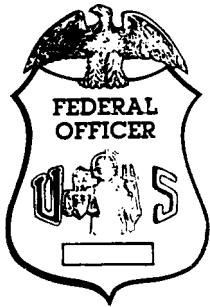




The New Mexico **LAWMAN**

The New Mexico Sheriffs' & Police Association

Est. June 13, 1935 Vol. 10 No. 1



NEW MEXICO SHERIFFS' & POLICE ASSOCIATION OFFERS FREE TRAINING AT 67TH ANNUAL CONFERENCE



**DEPUTY DAVID TESTA
DONA ANA COUNTY
SHERIFF'S DEPARTMENT
OFFICER OF THE YEAR 2003**

EXECUTIVE DIRECTORS MESSAGE



Dear Friends and Associates:

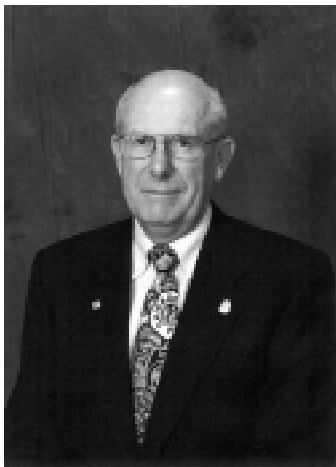
It is once again that time. Our 67th Annual Conference will be held in Ruidoso, NM on April 11th-13th, 2003, preceded by an outstanding training schedule on April 9th-11th, 2003. Each year we plan on having a great time and this year is no different. As you can see from Cal's letter we have a full week of training and conference activities. Please make your reservations early as training is on a first come-first serve basis and the main hotel is already filled. I will list a few other hotels that are close by along with the agenda. We are being joined by the State Police

Brotherhood Association, the State Police Association and the National Academy Graduates. As you can see this could end up being a pretty large group. We are enclosing our agenda and a pre-registration form. We ask that if you have not already done so, to please pre-register so that we have an accurate head count for meals, etc.

Please come out and support your organization. We look forward to seeing you in Ruidoso.

Sincerely,
Richard L. Ness
Executive Director

PRESIDENT'S MESSAGE



Dear Friends and Associates:

My extended term as President on the New Mexico Sheriffs' & Police Association is rapidly drawing to a close. My term will end with the upcoming Annual Conference, held April 11th-13th, 2003 in Ruidoso. This year we will be joining the New Mexico State Police Brotherhood Association, which will hold it's annual meeting at the same time. The New Mexico State Police Association and the National Academy Graduates will also be joining us.

The conference will begin with some outstanding training, which is being sponsored by the New Mexico Sheriffs' & Police Association, FBI, Lincoln County Sheriff's Department, Ruidoso PD, and the New Mexico Dept. of Public Safety, Advance Training Bureau. The training is being offered free of charge and is open to all Law Enforcement. If you or any member of your department are interested in attending any of the training you will need to register by calling Donna Blagg at the New Mexico Sheriffs' & Police Association office at 1-800-491-1004. The training will include Effective Interview and Interrogation for Law Enforcement, Legal Update, Domestic Terrorism in New Mexico, FBI Counter Terrorism/INFRAGARD/Weapons of Mass Destruction, Smallpox, Communicable Disease and a working dinner with special guest speaker for our Friday night banquet and Officer of the Year Presentation.

Sincerely,
Calvin E. Guymon
President

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INTELLIGENCE - SANDIA LABS
RETIRED FBI AGENT, ALBUQUERQUE

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ASSISTANT FEDERAL SECURITY
DIRECTOR FOR LAW ENFORCEMENT,
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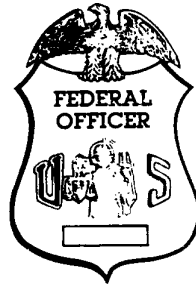
LANNY MADDOX, CHIEF
RUIDOSO PD, NATIONAL EXECUTIVE
BOARD - FBI LEEDA

LIEUTENANT DANNY ESCOBEDO, PAST
PRESIDENT,
LOVINGTON POLICE DEPARTMENT

MATT MURRAY, PAST PRESIDENT
FORMER CHIEF DPS/MTD
FORMER SHERIFF CURRY COUNTY

TABLE OF CONTENTS

| | |
|--|-------|
| Executive Directors Message | |
| Presidents Message | Pg 2 |
| Founding the NMSPA | Pg 3 |
| Donations Organizations | Pg 4 |
| Officer Of The Year 2003 | |
| Whatever Happened to LEAA | |
| Defective handguns | Pg 5 |
| Officer Of The Year 2003 (cont) | |
| NM Homeland Security - Dept. Head Named! | |
| Training Agenda | Pg 6 |
| Conference Agenda | |
| Public Interest | |
| SWIFT | |
| Police Searches | |
| Stun Gun | Pg 7 |
| Terrorism Attack Prevention | Pg 8 |
| The Key to Success | |
| Going Hi-Tec | |
| Just when we thought | Pg 9 |
| U.S. Attorney, David Inglesias takes a stand | |
| Policeman Stops Lady | |
| Not all Crooks are Smart | |
| The Law of the West | |
| Officer Down | |
| What are things coming to | Pg 10 |
| Past President's | Pg 11 |
| Web Page Information | |
| E-Mail Address | Pg 12 |

