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HIV/AIDS in Law Enforcement ***“What-If” Scenarios***

By JOHN COOLEY



Since its initial identification nearly two decades ago, HIV/AIDS¹ has impacted millions of families, creating unprecedented challenges to municipal, state, and federal agencies charged with maintaining public safety and health. Law enforcement's response to these issues has focused primarily on providing awareness training on the epidemiology of the disease; implementing Occupational Safety and Health Administration (OSHA) mandates regulating exposure protocols; testing and ensuring

confidentiality of test results; and issuing personal protection equipment and training personnel in its use. Thus, education, awareness, and compliance with established laws, regulations, policies, and procedures have constituted important first steps for the law enforcement community.

Yet, as HIV/AIDS issues approach a third decade, law enforcement managers and subject-matter experts face new questions and concerns centering on the fear factor associated with the disease. Many individuals still react with fear when

they hear the words, “I’m HIV positive” or “I have AIDS.” Even individuals schooled in how difficult it is to contract the disease feel at least a momentary uncertainty when hearing those words. Although private citizens remain free to choose how they will react to such admissions, an officer's response or, in some cases, refusal to respond can create significant liability issues for law enforcement. For example, some officers may feel a strong personal and moral obligation to violate basic laws and policies, supposedly to protect



Sergeant Cooley leads the Employee Assistance Unit and serves as the AIDS coordinator of the Los Angeles, California, Police Department.

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themselves and their partners from this potentially deadly virus. At the very least, this scenario can lead to legitimate personnel complaints; worse, it may provide substantial grounds for litigation and erosion of public trust.

To combat these fears, in 1985, the city council in Los Angeles, California, enacted an AIDS anti-discrimination law and, in the following years, created several AIDS workplace policies. In 1990, the city council mandated that every city department have an AIDS coordinator who would report to the city's AIDS coordinator. This action enabled the Los Angeles Police Department to provide its employees and their families with a variety of information and services about HIV/AIDS issues, allowing the department to respond to individual and organizational needs. The police department's AIDS coordinator publishes updated information about HIV/AIDS issues germane to the workplace, works with department and city entities responsible

for providing medical and psychological services, monitors compliance with OSHA regulations and the city's bloodborne pathogen protocol, and oversees all department training on HIV/AIDS issues.

However, other areas have evolved over the last two decades that surpass the original issues of concern. These include confidentiality concerns, legal issues, employee assistance considerations, and preventive measures.

CONFIDENTIALITY CONCERNS

Confidentiality concerns permeate every aspect of HIV/AIDS issues. For example, who can tell what to whom? What information can officers include in reports? If officers disclose their HIV status to a partner, can the partner tell others? What can crime victims be told and by whom? The list can go on and on. The main confidentiality concerns involve including HIV information in police reports and having officers disclose their HIV

status to their co-workers and supervisors.

Crime and Arrest Reports

Some officers believe they need to include HIV-status information about victims, witnesses, and arrestees when it is neither an element of the crime nor relevant to the investigation. When questioned about this, officers respond that they want others who come in contact with these individuals to know so they can protect themselves. Training focusing on bloodborne pathogens and the universal precautions (i.e., treating all blood, from all individuals, at all times, as potentially toxic) that everyone should practice whenever a potential for exposure exists has not proven sufficient to alter the officers' beliefs that they have an obligation to go beyond stated policy to protect themselves and others. However, including an offender's HIV status in a report may violate basic medical information confidentiality laws, as well as specific laws pertaining to HIV, which may vary from community to community.

To address this, departments should train their officers in and provide a comprehensive resource guide for report writing. Further, field supervisors and detectives who approve arrest reports should have the authority to correct reports before duplication and distribution and, thereby, act as the first line of protection against any of these potential confidentiality violations.

Officer Disclosure

Some field enforcement officers, especially those working

patrol, believe that any officers who know they are HIV-positive have a moral obligation to inform their partners and peers. Their rationale is that in a life-threatening situation, they may not stop to put on gloves before rendering aid to a fellow officer. They believe that they should not have to view their colleague's blood as a potentially toxic agent—partners take care of each other. Not only does the desire to reveal such information conflict with medical confidentiality laws, but universal precautions should eliminate the need for disclosure in many cases, as well.

Officers also should remember that choosing to reveal their HIV status is a painfully difficult decision for anyone, including law enforcement personnel. For example, if officers disclose their HIV status to co-workers, they risk being ostracized and becoming victims of discrimination, which could jeopardize their safety in the field. However, their co-workers may believe that their own safety is jeopardized if affected officers do not disclose their HIV status. Therefore, disclosure stands as a moral dilemma, not a legal one.

LEGAL ISSUES

Prisoner Handling

Sometimes, officers who learn of arrestees' HIV status (through self-disclosure or other means) isolate these individuals in holding tanks, interrogation rooms, or cells solely on their medical status. Some officers may place a sign on the individual or detention room that identifies the arrestee as HIV-positive.

Another form of isolation occurs when officers place face masks on arrestees, even though these individuals have exhibited no behavior (e.g., biting or spitting) that merits such action. Officers should remember that detention, booking, and processing policies dictate how they must handle arrestees. These policies never mention placing signs on arrestees for any reason; HIV is no exception.

In reality, officers only need to isolate arrestees in very limited circumstances—when a bleeding suspect may come in contact with others. In such cases, if officers do not know the HIV status of bleeding suspects, they should isolate these individuals temporarily.

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Moreover, the issues of officer safety and a partner's or co-worker's right to know bring the potential conflict between legal obligations and moral responsibilities to the forefront. HIV is a bloodborne pathogen; therefore, universal precautions can protect officers from exposure. Usually, only jailers need to know about an arrestee's HIV status so they can provide the appropriate medical protocol.²

ADA Accommodation

Because medical research continues to find new medicines that allow people with HIV/AIDS to stay healthier longer, employees may become more likely to seek accommodation for these health issues within the context of the Americans with Disabilities Act (ADA).³ For example, employees with HIV/AIDS frequently request to work a specific shift because their prescribed medication disables them during certain hours of the day. In many cases, this constitutes a reasonable accommodation provided that the availability for shift work is not an essential function of the job.⁴ However, the agency would not have a duty to reasonably accommodate an employee when the disability poses a direct threat to life or safety.

Whether the request for accommodation comes from sworn or civilian personnel, supervisors often question the reason for such an adjustment, jeopardizing the employees' medical confidentiality. However, only the agency's medical director and the employee's physician should discuss this information. Supervisors must understand their roles in medical and ADA issues, realizing that medical confidentiality can prohibit them from knowing all of the details.

EMPLOYEE ASSISTANCE CONSIDERATIONS

Exposure to a bloodborne pathogen may precipitate a severe psychological reaction for officers and their family members, whose overall fear for their loved ones' safety becomes exacerbated by the

possibility that their loved ones could contract a contagious, deadly disease. Partners of officers who may have been exposed also may feel vulnerable, believing that the officers represent a potential threat to their own safety. Moreover, fellow officers and other co-workers may attend all of the required training on bloodborne pathogens but still have difficulty accepting colleagues who have disclosed their disease. Therefore, the agency must offer psychosocial services to anyone impacted by such situations. Assuring officers and family members that their fears are normal and providing a supportive environment in which they can work to lessen the impact of such fears prove more productive than allowing fear to run rampant throughout the family or the organization.

PREVENTIVE MEASURES

Any agency that has not developed and implemented strategies and policies to address these

concerns could become extremely vulnerable, both from the standpoint of civil liability, as well as that of effective personnel management. Managers have to lead the way in adhering to and enforcing departmental policies. The absence of such leadership can produce a lack of confidence among agency employees, particularly when dealing with such an emotionally volatile issue.

Just as training academies use situation simulations or role-play scenarios to teach tactical maneuvers, interviewing skills, and other law enforcement techniques, administrators can use the same approach to address HIV/AIDS concerns. Managers and subject-matter experts should meet and discuss “what-if” scenarios, suggesting resolutions that comply with current laws, protocols, and policies. These meetings also provide agencies with excellent opportunities to review their basic medical contingency

plans to assess their efficacy for the future and ensure that adequate medical and psychological support is available for their personnel and their families.

What-If Scenarios

1) Cooperating arrestees disclose their HIV-positive status at the scene of the arrest and officers put on gloves, face masks, and goggles, when no bodily fluids are present that can transmit the virus.

Officers who overreact demonstrate their lack of knowledge about HIV and universal precautions. If their actions are knowledgeable and intentional, then they are likely discriminatory and could make officers and the agency liable. Further, administrators could consider these types of situations cause for disciplinary action.⁵

2) Members of a work group tell their co-workers that they are HIV-positive. Can the co-workers refuse to work with the infected individuals? Can they request reassignment? Can the infected individuals be reassigned?

Employees can tell their co-workers anything, including their HIV status. Co-workers cannot refuse to work with others because of their HIV status any more than they can refuse to work with individuals because of their national origin, age, race, color, sex, or religion.⁶ Agencies have policies on how and when they transfer personnel from one location to another or from one shift to another. Agencies should not

Law Enforcement HIV/AIDS Resources

- **Americans with Disabilities Act Information Line**
800-514-0301
- **Equal Employment Opportunity Commission**
800-669-4000
- **American Bar Association**
AIDS Coordination Project
202-662-1025
- **American Red Cross**
AIDS Education for Emergency Workers Project
916-368-3137

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 provides federal protection against discrimination for individuals with disabilities and extends this protection to the workplace, public accommodations, transportation, state and local government services, and telecommunications. Strengthening and reaffirming the earlier principles of the Federal Rehabilitation Act of 1973, the ADA provides uniform, forceful, and enforceable federal protections to individuals with disabilities, including persons with AIDS and HIV infection.

Individuals who are in a relationship with a disabled individual also are protected under the ADA. Discrimination against persons with contagious diseases or their partners or relatives based on unsubstantiated perceptions of the threat of infection violates the ADA. The ADA challenges employers to establish workplace policies that encompass the new definition of "disability," which includes not only HIV/AIDS, but other catastrophic illnesses, such as cancer and heart disease, that affect the work environment.

make exceptions to their standard operating procedures to accommodate an employee who refuses to work with an individual with HIV. A refusal to work is just that, and administrators should handle it accordingly. Finally, supervisors cannot reassign, isolate, or change the working conditions of an individual with HIV.⁷

3) An officer becomes exposed to a bloodborne pathogen and, according to protocol, is tested for HIV. The officer's spouse calls, demanding to know the test results. Can the department release the results? What if a domestic partner makes the request?

Test results remain confidential.⁸ An employer cannot share this information. Although laws vary from state to state, typically no laws require that tested individuals inform their sexual partners of the results.

However, agencies should not ignore the spouses and domestic partners of affected officers. They should refer such individuals to the appropriate health agency to receive professional counseling and evaluation.

4) Infected officers tell their immediate supervisors that they want to disclose this information to the entire agency. Should supervisors encourage them to do so? Can supervisors discourage them because of problems that may occur?

