

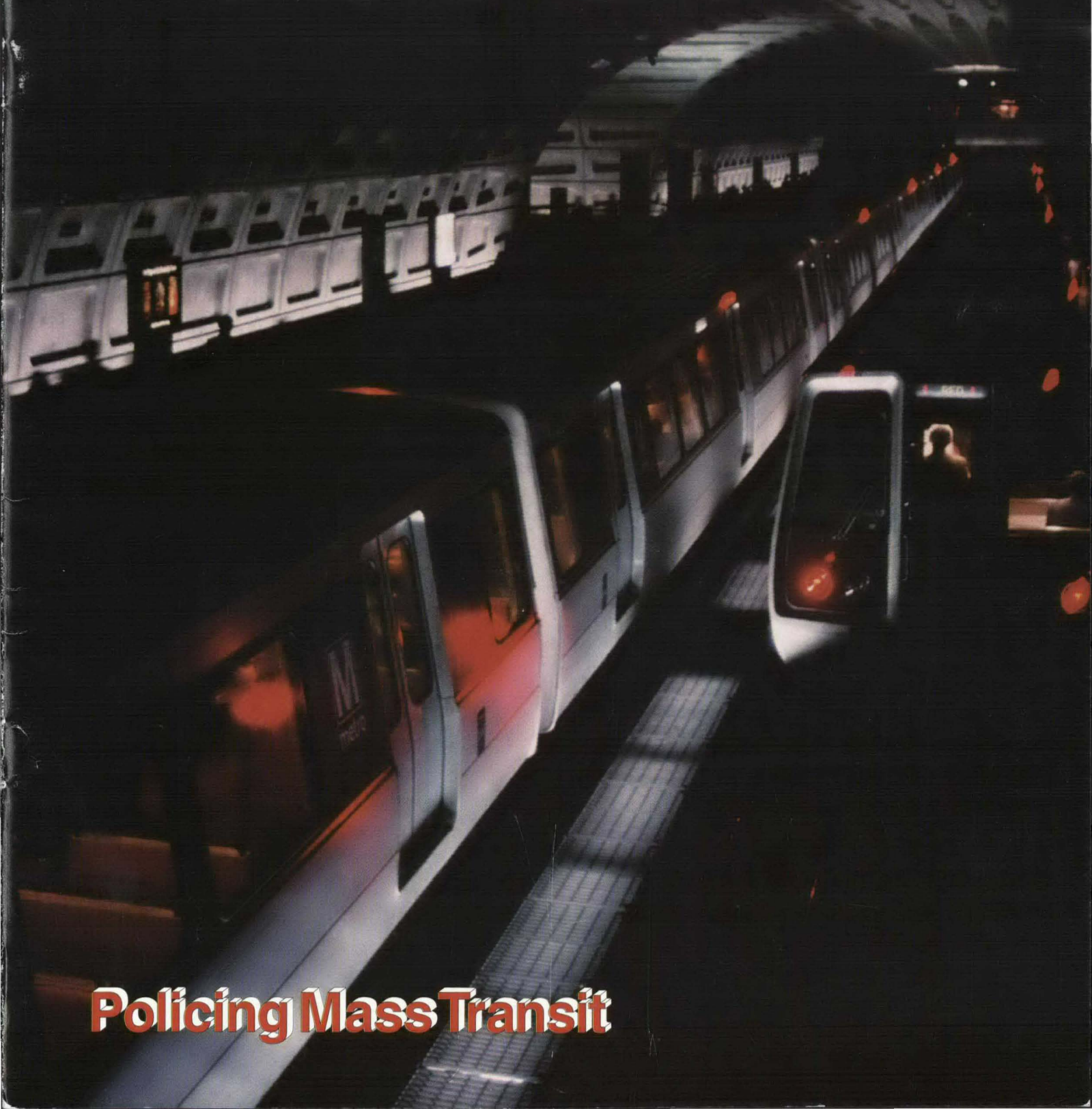
U.S. Department of Justice  
Federal Bureau of Investigation



JANUARY 1997

# FBI Law Enforcement

B ♦ U ♦ L ♦ L ♦ E ♦ T ♦ I ♦ N



**Policing Mass Transit**



# FBI Law Enforcement

B ♦ U ♦ L ♦ L ♦ E ♦ T ♦ I ♦ N

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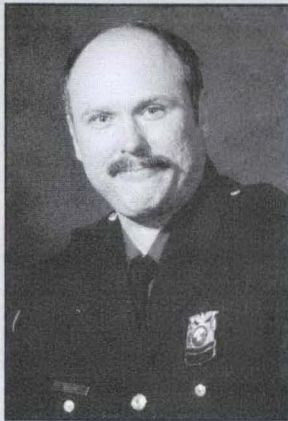
Managing Police Personnel

# ***Policing Mass Transit Serving a Unique Community***

By KURT R. NELSON



**P**olicing mass transit systems presents distinct challenges to law enforcement. At the same time, though, it enables agencies to send a clear, high-impact message that community-based policing extends to communities distinguished not only by geographical boundaries but also by shared needs. To fully integrate transportation security into a police agency's overall



Officer Nelson serves with the Portland, Oregon, Police Bureau.

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***The unique elements of a mass transit environment tend to amplify security concerns among potential riders.***  
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crime-reduction strategy, administrators must remember that mass transit riders make up a special community based on a mode of transportation as opposed to a location.

The primary goal of policing mass transit is twofold—to enhance transit system safety and to reduce the fear of crime on transit systems. When riders perceive a transit system as unsafe, they will not use it, no matter what claims statisticians or civic leaders make to the contrary.<sup>1</sup>

If the level of crime and disorder becomes so high that it has a measurable impact on the public's perception of safety, the number of riders will decrease either on the entire system or on specific routes or lines. The loss of ridership then sets in motion an inevitable cycle of deterioration spurred by the decline in revenues and the migration of potential middle-class and affluent riders to other modes of transportation.

Transit systems besieged by such a cycle become largely the domain of low-income riders with no

alternatives, visitors, and the criminals who prey on them. To avert such scenarios, the police must provide a coordinated effort to combat threatening behavior and maintain order on the mass transit system.

Police officials should not underestimate this challenge. The unique elements of a mass transit environment tend to amplify security concerns among potential riders. In a recent Canadian study, women were asked to identify areas of their lives where they felt unsafe. Respondents ranked riding public transit at night as the third most unsafe city environment. As a consequence, the women polled tended to avoid riding mass transit in the evening whenever possible.<sup>2</sup> Such sentiments could be generalized to the rider population as a whole.

In addition, Hollywood images that highlight the dangers—real or imagined—of big-city mass transit compound the problem. Keying in on modern urban fears, the news media, too, tend to emphasize the

transit angle in covering criminal incidents. Crimes that might barely merit mention otherwise become headline news if they occur on a mass transit system.

Selective media coverage perpetuates the myth that public transportation is unsafe. One writer succinctly summed up the public fears that make policing mass transit systems a distinctive challenge for law enforcement: “For many reasons—including television and movie portrayals, the crush of crowds and the necessity of traveling through unknown neighborhoods—transit riders often view the systems as isolated, crime-ridden places.”<sup>3</sup>

Fortunately, the police can pursue specific policies to counteract such sentiments and to enhance the public's attitude toward safety in the mass transit environment. The first step is to develop a reliable and practical standard to measure the success or failure of current and future security efforts.

## **STRATEGIC MEASUREMENTS**

To achieve the goal of a system that is not only safe but also perceived to be safe, the police, working in concert with the transit authority, must have the ability to measure data that relate to security. Failure to maintain objective measurements of crime and disorder, as well as subjective assessments of security by transit users, will prevent strategic planners from determining the impact of their efforts.

Police can use three readily available measurements to gauge the overall security of a transit

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system—a statistical database of crime and disorder, a tally of ridership losses and gains, and a survey to estimate the perception of fear among riders and employees. Together, these measurements will provide police managers with an accurate assessment of the safety, both real and perceived, of a mass transit system.

### Crime and Disorder

The most logical measurement to use when gauging the security of a transit system is one of crime and disorder on the system—or on particular lines within the system. Analyzing crime records can help police managers identify emerging criminal trends before they become entrenched problems.

In addition to tracking felonies, police managers should monitor statistics covering a broad range of activities that impact the quality of a customer's ride. Data on regulation violations, fare evasions, ejections/exclusions, and other lesser categories can be used to measure disorderly behavior on the system.

When building a statistical database, police managers can use as a starting point the FBI's Uniform Crime Reporting (UCR) system for Part I and II classified crimes. In addition, the Federal Transit Administration (FTA) has implemented a new policy for transit agencies, requiring those that receive federal Section 9 operational grants to report a wide range of offenses to the National Transit Database. The FTA created this program in part to encourage and assist transit systems across the country in identifying

problems and developing effective countermeasures.<sup>4</sup> However, as transit systems begin to comply with the FTA's requirement, police agencies should use UCR statistics to build their own databases and to measure their own efforts.

### Ridership

Several factors can impact ridership levels on transit systems, but large-scale losses in ridership generally indicate the riding public's loss of faith in the security of a system. Passengers express their fear by abandoning mass transit and choosing alternate, often more expensive, modes of transportation.<sup>5</sup>

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***When riders perceive a transit system as unsafe, they will not use it, no matter what claims statisticians or civic leaders make to the contrary.***

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Because a decrease in activity can affect either the entire system or specific lines, police managers need to collect detailed data to determine where they should direct resources. A careful measurement of ridership levels *before* proactive activities begin can serve as a baseline for measuring the success of an enhanced enforcement program. Knowing baseline figures also can help managers redirect their efforts

if the program fails to stem a trend of decreased ridership.

### Rider Perceptions

Along with objective measurements, police managers also should use a third, more subjective, measure to gauge the security of a mass transit system. By conducting periodic ridership surveys with the assistance of transit authorities, the police not only demonstrate their genuine concern for the safety of passengers, but they also gain valuable information that can help them address problems at the earliest possible stages. Riders may perceive potential trouble before a trend in crime reports becomes apparent.

Once the police develop a baseline fear index, managers can use it to monitor the success of the department's efforts to reduce the perception of an unsafe transit system. They also can use it to measure reaction to atypical, but traumatic, events on the system, such as a well-publicized shooting.

### SYSTEM SECURITY

#### Patrol

With an effective strategic measurement protocol in place, police managers can focus on developing strategies to increase rider security on the transit system. By far, the most important element of this effort is high-profile police patrol.

Patrol commanders should remember that within the diverse community of mass transit riders, passengers share one common element: Their presence in the system is transitory. That is, they do not reside

in the transit system, and therefore, they tend to view the long-term effects of criminal activity occurring in the system in a different framework than they would crime occurring near their residences or places of business.

Long-term, ongoing criminal behavior that has limited personal impact on riders generally makes little impression. For example, signs of flagrant drug use on a system may fail to influence ridership levels. However, threatening behavior that results from drug use could have a profound effect on ridership.

Likewise, the disorder that comes as a by-product of such offenses as drug use has a dramatic effect on riders' impressions of the system in general and the police response in particular. Riders' fear of crime correlates strongly to their perception of police effectiveness in maintaining order in the transit system. In surveys, passengers who give the police high marks for maintaining order also express little fear of being victimized while using the system.<sup>6</sup>

Undoubtedly, high visibility enforcement is a central component for maintaining order and making riders feel more secure in the mass transit environment.<sup>7</sup> While the fear of crime is reduced by police presence, crime itself is reduced by police acting on the elements of disorder. When crime analysts from the New York City Transit Police examined statistics for the years 1990 to 1993, they drew the following conclusion:

...police activities (making arrests, issuing summonses, and ejecting violators for minor offenses, such as fare evasion)

have had an inverse effect on the number of felonies reported. In other words, when there is an *increase* in the number of police activities, there is a corresponding *decrease* in the number of felonies reported.<sup>8</sup>

Panhandling, gambling, and similar activities also have a negative impact on the perceived desirability of mass transit. Through direct observation or by monitoring transit employee reports and rider complaints, police easily can identify and track disorderly individuals. Once a problem has been identified, patrol officers can act quickly to remove the offenders from the transit system.

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**...high visibility enforcement is a central component for maintaining order and making riders feel more secure in the mass transit environment.**  
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Special legislation may be needed to give the police specific authority to exclude repeat offenders from a facility. The exclusion of individuals for fare evasion is a particularly effective tool, but police can use other transit-oriented ordinances, such as prohibitions against eating or playing music without headphones, with equal effect. Whatever the legal tools used, it is

clear that by closely monitoring the disorderly behavior of potential offenders, the police can play a crucial role in controlling crime rates in a transit system.<sup>9</sup>

Police officers who patrol transit systems also should practice the proactive intervention strategies characterized by the community policing approach. To help them do so, police managers might find it best to focus efforts away from radio dispatch and dramatic enforcement missions, such as drug arrests, in favor of providing the kind of high-profile crime prevention presence that has a true impact on ridership.

### Night Patrol

Like many components of the urban landscape, transit systems undergo a transformation when day turns into night. As the number of riders drops dramatically after the evening rush hour, large masses of passengers traveling in one direction give way to single, isolated riders heading to different destinations. Unfortunately, these riders make attractive targets for criminals and opportunists who use the isolation of the transit setting to their advantage. Therefore, as evening passenger traffic decreases, the need for police vigilance to prevent and detect crime increases.