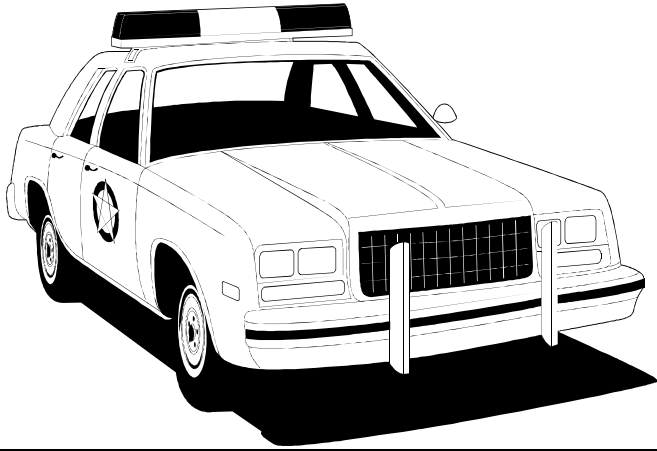


NM SHERIFFS' & POLICE ASSOCIATION 1935-2003

SIXTY EIGHT YEARS AGO WHEN CARS AND PHONES WERE FEW, BEFORE TELEVISION CAMCORDERS, TWO-WAY RADIOS, RADAR AND SUPER HIGHWAYS, A HANDFUL OF NEW MEXICO LAW ENFORCEMENT OFFICERS SAW A NEED TO COORDINATE THE EFFORTS OF ALL LAW ENFORCEMENT ORGANIZATIONS IN NEW MEXICO. THEY MET AND FOUNDED THE NEW MEXICO SHERIFFS' AND POLICE ASSOCIATION.

WE APPLAUD THE VISION OF THE FOUNDING FATHERS OF THIS ASSOCIATION TO BRING TOGETHER THE EFFORTS OF ALL LAW ENFORCEMENT IN NEW MEXICO FOR THE COMMON GOOD OF ALL.

**YOUR GENEROUS DONATIONS
CONTRIBUTE TO THE FOLLOWING AREAS IN
THE GREAT STATE OF NEW MEXICO**



**STATEWIDE LOBBYING
EFFORT ON BEHALF OF LAW ENFORCEMENT**

STATEWIDE RED RIBBON CAMPAIGN

ANNUAL CONFERENCE

**DISBURSEMENT OF
MARIJUANA ERADICATION FUNDS**

SPECIAL OLYMPICS GOLD TORCH RUN

**LAW ENFORCEMENT
DIRECTORY**

SOUTHWEST COMMAND COLLEGE

H.I.D.T.A

VARIOUS CHARITIES

NEWSLETTERS

ONE HUNDRED CLUB

POLICING IN THE 21ST CENTURY

CHILDHAVEN

OFFICER DEATH BENEFITS

**DISBURSEMENT OF FUNDS FOR
PROJECT EXILE**

**THE NEW MEXICO SHERIFFS' & POLICE
ASSOCIATION BELONG TO THE
FOLLOWING ORGANIZATIONS:**

**INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE**

NATIONAL SHERIFF'S ASSOCIATION

WESTERN STATES SHERIFF'S ASSOCIATION

ALBUQUERQUE BETTER BUSINESS BUREAU

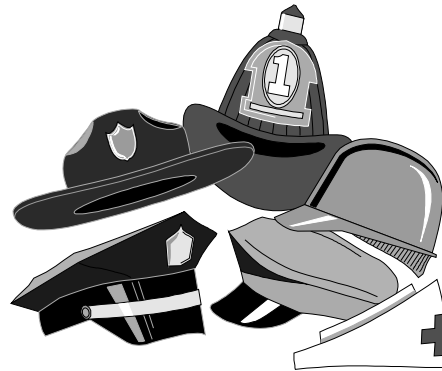
CHAMBER OF COMMERCE

**INTERNATIONAL ASSOCIATION OF DRUG
INVESTIGATORS**

NM CHIEFS OF POLICE ASSOCIATION

NM SHERIFF'S ASSOCIATION

CALIFORNIA SHERIFF'S ASSOCIATION



**Unless otherwise stated, all articles written in this document are
written by Felipe Sandoval, Assistant Executive Director, New
Mexico Sheriffs' & Police Association**

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Department of Justice Office of Community Oriented Policing
Services. Points of view or opinions contained in this document
are those of the author and do not necessarily represent the
official position or policies of the U.S. Department of Justice.

DEPUTY DAVID TESTA
NM SHERIFFS' & POLICE ASSOCIATION
OFFICER OF THE YEAR 2003



To Whom It May Concern:

I recommend that Deputy David Testa be considered for the Officer of the Year Award, sponsored by the New Mexico Sheriffs' & Police Association. Deputy Testa has shown the qualities that I believe should be rewarded by your organization. He possesses an above average knowledge of his profession, consistently represents this department in a professional manner, and has always applied himself to the betterment of the department and the citizens it serves.

During 2002, Deputy Testa was responsible for saving two lives, on two separate occasions, by performing CPR and monitoring the citizens until they were transported to local hospitals.

In one of these incidents, Deputy Testa was dispatched to a possible deceased subject. Upon his arrival, he found a 58-year-old male lying on the floor. While on scene, this man stopped breathing and he immediately initiated CPR and was able to revive him. Shortly after this, and while waiting for the ambulance, the man went into cardiac arrest again. Once again, he was able to revive him. According to the doctors and ambulance crew, it was Deputy Testa's quick response and immediate attention that allowed this man to be alive today.

On another occasion, Deputy Testa was dispatched to a male subject acting bizarre. Upon contacting the individual, a physical altercation ensued and the subject ran from him. While the subject was running, he went into cardiac arrest. Deputy Testa correctly evaluated the subject and performed life-saving CPR on him until the ambulance crew arrived. It was later found that the bizarre activity and the cardiac arrest appeared to have been triggered by illegal drug use.

Deputy Testa came to the Dona Ana County Sheriff's Department with a significant history of law enforcement. His father is a retired Police Officer and Deputy Testa spent 13 years in the Military Police for the army. After leaving the Army, he was employed in law enforcement in Hager Heights, Texas. Deputy Testa holds certificates in the area of Field Training Officer Course, Collision Reconstruction, Breath Test Operator, Aerosol Agents Re-certification, and DWI Detection and Standardized Field Sobriety Tests.

Since joining the department, Deputy Testa has consistently shown the qualities of a fine law enforcement officer and it is my recommendation that he be bestowed with the Officer of the Year Award from your organization.

In closing, I would like to express my appreciation to the New Mexico Sheriffs' and Police Association for offering this award to the local law enforcement agencies.