Self-disclosure is a personal decision. When an employee informs a supervisor beforehand, the agency has the opportunity to prepare for potential problems. Encouraging or discouraging disclosure represents a personal decision influenced by a variety of factors that will change from agency to agency. However,

ordering someone to disclose or keep silent about their HIV status is a poor management decision.

5) Officers know that certain street criminals are HIV-positive, and practicing "selective enforcement," they arrest these individuals to "protect" society.

Selective enforcement because of someone's known or perceived HIV status is discriminatory. Health officials, not police officers, deal with community health problems, including individuals who have potentially infectious or contagious diseases.

6) First responders refuse to provide lifesaving first aid based on their opinion that the victim belongs to a high-risk group. What if they do not have protective devices readily available?

In California, police officers are considered first responders

and, by legislative opinion, are expected to provide lifesaving first aid.⁹ OSHA requires that all police vehicles carry personal protective equipment. Gloves and masks provide a barrier, but if they are not available, then officers should seek some other sort of protective aid, such as improvising with existing materials at hand.¹⁰

CONCLUSION

The potential for exposure to HIV/AIDS in police work remains minimal. If officers follow universal precautions, the risk decreases further. However, fear still constitutes an important factor to address because it can permeate an organization, from a variety of sources, with lightning speed.

Managers can curtail this fear by responding directly, quickly, and consistently to issues raised by officers' emotions, moral beliefs, and interpretations of their level of safety. This action provides clear leadership and dispels much of the confusion and speculation that may arise. Additionally, anticipating problems and developing appropriate contingency plans spare administrators from having to say that they never thought a particular situation would happen. What-if discussions can help managers assess their agencies' preparedness for responding effectively to the next generation of AIDS-related problems. In short, common sense, knowledge, and adherence to established procedures and policies increase the potential for officers to

have safe, healthy lives and productive careers while facing HIV/AIDS. ♦

Endnotes

¹ HIV (human immunodeficiency virus) causes AIDS (acquired immunodeficiency syndrome). Individuals can test positive for HIV before showing any symptoms of AIDS.

² Laws permitting the disclosure of an individual's medical records, including HIV test results, are not exceptions to confidentiality laws, but rather extensions of the umbrella under which certain individuals in specific circumstances are allowed or required to receive information or pass it on to another.

³ 42 U.S.C. § 12101.

⁴ The duty to reasonably accommodate a qualifying disability includes modifying some aspects of the job but not the essential functions of the job.

⁵ In a 1994 landmark case, a federal court ruled under the ADA that the Philadelphia Fire Department had wronged a suspected HIV-infected client when its personnel refused to place him on a stretcher after he had collapsed from chest pains. The court ordered the department to develop and advertise a written policy to prohibit discrimination against individuals with HIV/AIDS and discipline any employee who failed to follow the policy. See *Doe v. Borough of Barrington*, 729 F.Supp. 376 (E.D. Pa. 1994).

⁶ Supra note 3.

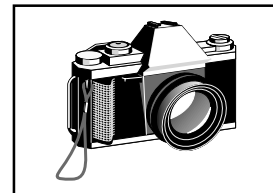
⁷ Supra note 3.

⁸ Confidentiality laws may address HIV/AIDS specifically, or they may relate more generally to medical records or an individual's "right to privacy."

⁹ An agency's mission statement or other written policy also may outline the circumstances, conditions, and responsibilities under which first responders must perform their duties.

¹⁰ Rather than stating that a worker has a duty to provide services, the law may encourage the provision of care by limiting the liability of responders, including police and emergency medical personnel, in the event that something goes wrong, barring negligence (e.g., Good Samaritan Laws).

Wanted: Photographs



The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

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Training Patrol Officers to Mediate Disputes

By Christopher Cooper, J.D., Ph.D.

A patrol officer responds to a disturbance call at a local bar where two patrons are fighting over a video game. The officer separates the parties and, after a brief discussion, convinces one of them to leave. The officer goes back on patrol, only to be dispatched to the same location an hour later. This time, the officer arrests one of the men for assault.

How might this scenario have ended differently? Could the officer have peacefully resolved the dispute without having to return to the scene later or arresting one of the parties? The answers to these questions lie in the concept of mediation.

Whether they realize it or not, many officers already employ some form of mediation. However, formal mediation represents a step-by-step conflict resolution strategy in which the parties fashion their own agreement. The method enjoys popular use as an alternative to litigation (e.g., as a way to divide assets pursuant to a divorce), and if given a chance, mediation can become just as popular in policing.

Why Mediate?

The concept of patrol officers' receiving mediation skills training or undergoing mediator certification training is so new, few empirical studies exist to show its benefits. Some evidence, however, indicates that by using mediation, the police can drastically reduce repeat calls for service. For example, the Hillsboro, Oregon, Police Department has documented a correlation between mediation and a reduction of repeat calls. This finding suggests that mediation represents a substantive, not superficial, treatment of interpersonal disputes, and as such, it can decrease repeat calls for service. The Pittsburgh, Pennsylvania, Police Department has found that training police officers in mediation has proven so helpful that the department has enacted an official policy mandating mediation use for many interpersonal disputes.

Though preferable, officers do not necessarily need to become certified mediators. Mediation training can improve officers' interpersonal skills and show

them how their attitudes and behavior influence the actions of others. As a result, they can better handle disputes and prevent incidents from escalating. In doing so, they avoid injury to themselves and others while increasing citizen satisfaction with the police response. Understandably, satisfied citizens remain less likely to file complaints against the department.

Perhaps mediation achieves its best results in bolstering existing community policing philosophy, programs, and missions. For example, community policing champions citizen empowerment. When patrol officers make mediation available to citizens, they empower them to handle many of their own disputes. In addition, officers who offer mediation services show appropriate deference to the responsibility and freedom that most citizens expect to exercise in their lives.

Moreover, when officers become third-party intermediaries, they appear less as outsiders and more as a part of the communities they serve.

Thus, agencies should view mediation as a requisite component of community policing initiatives because both seek to foster positive police-community relations, empower and show deference to citizens, and reduce confrontations between police officers and citizens.

When to Mediate

Although mediation lends itself to disputes, the skills officers employ—for example, listening, becoming cognizant of body language, and analyzing verbal cues—allow officers to have professional and positive interaction in a variety of incidents. Still, mediation by patrol officers works best for conflicts that are episodic in nature. Disagreements of this type often do not involve a history or ongoing relationship between the parties, who probably will never see each other again. As a result, these incidents prove easier to resolve. Examples include a quarrel between picnickers over who has the right to a particular grassy area in a public park when neither holds a permit, a fight for a parking space, and an argument over the use of a pool table.

At the same time, some disputes remain off-limits to police mediation. Officers should refer to a local mediation center any conflict with a high degree of seriousness, a likelihood of significant financial cost or loss, or likely significant legal (civil law) ramifications. An argument over a 70-year-old family heirloom, for instance, concerns a valuable piece of property. Moreover, what appears to be the issue on the surface (the “manifest” dispute) may cloud the real issue (the underlying, or “latent,” dispute). The fight over a relative’s possession may really involve a debate over “whom mom liked best.” In these cases, officers should control the scene by addressing the manifest dispute, while leaving the latent dispute to other mediation professionals.

How to Mediate

Mediation need not take place in an office. It can occur on a basketball court or in a parking lot. It can be done standing or sitting. The physical venue of the mediation generally does not present an issue as long as the mediator pays attention to the steps for conducting the process. Moreover, mediation that occurs in a location other than an office does not make the process informal; rather, whether the mediator adheres fully or partially to the steps of the mediation process does. Generally, the mediation process includes laying down the ground rules; allowing the parties to tell their side of the

story; recapping the central issues; brainstorming possible solutions; and reaching an agreement. The key to successful mediation, whether formal or informal, lies in allowing the participants to fashion their own agreement.

Whether officers employ formal or informal mediation, or some other conflict resolution methodology, they should document it on their assignment sheets (e.g., run sheets). In addition, officers who refer parties to a mediation center should provide them with referral cards that give the center’s location and describe the services provided. A copy of the card

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should go to a police department employee, who should follow up on all referrals.

How to Make Mediation a Reality

In order for mediation to make a positive difference in a police agency, the chief must issue an official proclamation mandating that patrol officers use mediation on scenes that warrant the methodology. General orders or police policy handbooks should outline when and how officers should employ mediation. Additional support for mediation should come in

the form of rewards. Police departments routinely reward patrol officers for heroism, for example, when an officer captures a bank robber. Likewise, officers who use mediation to defuse and calm situations should receive commendations.

As important, department supervisors and policies must allow patrol officers to spend additional time on scenes where they use mediation. Many times, mediation processes take more time than traditional responses but not always. In fact, many mediations can occur in a short period of time (i.e., within 10 to 15

For Further Reading

- M. Bard, *The Function of the Police in Crisis Intervention and Conflict Management* (Washington, DC: U.S. Department of Justice, 1975).
- M. Bard, *Family Crisis Intervention: From Concept to Implementation* (Washington, DC: U.S. Department of Justice, 1973).
- M. Bard, *Training Police As Specialists in Family Crisis Intervention* (Washington, DC: U.S. Department of Justice, 1970).
- C. Cooper, *Mediation & Arbitration by Patrol Police Officers* (Lanham, MD: University Press of America, Inc., 1999).
- H. Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990).
- R. Louie, "Crisis Intervention: A Police Model for Dispute Settlement," *Journal of California Enforcement* 15, no. 2 (spring 1981): 70-77.
- D.G. Pruitt and J.Z. Rubin, *Social Conflict: Escalation, Stalemate, and Settlement* (New York: Random House, 1986).
- K. Slaikeu, *When Push Comes to Shove: A Practical Guide to Mediating Disputes* (San Francisco: Jossey-Bass, 1996).
- M. Volpe and T. Christian, "Mediation: New Addition to Cop's Toolbox," *Law Enforcement News*, June 15, 1989, 8, 13.
- M. Volpe, "The Police Role," in *Mediation and Criminal Justice: Victims, Offenders, and Community*, ed. M. Wright and B. Galaway (Newbury Park, CA: SAGE, 1989), 229-238.
- P. Williams, "Police and Mediation: Win-Win Partnership," *Oregon Chiefs of Police Magazine*, November 1997, 24-26.

Mediation Basics

- Explain mediation concept to participants
- Introduce parties who do not know one another
- Deliver ground rules (e.g., one person speaks at a time; no profanity allowed)
- Advise of confidentiality (discussion remains confidential; officer may file confidential police report)
- Explain nature of agreement (parties remain bound; legal action may follow breach)
- Discuss alternatives (e.g., arbitration)
- Allow parties to convey their version of the incident
- Give parties chance to rebut
- Ask questions, clarify issues by restating, seek agreement on issues
- Parties brainstorm possible solutions; officer encourages, makes suggestions
- Officer clarifies agreement, seeks verification from parties, may put in writing

Source: Christopher Cooper, J.D., Ph.D., Mediation & Arbitration by Patrol Police Officers (Lanham, MD: University Press of America, Inc., 1999).

minutes). Nevertheless, mediation can extend out-of-service time because the process represents a more substantive handling of incidents. In the long run, mediation can save officers time, especially if it reduces repeat calls for service.

