



FBI Law Enforcement

B ♦ U ♦ L ♦ L ♦ E ♦ T ♦ I ♦ N

August 2000
Volume 69
Number 8

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

Louis J. Freeh
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. Periodical 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

John E. Ott

Associate Editors

Glen Bartolomei
Cynthia L. Lewis
Bunny S. Morris

Art Director

Brian K. Parnell

Assistant Art Director

Denise Bennett Smith

Staff Assistant

Linda W. Szumilo

Internet Address

leb@fbiaacademy.edu

Cover Photo

© Digital Stock

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

Features

Investigative Uses of Computers

By Craig W. Meyer and Gary M. Morgan

1

Law enforcement can use time line analysis to provide a method of quickly tracking and retrieving valuable case information.

Identity Theft

By Matthew L. Lease and Tod W. Burke

8

Law enforcement officers can help citizens prevent and resolve identity theft.

Color of Law Investigations

By John R. Schafer

15

Officers can help prevent most color of law investigations by acting in a professional manner and writing more detailed, accurate reports,

Getting Along with Citizen Oversight

By Peter Finn

22

Although many law enforcement agencies have voiced concern about citizen oversight, more and more agencies are finding the process helpful.

Anonymous Tips and Frisks

By Michael J. Bulzomi

28

Officers can conduct protective searches based on reasonable suspicion when dangerous situations justify taking unusual precautions.

Departments

6 Perspective

Investigative Priorities

14 Book Review

Crime Prevention

13 Crime Data

Police Deaths

21 Technology Update

LEO

Investigative Uses of Computers Analytical Time Lines

By CRAIG W. MEYER, M.S.
and GARY M. MORGAN, M.A.

How often has a defense attorney exploited a gap in an investigator's case without the investigator realizing this obvious discrepancy existed? How can investigators work on complex cases with developing information that proves difficult to assimilate? How can they keep track of a myriad of case facts used during interviews and interrogations and meetings with prosecutors, task forces, or management? Do they struggle to keep track of which leads they have covered? The solution to any or all of these problems may lie in time line analysis—a simple application of readily available computer software.

Using time lines will often prove more productive for these issues as well as enable investigators to virtually eliminate duplication of effort and inefficiencies during the course of an investigation. This concept also will help investigators quickly track and retrieve information that took numerous hours to develop.



TIME LINE DEVELOPMENT

Many disciplines, such as management science and psychology, have used time lines for analytical purposes for decades. Studies dating as far back as 1917 focused on using time lines in production and scheduling. Early management pioneers employed time lines to represent the start and duration of

tasks in production analysis for scheduling resources.¹ In 1958, these early efforts evolved into a scheduling technique that incorporates the interrelationships of tasks called Program Evaluation and Review Technique (PERT).² One recent study involves a seven-step process, termed the Critical Decision Method, which discusses the use of time lines in cognitive task

analysis.³ Step five of this process uses time lines to chronologically capture the salient events within an incident, allowing the expert to verify the time line during its construction. In a more fundamental application, farmers have advocated the use of time lines to improve grain drying and the handling and storage of farm commodities.⁴

TIME LINE APPLICATION FOR LAW ENFORCEMENT

Time line analysis can help law enforcement investigators record and analyze large amounts of data, prepare for witness interviews, and write affidavits. Additionally, the time line can assimilate the voluminous information gathered from investigative techniques, such as search warrants, record reviews, and wire taps. A time line can help during interrogations by providing investigators with succinct information that will aid in accusing subjects and may help to redirect

protests made by subjects concerning their guilt. The time line also gives investigators a tool for presenting their case, logically and concisely, to others, such as managers, prosecutors, and grand jurors. Whether in simple handwritten form or in a sophisticated multimedia program, the time line also can serve as an invaluable tool throughout the case process.

Interviewing Application

Experienced investigators know that the first step in a structured interview is preparation, which includes reviewing case facts.⁵ Investigators can use the time line to study case facts before the interview and refer to it during the interview to verify the interviewee's information. Having the time line available will aid investigators in determining the truthfulness of the individual and help keep a potentially large number of facts in order during a complex

investigation. Investigators should update the time line by adding pertinent information to it after each interview.

Interrogation Application

An interrogation differs significantly from the interview in several ways. While the objective of an interview is to gain information, the objective of an interrogation is to gain a confession. An interrogation generally involves the subject of the investigation, whereas the interview usually involves a witness. A witness interview can turn into an interrogation if the interviewer believes the individual has become the focus of the investigation as a result of the interview.⁶

In the first stages of an interrogation, an investigator confronts the subject.⁷ A time line may help the interrogator convincingly make this accusation. Next, the investigator may need to cut off denials, redirect protests, and provide reasons for the subject to confess.⁸ The time line would help investigators accomplish this by providing them quick and easy access to case facts, thereby enhancing the probability of a confession.

Other Applications

Time lines have other uses pertinent to law enforcement. Behavioral science experts advocate developing and maintaining a time line for information collected about a particular subject, indicating whether a person behaves with some consistency over time.⁹ This could prove useful for court purposes or for further evaluation by documenting aspects of a subject's behavior and mental state. Time



Special Agent Meyer teaches interviewing and interrogation at the FBI Academy.



Special Agent Morgan teaches computer crime investigations at the FBI Academy.

lines also serve as an excellent method for law enforcement administrators to enhance crime surveys that help track crime problems in their jurisdictions and to determine where they should apply their resources.

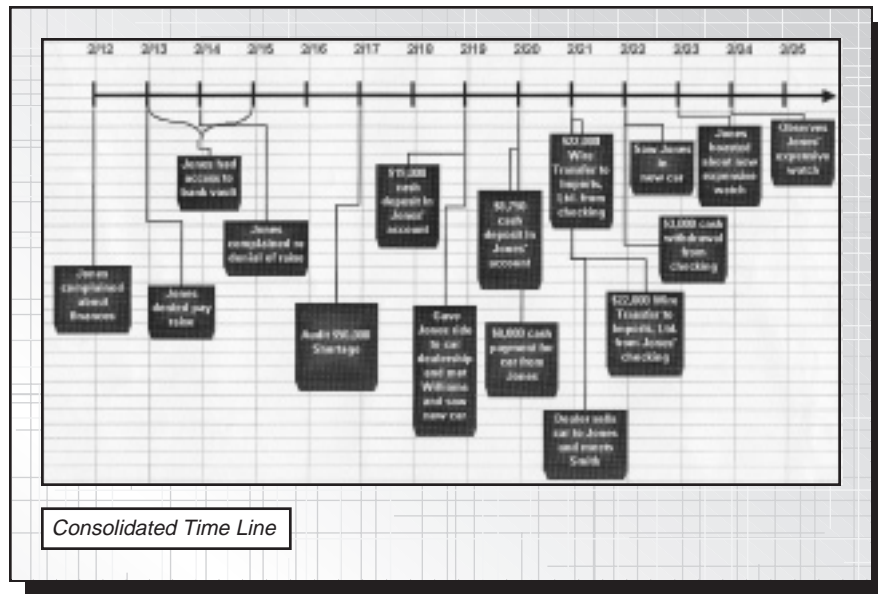
Courts can benefit from using time lines to track subjects through the judicial process. This ensures that the courts have completed all the appropriate procedures both before and after adjudication. Additionally, the time line also can help visually depict case facts to a prosecutor, grand jury, magistrate, or judge.

TIME LINE IMPLEMENTATION

Various affordable spreadsheet programs exist that investigators can use to effectively construct time lines. After becoming familiar with the program's drawing and hyper-linking tools, all levels of users can create fairly sophisticated time lines.

Consolidating Time Lines

Creating a master or consolidated time line represents one goal of using this type of software. To produce a master time line, investigators should develop individual time lines for each investigative step that deserves documenting, such as witness interviews, search warrant reports, record reviews, or surveillance logs. When grouped, they form the master time line that investigators could use to compare events developed from various facets of the investigation. For example, when investigators conduct an interview, they need to analyze



the information and place the salient facts, in chronologic order, on a time line for the interview and on a master time line for the case. In doing so, investigators can quickly view these events to determine subsequent courses of action.

In a murder investigation, witnesses' statements that they observed the subject with a weapon on a certain date before the crime represents a significant event that investigators would place on a time line. In a fraud investigation, the investigator would document a subpoenaed record reflecting the transfer of a large sum of money to a bank account on the time line. As the investigator places each event on the time line, an outline of the case, which investigators can continue to build on, emerges. Investigators should modify the time line as the case develops or facts change. By continually updating the time line, investigators can use it for a variety of purposes, such as analyzing the investigation to date or ana-

lyzing potential subsequent investigations to help identify appropriate leads or courses of action that would bring a case to a logical conclusion. As investigators analyze the master time line, they should consider possible shortcomings in the overall investigation. This analysis will help investigators develop a strong case and disclose a possible course of action for subsequent investigation. The master time line also may provide managers or prosecutors a quick reference for case presentation or aid investigators in conducting further interviews or interrogations.

Linking Time Lines

Time lines can contain much more than a simple chronology of events. Many software programs allow investigators to add other data to time lines through hyperlinks, which allow users to electronically cross-reference documents. In doing so, investigators can incorporate photographs, additional

reports, scanned documents, video material, and other digitized data into the time line. Simply clicking on the hyperlink allows investigators to view the corresponding information in its appropriate program. This allows investigators access to an evidence-retrieval mechanism that can double as a presentation tool.

A TIME LINE ILLUSTRATION

The following sample case shows the concept of using a time line. However, the time lines in this sample are oversimplified for illustrative purposes. Obviously, in an actual investigation, the time line could contain dozens if not hundreds of events. Most software programs allow investigators to augment time lines and can handle voluminous case information.

The crime in this case involves the theft of \$50,000 from the bank vault of the National Bank of

Anytown (NBA). In conducting the investigation, investigators initially interviewed NBA's Branch Manager James Adams and bank teller Joan Smith.

Adams Interview

Investigators gleaned pertinent information regarding this crime from the Adams interview. Analysts would then place the salient points on a time line.

- Teller Jesse Jones has appeared somewhat unhappy at work.
- Jones asked for a raise on 2/13/99, which management denied.
- Jones acted as head teller from 2/13/99 through 2/15/99, and, as a result, had legitimate access to the bank vault.
- An audit conducted on 2/17/99 discovered a \$50,000 shortage, which prompted this investigation.

- Jones was observed in a new car on 2/22/99.
- Jones was observed wearing a new expensive watch on 2/24/99.

