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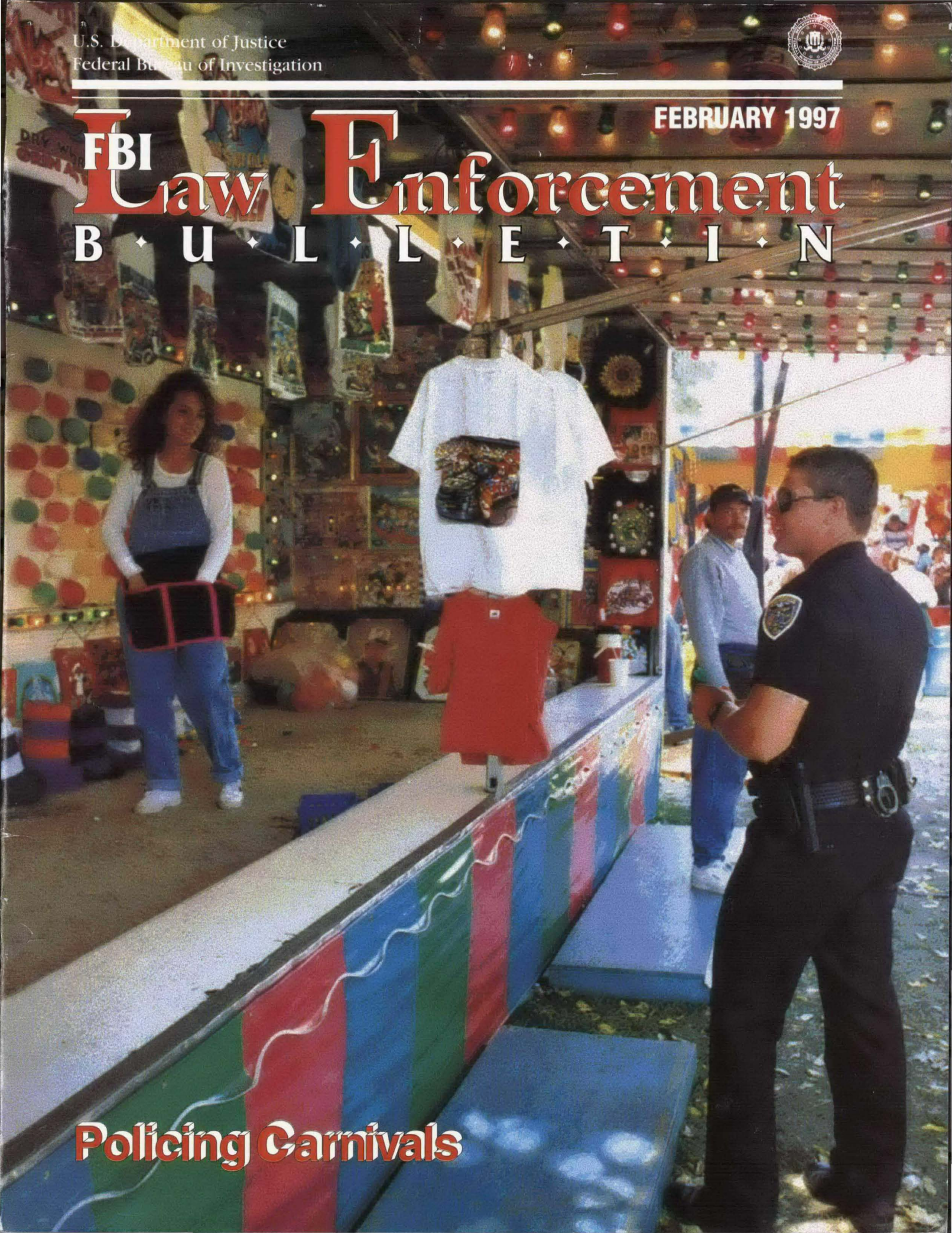

Policing Carnivals

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**Louis J. Freeh
Director**

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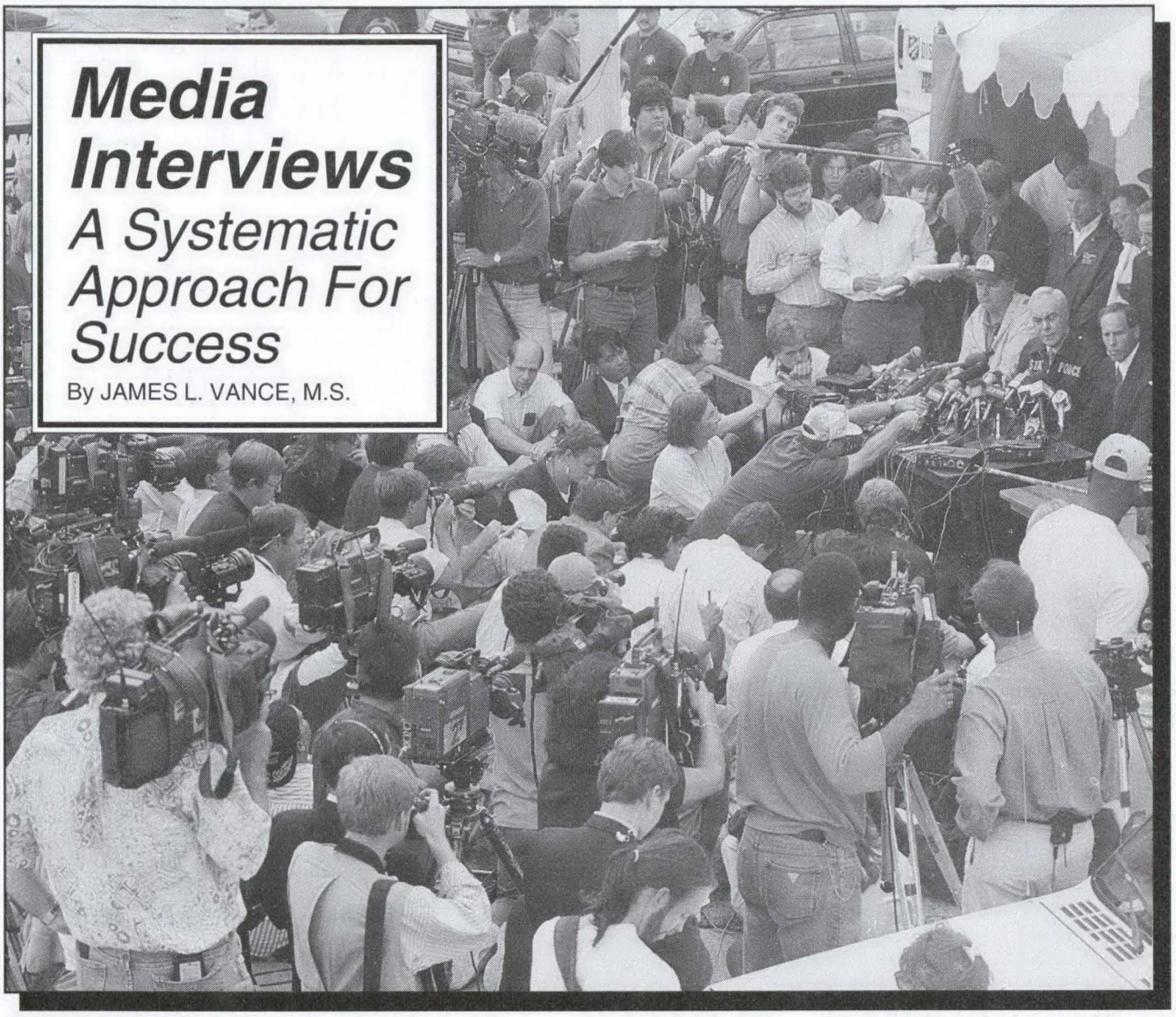


Media Interviews

A Systematic Approach For Success

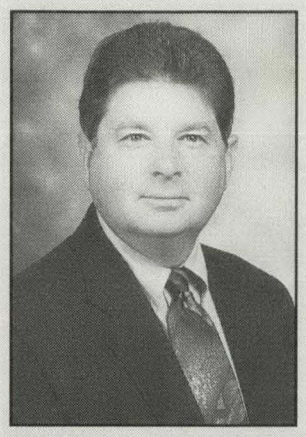
By JAMES L. VANCE, M.S.

Law enforcement officials, when asked their opinions of today's news reporters, predictably reply with such words as "insensitive," "arrogant," "untrustworthy," and "sensational." Rarely are the words "useful" or "necessary" included in their responses.

In contrast, reporters and editors from both print and electronic news agencies, when asked to describe the police in the 1990s, unanimously voice their opinions using such terms as "clannish," "secretive," "incompetent," and worse. The words "professional" and "trustworthy" almost certainly never make the list.

Such stereotypical characterizations from both sides do little to promote mutually beneficial relations. In fact, the attitude of police officials and the media toward one another deprives an important third party, namely, the public, of clear accounts of what it needs to know to make reasoned judgments on law enforcement's impact on the community.

In the arena of police-media relations, one of the primary goals of any law enforcement agency should be to help ensure the accurate reporting of information that the public needs to know. While



Mr. Vance, an instructor assigned to the Law Enforcement Communication Unit, teaches media relations to police administrators at the FBI Academy.

> ***"The seven-step systematic approach to media interviews offers potential spokespersons a simple set of working guidelines."***

administrators can employ a number of strategies toward this end, there is no substitute for a proactive attitude based on sound preparation. This article addresses the need for good police-media relations, offers a strategy to improve relations, and then presents a seven-step systematic approach that administrators can use to prepare for media interviews.

THE NEED FOR GOOD POLICE-MEDIA RELATIONS

Public opinion polls consistently show that the public supports law enforcement when it acts responsibly. These same polls also indicate that the public expects law enforcement officials to tell their stories—warts and all—to maintain the public's trust.

At the same time, those charged with the public's welfare, whether they are police officers, firefighters, or elected officials, need to remember three important points regarding the media. First, the media are not going to go away. Law enforcement represents, either directly or indirectly, well over one-half of their stories, especially in local markets. In short, the actions of the police are too important to ignore.

Second, the media will run the story whether law enforcement officials like it or not. While the media may entertain an occasional plea to delay a story, given sufficient justification, law enforcement's choice, more often than not, is to be either a player who shapes the coverage from the outset or an observer who stands back to let the critics define the issue.

Finally, bad news does not improve when it stays in the spotlight. In such instances, an agency's best media strategy is to offer a complete account of what happened, consistent with legal constraints, and let the issue run its course. This simply clears the way for other issues. To put it another way, "You may get beat up, but you'll only get beat up once."

A STRATEGY TO IMPROVE RELATIONS

Without debating the merits of today's media, their own excesses and tactics, or their cynical approaches to the issues they cover, the primary question regarding police-media relations simply is, "How can today's law enforcement professionals prepare for media interviews to ensure their stories are told accurately, fairly, and in a way that the public can understand?" Surprisingly, there *is* a strategy for media interviews that, balanced over time, offers a better chance to obtain accuracy in reporting.

The strategy is proactive, not reactive, and requires administrators to take an aggressive, rather than passive, stance when dealing with the media. It is a strategy based on systematic organization and consistency of response. In short, it is a process based on control.

Control, in this case, does not mean attempting to hold in check the media and their access to law enforcement information, although there are times when investigative or prosecutorial realities demand a less complete response than the media might otherwise like. In fact, any tactic to control the media works against the organization, creating a climate of greater distrust in an already-adversarial relationship and possibly becoming the focus of media scrutiny.

Instead, administrators need to control their own departments by ensuring that all levels of management receive and disseminate consistent information. This is accomplished through a sound media policy and a public information

officer, one with either full-time or auxiliary media duties, who has a mandate to train appropriate personnel within the agency on media relations and interviewing techniques. It also requires the full support and involvement of administrators who give priority to media relations. Enlightened leadership is the first step toward establishing sound relationships with the media.

Armed with this posture, administrators start out in a strong position with the media because they recognize that they have something the media, and presumably the public, want and need—information. From this foundation, administrators can disseminate information in such a way that the organization's position will stand the greatest chance of being reported accurately. This is where a systematic approach to preparing for media interviews assumes vital importance.

A SEVEN-STEP SYSTEMATIC APPROACH

While there are as many "systems" to interview preparation as there are media consultants, the following seven-step approach is both simple and proven. It should be noted at the outset, however, that not every element of this process applies in every media encounter. The goal is to give prospective interviewees a complete arsenal from which they can draw "interview ammunition" as the situation dictates.

Step One: Define the Issue

It happens all too frequently. A reporter calls with tough questions; an agency executive or other spokesperson, often without forethought and adequate preparation, answers, believing to know the ins and outs of the issue. This response results in an incomplete or inaccurate treatment of the issue by the press, which sends the agency into the first of many rounds of damage control.