How to Prepare Officers to Mediate

Mediation requires two elements—professional application and scientific, or systematic, application. On one level, professional application means that the officer possesses the requisite education and training to employ such methods as mediation. On another level, it signifies polite, lawful, and objective delivery of the mediation process. Systematic application emphasizes the step-by-step process by which the officer demonstrates analytical ability and learned skills.

Because conceptualization, comprehension, and employment of mediation require that patrol officers have a strong academic base, police agencies would benefit if they underwent a transformation to professionalization prior to providing their officers with mediation training. However, because the professionalization of many police agencies typically occurs piecemeal, incorporation of mediation can happen the same way. Regardless of their level of education, with the right amount of attention and training, officers can learn to employ mediation at

the minimum competency level. Dispute resolution organizations can provide police departments with qualified trainers to teach officers mediation skills or to certify officers as mediators.

Conclusion

Every time they answer a call for service, patrol officers use interpersonal skills. Some incidents, however, require more time and skill than officers have. Training officers to mediate disputes takes time and a commitment to trying unconventional policing practices. But when departments use mediation to resolve conflicts in their communities, they empower residents to take responsibility for their actions and to resolve their own problems, not just in arguments with their neighbors but in other areas of their lives, as well. Thus, when officers take the time to mediate disputes, they help citizens exercise their constitutional rights while freeing themselves to solve other problems instead of answering repeat calls for service. In the end, a little extra attention goes a long way. ♦

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Law Enforcement's Response to Small Aircraft Accidents

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



Headlines such as “Four Found in Plane Wreckage in Arkansas”¹ and “Small Plane Crashes in New Mexico”² often appear in newspapers nationwide and represent just a few of the thousands of small aircraft accidents that face law enforcement today.³ In 1998, the National Transportation Safety Board (NTSB) received 2,120 reports of commuter and private aircraft accidents within

the United States, resulting in 641 fatalities.⁴ Based on an analysis of these 1998 reports, one aircraft accident happened every 4 hours and one aircraft fatality occurred every 13.6 hours.⁵

Much of the public's attention is devoted to such major aircraft accidents as ValuJet's Flight 592, which crashed into the Florida Everglades on May 11, 1996, killing 110 passengers and crew. Two months after

that crash, the country faced another catastrophe—TWA Flight 800, where 212 passengers and 17 crew members died. Fortunately, mass commercial aircraft disasters remain rare, due possibly in part to safety recommendations imposed by the NTSB and the Federal Aviation Administration (FAA) and to the experience and training of commercial aircraft pilots and maintenance staff, as well. Commuter

airlines—those whose aircrafts have 30 or fewer passenger seats—historically have higher accident rates than commercial airlines.⁶ Because of this, law enforcement agencies more frequently respond to regional, commuter, or private aircraft accidents. Due to the rapid growth of air travel, law enforcement administrators should analyze local and national trends of aircraft accidents, establish response procedures, and develop training initiatives for their departments. These actions will enable law enforcement personnel to investigate aircraft accidents more efficiently and professionally.

TRENDS

Law enforcement agencies should remain aware of national aircraft accident trends because local trends often mimic them. By understanding aircraft accident trends, police departments can better determine response and training

needs. Police administrators can focus on two distinct categories of data—regional and seasonal.

Regional

The NTSB compiles statistics on airplane crashes in each of America's 50 states and divides the country into five regions—northeastern, southeastern, midwestern, southwestern, and western. The western region accounted for a significant proportion of aircraft accidents, with Alaska and California making up 53 percent of aircraft accidents in this region in 1998. Also in that year, Texas accounted for 53 percent in the southwest region, Michigan lead the midwest region with 14 percent of total accidents, Florida lead the southeast region with 35 percent of the total accidents, and New York had 23 percent of the total accidents in the northeastern region. Experts attribute various reasons to each of these high rates, such as hazardous

weather conditions, lack of roadways for emergency landings, increased air traffic, and the number of airports in a particular region.

Seasonal

Police departments also should focus on seasonal trends to prepare for such contingencies as weather and amount of daylight, which may impair a response to a small aircraft accident. For example, two men died in a small aircraft accident caused by a severe cold weather storm in San Benito County, California. The California Highway Patrol could not reach the crash site for a week due to high winds and icy weather conditions.⁷

The high accident rates of spring and summer seasons, March 20 through September 22, may reflect the increased air travel during this period. In 1998, 29.2 percent of aircraft accidents occurred in the spring of the year, 34.1 percent in the summer, 20.5 percent in the fall, and 16.2 during the winter season.⁸

RESPONSE

A small aircraft accident can produce a large number of victims and a variety of problems. Therefore, police administrators should integrate response procedures into their departments' crash management programs that provide aid to victims, protect the crash site, and afford mental health services for people involved. Small law enforcement departments, that lack the resources may form multiagency agreements with neighboring departments to facilitate an emergency response to a small aircraft accident. By forming



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mutual-aid agreements, departments can share the cost of training and equipment and also establish strong relationships that may improve other police operations.⁹

The Crash Site

Law enforcement should treat an aircraft crash site similar to a crime scene in order to protect the integrity of the area for NTSB accident investigators. After the search for possible victims, officers should cordon off the area by at least 50 to 65 feet from any aircraft debris and ensure that unauthorized or unnecessary personnel do not enter the site. In order to prevent destruction of possible evidence, law enforcement officers should not move or tamper with the aircraft debris. Further, the department should designate an officer or representative as a liaison or public affairs officer. This individual should have access to information that the press or public may inquire about and, if needed, should establish a command post to disseminate information to other officers, members of the press, and families of the victims. Finally, administrators should remember that although small aircraft accidents typically do not require a sustained police presence, they should plan for officers to remain on the scene for a period of 24 to 72 hours, or enough time for NTSB investigators to conduct an initial investigation and remove the aircraft.

The Victims

Rendering medical assistance should remain the primary duty of any officer responding to an aircraft

Summary of Recommendations

Identify Local Aircraft Accident Trends

- Examine NTSB and department aircraft accident reports
- Focus on where, when, and how accidents occur

Establish Response Procedures/Contingency Plans

- Form multiagency agreements
- Prepare for a sustainment period at the crash site
- Incorporate aircraft accident response into a crash management program

Conduct Training

- Train officers to prioritize/stabilize life threatening injuries
- Understand that realistic training can reduce critical incidence stress
- Invite media to cover training to create public awareness

accident. Of the 378 aircraft accidents that occurred in the United States in 1998, 169 involved multiple fatalities.¹⁰ The number of victims usually outnumbers available police and rescue personnel.¹¹ Because aircraft accident victims often sustain critical injuries, such as leg, upper torso, and head trauma,¹² officers should receive training on how to stabilize life-threatening injuries and prioritize medical treatment based on urgency. First responders should conduct a thorough search for other victims in the area.

The Families and Officers

The NTSB coordinates services to victims' families, particularly regarding the initial notification of the accident, as well as other

services, such as the recovery and identification of victims, disposition of unidentifiable remains, and return of personal belongings.¹³ Police department chaplains can provide death notification, comfort families, and counsel officers.¹⁴ Departments with limited resources also can request assistance from the American Red Cross, which provides care for accident victims and families during times of crisis. Agency representatives should conduct critical incident stress debriefings immediately following an aircraft accident and coordinate with community health service providers to offer mental health counseling for families suffering from depression and emotional trauma. These debriefings provide an atmosphere for open communication and

ensure that officers do not develop long-term problems that may lead to posttraumatic stress disorder. Conducting realistic training in response to small aircraft accidents can reduce psychological and emotional trauma on responding officers.

TRAINING

Training on the basics of responding to an aircraft accident, searching the crash site, and providing preincident stress education should start at the police academy with a 1- or 2-hour block of instruction and continue after an officer joins a department. Seasonal training remains important to take advantage of different weather conditions that may hinder a response to an aircraft accident.

Agencies can use various training methods to prepare for an aircraft accident. For example, once a month, the Fort Campbell, Kentucky military police respond to a simulated in-flight emergency at the

base's airport. When a dispatcher relays the call over the radio for an in-flight emergency, two patrol units and a supervisor go to the aircraft's location. A third unit obtains an aircraft accident kit from police headquarters, before responding to the crash site. Police administrators seeking to develop aircraft accident training should contact airport representatives in their jurisdictions for assistance.

Additionally, departments should consider inviting the media and the public to participate in aircraft accident training. For example, when New York City police, fire department, and emergency medical personnel conduct their annual simulated aircraft disaster at JFK Airport, the media provide coverage of the training, and members of the public, such as the Boy Scouts, role-play as victims.¹⁵ Such training initiatives can promote public awareness, and departments can benefit from the public's increased sense of security and confidence,

knowing that the police can handle an aircraft disaster and other emergencies effectively and professionally.

CONCLUSION

Within the next decade, the number of annual U.S. aircraft passengers may rise to one billion. Federal government agencies have initiated steps to cope with the "inevitable prospect" of additional aircraft accidents.¹⁶ Local and state law enforcement agencies must initiate steps to prepare for the rising rate of air travel provided by commercial airlines and the increase of the number of commuter aircraft flights.

Because responding to even small aircraft accidents can quickly evolve into large operations involving many resources and jurisdictions and an unlimited number of contingencies, law enforcement administrators must plan ahead for such disasters. By analyzing trends and developing response procedures and training initiatives based on those results, administrators will help prepare their departments to better handle aircraft accidents. ♦

Aircraft Accident Kit

A typical aircraft accident kit may consist of the following items:

- medical supplies to stabilize life threatening injuries;
- extra fire extinguishers, capable of extinguishing jet fuel;
- marking tape, which can be used to identify debris and establish a perimeter;
- batteries and high power lighting equipment, used for searches; and
- contact numbers of local airport representatives who can provide possible identification of the aircraft and victims.

Endnotes

¹ Associated Press, *The Washington Post*, January 18, 1999, A1.

² Associated Press, *The Washington Post*, January 21, 1999, A1.

³ For purposes of this article, the term "small aircraft" incorporates both airplane and helicopter designs weighing under 41,000 pounds that fall under the National Transportation Safety Board's (NTSB) investigative authority.

⁴ NTSB, 1998 Aviation Accidents; available from <http://www.nts.gov/aviation/9801.htm>; accessed June 18, 1999.

⁵ According to the Federal Aviation Administration's *Statistical Handbook of Aviation*, Chapter 9, 9.1: "An aircraft accident

is an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, and in which any person suffers a fatal injury or serious injury as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached to the aircraft, or in which the aircraft receives substantial damage"; and "A fatal injury is any injury which results in death within 30 days of the accident."

⁶ NTSB, "We Are All Safer," July 1998, 18.

⁷ P. Warren, "Bodies of 2 Plane Crash Victims Recovered," *Los Angeles Times*, February 22, 1999, A1, 2.

⁸ Data compiled from NTSB aircraft accident reports.

⁹ A. Garber, "Mutual-Aid Agreements Facilitate Emergency Response for Smaller Agencies," *The Police Chief*, March 22, 1997, 33.

¹⁰ Supra note 4.

