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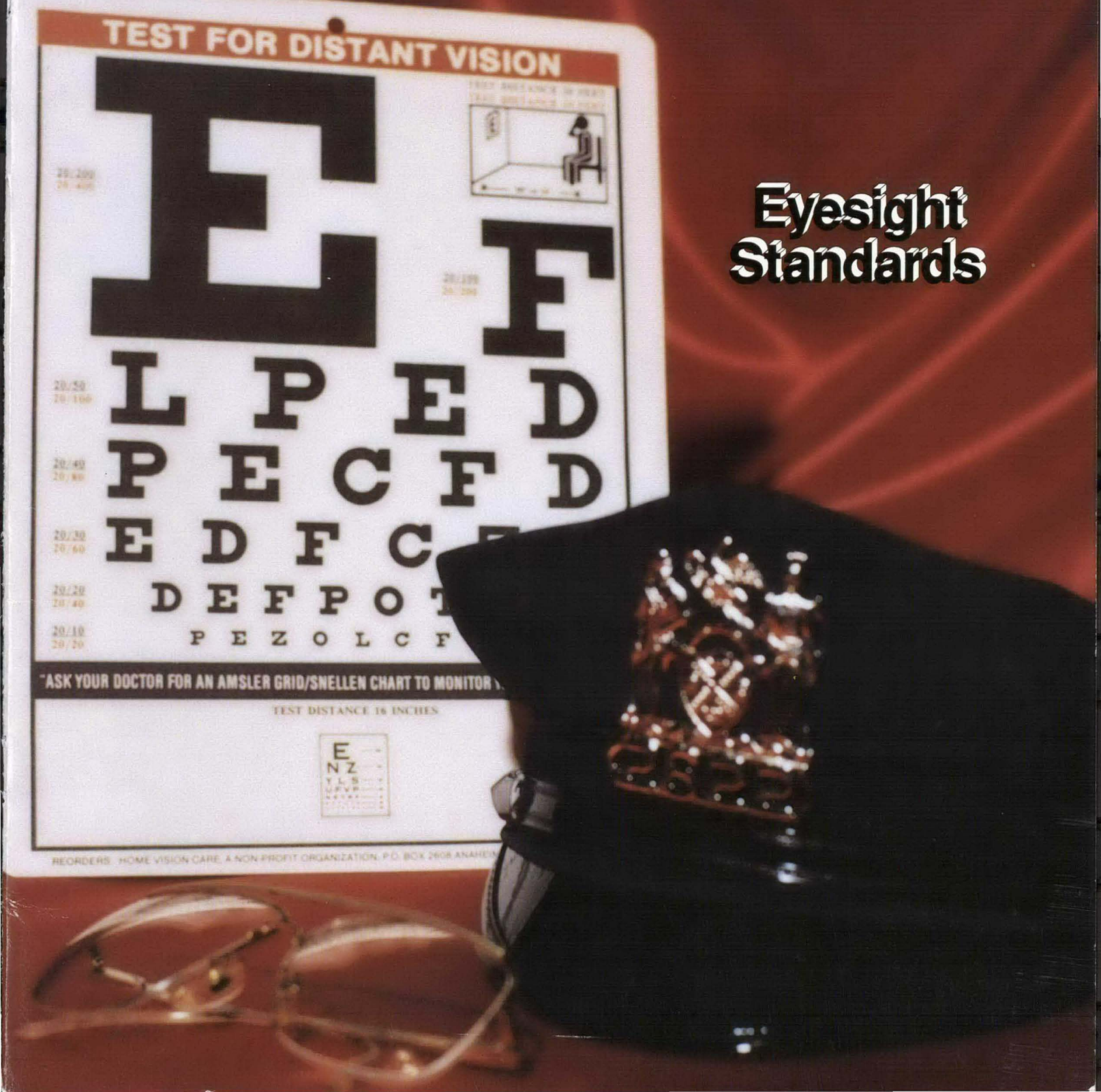
FBI Law Enforcement B·U·L·L·E·T·I·N

Eyesight Standards



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Features

Departments

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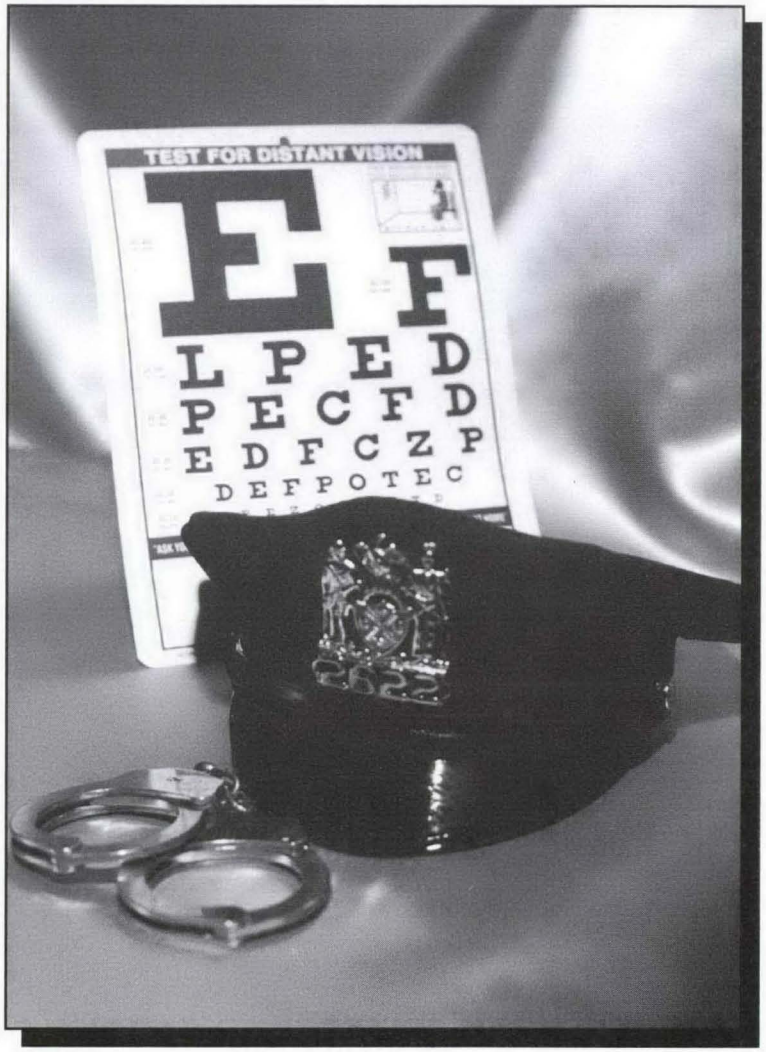
Eyesight Standards
Correcting Myths

By
RICHARD N. HOLDEN, Ph.D.

PHOTO BY K.L. MORRISON



For decades, law enforcement agencies required applicants to satisfy certain eyesight requirements before being considered for employment. Few would challenge the belief that public safety officers need good eyesight. What many do challenge, with some success, is the idea that applicants must possess perfect *uncorrected* vision. A basic question emerges: Should police recruits be allowed to compensate for imperfect vision with corrective lenses? If the answer is "yes," then how much variation should agencies allow?

Several factors converge to make this a timely issue for law enforcement managers to consider. With a dwindling pool of suitable applicants from which to fulfill future personnel needs, some argue that unnecessary selection requirements undermine law enforcement's recruiting efforts.

In addition, the recent enactment of the Americans with Disabilities Act (ADA) prohibits employment discrimination on the basis of physical disabilities, if a person is able to perform the essential functions of the job. Because visual impairment could constitute a protected disability, agencies that cannot defend their vision standards leave themselves open to litigation under this new act.

Finally, advancements in medical science need to be considered. Present-day optical technology renders obsolete many of the age-old arguments in favor of vision requirements.

This article explores the issues involved in vision standards. It goes on to discuss these issues as they relate to the experiences and sentiments expressed in a recent survey of law enforcement officers concerning eyesight requirements.

SUPPORTING ARGUMENTS

The necessity for good vision in law enforcement—corrected or otherwise—rests in the visual nature of police work. Law enforcement officers spend a good portion of their

> ***"The arguments upon which agencies base uncorrected vision requirements offer little in the way of empirical support."***

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working hours observing people and events and then reporting what they see. Additionally, officers must respond quickly to events taking place around them. They must interpret and react to the actions of others.

One basic tenant of vision standards is that a significant impairment translates into an equally impaired ability to interpret events and react appropriately. Moreover, evidence of poor vision might make officers vulnerable in court. If an officer's vision becomes open to judgment, so too may the evidence offered based on the officer's observations.

The argument for strict *uncorrected* vision standards rests on the belief that an officer may have lenses forcibly removed. Should this occur, the argument is that the officer would be unable to function adequately. That is to say, the officer would not be able to fire a weapon accurately, discern if a suspect was armed, or operate a police vehicle. This would place the officer in a physically dangerous situation that could possibly jeopardize others.

Although these arguments constitute the underpinning for vision requirements, police administrators are clearly not in agreement over the necessity for uncorrected vision standards. A 1984 study found that while a majority of the 323 police agencies surveyed required some minimum uncorrected standard, 26 percent of the responding departments required only that vision be correctable to 20/20. Another 22 percent allowed uncorrected vision of 20/100.[1]

Further, differing vision standards exist in otherwise similar agencies. Some large police departments, including New York City, Los Angeles, and Dallas, apply restrictive standards. Other large departments—such as Chicago, Detroit, Newark, and Tulsa—have no uncorrected vision standards.

The academic community also fails to reach a consensus on the subject. Some argue for a strict standard.[2] Others, however, question strict uncorrected vision requirements, especially in light of evolving vision technology, such as shatterproof plastic and soft contact lenses.[3]

And, even before passage of the ADA, the controversy over uncorrected vision standards attracted the attention of the courts. Although some courts upheld individual agency vision requirements in the past, this congruence may be coming to an end. In 1985, a Wisconsin court ruled that an uncorrected vision standard violated a State law prohibiting discrimination against the handicapped.[4]

In addition to these issues, several other factors fuel the argument over vision requirements. Few law enforcement agencies require incumbent officers to maintain the vision standard required for recruits. This means that many police agencies, even those with strict uncorrected vision standards for recruits, employ numerous veteran officers who now need to wear corrective lenses in order to perform their duties. Still, despite this fact, little concrete data exists concerning the relationship between corrective lenses and police performance.

BASIC ISSUES

Three basic issues emerge as arguments *for* a restrictive uncorrected vision standard. First, an officer who loses corrective lenses becomes visually impaired and vulnerable to physical assault. Second, the officer will not be able to see sufficiently to aim a service weapon, and as a result, may become vulnerable to an armed suspect. Third, the officer's vision will be

too impaired to operate a police vehicle, and therefore, the officer could not pursue a fleeing suspect. In addition, a corollary to these issues emerges. If an officer's ability to perform becomes hampered, then other officers will be placed at a similar risk due to the loss of support of the vision-impaired officer.

Many observers both within and outside law enforcement offer these beliefs in sincerity. However, some dissenting opinions exist. With regard to the first issue, it could be argued that an officer engaged in hand-to-hand combat does not need eyeglasses to identify an assailant. At that range, the officer would have to be nearly blind to be incapacitated. An individual's uncorrected vision is not likely to be that bad if it is correctable to 20/20.

Second, the vast majority of shoot-outs with handguns occur at very close range. Of the 735 officers killed by firearms between 1980 and 1989, for example, 652 (89 percent) were shot from 20 feet or less. Indeed, nearly 60 percent of the fatalities resulted from shootouts of 5 feet or less.[5] At this range, officers point their firearms, rather than aim them. Therefore, officers with less-than-perfect vision suffer from no significant disadvantage. As the range increases, vision capabilities become more important, but handgun accuracy diminishes drastically as the distance increases beyond 20 feet, regardless of the officer's vision.

Last, with regard to the issue of visual impairment and the inability to pursue fleeing suspects, few issues currently generate as much debate among police administrators as vehicle pursuits. Several departments now prohibit pursuits in all but the most extreme circumstances, and few departments possess the facilities to teach effective pursuit procedures. In addition, police vehicles are notoriously subject to poor maintenance.

These factors cloud arguments concerning vision capabilities. Should perfect vision be required when proper training and equipment are not. Those who question the need for strict uncorrected vision requirements frame the question in simple terms. If an officer feels inadequate to initiate a vehicle pursuit, for whatever reason, the pursuit should not occur. This remains true for any situation involving the potential for pursuit and currently represents standard policy in the majority of police agencies.

Finally, it may be argued that officers who lose their corrective lenses in a duty-related incident are no more impaired than officers with perfect vision who get foreign objects in their eyes, such as chemical mace, fingers, or sand. In some cases, an officer with corrective eyewear may actually be better protected than those without eye covering.

RESEARCH STUDY

The lack of quantifiable data regarding the correlation between corrective lenses and police performance hampers any productive discussion of the subject. For this reason, a research study was recently conducted in an attempt to clarify the issue and provide sufficient baseline information so that future debate might center upon fact rather than supposition.

