

KENTUCKY CERTIFIED PUBLIC MANAGER PROGRAM

APPLIED PROJECT

ANALYTICAL/ CONCEPTUAL/TECHNICAL SKILLS

PROJECT MANAGEMENT

May 1-December 1, 2003

CONSULAR NOTIFICATION REQUIREMENTS FOR KENTUCKY LAW
ENFORCEMENT AGENCIES

PROJECT #1

SUBMITTED BY:

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A. PROJECT IDENTIFICATION

a. Background

To place this project in context, I must first explain that Kentucky has a myriad of law enforcement agencies. On the local level, Kentucky has municipal (city) police departments, county police departments, county sheriff's offices, and public schools police. On the state level, law enforcement agencies include the Kentucky State Police, Kentucky Vehicle Enforcement, Kentucky Fish & Wildlife, the police departments of state universities, as well as all of the state agencies that have enforcement officers with limited jurisdiction.

The question arose as to how to get important information out to all of these agencies, in a timely manner. Specifically, for the purposes of this project, I identified the need to inform all agencies that may arrest foreign nationals (illegal or legal aliens) of the legal requirement to notify those individuals of their rights under the Vienna Convention on Consular Relations.

In recent years, Kentucky's foreign-born population has increased tremendously. While Mexican nationals account for the majority of this increase, Kentucky also has substantial numbers of aliens from other countries, including Central and South America, Eastern Europe and Asia, in particular. Certainly many of these individuals are in the process to become United States citizens, but many others have entered and remain in the United States illegally.

According to the Profile of the Foreign-born Population in the United States¹, 2000, Kentucky's foreign-born population consisted of approximately 2.5% of the population. This is a substantial increase from the 1997 report² of the same name, which set the foreign-born population of Kentucky at 1.2% of the state's total. It is generally believed, however, that these official numbers actually under-report the true numbers, because of the difficulty of doing a government tally of individuals who are illegally in the country, and who fear deportation.

Non-U.S. citizens may come to the attention of law enforcement in many ways. Some are victims, others may be lawbreakers. As an example, because illegal aliens are unable to get a Kentucky operator's licenses, an illegal alien caught driving on Kentucky roads will likely face arrest for that offense. Aliens are also subject to arrest for all of the same criminal offenses as citizens, everything from possessing forged documents to domestic assault. Kentucky law permits an officer to make an arrest of an individual for misdemeanors under certain circumstances, in this situation, for example, a legal Kentucky resident (whether alien or citizen), who may be presumed to appear in court as required, may be given a citation, where a non-resident or illegal alien would be jailed, to ensure that they would appear in court.

In 1969, the United States ratified the Vienna Convention on Consular Relations. This treaty is most commonly known as the treaty that gives diplomats and consular officers, and their respective staff members, varying degrees of legal immunity from arrest and prosecution. However, this treaty also identifies the right of foreign nationals, when under arrest or detention in a foreign country, to be notified by the arresting officer

¹ U.S. Census Bureau, Current Population Reports, December, 2001.

² U.S. Census Bureau, Current Population reports, August, 1999.

that they have a right to be notified that they may contact their consulate for assistance. (In certain cases, pursuant to separate bi-lateral agreements, the consulate must be notified if one of their citizens is arrested.)

Over the last few years, the Kentucky Department of Criminal Justice Training has trained officers in the need to include the consular notification in the arrest process. This requirement was included in basic recruit training in 1999, and has been included in various professional development (in-service or continuing education) classes as well. In January, 2002, an article concerning this requirement was included in the departmental publication, Inside Information, which is published quarterly and sent to law enforcement commanding officers (chiefs and sheriffs) as well as a variety of other individuals. (See Appendix 1.) In addition, every issue of the magazine is available in Portable Document Formant (PDF format) on the department's web site, so that all officers and other interested parties may read the publication as well.

b: Theory and Application

A project is simply “doing something that has never been done before, by predicting the unknown, by developing a plan to deal with the unknown, and by implementing tasks through people who don't report to you, using resources that are limited and over which you have no control.”³ To qualify, a project must include both a definite beginning and ending, although of course, the end of one project may in fact be the beginning of the next project. A project should result in a tangible result that comes as a result of a series of sequenced and planned activities. All projects have constraints, or limiting factors, such as quality, time and resources, and these triple constraints are often in conflict.