In addition to heightened security concerns, nighttime often means an increase in so-called victimless crimes occurring along transit lines. Chief among these is prostitution, which can have a dramatic negative impact on the livability of the community as a whole and can detract from the desirability of mass transit

in particular. Vigorous enforcement of solicitation laws—directed both at prostitutes and their transit customers—can greatly improve a system's safety image for potential nighttime riders.

### Juveniles on the System

Studies have found that many passengers find youthful activity—even relatively innocent behavior—threatening.<sup>10</sup> Such concerns are especially profound for “transit-captive” riders, such as the elderly, women, and parents with small children. Youthful exuberance, even without criminal intent, can carry large crowds of young people to extremes. When the energies of youth are coupled with criminal intent, the situation can become volatile.

In many communities, large numbers of students use mass transit to get to and from school. Most of these children ride responsibly. However, the mere presence of large numbers of school-age children can pose problems, especially when single lines serve multiple schools or where students from different schools congregate at transfer points.

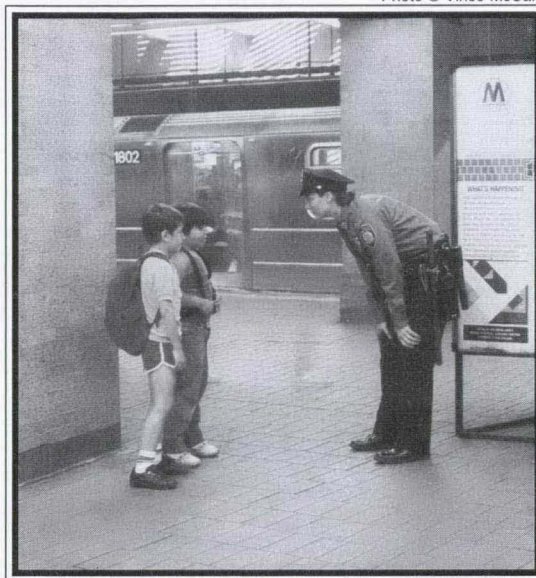
Normal school rivalries, both within and among schools, can lead to incidents. Added to the problem is the increasing gang-related activity, which raises the potential for an explosive mix, especially with the all-too-real possibility of guns being involved. Police must be cognizant of the tensions within the schools and take action to monitor and control the behavior of school-age riders.

Police managers should work closely with school administrators to avert potential problems. If lines of communication remain open, school officials can notify transit police when potential concerns arise for

conjunction with the Philadelphia Board of Education and the Juvenile Aid Division of the Philadelphia Police Department. As part of the program, police officers who encounter truants on the transit system take them into custody and transport them to designated holding sites operated by the board of education. If further investigation results in criminal charges, SEPTA police officers transfer the students to a police facility. If the police do not file charges, the students are returned to school.<sup>11</sup>

Such an effort can have a dramatic impact on crime not only on the transit system but also in neighboring areas. By diverting lawbreakers to police custody and potential troublemakers back to school, TIP has helped reduce daylight criminal activity in many communities throughout Philadelphia.<sup>12</sup>

Photo © Vince McCarty



student-rider safety resulting from increased tension between rival groups or incidents occurring during the school day. This information can prove invaluable in helping the police to monitor and diffuse tense situations on the transit system.

Truancy represents another challenge for the police. Youths who skip school may be more likely to commit other types of offenses. The police can take these youths' criminal proclivities into account by addressing the problem of truancy. In Philadelphia, the Southeastern Pennsylvania Transportation Authority (SEPTA) instituted the Truancy Intervention Program (TIP) in

### Special Legislation

When police managers consider ways to enhance transit system security, they should not overlook working with transit authorities to strengthen the special ordinances and codes that communities generally enact to encourage orderly behavior on transit systems. Where a specific need exists, police managers also can work with community groups to support legislation to help address the problem.

For example, to discourage repeat offenses, state legislatures or local governing bodies should be encouraged to enact ordinances to give the police specific powers to

expel and exclude troublemakers from the system. Such legislation would provide the police with the legal ability to exclude—and then arrest upon reentry—individuals who demonstrate undesirable behavior.

Other laws can be enacted to control behavior that would not otherwise be controlled outside of the transit environment. However, when advocating new legislation, the police must balance the constitutional issues related to regulating behavior that might be legal elsewhere but undesirable within the confines of a transit system.

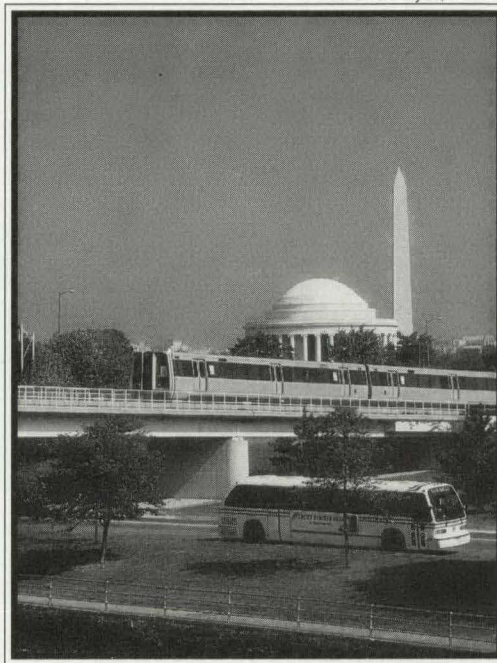
### Prosecution

To further enhance the overall effectiveness of crime reduction efforts, police managers can work with the district attorney's office to create special prosecution teams for offenses occurring on mass transit systems. In Oregon, the Tri-County Metropolitan Transit Authority (Tri-Met) of the greater Portland area contracted with the Multnomah County District Attorney's Office to hire a prosecutor who specializes in transit crime cases. This prosecutor not only serves as an enforcer of transit law and an expert on transit crime but also acts as a source of valuable training assistance to the police. Further, because the prosecutor's office is adjacent to the Portland Police Bureau's Tri-Met Unit, officers who patrol the transit system have direct, daily interaction with the district attorney's office through this special prosecutor.

### Environmental Design and Maintenance

Ideally, environmental design starts when planners lay out new stations or stops for a transit system. After all, planners understand that a poorly designed system will not attract passengers. Police managers

Photo ©Paul Myatt, WMATA



can enhance passenger safety in an existing facility by taking fairly simple steps and working with the transit authority to maintain the aesthetic qualities of the location and to improve security. For example, by responding quickly to graffiti or other displays of vandalism, police and transit authority personnel can significantly enhance passengers' perceptions of the system's safety.

Another important step is to ensure that stations provide adequate

signs to direct users to their destination, whether that be another train, the nearest staffed booth or security office, an elevator, or the proper exit. A person lost in a mass transit system can easily become fearful—and a target of opportunity for criminals. Special security telephones and ample access to pay telephones also reassure riders that they can contact help if needed.

Visibility represents another important safety consideration for a mass transit system. Not only is it important that police have the capability to monitor remote areas of the system, but passengers also feel more confident in a system with good visibility.

Ample lighting in all areas of the system should be a paramount concern. Other measures to increase visibility include installing convex mirrors at corners, removing overgrown plants and poorly designed fixtures, and installing closed-circuit television (CCTV) cameras to cover areas that would otherwise be difficult to monitor on a regular basis.

Some transit systems have taken CCTV to the next level by placing monitor screens so that passengers can remotely observe platforms and other areas of the system prior to entering them. The prominent placement of cameras and monitors throughout the Metro system in Washington, DC, is believed to serve as a significant deterrent to criminal activity that might otherwise take place on the system.<sup>13</sup> Once police managers identify security needs stemming from



environmental design, they should advise transit authority officials and suggest measures to correct the problems.

### Community Identity

To address the needs of the transit community properly, police managers must appreciate the relationship between a transit system and the areas it serves. The interconnection between neighborhoods and mass transit is real. Transit lines in high crime areas generally have higher crime rates than other parts of the system.<sup>14</sup>

To increase the community's stake in a safe and secure system, transit authorities and police should work to increase the perception that the transit system is *part* of the community and not merely something that moves through it. Coordination of law enforcement efforts within the mass transit system and in the neighborhoods can result in reduced crime not only on the transit system but in the neighborhoods as well.

In Philadelphia, SEPTA implemented the Adopt-A-Station program to increase the public's involvement in maintaining neighborhood transit stations. The program's goal is to "...strengthen communications with the public and to enhance the environment that SEPTA and the community share. After 'adopting' a station, the community provides valuable input to SEPTA so that the station continues to reflect or improve the climate of the neighborhood."<sup>15</sup>

In implementing such efforts, transit authorities and police

managers recognize that policing mass transit means more than developing techniques for handling crime on vehicles, platforms, and stations. It involves treating mass transit as an integral part of the community and recognizing that the community has an absolute need for the system's service. Crime, or even the fear of crime, will diminish ridership and isolate members of the community served by the transit system.

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**...policing mass transit means  
...treating [it] as an integral part of the community.**

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### CONCLUSION

For police managers, the term "mass transit" combines elements that challenge law enforcement's ability to maintain a secure environment: large groups of people in a transitory status. However, by developing a comprehensive approach to policing the transit setting, police can meet the challenge of providing service to this special community.

Police first must develop a reliable method for measuring important statistics that accurately relate the condition of the transit system in terms of security. These strategic measurements should be

broad-based enough to provide a picture of the security needs of the entire system and take into account subjective assessments by passengers of transit security. With this information, police and transit authority officials can develop specific proactive strategies to enhance security throughout the transit system. The ultimate goal should be to make riders *feel* safe by ensuring that they *are* safe. ♦

### Endnotes

<sup>1</sup> Vincent Castillo, "Fear of Crime: The Police Response," *Transit Policing*, Winter/Spring 1993, 1.

<sup>2</sup> Connie Guberman, "Making Transit Safer for Women," *Transit Policing*, Spring 1994, 9.

<sup>3</sup> Dorothy M. Schulz and Susan Gilbert, "Developing Strategies to Fight Crime and Fear," *Police Chief*, July 1995, 20.

<sup>4</sup> Annabelle Boyd and Patricia Maier, "An Assessment of Transit Crime Data Collection: Looking Toward the Future," *Transit Policing*, Spring 1995, 19.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Supra* note 1.

<sup>8</sup> James A. Eastman and Vivian Yuan, "Analysis—The Relationship Between Misdemeanor Arrests and Reported Felonies on the New York City Subway," *Transit Policing*, Spring 1994, 7.

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *Supra* note 2; additional data compiled from ridership surveys conducted by the Tri-County Metropolitan Transit Authority, Multnomah County, Oregon, 1994-1995.

<sup>11</sup> David Scott, "Policing Mass Transit: The SEPTA System," *FBI Law Enforcement Bulletin*, July 1993, 4.

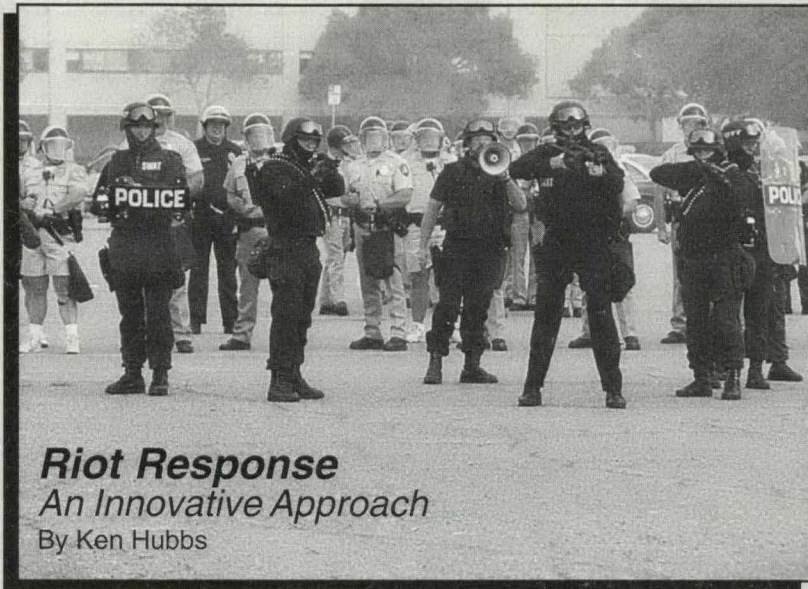
<sup>12</sup> *Ibid.*

<sup>13</sup> Susan Gilbert, "Surveillance Technologies: Electronically Leveraging Transit Security Forces," *Police Chief*, July 1995, 22.

<sup>14</sup> John W. Richardson and Robert Angone, "Chicago Police Department's Public Transportation Section: Facing the Mass Transit Challenge," *Transit Policing*, Summer/Fall 1992, 13.

<sup>15</sup> *Supra* note 11.

# Police Practice



## Riot Response An Innovative Approach

By Ken Hubbs

Over the centuries, organized societies often have spawned violent civil disturbances. Countless civil uprisings have been motivated by personal, religious, or political purposes, and many have prompted significant societal changes. Past decades witnessed race riots across the United States in the 1960s, protests over American involvement in Vietnam in the 1970s, abortion clinic demonstrations in the 1980s, and disturbances stemming from allegations of police brutality in the 1990s. The assorted techniques used by modern law enforcement to quell civil disturbances have been used for many years with varying degrees of effectiveness.