Method

The survey method emerged as the logical means to determine the association between vision requirements and police performance. Unfortunately, no police agency contacted kept relevant records in this area.

There may be several reasons for this lack of information. One may be that officers who wear corrective lenses do not wish to be perceived as weaker than those with perfect vision. Therefore, they do not include information relating to any vision-related incapacitation in police reports. Or, law enforcement agencies may simply not perceive loss of corrective lenses in a physical confrontation as a problem worth studying.

For whatever reason, agencies do not routinely record such information in police databases. The only information available appeared to be the cost to agencies for replacement of damaged lenses. However, this information failed to address the issue of police performance immediately after loss of the lenses.

Failing to obtain agency data relating to vision and performance required that the research effort

concentrate on officers' experiences. While this method yielded primarily anecdotal information, it remained the only viable way of establishing some quantifiable data regarding this issue.

In order to gauge the relationship between vision and policing effectively, the project focused on police managers from a wide variety of agencies. The survey population consisted of 92 police executives from across the United States, England, Australia, and Canada attending a conference at the FBI Academy in Quantico, Virginia.[6] The combined length of service for the survey population totaled 1,714 years, for an average of 18.6 years per respondent.

Participants were asked if they knew of cases where officers lost their corrective lenses in duty-related incidents. If respondents answered yes, they were asked if the loss of the corrective lenses resulted in injury to the officer or to others.

Further, researchers asked if the loss of corrective lenses prevented the officer from completing the activity being attempted at the time of loss. Then, respondents were asked to report any incidents in which impaired vision presented a problem, regardless of corrective lenses. Finally, researchers asked respondents to offer comments about police vision standards and to provide phone numbers for further contact.

Results

Of the 92 participants, 48 (52 percent) said they knew of incidents where officers lost their corrective lenses in the course of duty. Forty-four (48 percent) knew of no such incidents. Twelve respondents (13 percent) recalled incidents where officers sustained injuries related to the loss of corrective lenses. Five (5 percent) reported incidents in which loss of corrective lenses impaired an officer's performance, and 12 (13 percent) recalled incidents where impaired vision unrelated to corrective lenses created a problem.

While the data appear fairly straightforward and easy to interpret, several factors actually make it more complex. Analysis of comments and followup telephone interviews revealed misinterpretation in several responses to the questionnaire. For example, a number of respondents understood the question regarding injuries to mean wounds suffered during the specific incident in which officers lost corrective lenses. In fact, the intent of

the question was to determine if respondents knew of incidents where loss of lenses directly led to an ensuing injury. The same confusion occurred with regard to the question of performance. These misinterpretations led to a slightly inflated representation of the number of cases with injuries.

By analyzing the comments on the survey instruments and conducting followup telephone interviews, a slightly different picture emerged. In nine of the cases where respondents reported injuries, the wounds were not due to lost corrective lenses and presumably would have occurred anyway. The injuries happened during the same struggle that caused the officers to lose their lenses. In one case, a subject struck an officer with sufficient force to render him unconscious. The force of the blow also broke the officer's glasses. Similarly, two of the incidents initially reported as failures to perform adequately due to lost eyewear were physical confrontations in which the officers lost corrective lenses but still controlled the subjects and the situations.

In these cases, loss of lenses inconvenienced the officers, but did not impair their performance. Likewise, in several instances, an officer's failure to complete an assignment actually resulted from an accompanying injury, rather than lens loss.

Additionally, several anomalies bear mention. One respondent initially reported that he sustained injury when he lost his corrective lenses. A followup interview determined that vision impairment did not lead to the injury. Rather, when a subject knocked a pair of expensive eyeglasses from his face, the officer instinctively reached for them. When he did so, the subject grabbed and twisted his arm. Although sustaining an injury to his arm, the officer did regain control of the subject.

Another respondent reported that an officer who lost his lenses could not read the license number of an escaping suspect's vehicle. How-

ever, his partner did manage to record the number, leading to an eventual arrest.

In addition, several respondents reported instances where officers' eyeglasses became temporarily fogged as they exited air conditioned vehicles. One respondent also reported that exposure to sand and wind required officers with contact lenses to take periodic breaks for lens cleaning.

Ultimately, only three of the reported cases of injury or failure to perform satisfied the intended perimeters of the survey questionnaire. This represents 3 percent of the survey sample. When accounting for the number of service years represented by the respondents, the number equates to 1 case per every 571 years. Of these, only one incident could be verified.

The sole verified case involved a major shootout between several FBI agents and two heavily armed suspects. After the exchange of gunfire, two of the agents and both suspects lay dead, and five other agents sustained serious wounds. Immediately prior to the shootout, one of the agents lost his glasses when he brought his automobile to an abrupt halt just feet from the suspects' vehicle. He was fatally wounded during the ensuing gunfight, and his fellow agents speculate that the loss of his glasses significantly affected his ability to observe the movements of the gunmen. If that assessment is accurate, then the loss of eyewear may be cited as a contributing factor in the agent's death.

The experiences of the officers surveyed indicated that officers wearing corrective lenses do encounter situations in which they momentarily lose their corrective lenses or have them forcibly removed. However, the vast majority of these cases occur in arrest situations or within detention facilities. These face-to-face confrontations rarely involve weapons. In most of these cases, the loss of lenses produced no negative results either for the officer or the eventual outcome of the situation.

> ***"Police vision standards...should be based on proven capabilities necessary to fulfill the terms of employment."***

In their personal commentaries, respondents expressed uniform opposition to uncorrected vision standards. Several noted that their agencies lost a number of well-qualified applicants, who later gained employment in other agencies. The following comment offered by a lieutenant in charge of training and personnel for his department typifies the observations:

> "I think this is one of the most meaningless fitness standards remaining to bar qualified people from police service. While I am sure that somewhere at some time some officer was seriously hurt and maybe died because of an eyesight issue—lost glasses, etc.—officers have not been fired, dismissed, or even had assignments changed because of diminished sight capacity *after* the hiring process. This standard only serves to eliminate otherwise qualified and acceptable candidates."

In addition, several officers offered personal accounts. They acknowledged their own vision problems and argued that their performance remained unhindered. Several reported that their agencies changed their standards due to lawsuits. Other respondents reported that their agencies were reevaluating their standards because they felt the current requirements barred too many qualified candidates.

CONCLUSION

Does this mean that law enforcement agencies should immediately eliminate their policies concerning standards for uncorrected vision? Not necessarily. This study is neither sufficiently comprehensive nor scientifically representative enough to draw such a sweeping conclusion.

However, surveys of this type do provide a starting point for meaningful discussion. The arguments upon which agencies base uncorrected vision requirements offer little in the way of empirical support. They remain based on largely hypothetical arguments. Nowhere has any agency documented such situations and studied the data concerning this issue.

This points to the underlying problem. Police vision standards, as well as other areas, should be based on proven capabilities necessary to fulfill the terms of

employment. Instead, the reverse often happens.

Lacking supporting data, law enforcement agencies adopt standards based on "what if" scenarios. In the process, they lose qualified applicants and perpetuate myth-based standards with questionable relationships to police performance or agency needs. Perhaps this survey and future studies can help to counter these myths and lead to a more productive approach in establishing vision standards for today's law enforcement agencies.✦

Endnotes

[1] Richard N. Holden, "Vision Standards for Law Enforcement: A Descriptive Study," *Journal of Police Science and Administration*, 12, 1984, 125-129.

[2] O.W. Wilson, *Police Administration* (New York: McGraw-Hill Co., 1961); James E. Sheedy, Jeffrey T. Keller, Donald Pitts, Gerald Lowther, and Stephen C. Miller, "Recommended Vision Standards for Police Officers," *Journal of the American Optometric Association*, 54, October 1983, 925-928; Gregory W. Good and Arol R. Augsburger, "Uncorrected Visual Acuity Standards for Police Applicants," *Journal of Police Science and Administration*, 12, 1987, 18-23; C.J. Forkiotis, "Vision Requirements and the Police Officer Selection Process," *Police Chief*, November 1981, 56-59.

[3] Michael A. Sciales and Leonard Territo, "Eyesight Standards for Police Applicants," *Police Chief*, February 1983; James E. Sheedy, "Contact Lenses for Police Officers," *Journal of the American Optometric Association*, 57, 1986, 658-660; Terry Cox, Annis Crabtree, Daniel Joslin, and Adrienne Millet, "A Theoretical Examination of Police Entry-Level Uncorrected Visual Acuity Standards," *American Journal of Criminal Justice*, 11, 1987, 199-208.

[4] *Brown County* v. *LIRC*, 124 Wis. 2d. 560, 397 N.W. 2d. 735 (1985).

[5] *Law Enforcement Officers Killed and Assaulted*, U.S. Department of Justice, Federal Bureau of Investigation, 1989, Washington, DC.

[6] The First International Symposium on the Future of Law Enforcement, FBI National Academy, Quantico, Virginia, April 1-5, 1991.

Crime Data

1992 Crime Trends

Preliminary figures of the FBI's Uniform Crime Reporting Program reveal that the volume of serious crimes in the United States declined 4 percent during 1992 as compared to the 1991 total. This marks the first time since 1984 that the country registered a decrease in the Crime Index total, which the FBI uses to measure changes in the level of serious crimes reported to law enforcement across the country.

As a group, the violent crimes of murder, forcible rape, robbery, and aggravated assault showed virtually no change from 1991 to 1992. At the same time, the property crimes of burglary, larceny-theft, motor vehicle theft, and arson collectively decreased 4 percent.

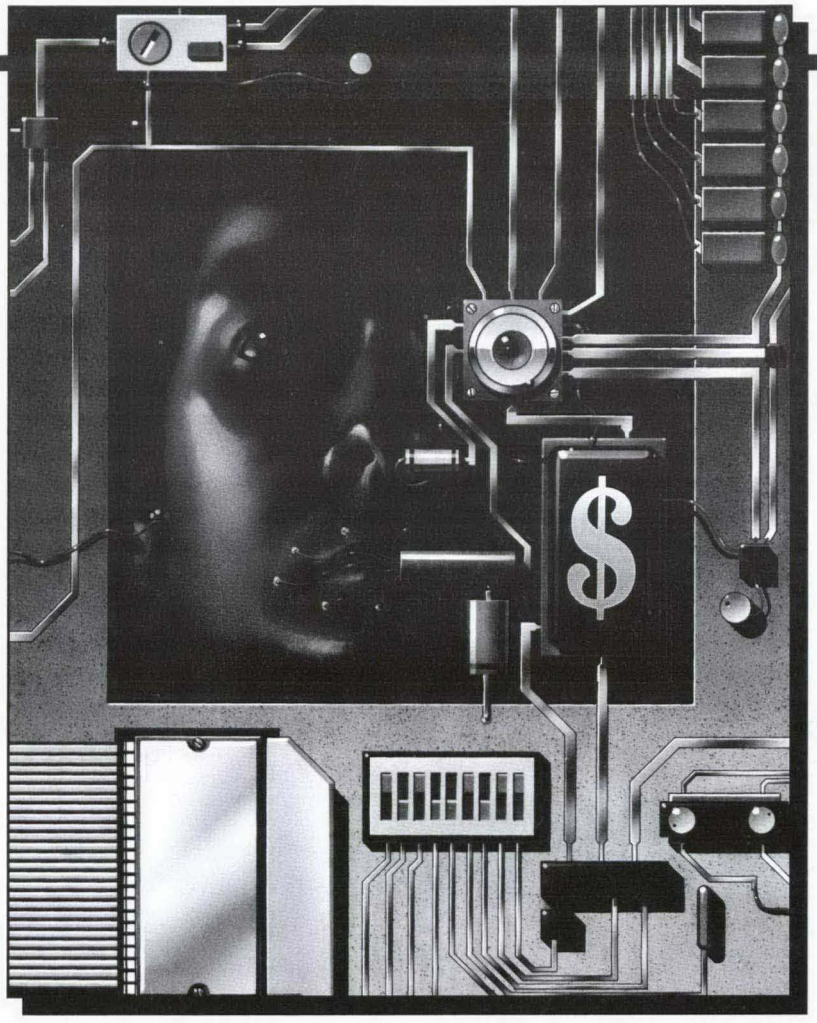
Among the Index crimes to register a decrease were murder (6 percent), burglary (6 percent), larceny-theft (4 percent), motor vehicle theft (4 percent), robbery (3 percent), and arson (2 percent). Only forcible rape and aggravated assault increased, each up 2 percent from 1991 to 1992.

Geographically, the Northeast experienced a 7-percent decrease in overall Crime Index totals; the Midwest, 5 percent, and the South, 4 percent. The total for the Western States showed no change for the 2-year period. Violent crime was down in the Northeast and Midwest, while increasing in the South and West. Property crime declined in all regions.

All city groupings by population size, as well as in suburban and rural countries, showed a downward trend in overall crime. The largest decline was in cities with populations over 1 million, which collectively measured an 8-percent drop. In addition, cities within this grouping experienced the only violent crime decrease, one of 6 percent.✦

The Computer
High-Tech Instrument of Crime

By
MICHAEL G. NOBLETT



The use of computers as criminal instruments or as devices to collect information associated with criminal enterprises increases yearly. Criminals use computers to store data relating to drug deals, money laundering, embezzlement, mail fraud, extortion, and a myriad of other crimes. In addition to the simple storage of records, criminals also manipulate data, infiltrate computers of financial institutions, and illegally use telephone lines of unsuspecting businesses.

