



Law Enforcement
Executive

FORUM

 **Criminal Justice Compliance Officer:**
A new title and duties for self-governance responsibilities
within law enforcement and corrections agencies

by Wayne W. Schmidt †

The Genesis

Two decades of intermittent business investigations focused on the spectacular misconduct of Charles Keating (savings and loan scandals), Ivan Boesky (arbitrage), Michael Milken (junk bonds), Ken Law (Enron), Arthur Andersen (shredding and altered documents) and the lavish home furnishings and lifestyle of Tyco's CEO. [1]

Recently, it was revealed that hundreds of large firms deliberately had overstated their earnings by capitalizing ordinary expenses and otherwise "cooking the books" – thus enhancing the value of executive stock options. The public and Congress were outraged, prompting new legislation and regulations, including the Sarbanes-Oxley Act of 2002, which requires publicly traded companies to adopt and periodically review the effectiveness of their internal controls systems. [2]

The financial industry responded, and securities brokers now must adopt written procedures "that are reasonably designed to achieve compliance with applicable securities laws, regulations and industry-imposed rules." [3]

Government Self-Regulation

In the past, the public sector – including criminal justice agencies – have followed the lead of the private sector in making key managers responsible for equal opportunity advancement, the prompt resolution of sexual harassment complaints, and increased accountability.

Change, especially in the field of organizational self-regulation, is not always prompted by pure intentions. Legislation – such as enhanced civil rights laws and jury verdicts – also have spawned improved oversight systems.

Police agencies began a form of ritualized self-inspection in the 1960s and 1970s when they contracted for on-site management reviews conducted by the Field Operations Division of the International Assn. of Chiefs of Police.

The outgrowth was voluntary self-regulation, in the form of law enforcement accreditation. In 1979 the International Assn. of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs' Assn. and the Police Executive Research Forum jointly formed the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).

CALEA claims that accreditation creates greater organizational accountability with a proven system of written directives, enhanced training, and clearly defined lines of authority that support decision-making and resource allocation. Several states have formed their own accreditation systems for criminal justice agencies. [4]

However useful the process of accreditation is, it also is expensive and in some cases, redundant.

Chief Compliance Officer – Commercial and Services Sectors

Brokerage houses have led the way by creating an *internal* office of compliance, headed by a **CCO** - a Chief Compliance Officer. While some organizations have created a new vice-presidency, others have given the CCO title, and responsibilities, to the Chief Legal Officer or Chief Financial Officer of the enterprise.

The CCO movement is spreading internationally. The German firm BASF AG, the world's leading chemical company, appointed a CCO in 2003 to enforce the group's "zero tolerance" policy for legal violations and to oversee worldwide training and adherence to BASF's Code of Conduct. [5]

Hospitals and other health care institutions have duties, responsibilities and liabilities that arise from privacy regulations under the Health Insurance Portability and Accountability Act (HIPAA). Many have appointed a CCO to monitor HIPAA and other regulatory compliance.

Banks and other financial services organizations also have embraced the CCO concept. A CCO certification program is offered by the National Assn. of Federal Credit Unions and by Thomson Media's Sheshunoff Information Services. [6] Compliance checklists and manuals assist the CCO with internal inspections and certifications.

Compliance by police and correctional agencies, has been the subject of oversight efforts from a variety of sources, primarily political, citizen and judicial. This article discusses those systems and will then focus on a fourth concept, the creation of an internal compliance office.

I - Political Oversight

Supplanting a general merit service system, some states have created a police commission, fire and police commission, or police merit board, usually appointed by the mayor with the consent of the governing council.

For example, in Illinois, village presidents and city mayors appoint a Board of Fire and Police Commissioners to supervise the hiring, disciplinary and promotional processes, but the members lack policymaking authority. [7] Chicago has a Police Board for personnel and disciplinary review purposes, but also has an Office of Professional Standards, composed of civilian investigators that examine excessive force allegations and recommend action to the Superintendent

In Missouri, the Governor appoints Boards of Police Commissioners for Kansas City and St. Louis. The Kansas City Board also has an Office of Citizen Complaints. In addition to adjudicating personnel matters, the Boards exercise policymaking functions. In Los Angeles, the mayor appoints a Police Commission to exercise policymaking duties, but it does not hear disciplinary appeals.