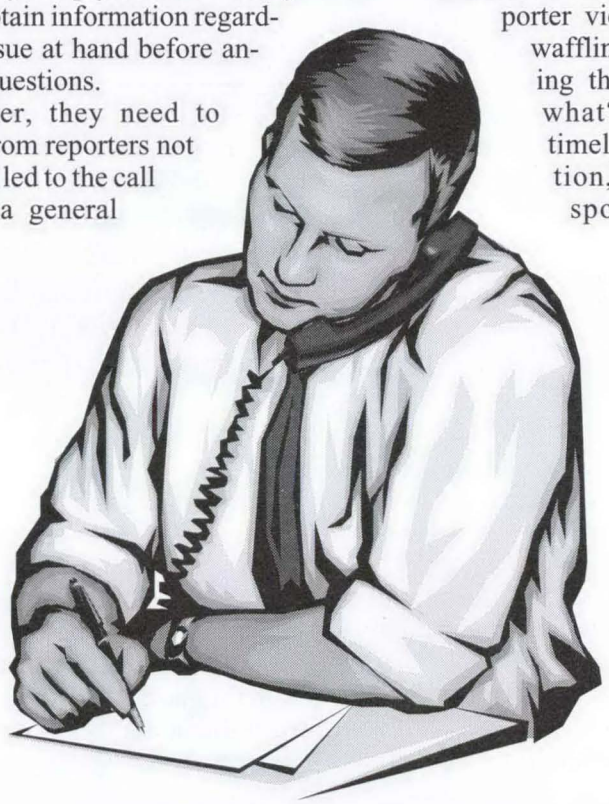
The agency would have been better served, in terms of time and reputation, by seeking to control the situation from the outset. By not doing so, administrators put the media in charge.

To begin, agency officials and spokespersons should know not to respond to other-than-routine questions without knowing the background of the inquiry. In such instances, when queried by the media, they simply stress that they need to obtain information regarding the issue at hand before answering questions.

Further, they need to find out from reporters not only what led to the call but also a general idea of the identities of other individuals to whom the reporters are talking. This information will help reveal the likely tone of the press' inquiry, the reliability of their information, and even their "edge" or slant on a particular piece.

Spokespersons then should determine from reporters the specific interview topic and the kind of questions that will be asked. This gives the department the opportunity to decide who is the best person in the agency to handle the issue at hand. It may not be the individual contacted originally.

No rule exists that says the person called is the one who must respond to the inquiry. In fact, reporters appreciate a good faith effort to direct the questions to the right source. Even if the reporter views this as waffling or ducking the issue, so what? Precise, timely information, clear responses, and



thoroughness are more important than a reporter's delicate feelings.

Where appropriate, the official contacted can offer to fax background information to the reporter. This does not mean that the person is refusing the interview; it just shows that the department is offering to do what it can until it develops a more specific response.

At some point during the initial media encounter, the agency official or spokesperson must make one of three choices—decline the interview, answer the questions, or ascertain the reporter's deadline and offer to call back shortly with the agency's response. If the agency official declines the interview based on the nature of the questions, the reporter should be told why. If it appears that the information may be available later, that, too, should be relayed to the reporter, along with the reason why. In either case, officials should have no illusions about whether reporters will pursue stories, because they will.

Agency officials who decide to answer the questions on the spot should do so only if the issues have been developed beforehand (perhaps because of previous queries) and answers are readily available. Officials should resist being goaded into responding to questions until they are prepared completely. This is why calling a reporter back is the best option in the majority of inquiries.

With the foregoing as an agency's management posture, firm, fair negotiations between the agency and the media prior to an interview seem not only reasonable but also expected. Why? Because the agency and its issues are too important to address by shooting from the hip.

Step Two: Gather Facts and Prepare Organizational Messages

In today's high visibility, sound-bite-oriented media arena, developing organizational messages in concert with accurate information is the single most important part of interview preparation. It can be accomplished when an agency has the luxury of hours or even days to prepare, or it can be accomplished quickly, even by a police official stepping onto a crime scene with cameras already in place. Without question, however, this preparation must be done.

> ***"...developing organizational messages in concert with accurate information is the single most important part of interview preparation."***

What are organizational messages? They are points a spokesperson wants to make, no matter what. They support a department's theme or position and frequently serve to counteract the messages of critics who inevitably hover around law enforcement and who always will be given equal time by the media, regardless of their credibility. Organizational messages must be repeated often and emphatically throughout the interview.

Department administrators develop organizational messages with an eye toward promoting public recall. The messages are simple, focused, concise, and limited in number. Essentially, they are a concession to the sound-bite nature of today's media outlets and to the often-limited attention span of the viewing and reading public.

Print journalists often dispute the assertion that, like their electronic media counterparts, they focus primarily on short, easy-to-understand messages. They assert that theirs is a more in-depth medium.

Perhaps in terms of the number of words devoted to a particular topic, print journalists offer a great deal more than their broadcast counterparts. But anyone reading a typical news account on any topic would be hard-pressed to find more than a sentence or two attributed to a source, regardless of the source's prominence or the article's length. Until the media's approach to news coverage changes, a "quotable quote" on a particular issue stands a far greater chance of being repeated than a detailed explanation. The point is: Spokespersons should not fight the trend; instead, they should make it work for them.

Supporting facts should accompany organizational messages. These facts are the standard "who, what, why, where, when, and how" material that provides the details

necessary to understand an issue. Without exception, police officials must verify and reverify information before releasing it.

Once in the public domain, erroneous information is difficult to retrieve, and it damages an organization's credibility. It also places a reporter in an awkward situation.

Administrators should remember that reporters succeed or fail by their credibility. If their accounts are inaccurate because the information provided was incomplete or incorrect, reporters face the wrath of their editors and are less likely to be trusted. As a result, these reporters become more skeptical of their sources and are much less inclined to accept at face value future information from law enforcement officials. In short, an organization concerned with sound media relations *always* strives for precision in its responses to queries.

If information cannot be released, a thorough explanation of the reasons why is warranted. The explanation should be accompanied by a promise to release the information later, as soon as practical. This is an organization's only viable option for cultivating and maintaining the public's and the media's trust.

Step Three: Brainstorm Potential Questions

Brainstorming potential questions simply means writing down *everything* a spokesperson conceivably might be asked. This includes both tough and easy questions. The reasoning behind this is simple. The first time interviewees come in contact with a tough question, it should be from someone on their side.

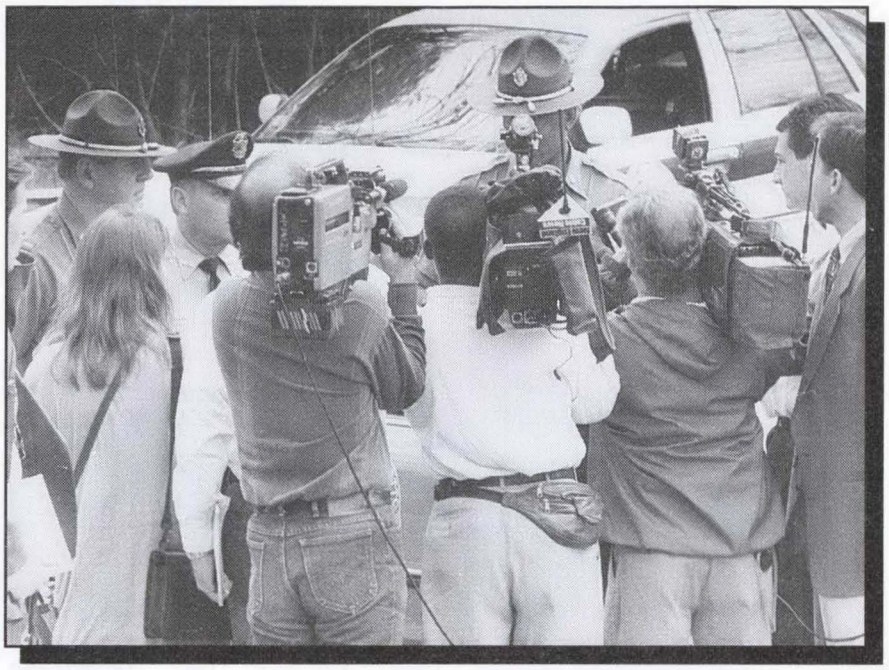


Photo © Mark Ide

To ensure thoroughness, all personnel familiar with the issue should help draft potential questions. Almost always, the questions an organization identifies on its own will be more extensive than those asked by the media.

Step Four: Answer the Questions in Writing

The mere act of writing out answers to questions promotes recall. In addition, it produces a document to be used during rehearsal and referred to during the actual interview (especially a phone interview).

Written answers also help to ensure adherence to the organizational message. Moreover, they provide a source document to assist with follow-up queries from other media outlets, thus ensuring consistent responses and saving considerable preparation time.

Step Five: Rehearse Out Loud

Spokespersons often overlook or ignore this key element of media interviews. If actors or actresses refuse to go on stage without rehearsal, why would police spokespersons ever consider giving an interview unrehearsed, where the results are so much more important? A prepared official is a believable official.

A good rehearsal technique is to have other personnel role play the reporter and fire the questions—both tough and easy—at the interviewee. If they play their roles earnestly, officers usually ask tougher, more detailed questions during a rehearsal than those voiced in the actual interview. Following this session, the role players then critique the performance, updating the written answers in the process.

A rehearsal produces a highly prepared, polished spokesperson with a heightened awareness of the agency's position on the issue. At

The Seven-Step Approach To Media Interviews

Step One: Define the Issue
Step Two: Gather Facts and Prepare Organizational Messages
Step Three: Brainstorm Potential Questions
Step Four: Answer Questions in Writing
Step Five: Rehearse Out Loud
Step Six: Set the Ground Rules During the Callback
Step Seven: Conduct the Interview

the same time, it greatly reduces performance anxiety and helps to ensure the clear transfer of factual data to the reporter.

Step Six: Set Ground Rules During the Callback

First of all, the callback is predicated on the bedrock principle that if someone in the department tells reporters that their deadlines will be met and that they will be called back within a specific period of time, then this is precisely what should happen. Beating the deadline is even better.

Why is this important? Because just as agencies expect reporters to keep their word, so, too, do reporters expect spokespersons to keep theirs. Any agency, especially a law enforcement one, is only as good as its credibility. Once lost, credibility is virtually impossible to regain.

During the callback, several issues need to be addressed. First, the spokesperson must reiterate the subject of the interview. No agency wants surprises, so reporters should state clearly their intentions to stay with the agreed-upon topic(s).

A majority of credible journalists adhere to this simple ground rule. However, prudent administrators also plan for those journalists who "push the envelope" by attempting to explore different peripheral areas for which the spokesperson is not prepared or who knock a spokesperson off stride by asking questions on totally unrelated topics.

Reiterating a topic beforehand provides the spokesperson with the opportunity to remind reporters of their prior agreements and the expectation of integrity. Should reporters persist in pursuing issues beyond the scope of the prior agreement, thus making clear their real intentions, spokespersons can seize the moral high ground and threaten to terminate the interview.

Along the same line, reporters should be advised of those issues that cannot be addressed and the reasons why. For law enforcement, in particular, many issues are investigatory in nature, protected by state or federal privacy laws, and are not disclosable due to prosecutorial realities. In fairness to reporters, prior knowledge of untouchable issues avoids false expectations that can lead to misunderstandings and strained relations.

Nevertheless, as a practical matter, officials stating beforehand what cannot be discussed still may be asked to state on the record or before the camera those issues on which they will not comment and why. This is a reasonable request and should be accommodated. Spokespersons should remember that the public has a strong sense of fairness and will accept reasonable explanations.

Other issues to be handled during the callback are the time, length, and site of the interview, as well as related matters. These details set the parameters for the interview.

As a general rule, brief interviews are better than long ones; however, spokespersons need to avoid setting a specific time limit during negotiations. Not only does this allow for some latitude, but it also does not tie the spokesperson to a reporter for a fixed time period if the interview goes poorly. Put simply, spokespersons should say what they have to say and then stop.

At this point in the interview process, there is, in essence, a completed verbal contract. The level of preparation that already has taken place should make the spokesperson more than ready for the seventh and final step.

Step Seven: Conduct the Interview

The interview itself often can be anticlimactic, given the preparation that goes into it. What reporters

confront, regardless of individual leanings, is a confident, controlled, and professional spokesperson. In other words, the nonverbal presence supports the verbal message.

But what of those circumstances, alluded to earlier, in which a spokesperson has little time to prepare, for example at a crime or accident scene? The answer is simple: There *always* is time to prepare.

Under no circumstances should any official have to participate in an impromptu interview. Negotiation on questions to be asked and basic ground rules can and should be accommodated off camera or before going on record with a print journalist, even when an official decides to speak while "on the scene."

Moreover, officials always should exercise the prerogative to gather basic facts from others at the scene and develop one or two organizational messages before talking to reporters. Finally, such on-the-scene or ambush-style interviews always should be brief, with the promise of follow-up information if appropriate.

CONCLUSION

The seven-step systematic approach to media interviews offers spokespersons a simple set of working guidelines. Additionally, it allows an organization to provide information in the vital early stages of a story rather than wait and give critics or less-informed sources the chance to shape the issue.

For law enforcement, a policy of complete, consistent responses to media queries enhances public understanding and support. At the same time, it breaks down media-held stereotypes.

