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Fraud**



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Director

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FBI Law Enforcement

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Plastic Payments

Trends In Credit Card Fraud

By KEITH SLOTTER, CPA



“The future, my boy, is in plastics.” When Dustin Hoffman’s neighbor uttered this line in *The Graduate*, little did he know how prescient the statement would be, at least as it applies to the credit card industry. Although, the character was not referring to credit cards back when the film was released in 1967, no one can deny that the credit card market has been booming during the past 30 years.

Industries that expand at such a rapid rate often are vulnerable to fraud schemes devised by those seeking to capitalize on new-found criminal opportunities, dated security measures, and outdated laws. The credit card sector is no exception.

Approximately 124 million of the 193 million adults in the United States owned at least one credit card in 1994.¹ Experts expect this gap to narrow over the next 6 years at a rate of about 2.8 million new

cardholders per year, as credit card companies inundate prospective customers nationwide with more than 2.7 billion mailings and pitches.²

The *New York Times* noted that “...the sheer pace of this growth raises the question of whether credit card lending is following in the checkered tradition of loans to third world countries and speculative real estate developers.”³ Indeed, recent statistical data indicate that credit card fraud is



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“ Law enforcement authorities continually confront new and complex schemes involving credit card frauds committed against financial institutions and bank card companies. ”

growing in proportion to industry advancements.

Around the world, bank card fraud losses to Visa and MasterCard alone have increased from \$110 million in 1980 to an estimated \$1.63 billion in 1995.⁴ The United States has suffered the bulk of these losses—approximately \$875 million for 1995 alone. This is not surprising because 71 percent of all worldwide revolving credit cards in circulation were issued in this country.⁵

Law enforcement authorities continually confront new and complex schemes involving credit card frauds committed against financial institutions and bank card companies. Perpetrators run the gamut from individuals with easy access to credit card information—such as credit agency officials, airline baggage handlers, and mail carriers, both public and private—to organized groups, usually from similar ethnic backgrounds, involved in large-scale card theft, manipulation, and counterfeiting activities.

Although current bank card fraud operations are numerous and varied, several schemes account for the majority of the industry's losses by taking advantage of dated technology, customer negligence, and laws peculiar to the industry.

CREDIT CARD FRAUD SCHEMES

Visa and MasterCard account for approximately 65 percent of all outstanding revolving credit, and most substantive fraud cases involve schemes centered on one or both of these bank cards.⁶ Law enforcement authorities repeatedly encounter certain ethnic groups—particularly Asian and Nigerian—and organizations involved in multilevel bank card fraud operations.

Notably, nearly one-fifth of all U.S. credit card losses occur in California, an amount close to the combined total for the other five identified problem areas worldwide: Florida, Texas, New York, Asia, and Great Britain.⁷ While

losses to Visa, MasterCard, and the financial institutions issuing these cards continue to mount, several basic schemes have been identified as most prevalent throughout the nation.

Mail/Credit Bureau Theft

One of the simplest ways to obtain account information or actual bank cards is through postal theft. Numerous Nigerian fraud rings operate sophisticated theft operations throughout the eastern and southern regions of the United States. Having illegally obtained legitimate bank cards or account information, the group then creates portfolios of fictitious identification, including driver's licenses, social security cards, and other materials, to support the purchasing power behind those cards. At the direction of group leaders, “runners” purchase merchandise from a variety of sources until the legitimate owners report the cards as stolen or confiscated.

These organizations also take advantage of contacts within the various credit bureaus to obtain legitimate bank card account information for counterfeiting or telephone order purchasing. The groups commonly mail stolen cards and information via overnight courier to other factions located throughout the country. For this reason, the U.S. Postal Inspection Service has implemented the Express Mail Label Profiling Program to identify packages likely to contain contraband. The profile flags suspicious packages based on mail quantity, delivery frequency, destination, label and packaging material

characteristics, etc. The profile was developed initially to identify packages containing drugs. Postal inspectors in the drug unit forward profiles to the credit card fraud unit if they believe that non-drug criminal activity is occurring.⁸ Through this program, postal inspectors can trace the illicit mail to both its source and its destination, thus identifying members of the fraud rings.

Advance Payment Schemes

Federal consumer credit regulations require credit card issuers to credit a customer's account as soon as payment is received, i.e., before the payment instrument has cleared the bank. While this regulation is intended to protect consumers, it also creates what a member of the California Bankers Association calls a "window of opportunity for fraud."⁹

The scheme is simple. Using a counterfeit or stolen credit card, the group either makes an advance payment on the card or overpays an existing balance using a bogus check. Because the account is credited upon receipt of payment, cash advances immediately can be drawn against the bank card before the payment check has cleared. Through hundreds of like payments, a criminal organization can realize profits in excess of \$1 million within a relatively short period of time.

Counterfeiting

The fastest growing type of bank card fraud, in both frequency and severity, involves the illegal counterfeiting of Visa and

MasterCards. New technology has aided criminals in producing exact replicas of existing cards and in creating fictitious cards from scratch. Illegal counterfeiting is primarily responsible for the overall upsurge in credit card fraud, particularly in California, a hotbed for Asian gang counterfeiting activity. Credit card fraud in the state jumped from \$60 million in 1991 to \$282 million in 1993, a 370-percent increase in just 3 years.¹⁰

"The fastest growing type of bank card fraud, in both frequency and severity, involves the illegal counterfeiting of Visa and MasterCards."

THE COUNTERFEITING PROCESS

To understand the complexity and nature of this fraud, it is important to review the methodology used by counterfeiters in their operations. Until recently, most counterfeit credit cards were manufactured using a silk screening process that duplicated the card logo and background onto a plain white plastic card. With improvements in technology, however, counterfeiting a credit card has become a multi-step process, often using

desktop computer systems and peripherals, including embossers, laminators, and tipping foil, to produce a more realistic looking card, complete with a hologram and fully encoded magnetic strip. Most of the supplies used to manufacture counterfeit bank cards, including the white plastic cards and Visa/MasterCard holograms (the Visa dove and the MasterCard interlocking globes), are smuggled into the United States from the Far East.

The magnetic strips and holograms used to counterfeit bank cards represent a distinct sub-market within the criminal community. Currently, there are 87 firms worldwide legally approved to manufacture cards with holograms for members of Visa and MasterCard, and only two companies, De La Rue (Great Britain) and American Bank Note Holographics (New York) authorized to manufacture actual card holograms.¹¹

Credit card companies started using holograms in 1981 as a safeguard against fraud; since then, however, large-scale hologram counterfeiting operations have developed in Taiwan, Hong Kong, and China. A separate market emerged for holograms, which usually sell for between \$5 and \$15, depending on their quality.

Smugglers bring holograms into the United States and Canada regularly. During April, 1994, the Canadian Combined Forces Special Enforcement Unit and Combined Forces Asian Investigation Unit arrested members of a Chinese syndicate that produced approximately 300,000 counterfeit holograms, of

which 250,000 already had been distributed. Based on the quantity delivered and using an estimated loss of \$3,000 per card, Visa and MasterCard anticipated losses approaching \$750 million caused by this group alone.¹²

Often, the key to quickly identifying a counterfeit card lies in an examination of the hologram. On legitimate cards, the hologram is actually embedded in the plastic upon manufacture; counterfeit credit cards commonly contain a hologram decal purchased from an illegal distributor. These holograms are affixed to the top of the card, rather than embedded in the card, and can be seen or felt to rise slightly above the card face.

Counterfeiters sell magnetic strips for credit cards piecemeal. The strips contain names, account numbers, credit limits, and other identifying information for legitimate or contrived Visa/MasterCard card holders. Using a computer system, source materials, and peripheral equipment, a counterfeiter can compile a fraudulent bank card with relative ease.

TECHNOLOGICAL DETERRENTS

To combat the problem of fraud, credit card manufacturers plan to employ a series of security features, most of which are designed to enhance customer identification and authorization requirements. Due to the shortcomings of holograms as a fraud deterrent, credit card manufacturers currently are modifying magnetic strip coding to include a number of additional personal identifiers, such as

customer photographs, fingerprints, and personal histories.

Photographs on the face of credit cards have been used by financial institutions for the past 25 years, but their value as a true fraud deterrent has been questioned because such photos can be altered easily. Eastman Kodak, Xerox, Gemplus and other companies have

“Often, the key to quickly identifying a counterfeit card lies in an examination of the hologram.”

developed systems to digitally encode a customer's photo within the magnetic strip, enabling verification through specialized processing terminals at the point of sale.¹³

The next generation of credit card technology involves the so-called Smart Cards, which will feature computer chip technology in lieu of holograms. Specifically, each card will contain a microprocessor memory chip, as well as data encoded on the magnetic strip. In addition to providing extra security benefits, the chip will allow customers to authorize off-line transactions, store prepaid values, and conduct secure transactions from remote locations. The chip will store more personal information about the cardholder than that currently available through the

magnetic strip and will require the customer to verify the personal identification number (PIN) encoded on the microchip.

Although advancements in security technology are encouraging, Smart Cards are unlikely to become commonplace until after the year 2000. Neither Visa nor MasterCard have yet been able to justify the estimated \$7.4 billion required over the next 5 years alone to establish the necessary infrastructure to issue and accept such cards worldwide.¹⁴ As a result, bank card fraud will remain an omnipresent concern for white-collar fraud investigators well into the next century.

LAW ENFORCEMENT EFFORTS

Undercover operations and cooperative efforts among various federal, state, and local investigative agencies have generated positive results in the fight against credit card fraud. Investigators have succeeded in dismantling several high-profile rings involving airline baggage handlers, postal service employees, and other organized criminal groups.

In one case, Joseph Nuzzo, a former crew chief at Logan Airport in Boston, Massachusetts, led a credit card mail theft ring consisting of 10 airline baggage handlers and 25 other subjects who routinely invaded passenger luggage in search of bank cards and identification that could be easily counterfeited. This group made more than \$1 million in fraudulent credit card charges, cash advances, and casino advances prior to their arrests by U.S. Postal Service Inspectors.¹⁵

In Seattle, Washington, Julius Camarillo Campo, several associates, and at least three postal employees stole credit cards from the U.S. mail and conducted fraudulent transactions in excess of \$2.5 million. This successful investigation led to a 3-year prison sentence for Campo and the termination and prosecution of the postal employees involved.¹⁶

With the rise in west coast Asian counterfeiting activities over the past several years, authorities in California increasingly have concentrated their efforts on gathering intelligence and investigating gang credit card fraud activities. On March 16, 1994, law enforcement officers from the Bureau of Investigation of the California Department of Justice; the Antioch, Oakland, and San Francisco Police Departments; the U.S. Customs Service; the U.S. Secret Service; and the Drug Enforcement Administration raided several residences in Antioch and Oakland and uncovered a counterfeit credit card ring operated by members of the Chinese gang Wo Hop To. Officers arrested numerous gang members and confiscated counterfeiting equipment and fraudulently obtained merchandise.

As important as these arrests were, the intelligence information gathered from the raids has proven even more valuable, providing insight into the general structure of Asian organizational counterfeiting operations. This framework has been supported by other investigations throughout the state and is outlined as follows:

- One member imported all credit card counterfeiting

materials—including plastic, holograms, and magnetic strips—from sources in Hong Kong;

- Another member transported cash to Hong Kong in exchange for counterfeiting paraphernalia;

- Two members handled the actual counterfeiting operation, using computers, laminators, and tipping foil to create and encode credit cards with account information obtained from local trash bins. They also re-embossed and re-coded

Visa Card Security Features

All VISA account numbers begin with a 4. The characters and numbers embossed on the card should be clear and uniform in size and spacing.

A four-digit number printed on the card (above or below the account number) should match the first four digits of the account number.

The Valid Date lists the last date on which the card is valid. Some cards may have an Effective Date as well.

The "Flying V" is embossed on the same line as the valid dates.

The account number embossed on the card must match the account number printed on the sales draft. The last grouping of embossed digits should extend into the hologram.

A hologram showing the Visa Dove should appear to move when the card is tilted. A genuine hologram is a photographic image that appears to be three-dimensional when rotated. Most counterfeit cards contain a one-dimensional printed image on a foil sticker.

Tamper-evident signature panel with "VISA" printed at an angle in blue and gold or blue only.