Smith Interview

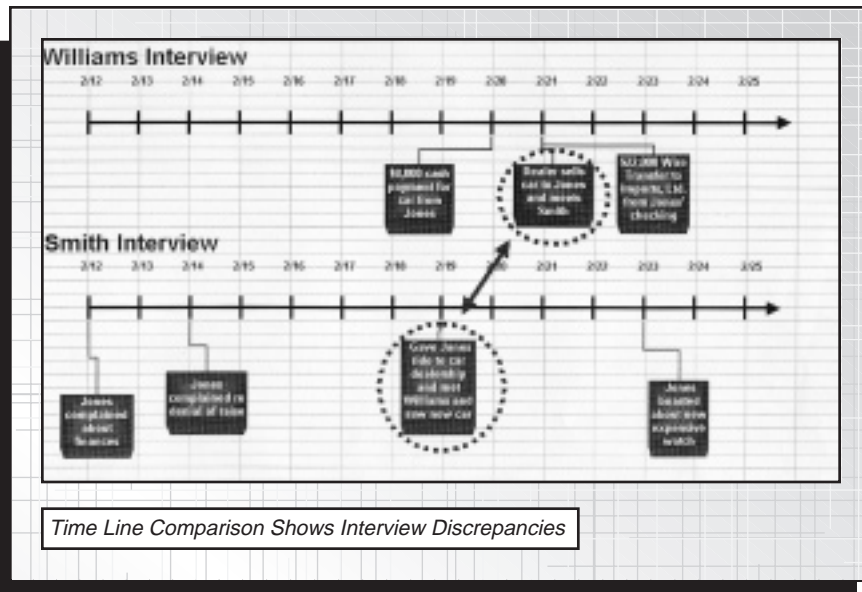
Smith also provided relevant information during her interview. Investigators can create a summary of her information and place it on the time line.

- Jones complained about her finances on 2/12/99.
- Jones complained about being denied a raise on 2/14/99.
- Smith dropped Jones off at the car dealer Imports, Ltd. to pick up a new car on 2/19/99.
- Smith met the car salesman and saw the new car.
- Jones was boasting about an expensive watch she received as a gift on 2/23/99.

Bank Records Review

A review of bank personnel records indicated that Jones had a checking account at NBA. A subsequent review of this account (resulting from a subpoena) showed transactions worthy of placing on the time line.

- A cash deposit of \$19,000 was made on 2/19/99.
- A cash deposit of \$8,750 was made on 2/20/99.
- A wire transfer to Imports, Ltd. in the amount of \$22,000 was made on 2/21/99.
- A cash withdrawal of \$3,000 was made on 2/22/99.



Time Line Comparison Shows Interview Discrepancies

As a result of the obtained information, investigators conducted a follow-up interview at Imports, Ltd., with the salesman Bill Williams. Investigators added the significant data to the time line.

Williams Interview

- On 2/20/99, Imports, Ltd. received an \$8,000 cash deposit from Jones for a new car.
- Jones purchased a new car for \$30,000 using a wire transfer for the balance of \$22,000 on 2/21/99.
- Williams met Smith when Jones came to pick up the new car on 2/21/99.

Time Line Review

Up to this point, investigators have created a time line for each witness and the record review of the checking account. Analysts can compare these time lines by building a master time line, which they should perform as the investigation progresses. By creating and constantly reviewing and updating each individual time line, investigators can look for inconsistencies in the investigation and logically conduct subsequent investigations.

A review of the consolidated time line reflects a discrepancy between the witness statements of Smith and Williams. Smith indicates that she gave Jones a ride to the car dealership and met Williams on 2/19/99, wherein Williams indicates that meeting occurred on 2/21/99. A time line analysis can show this discrepancy in a more obvious fashion.

Investigators must resolve this conflict through a follow-up interview of one or both witnesses or decide upon another course of action to verify the accuracy of the witness statements. Use of time lines in this fashion prove most effective in managing case information. The value of time line analysis becomes most apparent when these types of discrepancies exist in an investigation because they become visual. If investigators cannot eliminate discrepancies, at least a time line can alert them to possible issues that a prosecutor must diffuse before trial.

//
**Time lines can
contain much
more than a simple
chronology of events.**
//

CONCLUSION

The law enforcement community handles many complex criminal investigations each year. Administrators constantly must look for ways to help investigators deal with the difficulty of assimilating vast amounts of information inherent in managing complicated cases. Time line analysis can provide investigators with a method of quickly tracking and retrieving information that they may have spent many hours developing.

Once investigators have constructed time lines and completed all of the supporting links to the

digitized evidence, they can make comparisons to obviate problems in the investigation. Subsequent investigations become apparent and case resolution is enhanced. Additionally, investigators can access all of the supporting evidence with the click of a mouse. Time lines enable investigators to search for specific information should a trial attorney require them to do so. Investigators who use time lines may begin with a seemingly common spreadsheet program but become armed with a powerful and impressive tool that helps them to better manage their cases. ♦

Endnotes

¹ Samuel C. Certo, *Modern Management: Diversity, Quality, Ethics, and the Global Environment* (Boston, Massachusetts: Allyn and Bacon, 1994), 198-199.

² Joseph Horowitz, *Critical Path Scheduling: Management Control Through CPM and PERT* (New York, New York: Ronald Press Company, 1967).

³ Robert R. Hoffman, Beth Crandall, and Nigel Shadbolt, "Use of the Critical Decision Method to Elicit Expert Knowledge: A Case Study in the Methodology of Cognitive Task Analysis" *Human Factors*, June 1998, 254-276.

⁴ Larry Reichenberger, "A Bottleneck at the Bins (Tips to Improve Grain Drying)," *Successful Farming*, November 1997, 27-29.

⁵ John E. Hess, *Interviewing and Interrogation* (Cincinnati, Ohio: Anderson Publishing Co., 1997), 9-10.

⁶ Don Rabon, *Interviewing and Interrogation* (Durham, North Carolina: Carolina Academic Press, 1992), 5.

⁷ "The Reid Technique of Interviewing and Interrogation," John E. Reid and Associates, Inc., Chicago, Illinois, 1998.

⁸ Michael R. Napier and Susan H. Adams, "Magic Words to Obtain Confessions," *FBI Law Enforcement Bulletin*, October 1998, 11-15.

⁹ Anthony J. Pinizzotto and George D. Deshazor, "Interviewing Erratic Subjects," *FBI Law Enforcement Bulletin*, November 1997, 1-5.

Rethinking Investigative Priorities

By Gary J. Glemboski

A community beleaguered by crime faces a host of related problems. Businesses will not locate in or will move from crime-ridden cities, taking jobs and employees with them. Tourists will vacation elsewhere. Perhaps most important, residents will move to where they feel safe, and those who are left behind will live in fear.

While public officials may clamor for a reduction in high-profile crimes to decrease the overall crime rate, minor crimes increase the overall crime rate because they account for such a large portion of total crime. Although violent crimes prove traumatic for the victims and their families, such crimes occur much less often than other crimes, such as larceny.¹ In short, larceny² is a crime that hits close to home. Accordingly, the Savannah, Georgia, Police Department (SPD) targeted larcenies to reduce their occurrence, decrease the crime rate, and to improve the quality of life for all of its residents.

Reduce Larcenies, Reduce Crime

Violent crimes are serious offenses that require and deserve adequate attention and resources. Yet, both larcenies and murders have equal value when it comes to the crime rate because they each count as one incident.³ Assigning high-profile, violent crime cases to the most skilled investigators while giving larcenies to inexperienced investigators or not emphasizing the importance of solving them not only adversely affects an agency's ability to influence the crime rate but also gives lesser priority to a crime problem that affects a majority of citizens.

Targeting Larcenies: The Reverse Solvability Factor

The SPD's strategy to target larcenies represents a multifaceted approach. First, the department gives each crime equal weight. For such crimes as homicides, witnesses, confessions, and other evidence can help investigators quickly close the case, giving it a high solvability factor. However, in many larceny

cases, no witnesses or evidence exists. Consequently, these incidents have a low solvability factor.

In most departments, high-profile crimes garner high priority, not only because of the gravity of the crime but also because of their high solvability. At the same time, larcenies and other property crimes get relegated to the bottom of the case pile. However, the SPD assigns each case equal weight, an approach it calls "reverse solvability." It may take even more skill to investigate crimes with traditionally low solvability and bring them to a successful closure. However, doing so can significantly decrease the crime rate.

Next, the department emphasizes thorough investigation by responding patrol officers, who attend 8 hours of in-service training to sharpen their interviewing skills. They learn to ask pertinent, probing questions and not just be report writers. Officers must understand that they serve as the preliminary investigators and strive to produce an all-inclusive report. A supplemental report, which includes the patrol officer's opinions regarding suspects and other important information, goes to investigators for follow-up.

Above all, patrol officers must ensure the factual accuracy of their reports. In some cases, investigation

Lieutenant Glemboski commands a special operations unit for the Savannah, Georgia, Police Department.



may reveal that the incident could not have happened as claimed, and the property owner may be guilty of filing a false report. Equally important, officers should correctly classify each crime. If necessary, reclassification must be done honestly, not merely in an attempt to reduce a department's crime numbers. In the SPD, data entry personnel review all reports, and only the supervisor, a sergeant, can reclassify a crime. The check-list style of form the department uses for reporting crimes leaves little room for error, so reclassification rarely occurs.

Should patrol officers spend their valuable time taking theft reports? After all, many property owners only report thefts to the police so they can file an insurance claim. Consequently, agencies often take these reports over the telephone with little or no investigation. Although this method saves time and resources, it could lead to fraudulent reporting. Moreover, when officers take reports in person, it can go a long way to improving community relations. Agencies need to decide for themselves if the benefits of sending a patrol officer to investigate a property crime outweigh the costs. No matter what method they use to take reports, agencies should use computerized records management systems to help link incidents and solve additional cases.

A Collaborative Approach

The SPD realized that teamwork can mean the difference between success and failure for any program. Accordingly, the department has assigned property crimes investigators in two of the city's four precincts. This arrangement brought investigators and patrol officers closer together physically and, at the same time, improved communication between them. Working closely with patrol officers and precinct commanders helps investigators tackle the city's property crime problem.

In addition, SPD's leaders met with prosecutors and judges to ensure that individuals brought before

the court for larceny crimes would receive the maximum sentence. Such punishment sends a strong message to those contemplating crimes of this type. Finally, crime prevention officers in each precinct work with residents to help prevent crime.

Conclusion

Every day the news paints a gruesome crime picture. Rape, murder, and other violent acts capture the public's attention. Yet, Americans remain more likely to become victims of theft than homicide.⁴ By assigning equal resources to property crimes, which affect the crime rate just as much as other crimes while affecting more of the population,⁵ police departments may reduce crime rates while helping their residents feel safe.

The Savannah Police Department has initiated such a strategy. While still committed to reducing violent crimes, the department also has begun to address the less serious, yet more prevalent occurrence, of larcenies. By attacking a problem that affects many of its citizens, the department has shown its concern not only for those few victims of violence but for the welfare of the entire community. ♦

“

...both larcenies and murders have equal value when it comes to the crime rate because they each count as one incident.

”

Endnotes

¹ U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting, *Crime in the United States 1998* (Washington DC: 1998), 66-67.

