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# FBI Law Enforcement Bulletin



## Features

### Connecting Drug Paraphernalia to Drug Gangs

By Robert D. Sheehy  
and Efrain A. Rosario

1

*The connection between drug paraphernalia and drug gangs can aid law enforcement agencies in the battle against drug distribution.*

### The Violence of Hmong Gangs and the Crime of Rape

By Richard Straka

12

*Hmong gangs use the crimes of rape and prostitution more and more to gain control of communities.*

### Consent Once Removed

By Edward M. Hendrie

24

*It is possible to make a warrantless entry to arrest a suspect based on consent to enter given previously to an undercover officer or informant.*

## Departments

### 7 Perspective

Uniform Definition of  
Gang-Involved Crime

### 17 Book Review

Confronting Gangs

### 11 Crime Data

National Crime  
Victimization Survey

### 18 ViCAP Alert

Unsolved Sex Crime

### 20 Focus on Communications

The Pen and the Sword

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# Connecting Drug Paraphernalia to Drug Gangs

By ROBERT D. SHEEHY and EFRAIN A. ROSARIO



**T**he trail of drug paraphernalia can lead investigators to illicit drugs and drug gangs. The FBI in Baltimore, Maryland, together with the Maryland State Police, U.S. Customs Service, DEA, Internal Revenue Service, Baltimore City, Baltimore County, and Howard County Police Departments put this concept to the test. From April 1997 through February 2000, these agencies conducted an investigation targeting drug paraphernalia outlets. Known as “Shop Light,” this investigation used the

outlets as a means to locate, identify, and disrupt (or dismantle) large drug organizations operating in the greater Baltimore metropolitan area.

The Shop Light investigation recognized that two types of illegal paraphernalia stores operated in the region. However, the investigation ignored the first type of store, commonly referred to as “head shops,” because their inventory, although illegal, consists of products designed for the end user (addicts) to ingest drugs. Instead, the investigation

focused on the second type of store, typically known as “cut or vial stores.” Their inventory includes diluents, adulterants, and other products used by drug organizations to measure, separate, convert, dilute, adulterate, and package drugs in bulk quantities that drug gangs then sell.

## UNDERSTANDING THE CONNECTION

In April 1997, investigators found 30 businesses in the city of Baltimore engaged in the sale of



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drug paraphernalia to area gangs. With the exception of just a few of the businesses, the sale of paraphernalia accounted for nearly all of the revenue received by the shops. A review of law enforcement records revealed that police already knew about the stores and, in fact, had raided most of the stores, some on more than one occasion. Nearly all of the prior raids failed to result in meaningful prosecutions, with most of these cases being statted or nolle prossed. Those that authorities pursued resulted in a fine and probation before judgment. The subjects considered the prosecution merely an inconvenience and simply the price of doing business. Further investigation discovered that even those offenders successfully prosecuted in the past immediately reopened their stores and continued business as usual. Two central themes appeared in the ill-fated cases: first, an apparent lack of understanding of the essential and contributory role played by these stores in the distribution of drugs and, second, an

inability to present adequate testimony of the illegal nature and use of the paraphernalia.

Investigators should not consider paraphernalia stores as an isolated industry, separate and distinct from drug gangs. In fact, these stores fill an absolutely essential role with each drug gang that patronizes such a store. For example, a kilogram of raw heroin, purchased in New York for distribution in Baltimore, is essentially worth little more than its cost upon arrival at Baltimore in its raw form. However, when diluted (gangs in Baltimore favored mannitol and quinine), the drug gang will realize an increase in weight to approximately 8 kilograms of heroin at a 13 percent purity level, ready for packaging and sale. At a very minimum, the gang will gross a sixfold return over the cost of the original kilogram.

In short, the paraphernalia industry acts in concert with the drug gangs, facilitating drug distribution by supplying the means to

accomplish the cutting and packaging of illegal drugs. This fact is exploited by the shops, which greedily share in the drug proceeds by charging extraordinary mark ups, ranging up to 2,500 percent over the cost of items sold. Evidence from cooperating subjects revealed that shop owners also would advance paraphernalia to their larger drug customers and await payment until after the drugs were sold.

Based upon this view, one objective in the Shop Light investigation was to seriously impact the paraphernalia industry after first using the industry to eliminate multiple drug gangs. The U.S. Attorney's Office in the District of Maryland decided to charge the more significant paraphernalia subjects with Conspiracy to Aid and Abet the Distribution of Drugs and Engaging in Continuing Criminal Enterprise (CCE) as more reflective of their involvement than mere violation of paraphernalia laws. This case marked the first use of the CCE statute when the underlying violation involved paraphernalia.

## **STRUCTURING THE INVESTIGATION**

Initially, investigators must determine what diluents/adulterants (cut) and packaging materials drug gangs operating in their territory favor. Debriefing such individuals as drug subjects, sources, and local police officers should provide locations of cut and vial stores from which drug organizations secure their supplies. Another source of information concerning the whereabouts of these stores includes the manufacturers of some of the items, such as gelatin capsules.

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Once investigators locate the stores, they should have sources or undercover officers make small purchases of drug paraphernalia to observe the outlets' operations. After analyzing the information obtained during debriefings, investigators then can formulate an investigative strategy. Next, investigators need to answer some important questions.

- How many outlets are operating in the area and when are they open?
- Can investigators identify the largest outlets and does paraphernalia sales account for the majority of their business?
- Should authorities put some of the smaller outlets and those where legitimate business is greater than paraphernalia sales out of the "cut game?" Continuous raids that seize the products each time the store restocks paraphernalia will force it to discontinue the sale of those items.
- Which stores are located in areas that investigators can surveil, including the use of closed-circuit television under certain conditions?

If the answers to these questions reveal that cut/vial shops are in operation, the most important question for investigators then becomes the selection of an approach. The conduct of the investigation can be overt, covert, or both. That is, aggressive (overt) use of the shops involves approaching the store owners and securing their

cooperation. Passive (covert) use of the stores occurs when investigators establish surveillance without the knowledge of store owners/managers. And, of course, investigators may choose to approach some store owners, securing their cooperation, while conducting surveillance at other stores without involving the owners/managers.



The Shop Light investigation obtained positive results using both overt and covert approaches. Obviously, cooperation from the store owner/manager simplifies selection of which drug gangs to investigate. Owners can rank their customers based upon the quantities of cut and packaging purchased, as well as the frequency at which they make purchases. If owners do not know the true names of customers, they often know their street names and usually can supply pager numbers, as well as vehicle descriptions. If a gang frequents a store, the owner may restrict certain products for its use alone, such as a specific color of gelatin capsule or small plastic resealable bags bearing a specific stamp. By offering special pricing discounts or restricted packaging, a

cooperating store owner may predict the arrival of certain drug subjects, thereby making surveillance more productive.

Regardless of the approach, the objective remains the same, to follow drug dealers to their "safe" or "stash" houses where they store drugs, weapons, cash, documents, and other items of value to the investigation. The most compelling reason for monitoring paraphernalia stores is that the drug dealers themselves are indicating a recent receipt of raw drugs by making purchases of paraphernalia. Following the paraphernalia will lead investigators directly to the nerve center of the gang. Experience gained in Shop Light determined that drug gangs do not stockpile or keep inventories of diluents and packaging, rather they purchase those items on an as-needed basis.

Investigators found that this paraphernalia resupply, on average, occurred on a 2-week cycle, timed with the purchase of raw drugs.

#### **Overt Approach: Owner Cooperates**

Investigators can obtain the cooperation of some store owners for economic reasons. Some will prefer to assist investigators as a means to continue reaping the profits from their business, rather than face closure, loss of income, and criminal charges. However, absent prior contact indicating that a paraphernalia shop owner will cooperate, investigators first should make a case against the store before "quietly" approaching the owner away from the business. Indeed, the case

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against the store and owner already may exist, for the most part, by a drug subject currently cooperating with investigators. Moreover, investigators should substantiate statements relative to the store owner's knowledge of the drug dealer's use of the products by a consensual covert recording in the store. The store owner's cooperation is more likely forthcoming if the individual believes that investigators are ready to raid the business.

#### **Covert Approach: Owner Unaware**

In this approach, investigators conduct surveillance of customers away from a cut store using an arbitrarily applied factor, such as following anyone carrying an agreed-upon size bag or box from the store. Investigators can use this approach only when drug paraphernalia sales account for nearly all sales made from the store or if the paraphernalia sales can be readily distinguished from legitimate sales (e.g., if the only legal merchandise in the store is tires or bicycles). Because no one within the store is assisting investigators, establishing surveillance without detection poses the largest problem. The Shop Light investigation employed remote-controlled "pole cameras" to relay activity at the shop to a monitoring site. The monitor would then broadcast to surveillance units the physical and vehicle descriptive information for individuals meeting the agreed-upon prerequisite.

Shop Light investigators determined that even when some shop owners learned of the surveillance, they were powerless to do anything

about it. They could not warn their customers, fearing a loss of profits, and they could not complain to authorities because they were attempting to create an air of ignorance as to the actual use of the products.

#### **RAIDING THE DRUG GANGS**

Experience has shown that where members take the package of paraphernalia is the central hub (safe house) for the gang. Here, the gang stores significant amounts of drugs, cash, and other such items as weapons and records. Surveillance of that location will identify the hierarchy of the organization, including many individuals not involved in the actual street sales of drugs.

***Experience has shown that where members take the package of paraphernalia is the central hub (safe house) for the gang.***

The only people allowed into this site while the drugs are being prepared for distribution are the most trusted members of the gang.

Probable cause to raid a gang's central hub or safe house must be drawn from facts that investigators develop after identifying its location. This occurs primarily to protect the technique of ongoing surveillance of the cut shop for

future use against other gangs. Further, most judges will not consider following a package from a store, even a known cut shop, sufficient probable cause to issue a search warrant in the case of the covert surveillance. The affidavit would expose the cooperation of the store owner/manager in the overt method. Normal investigative procedures will develop the probable cause necessary to raid the safe house.

During Shop Light, investigators frequently developed probable cause to support a search warrant by retrieving trash containing packaging wrappers for paraphernalia discarded from the identified safe house location, intercepting the delivery of drugs from the stash house when transported to a worker at a site where the drugs were sold, and stopping departing vehicles a distance away from the house if a legal reason existed. In many instances, investigators developed the requisite probable cause to support a search warrant in a matter of hours after identifying the gang's safe house. Some of the surveillances identified subjects of ongoing investigations conducted by other agencies. Shop Light investigators contacted officers from these agencies who then assumed investigative responsibility from the Shop Light team at the safe house. In each case encountered, the investigating agency had not previously identified the location.

As a cautionary note, while conducting the initial surveillance away from the cut store, investigators must not get too aggressive. It is better to lose the

subjects than to needlessly expose the surveillance. The subjects will return to the store on future dates to purchase additional diluents/adulterants and packaging, and investigators might have better luck with the surveillance at that time.

### CLOSING THE STORES

After using the paraphernalia stores to locate and eliminate as many gangs as deemed worthwhile, the final action should be to close the shops. Depending upon the number of stores and the evidence collected against each, authorities will have to decide between federal or state prosecution. Criteria used in deciding which venue to use for the Shop Light investigation included—

- the prior criminal history of the store owner;
- the assets possessed by the store owner;
- the amount of business in paraphernalia conducted by each store and legitimate versus illegitimate sales proceeds;
- whether a store was involved in retail, wholesale, or a combination of sales;
- whether the owner exercised control over other stores, including material stocked or prices charged;
- whether weapons were seized from the business;
- whether surveillance of subjects away from a store

produced a prosecutable drug case; and

- whether the owner conducted regional/national sales via mail order or Internet advertising.

