February 2002
Volume 71
Number 2

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

**Robert S. Mueller III
Director**

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

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

Editor
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Staff Assistant
Linda W. Szumilo

This publication is produced by members of the Law Enforcement Communication Unit,
William T. Guyton, Chief

Internet Address
leb@fbiacademy.edu

Cover Photo
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Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

FBI Law Enforcement Bulletin

Features

Departments

ISSN 0014-5688 USPS 383-310

HITS/SMART
Washington State's Crime-Fighting Tool

By TERRY MORGAN

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"Just beyond the horizon, there lurks a cloud that the winds will soon bring over us. The population will start getting younger again. By the end of this decade there will be a million more people between the ages of 14 and 17.... This extra million will be half male. Six percent of them will become repeat offenders. Get ready."[1]

Police and corrections managers know that they will face many challenges in the next decade. What will be the scope and nature of the crime problem? What will be the best ways to meet emerging challenges with available funding and resources? How can law enforcement and corrections not only hold the line on public safety but actually improve public safety and continue to drive the crime rate down? According to many experts, this could prove a daunting challenge.[2]

Another area of concern for police and corrections managers is prison overcrowding. "All but eight states in the United States are under federal court orders to do something to alleviate overcrowding in prisons—overcrowding so severe that it constitutes 'cruel and unusual punishment.' In their efforts, many states have had to reduce the time offenders spend in prison, and some states have placed an increasing percentage of felons on probation. This may mean that convicted felons are spending more post-conviction time on the streets than ever before, a situation that not only severely strains the resources of probation and parole agencies but also

jeopardizes public safety."[3] Clearly, a challenge exists for corrections agencies to decide how to use their limited number of officers, who already have bulging caseloads, in a way that focuses necessary resources on the most dangerous and recidivism-prone probationers.

Over the past three decades, researchers have examined the impact of recidivism. For example, one study showed that in 1997, only 44 percent of persons under state supervision successfully completed their term of supervision compared with 70 percent in 1984. Moreover, police arrested a high percentage of these individuals for new felonies.[4] Over 10 years earlier, a study in Los Angeles County concluded that recidivism rates for high-risk offenders ranged between 50 and 75 percent,[5] while a Philadelphia study conducted nearly 30 years ago found that 7 percent of the criminal population committed approximately 70 percent of all violent crime.[6]

The probation failure and high recidivism rates cited in these studies will not surprise any veteran law enforcement or corrections officer. Clearly, both corrections and law enforcement officers need to focus on felons who are under supervision because "...successfully preventing this group from committing new crimes may be the key to continued and sustained reduction of crime rates."[7]

NEW CHALLENGES, NEW SOLUTIONS

Police have attempted to meet these challenges through such efforts as community policing, new partnerships, and improved information sharing, including new shared-technology systems that can link similar crimes and identify suspects. These systems can help police catch serial criminals and swiftly identify and take action against unlawful enterprises. The last decade saw the development and implementation of a number of successful partnerships between police and community corrections, such as Boston's Operation Night Light.[8] Most of these programs developed as an outreach of community policing and antigang and antidrug efforts.

Corrections agencies have embraced a variety of strategies for improved supervision of offenders, including intensive probation supervision, electronic monitoring, house arrest, and community-service sentencing. These tactics fall under the rubric of intermediate sanctions. Some experts believe "that the U.S. criminal justice system might be able to get additional return on the resources that are actually or potentially available by examining the benefits and cost of various intermediate-level sanctions for felony offenders, such as community-based programs, that provide more intensive supervision than routine probation but are less restrictive than prison."[9] However, some intermediate sanctions, such as intensive supervision programs, can require extra personnel, resulting in either additional probation resources or a reallocation of these resources.

Such new challenges definitely require new solutions. To this end, Washington State has created a new state-of-the-art crime-fighting system called HITS/SMART (Homicide Investigative Tracking System/ Supervision Management And Recidivist Tracking). This system developed out of a spirit of cooperation and a common strategic goal of increased community safety. Combining a state system, HITS, with a local approach, SMART

"SMART Partnerships began in 1992 as a collaboration between the Redmond...Police Department and the...Department of Corrections in Bellevue."

Commander Morgan serves with the Redmond, Washington, Police Department.

Partnerships, created a unique venture between police, the Washington State Department of Corrections, and the Attorney General's Office HITS Unit. HITS/SMART assists in solving homicide and other serious criminal cases, as well as providing a new investigative tool to police and community corrections (i.e., Washington State's term for state parole officers). It also provides near real-time information to community corrections officers regarding police contacts with supervised offenders. Combined with mapping and other crime analysis programs, it creates a comprehensive system for tracking offenders and crime patterns and stands ready to help law enforcement and corrections meet the challenges of the future.

HITS: The State System

HITS comprises a unit of the Criminal Division of the Washington State Attorney General's Office.[10] The state developed HITS as a result of several heinous serial killings that occurred in the area during the 1980s. The National Institute of Justice provided the original funding in the form of a grant to study the salient characteristics of murder. HITS success became apparent even before all of the collected data had been entered. As a result, in 1991, the state legislature mandated that the system also track *all* violent crimes, including sex crimes.

As a software application, HITS stores information contributed voluntarily by system users who collect crime information on standardized forms, which require fewer than 30 minutes of preparation and data-entry time. The system's current design supports murder, attempted murder, missing person cases where investigators suspect foul play, sexual assault, sex-related vice, sex crimes committed by sexual predators (both known and unknown to the victims), and gang-related crime. HITS also can expand easily to include other crimes.

> ***"Primarily, HITS acts as a central repository for detailed violent crime information collected from police and sheriff's departments...."***

Criminals do not have boundaries—murderers may commit rape and robbery; arsonists may commit murder and rape. Whether by design or accident, offenders perpetrate a variety of crimes across many different borders or jurisdictions. Law enforcement organizations, on the other hand, have very distinct boundaries, federal, state, county, and city. Larger agencies even have demarcations between investigative units, such as homicide, rape, and robbery. In many cases, these units are divided into districts, with individual investigators handling one specific type of crime in only that district. If an individual commits several different crimes within the same district or jurisdiction or the same type of crime in different districts or jurisdictions, a good chance exists that the police will not catch the offender. If they do apprehend the perpetrator, they most likely will charge the subject with a single crime because they will not know about additional crimes committed in other jurisdictions.

Historically, a lack of communication and unwillingness to share information, referred to as "linkage blindness," has occurred between law enforcement agencies. Washington State created the HITS program to overcome this problem. The HITS design allows each agency to enter, maintain, search, compare, analyze, and view its own information in its entirety, as well as to compare this information with all of the data in the whole system. When the computer finds comparable cases not authored by the inquiring agency, it provides only the name of the investigating agency, the investigator's name, phone number, and agency case number. If the inquiring agency needs further information, it must contact the listed agency or investigator. This allows each agency to maintain the integrity and anonymity of its information.

Primarily, HITS acts as a central repository for detailed violent crime information collected from police and sheriff's departments in Washington, Oregon, and Idaho. Through analyzing this information and providing linkages between different incidents, HITS has

contributed significantly to solving a number of high-profile crimes.[11]

SMART Partnerships: The Local Approach

SMART Partnerships began in 1992 as a collaboration between the Redmond, Washington, Police Department and the Office of the Washington State Department of Corrections (DOC) in Bellevue. In a two-part program, Redmond police officers began working directly with Bellevue community corrections officers (CCOs) to increase supervision and accountability of offenders who reside in, or frequent, Redmond.

In the first part of the program, Redmond police officers directly assist DOC in monitoring high-risk offenders who live in their patrol areas. One of the often-cited premises of community-oriented policing states that officers will be more effective if they work the same area and get to know individuals who live and work there, as well as knowing the normal patterns of activity in that locale. For the Redmond Police Department, SMART represents an extension of this philosophy. Officers not only must know the individuals who live and work in their patrol area but they also must recognize the high-risk supervised offenders who live there and their conditions of supervision. They also must develop working relationships with the CCOs whose caseloads include these offenders. The Redmond Police Department assigns officers one or two offenders, who they visit randomly at their homes twice a month during the offender's hours of curfew. Officers document the visit on a simple form that they provide to the subject's CCO. A second, alternating officer always accompanies the primary officer on each visit. This alleviates liability concerns and, over a short period of time, allows most officers on the shift to recognize the offenders and learn their hours of curfew and other conditions of release. Direct monitoring by police during predominantly nighttime hours makes it extremely difficult for offenders to violate their curfew or other conditions. If police officers discover that an offender is not home or observe other violations, they document these and notify the subject's CCO as soon as possible. If officers witness a violation of law, they take normal enforcement action. During home visits, officers stress professionalism, and many offenders actually have found this police monitoring a positive experience in their reentry into the community.

The second part of the program requires Redmond police officers to document *random* contacts with supervised offenders. In Washington State, when an officer performs an electronic name search to verify an individual's identity and to check for warrants, the process informs the officer whether the subject is under DOC supervision. For years, officers statewide received information on supervised offenders during traffic stops, as well as other police investigations, from suspicious person contacts to disturbances and serious criminal investigations. Sometimes, officers received this information on individuals who they would arrest for a new crime, but, more often, such matches occurred on offenders stopped for traffic infractions or associated with an event, such as a disturbance call, where officers usually would not effect an arrest. Until the advent of SMART, officers *never* documented or forwarded these contacts to DOC. Thousands of these contacts occurred in Washington State each year without DOC's knowledge. However,

the implementation of SMART changed this dramatically.

Because supervised offenders represent a group at high risk to reoffend and one that poses a significant threat to community safety, the Redmond Police Department took a new approach to random contacts with supervised offenders. Now, officers document these contacts and forward this information to DOC. The perfect tool for this existed in the Field Interview Report (FIR). Redmond, as well as most other police departments, has used FIRs for decades to document contacts with suspicious persons. Although the dimensions and details of the FIR vary slightly from department to department, the type Redmond uses consists of a 3x5-inch card that has spaces to record biographical information on the individual and associates, related vehicle data, time of day and location of the contact, type of event investigated, and a short narrative. The card also captures whether the subject appeared under the influence of alcohol or other drugs and whether the individual is under the supervision of DOC.

When officers complete a FIR on a subject under DOC supervision, the FIR is routed the same as all other reports, through the duty lieutenant and to the crime analyst. On a weekly basis, these FIRs are sent to the Bellevue office of the DOC, where the CCO designated as the SMART Partnership liaison forwards a copy of the FIR to the subject's supervising CCO. Although conditions for release can vary, typical provisions of supervised offenders include no alcohol or other drug use, an 8-hour nightly curfew, no travel outside of the offender's county of residence without permission, and no association with other offenders or in the case of a sex offender, no association with children. Frequently, other requirements exist that involve avoiding certain locations, such as high drug-trafficking areas or victims' places of residence or work. Obviously, these FIRs provide a wealth of information to CCOs regarding activities uncovered by police contacts with offenders that they supervise. SMART Partnerships make police the eyes and ears of CCOs and give DOC an enhanced 24-hour capability, with no overtime and little associated cost.

> ***"Over the last 8 years, a steady evolution of SMART Partnerships, HITS, and the Washington State DOC has occurred."***

SMART Partnerships soon spread to other departments. Since 1992, over 70 police departments and community corrections field offices in Washington State have received training in the implementation of SMART Partnerships.[12] From September 1993 to September 1994, the law enforcement agencies of Redmond, Bellevue, and King County North Precinct, forwarded 359 FIRs to DOC.[13] In 1997, Aberdeen, a small city on the coast of Washington with 20 police officers, forwarded 612 FIRs to DOC.[14] This represents a fraction of the volume of FIRs generated by the police departments currently participating in SMART.

HITS/SMART: The Connection

In early 1995, HITS investigators became aware of SMART Partnerships and, specifically, the high volume of FIRs that the program generated on police contacts with supervised offenders. Members of the Redmond Police Department, the Bellevue Community Corrections staff, and the managers of the HITS Unit met to discuss using HITS as a repository for the FIRs generated by SMART. HITS could use this information to create another database for comparing criminal incidents by employing information gathered through police FIRs of offenders. For example, a certain supervised offender may be a suspect in an abduction/rape case; however, not enough evidence for an arrest and no record of the offender having access to the type of vehicle described by the victim exists. A FIR on that offender may show that he has access to a friend's vehicle that turns out to match the victim's description. The rape investigator's knowledge of the vehicle could lead to evidence recovery and the arrest and conviction of the perpetrator. HITS also may connect this vehicle to several other unsolved rape cases.