The U.K. Home Office has an Inspectorate of Constabulary, which makes inspectional site visits at English and Welsh police agencies and publishes its reports on a website. [8]

Critics of the political oversight model claim that political panels lack independence and do not reflect the interests of minority communities.

II- Citizen Oversight

As stated in a National Institute of Justice publication, [9] there is no single model of citizen oversight but most systems have features that fall into one or more of four types of oversight systems:

1. Citizens investigate allegations of police misconduct and recommend findings to the chief or sheriff. The Chicago Police Office of Professional Standards (1974) and Minneapolis Civilian Police Review Authority (1990) are in this category.
2. Police officers investigate allegations and develop findings; citizens review and recommend that the chief or sheriff approve or reject the findings. The District of Columbia Police Complaint Review Board (1948) and Philadelphia Police Advisory Board (1958) are in this category. In some cities, the panel also has the authority to investigate citizen complaints independently or in cooperation with the police agency. The Kansas City (Mo.) Police Office of Citizen Complaints (1969), the Detroit Board of Commissioners (1973) and the San Francisco Office of Citizen Complaints (1982) are in that category.

3. Complainants may appeal findings established by the police or sheriff's department to citizens, who review them and then recommend their own findings to the chief or sheriff.

4. An internal auditor investigates the process by which the police or sheriff's department accepts and investigates complaints and reports on the thoroughness and fairness of the process to the department and the public. The Portland (Ore.) Police Internal Investigations Auditing Committee (1982), the San Jose Independent Police Auditor (1993) and the Los Angeles County Sheriff's Office of Independent Review (2001) are in this category.

Critics of citizen oversight say that panel members are too lenient, lack resources, and do not have the authority to adopt changes in agency policies and procedures – such as the creation of an Early Warning System.

III- Judicial Oversight

The Police Pattern or Practice statute, 42 U.S. Code §14141, authorizes the Dept. of Justice's Civil Rights Division to initiate lawsuits against state and local law enforcement agencies. [10] Since 1994, consent decrees have been entered in more than a dozen cases, and the DoJ has issued "Technical Assistance Letters" to end a few other inquiries. [11]

The Los Angeles Police decree covers such things as the use of force investigation procedures, search and arrest procedures, gang unit operations and administration, the initiation of complaints, the conduct and adjudication of investigations, discipline and non-disciplinary action, motor vehicle and pedestrian stops and the implementation of a non-discrimination policy.

Kroll Associates, an international risk management firm, is the LAPD "Independent Monitor," and their quarterly reports are posted on the agency's website at <www.lapdonline.org>, including a "report card" of progress and performance.

The Oakland, CA, Police consent decree covers internal affairs investigations, discipline, field supervision, management oversight, use of force reporting, a personnel information management system, training, and auditing and review systems. As in Los Angeles, monitor reports are posted on the agency's website at <www.oaklandpolice.com>.

Internally, an Oakland captain functions at the agency's inspector general and a lieutenant serves as the compliance unit coordinator. The decree also requires management to investigate allegations of misconduct arising from lawsuits filed by citizens, and to treat them "in the same manner as other citizens' complaints."

On the corrections side, inmate rights organizations have filed hundreds of "jail conditions" lawsuits. The American Civil Liberties Union founded its National Prison Project in 1972. Bringing class actions in federal courts, the ACLU has collectively represented over 100,000 inmates. Most of the actions have resulted in a consent decree

covering inmate disciplinary systems, medical care, access to courts and legal materials, grievance processing, fire safety, and many other issues.

In general, DoJ mandated monitors review and evaluate an agency's compliance with the consent decree, including use of force policy revisions, citizen complaint investigations, training programs, the Early Warning System, and protocols for the use of vehicle video cameras. [12]

IV - The Police or Corrections Compliance Office

Introducing the Concept

Successful businesses have learned you can pay *now* for risk reduction systems, or you can pay *later* in the form of lawsuits and jury verdicts. Almost always, a post-verdict pay out is larger than the cost of prevention. Police and corrections agencies are often slower than the private sector to adopt controls, in part because judgments are usually paid from a general fund, and not out of the agency's annual budget.