### EXAMINING THE RESULTS

The Shop Light investigation resulted in the arrests of approximately 80 significant drug dealers. Investigators seized multiple kilograms of heroin and cocaine, weapons, cash, and vehicles usually within hours of the first sightings of the drug dealers. Twenty federal indictments of drug paraphernalia distributors, four of whom were charged with the minimum mandatory 20-year CCE violation,

### Paraphernalia Items Sold by Baltimore Cut Stores

#### Diluents/Adulterants

Mannitol/Mannite  
Quinine  
Lidocaine  
Procaine  
Benzocaine  
Vitamin B blend  
Caffeine  
Asteroid Rock, Bolivian  
Rock and Comeback  
Inositol  
Lactose  
Niacinamide  
Ascorbic acid

#### Miscellaneous Items

Scales (electronic and mechanical)  
Strainers and sifters  
Grinders  
Glassware (e.g., bongs and rose stem tubes)  
Detox pills and drinks  
Capsule-filling trays  
Heat-sealing machines  
Stash safes  
Pipe screens  
Single-edged razor blades  
Protective equipment (e.g., breathing masks and gloves)

#### Packaging Components

Gelatin capsules  
Vials and stoppers  
Jugs and screw caps  
Small resealable plastic bags  
Glassine envelopes

were handed down along with 25 state indictments of other drug paraphernalia distributors. The investigation also closed 30 Baltimore area businesses engaged in paraphernalia sales, a California chemical wholesaler specializing in the national distribution of diluents and adulterants, and an importing company that distributed diluents along the east coast of the United States used in selling 40,000 pounds of heroin at street-level purity with a volume of drug sales approaching \$1 billion. In addition, Shop Light resulted in

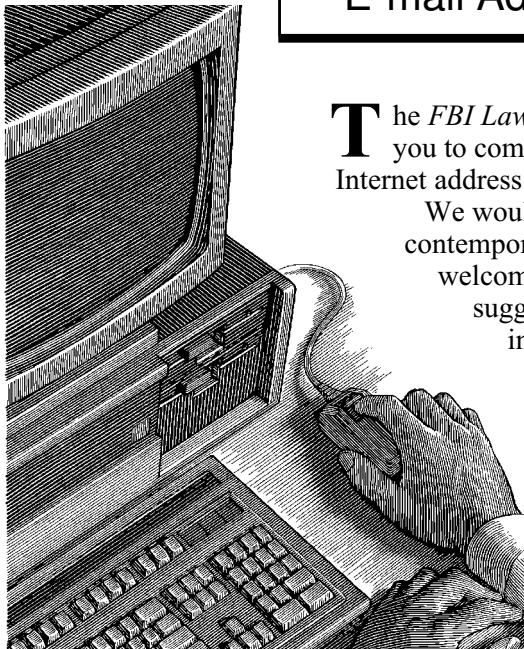
numerous spin-off drug investigations to include international subjects importing drugs into the United States.

### CONCLUSION

The Shop Light investigation offers a technique that other law enforcement jurisdictions may desire to implement. The approach represents another proven method that agencies can employ in the battle against drug distribution. A major benefit of using this technique is that it produces instant identification of the upper echelon

members of numerous drug gangs and identifies the gangs' principle operating locations in a minimum of time without relying upon unpredictable informants. Concentrating on the trail of drug paraphernalia leads to those who traffic in such illicit substances, provides a means of uncovering illegal drug operations, and shows those involved in these criminal activities that no aspect of the drug trade will be safe from the scrutiny of law enforcement agencies dedicated to ridding society of the scourge of drug abuse. ♦

### The *Bulletin's* E-mail Address



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## Addressing the Need for a Uniform Definition of Gang-Involved Crime

By Mike Langston

*A key issue in combating youth gangs is providing a uniform definition for them, distinguishing them from troublesome youth groups and adult criminal organizations.<sup>1</sup>*

“A group must be involved in a pattern of criminal acts to be considered a youth gang. These groups typically are composed of only juveniles, but may include young adults in their memberships.”<sup>2</sup> “A criminal street gang refers to three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.”<sup>3</sup> “A street gang is a cohesive group, with most members between the ages of 11 and 21, that has a recognizable geographical territory (usually defined with graffiti), leadership, a purpose, and various levels of organized continuous course of criminal activities.”<sup>4</sup>

These three examples of what constitutes a gang illustrate the variety of definitions of the term. With the surge in gang-involved criminal activity over the past 20 years, it would seem likely that the law enforcement community would have a commonly recognized definition for what typically is called gang-related or gang-motivated crime. The need for such a definition within the community would appear obvious on its face. However, a review of published books, articles, and law enforcement policies revealed that no uniform definition used openly articulates what constitutes a gang-involved crime.<sup>5</sup> Rather, considerable differences existed in what the law enforcement profession considers as gang-related or gang-motivated crime. Such variations in definitions and reporting characteristics can lead to inaccurate and unreliable gang-related crime statistics, which, in turn, can distort any national estimate of the gang

problem and the extent of gang-related crime. What can the law enforcement community do to remedy this?

### THE IMPORTANCE OF UNIFORMITY

“The definition problem is not trivial. How to define a youth gang is one of the most contentious issues in the field of youth crime. Policymakers, law enforcement personnel, social service agencies, researchers, and other groups have not been able to reach consensus on this issue over the past 25 years, and current efforts to reach this goal have thus far met with only limited success. There is little disagreement among those who study or deal with gangs that the availability and widespread use of a uniform definition would be extremely useful for a variety of important purposes, but few are willing to relinquish and replace the definitions that have become established within their agencies and are intimately related to agency operations....”<sup>6</sup> Herein lies the issue that can lead to vagueness, conflict, and denial, without a uniform gang-involved crime definition.

With these difficulties in mind, the author suggests a uniform gang-involved crime definition that



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he believes can consider both the gang member-based and activity-based issues. Adoption of a uniform policy would benefit the entire law enforcement community in several ways.

- All in law enforcement could communicate in the same “definition language” and would understand what someone from another agency meant when referring to a gang member or a gang-involved crime.
- Law enforcement officers would better understand their own agency’s policy on gang-member and gang-involved crime definitions and could apply those definitions when documenting gang reports and investigating gang-involved crime.
- Officers could provide more complete and accurate information in police reports, improving the content and accuracy of police records.
- Databases from different agencies could share information in common terms, reducing confusion about whether a person is a gang member and in which, if any, jurisdiction.
- Trainers could communicate the same information when instructing law enforcement personnel on gang awareness, identification, investigation, prosecution, and prevention. Training materials would cover the same information and criteria.
- Commonality would exist when discussing gang members or gang-involved crime with prosecutors, thereby aiding in the case presentation at trial for motive (common design) and method of operation, as well as sentencing proceedings.
- Courts and juries would better understand the testimony of expert witnesses on the issue of gang members and gang-involved crime as departmental, or even state or federal, law enforcement operating guidelines would document the explanations given by these witnesses.

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- Corrections facilities would better understand incoming inmates and their gang involvement, if any.

For these reasons, as well as others, the law enforcement community should address the need for a uniform gang-member definition. A set of definitions—open enough to encompass all of the relevant criteria, yet specific enough for courts to accept and uphold—incorporated into a model operational policy could offer a workable and practical solution for classifying gang members and gang-involved crime.

### A MODEL POLICY

The author offers this policy as an example of addressing the current need for a uniform definition for gang crime and gang members and to outline a set of working guidelines for the law enforcement community. The definitions include, but are not limited to, members and associates of criminal street gangs, criminal motorcycle gangs, criminal hate groups, and criminal extremist groups.

#### Definitions

- *Criminal gang*: A group of people following a common code of conduct, having common beliefs and identifiers, existing in a semistructured organization or hierarchy, and attempting to accomplish their goals through criminal activity.
- *Criminal gang member/associate*: A person involved with a criminal gang who either bears a tattoo that represents a specific gang or states his or her membership in a specific gang. In addition, a combination of two or more of the following items can establish criminal gang association in a specific criminal gang and two or more of these on three or more occasions can establish criminal gang membership in a specific criminal gang: wears clothing that contains the colors or symbols of a specific criminal gang; exhibits jewelry that represents a specific criminal gang; displays hand

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signs or other gestures or speaks a slogan of a specific criminal gang; associates with known criminal gang members at established criminal gang locations or hangouts; and has information meeting any of these criteria verified by a law enforcement agency.

- *Gang-involved crime*: Any criminal acts, including but not limited to those, involving gang members or gang associates committed for the benefit or furtherance of any criminal gang or analyzed by a law enforcement officer with specialized training in identifying criminal gang associates, members, or gang activity based on a reasonable application of that specialized knowledge who can articulate facts that indicate criminal gang involvement.

### Reporting Instructions

Agencies should classify criminal incidents that involve a person or activity that meets the definitions for a criminal gang, criminal gang member/associate, or gang-involved crime as a gang-involved crime. A gang-involved crime report must have the appropriate boxes (criminal gang member/associate involved as a victim, suspect, or complainant; criminal gang identifiers involved; and criminal gang activity involved) checked in the gang-involved crime section of the report.

The incident report should document all known details and facts of criminal gang members/associates or criminal gang activity involved in the incident. In the event that the incident does not require a report, officers should document the information on a criminal gang member/associate information form or an investigative information report. In either case, officers should submit these documents to their supervisor for approval. After approval, the supervisor forwards the documents to the records division for data entry and then to the appropriate investigative

division. The supervisor also should include any relevant information for immediate street operations planning on the appropriate shift pass-along information file in the computer system. This information then becomes available for crime suppression operations planning by patrol and special operations supervisors when applicable.

### Training

All officers should receive training on gang awareness and identification. Training objectives

should provide relevant information on—

- definitions of a criminal gang, criminal gang member/associate, and gang-involved crime;
- legal issues addressing criminal gang member/associate identifications, field stops, and investigations;
- criminal gang identifiers and common types of criminal gang activities;
- locations typically used by criminal gangs; and
- effective street investigation tactics and techniques for criminal gang activity and gang-involved crime.

### Information Sharing

Information sharing is critical to effective law enforcement planning. Agencies should use gang-involved crime information for analysis purposes, including, but not limited to, crime-occurrence mapping, crime statistics, crime patterns and trends, police resource allocation, crime suppression planning, and community-oriented policing direction.

Agencies should produce daily gang information bulletins based on the review of gang-crime incident reports, criminal gang member/associate information forms, investigative information reports, and other relevant data. They can use these bulletins, documented in the shift information computer file, not only for in-services but every day throughout each



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shift. They also can use them in planning crime suppression operations and for crime analysis. In addition, agencies should review current crime-mapping printouts at in-services, along with any relevant crime analysis information.

Crime analysts should compile weekly, monthly, quarterly, and annual reports and distribute them to all supervisory and command-level personnel, along with statistical reports showing comparisons of historical patterns, current levels, and future forecasts of potential trends. These reports should serve to keep a continuous flow of information on gang-involved crime available for resource allocation, operations planning, and response effectiveness evaluations.

Supervisors should review all documentation closely and assure that all relevant information is included and formatted properly. Accurate information collected, documented, processed, and analyzed in a timely fashion greatly enhances effectiveness in planning and scheduling and in investigations and other operational considerations. This information establishes a strategy to focus daily, weekly, and long-term goals to drive an agency's efforts to reduce gang-involved crime. It also serves to evaluate these efforts and to adjust the plans and operations for peak performance.

### Investigations

To gather as much gang-related information as possible, agencies should endeavor to interview every criminal gang member/associate arrested. These interviews would be in addition to any criminal case investigation interviews in an attempt to gain additional gang-related information or to corroborate current gang-involved crime data. Interviewers should concentrate on learning about gang hierarchies, leadership, membership, meeting information and locations, criminal activities, rivalry, and any other relevant criminal gang information.

Officers would document all information gained from these interviews on the appropriate forms, duly

submitting them to and processing them through the proper division for analysis. Supervisory personnel would determine the practicality of distributing any information gained through these interviews and the appropriate recipients for use in planning, scheduling, operations, and investigations.