This initial meeting generated ideas that would take a partnership

between HITS and SMART far beyond simply adding HITS as a repository for SMART-FIRs. Participants developed a plan that had far-reaching effects and included the following actions:

- HITS would develop an electronic database for storage of all FIRs generated by SMART.
- HITS would use this database as a new field for its primary role of linking and helping investigators solve serial crimes.
- Any police department participating in SMART could access this entire database in the course of its own criminal investigations.
- Any CCO could access this entire database for investigative purposes regarding the activities of supervised offenders.
- Because HITS already maintained an up-to-date computer record of every offender who was under DOC supervision, the new system also would match an offender who was the subject of a FIR with that individual's CCO. The system then would notify CCO

Examples of Case Resolutions

Over a 2-month period, 11 sexually motivated burglary/rapes and attempts occurred in King County, Washington. The investigating detective provided the names and addresses of the victims and the method of operation and physical description of the suspect to HITS personnel, who conducted an analysis of this information. First, staff members ran a computer check on the physical description of the suspect (21 to 24 years old, 5"9" to 6' in height, and weighing between 140 and 170 pounds) and a present or former address within 10 square miles of the center of the series of crimes. The computer check, which also included those offenders previously convicted of a sexual offense or burglary in King County, identified 37 possible suspects. Staff members then requested information on only those suspects with previous convictions of both a sex crime and a burglary. This reduced the number of suspects to two, with one's physical description closely matching that of the unknown rapist. HITS personnel then plotted the names and addresses of the 37 possible suspects, highlighting the two specific ones, and the victims on a computer-generated map. Based on this information, the detective set up a surveillance on the one suspect. Two nights later, police arrested the suspect attempting to break into a residence occupied by two women. The suspect confessed to some of the rapes and was linked to others by evidence.

The Bainbridge Island, Washington, Police Department requested assistance from HITS while investigating what they believed was a series of burglaries where the offender showed a propensity for violence. In one incident, the subject broke into a residence and took many items of considerable value. In another, he broke into a residence, tied up the resident, then took her property and vehicle. In the first case, police obtained a description of the suspect's vehicle and partial license plate. Because of the similarities in the method of operation and physical description of the suspect, the police believed that the same offender committed both crimes. HITS used the partial license plate and vehicle information to obtain a list of nine possible vehicles. Officers contacted the registered owners of these vehicles and found that the owner of one had loaned the vehicle to a friend who witnesses identified as the burglar.

Source: Robert Lamoria, Office of the Attorney General of Washington State, Criminal Justice Division, Homicide Investigative Tracking System, HITS Advancement, SMART: Washington's Answer to Crime Prevention? *October 2000.*

electronically of the existence and availability of the FIR in the HITS database.

- The system would allow electronic entry of FIRs by police directly into the HITS database.
- After completion of the development phase of the program, a systematic effort would occur to connect every police department in the state and expand the database as rapidly as possible.

After the initial meeting, HITS representatives studied the feasibility and cost of such a system and, in mid-1995, the Washington State Attorney General directed HITS to develop HITS/SMART. During the 1996 legislative session, the state appropriated funding, which began in 1997. After a 2-year development phase, HITS/SMART was ready for tests and final refinement. Three Washington law enforcement agencies—the Redmond, Yakima, and Seattle Police Departments—are participating in the test phase. In mid-1999, these agencies began entering SMART-FIRs. Representing only a tiny fraction of police offender contacts statewide, these three agencies made over 600 entries into the HITS/SMART database by mid-October 2000. Once these agencies complete the test phase, all other law enforcement agencies in Washington State will be invited to participate in the program.

Currently, the Seattle Police Department is using the HITS/SMART program as part of a sophisticated partnership between the agency, DOC, and HITS. Coordinated through the Seattle Police Department's Crime Analysis Unit, the program uses crime mapping and several other crime analysis programs to analyze crime patterns and police contacts against offender addresses. Police officers use this information in investigations and to assist CCOs in prioritizing home visits with offenders.[15]

> ***"Combining a state system, HITS, with a local approach, SMART Partnerships, created a unique venture...."***

NEW DEVELOPMENTS, NEW APPLICATIONS

Over the last 8 years, a steady evolution of SMART Partnerships, HITS, and the Washington State DOC has occurred. These three entities, along with a new state law, have come together in a continually evolving partnership that will propel police, corrections, and technology into unprecedented crime-fighting synergy.

SMART Enhancements

SMART has evolved from hand-delivered or mailed FIRs, which could take weeks to reach a CCO, to a computerized system that matches a FIR to a CCO and alerts the officer almost instantly. The technology of HITS/SMART will make this system available to every police department and DOC office in Washington State. Currently, the Seattle Police Department and the King County Sheriff's Office are spearheading a movement to make HITS/SMART a statewide database for *all* FIRs, not just those where the subject of the FIR is under DOC supervision. The criterion for entry would be that the person must be suspected of criminal activity, which constitutes the same criterion, besides being under DOC supervision, that guides most departments on completing a FIR on anyone. Expansion of HITS/SMART to a statewide database for all FIRs would create a valuable new tool by providing every police investigator in the state with information on suspected perpetrators of crimes, ranging from vehicle thefts to serial murders.

HITS Expansions

Just as SMART evolves, HITS continues to expand its other databases and programs, all of which can be queried, overlaid, or applied to solving crimes. Some of these other databases and programs are Crime Data, Gangs, Registered Sex Offenders, Time Line, and Tip Sheet. All of the new programs employ technology in innovative ways. For example, another database, CATCH (Computer Aided Tracking and Characterization of Homicides), is an application that uses artificial neural networks and mathematical algorithms to assist in the analysis of murders and sexual assaults. It assists crime analysts by using known characteristics from previous similar cases to fill in

missing characteristic information about recent sex-related homicides or sexual assaults and by relating the information in recent sex murder cases to past cases of sexual assault and sex-related homicide. It also helps crime analysts relate different cases to the same offender.[16]

DOC Innovations

The Washington State DOC remains committed to working partnerships with police. Past support for SMART and other police-corrections partnership programs, along with DOC's evolving relationship with the Seattle Police Department, exemplifies this commitment. Both agencies are working together on a program called the Neighborhood Corrections Initiative (NCI), which formalizes a working partnership that focuses on high-risk and chronic offenders under the supervision of the Washington State DOC. NCI will assist in identifying and monitoring high-risk and repeat offenders, who threaten the safety and welfare of the community, and hold them accountable for their actions. NCI's primary goal is to reduce repeat offenses by supervised offenders, thereby improving public safety. Broadening collaboration between DOC, the Seattle Police Department, and the community represents NCI's approach to increasing positive compliance from supervised offenders. Assigned to each precinct, NCI teams of police officers and CCOs will work on joint initiatives to accomplish these objectives. The teams will employ joint emphasis patrols, monitor high-risk offenders, serve bench warrants and detainers, conduct joint home visits, and expand the HITS/SMART program. The Seattle Police Department's Crime Analysis Unit will assist the NCI teams and other DOC and police staff members by employing HITS/SMART, crime mapping, and other technology to guide monitoring efforts of supervised offenders, as well as governing detection and apprehension initiatives of those who commit new crimes.[17]

Seattle is leading the way toward a day in policing when this technology, which currently is available in limited areas and only for the most serious crimes, will be available to and used by all police officers as well as CCOs. Besides crime analysts, line police officers and CCOs will feed information into these systems. In Seattle and most of Washington State, police and corrections agencies have learned that they can gain significantly by working together in formal partnerships. Technological advances, such as HITS/SMART, make these partnerships even more effective.

Legal Accountability

Even with all of the efforts to prevent supervised offenders from committing new crimes, authorities realized that they needed enhanced laws relating to these individuals. Therefore, Washington State enacted the Offender Accountability Act,[18] which completely overhauled the way that offenders are supervised. The following items set forth some of the major changes:

- As of July 1, 1999, community supervision became community custody. This greatly expanded the community custody classification, the highest level of offender supervision in the community. This means that all offenders can encounter a variety of restrictions, including an 8-hour daily curfew. It also means that those who violate their terms of supervision can face a range of sanctions, including felony escape charges for violation of curfew or abdication of supervision. Police also can assist with direct monitoring of community custody inmates.
- DOC may establish and modify additional supervision conditions based on risk to community safety and will work with law enforcement agencies as partners in community safety.
- DOC must complete risk assessments of offenders, deploy CCOs on the basis of geographic distribution of these offenders, and establish a systematic means of assessing risk to community safety.

- Communities, including victims, law enforcement, and offenders and their families, will define problems, seek solutions, and develop community standards for managing offenders.

Basically, the act is an attempt to prevent new criminal behavior by offenders who are under supervision in the community. The act, however, recognizes the limited resources of the DOC and seeks to not only focus those resources more effectively but to use community and law enforcement partnerships to do so. This philosophy summarizes the Washington State DOC's mission statement: "Working together for safe communities."[19]

Contact Information

To find out more about HITS, SMART Partnerships, and HITS/SMART, contact the following individuals:

Robert Lamoria
HITS Unit
Washington State
Attorney General's Office
206-389-2016

Steve Marrs
SMART Partnerships
Washington State
Department of Corrections
425-649-4439

Detective Christine Robbins
Taking HITS/SMART
to the Next Level
Crime Analysis Unit
Seattle, Washington,
Police Department
206-684-8907

Assistant Chief John Pirak
Seattle, Washington,
Police Department
206-233-5141

CONCLUSION

Offender recidivism stands as an ever-increasing problem facing the entire criminal justice community. Law enforcement and corrections officers, alike, know all too well the frustrations of dealing with repeat offenders. Finding effective and efficient ways to combat this problem represents a challenge that requires innovative solutions.

To this end, Washington State has combined community policing, community corrections, and technology into a new state-of-the-art crime-fighting system. Without additional staff or expense, the Washington State Department of Corrections enhances supervision of offenders through the use of police officers who provide patrol coverage 24 hours a day. Community corrections officers know, sometimes within hours, when offender conduct has come to the attention of the police and whether this conduct is a violation of supervisory conditions. Police and corrections officers work together through programs, such as SMART Partnerships or Seattle's Neighborhood Corrections Initiative, to deter recidivist offenders. The result represents a type of intense supervision, only without the need for additional personnel or financial resources. Police and corrections officers employ crime analysis technology, including HITS/SMART, to direct and coordinate efforts and resources while using HITS as a powerful new tool for criminal investigation and linkage analysis[20] of serial crimes. Through these innovations, police, corrections, and HITS are all working together to support Washington State's tough new law, the Offender Accountability Act, and, thus, prevent recidivism by supervised offenders and improve the safety of their communities. ✦

Endnotes

[1] James Q. Wilson, "Crime and Public Policy," in *Crime*, ed. James Q. Wilson and Joan Petersilia (San Francisco, CA: ICS Press, 1995), 507.

[2] Ibid.

[3] Joan Petersilia and Susan Turner, "Prison Versus Probation in California: Implications for Crime and Offender Recidivism," in *Community Corrections: Probation, Parole, and Intermediate Sanctions*, ed. Joan Petersilia (Oxford, NY: Oxford University Press, 1998), 61.

[4] Allen J. Beck, "Trends in U.S. Prison Populations," in *The Dilemmas of Corrections*, ed. Kenneth Haas and Geoffrey Alpert (Prospect Heights, IL: Waveland Press, Inc., 1999).

[5] Joan Petersilia, Susan Turner, and James Kahn, *Granting Felons Probation: Public Risks and Alternatives* (Santa Monica, CA: The Rand Corporation, 1985).

[6] Marvin E. Wolfgang and Robert M. Figlio, *Delinquency in a Birth Cohort* (Chicago, IL: University of Chicago Press, 1972).

[7] Joan Petersilia, "The Current State of Probation, Parole, and Intermediate Sanctions," in *Community Corrections: Probation, Parole, and Intermediate Sanctions*, ed. Joan Petersilia (Oxford, NY: Oxford University Press, 1998), 19.