Sincerely,

Juan Hernandez
Sheriff, Dona Ana County

On behalf of the New Mexico Sheriffs' & Police Association we would like to express our thanks to Deputy Testa for a job well done. In troubled times like these, we realize that without people willing to lay their lives on the line our freedoms and security would be in jeopardy. We thank you Deputy Testa and your family for contributing to our community.

What ever happened to the LEAA?

As I recall, there used to be an organization called The Law Enforcement Assistance Administration (LEAA). It was very helpful to the law enforcement community in the United States in the 1960s, by providing grants and establishing standards for police equipment. Much good was done by this organization, providing funding and training; field testing police equipment, and justifying equipment requirements by law enforcement organizations throughout the country. Studies like the "life cycle costing of police patrol vehicles" which resulted in motor vehicle manufacturers upgrading the quality of vehicles used by law enforcement organizations as well as communications equipment designed for police use. Additionally encouraging law enforcement organizations to re-evaluate their operational policies relative to the use of patrol vehicles, as well as some management practices. The end result being state of the art equipment and training. Smaller departments gained the most, and for the first time, they were able to purchase up to date equipment and training for their officers.

Defective handguns

Be careful out there guys, it seems that the Bernalillo County Sheriffs' Office recently bought some new handguns and soon discovered that some of them would break down after firing only one shot. Every weapon, new or used, or about to be used for the first time should be tested in a safe environment before putting it in service.



67TH ANNUAL CONFERENCE NM SHERIFFS' & POLICE ASSOC. TRAINING (FREE)

FREE

TRAINING OPPORTUNITY FOR
LAW ENFORCEMENT

FREE

The New Mexico Sheriffs' & Police Association along with the New Mexico Department of Public Safety Training Division, FBI, NM State Police Brotherhood Association, New Mexico State Police Association, Lincoln County Sheriff's Office and Ruidoso Police Department will be providing the following free training opportunities in conjunction with the New Mexico Sheriffs' & Police Association's Annual Conference. The training is being offered to all law enforcement. The training will be as follows:

Wednesday, April 9th

8:00 - 12:00

Effective Law Enforcement Interview Interrogation

1:00 - 5:00

(Dave Vessel, Supervising Special Agent FBI, Retired)

Thursday, April 10th

8:00 - 12:00

New Mexico DPS Training Academy, Legal Update (Madeline Melka, Instructor/Staff Attorney)

1:00 - 5:00

Domestic Terrorism in New Mexico (Harry Betz, Assistant Federal Security Director for Law Enforcement)

(Noel Johns, Senior Special Agent, Department of the Interior FBI JTTF)

Friday, April 11th

8:00 - 12:00

FBI Counter Terrorism/INFRAGARD/ Weapons of Mass Destruction (Special Agent Wayne Shuptrine) (Special Agent Chris Carroll)

1:00 - 2:30

Dr. Alan Zelicoff
Smallpox, Communicable Disease

7:00 - 9:00

Lt. General Edward D. Baca (Retired)
United States Army

The training will take place in Ruidoso, New Mexico at Cree Meadows Golf Course located at 301 Country Club Drive. The Hawthorne Suites is headquarters for the training, however rooms are sold out. For your convenience additional Hotel's are the Holiday Inn Express (257-1133) at a rate of \$59.95 plus tax per night and Motel 6 (630-1166) for a rate of \$48.50 plus tax per night.

Training will be certified by the Law Enforcement Academy. Again, this training is free and available to all law enforcement in New Mexico. You are also invited to attend the New Mexico Sheriffs' & Police Association's 67th Annual Conference, which will include a golf tournament held in conjunction with the State Police Brotherhood Association on Friday afternoon and a dinner on Friday evening. On Saturday evening (April 12th) the Flying J owners are going to host a special (private) BBQ and Wild West Show for all registered attendees of the conference. There will be a fishing tournament and the only requirement is that you must purchase your fishing license. There will be a sports trap - skeet shoot for a nominal fee to be paid at the door. There also be a Motorcycle run at no charge. Activities are being planned for the ladies, and a hospitality suite will be furnished during your stay. We have numerous activities planned, so we hope you will come and join us. Registration for the conference will be \$75.00 and if accompanied by spouse there will be a fee of \$70.00.



Biography of Deputy David Testa

Deputy Sheriff David Testa came to the Dona Ana County Sheriff's Department with a significant law enforcement history. He first became involved with Law Enforcement through his father, Raymond Testa, who has been in the Trumbull County Sheriff's Department (Ohio) since 1970.

After graduating High School in Ohio, Deputy Testa entered the United States Army, where he completed 12 years of service as a Military Police Officer. Following his discharge from the service, he began his civilian law enforcement career with the Harker Heights (Texas) Police Department. From there, he moved to Las Cruces, NM to be close to family, and joined the Dona Ana County Sheriff's Department in early 2001.

Since being employed with the Dona Ana County Sheriff's Department, Deputy Testa has received numerous awards for his outstanding law enforcement work, to include a letter of commendation, Officer of the Quarter, Life Saving award, and the Officer of the Year from the Son's of the American Revolution.

Deputy Testa's role models include his father, for always instilling in him the sense to do what is right. First Sergeant Willard Dunn (Ret) for not allowing Testa to settle for anything less than perfection, and Chief Michael Gentry of the Harker Heights Police Department for teaching him to be "Bullet Proof".



NM Homeland Security Department Head Named!

Our new Governor, Bill Richardson, didn't waste any time forming the state version of the Homeland Security Department. He named former State Senator, and retired New Mexico State Police Captain, R.I Stockard, to head up the Cabinet level Department. Stockard's job will be to oversee and coordinate emergency response and security activities. His office will also be New Mexico's liaison with the new Federal Homeland Security Department. Development of this Office is still in the planning stages. We will keep you abreast of developments once they are finalized.