### Legal Issues

This model policy serves as a set of guidelines for defining, classifying, and processing criminal gang crime information. The collection, documentation, analysis, and distribution of any information always would be within the applicable laws and procedures.<sup>7</sup> Agencies should address any questions on proper

action through their training divisions, supervisors, or command-level officers who would decide the appropriate action or obtain further direction from their legal departments or advisors.

### CONCLUSION

There appears to be as many definitions for gang-related or gang-motivated crime as there are different law enforcement agencies in the United States. Such a quandary does little to help the law

enforcement community reduce the ever-increasing threat of gangs and their criminal activities. By agreeing upon a uniform definition of what constitutes a criminal gang, what describes a person as a member/associate of a gang, and what unlawful acts comprise gang-involved crime, the law enforcement profession can begin the difficult, but not impossible, task of reversing the current menace that has engulfed many of America's young people and their communities.

Additionally, a model policy that incorporates a broad range of criteria and gives the criminal justice system a workable, comprehensive classification of gang members and gang-involved crime can lead to a truer picture of the gang problem in America and focus resources on this growing concern. The dedicated officers who strive daily to rescue young people from the clutches of gang membership and who also see the ravages inflicted upon the victims of

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gang-involved crime deserve the support of a law enforcement community united in its effort to combat gangs and their criminal activities. ♦

#### Endnotes

<sup>1</sup> James C. Howell, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Youth Gangs: An Overview* (Washington, DC, August 1998), 15.

<sup>2</sup> Ibid, 1.

<sup>3</sup> Deborah Lamm Weisel and Ellen Painter, U.S. Department of Justice, National Institute of Justice, Office of Justice Programs, Police Executive Research Forum, *The Police Response to Gangs* (Washington, DC, 1997), 14-15.

<sup>4</sup> Chicago Crime Commission, *Gangs: Public Enemy Number One* (Chicago, IL, 1995).

<sup>5</sup> While attending the National Academy (the FBI hosts four 10-week sessions each year for law enforcement executives from around the

world), the author conducted research on this matter and submitted his findings in a paper for a futuristics course. He reviewed a large amount of literature on the subject, including studies conducted by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, and research done by the Police Executive Research Forum. He also surveyed several of his fellow National Academy attendees concerning the policies and procedures that their agencies employed in classifying gang-involved crime. He based this article on the results of his research.

<sup>6</sup> U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *The Growth of Youth Gang Problems in the United States: 1970-1998* (Washington, DC, April 2001), 7-8.

<sup>7</sup> For additional information, see Lisa A. Regini, "Combating Gangs: The Need for Innovation," *FBI Law Enforcement Bulletin*, February 1998, 25-32; and Daniel L. Schofield, "Gang Congregation Ordinance: Supreme Court Invalidation," *FBI Law Enforcement Bulletin*, September 1999, 28-32.

## Crime Data

### *National Crime Victimization Survey*

The U.S. Department of Justice's Bureau of Justice Statistics (BJS) has announced that the nation's violent crime rate fell 10 percent in 2001, continuing a trend observed since 1994. Violent victimization and property crime rates in 2001 are the lowest recorded since the National Crime Victimization Survey's inception in 1973. There were an estimated 44 million personal and household crimes that year, compared to 24.2 million during 2001.

In 2001, there were approximately 18.3 million property crimes (burglary, motor vehicle theft, and household theft) and 5.7 million violent personal crimes (rape, sexual assault, robbery, and simple and aggravated assault). The decline in violent crimes in 2001 was attributable primarily to a drop in simple assaults.

According to victim self-reports, most male victims of violence were victimized by strangers, whereas the majority of females were victimized by someone they knew. About 1 in 3 victims of violence faced an offender armed with a weapon; 1 in 11 victims of violence said the offender had a firearm. Firearm use in crime has significantly declined; it accounted for 12 percent of all violent crime in 1994 and 9 percent in 2001. Additionally, between 1993 and 2000, FBI murder data show a decrease of 42 percent in the per capita rate of murder, a drop from 9.5 murders per 100,000 U.S. residents to 5.5 per 100,000 residents.

The report, "Criminal Victimization 2001, Changes 2000-2001 with Trends 1993-2001" (NCJ 194610), was written by BJS statistician Callie Rennison. It may be obtained from the BJS clearing-house at 1-800-732-3277 or from the BJS Web site at <http://www.ojp.usdoj.gov/bjs/abstract/cv01.htm>.

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# *The Violence of Hmong Gangs and the Crime of Rape*

By RICHARD STRAKA

© Saint Paul Police Department/Minnesota Gang Strike Force



**T**hroughout the United States, the number of Hmong gangs and the level of their criminal activity is increasing in severity. Their participation in criminal activity has evolved over time. During that evolution, they have become involved in a wide range of crimes, such as homicides, gang rapes, prostitution, home invasions, burglaries, auto thefts, and, most recently, the sale and distribution of illicit drugs.

The crime of rape, however, with its violent nature, its strong incorporation into the gang's operational structure, and the serious implications for the victim and the overall Hmong community,

represents a particular concern to the law enforcement profession and requires a special focus to find ways of decreasing its occurrence. To this end, the law enforcement community must examine the unique structure of Hmong gangs, including their historical and cultural influences, and the characteristics of the "ritual" use of rape by these gangs and the impact on the victims.<sup>1</sup>

## **Exploring Hmong Gang Structure**

The Hmong gangs started forming in St. Paul and Ramsey County, Minnesota, in the mid-1980s.<sup>2</sup> The first Hmong gang in Minnesota, the Cobra gang, began as a group of

teenage friends who played on a soccer team. At the time, the majority lived in housing projects and banded together to protect themselves and other Hmong youth from the racism occurring in their schools and neighborhoods. Eventually, some members of the Cobra soccer team became involved in crimes, leading to the evolution of the Cobra gang. These crimes started out as fights, thefts, and other minor crimes, but soon led to more serious crimes, such as auto theft and aggravated assault.

Around 1988, some 10- and 11-year-old Hmong youths wanted to become members of the Cobra gang. After being told that they

were too young, they decided to start their own gang, the White Tigers. The White Tiger gang was, perhaps, the first Hmong gang to break into gun shops to obtain weapons. They would steal a car, drive it through the front door of a gun shop, and have individuals go into the store, break the glass out of the gun cases, and scoop guns (usually only semiautomatic handguns) into a bag. In just a few minutes, the gang could acquire 20 to 30 guns. With these weapons, the White Tigers became the first of the active and violent Hmong gangs in Minnesota.

In addition to these two gangs, several others, such as the Oroville Mono Boys, Oriental Ruthless Boys, and Asian Crips, exist in Minnesota and throughout the country. These gangs, comprised of many members, operate in California, North and South Carolina, Rhode Island, Washington, Oregon, Colorado, Michigan, Ohio, and Wisconsin.

Because Hmong gangs are not as organized as African-American and Hispanic gangs in leadership and rank structure, their members do not need to ask a leader for permission before committing a crime. In fact, some members of the gang may not know that their own members have perpetrated a crime.

In addition, Hmong gangs often resort to violence, as was the case in the St. Paul/Minneapolis area during the summer of 1999. Within about a 6-week period, at least 22 reported shootings resulted in two deaths and 14 injuries. The majority of these shootings occurred among four rival gangs, the White Tigers,

Oroville Mono Boys, Purple Brothers, and Oriental Ruthless Boys. This violence primarily resulted from the abundant availability of guns within the gangs and the need to "save face" by not backing down or showing weakness to a rival gang.

Moreover, Hmong gangs have considerable mobility. It is not uncommon for gang members to drive from California to North Carolina, stopping en route to visit fellow gang members in other states, such as Minnesota or Wisconsin. Many times, these gangs transport guns to another state and commit crimes in transit. Because of this mobility, law enforcement agencies investigating these gangs must maintain a high level of communication to effectively track gang activity.

### **Understanding the Role of Rape**

In addition to their violent tendencies toward rival gang members, the Hmong gangs also present a

violent threat to people who are not members of gangs. The most frequent and violent crimes against nongang members are rape and prostitution.

Since 1997, authorities have received reports of several gang rapes, kidnappings, prostitution rings, and other violent sexual assaults involving Hmong gang members. The majority of the victims in these incidents are juvenile Hmong females. For example, during the fall of 1997, St. Paul officers conducted an investigation involving members of three Hmong gangs meeting juvenile Hmong females on the "G-Line" (a message service using an access code where individuals can leave messages and others can listen to them). Mainly used by gang members who would call and disrespect rival gangs, the service also attracted young females who would call to listen to the messages. In such cases, some of the victims, 12 to 15 years old, arranged

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***...gang rapes and prostitution of young females are happening everywhere, not just in large cities.***

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*Sergeant Straka serves with the St. Paul, Minnesota, Police Department.*

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to meet the gang members from the “G-Line.” The victims went willingly with the males, but, in one case, the victim was kidnapped. The girls thought that they were just going for a ride or to a party. Instead, gang members took them to an attic of a garage or a house, turned off the lights or put a blanket over their heads, and raped them. The gang members called this “doing the Ninja” as the victim could not identify who had sexually assaulted her. Several different cases, with multiple victims, occurred over a period of time. However, the first victims did not report the assault until several days later, and the other victims had to be located and asked to make police reports. Gaining the trust of the victims and working in the Hmong community eventually led authorities to arrest and obtain convictions of eight members of three different gangs.

While other such incidents occurred in Minnesota, the mobility of Hmong gangs resulted in similar crimes in other states. For example, in Warren, Michigan, several members of a Hmong gang were arrested for repeatedly raping teenage girls who they had held prisoner for nearly 3 weeks. The gang had kidnapped some of the girls and also had transported others from state to state and prostituted them. The victims came from Minnesota, Wisconsin, and Michigan.

Also, authorities in Fresno, California, uncovered a similar case when the first three victims, 12- to 14-year-old Hmong girls, came forward in April 1998. Members of the gang held the girls for 2 days at a local motel. After further

investigation, officers discovered several other victims who agreed to come forward. Investigators identified a total of 33 victims between January 1997 and April 1998. The gang had held the victims anywhere from 2 days to 3 months.

The lead investigator stated that the case was so large that officials had to pursue it in three phases.<sup>3</sup> In the first phase, the grand jury handed down 350 indictments on 14 suspects. Eleven of the suspects pled guilty and received sentences ranging from 17 to 31 years in

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prison. Two other gang members got 280 years and 4 months and 94 years and 4 months, respectively, in prison. The second phase consisted of the grand jury handing down a 323-count indictment and several of the suspects pleading guilty. The third phase included 9 victims and 20 suspects, in which the grand jury handed down an 826-count indictment. Several suspects pled guilty and others were found guilty. The lead investigator also said that during the 2-year investigation, 10 percent of the victims stayed with the

gang and were not threatened by its members. The rest were lured, kidnapped, and forced into unwilling participants. The gang held the victims against their will, repeatedly raped them, and forced them into prostitution. Gang members displayed guns and beat and threatened those victims who tried to leave.

These cases represent just a small number of the known and reported gang rapes occurring across the country involving Hmong street gangs. What makes these cases so similar is that the victims were afraid to come forward and, in most cases, did so reluctantly. Also, other victims in the cases would not come forward. One of the reasons for this reluctance to come forward was fear of the gang members because they had produced guns, talked about the “shootings” they had been involved in, and threatened to assault the victims or kill their families if they talked. After the victims were raped, they feared being shunned by members of their families who now would consider them “damaged” or having “shamed” them. This reaction stems from the Hmong culture, which values virginity before marriage. If a girl is raped, others in the Hmong community may look down on her. The gang members also used this belief to their advantage. They told the victims that they were no good to their families and that the gang was now their family. “There is a double standard for Hmong girls, the blaming and shame is big, and the girls give up when they see they are not getting support from their family and the community.”<sup>4</sup> Some of the victims stayed with the gang



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members even after they were raped. They felt that they had nowhere else to go because they feared their own families more than the gang members.