¹¹ B. Hersche and O. Wenker, "First Aid Station FAS," *The Internet Journal of Disaster Medicine*; available from <http://www.ispub.com/journals/IJDM/Vol11N1/fas.htm>; accessed June 18, 1999.

¹² S. Cullen, "Prevention of Injury in Vehicular Accidents," *Pathology of Violent Injury*, NCJ-55688, 1978.

¹³ Supra note 6, 3.

¹⁴ T. Burke and J. Reynolds, "The Changing Role of Police Chaplains," *The Police Chief*, January 1995, 45-47.

¹⁵ J. Kaplan, "Crash Course," *New York*, August 22, 1994, 32.

¹⁶ Associated Press, "FAA Unveils New Aviation Safety Agenda"; available from http://www.nando.net/newsroom/ntn/politics/041498/politics3_16906_noframes.html; accessed June 18, 1999.

Aircraft accident information can be obtained through:

*National Transportation Safety Board
Public Inquiry Section, RE-51
490 L'Enfant Plaza East S.W.
Washington, D.C. 20594
202-314-6551
Internet site: <http://www.NTSB.GOV>*

Crime Data

Serious Crime Decreased in 1999

According to preliminary Uniform Crime Reporting figures released by the FBI, U.S. law enforcement agencies reported a 10 percent decrease in serious crime during the first 6 months of 1999 compared to the figures reported for the same time period of the previous year.

Serious crime includes both violent and property crimes. From January through June 1999, agencies reported an 8 percent decline in violent crime and a 10 percent drop in property crime. Within the violent crimes, murder registered the greatest decline with a 13 percent drop, followed by robbery with a 10 percent decrease; forcible rape, 8 percent; and aggravated assault, 7 percent. All property crimes also declined for the first 6 months of 1999. Burglary fell 14

percent; motor vehicle theft, 12 percent; and larceny-theft, 8 percent.

Throughout the nation, serious crime dropped. In the West, serious crime decreased 12 percent; in the Midwest, 11 percent; in the Northeast, 10 percent; and in the South, 7 percent.

Serious crime fell in cities of all population groups during the first half of 1999 compared to the first half of 1998. Declines ranged from 11 percent in cities with populations of 25,000 to 99,999 to 6 percent in cities with populations over 1 million. Rural and suburban county law enforcement agencies recorded 11 and 10 percent decreases, respectively.

For the complete preliminary semiannual *Uniform Crime Report*, access the FBI's Internet site at <http://www.fbi.gov>.

Police Practice

Police Eliminating Truancy: A PET Project

By William B. Berger, M.P.A., and Susan Wind

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Even though national statistics have shown an overall decrease in juvenile crime over the past 5 years,¹ many communities would argue differently. In North Miami Beach, for example, an overwhelming number of students spent their days aimlessly hanging out at local businesses, malls, and city streets, creating a heightened perception of crime and, with it, fear in the community. Some of the truants had gang affiliations and did, in fact, engage in criminal behavior.

Agencies in the community debated who should take responsibility for this problem. Some argued that the school remained responsible for its students; others said parents should be held accountable for their children's behavior; still others thought it was a police problem. Instead of joining the debate, the North Miami Beach Police Department took action. Truancy became its PET Project: Police Eliminating Truancy by tackling its underlying causes and, at the same time, reducing the criminal behavior that resulted when juveniles spent their day on the street instead of in the classroom.

The Problem

The North Miami Beach community knew it had a problem with truancy. Residents who completed a survey said that the police department should make controlling juveniles its number one priority. A crime analysis associated truants with criminal "hot spots," areas where a high number of Part I index crimes² took place. But the truancy problem hit close to home when the police chief, on his way to work after a chamber of commerce meeting, spotted a large group of teens in the local video store at 8:30 a.m.

While the fastest, simplest way to get juveniles off the street and back in school might be to merely pick them up and take them, this solution would not address the underlying causes for their behavior, nor would it solve the problem. In fact, in the past, youths taken back to school simply would leave again when they got the chance. So, although officers still pick up truants, what they do with them afterward has changed.

The Truancy Evaluation Center

The PET Project assigns two officers to patrol in community hot spots during regular school hours, from 9 a.m. to 3 p.m. By conducting field interviews, the officers identify truants, defined as juveniles under age 16 with no legitimate reason to be out of school. For example, a school may have different holidays, or a student may have gotten suspended. The officers take truants to the Truancy Evaluation Center (TEC).

Located in an off-campus classroom, TEC shares space with the department's Alternate to Suspension Program (ASP). Like its new counterpart, ASP aims to get juveniles off the street. Its intensive learning environment and disciplined approach have helped a number of students rededicate themselves to school.³ The school teacher, counselor, and police officers who work with ASP students also staff TEC.

When students arrive at the center, the counselor calls the school to verify their status, then contacts their parents. The parents have the option of picking up their children, and sometimes they do. Other parents leave their children at the center, often because they feel they have no control over their children's actions. These kids frequently become chronic truants. Many eventually drop out of school and may become a part of the juvenile justice system.

The counselor administers a survey to the students who stay at TEC. Questions include why they skip school and whether they have committed crimes while out of school. This information not only helps the counselor evaluate the students, but it also helps the department determine the underlying causes of the students' truancy. Together with the demographic information from the PET officer's field interview card, it serves as a record of the students' introduction to TEC and allows the department to track the youths.

After the counselor evaluates the students, one of three things may happen. If students have no history of truancy, PET officers take them back to school. Suspended students take part in ASP, and about 50 percent successfully complete the program and return to school without incident. Students who seem to be making truancy a habit usually meet with their parents and the counselor to discuss possible solutions to their problems. The counselor provides referrals to other social service agencies, and the children participate in ASP classes that include anger management, drug and alcohol awareness, and gang prevention.

Solutions to the Truancy Problem

Some solutions to students' truancy come from the answers to perhaps the most important survey question: "Why were you truant from school?" Twenty percent said they missed the bus. Investigation revealed that many bus drivers would not wait for latecomers, even if they saw the students walking down the street toward the bus stop. The school board stepped in and remedied that problem. An additional 20 percent of truant students had been suspended, so they attended ASP.

Thirty percent said they simply did not like school. These students may become chronic truants. To help these students, the department entered into a partnership with the Miami-Dade State Attorney's Office, whose existing Truancy Intervention Program (TIP) targets chronic truants and holds parents accountable for their children's behavior. The program, which

uses a computerized system to track the youths, combines early intervention with prosecutorial enforcement of Florida's compulsory education laws. According to statistics from the state attorney's previous experience with the program, 75 percent of TIP students need only one meeting to break their cycle of truancy. The rest eventually get expelled.

In the spring of 1999, the department decided to collaborate with the state attorney's office in this successful program. At that time, the program focused on one middle school. Now targeting both middle and high school students, the department assists in the investigative process, picks up truants, and attends weekly meetings with the youths, their parents, and representatives from the school board and the attorney's office. During these meetings, the public

officials essentially lay down the law, reminding students and their parents that in Florida, children have to stay in school until age 16. They also offer the parents assistance in keeping their kids in school, and a counselor follows up. By the end of the school year, 75 percent of the children who had gone through this program did not get picked up again.

Other students have special needs that keep them out of school. One boy told the counselor that he did not like school because the

other children made fun of him when he read. He actually had a learning disability and putting him in a special reading class solved his truancy problem.

Results

From its inception, the PET project has had four goals: 1) to identify the primary reasons why students become truant; 2) to get truants off the streets; 3) to reduce the number of Part I index crimes that truants have committed; and 4) to track chronic truants. The survey each truant completes at TEC helps pinpoint why they skip school and, in the process, may stop them from doing so. Proactive patrol, in conjunction with a PET hotline that allows community residents and business owners to notify police when they see

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Working with parents and other government agencies offers hope to more hard-core truants.

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juveniles who should be in school, gets truants off the street. To date, PET officers have picked up over 400 truants.

In North Miami Beach, Part I crimes—particularly burglary, larceny-theft, and motor vehicle theft, as well as criminal mischief—all have decreased. Specifically, apartment burglaries decreased 13 percent; residential burglaries, 19 percent; vehicle burglaries, 22 percent; motor vehicle theft, 32 percent; grand theft, 13 percent; petit theft, 17 percent; and criminal mischief, 19 percent. Can the department credit the PET Project with these crime reductions? To answer that question, the department's crime analyst carefully tracked and mapped these crimes, many of which occurred during regular school hours. The TEC surveys revealed that 20 percent of students admitted to committing crimes while they were truant, and in fact, a review of previous juvenile arrests associated youths with these property crimes. Moreover, 40 percent of the truants who reside in North Miami Beach have a criminal past of some sort. Of the truants who live within a 45-mile radius of North Miami Beach, 30 percent have a criminal past. Many of these juveniles have committed the crimes that have occurred in North Miami Beach during school

hours. In short, the PET Project has helped decrease crime in the area.

Can chronic truants be saved? By tracking chronic truants and sending letters home, the department puts them and their parents on notice that the police, and in fact the entire community, are watching. This may keep them from progressing to more serious behavior and get them back in school. If not, the database at least allows the department to maintain the records it needs to perform crime analysis, conduct investigations, and implement additional crime prevention strategies.

Conclusion

When children skip school, it quickly becomes a police problem, especially if parents feel helpless to control their kids. In North Miami Beach, truant students roamed the streets, alarming residents. Many committed crimes. Through its Police Eliminating Truancy Project, the department not only gets truants off the street, but it also attempts to destroy the roots of truancy.

The department's Truancy Evaluation Center provides a confidential, supportive environment where counselors try to discover the causes of a

Truancy Evaluation Center Survey Results

- | | |
|---|---|
| 1. Why were you truant from school? | 3. Do your parents know you skip school? |
| 30% – Do not like school | 70% – No |
| 20% – Missed bus | 15% – Yes |
| 20% – Suspended from school | 15% – Don't skip school |
| 15% – Sick | |
| 15% – Other | |
| 2. What do you do when you skip school? | 4. Have you ever committed a crime or gotten into criminal mischief while truant? |
| 40% – Hang out with friends | 70% – No |
| 30% – Stay home | 20% – Yes |
| 10% – Visit boyfriend/girlfriend | 10% – Unknown |
| 10% – Look for a job | |
| 10% – Other | |

student's problems and devise possible solutions. Oftentimes, a simple solution, such as asking bus drivers to wait for late students or placing children in special classes, can get students back into the classroom. Working with parents and other government agencies offers hope to the worst truants. Chronic offenders may need more than this collaborative approach can provide. Unfortunately, for students who feel imprisoned by school, the next step might actually be prison. As the PET Project evolves, it may catch these youths before they go too far. School should help students prepare for rewarding careers, not turn them into career criminals. The PET Project may help them do just that. ♦

Endnotes

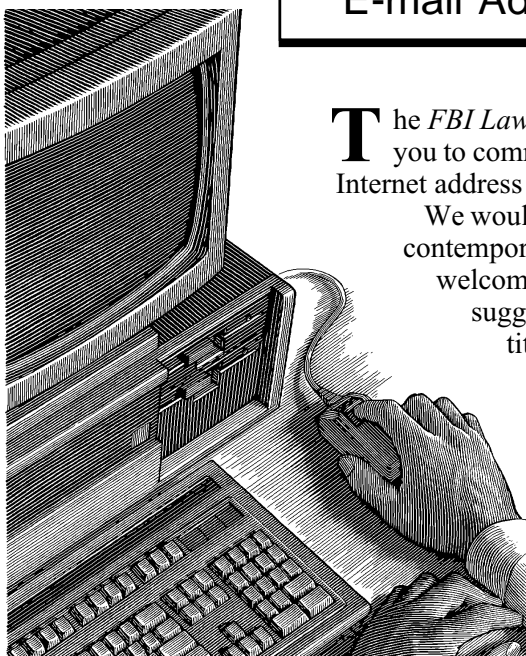
¹ See, e.g., U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 1998* (Washington, DC, 1999).

² Murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson make up the FBI's Uniform Crime Reporting Program's Part I index crimes.

³ ASP generally does not target high school students because in Florida, juveniles 16 years and older are not legally required to stay in school. See William B. Berger and Alan P. Graham, "Suspended Students: A Practical Approach," *FBI Law Enforcement Bulletin*, July 1998, 7-8.

Chief Berger leads the North Miami Beach, Florida, Police Department. The research planner and grant administrator for the North Miami Beach Police Department, Ms. Wind also serves as program director for the PET Project.

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The Financial Crimes Task Force of Southwestern Pennsylvania

By KENNETH W. NEWMAN, M.S., and JOHN A. WISNIEWSKI, M.P.A.

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Today's criminals are more mobile than ever before. Technology allows them to conduct their illicit activities on a global scale. In doing so, they cross multiple jurisdictions. Oftentimes, the law enforcement agencies on the trail of these criminal nomads find out, well into their investigations, that they unknowingly have targeted the same suspects.

To avoid the duplication of effort inherent in multijurisdictional investigations, as well as to share resources and information, many agencies have formed task forces. Whether ad hoc and temporary to serve a particular need or permanent to deal with an ongoing crime

problem, task forces can help law enforcement solve complex cases that span multiple jurisdictions. The Financial Crimes Task Force of Southwestern Pennsylvania does exactly that.

BACKGROUND

Perhaps best known for its steel production, Pittsburgh saw its small-town flavor change with the opening of a new airport in 1992. Serving as the hub for a major airline, the Pittsburgh International Airport gave criminals easy access in and out of town. Before long, it seemed that every financial-crime gang between Los Angeles and Pittsburgh was using the airport as a

transit point. The activities of these out-of-state groups combined with Pittsburgh's homegrown white-collar criminals spurred the creation of the Financial Crimes Task Force of Southwestern Pennsylvania.¹ Comprised of members from a number of federal and local agencies,² the task force investigates a variety of white-collar crimes and takes proactive steps to prevent financial fraud in the southwestern Pennsylvania area.

INVESTIGATIONS

The cases the task force investigates range in size, scope, and sophistication. While some involve one or two suspects who employ

simple schemes, others involve groups of people who use advanced technology to commit their crimes. Some suspects remain local, while others extend their reach to other countries.

Debit Card Fraud

The convenience of debit cards has not been lost on criminals, and debit card fraud has become a growing trend in many U.S. cities. Individuals open bank accounts with fraudulent identification, then deposit counterfeit checks into the accounts. By crediting the accounts before actually verifying the existence of the funds, the banks give criminals immediate access to the money. In Pittsburgh, two Russian nationals from New York City perpetrated such a scheme. After opening fraudulent bank accounts, they deposited counterfeit corporate checks through the banks' automated teller machines (ATMs). Within a few days, they began withdrawing the money and were long gone before the banks realized what had happened. Fortunately, the task force caught the pair.

Another case involved a mid-level manager at a local bank who electronically accessed customers' checking and savings accounts to determine which had high balances. Next, he generated debit cards for these accounts, and via an ATM, he and a coconspirator siphoned out all of the victims' funds. The manager and his cohort have since been convicted in federal court.

Credit Card Fraud

Easily obtainable credit cards tempt consumers and criminals alike. The latter use false identifica-

tion to procure legitimate cards, or they simply steal other people's cards. The task force has thwarted the illicit activities of a number of credit card groups.

In one case, a California resident and his female accomplice obtained over \$120,000 in fraudulent cash advances from financial institutions in the Pittsburgh metropolitan area, then left, abandoning their rental car at the airport. Task force investigators searched the vehicle and seized numerous documents, including the lease for the car. Although the man had used a stolen credit card as identification to obtain the rental car, a latent fingerprint found on the lease and entered into the Western Identification Network eventually identified him and his Los Angeles residence.

About a year later, as the man attempted to make a cash advance on a stolen credit card, an alert bank teller notified her manager.

Although the man had left by the time task force members arrived, the teller identified him from his driver's license photo, which the task force had obtained. Surmising that the man eventually would return to Los Angeles, members of the task force, along with Allegheny County and Pennsylvania State Police officers stationed at the airport, monitored all outgoing direct flights from Pittsburgh to Los Angeles. Two days later, they arrested the man and a male partner as the two attempted to board a nonstop flight from Pittsburgh to Los Angeles. Officers recovered 40 credit cards, 34 counterfeit driver's licenses from various states, and \$63,000 in cash.

Mail Theft

Mail theft investigations keep the task force busy. In one case, volumes of rifled mail began turning up along roadsides in two of



Mr. Newman, deputy chief postal inspector for the U.S. Postal Inspection Service in Washington, DC, initiated the task force.



Inspector Wisniewski, assigned to the Western Allegheny Division of the U.S. Postal Inspection Service in Pittsburgh, supervises the task force.

Pennsylvania's rural counties. The mail was addressed to various residences within the counties. As a result of extensive surveillance, the task force developed several suspects. Obtaining a federal search warrant for one suspect's residence, investigators revealed substantial evidence of mail theft and credit card fraud. The next day, the task force obtained federal arrest warrants for the two main suspects. One subject was arrested after leaving a shopping area in a nearby township; the other fled to New York but eventually turned herself in to the task force. During their crime spree, the subjects had stolen over 2,000 pieces of mail in an effort to find checks, credit cards, and other financial documents. Faced with the evidence against them, they pled guilty in federal court.

Counterfeit Identification and Checks

White-collar criminals often use today's technology to further their schemes. In one case, an employee of a local business photocopied personal checks customers had written to make purchases. He then provided the copies to other group members, who produced counterfeit identification to correspond with the legitimate bank information obtained from the stolen checks. Members of the group then forged and cashed at local banks blank checks that they either had stolen from the mail, taken during burglaries, or purchased on the street. To date, nine individuals have been charged in state court under Pennsylvania's equivalent of the federal Racketeer

Influenced and Corrupt Organizations Statute.

In a similar case, a group of people from New York City stole business checks, scanned them, then replaced them to avoid suspicion. They then were able to make new, fraudulent checks, which they used, along with counterfeit identification, to open bank accounts. They would deposit the counterfeit checks, then withdraw the funds before the banks discovered the fraud. The task force has charged 24 people in this scam, which so far has cost local banks more than half a million dollars.

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...the task force investigates a variety of white-collar crimes and takes proactive steps to prevent financial fraud in the western Pennsylvania area.

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International Investigations

The new airport in Pittsburgh opened the area to international fraud cases. An employee of an air cargo company observed two men mailing large stereo systems to Laredo, Texas. Thinking they might be shipping drugs, the employee watched the pair closely and noticed that they carried a stack of credit cards 2 inches thick and that their vehicle contained hundreds of pairs of brand-new athletic shoes. He

recorded their license plate number and called the Allegheny County Police, who notified the task force.

Because the shoes had come from a nearby outlet mall, the task force asked the Pennsylvania State Police to watch for the suspects there. The hunch proved correct, and a short time later, the men arrived. They purchased large amounts of merchandise using credit cards issued under 10 different names. When state police officers and task force agents arrested them for the fraudulent use of counterfeit credit cards, the men had a number of counterfeit credit cards and counterfeit Mexican driver's licenses.

The following day, the task force obtained a federal search warrant for the subjects' vehicle. It contained more counterfeit credit cards and driver's licenses, a laminator, and a large volume of fraudulently obtained merchandise. Further investigation determined that the suspects had been shipping items from various locations throughout the United States after shopping at outlet malls using counterfeit credit cards. For almost a year, banks in Mexico had fallen prey to the subjects' scam, incurring losses in excess of \$5 million. In the United States, the suspects had made purchases in Atlanta, Boston, Washington, DC, and other cities.

The task force also became involved in a credit card "skimming" case that reached as far as Hong Kong. Patrons of a popular Pittsburgh restaurant began receiving credit card statements that indicated they had made significant purchases in Japan. Task force investigators soon determined that the restaurant

served as the source of the compromise. Working with Pittsburgh area banks and credit card companies, the task force identified two additional restaurants as locations for skimming activity.

Investigation determined that more than 100 fraudulent transactions had occurred in Tokyo, San Francisco, and San José after customers used their credit cards at Pittsburgh-area restaurants. The owner-manager of one of the restaurants and one employee from each of the other two restaurants used a magnetic strip reader to extract and store the information contained on the credit cards customers had used to pay for their meals. The employees then sent the reader on to San Francisco, where the information was downloaded and forwarded to Hong Kong, where the subjects produced counterfeit credit cards. Four subjects were indicted in Pittsburgh for their part in this scheme.

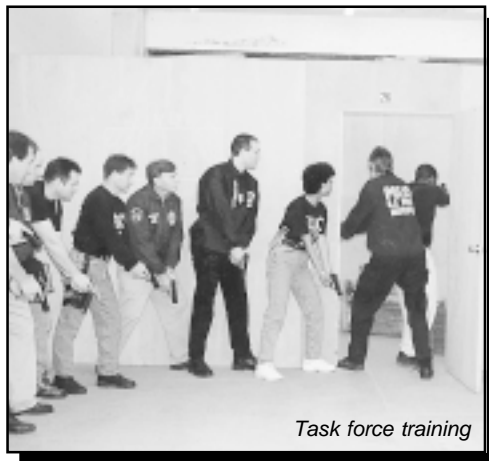
PROACTIVE STRATEGIES

Although investigations form the foundation of the task force's work, group members play active roles in preventing white-collar criminals from plying their trade. To that end, the task force regularly shares information with area business and law enforcement professionals.

The task force's semiannual "Financial Crimes Newsletter" provides information on the latest financial frauds to over 300 law enforcement agencies in the greater Pittsburgh area. The newsletter also identifies Pittsburgh's Most

Wanted and recognizes the Task Force Honor Roll, area law enforcement personnel who have assisted the task force with cases.

Membership in the International Association of Financial Crime Investigators gives task force members access to a computer



network of financial crimes and criminals, and the association's fax alert relays critical information on ongoing scams. Task force members also join local law enforcement officers and bank representatives to share information at the association's monthly meetings.

Additional information-sharing opportunities arise four times a year, when the U.S. Postal Inspection Service sponsors a national meeting of representatives from all major credit card companies. A task force member regularly attends these meetings.