Tiny characters called Micro Printing form a border around the Visa logo which appears above or below the hologram. Visible by using a magnifying loupe, it is made up of the first four digits of the account number and other characters.

The signature on the back of the card must match the signature on the sales draft. All Visa cards must be signed before they are valid.

If you are suspicious the card may not be legitimate, call the VISA Law Enforcement Phone Line at 1-800-FOR-VISA.

MasterCard Card Security Features

All MasterCard account numbers begin with a 5. The characters and numbers embossed on the card should be clear and uniform in size and spacing.

A four-digit number may be pre-printed on the card. It must match the first four digits of the account number.

The Valid Date lists the last date on which the card is valid. Some cards may have an Effective Date as well.

The MasterCard security character is embossed on the same line as the valid dates.

The account number embossed on the face of the card should be exactly the same as the 16-digit account number printed on the signature panel and encoded on the magnetic stripe (the number displayed on your terminal and/or printed on the sales draft).

There is an ultraviolet M and C on the face of the card visible when placed under a black light.

A hologram with interlocking globes showing the continents should appear three dimensional and move when the card is tilted. The word MasterCard will appear in the background of the hologram. The letters "MC" are microengraved around the two rings.

The 16-digit account number is indented printed in reverse facials on the signature panel and is followed by a 3-digit card validation code (CVC2).

The word "MasterCard" is printed in multi-colors at a 45° angle on a tamper-evident signature panel.

The signature on the signature panel should reasonably compare with the signature on the sales draft.

If you are suspicious the card may not be legitimate, call the MasterCard Law Enforcement Phone Line at 1-800-231-1750.

valid information onto older stolen cards;

- Two members created counterfeit parallel forms of identification to use in conjunction with the bogus credit cards;
- One member tested each card by making small purchases at local grocery stores, gas stations, and restaurants;
- A host of low-level members, or runners, were recruited to make purchases and withdraw cash against the cards, as directed by the gang's leaders. The runners traveled with the cards throughout the western United States, purchasing fine jewelry, leather goods, and electronics equipment before returning to their home base in California.¹⁷

In one of the largest joint credit card fraud investigations, authorities from the FBI, U.S. Secret Service, and local police departments in Orange County, California, combined resources for "Operation Repayment." This case targeted ringleader Minh C. To, also known as "Big Ming," and 41 others involved in massive credit card fraud operations.

In his scheme, To recruited legitimate cardholders to overpay their credit card accounts using counterfeit checks. Upon receipt by the bank, the customer's account was immediately credited and To and the recruit would make purchases throughout southern California. In turn, To would fence the ill-gotten merchandise and split the profits with the recruit. The scheme ended with To instructing the

cardholder to file for credit protection under federal bankruptcy law to avoid future bank liability. One participant in the scam personally made \$615,000 in fraudulent purchases over a 1-year period. In all, parties to this organization caused in excess of \$100 million in Visa and MasterCard fraud losses through more than 100 financial institutions.¹⁸

“ Undercover operations...have generated positive results in the fight against credit card fraud. ”

THE FUTURE OF BANK CARDS

Within the next several years, the term "credit card," as we know it, will become antiquated, likely to be superseded by such terms as "banking card," "electronic payment card," or "check card." The industry foresees a time when bank customers will be able to use a single card to accommodate a variety of transactions, including automatic teller machine (ATM) withdrawals, credit purchases, direct bill payments, and purchases against predetermined stored value levels.

Several companies are currently working with Visa and

MasterCard on these services, and prototypes of stored value and debit/credit combination cards are being test marketed and issued throughout the country. The goal is to create a single card through which customers can administer all their financial needs, from paying bills via electronic transfer of funds to buying and trading securities over the New York Stock Exchange. During 1995, Visa added 9.3 million debit/credit Check Cards to its portfolio, while MasterCard added 2.5 million of its counterpart MasterMoney Cards.¹⁹

In addition to these services, financial institutions have begun to establish automatic loan machines (ALMs), which can be accessed by customers or potential customers using their bank cards. These machines offer individuals the opportunity to obtain various types of financial loans without having to meet personally with a bank representative. Although the system is still in its infancy, bank officials envision ALMs becoming as commonplace as current ATMs in this country.

CONCLUSION

If the past is any indication, these fast-paced advances in technology likely will create previously unseen fraudulent opportunities for criminals and criminal organizations, as well as new challenges for law enforcement. Despite some anticipated advances in security through the use of Smart Cards and improved encoding, it remains unlikely that security concerns will keep pace with marketing and customer convenience technologies

across the broad market. By the year 2000, gross bank card volume is expected to total \$9.9 trillion. Based on current fraud ratios, cumulative credit card fraud losses between 1993 and 2000 will exceed \$14 billion, almost three times the accumulated loss of the previous 7 years.²⁰

As bank card companies continue to develop their own internal anti-fraud strategies, law enforcement agencies must prepare for the challenges of investigating complex fraud schemes. Spiraling industry growth need not lead to spiraling crime rates. ♦

Endnotes

¹ "Credit Cards in the U.S. - Year 2000," *The Nilson Report*, No. 587, January 1995, 6.

² Saul Hansell, "A Shaky House of Plastic With No Quick Fix in Sight," *The New York Times*, December 28, 1995, D1.

³ Ibid.

⁴ "Future of Bank Cards - Part I (Fraud)," *The Nilson Report*, No. 568, March, 1994, 6.

⁵ Sharon Walsh, "Cracking Down on Fraud With Credit Cards," *The Washington Post*, December 5, 1995, C1.

⁶ Supra note 4.

⁷ "Counterfeiting in California," *The Nilson Report*, No. 601, August 1995, 9.

⁸ *Credit Card Mail Theft Newsletter*, U.S. Postal Inspection Service, Office of Criminal Investigations, Vol. IV, No. 1, November 1995, 3; see also Mark T. Langan and Gerald Vajgert, "Profiling Postal Packages," *FBI Law Enforcement Bulletin*, February/March 1996, 17-21.

⁹ Supra note 5.

¹⁰ "Asian Gangs Involved in Credit Card Fraud," *Intelligence Operations Bulletin*, prepared by the Office of the Attorney General, California Department of Justice, Vol. 47, December 1994.

¹¹ "Card Manufacturers Worldwide," *The Nilson Report*, No. 606, October 1995, 1.

¹² "Counterfeit Hologram Manufacturing in the People's Republic of China," *A/P Regional Security & Risk Management*, prepared by Mastercard International, Inc., November 1, 1994.

¹³ New York state driver's licenses currently use this same technology, which is under consideration in a number of other states, as well. In this way, police officers will be able to reproduce digital photos on computer screens installed within their patrol cars. See, "Digital Photo/Encryption Systems," *The Nilson Report*, No. 596, May 1995, 6.

¹⁴ "Smart Bank Cards," *The Nilson Report*, No. 586, December 1994, 1.

¹⁵ Supra note 8.

¹⁶ Ibid.

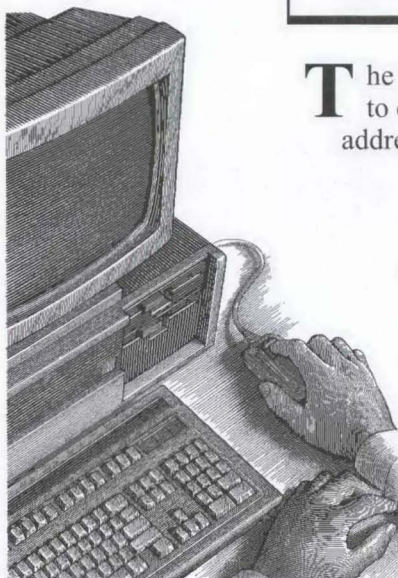
¹⁷ Supra note 10.

¹⁸ Supra note 5.

¹⁹ "Debit Card Results," *The Nilson Report*, No. 609, December 1995, 9.

²⁰ Supra note 4.

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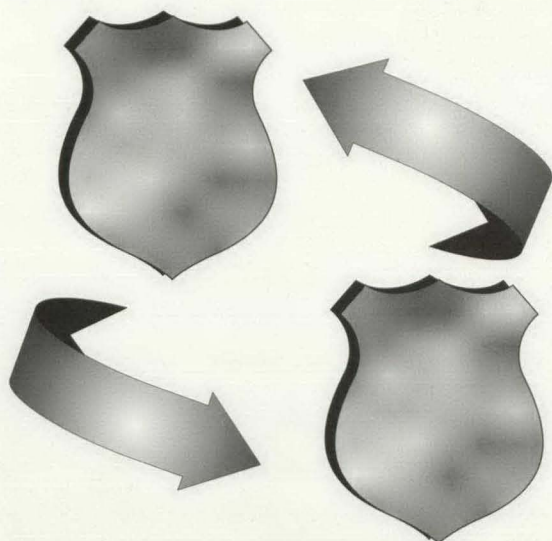
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Police Practice

Cross-Training A Step Toward the Future

By George R. Bandics



“Chief, I need more help with this investigation.”

“Sergeant, we have no other experienced investigators to help you. Do the best you can.”

How many times have similar conversations taken place in police agencies throughout the country? Many departments need additional experienced investigators to assist in major criminal cases. When administrators analyze departmental resources, however, they often find a host of specialized investigative units and few officers who have been trained or who want to handle other types of cases. While it is beneficial to have well-schooled investigators in specialized units, such specialization limits the department's ability to address changing needs.

Law enforcement agencies, like other governmental entities, are beset with budget cuts and personnel reductions, which reach far into the ranks. In the past, administrators could assign uniformed officers to investigations when needed. Now, however, limited resources and public pressure for an increased police presence on the street make this practice difficult.

Police administrators face the task of making their departments flexible while maintaining economic efficiency. They must be able to assign experienced investigators to a variety of cases confidently and without hesitation. They must ensure that all investigators show a basic knowledge of investigative strategy and technique and then channel this expertise into as many fields as possible. Administrators must give investigators the opportunity to study a variety of disciplines while maintaining their own identities and expertise.

By cross training investigators, agency administrators can obtain the desired flexibility and efficiency. In addition, because cross-trained employees likely will vie for future supervisory and administrative positions within the department, the agency will benefit from having thoroughly trained candidates with a wide range of experience.

The Middlesex County Prosecutor's Office Detective Bureau in New Brunswick, New Jersey, has developed such a cross-training program. The bureau contains three types of units: those that are primarily investigative but also help the legal staff prepare cases and take them to trial; those that primarily support the legal staff but also conduct a limited amount of investigative work; and those that primarily provide administrative support to the entire prosecutor's office. Overall, there are approximately 90 sworn employees, mostly investigators and their supervisors, complemented by a small number of prosecutor's agents who perform a quasi-investigative function but have no police powers. Approximately 50 of the sworn employees, none of whom are prosecutor's agents, work in the six investigative units selected for cross-training. The units include the narcotics task force, and the sex crimes/child abuse, fugitive, special investigations, homicide, and arson/environmental crime units.

THE PROCESS

Selection

First, the bureau established criteria for participation. Investigators must have 3 to 15 years of service with the agency. This minimum time on the job ensures that program participants possess a base level of experience and investigative skills on which to build.

To select appropriate personnel to participate in the program, each unit supervisor submits the names of two candidates to the chief and deputy chief, who choose one candidate per unit for cross-training. The exchange of personnel must be equitable, i.e., an investigator for an investigator and a supervisor for a supervisor.

The program lasts for 9 months, whereupon participants return to their regular assignments. Investigators selected for training receive ample time to complete any pending case work before and after the cross-training period.

When making their recommendations, unit supervisors must consider the needs of the unit and the agency. Sometimes supervisors resist giving up an investigator for cross-training, claiming that the person is too valuable or has too great a caseload. The chief then must balance these legitimate concerns against the agency's need to develop the flexibility to respond to ever-changing investigative demands.

Instruction

The unit supervisor personally provides participants at least 3 hours of instruction per week. (Supervisors who participate receive instruction from the next higher ranking officer.) For the remainder of the time, they work cases with an experienced counterpart who shows them the intricacies of the unit's specialized investigations. The investigators also take in-service courses at the county's police academy and, when offerings and scheduling permit, outside training courses to master the substantive elements of the unit's work. The chief's office receives monthly reports on the type and content of training provided to the investigators.