² Larceny-theft is the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. It includes crimes, such as shoplifting, pocket-picking, purse-snatching, thefts from motor vehicles, thefts of motor vehicle parts and accessories, and bicycle thefts, in which no use of force, violence, or fraud occurs. U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting, *Crime in the United States 1998* (Washington, DC: 1998), 43.

³ Eight crimes comprise the FBI's Uniform Crime Reporting program's Part I, or Index, Crimes. These crimes—murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson—determine a community's crime rate.

⁴ Supra note 1.

⁵ Supra note 1.



Identity Theft ***A Fast-growing Crime***

By MATTHEW L. LEASE and TOD W. BURKE, Ph.D.

© Photodisc

Criminals have evolved from picking pockets to using more sophisticated methods of theft. Today, thieves can steal personal information and use another person's identity to commit numerous forms of fraud. Identity theft, the criminal act of assuming another person's name, address, social security number, and date of birth in order to commit fraud, affects approximately 350,000 to 500,000 victims annually.¹ Fraud is intentionally deceiving a person or

business in order to obtain property or some lawful right.² Identity theft differs from other forms of less calculated fraud. For example, a juvenile using someone else's driver's license to purchase alcohol does not constitute identity theft. Although intentional deception exists, using someone else's license to make a purchase does not result in a loss to the victim company.

The Identity Theft and Assumption Deterrence Act of 1998 made identity theft a federal crime

and recognized the true victim—the person who had their identity stolen. This act enables law enforcement agencies to investigate identity theft crimes and the associated fraud that often results.³ In 1997, the Financial Crimes Division of the U.S. Secret Service investigated 9,455 cases of identity theft with losses totaling \$745 million.⁴ In the past decade, the U.S. Secret Service has observed an increase in financial institution, credit, and computer fraud facilitated by identity

theft.⁵ One of the three major credit bureaus reported 522,922 consumer inquiries in 1997, with two-thirds of this amount related to identity theft, up from 35,000 in 1992.⁶ The amount of identifying information available over the Internet and from an individual's trash and mail as well as the increasingly sophisticated tactics used by criminals has facilitated the increase in identity theft. By examining how identity theft occurs and the steps to resolve it, preventive measures can curb this fast-growing crime.

HOW IDENTITY THEFT OCCURS

Identity theft can occur in many ways. Identity thieves scavenge through garbage, steal and redirect mail, use internal access of databases, and surf the Internet searching for personal information. To combat the growing number of identity theft cases, law enforcement officials should know how thieves gather another person's identifying information.

Dumpster Diving

An individual or business that fails to dispose properly of personal identification information, by shredding or mutilating, could find themselves susceptible to a "dumpster diver"—an individual who retrieves discarded material looking for anything of value. Dumpster divers obtain account numbers, addresses, and dates of birth from financial, medical, and personal records—all of which they can use to assume an identity.

One dumpster diver drove around affluent neighborhoods on

garbage collection day.⁷ He picked up garbage bags left on the curb, took them home, and rummaged through them. The social security numbers and preapproved credit cards he obtained from the garbage, along with using rented mailboxes, cloaked him from his crimes.⁸ Businesses that rent mailboxes for short periods of time make tracing a dumpster diver difficult. These companies do not require a lot of information about the renter, which aids the individual in remaining mobile and isolated from the crime. Law enforcement agencies should establish mutual agreements with these businesses to facilitate information gathering. Additionally, police may deter dumpster divers by patrolling residential areas more aggressively on garbage collection days and during the tax season, a prosperous time for dumpster divers. Many taxpayers dispose of

old receipts and financial records carelessly. Through town hall meetings, local newsletters, or community bulletins, law enforcement departments can disseminate prevention information on identity theft. By encouraging people to shred documents and by enforcing local trespass ordinances with regard to residential and industrial dump sites, law enforcement agencies can prevent thousands of identity theft cases.

Mail Theft

Mail theft presents another way criminals obtain personal identification information. Thieves check mailboxes looking for paid bills or credit card payments that people leave in their mailbox for the postal carrier to collect. Thieves use information from these items to obtain credit or to purchase products and services in the victim's name.



Mr. Lease served as a military police officer and is currently a graduate student-researcher at Radford University in Radford, Virginia.



Mr. Burke, a former police officer, is an associate professor with the department of criminal justice at Radford University in Radford, Virginia.

Further, mail theft can occur from mail processing areas by postal employees.

Additionally, criminals might attempt to complete a change of address card in order to divert the victim's mail to a rented mailbox. Police agencies should instruct victims to notify their postal inspector immediately if they suspect that someone has forwarded their mail to another location. Law enforcement departments should urge people not to leave their paid bills in the mailbox for the carrier to collect and recommend that residents drop their paid bills and account payments at the post office or in a locked mailbox.

The Citrus Heights Police Department in Sacramento, California, conducted community meetings, which revealed that mail and identity theft had become significant problems for citizens.⁹ By contacting mail couriers or the local postal inspector, officers can determine if mail theft presents a problem in their jurisdiction. Cooperation between law enforcement and postal officials will make mail theft more difficult.

Internal Access

Internal access refers to an individual obtaining personal information illegally from a computer connected to a credit reporting bureau or to an employee accessing a company's database that contains personal identification information. Such an insider will look for names similar to their own, or for someone with good credit, intending to assume their identity and commit credit fraud. Also, the employee

may attempt to sell the personal information to another thief. This happened in Fayetteville, California, when a consumer learned that her credit report revealed five new accounts issued in her name. An identity thief had charged over \$65,000 of unsecured debt using her identity.¹⁰

The negligence of a company that permits such access in an unmonitored environment contributes to this type of identity theft. One medical office employee illegally obtained a patient's name and social security number, established a credit line, rented an apartment, and earned income in the patient's name.¹¹



***...state legislatures
have begun
adopting statutes
that make stealing
a person's identity
a crime...***



To reduce the misuse of personal information, police departments with financial or crime prevention units should conduct 1- or 2-day workshops with businesses that have the threat of internal access fraud. Law enforcement representatives should work with business security managers to suggest possible restrictions and procedures to limit access to personal identification information.

Computerized Information and the Internet

Today's information age changes the way thieves commit crimes. With so much personal information obtainable in the networked world, thieves can access information easily. They find personal identifying information through computerized information services, also known as information brokers. These services collect, sort, package, and sell personal information in electronic form to other businesses and individuals. Computerized information services may not safeguard the personal information adequately nor screen purchasers of computerized information appropriately, creating the opportunity for an identity thief to commit fraud. Private companies and individuals in some states can purchase driver's license information and photos, traditionally restricted to law enforcement authorities. South Carolina and Florida officials sold millions of digital photos of driver's licenses to private companies, which raised serious questions about personal privacy. Who has access to the information? How will individuals and companies safeguard the data? After a surge of citizen complaints and questions, state officials in Florida and South Carolina halted the sale of digital photographs.¹²

According to one organization, the Internet also provides opportunities for identity theft.¹³ Compromised public and private networks endure millions of dollars in losses, annually.¹⁴ In the case of one company, a security breach allowed anyone to view thousands of private

Recommendations and Strategies for Preventing Identity Theft

- Patrol residential areas on trash collection days and during the tax season.
- Enforce trespass laws with regard to residential and industrial dump sites.
- Advise citizens to shred documents and drop off mail in a locked mailbox.
- Remind people to be cautious using automated teller machines.
- Disseminate information to the public on how to mitigate and prevent computer, credit, and cellular telephone fraud.
- Suggest restrictions to businesses to reduce internal access fraud.
- Educate officers about the various methods used to commit identity theft and the resulting types of fraud.

customer information files that revealed names, addresses, and other personal information, without restriction.¹⁵ Company officials corrected the problem quickly, but many consumers began to question the guarantees of information confidentiality and realized the vulnerability of information on the Internet.

HOW TO RESOLVE IDENTITY THEFT

Victims may need months or years to restore their credit and reputation. Law enforcement agencies should advise citizens to report identity theft immediately. Departments should gather as much documented evidence from the victim as possible. After completing the initial report, agencies should provide a copy to the victim, along with the phone number of the fraud investigator assigned to the case. Credit card companies, banks, and insurance companies often require the police report to verify the crime.

After notifying the police, victims should take the necessary steps

to mitigate and resolve the damage caused by identity theft. Departments can provide these steps through a booklet or private consultation with an investigator, using separate procedures for different types of identity theft. Although other forms of identity theft exist (e.g., theft of cellular phones, driver's licenses, passports, and checks), credit theft remains the most common.

Law enforcement agencies should instruct victims to contact their current credit card and loan companies about the theft. Victims should cancel old cards and order new cards with different account numbers. The victim should inform all check-monitoring agencies of the theft and alert the fraud departments of the three major credit bureaus in order to place a hold on accounts.

Additionally, victims should complete and submit a credit fraud report with a victim statement to the credit bureaus. The victim statement should explain briefly that an individual has used their identity fraudulently to apply for credit and

provide a contact number to verify credit applications, as well. Victims should request the credit bureaus to provide free monthly credit reports to monitor for evidence of new fraudulent activity. Departments should recommend that victims keep a log of all conversations with police officers and financial institution officials. Agencies should advise victims that no one can remove information from their credit report and warn them about credit repair scams that promise to restore tarnished credit reports. Officers may need to refer traumatized victims of identity theft to support groups, which can assist and support identity theft victims as well as help in the recovery process.¹⁶

HOW TO PREVENT IDENTITY THEFT

Law enforcement agencies, as well as businesses and consumers, have an equal obligation to fulfill when preventing identity theft. Agencies can disseminate information to minimize the risk of identity theft through their Internet sites, local media, or community policing

initiatives, such as Neighborhood Watch meetings and community liaisons. Departments should recommend that individuals check their credit report annually to ensure accuracy and report any discrepancies to credit bureaus for corrective action.

Additionally, agencies should advise individuals to reduce the amount of personal information that exists in the public domain and encourage people to remove their names and addresses from telemarketing lists. They should disclose personal information only

when necessary. Other tips include shredding financial documents and preapproved credit card applications, which minimizes the threat of dumpster divers obtaining valuable personal information. Law enforcement officers should advise consumers who purchase products over the Internet to use a secure site, which encrypts their personal information, to place their order.

CONCLUSION

Identity theft has escalated dramatically. Local and state law enforcement agencies handle

thousands of identity theft cases. Recognizing this increase, state legislatures have begun adopting statutes that make stealing a person's identity a crime, giving law enforcement the necessary tools to battle this fast-growing offense.