These gang rapes and prostitution of young females are happening everywhere, not just in large cities. "There is a market out there for young girls, and the Hmong community is not seeing this, they are not acknowledging it."<sup>5</sup>

### **Investigating Hmong Gang Rapes**

Due to their violent behavior, high degree of mobility, and broad level of contacts around the country, Hmong gangs require law enforcement agencies to practice quality tactics and maintain adequate communication when conducting investigations. One of the most important aspects in the investigation of a gang rape involves what the street officer does at the scene. The street officer may not even know that a crime has occurred or may believe that some juveniles only have been drinking. All officers have responded to calls where they encounter a group of young males and females who have been drinking at a house or a motel. The difference in incidents involving Hmong females with older males is that there probably has been more happening than just drinking. Officers on the scene of such incidents should—

- compare the ages of the females to the ages of the males (11- to 13-year-old females in a room with adult or teenage males indicates a problem);

- separate the females from the males and from each other (the females may be more afraid of the police than of the males with them);
- ask the females their names, maybe more than once (they may lie because they are afraid to go home, or they may be runaways);
- ask the females how long they have been with the males in the room, how they know them, and where they met the males;

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- question the males about who they are and how they know the females;
- search the room for evidence of sexual assaults, including condom wrappers, condoms, and blood on the mattresses;
- check the motel records to determine who rented the room; and
- note and photograph any gang graffiti (if officers are unsure

whether a crime occurred, they should make every effort to ensure that they properly identify everyone, including photographing the people involved and the surroundings).

When assigned a gang rape or prostitution case involving a Hmong female victim, the investigator may face difficulties. The incident may have happened days or weeks earlier and little or no evidence may exist. The victim may be a runaway or may have left home willingly with a group of unknown males or gang members. Regardless, investigators must trust the victim, gain her trust, and not question her judgment in allowing herself to become a victim or not reporting the incident in a timely manner. The victim not only has been sexually assaulted and threatened but also faces possible cultural consequences. One 12-year-old victim stated, "I was given two choices; the gang would kill me if I talked, or I could just keep hanging out with the gang members and they could have sex with me when they wanted." She also said that she was afraid to tell anyone because, being Hmong, she was afraid of what her parents would do to her. She felt as though her parents would blame her for getting raped, yell at her, hit her, or, worse, kick her out of the house.

To conduct a thorough investigation and to be respectful of the victim, investigators should consider several factors. They may have to talk to the victim several times, just to get new information and to gain her trust. Only one person should interview the victim,

usually someone who has gained the victim's trust. If it can be avoided, a male Hmong officer should not interview the victim. The Hmong officer can help identify the suspects, but the victim may hesitate to discuss the matter with a Hmong male. The investigator should attempt to find help from the Hmong community for the victim and her family. Also, according to the lead investigator of the Fresno, California, cases, investigators should "recognize the impact of threats, violence, retaliation, length of time held, prostitution, culture issues, and overall condition of the victim. Keep these issues in mind when starting to interview. These victims have been severely traumatized. Remember that everyone shows or reacts to a situation differently. Don't go into the interview expecting the victim to act in any certain way."<sup>6</sup>

In prostitution cases, it may prove difficult to identify the pimps and to obtain evidence. The pimps are Hmong who usually only offer the girls to other Hmong, often older members of the community. They bring the victims to unknown locations or motels, as well as transporting them to other cities and states.

One of the most difficult aspects of the investigation is keeping the victim from disappearing. Many of these young Hmong girls have been runaways. After they do come forward, they are under opposing pressure from the police, suspects, friends, and family members. Investigators must maintain almost constant contact with the victim and continue to reassure her that

she did the right thing by coming forward.

Even after the investigation concludes, other people, such as defense attorneys and members of the Hmong community, will scrutinize the victims. The effects of the crime on its victims may be minimized or viewed as typical teenage behavior. After the guilty charges in the Fresno case, the local newspaper reported comments, such as "A bunch of kids were doing the wrong thing. It was a big party, a moving summer party. You blame somebody else, I'm not saying these guys are all these innocent angels.

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***...Hmong gangs  
have  
considerable  
mobility.***

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They're not. They're gang members, but certainly forcible rape, to me, is out of the question. The girls themselves were gang members, too, a lot of people disagree with the girls for charging the boys with raping them. We, as parents, would want to put them both into jail. Not everyone believed the girls."<sup>7</sup> Although cultural issues may interfere, prosecution of these cases must continue.

### **Conclusion**

Law enforcement can more effectively investigate and prosecute

cases of Hmong gang rapes and prostitution. Networking among law enforcement agencies throughout the country is imperative due to the mobility of Hmong gangs. More important, understanding the Hmong culture and the role of the gangs in the community and following the specific guidelines for investigation will equip the law enforcement profession to better address the needs of the victims involved in gang rapes and prostitution. Working with the victims will bring the perpetrators to justice and ultimately put a stop to Hmong gang rapes. ♦

### **Endnotes**

<sup>1</sup> The author based this article on the knowledge he has gained during 10 years of working in the Hmong community as a street officer and investigator. He has talked to hundreds of Hmong gang members in custodial and noncustodial situations and investigated numerous crimes involving Hmong gangs, including homicides, assaults, rapes, and prostitution rings.

<sup>2</sup> Originally from China, some Hmong left due to persecution and traveled to Vietnam and Laos around 1740. They fought alongside U.S. troops and rescued downed pilots during the war in Vietnam. This alliance resulted in persecution by the Vietnamese government, and many Hmong immigrated to the United States, first settling in California, Minnesota, and Wisconsin. With additional families immigrating to America, at least 36 states now have Hmong populations.

<sup>3</sup> Detective Brenda Trobaugh, Fresno, California, Police Department.

<sup>4</sup> Na Ly Yang, executive director of Women's Association of Hmong and Lao, in St. Paul, Minnesota.

<sup>5</sup> Ibid.

<sup>6</sup> Supra note 3.

<sup>7</sup> These comments from various individuals connected with the case appeared in the July 14 and 15, 2000, issues of the *Fresno Bee*.

**Confronting Gangs: Crime and the Community** by G. David Curry and Scott H. Decker, Roxbury Publishing Co., Los Angeles, California, 1998.

*Confronting Gangs: Crime and the Community* provides the gang investigator or police administrator with an easily understood overview of important topics relevant to criminal street gangs. The authors draw from their own experiences, a wide range of previously conducted studies, and gang member interviews to explain the often-confusing world of gangsters and those who attempt to work with them. The book concludes with a number of suggested prevention or intervention methods available to agencies confronted with either existing or emerging gang problems.

Developing a realistic law enforcement strategy to deal with gangs must start with a good definition of what constitutes a "gang." The book points out the problems a jurisdiction can experience by denying or failing to understand a gang presence in its community. *Confronting Gangs* employs diverse sources to reach a widely applicable composite description for a criminal street gang. Using the guidelines given in this description, the gang investigator or police administrator can guide discussions with political leaders and community residents to reach a consensus on the existence or degree of the gang problem in their area.

The amount of criminal activity gang members engage in represents a major aspect of the gang dilemma. The authors use a variety of studies and other information to demonstrate that gang members, as a group, are involved in more criminal activity and delinquency than nongang members. The authors advance an important conclusion for gang investigators to consider: gang solidarity is a product of external forces as opposed to internal dynamics. Therefore, instead of dismantling a criminal street gang, police efforts and well-meaning social programs, if not properly managed, inadvertently may provide an opportunity for growth.

Curry and Decker draw from their own experiences and gang member interviews to discuss what gangsters may face during their time in that subculture. While street gangs come in a variety of shapes and sizes, most lack any real organization or structure. However, the authors recognize important exceptions, such as the Gangster Disciples and other Chicago-based gangs, which are well organized. They identify violence as an important part of a gang's makeup. Violent acts committed against the gang call for retaliation, which leads to a circle composed of more violent acts. As a result, gang members are more likely than nongang members to be victims or perpetrators of assaults. Fear of violence then becomes a unifying factor for gangsters.

The authors identify members and discuss the roles and leadership of street gangs. They interviewed gangsters about leaving the street gang and dispel one popular myth: most gangsters simply leave the gang when it is appropriate for them. Curry and Decker indicate that most street gangs hold meetings, often on an irregular basis. They describe leaders as resembling "captains of sports teams" whose roles can change quickly. Law enforcement officials involved in targeting gangs must understand these facts and structure intervention efforts appropriately.

The authors indicate in their discussions regarding drug sales by gang members that the amount of organization present in the gang may contribute to the level of drug sales by the group's members. Party gangs may sell enough drugs to fund their partying. Gangs that deal crack cocaine at the street level often are loosely organized because their customers demand ready and easy access to the product. Information of this nature could be an important consideration when the structure and goal of an investigation is determined.

A discussion of females as gang members covers a variety of topics. The authors advance a thought-provoking argument that female gang members are more in danger of suffering emotional damage than their male counterparts



because of their traditional role in the family and child rearing. They also mention the role females sometimes play in dismantling a gang by pulling male members away. *Confronting Gangs* indicates that a distinct need exists for more research when it comes to the involvement of females in the gang subculture.

Curry and Decker devote the last two chapters of the book to a discussion of intervention and prevention strategies. The authors provide enough information on each entry to allow readers to decide if it would be an appropriate program to study for application to an identified gang problem in their communities. As an aid, the book points out areas of concern that have arisen when others have employed some of the initiatives mentioned.

The book concludes with an examination of the future of gangs in the United States. The authors point out that the historical pattern for street gangs is one of ebb and flow. Gangs will flourish for a time, and, then, as social conditions

change, they will diminish to the point of almost disappearing. The growth of a permanent underclass with high unemployment represents the current trend that Curry and Decker see as having the strongest influence on future gangs. Coupled with the spread of the gang ideology by media sources and popular culture, the high unemployment will contribute to gang members staying with their gangs well into adulthood. Older gang members may lead to more organized gangs, with profit from illegal activities playing an increasingly important role in the gang's makeup.

Gang investigators and police executives who develop enforcement policies for their agencies should read *Confronting Gangs: Crime and Community*. Moreover, many of the programs the authors identify blend well with community-policing initiatives that agencies already may have implemented.

Reviewed by  
Captain David Allender  
Indianapolis, Indiana, Police Department

## ViCAP Alert

### **Attention: Sex Crimes and Robbery Units**

#### *Unsolved Sex Crime*

**T**he Madison, Wisconsin, Police Department requests assistance in an ongoing serial sexual assault investigation. Since the spring of 1999, nearly two dozen unsolved sexual assault attacks have occurred at southern Wisconsin and northern Illinois



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mall and strip mall stores and parking lots. In all cases, a lone white male stalked and attacked young white female store clerks working alone or customers and clerks as they walked to their vehicles in the late afternoon or evening hours. The suspect selected, stalked, and spoke to the victims before attacking them from behind. In many cases, he used a knife to gain control and compliance in getting victims into their cars or a store bathroom.

### **Crime Scenes**

The suspect appears comfortable traveling long distances between attack sites and has selected victims in malls around the Madison area, as well as in the jurisdictions of Janesville, Fond du Lac, Johnson Creek, Cottage Grove, and Monona, Wisconsin, and Roscoe, Illinois. For the past 3 years, he has effected a pattern of discontinuing the attacks in Wisconsin around the month of September and returning in late January or early February. For this reason, investigators believe that he may be traveling for work or other reasons and perpetrating elsewhere.

Law enforcement officers should pay particular attention to all calls dispatched to mall and strip mall stores and parking lots between 1 p.m. and 10 p.m. In previous cases, officers received dispatches of armed robberies, domestic disturbances, suspicious person complaints, and exposure incidents, as well as sexual assaults. As a result of this initial call confusion, response sometimes was slow or given low priority, resulting in the suspect's escape and loss of evidence from the scenes. Therefore, regardless of the nature of the dispatched call, if it occurs at a mall or strip mall store in the afternoon or evening hours, responding officers should remain alert for this suspect fleeing to a nearby highway.