Evaluation

Evaluation provides a key element of the cross-training program. Unit supervisors periodically evaluate the investigators' progress and document

their performance upon completion of the program. The evaluations address the participants' cooperation, initiative, perseverance, and thoroughness, in addition to any other skills the training supervisor deems pertinent. Copies of the evaluations are provided to the chief, the deputy chief, the participants' regular supervisors, and the participants, as well.

Likewise, all of the investigators evaluate the training they receive. They assess the training provided in-house, any courses taken outside the agency, and the organizational and personal value of the cross-training assignment.

**“
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”**

RESULTS

The initial concept called for six officers to receive 6 months of training in a different discipline and to be able to participate actively in that type of investigation. Four phases of the program would train a total of 24 officers in areas that were new to them.

Upon completion of the first two phases, an unanticipated benefit of the cross-training

program developed. An observable change in the working atmosphere of the department occurred. It became more cohesive, with less competition among units. Individuals who had been trained, as well as personnel assigned to the units in which they trained, expressed a greater regard for one another and their respective areas of expertise. Barriers between units fell, and investigators began to share information and investigative techniques.

Another benefit of this increased cooperation has been a new approach to the most difficult unsolved cases. The original investigator presents the facts of the case to a group of 8 to 10 investigators from various units. The group then brainstorms possible leads and new ways to approach the investigation and suggests techniques for solving the case.

The evaluations submitted by the investigators and supervisors who participated in the first two phases supported the cross-training program. Ninety-five percent of the supervisors responded that they

would feel confident in calling upon the investigators who were trained in their units if the need arose. Likewise, most of the participants (84 percent) rated their knowledge of the field in which they had trained as "very good to excellent," and the remaining 16 percent rated their knowledge as "fair to good."

The bureau made some adjustments to the last two phases of the program because both supervisors and participants recommended lengthening each phase of training. The main reason for this was the adverse effect of training during the summer months. In the summertime, fewer formal training classes were available, thus limiting the participants' opportunities to learn their new disciplines. Supervisors generally discouraged participants from requesting vacations even though they did not similarly discourage employees working with the trainees. In addition, supervisors were being left short-handed because unit staffing was depleted further by vacations of other people in the unit. To minimize the effects of many of these problems, the bureau extended the training period to 9 months and scheduled it for September through May.

CONCLUSION

Cross-training addresses many of the problems that arise as agencies become increasingly fragmented into specialized investigative units. Individual investigators can retain and continue to develop their specialties, while acquiring additional skills valuable to the agency. In the short term, the agency gains the flexibility it needs to address changing investigative priorities. In the long term, a cadre of well-rounded investigators will be ready to assume leadership of the agency in the future. From now on, when one of the unit supervisors in the Middlesex County Prosecutor's Office Detective Bureau says, "Chief, I need more experienced people to help with this investigation," the positive response will be, "Let's see who has been cross-trained in your area." ♦

Deputy Chief Bandics serves with the Middlesex County Prosecutor's Office in New Brunswick, New Jersey, and is a graduate of the 111th FBI National Academy.

Wanted: Photographs



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

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

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Attention-Deficit/ Hyperactivity Disorder

Implications for the Criminal Justice System

By SAM GOLDSTEIN, PH.D.



Interaction between the mental health and criminal justice professions traditionally occurs over issues such as a defendant's claim of temporary insanity or overt mental disorders exhibited by criminal offenders. Recently, however, professionals in these two fields have begun to explore a broader range of behavioral disorders that could bring individuals into contact with the criminal justice system.

This article focuses on one set of temperamental qualities that occur in a small but significant group of people. The mental health community refers to these qualities

under the diagnostic description Attention-Deficit/Hyperactivity Disorder (ADHD).¹ Because individuals with ADHD come into contact with the criminal justice system at a statistically higher rate than others in the general population,² criminal justice officials, including police administrators, should be aware of the implications ADHD has for the profession.

UNDERSTANDING ADHD

Problems characterized as attention disorders and hyperactivity have long constituted the most chronic childhood behavioral disorders and the largest sources of

referral to child mental health centers.³ Moreover, the diagnosis of ADHD among children and adolescents is increasing consistently. In 1993, nearly 2 million children and adolescents were diagnosed or being treated for ADHD.⁴ It appears that this number will continue to rise in the years to come.

Behavior

Symptoms of ADHD largely stem from impulsive, non-thinking behavior. ADHD reflects an exaggeration of normal behavior—either too much or too little of what should be expected in a given environment.



Dr. Goldstein is a clinical instructor at the University of Utah School of Medicine in Salt Lake City.

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Often, individuals with ADHD know what to do, but in the heat of the moment their sense of immediate need overwhelms their limited capacity for self-control. They act. Thus, their behavior might be inconsistent and unpredictable. If prone to violent behavior, their actions may be difficult to anticipate from moment to moment.

Three additional behavioral qualities of individuals with ADHD merit consideration. First, these individuals do not respond well to repetitive, effortful, uninteresting activities that others choose for them. It is not so much that they cannot pay attention but that they do not pay attention as well as others under demanding circumstances.

Second, in addition to a low threshold for emotional arousal, many individuals diagnosed with ADHD exhibit very strong emotional reactions. Thus, little things often provoke a disproportionately dramatic response. As adults, these individuals may be labeled as stress-intolerant.⁵ Many are described simply as short-tempered.

Third, individuals with ADHD appear to require more immediate, frequent, predictable, and meaningful rewards than others. Thus, the payoffs sufficient for others to function in normal society often do not provide enough reinforcement for these individuals. They may seek excitement and stimulation, even at the expense of injuring themselves or violating the rights of others.

Ratios

The male to female ratio for ADHD is approximately 6 to 1. Nearly 80 percent of children and adolescents with ADHD experience problems related to the areas of impulsivity, hyperactivity, inattention, and rewards. Members of this hyperactive-impulsive group face the greatest risk for coming into contact with the criminal justice system as they approach adulthood.⁶

ADHD INTO ADOLESCENCE AND ADULTHOOD

The severity of ADHD symptoms in adolescence and adulthood apparently coincides with an

increase of problems related to aggression and conduct. Thus, the worse an individual's ADHD symptoms get, the more likely that the individual might progress to criminal behavior. Further, the rate of borderline and antisocial personality disorders appears much higher in individuals with histories of ADHD.⁷

Well-controlled prospective studies of children with ADHD find that at least 70 percent continue to meet the full diagnostic criteria for the disorder into adolescence. By young adulthood, this population has more academic problems and is more oppositional and delinquent than peer groups. Compared to other young adults, they engage in activities that result in more school suspension (14 percent vs. 2 percent), have more adversarial contacts with law enforcement agencies (19:3), and are more likely to be admitted into juvenile justice facilities (5:1).⁸

Researchers increasingly identify the development of aggressive behavior during childhood and adolescence as the connecting bond between ADHD, substance abuse, and criminal behavior.⁹ While aggression does not represent one of the diagnostic criteria for ADHD, approximately 50 percent of those with ADHD evaluated in clinics progress to a level of aggressive behavior defined by most law enforcement agencies as delinquency.¹⁰ ADHD appears to be a catalyst with primarily family variables increasing the risk that ADHD behavior will lead to delinquency and substance abuse problems.¹¹

A number of studies show that individuals with ADHD are as

much as seven times more likely than others to develop an antisocial personality or drug abuse problem in adulthood.¹² Studies also suggest that this group is likely to cause and experience more automobile accidents, and sustain more bodily injuries associated with accidents, than others. Members of this group also are more likely to receive traffic citations, particularly for speeding.¹³

One study revealed that even before receiving their operator's permits, a group of adolescents with ADHD was three times more likely to have driven a vehicle without a valid driver's license and had done so nine times more often than others of the same age. Not surprising, a significantly higher proportion of adolescents with ADHD had had their licenses suspended or revoked.¹⁴

Researchers consistently report an overlap of ADHD and addictive disorders beginning in adolescence and continuing into early adulthood affecting at least 10 to 20 percent of the adult population with ADHD. Males appear to predominate. Problems with antisocial behavior in this subpopulation are the norm rather than the exception.¹⁵ In addition, research suggests that one-third of adults with ADHD abuse alcohol, with one-fifth having a history of drug abuse.

Studies have found that nearly 40 percent of all cocaine and opiate abusers meet the diagnostic criteria for ADHD.¹⁶ In comparison to other opiate and cocaine abusers, those with a history of ADHD generally began their abuse at an earlier age, exhibited more severe abusing habits, and showed higher

rates of criminal and antisocial behavior.

Some studies have explored the relationship between childhood ADHD and later adult substance abuse and criminal behavior. One study, published in 1989, followed 103 males in New York State who had been diagnosed with ADHD at ages ranging from 6 to 12. When this group reached 16 to 23 years, the team conducted followup interviews with the subjects and their

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No data exists to suggest that symptoms of ADHD in and of themselves require any specific types of interview or interrogation techniques.
”**

parents. The researchers then compared the subjects' arrest records with a control group of 100 individuals in the same age range. The researchers found that significantly higher percentages of individuals with ADHD had been arrested (39 percent vs. 20 percent), convicted of a crime (28:11), and incarcerated (9:1).¹⁷

However, the research showed that ADHD in adulthood *by itself* was not a significant factor contributing to delinquent behavior. These findings and others indicate that childhood ADHD represents a risk factor for later criminality but that this relationship is almost

exclusively mediated by the onset of serious aggression during adolescence leading to development of an anti-social personality disorder in early adulthood.¹⁸

INTERACTION WITH THE CRIMINAL JUSTICE SYSTEM

Although studies indicate that adolescents and adults with ADHD interact with the criminal justice system more frequently than do members of the general population, research has yet to produce a comprehensive assessment that could be used by law enforcement personnel as a guideline for dealing with these subjects. The majority of data now available concerning adolescents and adults with ADHD may be more applicable to corrections and court officials than to law enforcement personnel.

However, a number of issues have emerged related to ADHD of which law enforcement personnel should be aware. As research in this area continues, law enforcement and the criminal justice community may benefit considerably from an expanded understanding of this disorder.

Identification and Interrogation

Criminal offenders often act irrationally. How can law enforcement officers distinguish between individuals who merely act in a rash manner and individuals who suffer from ADHD? Further, is it important that they do so?

It never hurts for officers to understand as much as possible about the people with whom they come into contact. No data exists to suggest that symptoms of ADHD in and of themselves require any specific

types of interview or interrogation techniques. However, impulsive qualities often compel affected individuals to lie, speak their minds, or say anything necessary to get themselves off the hook.

Although there is no simple way to determine if an individual suffers from ADHD, investigators interested in exploring whether the disorder may have contributed in part to an individual's criminal behavior may wish to consider the following questions as part of their interrogation:

- Do you have difficulty paying attention during conversations, classes, at work, etc., and find that your mind drifts off easily?
- Do you feel excessively stressed or overwhelmed?
- Do you become sidetracked easily, leave tasks unfinished, or disrupt tasks in progress to switch to other matters?
- Do you become frustrated easily?
- Do you procrastinate?
- Do you forget to complete things that you intended to do?
- Is your work inconsistent and your performance erratic?
- Do you have sudden outbursts of intense anger?
- Do you easily misunderstand directions?

Affirmative responses to these questions strongly suggest that an individual manifests underlying symptoms consistent with ADHD. Law enforcement personnel or prosecutors should gather evidence

and refer it to a qualified mental health professional for a diagnosis.

However, criminal justice officials should understand that problems with impulsivity generally play a more significant role in connection to minor status offenses. ADHD symptoms offer much less



insight into understanding the behavior of criminals manifesting more serious violent and anti-social behavior. Investigators who believe that an individual suffers from ADHD should suggest a pre-trial psychiatric or psychological assessment for the subject.

ADHD as a Defense

In recent years, a growing number of defense attorneys have consulted mental health professionals to determine whether a history of ADHD might offer a justifiable defense for offenses ranging from minor status or parole violations to more serious, even violent, crimes. Thus far, the courts have not been particularly receptive to this defense.

ADHD does not excuse criminal conduct or render a person incompetent to stand trial. The courts have found that individuals with more serious psychiatric disorders, such as psychoses, may still be held responsible for their conduct and found guilty of alleged crimes.