After any significant civil disturbance in which large-scale property damage, loss of life, or both occur, law enforcement agencies are held accountable. Often, departments face a Catch-22 situation: rapid and aggressive police action garners allegations of overreacting, whereas a limited police response in hopes that the incident will calm down on its own brings accusations of

incompetence. Clearly, the police need new strategies for dealing with civil disturbances.

As the city of Los Angeles was burning in the wake of the Rodney King verdicts, members of the San Diego, California, Police Department SWAT Special Response Team began developing new methods of extinguishing the violent behavior of an unruly populace. They eventually adopted two techniques—the Augmented Skirmish Line and the Tango Team. These offer law enforcement agencies innovative ways to quell such disturbances.

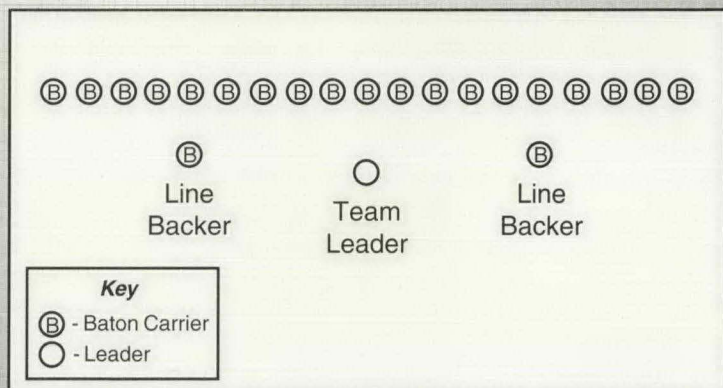
### The Augmented Skirmish Line

Generally, when a civil disturbance erupts, uniformed officers prepare themselves by donning helmets with face shields and carrying riot batons.

The officers quickly assemble into one of several formations designed to show police presence and/or deny the crowd access to specific areas.

The most common formation is the standard skirmish line. This formation quickly and effectively differentiates the crowd from the police. The skirmish line usually consists of a line of officers with hats and

### Standard Skirmish Line Formation



bats, several line backers, and a leader. Once the skirmish line is in place, the police give a dispersal order, commanding the members of the unlawful group to leave the area.

A significant weakness of the standard skirmish line concept is the span of control. With 20 to 40 or more officers deployed in the formation, it is inconceivable that only 1 leader, even assisted by the line backers, can maintain control of the line of officers during a conflict.

The augmented skirmish line provides a method of deploying officers in a riot squad formation, while maintaining control of the personnel involved. It divides the entire group of officers into smaller element groups, each with an element leader. The overall, or "Alpha," leader can make decisions and give directions to the element leaders (designated "Bravo," "Charlie," etc.), thus limiting the span of control. With improved command and control of the skirmish line and, therefore, the conflict, the police improve the odds of resolving the incident successfully.

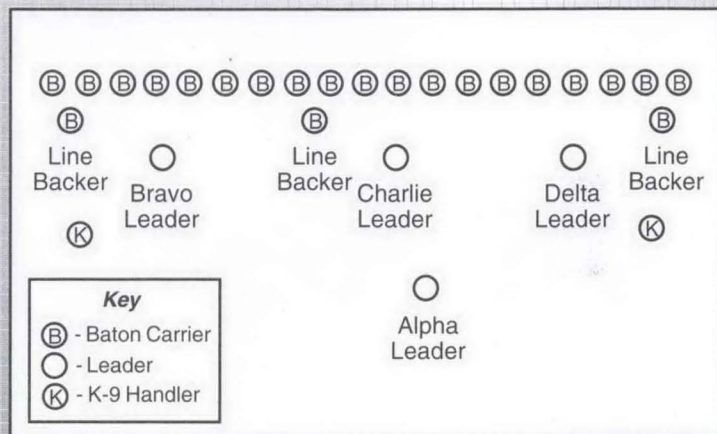
### Crowd Dynamics

Frequently, unruly groups contain only a handful of aggressive or violent members. The majority are onlookers who just want to be part of the event. Therefore, the presence of uniformed law enforcement officers formed into the skirmish line and outfitted with helmets and riot batons usually has an intimidating effect on the crowd.

In most cases, this effect lasts about 2 minutes before some members of the crowd become vocal in an attempt to provoke an altercation. As time passes without action from either side, a small faction within the crowd might begin to search for objects to throw at the officers maintaining the skirmish line. This is especially true if the officers are carrying shields.

Essentially, absent other activity between the crowd and the skirmish line, the shields become missile

## Augmented Skirmish Line Formation



magnets, inviting the crowd to start throwing things. Unfortunately, the police often have no contingency plans for responding to a rain of rocks and bottles. In the absence of other procedures, the leader commands the line to charge, batons start flying, and the police completely lose control of the incident. The Tango Team provides an alternative, allowing every use-of-force decision to be controlled and planned.

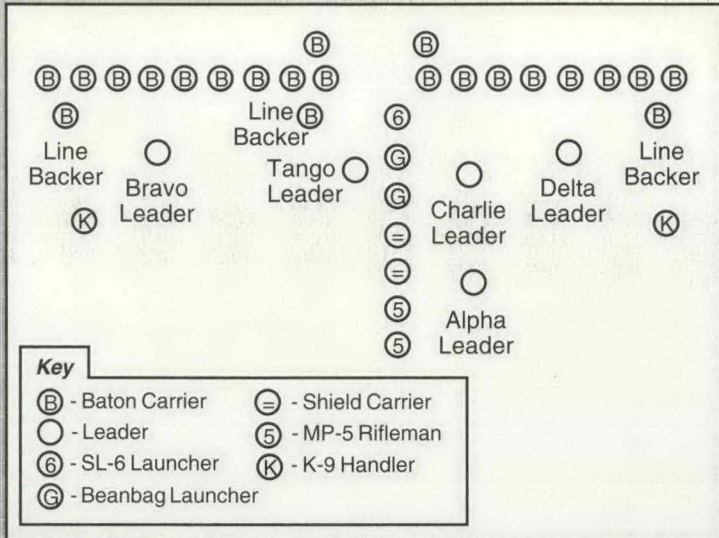
### The Tango Team

Tango stands for Tactically Aggressive and Necessary Gambit of Options. This team goes forward and "dances" with the crowd. The Tango Team can bring to bear the entire spectrum of use-of-force options—from command presence through deadly force—in a controlled, self-contained package.

This unit of special weapons team members can be mobilized to support riot response teams in the event of violent activity by angry crowds. Using extended range weapons (e.g., rubber bullets and beanbag ammunition), the Tango Team can strike selected targets in the crowd from beyond rock and bottle receiving range. This not only deters the crowd but also helps protect officers from injury. The San Diego Police Department's Tango Team consists of eight members:

- Team leader

### Formation for Skirmish Line with Tango Team

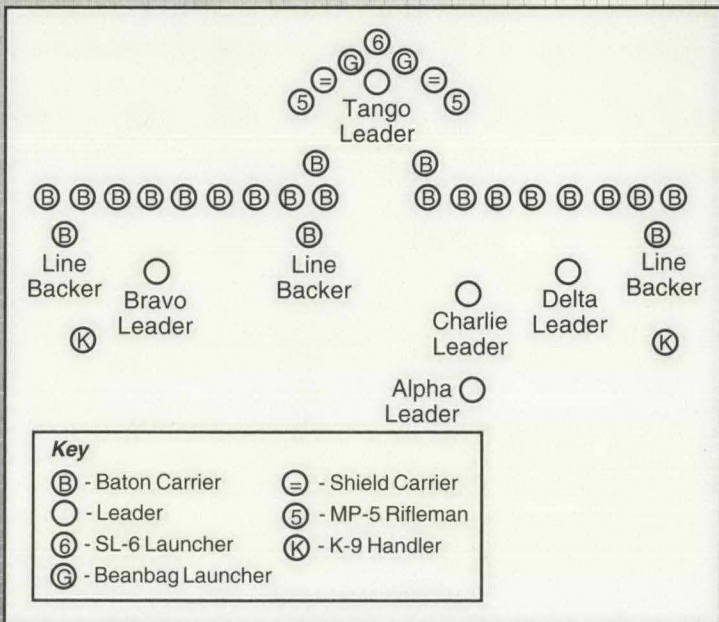


- Point officer armed with a Sage SL-6 37mm launcher loaded with baton rounds
- Two officers armed with shotguns loaded with 12 gauge bean-bag munitions and carrying bandoleers of additional rounds
- Two shield handlers, each with a shield and a large (46 ounces) canister of aerosol agents (CN, CS, or OC)
- Two riflemen armed with submachine guns set on semi-automatic firing mode.

The Tango Team can remain out of sight of the crowd, behind the skirmish line, until it is deployed. After deciding to use force to resolve the situation, perhaps because of escalating violence toward the police, the incident commander authorizes the Tango leader to deploy the team. The center of the skirmish line opens, and the Tango Team marches through the gap toward the crowd. The psychological effect of seeing this aggressive police action might in itself cause some members of the crowd to realize that they should leave.

On the Tango leader's command, the team breaks into a wedge formation. The Tango leader, in the center of the wedge, communicates with each member of the team through tactical communication equipment, including throat microphones and custom-molded ear pieces. The point officer takes up the apex position. The shotgun operators position themselves on each side, one step back and two steps out. The shield handlers take their places behind

### Formation for Skirmish Line with Tango Team Wedge



and outside of the shotgun operators, followed by the riflemen, stationed behind and outside the shield handlers.

The point officer identifies individual targets, such as rock throwers, instigators, or others, as directed by the Tango leader. Using the SL-6 launcher, the point officer can strike with accuracy targets as far as 100 meters away.

The shotgun operators have the same responsibility as the point officer, only at closer range. They can accurately strike targets within 20 meters.

The shield handlers are responsible for alerting the rest of the team of incoming projectiles and deflecting objects away from team members. They also carry large aerosol chemical agent dispensers. Chemical agents can be used to create distance between the skirmish line and the crowd and can be deployed effectively by the shield handlers without contaminating unnecessary areas.

Should the team receive gunfire from adjacent buildings or other areas, the riflemen can return fire accurately. They provide the team's deadly force option.

### Appropriate Levels of Force

In the San Diego format, the Tango Team leader selects from four levels of force. The choice always depends on the actions of the crowd.

In a level-one deployment, once the Tango Team has formed in front of the skirmish line, the Tango leader can use a bullhorn to advise the crowd to leave. The leader can escalate the team's response based on the crowd's behavior. With a level-four deployment, the team uses sound/flash diversionary devices (flashbangs) to gain the attention of the crowd, while aggressively advancing on the crowd and firing baton rounds and bean bags.



### Conclusion

In many circumstances, law enforcement agencies have been inadequately prepared to deal with violent civil disturbances. Sometimes, a resulting lack of options has led to overreaction on the part of the police and, at other times, to underreaction. The Augmented Skirmish Line and the Tango Team add two choices to the range of options available for handling violent outbreaks.

In an ideal world, no police commander would ever be faced with another bloody riot, but the lessons of history do not predict such a peaceful future. Fortunately, as the San Diego Police Department has shown, law enforcement can learn from the past and continue to seek safe and effective measures for quelling violent civil disturbances. ♦

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*Sergeant Hubbs, a 16-year veteran of the San Diego, California, Police Department, has served on the SWAT Special Response Team for 13 years.*

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# Outside Employment Guidelines for Law Enforcement Agencies

By DARCY U. BURTON

Since the introduction of modern policing in America, law enforcement has occupied a unique place among public service organizations. This largely stems from what society has come to expect from law enforcement officers.

The profession demands that they be prepared to exercise enforcement authority 24 hours a day, 7 days a week, although officers generally are scheduled and compensated for a specified duty period (usually 8- or 12-hour shifts). Few, if any, public service vocations share that attribute or require the bearing, attentiveness, and diligence exacted by law enforcement.

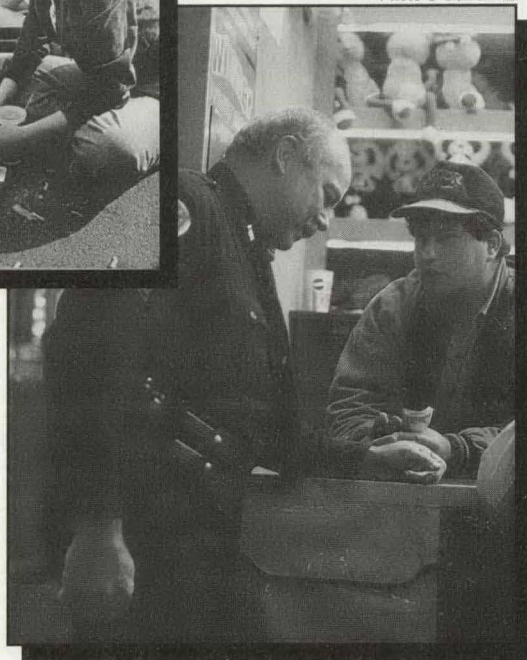
Despite these high demands, the police profession has never been noted for providing premium salaries to its line officers. To offset the pay inequities, many officers supplement their incomes. In response, some law enforcement agencies have established policies regarding officer employment off the job.

This article discusses some of the factors that agencies face when attempting to regulate outside employment for their officers.<sup>1</sup> It also suggests a set of procedures that administrators can follow to help ensure that part-time or off-duty employment does not interfere with the primary responsibility of law enforcement officers to serve their agencies.