Statistics suggest that the law enforcement community must act quickly and decisively to meet the challenge presented by the criminal use of computers. For example:

- Over 4.7 million personal computers were sold in the United States in 1988, as compared with 386,500 in 1980
- An estimated 60 percent of personal computers are now networked
- $500 million is lost annually through illegal use of telephone access codes
- $1 trillion is moved electronically each week, and
- Only 11 percent of computer crime is reported.

While the law enforcement community, in general, often thinks of computer crime as high-tech crime, a growing segment of the population looks at computers and the data they store as nothing more than electronic paper. They feel very comfortable keeping their records, whether legal or illegal, in this format.

In order to address the legitimate need for access to computers and the information they contain, law enforcement must develop a structured approach to examine computer evidence. The examination of this evidence can provide investigative and intelligence information, and at the same time,

preserve the information for subsequent admission in court.

PRESERVING COMPUTER EVIDENCE

As more and more records are converted from paper to electronic storage, individuals are becoming more and more computer literate. Unfortunately, a growing number of individuals use their computer knowledge for illegal activities.

While there is no typical computer case, the majority fall into the broad category of white-collar crime. During investigations of these cases, several problems repeatedly occur. However, by following the guidelines offered in this article, law enforcement agencies can protect valuable computer evidence.

Conduct Preliminary Examinations

Investigators should take immediate action to protect a computer's memory. Often, investigators attempt to generate investigative and intelligence information on site. While this approach is reasonable and should be encouraged, it is equally important that the computer be protected from any input introduced unintentionally by investigators.

For instance, many computer systems update files to the current date when read. In order to preserve the evidence in the same condition as it was when seized, steps must be taken to ensure that no dates are changed and nothing is written into or deleted from the computer's memory. Specialized software currently on the market protects the computer's memory and should always be used before an examination.

Investigators should also consider that anyone conducting a preliminary examination may be called on to testify concerning the procedures followed and the accuracy of the results. Because of this possibility, documented policy and protocol detailing steps to follow during examinations must be established. Examiners should closely follow guidelines set by their particular agency to avoid any legal discrepancies.

Seize Supporting Software

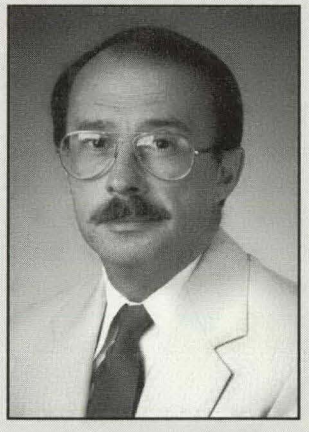
When investigators seize a computer, they should also take all supporting software and documentation. This simple action eliminates a host of problems that may arise during the examination of the computer. It is logical, but not necessarily correct, to assume that the software that runs the seized computer is common and commercially available.

As commercial software is developed and marketed, manufacturers add new features and correct previously identified problems. Once the manufacturer revises the old programs, the data seized may not be compatible with the particular version of the same software. Therefore, it is good policy to seize all software, documentation, handwritten notes, and any other related items found near the computer.

Seize the Entire Computer System

Many of the items connected to the seized computer are probably standard pieces of equipment found in any computer facility. However, it only takes one unique, nonstandard piece of equipment to render a system incompatible with others. For this reason, it is best to seize all the equipment related to the computer. If it turns out that some of the items are not needed for the examination, they can be quickly returned to the site.

The FBI Laboratory does not recommend that investigators re-



"...it is important for law enforcement to have the necessary knowledge and procedures ready to address adequately the examination of computer evidence and records."

SA Noblett is chief of the Document Analysis, Research, and Training Unit in the FBI Laboratory, Washington, D.C.

move and submit the hard drive (memory), located inside the computer, for examination. The manner in which the computer is set up internally is often crucial to reading, displaying, and printing the data on the hard drive. Thus, removing just the hard drive may be useless to the investigation.

In light of technical considerations, it may be appropriate to use an expert as a consultant in the execution of these types of search warrants. This is especially true if investigators do not seize the entire system. Concerns regarding incompatibilities of computer systems should be stated in the supporting affidavit as justification if investigators plan to seize the entire computer system.

Package Equipment Properly

If investigators need to ship the computer to another facility for examination, they should package it properly. Oftentimes, examinations take an inordinate amount of time because poorly packaged computers are damaged in shipment and must be subsequently repaired.

Likewise, shipment of computer diskettes and other memory devices requires certain precautions. Because of the potential hazard of static electric discharge, these items should not be shipped in plastic evidence envelopes. In addition, the evidence should be marked to avoid exposure to strong magnetic fields, such as those generated by x-ray machines.

COMPUTER ANALYSIS AND RESPONSE TEAM

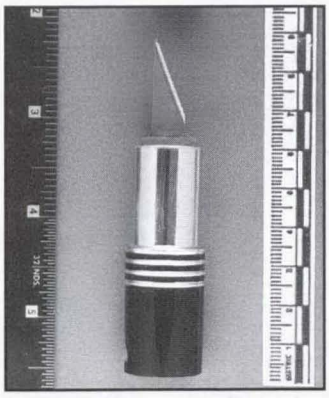
To assist with investigations involving computers as evidence, the FBI Laboratory established the Computer Analysis and Response Team (CART) at FBI Headquarters. Computer professionals with a variety of experience and expertise, along with a sensitivity to the needs of the law enforcement community, staff the team. The CART has a full range of hardware available, as well as unique utility software useful in forensic examinations of computer-related evidence.

Limited by the number of technical personnel available to conduct these investigations, this service is available to police agencies authorized to submit evidence to the FBI for forensic examination. In addition to its traditional forensic examination, the FBI Laboratory's CART provides on-site field support to both Bureau field offices and local police departments. Approval for this on-site support depends on the individual case, the resources available, and the needs of the requesting agency.

CONCLUSION

The FBI Laboratory has seen the submission of computer evidence double and then double again in the past few years, reflecting the proliferation of computers in society. With the role of the computer becoming more predominant in society, its impact is felt in every law enforcement investigative program. Therefore, it is important for law enforcement to have the necessary knowledge and procedures ready to address adequately the examination of computer evidence and records. ✦

Unusual Weapon



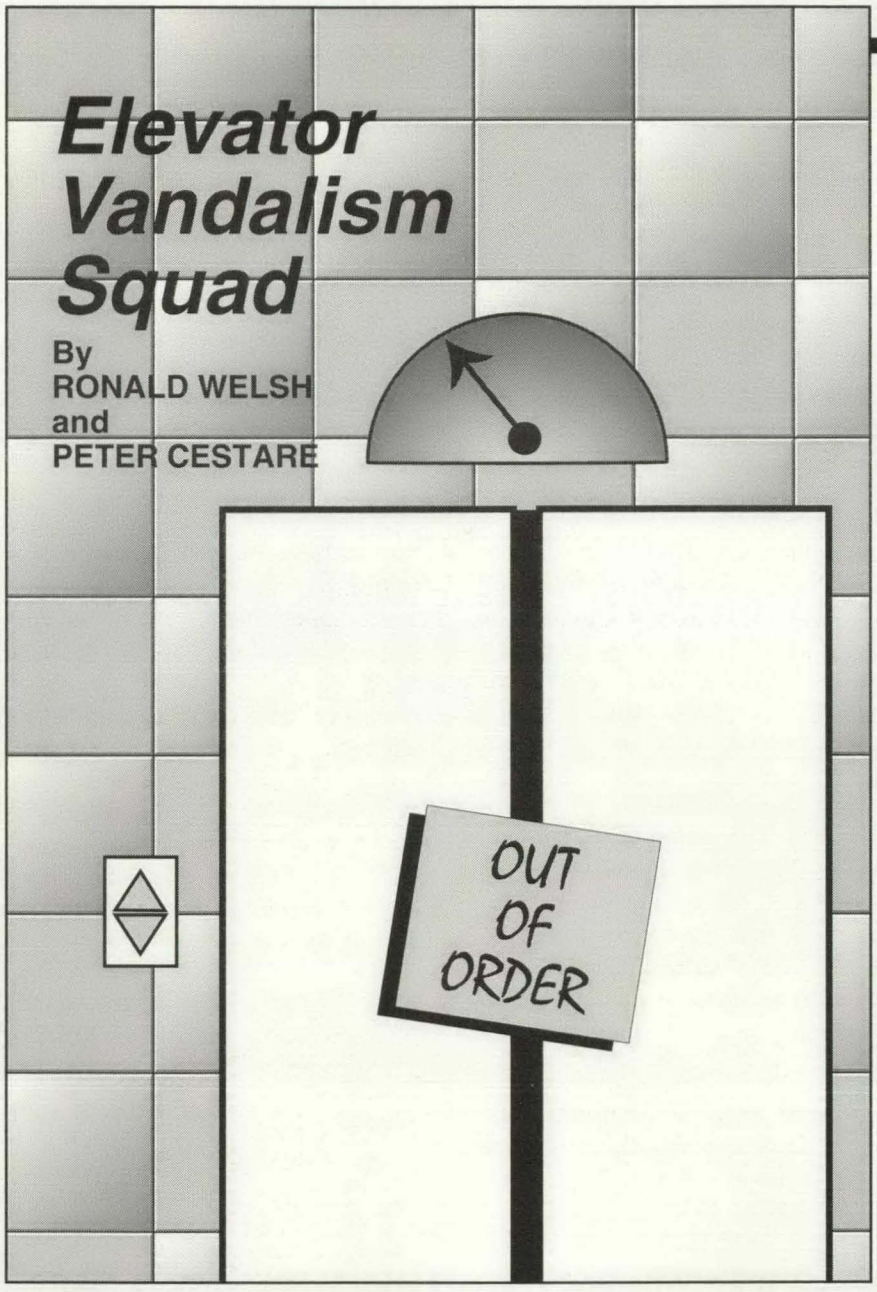
Lipstick Knife

The principal of a Newmarket, Ontario, public school recently confiscated concealed knives from two students who were arguing on school grounds. One of the adolescents apparently manufactured the weapons and charged other students $5 for them. The weapons were produced by altering ordinary lipstick tubes. The lipstick was removed and an exacto knife was affixed to the bottom of the empty container using a silicone-based glue. Despite this modification, the retracting mechanism remained intact, allowing the knife to be easily concealed when not in use. ✦

Submitted by the Newmarket, Ontario, Canada, Police Department.

Elevator Vandalism Squad

By
RONALD WELSH
and
PETER CESTARE



Today, most Americans take elevators for granted. These wonders of the modern age allow architects to design structures that provide ample working and living areas, while making efficient use of limited space in urban centers.

However, elevators also create special problems for law enforcement agencies that provide police service to public housing highrise buildings. In New York City, this responsibility rests with the Housing Authority Police.

With an increasing number of apparent elevator vandalism cases that caused some New York City elevators to come to a halt, new problems confronted Housing Authority officers. Department leaders responded by creating the Elevator Outage Reduction Program, which evolved into the Elevator Vandalism Squad (EVS).

This article discusses the EVS and how it aids in reducing vandalism and serious injuries on elevators. It also explains how the squad assists in investigations of crimes that occur on elevators, such as robberies and sexual assaults.

BACKGROUND

In 1980, the estimated cost of elevator vandalism in New York City's public housing developments approached a staggering $10 million annually. In addition to this large financial loss, the vandalism also caused great inconvenience to scores of housing development residents.

To combat the problem, Housing Authority administrators developed the Elevator Outage Reduction Program. They began the program by assigning two investigators to review elevator records in buildings that reported an unusually high number of outages. Officials hoped to determine whether the outages were actually caused by vandalism or whether the problem was, instead, a result of stolen elevator parts.

These investigations revealed that most outages were a result of parts thefts, not merely vandalism. However, investigators also discovered a far more dangerous situation—juveniles were playing in and on the elevators, which resulted in many injuries and deaths. This discovery led department leaders to expand the program and to form the Elevator Vandalism Squad, which

now focuses on reducing the number of juvenile deaths and injuries on elevators.

SQUAD SELECTION

Given the technical nature of the assignment, most investigators chosen for the EVS have either a mechanical or electrical background. These backgrounds are helpful because squad members receive extensive training, much like that given to elevator mechanics. Squad members learn about elevator electrical systems and how to read wiring schematics and blueprints.

The extensive training provided to squad members gives them an added edge in solving cases. Their expertise in elevators allows them to pursue suspicions they may have about how the crimes were actually committed or how the accidents really occurred, either proving or disproving the original theories of responding investigators.

SQUAD DUTIES

The Elevator Vandalism Squad focuses primarily on reducing the number of elevator injuries and fatalities among juveniles who play dangerous elevator games. However, they also investigate other elevator injuries and deaths and make recommendations for elevator safety modifications that may reduce unsafe access to elevator shafts. In addition, they assist in other investigations that involve elevators, and they support drug teams when they raid apartments in highrise buildings.