Officers should consider this suspect as armed and dangerous and preserve all possible evidence at the scene, including soft drink cans, cigarette butts, chewing gum, coins, videotapes, latent fingerprints on doors, and any other items of DNA or evidentiary value. Suspect DNA currently is on file in CODIS with no known identification.

### **Possible Suspect Information**

The suspect is described as a white male, 25 to 35 years of age, 5' 7" to 5' 10" in height, with a stocky build, broad shoulders, and strong hands. He has sandy brown short hair, with no thinning or receding hairline. He has noticeably blue eyes, is clean shaven or with a five o'clock shadow and a rough complexion, and frequently wears a close-fitting baseball cap.

The suspect has fled the scenes of previous attacks in a metallic ruby red, early to mid-1990s, full-size, clean pickup truck, possibly a Chevy Silverado or Ford F-150. The truck may have a narrow midline white or silver horizontal stripe, a black toolbox with two chrome handles in the bed behind the cab, and a reddish maroon topper. He also was seen operating a full-size, clean, 1989 to 1995, gray, Ford F-150, with a gray topper and gray interior, following an attack in Illinois.

### **Alert to Law Enforcement**

Law enforcement agencies should bring this information to the attention of all crime analysis personnel and officers investigating crimes against persons, sex crimes, and robberies. Any agency with crimes similar to these should contact Madison Police Department Detectives Maureen Wall at 608-266-4696, Mark Zwart at 608-266-5935, or Bruce Frey at 608-245-3656 or Crime Analyst Butch Rabiega of the FBI's Violent Criminal Apprehension Program (ViCAP) at 703-632-4170 or Special Agent Gary Cramer at 703-632-4197. For a composite drawing and vehicle description, access <http://www.ci.madison.wi.us/police>. ♦

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*Agencies that have information on similar cases in their areas should contact the Madison, Wisconsin, Police Department at 608-266-4696.*

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# Focus on Communications

## ***The Pen and the Sword How to Make the Writing Process Work for You***

By Julie R. Linkins, M.A., M.S.



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**A**s employees advance through the ranks of an agency, the nature of their writing changes. Sergeants write fewer incident reports and more performance evaluations; lieutenants and captains respond to letters from the public, propose new programs, submit grant requests and the like; even chiefs and sheriffs may find themselves writing unfamiliar documents for new audiences. Civilian employees face similar transitions, from writing standard interagency memos to wide-ranging budget narratives and annual reports. As one student at the FBI National Academy recently said, "In law enforcement, there is a point where the gun becomes less of a weapon and writing becomes more of one."<sup>1</sup> Law enforcement officers should be proficient with both.

Business writing is not mysterious, magical, or impossible to learn. Writers at all levels can follow five logical steps to ensure that their documents get the job done with minimal fuss and effort. By

answering a few questions, brainstorming potential information to include, selecting the needed information and organizing it logically, editing for style, and finally proofreading for grammar and punctuation, writers can produce successful documents.

### **Step One: Prewriting**

When given a writing assignment, inexperienced authors frequently start typing right away. This approach usually leads to a jumble of rambling thoughts that readers cannot decipher. Just as officers learn to develop a plan for responding to a call for service before they arrive at the scene, writers should develop a plan for composing their documents before they sit down at the computer. Answering these four basic questions will put writers on the correct path:

- Who am I writing to?
- What is my purpose?
- What action do I want my reader to take?
- What is in it for the reader?

The answers to these questions will help writers form a simple, one-sentence statement that conveys the essence of their message: a bottom line. This sentence tells the reader the topic, who is affected, and what will or should happen. Here are a few examples of bottom lines for everyday documents:

- *Internal job posting:* To apply for this position in the Drug Unit, you must submit a letter describing your qualifications to Lieutenant Mary Jones by 1700 hours on 12/20/02.
- *Information request:* By Tuesday, please send me a spreadsheet showing the projected fleet maintenance costs for fiscal year 2002.
- *Thank you letter:* Thank you for speaking to my class today and sharing your expertise in legal issues.
- *Performance evaluation:* During the rating period, Mr. Adams met expectations in the areas of oral and written communications, but he needs to improve his interpersonal skills and filing system.

An effective bottom line predicts the information to follow; everything else in the document should

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support or clarify it. Anything that does not pertain to the bottom line does not belong in the document.

### Step Two: Brainstorming

With a clear bottom line on paper, writers can begin brainstorming potential ideas to include in the document. This step often is called “fast writing” because the writer seeks to record as many ideas as possible without sorting or evaluating them. Not every idea generated at this stage will end up in the final document, but that is okay. Anyone who has participated in a group brainstorming session probably has experienced the phenomenon of having a silly idea from one person inspire someone else to think of the perfect solution. The same thing holds true here. No idea is too absurd or wrong to record during a fast-writing session.

Writers employ a variety of fast-writing techniques. Some jot lists of words and phrases for key ideas, while others use more visual techniques, such as webbing or mind mapping. Free writing, also known as letter writing, helps some writers generate ideas; this technique simply involves writing a letter about the topic to a trusted reader. Still others, encumbered by the tools of writing, talk through their ideas and record them on audiotape to transcribe into a first draft later. No matter the fast-writing method used, the objective remains to record as many ideas related to the bottom line as possible. From this pool of ideas, writers choose the best ones to include in the final document.

### Step Three: Writing and Organizing

Writers can choose from many patterns to organize their information. For investigative reports, chronological order makes the most sense. For other types of documents, however, chronological order might not serve the reader or the writer well, so effective writers use different methods of organization.

For example, proposals frequently describe the problem or current situation first, follow with the proposed solution, and end with the anticipated results. Progress and after-action reports follow the same format, only all in past tense. Employee evaluations might employ a topical or grouping method, describing each performance element in a set order. Instructions and procedures follow sequential order from first step to last. Operational plans include a spatial component that describes the physical layout of the buildings, streets, or locations involved. Writers should select the pattern that best serves the document’s purpose.

### Step Four: Revising for Style

Clutter, jargon, ambiguity, and bias can derail even a well-organized document. Unnecessary verbiage acts like static on the radio; it just adds distracting noise to the message. Specialized terms, including abbreviated program names or the use of 10-codes in certain situations, exclude readers unfamiliar with the definitions. Vague references or unclear descriptions leave readers confused and frustrated. Similarly, language that exhibits prejudice can anger readers, causing them to dismiss the writer’s message completely. The style choices writers make in each of these areas dramatically affect the success of the document; therefore, after crafting the first draft, writers

should carefully review their documents for clarity, simplicity, specificity, and sensitivity.

Many kinds of clutter exist, including redundancies (e.g., free gift, fatal slaying), wordy expressions (e.g., “six individuals of the male persuasion” versus “six men”), smothered verbs (e.g., “conduct an appraisal” versus “appraise” or “have expectations” versus “expect”), and passive voice (e.g., “All homicide cases are investigated by Detective Larson.” versus “Detective Larson investigates all homicides.”). Writers should strive for clean sentences that include no unnecessary words.

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**...writers should develop a plan for composing their documents before they sit down at the computer.**

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## Writing Resources

Stephen D. Gladis, *ProcessWriting: A Systematic Writing Strategy* (Amherst, MA: HRD Press, 1989).  
*Hodges' Harbrace College Handbook*, 13th ed. (New York, NY: Harcourt Brace, 1998).  
Online Writing Lab, Tidewater Community College, <http://www.tc.cc.va.us/writcent/>  
William Strunk, Jr. and E. B. White, *The Elements of Style*, 3rd ed. (New York, NY: Macmillan, 1979).  
Andrea J. Sutcliffe, ed., *The New York Public Library Writer's Guide to Style and Usage* (New York, NY: HarperCollins, 1994).  
Christopher Thaiss and John E. Hess, *Writing for Law Enforcement* (Boston, MA: Allyn and Bacon, 1999).  
William Zinsser, *On Writing Well*, 6th ed. (New York, NY: HarperCollins, 1998).

Writers also should choose the simplest words possible. Why say "assist with recuperative maintenance" when "help clean up" will do? When writers use plain language as much as possible, readers do not mind the occasional difficult or specialized term. Writers should try not to drown readers in big words or jargon. Not only does it annoy the reader, it defeats the writer's purpose because the audience cannot comprehend the message.

Writers can make their words more specific by describing observable actions and characteristics instead of using general conclusions. Rather than reporting that a suspect "appeared suspicious," for example, a writer might say that the suspect "left the car running at the curb, carried a brick in one hand, and peered into the window of the closed jewelry store." As the example shows, sometimes it takes more words to say something clearly. That is okay. Writers must never sacrifice clarity for brevity.

One last item for writers to check in this step is bias. Biased language—whether racial, ethnic, sexist, or otherwise—has no place in careful workplace writing. Writers should be sensitive to the concerns of their readers.

Such choices can determine whether a document succeeds or fails. With careful attention to these four aspects of style, writers will improve the readability of their documents, help readers who do not have a lot of time to devote to the task, and ensure that readers receive the intended message.

## Step Five: Proofreading

After writers ensure that they have organized the content well and removed all clutter, they must check the fine details of spelling, punctuation, and grammar. Running the spell check application available in today's word processing programs will catch the obvious errors, but it cannot replace a careful line-by-line, word-by-word review. Software programs cannot tell the difference between a misspelled word and a misused word.

For the most part, grammar-checking programs perform even more poorly than spell-checking applications. While they can highlight areas for the writer to examine more closely, such programs often misunderstand the writer's meaning and offer bad advice for corrections. Writers should invest in a good grammar book and take time to learn the basic rules of grammar and punctuation. Continuing education courses or in-service training can help employees refresh their skills.

When in doubt about the correct punctuation, writers should revise the sentence until they know for certain how to punctuate it. This frequently requires breaking a complex sentence into two or more simple ones.

## Managing Time

This time-tested writing process divides a writing task into manageable steps. Some writers, however, tend to get stuck along the way and run out of time

before completing all of the steps. To avoid such problems, writers can follow this general guide for dividing the time they have to complete a document:<sup>2</sup>

- |                           |        |
|---------------------------|--------|
| 1) Prewriting             | 12.5 % |
| 2) Brainstorming          | 25.0 % |
| 3) Writing and organizing | 25.0 % |
| 4) Revising for style     | 25.0 % |
| 5) Proofreading           | 12.5 % |

Thus, if a letter needed to go out in an hour, the writer would spend about 7 minutes answering the prewriting questions and developing a bottom line, 15 minutes brainstorming, 15 minutes writing and organizing, 15 minutes revising for style, and 7 minutes proofreading. These times are flexible, so 10 minutes brainstorming and 20 minutes writing would probably work well, too. The objective is to leave enough time to complete all five steps.

### Conclusion

For most people, writing well requires study and practice. Law enforcement officers at all levels should approach learning this skill just like they learned marksmanship or investigative techniques: begin with the basics, split the task into steps, practice with feedback, and requalify regularly. With time and practice, the steps outlined here will become second nature.

Writing matters. It can help spend or save money, win or lose a case, and cause or avert danger. Members of the public expect their law enforcement officers to use all available tools to protect them and keep the peace; members of the department expect their leaders to do the same. Law enforcement executives must arm themselves with both the pen and the sword. ♦

### Endnotes

<sup>1</sup> William J. Weightman, FBINA 206. The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects, including effective writing.

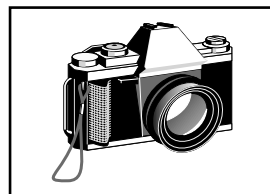
<sup>2</sup> Ginny Field, "Time Management for the Writing Process," Lesson Plan, 1998.

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## Wanted: Photographs



**T**he *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). We will give appropriate credit to photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

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# Consent Once Removed

By EDWARD M. HENDRIE, J.D.