³ Project Management workbook, Governmental Services Center, p. 6.

c: Life Cycle

Every project undergoes a life cycle: initiation, planning, execution and close-out. As mentioned above, the close-out of one project may become the initiation of the next project. (This cycle is similar to the one described as OODA: Observation, Orientation, Decision and Action.)

Initiation

For the purposes of this paper, this specific project was precipitated by a question received by the Legal Section in the spring of 2003. The initiation phase of any project includes consideration of the following: need (or opportunity), stakeholders, goal, roles and responsibilities, communication plan and business case. The goal is further described by the SMARTI acronym: specific, measurable, agreed upon, realistic, time, and integrated. In this case, we identified the goal to be sharing the same message with as many law enforcement agencies as possible, within the stated time frame.

A number of law enforcement agencies had received a letter during the first week of January, 2003, from the Mexican consulate in Indianapolis, which reminded these agencies of their requirement under federal treaty law that they notify that Mexican consulate of any arrests of Mexican citizens in Kentucky.⁴ A member of one of these agencies remembered that the issue had been discussed in his recruit class, and he called to request further information. As the attorney who handles most inquiries relating to federal issues, I received the inquiry. After making several calls to large departments around the state, I was able to have a copy of the letter faxed to me, from a county sheriff's office. (See Appendix 2.) I realized that the letter was an incorrect statement of

⁴ Kentucky has no office of the Mexican consulate within its borders.

the law, and immediately submitted a short information article to be published in Inside Information. (See Appendix 3.)

Several of my colleagues spent approximately a week asking recruits and professional development students in several classes if their agencies had received that letter, and confirmed that many agencies had received the letter. While some of these agencies realized that the information in the letter was incorrect, and a few believed it to be an outright fake, many believed the letter to be an accurate representation of the law and had so notified their officers. However, we knew that what the letter stated was not a correct reflection of the law, because the federal treaty in question does not require that Mexico's consulate be notified upon the arrest, but only requires that the arrested individual be notified of their right to have the consulate notified. If they do not make the request, the officer is under no obligation to contact the consulate.⁵

While it was important to correct this information quickly, which we did by initially submitted the correction in the magazine, we decided it was just as important to get out the same message to everyone possible, in order to be consistent. We were limited in resources, which included time, but also wanted to provide the highest quality, most useful information to our client law enforcement agencies.

As a result, the Legal Training Section decided to make a concerted effort to inform as many agencies as possible of their legal responsibilities under this federal treaty. Meeting the definition of a project, we decided to use the month of October as the timeframe. October was chosen because during that month, the DOCJT holds a series of three classes, called Command Decisions, for the benefit of high-ranking, command

⁵ Mexico is not one of those countries that have entered into bi-lateral agreements on notification with the United States.

level officers. Traditionally, the Legal Section has provided an update of statutory and case law changes from the previous year, and we decided that we would add something new to the usual format, by researching and presenting a “special topic.” Prior to the first Command Decision class, on October 7, we were also asked to give a legal update to the Kentucky Attorney General’s Investigators, based in Frankfort, and took advantage of this class to preview the Command Decisions classes. This enabled us to discover and prepare for questions that would almost certainly also arise in the Command Decisions class. Using the Command Decision classes were an excellent opportunity to use an existing vehicle to distribute this information quickly and uniformly. We decided upon a schedule that would allow us sufficient time to acquire the necessary materials and develop a presentation.

We had the option of doing a direct mailing to every law enforcement agency, but that would be in excess of 450 mailings, a time-consuming and costly process, particularly since the materials were to include a substantial booklet. Later, in October, we were offered the opportunity to take the same message to the Kentucky Sheriff’s Conference, which would be held in December, and we took advantage of this opportunity and extended the original time frame of the project.