Investigate Elevator Deaths

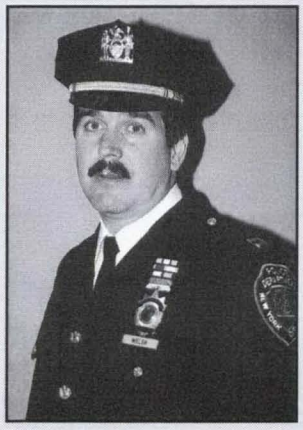
The expertise of EVS members is crucial in investigations of elevator deaths. This expertise allows them to determine whether an injury or death resulted from a dangerous elevator game or whether it resulted from an elevator malfunction.

For example, when Housing Authority officers found a blind woman at the bottom of an elevator shaft, they originally believed that the woman was murdered. However, the responding officers immediately called in EVS members to assess the incident.

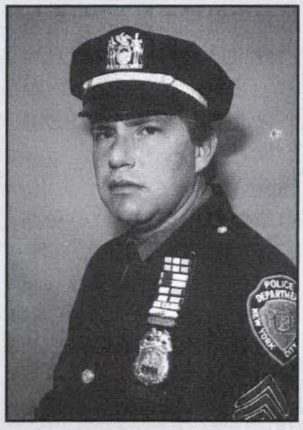
When squad members arrived, tenants advised them that the elevator doors on the third floor (the victim's floor) would often fail to open. With trained eyes, EVS members focused on the elevator's locking mechanism, which should have prevented the outside door from opening before the elevator arrived at the floor. When squad members took the lock apart, they found that the catch to the lock had actually been bent, allowing the door to open without the elevator being on the floor.

Further investigation revealed that the blind victim had no way of knowing when the elevator arrived at her floor. Because of this, she constantly pulled on the hallway door to the elevator until it opened. When the door opened, she assumed the elevator was there. Tragically, on the day she died, the lock failed because of the repeated pulling action.

In other cases, EVS members determined how juveniles died while playing dangerous elevator games. The youths would gain entry to the elevator shafts by circumventing safety features and then jump from the top of the elevator to the counterweight or from one elevator to the next. Eventually, bad timing, lack of concentration, or other factors led to the lose of life.



Captain Welsh is with the Housing Authority Police Department in New York, New York.



Sergeant Cestare is commanding officer of the Elevator Vandalism Squad of the Housing Authority Police Department.

Investigate Elevator Injuries

The EVS also investigates elevator injuries to determine how the injuries actually occurred. For example, one youth left his apartment and returned later with three fingers missing. The youth told responding Housing Authority officers that the injury was caused by the elevator door closing on his fingers. A trail of blood from the elevator to the youth's apartment appeared to corroborate this story, but the officers could not find the severed fingers.

When EVS members arrived to investigate, they meticulously searched the garbage-strewn elevator shaft for the fingers. They then examined the top of the elevator, actually riding the top to check every ledge, where the fingers might possibly have fallen.

Past experience then led them to check the guide rollers on the floor where the accident occurred. (Guide rollers are wheels attached to the steel tracks that run vertically inside the shaft. The elevator runs on these tracks, and the rollers stabilize the cab while it is in motion.) Juveniles who ride the tops of elevators sometimes grab the steel tracks for balance. This young man, while playing a dangerous game on the elevator, grabbed the steel tracks for balance, and his hands slid up to the guide roller, severing his fingers. EVS members found the fingers still in the guide roller.

Through investigations of this type, the EVS provides valuable information that protects the Housing Authority from costly negligence lawsuits. Officials estimate that this program saved the Housing Authority between $40 and $50 million over the last 10 years.

Recommend Modifications

In addition to investigating injuries or deaths on elevators, EVS members make recommendations concerning possible safety modifications that could prevent future incidents. In some cases, simple modifications can totally eliminate specific problems.

> ***"The [EVS]focuses primarily on reducing the number of elevator injuries and fatalities among juveniles...."***

For example, prior to the formation of the EVS, the city required that all safety hatches at the tops of elevators remain unlocked in order to allow trapped riders to exit the elevators in cases of emergency. However, EVS members determined that juveniles were being killed or injured when they climbed through the hatches to ride the tops of elevators.

EVS members convinced city administrators that trapped riders would be safer if they remained inside the elevator until help arrived, rather than risking injury by climbing through the safety hatch. Now, the city requires all safety hatches to remain locked. This simple modification resulted in an immediate decrease in the number of juvenile injuries and deaths caused by riding the tops of elevators.

At times, specific cases serve as the impetus for changes that enhance elevator safety. When the blind woman died as a result of the faulty elevator lock, the EVS recommended certain changes that have since been implemented. First, whenever possible, building managers rent ground floor apartments to blind individuals. Second, elevator maintenance workers now focus special attention on the locks of elevator hallway doors on the floors of blind residents. These simple precautions can help to reduce elevator fatalities among the blind.

Investigate Other Elevator Crimes

The EVS also investigates other types of elevator crimes, such as robberies and sexual assaults. Elevators provide ideal environments for such crimes because criminals can contain the movements of the victim and control the movement of the elevator. The isolation also heightens the victim's fear.

When a particular crime pattern develops, EVS personnel mount cameras (approximately the size of a pack of cigarettes) equipped with pinhole lenses on the roofs of elevator cabs. This allows them to view the interior of the elevator on a television monitor located in the motor room. They can also video tape any action within the elevator.

This technique helps to obtain valuable information in cases where authorities identify particular crime patterns. The EVS has used the cameras in over 20 crime patterns that detectives identified, solving cases in 8 of these patterns.

Assist Drug Teams

Often, EVS members are called on to assist drug teams that plan to raid apartments in highrise buildings. When such a raid is planned, the drug teams contact EVS members, who enter the buildings disguised as elevator mechanics. They then hold an elevator at the main floor so that the drug team can enter the building, quickly get on the elevator without waiting for one to arrive, and go straight to the appropriate floor.

Another benefit of having the EVS present during drug raids is that they can keep the elevator at the floor where the raid takes place. This way, if any injuries occur during the raid, an elevator is immediately available to take the injured persons directly to the lobby.

CONCLUSION

The Elevator Vandalism Squad has proved to be an asset to the New York City Housing Authority Police. The professional, knowledgeable investigations conducted by the squad avert costly lawsuits, saving the Housing Authority large amounts of money. Because of their speedy responses to elevator accidents, the squad can reconstruct the incident almost immediately, as opposed to reconstructing the incident at some later date in response to a civil lawsuit. In addition, the EVS reduces the amount of vandalism to elevators, as well as thefts of elevator parts.

Most importantly, however, the EVS saves lives. Buildings that previously experienced numerous elevator incidents now report no problems. This is due, in large part, to the implementation of EVS recommendations.

Departments continually seek out programs that make their citizens safer, while conserving money. This is a program well worth consideration by departments that must ensure the safety of their citizens while in elevators. ✦

Author Guidelines

Manuscript Specifications

Length: 1,000 to 3,000 words or 5 to 12 pages double-spaced.

Format: All manuscripts should be double-spaced and typed on 8 1/2" by 11" white paper. All pages should be numbered, and three copies should be submitted for review purposes.

Publication

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

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Author Notification: Receipt of manuscript will be confirmed. Notification of acceptance or rejection will follow review. Articles accepted for publication cannot be guaranteed a publication date.

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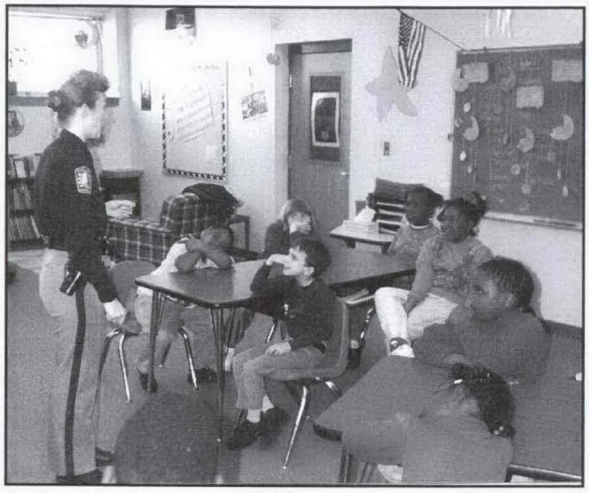
Authors may contact the Special Agent police training coordinator at the nearest FBI field office for help in submitting articles, or manuscripts may be forwarded directly to: Editor, *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation, Room 7262, 10th and Pennsylvania Ave., NW, Washington, DC 20535.

Police Practices



Drug Education
Saving America's Youths

By Damon Davis

As America grapples with the increasing use of drugs among its young people, police leaders throughout the country seek effective solutions to the problem. However, when considering specific programs, these leaders must also consider their impact. They must find programs that youths, as well as adults, accept and support.

When members of the Essex County, Virginia, Sheriff's Office considered ways to reduce drug use in their county, they decided to build on a program already in existence in most States—the Drug Abuse Resistance Education (DARE) Program. Moreover, the sheriff's office expanded the program to begin the drug education process in kindergarten and continue it through the 12th grade.

Two full-time, uniformed deputy sheriffs spend the first semester of the school year teaching kindergarten through 7th grade students and the second semester of the school year teaching 8th through 12th grade students. Funds for the program come from both the sheriff's office budget and a Federal grant.

THE PROGRAM

The goals of Essex County's drug education program are to teach students at an early age how to recognize and resist peer pressure to use drugs and to help them understand that most individuals do not use drugs. Drug education instructors also attempt to impress upon the students that citizens and law enforcement agencies must work together to eliminate the drug problem. Instructors reinforce these two recurring themes throughout the students' elementary and high school years.

The program concentrates on five general topics. Students learn about drug demand reduction, drugs and the law, how to communicate choices assertively, how to manage stress without using drugs, and how drugs and violence mix. Instructors begin at a very simple, general level with the younger students and progress to more complex material with students in the higher grades. For example, instructors may discuss drug-use symptoms in very general terms with younger students, telling them that drug use makes individuals sick. With the older students, they can be more graphic in their explanations of how drug use ruins the health and lives of those who choose to indulge.

Drug Demand Reduction

After years of attempting to reduce the supply of illegal drugs, criminal justice leaders now believe that the drug problem must be attacked by reducing the *demand* for the drugs as well. Drug education instructors approach this problem by familiarizing students with the risks associated with drug use. They then ask the students to describe the effects drugs have on their peers and how this drug use may affect their neighborhoods and community.

Instructors also discuss drugs in connection with crime rates, violence, medical emergencies, and suicide rates. They attempt to bring the problem closer to home by discussing with the students incidents involving either themselves or family members that may have occurred as a result of an individual's drug use. For example, the homes of students may have been burglarized by someone who needed money to buy drugs.

In addition, instructors discuss the types of peer pressure young people may encounter in connection with drugs. Drug dealers attempt to coerce students to use drugs by exerting different types of pressure—teasing or tempting. Preparing students for this possibility and giving them ways to avoid yielding to negative pressures help to prepare them to just say "No."

Drugs and the Law

Through this segment of the program, students gain insight into the criminal justice system so that they can better understand how it works. The younger students can discuss areas as simple as how buying or selling drugs can get them in trouble, while the older students discuss the laws more specifically. For example, they may discuss why society needs such laws, the penalties for violating the law, and the differences between misdemeanor violations and felonies. Instructors also explain under what circumstances juveniles can be tried as adults, the investigation and arrest procedures, and how an arrest record on drug charges can affect students in the future.

> **"The key to reducing drug abuse may lie in the education of young people."**

Communicating Choices

Another area of emphasis in the Essex County program is how students can assertively communicate their choices and feelings about drug use to their peers. Instructors suggest certain courses of action for students being pressured to engage in drug activity. They advise students to change the subject, walk away, ignore the person who approaches them, or simply say "No."

Students also learn to react assertively to drug dealers and to design their actions to let them know that the presence of drug dealers is unwanted. By acting out different scenarios, students learn how to deal with various situations.

Managing Stress

This vital segment of the program allows students to discuss the stress they feel in their lives and offers positive ways to deal with this stress. Instructors encourage the young people to manage this stress through constructive activities or by simply talking their problems over with another person. The instructors' goal is to convince students that they can deal with stress in positive, effective ways—they need never resort to drugs.

Drugs and Violence

The final section of the drug program deals with how the illegal use of drugs contributes to the increase in violence among young people. During this segment, instructors help students develop ways in which they can decrease drug-related violence. They also educate the students on the possible tactics of drug dealers.

For example, drug dealers sometimes attempt to intimidate students into using drugs by force or the threat of force. This intimidation may take the form of verbal, mental, or physical abuse.

Instructors warn that drug use can also cause the users to hurt either themselves or others. As instructors make clear, drug use often contributes to motor vehicle accidents, suicides, and murders.