[8] For a description of police and corrections partnerships, see National Institute of Justice, *Police Corrections Partnerships*, NCJ 175047 (Washington, DC, 1999); Joan Petersilia, "Innovative Programs in Community Corrections," in *Community Corrections: Probation, Parole, and Intermediate Sanctions*, ed. Joan Petersilia (Oxford, NY: Oxford University Press, 1998), 160; and James T. Jordan, "Boston's Operation Night Light: New Roles, New Rules," *FBI Law Enforcement Bulletin*, August 1998, 1-5.

[9] Supra note 3, 66.

[10] Information in this section comes from Robert Lamoria, Office of the Attorney General of Washington State, Criminal Justice Division, Homicide Investigative Tracking System, *HITS Advancement, SMART: Washington's Answer to Crime Prevention?* October 2000. For additional background on HITS, see Robert D. Keppel and Joseph G. Weis, "HITS: Catching Criminals in the Northwest," *FBI Law Enforcement Bulletin*, April 1993, 14-19.

[11] Supra note 10 (Lamoria, 4). For example, HITS staff identified a brutal child rapist by using physical characteristics and the suspect's vehicle description provided by the two victims. Since 1990, HITS has determined that 39 serial rapists (3 or more rapes) have been operating in Washington State. Analysis of these rape cases in the HITS program led to the identification, location, or conviction of 22 of these rapists.

[12] The Bellevue office of the Washington State Department of Corrections gathered these figures.

[13] Ibid.

[14] The Aberdeen, Washington, Police Department gathered these figures.

[15] Seattle Police Department's Crime Mapping Research Center concept paper, *Utilizing "Crime Mapping and Analysis" in Community Corrections Knock and Talks*, October 1999.

[16] Robert Lamoria, Office of the Attorney General of Washington State, Criminal Justice Division, Homicide Investigative Tracking System, *Statewide FIR Database*, October 2000.

[17] Seattle Police Department and Department of Corrections Neighborhood Corrections Initiative Draft Policy, August 2000.

[18] Office of the Governor of Washington State, Public Information Office, *Offender Accountability Act: Requiring Offender Accountability*, 1999.

[19] Ibid.

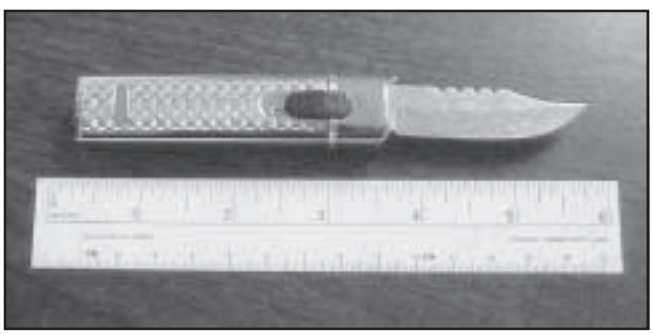
[20] Bill McGarigle "Crime Profilers Gain New Weapons: Linkage analysis and geographic profiling systems get criminals where they live," *Government Technology*, December 1997; *http://www.govttech.net/publications/gt/1997/dec/geoinfo/geoinfo.phtml*; accessed March 19, 2001.

Unusual Weapon

Lighter Knife

Detectives with the Perth Amboy, New Jersey, Police Department confiscated this concealed weapon. They advised that this functional butane lighter also contains a spring-loaded knife. The lever located on the side of the lighter releases the blade. The weapon often is sold in small stores and can be purchased easily by youths.

Submitted by the Perth Amboy, New Jersey, Police Department



Law Enforcement's Response to People with Mental Illness

By Michael Klein

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In 1998, police officers shot a man who lunged at one officer who was trying to coax him from the roof of a building. Although the man had a history of mental illness, prior to its onset, he was a respected schoolteacher. This incident triggered a widespread controversy and received much coverage in the local press. The public debate over this and other similar cases led to an examination of the appropriate role for law enforcement agencies in dealing with people in a state of mental or emotional distress. Traditionally, law enforcement officers are the first to respond to crisis situations involving individuals with mental illnesses and, therefore, must receive training on how to resolve these situations more efficiently and with greater sensitivity.

ONE AGENCY'S EXPERIENCE

Monterey County, California, known for its scenic beauty, encompasses more than 2 million acres and has a resident population of more than 400,000. In addition to over 2 million visitors attracted to the county each year, estimates for the year 2000 included a homeless population of 2,915 men, women, and children, with a transient population of 6,835, and showed that approximately 22 percent of this homeless population had some form of mental illness.[1] The Monterey County Health Department serves approximately 4,000 residents with mental illness. Statistically, this figure represents 50 percent of the affected residents living in the communities of Monterey County. The county has 16 different law enforcement agencies, two state prisons, two federal police agencies, four state agencies that have patrol functions, a district attorney's office, and a county probation office. All of these agencies, subject to a mental health critical incident response requirement, have limited resources to deal with a mental health crisis situation.

The Response

The Monterey County Police Chief's Association decided to combine their resources and create a standardized training program to develop a better response capability to mental health crisis situations. Members of the association recognized that addressing the training issues of first responders only represents a small component of having a better response capability. They involved the county health department as an equal partner in creating the countywide program. The association concluded that the program must contain three parts in order to be a success—a first-responder certified training program; agreements/protocols of cooperation between law enforcement and the local emergency medical services; and a medical doctor and a psychiatrist assigned to assist the commander on the scene. Without these three components in place and full agreement between agencies, a comprehensive plan to deal with mental health crisis situations could not be complete.

The Training Program

The committee reviewed a number of programs, including the Memphis model.[2] Three individuals from Monterey County, including an employee of the county mental health department, were sent to a critical incident training (CIT) academy developed by the San Jose, California, Police Department. Using

this CIT as an outline, upon graduation, these key workers developed a similar training course specifically designed for the needs of Monterey County. They concluded that an integrated, countywide program would have to serve the various population centers and account for the distance between all agencies in Monterey County. They needed to adapt the San Jose training program to meet the specific and unique conditions of all jurisdictions in Monterey County. Consequently, an oversight committee, chaired by the chief's association designee, was created and included the three graduates of the San Jose CIT Academy. Their task involved molding the Memphis/San Jose CIT model into a germane product for Monterey County to incorporate into the training protocol program that included the mental health community. The active support of the Monterey County Mental Health Department remained a keystone in the completion of this task.

> **"...addressing the training issues of first responders only represents a small component of having a better response capability."**

The committee created a 40-hour intensive training program that included role-playing, interactive participation of people with mental illness (consumers), identification of various symptoms and types of medications used by consumers, crisis negotiation tactics, panel discussions, visits to interim-type housing facilities, suicide and crisis intervention training, and a review of all countywide protocols and incident response procedures. The team found that having more than 30 students in the class detracts from the interactive training experience. The training focuses on the most useful tool available to officers—their communication skills—and culminates with tests and feedback evaluations. All participating officers sent to the CIT academy volunteer to attend. Upon graduation, the officers receive a pin, designating them as CIT certified, that they can wear on their uniforms.

Multiagency Agreements

The training administrators created several multiagency agreements. The most important being a political commitment by the county and the cities to develop a comprehensive approach to mental health crisis situations. Monterey County considered numerous areas when they developed these agreements.

Transportation

A contract binds a single ambulance provider to facilitate all 911 ambulance services. The agreement requires that the ambulance service respond to all mental health crisis calls upon request of the agency. The ambulance can transport the individual to a mental health hospital facility without the need of a police escort. In the event of a medical emergency, the ambulance attendants can choose to transport the patient to the nearest emergency hospital facility.

Hospitalization

The two major hospitals in the county agreed that one will accept all juveniles and senior citizens and the other will accept all remaining consumers. Unless otherwise necessary, the hospitals would not require the assistance of police officers. When needed, officers covering the hospital's jurisdiction would respond. Since the inception of this protocol in Monterey County, neither hospital has requested police response.

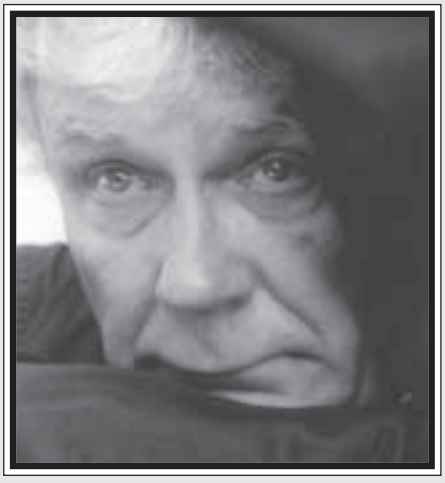
Medical Psychiatric Response

In most instances, merely having an officer trained in how to respond to critical incidents quickly resolves the problem. However, in cases where a consumer may hold themselves hostage, threaten only themselves or their property, or when a CIT officer cannot resolve the situation, officers may call upon a psychiatrist's services. The committee decided that a psychiatrist, available 24 hours a day, would prove essential. Therefore, they developed a mutual aid agreement with the two prisons in Monterey County that have staff psychiatrists with experience in dealing with people in crisis. In Monterey County, with a diverse population of one-half million people, an

average of two to three such responses have occurred per year and the need for this component remains paramount.

Interaction of the Mental Health Department and Providers

Cooperation between the service providers, consumers, and the CIT officers will facilitate smooth interaction between the agencies that traditionally have little to do with each other. Ongoing training or interaction of the psychiatrists with the officers trained in crisis intervention also proves essential. Having participants either teach or take part in panel discussions or role-playing exercises can help accomplish this. Such a working relationship resolves many difficulties. In fact, Monterey County has found that these mental health agencies often call upon the CIT officers to help, which results in a mutual support system.



Mutual Assistance Protocol

Because the program has only 30 students per class and only three classes per year, an 8-year commitment exists to have all officers and supervisors CIT trained. Having all jurisdictions in Monterey County involved allows most agencies only one student per class, which leaves few officers available in a department to respond to crises. Consequently, the police agencies involved developed a mutual aid protocol to respond with a CIT officer to a crisis situation. The on-scene commander can make the request through the county communications center, which maintains a current list of graduates and would choose the closest CIT officer available. The responding CIT officer would assist the on-scene commander, yet apply the officer's own department's policies, such as using less-than-lethal force.

Documentation

Monterey County tracks all CIT officer responses, which allows them to receive feedback and monitor additional training needs. This also helps in any litigation from situations that may not be resolved nonviolently.

Ancillary Agreements and Protocols

Often, departments need additional protocols with agencies, such as the Salvation Army, which deal with the transient and homeless population, many of whom have mental illness and are not known to the law enforcement community. With this in mind, the Sand City, California, Police Department created a consortium with the Salvation Army and the Monterey County Health Department. The health department provides Salvation Army personnel training to provide referral service and assistance. If personnel of the Salvation Army identify an individual in need of assistance, but who refuses, the police department initiates commitment paperwork. In a case where an individual does not qualify for an immediate commitment, Salvation Army personnel notify the police department and can provide information to allied agencies in the event that the individual goes into crisis in another jurisdiction. Any additional available information may prove essential in providing crucial details to establish the probable cause for that involuntary psychiatric commitment. The Salvation Army in Monterey County has agreed to share information with their other facilities throughout the state regarding the transient homeless population who may have some form of mental or emotional illness. This ancillary agreement helps to provide a safety net for those individuals who normally would remain unknown to law enforcement.

The Monterey County Sheriff's Department is developing another program to help resolve the issues of incarcerating those individuals with mental illness who continually commit minor crimes. This program involves the county health department acting as a facilitator for treatment and creates a diversion program with the courts. The results will reduce

overcrowding in jails and divert those individuals with mental illness to alternate treatment facilities.

CONCLUSION

In Monterey County, California, three separate crisis situations involving individuals with mental illness occurred the weekend after the first graduation of the critical incident training academy; all were resolved without the use of force. Since then, the county has noted numerous calls resulting in successful, nonviolent results. In fact, the training helped officers defuse other emotionally stressful situations that may not have been related to mental health issues, such as domestic disputes.