Photo © Jerry Gay

Photo © Don Ennis



## RESPONDING TO A NEED

In recent years, two forces have led to a steady rise in the number of officers engaged in outside employment. Reduced public outlays have kept officers' salaries flat in many communities, forcing

officers to seek additional income. At the same time, the rising fear of crime has led more businesses, citizens' groups, and other organizations to arrange for additional security. Many officers see the increased opportunities for off-duty security

work as a way to supplement their incomes while performing work for which they already are amply trained.

Law enforcement agencies and municipalities can actually benefit from the trend of increased outside employment. The availability of such employment may reduce the continual push by individual officers, police associations, and collective bargaining groups to increase wages, salaries, and benefit packages.

Still, for individual agencies, failure to address outside employment as a priority policy issue can prove disastrous. The blessing of bountiful part-time and off-duty opportunities can indeed become a nightmare for police managers and administrators.

Through collective bargaining agreements and similar measures, some agencies already have lost regulatory authority in many aspects of officer conduct while their officers are engaged in off-duty work. As a result, these agencies have become effectively powerless to regulate the conditions under which officers work in off-duty capacities.

Yet, agencies continue to bear primary liability relating to officer conduct and shoulder the burden of providing workers' compensation for injuries that may result from off-duty enforcement actions. Therefore, law enforcement agencies have a vested interest in establishing and periodically reviewing outside employment policies. Such an effort, regardless of its complexity, should be pursued with the assistance and guidance of a legal advisor.

## CATEGORIES OF OUTSIDE EMPLOYMENT

To develop an outside employment policy, agency administrators first must decide which types of employment will be regulated. For the most part, outside employment opportunities fall into three categories: part-time employment, regular off-duty police employment, and temporary off-duty police employment. An agency should tailor its outside employment policy to address each of these categories.

### Part-time

Part-time employment does not require use of law enforcement powers. In a broad sense, an officer who owns or operates any private business, works on commission, or receives compensation in any form from any person, firm, or corporation other than the department for the performance of nonpolice services is considered to be engaged in part-time employment. Examples

include photography, property management, direct marketing, retail sales, and other commercial pursuits.

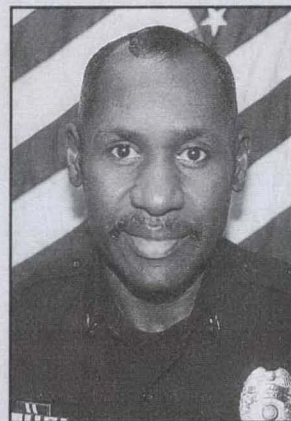
### Regular Off-duty

Regular off-duty police employment is conditioned on the actual or potential use of law enforcement powers for an employer other than the officer's department for a continuous period of 30 days or more. Examples include working crowd control at amusement parks or providing security at apartment complexes, malls and shopping centers, financial institutions, schools, etc.

### Temporary Off-duty

Temporary off-duty police employment is conditioned on the actual or potential use of law enforcement powers for an employer other than the officer's department for a period of less than 30 days. Examples include providing security

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*Captain Burton serves with the Longview, Texas, Police Department.*

at exhibitions, festivals, parades, construction projects, special merchandise sales, sporting events, and other similar events of relatively short duration.

## EMPLOYMENT CONDITIONS

Conditions of employment are, for the most part, general restrictions that state what an officer can or cannot do when engaging in part-time or off-duty work. The conditions also restrict the number of hours officers are permitted to devote to outside jobs and establish guidelines for wearing the department's uniform while engaged in off-duty employment.

### General Restrictions

Final approval for any request to engage in outside employment should be placed in the chief's office. Officers requesting approval to engage in part-time or off-duty work also should be subject to certain policy restrictions. These restrictions not only protect the department but also help prevent conflicts of interest between an officer's professional status as an impartial public servant and those jobs that may tarnish this image or prejudice the officer's impartiality. The restrictions also ensure that officers remain both physically and mentally capable of performing all functions required of their primary employer—the police department.

Accordingly, the policy should expressly forbid officers from accepting employment that would constitute a threat to the status or dignity of law enforcement as

a professional occupation. Examples include employment at establishments that promote pornography or obscenity, as defined by applicable statutes; where the principal business is the sale, manufacture, transport, or dispensation of alcoholic beverages; where the owners previously had been convicted of a felony; or where obvious potential for illegal activity exists.

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***...failure to address outside employment as a priority policy issue can prove disastrous.***

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Likewise, the chief should not approve employment requests that could pose a conflict of interest. Examples include employment that would require an officer to:

- Work as a process server, reposessor, or debt collector
- Conduct personnel investigations for the private sector
- Conduct tasks in uniform that are not of a law enforcement nature
- Assist others in preparing criminal or civil cases
- Act as an independent contractor of police services.

Supervisors and managers should ensure that no approved off-duty

employment conflicts with official on-duty tours.

Administrators also should avoid setting precedent in scheduling official duty hours to accommodate individual officers' off-duty work commitments. Officers absent from duty because of illness should be temporarily restricted from engaging in outside employment. Additionally, administrators may consider denying off-duty employment to officers on probation as a result of a disciplinary action.

In the Longview, Texas, Police Department, officers working part-time or regular off-duty jobs are required to include the approximate duration of the job in the initial request for approval. Otherwise, it is not required by policy to inform the department when a job ceases.

### Maximum Hours

To help ensure that officers remain physically and mentally alert while on duty, an outside employment policy should set a ceiling for the maximum number of hours they can work outside the agency. The Longview Police Department's policy generally restricts officers to 20 hours per week. According to the policy, officers should not work more than 14 hours in 1 day, including duty hours.

### Uniforms

Officers performing law enforcement-related services as a condition of off-duty employment generally should be required to wear the department's uniform. Chiefs, however, may reserve the privilege to circumvent this stipulation when



necessary. When employed in an off-duty capacity that requires the exercise of police powers, whether on a regular or temporary basis, officers should be allowed to engage only in the following types of activity: traffic control and pedestrian safety, crowd control, security, or routine law enforcement duties for public or private concerns.

### COMPENSATION

Administrators should take into consideration the three categories of employment when deciding to institute a compensation standard. For example, there is little need to set a rate of pay for part-time employment because the exercise of police power is not at issue and a broad diversity of opportunities exists. The local consumer market generally determines the profitability of a part-time enterprise. The agency's policy should, however, ensure that officers engaged in part-time business pursuits do not use the badge or the "color of office" to promote such a venture.

Likewise, regular off-duty police employment does not require that an agency set a minimum pay rate. In fact, the types of businesses offering regular off-duty police opportunities to officers in many cases supplement wage payment with compensation in some other form. For example, an apartment complex might offer a rent-free apartment to an officer as part of a compensation package for on-site

security services. This and other factors related to long-term employment dictate that certain flexibility be granted both to officers and businesses in establishing a rate and method of payment.

By contrast, the abundant but often sporadic or seasonal nature of temporary off-duty police employment requires that agencies seriously consider establishing a standardized minimum pay rate for

officers for security purposes on a short-term basis to pre-plan their expenses and ensures that the minimum rate of compensation for officers working off-duty remains competitive.

The authority to set a minimum compensation rate for temporary off-duty employment should be placed with the office of the chief. The established rate should be commensurate with the agency's standard overtime rate. If ranking officers are eligible to work temporary off-duty jobs, a standard rate can be established by averaging the overtime rates of all participating ranks.

### APPROVAL PROTOCOL

Department administrators should develop and maintain approval request forms for officers interested in engaging in part-time or off-duty employment. After completing the forms, officers should route them through the chain of command for final approval.

The outside employment policy should include a formal appeals process for cases where a request is rejected at the supervisory or mid-management level. However, under no circumstances should an officer be allowed to begin working outside the agency prior to final approval by the chief or the officer given this responsibility. The decision regarding an officer's request for outside employment should be final.

these types of employment opportunities. A standard pay rate for temporary off-duty police employment helps avert "under-cutting" practices and bidding wars among officers who might become overzealous in acquiring extra income. It also reduces the temptation on the part of any officer to assume the role of an independent contractor for off-duty police services. Such practices should be expressly prohibited by policy. Finally, a standard pay rate enables businesses or organizations that want to hire off-duty



Requests for approval should contain the following information:

- Date of request
- Location of employment or event
- Telephone number of employer or business
- Description of duty requirements
- Clothing to be worn (uniform or plain clothes)
- Name of person in charge
- Date(s) and time(s) of employment
- Category of employment
- Current duty assignment, shift, signature, and identification number of officer requesting outside employment.

Any additional information relevant to the request should be submitted in writing along with the form.

## SUGGESTED PROCEDURES

### Part-time Employment

For officers engaged in part-time work, agencies should review information annually that relates to the business, service, or employment. A file containing the officer's request and updated information should be maintained by the department, under the control of the chief. The officer should report any material change of business or employment functions within 10 days by filing a new request. Unlike officers engaged in off-duty police employment, officers injured while working part-time might not be protected by the agency's workers' compensation coverage.

### Regular Off-duty Police Employment

Officers engaging in regular off-duty police employment should submit yearly updates and file new requests in the event of substantial duty changes. The agency should maintain a separate file for requests of this nature because these assignments involve the exercise of police power and authority. Agency administrators should keep in mind that should an officer engaged in

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***The procedures established by an agency's outside employment policy should be articulated clearly and distributed to all affected employees.***

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regular off-duty police employment be injured while exercising police powers, the agency might be responsible for providing workers' compensation coverage.

### Temporary Off-duty Police Employment

All requests for temporary off-duty police employment made by outside concerns or by sworn personnel should be channeled to a centralized location in the department as designated by the chief. In many instances, organizations sponsoring events such as festivals or concerts will ask the department to provide security. Ideally, the chief should

appoint a command-level officer or division manager to coordinate all requests for temporary off-duty police employment.

The coordinator should determine if requests are acceptable and do not conflict with existing restrictions and directives and decide on the number of officers, including supervisors, needed for the assignment. The decision should be based upon the type of event, expected attendance, availability of alcoholic beverages, traffic control problems, etc.

The coordinator also needs to devise a system to post approved assignments in advance. This system should provide equal opportunity for personnel to sign up for job openings.

When possible, the coordinator should honor an organization's request for specific officers. Likewise, officers who initiate an acceptable assignment should be allowed to work the event.

The Longview policy generally requires that businesses or organizations provide at least 1-week advance notice to ensure that officers have an adequate opportunity to review and sign up for temporary off-duty jobs. Under no circumstances, however, does the department assume responsibility for guaranteeing coverage of off-duty employment requests with the possible exception of certain events held at the city's activity complex.

## PUBLICIZING THE POLICY

The procedures established by an agency's outside employment policy should be articulated clearly and distributed to all affected

employees. The Longview Police Department's policy regulating outside employment is included in the department's General Orders Manual, which is provided to every employee upon joining the agency.

### CONCLUSION

Outside employment is a major issue for line officers and administrators in many law enforcement agencies. As more officers decide to supplement their primary income through part-time or off-duty employment, agency administrators often find themselves making ad hoc decisions concerning each outside employment request.

However, the economic realities facing departments and individual officers alike dictate a more proactive approach. Modern administrators should recognize these realities and embrace the overall benefits that a thoughtfully implemented outside employment policy offers to an agency. A well-managed policy can lead to fewer officer demands for salary and benefit increases, while it enhances community support through increased police visibility. Such a policy also can improve morale by letting officers know that within certain parameters, the agency hierarchy supports their efforts to supplement their income.