CONCLUSION

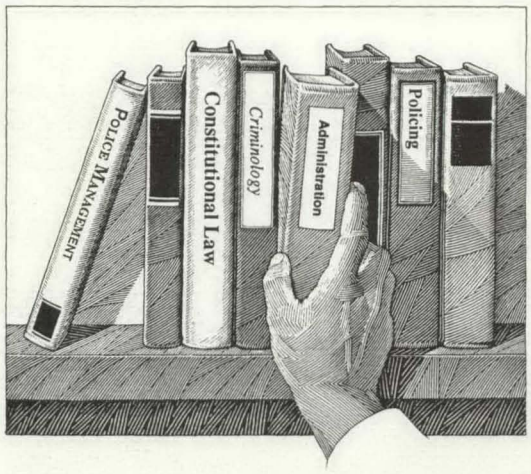
The key to reducing drug abuse may lie in the education of young people. Clearly, those students who receive drug education are better prepared for the temptations they may confront in later years.

An added benefit to drug education given by police officers is the rapport built between law enforcement and the youth in the community. Drug education instructors sometimes become confidants to the students and often render the moral support youths need when trying to avoid drugs.

Citizens and law enforcement agencies must come together to form a united front against the use of drugs. Unless this happens quickly, America may lose a generation to drugs. ✦

Sheriff Davis heads the Essex County, Virginia, Sheriff's Office.

Book Review



Police Administration by Larry K. Gaines, Mittie D. Southerland, and John E. Angell, McGraw-Hill, New York, 1991, 1-800-722-4726.

The authors direct this book primarily to municipal police administrators. However, new and aspiring administrators can easily understand the principals discussed.

The 470 pages of this well-written text are divided into four sections. The presentation covers a wide range of issues, using realistic examples of what today's police administrators may encounter. Individual chapters include thought-provoking, practical application exercises to assist readers in understanding the theoretical points presented.

Part one explores the mechanistic aspects of the traditional police agency and discusses the roles of both law enforcement agencies and administrators. The discussion underscores the importance of information exchange and the necessity for administrative change. It examines the environmental factors, such as interagency relations, personnel, and social structures, that influence agencies. As the authors make clear, these forces can either assist or hinder police administrators.

Part two compares, and then contrasts, traditional and contemporary management principles. The authors conclude that in order for law enforcement to meet the challenges of modern society, agency administrators should consider adopting many of the contemporary and emerging management principles. Within this section, chapter five (contemporary management) is critical to understanding the remainder of the text.

In part three—the largest section—the authors discuss specific issues, such as motivation, communication, stress, personnel management, and labor relations that can "make or break" police administrations. In a general sense, this discussion can be applied to most police agencies. However, because State laws vary, readers should view this section within the context of their own State statutes.

The last section of the book concentrates on managerial control. Within the framework of exercising effective command, the discussion centers on accountability, planning, and productivity. This section concludes with a brief, but insightful, examination of trends that may impact upon police administration in the future.

Within an instructional context, videotapes and other audiovisual aids can easily be adapted to augment many of the issues presented in *Police Administration*. And, from a training standpoint, class exercise recommendations and study questions at the end of each chapter add a helpful interactive dimension to the text. Although aimed primarily toward municipal police administration, the book's broad-based presentation can be easily adapted to rural or small town law enforcement, as well.

Reviewed by
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Erie, Pennsylvania

Police Violence
Addressing The Issue

By
DANIEL B. BOYLE

A young man lies dead in the street. Kneeling next to him, a woman holds his head and screams "police brutality!" A crowd begins to gather as the woman continues her outcry. The subtle whispers of "brutality" overcome the onlookers, who believe the woman but have no idea what actually took place.

The police officer who shot the man stands alone, visibly shaken, as he awaits medical and supervisory assistance. No one notices that he, too, has been wounded—the cries of brutality overshadow his injuries. Coming upon this scene, an uninformed individual might perceive police brutality. However, in reality, the police officer interrupted the man committing an armed robbery. When the young man shot at the officer, the officer returned fire, killing him.

Oftentimes, citizens believe an incident constitutes police brutality even though they did not witness the incident or learn all the facts regarding the case. In addition, media reports, eyewitness accounts, and even film coverage may be biased in their depictions of the event. Indeed, they may tell just one side of a complicated story.

Recent events highlighting alleged excessive force by police have heightened public awareness of the police brutality issue. Consequently, many people believe that the police often use excessive force. In reality, police brutality occurs less often than the public perceives. The discrepancy arises, in part, because brutality means different things to different people. To some,

it means the unjustified use of an officer's firearm, while to others, it means verbal harassment by an officer.

Indeed, no clear definition of brutality exists. One researcher who conducted a study on the use of force by police stated that the use of force is "...a product of interacting variables that can be traced to the individual, the situation, or the organization."[1] Consequently, since no two arrests are exactly alike, what may constitute excessive force in one situation might not in another.

The police stand as barriers between the good and the bad with no clear direction on how to combat the violent criminal. However, if police officers learn effective ways to handle specific situations, and they apply these methods consistently, cases alleging police brutality should decrease.

This article discusses several methods that police administrators can use to address police violence. These include the preselection and selection processes; police academy, field officer, and inservice training; evaluations; community relations; and discipline procedures.

Preselection and Selection Processes

An effective program to eliminate excessive use of force begins before a candidate is even selected. First, the department must provide the foundation for the program by establishing and enforcing clearly defined procedures, policies, and rules of conduct for all behavior, including the use of force. The top administrator must commit to the department's programs and instill the same attitude in all the department's officers, including the selection officer. In turn, the selection officer should attempt to recruit applicants who best exemplify the philosophy and goals of the department.

The selection process should involve several comprehensive stages, including a written examination; an interview; psychological, polygraph, and physical examinations; and an extensive background investigation. When reviewing an applicant's file, the selection officer should pay particular attention to any area that might indicate overly aggressive tendencies. For example, the background investigation might reveal that an applicant constantly instigates fistfights. Or, psychological testing might indicate a volatile temper. Obviously, candidates who exhibit such behaviors may not be suited to serve as law enforcement officers because of their predispositions to either overreact or underreact to given situations.

Lieutenant Boyle serves with the Syracuse, New York, Police Department.

> ***"Educating the public as to the complexities of policing can align the community with the police instead of against them...."***

Police Academy

The police academy provides crucial training and education on the use of force. This formal training serves as the foundation for recruits to step into the organization's culture. Instructors can mold new recruits to fit the agency. They advise the recruits of the rules, regulations, policies, and procedures of the department and the consequences for breaking the rules. No one in the department should bend with regard to the use of excessive force so that recruits do not get a false image of the organization's policies.

Like selection officers, academy instructors must believe in the department's goals, objectives, and ethical policies in order to instill

them in recruits. Once established, instructors can move on to formal training in the law, firearms, philosophy, cultural awareness, etc. In other words, instructors set the tone prior to the learning process.

In the past, training dealt with such mandatory requirements as criminal procedures, basic law, defensive driving, and firearms training, just to name a few. Today, administrators must ensure that contemporary training in ethics, human behavior, stress management, cultural awareness, and sensitivity does not take a back seat to traditional training.

One important area of police training that could stand revision is conflict management. Most police departments currently teach their new officers to deescalate, or defuse, tense situations by using physical defense tactics. A more appealing option would be to help officers avoid physical confrontation entirely. In fact, one clinical psychologist suggests that "law enforcement academy training courses, specifically those that utilize primarily tactical or physical techniques, should regularly debrief students from both a psychological and physical standpoint."[2] In other words, officers should be taught to use diplomacy instead of aggression, their brains instead of their brawn.

Field Officer Training

Once in the field, new police officers start to apply what they learned in training. However, through experience, they begin to realize that the realities of the street do not always compare to life at the academy. For the first time, they see where the thin blue line of excessive force lies, and they will learn to stay within its boundaries if coached in a positive manner.

Now comes the job of the field training officer (FTO), which is probably one of the most important positions to hold. FTOs can have either a positive or negative effect on new officers. If FTOs abuse their power, new officers will probably follow along, because they desparately want to fit in and be accepted as team players. However, FTOs who adhere to the philosophies, ethics, and professional demeanor of an organization set an example that will last new officers throughout their careers.

FTOs must also evaluate the new officer's ability to do the job. Even with a good preselection process, an unsuitable candidate can still slip through. A private counselor for officers suffering from stress warns that police officers, as well as supervisors, must weed out those with the inclination to use excessive force. He states, "Police are out there looking for troubled people, they ought to be able to spot troubled cops."[3]

Troubled police officers may be easy to spot, but would their fellow officers turn them in? Officers rarely inform on one another for fear of being accused of "whistle blowing," "breaking the blue code," or "breaking the code of silence." Consequently, training and education must change officers' attitudes regarding the reporting of undesirable behavior by their peers.

Inservice Training

Even experienced officers can benefit from additional training. Therefore, police administrators should schedule inservices that reinforce the department's policies, procedures, and directives, especially in the area of excessive force. These inservices allow officers to brush up on deescalating and technical techniques, as well as any areas in which they demonstrate deficiencies. Quality of training should take precedence over quantity, and as always, the most qualified instructors should teach.

Teaching officers about human behavior can also lessen claims of police brutality. Officers who learn what makes people aggressive can possibly defuse potentially volatile situations without creating conflict. If a confrontation appears to be

inevitable, however, police officers can still help to resolve the situation by thinking before they react. This, too, can be covered in inservice training.

Training sessions should also include stress management. Officers suffering from personal or job-related stress may overreact in certain situations, becoming aggressive and using excessive force. Supervisors should watch out for those who exhibit this type of behavior. Teaching officers how to recognize and relieve stress can reduce the number of such incidents.

Stress can be mental, as mentioned above, or physical, as in the case of the rush of adrenalin that officers experience during a heated confrontation or a pursuit. Officers who are surprised by their bodies' reactions to such situations may be unprepared to handle these reactions. Effective training increases officers' awareness of these responses and provides practical means to deal with them.

Evaluations

An effective evaluation program can enlighten administrators as to officers' performance and can serve to combat officers' tendencies to use force. If officers demonstrate deficiencies in their work performance, their evaluations should reflect these inadequacies. Supervisors should address and correct problem areas through either training or discipline. If all else fails, the department might consider terminating the officer.

Community Relations—Educating the Public

In many regards, a police department is only as productive as the community perceives it to be. Sometimes, however, the public's perception of a police department is prejudiced by a lack of knowledge. For example, because citizens do not normally face violent, aggressive criminals, they might not realize the force required to subdue such individuals. Therefore, police administrators need to educate the public as to the nature of the police officer's job, as well as the department's policy, procedures, and the law regarding the use of force. The police and the community should have the same understanding of what the overall job requires, and residents should know that force is sometimes necessary to end a violent confrontation.

> ***"...officers should be taught to use diplomacy instead of aggression, their brains instead of their brawn."***

When officers must use force, they should document the entire incident to avoid misunderstandings by the public or the press. The department should also maintain and make the public aware of statistics regarding situations resolved without force, as well as the number of officers injured by force against them. Police managers should investigate all police brutality cases, keeping the public abreast of the process and the outcome. Withholding information from the public only clouds the issue by creating the perception of a coverup.

Open communication with the public also counteracts the false perceptions that the public might hold regarding a case. To many people, a videotape presents undeniable proof that an act of brutality has occurred. However, in many instances, the person filming might not have presented all the facts. The dead man in the street, the officer with the gun, the woman screaming police brutality—what the camera recorded and what actually occurred may be two different things.

Discipline Procedures

All of the issues discussed so far—the preselection and selection processes; police academy, field, and inservice training; evaluations; and community relations—are all attempts to keep citizen complaints of brutality to a minimum. A police department that administers these areas effectively and efficiently, using qualified personnel, should accomplish this goal. Ideally, administrators, field officers, citizens, and the media would all be working toward the same goals—education and understanding.

However, should a citizen file a complaint that proves valid, management should discipline the officer(s) involved. The department can maintain integrity with the public and its officers by dispensing fair and consistent punishments. In turn, officers will conform to the established policies and procedures to avoid suffering the consequences, while the public will trust the department to protect its interests. As

noted above, the department should advise the public of the outcome of the case and the disciplinary action taken.

Conclusion

Police violence is a complicated and controversial issue. Most people do not even agree on what constitutes excessive force, let alone how to combat it. Educating the public as to the complexities of policing can align the community *with* the police instead of *against* them, thus decreasing brutality charges.

In addition, police administrators must select the best possible officer candidates and provide them thorough training, not only at the police academy but also throughout the officers' careers. Furthermore, management must continually evaluate the policies, procedures, and statistical data on their department's use of force, revising policy when necessary and disciplining violators. Police managers should accept no less than full compliance from their employees.

Law enforcement, as a profession, continues to make headway, even when confronted with difficult issues like police violence. Indeed, if dealt with effectively, the issue of police violence may be reduced to a mere mention in the annals of law enforcement. ✦

Endnotes

[1] Robert J. Friedrich, "Police Use of Force: Individuals, Situations and Organizations," *The Annals,* November 1980, 82-92.

[2] John Nicoletti, Ph.D., "Training for De-Escalation of Force," *The Police Chief,* July 1990, 37-39.

[3] Lance Morrow, "Rough Justice," *Time*, April 1, 1991, 15.