Few agencies have a greater or more important story to tell than law enforcement. A systematic approach to telling that story —ideally as a matter of organizational policy—is a management imperative. ✦

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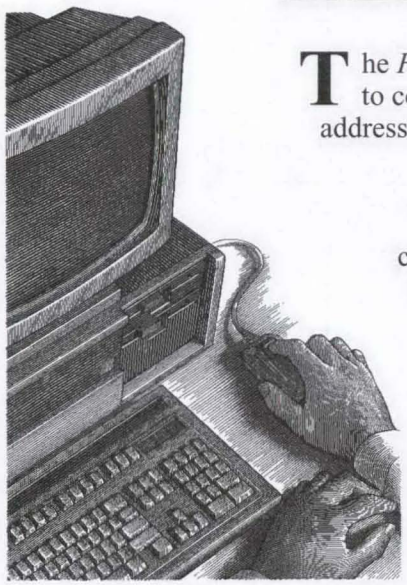

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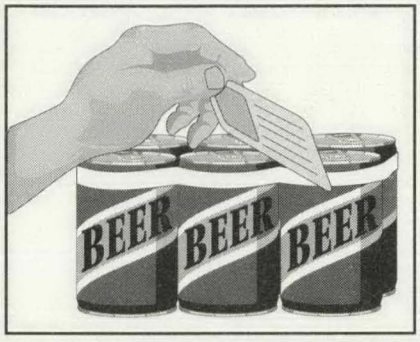
Focus on Training

F.A.B. IDs
Detecting Fake, Altered, and Borrowed Cards

By Roger Johnson



In the United States, 18-year-olds can legally drive, vote, and die for their country, but they cannot drink alcohol. Viewing this discrepancy in the law as a denial of their rights, today's teens are determined to beat the system. This results in a proliferation of false identification cards (IDs)[1] and a nightly cat-and-mouse game between the youths and the law enforcement officers and alcohol beverage licensees who stand in their way.

Indeed, both law enforcement officers and retailers have become increasingly frustrated as false IDs have become a way of life for many thirsty 18-, 19-, and 20-year-olds. Aided by today's technology, these would-be patrons have become so sophisticated in their methods that they leave many alcohol beverage licensees and police officers shaking their heads.

Officials in Wisconsin faced similar concerns, which were compounded by the state's economic climate and environmental factors. In Wisconsin, a 40-ounce bottle of beer can cost less than a 33-ounce bottle of sparkling water, and the state beer tax has not increased since 1969. An abundance of bars and liquor stores provides teens with easy access to alcohol. Moreover, the Europeans who settled in the area over a century ago not only drink alcohol on a regular basis, they actually celebrate it through such festivals as Oktoberfest. Together, these factors make the state a prime target for underage drinkers using false IDs to purchase alcohol.

Many of these youths can be found on college campuses. One study concluded that as many as 22 percent of Wisconsin college students have false IDs,[2] although university police officers estimate numbers as high as 50 percent. One police detective at the University of Wisconsin at Madison has confiscated false IDs from every state in the nation, including Alaska and Hawaii.

ADDRESSING THE PROBLEM

Tasked with enforcing alcohol beverage laws, special agents of the Alcohol and Tobacco Enforcement Section of the Wisconsin Department of Revenue knew that they would have to find a way to combat the state's underage drinking problem. They also realized that any strategy would need to have a broad impact for both law enforcement and the retail industry without draining the department's limited resources. With these requirements in mind, section agents developed a training program designed to help law enforcement officers and alcohol beverage retailers spot false IDs.

DEVELOPING THE TRAINING PROGRAM

To begin, agents researched the methods used to manufacture forgeries by gathering information and false ID cards confiscated by university police departments, bar and liquor store owners located near college campuses, and in some cases, from the experts themselves, the counterfeiters. During the intelligence-gathering phase, it became clear that the cards generally fall into three categories: fake, altered, and borrowed.

Fake IDs

For the most part, fake, or counterfeit, IDs encompass two different types. Some closely resemble state driver's licenses. Others, such as identification cards manufactured by mail-order firms, may have no legal counterpart, making illegal ones harder to detect.

Still, both types of counterfeit cards may contain anomalies that can alert officials to their lack of authenticity. For example, a fake driver's license, when compared to the real thing, may be a different size, thickness, or color. Letters and numbers may differ in size, typeface, or placement, or they may be fuzzy. In fact, although many counterfeiters spend a

great deal of time reproducing the front of the card, they may merely photocopy the reverse side, leaving blurred letters and/or dark images.

No matter how professional-looking it is, the front of the counterfeit card may miss the mark. The photograph may lack the quality of the motor vehicle card, producing a shadow or glare or giving the subject "red-eye." Finally, the state seal or logo may be missing or altered. Mail-order IDs may actually contain such phrases as "for personal use," "office use only," or "not a government document," a sure sign that the card is a fake.

> "One study concluded that as many as 22 percent of Wisconsin college students have false IDs...."

Altered IDs

Altered IDs may exhibit signs of tampering in one or more places, including the numbers, the photograph, and the laminate. The birth date, driver's license number, height, and weight may be scratched or bleached out and inked over or cut out and reinserted. If altered, the numbers may be bumpy.

Changed numbers in the birth date may not correspond to the driver's license number, which many states code with the birth date and other identifying data. In Wisconsin, for example, the 7th and 8th numbers match the year of birth and the 9th through 11th numbers indicate the person's sex.[3]

A photograph with bumpy surfaces or rough edges may have been inserted over the original. Because many states place their seal over the photograph, an ID altered in this manner would cover part of the seal.

Changes in the card's laminated cover often indicate tampering. It may contain glue lines or rough edges, especially near the photograph. Altered numbers may not match up after the laminate is put back into place. A shadowy or cloudy image on the card means that a new laminate covers the original.

Borrowed IDs

Oftentimes, minors borrow identification from individuals who can drink legally. Although appearances change, even subtle differences between the subject presenting the ID and the photograph and/or the physical description data on the card should be questioned.

Also included in this category are duplicate and expired cards. An expired driver's license or one marked "DUPL" may not belong to the person presenting it as identification.

Training Aids

After gathering a representative sample of fake, altered, and borrowed cards, agents photographed the cards and made them into slides, accentuating the points officers and retailers should examine in determining their validity. While most are examples of Wisconsin IDs, the slides also include those from other states. In addition to serving as a visual reference, these cards show that the same techniques used to alter and counterfeit cards in Wisconsin are used throughout the United States.

CONDUCTING THE TRAINING

During the 4-hour training session, students view the slide presentation, while listening to an informative lecture, which includes a review of the laws governing the manufacture and use of false IDs. Students also receive a close-up, hands-on look at the cards found in the slides.

Next, they put their newly acquired skills to the test. The instructor passes out 25 cards to the class; some, but not all, are altered or counterfeit. The students must determine which cards are bad and why. This practical exercise allows students to evaluate their ability to spot false IDs. As an added benefit, it gives law enforcement officers an appreciation for what liquor licensees confront on a daily basis.

An instructional text accompanies the visual aids. In addition to describing each card in detail, the text provides anecdotes to explain further how the cards were created, spotted, or seized.

Another handout given to the students is an ID-checking guide. The easy-to-use guide provides clues

THE F.A.B. ID CHECKLIST

This checklist gives a thumbnail sketch of what officers should look for when examining identification cards.

Fake IDs

- Check the size, thickness, and color of the card
- Check the placement, size, and typeface of the letters and numbers
- Check the photograph for shading, glare, or "red-eye"
- Check the state seal for accuracy
- Check the back for blurred or dark images
- Check for such phrases as "for personal use," "office use only," or "not a government document"
- Request backup documentation
- Reject and confiscate questionable cards

Altered IDs

- Check for numbers that have been scratched or bleached out and inked over or cut out and reinserted
- Check for overlapping numbers; the laminate may have been peeled back and replaced
- Check for cloudy images; a new laminate may cover the old one
- Compare the birth date to the driver's license number because in some states these numbers match
- Check for rough spots, especially around the edges and over the photograph
- Check the state seal for accuracy and completeness; an inserted photograph may cover part of it
- Request backup documentation
- Reject and confiscate questionable cards

Borrowed IDs

- Compare the photograph and physical identifiers to the cardholder and question discrepancies
- Ask the presenter to verify personal data on the card
- Obtain a signature and compare it to the one on the card
- Be wary of expired and duplicate cards
- Request backup documentation
- Reject and confiscate questionable cards

Information provided by the Alcohol and Tobacco Enforcement Section, Wisconsin State Department of Revenue, and the Office of Transportation Safety, Wisconsin Department of Transportation.

for identifying fake, altered, and borrowed cards. It also presents tips for obtaining corroborating information from cardholders.

A clever tactic involves casually conversing with the cardholder. For example, if an individual presents an ID card (as opposed to a driver's license) as proof of age, the retailer can inquire about the drive to the establishment. A person who admits to driving there should be able to present a license that matches the information on the ID card.

Officers and retailers also might question the carrier about some basic information on the card, such as the address, middle initial, or height and weight. Someone using a borrowed ID may not know the right answers. Another approach involves obtaining the person's signature, which may not match the one on the ID.

People carrying false IDs—whether fake, altered, or borrowed—rarely can produce backup documentation, whereas most people have several legitimate forms of identification. When confronted with a questionable ID, officers and retailers should ask for additional documentation, such as a Social Security card, a credit card, or a hunting or fishing license.

WORKING WITH THE BEVERAGE INDUSTRY

In classic examples of industry and government working together, the National Beer Wholesalers Association and the Beer Institute incorporated the

ID-checking guide into their annual point-of-sale campaign aimed at thwarting underage drinking. Together, they have produced over 1 million laminated cards with tips for spotting false IDs. Printed in English, Spanish, and Korean, the cards go to retail establishments across the United States. The organizations also have teamed with independent breweries to produce a booklet that contains photographs of driver's licenses from the United States, Mexico, Canada, and the United Kingdom.

With assistance from revenue agents and funding from the National Highway Traffic Safety Administration, the Wisconsin Department of Transportation produced a training video, a laminated ID-checking guide, and a responsible-server packet, which gives alcohol servers and sellers a uniform policy to follow. Industry associations, including the Wisconsin Wholesale Beer Distributors Association, the Tavern League of Wisconsin, and the Wisconsin Tavern Hosts, cooperated in distributing these materials throughout the state.

> "When confronted with a questionable ID, officers and retailers should ask for additional documentation...."

ASSESSING THE PROGRAM'S IMPACT

Since the program's inception in 1988, Wisconsin revenue agents have provided free training to both industry officials and law enforcement officers in a number of forums. In addition to state and local officers and alcohol beverage retailers, recipients have included Pennsylvania Alcohol Beverage Control agents and members of the National Liquor Law Enforcement Association. Likewise, the class has been incorporated into Wisconsin's 400-hour police recruit training program, required for law enforcement certification in the state. This training is especially beneficial for new recruits, who often get assigned shifts where they encounter underage drinkers with false IDs.

Because Wisconsin law usually imposes civil penalties on youths who make or carry false IDs, no statewide statistics exist to gauge the full impact of this training program. Still, the class provides students with the ability to detect false IDs, a skill that officers can use in any situation where a subject presents identification. Moreover, the training has created a greater awareness in law enforcement, the beverage industry, and the community at large.

CONCLUSION

Like the rest of the 50 states, Wisconsin requires patrons to be 21 years old to buy and consume alcohol legally. At the same time, today's youths encounter tremendous peer and social pressure to drink. As the two forces clash, law enforcement faces a host of problems, most notably, a proliferation of false IDs.

At first glance, the problem of false ID use by underage drinkers in Wisconsin seemed insurmountable, especially in light of the state's economic climate and environmental factors. Yet, even with limited resources, agents from the Alcohol and Tobacco Enforcement Section of the Wisconsin Department of Revenue were able to develop and implement a broad strategy with statewide impact. With assistance from the private sector, they instituted a comprehensive training program designed to help law enforcement officers and beverage industry employees alike detect fake, altered, and borrowed IDs. ✦

Endnotes

[1] Unless otherwise noted, ID refers to both driver's licenses and identification cards.

[2] "Wisconsin Youth Alcohol and Other Drug Abuse Final Report: Task Force to the State Council on Alcohol and Other Drug Abuse," August 1988, 50-51.

[3] Numbers below 500 indicate a male; 500 and above indicate a female.

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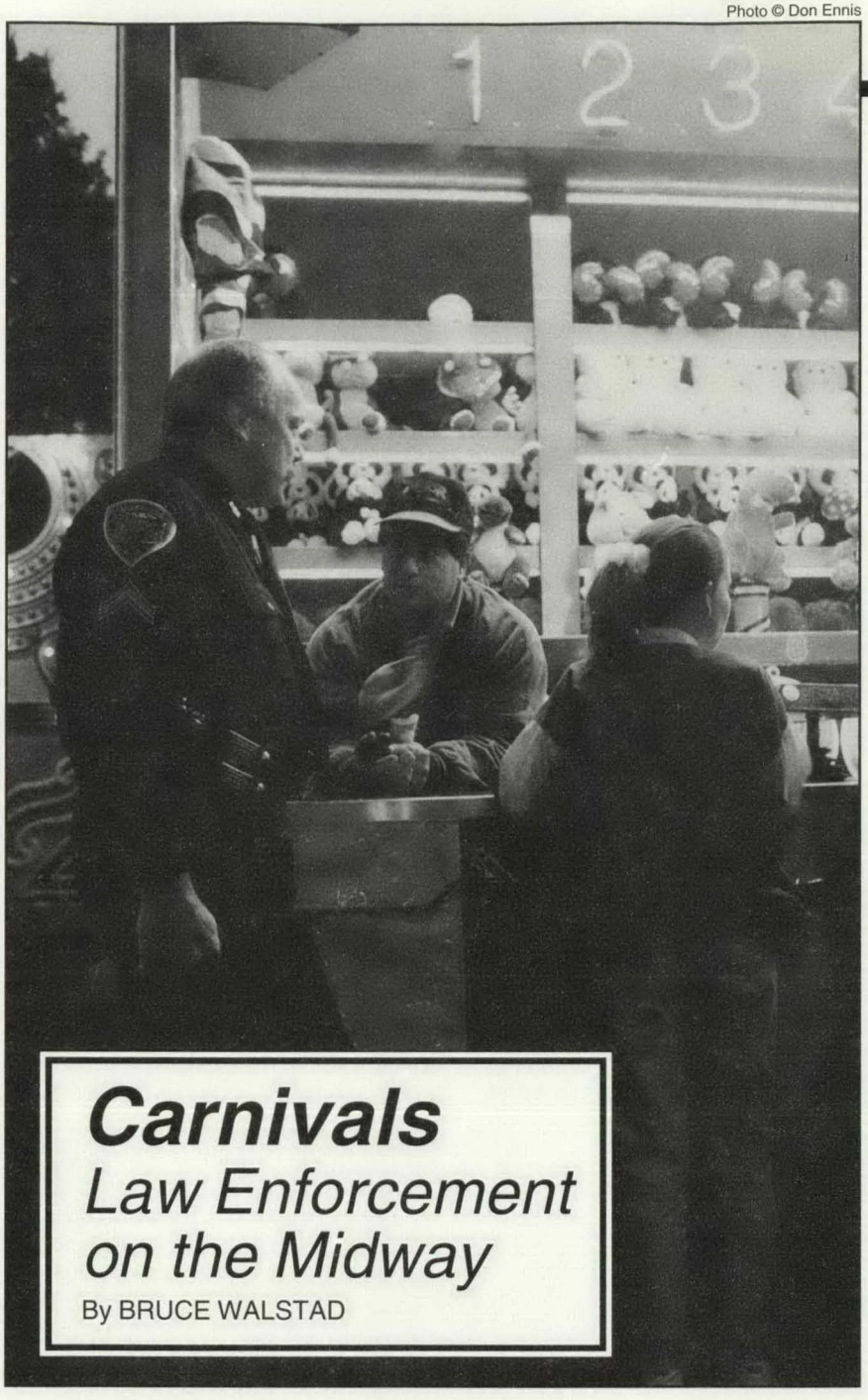