Using the SMARTI acronym, the project as developed was specific, as mentioned above. It was measurable, in that it was a simple matter to record how many agencies were represented at the various class opportunities. All of the members of the legal team that worked on this project agreed to the message that was to be presented. It was realistic, in that it could be done with existing resources and within the available time

frame. Finally, the project was integrated into the existing class and the ongoing mission of the agency.

Planning:

The planning phase of this project consisted of researching the issue, identifying the material that needed to be shared with the attendees, locating and acquiring the appropriate materials to be used during the presentation. Most of the materials, fortunately, were available free of charge from the U.S. State Department. (See Appendix 4 and 5.)

Execution:

In April of 2003, I contacted the United States State Department (USSD) about the issue. They were immediately concerned, as such direct contact between a consulate and state and local officials was considered improper. (This contact precipitated the short notice concerning the letter from the Mexican consulate that I immediately prepared and included in the May, 2003, issue of Inside Information.)

Over the next few months, the DOCJT had further contacts with the USSD, consular affairs section. A representative of the USSD prepared a presentation for the International Association of Directors of Law Enforcement Standards and Training (IADLEST), which held its annual convention in Lexington, in June, 2003. I attended that presentation and spoke with the representative. (On a related note, as a result of this contact, my article previously published on the topic in the department's quarterly publication that is distributed to state law enforcement agencies was reprinted in the IADLEST journal.)

The representative of the USSD also provided a sampling of the materials the State Department was making available, at no cost, to state and local agencies to assist in properly training officers as to the requirements of the law. These materials included a short video, a booklet and a pocket card for individual officer.

After discussion with other members of the Legal Section, we decided to request sufficient numbers of the pockets cards to provide to each recruit officer, to be given to them when they attend the class on the laws of arrest. This has since become a regular part of the curriculum for basic recruits.

In addition, the Legal Section Supervisor, Jerry Ross, recognized that we needed to go beyond the recruit officers, and take this information to the agency heads directly. With the agreement of the Professional Development Branch Manager (the Legal Section is a division of the Professional Development Branch), information about this requirement was incorporated into the legal presentation to be given at the three Command Decisions classes in October, 2003.⁶ The Command Decisions classes were chosen as the appropriate forum for this presentation because the audience consists of high-ranking members of law enforcement agencies statewide. To prepare for this presentation, I contacted the USSD and requested sufficient booklets and cards, approximately 450, so that every attendee could receive copies, along with the order form to request more materials directly from the USSD.⁷ (On a related note, the contacts with the USSD, Mr. Clyde Howard and Mr. Bruce Ammerman, were quite pleased that Kentucky was taking the lead in this effort, as they had previously had tremendous

⁶ Two of these classes are held at Barren River State Park, and one at the DOCJT facility in Richmond. All three presentations are identical.

⁷ In fact, we have received in excess of 700 booklets, since the agency retained those not needed at the IADLEST conference as well.

problems addressing local agencies in a consistent manner – and noted that the USSD would be making a greater effort during 2004 to share the information with local law enforcement agencies.)

The Kentucky Attorney General's Investigators class was held the first week of October, and served as a preview of the presentation planned for the Command Decisions classes.⁸ The Command Decisions classes were held during the weeks of October 7- 10, October 20-24 and October 28-31, 2003. A total of 284 officers attended, representing approximately 160 local and state agencies.⁹ As we were concluding the final Command Decisions class, we were asked to do a presentation for the Kentucky Sheriff's Conference, in December, and while most of the material was to be different for this conference, we quickly concluded that we should take advantage of the opportunity to provide this same material to the sheriffs, as well. This allowed us to add another 56 attendees, and 35 agencies, to the total.

Close-out:

We concluded this project by completing the last class and analyzing and evaluating the results of the feedback collected during the class. While some of the agency representatives were puzzled by this new requirement, most were open to the idea of making the required notifications. Several stated a concern that attempting to establish citizenship status might be considered to be profiling, and having the opportunity to raise that question with, and receive reassurances from, legal counsel alleviated that concern.