Bulletin Reports

Test for Drug Use

A *Research in Brief* published by the National Institute of Justice summarizes the results of a study conducted on hair testing for drug use. The study compared tests of hair for signs of drug abuse with urinalysis tests and with self-reports of drug use.

The published report covers the scientific basis for hair testing and provides an overview of the research project's findings. It also tells of the unique advantages that hair analysis has over other currently used drug testing methods.

Copies of this report, NCJ 138539, can be obtained from the National Institute of Justice, P.O. Box 6000, Rockville, Md. 20850.

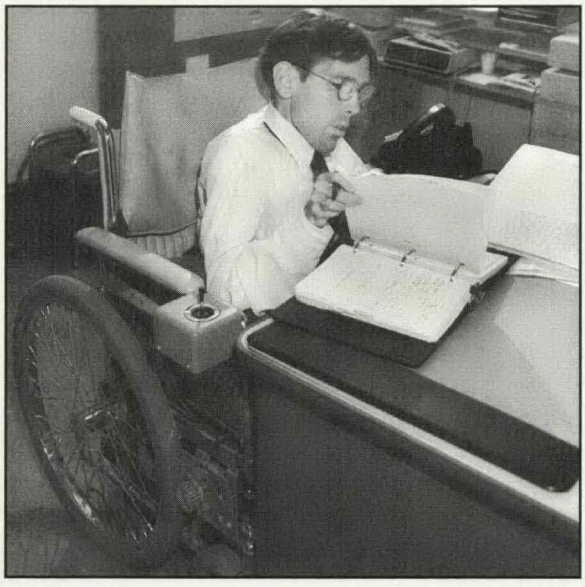
Juvenile Justice Standards

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) offers, through its clearinghouse, all 24 volumes of *Juvenile Justice Standards* prepared by the American Bar Association and the Institute of Judicial Administration. These standards can help jurisdictions adapt their practices to emerging law pertaining to juveniles.

Each volume deals with a different topic, including rights of minors, prosecutions, police handling of juvenile problems, and juvenile records and information systems. The standards analyze issues, provide case citations, and suggest additional readings.

To obtain a listing of the standards or to place an order, call the Juvenile Justice Clearinghouse at 1-800-638-8736 or 301-251-5500 in the Washington, DC, metropolitan area. Prices for the individual standards vary. The above 800 number can also be used to obtain the training video on Juveniles in Custody, *which was summarized in the April 1993, issue.*

Focus on Training



The Americans with Disabilities Act

By John A. Leonard

In July 1990, President George Bush signed into law the Americans with Disabilities Act (ADA). This milestone legislation, which is intended to end discrimination based upon physical or mental disabilities, presents new challenges to law enforcement administrators. These administrators must now ensure that their agencies comply with the provisions of the new law.

In order to meet this challenge successfully, police executives must first implement training that focuses on the ADA and how this law may affect hiring practices. The legislation explicitly defines what is expected of employers; however, before employers can meet these expectations, they must develop training programs that focus on educating *all* employees within their agencies. This education process should accomplish two goals: It should educate employees on the specifics of the law, and it should allay their fears that the law may have a negative impact on the agency or its current employees.

Early Training

Agency leaders should begin the education process by targeting selected personnel to receive early training in the particulars of the ADA. The initial training sessions should include those employees who will direct the implementation of the law. This encompasses the agency heads themselves, as well as their administrative staffs.

Administrators should then target for training those involved in the hiring process. In order to ensure that hiring procedures adhere to the new regulations, background investigators, polygraph examiners, and oral interviewers must know what information they should obtain, how they can *legitimately* obtain this information, and what types of inquiries are inappropriate. Early training of these employees may avoid problems for the agency at a later date.

Broadening the Scope of Training

After key personnel receive training on the specific provisions of the ADA that directly affect their job responsibilities, all other personnel within law enforcement agencies should receive training to broaden their understanding of the law. Taking this critical step may help to minimize many of the misconceptions that occur when agencies lack training of this nature.

For example, any modification of hiring criteria by police agencies, either real or imagined, will likely be greeted with skepticism by some officers and outright hostility by others. Some officers will immediately begin to speculate on how the new legislation may affect them and whether it will lower the standards of the agency—a source of great pride to most officers.

Early intervention by administrators in the form of training can do much toward allaying any unfounded fears that employees may have. Clearly, if employees view the implementation of the ADA as a reduction in hiring standards, concern—and even resentment—can build. This may, in turn, cause the employees' sense of pride, which is built on traditional practices within the department, to be challenged, lowering employees' morale. In addition, new recruits who do not meet the expectations of the existing personnel may never be fully assimilated into the organization.

However, with effective training programs in place, employees learn not only what the ADA *is* but also what it is *not*. They will then understand that the employment provisions of the ADA do not reduce or eliminate selection criteria—the law simply attempts to offer equal employment opportunities to qualified individuals with certain disabilities.

Through effective training programs, employees also learn that persons with disabilities must demonstrate that they can perform the essential functions of the position they seek. The essential functions of a job may be determined by a variety of factors, including written job descriptions, collective bargaining agreements, the amount of time spent performing the task, the consequences that may occur if the task is not performed, and the employer's judgment.[1]

Finally, effective training programs underscore the fact that the ADA expressly excludes certain individuals, including current drug users, transvestites, kleptomaniacs, and pyromaniacs, among others. In addition, the law allows certain employers, such as law enforcement agencies, to exclude applicants with a history of illegal drug use if it is established that such an exclusionary standard is job-related and consistent with business necessity.[2]

Providing employees with this critical information reduces employee stress and the opposition that frequently accompanies change. Through education, employees gain both an understanding and an acceptance of the law.

Conclusion

Law enforcement administrators who develop instructional programs that prepare employees for the changes the ADA brings to their agencies create an atmosphere where well-informed employees both understand and support the law. This, in turn, creates an atmosphere that fosters the successful fulfillment of this legislative mandate.✦

Endnotes

[1] Jeffrey Higginbotham, "The Americans with Disabilities Act and the Federal Rehabilitation Act of 1973: An Overview," (unpublished manuscript, 1992).

[2] Ibid.

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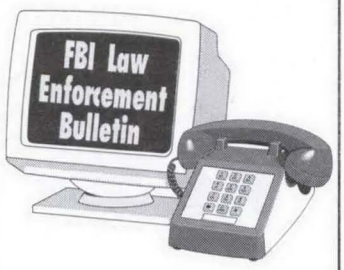

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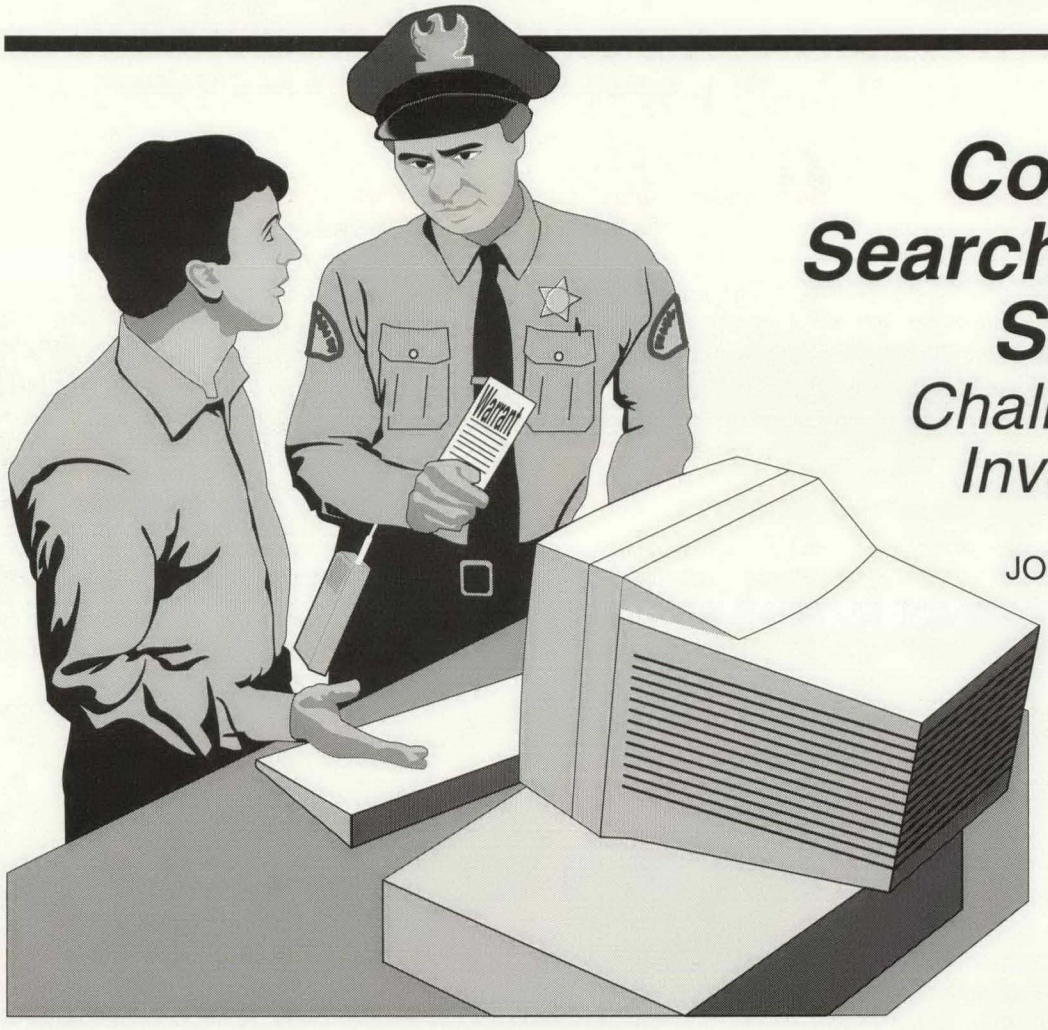


Computer Searches and Seizures

Challenges for Investigators

By
JOHN GALES SAULS

An informant tells a detective preparing an affidavit for a warrant to search a drug trafficker's home that the trafficker is a "computer wiz" who keeps all financial records on a "50 megahertz 486." To trace the drug trafficking proceeds for forfeiture purposes, the detective wishes to seize the financial records.

A second officer is investigating a crime in which a computer virus was introduced into a university's mainframe computer, shutting down the school's computer operations for 48 hours. As a result of the officer's investigation, a computer science student becomes a prime suspect. In order to search the student's computer "account" on the school's mainframe for the virus' computer code, the officer seeks a search warrant. He also suspects the "account" to contain an article that the student wrote on computer viruses.

These officers, in seeking to search for computerized information, must contend with both statutory and constitutional restraints that limit police authority. This article examines the effect of these legal restraints on searches for computers and computerized information and suggests strategies to ensure the admissibility of evidence detected.

THE PRIVACY PROTECTION ACT OF 1980

In 1980, Congress enacted a statute to give special protection to documentary materials prepared or gathered for dissemination to the public.[1] The statute requires the government to use a subpoena, rather than a search warrant, to acquire documentary materials, unless one of the statute's exceptions that permits the use of a search warrant applies.[2]

Although the statute specifically provides that its violation is not grounds to suppress evidence,[3] it does provide a civil remedy in Federal court against either the government entity or individual officers involved in the search where a search warrant is used contrary to its provisions.[4]

Because personal computers are used for word processing and desktop publishing with increasing frequency, officers contemplating use of a warrant to search for computerized information should consider the potential application of this statute.[5] When officers have reason to believe that the computer stores information created or gathered for public dissemination, they should make sure that one of the exceptions to the act's prohibitions applies before a search warrant is used.

The exception most likely applicable permits the use of a search warrant when there is probable cause to believe the person *possessing* the materials sought "has committed or is committing a criminal offense to which the materials relate...."[6] If none of the act's exceptions apply, a subpoena should be used to acquire the evidence.

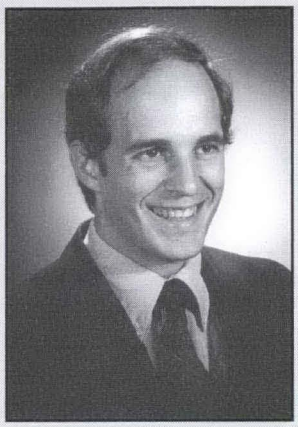
DRAFTING THE APPLICATION AND SEARCH WARRANT

The fourth amendment protects the right of the people to be "secure in their persons, houses, papers, and effects" against unreasonable government intrusion.[7] This protection extends to computers, which are effects, and to information processed and stored by computers, which can be categorized as papers. The constitutional demand on the officer seeking to search for and seize a person's computer or computerized information is that the search and seizure be reasonable.[8]

"Reasonableness" is generally best achieved with a valid search warrant.[9] This is especially true when business or residential premises, the most likely locations for computers, must be entered to perform the search.[10]

The fourth amendment sets forth certain procedural requirements that must be met for a valid warrant to be issued. There must be a showing of probable cause, supported by oath or affirmation, and the warrant must particularly describe the place to be searched and the persons or things to be seized.[11] The requirement of oath or affirmation raises no special problems where computer searches are concerned; however, the probable cause and particularity requirements pose unique problems where computers are the search target.