The Congress partially attempted to change that thinking with the passage of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), which protects employee-whistleblowers and other victims of federal discrimination.[13] It requires federal agencies to maintain "No Fear" websites in specified formats. More importantly, agency budgets are assessed any damages imposed as a result of retaliatory and other unlawful treatment of their workers.

Following the lead of highly regulated businesses, several not-for-profit and governmental agencies have created the position of Chief Compliance Officer (CCO), including Drexel University in Philadelphia, Lehman College in New York, the University of Chicago Medical Center, and the UC Davis Health System.

A common thread of organizations with CCOs is that they are substantially affected by federal and/or state laws, they operate under a considerable number of opaque regulations, they are particularly susceptible to media scrutiny, and they are frequently exposed to serious liability claims. Because police agencies and correctional institutions operate in a similar environment, the concept of a centralized compliance office warrants serious examination.

The Litany of Laws and Regulations

Police managers must actively monitor such things as:

1. Adherence to Constitutional requirements relating to the use of force, arrests, the stopping of pedestrians and motorists, searches, seizures, electronic surveillance, infiltration and interrogations.

2. Violations of internal rules, regulations, policies, procedures, and standards of conduct.
3. Unauthorized release of criminal history and driver information.
4. Improper disclosure of personnel information.
5. Illegal or unethical access of restricted data or privileged information.
6. Inadequate investigation of citizen complaints of officer misconduct.
7. De-policing, profiling and other equal protection failures.
8. Adherence to injunctions and other judicial decrees.
9. Misuse of funds, equipment or personnel.
10. Safety violations.
11. Employee whistleblowing.

Corrections managers must actively monitor similar matters, including:

1. Adherence to Constitutional requirements relating to the use of force, prisoner and cell searches, and access to courts and counsel.
2. Violations of internal rules, regulations, policies, procedures, and standards of conduct.
3. Improper disclosure of personnel information.
4. Deficient investigation of inmate complaints of officer misconduct.
5. Indifference to inmate-on-inmate physical or sexual assault.
6. Inadequate sanitation and medical care.
7. Wrongful censorship of inmate mail.
8. Adherence to injunctions and other judicial decrees.
9. Safety violations.
10. Employee whistleblowing.

Methodology

There are many components in an effective compliance system. Some of the more prominent ones are:

- **Periodic inspections.** An *audit manual* and *checklists* help insure uniformity. In medium-sized agencies, inspections can be delegated to divisional commanders and unit supervisors. In larger agencies, specially-trained internal investigation personnel could perform inspectional duties.
- **Random audits.** Nonpatterned examinations encourage voluntary compliance and uncover errors and misconduct. This method has proven effective in detecting and reducing substance abuse.
- **Personnel education and training.** Workers need to be *trained* to follow standardized policies and procedures. Supervisors and managers need to be *educated* on how to implement and interpret policies and procedures. Ethics awareness also should be a component of in-service training programs.
- **Inducements.** Compliance proficiency can be a component of periodic employee *competency ratings*, leading to promotion and assignment preferences.
- **Fairness and objectivity.** Employee associations need assurance that compliance inspections and random audits will be conducted on a non-selective basis, in a standardized manner, and that assessments will be free from bias and political or fraternal influence. Union leaders have a fiduciary duty to question the way a compliance office is implemented and how it functions. Management should be prepared to demonstrate how effective compliance can reduce citizen (or inmate) complaints and minimize liability for the agency and its employees.

Compliance officers also need to report what is being done well, along with any improprieties that might be discovered.

Funding and Organizational Staffing

Management will have to define the scope of inspections and audits, in consultation with the entity's legal and risk management offices. It is premature to suggest targets and methodology in the pre-planning stages.

Internal inspections and audits, like accreditation, will require a time commitment from managers and supervisors. But the establishment of a central compliance office does not require a substantial budget. Duties and responsibilities may shift, but additional personnel are not required.

The Chief Compliance Officer will need to learn new skills and methods, but except in the largest agencies, the assignment requires only the conferring of additional authority, duties and responsibilities. In medium sized agencies, the commander of the internal affairs unit or a civilian risk manager could fulfill this role. In smaller agencies, a deputy chief (or chief deputy sheriff) could be designated the CCO. If the agency is accredited,

the accreditation manager could coordinate the compliance office.