However, defense attorneys increasingly may rely on claims of ADHD to reduce the severity of an offense and subsequent court penalty. A crime requiring proof of intent, for instance, might be reduced to one involving merely reckless behavior if ADHD can be demonstrated as the mitigating factor. In such situations, defense attorneys may attempt to document how the disorder impacted the accused in the particular circumstances surrounding the offense.

To date, research has yielded very limited hard data on the relationship between ADHD and criminality. For this reason, and because of a lack of legal precedents in this area, prosecutors should keep courts focused on factors related to guilt and intent rather than explanations of cause.

Courtroom Accommodations

Because the Federal Government considers ADHD a disability if the disorder limits a major life activity,¹⁹ individuals appropriately diagnosed with ADHD are entitled to reasonable accommodations in the courtroom just as they are in the classroom or workplace. Courtroom accommodations might include careful repetition of important information, additional time to think in response to questions, and

nonconfrontational communication. When ADHD is coupled with a learning disorder, which occurs in approximately 30 percent of cases, the court also must accommodate the particular learning disability. For example, if an individual suffers from a reading disorder, the courts might need to present information orally.

ADHD as a Factor in Sentencing

ADHD could be a factor in lessening an imposed sentence. During a recent attorney disciplinary proceeding involving misuse of client funds, the attorney involved received a diagnosis of ADHD. The court considered the ADHD diagnosis as a mitigating factor when it sentenced the attorney.²⁰

In general, the underlying or explanative causes for an individual's behavior play a greater role in the sentencing process than during the trial phase of a criminal case. Prosecutors should recognize that ADHD, combined with other life variables, represents an increased risk factor for repeated criminal behavior. To advance the best interests of the individual and the public, courts should focus on combining appropriate treatment with punitive sanctions.

Incarceration and Rehabilitation

Although discovering a cure for ADHD remains a remote possibility, data strongly suggest that appropriate diagnosis, counseling, and treatment significantly can improve the life course of most adults manifesting this disorder. No research indicates that individuals with ADHD require special

facilities for incarceration. In fact, individuals with ADHD function best in a consistent, well-structured, predictable environment. These qualities form the basis for most penal institutions.

However, correctional facilities should ensure that inmates diagnosed with ADHD have access to appropriate medication and trained counselors. Such measures will enhance rehabilitation and daily functioning. Facility administrators also should take steps to educate correctional personnel on the topic of ADHD.

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ADDITIONAL CONSIDERATIONS

Individuals with ADHD are not criminals waiting to happen. Most will have no greater contact with the criminal justice system than individuals without the disorder. The best causal connection between ADHD and criminal behavior appears to be the development of antisocial problems in adolescence. Those with a tendency toward impulsive behavior run a greater risk

of coming into contact with the justice system than others.

Most adults with ADHD still go undiagnosed, untreated, and unaware that help is available. Their symptoms occur in varying types and severity. These symptoms may cause significant impairments in interpersonal relations, marriage, emotional well-being, employment, and daily adaptive functioning. It is likely that law enforcement personnel will encounter a significant group of individuals with childhood histories denoting ADHD who exhibit these same symptoms—combined with serious antisocial behavior—as adults. At the present time, however, insufficient information exists to guide criminal justice professionals precisely concerning any adjustments they should make in the investigation, prosecution, or incarceration of these individuals.

CONCLUSION

From a mental health perspective, the understanding of Attention-Deficit/Hyperactivity Disorder is still in its infancy. However, continued research promises to yield considerable information relevant to the criminal justice community.

Several facts already have emerged from the research. By itself, ADHD does not appear to be a significant factor contributing to criminality. But, individuals who manifest symptoms of ADHD in childhood *and develop antisocial tendencies in adolescence* have a significantly higher rate of confrontational contacts with the criminal justice system than do members of the general population. Early diagnosis and intervention

before individuals develop anti-social tendencies might be the best comprehensive, long-term approach to reducing these contacts. In the shorter term, prosecutors and the courts should consider referring offenders who exhibit ADHD symptoms to mental health professionals for diagnosis and treatment. Such positive intervention might not only ease crowded prison conditions but also might help individuals reclaim their lives and end cycles of criminality.

Law enforcement personnel should remember that crime is not a way of life for the vast majority of persons with ADHD. However, those who engage in activities that bring them into conflict with the police generally have considerable difficulty controlling their impulses. Thus, officers who believe that a subject suffers from Attention-Deficit/Hyperactivity Disorder should be prepared for highly impulsive and unpredictable responses to commands and requests for information.

In recent years, the mental health and criminal justice communities have begun to work more closely to address issues relevant to both groups. Research into ADHD and other disorders represents an area that could assist law enforcement, prosecutors, the courts, and corrections officials to better understand the dysfunctions that bring a significant number of offenders into conflict with the criminal justice system.

By better understanding these individuals' problems, criminal justice personnel can refer them to treatment programs designed to

help them control their impulses and exercise more control over their own lives. With this as a goal, continued interaction and cooperation between the mental health and criminal justice communities can benefit everyone involved. ♦

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 way of life for
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Endnotes

¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, DC: American Psychiatric Association, 1994).

² S. Mannuzza, R. Klein, P.H. Konig, and T.L. Giampino, "Hyperactive Boys Almost Grown Up: IV. Criminality and Its Relationship to Psychiatric Status," *Archives of General Psychiatry*, 46, 1989, 1073-1079.

³ P.H. Wender, "The Minimal Brain Dysfunction Syndrome," *Annual Review of Medicine*, 26, 1975, 45-62; R.A. Barkley, *Hyperactive Children: A Handbook for Diagnosis and Treatment* (New York: Guilford Press, 1981).

⁴ L. Williams, M. Lerner, and J.M. Swanson, "Prevalence of Office Visits for ADD: Gender Differences Over the Past Five Years (1990-1994)," unpublished manuscript, 1994.

⁵ P.H. Wender, F.W. Reimherr, and D.R. Wood, "Attention-Deficit Disorders in Adults," *Archives of General Psychiatry*, 38, 1981, 449-456.

⁶ S. Goldstein and M. Goldstein, "Attention-Deficit Disorder in Adults," *Directions in Clinical Psychiatry*, 15, 1995, Lesson 18.

⁷ S. Goldstein, *ADHD/ID in Adults* (New York: John Wiley and Sons, Inc., 1996).

⁸ Supra note 2.

⁹ S.O. Lilienfeld, I.D. Waldman, "The Relation Between Childhood Attention-Deficit/

Hyperactivity Disorder and Adult Anti-social Behavior Re-examined: The Problem of Heterogeneity," *Clinical Psychology Review*, 10, 1990, 699-725.

¹⁰ J. Biederman, J. Newcorn, and S. Sprich, "Comorbidity of Attention-Deficit/Hyperactivity Disorder With Conduct, Depressive, Anxiety, and Other Disorders," *American Journal of Psychiatry*, 148, 1991, 564-570.

¹¹ P.J. Frick, "Family Dysfunction and the Disruptive Behavior Disorders: A Review of Recent Empirical Findings," *Advances in Clinical Child Psychology*, 16, 1994, 203-226.

¹² S. Mannuzza, R. Klein, N. Bonagura, P. Malloy, T.L. Giampino, and K.A. Addalli, "Hyperactive Boys Almost Grown Up: IV. Replication of Psychiatric Status," *Archives of General Psychiatry*, 48, 77-83.

¹³ R.A. Barkley, D.C. Guevremont, A.D. Anastopoulos, G.J. DuPaul, and T.L. Shelton, "Driving-related Risks and Outcomes of Attention-Deficit/Hyperactivity Disorder in Adolescents and Young Adults: A 3- to 5-year Follow-up Survey," *Pediatrics*, 92, 212-218.

¹⁴ J. Biederman, K. Munir, and D. Knee, "Conduct and Oppositional Disorder in Clinically Referred Children with Attention-Deficit Disorder: A Controlled Study," *Journal of the American Academy of Child and Adolescent Psychiatry*, 26, 1987, 724-727.

¹⁵ J.A. Halikas, J. Meller, C. Morse, and M.D. Lyttle, "Predicting Substance Abuse in Juvenile Offenders: Attention-Deficit Disorders Versus Aggressivity," *Child Psychiatry and Human Development*, 21, 1990, 49-55.

¹⁶ J.A. Cocores, R.K. Davies, P.S. Mueller, and M.S. Gold, "Cocaine Abuse and Adult Attention-Deficit Disorder," *Journal of Clinical Psychiatry*, 48, 376-377.

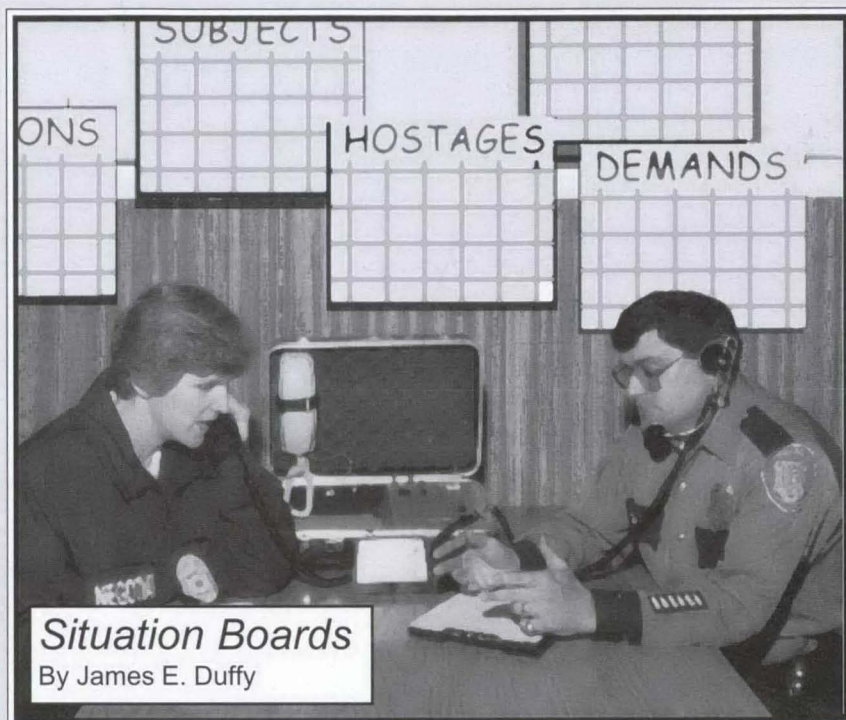
¹⁷ Supra note 2.

¹⁸ Supra note 7.

¹⁹ Because Titles II and XVI of the Social Security Act (42 USC) provide for the payment of supplemental security income to disabled persons, including those diagnosed with Attention-Deficit/Hyperactivity Disorder, defense attorneys can be expected to explore every possibility of an ADHD defense. See *Aviles v. Bowen* (715.F.Supp.509 S.D.N.Y., 1989).

²⁰ P.S. Latham and P.H. Latham, "Legal Rights of Individuals With LD and ADHD," in S. Goldstein (ed.) *Learning Disabilities and Attention-Deficit Disorder in Late Adolescence and Adulthood* (New York: Wiley Interscience Press, 1996).

Focus on Negotiations



Situation Boards

By James E. Duffy

Negotiators perform a number of duties during a crisis or a hostage situation. Primarily, they must communicate with criminals and disturbed or irrational individuals, while implementing the on-scene commander's directives by relaying them to the crisis site. They also record on paper information obtained during their discussions with the subject(s). The outcome of the crisis often depends on how successfully negotiators handle and disseminate this information.

Experienced negotiators acknowledge that collecting, recording, and collating information become, at times, monumental undertakings. They routinely describe the appearance of their work areas during a crisis as piles of notes, 3 x 5 index cards, yellow Post-it notes, and paper scraps strewn across any flat surface. Without a systematic retrieval process, they must sort through mounds of written material to locate information when they need it.

Situation boards, or incident boards, offer one solution to this ongoing problem. Situation boards are

nothing more than large sheets of paper, such as white flip-chart paper or sheets of tan butcher-block paper, often found in police department mail rooms, that are affixed to walls in close proximity to, or in sight of, the primary negotiator and the coach. These boards give both individuals immediate access to crucial information regarding the incident at hand. They also provide other crisis management team members a commanding view of information as it is processed.