> ***"...officers, in seeking to search for computerized information, must contend with both statutory and constitutional restraints...."***



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ESTABLISHING PROBABLE CAUSE

The fourth amendment probable cause requirement has been interpreted to command that before a search warrant is issued, the government must set forth facts that would cause a reasonable person to conclude that three factors are probably true. Specifically, it must be probably true that a crime has been committed, that evidence of the crime exists, and that the evidence presently exists at the place to be searched.[12]

Crime Committed

Magistrates are familiar with the mechanics of how a murder might be committed with a gun, but they may have difficulty understanding how an embezzlement might be accomplished by means of a computer. When computers are

used to commit a crime, officers need to detail how the suspect committed the crime, primarily because the process involves unfamiliar technology.[13] The problem becomes an educational one.[14]

Obviously, when seeking to convince a magistrate that a crime has been committed in a novel manner, an officer should explain the mechanics of the crime carefully and clearly. If the officer wishes the magistrate to consider the officer's interpretations of the facts, the officer must inform the magistrate in the affidavit of the experience and training that accredit these interpretations.[15]

An officer seeking to establish probable cause that an unusual crime has been committed may also elect to use the services of an expert.[16] The challenge for the officer is providing sufficient details in layman's terms to familiarize the magistrate with the mechanics of an unusual criminal technique.

Evidence of the Crime Exists

A computer may be used as a tool to commit a crime and to create and/or store records of crime. In order to acquire a search warrant to seize both the computer *and* records, officers need to establish factually the probability that each of these things exists and the link between them and the criminal activity. When facts establish the probability that a computer was used to commit a crime, those same facts establish the existence of the computer, as well as its link to the crime.[17]

When an officer seeks to establish that computerized records of criminal activity probably exist, the focus should be on establishing the creation and retention of records rather than the mechanism by which this was accomplished.[18] In the past decade, computer use to create and store records has become so pervasive that the concept of a document existing as binary code imprinted magnetically or optically on a computer disk is no longer novel. Consequently, when documents are the target of the search, the process by which the suspect created the documents need not be set forth for a magistrate in an affidavit. The critical facts are those that demonstrate the probability that records are being kept and that these records are evidence of the criminal activity.

> ***"Factually linking, in the affidavit, the relationship of the items to be seized to the alleged criminal activity is the key."***

United States v. *Falon*[19] is illustrative of this point. In *Falon*, investigators established probable cause that Falon was operating a fraudulent loan advance fee scheme out of two adjacent luxury apartments. They obtained a search warrant that authorized the seizure of "borrowers' files; lists of borrowers; banking and financial records; financial statements; advertising records; correspondence, memoranda and documents relating to loans, loan guarantees, potential loans and potential loan guarantees; and sales literature and brochures."[20] Also listed were "checkbooks; canceled checks; telephone records; address indexes; message slips; mail, telex, and facsimile records; calendars and diaries; memory typewriters; word processors; computer disks, both hard and floppy; and other electronic media devices, electronic storage media and related software."[21]

Items on the first list, because of the clear link to the fraudulent advance fee scheme set forth in the probable cause statement, were held to have been properly seized under the search warrant.[22] "Borrowers' files," for example, have a clear relationship to a loan advance fee scheme.

Items on the second list were held to be insufficiently linked to the alleged criminal activity, and their seizure was held improper, causing them to be inadmissible as evidence.[23] "Calendars and diaries" located in the search might as likely be innocent and personal as criminal.

Factually linking, in the affidavit, the relationship of the items to be seized to the alleged criminal activity is the key. Had the warrant specified, for example, "calendars listing events related to loan-making activity," the linking requirement would have been satisfied for such items. Likewise, listing "floppy disks containing documents related to making or guaranteeing loans" would make such items validly subject to seizure.

Evidence Present at the Search Site

An officer seeking to establish probable cause to search must also factually establish the probability that the evidence sought is *presently* located at the place to be searched.[24] At times, having a computer or its records as the target of the search may simplify meeting this requirement.

If a suspect used a computer to commit a crime telephonically, it is also possible that the suspect set up the computer to "answer" incoming calls. This allows other computer operators to call it using their computer terminals and a telephone.

When such an operation exists, an incoming call will be answered with a tone called a "carrier."[25] When a particular phone is answered with a "carrier," it seems reasonable for a magistrate, informed of the carrier's significance in the affidavit, to find that a computer and related equipment are probably present at the telephone's location.[26]

When computerized records are sought, the magistrate should consider that records, by their very nature, are created to be kept for at least a minimum period of time. This fact, along with the other facts presented, should be weighed in determining whether the records are presently at the place to be searched.[27] Although each case must be evaluated on its own facts, the U.S. Supreme Court and lower courts have held that under certain circumstances, it is reasonable to expect that records seen 3 months previously will still be present at the location where they were observed.[28]

SUFFICIENTLY PARTICULAR DESCRIPTIONS

The fourth amendment limits valid warrants to those "particularly describing the place to be searched and the persons or things to be seized."[29] This provision mandates that a warrant authorizes only a search of a specific place for specifically named items.

Coupled with the probable cause requirement, this provision prevents general searches by ensuring that warrants describe a discrete, defined place to be searched, describe only items connected with criminal activity for which probable cause has been established, and describe the items so definitely that it removes from an officer executing the warrant the unguided discretion of determining which items to seize.[30] It also provides a signal of when to end a search, that is, when all items named in the warrant have been located and seized or when all possible hiding places for items not located have been explored.

The "place to be searched" portion of the particularity requirement has no special impact on computer searches. However, the "things to be seized" portion has a significant impact in seeking warrants to authorize the seizure of computers and information processed by computers.

Describe the Computer System

The primary rule of particularity is to describe the items to be seized as precisely as the facts allow. For example, when a computer has been reported stolen, it is reasonable to expect that the owner can provide a detailed description of the stolen item. Therefore, if the object of the search is a stolen computer, a detailed description, including make, model, and serial number, if known, will probably be required.

When computer equipment is sought because it was an instrumentality of crime, only a more general description may be possible. For example, when a victim complains that the computer system has been accessed telephonically by an unknown person, the investigating officer may only be able to determine what types of devices were used to accomplish the crime. The officer may determine that a computer terminal (a keyboard and display monitor) and a modem (a device that permits digitally encoded computer information to be transmitted over telephone lines) were necessary to perform the acts accomplished, but the officer may not have any information regarding the manufacturers of the equipment, model numbers, or serial numbers. If a telephone

trace reveals the location from which the intruding call originated, the officer may have probable cause to search. Under such circumstances, a rather general description of "a computer terminal and modem of unknown make or model" would likely suffice.[31]

Because numerous component parts comprise computer systems, an investigator applying for a warrant to seize a computer should ensure that the warrant describes all computer system parts that are probably present, including mechanisms for data storage.[32] Consulting with an expert increases the likelihood of listing thoroughly the items of evidence probably present. The expert's education and experience should be set forth in the affidavit to give the magistrate a sound basis for concluding that the items sought are probably located at the place to be searched.

Information Processed By Computer

Because the fourth amendment particularity requirement is strictly applied where documents are concerned, the descriptive task where computerized information is the subject of a search warrant is often a demanding one.[33] Nonetheless, courts reviewing applications for search warrants evaluate the particularity of the document's description in light of the degree of precision that the facts of a case allow.

For example, in *United States* v. *Timpani,*[34] a search warrant authorizing the seizure of "any and all records relating to extortionate credit transactions (loansharking)"[35] was challenged as being insufficiently particular. In reviewing the warrant, the court noted that the warrant included a lengthy list of types of records (including "lists of loan customers, loan accounts, telephone numbers, address books"[36]) and that the warrant "provide[d] a standard for segregating the 'innocent' from the 'culpable' in the form of requiring a connection with [the] specific, indentifiable crime [of loansharking]."[37] The court upheld the particularity of the warrant, stating, "It is difficult to see how the search warrant could have been made more precise."[38]

When aware of specific documents sought, an officer should designate them by type (letter, memo, etc.), date, subject, author, and addressee, providing as much detail as possible. For example, when "a letter from John Jones to Bill Smith dated November 9, 1985, and concerning the ownership of 200 shares of IBM stock" is sought, officers should describe the letter in such specific terms.

When only the general nature of the information sought is known, a highly detailed description is impossible. In such cases, officers must use great care to give a description that includes the information sought but limits the search as narrowly as possible. This is accomplished by using a general description, qualified by some standard that will enable the executing officers to separate the information to be seized from innocent information that may also be present.

Such limiting phrases must be crafted based on the facts establishing probable cause to search. If the facts establish that the information sought comes from a particular time period, the phrase should limit the warrant to information of that time period. If the information sought is known to have been produced by a particular individual, the phrase should limit the description to material authored by that person. If the phrase combines several such factors, it is even more effective. As in *United States* v. *Timpani*, the phrase may restrict the description to particular criminal conduct. In that case, the limiting phrase was "records relating to extortionate credit transactions (loansharking)."[39]

It is most important that the limiting phrase restrict the scope of the search so that it remains within the bounds of the probable cause set out in the affidavit. A warrant may not validly authorize the seizure of items for which probable cause to search has not been established.

In upholding the description of items in the warrant in the *Timpani* case, the court noted that "[e]ach item is plausibly related to the crime—loansharking or gam-

bling—that is specifically set out [in the affidavit]."[40] The description, even though the items to be seized were described in generic terms, did not exceed the probable cause because of the use of an appropriately narrow limiting phrase.[41]

When information sought is described with sufficient particularity, the form in which the information may be found is not of great concern. Concluding the list of described items with the phrase "the documents listed above may be found in written or electronic form" should be sufficient to permit lawful seizures of the documents regardless of the form in which they are found.[42]

EXECUTING THE SEARCH WARRANT

The protection of the fourth amendment does not end when an officer obtains a valid search warrant. The right of citizens to be free of "unreasonable searches and seizures" extends to the manner in which officers execute a search warrant.

The "reasonableness" requirement demands that officers executing search warrants:

1) Give notice of their authority and purpose, under most circumstances, prior to forcibly entering premises to execute the warrant

2) Take only reasonable action, once inside, to control the premises and prevent the destruction of evidence

3) Conduct the search within the limits set forth in the warrant, and

4) Refrain from seizing items not listed in the warrant (unless there are independent, legal grounds for the seizure).

Each of these requirements has potential impact on computer searches.

The "Knock and Announce" Requirement

To protect safety, and because of a judicial preference for peacable entries based on submission to lawful authority, officers are generally required to knock and announce their identity and purpose before forcibly entering premises to perform a search.[43] This requirement is subject to certain exceptions that allow entry without notice under certain circumstances, including

> ***"Consulting with an expert increases the likelihood of listing thoroughly the items of evidence...."***

when officers have information that an announcement would likely result in the destruction of evidence.[44] The ease and rapidity of destruction of the evidence sought is a factor courts will consider in determining whether a "no-knock" entry was reasonable.[45]

Due to the manner in which it is processed and stored, computerized information is easily and quickly destroyed. Information in the computer's active memory can be instantly destroyed by switching off the machine's power. Information stored on magnetic media (with capacities of thousands of pages) can be quickly erased by exposing the storage device to a magnet. Consequently, when officers know prior to executing a warrant that information has been stored by computer and that persons with a motive to destroy the information are likely present at the place to be searched, an unannounced entry is likely reasonable.[46]

Controlling the Premises

The U.S. Supreme Court has noted that officers executing a search warrant exercise "unquestioned command of the situation."[47] Consequently, officers executing a search warrant have the power to control access to the premises being searched and to control the movement of persons present to facilitate the search and to prevent the removal or destruction of evidence. Because of the ease of destruction of computerized information and the size and complexity of some computer facilities, it will often be reasonable to take full control quickly of the facility to be searched.[48]

Searching Within the Scope of the Warrant

Requiring a particular description of the items to be seized limits the allowable scope of a search in two ways. First, it restricts where an officer may look to only those places where the items sought might reasonably be concealed.[49] Second, it restricts the duration of the search

to the point where either all listed items have been located and seized or until all possible places of concealment have been explored.[50] Failure to comply with either of these restrictions can result in a search that violates the fourth amendment.

A sensible first step is to ensure that all searching officers know the items listed on the warrant.[51] Once on the scene, the officers should carefully restrict the search to the items listed in the warrant.

A problem that frequently arises is that of sorting the items subject to seizure from those that are innocently possessed. This problem is especially common in cases where business records are the target of the search. In all cases, the officers must limit the examination of innocent items to that necessary to determine whether the items are among those listed in the warrant.[52]

A search for documents stored in electronic form by a computer will require use of the computer's display screen to view documents or the computer's printer to print them. A sorting process should be used where each document is briefly examined to determine if it is one of those to be seized, similar to that used to search through "ink on paper" documents.

Obviously, this type of search requires certain operational knowledge regarding computer equipment. For this reason, expert assistance during the search may be essential, especially where efforts have been made to encrypt or conceal the documents.[53]

In general, the sorting process should be performed at the scene of the search to prevent unnecessarily denying the owner access to and use of innocent records. The mere fact that the sorting process is time consuming does not justify a wholesale seizure of all records present.