Roles and Responsibilities:

⁸ For statistical purposes, the students in this class were not counted in the total, since they were all members of the same agency. The agency itself, however, is reflected in the total number of agencies exposed to the material.

⁹ In some cases, multiple members of the same agency attended.

While my section supervisor was to give two of the three presentations at Command Decisions, I was responsible for researching and preparing the presentation, and ensuring that all of the materials were ready in sufficient time to be transported to the location of the first meeting. I was also responsible for the preview of the material with the Kentucky Attorney General Investigators, one of the three Command Decisions classes, and ultimately, for the presentation at the Sheriff's Conference, as well as ensuring that my section supervisor was comfortable with the presentation and adequately prepared to answer any questions. This was made a bit more complicated than usual because he was scheduled to be out of the country the week before the presentation, so all of the materials for the week-long class, including the materials that make up this project, had to be ready in advance of his departure to allow him sufficient time to prepare.

C: INFORMATION GATHERING:

Every project works under the triple constraints of Resources, Quality and Time.

Resources: Like all of state government, the DOCJT strives to make the best use of taxpayer dollars. Since the Command Decisions classes are already an annual event, and because the individual attendees are responsible for their expenses while attending, they would not incur any additional costs by attending. The staff members who would be in attendance likewise would already be attending the event, as part of a regularly budgeted event. The USSD provided most of the materials used at no cost to the agency, the only other items provided to attendees were photocopies of the forms needed to request additional materials.

Quality: It was critically important that this project's quality be high, as the attendees had come to expect such excellence from DOCJT. Since this project was intended to convince agencies to make a change in their operating procedures, it was necessary to be quite persuasive to achieve that aim.

Time: Time was not a primary factor in this project. The need was identified in sufficient time to obtain the necessary materials and prepare a quality presentation. The USSD was quite responsive in sending a large quantity of the materials very quickly, in fact, far earlier than they were actually needed. (In fact, I received several e-mails from the public affairs officer to ensure that they were sending everything we might need to make the project a success.)

D. INFORMATION ANALYSIS :

Communication Plan: See Attachment A.

Business Case: See Attachment B.

E: ACTION PLAN AND IMPLEMENTATION:

Work Breakdown Structure: See Attachment C.

Project Specification: See Attachment D.

Gantt Chart: See Attachment E.

Critical Path: See Attachment F.

Risk Analysis: See Attachment G.

F: PROJECT RESULTS AND EVALUATION:

Project Close:

The initial phase of this project concluded with the last Command Decisions class, during the last week of October, 2003. While meeting federal treaty requirements

is something new and different for local law enforcement agencies, many of the attendees commented on the value of the information. Potentially, having this information, and *meeting* these legal obligations, may save these agencies from expensive and negative litigation. (Agencies in other states have found themselves defending their failure to give such notifications in the World Court at The Hague, in The Netherlands, the proper venue for such actions.) In addition, this project increased the awareness of the issue of foreign nationals in Kentucky, and how they may additional needs.

Audit:

A review of attendance at the three classes indicated that we reached a total of 340 command personnel, including chiefs, sheriffs and their immediate subordinates, from 211 agencies. According to our database, there are 409 local agencies. This makes a total of just over 51.5 percent of local agencies received this information directly, as a result of this project. This total includes 56 sheriff's offices, from a total of 120, for a saturation of 46.6 percent of sheriff's agencies. Of particular interest, law enforcement representatives of the largest universities also attended one or more of the series, as well as representatives of all three of the major airports. Attendees also represented several state law enforcement agencies, several of which might expect to have regular contact with foreign nationals, such as the Kentucky Horse Park, Kentucky Vehicle Enforcement, Alcohol Beverage Control and Kentucky Fish & Wildlife, among others.