Some consumer advocates have estimated that identity thieves victimize as many as 1,000 people per day.¹⁷ Some criminals use conventional methods, such as dumpster diving and mail theft, while others use newer technology, such as insider computer access and the Internet, to obtain a fraudulent identity. The various ways that criminals use personal information will change as technological developments continue. Police can assist in the recovery and prevention of identity theft by providing corrective steps and helpful tips that allow citizens to avoid the traumatic consequences that result. ♦

Identity Theft Resources

Social Security Administration

Fraud report 800-269-0271

The three major credit bureaus:

TransUnion

Fraud report 800-680-7289

Credit report 800-888-4213

Cancel preapproved credit card offers 888-567-8688

Equifax

Fraud report 800-525-6285

Credit report 800-685-1111 or 800-997-2493

Experian

Fraud report 800-301-7195

Credit report 800-682-7654

Cancel preapproved credit card offers 800-353-0809

For more details on identity theft, visit these Web sites:

www.identitytheft.org

www.privacyrights.org

www.futurecrime.com

Endnotes

¹ L. Wolf, "Theft of Identity, Credit Abuses Stir Anguish," *The San Diego Union Tribune*, February 10, 1999, B1.

² M. Pena, *Practical Criminal Investigation*, 3^d Ed. (Placerville, California: Copperhouse Publishing Company, 1993).

³ 18 U.S.C. §1028.

⁴ T. Lowry, "Information Brokers Put on Brakes, New Limits to Cut Identity Theft," *USA Today*, January 18, 1999, 3B.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ J. Hoffman, *The Art and Science of Dumpster Diving*, (Port Townsend, Washington: Loompanics Unlimited, 1993).

⁸ T. Dacolias, "Identity Theft," available from <http://www.congames.com/identity.html>, accessed on March 5, 1999. This site is no longer accessible.

⁹ D. Richie, "Police Eye Residents Concerns, Drug Dealing Seen As City's Top Trouble," *The Sacramento Bee*, January 31, 1999, N1.

¹⁰ B. Horne, "Identity Theft Disrupts Fayetteville Woman's Life," *Fayetteville Observer-Times*, September 21, 1998.

¹¹ State of California, Department of Consumer Affairs, "Credit Identity Theft: Tips to Avoid and Resolve Problems," Legal Guide P-3, January, 1998, 1.

¹² R. O'Harrow and L. Leyden, "Firm Got Almost \$1.5 Million in Federal Aid to Build Driver's License Database," *The Dallas Morning News*, February 18, 1999, 6A.

¹³ The Computer Security Institute,

established in 1974, is an organization of computer security professionals dedicated to serving and training information, computer, and network professionals. It offers classes in encryption and intrusion management.

¹⁴ Newswire, "eBay Selects Equifax Secure to Verify Identity of Buyers, Sellers Over the Internet," January 15, 1999.

¹⁵ T. Hamilton, "Privacy Czar Raps Absence of Online Protection, Commissioner Says Electronic Commerce Will Stagnate until Regulations Establish Trust on the Internet,"

The Globe and Mail, March 4, 1999, T1.

¹⁶ California Public Interest Research Group, "Victims of Identity Theft Action and Support Group," available from <http://www.igc.apc.org/pirg/calpirg/consumer/privacy/toi/voit.htm>; accessed on January 5, 2000.

¹⁷ *Supra* note 4.

Crime Data

Lowest Number of U.S. Police Deaths in 35 Years

Preliminary statistics released by the FBI indicate that 42 law enforcement officers lost their lives due to criminal action in 1999, the lowest recorded figure in more than 35 years. The total shows a decrease of 19 officer deaths compared with the 1998 annual count of 61 and 29 fewer deaths than occurred in 1997. Thirty-nine separate incidents account for the 42 officer deaths in 1999. Law enforcement agencies have cleared 38 of these incidents by arrest or exception means; 2 suspects remain at large.

Firearms continue as the weapon most frequently used to kill officers. Suspects employed handguns in 25 slayings, rifles in 11, and shotguns in 5. The remaining officer was killed with a vehicle. At the time of their deaths, 27 officers were wearing body armor. Five of the 42 officers were killed with their own weapons.

Twelve officers lost their lives during arrest situations: 6 serving arrest warrants; 3 attempting to prevent robberies or apprehend robbery suspects; 2 investigating drug-related situations; and 1 attempting to apprehend a burglary suspect. Eight officers were killed enforcing traffic laws, 7 investigating suspicious persons or circumstances, 7 answering disturbance calls, 6 encountering ambush situations, and 2 handling prisoners.

The FBI also released preliminary statistics on the number of officers accidentally killed in the performance of their duties. In 1999, 63 officers lost their lives in accidents. This total represents a decrease of 18 compared with the 81 accidental deaths that occurred in 1998.

For the complete preliminary annual *Law Enforcement Officers Killed and Assaulted* press release, access the FBI's Internet site at <http://www.fbi.gov>.



Book Review

Community Education and Crime Prevention: Confronting Foreground and Background Causes of Criminal Behavior by Carolyn Siemens Ward, published by Bergin & Garvey, Westport, CT, 1998

Community Education and Crime Prevention gives both specific insight into how the Hyde Park community of St. Louis, Missouri, manages criminal behavior as well as providing general information on crime prevention that any community can use. Community policing, a popular topic in law enforcement circles, receives attention throughout the United States in print, at lectures and conferences, and through course work. It encompasses community education, citizen involvement, and crime prevention. The author, a community education professor and member of the National Community Education Association, discusses all of these topics in *Community Education and Crime Prevention*.

The author begins by using a quote from Alexis de Toqueville: "Each person, withdrawn into himself, behaves as though he is a stranger to the destiny of all the others. As for his transactions with his fellow citizens, he may mix among them, but he sees them not; he touches them, but does not feel them; he exists only in himself and for himself alone. There no longer remains a sense of society." To the contrary, the author presents research clearly indicating that law enforcement agencies must become involved with citizens and create strategic and long-term plans to manage the increase in criminal behavior.

Community Education and Crime Prevention is divided into two parts. Part I addresses foreground causes (opportunity) of criminal behavior and consists of five chapters that include "A Theory of Crime Causation" and "Hyde Park Crime: Prevention Efforts and Their Effects." Part II confronts background causes (social malaise and demographics) and offers instruction on a community education approach.

Within its fifteen chapters, Part II ranges from "What is Community Education?" to "Leadership for Community Education." The book includes theories by the authorities and the practical wisdom of the neighborhood citizenry. For example, one expert believes that "citizens tended to drastically misperceive the power arrangement in their communities, seeing more competition than actually existed." A local resident commented on the power structure by stating, "I look at it as pluralistic" and "we have a lot of different agencies that do a lot of different things."

The crux of the book lies with bringing citizens out of their individual circles and encouraging participation in every facet of the community's makeup. A basic step to accomplishing such a task involves using neighborhood schools as community centers to fulfill multiple purposes. Neighborhoods should conduct community events and meetings in neighborhood schools and keep the schools' doors open after school hours, allowing children a safe location to meet and play with friends. Parents should volunteer in their children's schools and understand how they can make positive changes. Additionally, neighborhoods should recruit or become aware of the existing service or social organizations whose outreach involves all aspects of family and community assistance. After instituting these services, families should spread the word about such opportunities and available assistance. All of these suggestions combine to form a final product. A strong, interwoven system of services and neighbors may effectively reduce crime in communities. Educating neighborhood residents leads to their empowerment.

Reviewed by
Djana E. Trofimoff
Operations Analyst
Planning and Research Unit
Kansas City, Missouri, Police Department



Color of Law Investigations

By JOHN R. SCHAFER

The vast majority of police officers perform their difficult jobs in a professional manner. However, exceptions do occur. In one instance, an on-duty sheriff's deputy approached a verbally abusive drug addict strapped to a gurney in an emergency room, drew his pistol, placed the barrel of the weapon into the addict's mouth, and threatened to pull the trigger if he did not stop shouting. Police misconduct also encompasses less obvious wrongdoing, such as striking suspects more than necessary or threatening to harm them if they do not cooperate.

Even those officers cleared of wrongdoing often do not understand the color of law investigative protocol and feel unjustly targeted by the U.S. Department of Justice (DOJ) or the FBI, which have jurisdiction in these matters.¹ In order to better comprehend color of law investigations, officers should understand the role of the FBI and DOJ in color of law investigations, the legal guidelines for police misconduct, and the investigative protocol in these cases. More important, officers can take steps to prevent unnecessary color of law investigations.

BACKGROUND

In 1957, President Eisenhower mandated that DOJ prosecute civil rights violations, to include police misconduct, thus, allowing uniform application of civil rights law across the nation.² Approximately 74 percent of all civil rights investigations reported each year allege police misconduct.³ Because state and federal authority for civil rights investigations comes from different statutes, double jeopardy usually does not apply. In fact, dual prosecution may occur because separate sovereigns (i.e., federal and state) may prosecute individuals. One

well-known example of dual prosecution occurred when a Los Angeles County Superior Court jury acquitted the four police officers who beat Rodney King. After reviewing the jury's verdict, DOJ elected to charge the officers in federal court with color of law violations.

Approximately 30 attorneys from the DOJ Civil Rights Division and 190 FBI special agents in 56 field offices investigate and prosecute civil rights matters.⁴ The most common types of police misconduct include excessive force, sexual assault, intentional false arrest, falsifying evidence, extortion, and other related offenses. Of the nearly 10,000 color of law complaints received each year, DOJ prosecutes only about 30 police officers.⁵ The remaining cases either lack prosecutive merit or do not require formal judicial proceedings to resolve. Additionally, these figures do not include police misconduct complaints adjudicated at the state or local level.

COLOR OF LAW STATUTES

The term color of law derives from the federal statute, Title 18, U.S. Code, Section 242, titled "Deprivation of Rights Under Color of Law," which primarily governs police misconduct investigations. This statute makes it a crime for any person acting under the color of law to willfully deprive any individual residing in the United States those rights protected by the Constitution and U.S. laws. Other related federal statutes include Title 18, U.S. Code, Section 241, "Conspiracy Against Rights"; Title 18, U.S. Code, Section 1512, "Obstruction of Justice"; and Title 18, U.S. Code, Section 1001, "False Statements." Federal statutes generally restrict color of law investigations to official actions taken by police officers, federal agents, sheriff's deputies, correctional officers, and other public safety officials. However, off-duty officers who assert their official status also may face prosecution. In rare cases, the actions of security

guards, private citizens, judges, defense attorneys, and prosecutors who willfully participate with federal, state, or local law enforcement officials in the commission of color of law violations fall within the purview of the federal statutes.

Punishment for color of law violations varies depending on the gravity of the offense. Penalties for minor infractions range from probation to 1-year imprisonment, a fine, or both.⁶ Under aggravated circumstances, offenders risk the maximum sentence of imprisonment up to 10 years, a fine, or both. If loss of life occurs as a result of intentional police misconduct, the officer could face the death penalty.⁷

INVESTIGATIVE PROTOCOL

Color of law investigations comprise two categories—criminal wrongdoing and pattern-and-practice misconduct. Criminal wrongdoing focuses on individual misconduct, while pattern-and-practice misconduct leads to civil proceedings and examines systemic misconduct in law enforcement agencies. Police officers wontedly using traffic stops as a tool of intimidation to discourage minorities from entering town illustrates pattern-and-practice misconduct. To sustain this type of misconduct, the actions of officers in a department must prove pervasive. The Special Litigation Section of DOJ's Civil Rights Division investigates most pattern-and-practice violations.