Carnivals
Law Enforcement on the Midway

By BRUCE WALSTAD

For most people, carnivals conjure up pleasant thoughts of fun and games, cotton candy, amusement rides, and sideshows. Law enforcement officers, on the other hand, often think of the dust and dirt, long hours, lost children, rowdy teens, intoxicated individuals, blaring music, and blinding lights. Their superiors find themselves concentrating on the costs of policing carnivals and the personnel shortages they cause.

Despite the pressing problems they raise for law enforcement, carnivals have their place in American culture. Carnivals have been in existence since 1893 as an offshoot of the Chicago World's Fair. They have endured the last 100 years and will continue to do so.

This article unveils the "carnie's" world. It looks at the behind-the-scenes operations of owners and operators and suggests ways for law enforcement personnel to protect citizens, and themselves, from becoming victims on the midway.

NOT A NICKEL-AND-DIME BUSINESS

It might be easy to think of carnivals as nickel-and-dime businesses, but this myth could not be farther from the truth. The more than 700 carnivals operating in North America sell about 2.5 billion ride tickets annually.[1] In 1995, one of the leading carnivals alone drew over 6.5 million people to its midway in just seven dates; another carnival, playing just three dates, attracted 3.7 million patrons.[2] Obviously, the gross receipts generated by this form of outdoor entertainment amount to more than just spare change.

THE CARNIE'S WORLD

Operations

Rides, games, food concessions, and sometimes shows make up a carnival. With the smaller carnivals, owners hire employees to run the rides, operate the games, sell the food, and put on the shows. Larger carnivals commonly use independent contractors or agents to supplement the operation. These contractors or agents pay either a daily flat fee or a percentage of the

gross receipts to the carnival owners. Also, individuals who own a single game, which they run themselves, or several games, for which they hire others to run, can contract with the carnival owners.

Equally confusing is how carnivals book their playing dates and chart their touring routes. For the shorter dates with few anticipated attendees, a carnival can be divided into two or more smaller units so that it can play different locations simultaneously. When a longer date that promises huge crowds is scheduled, the entire carnival will come together to operate as one unit. Or, two or more carnivals will combine, along with individual operators adding their rides, games, concessions, and shows.

For county and state fairs, a carnival owner or an individual may hold the contract with the fair board to supply all or a portion of the rides, games, or food concessions. The one who holds the contract also can deal with others to run these operations.

Then there are the carnivals sponsored by local civic clubs or churches. For these events, the club or church members may run some of the booths, games, and shows, while contracting out the rest.

Chain of Command

The different combinations of owners and operators make it difficult for law enforcement to determine who to hold accountable for violations of the law. Compounding the problem is a carnival's chain of command.

A carnival, like any business or organization, has an operating hierarchy. At the top sits the carnival owner, who sets the playing dates and touring routes, arranges the advertising, makes the deals with fair boards and sponsors, and oversees the bookkeeping.

Next in the chain of command are the ride supervisor and game supervisor who oversee the daily operations of the rides and games and their operators. They also collect the daily rent or percentages from the games' operators and rides not owned by the carnival.

A person known as the "patch" settles all complaints or problems that arise between carnival personnel and patrons or the police and reports directly to the owner. When trouble starts, the patch responds and makes the decision on how to resolve the dispute. This can involve giving an angry, vocal game player who feels cheated a stuffed animal or returning some of the money lost. The patch also may try to offer free refreshments, ride passes, or stuffed animals to police officers patrolling the grounds.

Privileges, Percentages, and "Dings"

Independent game and ride owners pay for the opportunity to operate with the carnival. A ride owner gives a percentage of the daily gross receipts to the carnival,[3] while the game owner pays a daily fee, rain or shine, known as "privilege." The location on the lot and the footage of the trailer or tent determine the amount of the privilege. Owners of games located on the right side of the carnival midway, toward the front, pay a higher privilege than those located in the back lot, the least expensive place.

For example, one game owner at the 1995 Florida Mid-State Fair paid a privilege of $1,600 per day for a total of $17,600 for the 11-day run. He operated a bushel basket game from a 20-foot trailer. The

"...preparing for a carnival is similar to preparing for any other type of special event."

Investigator Walstad serves in the Franklin Park, Illinois, Police Department.

owner charged $3 to $5 per play.[4] Just to pay his privilege for the run of the fair, the owner needed 3,520 plays at $5 each from patrons.

Game, ride, and concession owners also pay additional fees, known as "dings," to the carnival. Dings guarantee a good spot on the carnival lot, get the electricity hooked up, and allow operators to run a nonwinning game. Dings also provide "fuzz" money to the patch, who use it to handle patrons' complaints or to have available for gifts for politicians or fair board members.

Carnie Traits

Carnies exhibit some common traits. Most enjoy their line of work and readily talk about their love for travel and the excitement associated with a carnival. They are a close-knit people and clannish, slow to accept outsiders, let alone trust them.

Some are born and raised as carnies; others just wander onto the lot and never leave. Some spend their entire lives working for a carnival; others simply stay a week or two before moving on.

The carnie's relationship with local police varies. Some carnival workers think the police are not very bright, referring to them as "town clowns." Many carnival employees, however, respect the police and are quite friendly toward them.

When dealing with carnies, officers must remember that carnies are persuasive talkers who can be very convincing. Many carnies are bullies who can intimidate people, and this trait may carry over to their dealings with the police. Above all, carnivals do their best to keep their employees out of trouble, which translates into covering up for them when they are questioned by the police or not reporting criminal activities to the police.

> ***"Policing a carnival does not begin when the trucks cross the town limits."***

POLICING THE CARNIVAL

Policing a carnival does not begin when the trucks cross the town limits. Nor can a police department permit any carnival to police itself. Police departments need to plan ahead for a carnival's arrival in order to be ready when the first patrons arrive at the gates.

In many ways, preparing for a carnival is similar to preparing for any other type of special event. Departments need to assemble a team of officers who will be working the carnival both in uniform and in plain clothes. When assigning officers to the detail, supervisors should select those who are friendly, courteous, patient, and helpful.

Supervisors also should create a layout of the grounds to include the midway, parking lot(s), perimeter fences, all entrances and exits, and sites where alcoholic beverages will be sold. With the layout, they can designate patrol areas and determine the number of officers to patrol each area. All officers working the carnival detail should receive a diagram of the midway and the designated patrol areas and assignments.

Arrangements should be made with the local fire department and ambulance service to have rescue equipment on site while the carnival is in town. Anticipating a possible emergency is better than not being able to respond rapidly should one occur.

If possible, an officer on the detail should visit the carnival if it is playing in a nearby jurisdiction. It is advantageous to know what to expect before the carnival arrives. This officer should look over the layout, watch the games in action, observe the carnies at work, and identify the ride, game, and concession supervisors and the patch.

Carnivals require police departments to take uncustomary steps. For example, the officer heading the carnival detail should ask the local prosecutor to assign a specific individual to work with the department on carnival game fraud.

On with the Show

While the carnival is setting up, the officer in charge of the detail should meet with carnival owners or supervisors to inform them of the department's policing plans and tactics during their stay. At this time, this officer needs to make arrangements with the owner or supervisor for a location on the midway to be used as a police command

post, which will be staffed at all times while the carnival is open. The command post serves as a first-aid station, a place to take lost children, and a rest area for officers assigned to the detail. It should be centrally located and easily accessible, with signs strategically placed on the lot advising of its location.

During this meeting, carnival management should produce all needed documentation, e.g., licenses, permits, proofs of insurance, and ride inspection certificates. A date and time also should be set for the inspection of games and rides by police officers and the member of the local prosecutor's office assigned to the detail.

Photo © Don Ennis

Game Inspection

Two officers are needed to do the actual inspections, while another officer videotapes the entire process. The game supervisor or patch usually accompanies the team, although uninvited, to explain how the games work. The prosecutor office's representative should accompany officers on game inspections so a judgment on the legality of a game can be made on the spot, not after an arrest has been made or the carnival has moved on.

During the inspections, officers need to document the location of the game on the midway, the operator's name, and the date and time of the inspection. Then, they should have the operator explain the game to them and show them where the rules and trade-up formula for patrons are posted. Officers need to know which prizes can be won and how, as well as the formula the operators use to allow patrons to trade up prizes.

Once this is done, the operator must demonstrate the game from the player's position, *not* from behind the counter. At this point, officers should be able to determine the type of game being played—skill, nonwinning, or gambling.[5] If it is a gambling or a nonwinning game, the inspection team should forbid them from opening.

If officers determine that the game involves skill, they need to inspect all the props used, e.g., rings, balls, darts, targets, etc. They must ensure that players can win the game. Do all the rings fit over the blocks? Do all the balls fit through the hoops? Can the targets be knocked over? Can the darts break the balloons? Is there a proportionate number of winning possibilities when compared to losing ones?

Depending on the type of game, inspecting officers may have to play it to determine if anyone can win. If this is the case, they need to play from all positions and use as many different game props as possible.

Once satisfied that the game is one of skill, one of the inspecting officers should explain to operators that the rules and props cannot be changed or altered, that they may not move to another midway location, and that they must operate the game as it was explained and recorded during inspection. This officer also needs to caution operators that they will be watched and possibly reinspected if patrons complain about the game and that they cannot give credit and free plays to patrons.

Ride Safety

Carnival owners and law enforcement officers share a mutual concern as to the safety of the rides. Unfortunately, very few law enforcement officers are capable of determining if a ride is safe to operate, thereby putting the safety issue in the carnival's hands by default. If asked, carnival employees say that their rides are inspected on a regular basis. Law enforcement needs to make every effort to ensure that this is true.

The inspection team should look at the inspection certificates for each ride. An officer also should contact the state carnival safety board, if one exists, regarding the safety record of that particular carnival and the rides that will be in operation.

As a whole, carnivals do their best to maintain their rides in safe running order because one major incident could put them out of business. Yet, accidents do occur. According to a representative of an insurance group that underwrites insurance for carnivals, employee or human error causes 90 percent of all accidents on carnival rides, and employee-related accidents peak in August as operators become more tired and less attentive.

Statutes and Ordinances

The officer in charge of the carnival detail needs to research and compile all state, county, and local ordinances, statutes, and laws pertaining to carnivals and their operations. These documents should be photocopied and made available to officers as they work the detail. If questions arise, it is best to ask the local prosecutor for an interpretation.

Sometimes, a department needs to work with the local governing body to enact local ordinances, if none pertaining to carnivals and carnival games exist in its jurisdiction. When enacting ordinances, particular attention should be given to forbidding gambling and nonwinning games and making the posting of all game rules mandatory.

A local license or permit requirement that allows the police free access to carnival grounds, booths, concessions, and games at all times while the carnival is open also is advised. Although only local ordinances, they give the department the needed authority to control what games are permitted and to avoid subsequent confrontation and debate with carnival personnel.

PATROL AREAS AND ASSIGNMENTS

By opening day, all officers working the carnival should have a diagram of the midway and their designated patrol areas and assignments. Police presence is required on the midway; in the parking lots; at entrances, exits, and perimeter fences; and designated sites where alcoholic beverages are sold.

The Midway

As the focal point of the carnival, the midway attracts both honest, fun-loving patrons and those who use it to create havoc or commit crimes. The rides on the midway designed for teenage patrons tend to be the most common trouble spots. This is where large groups gather, fighting occurs, and drugs commonly are sold and consumed. Gangs also like to walk

Photo © Mark Ide

through the midway in groups, making their presence known to other patrons.

Because of the large number of people who parade through it, the midway becomes the place most frequented by pickpockets. And it is here that police usually find the dishonest ticket sellers and game operators known to shortchange their patrons on a regular basis.

To police larger carnivals, some departments have erected towers on the midway that are staffed by officers with binoculars. These officers can watch suspicious individuals or groups and direct officers on the ground to areas where they are needed.

