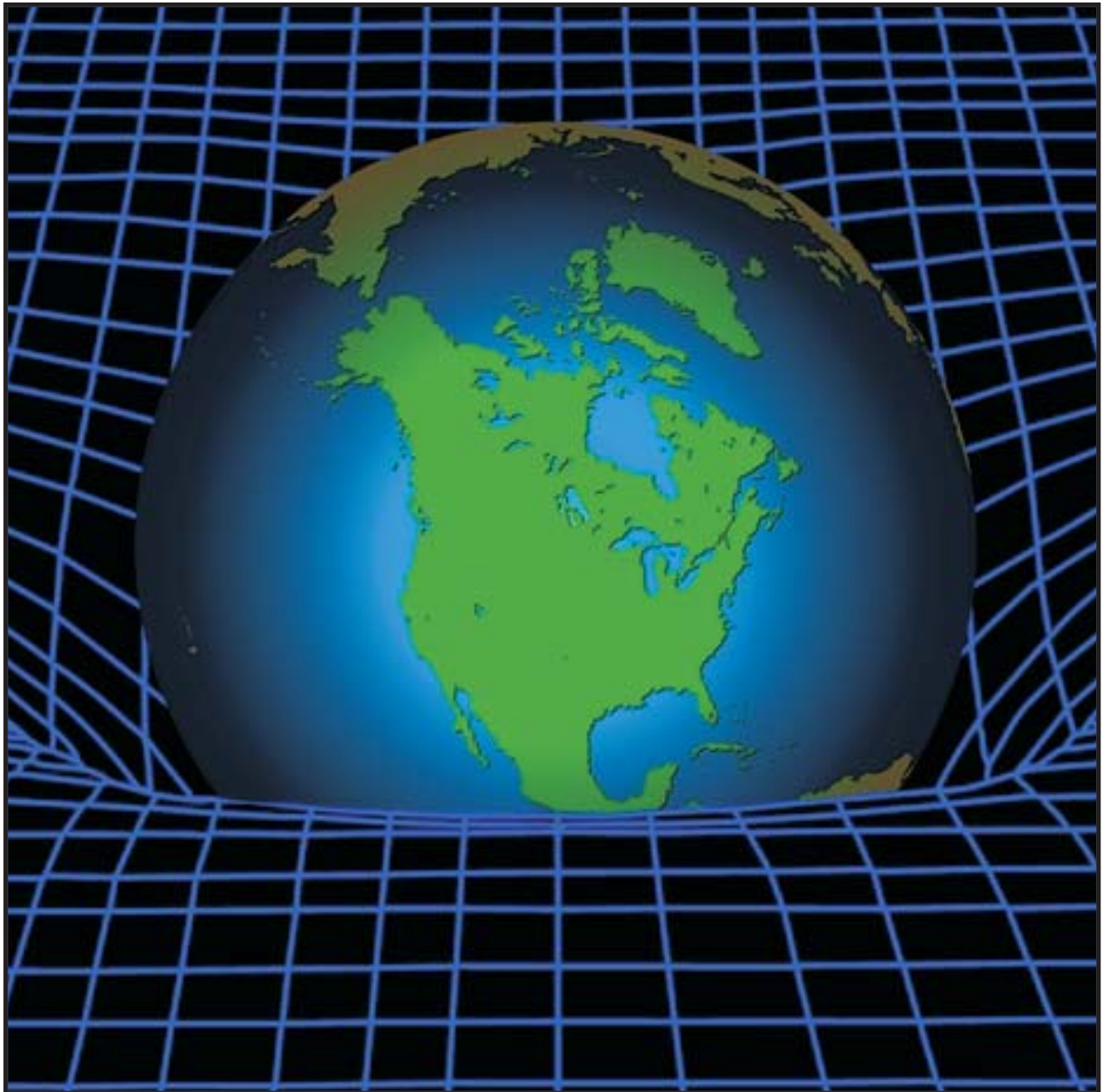




May 2006

# **FBI** **Law Enforcement** **Bulletin**



## **Field Intelligence Groups**



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Director

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# FBI Law Enforcement Bulletin

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# ***The FBI's Field Intelligence Groups and Police Joining Forces***

By an analyst with the FBI's Directorate of Intelligence



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**S**ince the terrorist attacks of September 11, 2001, managing and sharing timely threat information and strategic and tactical intelligence with state and local officials have become primary concerns of the federal government. In its final report, the 9/11 Commission stated that “intelligence gathered about transnational terrorism should be processed, turned into reports, and distributed according to the same quality standards, whether it is collected in Pakistan or in Texas.”<sup>1</sup> The report

went on to say that the FBI should build a reciprocal relationship with state and local agencies, maximizing the sharing of information.<sup>2</sup>