Just as important, though, a well-managed outside employment policy serves to protect the community and the agency, as well as individual officers. By taking an active role in setting standards for outside employment, law enforcement agencies can ensure that those standards remain high. ♦

## Wanted: Photographs



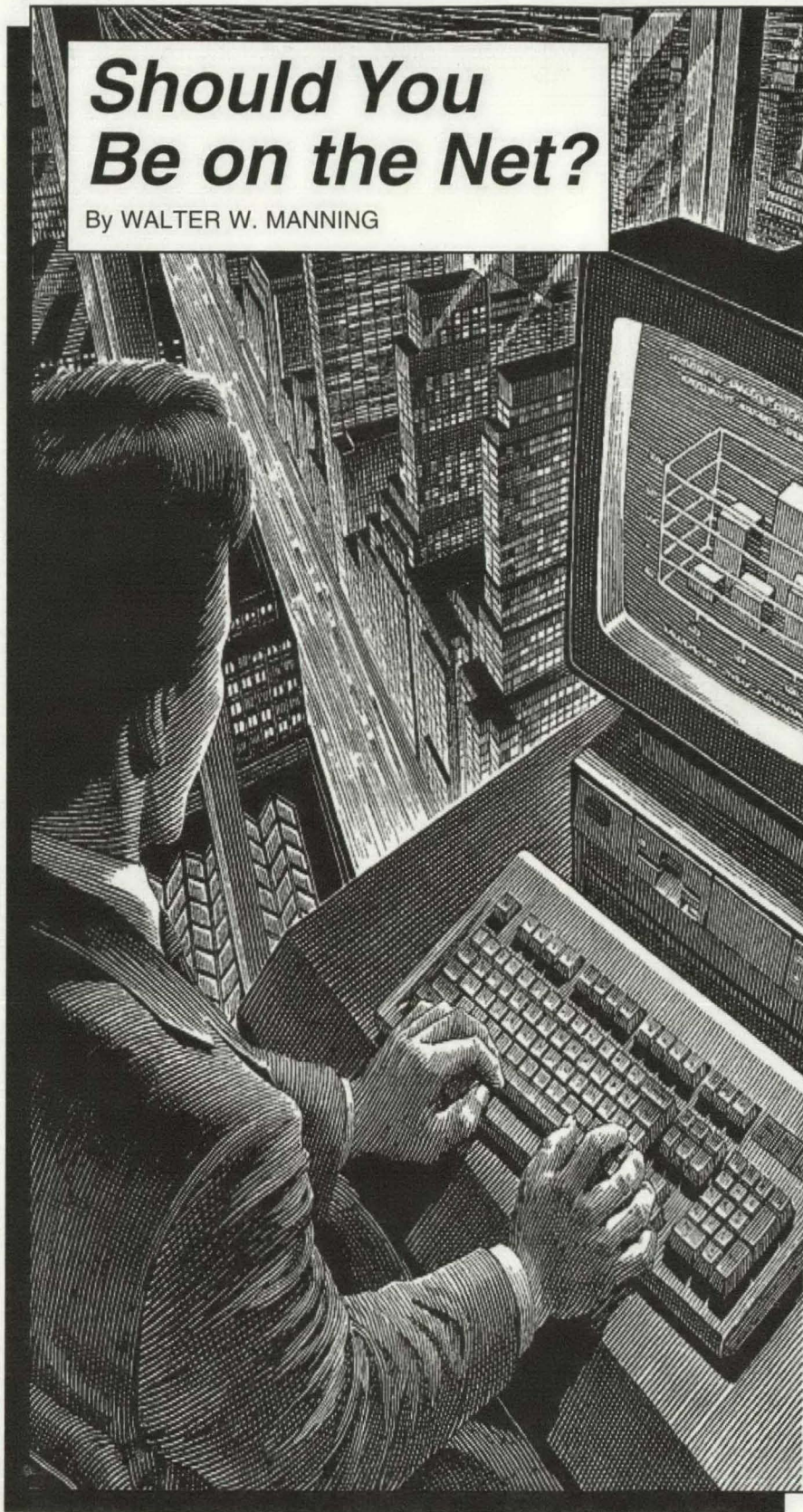
**T**he *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

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

John Ott, Art Director,  
*FBI Law Enforcement  
Bulletin*, Law Enforcement  
Communication  
Unit, FBI Academy,  
Quantico, VA 22135.

# Should You Be on the Net?

By WALTER W. MANNING



Everyone has heard the media trumpet the virtues of the Internet (a.k.a., the Information Superhighway, the National Information Infrastructure, etc.) and how this miraculous resource will change their lives for the better. Now, law enforcement is becoming involved in this trend, although in many cases, agencies apparently get involved only to be trendy, not because they have a vision of the possibilities associated with this technology.

The time has come for law enforcement professionals to think about the potential benefits the Internet could bring to their agencies. Emerging computer-related crime will require law enforcement to participate in the Internet in some form; members of the law enforcement community should stretch beyond the narrow crime-response paradigm and embrace the positive aspects of this global communication network.

## Internet Overview

Although people hear about the Internet every day, many still do not know what the Internet really is. Today, most people understand the concept of a "computer network" or even a "limited area network," because they have them in their organizations and work with them daily.

To simplify, a computer network is two or more computers connected together so they can communicate with one another. The more computers involved in such a network, the more complicated it becomes. As the computers within the network become spaced over wider geographical areas, the network

grows in complexity. However, the basic definition—two or more computers that can communicate with each other—still holds true.

This definition can be applied to the Internet. The Internet is a group of connected computer networks that can communicate on a global scale. The Internet currently has an estimated 35 million users, a figure expected to double before the year 2000.<sup>1</sup>

Certainly, from a practical perspective, the Internet is an extremely sophisticated and technically complex network. But access to this global system has become easy and inexpensive. Law enforcement professionals should no longer be intimidated by the technology or the cost.

The Internet's various protocols or other technical aspects need not be fully understood in order to use the network. This is especially true of the Internet's most popular area, the World Wide Web. Why is the Web so popular? Probably because it is so easy to use.

The protocol, or language, used on the Web allows users to create "home pages" that can include text, graphics, and audio information, as well as video images. This makes it possible to publish multimedia documents that can be viewed from any computing platform with access to the Internet. Users with powerful workstations running UNIX, personal computers running Microsoft Windows, or Apple Macintosh computers with the System 7 operating system all can read and exchange information over the Internet.

One feature of the Web, the hypertext link, makes it particularly

easy to use. Hypertext links permit users to move easily between sections within a document or between separate documents with just the click of the computer mouse. For example, a reference to the National Institute of Justice (NIJ) on a police department's home page might be programmed as a hypertext link that could take a user directly to NIJ's World Wide Web site. Hypertext links can connect documents on computers located anywhere in the world. Unless users wish to leave a message, they can navigate through all of the information with only a computer mouse; the computer keyboard might not even be required.

The cross-platform capabilities, user-friendly environment, and global nature of the World Wide Web create a variety of possibilities for criminal justice agencies. Some areas in which agencies could benefit from participating in the Internet community include community

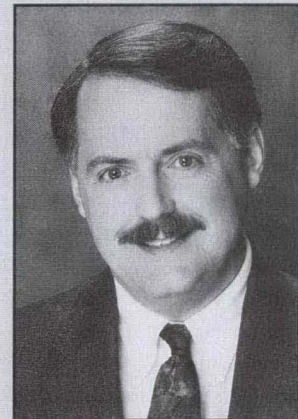
policing, administration, recruiting, research, and investigation.

### Community Policing

The philosophy of community policing advocates increasing the communication and interaction between a police agency and the community it serves. By focusing on solving problems at the neighborhood level, local government organizations working in close concert with citizens and community groups help to improve the quality of life for all. The Internet provides a great opportunity to establish an information resource for the community and to solicit citizens' comments and questions.

For example, statistical information related to criminal offenses, arrests, and calls for police service are of considerable interest to individual citizens, as well as community and business groups. Linking statistics to maps provides a graphical connection to this data.

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***The Internet offers  
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agencies....***  
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*Lieutenant Manning serves in the Computer/Crime Analysis Unit of the Dallas, Texas, Police Department.*

Crime prevention material and information about agency programs also can be provided efficiently via the World Wide Web. Photographs can be published with textual information that duplicates—or even surpasses—the quality of printed material. Rapidly developing technology soon will permit the easy addition of audio clips (perhaps a recorded message from an agency executive) and even video clips. Some law enforcement agencies publish an electronic list of most wanted fugitives with digitized photographs, physical descriptions, and details of the crimes committed.

As another way to support the goal of improving access and communication, an agency can publish a directory of all its units. This can be updated easily and might include unit addresses, telephone numbers, and perhaps even the names of the commanders or managers.

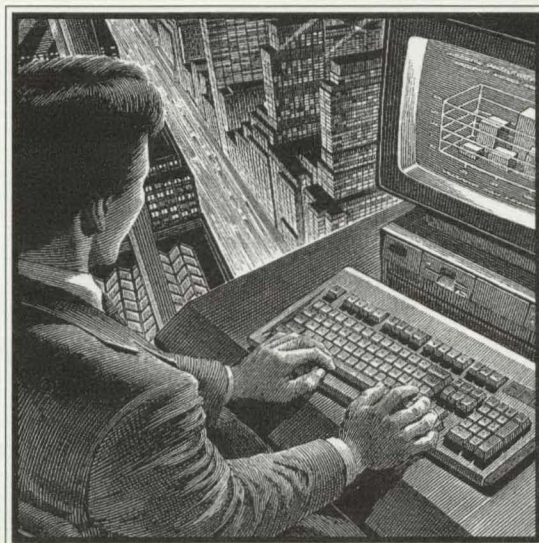
Electronic mail links from this directory can make it even easier for citizens to send messages to the right people or places to deal with a particular problem.

All of these Internet features can provide tremendous support to a community policing program. The Internet also can assist with the administration of a law enforcement agency.

### **Administration**

Criminal justice agencies receive an ever-growing number of requests for information each day. Other agencies need statistical information for comparison purposes.

Citizens want crime statistics to learn what types of criminal activity might be occurring where they live or work. Executives in government organizations, such as the city council or other parts of the management structure, frequently require data from the criminal justice



agency. And, in fact, the command structure of the agency itself also needs data to develop resource allocation and budgetary strategies. These requests repeatedly involve the same information.

The Internet can help. Many citizens have Internet access either at home or at the office. Others have access through colleges and universities or even the local library. By placing the most frequently requested information on the World Wide Web in a convenient and useful format, agencies enable users—inside and outside their organizations—to find the answers to their questions independently. Once users

locate the facts they need, they can print the information themselves, which reduces the demand for costly printed material.

Other types of administrative data also can be published via the Internet. Staffing information and budget figures can be included in this electronic compilation so that citizens can review how the agency allocates resources.

### **Recruiting**

The Internet also can benefit police agencies in the area of recruiting. The scarcity of qualified applicants, as well as the growing costs associated with recruitment, makes this a perfect place to use the Internet.

Agencies can post their hiring requirements, salary structure, and employment benefits on their home pages. Descriptions of various career opportunities could be included, complete with photographs and audio and video clips to make the presentation attractive and interesting. The multimedia effects possible with a World Wide Web document have a punch that only a few printed recruiting packages can equal.

Many agencies recruit heavily from colleges and universities all over the United States. Most of these institutions provide students with access to the Internet, sometimes as part of their enrollment packages. Agencies with a presence on the Internet can reach this group, whose members are preparing to make a career choice. By providing

employment information to prospective applicants, departments enable them to make highly informed career decisions.

Departments can benefit as well. First, recruiters can assume that applicants who respond based on the information posted on the Internet will be fairly serious about prospective employment. This results in a more efficient return on the investment of the recruiting staff's time and effort. A secondary benefit could be a more cost-effective use of advertising and travel expenditures. Through the Internet, recruiters reach a larger number of potential applicants and cover greater distances without ever leaving the office. Plus, agencies should consider providing an online employment application, possibly saving staff time and expense, speeding up the entire application process.

### Research

Most criminal justice agencies have planning and research units or other employees who need a wide range of criminal justice-related information. The Internet already houses a tremendous amount of useful information, including, for example, legislation introduced at the state and federal levels, as well as research studies and academic papers on a wide variety of topics.

Newsgroups can be another useful Internet research tool. Most newsgroups provide public forums for discussing specific topics of interest. Agencies can send messages, known as "posts," to ask questions about emerging issues, get facts about particular products or services, address a miscommunication

about a specific event, or clarify agency policy. For example, one extremely active newsgroup, **alt.guns**, has hosted a heated debate about the issues and agency policies pertaining to the new concealed weapons law in Texas.

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*...the information age will require a significant change in investigative philosophy for law enforcement agencies.*

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### Investigations

Like it or not, the information age will require a significant change in investigative philosophy for law enforcement agencies. Police departments historically have been somewhat territorial, addressing only those problems occurring within their geographical jurisdictions. As expanding technology blurs traditional geographical boundaries, criminal justice will be forced to adjust.

For example, an American citizen visits a casino located in another country where gambling is legal. No one would consider this a violation of the law. But, what if the same person visits the same casino over the Internet from a location where gambling is illegal? Has a violation occurred? Sex shops located in Amsterdam and other cities could

not exist in many U.S. communities, but they can be accessed easily via the global network. Does this violate local pornography restrictions?

In addition, the Internet enables new twists on common criminal scams, such as securities and investment fraud and drug trafficking. The Dallas Police Department (DPD), for example, investigated a national drug ring that used computers to communicate with encrypted data over the Internet. Another issue involves new technology that now permits voice transmissions, converted into analog signals by a modem, to be sent over the Internet, just like a long-distance telephone call but without the long-distance charges. How will law enforcement address the need to intercept such transmissions?

Many other investigative issues could be raised. The point, however, is that criminal justice agencies increasingly will confront new challenges in situations involving computer and telecommunications technology. Agencies unfamiliar with the technology will be hard-pressed to pursue those investigations successfully.

### The Dallas Experience

The Dallas Police Department launched a home page on the World Wide Web in the fall of 1995. This resource contains a significant amount of information in the following areas:

- Crime statistics (dating back to 1992)
- Arrest statistics
- Recruiting information
- Budget allocations

- Police department contact information
- Calls for service statistics
- Crime prevention programs
- Staffing data
- Maps of the city, service areas, police sectors, and beats
- Links to other law enforcement-related sites on the World Wide Web.

If all this information were printed on paper, the package would be approximately 1-inch thick. The cost of printing this material in full process color, storing it, and mailing it to requestors would be staggering. In contrast, providing this volume of data via the Internet is exceptionally cost-effective.

Before establishing a home page, the DPD evaluated its needs and the possible ways to fulfill them via the Internet. The department set four goals for its home page. It sought to stimulate communications between the public and the department, make obtaining information easier for the public, enhance recruiting, and promote the Dallas Police Department on a worldwide scale.

Since the deployment of DPD's home page, the site has averaged more than 260 visits each day. The department received 32,000 visitors to the Web site during the first year with more than 1,200 electronic mail messages responding to its presence on the Internet.