The CCO should report directly to the chief (or sheriff) on compliance matters, without exhausting a chain of command. He or she should be able to contact the agency's legal representatives directly, and to discuss problems or concerns from a legal perspective.

Similarly, all employees should be able to contact the CCO directly, especially if they have ethical questions or need interpretive guidance on agency policies and procedures. Normally, paramilitary courtesy usually entails informing one's superiors that the CCO's opinion will be sought.

On hearing of the CCO concept, one chief commented that several agencies might want to form a cooperative arrangement, whereby officers from one agency would conduct random and periodic inspections of participating sister agencies. That model would relieve superior officers from having to confront their direct subordinates and coworkers, and would minimize any bias or favoritism.

A multi-agency inspections team standardizes the inspections process for all of the participating agencies. Although the results would still be given to each agency head and CCO for review and remedial action, there is greater transparency when outsiders are involved.

Potential Benefits of Central Compliance

1. The chief (or sheriff) and senior management need periodic assurance that subordinates are properly interpreting and following agency policies and procedures.
2. Because administrative negligence often is alleged in lawsuits, civil juries need objective proof that management has established a system to reveal mistakes, to uncover misconduct, and to encourage professional behavior.
3. Political leaders are less likely to overreact to partisan criticisms by special interest groups when management has adopted a reliable internal control system.
4. Periodic reporting by the CCO enhances agency transparency and provides assurances of proper self-governance.
5. If the agency currently has a citizen oversight panel, the CCO is in a strategic position to coordinate and converge the interests of the agency and panel.
6. If the agency is accredited or in the process of achieving accreditation, the CCO is a pivotal participant.

Potemkin Imagery

In the mid 1700s, Marshal Grigori Aleksandrovich Potemkin built elaborate fake villages

to impress the Russian Czarina, Catherine the Great, when she toured along the Volga River in the Ukraine and Crimea. The police agencies that have been sued by the Justice Dept. also had ceremonially adequate internal investigations units and training divisions.

There is a danger that a few corporations, nonprofit organizations and government agencies will create a compliance office in name, without a serious effort to undertake thorough inspections or a commitment to making remedial changes.

The creation of an ineffective compliance office will be recognized as a contrivance. It will not prevent the filing of a pattern and practice lawsuit – nor is it likely to discourage a movement to create a civilian oversight panel. Several cities that were sued by the DoJ had achieved CALEA accreditation. [14]

Core integrity is not just a phrase in an agency's mission statement, it must be reflected in the agency's nuclear culture. [15]

Implementation of the CCO Concept

The AELE Law Enforcement Legal Center is committed to advancing the creation of internal compliance offices. [16] Several stages are planned:

1. Receiving comments and suggestions from people who read this article in the *Forum* or on AELE's website.
2. Participating in conceptual meetings with criminal justice leaders.
3. Hosting a three-day national seminar in November 2005, which would include a review of the laws, regulations, policies and procedures a compliance office would want to monitor.
4. Offering a Certified Compliance Specialist designation for those individuals who complete the compliance seminar and also attend qualifying seminars in police or jail liability and internal investigations.

If the concept is implemented in several states, it is likely that an association of compliance officers will emerge, so that techniques and experiences can be shared.

Notes:

† Wayne Schmidt is a Chicago area police attorney and has served as the editor of the *Fire and Police Personnel Reporter* since 1975, which has discussed thousands employment-related court and arbitration decisions. He is the staff executive for AELE's three-day seminars on police discipline and internal investigations and the chair of the

IACP's Internal Affairs Subcommittee. He earned an LL.M. degree at Northwestern University Graduate School of Law, after serving as Director of the school's Police Legal Advisor Program. His LL.M. thesis was on police administrative rulemaking. He also authored another *Forum* article entitled "New Challenges for Law Enforcement Professional Standards Officers" (May, 2003).

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1. See in general, Rosoff, Stephen, et al. (2003). *Profit Without Honor: White Collar Crime and the Looting of America*, 3rd edit., ISBN 13-114874-5.