Parking Lots

Thefts, burglaries, and drug sales often occur in the parking lots. To deter crime here, officers need to patrol these areas, either on foot, bicycle, horseback, or in vehicles. The most appropriate method depends on the police department's capabilities, the size of the parking lot, the lighting, and the road conditions (paved or unpaved). Again, as on the midway, towers might be called for to enhance surveillance efforts.

Perimeter Fences, Entrances, and Exits

All entrances and exits should be staffed by officers at all times. This lets patrons and potential troublemakers know at once of a police presence and might discourage some criminal activity. Officers especially should be alert for intoxicated individuals, patrons bringing in alcoholic beverages, and known troublemakers.

Along with stationing officers at entrances and exits, the police should patrol the perimeter fences, through which drugs frequently are sold and purchased. Patrolling this area also deters individuals who may not want to pay the admission price or patrons previously expelled from the grounds from gaining access to the carnival.

> ***"...law enforcement cannot afford to allow carnivals to police themselves."***

Alcoholic Beverage Sites

The designated areas where alcoholic beverages are sold and consumed obviously require constant police attention. Officers should be on hand to remove intoxicated patrons from the grounds before they can cause problems or disturb others. Officers also need to watch the exits and entrances of these designated areas to prevent patrons from carrying alcoholic beverages to other parts of the carnival grounds.

Other Areas

Officers can be assigned to the carnival's office trailer, which usually contains large amounts of cash. Although carnival personnel usually watch over this area, an officer assigned here at closing time is a well-advised added security measure. This officer then should accompany the individuals responsible for the bank deposit as they leave the lot.

ADVICE TO ADMINISTRATORS

Depending on the length of the shifts worked and the dates of the carnival, officers on the detail can become weary after only a few days. To alleviate some of the debilitating effects of working a carnival, officers should rotate assignments two or three times each shift. Officers can relieve one another on the entrances, exits, and perimeter fences; the command post; the midway; and the parking lots. It also is advisable to divide the plainclothes assignments among all officers, so that each officer on the detail has the opportunity to work both in uniform and in plain clothes.

ADVICE TO OFFICERS

To make working a carnival more comfortable and safe, officers should:

1) Wear body armor at all times

2) Use sunblock and wear a hat and sunglasses

3) Consider brown-bag meals to avoid midway food

4) Take breaks, drink plenty of liquids in hot weather, and rest during allotted times, and

5) Avoid fraternizing with carnival people to dispel any notion of improprieties that may arise.

Officers will be attending to all types of victims during their shifts;

they need not become victims themselves.

CONCLUSION

A carnival is a world unto itself, a world that in most instances is unfamiliar to the police. Yet, law enforcement cannot afford to allow carnivals to police themselves. It must ensure strict adherence to all local, county, and state ordinances and statutes by conducting a thorough check of all licenses, permits, insurance, and inspection certificates. Failure to do so can place citizens of all ages in jeopardy.

Few can resist the call of the midway. But amid the rides, games, and sideshows lurks the potential for danger and criminal activity. Law enforcement agencies need to know what must be done to protect citizens and themselves from becoming victims on the midway. And, the time to prepare for policing a carnival is now, not when the carnival rolls into town. ✦

Endnotes

[1] Michael Kates, "Carnival Turns Empty Lot into Magic Kingdom," *Chicago Tribune*, July 5, 1992.

[2] "Carnivals Playing the Top 50 Fairs," *Amusement Business Magazine*, December 18, 1995, 27.

[3] Ride owners can pay up to 50 to 60 percent of their gross directly to the carnival.

[4] Interview by author with game owner, Florida Mid-State Fair, March 1995.

[5] Carnival games can be divided into four basic groups: 1) *Nonwinning*, where the player has little or no chance to win; 2) *gambling*, where the player has little or no control over the outcome in games of chance; 3) *skill*, where the player must accomplish a specific feat to win; and 4) *two-way* , where the operator controls a game that can be played as a skill or non-winning game.

Bulletin Reports

Juvenile Curfews

The Office of Juvenile Justice and Delinquency Prevention has published a bulletin that addresses the issue of juvenile curfews. "Curfew: An Answer to Juvenile Delinquency and Victimization?" provides an overview of the legal challenges to curfews and presents profiles of seven jurisdictions with comprehensive curfew enforcement programs. The bulletin also contains two tables—one that shows the statutory provisions of the juvenile curfew ordinances in the seven jurisdictions and a second that notes the exceptions to these ordinances.

A copy of this bulletin (NCJ 159533) can be obtained by calling the Juvenile Justice Clearinghouse at 800-638-8736. The bulletin also lists additional sources for information on juvenile curfews.

Gun Buy-Backs

The Police Executive Research Forum (PERF) has published a book that provides a compilation of views and findings about gun-reduction programs. *Under Fire: Gun Buy-Backs, Exchanges, and Amnesty Programs* presents articles written by noted researchers, public health experts, public and police officials, and citizen advocates who are involved on both sides of the gun control debate. Yet, the viewpoints aired leave it to readers to determine if gun buy-backs, exchanges, and amnesty programs are worth the investments of time, money, and effort. The book also includes several appendices offering guidelines for gun-reduction programs and evaluations of specific programs.

Copies of *Under Fire* can be purchased from PERF Publications, 1120 Connecticut Avenue, NW, Suite 930, Washington, DC 20036. The phone number is 202-466-7820; the fax number, 202-466-7826. Customers should request product #805.

DNA Evidence

The Institute of Law and Justice, supported by the National Institute of Justice, conducted a study that sought to identify and review cases in which convicted individuals were released from prison as a result of posttrial DNA testing of evidence. The research report, *Convicted by Juries, Exonerated by Science*, gives an account of 28 cases identified during the study.

The report begins with commentaries given by prominent experts from a variety of disciplines about the power and potential of DNA evidence. It then discusses the findings pertaining to characteristics of the 28 cases and the policy implications. The final section profiles the 28 cases.

A copy of this report (NCJ 161258) can be obtained by writing the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20849-6000, or calling 800-851-3410. The e-mail address is askncjrs@ncjrs.org. This document also can be viewed or obtained electronically from the NCJRS World Wide Web site at http://www.ncjrs.org.

Youth Programs

A report by the National Recreation and Park Association, *Public Recreation in High Risk Environments—Programs that Work*, profiles 21 youth programs across the country, from Washington, DC, to Longview/Kelso, Washington, that target at-risk youths. The publication describes programs that embrace gang prevention and intervention, academic enhancement, leadership training, substance abuse prevention, outdoor adventures, community empowerment, employment and training, and artistic enrichment.

The profiled programs evolved in response to circumstances, opportunities, and resources available in each of the respective communities. The report also provides the names and phone numbers of contacts for the individual programs.

A copy of the report can be obtained from the National Recreation and Park Association, 2775 South Quincy Street, Suite 300, Arlington, VA 22206. The phone number is 703-820-4940.

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

Controlling Subjects

Realistic Training vs. Magic Bullets

By SAMUEL D. FAULKNER, M.A.
and LARRY P. DANAHER

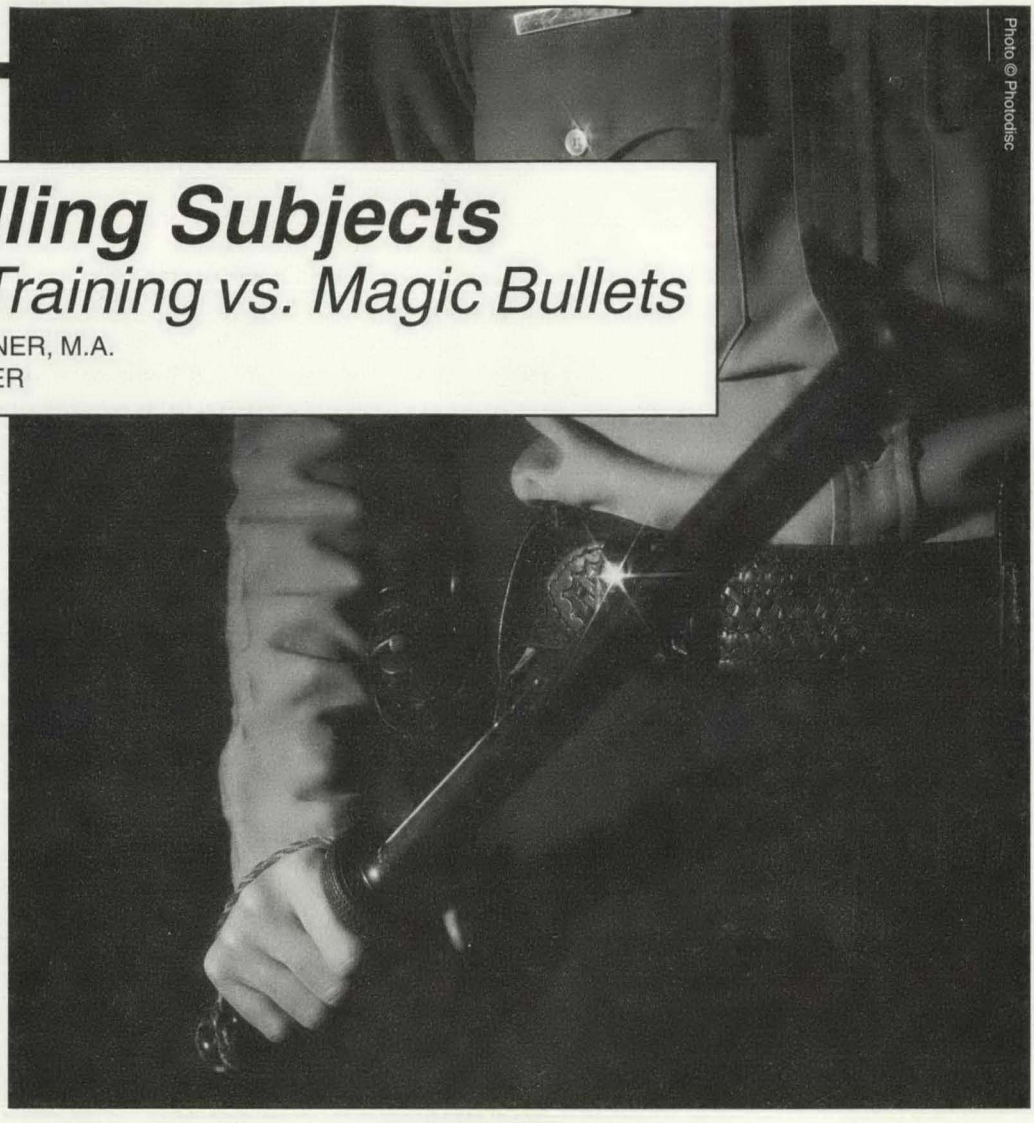

Photo © Photodisc

Researchers once monitored the behavior of a group of young school children. When placed in a large field with no boundaries, the children tended to huddle together and play in close proximity. When the researchers conducted similar sessions with the same type of children in a fenced-in area, the children played in a much more relaxed manner, using the entire area inside of the boundaries.

In some ways, the law enforcement community behaves like the children in the open field. Society tasks the police with maintaining order and controlling resistive behavior without providing them the benefit of clear-cut parameters from which to operate. As a result, the police routinely engage in a search for direction and guidance. Unsure of where they should be, they group together around a common area of accepted practices. Nowhere is the search for boundaries more intense than in questions on the proper use of force.

However, a journey started in the wrong direction rarely ends in success. In its search for the perfect nonlethal means to control resistive subjects, the law enforcement community often finds itself embarking on the wrong course, looking for easy answers that do not exist. After nearly a quarter-century of concerted effort in this area, only one thing seems clear: No magic bullet exists that will control every subject in every situation.

Rather than wait in false hope for the next sure-fire solution, law enforcement administrators may consider approaching the problem from a different angle. Training should incorporate what many officers have already learned the hard way. No device or physical maneuver guarantees 100 percent success when confronting subjects.

Therefore, training should provide officers with various methods to address combative subjects and surprise assaults. It then should prepare officers to be flexible in their responses to confrontations.

EARLY PHYSICAL RESPONSE

The earliest training efforts focused on teaching officers physical maneuvers that would allow them to control subjects. Over the years, physical response has evolved—in name at least—from hand-to-hand combat to unarmed self-defense to defensive tactics, and most recently, to subject control.

Martial artists taught the first defense classes. While proficient in their craft, these instructors possessed no clear concept of escalating force. This is understandable enough—offensive moves in the martial arts are performed for one of three reasons: to kill, maim, or cripple. In the majority of situations where officers confront resistive subjects, such a response is not acceptable.

Departments that could not secure the services of a karate or judo instructor often hired former boxers or wrestlers to conduct physical encounter training. Like their counterparts in the martial arts, these instructors may have possessed a great deal of proficiency in their fields, but their training had little in common with the mission of the police.

NONLETHAL DEVICES

Perhaps inevitably, the shortcomings of such physical training led to the development of a more advanced array of devices designed to assist officers in controlling subjects. In 1971, responding to the burgeoning growth in this market, the Department of Justice (DOJ) issued a report entitled "Non-lethal Weapons for Law Enforcement: Research Needs and Priorities."[1] Researchers examined all types of less-than-lethal weapons and found none that fully satisfied their criteria. The report went on to cite the development of electrical or chemical weapons as the greatest short-term priority to augment traditional police weapons.