Criminal matters require proof beyond a reasonable doubt; however, civil proceedings need only establish the preponderance of the evidence—a lower standard of



“
Two types of color of law investigations exist: a preliminary investigation and a substantial case investigation.
”

Special Agent Schafer serves in the Lancaster Resident Agency of the FBI's Los Angeles, California, Field Office.

proof.⁸ Punishment for criminal wrongdoing is imprisonment, a fine, or both. In civil proceedings, a judge orders the police department to correct any deficiencies in their administrative, training, or policy procedures.

DOJ or the FBI can initiate a color of law investigation based on credible media reports or a complaint from any person who does not have a history of providing false information. Any valid complaint triggers a color of law investigation; however, the extent of the investigation depends on the specific facts of the complaint. Two types of color of law investigations exist: a preliminary investigation and a substantial case investigation.

Preliminary Investigation

The preliminary investigation gleans sufficient information for DOJ attorneys to evaluate the incident with the least amount of disruption to the police officer's daily routine. The investigative steps in the preliminary investigation include identifying and interviewing the victims; identifying and interviewing witnesses; conducting criminal checks for both subjects and complainants; photographing the injuries, if appropriate; and obtaining police reports and medical records or a coroner's report in the event of a death. Additionally, the FBI notifies in writing the officer's employing agency of the ongoing color of law preliminary investigation. Also, the preliminary report incorporates a list of individuals that DOJ will notify at the conclusion of the investigation. This list contains the name and address of

the complainant, the subject or subjects of the investigation, and a supervising official at the employing law enforcement agency. After completing these steps, the FBI forwards the report to DOJ for review.

The FBI mandates that its agents complete preliminary color of law investigations within 21 days of receipt of the complaint; however, a DOJ decision may take months to finish because of the large number of reports submitted each year. This delay often leaves a police officer frustrated while awaiting the outcome of the DOJ review. The DOJ notification letter



...officers can take steps to prevent unnecessary color of law investigations.



also discourages some officers because it states only that the facts of the case do not support federal prosecution. Due to the large volume of complaints, DOJ does not tailor the notification letters to each specific complaint. The generic wording in these letters may not specifically exonerate the officer, leaving the officer and the officer's employer to wonder if the report lacked sufficient evidence to support a prosecution or if the officer acted properly. Neither the length of the DOJ

response nor the vagueness of the notification letters indicates any level of guilt on the part of the officers involved. Regardless of the outcome of the federal investigation, the employing agency still maintains the prerogative to discipline violators of administrative policies.

Substantial Case Investigation

If the facts cited in the preliminary report warrant additional investigation, DOJ initiates a substantial case. The investigative steps beyond the preliminary investigation include interviewing medical personnel and physicians, if appropriate; reviewing police logs and internal affairs reports; interviewing the subject or subjects of the investigation; photographing and diagramming the crime scene; and securing all relevant evidence and witness testimony. When the facts of the substantial case indicate that the subjects may have violated the civil rights of the victims, a federal grand jury convenes to formally investigate the incident.

The Grand Jury Process

A federal grand jury consists of between 18 and 24 citizens, who have the power to subpoena witnesses and examine all relevant evidence. The grand jury inquiry establishes victim and witness credibility, provides the subject an opportunity to testify, and determines probable cause. When the inquiry concludes, the grand jury hands down a true bill or a no bill. A true bill, also referred to as an indictment, means the grand jury determined that probable cause

FBI Civil Rights Subprograms*

FBI Priority	Civil Rights Subprograms	**Percent of FBI Investigations
1	<p>Racial or Religious Discrimination—Violence/No Violence</p> <p>Includes investigations of:</p> <ul style="list-style-type: none"> • Violence and hate crimes by individuals or members of racist groups • Damage/destruction of religious property • Discrimination in occupation, purchase, sale, rental or financing of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. • Voting rights violations • Criminal interference with the Civil Rights Act of 1964 	25
2	<p>Color of Law—Force/Misconduct</p> <p>Includes investigations of:</p> <ul style="list-style-type: none"> • Physical abuse • The infliction of summary punishment • The deprivation of rights through fabrication of evidence 	72
3	<p>Involuntary Servitude/Slavery</p> <ul style="list-style-type: none"> • Investigations involve migrant farm workers or immigrants who are forced to work against their will. 	0.2
4	<p>Violence Against Reproductive Health Clinics</p> <ul style="list-style-type: none"> • Bars conduct, including violence, that would obstruct access to reproductive health facilities or cause damage or destruction to these properties. 	2.5

Note: Percentages may not equal 100 due to rounding.

*Obtained from "FBI Headquarters Civil Rights Program New Agent Training Handbook," (U.S. Department of Justice, Federal Bureau of Investigation), 5.

**Percentages reflect civil rights investigations conducted in fiscal year 1997.

exists to believe that a crime occurred and that the subject of the inquiry committed the crime. After the grand jury indicts a subject, a trial in federal court follows. A no bill means the grand jurors found insufficient evidence to sustain a federal prosecution.

PRACTICAL APPLICATION

The public, activist groups, and internal affairs units routinely scrutinize the conduct of law enforcement officers. However, this scrutiny should not prevent police officers from effectively doing their jobs. Neither the subjects of a color of law preliminary investigation nor their employers should assume any wrongdoing on the part of the officers. A preliminary investigation simply means that a citizen filed a complaint; the investigation that follows determines the veracity of the allegation.

In many instances, offenders, upon arrest, allege police misconduct to divert attention from their own misdeeds. Typically, DOJ does not open an investigation but, rather, allows the local judicial system to examine the alleged misconduct in conjunction with the complainant's pending charges. In the event the allegations are substantiated, DOJ will initiate a preliminary investigation.

PREVENTING COLOR OF LAW INVESTIGATIONS

Although police officers cannot prevent color of law complaints, they can take steps to ensure that their actions do not place them in jeopardy. Police officers carry

batons, pepper spray, guns, and other tools to protect their lives and the lives of others. Officers should use these tools within the parameters of state and federal laws and their agency's policies.

Most officers exercise good judgment in crisis situations, but they often do not adequately record their actions. In the event of a misconduct complaint, the reviewing officials rely almost exclusively on reports to make an initial judgment regarding justification for the use of force. In many cases, the lack of information in reports triggers substantial case investigations when, in fact, the officers did not violate any laws.

Complete and accurate reports reflect officers' actions regardless of how officers or their colleagues judged those actions. Good intentions do not always yield good results. For example, a California state prison correctional officer

struck an aggressive inmate several times in the head with a baton, causing severe injuries. The officer who struck the inmate, along with several other officers present during the attack, failed to accurately record the sequence of events. Additional investigation determined that some officers enhanced their reports, without the subject officer's knowledge, attempting to help him explain his actions. To compound matters, this prison's policy required that officers complete all reports before going home. Because this incident occurred at the end of the shift, the officers wrote incomplete and inaccurate reports in a rush to go home. The conflicting reports provided the impetus for a substantial case investigation, which, in the end, exonerated the officers. Nevertheless, the intense inquiry significantly disrupted the officers' professional and personal lives.



In another example, three officers shot and killed a transient. A review of the incident reports could not determine if the officers' actions were justified because two of the officers' reports contained no more than 500 words, and one officer described the shooting in just 98 words. After a long and exhaustive grand jury investigation, the grand jurors found insufficient evidence for indictments. Again, incomplete report writing caused unnecessary stress in the officers' lives.

Many officers write such words or phrases in reports as "lunged," "menacing," or "furtive move to the waistband." Instead of using the word "lunged," the officer should describe the actions of the offender. For example, "the offender, holding a 9-inch butcher knife in his outstretched right hand, took three rapid steps toward me." Instead of using the word "menacing," the officer should write, for example, "the offender squinted her eyes, clenched her teeth, and made deep growling sounds." When officers fear for their lives, or the lives of others, they should narrate what specific actions led them to this state of mind. In addition to a description of the offenders' actions, a notation of the officer's state of mind provides a more complete picture as to why the officer responded with a measure of force. Such phrases as "furtive move to the waist band" or "shiny metal object" often lack credibility because of their overuse and, often, misuse.

A good report also addresses the legal elements as well as specific agency policies that authorize

the use of force. Including these issues in the report helps the reviewing official determine whether the use of force was justified. Officers must know when to use force, how much force to use, and, most important, how to accurately record their actions in a report. Written reports often provide officers with the only opportunity to explain their actions outside the courtroom setting. A well-written report can prevent an otherwise-long-and-stressful color of law investigation.

//
**...incomplete report
writing caused
unnecessary stress
in the officers' lives.**

//
Empirical evidence suggests that a high number of color of law investigations stem from pursuits. When pursuits terminate, police officers sometimes vent their excess energy on suspects. Devising techniques to dissipate excess energy in an appropriate manner often prevents the spontaneous use of excessive force. With one technique, partners agree to monitor each other's behavior at the end of a pursuit, to include restraint, if necessary. Police administrators can devise other simple, yet effective, techniques to reduce the possibility of officer misconduct and subsequent color of law investigations. This could include something as

simple as periodically reminding officers at role call to be mindful of color of law investigations.

CONCLUSION

Even police officers who conscientiously perform their duties should expect allegations of police misconduct at some point in their careers. However, officers can prevent most misconduct complaints if they conduct themselves in a professional manner and write detailed, accurate reports. A report not only records facts but also reflects the writer's integrity.

Police oversight and color of law investigations constitute a part of today's policing environment. Understanding the purpose and the mechanics of color of law investigations not only reassures police officers but also ensures that the public receives professional police services. ♦

Endnotes

¹ For a complete definition of color of law, see, 18 U.S.C. § 242.

² Alexis Agathocleous and Heather Ward, *Prosecuting Police Misconduct* (New York: Vera Institute of Justice, 1998), 1-2.

³ Egon Dezihan, et al., "Color of Law Matters," (Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, unpublished).

⁴ Louis J. Freeh, "Ensuring Public Safety and National Security Under the Rule of Law – Report to the American People on the Work of the FBI 1993 – 1998," (Washington, DC, 1999), 2; Egon Dezihan, et al., "Civil Rights Program, National Academy Manual," (Quantico, VA: U.S. Department of Justice, Federal Bureau of Investigation) 2.

⁵ *Supra* note 2.

⁶ 18 U.S.C. § 242.

⁷ *Ibid.*

⁸ "Addressing Police Misconduct - Laws Enforced by the United States Department of Justice, Civil Rights Division," (Washington, DC), 3.

Law Enforcement Online (LEO) Promotes Information Sharing

Every day across the country, law enforcement, criminal justice, and public safety professionals are “signing on” to Law Enforcement Online (LEO), a secure Intranet communication system built and maintained by the FBI, to share sensitive information. They rely on LEO as their primary tool to communicate or obtain mission critical information, to provide or participate in online educational programs, and to participate in professional special interest or topically focused dialog.