In some instances, having protocols, agreements, mutual aid assistance, or the assistance of a psychiatrist available still may not resolve a situation peacefully. However, having an extensive training and interactive working arrangement will give the first-arriving officer more tools for achieving a peaceful resolution to a mental health crisis situation and can help law enforcement and mental health officials bring about a positive change in law enforcement response to individuals with mental illness. ✦

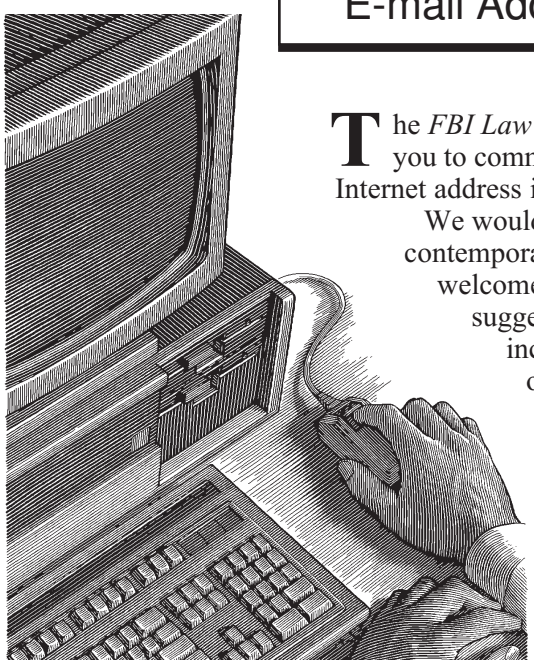
Endnotes

[1] Based on information provided by the Monterey County Health Department.

[2] The Memphis, Tennessee, Police Department established this mental health emergency response model that couples intense crisis intervention training for officers with a partnership between law enforcement agencies, mental health providers, advocates, and individuals who are mentally ill. Many law enforcement agencies throughout the country have adopted this model.

Chief Klein heads the Sand City, California, Police Department.

The *Bulletin's* E-mail Address



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Adventures in Public Speaking

A Guide for the Beginning Instructor or Public Speaker

By JAMES E. TILTON

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According to recent surveys, many people in America rank speaking in public as one of the greatest fears of their lives.[1] In fact, some individuals have ranked the fear of public speaking ahead of their fears of financial difficulty, illness, or even death. In law enforcement, some officers compare dangerous incidents they encounter while on duty with standing in front of a group of strangers and giving a prepared presentation. A greater fear is having to speak in front of superiors and explain a procedure or specific occurrence without the benefit of preparation. This, coupled with the possibility of having to answer questions by an audience, can induce fear in even the most senior employees.

Regardless of their title, one day, someone will ask most officers to formally speak to a group. By properly preparing, they can avoid a potentially embarrassing event, whether giving a status report to the city government or representing their own department at a local civic meeting.

Addressing Public-Speaking Fears

Why does speaking in public terrify so many individuals? A 1990 study asked a group of men and women what they feared most about speaking to groups of people. They

responded with a variety of answers,[2] some of which include the fear of—

- making embarrassing mistakes (81 percent);
- damaging their career or reputation (77 percent);
- forgetting material or "freezing" (63 percent);
- being dull or boring (58 percent);
- looking nervous (52 percent);
- being stared at (45 percent);
- being unable to answer questions (37 percent);
- being unprepared (31 percent);
- being ignored (24 percent);
- being laughed at (19 percent); and
- having someone in the audience fall asleep (7 percent).

Experienced public speakers can address nearly all of these issues and help make speaking to groups less intimidating. Although public speakers must accept certain fears, most individuals can overcome such fears through practice and commitment and from identifying their own particular weaknesses. Certain techniques exist that can help individuals address their public speaking concerns and teach them how to relax. Relaxation will help the speaker control any nervous mannerisms (e.g., dry mouth, wrenching hands, crackling voice) that adversely can affect the way they present themselves. Knowing and working within their limitations and increasing their self-confidence constitutes the first step in becoming a successful speaker. The process of communication is an ordinary occurrence but, through inadvertent means, easily can become unclear. Understanding how the basic communication process unfolds will prove invaluable in making a successful presentation.

Detective Sergeant Tilton serves with the Nassau County, New York, Police Department.

"...how speakers present themselves to an audience determines their effectiveness as a public speaker."

Identifying Barriers to Communication

The basic process of communication consists of three simple parts. The first component, the sender of the message, can be a speaker or instructor, a television or radio program, or even a movie. The last component, the receiver of the information, consists of the individuals to whom the material is presented. The central and most important part of the process, the message itself, is simply the information that the sender delivers to the receiver. This seemingly simple process easily can get distorted for a variety of reasons. For example, in the telephone or grapevine game, the first person in line whispers a message one time to the next person in line. In turn, that person must relate the message to the next person in line. This is repeated until the last person in the group receives the message and then relates it aloud. In large groups, the last person's interpretation of the message is invariably different from the originator's message. This exercise demonstrates some of the barriers to effective communication. Both the instructor, or sender, and the audience, or receiver, can construct such barriers, with attitudes as the most equally erected barrier.

If the sender has a preconceived idea about the audience, it will be reflected in the delivery. For example, if a speaker who usually gives presentations to corporate executives or senior administrators presents a similar lecture to a group of high school students, the speaker may oversimplify the topic. As a result, the audience may perceive this as conceit or egotism on the

part of the instructor, which can result in a diminished receptiveness. The audience will recognize such subtleties, whether intentional or not, and may become tainted toward the speaker and, ultimately, the material presented.

Most everyone has heard speakers they disliked. Whether the recipient thought the speaker was too liberal, too conservative, or simply difficult to understand, when a member of an audience has a preconceived attitude toward a speaker, they tend to focus on the negative aspects of the presenter and ignore the message.

Additionally, a speaker may display a limited vocabulary or poor choice of words. A speaker whose presentation contains acronyms and technical language risks losing the attention of anyone unfamiliar with their meanings. Using unfamiliar terms to an audience of trainees does not imply that the speaker knows more than the audience; rather, it can create an undesirable attitude toward the instructor. Individuals often tune out things they do not understand. Generally, audience members hesitate to ask questions or admit that they do not understand the meaning of a word or concept. Some individuals refrain from raising their hands and asking for clarification because they feel that they are interrupting the lecture or that their question may make them look ignorant or uninformed. Therefore, rather than asking the speaker to clarify or define a term, these individuals tend to substitute the word or phrase that they do not understand with one that they do. This can have a profound effect on the substance and true meaning of the message.

The simpler the information the speaker presents, the better an audience will understand it. For example, if an instructor gives a presentation on a highly technical topic to a group of novice trainees, the instructor first must define any technical terms at the beginning of the program. Otherwise, the instructor risks losing the attention of part or all of the audience.

> ***"Nothing can substitute for quality preparation."***

Unpreparedness constitutes another barrier common to presenters. Effective speakers must have a solid working knowledge of the topic and must support the presentation with facts and research. Nothing can substitute for quality preparation. Lack of skill and preparation quickly can destroy a well-conceived program. Presenters should consider the individuals who make up their audience, their background, and their level of likely resistance or acceptance. They should research and become familiar with their topic and learn as much about the audience as possible. In doing so, the material will become stimulating and relevant. At the beginning of the program, speakers should make clear what the audience will gain by accepting this material.[3]

Using Nonverbal Behavior

Individuals in law enforcement extensively use somatic, or body, language in their daily contacts with others. This concept, defined as any conscious or unconscious movement of a part or all of the body that communicates an emotional message, remains an essential principle in courses on interviewing and interrogation.[4] Law enforcement professionals recognize that individuals exhibit certain constant, spontaneous, and involuntary behaviors when interviewed under stressful conditions.[5] Similarly, those same nonverbal cues law enforcement officers search for while conducting interviews can indicate doubt, nervousness, or fear to an audience. Trained interrogators can recognize certain nonverbal behaviors as indicators of both truth and deception. During an interview, if individuals place their hands in front of their mouth when answering incriminating questions, investigators often suspect deception. If a speaker does this when addressing a group, the audience may reach the same conclusion. Psychologists examining human behavior relevant to communication determined that only 7 percent of any message is communicated by words; 38 percent is conveyed vocally (e.g, the tone of voice, inflection, volume, or rate of speech); and the remaining 55 percent of the message is transmitted by nonvocal means or body language.[6]

Most important, how speakers present themselves to an audience determines their effectiveness as a public speaker. They must sell themselves to their audience before

Elements to Consider When Making a Presentation

- ***Appearance:*** A neat professional appearance is mandatory. The audience will make their first impression solely on the way the speaker looks, even before hearing any spoken words. The speaker should dress comfortably in suitable professional attire.
- ***Stance/Poise:*** Speakers should walk and stand with their head up and shoulders back and project a quiet, confident attitude. Speakers should try to recognize and avoid any nervous mannerisms common to first-time speakers (e.g., keeping hands in pockets, crossing arms, tightly gripping the podium) that an audience can discern as nervousness.
- ***Gestures:*** Because most people use their hands and arms when engaged in a conversation, a speaker should ensure these gestures are spontaneous and natural and never allow them to overcome the presentation. Repeating the same gesture too often or using gestures, such as finger-pointing or handling a pen, pointer, or other object, also can prove distracting. Practicing a presentation in front of a mirror can help a speaker observe and identify any distracting gestures.
- ***Facial Expressions:*** Speakers' facial expressions should convey their personality along with warmth and sincerity toward the topic. If a speaker looks interested and friendly, the audience will reciprocate. Because most audiences want the speaker to succeed, the speaker should think positive and not say phrases, such as "I'm new at this" or "I'm pretty nervous up here."
- ***Eye Contact:*** Confident speakers who develop proper eye contact will communicate more efficiently by making each audience member believe the speaker is speaking directly to them. A speaker visually can divide the room into quadrants and locate a few people in each quadrant with whom to make eye contact.[7] The duration of the eye contact should last between 3 and 5 seconds.
- ***Voice/Inflection:*** If rooms are large and the speakers' voices are naturally low, they should consider using an amplifier. Speakers should modulate the tone of their voice, change the pitch, and vary the pace of their speech.
- ***Vocabulary:*** Speakers always should ensure correct pronunciations and definitions of difficult words and use proper grammar and language as simple as possible so their presentation remains easy to comprehend by all levels of the audience.
- ***Enthusiasm:*** By choosing a topic of interest to them, speakers easily can get excited about what they will share with their audience, which will allow them to concentrate on their message and convey the information as valid and important. Additionally, a speaker's enthusiasm will carry over to the audience.

attempting to relay a message. The first few minutes of any program, when the audience makes its initial impression of the speaker, remain vital to a successful speech. A positive impression will make the audience more receptive to the speaker's message. In contrast, a negative first impression only will make the speaker's job more difficult. A variety of factors can influence the way an audience receives a program and speakers must use each one in varying degrees to build a successful presentation.

Conclusion

Speaking in public for the first time does not have to be a frightening experience. Through practice and preparation, first-time speakers can succeed and feel an outstanding sense of accomplishment. They should consider an effective

presentation simply as a conversation with their audience.

With acknowledgment and practice of certain techniques, officers or administrators easily can become better communicators. In doing so, they can better understand their coworkers, themselves, and the communities they serve. ✦

Endnotes

[1] Roger Flax, "Inter-Office Memo," *NY Daily News*, January 21, 1990, B2.

[2] Ibid.

[3] New York State Division of Criminal Justice Services, Office of Public Safety, Manual for Instructor Development (New York, 1975), Module IV, 5.

[4] Stan Walters, *Principles of Kinesic Interviews and Interrogation* (Boca Raton, FL: CRC Press, 1996).

[5] For more information, see, for example, Sue Adams and Tony Sandoval, "Subtle Skills for Building Rapport: Using Neuro-Linguistic Programming in the Interview Room," *FBI Law Enforcement Bulletin*, August 2001, 1-5.

[6] A. Mehrabian, *Silent Messages* (Belmont, CA: Wadsworth Publishing, 1970).

[7] Roger Flax, "A Manner of Speaking," *TWA Ambassador Magazine*, May/June 1990, 38.

Crime Data

Injuries from Violent Crime

According to the U.S. Department of Justice's Bureau of Justice Statistics (BJS) and the Centers for Disease Control and Prevention (CDC), each year, about one in four U.S. residents who are victims of a violent crime are injured during the attack. About 2.6 million people each year were injured from nonlethal violence (rape, sexual assault, robbery, simple and aggravated assault) from 1992 through 1998. About 480,000 of the victims injured, or about one in five, were admitted to a hospital or treated in an emergency department.