**T**his article addresses the “consent once removed” exception to the search warrant requirement. Under that exception, officers are permitted to make a warrantless entry to arrest a suspect based on the consent to enter given earlier to an undercover officer or informant. Knowledge of the law of arrest and search is important to understanding the doctrine of consent once removed. This article provides a brief review of those areas before explaining consent once removed.

## Review of Arrest Law

It is constitutional for a police officer to arrest a suspect in a public place without a warrant if the officer has probable cause to believe the arrestee has committed a crime, regardless of whether that crime is a felony or a misdemeanor.<sup>1</sup> The common law rule, however, followed in many state and federal statutes, limits the authority of an officer to make a misdemeanor arrest without a warrant to circumstances when the suspect commits the misdemeanor in the officer’s presence.<sup>2</sup> Under the Fourth Amendment, a person could be arrested without a warrant for a minor offense that is neither violent nor a breach of the peace.<sup>3</sup> While a search



without a warrant is presumed unreasonable, there is no presumption of unreasonableness that attaches to a warrantless public arrest. Consequently, it is not constitutionally required that an officer be faced with an emergency or to obtain consent before making a public arrest without a warrant.<sup>4</sup>

Arresting a person in public is one thing, entering his home to arrest him is quite another. When an officer enters a subject’s home and arrests him, not only has the officer seized the subject but, by entering the home, the officer also has conducted a Fourth Amendment search of the home. If officers have

an arrest warrant, they may enter a suspect's residence to arrest him if they have probable cause to believe he is home. Even though an arrest warrant is a seizure warrant and not a search warrant, the U.S. Supreme Court has ruled that an arrest warrant carries with it the implicit authority to enter the residence of the person named in the warrant to search for him, provided that there is at least probable cause to believe that he is present in his home.<sup>5</sup> Where the person named in an arrest warrant is believed to be in a third party's home, however, an arrest warrant alone will not suffice to enter the third party's home to arrest the suspect. An officer must obtain a search warrant before entering the third party's home, unless there is an emergency or the resident gives consent to search.<sup>6</sup>

### Review of Search Law

A search conducted under the authority of a search warrant is presumed reasonable, whereas a search conducted without a search warrant is presumed unreasonable.<sup>7</sup> The presumption of unreasonableness for searches conducted without a warrant can be rebutted through one of the exceptions to the warrant requirement, such as consent or emergency. The emergency exceptions applicable to building searches fall into closely circumscribed categories: 1) prevent escape;<sup>8</sup> 2) prevent harm to officers or others;<sup>9</sup> 3) render immediate aid;<sup>10</sup> 4) prevent the destruction of evidence;<sup>11</sup> or 5) hot pursuit.<sup>12</sup> Once the emergency that justified the warrantless entry has passed, the authority to search without a warrant ends. If the police desire to continue to search the

premises, they may secure the area and seek a search warrant.

### Consent Once Removed

Ordinarily, officers cannot enter premises without a warrant unless they have consent or there is an emergency.<sup>13</sup> The consent once removed doctrine is an extension of the consent exception to the search warrant requirement. In circumstances when officers do not have a warrant and are not faced with an emergency, they still will be able to conduct a search if they obtain voluntary consent to search from someone who has actual or apparent dominion and control over the premises.<sup>14</sup> An officer who is working in an undercover capacity can use deception to obtain valid consent to enter premises.<sup>15</sup> Once an undercover officer obtains the initial consent to enter, that consent can be transferred to officers who later enter the premises to arrest the suspects.

Under the doctrine of consent once removed, officers without a search warrant or an emergency may enter a residence that the

***“...officers are permitted to make a warrantless entry to arrest a suspect based on the consent to enter given earlier....”***



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undercover agent or informant has recently entered if “[t]he undercover agent or informant: 1) entered at the expressed invitation of someone with authority to consent; 2) at that point established the existence of probable cause to effectuate an arrest or search; and 3) immediately summoned help from other officers.”<sup>16</sup> There is no requirement that the person obtaining the original consent be an officer of the law. The person obtaining consent could be an informant.<sup>17</sup> Of course, the original consent must be valid to support the second entry by the arrest team.<sup>18</sup>

In *United States v. Bramble*,<sup>19</sup> undercover federal agents entered the home of a suspect to negotiate the purchase of sea otter pelts advertised for sale. During negotiations, the suspect showed the agents parts of a bald eagle, a golden eagle, a horned owl, and a red-tailed hawk, all of which are unlawful to possess. One of the agents also noticed what appeared to be a vial of cocaine on the dining room table. After seeing the illegal bird parts and the suspected cocaine, the undercover

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agents identified themselves and told the suspect that he was going to be placed under arrest. The agents then called for backup officers to enter the home. The U.S. Court of Appeals for the Ninth Circuit ruled that once the suspect had given consent to the undercover agents to enter his home, he lost any expectation of privacy in the area to which he invited them. The backup officers could then enter the home upon the authority of the original consent given to the undercover agents. The entry of additional officers did not infringe upon the consenter's expectation of privacy.

It is dangerous, particularly in drug cases, for an undercover officer to notify a suspect that he is an undercover officer and then tell the suspect that he is under arrest, as was done in *Bramble*. The safest tactic would be to have the undercover officer leave the premises before the arrest team enters to make the arrest. If, for some reason, it is necessary for the undercover officer to remain inside the premises, the undercover officer should not arrest the suspect. It would be safer for him to remain in his undercover role and surreptitiously signal backup officers to enter and make the arrest. The consent once removed doctrine would apply to the entry by the arrest team in such a case. For example, in *United States v. Polard*,<sup>20</sup> an informant and an undercover officer entered a residence to purchase 4 kilograms of cocaine. Upon seeing the cocaine in the apartment the informant gave the arrest signal. In response to the arrest signal, approximately six officers, without knocking or announcing, immediately broke down the

front door and arrested the defendants. The U.S. Court of Appeals for the Sixth Circuit ruled that the entry by the backup officers to arrest the defendants was lawful under the consent once removed doctrine. The court found that once the defendants gave the undercover officer and the informant permission to enter, the entry by the arrest team did not create any further invasion of privacy.

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***There is no requirement that the person obtaining the original consent be an officer of the law.***

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Under the consent once removed doctrine, the lawfulness of the second entry by the arrest team is based upon the initial consent given to the undercover officer. Therefore, because the entry team could force their entry into the premises, it certainly would be permissible for the entry team to use a ruse to enhance the safety of the second entry. For example, in *United States v. Samet*,<sup>21</sup> an undercover officer gave a prearranged arrest signal from inside the defendant's apartment after he made a purchase of 277 grams of cocaine. Upon receiving the arrest signal, the entry team rushed into the defendant's apartment and announced that they had a search warrant. In fact, the officers did not possess a search warrant. The U.S. District Court for the East-

ern District of Virginia ruled that because the officers were relying upon the original consent to enter given by the defendant to the undercover officer, the false statement of an officer that the arrest team had a search warrant did not render illegal the otherwise legal entry.

### **No Emergency Required**

Once an informant or undercover agent obtains consent to enter a residence, there is no requirement that there be an emergency for officers to follow the informant or undercover agent into the home without a warrant. All that is needed is the original voluntary consent, probable cause to arrest, and the informant or undercover agent immediately summoning the officers to arrest the defendant.<sup>22</sup>

In *United States v. Jachimko*,<sup>23</sup> DEA agents sent an informant, equipped with a recorder and an agent-alert device, into a suspect's home. The agents instructed the informant to activate the alert button only if he saw more than 100 marijuana plants. As is usual in drug cases, events took a turn toward the unexpected. After the informant entered the suspect's home, he and the suspect left the suspect's home and drove to the house of another individual named Jachimko. Up to that time, DEA did not have any suspicion that Jachimko was involved in illegal drug activity, nor did they suspect that there was marijuana inside his house. Twenty minutes after entering Jachimko's house, the informant activated the agent-alert button. The DEA agents responded by knocking on the side door to Jachimko's home; Jachimko opened the door, but tried to close

it when the agents identified themselves. A scuffle ensued, and Jachimko and the other suspect were arrested. In addition, several marijuana plants were seized.

In *Jachimko*, the government did not argue that the second entry by the officers into Jachimko's residence was justified by an emergency, but, rather, that it was justified by the original consent given to the informant. The U.S. Court of Appeals for the Seventh Circuit agreed with the government and ruled that the second entry was authorized by the initial consent given to the informant.<sup>24</sup> The defendant argued that he withdrew his consent when he refused to allow the officers to enter after they identified themselves. The court, however, ruled that once the contraband was discovered by the informant, it was too late for Jachimko to withdraw his consent.

Jachimko further argued that the consent obtained by the informant to enter was ineffectual because there was no preexisting DEA investigation on him, nor was there probable cause for a search when he gave the informant consent to enter his residence. The court ruled that there is no legal requirement that there be an investigation before a suspect can give valid consent and, further, that it is not required that there be probable cause before consent may be obtained.<sup>25</sup> The only requirement for valid consent is that a person with actual or apparent authority give voluntary consent. The fact that the informant misrepresented his purposes for entering the premises did not render the consent given to the informant involuntary.

The consent once removed doctrine is particularly helpful in reverse drug operations. In a reverse drug transaction, the undercover officer acts as the seller of the drugs. The suspect, being the purchaser of the drugs, is expected to bring the money. The suspect ordinarily would not be expected to attempt to destroy money if he believed that he was the object of a police sting. A second entry, therefore, could not, be based upon the fear that the suspect would destroy the evidence. The entry of the arrest team, however, could be based upon the consent given earlier to the undercover officer.<sup>26</sup>

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### **Undercover Officer Leaves and Promises to Return**

It is tactically more sound to arrange ahead of time to have the undercover officer who is acting as the purchaser of illegal drugs leave the premises after he sees that the suspects possess the illegal drugs. It is much more dangerous for the undercover officer to stay in the residence when the arrest team makes its entry to arrest the suspects. The

suspects likely will become immediately aware that the cause for the unwelcome entry of the police is probably the undercover officer. The consent once removed doctrine requires that once the undercover officer or informant establishes probable cause to arrest he must immediately summon help from the other officers. Most courts permit the undercover officer to leave the residence to summon assistance from the other officers. If the undercover officer makes an arrangement with the suspect that he will leave the residence to obtain money or some other item to complete the illegal transaction, the undercover officer could then leave the residence and lawfully reenter with several backup officers. The legality of the officers' reentry would be based on the original consent of the resident and his expectation that the undercover officer would return.

For example, in *United States v. White*,<sup>27</sup> an undercover officer and an informant arrived at an apartment to purchase illegal drugs from suspected drug traffickers. The informant exited the suspects' apartment, purportedly to obtain money to complete the illegal drug transaction. The informant was accompanied by one of the suspects who locked the door behind him with a key. The undercover officer remained in the apartment with another suspect. Upon arriving at the informant's automobile, ostensibly to obtain money for the drug transaction, the accomplice was arrested. The keys found on the accomplice were used by the backup officers to enter the apartment and arrest the other suspect. The court expressly refused to consider whether the

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second entry justified the potential harm to the undercover officer, who remained in the apartment, because the court found that the second entry was authorized by the initial consent given to the undercover officer and the informant to enter the apartment.

In *White*, the undercover officer remained in the apartment. It is not required, however, that an undercover officer remain behind on the premises after an informant leaves to have the benefits of the consent once removed exception. That is because the consent once removed doctrine is not based upon an emergency concern for the safety of the undercover officer or informant; rather, it is founded on the premise that the initial consent given by the suspect to an undercover officer or informant can be transferred to the arrest team, justifying their second entry.