Many of the e-mail messages from the public have shown the value of the department's Internet presence. Citizens have offered to work as volunteers with juvenile

detainees and gang members, indicated an interest in joining the police reserves based on information posted about the program, and simply expressed appreciation for the department's work. One community member said, "Many possibilities are here to make your jobs easier and [the citizens] of Dallas safer. Glad to see that the Department is making use of all the advanced technology to work for all of our best interests."

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**Since the deployment of DPD's home page, the site has averaged more than 260 visits each day.**

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Similar positive returns have been realized in the area of recruiting. The department posted information related to its hiring requirements, the hiring and training processes, salary, benefits, and career opportunities. In the first 12 months, 500 people indicated an interest in employment via e-mail, and an unknown number of others might have called the Personnel Section's toll-free phone number, which is listed on the home page.

Moreover, the home page has enabled the department to establish a strong global presence. Messages

have come from England, Canada, Australia, South Africa, Taiwan, Germany, and Sweden, as well as from all over the United States. The DPD's administrators believe the responses received so far have proven the success of this project.

### Conclusion

Should your agency be on the Internet? While it is true that public agencies frequently have difficulty finding resources for such projects, some situations must be approached as investments in the future. Each agency will have to examine its needs for both the short- and long-term future.

The Internet offers many opportunities for law enforcement agencies to connect with their communities, simplify administrative tasks by centralizing data, reduce publishing costs, recruit employees, conduct research, and make a stand against the torrent of computer-related crime. Criminals already ply their illicit trade over the Internet. Today, leaders of the criminal justice community have a chance to embrace this exciting new resource and put it to good use instead. ♦

### Endnote

"Bullish Internet Growth Predictions," *Screen Digest*, June 1, 1996.

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*The Dallas Police Department's World Wide Web home page can be found at <http://www.airmail.net/dpd/index.htm>*

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## FaxBack Response



### Previous Question

*How has the Internet helped your agency?*

**T**he overwhelming response to our August 1996 FaxBack question indicates that agencies use the Internet in a wide variety of ways to communicate with citizens. Law enforcement agencies large and small, rural and metropolitan, have established home pages. And, respondents report almost universally that these sites have proven more successful and popular among citizens than department administrators originally envisioned they would be.

All of the responding agencies use their home pages to provide basic information about their departments to citizens. This information generally includes an agency's mission statement, a brief history of the department, and a message from the commanding officer. Agencies also feature local fugitives (some even include a list of the FBI's Ten Most Wanted), crime prevention tips, and crime tip hotlines. Some agencies use the Internet to obtain product information or simply to contact other police agencies. The majority of responding agencies provide a listing of state and local criminal statutes.

In addition, many of the agencies use their Internet sites to provide citizens with detailed information about criminal activity occurring in the community. The King County, Washington, Police Department worked with a local computer firm to develop a software application that enables the department to include electronic pin maps on its home page. These maps—which quickly became one of the most popular features of the site—display information on all arrests, residential burglaries, aggravated assaults, auto thefts, and other crimes occurring throughout the county.

Departments also use the Internet to streamline operations while reaching out to an ever-growing number of computer users. Many responding agencies include recruiting information on their home pages. The Chicago, Illinois, Police Department developed an online form for residents to register their bicycles with the department. Since implementing the electronic registration program, not only has the number of registrations increased, but the process has become more cost-effective for the police department.

The Beaufort City, South Carolina, Police Department issues press releases to local media via the Internet, eliminating the scheduling problems caused by officers having to meet in person with different news organizations that need information. The department now posts all press releases on its Web site, making them instantly available to media groups and the general public alike.

In Davis, California, the police department's youth services division assisted in the development of an online coloring book that allows young students to color pictures via the Internet. When completed, the pictures—each of which reinforces a different safety message—can be printed or sent via electronic mail (e-mail) to other computers.

In addition to creating home pages, several responding agencies have applied more interactive approaches to their web sites. The Wakefield, Massachusetts, Police Department established an interactive e-mail capability coupled with voice mailboxes routed to officers' work stations. This capability allows citizens—most notably crime victims and witnesses—to leave messages for individual officers.

The Des Moines, Washington, Police Department hosts various e-mail conferences on its Web site—

including a popular "ask a cop" conference in which citizens get direct answers to law enforcement-related questions. The city of Tempe, Arizona, recently established several computerized information kiosks that draw information from the Internet server. This year, the police department's home page will be included in this system, significantly broadening its potential audience.

Several of the responding agencies noted that creating and operating their own Internet sites

enhance their ability to investigate computer-related crime. Given the dramatic growth in computer and Internet use during the past 5 years, this expertise is fast becoming an integral component of policing.

Despite the many benefits of increased computer networking capabilities, law enforcement must be prepared to address an inevitable downside. One respondent from North Richland Hills, Texas, for example, related a case involving a high school hacker that falls outside the boundaries of current state law.

#### **Responding agencies with Web addresses:**

- Anderson County, Tennessee, Sheriff's Office  
<http://tn.areaguide.com/acso>
- Arroyo Grande, California, Police Department  
<http://www.thegrid.net/agpd>
- Beaufort City, South Carolina, Police Department — <http://www.bftpolice.com>
- Chicago, Illinois, Police Department  
<http://www.ci.chi.il.us>
- Davis, California, Police Department  
<http://www.dcn.davis.ca.us/go/dpd>
- Fairfield Township, New Jersey, Police Department  
<http://www.hicom.net/~fpd>
- Florida Office of the Attorney General Citizen Safety Center  
[http://legal.firn.edu/safe\\_cen.html](http://legal.firn.edu/safe_cen.html)
- Fort Lauderdale, Florida, Police Department  
<http://paradise.net/online/police>
- King County, Washington, Police Department  
<http://www.metrokc.gov>
- Lancashire Constabulary, Skelmersdale Police Station, United Kingdom  
<http://www.ehche.ac.uk/community/bluelight/forcei.htm>
- The Law Enforcement Executive Development Association (LEEDA)  
<http://www.fbileeda.org>

- North Richland Hills, Texas, Police Department  
<http://web2.airmail.net/nrhjbc>
- Village of Olympia Fields, Illinois, Police Department  
<http://www.lincolnnet.net/users/lmolymp/ofpage.htm>
- Tempe, Arizona, Police Department  
[http://www.tempe.gov/police/pd\\_page2.htm](http://www.tempe.gov/police/pd_page2.htm)
- Wakefield, Massachusetts, Police Department  
<http://www.wakefieldpd.org>

#### **Responding agencies with local systems, bulletin boards, or e-mail addresses**

- Atikokan Township Police Department, Atikokan, Ontario, Canada  
[jmcinnis@atikokan.lakeheadu.ca](mailto:jmcinnis@atikokan.lakeheadu.ca)
- Des Moines, Washington, Police Department (Bulletin Board System) 206-878-3816

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*The growth of the Internet has provided new ways for law enforcement agencies to interact and share information with each other. The Bulletin would like to further this information-sharing by publicizing agencies' online addresses. If you would like to share your agency's home page address with other readers, please forward it to us via fax or e-mail. We will compile the addresses and print them in upcoming issues of the magazine.*

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The youth—who had been expelled from school for planting a virus on the school computer—subsequently included the name, as well as the work and home telephone numbers, of a former teacher in a provocative ad placed on a “match makers” Web site. The teacher received unwelcomed calls from all over the country.

In Florida, the Office of the Attorney General has implemented an aggressive program to assist local agencies in establishing an online presence. Since its inception in April 1995, the initiative, called “Operation Electronic Substation,” has sparked a dramatic increase in the number of municipal agencies throughout the state that have established their own home pages.

The popularity of police home pages and other online sites is evidenced by the number of times citizens access them. Many small to medium-sized agencies generate a surprisingly high level of citizen feedback with their sites, given the relative size of the communities they serve. The town of Arroyo Grande, California, with a population of 15,500, has just over 700 computer sites with Internet access. Still, the police department home page averages 475 hits per month. The Township of Fairfield, New Jersey, Police Department’s home page receives between 400 and 500 hits in any given month. The Chula Vista, California, Police Department’s home page receives 700 hits per month. In its second *week* of operation, the Beaufort City Police Department’s Web site recorded over 1,000 hits. The Davis Police Department, serving a city with a population of 51,000, receives approximately 20,000 hits per month on its Web site. The Chicago Police Department tops out our unofficial survey with 40,000 hits per month.

Such numbers reflect very strong public interest in accessing crime- and police-related information via the Internet. Not surprisingly, several respondents noted that the number of hits their sites receive has increased at a steady rate, as the number of Internet users grows. Ironically, many of these same agencies initiated their online sites reluctantly—unsure if public interest would warrant the effort. Law enforcement agencies that have not yet established an online presence might be missing out on an exciting opportunity to advance their computer expertise while they enhance their relationships with the citizens they serve. ♦

## ***FaxBack Question***

### ***What hotlines have you dialed?***

Hotlines provide a wealth of information that law enforcement agencies can use in various ways. We would like to provide readers with a list of useful hotline numbers. If your agency has found a particular hotline helpful, please let us know by providing the following information:

- The hotline’s name and telephone number
- What information the hotline provides
- How your agency used the information provided.

Also, if your agency operates its own hotline, please provide the name and telephone number of the hotline and describe the type of information available.

### ***How to Respond***

Fax responses to FaxBack at (703) 640-1474. Responses also may be mailed to the Law Enforcement Communication Unit, FBI Academy, Madison Building, Room 209, Quantico, Virginia 22135, or sent via e-mail to our internet address, [leb@fbi.gov](mailto:leb@fbi.gov). Responses should be drafted on agency letterhead.

# Book Review



*Managing Police Personnel*, Dennis J. Kenny and Gary W. Cordner, eds., Anderson Publishing Company, Cincinnati, Ohio, 1996.

*Managing Police Personnel* is a collection of well-documented articles written by some of the leading authorities in the field of criminal justice. The editors have assembled a truly useful collection of writings dealing with critical issues related to the selection, hiring, and training of police personnel. The individual articles offer a substantial amount of important personnel-related information that police leaders can evaluate and implement in their own agencies.

The book divides a broad range of personnel-related issues into three basic parts: selection, education and training, and the impact of policing. Many of the issues discussed are based on research articles published in the *American Journal of Police*. The presentation is well balanced among topics of contemporary interest to the criminal justice community.

The book is designed to meet the needs of scholars as well as practitioners. Contributors explore such issues as physical

agility testing, disabilities, race, sex, promotion, and job satisfaction from both a theoretical and applied perspective. By amply referencing prior works, the articles' authors lend added weight to their arguments by grounding the discussions in reliable documentation.

Two articles—one focusing on the Americans with Disabilities Act and the other on controlling the use of force—stand out as especially informative, concise, and well-written. Both articles address timely topics in a way that offers direct applications to police agencies.

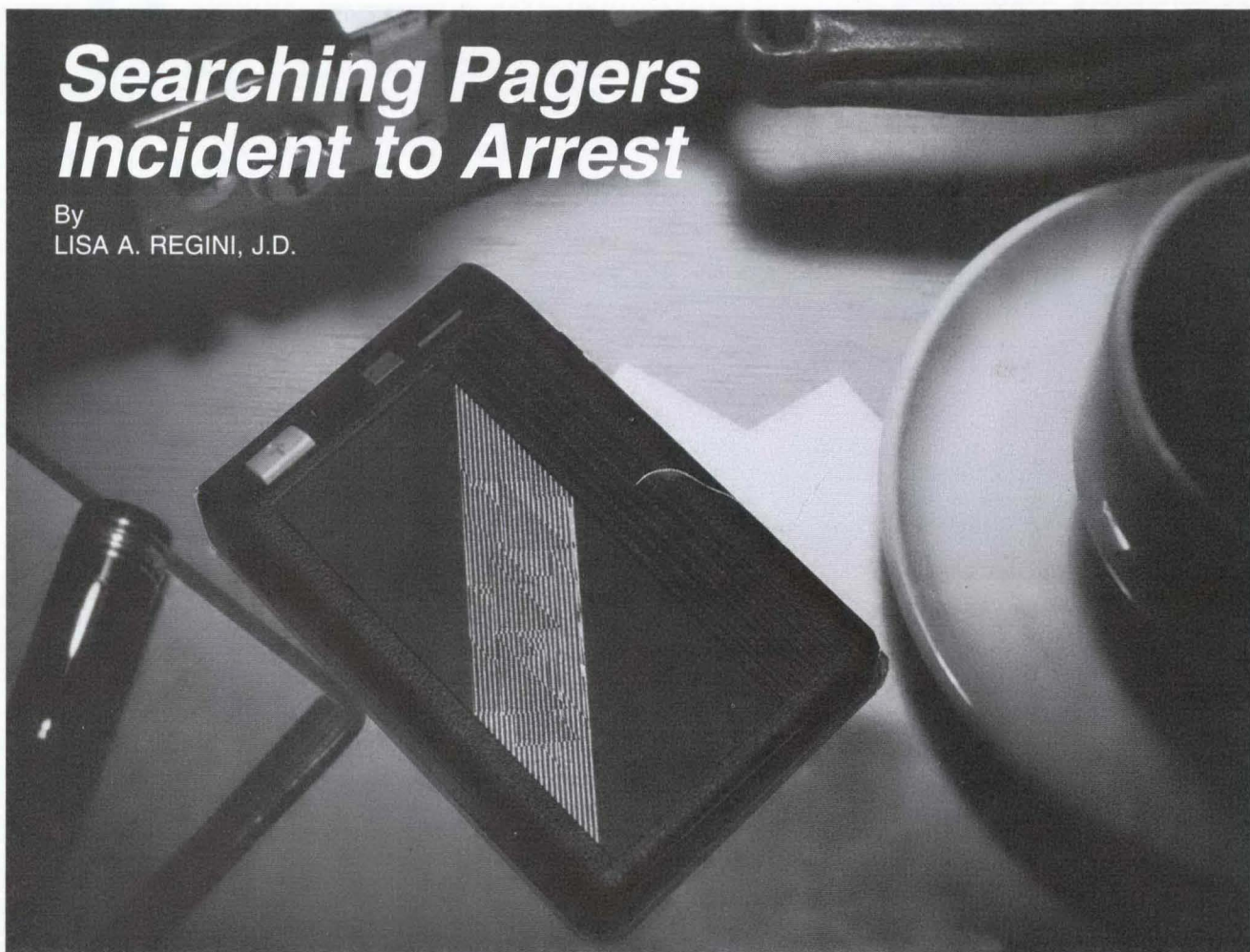
While college students unfamiliar with statistical analysis and methods of research might find some of the text challenging, a careful read on their part would help increase their research skills and greatly enhance their understanding of police management. The book should be of particular interest to those looking for a scholarly approach to modern police management.