If you or any member of your department are interested in attending, please register for the training by calling Donna Blagg at the New Mexico Sheriffs' and Police Association. The number is 1-800-491-1004. Attendees will be limited to space availability.

67TH ANNUAL CONFERENCE 2003 - RUIDOSO, NM

The 67th Annual Conference for the New Mexico Sheriffs' and Police Association will be held in Ruidoso, NM on April 11th – 13th, 2003. The Hawthorne Suites will be our headquarters, however the hotel is already filled. Please refer to the training agenda for other hotels in the area. *Please pre-register* so that I may get an accurate head count. This is very important as we are expecting a large turnout and I would like to accommodate everyone.

| | |
|--------------------------------|--|
| Friday, April 11 th | |
| 8:00 – 5:00 | Registration, Coffee and Donuts Available |
| 10:00 – 11:30 | NM Sheriffs' and Police Association Board Meeting |
| 2:30 – 5:00 | Business Meeting |
| 7:00 | Banquet- Featuring Lt. General Edward D. Baca (Retired), United States Army Officer of the Year Presentation |

| | |
|----------------------------------|--|
| Saturday, April 12 th | |
| 8:00 – 12:00 | Registration, Coffee and Donuts Available |
| 10:00 | New Mexico Sheriff's Association Board Meeting |
| to be determined | Fishing Tournament |
| | Sports trap – skeet shoot |
| | Motorcycle Poker Run |
| 12:00 | Golf Tournament – Links Golf Course – All activities in conjunction with NM State Police Brotherhood |
| 6:00 | Flying J. Ranch – Wild West Show and Dinner |

Sunday, April 13th Depart

CONFERENCE COST'S

Member: (\$75.00)
 Non-Member: (\$75.00)
 Golf: (\$35.00)
 Spouse: (\$70.00)
 Children: (\$35.00)
 Dues: (\$30.00)

PRE-REGISTRATION FORM

Name: _____
 Agency: _____
 Golf: (\$35.00)
 Fishing _____
 Sports Trap – Skeet Shoot _____
 Motorcycle Poker Run _____

To attend the Friday night banquet you must be registered for the New Mexico Sheriffs' and Police Association conference or you must be registered as a trainee for the week. There will be a \$20.00 charge for all others wishing to attend the banquet. This will be on a first come – first serve basis, as we are limited to 200 seats.

PUBLIC INTEREST

Former Director of the Department of Public Safety, Darren White, was elected as the new Bernalillo County Sheriff. Retired Chief of the Santa Fe Police Department, and Chief of the New Mexico State Police, John Denko was named as Director of the Department of Public Safety. Assistant Chief of the Santa Fe Police Department, Beverly Lennen moved into the Santa Fe Chief slot, by the way – the first female Chief of the Santa Fe Police Department, at least since I was a member of the department back in 1953. In our last bulletin, we inadvertently omitted naming the new Isleta Chief Sylvester Stanley. Congratulations to all.

SWIFT (South West Investigative Fugitive Team)

A most appropriate title for a fugitive task force. It Reminds me of a Venezuelan Army recruiting program. They would use a similar tactic of surrounding a popular event, like, say a soccer game, grabbing everybody that looked too young to have served in the military and "recruit" them. They would then load them up in a big old 6X6 and carry them off to a secret recruit training camp. The difference between the Venezuelan Army and SWIFT was that Swift participants had warrants before they cordoned off the state fairgrounds and they knew exactly who they were looking for. The "operation" was termed a great success according to Gordon Eden our most recently appointed U.S. Marshall. Gordon may have remembered his days when he was a New Mexico State Police Officer and perhaps "worked" the State Fair back then.

The task force was comprised of almost 200 officers from nine law enforcement agencies: Federal, State, County, Albuquerque Police Department, the District Attorneys office, the U.S. Immigration and Naturalization Service, the New Mexico State Police, the New Mexico State Probation & Parole Division, the Open Space Division Rangers, and the U.S. Marshall's office. Armed with over 500 warrants they managed to serve one hundred thirty-one of which 80 were felony warrants, and 51 misdemeanor warrants. Much to their surprise, they also discovered that five of the people named in warrants were deceased, reported by next of kin and confirmed through death certificates. We are assuming that all 5,500 people named in active felony warrants were researched through state death records, and that the other 5 thousand names are still being sought by the authorities. Hats off to the members of SWIFT for a job well done!

Police searches

An update on the matter of searches of vehicles and the California Supreme Court decision allowing police to search vehicles in cases where the driver could not produce registration papers or drivers license. We mentioned vehicle searches in a recent article in the NMS&PA newsletter where we addressed curtilage, the area immediately available to a person where we may search for our own safety. Searching beyond that is strictly prohibited by the constitution **unless** the person is **arrested**, then a search of the vehicle is conducted to protect its contents while the owner thereof is in custody. If the search subsequently reveals the fruits of a crime whether it be drugs, guns, or other real evidence, the search then could realistically be presumed to be legal by the courts.

Stun gun

I know it's been a long time since you all have seen this not so newsy newsletter. Many of you may not have noticed an article first appearing in the Albuquerque Journal way back during the last week of September. It appears that a man in Texas discovered another use of the stun gun, he is reported as having "zapped", his eight-year old stepson as punishment for having missed the school bus. What happened to spankings, or time-outs? It is our hope that something like this never happens again.