While important, situation boards in no way eliminate the need for a negotiation log; rather, they serve solely as an immediate retrieval device for information. Additionally, situation boards allow team members arriving on the scene to be updated on developments without disturbing the others present.

Categorizing and Recording Information

Each situation board is dedicated to only one category of information. As negotiations proceed, a team member legibly prints the information obtained on the appropriate situation board. Printing large block letters with a black marker ensures readability from a distance.

As a result of their experience in past crisis situations, FBI negotiators have identified several topic headings that could be used for situation boards and have categorized the information as follows—subject(s), hostage(s), weapon(s), medical histories, demands, deadlines, positive police actions, delivery plan, site, third-party intermediaries, surrender plan, escape plan, things to know, things to avoid, and important telephone numbers. Yet, inasmuch as all crisis situations are different, the type and amount of information obtained dictate the number and topics of board headings.

Under *subjects*, a team member would print the subject(s)' name(s), description(s), clothing, motives,

association to hostage(s), health, criminal history, possible psychological status, and weapons. Weapons in the subjects' possession represent a vital concern for members of the crisis team. Accordingly, the type of weapon, who controls it, that person's location in the crisis site, and whether any member of the tactical team actually saw the weapon would be cross-listed on the *weapons* situation board.

The information for *hostage(s)* includes their names, descriptions, clothing, association to the hostage taker(s), medical histories, and any other information investigators can gather that might help resolve the crisis. Essentially, negotiators should know as much about the hostages as they know about the subjects, and situation boards give them these facts at a glance.

Creating a situation board for *medical histories* and medications prescribed gives the negotiation team immediate access to known medical problems, which could be used to request the release of a hostage or to attempt a medical delivery. Additionally, negotiators can use medical problems to stress the importance of releasing infirmed hostages before their conditions deteriorate to the point where they become life-threatening.

The *demands* situation board notes all of the demands made by the subject(s), the times the subject(s) made these demands, and the time and response of the on-scene commander to each demand. Along with demands come the *deadlines* for each, which a team member prints on a separate board. This board records the time and date of each deadline, the name of the subject(s) setting the deadline, and the response of the crisis management team to the deadline. Ideally, negotiators talk subjects through each deadline, and as each one passes, a team member promptly notes it on the appropriate situation board.

Critical to resolving any crisis successfully are the *positive police actions* taken. These actions

simply tell what the police have done for the hostage taker(s). Therefore, a situation board with this heading records the date and time of every food or medical delivery made by the crisis management team, as well as all telephone calls made to the subject by a team member or third-party intermediary.

Other comments also could be noted on the *positive police actions* situation board, such as "no gun fire directed toward hostage taker(s)" or "no assault by tactical team." While law enforcement personnel may not interpret such lack of activity as positive, subjects do because they constantly fear a tactical response and remain focused on this police option.

The number of situation boards used to record information regarding the delivery of items to the crisis site reflects

their importance to the crisis team. First, deliveries of food and medical supplies are considered *positive police actions*. They also are cross-listed on a situation board that records the delivery of such items as clothing or the "throw phone" the negotiator uses to communicate with the subject. Titled *delivery plan*, this situation board also outlines the plan for making deliveries. Detailing the delivery plan not only ensures coordination between negotiators and members of the tactical team but also may reveal weaknesses in the subject(s)' position.

The *delivery plan* situation board also lists the time and date of the delivery, the items delivered, and who accepted the items. Finally, while making deliveries, members of the tactical team gather intelligence on the subject, the situation, and the site. They might note, for example, that their shoes squeaked on the floor. They would record this information on a separate situation board.

Another situation board describes the crisis *site* in tactical terms. That is, members of the tactical team assign each side of the building a color, each level a letter, and every opening, a number. They would

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The outcome of the crisis often depends on how successfully negotiators handle and disseminate... information.

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designate the front of a building white; the back, black; the left, green; and the right, red. The floors would be labeled from the ground up, starting with alpha (A). Moving from left to right, each window and door would receive a number, beginning with 1. As an example, the third opening from the left on the second floor, front side of a building would be designated white-bravo-3.

If a negotiation team contemplates using *third-party intermediaries*, a situation board should be dedicated to a list of names and contact numbers for these individuals. The negotiation team then can interview the potential intermediaries and assess their value in resolving the crisis.

As soon as possible after negotiations begin, the tactical team forwards an approved surrender plan to the negotiation team in the event the subject wants to surrender. A team member then lists the mechanics on the *surrender plan* situation board. It could prove embarrassing for law enforcement and potentially disastrous for the entire operation if a subject wants to give up, and no one knows how the surrender should take place. By the time the crisis management team develops such a plan, the subject may lose the desire to surrender.

As a general rule, negotiators try to caution hostages against escaping. But if they learned that the hostages were planning to escape, the negotiators would work with the tactical team to devise an escape plan. Their primary concern rests with the safety of the hostages, who might get hurt if mistaken for fleeing subjects. The *escape plan* situation board allows the team to track the method and avenue of escape, the number of hostage(s) escaping, and a description of their clothing. As a precaution, the tactical team would treat escaped hostages as subjects until their true identities were established.

Negotiators also can use situation boards to record facts they *need to know* and specific *things to*

avoid. On the *need to know* board, a negotiator notes the questions the team needs to answer to resolve the crisis, which can range from how the subject feels about family members who want to assist to whether the subject has barricaded the crisis site.

The *things to avoid* board lists topics the negotiators should not discuss under any circumstances, for example, the subject's painful divorce or dismissal from a job. Law enforcement personnel develop these points as they conduct background investigations during the crisis. This situation board also would include actions to avoid. The subject may have demanded that negotiators remove tactical team

members from the building across the street. If the on-scene commander agrees and does so, the team would note this action on the *things to avoid* board and cross-list it on the *positive police actions* board.

Finally, a situation board for *important telephone numbers* gives negotiators immediate access to personnel and equipment suppliers. Listings include home and business, pager, and fax numbers.

Conclusion

No negotiator wants to work a crisis with only piecemeal

information. Time wasted in locating a particular fact could result in serious consequences for an entire operation. Indeed, the successful resolution of any crisis situation hinges on the ability of both negotiators and tactical team members to quickly obtain and disseminate information.

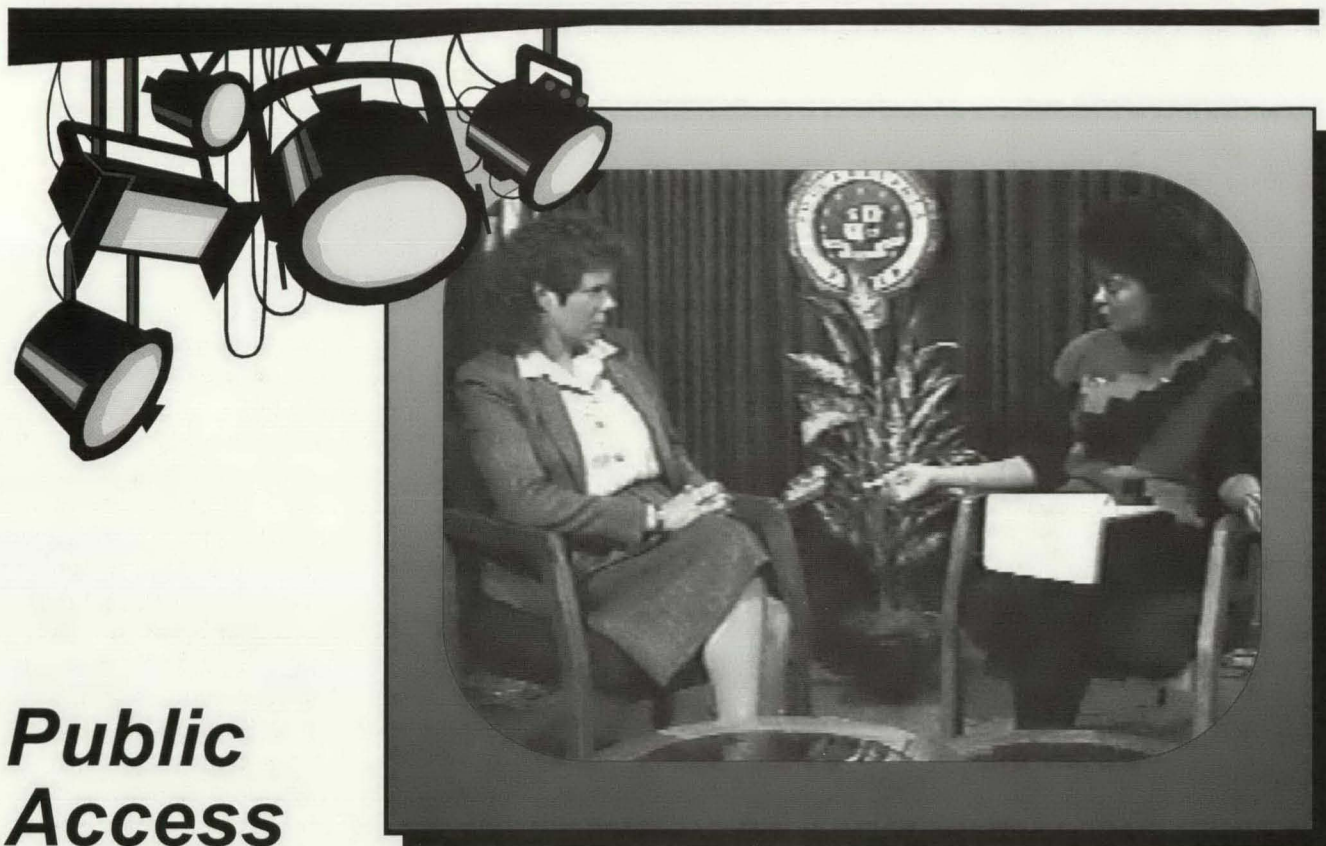
Easy to create and maintain, situation boards allow crisis team members to locate vital information almost instantaneously. They can make all the difference when lives are at stake and every second counts. ♦

Special Agent Duffy serves in the FBI's Crisis Negotiation Unit at the FBI Academy.

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Easy to create and maintain, situation boards allow crisis team members to locate vital information almost instantaneously.

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Public Access

Reaching the Community Through Cable TV

By THERESA YOUNG, M.A.

Community policing, as its name implies, involves establishing and maintaining meaningful relationships between the police and the community. And as police administrators around the country have discovered, communication is the key to any enduring and substantial relationship of this type. Progressive departments use diverse methods, from neighborhood workshops to telephone surveys to community newsletters, to communicate with citizens. These types of measures have met with varying degrees of success.

However, in their search for innovative communicative outlets, many departments have ignored an

existing, and in most cases, readily available resource that could reach out to the community with minimal effort from line officers. This resource is available free-of-charge to potential users and generally even comes with an in-house technical support staff that will help clients get the most out of their investment of time and effort. It also has the potential to reach nearly every man, woman, and child in a municipality and offers a very flexible array of formats to suit the needs of its client users.

What could possibly offer so much to law enforcement? This potentially powerful, but often untapped, resource is the public access

programming component of the cable television industry.

A POWERFUL TOOL

Since its first practical application some 25 years ago, cable television has revolutionized America's television viewing patterns. Today, it offers the ultimate in mass communication to a busy, information hungry society. Through its public access programming, cable television also offers law enforcement agencies a viable and highly effective means to further their community policing efforts on a truly community-wide basis.

The Philadelphia, Pennsylvania, Police Department has enjoyed

a 6-year relationship with the city's cable companies. During this time, the police department worked with these cable operators to develop and produce a variety of programs that promote the department's community policing efforts while providing useful police- and crime-related information to viewers. The police department has worked with the cable companies to produce programs in three different formats—a live call-in show, a talk show, and a fugitive-style show. Its experiences serve as a model for departments large and small that are considering adding public access programming to their community policing initiatives.

THE CABLE CONNECTION

Cable television is area-specific in most regions of the country. That is, the cable market is divided into geographical sections. Cable franchises bid to provide service to a particular area and then enter into a contract with the municipality to deliver that service. Depending on a variety of factors, including the size of the local television market, a city or county may have one or more franchises operating within its boundaries.