EQUIPMENT AND SERVICES

On a daily basis, the task force receives numerous referrals from area police departments, banking

establishments, credit card issuers, and fraud victims. To capture and track this influx of information, the task force designed and established a computerized database at its headquarters at the U.S. Postal Inspection Service's Pittsburgh office. Postal Inspection Service technicians input, on a daily basis, a steady flow of intelligence, including suspect information and known fraud addresses. The system includes a digital mugshot file that can automatically match known suspects with their photographs.

At the task force's headquarters, each member has ample office space, which includes a laptop computer, voice mail, and dictation equipment. Postal Inspection Service technicians type all task force reports and correspondence to allow investigators the time to devote to their cases. The Postal Inspection Service also provides task force members with portable radios and raid shirts. Each member agency contributes vehicles and technical equipment. The Postal Inspection Service's and U.S. Secret Service's crime laboratories provide analysis of the evidence collected in each case.

TRAINING

Because of the high number of arrests the task force makes, all members receive warrant service training monthly, using the Postal Inspection Service's building-entry facility. An interactive firearms training system helps members maintain their firearms proficiency.

CONCLUSION

To face the challenges of the future, law enforcement agencies must cooperate and pool their resources. The Financial Crimes Task Force of Southwestern Pennsylvania consistently demonstrates the effective use of time, money, material, and human resources in a combined effort to attack the growing problem of financial crime. Intelligence from various law enforcement agencies and private financial institutions has streamlined the investigative process. The combined investigative skills of the task force members have yielded a number of

creative approaches to the investigation of major conspiracies that impact large numbers of individuals and corporations, not only in southwestern Pennsylvania but also throughout the country.

While no single law enforcement agency has the resources or expertise to address the myriad financial crimes that occur every day in a large city, the collaborative effort that a task force provides can. The Financial Crimes Task Force of Southwestern Pennsylvania can serve as a model for other metropolitan areas as they strive to combat white-collar crime. ♦

Endnotes

¹ Originally dubbed the Pittsburgh Credit Card Fraud Task Force and later the Pittsburgh Financial Crimes Task Force, the task force's new name reflects the growth of financial crime in the southwestern Pennsylvania area.

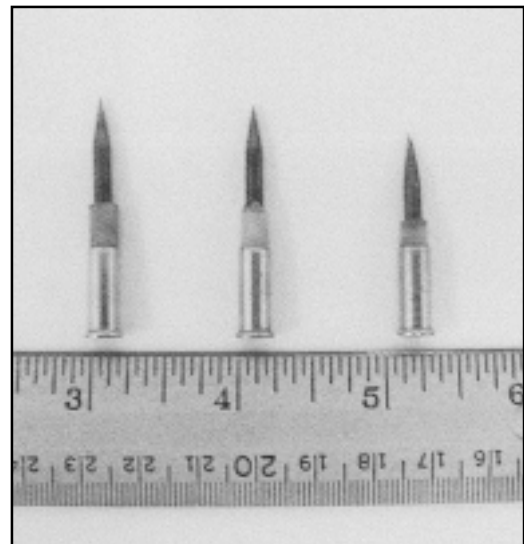
² The following agencies participate in the task force: the FBI, the U.S. Secret Service, the U.S. Postal Inspection Service, the U.S. Attorney's Office for the Western District of Pennsylvania, the Pennsylvania State Police, the Westmoreland County District Attorney's Office and its Detective Unit, the Allegheny County District Attorney's Office and its White-collar Crimes Unit, the Allegheny County Police, the City of Pittsburgh Police, and the City of Greensburg Police Department. All local, county, and state officers have been deputized as special deputy U.S. marshals.

Bulletin Alert

Steel Dart Ammunition Cartridges

The Ottawa, Kansas, Police Department seized several modified 22LR ammunition cartridges that did not have the lead projectile in place. A steel dart inside a plastic sleeve was inserted instead. All normal powder from the 22 round and primer were still intact. These darts easily penetrated a standard level II bullet-resistant vest. The pointed steel dart went through the vest and approximately 1 inch further into a 2- by 4-inch wooden board behind the vest. The accuracy between rounds varied greatly. Although these rounds do not function in all firearms because of the length of the overall modified shell, they still pose a serious threat to law enforcement officers.

Submitted by the Ottawa, Kansas, Police Department.



Electronic Surveillance

A Matter of Necessity

By THOMAS D. COLBRIDGE, J.D.

Criminal investigations are becoming increasingly more difficult as criminal targets become even more sophisticated. The challenge for criminal investigators is to keep pace by using increasingly sophisticated investigative techniques. One extremely successful technique has been electronic surveillance, both silent video surveillance and interception of wire, oral, or electronic communications. No jury can ignore watching defendants commit crimes before their very eyes or hearing the defendants talk about their crimes in their own voices. This article focuses on investigators' obligation to demonstrate the necessity for electronic surveillance before the court will authorize its use.

HISTORY

Electronic surveillance is not a new technique. As long ago as 1928, the U.S. Supreme Court wrestled with the constitutional implications of governmental recording of telephone calls. The Court decided in the case of *Olmstead v. United States*¹ that tapping a telephone line from outside a residence was not a search under the Fourth Amendment.² The Court reasoned that the government, by tapping the telephone line outside the residence, had not invaded any constitutionally protected area ("persons, houses, papers, and effects..."). In addition, the government had seized mere



telephone conversations, instead of tangible objects ("the persons or things to be seized") described in the Fourth Amendment.³

In 1934, perhaps partially in response to the *Olmstead* case, Congress passed the Communications Act of 1934.⁴ That Act prohibited the unauthorized recording of telephone calls but only if the contents of the recording were disseminated. Consequently, the government could tap telephones as long as it

did not reveal the content of the recorded conversations without authorization.

The U.S. Supreme Court completely altered the legal landscape surrounding electronic surveillance with two decisions in 1967. In *Katz v. United States*,⁵ the Court redefined a search under the Fourth Amendment. The Court decided that a Fourth Amendment search occurs anytime the government infringes a person's reasonable



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

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expectation of privacy. Under this new definition, the government does not have to invade a constitutionally protected area for a search to occur. The Fourth Amendment now protects people, not places—the government may not unreasonably invade a person's privacy anywhere, in public or private, as long as the person's expectation of privacy in that activity or place is objectively reasonable.⁶ In *Berger v. New York*,⁷ the Supreme Court, while reviewing the New York state wiretapping law, clearly held that any form of electronic surveillance that infringes this reasonable expectation of privacy is a Fourth Amendment search. The Court also established the constitutional standards for obtaining authority to wiretap.

In 1968, Congress codified the requirements for obtaining court authority to intercept oral and wire communications in Title III of the Omnibus Crime Control and Safe Streets Act (Title III).⁸ This Act subsequently was amended in 1986

to include the interception of electronic communications among its prohibitions⁹ and, in 1994, by the Communications Assistance for Law Enforcement Act (CALEA).¹⁰ Most states have enacted electronic surveillance statutes patterned after the federal model.¹¹

There is no federal legislation concerning judicial authorization of silent video surveillance.¹² The federal courts have decided that Title III—governing the interception of oral, wire, and electronic communications—neither prohibits nor authorizes the practice.¹³ Instead, federal courts have the authority to issue silent video surveillance warrants under Rule 41 of the Federal Rules of Criminal Procedure.¹⁴

IS A WARRANT NECESSARY?

If a government action in no way infringes upon a reasonable expectation of privacy, it is not a search under the Fourth Amendment.¹⁵ In that case, officers are not governed by the Constitution's

warrant requirement. Consequently, court authority for electronic surveillance is not required by the Fourth Amendment where there is no reasonable expectation of privacy.

For example, no warrant is required on the federal level to videotape activity in an open field,¹⁶ or other public places.¹⁷ It also is not a violation of either Title III or the Fourth Amendment to tape record a defendant's prearrest conversation in the backseat of a police car,¹⁸ or outgoing telephone calls from a prison that already are routinely recorded.¹⁹

Similarly, the federal courts have ruled that there is no expectation of privacy in a conversation or activity when one party to the conversation or activity consents to government monitoring.²⁰ Such conversations have been specifically exempted from Title III coverage²¹ and from the Fourth Amendment's warrant requirement for silent videotaping.²²

THE WARRANT REQUIREMENT

The courts and Congress have long considered any form of electronic surveillance extremely invasive. As the Supreme Court noted in the *Berger* case: “[I]t is not asking too much that officers be required to comply with the basic command of the Fourth Amendment before the innermost secrets of one's home or office are invaded. Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices.”²³ Because of this view, the prerequisites for obtaining a warrant authorizing electronic surveillance of oral, wire, and

electronic communications, as well as silent video, are quite strict.²⁴ Officers must comply with the Fourth Amendment requirements of probable cause²⁵ and particularity.²⁶ In addition, Title III requires that officers seek prior authorization from a particular government official;²⁷ identify previous electronic surveillance applications regarding the same people, facilities, or places;²⁸ confine their surveillance to only relevant conversations or activities (the “minimization requirement”);²⁹ specify the length of time the technique will be used;³⁰ and certify that normal investigative techniques have been tried and failed, are reasonably unlikely to succeed, or too dangerous to attempt.³¹ It is this last requirement, the exhaustion of normal investigative techniques, that is the focus of the remainder of this article.

A Matter of Necessity

The courts and Congress view electronic surveillance as extremely invasive. With more traditional investigative techniques, the person targeted knows what the police are doing. Individuals interviewed about criminal activity clearly know they are suspected. If the police search a person’s home under the authority of a search warrant, the homeowner is present at the time of the search or learns of the search soon after when a copy of the warrant is found on the premises. Even if the police use an informant or undercover officer to speak to the subject about criminal activity, the subject makes a choice to divulge information and assumes the risk that the information will be given to the police.