Nonetheless, certain characteristics of computerized record-keeping support off-site sorting. First, the storage capacity of some computerized systems is so great that review of all documents stored in the system could take a very long time. Second, unlike with paper files, the number of investigators who may assist in the search is limited by the number of computer terminals available for document display. Finally, records stored by computer can usually be quickly duplicated in their computerized form, allowing copies to be left for the owner's use.

> ***"...it is sound practice to disconnect the computer from telephone lines at the outset of the search."***

Officers who anticipate the need to seize a large quantity of computerized documents for sorting at a later time should seek approval from the magistrate when applying for the search warrant. A likely legal concern in this situation is that the innocent documents included in the seized records will be available for unrestrained viewing by investigators, resulting in a postponed "general search." A potential control on such unrestricted viewing is continued judicial supervision of the sorting process.[54]

Disconnecting the Computer from Telephone Lines

The Electronic Communications Privacy Act of 1986 provides that in order to intercept an electronic communication (which includes transmission of words or characters from computer to computer) during its transmission, without the consent of one of the parties to that communication, an officer must obtain an extraordinary court order, similar to that required to lawfully wiretap.[55] Because the computer that is the subject of a search warrant may be connected electronically to others, forbidden interception of electronic communications might result during execution of the warrant. To avoid this, and to ensure that commands to destroy evidence are not transmitted to the computer from a remote location, it is sound practice to disconnect the computer from telephone lines at the outset of the search.

CONCLUSION

Addressing the situations faced by the two officers described at the beginning of this article, the first officer needs to establish factually in his affidavit the probable existence of financial records that are evidence of crime, and to describe particularly those records in the search warrant. The fact that the records may be computerized some-

what complicates the execution of the warrant, and the officer may need to seek expert guidance in order to locate and seize the records in question successfully.

The second officer needs to consider whether the Privacy Protection Act of 1980 permits the use of a search warrant in his case when he is seeking authority to search for items he reasonably believes are, in part, materials prepared for public dissemination that are in the possession of an innocent third party. If the officer determines that a search warrant is appropriate under the circumstances, the officer must then contend with the challenge of communicating to the magistrate how a novel criminal offense has been committed by means of a computer.

As officers approach such challenges, they should carefully adhere to established fourth amendment principles. These principles, coupled with the use of expert assistance where needed, enhance the likelihood of obtaining computerized evidence that is judicially admissible. ✦

Endnotes

[1] Privacy Protection Act of 1980, 42 U.S.C. 2000aa, *et seq.*

[2] 42 U.S.C. 2000aa.

[3] 42 U.S.C. 2000aa-6(e).

[4] 42 U.S.C. 2000aa-6. The statute also provides for award of costs and attorneys fees to a prevailing plaintiff. For a detailed discussion of the act, see Rissler, "The Privacy Protection Act of 1980," *FBI Law Enforcement Bulletin*, February 1981.

[5] Federal law enforcement officers should be aware that the Attorney General, as directed by 42 U.S.C. 2000aa-11, has issued guidelines to assure compliance with the Privacy Protection Act of 1980, which Federal officers must follow to avoid being the subject of disciplinary proceedings. These guidelines are found at 28 CFR Part 59.

[6] 42 U.S.C. 2000aa(a)(1), 2000aa(b)(1).

[7] U.S. Const. amend. IV.

[8] *See Katz* v. *United States*, 389 U.S. 347 (1967).

[9] *Id.* at 357.

[10] *See Michigan* v. *Tyler*, 436 U.S. 499 (1978).

[11] U.S. Const. amend. IV.

[12] *Zurcher* v. *Stanford Daily*, 436 U.S. 547, 556-557 n. 6 (1978), quoting Comment, 28 U. Chi. L. Rev. 664, 687 (1961).

[13] *See, e.g., United States* v. *Morris*, 928 F.2d 504, (2d Cir. 1991), *cert. denied*, 112 S.Ct. 72 (1991) (defendant introduced computer "worm" into national research computer network, shutting down university and government computer systems across the country); *United States* v. *Taylor*, 945 F.2d 1050 (8th Cir. 1991) (defendant accessed American Express computer system by phone and acquired "working" but unissued credit card numbers, which he then used to purchase thousands of dollars worth of merchandise).

[14] An example of an officer successfully obtaining a search warrant in a case where novel technology was being employed to commit the crime of fraud is found in *Ottensmeyer* v. *Chesapeake & Potomac Telephone Co.*, 756 F.2d 986 (4th Cir. 1985).

[15] *See, e.g., United States* v. *Ortiz*, 422 U.S. 891 (1975).

[16] An example of using information provided by experts in affidavits for search warrants is found in *United States* v. *Steerwell Leisure Corp., Inc*, 598 F. Supp. 171 (W.D.N.Y. 1984).

[17] *See United States* v. *Steerwell Leisure Corp., Inc.*, 598 F. Supp. 171 (W.D.N.Y. 1984).

[18] *See, e.g., United States* v. *Truglio*, 731 F.2d 1123 (4th Cir. 1984), *cert. denied*, 469 U.S. 862 (1984).

[19] 959 F.2d 1143 (1st Cir. 1992).

[20] *Id.* at 1149.

[21] *Id. at* 1145.

[22] *Id.* at 1149.

[23] *Id.*

[24] *Illinois* v. *Gates*, 462 U.S. 213, 238 (1983).

[25] *See* Fitzgerald and Eason, *Fundamentals of Data Communication* (John Wiley & Sons, 1978), pp. 42-43.

[26] *Cf. United States* v. *Harvey*, 540 F.2d 1345 (8th Cir. 1976).

[27] *United States* v. *McManus*, 719 F.2d 1395 (6th Cir. 1983).

[28] *Andresen* v. *Maryland*, 427 U.S. 463, 478 n. 9 (1976).

[29] U.S. Const. amend. IV.

[30] *See Marron* v. *United States*, 275 U.S. 192 (1927). For a thorough discussion, *see* 2 W. LaFave, *Search and Seizure*, 95-101 (1978).

[31] An analogous case is *State* v. *Van Wert*, 199 N.W.2d 514 (Minn. 1972).

[32] Equipment components will probably include a central processing unit, printers, terminals (keyboards and display screens), magnetic disk drives, optical disk drives, and magnetic tape drives. Software and manuals are also critical components of an operating computer system and should be included as items to be seized, especially if the officer anticipates operating the system for investigative or evidentiary purposes. Common storage media include magnetic hard disks, floppy disks, and magnetic tapes, as well as optical disks.

[33] *See Andresen* v. *Maryland*, 427 U.S. 463 (1976).

[34] 665 F.2d 1 (1st Cir. 1981).

[35] *Id.* at 4.

[36] *Id.*

[37] *Id.* at 5.

[38] *Id.*

[39] *Id.* at 4.

[40] *Id.* at 5.

[41] An innovative means of limiting the items described to those for which probable cause to search has been established is found in the case *In Re Search Warrant Dated July 4, 1977, Etc.*, 667 F.2d 117 (D.C. Cir. 1981), *cert. denied*, 102 S.Ct. 1971 (1982). Here, the scope of the description of items to be seized was limited to documents related to "the crimes ... which facts recited in the accompanying affidavit make

out." The court, in upholding the warrant, noted with approval the limiting phrase. As was done in this case, it is often desirable to incorporate the affidavit into the warrant by appropriate language and to attach it to the warrant.

[42] *See United States* v. *Truglio,* 731 F.2d 1123 (4th Cir. 1984), *cert. denied,* 469 U.S. 862 (1984). *See also, United States* v. *Offices Known as 50 State Distrib.,* 708 F.2d 1371 (9th cir. 1983), *cert. denied,* 79 L.Ed.2d 677 (1984).

[43] For a thorough discussion, *see* 2 W. LaFave, *Search and Seizure,* 122-140 (1978).

[44] *Id.*

[45] *Id.*

[46] *Id.* The announcement requirement is also less stringently applied where warrants are executed against business premises. *See United States* v. *Francis*, 646 F.2d 251, 258 (6th Cir. 1981), *cert. denied,* 70 L.Ed.2d 616 (1981).

[47] *Michigan* v. *Summers,* 452 U.S. 692, 703 (1981).

[48] An example of such action is found in *United States* v. *Offices Known as 50 State Distrib.*, 708 F.2d 1371 (9th Cir. 1983), *cert denied,* 79 L.Ed.2d 677 (1984).

[49] *Harris* v. *United States,* 331 U.S. 145 (1947).

[50] *Id.* In addition to suppression of evidence, civil liabilityy may result when a search continues after all items named in the warrant have been seized. *See Creamer* v. *Porter,* 754 F.2d 1311 (5th Cir. 1985).

[51] *See In Re Search Warrant dated July 4, 1977, Etc.,* 667 F.2d 117, 123 (D.C.Cir. 1981), *cert. denied,* 102 S.Ct. 1971 (1982) (noting with approval that "[i]n preparation for the search the agents attended several meetings to discuss and familiarize themselves with the areas and documents described in the search warrant and accompanying affidavit. They were instructed to confine themselves to these areas and documents in their search. During the search each agent carried with him a copy of the search warrant and its 'Description of Property' and could contact one of three persons on the scene who carried the supporting affidavit.")

[52] An officer executing a search warrant will frequently need to sort through information to determine what portion of it may be seized pursuant to the warrant. If, during the course of the process, the allowed limited perusal of information is sufficient to cause the officer to conclude that the information is probable evidence of a crime, the officer may lawfully seize the document without obtaining a second warrant under the "plain view" exception provided he can later demonstrate that he was searching reasonably within the limits of the warrant he was executing when he encountered the evidence, and there was probable cause upon proper examination of the item that it was evidence of criminal activity. *Horton* v. *California*, 110 S.Ct. 2301 (1990).

[53] An expert accompanied officers executing the search warrant in *Ottensmeyer* v. *Chesapeake & Potomac Telephone Co.,* 756 F.2d 986 (4th Cir. 1985). Another case considering the role of an expert accompanying officers executing a search warrant is *Forro Precision, Inc.* v. *International Business Machines Corp.,* 673 F.2d 1045 (9th Cir. 1982).

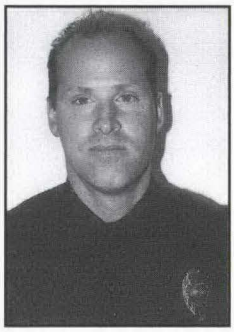
[54] *See United States* v. *Tamura,* 694 F.2d 591 (9th Cir. 1982); *DeMassa* v. *Nunez,* 747 F.2d 1283 (9th Cir. 1984) (special master appointed to supervise sorting of documents during search of attorney's office).

[55] 18 U.S.C. 2511(1).

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

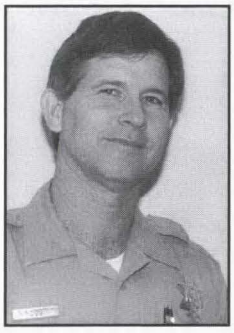
The Bulletin Notes

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



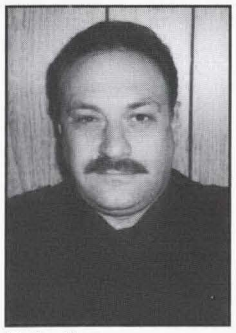
Officer Trimbur

Officer Walter Trimbur of the Lower Providence Township, Pennsylvania, Police Department responded to the report of a 17-year-old girl who had stopped breathing. As a relative carried the girl to an awaiting ambulance, Officer Trimbur observed that the victim showed no signs of life and immediately initiated CPR. Within minutes, the victim's pulse returned, and she began to take shallow breaths. The girl was later taken to a medical facility and treated for respiratory arrest resulting from a severe asthma attack.



Sergeant Courtney

During an early morning traffic stop, a deputy with the San Diego County, California, Sheriff's Department sustained multiple gunshot wounds. After returning fire, the badly injured deputy broadcast descriptive information concerning the fleeing suspect's vehicle. Upon receiving the dispatch, Sergeant Al Courtney of the same department immediately responded to the scene. There, Sergeant Courtney quickly determined the nature of the deputy's injuries and took action to control the bleeding. The wounded deputy was eventually flown to an area medical center, where an attending physician stated that Sergeant Courtney's decisive actions greatly contributed to the survival of his fellow officer.



Detective Sergeant Bivona

Detective Evan

Det. Sgt. Sal Bivona and Det. Mark Evan of the Linden, New Jersey, Police Department joined the pursuit of several armed subjects who had just assaulted the staff of a jewelry store and shot a responding officer. After the subjects abandoned their vehicle following a car chase, Sergeant Bivona and Detective Evan located one of the assailants aiming a gun at a bystander in a residential area. To avoid placing the civilian in danger of being shot during a gun battle and to distract the offender's attention, both stepped out of cover and ordered the subject to drop his weapon. After a tense standoff, the assailant eventually surrendered.

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Patch Call

The Highland Beach, Florida, Police Department patch depicts a scenic panarama similar to the town's own seaside setting.