TERRORISM ATTACK PREVENTION

The more I read about homeland security the more convinced I am that you cannot prevent all attacks designed to terrorize people. During the official signing into being of the new Homeland Security Department on November 25th, 2002, President Bush himself acknowledged that even with this reorganization in more than fifty years, we can neither predict nor prevent every conceivable terrorist attack. In a free and open society, no department of government can completely guarantee our safety against ruthless killers who move and plot in the shadows, he said. This was proven true just fifteen days after President Bush formally established the Homeland Security Department. While the country was busy rooting out the planners and perpetrators of the September 11, 2001 attack on the world trade center and the Pentagon, a sniper launched an attack in one of the most guarded places in the country. We were not able to catch him/them, until AFTER numerous innocent people had been murdered, striking terror in the minds of the American people, especially those living in the shadow of the Nations Capitol. That we are highly vulnerable to terrorist acts is an understatement, our democratic system of government makes us so. Heretofore we relied on swift and severe punishment of the perpetrator as a deterrent. But how can you deter someone whose ultimate objective is to kill himself/herself while taking out innocent bystanders who have done nothing to attract such an act. Who are we going to punish? This is a totally different kind of war, a war that must be fought in a totally different manner. Hence the Patriot Act, and the establishment of the Office of Home Security. To succeed in this war, everybody must be involved, from the alert eyes of every common citizen to the most sophisticated technological development at our disposal. No matter the technology, it will never replace the human element. Remember it was an alert civilian who led law enforcement officers to the vehicle where the D.C. Snipers were sleeping. Oh yes, we can secure highly vulnerable places with cameras & other security systems; we can place armed guards around some of them, but without advance intelligence we won't know where they will strike next, nor how or by whom. This is an area where the Office of Home Security will play a key role as it massages intelligence reports from numerous law enforcement organizations and other agencies. The key to success will be timely sharing of the ultimate result. People whose objective is to terrorize are very different from common criminals whose objective is to steal, sell drugs, or kill someone who has betrayed their trust. Yes, we can make it harder to penetrate certain specific areas, but we cannot prevent acts of terrorism.

Article IV of the Constitution

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

It has been reported that the U.S. Court of Appeals over turned a lower court decision ruled last January 21, 2003, (based on the capture of an American Citizen fighting in Afghanistan alongside Taliban and al-Quida fighters); that American citizens could be held as enemy combatants (during wartime) without the constitutional protections afforded Americans in criminal prosecutions. + I don't believe that a U.S. Citizen fighting against U.S. forces in any country, especially a foreign country can be treated the same as a U.S. citizen voicing a differing opinion about policies being employed in the United States. The former should be labeled a TRAITOR and banished in isolation for life, and the latter afforded every constitutional right afforded any U.S. citizen, and if ultimately found guilty of a crime, punished in accordance with the laws of the United States. While I personally don't believe this, war, as it is being called, truly fits the definition of war. According to the Merriam-Webster Dictionary, war is defined as,

- 1.) a state or period of open and declared armed fighting between states or nations
- 2.) the art or science of warfare,
- 3.) a state of hostility or antagonism
- 4.) a struggle between opposing forces or for a particular end.

This is not that kind of a war. As defined by the Department of Defense in the Return to Freedom Papers on combating terrorism it is the calculated use of violence or threat of violence to include fear; intended to coerce or intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological. Terrorism is a criminal act, terrorists are criminals. Combating terrorism involves actions that include antiterrorism defense measures used to reduce vulnerability to such acts. The best way to achieve this objective is through the timely analysis of intelligence and prompt dissemination to involved locations followed by swift, and severe punishment. Terrorist acts are criminal acts whether committed during peacetime military operations, hostilities short of war; however, jurisdiction varies in wartime. Terrorists, by definition do not meet the four requirements necessary for combatant status:

- 1.) Wear uniforms or other distinctive insignia
- 2.) Carry arms openly
- 3.) Be under command of a person responsible for group actions,
- 4.) Conduct their operations in accordance with the laws of war.

Only combatants can legitimately attack proper military targets. For this reason, captured terrorists are not afforded the protection from criminal prosecution attendant to prisoner of war status. War is not a game, that is perhaps why the declaration of war, calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions, is delegated to the Congress of the United States Congress rather than to any one individual. See (Section #8 of the Constitution). In peacetime, military operation terrorist acts are punishable under domestic (local) law. This is also true in police actions to maintain a legitimate government. However, in an internationally recognized war or hostilities short of war (regional or global), terrorists can be tried under local criminal law or under military jurisdiction by either court-martial or military tribunal. We have learned from painful experience that unchecked authority, once tasted, easily becomes insatiable. The first thing that comes to mind is the treatment of American Indians in the early 1860s, and more recently of the incarceration of native Americans of Japanese ethnicity during World War II. There is a lesson to be learned by studying the terrible loss of life in Israel and Palestine in their struggle. We have amendments to the Constitution that accommodate the changing times. One such change is the posse comitatus act enacted by congress in 1878 prohibiting the army from enforcing civilian laws. As times have changed, so has the wording of the Posse Comitatus Act. Gleaned from the Return of Freedom Papers:

A.) The Posse Comitatus Act, enacted in 1878 (18 United States Code 1385), prohibits use of Army and Air Force personnel to execute the civil laws of the US, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress. Violation of the Act carries with it criminal liability (felony) and the possibility of a fine and imprisonment. This prohibition is applicable to Navy and Marine Corps personnel as a matter of DOD policy. The primary prohibition of the Posse Comitatus Act is against direct military involvement in law enforcement activities. Generally court interpretations have held that military support short of actual search, arrest, or similar confrontation with civilians, e.g. traffic direction (i.e. traditional law enforcement functions) is not a violation of the Act. Examples of such permitted support include the provision of information, equipment and facilities. By way of personal experience, when I was Assistant Chief of the U.S. Customs Air Operations Branch in El Paso, Texas, it was not unusual for me to check out Night Vision equipment at Fort Bliss for our Air Officers to mount a surveillance of a suspected landing site or other smuggling activity, or to call upon the Army to assist us with their Portable radar units and personnel to operate them during surveillance of suspected smuggling areas. Further, the Air Force allowed one of our U.S. Customs pilots to fly in the AWACS to monitor border Activity for smugglers as they flew along our Western border fulfilling their mission. Note the categories of personnel to whom the PCA does not apply:

- 1.) a member of the reserve component when not on active duty, for training, or inactive duty for training;
- 2.) a member of the National Guard when not in the Federal service;
- 3.) a civilian employee of the DOD, unless they are under the direct command and control of a military officer;
- 4.) a member of the Military Service when off duty, and in a private capacity (but a member is not acting in a private

The key to success is Cooperation

capacity) when the assistance is rendered under the direction or control of DOD authorities. In 1981, and in subsequent years, in an effort to clearly stake out the boundaries of the Posse Comitatus Act, Congress codified these court interpretations in 10 USC 371-381 military support for civilian law enforcement agencies. In so doing, commanders could feel confident that the support they provided to civilian law enforcement, particularly in the counter-drug area, would be legal. While these statutes are frequently called, exceptions to the PCA, in fact only one, 10 USC 374, expanded the court-set boundaries of the PCA. That statute permitted military forces to operate and maintain equipment utilized by civilian law enforcement forces.