2. P.L. 107-204, 116 Stat. 745 (2002).

3. NASD Conduct Rule 3010(b); NYSE Rule 342. Further enhancing regulations are pending.

4. State accreditation organizations include the Commission for Florida Law Enforcement Accreditation, the Georgia Law Enforcement Agency Certification Program, the Massachusetts Police Accreditation Commission, the North Carolina Law Enforcement Accreditation Network, the Pennsylvania Law Enforcement Accreditation Program, the South Carolina Law Enforcement Accreditation Council, the Wisconsin Law Enforcement Accreditation Group and the Accreditation Program of the Washington Assn. of Sheriffs and Police Chiefs. The New Jersey Law Enforcement Agency Accreditation Program is partnered with CALEA to allow joint accreditation.

5. Germany also enacted a Corporate Governance Code (2002), which is accessible in English at:

<www.corporate-governance-code.de/eng/download/DCG_K_E.pdf>. The European Corporate Governance Network highlights other European reforms on its website at: <www.ecgi.org>.

6. Websites: <www.nafcu.org> and <www.sheshunoff.com>.

7. An attempt to promulgate a residency requirement was declared invalid in *Wierenga v. Bd. Fire & Police Cmsnrs. of Cicero*, #61887, 40 Ill.App.3d 270, 352 N.E.2d 322 (1st Dist. 1976) as falling outside the statutory powers of appointment, promotion, the discipline of police officers and firefighters.

8. <www.homeoffice.gov.uk/hmic/integall.pdf>.

9. Finn, Peter (2001). Citizen Review of Police: Approaches and Implementation, U.S. Dept. of Justice, Office of Justice Programs. An online roster of civilian oversight agencies in the U.S. is maintained by the National Association for Civilian Oversight of Law Enforcement at: <www.nacole.org/RosterCivilianOversightAgencies.pdf>. Also see:

- Farrow, Joe & Pham, Trac (Nov. 2003). Citizen Oversight of Law Enforcement: Challenge and Opportunity, The Police Chief.
- Jones, Benjamin Jones (2003). A Historical Analysis of Civilian Oversight [of Police] in America, presented at the annual meeting of American Bar Association's State and Local Government Law Section.
- Bobb, Merrick (2002). Civilian Oversight of the Police in the U.S., Police Assessment Resource Center, viewable at: <www.parc.info/pubs/pdf/Bobbpresentation.pdf>.
- Phillips, Emma & Trone, Jennifer (2002). Building Public Confidence in Police Through Civilian Oversight, Vera Institute of Justice, viewable at: <parc.info/pubs/pdf/verapaper.pdf>.
- Finn, Peter (Aug. 2000). Getting Along with Citizen Oversight, 69 (8) FBI Law Enforcement Bulletin 22-27, viewable at: <www.fbi.gov/publications/leb/2000/aug00leb.pdf>.
- Livingston, Debra (2002). Citizen Review of Police Complaints: Four Critical Dimensions of Value, NACOLE annual conference presentation, viewable at <www.nacole.org/livingston_12_02.htm>.
- IACP (2000). Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs, viewable at: <www.theiacp.org/documents/pdfs/Publications/policeaccountability%2Epdf>.
- Human Rights Watch (1998). Shielded from Justice: Police Brutality and Accountability in the United States, viewable at: <www.hrw.org/reports98/police/uspo118.htm>.
- Johnson, Richard (Dec. 1998). Citizen Complaints: What the Police Should Know, 67 (12) FBI Law Enforcement Bulletin 1-5, viewable at: <www.fbi.gov/publications/leb/1998/dec98leb.pdf>.

10. 42 U.S. Code §14141, Police Pattern or Practice, states: “Cause of action

- (a) Unlawful conduct. It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by

officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

- (b) Civil action by Attorney General. Whenever the attorney General has reasonable cause to believe that a violation of ... [subsection (a) of this section] has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”