However, the report cautioned that prior to the introduction of such devices into police arsenals, research should be conducted into the "potentially hazardous physiological effects they might have on human body systems and sensitive areas."[2] The report also called for refining and improving the nightstick and developing sublethal ammunition for police shotguns. In short, the DOJ report provided suggestions for meeting the changing needs of the police but confirmed that nothing then on the market satisfied those needs. Twenty-five years later—despite many heralded advancements—no device has emerged that meets all of these needs all of the time.

Mace

Three years after publication of the DOJ report on nonlethal weapons, a text titled *Patrol Administration* featured a write-up on a new device available to law enforcement officers. The notice proclaimed mace as a breakthrough into "a new era in police weaponry."[3]

In the ensuing years, mace would be billed as a humane, yet effective, alternative to police weapons such as the nightstick and the service revolver. While some manufacturers claimed that mace reduced assaults on police officers

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by as much as 50 percent and lowered complaints of police brutality by 80 percent, time and experience proved these claims to be wildly exaggerated.

In 1988, a paper titled "Use-of-Force Tactics and Nonlethal Weapons" discussed the strengths and weaknesses of chemical agents, including mace.[4] On the positive side, the paper cited these devices as being inexpensive and requiring little officer training or physical contact with subjects. At the same time, researchers identified the following shortcomings:

- Chemical agents might not be effective on mentally disturbed individuals or those under the influence of drugs or alcohol
- Some individuals become more combative when sprayed
- A potentially dangerous lag time exists between application and effect
- Individuals with preexisting respiratory conditions may suffer serious medical problems
- Sprays can seriously irritate the eyes
- Subtle changes in wind direction may place officers in jeopardy
- Sprays may cause discomfort or harm to innocent bystanders.

These deficiencies led to several court cases initiated against departments by individuals who claimed serious or permanent harm after being sprayed with mace.[5] The search for the perfect device to control subjects continued.

Tasers

In many ways, electric tasers represented a sharp departure from tear gas, mace, and other chemical-based agents used by law enforcement—if for no other reason than that wind direction does not alter the effectiveness of the taser. A paper published in 1991 titled "Nonlethal Weapons vs. Conventional Police Tactics: The Los Angeles Police Department Experience" made a strong case for the taser, stating that field tests proved the device could "immediately incapacitate" even violent suspects under the influence of mind-altering drugs.[6] The author asserted that speculation that the taser can induce a heart attack or cause burns is "based upon the human fear of electricity." Still, the author cited seven cases in which suspects died after being exposed to the taser.[7]

> ***"...police administrators should be prepared to separate fact from fiction in assessing the value of different training techniques."***

While medical authorities believe that the device contributed to only one of the deaths, the taser has fallen out of use in many departments for various reasons, including the potential for accidental death. Another reason departments cite for discontinuing use of tasers—or for not authorizing their use at all—is the close proximity required between officer and subject for the effective application of the weapon.

When applied, tasers often leave burn marks on subjects and are not, in fact, effective in many situations. The Rodney King incident represents perhaps the most widely witnessed failure of any tool used to control a single subject. King could not be subdued immediately, despite repeated taser applications and baton blows. Police officers across America could relate similar, but less publicized, incidents.

Nonlethal Projectiles

A tragic incident on August 28, 1992, shattered the myth of the nonlethal projectile. When deputies from the Prince George's County, Maryland, Sheriff's Department attempted to serve psychiatric evaluation papers to a 61-year-old woman, they were chased out by the woman who wielded a large butcher knife. The deputies obtained judicial authorization for a forced entry and returned to the woman's home an hour later. When the woman again came at the deputies with a knife, they fired one rubber, supposedly nonlethal, projectile. After being struck in the abdomen, the woman retreated to her living room and collapsed. Doctors pronounced her dead at a hospital a short time later.

By every indicator, the deputies responded to a very threatening situation with restraint and acted in accordance with their department's guidelines. Still, the incident ended in tragedy. In a statement released after the incident, the department

seemed to confirm what a growing number of officers knew: "The perfect weapon does not exist." Nonlethal projectiles "...can be lethal under certain circumstances."[8]

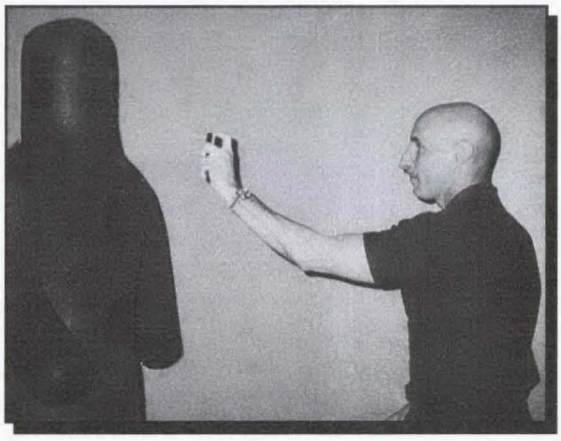
Pepper Spray

During the past several years, aerosol agents made a strong return to the market. Unlike mace, the newest products on the block—most notably pepper spray (oleoresin capsicum)—are organically, rather than chemically, based. However, the claims coming from various sources had a familiar ring. These natural, organic products would control everyone but injure no one. Facing rising crime rates and reduced public funding, the law enforcement community quickly embraced pepper spray as a low-cost method to control subjects.

Many departments placed such belief in the product that they allowed officers to use the device at the first sign of resistance. In some jurisdictions, subjects did not have to indicate a threat of harm toward officers or others but could be sprayed if verbally uncooperative.

Unfortunately, as the use of pepper spray increased, so, too, grew the list of injuries reported and the number of cases in which the aerosol agent failed to subdue offenders. On July 11, 1993, an officer from the Concord, North Carolina, Police Department sprayed a 24-year-old male charged with disorderly conduct. After being sprayed, the subject complained of respiratory difficulty and then collapsed. Officers drove the man to the police station where he was found to be unresponsive. He was pronounced dead a short time later. After the autopsy, the medical examiner issued the following statement: "In my opinion, the cause of death in this case is asphyxia due to bronchospasm precipitated by inhalation of pepper spray."[9]

Just 3 months later, a 34-year-old man died of cardiac arrest after officers subdued him with pepper spray. In January 1994, a 37-year-old man being committed for psychiatric care by his family became violent. When police officers arrived, they chose to use pepper spray to subdue the subject rather than using more aggressive control measures. The subject died a short time later at an area hospital.[10]



As a result of these incidents, many departments collected cans of pepper spray and banned use of the product that they had so optimistically distributed to their officers just a short time earlier. Such a reaction may cross the line into overreaction. There is nothing necessarily wrong with pepper spray; nor was its use in these three incidents necessarily inappropriate. The problem lies in the fact that departments bought the product under false assumptions and allowed it to be used under unrealistic expectations.

PHYSICAL TRAINING

The "new and improved" approach is not limited to suppliers of law enforcement products. Training companies often get into the act, claiming that their techniques are better than those of their competitors. As with claims made by product manufacturers, police administrators should be prepared to separate fact from fiction in assessing the value of different training techniques.

Joint Locks

Joint locks have a long history in the martial arts but a somewhat less than sparkling track record in American law enforcement. As practiced in the martial arts, a joint lock is used to disable an opponent's limb.[11]

In many law enforcement training academies, experts in the martial arts teach cadets and experienced officers the various moves involving joint locks. The theory holds that by using the stimulus of pain *in just the right amount*, law enforcement officers can alter resistive behavior without causing injury to subjects. This principle gave birth to the "pain compliance" techniques practiced today by many law enforcement agencies.

Problems arise, however, when the original purpose of the joint lock maneuver is expanded beyond its limited capabilities. For instance, when a subject's resistance level and pain threshold are altered by drugs or alcohol or if an officer's commitment level is low, pain compliance techniques often do not produce the desired effect.

Officers who receive minimal training in these techniques in a highly controlled environment hit the streets and soon encounter adversaries who are larger, stronger, younger, and more aggressive than they are. As a result, these officers may be forced to use additional pressure when the moves that worked well in training fail to control subjects in street situations. Ironically, officers could end up in the courtroom when injuries occur despite their efforts to respond at a low force level.

Pressure Points

Like any device or physical maneuver, pressure points—the controlled application of pressure to a specific area of the head—should not be considered the final word on subject control. But pressure points have been used for thousands of years in the martial arts. They also have developed a very successful track record in many American law enforcement agencies.

Recently, however, the use of pressure points has come under attack.[12] Most of the charges against pressure points focus on dubious claims concerning the potential for injury to the area of the jaw called the temporomandibular joint (TMJ).[13]

While the possibility for such injury does exist, the likelihood is remote at best. Damage to the TMJ is usually caused by some type of injury to or malfunction of the joint itself, which is located in front of the ear.[14] As pressure point maneuvers are taught in departments across the country,[15] finger placement is well away from the TMJ. Moreover, pressure is applied in a direction away from the joint, which minimizes the risk of injury.

> ***...training must adapt to the realities that officers face....***

The issues surrounding pressure points and the recent criticisms leveled against them are not brought up to malign legitimate expressions of concern over the effectiveness of a specific technique. Rather, these issues are presented with a note of caution to law enforcement administrators.

Word of Caution

The police traditionally harbor a healthy sense of skepticism toward changes in accepted practices. This skepticism is generally beneficial and acts to shield law enforcement from ill-conceived or politically driven vacillations. However, administrators also should refrain from forsaking time-proven techniques simply because they hear or read something negative about them. Administrators always should consider the source and search for independent supporting documentation before making a decision.

REALITY-BASED TRAINING

Law enforcement administrators must learn from the past. An important lesson can be drawn from the search for the perfect means to control subjects. Realistic training that actually *prepares* officers for the types of encounters they will experience on the streets should be valued over the latest device or maneuver to hit the market.

Three Categories of Assault

In an article in *Psychology of Science* titled "Cerebral Self Defense," the author divides assaults into three psychological categories: the consent assault, the suspicion assault, and the surprise assault.[16] While the training that law enforcement officers receive should prepare them primarily for the third category, the surprise assault, officers should be aware of all three types.

The consent assault is the easiest for the mind to process because the victim actually allows the assault to occur. Police officers see this type of assault routinely when responding to domestic disturbance calls. When a female abuse victim declines to press charges against the spouse or boyfriend who has just beaten her, she—for whatever reason—accepts, or consents to, the assault.

In the second type of assault, the suspicion assault, the brain has

prior warning of impending danger. Therefore, while the individual may not know precisely what will happen, the brain actively prepares the body for some type of response. When an officer working crowd control learns that a person is carrying a firearm, the officer automatically prepares mentally and physically for a range of responses. If confrontation erupts, the officer will be in a better position to respond correctly.

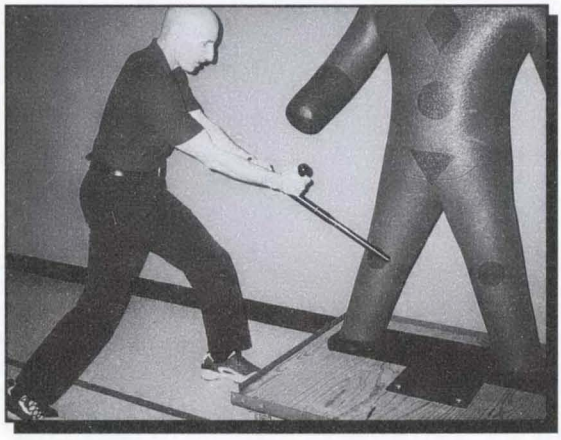
The third type of confrontation, the surprise assault, is by far the most difficult to which officers respond. This form of assault shocks both the brain and the body. Because the victim has no time to prepare, the body's reactions are basically of a survival nature. Unfortunately, law enforcement officers encounter surprise assaults on a regular basis. Even worse, the training that most officers receive does not provide them with an adequate psychological-physical defense mechanism. This often leads to the failure of defensive techniques in actual encounters.

Preparing for Surprises

Of course, it is impossible to be totally prepared for a surprise assault, but proper training can condition officers to reduce stress levels during an assault so that they can respond from a position of control rather than from one of surprise. It is well understood within the law enforcement training community that fine motor skills diminish as stress levels increase.[17]

The loss of fine motor skills thereby reduces proficiency in defensive tactics that require grabbing, pivoting, completing a series of steps to a technique, or deciding proper amounts of pressure to apply. As adrenaline activates the body's survival mechanisms, an individual loses sensitivity in the hands and feet. Therefore, techniques that seem simple in a training environment may be nearly impossible to execute in a street encounter when officers experience heightened stress levels.

However, most training sessions seldom, if ever, address surprise assault encounters. Today's trainers should strive to teach techniques that better prepare officers to respond to such situations.



Defensive maneuvers should be based on *gross* motor skills that use large muscle groups and follow natural patterns, so that the ability of the officer to execute the moves will not deteriorate as arousal levels increase. Because the first reaction of the body in a surprise assault is to get away from the threat, the best response to teach officers may be momentary disengagement followed by controlled reengagement. While this may violate some long-held training paradigms, such an approach may be more realistic than expecting a startled officer to immediately control a subject on initial contact.

CONCLUSION

Criminals will not adapt to the needs of law enforcement training; law enforcement training must adapt to the realities that officers face on the streets. The concept of controlling violent subjects without any risk of injury is not only unrealistic, but it has proven to be unsuccessful. However, while it may not be possible for law enforcement officers to eliminate risk, they can act to manage it.

The perfect tool for controlling subjects does not exist and probably will not be discovered in the foreseeable future. Until that day, officers should be trained to rely on their own abilities with the aid of equipment—rather than relying on the equipment itself—to control resistive subjects.