Keys to LEO’s rapid growth include its easy use, free services, and access availability at any time and any place. On a daily basis, the system’s 23,000 users take advantage of LEO’s various Web sites and electronic links, as well as its e-mail and distance learning capabilities, to stay abreast of relevant law enforcement issues; to establish or maintain contact with peers, colleagues, or experts in various fields; or to receive training on a wide range of topics.

Communication links to other agencies or organizations is particularly valuable to LEO users. In the market for new patrol vehicles or body armor? Planning to integrate your agency’s records system? Have an unsolved crime or unique modus operandi? Always wanted to learn more about terrorism? The LEO system can put you in touch with other professionals across the

country or with numerous special interest groups. The LEO system allows users to pose questions, gather feedback, do research, and access professional expertise.

Moreover, LEO Special Interest Groups (LEOSIGs) serve to connect users with common interests or goals. Over 50 LEOSIGs have sites on the LEO system, including the International Association of Auto Theft Investigators, Criminal

Intelligence Information Sharing Group, National Drug Intelligence Center, National Center for the Analysis of Violent Crime, National Center for Missing and Exploited Children, FBI Bomb Data Center, Asset Forfeiture Program, National Infrastructure Protection Center, and National Cybercrime Training Partnership. Group members can interact online to share information in their respective areas. LEO also can connect its users to

relevant Internet sites and, therefore, can put them in touch with agencies, such as the International Association of Chiefs of Police, Drug Enforcement Administration, International Association of Undercover Officers, and others.

LEO access is free to qualified law enforcement, criminal justice, or public safety professionals. To learn more about the LEO system, or to request an application, contact the LEO Program Office at 202-324-8833, or via e-mail at feedback@leo.gov.



Getting Along with Citizen Oversight

By PETER FINN

© DigitalVision



Two Rochester, New York, police officers arrested two young males allegedly for dealing drugs. One youth's mother claimed that the young men were innocently walking along the street when the officers approached them. She further alleged that one officer grabbed her son and threw him through a store window. Some community members became enraged at what they perceived as police brutality. When the city's citizen review board heard the case, however, it learned that the two males had drugs in their possession at the time of the arrest. Also, the store

owner reported that the officers had remained polite and professional during the encounter and that the woman's son had pushed *the officer* into the store window. The review board discovered the truth, exonerated the officers, and calmed the community members.¹

While this example illustrates how citizen oversight helped defuse a potentially volatile situation, the relationship between law enforcement and citizen oversight often has proved strained, at best, or even adversarial, in some cases. However, the 1990s showed a considerable increase in citizen oversight of

police in the United States. In light of this expansion, police administrators and citizen oversight members must consider how they can work together with a minimum of conflict and a maximum of collaboration.²

OVERSIGHT MODELS

Communities rarely create identical oversight systems. However, most of these review processes fall into four main types.

- 1) Citizens investigate allegations of police misconduct and recommend a finding to the head of the agency.

2) Officers investigate allegations and develop findings. Then, citizens review and recommend that the head of the agency approve or reject the findings.

3) Complainants may appeal findings established by the agency to citizens who review them and make recommendations to the head of the agency.

4) An auditor investigates the process the agency uses to accept and investigate complaints and reports to the agency and the community the thoroughness and fairness of the process.

While some oversight procedures represent “pure” samples of these models, many exist as hybrids that merge features from two or more different varieties of citizen review into their own unique systems. For example, the Minneapolis, Minnesota, civilian police review operates in two stages. First, paid, professional investigators and an executive director examine most citizen complaints to determine whether there is probable cause to believe that police misconduct occurred. Then, volunteer board members conduct closed-door hearings to decide whether they should support the allegations in probable cause cases. However, in Orange County, Florida, nine volunteer citizen review board members hold hearings, open to the public and the media, on all cases involving the alleged use of excessive force and abuse of power after the sheriff’s department has investigated them.

A member of the department helps coordinate the review board’s activities. By comparison, 13 citizen advisors, appointed by the city council and neighborhood coalitions in Portland, Oregon, hear appeals from citizens dissatisfied with police investigations of their complaints, review all closed cases involving allegations of the use of excessive force, and conduct random audits of internal affairs investigations. The city council also meets as an audit committee to hear appeals from citizens dissatisfied with the department’s investigation of their complaints. A professional examiner coordinates the work of the city council committee and the citizen advisors and conducts many of the audits. Although different in structure and content, these three oversight systems all function in similar ways by providing policy and training recommendations to their respective law enforcement agencies.

POLICE CONCERNS

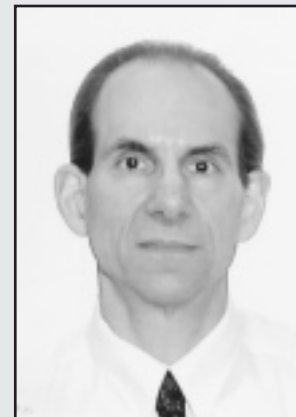
In many jurisdictions, law enforcement agencies have fought the initiation of citizen oversight. After communities have implemented such systems, agencies frequently have found them troublesome. Basically, most agencies have opposed citizen oversight because they feel that oversight procedures represent outside interference, oversight staff lack experience with and understanding of police work, and oversight processes are unfair.

Outside Interference

Most police administrators believe that their agencies should have the final say in matters of discipline, policies and procedures, and training. Because police administrators are in charge of their agencies, they are held accountable for their officers’ behavior. Accordingly, without final say over matters that directly affect their officers, administrators feel that this accountability

“
In many jurisdictions, law enforcement agencies have fought the initiation of citizen oversight.

”



Mr. Finn is a senior research associate for a private firm in Cambridge, Massachusetts, and serves as a special officer with the Belmont, Massachusetts, Police Department.

becomes undermined. Therefore, most jurisdictions have used a variety of approaches in addressing concerns about outside involvement in police affairs. In many communities, local governments have established oversight bodies that solely advise; they can make only nonbinding recommendations to law enforcement agencies. Also, some review bodies can appeal the agency's rejection of their recommendations to elected or appointed officials who can require the department to act. However, because these officials have this authority regardless of whether an oversight body exists, the oversight procedure itself does not further diminish the authority of agency administrators.

Even when citizen oversight systems have some authority over the police, they generally exercise it cautiously. For example, oversight bodies in St. Paul, Minnesota, and Flint, Michigan, have never used their subpoena power to compel officers to testify. Moreover, most oversight staff members agree that citizens should not have the power to discipline officers. They realize that giving citizens that authority could violate state laws, city charters, or collective bargaining agreements with police unions. Also, such authority would detract from holding the agency's administrator accountable for ensuring proper standards of professional conduct.

Lack of Understanding

Because they lack experience as law enforcement officers, oversight members may have difficulty fairly determining whether officers have engaged in misconduct.

Citizens generally are not familiar with pertinent case law governing officer behavior nor do they understand the nature of police discretion, the methods employed to train officers, or the totality of the circumstances of an incident that can influence officer behavior. Officers frequently observe that state medical boards, composed only of physicians, investigate doctors for malpractice, and only attorneys investigate lawyers for misconduct. Similarly, some police argue that only law enforcement officers have the knowledge to investigate and judge other sworn personnel.



...the oversight process can help establish and maintain an agency's reputation for fairness and firmness in addressing allegations of police misconduct.



However, many law enforcement administrators have worked with citizen review members to address these concerns and find ways of improving their relationships. For example, some agencies train oversight staff and volunteers. In Rochester, New York, candidates for the review board attend a condensed version of a police academy run by the police department. The 48-hour course involves 3

hours per evening for 2 weeks and 2 all-day Saturday sessions. The members use a shoot/don't shoot simulator, practice handcuffing, and learn about department policies and procedures, including the use-of-force continuum. Other oversight systems require a department supervisor to attend hearings or be on call to answer questions about department policies and operations. Also, review systems that investigate citizen complaints often hire investigators with pertinent law enforcement expertise. Finally, many agencies have found that outsiders can sometimes do a more objective job than insiders in assessing the performance of members of their own profession. Juries illustrate a frequent use of representatives of many different professions and life experiences to resolve allegations of police misconduct, physician and attorney malpractice, and other profession-specific cases in civil and criminal trials.³

Unfair Process

While many law enforcement administrators and officers feel that the oversight process is unfair because outside reviewers are unfamiliar with police work, they have other objections to citizen oversight. For example, unjust criticism and lengthy delays represent two concerns that many officers have about the oversight process.

Unjust Criticism

Many officers complain that oversight staff members hold them accountable for minor infractions, such as placing the wrong offense code on a citation or failing to

record the end mileage on a vehicle transport. Also, some administrators feel that complainants take advantage of the complaint process to benefit a planned or ongoing civil suit against an officer or the community.

Through educating civilian review members about police work and informing officers of the benefits that review members can provide, administrators can reduce some of these concerns. In one case, when a citizen, whose complaint a review board did not sustain, filed a civil suit, the city attorney had the oversight investigator testify. This investigator's testimony helped have the suit dismissed.

Lengthy Delays

Delays harm the credibility of the oversight process and cause officers considerable stress as they wait for their cases to be decided.⁴ To reduce these delays, agencies first should avoid contributing to them by establishing their own time lines for each stage of the review process. Next, agencies should work with oversight bodies and local government officials to establish deadlines. For example, in Rochester, New York, the city council requires oversight members to review cases within 2 weeks after the police department has completed its investigation. To speed up the hearing process in Berkeley, California, the review board decided to allow the director to recommend that the board summarily dismiss cases without merit.

POLICE STRATEGIES

Faced with concerns about the oversight process, law enforcement



administrators have discovered that they can take steps that may short-circuit future tension and lead to a successful relationship with oversight members. First, administrators can initiate citizen oversight systems. For example, the chief of the St. Paul, Minnesota, Police Department decided to implement an oversight system to gain citizens' perspectives on the behavior of the department's officers. The seven-member commission meets monthly to review cases investigated and decided by the department. The members, including two police officers, make their own findings and, in sustained cases, recommend discipline to the chief who makes the final decision.

In addition, when local officials begin talking about setting up a citizen oversight system, administrators can become involved in the planning process. This allows administrators to try to ensure that the oversight system has realistic and precisely specified objectives. Without well-defined objectives, an

oversight system can cause the involved parties to have different expectations for how the process should operate and what it should accomplish. For example, specific objectives could—

- reassure the public that the agency appropriately disciplines officers who engage in misconduct;
- provide the public with a “window” on how the agency investigates allegations of officer misconduct;
- defuse hostility expressed by residents or specific groups of citizens;
- reduce the number of police shootings; and
- establish mechanisms through which citizens can make recommendations for improving police policies, procedures, and training.