C.) a brief description of the statutes follows:

- (1) Information, Equipment, and Facilities may be provided per 10 USC 371/2. Always check approval authorities
- (2) Personnel may be used to provide training, expert advice, and to operate/maintain equipment. Note that the training authorized is limited to training in connection with the equipment. The 1982 version of DOD Directive 5525.5 contained the same limitation, which postdates AR 500.51, and does not contain this limitation. The Military Departments may provide training to Federal, State, and Local civilian law enforcement officials. They may include training in the operation and maintenance of the equipment made available. While the DOD SECDEF do prescribe to regulations prohibiting the direct participation of any service member (Army, Navy, Air Force, or Marine Corps) in a search, seizure, arrest, or similar activity, unless otherwise authorized by law.
- (5) A more detailed discussion of these statutes follows in the counter drug section. While these statutes were designed to address the drug problem, their scope is not limited to counter drug related activities.

The following are the traditional exceptions to the PCA:

- 1) Constitutional exception: limited presidential authority in cases of emergency and to protect federal property.
- 2) Civil disturbance statutes (10 USC 331-334): Permit use of federal troops to restore order.
- 3) Military Support for Civilian Law Enforcement Agencies statutes (10 USC 371-381): Technically, not an exception to the PCA: Instead they clarify its limits.
- 4) Military purpose doctrine: Permits use of military personnel in a law enforcement role when primary purpose is a military one. Most often used in joint criminal investigations by military criminal investigative personnel and civilian law enforcement agencies, e.g. DOD Inspector General Memorandum #5 (October 1987) sanctioned drug investigations.

The key phrases in the Posse Comitatus Act are, to execute the laws. Three different interpretations have emerged from federal courts regarding what this language means. In *United States v. Jaramillo*, 380 F. Supp 1375 (1974) the court looked to whether the conduct of the military precluded the activities of civilian law enforcement. In *United States v. Red Feather*, 392 F. Supp 916 (1975) the court held that executing the laws meant direct active use of military personnel. In *United States v. Mac Arthur*, 419 F. Supp 186 (1976), the court decided that execution of the laws meant subjecting citizens to military authority which was regulatory, proscriptive, or compulsory. All three tests may be applied to a single situation, and if the activity in question meets any of the tests, the court may determine that the Act itself has been violated. Note however, that no one has ever been convicted of a Posse Comitatus Act violation. As noted in the *Washington University Law Quarterly (WULQ): THE POSSE COMITATUS ACT: A PRINCIPLE IN NEED OF RENEWAL*. Congress passed the Posse Comitatus Act to prohibit the use of the Army in civilian law enforcement. The Act embodies the traditional American principle of separating civilian and military authority and currently forbids the use of the Army and Air Force to enforce civilian laws. In the last 15 years the WULQ goes on, Congress has deliberately eroded this principle by involving the military in drug interdiction at our borders. This erosion will continue unless Congress renews the PCA's principle to preserve the necessary and traditional separation of civilian and military authority. While military personnel are proscribed from executing the laws, it is to civilian law enforcement organizations interest to be aware that the military establishment may and does provide some very meaningful assistance.

One area where we can, and have improved, is sharing information that can be centrally analyzed and converted into meaningful intelligence that can be used to the benefit of all. An excellent example of this was operation SWIFT mentioned in a previous article in this bulletin. Another example of what can be done is by the cooperation of all law enforcement agencies in the DC area and the country during the sniper case in October of 2002. Even then you noticed that we could not prevent the first murder or several subsequent murders that wrought terror in the minds of the American people. Our strength comes from the free sharing of pieces of intelligence diligently developed and timely disseminated combined with the alert eyes of American citizens, one of whom led law enforcement officers to where the suspect's vehicle was parked. As with all other crimes, we only REACT after the fact. We should emphasize that our work is made easier by the extent of cooperation between law enforcement, the media, and the American public.

Going Hi-Tec

Just when everyone began worrying about the wasted time, the wear and tear on patrol vehicles, and officer downtime, we are going High-Tec. The problem, the new jail being 17 miles away from the courts. Although not the first in the country to do so, we have overcome the potential problem by establishing an electronic link between the court, the jail, the prisoner being tried, and the presumed need for some judges to carry a handgun into the courtroom. With a fist-sized camera in the face of the judge, through use of large screens within the walls of the jail, and the court's office, an audio/video digital system, the judge, and the lawyers on both sides of the aisle, and the prisoner being tried, can communicate with each other on a real time basis. And we don't have to worry about prisoners attempting to escape during the trip to and from the jail to the courtroom. While defense attorneys are complaining about the impersonal aspects of the system, and having to drive out there every time they need to consult with their client, it appears that the video arraignment system will become a reality by next October 2003.

Now, if the voice and picture can be piped into patrol units in the field we could skip the eye-ball to eye-ball stuff and get down to business. And officers wouldn't have to fear they'd get fined for being late to court as some have been lately. They could just pull over and take care of their testimony and go on with their business. That lacking, let's try out a hypothetical situation. You're working an accident on the Interstate, three people are hurt, the ambulance guys are busy stabilizing the injured, the wreckers (2 of them) are trying to snake their way between cars; Traffic is lined up for miles, and you get a call from the court that you are needed to testify on that DWI you worked three days ago. Perhaps you are in the process of taking down one of the numerous meth labs that keep popping up here and there, and the judge calls, "you are needed in court to testify, you've got 30 minutes to get to court". Realistically, you cannot say "excuse me folks, I need to go testify in court, and you sure can't say," "aw the heck with it, and drive off". Now if you're just being snooty, the judge has every right to fine you, but having been there myself, I know there isn't one officer that would do such a thing. Right?