The same is not true with electronic surveillance. The subjects are unaware that their words or actions are being recorded by the government until much later. And in some cases, the words and actions recorded were never even exposed to another, so the subject cannot be said to have accepted any risk. Because of this extraordinary invasiveness, electronic surveillance should be authorized only when necessary.³² In the words of the Supreme Court, electronic surveillance should not be “resorted to in situations where traditional investigative procedures would suffice to expose the crime.”³³

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The “Exhaustion” Statement

Title III requires that the application for an electronic surveillance order include “a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous....”³⁴ In addition, the surveillance order may be issued only if the reviewing judge makes a specific finding to

that effect.³⁵ While there is no corresponding statutory obligation on the federal level, federal courts have imposed the same requirement on officers seeking authority to surveil an area by means of silent video.³⁶

This requirement is commonly known as the “exhaustion” statement. It is an unfortunate description because it implies that law enforcement must exhaust all other standard investigative techniques before resorting to electronic surveillance. Nothing could be farther from the truth. The statutory language of this necessity requirement is disjunctive and actually permits the government to establish the necessity for the electronic surveillance in three different ways. Necessity can be shown by demonstrating that:

- 1) standard techniques have been tried and failed;
- 2) standard investigative techniques are reasonably likely to fail; or
- 3) standard investigative techniques are too dangerous to try.³⁷

Necessity Requirement Defined

The courts have recognized that the necessity requirement must be evaluated in a “practical and commonsense” way.³⁸ This approach requires that the reviewing judge consider all of the unique facts and circumstances of each case when deciding if electronic surveillance is necessary. Consequently, even if the government’s application is inartfully drawn, the government still may argue that the facts presented in the

application are sufficient for the reviewing judge to conclude from commonsense that electronic surveillance is necessary. As the U.S. Court of Appeals for the Tenth Circuit has noted: “[T]he government’s failure to explain its failure to utilize one or more specified categories of normal investigative techniques will not be fatal to its wiretap application if it is clear, under the government’s recitation of the facts of the case, that requiring the government to attempt the unexhausted and unexplained normal investigative techniques would be unreasonable.”³⁹

Mere conclusions, allegations, and boiler-plate language will not satisfy the necessity requirement. The application for the electronic surveillance order specifically must explain why, in the particular case at hand, ordinary investigative techniques have not worked or would fail or be too dangerous.⁴⁰

For example, the following statement was found to be conclusory: “Search warrants would not produce the full scope of the scheme or the identity of his many associates.”⁴¹ That statement, standing alone, offers the reviewing judge no explanation of why search warrants would be futile in this particular case. The officer making that statement might have had years of investigative experience that led him to that conclusion. The court may certainly consider that experience in making its evaluation of necessity. However, because there was no attempt to demonstrate why that conclusion was relevant in this particular case, the court was unpersuaded.

GENERAL INVESTIGATIVE TECHNIQUES

Title III requires that applicants for an order authorizing surveillance of oral, wire, or electronic communications explain in their applications what other investigative techniques have been tried and failed. If these techniques have not been tried, applicants must show why it would be futile or too dangerous to do so.⁴² A similar requirement has been attached to applications for authority to use silent

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...the electronic surveillance order specifically must explain why... ordinary investigative techniques have not worked, or would fail or be too dangerous.

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video surveillance.⁴³ What standard investigative techniques must officers consider? What circumstances will make these techniques futile or too dangerous?

A court’s view of what techniques are reasonable or futile or too dangerous will be colored by the investigator’s explanation of the goals of the investigation. For example, the use of undercover officers may be sufficient and reasonable to reveal the activities of a street-level narcotics dealer. However, if the goal of the investigation

is to identify the dealer’s associates and suppliers, undercover officers alone may not be sufficient. The broader the goals of the investigation, the greater the need for sophisticated investigative techniques. Investigators should ensure that the court knows what those goals are.

There may be circumstances in which officers need not consider any other techniques at all. If investigators can explain why other standard investigative techniques are either reasonably likely to fail or too dangerous, they have met their burden.⁴⁴ Consider the one-person counterfeiting operation. A single individual with no criminal history manufactures counterfeit bills in a small room. The subject then personally takes the bills and deposits them in unsophisticated off-shore banks where the bills are not inspected closely. In such a situation, standard techniques are likely to fail. Perhaps the only successful technique would be the installation of video cameras in the subject’s workshop.

What if investigators have tried standard investigative techniques and gotten some favorable results? That does not preclude the possibility of court-authorized electronic surveillance. For example, in *United States v. Maxwell*,⁴⁵ officers received useful information from a cooperating defendant, surveillance of individuals identified by the cooperating defendant, and pen registers. The court still found that electronic surveillance was necessary because the officers had not been able to determine the full scope of the suspected conspiracy or develop

enough evidence for a successful prosecution.

It is clear that the government need not exhaust, consider, or explain away all other conceivable investigative techniques before resorting to electronic surveillance. The requirement is designed to ensure that electronic surveillance is not used as a first resort when other standard, less intrusive investigative techniques would expose the crime.⁴⁶

It may be harder for the government to show the necessity for electronic surveillance in areas such as the home where people have a higher expectation of privacy. For example, the U.S. Court of Appeals for the Tenth Circuit has said: "Our holding is narrowly limited to business premises. We leave for another day the details of the higher showing [of necessity] that would *a fortiori* be required to justify video surveillance of the central bastion of privacy—the home."⁴⁷

SPECIFIC INVESTIGATIVE TECHNIQUES

What other standard investigative techniques should investigators consider? The answer, of course, depends upon the unique circumstances of each investigation. Reasonable techniques in one investigation may not be reasonable in another.

However, the legislative history of Title III and the federal case law provide clear guidance regarding what Congress and the courts consider reasonable techniques. In the legislative history of Title III, Congress identified four techniques that investigators should consider:

- 1) standard visual and aural surveillance;
- 2) questioning and interrogation of witnesses or participants (including the use of grand juries and the grant of immunity if necessary);
- 3) the use of search warrants; and
- 4) the infiltration of criminal groups by undercover agents or informants.⁴⁸

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Some courts have added two other techniques, the pen register and the trap and trace.⁴⁹

Because Congress considered these techniques standard and reasonable, investigators seeking court authorization for electronic surveillance should discuss their failure, futility, or danger when applying for that authorization. That discussion must be in terms of the investigation at hand, not in terms of investigations in general. Courts have recognized many circumstances in which these standard techniques would be futile or too dangerous. A

discussion of some of these circumstances demonstrates the common-sense approach taken by courts in judging the necessity requirement.

Interrogation

The technique of using standard interviews has obvious drawbacks. Such overt investigation would alert the targets to the investigation.⁵⁰ Interviewees would likely fear reprisals if it became known they had talked to law enforcement.⁵¹ No one person is likely to know the full extent of the criminal enterprise.⁵²

All of the same drawbacks apply to using the grand jury. In addition, because a grand jury witness may be granted immunity to testify early in the investigation, top-echelon leaders could get immunity before the full extent of the enterprise and its leadership is known.⁵³

Search Warrants

The problems of executing search warrants during an investigation also are obvious. Targets are alerted so they can take defensive measures or flee.⁵⁴ Records located in one location are unlikely to give investigators a true picture of the entire scope of the criminal enterprise.⁵⁵ A search could be futile where the criminal business is done on the telephone⁵⁶ or any records discovered are in a code unknown to investigators.⁵⁷

Standard Physical Surveillance

Obviously, the physical location and design of the area to be surveilled are factors the courts must consider. A home in a quiet residential⁵⁸ or rural⁵⁹ setting would pose

problems for surveillance teams. A home surrounded by high walls may be impossible to watch.⁶⁰ The target may have detected surveillance in the past⁶¹ or be known to practice countersurveillance measures.⁶² The number of vehicles available to the surveillance target is also a consideration.⁶³ It also could be impractical and futile to attempt surveillance because the targets are active 24 hours a day.⁶⁴ Finally, even if the target successfully is followed, it does not give investigators any information regarding meetings to which the target may have traveled.⁶⁵

Informants and Undercover Officers

Investigators also should consider these techniques prior to applying for court authorized electronic surveillance. Courts have recognized, however, that these techniques at times may be futile or too dangerous.

Informants themselves may pose problems. They may refuse to testify against the defendant.⁶⁶ They may have extensive criminal histories making them subject to impeachment.⁶⁷ Informants may not have access to crucial meetings where criminality is discussed⁶⁸ or may not be able to know the entire scope of the criminal enterprise.⁶⁹

The unique facts of the case may make the use of informants impractical. For example, in *United States v. Oriakhi*,⁷⁰ the target was a new immigrant to the United States who knew very few people in the area and spoke a foreign language. Using informants or undercover operatives in this situation would have been problematic at best.

It simply may be too dangerous to insert an informant or undercover officer. The members of the criminal enterprise may have an extremely close relationship in a very closed community. A stranger certainly would arouse suspicions.⁷¹ The target's previous violent response to attempts at infiltration may preclude the possibility of using informants or undercover officers.⁷² The target may be too crafty or wary to make attempts to infiltrate the organization safe.⁷³

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Pen Register and Trap and Trace

Some courts have added the pen register and the trap and trace to the list of standard investigative techniques. The pen register is a device that records numbers dialed *from* a telephone. The trap and trace is a device that records numbers dialed *to* a telephone and provides the name of the subscriber to the instrument making the call. They are usually used in tandem. A simplified court order is required to install the devices.⁷⁴

While the devices provide excellent information on possible associates of the owner of the telephone they monitor, courts have

recognized their limitations. The devices cannot specifically identify the caller, only the instruments from which the call is made.⁷⁵ The devices also cannot reveal the nature of the conversation.⁷⁶ Consequently, even if extensive associational information is developed through the use of the devices, more specific proof of criminal activity will be needed to successfully prosecute a criminal case.

Of course, this discussion does not encompass the whole spectrum of investigative techniques available to the criminal investigator, merely those typically identified in the case law as being standard, reasonable techniques. The applicant for the electronic surveillance order should discuss any and all other techniques used and explain their failure to produce a prosecutable case.

CONCLUSION

One of the most powerful investigative tools available to law enforcement is electronic surveillance of wire, oral, and electronic communications, as well as silent video surveillance of areas. While powerful, these techniques are also extremely invasive. Consequently, the federal Congress and courts, and state legislatures and courts, have sought to limit the use of electronic surveillance to only those times when its use is necessary.

The necessity requirement may be satisfied if the standard techniques have been tried and failed or if investigators can explain why each technique would be futile in their particular investigations, why the technique is simply too dangerous to undertake in a particular circumstance.

Electronic surveillance is a Fourth Amendment search when it is used by the government in a manner that infringes a reasonable expectation of privacy. Reasonableness is the standard that should motivate both the investigator and the court. If investigators can reasonably explain the necessity for electronic surveillance, the court will use its reason and commonsense to evaluate their judgment. ♦

Endnotes

- ¹ 277 U.S. 438 (1928).
² U.S. Constitution Amendment IV reads: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrant shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."
³ *Supra* note 1 at 464.
⁴ 47 U.S.C. § 151, *et. sec.*, June 19, 1934, c. 652, 48 Stat. 1105.
⁵ 389 U.S. 347 (1967).
⁶ *Id.* at 361 (Harlan, J. concurring).
⁷ 388 U.S. 41 (1967).
⁸ S. Rep. No. 1097, 90th Cong., 2d Session; Title 18 U.S.C. § 2510-2520.
⁹ Electronic Communications Privacy Act of 1986 (ECPA), S. Rep. No. 541, 99th Cong., 2nd Session.
¹⁰ S. Rep. No. 402, 103rd Cong., 2d Session.
¹¹ The Federal legislation regarding electronic surveillance has preempted state legislation on the subject: *see, e.g., United States v. Feiste*, 792 F.Supp. 1153, *aff'd* 961 F.2d 1349 (1991). Consequently, state laws governing electronic surveillance must meet at least the minimum requirements for authorization in the federal statute. However, local officers should consult with their legal advisors to determine if state requirements are stricter than federal standards.
¹² Local officers should consult their legal advisors to determine if their local jurisdictions have adopted legislation regarding video surveillance.
¹³ *United States v. Williams*, 124 F.3d 411 (3rd Cir. 1997).
¹⁴ *United States v. New York Telephone*, 434 U.S. 159 (1977); *United States v. Mesa-Rincon*,

- 911 F.2d 1433 (10th Cir. 1990); *United States v. Falls*, 34 F.3d 6741 (8th Cir. 1994).
¹⁵ *Katz v. United States*, *supra* note 5.
¹⁶ *Oliver v. United States*, 466 U.S. 170 (1984); *United States v. Harvey*, 117 F.3d 1044 (7th Cir. 1997) (silent videotaping of activity in a marijuana plot in a national forest permissible).
¹⁷ *United States v. Taketa*, 923 F.2d 665 (9th Cir. 1991). Officers should be alert, however, to the possible need to secure a warrant to install the monitoring equipment, if the installation is to be made in an area where there is an expectation of privacy.
¹⁸ *United States v. McKinnon*, 985 F.2d 525 (11th Cir. 1993) *cert. denied*, 114 S. Ct. 130.