In reflection of its emphasis on this goal, the FBI is making major changes. In September 2003, Director Robert Mueller ordered the creation of Field Intelligence Groups (FIGs) in all 56 field offices. FIGs constitute a centerpiece of the FBI's transition toward combining its intelligence and investigative capabilities and serve a critical role in the agency's intelligence

function. The groups work closely with the FBI-led Joint Terrorism Task Forces (JTTFs), various field office squads, and other agency components to provide valuable service to law enforcement personnel at the state and local levels.

## **Effective Structure**

Overseen by the FBI's Directorate of Intelligence,<sup>3</sup> FIGs generally consist of special agents, intelligence analysts, linguists, and other members of the law enforcement and intelligence communities.

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***FIGs provide  
valuable up-to-date  
intelligence to the  
law enforcement  
community.***

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While this basic structure remains largely consistent throughout the FBI's field offices, some FIGs have created new ways to address their critical mission.

FIGs manage the intelligence cycle in the FBI's field offices, integrating it with investigations so that local, state, and federal law enforcement and intelligence community agencies can benefit. FIGs identify intelligence gaps; obtain and analyze raw intelligence from FBI investigations and sources; and generate intelligence products and disseminate them to the intelligence and law enforcement communities to help guide investigative, program, and policy decisions.

One former police chief, now an assistant director with the FBI, considers the development of FIGs a positive move forward because they promote an environment of information

sharing between federal, state, and local agencies. He emphasizes that in addition to being consumers of information, FIGs provide it as well. The role of the FIG, in part, is to help make sense of intelligence, thereby assisting state and local police in their own analysis. FIGs can review data from all jurisdictions in a particular geographic area or nationwide and identify patterns or trends that police, isolated in their own municipalities, may not see. Personnel keep information in the respective field offices (unless, of course, it affects other areas of the country) and discuss it with local police.

### **Efficient Communication**

In the wake of the September 11 attacks, the FBI's ability to communicate with other law enforcement agencies has improved significantly. Its efforts in the Washington, D.C., area

serve as an example. Home to important government buildings, monuments, and more than 500,000 people, the nation's capital represents an attractive terrorist target. To address the important issue of how to communicate strategic and tactical intelligence and potential threat information quickly across federal and local jurisdictions, the FBI's Washington field office (WFO) FIG reaches out to some 40 federal, state, and local law enforcement agencies through a weekly conference call to brief metropolitan area officers on counterterrorism matters that could affect the city and the surrounding area. Police chiefs have valued the opportunity to receive briefings from the FBI and to communicate with their peers on a weekly basis.

Also, WFO special agents meet with police chiefs face-to-face and stay in regular contact with them through e-mails and telephone calls. The office has divided Washington, D.C., and northern Virginia into zones and assigned personnel to each one. Agents hold responsibility for establishing liaison with heads of police departments, hospitals, key businesses, security agencies, and others in their zones. If the need arises, WFO can simultaneously page every police chief in the metropolitan area and quickly initiate



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a conference call to relay critical information.

### **Timely Dissemination**

FIGs provide valuable up-to-date intelligence to the law enforcement community. For instance, WFO's FIG produces weekly intelligence bulletins and posts them on the Law Enforcement Online (LEO) Web site. Any police officer in the United States with access to the JTTF page of LEO can read them. In addition to general information, each bulletin contains a summary of potential threats, stolen items, and suspicious activities reported to the JTTF by citizens and police departments. These bulletins allow law enforcement executives to determine if similar crimes and suspicious activities are being reported in other jurisdictions.

The FIG analyst who writes the bulletin serves as the contact and receives numerous daily e-mails from police departments. Often, these messages contain general questions or requests for case-specific intelligence. Agencies that do not have a detailee on the JTTF or a contact at the FIG can communicate with personnel via a hotline. Law enforcement officers can relay their departments' intelligence needs to the FIG; personnel in the group then can determine a collection and production strategy.

FIGs also produce in-depth intelligence assessments of, for example, a particular crime problem. Information may come from classified sources, police tips, arrests, or crimes. Analysts remove references to sources and methods of collection, conduct analysis, and release a product via LEO, the National Law Enforcement Telecommunications System (NLETS), or

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***The groups...  
provide valuable  
service to law  
enforcement  
personnel at the  
state and local  
levels.***

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direct e-mail to cleared recipients. Agencies find such products useful. For example, a police department may pass the intelligence along to patrol officers who could come across suspicious terrorist-related activity.