Just when we thought we had heard it all:

Here's a guy in need of a little dope, who perhaps has a client waiting for a supply of the same. Unbeknownst to him, he makes a deal with an Albuquerque undercover police officer for 12 pounds of marijuana, however he puts a condition on the officer for delivery. He says, "you'll have to bring the marijuana to my house because I am babysitting". (He was sitting with his 3-year-old daughter and 7 month old son). The man hands the undercover officer \$4,800.00 in cash and the officer hands over a duffel bag with the dope. It isn't long before an officer shows up with a warrant and the man is arrested and booked into the Bernalillo County jail. In the course of serving the warrant, the officers turned up an AK-47, a Tec-9 assault pistol, and other weapons. Of course the man didn't waste any time in jail, his bail was set at \$15,000.00 and he was out in no time. We didn't hear what happened to the kids, but we hope they were taken some place where they could get the care and attention they need. We're thinking, maybe the bail wasn't high enough.

U.S. ATTORNEY, DAVID IGLESIAS TAKES A STAND!

As war looms over the horizon, more active law enforcement officers who are also National Guardsmen or reservists are being called back into active military service, leaving law enforcement organizations as well as civilian employers, crying foul as they see their already thin staffing thinner. The big problem lies in the position taken by administrators who do not want to leave positions open for an undetermined period of time while these personnel are serving their military obligations. Some thought reservists had to ask permission to be away from work. Those positions are still on their rosters and actually count as an active duty person, but there is no one there to perform the function. The absent person retains his or her seniority, thereby creating a problem for managers, e.g. Supposing a ranking officer or other manager is called into service, that person leaves that position open and it can only be filled as a temporary assignment. When the person returns to duty, he/she goes to the position held before being called to military service and pay grade or rank held, the acting person goes back to where he/she was before, promotions were put on hold. Iglesias has received a number of calls from persons being called back to active military service whose bosses are accused of discriminating against them. By way of example, Iglesias noted that it is illegal for bosses to count National Guardsmen and reservists time in training status as vacation time. He went on to say that employers are banned from discrimination in hiring or promotion practices in accordance with the Uniformed Services Employment Rights Act of 1994.

As a reservist myself after WW II, I was called back to active duty, when the Korean War broke out, and given two weeks to get my affairs in order before reporting for duty. I had a full-time job and was attending Adams State College in Colorado part time. I left my employer high and dry, as the saying goes, he had to hire a replacement. My wife and child had to find another home. When I returned two years later, my previous employer had already hired another man and I had to look for another job. Thank God for unemployment checks as meager as they were. I am sure that there were many other families that would have appreciated the current remedy. This was exactly the kind of situation the Uniformed Services Employment Rights Act is designed to prevent. We understand that 600 or so guardsmen and reservists from New Mexico are being called back to active duty as we prepare to defend our country again. Thanks Mr. Norman Churchill, Chairman of the Employer Support of Guard and Reserve of the Defense Secretary's Office for Reserve Affairs, and to U.S. Attorney David Iglesias, for coming to the aid of many of our police officers, firemen, and others who seem to always be among the first to answer the call to defend our country. If I remember correctly, some people in sensitive positions during WW II and Korea were exempted from military service, including law enforcement officers and firemen, as well as some scoundrels with connections. This might be a way to keep experienced officers who fight the battle every day on the streets of America on the job. After all, terrorists are criminals too.

Policeman stopping lady who ran stop sign

Policeman: "Lady, it says here that you should be wearing glasses".

Lady: "Well, I have contacts.

Policeman: "I don't care who you know, you're still getting a ticket."

Not all crooks are smart

Then there's the man in Long Beach, California who, when attempting to rob a person at gun point became angry when the supposed victim refused to hand over his money. The suspect pulled the trigger but the gun misfired, puzzled he peered down the barrel and squeezed the trigger again, this time the gun fired. You know the rest.

The law of the West is alive & well

Two armed graffiti artists at work in Southwest Albuquerque suffered minor wounds after they threatened to shoot an 81-year-old man. He didn't mess around he promptly raised his 12 gauge shotgun and blasted them. The moral of that story is, just cuz they're old doesn't mean they are helpless.

OFFICER DOWN!

This dreaded call is being heard more and more often these days, and it makes us sick to see the direction society appears to be taking. It began to escalate in early October 2002 when an off duty Deputy Sheriff from Luna County and his brother, an off duty State Police Officer, were attempting to break up a bar fight between two women. It was said that a person drove up to the two off duty officers, shooting both of them. The Deputy Sheriff was shot several times in the torso, and died as he was being taken to the hospital. The state police officer was treated and released. Luckily no innocent bystanders were struck by flying bullets.

On the same day in Albuquerque, another police officer responding to an 'officer down' call, was struck by a suspected drunk driver.

Another police officer when arriving at a loud party was struck by a vehicle, as were three other officers who were struck by two different vehicles. In a matter of minutes, five police officers were struck and injured by two different vehicles.

Later during the same month, another Police officer during a routine traffic stop in Roswell was shot while pursuing the driver of a vehicle who stopped and exited his vehicle and decided to run for it rather than respond to the officers questions. The police officer gave chase on foot and the race was on. The subject stopped, and turned on the officer firing and hitting him five times. Although seriously wounded the officer managed to get off one shot hitting the subject in the shoulder. Witnesses who saw the subject run into a nearby house alerted other officers who were able to apprehend the subject, who after a brief standoff with a SWAT team, surrendered. The police took him to the hospital where he is awaiting trial. The officer on the other hand, despite being hit 5 times is expected to recover, except for a finger, which was shot off during the exchange of fire.

