id.* at 1847.
[55] *Id.*

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.

FBI Law Enforcement Bulletin Author Guidelines

Length: Manuscripts should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced) for feature articles and 1,200 to 2,000 words (5 to 8 pages, double-spaced) for specialized departments, such as Police Practice.

Format: Authors should submit three copies of their articles typed and double-spaced on 8 ½- by 11-inch white paper with all pages numbered, along with an electronic version saved on computer disk, or e-mail them.

Criteria: The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. It generally does not publish articles on similar topics within a 12-month period or accept those previously published or currently under consideration by other magazines. Because it is a government publication, the *Bulletin* cannot accept articles that advertise a product or service. To ensure that their writing style meets the *Bulletin's* requirements, authors should study several issues of the magazine and contact the staff or access *http://www.fbi.gov/publications/leb/leb.htm* for the expanded author guidelines, which contain additional specifications, detailed examples, and effective writing techniques. The *Bulletin* will advise authors of acceptance or rejection but cannot guarantee a publication date for accepted articles, which the staff edits for length, clarity, format, and style.

Submit to: Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135; telephone: 703-632-1460; fax: 703-632-1968; e-mail: *leb@fbiacademy.edu*.

Bulletin Notes

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

Officer Arpin

Officer Eberhart

Officers Dave Arpin and Ryan Eberhart of the Saint Peter, Minnesota, Police Department responded to a distress call at a local river and discovered several people in the water in danger of drowning. A teenager and younger sibling had become caught in the strong current before a man helped them to shore. Then, he became victimized by the current as was his father who saw him in trouble and also entered the river, along with two younger men who tried to assist them. All four men now were struggling to stay above the surface. Officer Arpin wore a life jacket and a rope around his waist and entered the water while Officer Eberhart held the end of the lifeline. With the help of an off-duty emergency medical technician, the officers helped the men to shore.

Officer Tonkin

One evening, Officer Timothy Tonkin of the Suffolk, New York, Police Department was dispatched to a vehicle in the water at a boat ramp. Upon arrival, he found an occupied vehicle mostly submerged about 60 feet from shore. Officer Tonkin secured his firearm, entered the water, and swam to the site. After repeatedly striking the rear window with his baton, the glass broke, and the vehicle began to fill with water and sink. Officer Tonkin swam underwater, reached the occupant, and brought him to the surface. An off-duty emergency medical technician helped them into a dinghy. Officer Tonkin received treatment at a local hospital for minor injuries, and the victim survived.

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

U.S. Department of Justice
Federal Bureau of Investigation
FBI Law Enforcement Bulletin
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Periodicals
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use $300

Patch Call

The patch of the Cape Elizabeth, Maine, Police Department features the scales of justice and the Portland Head Light. The oldest lighthouse in Maine, it was commissioned by George Washington in 1791 and has guided maritime traffic for over 200 years.

Cortland, New York, is called the Crown City because of its location in the center of seven valleys in the middle of the state. The patch of its police department depicts this, as well as the city's role in importing and exporting items by river. Also featured are three prominent buildings in Cortland.