In addition, during the same time period, an average of 21,000 people were murdered each year. For every homicide victim 12 years or older, approximately 121 people were injured in a violent crime, including 16 people whose injuries were serious. An estimated 344,000 victims incurred severe injuries, such as gunshot or knife wounds, broken bones, loss of teeth, or internal bleeding. Fifty-eight percent of severely injured victims reported that the offenders had a weapon, usually a knife or other sharp object, such as scissors, an ice pick, or an ax, or a blunt object, such as a rock or club (44 percent), rather than a firearm (14 percent).

Victims of violence were more likely to report being injured when the offender was an intimate partner (48 percent injured) or a family member (32 percent injured) than when the offender was a stranger (20 percent injured).

During the 7-year period studied, one in four attacks resulting in severe injuries and almost half of the attacks resulting in minor injuries were not reported to law enforcement agencies.

Written by behavioral scientists Thomas Simon and James Mercy in the CDC's National Center for Injury Prevention and Control and by BJS statistician Craig Perkins, the special report, "Injuries from Violent Crime, 1992-1998" (NCJ 168633), may be obtained from the BJS clearinghouse at 1-800-732-3277 or from their Web site at http://www.ojp.usdoj.gov/bjs.

Book Reviews

Policing Mass Transit *by Kurt R. Nelson, Charles C. Thomas, Publisher, Springfield, Illinois, 1999.*

Policing Mass Transit reveals that this enforcement effort has become more critical now than ever before and must accommodate large and small public transportation policy objectives. Public, transit employee, and police officer safety and security represent an absolute necessity for transit systems. It is essential that transit vehicles, roadways, and railways, as well as stations and parking lots, be constructed to discourage criminals and to add to the capability of crime prevention and response enforcement. Members of the law enforcement profession and the community in general must work together on the total process, from planning to implementation.

In *Policing Mass Transit*, the author addresses strategic transit concepts, goals, and objectives inherent in policing transit modes and examines the tactical considerations and approaches. The book is designed in three parts. Part one addresses the strategic focus on orienting the community, measuring and communicating success, planning for security, developing a transit security plan and impact statement, managing the plan once implemented, and using the strategy of incident review committees on surfacing issues.

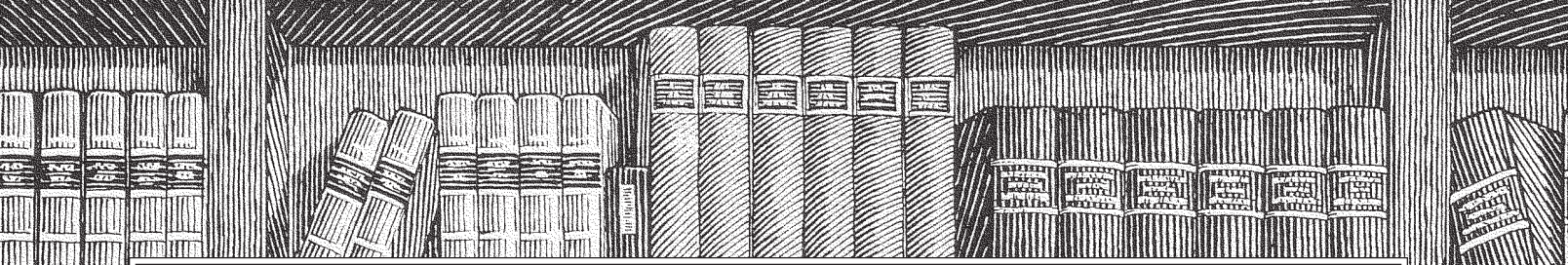
The book's second part emphasizes transit physical aspects related to crime prevention through environmental design and the tactical ramifications when law enforcement officers approach buses and trains, including their mobility, which can impact the safety and security of officers, transit employees, and the public. This part also assesses using plainclothes and undercover officers, as well as technology employment concerning "pan-tilt-zoom" cameras and their effectiveness, to detect and identify criminals. Further, the author reviews for the reader the Dallas area rapid transit concept of assigning sworn uniform officers to light rail vehicles and provides highlights of the *New Jersey Transit Police 1996 Annual Report* involving transit robberies and assaults. The author also analyzes the *Washington, D.C., Transit System Crime Statistics Report* for 1996 and 1997, which showed that fixed locations accounted for 50 and 45 percent of Part I and II crimes, respectively. The book contains reviews of other area transit systems as well.

Part three of the book addresses the strategy for preincident planning, training, system considerations, and types of responses and prevention measures. It also covers internal employee theft and crime, youth gangs and the identification of the types and threat levels, triggers to violence, and work-site violence that spills over into domestic situations that impact transit safety and security. The author argues the point that there are special and unique facets of transit policing that require law enforcement specialization or generalization enforcement to successfully meet the needed public and employee protection concerns and objectives.

Great advantages of the book include the eight appendices. They range from an example of a transit security survey and a listing of various transit/travel laws in major districts to a recent system security plan and program supported by a budget program identifying direct and indirect security costs. The appendices also contain an example of operating/customer profiles, an identification of management concerns of the implemented security plan, a listing of security roles and responsibilities, and a threat and vulnerability identification with assessments and potential resolution.

Policing Mass Transit is an asset to communities and local governments; transit planners; port, rail, and bus authorities; police policy/procedures developers; and training designers. It proves essential reading for trainers, transit construction and subcontractor vendors, and specific members of the criminal justice system who may have a direct or indirect interest in policing transit modes and bringing criminals to justice.

Reviewed by
Larry R. Moore
Certified Protection Professional
American Society for Industrial Security
Knoxville, Tennessee



Patrol Officer Problem Solving and Solutions *by John M. Memory and Randall Aragon (editors), Carolina Academic Press, Durham, North Carolina, 2001.*

Patrol Officer Problem Solving and Solutions constitutes a much-needed and timely book devoted to a subject that has grown in importance, popularity, and application in American policing. Even though Herman Goldstein first introduced the problem-solving approach to policing in 1979, it has taken many years for police organizations to acknowledge and operationalize the strategy. It is very likely that in the more progressive and contemporary police departments, problem-oriented policing will become even more evident in the day-to-day activities of their police officers. In this regard, *Patrol Officer Problem Solving and Solutions* should make an important contribution to this anticipated growth in the problem-solving strategy.

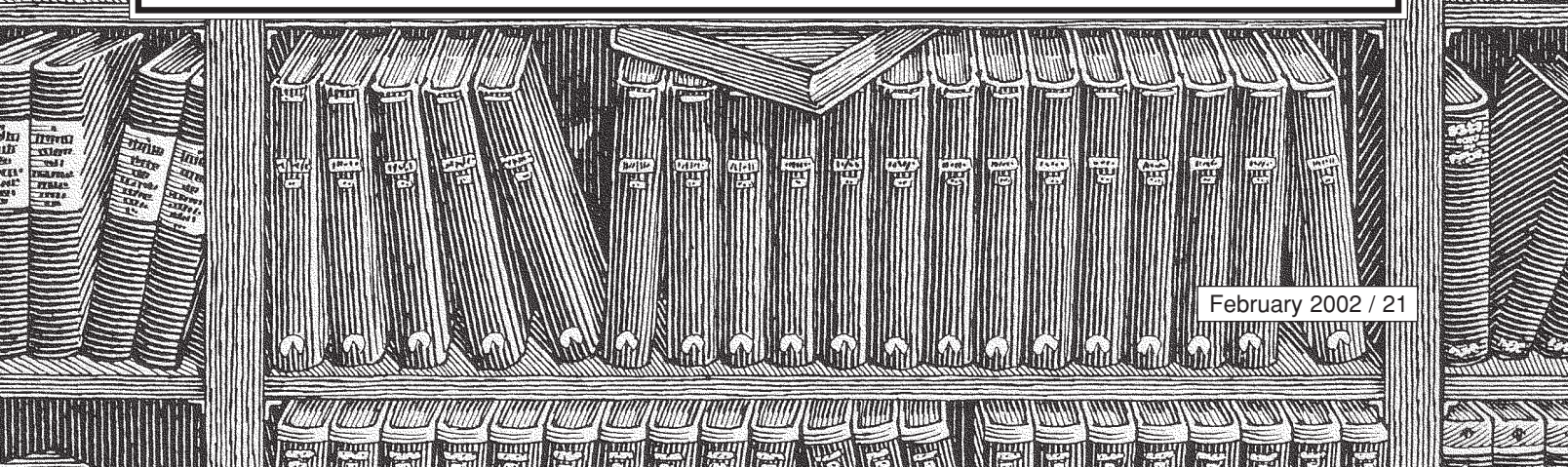
The authors bring an interesting blend of experience to the book. John Memory served in the Judge Advocate General's Corps in the U.S. Army Reserve and retired as a lieutenant colonel, while Randall Aragon recently retired as the chief of police of the Lumberton, North Carolina, Police Department. Chief Reuben Greenberg of the Charleston, South Carolina, Police Department authored the book's forward and characterizes the text as one that "...explores policing not only from a perspective of what it is today but, more interestingly, from a perspective of what it could be."

Considerable variation exists in the sources of the 33 chapters. Some were authored specifically for the book, while others were reproduced by permission from publications produced by organizations, such as the Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, Police Executive Research Forum (PERF), and the International Association of Chiefs of Police (IACP). The book also has about 40 appendices located at the end of those chapters to which they relate, rather than at the end of the book. This arrangement makes for easy and ready access to informative materials. Model policies from the IACP's National Law Enforcement Policy Center appear in abundance throughout the text.

Although all of the chapters are relevant in some manner to the subject of patrol officer problem solving, some seem more directly involved than others. For example, such chapters as "Learning the Skills of Policing," "Patrol Officer Problem-Solving Techniques," and "Proven Problem-Oriented Policing Approaches" all focus on critical aspects of patrol officer problem solving. Other chapters, however, such as "Criminal Law as Problem Solutions," "Problem Solution During Preliminary Investigations," and "Police Pursuit Policies: Problems and Innovations," although of significance in and of themselves, offer a broader examination of the overall topic.

The book is very well documented with a reference list and bibliography of approzimately about 140 entries. Another strength is its listing of over 100 Web sites concerned with law enforcement, criminal justice, and juvenile justice, including specific community policing and crime prevention sites. All in all, *Patrol Officer Problem Solving and Solutions* will make an important contribution to the anticipated growth of the problem-solving strategy in law enforcement.

Reviewed by
Terry Eisenberg, Ph.D.
Law Enforcement Consultant
San Diego, California



Bulletin Reports

Drugs and Crime

The Office of National Drug Control Policy (ONDCP) presents *Pulse Check: Trends in Drug Abuse, MidYear 2000 (Special Topic: Ecstasy and Other Club Drugs*. This 74-page report provides a snapshot of local drug abuse situations throughout the country with a focus on trends in ecstasy (MDMA) and other club drugs. ONDCP's biannual *Pulse Check* regularly addresses four drugs of serious concern: cocaine, marijuana, heroin, and methamphetamine. This newly redesigned edition describes hardcore drug-abusing populations, emerging drugs and markets, new routes of administration, use patterns, demand for treatment, drug-related criminal activity, and supply and distribution patterns from midyear 1999 to midyear 2000. Based on information gathered through conversations with ethnographers, epidemiologists, law enforcement officials, and treatment providers working throughout the United States, this report presents findings before population-based, long-term research is available. This document (NCJ 186747) is available electronically at *http://www.whitehousedrugpolicy.gov/publications/drugfact/pulsechk/midyear2000/midyear2000.pdf* or from the National Criminal Justice Reference Service at 800-851-3420.

Juvenile Justice

The Office of Juvenile Justice and Delinquency Prevention's (OJJDP) partnership with Eastern Kentucky University continues to offer satellite teleconferences on timely juvenile justice and delinquency prevention issues. Each teleconference is videotaped and accompanied by a participant's guide. Recent teleconference topics include balanced and restorative justice, mental health issues and juvenile justice, and employment training for court-involved youth. Tapes are available from the Juvenile Justice Clearinghouse (800-638-8736) for $28.00 ($30.00 if shipped outside the United States). To order videotapes on-line, visit *http://www.puborder.ncjrs.org* or to locate the nearest viewing site, receive additional information, or learn more about establishing a downlink site, contact the Juvenile Justice Telecommunications Assistance Project at 859-622-6671.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 209, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Inferring Probable Cause

Obtaining a Search Warrant for a Suspect's Home Without Direct Information that Evidence Is Inside

By EDWARD HENDRIE, J.D.