If police administrators rely on the testimonials of equipment and training companies to dictate which tools and techniques are appropriate, then the law enforcement profession faces a dark future. If, however, administrators promote reality-based training that corresponds to the types of situations officers encounter, agencies will enhance the safety of officers and the communities they

serve. Reshaping the paradigms within which law enforcement responds to resistive subjects is like placing a fence around the playground. It offers boundaries and guidelines that will benefit all.✦

Endnotes

[1] "Non-lethal Weapons for Law Enforcement Research Needs and Priorities," (Washington DC: U.S. Department of Justice, 1971), available through the National Criminal Justice Reference Service.

[2] Ibid, 8.

[3] Douglas G. Gourley, *Patrol Administration,* 2d ed. (Springfield, IL: Charles C. Thomas, 1974), 18.

[4] "Use of Force Tactics and Nonlethal Weapons," paper published by Americans for Effective Law Enforcement, 1988.

[5] *District of Columbia* v. *Colston*, 468 A. 2d 954 (D.C. App. 1983).

[6] Greg Meyers, "Non-lethal Weapons Versus Conventional Police Tactics: The Los Angeles Police Department Experience," (master's thesis, California State University, Los Angeles, CA, 1991).

[7] Ibid.

[8] "Woman Killed by 'Non-lethal' Bullet Fired by Officer," *Crime Control Digest*, vol. 18, no. 6, 1992, 5-6.

[9] Phil Lyons, "Pepper Spray-Related Fatality," (Raleigh, NC: North Carolina Department of Justice, 1973), unpublished report).

[10] Joseph Berger, "Use of Pepper Spray Ruled a Factor in Man's Death," *New York Times*, October 27, 1993, B6.

[11] Dann Draeger, *Classical Bujutsu* (New York: Whetherhill, 1973), 23.

[12] "Non-lethal Weapons: A Survey of Officers," *Defensive Tactics Newsletter* (Lakeland, FL: ISC Division of Wellness), April 1993, vol. II, number 4; "Elimination of Current Pressure Points," *Defensive Tactics Newsletter*, (Lakeland, Florida: ISC Division of Wellness), July 1993, vol. III, no. 1; L. Knight, W. Morris, S. Aull, and R. Kazoroski, *ISC Control Points: New Generation of Pressure Points* (Lakeland, FL: ISC Division of Wellness, 1993).

[13] Ibid.

[14] Dr. Stan Boot, interview by authors, Lafayette, IN, February 1994.

[15] The authors have 50 years combined experience in police training.

[16] Tony Stouce, "Cerebral Self-Defense," *Psychology of Science*, 1983.

[17] Richard A. Schmidt, *Motor Learning and Performance* (Champaign, IL: Human Kinetics Books, 1991), 27.

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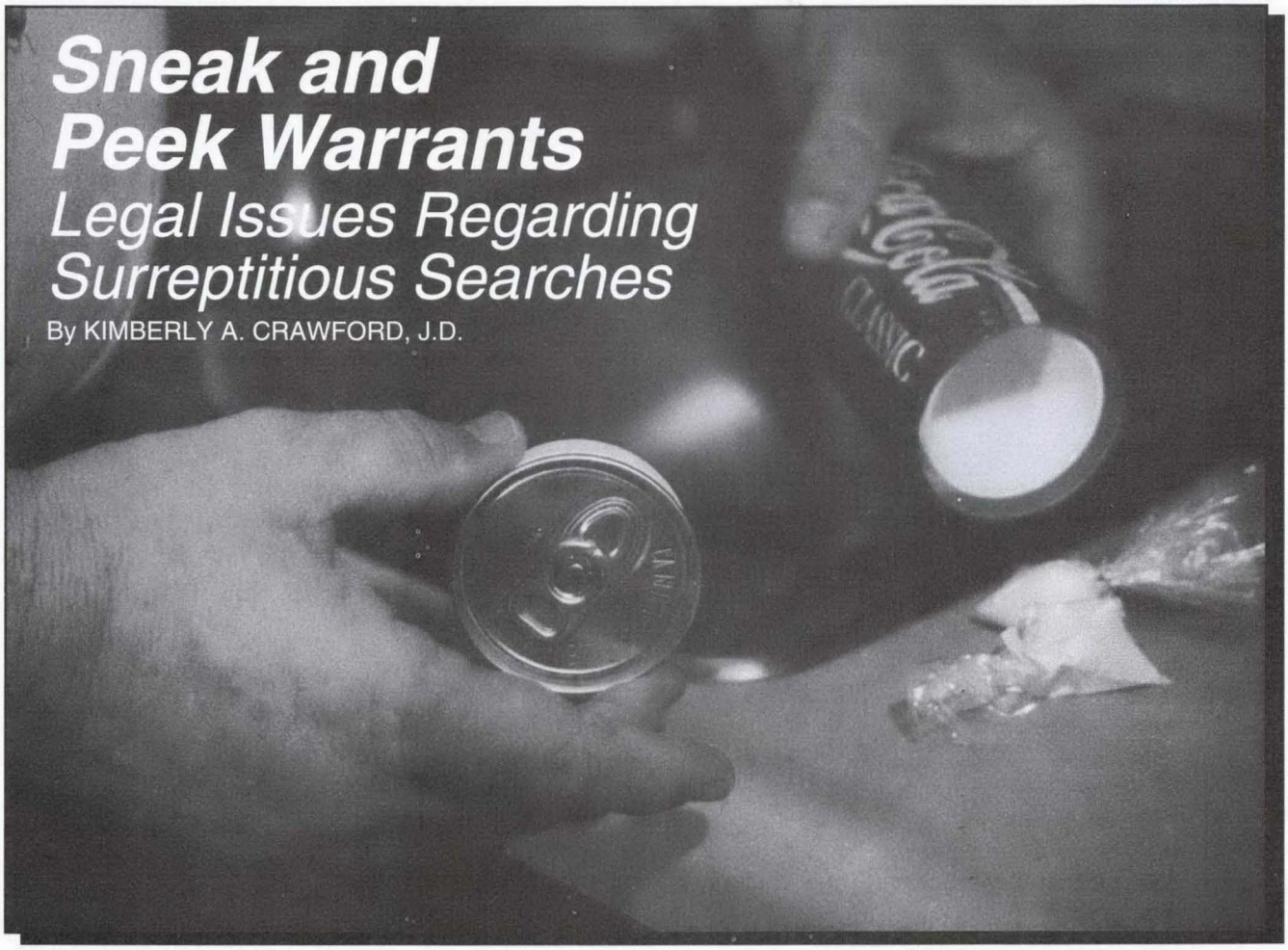


Sneak and Peek Warrants

Legal Issues Regarding Surreptitious Searches

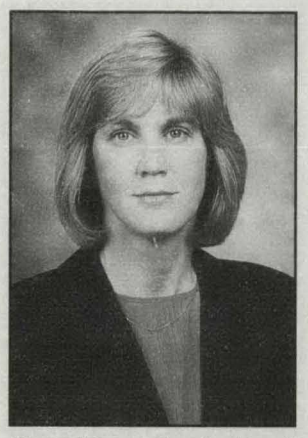
By KIMBERLY A. CRAWFORD, J.D.

Searches and seizures conducted pursuant to validly authorized and executed search warrants are very common law enforcement practices. The canons regulating such searches and seizures at the federal level are found in the Fourth Amendment to the U.S. Constitution[1] and Rule 41 of the Federal Rules of Criminal Procedure.[2]

The Fourth Amendment provides the general requirements that all searches and seizures be reasonable and that all warrants be based on sworn probable cause, particularly describing the place to be searched and the items to be seized. Rule 41 imposes more specific regulations regarding the authorization and execution of search warrants, such as authority to issue, authority to serve, time restraints, and notice requirements.

The prescriptions contained in the Fourth Amendment and Rule 41 are well-established and routinely followed by law enforcement officers. There are occasions, however, when a legitimate law enforcement activity does not fit squarely within the realm of a traditional search, and the government's ability to comply with conventional constitutional and statutory warrant requirements is questionable. Specifically, the use of "sneak and peek" warrants by law enforcement officers has raised questions regarding compliance with the Fourth Amendment prohibition against unreasonable searches and the Rule 41 notice requirement.

This article examines the emergence of the sneak and peek warrant as a viable law enforcement technique and reviews cases that have addressed the legal issues involved in the execution of such warrants. Additionally, it offers suggestions



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

> ***"...the covert nature of sneak and peek searches has made reviewing courts wary...."***

for meeting the demands of the Fourth Amendment and Rule 41 when employing a sneak and peek warrant.

A Viable Law Enforcement Technique

Sneak and peek warrants allow law enforcement officers to lawfully make surreptitious entries into areas where a reasonable expectation of privacy exists, search for items of evidence or contraband, and leave without making any seizures or giving concurrent notice of the search. The technique is particularly useful in controlled substance manufacturing cases.[3]

When conducting an investigation into the illegal manufacturing of controlled substances, law enforcement officers may want to enter premises to confirm the presence of precursor chemicals or to assess the stability of a clandestine lab without divulging the investigation or jeopardizing the potential for further investigation. Under such circumstances, employing a traditional search warrant, which requires notice at the time of execution, would be self-defeating. A sneak and peek warrant, however, would satisfy the legitimate law enforcement purpose by allowing the search to occur without concurrent notice.

The Notice Requirement

Because nothing is disturbed or physically seized[4] during the execution of a sneak and peek warrant, surreptitious searches are arguably less intrusive than the traditional search pursuant to a warrant. However, the covert nature of sneak and peek searches has made reviewing courts wary[5] and caused them to impose strict delayed-notice requirements.

The first reported case involving the review of a sneak and peek warrant was *United States* v. *Freitas*.[6] In *Freitas*, DEA agents obtained eight warrants to search numerous sites used in a large-scale methamphetamine operation. Before those warrants were executed, agents applied for and obtained a sneak and peek warrant for one of those locations to "determine the status of the suspected clandestine methamphetamine laboratory."[7]

When issuing the sneak and peek warrant, the magistrate used a traditional warrant form but crossed out the portions requiring a particular description of the items to be seized and an inventory. The sneak and peek warrant contained no notice requirement.

After executing the sneak and peek warrant, agents used information obtained during the surreptitious search to obtain extensions that would allow them to briefly delay the execution of the remaining eight warrants. When those warrants were finally executed, the agents seized numerous items of evidence and arrested the defendant.

In a subsequent motion to suppress, the defendant contested the validity of the sneak and peak warrant. After a hearing on the matter, the district court concluded that the failure of the warrant to provide notice of service breached the Fourth Amendment.[8]

On review, the Ninth Circuit Court of Appeals agreed that the agents violated the Fourth Amendment by their failure to provide notice.[9] In doing so, the court recognized that not all surreptitious entries are unconstitutional.[10] However, the court found that the "absence of any notice requirement in the warrant casts strong doubt on its constitutional adequacy."[11]

To remove that doubt, the court held that a sneak and peek warrant must be based on a demonstrated need for covertness and "provide explicitly for notice within a reasonable, but short, time

subsequent to the surreptitious entry. Such time should not exceed seven days except upon a strong showing of necessity."[12]

The need for covertness may be justified on numerous grounds. The more common justifications for delayed notice of surreptitious searches are the desire to locate unidentified co-conspirators and the flight risk of the subjects. However, probably the most compelling reason to delay notice of a search was demonstrated in *United States* v. *Ludwig*.[13]

In *Ludwig*, U.S. Customs agents were investigating the break-in of a Customs drug storage facility where 356 pounds of cocaine were stolen. During the course of the investigation, the agents obtained a sneak and peek warrant for the search of a storage locker where an undetermined amount of cocaine was reportedly observed by a confidential source. Among the reasons asserted to justify the delayed notice was the need to protect the confidential source's safety until all the subjects could be located and arrested. Finding the reasons compelling, the court upheld the 7-day notice delay.

Although the 7-day notice requirement espoused in *Freitas* was a creation of the court and not mandated by the Constitution or Federal Rules, it has been adopted by the only other federal court of appeals to deal with the issue of sneak and peek warrants. In *United States* v. *Villegas*[14] and *United States* v. *Pangburn*,[15] the Second Circuit Court of Appeals relied on the decision in *Freitas* to impose the 7-day requirement.

Extensions of the Notice Requirement

In *Freitas*, the court suggested that extensions of the 7-day notice requirement should not be granted except "on a strong showing of necessity."[16] Subsequently, the court in *Villegas* confronted a defense challenge to a surreptitious search where the notice of the search was delayed for more than 2 months.

In *Villegas*, DEA agents obtained a sneak and peek warrant to confirm the existence of a cocaine factory. The warrant contained a provision requiring notice of the search within 7 days. Two months after the execution of the sneak and peek warrant, agents executed a traditional search warrant and seized large quantities of cocaine in various stages of production and arrested 11 individuals.

> **"...a sneak and peek warrant must be based on a demonstrated need for covertness...."**

In the interim, agents obtained a series of additional 7-day extensions. The defendants ultimately moved to suppress the evidence on the grounds that notice of the surreptitious search, which did not occur until after the arrests were made, was not timely.

Addressing defendants' motion, the court found two limitations on the issuance of covert entry searches to be appropriate. First, contemporaneous notice of a search should not be delayed unless the government has made a showing of reasonable necessity for the delay.[17] Second, extensions of the delayed notice should not be granted "solely on the basis of the grounds presented for the first delay; rather, the applicant should be required to make a fresh showing of the need for further delay."[18]

Applying these standards to the facts in *Villegas*, the court found that both criteria were met. First, the government presented ample grounds for the initial delay based on the remote setting of the clandestine lab, the lack of informants, and the large number of unidentified co-conspirators.