Transfer of Ownership:

While the DOCJT has been offering Command Decisions classes for some years, with the Legal Section providing an annual update of statutory changes and case law

from the past year, this was the first time in agency memory that the Legal Section had made use of this delivery method to provide a consistent message concerning a specific legal topic. While this project was not originally planned to be a project, as it developed, it became clear that this method was an ideal way to share necessary information with a substantial percentage of law enforcement personnel in a one-on-one manner. The Legal Section is already discussing what topics should be researched and presented at the Command Decisions and Sheriff's Conference classes in fall, 2004.

Lessons Learned:

Since the majority of the project was performed within the DOCJT's Legal Section, it was not difficult to communicate regularly and informally about progress and "planned" meetings were not necessary. However, one or two more formal meetings with other staff members working on different parts of the class may prove to be an advantage in upcoming years, to ensure that the class is better integrated. In addition, the Sheriffs' conference, which was requested at the last minute, did not follow the same curriculum as Command Decisions, so they did not receive the entire presentation. More advance planning for this conference will ensure that the essential information shared at Command Decisions is also presented at the Sheriffs' Conference.

Celebration:

The completion of the annual Command Decision series is always a cause for celebration for the members of the planning and implementation committee. In this case, we discussed the feedback given by the attendees, which was generally quite positive. I have also mailed a letter to the USSD staff members who provided invaluable assistance in providing materials and support for the project.

G: PLANS FOR FUTURE IMPROVEMENT:

While the attendees were given the opportunity to provide feedback on the material that constituted this project, there were few written comments made concerning this particular issue. In the future, feedback should be actively solicited from attendees, and the attendees should be offered more practical tips on how to implement the process. In particular, developing a data collection process for arrests of foreign nationals by Kentucky law enforcement might be a future project, as the true numbers are simply not captured by any method currently in use. (The universal form used to book prisoners into jail does not include a data collection check box for citizenship status, as it does for race, gender and other demographical information.)

The Legal Section will also be working to share this information with agencies that are outside its usual reach. For example, we are writing an informational article to be provided to the Kentucky Association of Chiefs of Police (KACP), the Kentucky Jailers' Association (KJA), the Kentucky Sheriffs' Association (KSA) and the Kentucky Coroners' Association (KCA). While many members of the KACP and the KSA attended Command Decisions, there are also a substantial number who did not. In addition, Kentucky jailers also need this information, both because jailers/deputy jailers and correctional officers are peace officers under Kentucky law, and may make arrests, and because individuals incarcerated in their respective jails may decide to invoke their rights under this treaty at some time after they have been booked into the jails. Likewise, coroners are peace officers that have powers of arrest. In addition, the same consular agreements that provide for these notifications outline the rules to be followed when a coroner has a case involving a foreign national who has died while in their county.

While DOCJT does have contact with coroners and jailers, they do not have the regular, ongoing contact with this agency, as do other state and local law enforcement agencies.

For the long-range, we recognized that using our quarterly magazine is an efficient and cost-effective way to get information out to as many law enforcement agencies as possible. We will also be using our agency web site to share information on statutory changes and case law, and we will be encouraging agencies to regularly refer to the website to find updated information, and to request information from the Legal Staff. In addition, using specific Professional Development classes, including the annual Command Decisions series to convey the same information to new chiefs, commanding officers and sheriffs, is an excellent way to maximize our available resources.

Finally, this topic will be regularly included in management level classes, such as the Orientation for New Police Chiefs, to ensure that the required notifications become a continuing activity within the agencies.

I. PERSONAL AND AGENCY-RELATED BENEFITS:

Personal Benefits: Because of the nature of legal work, most lawyers rarely work in a true team environment, particularly with non-lawyers. This was an opportunity for me to take a project through from initiation to conclusion.

Agency Benefits: While the DOCJT has long been an advocate to its constituent law enforcement agencies, this was the Legal Section's first organized attempt to go beyond our usual mandate of reporting statutory and case law changes, and become proactive in addressing an issue that has not yet become a problem, in the legal sense, in Kentucky. By consistently using currently available avenues, such as a regularly scheduled class, a published magazine and the agency's web site, to share this

information, the agency is able to alert agencies about issues without occurring additional unplanned expense by mailing the information to each agency.