This article addresses the issue of when sufficient evidence exists to establish probable cause to search the residence of a person who has been arrested for, or is involved in, criminal activity.

To search a residence for evidence of a crime, an officer must have probable cause to believe that the evidence is inside the home.

What is Probable Cause?

Probable cause is a somewhat nebulous standard, yet officers are called on to apply that standard with some exactness each day. Many have tried to apply "a one size fits all" standard of probable cause to every situation, because they believe that probable cause is one consistent standard of proof that occupies a fixed point. In fact, probable cause offers a range of proofs that occupies a zone.[1] This zone allows for a flexible standard for probable cause, which depends on the circumstances.[2] Generally, the more serious the crime, the more latitude the police are allowed when deciding whether probable cause exists.[3]

No exposition of probable cause would be complete without a discussion of *Illinois v. Gates*.[4] In

Gates, the Bloomingdale Police Department received an anonymous handwritten letter through the mail on May 3, 1978. The letter alleged that Sue and Lance Gates were involved in drug trafficking. The letter gave a general description of the condominium complex where the Gateses lived and stated that the Gateses presently had over $100,000 worth of drugs in their basement. The anonymous tipster stated that Sue Gates ordinarily drove her car to Florida, where she would leave it to be loaded with drugs. Lance would fly down later and drive the car back to Illinois, and Sue would fly back to Illinois. The letter indicated that they planned to make a trip to pick up over $100,000 worth of drugs on May 3.

A police detective assigned to the case determined that Lance Gates made a reservation on a flight to West Palm Beach, Florida, scheduled to depart from Chicago on May 5 at 4:15 p.m. The detective made arrangements with agents from DEA for surveillance of the May 5 flight. The DEA agents observed Lance Gates boarding the flight, and other agents in Florida observed Gates arriving in West Palm Beach. The Florida agents observed Gates take a taxi to a nearby motel and go to a room registered to Susan Gates. Early the next morning, the agents observed Gates and an unidentified woman, apparently Susan Gates, leave the motel in an automobile bearing Illinois license plates registered to another vehicle owned by Gates. Gates drove northbound on an interstate highway frequently used to travel to the Chicago area.

Based on what the detective learned from the anonymous tip and the DEA surveillance, he obtained a search warrant for the Gateses' residence and automobile. Thirty-six hours after Lance Gates flew out of Chicago, Lance and his wife returned to their home in the suburban Chicago area. When the Gateses arrived at their home, the police were waiting for them. The police executed the search warrant and found 350 pounds of marijuana in the car and more marijuana, weapons, and other contraband in the home.

The trial court ordered that the evidence be suppressed because the affidavit failed to establish probable cause that the car and home contained the contraband in question. The decision of the trial court was affirmed by both the state appellate court and the Illinois Supreme Court. The Illinois Supreme Court applied the *Aguilar-Spinelli* two-prong test,[5] and stated that the affidavit did not establish probable cause because there was no indication of the informant's basis of knowledge, and there was no way for the officer to verify the credibility of the anonymous tipster. The court stated that while the officer was able to corroborate some of the details of the tipster's facts, they were only innocent details and, therefore, insufficient corroboration. The court further stated that the letter gave no indication of the basis of the writer's knowledge of the drug activities of the Gateses. The court felt that the detail in the letter was insufficient to infer that the tipster had personal knowledge of the Gateses' activity.

The U.S. Supreme Court reversed the Illinois Supreme Court. It ruled that probable cause is a practical, nontechnical concept, and that it should not be weighed in terms of library analysis by scholars using tests, such as the *Aguilar-Spinelli* two-prong test. Rather, the Court stated that the test for probable cause under the Fourth Amendment should be a totality of the circumstances test.

"To search a residence for evidence of a crime, an officer must have probable cause to believe that the evidence is inside the home."

Special Agent Hendrie, DEA Instruction Section, is a legal instructor for the DEA Training Academy at Quantico, Virginia.

The Court reasoned that probable cause is a fluid concept that turns on the assessment of probabilities, in particular factual contexts by those versed in the field of law enforcement.

The Court concluded that when viewing the facts through the clear lens of totality of the circumstances, rather than the fragmented prism of the *Aguilar-Spinelli* two-prong test, there was probable cause to search both the house and the car. The detective was able to establish, through independent investigation, that the Gateses were involved in drug trafficking. They were traveling to Florida, which is not only a vacation spot but also a well-known source state for illegal drugs. Lance Gates' flight to West Palm Beach and his immediate return to Chicago in the family vehicle that his wife had previously driven to Florida is not the sort of activity one would engage in if on vacation. Rather, such conduct is suggestive of a prearranged drug run. In addition, once some of the major details in the anonymous letter were corroborated, it was then reasonable to conclude that the tipster was accurate in his assertion that the Gateses were involved in drug trafficking. Finally, the court thought it was significant that the anonymous letter contained details regarding future actions of the Gateses; such unusual future conduct is not something that is easily predicted in the absence of personal knowledge. The accurate prediction regarding the future conduct of each of the Gateses likely was obtained directly from one of the Gateses or from someone they trusted who was familiar with their unusual travel plans.

Can a Court Infer Probable Cause?

In *Gates*, the police were able to search the Gateses' home because they had specific, credible information that the home contained over $100,000 worth of illegal drugs, and that they would be bringing drugs to the home. What if the police did not have that information and, instead, stopped the Gateses on the highway and found drugs in their car? Would the police have probable cause for a search warrant to search the Gateses home based solely on the fact that drugs were found in their car? Defendants arrested under such circumstances often will claim that there were insufficient facts to establish probable cause that drugs or drug records will be found in their residences. For example, in *Williams v. United States,*[6] the defendant was stopped for a traffic vio-lation. Based on suspected drug residue found in his car and information regarding prior drug offenses, officers had probable cause to believe he was a drug dealer. The U.S. Court of Appeals for the Fourth Circuit ruled that there was probable cause to conclude drug records, documents, and paraphernalia used in the sale and distribution of drugs would be in his motel room.[7]

> ***"Under the right circumstances, officers may be able to obtain a search warrant for a residence of someone...who is closely associated with the defendant."***

In *United States v. Anderson*,[8] the defendant attempted to sell a gun and silencer to three police informants. The defendant told the informants that the gun was used to commit a murder. The police investigating the murder obtained a search warrant to search the defendant's home where they found the gun and silencer. The defendant was convicted of murder, and he appealed. The U.S. Court of Appeals for the Fourth Circuit found that the warrant to search the defendant's residence was not facially defective, even though the affidavit contained no facts expressly stating that the gun and silencer were in the defendant's residence.[9]

In *State v. Ward*,[10] the police obtained a search warrant to search the home of Lance Ward. The affidavit stated that Darrell Vance had been arrested for possession of approximately 3 kilograms of marijuana and $11,000 in cash. Vance revealed that his supplier was Lance Ward, who lived on Royce Road. The police also had information that Ward was a drug dealer. During the search of Ward's residence, the police recovered 180.9 grams of cocaine, 2,578 grams of marijuana, and other drug paraphernalia. Ward filed a motion to suppress, alleging, among other things, a lack of probable cause to search his residence. The district court denied Ward's motion, and he appealed that decision to the court of appeals. The

court of appeals reversed the decision of the district court, and the government appealed that decision to the Wisconsin Supreme Court. Ward contended that the affidavit was inadequate because the detective did not establish a link between the drug evidence and Ward's home. Ward stated that an inference drawn from the detective's training and experience that drug traffickers often keep drug evidence in their homes would have been legally adequate, but the detective did not even do that. Instead, the magistrate himself drew that inference, based upon his 8 years of personal experience in handling drug cases. The magistrate opined that there was a high probability that evidence of drug trafficking would be found in the residence of a drug dealer.

The Wisconsin Supreme Court stated that the subjective experiences of the magistrate should not be part of the probable cause determination. However, the court further stated that a magistrate may make the usual inferences that reasonable persons would draw from the facts presented. Having said that, the Supreme Court ruled that the facts recited in the affidavit were sufficient for a reasonable person to logically infer that evidence would be found at Ward's home, without having to resort to any special personal experience.

The court reasoned that Vance was a substantial drug dealer based on the fact that approximately 3 kilograms of marijuana and over $11,000 in cash were seized from his home. Because Ward was a supplier of drugs to Vance, he would be an even bigger fish, which would lead to the reasonable conclusion that there was substantial basis to find probable cause to believe that illegal drugs would be found at Ward's home. The *Ward* court did not believe that the totality of the circumstances test requires formalistic express statements that drug dealers often keep drugs in their homes. The court pointed out that the test is not whether the inference drawn is the only inference, but, rather, whether the inference drawn is a reasonable one. The inference that drugs would be found at Ward's home is not the only inference that could be drawn from the facts in the affidavit, but it is certainly a reasonable inference. In fact, the court pointed out that even if there were two or three possible locations, there would still be probable cause to search each of them, which suggests that probable cause is a standard with a probability of less than 50 percent.

> ***"...most courts accept an affiant's explanation to the court that, based on his training and experience, drug dealers often keep drugs or drug records in their homes."***

The inference that drugs, scales, and packaging are in a drug offense arrestee's residence is particularly strong when the arrestee is found in possession of drugs that appear to be evenly weighed and packaged, and none of the packaging material or measuring devices are found on or near the suspect at the time of his arrest. Under those circumstances, it would be reasonable to infer that packaging materials, scales, and other evidence of drug trafficking would be found at the arrestee's residence.[11]

Inferring Probable Cause to Search a Third Party's Home

Under the right circumstances, officers may be able to obtain a search warrant for a residence of someone, such as a girlfriend, who is closely associated with the defendant. In *United States v. Suarez*,[12] the police obtained a search warrant based upon an affidavit indicating that Luis Suarez was a drug smuggler; that calls were made to the Suarez's pager, which led to the arrest of an associate and the seizure of a large quantity of marijuana; that neither Suarez nor his girlfriend, on whom he was spending large amounts of money, had any legitimate source of income; and that Suarez traveled to his girlfriend's residence upon his arrival in the city. Upon executing the search warrant at Suarez's girlfriend's residence, the police seized approximately $100,000 in cash and a small amount of marijuana. The defendant and his girlfriend were both indicted and convicted for conspiracy to possess with intent to distribute marijuana. They appealed the district court's refusal to suppress the evidence found in Suarez's girlfriend's home. The U.S. Court of Appeals for the Fourth Circuit ruled that there were sufficient facts in the affidavit to establish probable cause

to believe that the defendant's girlfriend's home would contain illegal drugs, cash, financial transaction records, and writings that would link the defendant and his girlfriend to the marijuana seized from the defendant's associate.

Inferences Based on Training and Experience

Simply because officers have probable cause to arrest a person does not necessarily mean that they will have probable cause for a subsequent search of the arrestee's home.[13] Courts require some factual connection between the charge for which the suspect could be arrested and his residence.[14] As evidenced by the *Ward* decision, the factual connection to the residence can be as simple as a reasonable inference by the magistrate that drug dealers often keep evidence and contraband at their residence. Not all courts, however, are so quick to draw that inference. For example, in *United States v. Gramlich*,[15] the defendant was arrested as he was off-loading 10,000 pounds of marijuana from two boats that, in turn, had been loaded from a Colombian freighter off the coast of Mississippi. No mention was made in the affidavit of any suspicious activity at the defendant's home, which had been under surveillance for more than 3 weeks prior to his arrest. The U.S. Court of Appeals for the Fifth Circuit ruled that the defendant's arrest alone did not justify a search of his home, which was 50 miles from where he was arrested.

The *Gramlich* court expressly refused to state what additional evidence would have been sufficient to establish probable cause to search the defendant's home.[16] Law enforcement officers are not, however, without guidance on that point. In drug cases, most courts accept an affiant's explanation to the court that, based on his training and experience, drug dealers often keep drugs or drug records in their homes.[17]

For example, in *United States v. Pace*,[18] the court found that there was probable cause to search the defendant's residence after arresting the defendant and searching his barn. The *Pace* court pointed out that: "The DEA agent who applied for the warrant described what

he saw at the barn and then indicated in his affidavit, among other things, that individuals who cultivate marijuana routinely conceal contraband, proceeds of drug sales, and records of drug transactions in their homes to prevent law enforcement officials from discovering them."[19]

Pace illustrates the importance of expressly explaining the connection between drug trafficking and the drug records that drug dealers often keep in their residences. Judges and magistrates should be told in the affidavit what is the common practice of drug dealers.[20] That information must be based upon the actual training and experience of the officer who is asking the court to rely on his expertise. A court reviewing an affidavit is not permitted to go beyond the four corners of the affidavit of the search warrant to determine if it contains probable cause. If a court, however, is fully informed of the practices of drug traffickers in the affidavit, it will have less difficulty issuing a search warrant for drug records at the residence of a drug dealer, even in the absence of direct evidence.