As to the numerous 7-day extensions, the court noted with approval that an affidavit supplying information on the progress of the investigation and a statement of the need for further delay were submitted with each request. These affidavits ranged in length from two to six pages and "were neither pro forma nor reflective of stale information."[19] While not suggesting that extensions could properly be granted indefinitely, the court concluded that "tolerable limits were not exceeded in this case."[20]

The court in *Villegas* set a functional standard for the issuance of delayed-notice extensions. Requests for such extensions should keep the issuing authority apprised of the status of the investigation and clearly demonstrate that the need for covertness continues to exist.

Remedy for Violations of the Notice Requirement

If the government violates the 7-day notice requirement by failing to obtain the initial authorization for delayed notice or by failing to adequately support the need for extensions, the remedy for such violation is likely to be suppression of evidence subsequently obtained during the follow-up traditional search. The likelihood of such suppression, however, depends on whether the court views the government's failure as a violation of the Fourth Amendment or Rule 41.

Jurisdictions that view notice violations as contrary to the Fourth Amendment impose a higher standard than those that consider them violations of Rule 41. To overcome the finding of a Fourth Amendment violation, law enforcement officers must be able to establish that they executed a surreptitious warrant in a good faith belief in its validity. To surmount a claim of failure to comply with Rule 41, on the other hand, the government need only show that the defendant was not prejudiced by any intentional or deliberate disregard for the rule.

In *Freitas*, the Ninth Circuit Court of Appeals concluded that the failure to give contemporaneous notice of a search without adequate prior authorization violated the Fourth Amendment reasonableness requirement. Traditionally, constitutional violations are sanctioned by suppression of the evidence unless, in the case of searches, the law enforcement officer relied in good faith on a warrant.[21]

In light of the fact that court decisions like those in *Freitas*, *Villegas*, and *Pangburn* have existed for a number of years, attempts to justify a good faith reliance on sneak and peek warrants that contain no notice requirements are likely to be ill-fated. However, if law enforcement officers make reasonable efforts to 1) support initial requests for surreptitious searches, 2) ensure that sneak and peek warrants contain 7-day, delayed-notice requirements, and 3) adequately justify delay extensions, then the prospects of a successful good faith defense on the part of the government increase.

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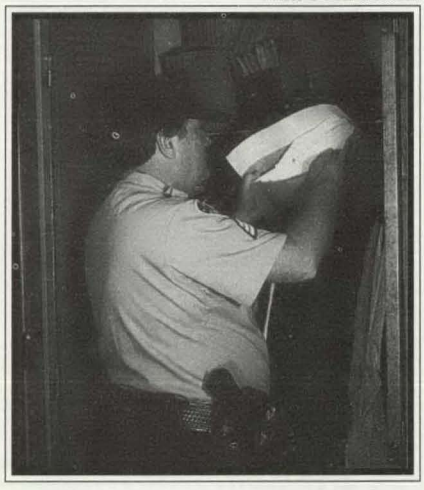

Contrary to the court in *Freitas*, the Second Circuit Court of Appeals has rejected the notion that notice violations contravene Fourth Amendment protections. Rather, the court in *Pangburn* found the contemporaneous notice requirement to be merely an element of Rule 41. Because an infraction of Rule 41 does not amount to a constitutional violation, the court concluded that suppression of the evidence would be unnecessary unless shown to cause prejudice to the defendant or to be an "intentional and deliberate disregard of...the Rules."[22]

Because sneak and peek warrants are essentially an alternative to the more intrusive traditional search warrant, it is unlikely that defendants will be successful in showing that they were prejudiced by the government's use of the surreptitious search. Thus, to defeat defense challenges that the use of sneak and peek warrants violates Rule 41, law enforcement officers should concentrate their efforts on ensuring that there is no "intentional and deliberate" disregard for notice requirements. This can be accomplished by making reasonable attempts to comply with the rules by addressing the need for covertness in sneak and peek warrant applications and, when possible, having those applications reviewed for sufficiency by competent legal advisors prior to submission for authorization.[23]

Suggestions for Ensuring the Admissibility of Evidence

Challenges to sneak and peek warrants usually take the form of motions to suppress evidence obtained during subsequent searches pursuant to traditional search warrants. Defendants inevitably claim that the previously executed "unlawful" surreptitious searches taint traditional warrants. Law enforcement can overcome these challenges in two ways.

One approach is for officers to ensure the lawfulness of the surreptitious search. In that regard, the following suggestions are offered:

1) Sneak and peek warrants should only be used when there is a legitimate need for

the government to covertly uncover information that could not be obtained through other, more traditional means of investigation. Because courts are wary of surreptitious searches, they should not be used as a routine matter of course.

2) When sneak and peek warrants are obtained, the warrant forms should contain a statement requiring notification of execution within 7 days.

3) Every effort should be made to comply with the 7-day notice requirement. Delays, when necessary, should be the result of circumstances beyond the control of the government and authorized in 7-day increments.

4) Delays, when justified, should be supported by affidavits summarizing the investigation to date and clearly demonstrating the need for continued covertness.

5) When feasible, a competent legal advisor should review both the surreptitious warrant application and any requests for extensions of the delayed notice prior to submission to the court for authorization.

6) If the conditions justifying the need for covertness are dispelled, notice of the surreptitious search should be given as soon as possible.

The second course of action to overcome a defense motion to suppress evidence seized pursuant to a traditional warrant executed subsequent to a surreptitious search is to protect the independent nature of the traditional search warrant. If the courts view the traditional warrant as an outgrowth of an unlawful surreptitious search, anything seized pursuant to the traditional warrant would be considered "fruit of the poisonous tree" and suppressed.

> ***"...warrant forms should contain a statement requiring notification of execution within 7 days."***

If, however, the courts deem the traditional warrant autonomous, the seized evidence may be admissible, despite the unlawfulness of a previous sneak and peek.[23] To protect the independent nature of the traditional warrant, law enforcement officers should be careful to omit from the probable cause statement any information obtained during the execution of the sneak and peek.

Conclusion

The covert nature of sneak and peek warrants makes them attractive to law enforcement officers but menacing to the courts. To preserve the continued use of surreptitious searches as a legitimate practice, law enforcement officers should carefully follow the dictates of the few courts that have reviewed the technique. Furthermore, the government should demonstrate good faith by using sneak and peek warrants only when necessary and by giving notice of the search as soon as feasible.✦

Endnotes

[1] U.S. Const. amend. IV reads: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no Warrants shall issue but upon probable cause supported by Oath or affirmation and particularly describing the place to be searched and the person or things to be seized."

[2] Statutes regulating the issuance and execution of search warrants at the state level differ greatly from state to state. Thus, state and local law enforcement officers are encouraged to consult with their department's legal counsel prior to engaging in activities discussed in this article.

[3] Sneak and peek warrants may be used effectively in other types of investigations. For example, the sneak and peek may be used to locate stolen items without revealing the government's investigation to the subjects so that further investigation can identify additional co-conspirators or fences.

[4] Although nothing is physically seized during the execution of a sneak and peek warrant, photographs of observed evidence or contraband are often taken and those images are considered seized.

[5] In *United States* v. *Freitas*, 800 F.2d 1451 (9th Cir. 1986), the court made the following statement:

> Surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment. The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed. *Id.* at 1456.

[6] 800 F.2d 1451 (9th Cir. 1986).

[7] *Id.* at 1453.

[8] The district court also concluded that the sneak and peek warrant impermissibly allowed agents to observe, but not seize, tangible property. However, on appeal, the court cited *United States* v. *New York Telephone Co.*, 434 U.S. 159 (1977) for the proposition that the seizure of intangibles does not violate the Fourth Amendment or Rule 41. *Id.* at 1455.

[9] Both the district court and the court of appeals concluded that the failure to give notice also violated Rule 41. However, because

failures to comply with the Federal Rules of Criminal Procedure do not automatically require suppression of evidence, it is more significant that these courts found a violation of the Fourth Amendment.

[10] *See Dalia* v. *United States*, 441 U.S. 238 (1979).

[11] 800 F.2d 1451, 1456.

[12] *Id.* at 1456. The court in *Freitas* did not order the evidence seized pursuant to the warrants suppressed. Rather, the court believed there was a strong possibility that the agents relied on the warrants in good faith and that the evidence would be admissible under the Supreme Court's ruling in *United States* v. *Leon*, 468 U.S. 897 (1984). Accordingly, the court ordered a remand. The second time on review, in *Freitas II*, the court concluded that the good faith reliance on the warrant exception to the exclusionary rule did, in fact, apply in this case. 856 F.2d 1425 (9th Cir. 1988).

[13] 902 F.Supp. 121 (W.D. Tex. 1995).

[14] 899 F.2d 1324 (2d Cir. 1990).

[15] 983 F.2d 449 (2d Cir. 1993).

[16] 800 F.2d 1451, 1456 (1990).

[17] The court did not suggest that the government must meet the Title III standard of establishing that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(3)(c).

[18] 899 S.2d 1324, 1338.

[19] *Id.* at 1338.

[20] *Id.* at 1338.

[21] *United States* v. *Leon*, 468 U.S. 897 (1984).

[22] 983 F.2d 449, 455 (citing *United States* v. *Burke*, 517 F.2d 377 (2d Cir. 1975)).

[23] In *Pangburn*, the court noted with approval that the agent submitted the sneak and peek warrant application to an assistant district attorney for review prior to presentment to the court. *Id.* at 455.

[24] *See, e.g., United States* v. *Sitton*, 968 F.2d 947 (9th Cir. 1992).

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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Length: 2,000 to 3,500 words or 8 to 14 pages.

Format: All manuscripts should be double-spaced and typed on 8 1/2- by 11-inch white paper. All pages should be numbered, and three copies should be submitted for review purposes. When possible, an electronic version of the article saved on computer disk should accompany typed manuscripts.

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Basis For Judging Manuscripts: Manuscripts are judged on the following points: Relevance to audience, factual accuracy, analysis of information, structure and logical flow, style and ease of reading, and length. Favorable consideration cannot be given to an article that has been published previously or that is being considered for publication by another magazine. Articles that are used to advertise a product or a service will be returned to the author.

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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. *Law Enforcement* also wants to recognize their exemplary service to the law enforcement profession.

Deputy Langdon

Officer Hamrick

Deputy Jack Langdon of the Brazoria County, Texas, Sheriff's Department and Patrol Officer H.K. (Ike) Hamrick of the Alvin, Texas, Police Department responded separately to the report of a major traffic accident. One of the vehicles had caught fire with the sole occupant remained trapped inside. When Officer Hamrick arrived at the scene, he observed Deputy Langdon struggling to free the female occupant from the burning vehicle, which was resting atop a ruptured natural gas meter. Together, Deputy Langdon and Officer Hamrick freed the woman and carried her to safety, just moments before the interior of the vehicle became engulfed in flames. While awaiting the arrival of an ambulance, Officer Hamrick administered first aid to a serious head wound sustained by the victim. Because of the critical nature of her injuries, the victim eventually was transported by medical helicopter to a regional hospital for treatment.

Corporal Shenay

When Corporal Jim Shenay of the Myrtle Beach, South Carolina, Police Department returned home after completing an evening shift, he learned that his daughter was in the final stages of delivering his grandchild. Earlier in the evening, a local hospital inexplicably decided against admitting the expectant mother. Sensing that delivery was now imminent, Corporal Shenay telephoned for an ambulance, but was told to expect a considerable delay because the only available unit was engaged in another call. With assistance from EMS personnel via the telephone, Corporal Shenay delivered the baby in his home, having to remove the umbilical cord from around the newborn's neck and perform emergency first aid until the ambulance arrived. The new mother and infant were transported to a hospital shortly after the birth.

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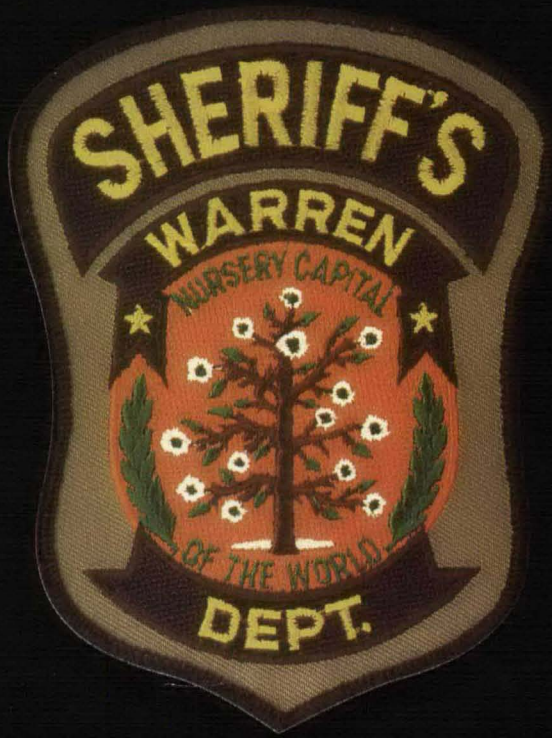
Patch Call

The Hayward, Wisconsin, Police Department patch depicts the American Birkebeiner, a 55-kilometer cross-country ski race held every year in February. The race, in which both professional and amateur skiers participate, begins in Cable, Wisconsin, and finishes in downtown Hayward.



The patch of the Warren County, Tennessee, Sheriff's Department features a dogwood tree to promote the county's reputation as "nursery capital of the world."