In *United States v. Diaz*,<sup>28</sup> an undercover officer entered the suspect's hotel room to negotiate the purchase of the 8 kilograms of cocaine. Once in the apartment, the undercover officer was shown the 9 kilograms of cocaine. Upon seeing the cocaine, the undercover officer told the suspect that he would go to the lobby and call his "money man," who would arrive in approximately 30 minutes. The suspect told the undercover officer that he would wait in the room for him. The undercover officer exited the hotel room and gave the prearranged signal to the surveillance team that had gathered in an adjacent hotel room. Minutes later, the undercover officer, accompanied by the surveillance team, knocked on the suspect's door, and, when the

suspect answered the door, he told the suspect he had forgotten his keys and coat. The arrest team then immediately pushed past the undercover officer and arrested the suspect and seized the drugs.

In *Diaz*, the U.S. Court of Appeals for the Seventh Circuit felt that the officers had plenty of time to obtain a search warrant before entering the hotel room. Furthermore, the court did not find that there was any emergency that would justify entry without a search warrant. The court stated that sim-

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***The only requirement for valid consent is that a person with actual or apparent authority give voluntary consent.***

”

ply because there is probable cause to believe a serious crime is being committed or that there is the mere possibility that evidence could be destroyed does not mean there is an emergency that would justify entry without a warrant. While the court found that entry was not justified by an emergency, it ruled that, instead, the entry was justified based upon the initial consent given to the undercover officer to enter. The consent given to the first entry was not broken by the undercover officer's brief exit to obtain assistance to arrest the suspect. The court opined that based on the evidence the

suspect would have likely admitted the undercover agent back into the hotel room and the fact that the agent was assisted by other law enforcement officers did not make a difference.

It is not required that the undercover officer actually return with the arrest team for the consent given to him to be transferred to the arrest team. For example, in *United States v. Santiago*,<sup>29</sup> an informant went inside a suspect's apartment purportedly to buy a kilogram of cocaine. Upon examining the cocaine package, the informant told the suspects that he needed to leave to retrieve the money for the purchase of the cocaine from his "moneymen." The informant then went out to his car and informed the federal agents on the arrest team about his observations. Approximately 15 minutes later, the arrest team, unaccompanied by the informant, used a battering ram to enter the apartment without a search or arrest warrant. The agents arrested the suspects, who gave the agents consent to search the apartment. Upon searching the apartment, the agents found and seized the kilogram of cocaine that the informant had previously examined. The suspects moved to suppress the evidence by contending that their Fourth Amendment rights were violated when the federal agents entered their home without a warrant, their voluntary consent, or exigent circumstances. The court found that there was no emergency that justified an immediate entry without a warrant. The court ruled, however, that the second entry by the arrest team was justified by the earlier consent to enter obtained by the informant. The *Santiago* court



decided that the 15-minute delay in the entry of the arrest team was not too long to put it outside the immediacy requirement of the consent once removed doctrine.<sup>30</sup>

The facts suggest that the [informant] and federal agents acted diligently in effecting the arrests and seizing the contraband. As described by the government prosecutor and agreed to by the defendants in open court, the length of time that elapsed was that necessary for the [informant] to return to his car and summon assistance and for the agents to gather in the parking lot, proceed up to the apartment, and enter using the battering ram. Their actions after the [informant] established probable cause essentially constituted an unbroken chain of events, and the arrests were executed without interruption or significant loss of time.<sup>31</sup>

### **Undercover Officer Not Expected To Return**

Most courts do not require that the undercover officer create an expectation that he will return for the arrest team to reenter on the authority of the original consent given to the undercover officer. For example, in *United States v. McDonald*,<sup>32</sup> an undercover agent with the New York Drug Enforcement Task Force was admitted to a one-room efficiency apartment on the first floor of an apartment building shortly before 10 p.m. on September 8, 1988. The agent encountered a suspect sitting in a chair pointing a cocked 9-mm semiautomatic pistol at the floor but

in his direction. Another suspect, Errol McDonald, was sitting on a couch counting a stack of money within easy reach of a .357-magnum revolver. There were four other men in the apartment. The agent bought a small amount of marijuana and left the building. Shortly thereafter, the agent returned to the apartment with reinforcements and knocked on the door. As soon as the agents identified themselves, they heard the sound of scuffling feet and received

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simultaneous radio communication from the perimeter team informing them that the occupants were attempting to escape through a bathroom window. The agents then used a battering ram to enter the apartment. The agents arrested the suspects and found large quantities of cocaine and marijuana along with two loaded weapons, drug paraphernalia, drug packaging materials, and several thousand dollars in cash.

In an opinion of the full bench of the U.S. Court of Appeals for the Second Circuit, the *McDonald* court ruled:

[T]here is no doubt that the agent who made the undercover purchase would have been entitled to arrest the suspects in the apartment at the time of the purchase. A controlled purchase of narcotics by an undercover law enforcement agent 'is a recognized and permissible means of investigation' employed to gather evidence of illegal conduct and to make lawful arrests.... It follows that the undercover agent here did not need a warrant to reenter the apartment within 10 minutes, having exited only to secure proper protection by obtaining reinforcements. This is not the kind of scenario that needs the detached judgment of a neutral magistrate to determine whether there is probable cause for an arrest and search.<sup>33</sup>

That same reasoning was apparent in *State v. Henry*.<sup>34</sup> In *Henry*, an undercover officer made a purchase of crack cocaine from suspects inside an apartment. The undercover officer exited the apartment and informed the waiting arrest team what had taken place. Approximately 15 to 20 minutes later, the backup detectives knocked on the door of the apartment. As soon as the door was opened, the officers announced themselves and one of the suspects fled into a bedroom, with two of the detectives in pursuit. The suspects were arrested and the illegal drugs were found on the suspects during a search incident to arrest. The Supreme Court of New Jersey ruled that once the undercover detective observed the

commission of a crime in his presence, he had both statutory and common law authority to arrest the defendant on the spot. The defendant contended that once the undercover officer left the apartment without making an arrest, he easily could have obtained an arrest warrant and therefore, was constitutionally obligated to do so. The *Henry* court disagreed with the defendant and stated that it does not follow that an otherwise legal warrantless arrest becomes illegal simply because the officers could have, but did not, obtain an arrest warrant.<sup>35</sup>

The more significant issue in *Henry* was not the warrantless arrest of the suspects but the warrantless entry of the apartment by the arrest team. The court ruled that the second entry into the apartment by the police to effectuate the arrest was reasonable because the undercover officer was earlier given consent to enter, and the probable cause that the undercover officer had to arrest the suspects had not dissipated in the short 15 to 20 minutes between the time he left and the second entry by the arrest team. The court concluded that there was no need for the officers to seek the detached review of a magistrate before entering the apartment to arrest the suspects. The court summarized the basis for its ruling thusly:

Here, the separate entries can be viewed as components of a single, continuous, and integrated police action and were not interrupted or separated by an unduly prolonged delay... ultimately we are convinced of the reasonableness of the

warrantless entry in light of all the circumstances surrounding the entry. Those circumstances include the consensual basis for the initial entry, probable cause for an immediate arrest arising out of that entry, the short amount of time and continuity between the two entries, and the legitimate grounds for delaying the initial arrest until backup officers could arrive.<sup>36</sup>

**“  
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doctrine to go beyond  
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suspect gave consent  
to the undercover  
officer to enter.  
”**

### Scope of Consent

When making an entry under the consent once removed doctrine, the backup officers are restricted to the scope of the consent originally granted to the undercover officer or informant.<sup>37</sup> The backup officers are not authorized under this doctrine to go beyond those areas that the suspect gave consent to the undercover officer to enter.<sup>38</sup> To expand the search area beyond the original consent given to the undercover officer, the officers must obtain a search warrant, obtain new expanded consent from the resident, or apply one of the other exceptions to the search warrant requirement. For example, when

placing someone under arrest the officers could search the subject and the immediate area surrounding that subject incident to arrest. The justification for the search would not be the consent given by the suspect to the undercover officer during the original entry, but, rather, the search incident to arrest exception to the search warrant requirement.<sup>39</sup>

### Conclusion

Officers may, without a search warrant or an emergency, enter the premises of a suspect if: 1) an informant or undercover officer has previously entered at the invitation of someone with authority to give consent; 2) the informant or undercover officer establishes probable cause to arrest or search while inside the premises; or 3) the informant or undercover officer immediately summons help from the other officers. This doctrine, commonly referred to as “consent once removed,” allows officers to rely on the authority of the original consent given to the undercover officer as justification to make the second entry. ♦

### Endnotes

<sup>1</sup> See *Street v. Surdyka*, 492 F.2d 368, 371-72 (4th Cir. 1974); *Minnesota v. Seefeldt*, 292 N.W. 2d 558 (Minn. 1980).

<sup>2</sup> *E.g.*, 21 U.S.C. § 878 (1970).

<sup>3</sup> *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

<sup>4</sup> *United States v. Watson*, 423 U.S. 411 (1976).

<sup>5</sup> *Payton v. New York*, 445 U.S. 573 (1980).

<sup>6</sup> *Steagald v. United States*, 451 U.S. 204, 215-16 (1981).

<sup>7</sup> *Katz v. United States*, 389 U.S. 347, 357 (1967).

<sup>8</sup> *Minnesota v. Olson*, 495 U.S. 91 (1990).

<sup>9</sup> *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967); *Hancock v. Dodson*, 958 F.2d 1367, 1375 (6th Cir. 1992) (court approved of police

entering residence after being called to scene where gunshots were fired).

<sup>10</sup> *Mincey v. Arizona*, 437 U.S. 385, 393 (1978); *Thompson v. Louisiana*, 469 U.S. 17 (1984); *Minnesota v. Olson*, 495 U.S. 91, 100 (1990); *United States v. Mayes*, 670 F.2d 126 (9th Cir. 1982) (A military corpsman was justified in entering the suspect's apartment to retrieve the object found in a child's throat so that the doctor could decide the proper medical procedure in giving aid to the child. The fact that the doctor also suspected criminal activity did not detract from the emergency need to preserve life.).

<sup>11</sup> *United States v. Santana*, 427 U.S. 38 (1976).

<sup>12</sup> *Id.*

<sup>13</sup> Oftentimes in drug cases, there is an emergency after making a controlled purchase of drugs. Some courts allow officers to reenter a residence without a warrant, based on the emergency; they do not base their decision on the initial consent given to the undercover officers. Those courts reason that once the illegal drug transaction begins to unfold any delay in obtaining a warrant would permit the destruction of evidence, the escape of suspects, or increase the danger to officers or others. See *United States v. Harris*, 713 F.2d 623 (11th Cir. 1983); *United States v. Bradley*, 455 F.2d 1181 (1st Cir. 1972).

<sup>14</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The burden of proving the voluntariness of consent rests with the government. *Bumper v. North Carolina*, 391 U.S. 543 (1968). The voluntariness of the consent must be established by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164 (1974); *United States v. Drayton*, \_\_\_ U.S. \_\_\_, 2002 WL 1305729 (2002) (It is not necessary that the suspect receive a warning from an officer that he has a right to refuse to give consent for his consent to be voluntary.) The suspect's knowledge of his right to refuse consent is only one factor for a court to consider when deciding whether, under the totality of the circumstances, the consent was voluntary. *Schneckloth*, 412 U.S. 218 (1973).

<sup>15</sup> *Lewis v. United States*, 385 U.S. 206, 211 (1966) ("[W]hen, as here, the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car, or on the street. A government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises for the very purposes contemplated by the

occupant. Of course, this does not mean that, whenever entry is obtained by invitation and the locus is characterized as a place of business, an agent is authorized to conduct a general search for incriminating materials.").

<sup>16</sup> *United States v. Pollard*, 215 F.3d 643, 648 (6th Cir. 2000); See also *United States v. Diaz*, 814 F.2d 454 (7th Cir. 1987). See generally *United States v. Rubio*, 727 F.2d 786 (9th Cir. 1983); *United States v. Janik*, 723 F.2d 537 (7th Cir.1983).

<sup>17</sup> *United States v. Jachimko*, 19 F.3d 296, 299 (7th Cir. 1994).