In *United States v. Feliz*,[21] a search warrant affidavit described drug transactions that took place approximately 3 months prior to the issuance of the search warrant. The affidavit stated that the informant had been purchasing drugs from the defendant for approximately 12 years. The DEA agent in *Feliz* did a good job of explaining to the magistrate the facts that supported his conclusion that there was probable cause to believe that drug records were in the defendant's residence.

> From my experience, education, training and/or study, I know it to be quite common for those involved in the illegal trafficking/furnishing of scheduled drugs to possess, maintain and keep with them, near them, and/or in their residences business records and journals relating to the trafficking and/or furnishing of scheduled drugs.... In particular, I know that, where, as here, an individual is demonstrated to be trafficking in

> drugs, it is common for there to be evidence of their drug trafficking activities, such as drug records, telephone numbers of suppliers and customers, drug-trafficking paraphernalia, drug proceeds and/or evidence of transfer, expenditures or investment of drug proceeds kept at the trafficker's residence.[22]

The *Feliz* court summarized the remainder of the search warrant affidavit.

> Finally, with regard to sums of money in the possession of drug traffickers, Agent Dumas stated that in his experience it was common for those involved in the illegal trafficking/furnishing of scheduled drugs to possess and keep with them, near them, and/or at their residences, sums of money...either as a result of scheduled drug sales or for the purpose of purchasing scheduled drugs or facilitating scheduled drug sales with others. Because such moneys are not usually safely disposed of legitimately (e.g., deposited in a bank or declared as taxable income), it is common for those who traffic or furnish illegal scheduled drugs to keep these sums on their person or near them, in a safe location, frequently in their residences, and/or at/near their residences, and/or near the same location where they keep their drugs or maintain drug operations.[23]

In *Feliz*, there was no direct evidence indicating that the suspect had drug records at his residence. Nonetheless, the court ruled that there was probable cause to believe drug records would be there.

> It could reasonably be supposed that a regular trafficker like Feliz possessed documents showing the names and telephone numbers of customers and suppliers as well as accounts showing the moneys paid and collected. It was also reasonable to suppose that he kept the money he collected and used in his business in some safe yet accessible place. The affidavit indicated that Feliz resided in apartment #1006 at 401 Cumberland Avenue, Portland. No other residence or drug-dealing headquarters of his was identified in the affidavit. It followed that a likely place to seek to find incriminating items would be Feliz's residence. If he did not maintain his accounts and records, and the presumably large sums of money received in the course of his dealings, at his apartment, where else would he keep them?[24]

"Judges and magistrates should be told in the affidavit what is the common practice of drug dealers."

It is important to note that the objects of the search in *Feliz* were drug records. When a search warrant is based on probable cause for the presence of drug records, the staleness of the information is not nearly as important as it would be if the search was for drugs. When the object of the search is drug records, the most recent drug trafficking or money laundering activities alleged in the search warrant could be several months prior to the issuance of the search warrant. That is because drug records are commonly maintained and preserved. The very nature of drug records suggests that they will be in existence long after the drugs themselves are gone.[25] For example, in *United States v. Reyes,*[26] the court ruled that information in a search warrant affidavit was not stale where, in an ongoing drug conspiracy, 5 months elapsed between the last illegal drug transaction and the authorization of the search warrant for drug records in the defendant's residence.[27] The *Feliz* and *Reyes* decisions involved longstanding drug operations. The longer the illegal drug activity has been in progress and the broader its scope, the longer courts will allow between the last drug transaction and the search for drug records.[28]

In *United States v. Terry*,[29] an officer stopped Terry 40 miles from his home. Terry was arrested after the officer discovered that the car Terry was driving contained methamphetamine, P-2-P (a precursor chemical for the manufacture of methamphetamine), and $10,000 cash. Eight days after Terry's arrest, a federal agent obtained a search warrant to search Terry's home.

The warrant was not executed until 5 days after it was issued. The court ruled that a magistrate's determination of probable cause should be accorded great deference and reversed only if it is clearly erroneous. In close cases, a reviewing court should uphold the probable cause finding of the magistrate. In *Terry*, the court ruled that the warrant was valid. The court stated that a magistrate is permitted to draw reasonable inferences based on the nature of the evidence and the type of offense. The court concluded that there were two bases for probable cause contained in the warrant. First, the items found in Terry's truck and, second, the agent's past experience that methamphetamine drug traffickers keep drugs, paraphernalia, records, and money in their homes or adjoining structures. The court concluded that evidence of drug dealing is likely to be found where drug dealers live.[30]

The decision in *Yancey v. Arkansas*[31] illustrates the importance of stating in the search warrant affidavit the inferences that the officer has drawn from his training and experience. In *Yancey*, the Arkansas Supreme Court disapproved of the search of the defendant's home based solely upon his involvement in criminal activity. In *Yancey*, an Arkansas game and fish officer observed a vehicle being driven down a road in a remote wooden area. Using night-vision equipment, the officer observed the occupants of the vehicle remove containers of water from their vehicle and water plants, later determined to be marijuana growing, in the area. He followed the vehicle for approximately 5 miles until it arrived at Lee Roy Cloud's residence. Upon his arrival at the residence, the officer asked the passengers, Lee Roy Cloud and Curtis Yancey, what they were doing down the road. They told the officer that they were "frogging." The officer knew that there were no frogs in the area in which he saw them, and he did not see any frogging equipment in the vehicle. The officer determined that Cloud previously had been convicted several times for possession of controlled substances, and police

intelligence indicated that Cloud and Yancey were involved in marijuana trafficking. Approximately 5 days later, the officer obtained search warrants to search Cloud's and Yancey's residences, and marijuana was found in each of the defendant's homes. The defendants were convicted for possession of a controlled substance with the intent to deliver.

The defendants appealed their convictions, alleging that the district court should have suppressed the evidence obtained at their homes pursuant to the search warrants. The defendants alleged that there was not a sufficient connection between their illegal marijuana growing and their homes to establish probable cause that evidence of criminal activity would be found inside. The Arkansas Supreme Court agreed with the defendants and ruled that there were insufficient facts provided in the affidavit from which to infer that there would be any evidence in the homes searched. The court stated that, standing alone, circumstantial evidence that the suspects may be drug dealers is not circumstantial evidence that evidence of drug dealing will be found in their homes.

A dissenting justice in *Yancey* wrote a separate opinion in which he voiced his disagreement with the majority of the court in its conclusion that there was no reasonable nexus between the cultivation of the marijuana and Cloud's residence. The dissenting justice noted that the officer personally observed Yancey and Cloud watering the marijuana plants. The officer then followed the vehicle to Cloud's home. Both men told the officer a story about frogging, which did not comport with what the officer had observed. Finally, Cloud previously had been convicted several times for possession of controlled substances. While the dissenting judge thought the link to Cloud's residence was clear, he agreed with the majority that there was not a sufficient factual link to Yancey's residence to establish probable cause.

The *Yancey* majority stated that the officer was unable to establish that any portion of any of the marijuana plants or anything connected with the propagation of the plants was likely to be found in the homes

to be searched. To avoid having a court make a finding like that, an officer should specifically set forth in his affidavit those facts which in the officer's training and experience lead him to conclude that further evidence will be found in the suspect's home. During the suppression hearing in *Yancey*, another officer testified that marijuana plants typically are started in a house or shed in small containers and then transferred to the woods until harvesting. The officer testified that police usually find potting soil, grow lights, fertilizers, and other items used to grow marijuana in the sheds and houses. He testified that after the marijuana is harvested, dried leaves and buds usually are found in the residences or sheds because they are used for processing the marijuana. In the *Yancey* case, the police were not aware of any place other than Yancey's and Cloud's homes where the marijuana could be processed. Unfortunately, this information was not contained in the affidavit. As a consequence, the court could not consider that information in determining whether there was a connection between Yancey's and Cloud's homes and the marijuana.

Requiring a Direct Link to the Home

Officers should not leave the deduction as to whether evidence could be found in a suspect's home up in the air for a judge to miss, no matter how obvious that deduction seems. Officers should put in the affidavit the types of evidence that, in the officers' training and experience, they reasonably believe will be found in the defendant's home and why they believe that evidence will be there. It should be noted, however, that not all courts are receptive to such inferential probable cause. Some courts do not accept inferences drawn from training and experience as being sufficient to establish probable cause, even though an officer, through such an inference, establishes a seemingly clear link between the evidence of the crime and the home.[32] For example, in *State v. Thein*,[33] the Supreme Court of the State of Washington decided that an officer's belief, based upon his training and, experience that persons who cultivate marijuana often keep records and material related to the cultivation in their homes, was not sufficient to establish probable cause to search a suspected drug cultivator's residence.[34]

> ***"The longer the illegal drug activity has been in progress and the broader its scope, the longer courts will allow between the last drug transaction and the search for drug records."***

Conclusion

Some courts have concluded that it is so obvious that criminals keep the fruits and implements of their criminal activities in their homes that it is not necessary for affiants to even mention that fact in their affidavits when obtaining a search warrant for a criminal's residence. Other courts are not so ready to accept that evidence of criminal conduct will be found in a criminal's home without some factual link to the home. Many of those courts, however, will allow the link to be established by inferences drawn from the affiant's training and experience. A minority of courts have ruled that such inferences are insufficient to establish a link between the crime and the criminal's home. Because of the differing approaches taken by courts throughout the country, officers should consult with their local legal advisors and frame their affidavits to comply with the legal requirements of their local jurisdiction. ✦

Endnotes

[1] *Llaguno v. Mingey,* 763 F.2d 1560 (7th Cir. 1985) (en banc), abrogated in part on other grounds by *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). In *Llaguno*, the full bench of the U.S. Court of Appeals for the Seventh Circuit ruled that a police determination of probable cause in an emergency is dependent, to a great extent, on the seriousness of the crime committed. In *Llaguno,* two suspects committed two robberies, killed four people, and wounded three others, including one police officer. The police shot and captured one of the suspects after the getaway car crashed. The other suspect fled on foot. The officers decided to go to the address on the car registration. The court had to decide, among other things, whether the police had probable cause to believe the suspect was at the location to be searched. The *Llaguno* court stated that the seriousness of the offense is an important consideration when determining if there is probable cause. The court stated that probable cause is not a fixed point, but, rather, occupies a zone somewhere between bare suspicion and virtual certainty. The more serious the crime, the more latitude the police

must be allowed when deciding probable cause. Even though the officers in *Llaguno* had only the address on the vehicle registration, that was considered sufficient because the crimes were serious and the killer posed a clear and present danger.

[2] For example, if an officer sees a suspected armed robber reach into his coat in response to a command to raise his hands, the officer would have probable cause to believe that the subject is reaching for a gun. The officer would be justified, therefore, in shooting the suspect to defend his life from what the officer perceives to be an attempted deadly assault. *Reese v. Anderson*, 926 F.2d 494 (5th Cir. 1991). If it turned out that the subject was unarmed, that would not change the lawfulness of the officer's conduct nor the fact that he had probable cause. *Sherrod v. Berry*, 856 F.2d 802 (7th Cir. 1988) (en banc). If, however, the issue is not whether the officer could shoot the suspect when he saw him reach into his coat, but, instead, whether the officer could arrest the suspect for assaulting the officer with a deadly weapon for reaching into his coat, the conclusion would be different. There would not be probable cause to arrest the suspect for assaulting the officer because the officer did not see a weapon. So, here is a scenario where there would be probable cause to shoot a suspect, but there would not be probable cause to arrest the subject. In both cases, the issue is whether there is probable cause to believe the suspect was reaching for a gun. In both cases, the suspect did not have a gun—in one case the officer had probable cause to shoot, but in the other case the officer does not have probable cause to arrest. Courts do not require an officer to see a gun before using deadly force to defend his life, however, they do require an officer to see a weapon if the officer is going to arrest the suspect for assault with a dangerous weapon. Probable cause for one course of action by an officer does not mean that there would be probable cause for every course of action.