*Managing Police Personnel* should be required reading for police leaders, scholars in the criminal justice field, and students planning for careers in law enforcement. Its insightful articles chart a clear path to addressing many of the personnel issues that will face law enforcement in the 21st century.

Reviewed by  
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# Searching Pagers Incident to Arrest

By  
LISA A. REGINI, J.D.



**L**aw enforcement officers confront an explosion of rapidly changing technology used by criminals to facilitate their illegal activities. What is new today becomes commonplace overnight.

The proliferation in the use of paging devices by the innocent and criminal alike is one example. Often, law enforcement officers find these devices on or near an arrestee. Messages within pagers seized from suspects during an arrest may provide incriminating information or valuable leads. Only recently have trends emerged from court decisions that

provide law enforcement with guidance on what may be done with pagers seized incident to arrest.

This article first addresses why most courts have concluded that electronic surveillance statutes do not govern the search of pagers incident to arrest. It then discusses the analysis courts have applied in reviewing the search of pagers seized incident to arrest. Generally, courts apply traditional Fourth Amendment search-and-seizure principles by first determining whether a search occurred and then addressing whether the search was reasonable.

## Interception vs. Retrieval of Communications

Upon lawfully seizing a pager incident to arrest, an officer initially must realize that the *retrieval* of alphanumeric or voice messages within a pager is not an *interception* of a communication, as defined in the federal electronic surveillance statute commonly referred to as Title III.<sup>1</sup> This statute applies to both federal and state officers and requires judicial approval in the form of an extraordinary court order for the nonconsensual *interception* of wire, oral, and electronic communications.<sup>2</sup> Many states have



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

“  
**...the most prudent  
course of action...is  
to access the  
pager's memory as  
contemporaneous to  
the arrest as  
feasible.**  
”

enacted similar electronic surveillance statutes, which must be at least as restrictive as the federal statute.<sup>3</sup>

Title III defines “intercept” as the “aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical or other device....”<sup>4</sup> To intercept a communication transmitted to a pager, often referred to as the use of a “clone pager,” law enforcement must comply with Title III electronic surveillance procedures.

Accordingly, the use of a clone pager to simultaneously receive the transmission emitted from the pager’s service provider to the pager is subject to Title III requirements and possibly to state statutory provisions on electronic surveillance.<sup>5</sup> However, the courts have not found accessing messages transmitted to a pager by activating the pager itself to be an interception of a communication, because the transmission of the communication ceases when the pager receives the communication.<sup>6</sup>

Additionally, when an officer seizes a pager and retrieves the information within, most courts have concluded the officer did not acquire the contents of the communication by “electronic, mechanical or other device” as prescribed by the definition of intercept. Courts have found that simply activating the pager itself to access a message transmitted is not using another device to intercept the communication.<sup>7</sup>

In addressing the admissibility of evidence obtained as a result of retrieving messages from a pager, courts have applied traditional Fourth Amendment search-and-seizure principles.<sup>8</sup> Recognizing the Fourth Amendment protection against unreasonable searches and seizures, courts first determine whether the party challenging the search of the pager had a reasonable expectation of privacy in the pager’s contents. If the challenging party did not have an expectation of privacy, the Fourth Amendment is not implicated.<sup>9</sup> If the party is found to have an

expectation of privacy in the pager’s contents, courts consider whether retrieving the messages within the pager was reasonable under the Fourth Amendment.

#### **Expectation of Privacy in Pager’s Contents**

In determining whether an expectation of privacy exists in the contents of a pager, courts consider both the privacy interests of the sender of the communication and the interests of the possessor of the pager. For the sender, there is no expectation of privacy protected by the Fourth Amendment. However, the possessor of the pager does have an expectation of privacy in the pager’s contents protected by the Fourth Amendment.

In *United States v. Meriwether*,<sup>10</sup> Drug Enforcement Administration agents seized a pager while executing a search warrant. An agent accessed the messages transmitted to the pager by pressing a button and called one telephone number that appeared repeatedly, along with the “911” emergency code. The agent spoke with an individual who wished to arrange the purchase of cocaine.

The caller appeared at the designated time and place and was arrested. The defendant moved to suppress evidence of his telephone number and all subsequent telephone conversations, alleging his Fourth Amendment rights were violated when the agent seized his telephone number from the pager. He argued that the seizure of his telephone number was not within the scope of the search warrant and that he had a reasonable

expectation of privacy in the numbers he transmitted to the pager.

The court rejected his claim that the seizure of the pager was not within the scope of the warrant. The court, however, noted that even if the warrant did not authorize the seizure of the pager, the defendant failed to establish a valid Fourth Amendment violation. The court concluded the defendant, by transmitting the telephone number into a paging receiver, voluntarily exposed this information to others and "...the Fourth Amendment does not protect a wrongdoer's misplaced trust that the one intended to receive a communication will actually receive it."<sup>11</sup>

*Meriwether* can be contrasted with cases in which the person in possession of the pager at the time it was seized has challenged the search. For example, in *United States v. Chan*,<sup>12</sup> police arrested the defendant for possession of heroin with intent to distribute. During a search conducted incident to Chan's arrest, officers seized a pager.

Shortly thereafter, an officer activated the pager's memory and retrieved messages that further incriminated Chan. Chan challenged the search, claiming he had a legitimate expectation of privacy in the pager's contents, which was violated by the government's warrantless search and retrieval of messages.<sup>13</sup>

The court agreed with the first part of Chan's argument and concluded Chan maintained an expectation of privacy with respect to the pager that is reasonable and thus protected by the Fourth Amendment.<sup>14</sup> Other courts have reached

similar conclusions and found the Fourth Amendment protections extend to those who possess a reasonable expectation of privacy in the contents of a pager.<sup>15</sup> Once the defendant establishes a protected privacy interest in the contents of the pager, the burden shifts to the government to justify a warrantless intrusion into this protected area.

“

**...most courts have concluded that electronic surveillance statutes do not govern the search of pagers incident to arrest.**

”

#### **Search Incident to Arrest**

The authority of law enforcement officers to conduct a warrantless search incident to a custodial arrest has long been recognized.<sup>16</sup> This authority automatically flows from the existence of a lawful custodial arrest and does not depend on probable cause or reasonable suspicion that weapons or evidence are present.

The scope of this authority includes the power to perform a complete search of the arrestee and the area within the arrestee's immediate control for the purpose of locating weapons, means of escape, and evidence of any crime.<sup>17</sup> The need to protect the officer and to preserve evidence of criminal activity out-

weighs the privacy interests of the arrestee.

Also included within the scope of this search is the authority to search containers and other items of personal property on the arrestee or in the area within the arrestee's immediate control. This authority to search containers includes the right to open closed containers.<sup>18</sup> As stated by the Supreme Court, "...the justification for the search is not that the arrestee has no privacy in the container, but that the lawful custodial arrest justifies the infringement of any privacy the arrestee may have."<sup>19</sup>

The search of the area within the arrestee's immediate control is generally limited to the area within which the arrestee could gain possession of a weapon or destroy evidence.<sup>20</sup> This area has commonly been referred to as the "lunge" area. The search of the lunge area is permitted even when the defendant is in handcuffs or officers have otherwise restricted the arrestee's movement.<sup>21</sup>

Courts have placed limits on the time within which the search of the area within the arrestee's immediate control may be conducted. Generally, the search of the lunge area and the containers within that area must be conducted contemporaneous to the arrest.<sup>22</sup> For example, in *United States v. Chadwick*,<sup>23</sup> the U.S. Supreme Court held that a locked footlocker searched at the stationhouse 90 minutes after the arrest was too remote in time and not a valid search incident to arrest.

Courts have given officers greater flexibility when conducting a search of an arrestee's personal effects, such as clothing and wallets.

For example, in *United States v. Rodriguez*,<sup>24</sup> officers discovered an address book during a search of the defendant incident to arrest. They photographed the contents of the address book and reviewed it at the stationhouse, well after the arrest.

The defendant argued that because the search of the book was conducted remotely in time and place from the arrest, the evidence derived from the search should be suppressed. The court rejected the defendant's argument, concluding the search of the defendant's personal property could have occurred at the arrest scene; thus, the defendant lost his expectation of privacy in items of personal property immediately associated with the arrestee and lawfully seized.<sup>25</sup>

The reasonableness of the warrantless search of a pager and the retrieval of messages within it must be assessed within three possibilities: 1) reasonable as contemporaneous to arrest; 2) reasonable as lawfully seized incident to arrest, even if not searched contemporaneous to arrest; and 3) unreasonable, despite being lawfully seized, due to the delay in the search following the arrest. The primary factor in determining the reasonableness of the search of a pager appears to be the length of the delay between the arrest and the search.

### **Search Contemporaneous to Arrest**

The courts generally have treated the warrantless search of a pager seized incident to arrest as a search of a closed container.<sup>26</sup> Thus, the activation of the pager's memory contemporaneous to arrest and the

seizure of messages transmitted to it have been upheld.<sup>27</sup> As stated by the court in *Chan*:

[T]he general requirement for a warrant prior to the search of a container does not apply when the container is seized incident to arrest....The search conducted by activating the pager's memory is therefore valid.<sup>28</sup>

**“  
It is likely at some point...that the delay between the arrest and the search of the pager would render the search unreasonable.  
”**

Rather than require law enforcement to stop and obtain a search warrant, courts cite the need to preserve evidence of criminal activity as justifying the warrantless search of the pager seized incident to arrest.<sup>29</sup>

### **Search Removed from the Arrest**

The remaining two possibilities concern the reasonableness of a delay in the search of a pager seized incident to arrest. When addressing the effect of a delay in the search of an item seized incident to arrest, courts have reached different conclusions. The outcome has depended on whether the court characterizes the pager as personal property immediately associated with the arrestee, similar to a wallet, address book, or other nonpersonal property.<sup>30</sup>

If found to be personal property associated with the arrestee, greater latitude is given to police concerning the time in which the pager's memory is activated and messages are retrieved.<sup>31</sup> If the pager is regarded as nonpersonal property and thus characterized simply as a container within the arrestee's lunge area, it must be searched contemporaneous to the arrest in order to be reasonable.<sup>32</sup>

For example, in *United States v. Chan*,<sup>33</sup> the court treated the pager as a container seized within the arrestee's lunge area. Because the pager's memory was accessed just minutes after the arrest and not remote in time, the search was valid.

However, in *United States v. Lynch*,<sup>34</sup> the court found the pager to be more like an item of personal property, such as a wallet or address book. Thus, it found the activation of the pager's memory to be reasonable, even if not contemporaneous to the arrest.<sup>35</sup>

Due to the lack of agreement among the courts concerning the need to conduct the search of the pager contemporaneous to the arrest and to ensure the admissibility of evidence obtained as a result of accessing the pager's memory, good practice dictates activating the pager's memory as contemporaneous to the arrest as feasible. However, recognizing the less restrictive time constraints some courts have adopted for items immediately associated with the arrestee and the logic in the argument that a pager is an item personal in nature, accessing the pager's memory at a point in time more removed from the arrest still may be deemed reasonable. Nonetheless, it is recommended that



a search warrant be obtained, if possible, when the search of the pager is not reasonably contemporaneous to the arrest.

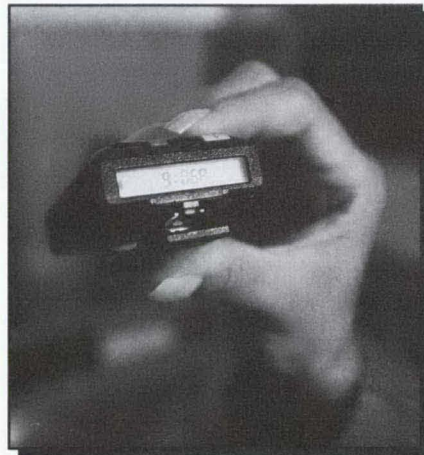
For example, an officer arrests a subject and seizes the jacket the suspect is carrying. A search of the jacket's pockets produces a pager. At the stationhouse, the arresting officer turns over the pager to a detective who has been investigating the subject for his role in a drug distribution ring. The detective activates the pager, which reveals numbers that further incriminate the subject. Support exists for the reasonableness of this search and for the admissibility of evidence produced by the search because, by activating a pager lawfully seized incident to arrest, the detective was merely searching an item of personal property immediately associated with the arrestee.