11. Jurisdictions sued by the Dept. of Justice, include:

- Buffalo, NY, Police (2002) consent decree: Covers policies, procedures, training, supervision, complaint investigation and compliance.
- Cincinnati, OH, Police (2002) consent decree: Covers use of force policies; chemical spray, canines, beanbag guns, the filing and tracking of complaints, investigation of complaints, oversight, training, duties of the monitor and enforcement.
- Cleveland, OH, Police (2004): Technical Assistance on use of force and prisoner detention facilities.
- Columbus, OH, Police (action filed in 1999 and ended in 2002).
- District of Columbia Police (2001, 2002) consent decrees: The cover use of force policies; the use of firearms, canines, and OC spray; use of force reporting and investigations; resolution of misconduct allegations; performance evaluations; training; and independent monitoring.
- Detroit, MI, Police (2003): Technical Assistance letters.
- Highland Park, IL, Police (2000) consent decree: Primarily covers traffic stops and racial profiling.
- Los Angeles, CA, Police (2001) consent decree: Covers use of force, search and arrest procedures; performance evaluation; internal affairs procedures and documentation; integrity audits; the duties of the Inspector General; and the independent Monitor.
- Miami, FL, Police (2003): Technical Assistance Letter on use of force, canines, Tasers, early warning systems, etc.
- Montgomery County, MD, Police (2000) consent decree: Covers traffic stop data, handling complaints of officer misconduct, training, oversight, reporting and

record-keeping, implementation, and compliance.

- Mt. Prospect, IL, Police (2003) consent decree: Primarily covers traffic stops and racial profiling.
- Nassau County, NY, Sheriff (pending): Complaint alleges that defendants “have engaged and continue to engage in a pattern or practice of using excessive force against inmates.”
- New Jersey State Police (1999) consent decree: Covers traffic stops, the handling of misconduct allegations, misconduct investigations, disciplinary procedures, records, and reporting, training oversight, Independent Monitor reporting, records and implementation.
- Oakland, CA, Police (2003) consent decree: Covers I-A investigations, discipline, field supervision, management oversight, personnel information management, training, and auditing and review.
- Pittsburgh, PA, Police (1997) consent decree: Covers supervision, strip searches, disciplinary early warning, traffic stop reporting, racial bias audits, training, community relations, investigating misconduct, complaint adjudication, and the duties of the independent Auditor.
- Portland, ME, Police (2003): Technical Assistance Letter on use of force, citizen complaints, early warning system, etc.
- Prince George’s County, MD, Police (2004) consent decree: Covers use of force policies, firearms discharges, management oversight, review of misconduct allegations, an early identification system, the use of video cameras and the appointment of an Independent Monitor.
- Schenectady, NY, Police (2003): Technical Assistance Letter on use of force, citizen complaints, early warning system, etc.
- Steubenville, OH, Police (1997) consent decree: Covers training, use of force, policies on stops, searches, and seizures, internal affairs procedures, and monitoring by the independent auditor.
- Villa Rica, GA, Police (2003) consent decree: Relates primarily to vehicle stops and racial profiling.

In addition, the California Attorney General brought a suit against the Riverside, CA, Police. The 2001 consent decree covers citizen misconduct investigations.

See also, Livingston, Debra (1999). Police Reform and the Dept. of Justice: An Essay on Accountability, 2 Buffalo Crim. L. Rev. 817, viewable at:

<wings.buffalo.edu/law/bclc/bclrarticles/2(2)/_ivingston.pdf>.

12. For a job-description of the Independent Monitor position in a police agency, see the DoJ announcement for the Prince George's County, MD, Police at:

<www.usdoj.gov/crt/split/documents/pg_police_rfp.pdf>.

13. 28 U.S. Code §2301.

14. The Cincinnati, OH, Police Dept. was CALEA accredited on July 26, 1997 and signed a consent decree on April 12, 2002. The Columbus, OH, Div. Of Police was CALEA accredited on July 31, 1999 and was sued by the DoJ on October 21, 1999; the litigation ended on September 4, 2002. The Mount Prospect, IL, Police Dept. was initially accredited by CALEA on April 2, 1989 and signed a consent decree on October 5, 2000.

15. See, for example, Hafner, Mark (Sept. 2003). Changing Organizational Culture to Adapt to a Community Policing Philosophy, 72 (9) FBI Law Enforcement Bulletin 7, viewable online at: <www.fbi.gov/publications/leb/2003/sept03leb.pdf>.

16. AELE's website is at <www.aele.org>. The author can be e-mailed at aele@aol.com

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