Finally, law enforcement administrators should demonstrate their willingness to work

cooperatively with oversight members. Police supervisors and oversight staff should meet regularly to discuss any specific misconceptions or conflicts and to share information. For example, when the Tucson, Arizona, citizen oversight board found some of the police department's statistics difficult to understand, the chief and the board's chair met with the department's statistical personnel, who then developed a clearer presentation method.

POLICE BENEFITS

Despite serious reservations about citizen oversight, many law enforcement administrators have identified several ways that such systems can benefit police agencies. These include bettering an agency's image with the community, enhancing an agency's ability to police itself, and, most important, improving an agency's policies and procedures.

Police Image

The example at the beginning of this article illustrates how citizen oversight can improve a department's relationship and image with the community it serves. Particularly among skeptical citizens, the oversight process can help establish and maintain an agency's reputation for fairness and firmness in addressing allegations of police misconduct. Citizen oversight also can promote the goals of community policing by enhancing communication between police and citizens and obtaining the public's views about law enforcement activities.

Internal Investigations

Oversight systems can improve the quality of a department's internal investigations of alleged officer misconduct.⁵ Some agencies report that officers perform more thorough investigations of such cases because they know that the oversight body—and, through it, the general public—will be examining how accurate and unbiased their reports are.



...law enforcement administrators have discovered that they can take steps that may short-circuit future tension....



While no empirical evidence may show that oversight systems deter police misconduct,⁶ citizen review may help in three ways to improve officer actions. First, by recommending additional training for errant officers, oversight bodies can encourage officers to learn how to avoid the behavior that led to citizen complaints. Next, oversight systems may discourage some officers from engaging in misconduct by reducing their chances for promotion. Finally, when law enforcement agencies adopt policy and procedure changes recommended by oversight bodies, officers gain a better understanding of how they should perform their duties.

Policies and Procedures

Many law enforcement administrators and oversight staff feel that providing suggestions for agency policy and procedure changes represents the greatest benefit of oversight systems. Policy recommendations, including suggestions for training improvements, can influence entire departments not just individual officers' behavior.

While some police administrators believe that outsiders do not have the necessary understanding of police practices to make useful policy recommendations, others disagree. For example, some managers feel that this lack of expertise allows oversight members to ask questions that encourage officers to reevaluate long-standing practices and approach situations from a different perspective.

Citizen oversight bodies can provide two general types of recommendations for changing police operations. First, they can recommend changes in the way the department conducts its internal investigation into alleged misconduct. For example, because of investigative inconsistencies in Portland, Oregon, the oversight committee recommended that the police department's internal affairs unit handle all use-of-force complaints rather than sending them to the precincts for investigation. The department agreed.

More often, oversight bodies offer recommendations intended to improve department policies governing officer behavior. For example, in the wake of riots in a local park that drew over 30 complaints from citizens alleging

officer misconduct, the Berkeley, California, city council directed oversight members to prepare recommendations about crowd control at large demonstrations. As a result, the city's oversight commission recommended 12 specific changes, including obtaining and using better-amplified sound devices to address crowds and monitoring the audibility of dispersal orders; providing clearer instructions about the location of the unlawful assembly site, the route that persons can use to leave the area, and the amount of time given to comply with the dispersal order; and training specific officers to serve as crowd liaisons at demonstrations. The department subsequently implemented all 12 of the oversight commission's recommendations.

By comparison, oversight systems may recommend changes to policies and procedures that prove more favorable to officers. For example, the internal affairs unit of the Orange County, Florida, Sheriff's Office recommended firing a deputy for violating the agency's pepper spray policy—excessive use of force. However, the citizen review board determined that the deputy, a recent hire from another department where deputies had carried ammonia capsules, had used the pepper spray only as a substitute to wake an unconscious suspect. The board concluded that the sheriff's office had a poor pepper spray policy because it required automatic termination for misuse regardless of mitigating circumstances. As a result, the department rewrote its policy so that misuse of pepper spray would not require

automatic termination and suspended, but did not terminate, the deputy.

CONCLUSION

Law enforcement administrators often find citizen oversight a burdensome, even contentious, procedure. In many jurisdictions, perpetual conflict has reigned between agencies and oversight members. In fact, some tension between the two may prove inevitable if the oversight system is functioning conscientiously. However, constant friction does not have to exist.

Ultimately, a good, or at least tolerable, working relationship depends on the personalities and commitment to fairness displayed by the oversight director and the law enforcement administrator. Both of these individuals must communicate openly and with a willingness to listen to the other's point of view. Indeed, if both sides make a sincere and sustained effort to work together, citizen oversight can help

law enforcement administrators perform their jobs more effectively and with increased public support. ♦

Endnotes

¹ Andrew Thomas, executive director of the Rochester Center for Dispute Settlement, which operates the city's citizen review board, interview by author 1999.

² The author based this article on information he collected as part of a report prepared for the U.S. Department of Justice, National Institute of Justice, Contract OJP-94-C-007.

³ Mary Dunlap, director of the San Francisco, California, Office of Citizen Complaints, interview by author, 1999.

⁴ Jerry Sanders, former chief of the San Diego, California, Police Department, interview by author, 1999.

⁵ Charles Moose, former chief of the Portland, Oregon, Police Bureau, and Captain Melvin Sears of the Orange County, Florida, Sheriff's Office and administrative coordinator of the Orange County Citizen Review Board, interview by author, 1999.

⁶ The oversight process may lack certain qualities thought necessary to deter misconduct: certainty, severity, and swiftness of punishment. Michele Sviridoff and Jerome E. McElroy, *Processing Complaints Against Police: The [New York City] Civilian Complaint Review Board* (New York: Vera Institute of Justice, 1998), 35.

© DigitalVision



Anonymous Tips and Frisks Determining Reasonable Suspicion

By MICHAEL J. BULZOMI, J.D.



The law enforcement profession is a precarious and perilous one. Its priorities are protecting the public and ensuring officer safety. Officers must be cautious because violence is always possible. Caution, however, does not mean that constitutional rights can be overlooked. It has been argued that “in dealing with rapidly unfolding and often dangerous situations on city streets, the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess.”¹

The Supreme Court of the United States has addressed this

need by recognizing search warrant exceptions that apply to situations where the usual search warrant requirement would hinder law enforcement in acquiring evidence that may be otherwise lost, or in obtaining items that would pose a danger to the public or to the officers. These exceptions require a sufficient showing of probable cause, or in cases of safety, reasonable suspicion. The Court appears reluctant to create any further search warrant exceptions other than the five it has currently allowed. These exceptions are: 1) the emergency or exigent circumstances exception, which requires a reasonable

suspicion of danger to justify a limited search² or probable cause to allow a search to prevent escape³ or to avoid the destruction of evidence;⁴ 2) the consent exception, which requires a reasonable belief that the consenting party has apparent authority, control, and access over the property and voluntarily consents;⁵ 3) the motor vehicle exception requires probable cause to believe there is evidence or contraband in the motor vehicle;⁶ 4) the search incident to arrest exception, which is justified by a lawful custodial arrest,⁷ permitting a search of the arrestee, personal items in his possession,⁸ the area within the

arrestee's immediate control⁹ for weapons, means of escape and evidence of any crime, and immediate adjacent areas for persons who may pose a danger to officers;¹⁰ and 5) the inventory exception, which allows law enforcement to locate and identify valuable or dangerous items contained within property they have lawful custody of, using a standardized inventory policy.¹¹ This article discusses one aspect of the emergency exception regarding frisks for weapons and the decisions made by the Court about frisks for weapons based on anonymous tips in *Florida v. J.L.*¹²

Florida v. J.L.

On October 13, 1995, an anonymous caller reported to police that a young black man was standing at a particular bus stop wearing a plaid shirt and carrying a gun. Officers went to the bus stop within minutes after receiving the information and saw three black males, one of whom was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. The officers did not see a firearm or observe any unusual movements to indicate the existence of a firearm. Without hesitation or question, one of the officers, who was a 14-year veteran, frisked the young man wearing the plaid shirt and seized a gun from his pocket. The other officer frisked the remaining two youths, against whom no allegations had been made, and found nothing. The youth who carried the gun was charged under state law with carrying a concealed firearm without a license and possessing a firearm while under the age of 18.

“
...an anonymous tip of a person carrying a gun is not...sufficient to justify police officers stopping and frisking that person.
”



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

The Florida trial court granted the youth's motion to suppress the gun as the fruit of an unlawful search. The intermediate appellate court reversed, but the Supreme Court of Florida quashed that decision and held the search invalid under the Fourth Amendment. The case then came before the U.S. Supreme Court to determine whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person.

The opinion of the Court delivered by Justice Ginsburg held that an anonymous tip of a person carrying a gun is not, without more information, sufficient to justify police officers stopping and frisking that person. The Court found that officers, for the protection of themselves and others, may detain individuals based on a reasonable suspicion that criminal activity is about to occur. As long as officers can articulate a separate reasonable suspicion that the individual is armed, they can conduct a carefully limited search of the individual's outer clothing

for weapons. Officers' assessment of reasonable suspicion can be based on their own perceptions, their training and experience, their knowledge of the area or person(s), and witness or informant information, including corroborated anonymous tips. This is a reiteration of the Court's landmark case, *Terry v. Ohio*.¹³

Terry v. Ohio

Terry involved three individuals who were stopped and frisked by Officer McFadden after he had observed them repeatedly walking up and down a street and peering into the window of a particular store. In *Terry*, the Court said, to justify a stop, the officer must identify specific articulable facts which, when taken with their logical inferences, establish a reasonable suspicion that criminal activity is about to occur. This makes the intrusion reasonable.

Officer McFadden was a 36-year veteran with 30 years working the same beat. He observed the individuals and concluded that he

did not know them and, based upon his training and experience, determined that they were “casing the joint” for an armed robbery. Having come to this conclusion, Officer McFadden approached the individuals to engage them in conversation. When Officer McFadden identified himself and asked the individuals who they were and what they were doing, they gave mumbled responses. It was only then that Officer McFadden frisked the individuals, having a reasonable suspicion that they were armed and therefore dangerous. His actions were deemed reasonable by the Court.

Anonymous Tips and Reasonable Suspicion

Terry v. Ohio and *Florida v. J.L.* present an interesting contrast. In *Florida v. J.L.*, the officer’s suspicion that J.L. was carrying a weapon arose not from any personal observations, training, or experience, but solely from a telephone call made by an unknown caller. In the course of investigating the anonymous tip, the officers did not identify themselves as police or make reasonable inquiries. They observed no unusual conduct that might have led the officers to reasonably conclude, in light of their experience and training, that criminal activity was about to occur or that the individuals with whom they were dealing were armed and dangerous. Officers are entitled to conduct a carefully limited search of the outer clothing of individuals who pose a danger to them for the protection of themselves and others in the area and in an attempt to discover weapons which might be

used to assault them. However, neither J.L. nor his associates were shown to pose a danger to the officers or to the public.