ATTACHMENT A: COMMUNICATION PLAN

	WHY	WHEN/HOW
<u>Executive Sponsor</u>		
Section Supervisor	Inform Seek Approval	5/1 (office)
Branch Manager	Inform Seek Approval	6/1 personal contact
<u>External Stakeholders</u>		
Attendees	Register for classes	Ongoing
Mr. Clyde Howard	Research	Ongoing (e-mail)
Mr. Bruce Ammerman (USSD)	Research Obtain materials	June 17 (meeting) July 15 (fax/e-mail)
<u>Staff / Planning Committee</u>		
Legal Staff	Develop presentation	Ongoing (in office)
Presenters	Prep for class	9/22-26

ATTACHMENT B: BUSINESS CASE

Benefits	Qualitative	Quantitative
<u>External:</u>		
Attendees	Gaining valuable information	Meets Training Requirement Avoid litigation
USSD	Establishing Kentucky contacts Avoiding problems in Kentucky	Saving money/bulk shipping
KyAG	Maintaining contacts	Satisfy training requirements Avoid litigation
<u>Internal:</u>		
Legal Staff	Opportunity to share information	Greater visibility
Professional Development Staff	Sharing of task load for classes	Greater variety of material
<u>Costs:</u>		
As is	None for agency (other than already scheduled work/travel time)	
Project	Photocopies (approximately 500) All other material provided at no cost or included in the overall cost of the class.	
Ongoing	None (materials regularly available at no cost from USSD)	

ATTACHMENT C:

WORK BREAKDOWN STRUCTURE

Project Manager
(Herron)

Obtain approvals from Legal Supervisor
Ensure all materials are complete/available

Branch Manager
(Czor)

Approve project
Schedule time for class
Supervise registration (through his staff)

Legal Staff Supervisor
(Ross)

Present/Seek project approval
Serve on planning committee

Planning Committee
(Herron, Ross, Ammerman)

Perform research
Obtain materials
Develop presentation

Presentation
(Herron, Ross)

Provide five (total) presentations

ATTACHMENT D: GANTT CHART

2003

5/1-6/15	Obtain general approval from section supervisor and branch manager Research issue Contact State Department for information
6/16-7/31	Meet with USSD (in Lexington)
7/31-8/30	Develop presentation Confirm approximate numbers of attendees Request materials from USSD
9/1	Send class materials to printers
9/20	Materials back from printer
10/2	Kentucky OAG class (Frankfort) Review and make changes as necessary to presentation
10/7	First Command Decisions class (Barren River)
10/14	Second Command Decisions class (Barren River)
10/ 28	Third Command Decisions class (Richmond)
12/ 1	Kentucky Sheriff's Association class (Lexington)
12/2-5	Review

ATTACHMENT E:

CRITICAL PATH

- 1. Identify problem**
- 2. Obtain agreement that problem must be addressed**
- 3. Planning committee (Legal Section)**
- 4. Decide upon medium to distribute information (Command Decisions)**
- 5. Research subject**
- 6. Identify available handouts/materials for class**
- 7. Develop presentation**
- 8. Preview presentation (Kentucky Attorney General Investigators)**
- 9. Present first Command Decisions class**
- 10. Present second Command Decisions class**
- 11. Present third Command Decisions class**
- 12. Present Kentucky Sheriff's Association class**
- 13. Evaluate results**
- 14. Close-out (and plan for future)**

ATTACHMENT F: RISK ANALYSIS

<u>Risk</u>	<u>Probability</u>	<u>Impact</u>
A. Materials not delivered on time	3	8
B. Presentation not completed	2	10
C. Low Attendance	2	9
D. Low Acceptance by attendees	7	7

Probability

10										
09										
08										
07						D				
06										
05										
04										
03							A	C		
02										B
01										
	01	02	03	04	05	06	07	08	09	10
	<u>Impact</u>									

Order of Importance: D, C, B, A

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