- ¹⁹ *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996), *cert. denied*, 117 S. Ct. 276.
²⁰ *Manetta v. Macomb County Enforcement Team*, 141 F.3d 270 (6th Cir. 1998); *United States v. Gibson*, 170 F.3d 673 (7th Cir. 1999).
²¹ Title 18 U.S.C. § 2511 (2)(c). Local officers should consult their legal advisors regarding consent exemptions under their state laws.
²² *United States v. Tangeman*, 30 F.3d 950 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 532; *United States v. McKneely*, 69 F.3d 1067 (10th Cir. 1995); *United States v. Gibson*, 170 F.3d 673 (7th Cir. 1999).
²³ *Supra* note 7 at 64.
²⁴ Federal courts have held the prerequisites for obtaining a warrant for silent video surveillance are the same as those established in Title III for a warrant authorizing the interception of wire or electronic communications: *see e.g. United States v. Koyomejian*, 970 F.2d 536, (9th Cir. 1992) opinion corrected, *cert. denied*, 113

- S. Ct. 617. Local officers are again urged to consult with their legal advisors to determine if their state standards are more strict.
²⁵ Title 18 U.S.C. § 2518 1(b) and 3(a) and (b). Generally, courts have required that the government establish probable cause to believe a crime has been, is being, or is about to be committed; that the target of the investigation will use the instrument monitored or the area surveilled in furtherance of the crime; and that communications or activities regarding the crime will be captured. *United States v. Meling*, 47 F.3d 1546 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 130.
²⁶ Title 18 U.S.C. § 2518 (1)(b)(i-iv). The officer is required to particularly describe the offense being investigated; the nature and location of the instrument to be tapped or the place to be surveilled; the types of communications or activities sought to be intercepted or recorded; and the people, if known, whose communications or activities will be intercepted or surveilled. These requirements form the basis for what is typically known as "minimization," the procedure whereby the government seeks to limit its monitoring or recording only to relevant communications or activities.
²⁷ Title 18 U.S.C. § 2516.
²⁸ Title 18 U.S.C. § 2518 (1)(e).
²⁹ Title 18 U.S.C. § 2518 (5).
³⁰ Title 18 U.S.C. § 2518 (1)(d), (4)(e), and (5). Generally, authorization may be given only for the length of time necessary to accomplish the objective of the request but in no event longer than 30 days.
³¹ Title 18 U.S.C. § 2518 (1)(c) and (3)(c).
³² Title 18 U.S.C. § 2518 (1)(c) and (3)(c); *United States v. Castillo-Garcia*, 117 F.3d 1179 (10th Cir. 1997), *cert. denied*, *United States v. Armendariz-Amaya*, 118 S. Ct. 395.
³³ *United States v. Kahn*, 415 U.S. 143, 153 n.12 (1974).
³⁴ Title 18 U.S.C. § 2518 (1)(c).
³⁵ Title 18 U.S.C. § 2518 (3)(c).
³⁶ *United States v. Falls*, 34 F.3d 674 (8th Cir. 1994); *United States v. Mesa-Rincon*, *supra* note 14.
³⁷ *United States v. Smith*, 31 F.3d 1294 (4th Cir. 1994), *cert. denied* 115 S. Ct. 1170.
³⁸ *United States v. McGlory*, 968 F.2d 309 (3rd Cir. 1992), *cert. denied*, *Cotton v. United States*, 113 S. Ct. 415; *United States v. Castillo-Garcia*, *supra* note 32.
³⁹ *United States v. Castillo-Garcia*, *supra* note 32 at 1188; *United States v. Mesa-Rincon*, *supra* note 14.
⁴⁰ *United States v. Commito*, 918 F.2d 95 (9th Cir. 1990).

⁴¹ *Id.*
⁴² *Supra* note 31.
⁴³ *Supra* note 36.
⁴⁴ *United States v. Castillo-Garcia, supra* note 32 at 1187.
⁴⁵ 25 F.3d 1389, (8th Cir. 1994), *cert. denied*, 115 S. Ct. 610.
⁴⁶ *United States v. Edwards*, 69 F.3d 419, 429 (10th Cir. 1995), *cert. denied*, 116 S. Ct. 2497 (1996); *United States v. Johnson*, 645 F.2d 865, 867 (10th Cir. 1981), *cert. denied*, 454 U.S. 866.
⁴⁷ *United States v. Mesa-Rincon, supra* note 14 at 1445. See also *United States v. Torres*, 751 F.2d 875 (7th Cir. 1984) *cert. denied*, 470 U.S. 1087 (1985).
⁴⁸ Senate and House Report of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, S. Rep. No. 90-1097, at 79 (1968).
⁴⁹ See, e.g., *United States v. Castillo-Garcia, supra* note 32 at 1187-1188.
⁵⁰ *United States v. Smith*, 31 F.3d 1294 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 1170.
⁵¹ *United States v. Milton*, 153 F.3d 891 (8th Cir. 1998).
⁵² *United States v. Adams*, 125 F.3d 586 (7th Cir. 1997).

⁵³ *United States v. Castillo-Garcia, supra* note 32.
⁵⁴ *United States v. Killingsworth*, 117 F.3d 1159 (10th Cir. 1997), *cert. denied*, 118 S. Ct. 393.
⁵⁵ *United States v. Leavis*, 853 F.2d 215 (4th Cir. 1988).
⁵⁶ *United States v. Smith, supra* note 50.
⁵⁷ *Id.*
⁵⁸ *United States v. Castillo-Garcia, supra* note 32.
⁵⁹ *United States v. Wagner*, 989 F.2d 69 (2nd Cir. 1992).
⁶⁰ *United States v. Caranza*, 921 F.2d 1557 (11th Cir. 1991), *cert. denied, Plasencia v. United States*, 112 S. Ct. 191.
⁶¹ *United States v. Castillo-Garcia, supra* note 32.
⁶² *United States v. Green*, 40 F.3d 1167 (11th Cir. 1994), *cert. denied*, 115 S. Ct. 1809.
⁶³ *United States v. Castillo-Garcia, supra* note 32.
⁶⁴ *Id.*
⁶⁵ *United States v. Collins*, 972 F.2d 1385 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1812.
⁶⁶ *United States v. London*, 66 F.3d 1227 (1st Cir. 1995), *cert. denied*, 116 S. Ct. 1542.

⁶⁷ *United States v. Kelly*, 140 F.3d 596 (5th Cir. 1998).
⁶⁸ *United States v. Collins, supra* note 57.
⁶⁹ *United States v. Castillo-Garcia, supra* note 32.
⁷⁰ 57 F.3d 1290 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 400.
⁷¹ *United States v. Phillips*, 959 F.2d 1187 (3rd Cir. 1992), *cert. denied*, 113 S. Ct. 497.
⁷² *United States v. Smith, supra* note 50;
United States v. Miller, 116 F.3d 641 (2nd Cir. 1997), *cert. denied*, 118 S. Ct. 2063.
⁷³ *United States v. Ashley*, 876 F.2d 1069 (1st Cir. 1989).
⁷⁴ Title 18 U.S.C. § 3121, *et. seq.*
⁷⁵ *United States v. Castillo-Garcia, supra* note 32.
⁷⁶ *Id.*

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.



Officer Linehan

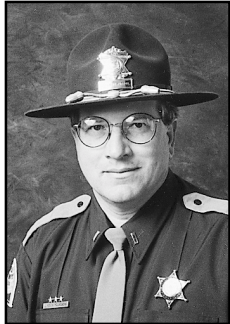


Officer Morrissey

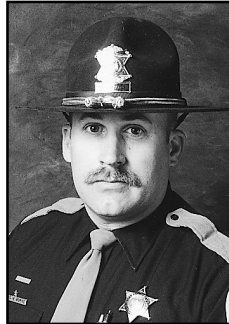
While on patrol, Officers Richard Linehan and Robert Morrissey of the Brockton, Massachusetts, Police Department stopped at a convenience store and observed two suspects behind the counter loading money into a knapsack, while a third suspect waited by the door. One of the subjects was armed with a handgun, the others had knives, and all three wore hooded sweatshirts and masks. Before the police arrived, a customer had driven into the parking lot, and one of the suspects had forced her out of her vehicle and into the store at gunpoint. The officers exited their patrol car and took cover. The subjects left the store and fled on foot. The officers initiated a foot pursuit and apprehended one of the suspects while additional police units pursued the other two subjects. Police also arrested a fourth suspect driving the get-away vehicle. The quick, decisive actions by Officers Linehan and Morrissey prevented injuries and a possible hostage situation and resulted in apprehension of all four suspects, as well.

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 Youngberg



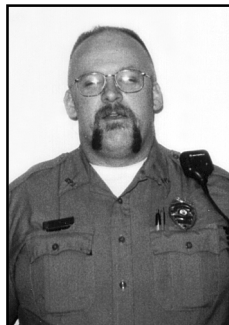
Officer Horne

Officers J. Kevin Youngberg and Brad Horne of the Utah Highway Patrol responded to the report of a vehicle accident. Driving through rain and snow, officers had difficulties finding the vehicle, which had hit a fence, run off the road, and overturned, partially submerged in a river. Officer Youngberg made his way to the vehicle as he held onto bushes that overhung the riverbank. He reached through the driver's side window frame and felt a victim inside. He was able to free the trapped man from the vehicle. At this point, Officer Horne joined Officer Youngberg in the river and climbed on top of the overturned vehicle holding the driver on top of him. Members

of the fire department arrived and laid a ladder from the bank to the vehicle. Officer Horne assisted the victim to the bank, then helped Officer Youngberg to the bank. The victim's body temperature had dropped to 90 degrees, but with immediate medical attention he made a full recovery. Without the quick and courageous efforts displayed by Officers Youngberg and Horne, the victim would have drowned in the river.



Officer Calvano



Officer Wilson

While on patrol, Officers Don Calvano and Steve Wilson of the Basalt, Colorado, Police Department were dispatched to a residence for a report of an 11-year-old boy who was the victim of a suicide attempt by hanging. The officers arrived on the scene within 2 minutes and found the victim, who had no pulse, laying in the hallway with a belt around his neck. Officers Calvano and

Wilson began administering CPR immediately and continued until the arrival of medical personnel. The victim was transported to the hospital and made a complete recovery. The officers' quick response and current CPR training were the primary factors in saving the young boy's life.

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

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