The outer limit of when such a search can be conducted and still be considered as reasonable has not been delineated by the courts. It is likely at some point, however, that the delay between the arrest and the search of the pager would render the search unreasonable. For example, in *United States v. Edwards*,<sup>36</sup> a case that involved the seizure of personal property searched remote in time from the arrest, the court noted that a "reasonable delay" is appropriate.

One federal court provided some guidance on the possible effect of an extended delay. In *United States v. Ortiz*,<sup>37</sup> a pager and a wristwatch, which also served as an electronic telephone directory, were seized incident to arrest. After the arrest but while still at the scene, an officer activated the pager and

retrieved the messages. The wristwatch/electronic telephone directory was taken to the stationhouse.

The next day, officers retrieved telephone numbers from the electronic directory. The court upheld the information retrieved from the pager as a reasonable search incident to arrest. However, it suppressed the information from the wristwatch due to the delay in the search.<sup>38</sup>



A different analysis may be appropriate with respect to a pager that has a finite memory because of the possibility evidence will be lost if officers pursue a search warrant. Due to this exigency, a warrantless search may be reasonable if probable cause exists to search the pager. Federal courts have not addressed this issue.<sup>39</sup>

As a practical matter, the number of incoming messages relating to criminal activity will likely lessen after the arrest as others learn of the arrestee's status and stop paging the suspect. Thus, the most prudent course of action from both a legal and practical standpoint is to access the pager's memory as contemporaneous to the arrest as feasible.

## Conclusion

When the provisions of the Bill of Rights, such as the prohibition on unreasonable searches and seizures, were drafted, little did the authors realize the technology that law enforcement would confront when pursuing criminal activity today. In the face of rapidly evolving technology, Congress has enacted, at times, legislation establishing the reasonableness standard for law enforcement activities. An example is the provisions of Title III governing the use of electronic surveillance.

However, when confronted with the vast amount of technology now used to facilitate criminal activity, and in the absence of such legislation, law enforcement still often must apply basic Fourth Amendment principles when assessing whether law enforcement action is a search and, if so, whether it is reasonable. The search of a pager and the retrieval of messages within its memory are no different. ♦

## Endnotes

<sup>1</sup> Title III of the 1968 Omnibus Crime Control Act (18 U.S.C. 2510-2522) established rules governing electronic surveillance, including the prohibition on the aural interception of wire communications and oral communications where there is a reasonable expectation of privacy, absent the consent of one of the parties or an extraordinary court order is obtained. In 1986, Congress passed the Electronic Communications Privacy Act (ECPA) in the face of new technology not covered by the earlier legislation. For example, communications transmitted in digital or electronic form are protected from unauthorized interception under the ECPA.

<sup>2</sup> 18 U.S.C. 2511.

<sup>3</sup> A state's electronic surveillance statute can be more restrictive than the federal statute. Thus, state and local officers should determine whether their statute, if one exists, provides greater protection to pagers than the federal statute.

<sup>4</sup> 18 U.S.C. 2510(4).

<sup>5</sup> *United States v. Suarez*, 906 F.2d 977 (4th Cir. 1990).

<sup>6</sup> *United States v. Diaz-Lizaraza*, 981 F.2d 1216 (11th Cir. 1993); *United States v. Meriwether*, 917 F.2d 955, 960 (6th Cir. 1990); *United States v. Reyes*, 922 F.Supp. 818 (S.D.N.Y. 1996) (definition of intercept requires the acquisition of the data simultaneously with the original transmission, even if the intended recipient has not yet read the message).

<sup>7</sup> *United States v. Meriwether*, 917 F.2d 955 (6th Cir. 1990); *State v. Wojtyna*, 855 P.2d 315 (Wash.App.Div.1 1993). *But see, United States v. Reyes*, 922 F.Supp. 818, 837 at n.20 (S.D.N.Y. 1996).

<sup>8</sup> One court concluded the search of a pager seized incident to arrest implicates Title II of the ECPA (18 U.S.C. 2701-2711), which governs access to and dissemination of information within the possession of an electronic service provider. *See United States v. Reyes*, 922 F.Supp. 818 (S.D.N.Y. 1996). In *Reyes*, the court concluded retrieving messages from within a pager constitutes accessing stored communications within the meaning of Title II. However, it further concluded that obtaining a search warrant, as required by the statute, was not necessary because an exception to the warrant requirement existed. *Reyes* at 837.

This interpretation of Title II appears inconsistent with the plain meaning of the statute and its legislative history. The statute limits access to and disclosure of communications and records within the possession of a service provider. Furthermore, legislative history indicates Congress intended to restrict access to and disclosure of such information in the same manner as that provided for financial records in the Right to Financial Privacy Act. *See Tucker v. Waddel*, 83 F.3d 688, 692 (4th Cir. 1996), *citing* S.Rep. No.541 *reprinted in* 1986 U.S. Code Cong. & AdminNews 3555.

<sup>9</sup> *United States v. Meriwether*, 917 F.2d 955 (6th Cir. 1990), *citing* *Katz v. United States*, 389 U.S. 347 (1967); *United States v. Chan*, 830 F.Supp. 531 (N.D.Cal. 1993); *United States v. Lynch*, 908 F.Supp. 284 (D.Virgin Islands 1995).  
<sup>10</sup> 917 F.2d 955 (6th Cir. 1990).

<sup>11</sup> *Meriwether* at 959, *citing* *Smith v. Maryland*, 442 U.S. 735 (1979); *State v. Wojtyna*, 855 P.2d 315 (Wash.App.Div. 1 1993).

<sup>12</sup> 830 F.Supp. 531 (N.D.Cal. 1993).

<sup>13</sup> *Chan* at 533.

<sup>14</sup> *Chan* at 535.

<sup>15</sup> *United States v. Ortiz*, 84 F.3d 977 (7th Cir. 1996); *United States v. Lynch*, 908 F.Supp. 284, 287 (D.Virgin Islands 1995) ("[i]t was reasonable for the defendant to consider the telephone numbers stored in the pager to be personal and private, and to expect them generally

to be free from governmental invasion"); *People v. Bullock*, 277 Cal.Rptr. 63 (1990).

<sup>16</sup> *United States v. Robinson*, 414 U.S. 218 (1973); *Chimel v. California*, 395 U.S. 752, 695 (1969); *New York v. Belton*, 453 U.S. 454 (1981).

<sup>17</sup> *United States v. Robinson*, 414 U.S. 218 (1973) (search of crumpled cigarette package valid incident to arrest); *Chimel v. California*, 395 U.S. 752 (1969), *United States v. Ortiz*, 84 F.3d 977, 984 (7th Cir. 1996) (an officer's need to preserve evidence is an important law enforcement component of the rationale for permitting a search of a suspect incident to arrest).

<sup>18</sup> Generally, the authority to conduct a warrantless search of containers extends to unlocked containers. The courts have not agreed on whether this includes locked containers. *See United States v. Tovolacci*, 895 F.2d 1423 (D.C.Cir. 1990) (warrantless search of locked suitcase reasonable, as the arrestee could have gained access to a weapon or destroyed evidence).

<sup>19</sup> *New York v. Belton*, 453 U.S. 454 (1981).

<sup>20</sup> *Chimel v. California*, 395 U.S. 752 (1969); *United States v. Knight*, 58 F.3d 393 (8th Cir. 1995) (warrantless search of hotel suite and seizure of documents from desktop valid, as seizure occurred contemporaneous to the arrest and the documents were within the reach of the arrestee).

<sup>21</sup> *New York v. Belton*, 453 U.S. 454 (1981); *United States v. Nohara*, 3 F.3d 1239 (9th Cir. 1993) (search of bag valid as contemporaneous to arrest even when defendant under control and in handcuffs at time of search); *United States v. Turner*, 926 F.2d 883 (9th Cir.), *cert. denied*, 112 S.Ct. 103 (1991). *But see United States v. Gorski*, 852 F.2d 692 (2d Cir. 1988).

<sup>22</sup> *Chimel v. California*, 395 U.S. 752 (1969).

<sup>23</sup> 433 U.S. 1 (1977).

<sup>24</sup> 995 F.2d 776 (7th Cir. 1993), *cert. denied*, 114 S.Ct. 1117 (1994).

<sup>25</sup> *Rodriguez* at 778. *See also, United States v. Edwards*, 415 U.S. 800 (1974); *United States v. Molinaro*, 877 F.2d 1341 (7th Cir. 1989) (warrantless search of arrestee's wallet, after the subject was handcuffed and placed in vehicle, valid).

<sup>26</sup> *United States v. Chan*, 830 F.Supp. 531 (N.D.Cal. 1993).

<sup>27</sup> *United States v. Ortiz*, 84 F.3d 977 (7th Cir. 1996); *United States v. Lynch*, 908 F.Supp. 284 (D.Virgin Islands 1995); *United*

*States v. Chan*, 830 F.Supp. 531 (N.D.Cal. 1993).

<sup>28</sup> *Chan* at 536.

<sup>29</sup> *United States v. Ortiz*, 84 F.3d 977, (7th Cir. 1996) (officers must have the authority to immediately "search" or retrieve, incident to a valid arrest, information from a pager in order to prevent its destruction as evidence); *United States v. Lynch*, 908 F.Supp. 284 (D.Virgin Islands 1995).

<sup>30</sup> *United States v. Lynch*, 908 F.Supp. 284, 287 (D.Virgin Islands 1995) (the retrieval of the telephone numbers from a pager falls either under *Chadwick* and its progeny, requiring a warrant, or under *Robinson* and its progeny, in which a warrant is not required).

<sup>31</sup> *United States v. Lynch*, 908 F.Supp. 284 (D.Virgin Islands 1995).

<sup>32</sup> *United States v. Chan*, 830 F.Supp. 531 (N.D.Cal. 1993).

<sup>33</sup> *Id.*

<sup>34</sup> *Lynch* at 289.

<sup>35</sup> The court noted, for example, the pager was seized while attached to the arrestee's body, thus it "...could be characterized as part of his person for purposes of a search incident to arrest." *Lynch* at 289, n.5.

<sup>36</sup> 415 U.S. 800 (1974).

<sup>37</sup> *United States v. Ortiz*, 84 F.3d 977 (7th Cir. 1996).

<sup>38</sup> *Ortiz* at 984.

<sup>39</sup> In *United States v. Lynch*, 908 F.Supp. 284 (D.Virgin Islands 1995), the government argued the search of a pager was valid due to the existence of exigent circumstances. The government noted that as messages are transmitted to the pager, numbers that exceed the memory capacity are erased. The court declined to address this issue because it found the search valid as incident to arrest. One state court has upheld the warrantless search of a pager based on exigent circumstances. In *People v. Bullock*, 277 Cal.Rptr. 63 (1991), the court found that the officer had probable cause to believe the pager contained evidence of criminal activity, as the defendant was arrested for drug trafficking and the pager is an "instrument commonly used in selling drugs." *Bullock* at 66. Thus, the warrantless search of the pager was reasonable due to the risk that evidence would be lost because of the pager's finite memory.

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

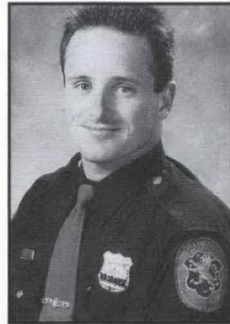
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# The Bulletin Notes

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



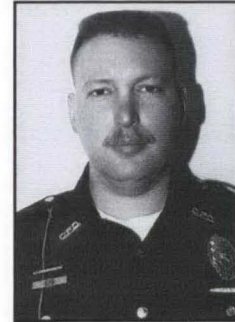
Officer Byrnes



Officer Trutt

Upon responding to the report of a raging house fire, Officers Brian Byrnes and John Trutt, Jr., of the Nassau County, New York, Police Department determined that at least one person was trapped in the burning residence. Officer Byrnes rushed in and assisted a man from the house, who informed the officer that his mother remained trapped somewhere inside. Both officers then entered the house and crawled through the smoke-filled hallway to the woman, as burning debris fell behind them, blocking their exit. Yet, the officers continued to search for a way out. When it appeared that all three would be trapped in the blaze, several volunteer firefighters arrived and were able to briefly beat back the flames using a water canister. The officers dove past the flames and escaped with the woman down the staircase. The woman later was transported to a local hospital for treatment. Officers Byrnes and Trutt were treated for burns and released.

Officer David Spencer of the Connersville, Indiana, Police Department responded to the report of an erratic driver. Officer Spencer caught up to the elderly woman as her vehicle weaved on and off the road, nearing a steep decline. When the elderly driver did not respond to Officer Spencer's attempts to stop her, he maneuvered his vehicle in front of hers and used it to slow and guide her to a safe stop, just before both cars reached a dangerous sloping turn. Observing that the woman appeared ill and disoriented, Officer Spencer requested medical assistance. It was later determined that the woman had suffered a series of strokes and had been driving for approximately 1 hour trying to reach her home.



Officer Spencer

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

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