<sup>18</sup> See *People v. Finley*, 687 N.E.2d 154 (Ill. App. 1997) ("Assuming, *arguendo*, that the "consent once removed" doctrine is applicable

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to the case at bar, we would conclude, nonetheless, that the State failed to meet the criteria of the doctrine. At best, the record suggests that defendant did not expressly invite Adams to his trailer for the purpose of conducting a drug transaction. Defendant had no previous arrangements with Adams regarding any drug buys. Defendant was highly intoxicated at the time, vitiating any alleged consent given to Adams. Secondly, Adams, in his initial entry, did not establish probable cause to believe that cocaine was located inside the trailer. Defendant did not display any cocaine to Adams, nor did defendant arrange to make a future sale to Adams. Having failed to meet two out of the three elements, a warrantless search of defendant's trailer could not be sustained under this doctrine.").

<sup>19</sup> 103 F.3d 1475 (9th Cir. 1996).

<sup>20</sup> 215 F.3d 643 (6th Cir. 2000).

<sup>21</sup> 794 F. Supp. 178 (E.D. Va. 1982).

<sup>22</sup> In *State v. Johnston*, 518 N.W.2d 759 (Wis. 1994), the Supreme Court of Wisconsin found that it was confusing and unnecessary to resort to the doctrine of consent once removed. The court reasoned that if an officer has

probable cause to arrest a suspect he may summon backup officers to enter premises without a warrant to assist him. The court further ruled that "there is no rule that back-up or assistance may be had only when there are exigent circumstances. Time does not need to be 'of the essence' and the officers certainly do not need to be in an emergency or in mortal danger before we will allow back-up and assistance." *Id.* at 766. See also *United States v. Ryles*, 451 F.2d 190 (3rd Cir. 1971), wherein the informant exited the defendant's apartment after witnessing the defendant mixing narcotics on the kitchen table. The informant signaled officers waiting outside, who immediately entered and arrested the defendant. The *Ryles* court ruled that the trial court properly denied the defendant's motion to suppress. No mention was made in the case of the doctrine of consent once removed. The *Ryles* court instead based its decision on the reasoning in the U.S. Supreme Court case of *Lewis v. United States*, 385 U.S. 206, 211 (1966), which it quoted: "when, as here, the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car, or on the street." *Id.* at 191.

<sup>23</sup> 19 F.3d 296 (7th Cir. 1994). See also *United States v. Paul*, 808 F.2d 645 (7th Cir. 1986) (informant signaled for assistance from federal agents by using an electronic device from inside the residence).

<sup>24</sup> See also *United States v. Akinsanya*, 53 F.3d 852, 856 (7th Cir. 1995).

<sup>25</sup> 19 F.3d 296, 299.

<sup>26</sup> See, e.g., *United States v. Jones*, 1995 WL 443929 (N.D. Ill. 1995) ("The charges against Jones resulted from a 'reverse buy' undercover DEA investigation. Through a cooperating individual and his girlfriend, a cocaine deal was arranged whereby Jones agreed to pay \$60,000 for two kilograms of cocaine. At Jones' instruction, the transaction was to be carried out at his father's house. When the cooperating girlfriend arrived, Jones placed a bag containing \$60,000 in front of her, signalling his willingness to complete the transaction. The girlfriend then left the house for the purported purpose of retrieving the cocaine. An arrest signal was given and DEA agents who were waiting outside entered the house." The *Jones* court ruled that the entry by the agents was lawful under the consent once removed doctrine.). But see *United States v. Ogbuh*, 982 F.2d 1000, 1004-05 (6th Cir. 1993). In *Ogbuh*, a suspect was stopped by DEA agents and found to possess approximately 51.73 grams of

heroin. The suspect decided to cooperate with DEA and make a controlled delivery of the heroin. The agents replaced most of the heroin with sham and had the suspect, who was now acting as a DEA informant, make a controlled delivery of the package to his accomplices in a hotel room. Within a minute of the informant's entry into the hotel room, the arrest team forcibly entered the room. By the time the agents entered, one suspect and the informant had already flushed the sham/drug mixture down the toilet. The court ruled that the entry was not justified under the emergency exception and, because the informant did not summon the officers, the second entry could not be based upon the consent to enter given to the informant. The U.S. Court of Appeals for the Sixth Circuit adopted the consent once removed doctrine in *United States v. Pollard*, 215 F.3d 643, 648 (6th Cir. 2000). The *Pollard* court cited, but did not overrule *Ogbuh*.

<sup>27</sup> 660 F.2d 1178 (7th Cir. 1981).

<sup>28</sup> 814 F.2d 454 (7th Cir. 1987). See also *Lawrence v. State*, 388 So.2d 1250, 1253 (Fla. Dist. Ct. App. 1980), *aff'd sub nom. Griffin v. State*, 419 So.2d 320 (1982).

<sup>29</sup> 1993 WL 75140 (N.D. Ill. 1993).

<sup>30</sup> *Contra United States v. Herrera-Corral*, 2002 WL 69491 (N.D. Ill. 2002) (The informant saw cocaine in an apartment as he negotiated for the purchase of the cocaine. The informant exited the apartment and told the waiting arrest team what he saw. The informant drove away, and, within 2 minutes after the informant exited the apartment, the arrest team forced entry into the apartment and arrested the defendant. The court ruled that the consent once removed doctrine was inapplicable because the entry of the arrest team was not immediate. The *Herrera-Corral* court disagreed with the *Santiago* court that the 15-minute delay between the exit of the informant and the second entry by the arrest team in the *Santiago* case constituted an immediate entry. The *Herrera-Corral* court further questioned whether simply telling the agents what he saw inside the apartment was sufficient to constitute "summoning" the agents as required by the consent once removed doctrine.).

<sup>31</sup> *Id.*

<sup>32</sup> 916 F.2d 766 (2d Cir. 1990) (en banc), *cert. denied*, 498 U.S. 1119 (1991).

<sup>33</sup> *Id.* at 771 (citing *Arkansas v. Sanders*, 442 U.S. 753, 759 (1979); *United States v. Russell*, 411 U.S. 423, 432 (1973); *United States v. Asencio*, 873 F.2d 639, 641 (2d Cir. 1989)). The *McDonald* court further ruled that the agents did not impermissibly create an emergency by knocking and announcing their

presence because it was lawful for the police to do that. The court gave yet another basis that the entry was lawful by stating that, regardless of the announcement by the officers at the door, they were faced with an emergency as soon as the undercover agent made the drug purchase. "First, the ongoing sale and distribution of narcotics constituted a grave offense. Second, the defendant and at least one of his associates were armed with loaded, semi-automatic weapons. Third, the law enforcement agents had not only probable cause to suspect that a crime had been perpetrated but firsthand knowledge that ongoing crimes were transpiring. Fourth, the agents further knew that the defendant and his associates were in the apartment. Fifth, the likelihood that a suspect might escape if not swiftly apprehended was confirmed by the fact that the man who actually made the sale to Agent Agee had apparently escaped during the 10-minute interval that elapsed after the controlled purchase and before the agents entered the apartment. Sixth, the agents acted in accordance with the law, and first attempted to effect a peaceful entry by knocking and announcing themselves." 916 F.2d at 770 (quoting *Warden v. Hayden*, 387 U.S. 294, 298 (1967), and *McDonald v. United States*, 335 U.S. 451, 456 (1948)). The *McDonald* court listed two other considerations as relevant to its decision. "[T]he volatile mix of drug sales, loaded weapons and likely drug abuse presented a clear and immediate danger to the law enforcement agents and the public at large.... In addition,...the agents were confronted by an urgent need to prevent the possible loss of evidence...." *Id.* at 770. See also *Minnesota v. Olson*, 495 U.S. 91, 100 (1990), wherein the U.S. Supreme Court cited with approval the Minnesota Supreme Court's position that in assessing the risk of danger, the gravity of the crime and likelihood that the suspect is armed should be considered.

<sup>34</sup> 627 A.2d 125 (N.J. 1993). See also *Commonwealth v. Moye*, 586 A.2d 406 (Pa. Super. Ct. 1990) (reentry with arrest team after undercover drug buy was justified under the consent once removed doctrine); *State v. Contrell*, 426 So.2d 1035 (Fla. App. 1983) (valid application of consent once removed doctrine where undercover officer leaves premises after a drug purchase and he signals the arrest team who reenter the premises).

<sup>35</sup> *Id.* at 128. See also *United States v. Watson*, 423 U.S. 411, 417-18 (1976) ("the Court 'has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant'") (quoting *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975)); *State v.*

*Doyle*, 42 N.J. 334, 345- 46, 200 A.2d 606 (1964) ("If the arrest without a warrant is lawful, the search and seizure are not invalidated solely because the officers had adequate time to procure a search or arrest warrant.").

<sup>36</sup> *Id.* at 131-32.

<sup>37</sup> See generally *Gouled v. United States*, 255 U.S. 298 (1921) (government informant obtained consent to enter the suspect's office by representing to the suspect that he intended to pay a social visit, but he exceeded the scope of the consent to enter and visit when he ransacked the office in the suspect's absence).

<sup>38</sup> *United States v. Bramble*, 103 F.3d 1475 (9th Cir. 1996).

<sup>39</sup> *Chimel v. California*, 395 U.S. 752, 763 (1969). The U. S. Supreme Court has ruled that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *United States v. Robinson*, 414 U.S. 218 (1973). Police have the automatic authority to search a person incident to a lawful arrest and need not establish the probability that weapons or evidence would be found prior to instituting the search. *Id.* at 236. An officer may perform a search of the person and may open any object found during such a search. *Chimel*, 395 U.S. 752, 763. "While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of protection from police interest in weapons, means of escape, and evidence." *United States v. Edwards*, 415 U.S. 800, 808 (1974). The Supreme Court has limited the spatial scope of a search incident to arrest. A search incident to arrest must be confined to the area within the immediate control of the arrestee. *Chimel*, 395 U.S. at 763. The Court reasoned that the search must be confined to that area within which the arrestee could gain possession of a weapon or destroy evidence. *Id.*

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*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.*

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# 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 those situations that transcend the normal rigors of the law enforcement profession.



Deputy Esch



Officer Bratton



Officer Young

While traveling west out of Greeley, Colorado, Deputy Bill Esch of the Weld County, Colorado, Sheriff's Office received a report of a possible drunk driver. Locating the vehicle, Deputy Esch attempted to make a traffic contact when the vehicle, traveling almost 80 mph, ran off the road. The vehicle reached a ditch, became airborne, and struck the guide wire of a utility pole. Fire engulfed the

vehicle and trapped the driver inside. Deputy Esch used a fire extinguisher to put out the flames in the cab, but was unable to open either door. Officers Pete Bratton and Tim Young of the Greeley, Colorado, Police Department arrived. Officer Bratton kept the flames at bay with a fire extinguisher while Deputy Esch and Officer Young pulled the driver from the vehicle. The driver suffered second- and third-degree burns on 10 percent of his upper body and face. Deputy Esch and Officers Bratton and Young exhibited bravery and a willingness to put their lives in danger and subsequently saved the life of the driver.



Officer Provost

Officer Scott Provost of the Bellingham, Massachusetts, Police Department responded to a call of a fire alarm in an apartment building. Upon arrival at the scene, Officer Provost entered the upstairs apartment, but was overcome by thick smoke. While regaining his composure outside the apartment, Officer Provost spoke with a group of tenants from a downstairs apartment. He was informed that a mother and two young children were in the upstairs apartment. After being instructed exactly where the children's bedroom was located, Officer Provost reentered the apartment. He discovered that the mother had left a suicide note and had placed puddles of accelerate throughout the apartment. She also had barricaded the door of the children's room and crawled into bed with them. Officer Provost was able to kick open the bedroom door enough to squeeze through the opening. Once inside the bedroom, he was able to confront

the mother and evacuate everyone from the fire. Officer Provost put his own life in peril by entering the burning apartment, and, by doing so, he saved the lives of three people.

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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