Federal Communication Commission (FCC) guidelines mandate cable franchises to dedicate a prescribed number of hours to free, local public affairs programming.¹ Local cable operators, therefore, need information-based telecasts to fill their programming slots on public access channels.

Police departments can supply exactly the kind of public affairs programming that cable companies need. In turn, cable companies can

help police departments disseminate their messages to a broad and diverse segment of the community.

To take advantage of the opportunities cable offers, police departments generally must initiate negotiations with the local cable operator. Before doing so, however, police administrators and executive-level officers should develop a firm proposal to take to the cable company. Preplanning will strengthen the police department's position when it presents the idea to the cable company. It also enables the department to take an advanced role in defining any future programming.

CONTRACT NEGOTIATIONS

Despite the obvious potential benefits of crime prevention- and police-related programming to a community, police departments still might find that they have to sell their programming ideas to cable companies. This is especially true

in mature markets where cable franchises have been operating for 15 or more years. In such areas, cable operators may have to displace established public access programs to make room for new programming. Such scenarios underscore the importance of developing a firm and comprehensive proposal to take to the cable company.

When negotiating with local cable companies, police administrators should remember what motivates cable executives. A cable company obviously is interested in any programming that could increase its subscriber base. However, through its public access efforts, the company's primary motivation is to provide programming that will enhance its relationship with the community it serves. Therefore, police negotiators should stress that as the most visible arm of municipal government, the police department can work with the cable company to

“...as the most visible arm of municipal government, the police department can work with the cable company to provide a wealth of public service programming.”



Sergeant Young serves with the Philadelphia, Pennsylvania, Police Department.

provide a wealth of public service programming.²

Police executives should come to the negotiation table prepared with general programming ideas. Examples could include providing viewers with crime prevention suggestions, child safety tips, and updates on new community crime patterns. The police department also could use cable access to publicize other information of interest to the community, such as budgetary news, hiring information, and the introduction of new police services.

Given the vast potential for public service programming from a public safety perspective, most cable companies will welcome a well-thought-out programming proposal from the police department. Once an agreement in principle is struck, the police department and the cable company can then discuss format options for the programming.

TYPES OF PROGRAMS

As stated, the Philadelphia Police Department has produced programs in three different formats.³ Each type of program places different demands on the police department, as well as the cable company's production staff, and delivers information to viewers in a decidedly different way.

The Live Call-in Show

From a production standpoint, the live call-in show is the easiest type of show to put on the air. Because these shows are broadcast live, they require no post-production work. The immediacy of live broadcast also adds a sense of

excitement and spontaneity that invariably comes through to viewers.

However, "live" does not mean unrehearsed or unprepared. Live call-in shows require considerable planning to ensure that they run smoothly and set a professional tone. Police administrators should work with the production staff to determine an appropriate running time for the program before the

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Cable access programming offers an unparalleled outlet for many law enforcement agencies to inform the public and enhance their presence in the community.

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broadcast begins. Generally, shows of this type should run 1 hour, depending on factors such as the size of the cable market. Administrators also must address other important issues, such as identifying a proper host for the program, ensuring that sufficient telephone lines are in place, and arranging for the screening of phone calls to the program.

Host

In large part, the success of a live call-in show will depend on identifying a camera-savvy host to moderate the program. The host

ensures that the program runs smoothly by serving as an intermediary between callers who ask the questions and the department representative, preferably the chief, who answers them. In larger departments, administrators should look for a host among the agency's community relations staff or the public information office because officers from these units possess media experience and some relative comfort in front of the camera. Administrators in smaller departments might ask for volunteers within the ranks to audition for the role.

Once a host is chosen, that individual must prepare for performing this demanding role prior to going before the camera. To do so, the host should watch other live programming, such as home shopping channels or nationally syndicated call-in shows, to learn how other professionals handle call-ins and on-camera guests.

Telephones

To allow for maximum viewer participation, sufficient telephone lines should be available to meet the demand. In most cases, the cable company has enough telephone lines to handle the calls. If not, police administrators can approach the local telephone company about the possibility of having lines donated on a temporary basis for the telecasts.

Screening the Calls

During a telecast, police personnel should screen incoming calls before they are forwarded to the on-air host. In small- to medium-sized police departments, patrol officers,

perhaps on a volunteer or rotational basis, can perform this function. In larger departments, community relations officers assigned to the areas where the program will air are best suited for this role.

The officers' primary objective in screening the calls is to filter out troublesome callers. This is not to say that officers should screen out callers who question or even oppose specific departmental practices, but a live call-in show should not become a forum for malcontented citizens to bash the police department. Officers also can positively influence the types of questions and caliber of callers by notifying community leaders in advance of the show time, format, and telephone number.

Specialized Programming

For large jurisdictions served by multiple cable providers, live programming raises additional issues. Three cable franchises serve the greater Philadelphia area. Under current contract arrangements, one company provides studio time and technical support for police department programming, and all three air the programs after taping is completed. This provides city-wide penetration for the department's taped telecasts.

With live, call-in programming, however, only the area of the city served by the originating cable company can receive the broadcast. In Philadelphia, the police department uses the area-specific quality of cable television to its advantage. The department is able to match its live telecasts to the needs of the viewing community. For example,

the department may use live call-in programming to address crime patterns in certain neighborhoods or to show how residents in particular areas of the city can access new police services.

Live call-in programs enable police departments to tailor programming for consumers of police services. The programming is immediate and results-oriented and provides a viable way for the police and citizens to engage in instant problem solving.



Studio Audience

Live call-in shows benefit from having an audience in the studio during the broadcast. The size of the audience will depend on the capacity of the studio. However, a strong contingent of ranking officers dressed in the uniform of the day will add to the credibility of the show.

The uniformed officers offer more than just an aesthetic component to the program. They assist the chief in responding to callers' questions. Responses coming from the chief and the ranking officers will send viewers the strong message that they have the full attention of their police department.

Floor Director

Normally, the cable company will appoint a member of its technical support staff to act as floor director for the live call-in show. If the cable company cannot provide a floor director, then the police department should select an officer to perform the role, preferably one who has worked in public affairs.

The floor director follows orders transmitted from the director through an ear piece and gives instruction to the show's host. The floor director also cues the host regarding the identity and location of callers and which telephone line a particular caller is on. For example, a typical cue would be, "Mary from Smithtown on line one."

In addition, the floor director cues the host for any breaks and informs the host when live broadcasting resumes. The floor director also may pass the microphone to officers in the audience when they respond to callers' questions.

The Talk Show

Although viewers find a lot to criticize about the current state of television talk shows, the Philadelphia Police Department found that the talk show format can lend itself to more than just outlandish revelations and sensationalized soul baring. The department's talk show featured police officials discussing timely topics that ranged from community policing to new programs designed to combat domestic violence to seasonal issues, such as holiday crime prevention techniques.

The talk show format is almost infinitely adaptable, which no

doubt accounts for its widespread growth. The Philadelphia Police Department's half-hour talk show included a 6- to 8-minute pre-produced segment.

Title

The title of a police-oriented talk show should be simple and set a professional tone, as well. Accordingly, it should instantly identify the program as a forum for the serious discussion of public safety-related matters. Titles such as "Police Perspective" or "Cop Talk" work well.

Host

Like the host of a live call-in show, the moderator of a talk show must have the ability to project a polished, engaging, and professional image on camera. Unlike the host of a call-in show, however, the talk show host cannot rely on a stream of callers with new questions to move the show forward.

The primary role of the talk show host is to ask guests questions and lead the conversation in the directions that interest viewers. Therefore, the host must be fully familiar with the subject and prepare extensive notes before each taping to keep the discussion meaningful and lively.

Guests

The talk show format provides a police department the opportunity to introduce a wide variety of department personnel to the community. On any given broadcast, the guest might be an officer who walks a neighborhood beat, the supervisor of a new elder abuse unit, or a

reserve officer who volunteers at a district ministration.

Departments also should consider inviting community leaders from outside the agency to be guests on the talk show. The department can schedule certain guests depending on the time of year (e.g., the head of the bicycle patrol unit at the beginning of spring, a theft prevention officer or the security chief of a local retail mall during the holiday shopping season) or schedule guests who correspond to highlights in the department's magazine or community newsletter.

“Public access television offers a practical and effective means for law enforcement agencies to increase interaction with the community.”

Pre-produced Segment

Although pre-produced segments are not essential to a successful talk show, they can help expand on the topic or highlight the good work of patrol officers. For example, a pre-produced segment may include the profile of an officer who saved a life using CPR or a community activist who provides safe houses for children along their route to school.

A pre-produced segment should be between 5 and 10 minutes

in length. The cable company might assign available staff members to produce the segment in conjunction with police personnel. Larger departments might choose to have their own audiovisual units prepare the pre-produced segments so that the department has more control over the content.

The Fugitive Show

The goal of a fugitive show is to communicate information regarding criminal fugitives to as large an audience as possible and thereby increase the chances of apprehending the subjects. The broadcasts serve two purposes. First, they alert viewers of the fugitives' possible presence in the community; second, they solicit information from viewers on the fugitives' whereabouts.

Given the potential dangers of eliciting such assistance from community members, any type of fugitive program should include warnings to the audience not to attempt to make contact with the subjects featured. During each telecast of the Philadelphia Police Department's fugitive show, viewers were cautioned at least twice with the following statement:

The fugitives you are about to see are armed and dangerous. Do not approach them. Do not take the law into your own hands. Instead, call the police using the numbers listed on your screen.

Title

The title of a fugitive show should be catchy and easily identifiable as a police program. Titles that evoke familiar phrases, such

as *Springfield's Most Wanted*, work well. Alliteration, as in *Philadelphia's Fugitive File*, also makes for an effective title.

Preparation

To avoid information overload, departments should limit the number of subjects featured on each episode of a fugitive show. A half-hour telecast should feature no more than 12 fugitives.

In general, each episode should highlight fugitives charged with a variety of offenses, such as theft, aggravated assault, and fraud. However, large police departments may choose to feature periodic special programs focusing on fugitives sought by a specific investigative unit, such as vice, narcotics, or homicide.

Department personnel should secure a clear, recent photograph of each subject. They should use copies of the investigative report(s) and the warrant to create interesting narratives about the fugitives.

The narratives and the script for the telecast, which includes the words of the host and camera directions, should be loaded onto a computer disk. The disk and photographs should be delivered to the cable company studio at least 1 week prior to the scheduled taping date. This provides the production staff the lead time necessary to place the photographs on video and load the script onto the TelePrompTer.

The night before taping, officers should conduct a final National Crime Information Center check and local records check to ensure that the warrants remain

outstanding. Any subjects who have been apprehended should be deleted from the final taping.

Host

The role of host for a fugitive show should rotate among different "camera-friendly" personnel in the department. Because the individual will read the narratives while the subjects' photographs appear on the screen, the host should possess a clear and pleasant speaking voice.



RATING THE IMPACT

Police administrators should understand that cable operators probably will not be able to provide the department with quantified ratings for its programming. Therefore, departments that wish to measure the impact of their cable programming must devise their own methods, perhaps by adapting existing satisfaction surveys or questionnaires, to gauge viewership.

The Philadelphia Police Department has realized considerable direct benefit from its cable programming. Numerous arrests have been made as a result of the

fugitive show broadcasts, and the department's other programming has generated positive responses from the community and cable providers alike. The cable companies receive numerous letters and calls from viewers concerning the programming.

LEGAL CONSIDERATIONS

Some cable companies might be reluctant to enter into agreements with law enforcement agencies because public safety-oriented programming could touch upon various legal issues. To protect the cable companies, the Philadelphia Police Department signs contracts with each company assuming full responsibility for the content of the department's programming. A police department's legal advisor should work with the cable company's legal counsel to write a contract that protects all parties involved.

RESOURCES

Public access television offers a practical and effective means for law enforcement agencies to increase interaction with the community. Despite the widespread impact of such programming, however, production agreements with cable companies do not necessarily require an exorbitant commitment of resources on the part of police departments.

When the Philadelphia Police Department produced three monthly shows, six public affairs officers contributed to the effort on an alternating basis, with the assistance of personnel from the audiovisual and other units. The officers performed

these functions in addition to their routine duty assignments.