Anonymous tips alone seldom demonstrate the tipster’s basis of knowledge or veracity, unlike tips received by police from known informants whose reputation can be assessed and can be held responsible if the allegations turn out to be fabricated.¹⁴ However, the Court has recognized that there are situations in which an anonymous tip, suitably corroborated, can be enough to give rise to the reasonable suspicion required to make an investigatory stop.



Reasonable suspicion must be based on what officers know prior to their stop and frisk, not on what they find as a result of a search.



Anonymous Tips and Reliability

In *Alabama v. White*,¹⁵ police received an anonymous tip that a woman would be leaving a particular apartment at a particular time in a particular vehicle. The tip also included information that the woman would drive to a named motel and would have cocaine in a brown attache case. Police corroborated the information by going to the apartment building and observing the car described by the caller.

They then saw the suspect leave the apartment building, enter the car, and drive the route toward the specific motel. Officers stopped the car just short of the motel. A consensual search of the car resulted in the recovery of marijuana. After her arrest, cocaine was found in her purse.

The Court held that the anonymous tip, standing alone, did not justify White’s detention. However, once police corroborated the informant’s accurate prediction of the woman’s future movements, it became reasonable for police to think that the tipster had inside knowledge about the suspect and bolstered his assertion about the cocaine possession. Although the Court held that the detention was reasonable in *White*, the detention was regarded as borderline in regard to establishing the necessary reasonable suspicion to stop and detain. The Court explained that “knowledge concerning a person’s future movements indicates some familiarity with that person’s affairs, but having such knowledge does not necessarily imply that the informant knows, in particular, whether that person is carrying hidden contraband.”¹⁶

Predicting future behavior is important. Unlike the *White* case, the tip concerning J.L. provided descriptive information, but no predictive information. It, therefore, left the police without any means to test the reliability of the informant’s information and, more important, the informant’s credibility. All that the police knew in *J.L.* was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing

he had inside information concerning J.L. The fact that officers found a gun did not add credence to the tipster's allegation. The officers, prior to the frisks, had no reasonable basis for suspecting J.L. of engaging in unlawful conduct. Reasonable suspicion must be based on what officers know prior to their stop and frisk, not on what they find as a result of a search.

Possible Means of Establishing Reliability

Florida v. J.L. and *Alabama v. White* make it clear that an anonymous tip that merely identifies a person, but does not show that the tipster has knowledge of concealed criminal activity is not sufficient to establish a reasonable suspicion justifying a stop and frisk. An anonymous tip may be bolstered where it predicts the subject's future behavior, and police can corroborate that prediction through observation and investigation.

Two additional suggestions as to establishing the reliability of an anonymous tipster were given in the concurring opinion of Justice Kennedy joined by Chief Justice Rehnquist. They advised that an anonymous tip may be thought reliable where the tipster has somehow put his identity at risk. For example, a tip given to police by a person in a vehicle, even if the tipster does not give his name, is entitled to more weight than the anonymous telephone tipster.¹⁷ They speculated that reliability may be bolstered where an anonymous tip is received by law enforcement on a telephone line equipped with caller I.D. and the tipster has not blocked the caller I.D., enabling police to identify the

caller.¹⁸ They also suggested that a repeat anonymous caller with a recognizable voice, who repeatedly provides police with information that has proven to be true, may be deemed a reliable source even though his true identity is not known.¹⁹ The full Court may not adopt these views, but they do provide some guidance in this as yet unsettled area of the law.

Firearms Exception to *Terry*

The state of Florida and the federal government argued before the Court that there should be a firearms exception to the *Terry* rule. The United States, as *amicus curiae* (or friend of the court), specifically argued that a stop and frisk should be permitted when 1) an anonymous tip provides a description of a particular person at a particular location illegally carrying a concealed firearm, 2) police promptly verify the pertinent details of the tip except the existence of the firearm,

and 3) there are no factors that cast doubt on the reliability of the tip.²⁰ The basis of this argument is that it is reasonable for law enforcement officers to begin an investigation into a tip concerning a person with a gun by protecting themselves and the public with an automatic frisk of the person(s) in question.

The Court responded to this argument by stating that "an automatic firearm exception to our established reliability analysis would rove too far. Such an exception would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful carriage of a gun."²¹ The Court also expressed a fear that such an exception would be difficult to limit to firearms and that it would eventually be extended to allegations of drug possession. Several courts of appeals have held it per se

© Mark C. Ide



foreseeable that people carrying large amounts of drugs also carry weapons.²² The Court was concerned that these holdings would soon be used to justify an automatic frisk exception in cases where the anonymous tip alleged mere drug possession, allowing the “exceptions to swallow the rule.”²³

The Court reaffirmed the reasonable suspicion standard in *Terry*. It decided that the *Terry* rule creates the proper balance between the safety concerns of police and an individual’s personal privacy guaranteed by the Fourth Amendment. Law enforcement officers must conduct a case-by-case analysis and be able to articulate why a particular individual is armed.

The Court did note that under certain circumstances the danger alleged in an anonymous tip might be so great as to justify a search without a showing of reliability. However, the Court did not articulate what these circumstances might be. The Court did state that in places where there is a diminished expectation of privacy, such as in airports²⁴ or schools,²⁵ protective searches could be conducted on the basis of information that would not be sufficient elsewhere.

Conclusion

An anonymous tip providing an accurate description of a subject’s readily observable location and appearance identifies the person whom the tipster means to accuse. However, this descriptive information alone is not necessarily enough to show that the accused is engaged in criminal activity. Predictive information may be necessary to establish the reliability of the tip in its

assertion of illegality. The requirement that an anonymous tip bear some standard of reliability in order to justify a stop in no way diminishes a police officers’ prerogative, in accord with *Terry*, to conduct a protective search of a person who has already been legitimately stopped.

The Court, in *Florida v. J.L.*, recognized the serious threat that armed criminals pose. Firearms are dangerous and extraordinary dangers sometimes justify unusual precautions. The *Terry* rule is such a precaution. It permits protective police searches based on a reasonable suspicion rather than the higher



...to justify a stop, the officer must identify specific...facts which...establish a reasonable suspicion that criminal activity is about to occur.



standard of probable cause normally required for police to conduct a search. However, the Court has reminded law enforcement that even a limited search of an individual’s outer clothing “constitutes a severe...intrusion upon cherished personal security, and surely must be an annoying and frightening, and perhaps humiliating experience.”²⁶ As such, it should only occur when permitted by the Constitution of the United States. ♦

Endnotes

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

² *Ibid.*

³ *Welsh v. Wisconsin*, 566 U.S. 740 (1984).

⁴ *Schmerber v. California*, 384 U.S. 757 (1966).

⁵ *Illinois v. Rodriguez*, 110 S. Ct. 2793 (1990).

⁶ *Maryland v. Dyson*, 119 S. Ct. 2013 (1999).

⁷ *U.S. v. Robinson*, 414 U.S. 218 (1973).

⁸ *U.S. v. Edwards*, 415 U.S. 800 (1974).

⁹ *Chimel v. California*, 395 U.S. 752 (1969).

¹⁰ *Maryland v. Buie*, 494 U.S. 325 (1990).

¹¹ *South Dakota v. Opperman*, 428 U.S. 362 (1976).

¹² *Florida v. J.L.*, 120 S. Ct. 1375 (2000).

¹³ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968) at 1874.

¹⁴ *Adams v. Williams*, 407 U.S. 143, 92 S. Ct. 1921 (1972) at 1923-1924.

¹⁵ *Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412 (1990) at 2415.

¹⁶ *Florida v. J.L.*, 120 S. Ct. 1375 (2000) at 1378.

¹⁷ *Id.* at 1381.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Id.* at 1379.

²¹ *Id.* at 1380.

²² See *U.S. v. Sakyi*, 160 F.3d 164 (C.A. 4 1998) at 169; *U.S. v. Dean*, 59 F.3d 1479, (C.A. 5 1995) at 1490, n.20; *U.S. v. Odom*, 13 F.3d 949 (C.A. 6 1994) at 959; *U.S. v. Martinez*, 958 F.2d 217 (C.A. 8 1992).

²³ *Richards v. Wisconsin*, 520 U.S. 385, 117 S. Ct. 1416 (1997) at 1421-1422. (rejecting a per se exception to the knock and announce rule for narcotics cases partly because the reasons for creating an exception in one category [of Fourth Amendment cases] can, relatively easily, be applied to others, thus allowing the exception to swallow the rule).

²⁴ See *Florida v. Rodriguez*, 469 U.S. 1, 105 S. Ct. 308 (1984) (per curiam).

²⁵ See *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S. Ct. 733 (1985).

²⁶ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

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.



Officer Hagen



Officer Roscoe

While on patrol, Officers Gail Hagen and Dustin Roscoe of the Chicago, Illinois, Police Department drove by an apartment building and heard the sound of breaking glass. Upon investigation, they saw smoke and flames coming from the building's first floor area. When Officers Hagen and Roscoe approached the building, residents told them that a family was trapped on the second floor. Because intense smoke and fire prohibited Officers Hagen and Roscoe from entering through the front and rear of the house, the officers made verbal contact with the trapped victims—four children and their parents—calmed them, and urged them to move to a side

window away from the blaze. Upon reaching the side window, the officers persuaded the father to drop the children down to the awaiting officers. After the children were safe, the parents leapt into the officers' arms. Although treated for minor injuries from smoke inhalation and the fall, the family survived the ordeal because of the bravery and decisive actions by Officers Hagen and Roscoe.



Officer Floyd

Officer Jeremy Floyd of the Redlands, California, Police Department responded to a call that an 8-year-old boy had fallen into a canal, which was full of raging water from a sudden rainstorm. When Officer Floyd spotted the child floating in the rapidly moving water, he jumped into the canal. Although battered by the force of the water, Officer Floyd was able to grab the child, who now was semiconscious, and pull him out of the water. Officer Floyd carried the child to safety where paramedics were waiting to

transport him to the hospital. Due to Officer Floyd's courageous actions and disregard for his own personal safety, the 8-year-old child sustained only minor injuries.

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.

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

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

Official Business
Penalty for Private Use \$300

Subscribe Now



United States Government
INFORMATION

Credit card orders are welcome!

Fax your orders (202) 512-2250

Phone your orders (202) 512-1800

Order Processing Code:

* 5902

YES, please send _____ subscriptions to:

FBI Law Enforcement Bulletin

(FBIEB) at \$23 each (\$28.75 foreign) per year.

The total cost of my order is \$ _____.

Price includes regular shipping & handling and is subject to change.

Check method of payment:

Check payable to: Superintendent of Documents

GPO Deposit Account

VISA MasterCard Discover

(expiration date)

Authorizing signature

10/99

Mail to: Superintendent of Documents, PO Box 371954, Pittsburgh PA 15250-7954

Important: Please include this completed order form with your remittance.

Thank you for your order!

Name or title (Please type or print)

Company name Room, floor, suite

Street address

City State Zip code+4

Daytime phone including area code

Purchase order number (optional)