Then we have an attempted train robbery near the Mexican border where two FBI agents were investigating the theft of interstate shipments from railroads who ended up being attacked, dragged across the border into Mexico and beaten up by a group of sixteen Mexican nationals that had previously boarded the train. Fortunately all were subsequently arrested and sent to the Sunland Park, New Mexico jail for interrogation.

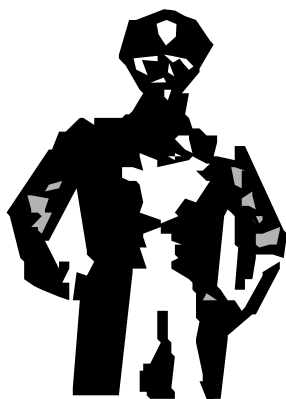
Follow-up: Of the 16 people arrested only 13 were charged in the fracas. Charges were dismissed against eleven of them by U.S. District Judge William P. Johnson for lack of evidence, but two individuals remain in custody according to information from Consular officers in El Paso. The injured agents have been released from the hospital, but one may need additional surgery while the other requires physical therapy resulting from a skull fracture.

One night later in the month, Albuquerque Police officers spotted two men breaking into a vehicle in the heart of the city early one night, when the officers attempted to stop the break-in, the two men jumped into a vehicle and attempted to run over the two officers. They failed in their attempt and were soon captured and jailed. Way to go men!

What are things Coming to?

In Fort Lauderdale, Florida, a sixteen-year-old youth was charged with beating his fifteen-year-old wife after she had hidden the caps to his toy pistol. What next? Things are getting bad, and that's for sure.

PAST PRESIDENTS, NEW MEXICO SHERIFFS' AND POLICE ASSOCIATION



| | | | |
|------|---------------------------------------|---------|--|
| 1935 | G.R. Fletcher Sheriff, Colfax County | 1968 | L.M. Hall Chief, Roswell, PD |
| 1936 | G.R. Fletcher Sheriff, Colfax County | 1969 | Capt. A.J. Smith New Mexico State Police |
| 1937 | J. Riley Hughes Sheriff, Union County | 1970 | Manuel Gonzales Chief, Gallup PD |
| 1938 | J. Riley Hughes Sheriff, Union County | 1971 | Sgt, D.N. McElroy NM State Police |
| 1939 | Leslie J. Mahoney Asst. Chief, Gallup | 1972 | Capt. James Larue Albuquerque PD |
| 1940 | Leslie J. Mahoney Asst. Chief, Gallup | 1973 | Lt. Bill J. Gill Roswell PD |
| 1941 | Frank Young Sheriff, Chaves County | 1974 | Lt. J.B. Sosa New Mexico State Police |
| 1942 | Frank Young Sheriff, Chaves County | 1975 | Felix D. Work NM Dept. Transportation |
| 1943 | Kelsey Presley Sheriff, McKinley Cty. | 1976 | J. Kavanaugh Los Alamos Labs |
| 1944 | Howell Gage Sheriff, Eddy County | 1977 | A.J. Campbell Albuquerque PD |
| 1945 | Howell Gage Sheriff, Eddy County | 1978 | Doug Brown Sheriff, San Juan County |
| 1946 | Roy Kerr Chief, Lordsburg | 1979 | Sam Tow New Mexico State Police |
| 1947 | Horace B. Owens Sheriff, Lea County | 1980 | C. Teague Roswell Police Department |
| 1948 | Horace B. Owens Sheriff, Lea County | 1981 | J. Syling New Mexico State Police |
| 1949 | H.W. Bealsey Chief, NM State Police | 1982 | J. Lehner Albuquerque Police Dept. |
| 1950 | Paul A. Shaver Chief, Albuquerque PD | 1983 | J. Brown Farmington Police Department |
| 1951 | Paul A. Shaver Chief, Albuquerque PD | 1984 | Ed Sauer, FBI |
| 1952 | Capt. E.A. Tafoya NM State Police | 1985 | J. Williams New Mexico State Police |
| 1953 | L.O. Thompson Jr. Chief, Roswell, PD | 1986 | M. Otero Farmington Police Department |
| 1954 | J.G. McAdoo Sheriff, Lea County | 1987 | Richard Ness APD, Torrance Cty. Sheriff |
| 1955 | Lalo Sanchez Chief, Lordsburg PD. | 1988 | James Jennings New Mexico State Police |
| 1956 | Joe Roach Chief, NM State Police | 1989 | Jim Robles Asst. Chief, Las Cruces |
| 1957 | Martin Hartsill Sheriff, Eddy County | 1990 | Juan Garcia Deputy Chief, Santa Fe |
| 1958 | A.B. Martinez Sr. Chief, Santa Fe PD | 1991 | Dave Bibb, FBI, Retired |
| 1959 | S.H. Andrews NM State Police | 1992 | Bill Conley APD, Chief Angel Fire, Ret. |
| 1960 | Frank J. Stephenson Dep. Chief Alb PD | 1993 | Anne Otero Lt. Farmington Police Dept. |
| 1961 | J. C. Jake Fort Sheriff, Lea County | 1994 | Jack Childress Sheriff Eddy County |
| 1962 | Capt. A.P. Winston NM State Police | 1995 | Jim Bureson Dir NM Motor Trans. Div. |
| 1963 | W.G. Bradley Sheriff, Lincoln County | 1996 | Mike Bowen New Mexico State Police |
| 1964 | James F. Robinson Chief, Lovington PD | 1997 | Steve Aguirre Jr. Retired Silver City PD |
| 1965 | Hoover Winberly NM State Police | 1998 | Joe Bowdich, Sheriff Bernalillo County |
| 1966 | Roy Marcum Sheriff, San Juan County | 1999 | Danny Escobedo, Lt. Lovington PD |
| 1967 | P.A. Sipe, Special Services, ATSF | 2000 | Matt Murray, Chief DPS/MTD |
| | | 2001-02 | Calvin E. Guymon, FBI Retired |

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