Administrators should not underestimate the level of commitment necessary to produce successful programming. Although cable companies provide the technical support, research, writing, and other pre-production skills are necessary from the police side. For this reason, departments should consider cultivating and training competent personnel before venturing into this arena.

CONCLUSION

No one disputes the integral role that television plays in modern American culture. Business enterprises and advertisers have long recognized its unparalleled ability to communicate a message to potential customers.

In an ever-more visually oriented society, law enforcement agencies should not overlook television as a way to communicate with their customer base. Cable access programming offers an unparalleled outlet for many law enforcement agencies to inform the public and enhance their presence in the community. ♦

Endnotes

¹ In *Turner Communications System, Inc., et al. v. Federal Communication Commission, et al.*, decided on March 31, 1997, the U.S. Supreme Court upheld existing FCC regulations requiring cable companies to provide free public-access programming. See 117 S.Ct. 1174.

² Dave Schwartz, Program Manager for Greater Media Cable of Philadelphia provided technical guidance and advice for this article.

³ Administrators interested in additional information about cable programming can contact the author at the Philadelphia Police Academy, 8501 State Road, Philadelphia, Pennsylvania 19136.

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

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Extending the Mimmms Rule to Include Passengers

By LISA A. REGINI, J.D.

On February 15, 1997, television viewers across the country witnessed a real-life drama involving two law enforcement officers in Wilmington, Ohio. The camera mounted on the dashboard of the officers' patrol car recorded a shooting incident that took place during what is perhaps the most misnamed activity in law enforcement—the "routine traffic stop."

The confrontation began when the two police officers in a marked patrol car stopped a vehicle after noticing that it was being operated with expired Washington State license plates. After pulling the vehicle over, one of the officers ordered the driver out; the passenger remained inside the vehicle. Shortly after the stop was initiated, the passenger suddenly opened the passenger's side door, quickly lunged from the seat, and began firing at the officers with a semiautomatic weapon. The gunman, by continuing to fire at the officers, managed to flee the scene on foot. During the exchange of gunfire, the driver was able to get back in the vehicle and drive away.

What began as a routine traffic stop involving an expired license plate quickly evolved into a life-and-death encounter, all due to the decision by the passenger to fight. Fortunately, neither officer was injured during the encounter.

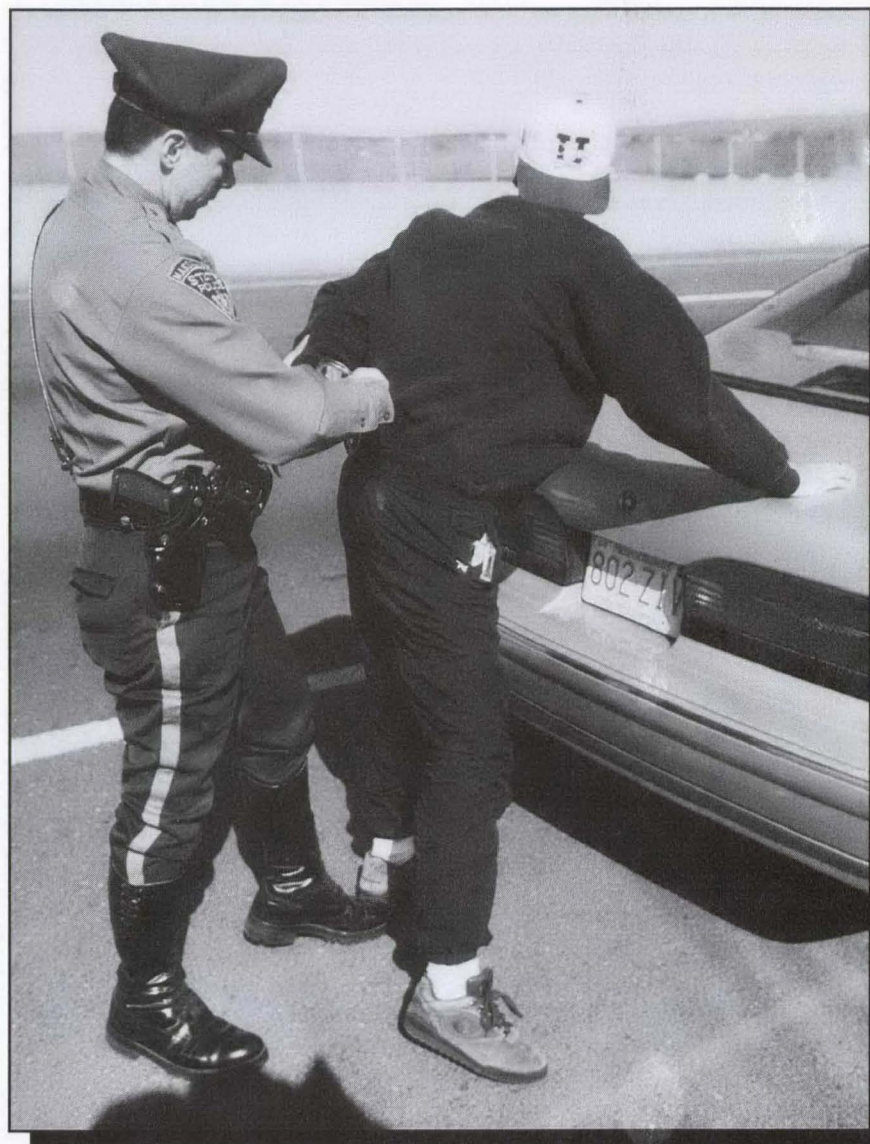


Photo © Mark Ide

The timing of this shooting incident, while certainly not planned, proved somewhat ironic. Just 4 days later, the U.S. Supreme Court issued its written decision in

Maryland v. Wilson.¹ In this case, the Court again recognized the danger inherent in routine traffic stops and ruled that, in order to protect their safety, law enforcement

officers who lawfully stop a vehicle may order all its occupants to exit.

So-called routine traffic stops, like the one that occurred in Wilmington, Ohio, take place thousands of times each day in the United States. Fortunately, not all traffic stops lead to attempts to inflict serious bodily injury or death on the law enforcement officers making the stop.

When officers stop a vehicle they initiate an encounter that is not only potentially risk-filled in the sense that the individuals stopped may turn to violence; the risk also exists that uninformed officers may overstep their investigative authority under the Constitution. In assessing the above risks, the Supreme Court concluded that it is appropriate for officers automatically to take certain minimally intrusive steps for safety reasons.

In *Wilson*, the Supreme Court concluded that a blanket rule allowing police to order occupants from a lawfully stopped vehicle is

constitutionally permissible. However, subjecting such occupants to investigative techniques such as a frisk for weapons would require specific factual justification in order to comply with constitutional requirements.

This article will first revisit the Supreme Court's decision in *Mimms v. Pennsylvania*,² which allows officers to order the driver from a lawfully stopped vehicle. It will then examine the Supreme Court's extension of this authority to passengers within the vehicle, decided in *Wilson*. Finally, the article will briefly address several additional constitutional restraints imposed if officers desire to intrude further into the passenger's personal liberty during the stop.

MIMMS V. PENNSYLVANIA

In the 1977 case of *Mimms*, the U.S. Supreme Court held that the Fourth Amendment of the U.S. Constitution allows a law enforcement officer who has made a lawful

routine stop of a vehicle for a traffic offense to order the driver to exit the vehicle without requiring any additional factual justification. In *Mimms*, the defendant was stopped for driving with an expired license plate. The officer then ordered the defendant to exit the vehicle. The officer later testified that while he had no reason to suspect the defendant of foul play other than the minor traffic violation, he routinely ordered drivers to exit vehicles following routine traffic stops out of a concern for his safety.³ When *Mimms* stepped out of the vehicle, the officer noticed a bulge in his jacket, prompting the officer to conduct a limited search for weapons and leading to the discovery of a handgun. *Mimms* was subsequently arrested for carrying a concealed weapon.

The Supreme Court in *Mimms* was asked to rule on the reasonableness of the order to exit the vehicle since the discovery of the weapon was the direct result of the officer's ordering the passenger out of the car. Based primarily upon concerns for officer safety, the Court held the order reasonable. The Court reasoned that the "legitimate and weighty" interest in officer safety outweighs the "de minimis" intrusion resulting from the request to get out of the car, and thus, the officer need not articulate any particular suspicion to justify this request.⁴

LOWER COURTS DIVIDED REGARDING PASSENGERS

While the Supreme Court's decision in *Mimms* resolved the issue with respect to the driver, lower



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“...the Supreme Court concluded that it is appropriate for officers automatically to take certain minimally intrusive steps for safety reasons.”

courts subsequently disagreed regarding officers' authority to order passengers to exit vehicles. For example, in *State v. Landry*,⁵ the Louisiana Supreme Court overruled an earlier decision by that same court and held that an officer who lawfully stopped a vehicle may order all its occupants to exit the vehicle. In an earlier decision the court had ruled that the *Mimms* rule did not extend to passengers.⁶

Reaching a different conclusion than reached in *Landry*, an Iowa state court ruled that ordering a passenger to exit a lawfully stopped vehicle requires officers, at a minimum, to articulate some suspicion of criminal activity on the part of the passenger.⁷ In the Iowa case, an officer, upon pulling over a car for speeding, ordered both the driver and the passenger from the vehicle. As the passenger got out of the car, the officer observed a gun protruding from his jacket. The officer arrested the passenger. A subsequent search incident to the arrest led to the discovery of a controlled substance. The officer testified that he often requests all occupants of a vehicle to exit once the vehicle is stopped in order to protect his safety. The Iowa Supreme Court concluded that this order was reasonable with respect to the driver but, absent some articulable suspicion with respect to the passenger, it violated the passenger's Fourth Amendment right to be free from unreasonable seizures.⁸

After declining to resolve this issue on several prior occasions,⁹ the U.S. Supreme Court agreed to consider whether the *Mimms* rule extends to passengers. While

Mimms was decided by the Supreme Court without considering any written or oral arguments,¹⁰ *Wilson* was argued not only by the attorneys representing the defendant and the state of Maryland but also by the U.S. Attorney General.

**“
...the Constitution
does not require that
seizures be based
on probable cause or
reasonable
suspicion, rather, its
only requirement is
reasonableness.
”**

MARYLAND V. WILSON

Facts

In *Wilson*, a Maryland state trooper pulled over a vehicle for speeding. The trooper, out of concern for his safety, directed the defendant, a passenger in the vehicle, to step outside the car. As the man exited the car, the trooper observed a bag of cocaine fall to the ground. The passenger was arrested for possession of cocaine with intent to distribute. The defendant's motion to suppress the cocaine was granted by a state circuit court judge based upon his conclusion that the trooper's order to get out of the car constituted an unreasonable seizure under the Fourth Amendment. The Maryland Court of Special Appeals affirmed the decision to suppress

the evidence, ruling that a law enforcement officer's authority to order a driver to exit a vehicle does not extend to passengers.¹¹

The Supreme Court's Holding and Rationale

In reversing the judgment of the Maryland courts, the Supreme Court emphasized once again that "...the touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular government invasion of a citizen's personal security.'"¹² In other words, the Constitution does not require that seizures be based on probable cause or reasonable suspicion, rather, its only requirement is reasonableness.¹³ In determining the reasonableness of the government's conduct, the Court balances the public interest promoted by the government action against the "...individual's right to personal security free from arbitrary interference by law officers."¹⁴

Applying this balancing test to the trooper's order in *Wilson*, the Supreme Court concluded that the public interest at stake—the concern for officer safety—outweighs the interests on the personal liberty side of the balance.¹⁵ As could be expected, in reaching this conclusion, the Court relied heavily on *Mimms*. The Court again recognized the inherently dangerous nature of the traffic stop, citing statistics showing that in 1994, the year in which this incident occurred, 5,762 officers were assaulted and 11 killed during traffic pursuits and stops.¹⁶ On the personal liberty side, the Court in *Wilson* acknowledged

that there is somewhat of a stronger argument with respect to the passenger who, at the time the stop is made, has not engaged in any wrongdoing. At least in *Mimms*, the driver committed a vehicular offense, albeit minor.¹⁷ Nonetheless, the Court concluded that this did not cause the balance to shift in favor of the passenger since, as a practical matter, the passenger is already detained by virtue of the traffic stop and an order to get out of a vehicle is only minimally intrusive.