[3] *Llaguno*, 763 F.2d 1560.

[4] 462 U.S. 213 (1983).

[5] In *Illinois v. Gates,* the Supreme Court rejected the *Aguilar/Spinelli* two-prong test in favor of a totality of the circumstances test for determining the reliability of hearsay. Federal courts are still guided, but are not bound, by the *Aguilar/ Spinelli* two-prong test. Some states still require compliance with the *Aguilar/ Spinelli* two-prong test as a matter of state constitutional law. The two-prong test is more stringent than the totality of the circumstances test. The first prong involves an assessment of the credibility of the source. Police officers are presumed credible. Good citizens/victims are presumed credible. Criminal informants are presumed incredible and their credibility must be established by any one of the following: track record, statement against interest, or corroboration. The second prong is a review of the basis of knowledge. Personal knowledge can be established if there is an express statement that the source has personal knowledge or sufficient detail from which to infer personal knowledge. It is permissible to have reliable hearsay within hearsay. Each level of hearsay, however, must pass the two-prong test of reliability. A weakness in either prong may be buttressed by corroboration.

[6] 974 F.2d 480 (4th Cir. 1992).

[7] *See also United States v. McNeese*, 901 F.2d 585, 596 (7th Cir. 1990) (it was reasonable to assume that drug distributors will keep drugs, implements of distribution, records, and proceeds at their residence).

[8] 851 F.2d 727 (4th Cir. 1989).

[9] The *Anderson* court stated: "The Fifth, Sixth, Eighth, and Ninth Circuits have held that the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence. *United States v. Jacobs*, 715 F.2d 1343, 1346 (9th Cir.1983) (it was reasonable for the magistrate to conclude that articles of clothing would remain at the residence); *United States v. Steeves*, 525 F.2d 33, 38 (8th Cir.1975) (people who own pistols generally keep them at home or on their persons); *United States v. Rahn*, 511 F.2d 290, 293 (10th Cir.1975), *cert. denied,* 423 U.S. 825, 96 S.Ct. 41, 46 L.Ed.2d 42 (1975) (it was reasonable to assume that individuals keep weapons in their homes); *Bastida v. Henderson*, 487 F.2d 860, 863 (5th Cir.1973) (a very likely place to find the pistols would either be on the persons of the assailants or about the premises where they lived)." *Id.* at 729.

[10] 604 N.W.2d 517 (Wis. 2000).

[11] *See, e.g., State v. Gobersen*, 493 N.W.2d 852, 855 (Iowa 1992) ("It is reasonable to assume that persons involved with drug trafficking would keep evidence—drugs, weighing and measuring devices, packaging materials and profits—at their residences.").

[12] 906 F.2d 977 (4th Cir. 1990).

[13] In *United States v. Freeman*, 685 F.2d 942 (5th Cir. 1982), the Court of Appeals for the Fifth Circuit stated: "[T]he fact that there is probable cause to believe that a person has committed a crime does not automatically give the police probable cause to search his house for evidence of that crime. 'If that were so, there would be no reason to distinguish search warrants from arrest warrants.'"

[14] *See United States v. Lalor*, 996 F.2d 1578 (4th Cir. 1993); *United States v. Ramos*, 923 F.2d 1346 (9th Cir. 1991). Some courts have held that there must be a "substantial basis" to conclude that the instrumentalities of the crime will be discovered on the searched premises. *E.g., United States v. Lockett*, 674 F.2d 843, 846 (11th Cir.1982); *United States v. Charest,* 602 F.2d 1015, 1017 (1st Cir.1979) (there was nothing in the affidavit from which a factual finding could have been made that the gun used in the shooting was located in the defendant's home).

[15] 551 F.2d 1359 (5th Cir. 1977).

[16] *Id.* at 1362.

[17] *See, e.g., United States v. Fama*, 758 F.2d 834, 838 (2d Cir. 1985) (DEA agent stated in his affidavit that his 10 years experience taught him that major drug traffickers often keep large amounts of cash, drugs, books, ledgers, and other documentary evidence of drug trafficking at their homes.); *United States v. Martin*, 920 F.2d 393, 399 (6th Cir. 1990); *United States v. Thomas*, 989 F.2d 1252, 1254-55 (D.C. 1993) (nexus between drug dealer's residence and evidence of drug trafficking was established through an inference made by the officer based upon his training and experience that drug traffickers often keep drugs and drug records in their residences). *See also Texas v. Brown*, 460 U.S. 730 (1983). In upholding a plain view seizure, which requires probable cause, the U.S. Supreme Court stated in *Brown*: "Officer Maples testified that he previously had made an arrest in a case where narcotics were carried in tied-off balloons similar to the one at issue here.

Other officers had told him of such cases. Even if it were not generally known that a balloon is a common container for carrying illegal narcotics, we have recognized that a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person." *Id.* at 746 (citing *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

[18] 955 F.2d 270 (5th Cir. 1992).

[19] *Id.* at 277.

[20] *See e.g., United States v. Emmons*, 24 F.3d 1210, 1215-16 (10th Cir. 1994).

[21] 182 F.3d 82 (1st Cir. 1999).

[22] *Id.* at 85.

[23] *Id.*

[24] *Id.* at 88 (footnote omitted, citation omitted). *See also United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir.1986) ("[i]n the case of drug dealers, evidence is likely to be found where the dealers live"); *United States v. Reyes*, 798 F.2d 380 (10th Cir. 1986) ("It is reasonable to assume that certain types of evidence would be kept at a defendant's residence and an affidavit need not contain personal observations that a defendant did keep such evidence at his residence.").

[25] *C.f. Andresen v. Maryland*, 427 U.S. 463, 478 (1976) (three months between the completion of the fraudulent misappropriation by a fiduciary and the ensuing records searches was not too long). "'[T]he vitality of probable cause cannot be quantified by simply counting the number of days between the occurrence of the facts supplied and the issuance of the affidavit.' *United States v. Johnson*, 461 F.2d 285, 287 (10th Cir.1972). Rather, we must look to all the facts and circumstances of the case, including the nature of the unlawful activity alleged, the length of the activity, and the nature of the property to be seized." *United States v. McCall,* 740 F.2d 1331, 1335-36 (4th Cir. 1984).

[26] 798 F.2d 380 (10th Cir. 1986).

[27] The search warrant affidavit in *Reyes* mentioned that it was the practice of some of the members of the drug conspiracy to maintain records of their associates, but there were no personal observations of specific facts that indicated the defendant's residence was used for the illegal drug trade or that the defendant kept drug records there. The court stated that such personal observation is not necessary and that it is reasonable to infer that drug dealers often keep such records in their homes. 798 F.2d at 392.

[28] *See, e.g., United States v. Rhynes,* 196 F.3d 207 (4th Cir. 1999), *vacated in part on other grounds,* 218 F.3d 310 (4th Cir. 2000) (en banc) (two years between the most recent drug trafficking and money laundering activities committed during a 30-year conspiracy and the ensuing records searches was not too long).

[29] 911 F.2d 272 (9th Cir. 1990).

[30] *See also United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986).

[31] ___S.W.3d ___, 2001 WL 549513 (Ark. 2001).

[32] *See, e.g., State v. Silvestri,* 618 A.2d 821 (N.H. 1992). In *Sylvestri*, the court rejected a link to the defendant's residence that was based on the affiant's experience that it was common to find illegal drug contraband and other evidence in the homes of drug traffickers. The court determined that "while the affidavit may have established probable cause to arrest the defendant for selling marijuana, it did not establish probable cause to search his residence." *Id.* at 823. Despite the inference drawn by the affiant from his experience, the court found that "[i]n the affidavit before us there was nothing to indicate that evidence of the crime was kept at, or picked up from, the defendants's residence other than the mere fact that the defendant was suspected of being a criminal." *Id.* at 824. The court further stated: "The State urges us to adopt a *per se* rule that if the magistrate determines that a person is a drug dealer, then a finding of probable cause to search that person's residence automatically follows. The State contends that the issuing magistrate can find that the fact that a person is an active drug dealer creates a fair probability that controlled drugs or other indicia of drug dealing could be found in the drug dealer's residence. We do not accept the State's invitation and note that we have consistently required some nexus between the defendant's residence and drug-dealing activities in order to establish probable cause to search the residence." *Id.* at 824. The New Hampshire Supreme Court decided *Silvestri* exclusively on state constitutional grounds. 618 A.2d at 822. *See also United States v. Gomez*, 652 F. Supp. 461, 463 (E.D.N.Y. 1987) (a court can consider an officer's expert opinion that drug traffickers often keep records in their residences, but that alone will not be enough to establish a nexus between the illegal trafficking and the residence to establish probable cause for a search); *United States v. Schultz*, 14 F.3d 1093, 1097 (6th Cir. 1994) ("While officer 'training and experience' may be considered in establishing probable cause...it cannot substitute for a lack of evidentiary nexus.").

[33] 977 P.2d 582 (Wash. 1999) (en banc).

[34] In *Thein*, the police had information from two sources that the landlord, whose name was given as simply "Steve," was the supplier of marijuana to Laurence McKone. The police had earlier seized over a one-half pound of marijuana from McKone's residence; they also seized from the basement 5 pounds of marijuana "shake," which is material pruned from cultivated marijuana plants. One informant indicated that the basement was exclusively controlled by Mckone's landlord, "Steve." The police were ultimately able to identify "Steve" as Stephen Thein. The police prepared an affidavit for a search warrant for Thein's residence. The affidavit contained generalized statements of belief regarding the common habits of drug dealers. The affidavit stated, in pertinent part, the following: "Based on my experience and training, as well as the corporate knowledge and experience of other law enforcement officers, I am aware that it is generally a common practice for drug traffickers to store at least a portion of the drug inventory and drug related paraphernalia in their common residences. It is generally a common practice for drug traffickers to maintain in their residences records relating to drug trafficking activities including records maintained on personal computers." 977 P.2d at 584. The court ruled that probable cause only exists if the affidavit sets forth facts sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity, and the evidence of that criminal activity can be found in his home. The court stated that probable cause requires a nexus between the criminal activity and the items to be seized and, in addition, a nexus between the items to be seized and the place searched. The *Thein* court ruled that an officer's belief that persons who cultivate marijuana often keep drug records and material in their house is not a sufficient basis for probable cause to search the home of the drug cultivator. The court stated that for there to be an inference that the suspect is in possession of illegal drugs at his home there must be specific facts that point to his possession, such as observations of activity at the house that are indicative of criminal conduct. The court felt that generalized statements regarding the common habits of drug traffickers are insufficient to establish a link between the drug activity and a drug trafficker's home.

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

The Bulletin Notes

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

Chief Smith

Sergeant Savage

While on patrol, Chief Keith Smith and Sergeant Joseph Savage of the Gentry, Arkansas, Police Department responded to a house-fire call. Upon arrival, they discovered that the rear side of the residence was engulfed in flames. Without hesitation, Chief Smith and Sergeant Savage entered the burning residence and helped the elderly owner to safety. The residence was completely destroyed, but the dedication and bravery of these two law enforcement officers prevented the loss of life.

Officer Susuras

Officer Stephens

Officers Nick Susuras and Genea Stephens responded to a call from a woman who stated that her husband had just shot her brother and father. The woman advised that the suspect, armed with a shotgun, was still in the house. She feared that he would shoot someone else or himself. When the officers arrived at the house, they were confronted by an older male who had been shot in the abdomen and was severely injured. As they entered the home, Officer Susuras saw a man who was carrying a sawed-off shotgun and walking toward a woman on the telephone. As the man got close to the woman, he raised the shotgun at her. Immediately, Officer Susuras rushed toward the suspect and knocked him to the floor, where the subject continued to struggle with him in an attempt to point the gun at the woman. Officer Stephens grabbed the muzzle of the shotgun and helped to wrestle it from the subject. After subduing the suspect, Officers Susuras and Stephens helped everyone out of the house, which included carrying two children outside and attempting to protect them from viewing the scene. Throughout this incident, Officers Susuras and Stephens showed control in an extremely stressful situation. They both unselfishly risked their lives to save the residents who remained in the house.

Nominations for the ***Bulletin Notes*** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

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