The addition of another occupant in the vehicle may also increase the danger to the officer. A decision by a driver and/or passenger to fight versus submit to authority may be influenced by whether the officer is outnumbered. This inference is supported by statistics relating to the number of officers killed during traffic stops and pursuits. Between 1985 and 1994, 9 officers were killed in "two-officer" vehicles while 65 officers riding in "one-officer" vehicles were killed.¹⁸ As stated by the Court, "...danger to an officer from a traffic stop is likely to be even greater when there are passengers in addition to the driver in the stopped car."¹⁹

DETENTION OF THE PASSENGER AT THE SCENE

The Court in *Wilson* expressly refused to answer the question of whether an officer could direct the passenger—once ordered out of the vehicle—to remain at the scene for the duration of the routine traffic stop. The state court expressed disapproval of such an order, stating, "...the passenger is subjected to no

mandatory detention whatsoever... [and] is presumptively free to abandon the driver to the clutches of the law and to hail a cab."²⁰

Arguably, the same rationale justifying the order to get out of the vehicle would also support a request by the officer for the passenger to remain at the scene for the limited amount of time it takes to

**“
...the Fourth
Amendment
requirement that the
officer act reasonably
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the seizure will
continue to provide
safeguards against
unreasonable police
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”**

complete a stop. The Federal Government expressed this point of view in its written brief in the *Wilson* case:

The same concerns that justify allowing an officer to order a passenger to get out of a stopped vehicle...should also afford the officer the discretion to direct the passenger to remain within the car or on the scene during the stop without a showing of particularized suspicion.²¹

Allowing a passenger to simply walk away from the scene may increase the risk to the officer as the

passenger would be out of sight and the officer would have relinquished control over the individual. This added risk when balanced against the minimally intrusive nature of the request would arguably render a request to remain at the scene reasonable under the Fourth Amendment without requiring the officer to articulate any particularized suspicion. Requiring the officer to articulate such facts might divert the officer's attention from the driver to the passenger, thereby increasing the danger to the officer. As explained by lawyers representing the state of Maryland:

During the brief time it takes to complete a traffic stop, the officer should be permitted to take limited measures to control the movement of all occupants for the sole purpose of ensuring the officer's safety.²²

Furthermore, such stops often occur in areas where the passenger would not be permitted to simply walk away, such as along interstate highways with absolute restrictions on pedestrian traffic.

FRISKS OR PROLONGED DETENTIONS

Require Additional Justification

Further intrusion into the personal liberty of the passenger, such as a prolonged detention or a limited search for the purpose of detecting the presence of weapons, would require more justification than the mere occurrence of a lawful traffic stop. To conduct such additional investigation, officers must

be prepared to articulate additional factual justification for their actions in order for the actions to comport with the reasonableness requirement of the Fourth Amendment.²³ A prolonged detention of the passenger would require the officer to articulate facts supporting a reasonable suspicion of criminal activity on the part of the passenger and must be reasonable in scope.²⁴ Furthermore, a frisk by the officer for the purpose of detecting weapons must be based on a reasonable suspicion that the passenger is armed and the search must be limited to what is necessary to detect a weapon.²⁵

The Constitution Prohibits Arbitrary Enforcement

It is important to note that while the Supreme Court has interpreted the Fourth Amendment as allowing officers the ability during a lawful traffic stop to automatically order people out of the vehicle, this does not mean an officer's actions are left unconstrained. First, there are other constitutional guarantees such as the Equal Protection Clause of the Fourteenth Amendment that safeguard against the use of an impermissible factor, such as race, in deciding when to order occupants to exit a vehicle. Additionally, as mentioned above, the Fourth Amendment requirement that the officer act reasonably during the duration of the seizure will continue to provide

safeguards against unreasonable police conduct.

CONCLUSION

In *Maryland v. Wilson*, the U.S. Supreme Court gave law enforcement officers the automatic authority to order all occupants from a lawfully stopped vehicle. In doing so, it concluded that such a slight restraint on an individual's freedom of movement is permissible under the Constitution when

vehicle that has been lawfully stopped. ♦

Endnotes

¹ 117 S.Ct. 882 (1997).

² 434 U.S. 106 (1977).

³ *Id.* at 109.

⁴ *Id.* at 108.

⁵ 588 So.2d 345 (La. 1991).

⁶ See *State v. Williams*, 366 So.2d 1369 (La. 1978).

⁷ *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). For similar treatment of this issue see *People v. Maxwell*, 254 Cal.Rptr. 124 (1988); *State v. Smith*, 637 A.2d 158 (1994).

⁸ *Id.* at 607. Federal courts have also addressed the extension of the *Mimms* rule to passengers. For example, in *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323, 1327 (9th Cir. 1995), the court held that once an officer lawfully stops "...a vehicle for a traffic violation, the officer may, consistent with the Fourth Amendment and despite the absence of probable cause or reasonable suspicion of criminal activity, order all occupants of the vehicle to step outside." See also *U.S. v. Sanders*, 631 F.2d 1309, n.2 (8th Cir. 1980), *cert. denied*, 449 U.S. 1127 (1981).

⁹ See *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323 (9th Cir. 1995), *cert. denied*, 116 S.Ct. 1841 (1996); *U.S. v. Tellez*, 11 F.3d 530 (5th Cir. 1993), *cert. denied*, 114 S.Ct. 1630 (1994); *U.S. v. Powell*, 929 F.2d 1190 (7th Cir.), *cert. denied*, 502 U.S. 981 (1991).

¹⁰ See dissenting opinion in *People v. Martinez*, 466 N.W.2d 380, 386 (Mich.App. 1991).

¹¹ *State v. Wilson*, 664 A.2d 1 (Md.App. 1995).

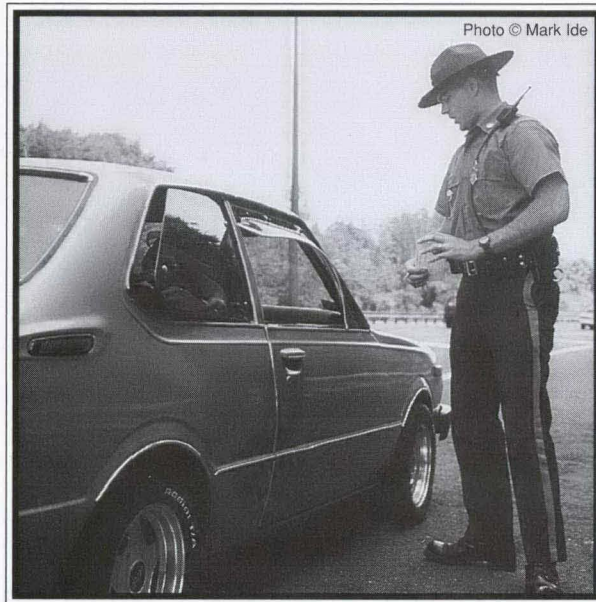
¹² *Maryland v. Wilson*, 117 S.Ct. 882, 884 (1997), quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

¹³ *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323, 1326 (9th Cir. 1995), citing *Vernonia School District 47J v. Acton*, 115 S.Ct. 2386 (1995).

¹⁴ *Wilson* at 884, quoting *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

¹⁵ *Wilson* at 885-886.

¹⁶ *Id.* at 885, citing Federal Bureau of Investigation, *Uniform Crime Reports: Law*



balanced against the concern for officer safety. Perhaps this ruling will allow law enforcement officers like the two police officers in Wilmington, Ohio, to go home at the end of the day, not because of the lack of accuracy on the part of a passenger in firing a firearm, but rather because the Constitution permits officers to exercise reasonable control over the occupants of a

Enforcement Officers Killed and Assaulted 71, 33 (1994).

¹⁷ *Id.*

¹⁸ See Kathleen Maguire and Ann L. Pastore, eds., *Sourcebook of Criminal Justice Statistics 1995*, U.S. Department of Justice, Bureau of Justice Statistics Washington, D.C.: USGPO, 1996. Table 3.161.

¹⁹ *Wilson* at 886.

²⁰ 664 A.2d at 10.

²¹ Brief for the United States as Amicus Curiae Supporting Petitioner, n.5.

²² Brief for Petitioner on Writ of Certiorari to the Court of Special Appeals of Maryland, 25, n.12. The propriety of an order to passengers to remain in the vehicle was addressed in *Dennis v. State*, 674 A.2d 928 (Md. 1996). The Maryland court concluded that there was not sufficient justification to direct

the passenger to remain in the vehicle. The state appealed this decision to the U.S. Supreme Court. The Supreme Court vacated the judgment and remanded the case to the Maryland courts. *Maryland v. Dennis*, 117 S.Ct. 40 (1997).

²³ See *Ruvalcaba v. City of Los Angeles*, 64 F.2d 1323, 1327 (9th Cir. 1995) ("Of course, no additional intrusion into the passenger's liberty, such as a frisk or prolonged detention, may be justified by the traffic stop absent some additional suspicion."); *U.S. v. Wanless*, 882 F.2d 1459, 1465, n.10 (9th Cir. 1989) ("[T]he record would not justify a frisk search of [the passenger] incident to the lawful traffic stop...[n]othing in the record suggests that [he] posed a threat to the officers."). See also Brief for the United States as Amicus Curiae Supporting Petitioner, n.3, stating that further

intrusion, such as a frisk of the passenger, must be based on objective facts giving rise to a reasonable suspicion.

²⁴ *Terry v. Ohio*, 392 U.S. 1 (1968); *U.S. Sharpe*, 470 U.S. 675 (1985).

²⁵ *Terry* at 28.

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

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The Bulletin Notes

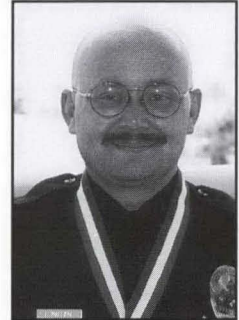
Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their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

Waiting at a traffic light while en route to work in the early morning hours, Sergeant Robert Shearer of the Harrisburg, Pennsylvania, Bureau of Police observed two naked men running through the snow-covered street, with one man attempting to assault the other. Sergeant Shearer pulled his personal vehicle onto an adjoining street and, opening his civilian overcoat to reveal his uniform and badge, identified himself as a police officer. The assailant, who had caught the other man and began stabbing him frantically with a large kitchen knife, ignored Sergeant Shearer's repeated commands to drop the knife. Hoping to avoid the use of deadly force, Sergeant Shearer rushed the assailant and knocked him off the critically injured victim. Instead of discontinuing his attack, however, the assailant raised the knife and began advancing toward the victim again. Sergeant Shearer fired one shot, which struck the 6'8", 260-pound assailant but failed to slow his advance. He fired two more shots, which finally stopped the man, who subsequently died in the emergency room of a local hospital. Though critically wounded, the victim, who had come to the aid of his wife and child when the assailant attacked the woman as she prepared to leave for work, made a full recovery.



Sergeant Shearer

While on patrol, Officer William Wallace of the Oceanside, California, Police Department attempted to stop a suspected stolen vehicle. The driver failed to yield and lost control of the vehicle, which careened over an embankment, plunged into a drainage ditch 80 feet below, and burst into flames. Two occupants were ejected from the vehicle, but the driver was able to exit on his own. As Officer Wallace attempted to traverse the steep embankment to determine if anyone needed assistance, he fell and seriously injured his left shoulder. Still, he continued down the hill and found a semiconscious female inside the burning vehicle. Despite the pain of his injury, Officer Wallace pulled the young woman out of the car through a broken window, just moments before flames fully engulfed the vehicle. He dragged the woman to the safety of a clearing using his right arm and then called for the assistance of a responding officer to help carry the victim up the embankment.



Officer Wallace

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

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Patch Call



The Borough of Riverdale, New Jersey, Police Department patch features a water mill. At one time, the Borough of Riverdale had three working water mills. One of those water mills, built in 1724, remains today.



The patch of the Vermont State Police, adopted in 1947, depicts pine trees and the mountain peaks, Camel's Hump and Mount Mansfield. Sheaves of grain and a grazing cow represent Vermont's agricultural and dairy industries. The deer's head at the top of the patch represents the state's abundant wildlife.