### **Variety of Intelligence**

Far from focusing only on terrorism, FIGs also produce and disseminate intelligence pertaining to cyber, counterintelligence, and criminal programs. For example, WFO has

personnel who specialize in violent crime and gangs and has been working to increase the amount of intelligence it gathers on subjects, such as what happens at gang meetings, who the local leaders are, and how an order to kill an individual is set. WFO strives to develop methods of collection and recruit sources, such as individuals who attend gang meetings, that will help the FBI gather such intelligence.

In one recent instance, a northern Virginia gang member threatened to kill a police officer. WFO received this information from a source who had been gathering intelligence on a particular gang. Additional information from this individual revealed that the person who made the threat was attempting to obtain a gun. Police were not able to arrest the man for threatening the officer, but the FBI passed the information to local police, who eventually arrested him for driving while intoxicated. This charge placed him in violation of his parole, and the two charges combined may result in several years of jail time.

In recent years, the Mara Salvatrucha gang, also known as MS-13, has become a problem for law enforcement in Washington, D.C., and northern Virginia. FBI intelligence gathered from sources and shared with local police has

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been used to clear cases of physical assaults and murders involving this vicious gang. In one instance, MS-13 members badly beat a victim in a local park. Source information helped local police identify a suspect, and a warrant was issued for his arrest.

Also, WFO can coordinate with personnel in the FBI's Los Angeles field office (LAFO), where MS-13 long has been a fixture in gang-related crime. Working with intelligence from LAFO's FIG helps WFO pass along valuable information to police in Washington, D.C., and northern Virginia. For example, WFO and its FIG receive information on MS-13 members who are traveling from Los Angeles to help organize gangs on the East Coast. Frontline officers benefit by tapping into these intelligence resources. In addition to providing such information, the FBI can help "connect the dots" between the different police departments.

### **Valuable Police Training**

FIGs also provide valuable training to state and local agencies. The efforts of the FBI's Dallas, Texas, field office serve as an example. In one instance, the north Texas law enforcement community had questions regarding the Violent Gang and Terrorist Organization File (VGTOF), one of several contained in the automated National Crime Information

Center database. As police know, they can use VGTOF to run names during traffic stops and other arrests to find out whether the individual, for example, is wanted for drug offenses or listed on a terrorist watchlist. The Dallas FIG offered training on how to respond when an individual's name registers as a positive hit on VGTOF for suspected terrorist activity. As a result, police now can use these electronic messages more effectively.

“

***...by working together,  
law enforcement  
personnel...are doing  
all they can to obtain  
and share information  
that will help them  
protect the citizens  
they serve.***

”

### **Emergency Response Network**

The Dallas field office and its FIG have established an emergency response network (ERN) that connects the FIG with more than 500 law enforcement agencies in the greater north Texas area. The ERN Web site allows the FIG to receive and provide critical information. Approximately

2,000 police and critical infrastructure business leaders have been cleared and given passwords to go beyond the home page to receive information from the FBI, such as intelligence bulletins and assessments. For example, north Texas utilities executives can learn about the concerns of other large utilities around the country, such as the Nevada power company that reported the loosening of bolts on transmission towers, through the ERN.

Also, members of law enforcement, the business community, and the general public can use the ERN to contact the FIG and provide information of potential interest. To ensure a quick response, some personnel wear pagers that alert them to the e-mail if certain key words are used. In one incident, a local company that makes bomb casings for the military suspected an act of sabotage within its plant. The company sent a message to the Dallas FIG on the ERN, and, within 10 minutes, a special agent responded with a telephone call to the company to obtain more information. Within 30 minutes, an agent arrived at the plant to investigate. The ERN also was used to report a number of suspicious incidents in which witnesses saw individuals taking pictures of critical infrastructure equipment, such as transformers, in

## The FBI's Intelligence Cycle

- *Requirements*: identifying information needs, based on critical data required to protect the United States from national security and criminal threats
- *Planning and direction*: managing the entire intelligence effort, from identifying the need for information to delivering a finished product to a consumer
- *Collection*: gathering raw information based on requirements (includes activities, such as interviews, surveillances, human source operation, searches, and liaison relationships)
- *Processing and exploitation*: converting collected information into a form usable by analysts through a variety of methods, including decryption, language translation, and data reduction
- *Analysis and production*: transforming raw information into intelligence (includes integrating, evaluating, and analyzing available data and preparing products)
- *Dissemination*: distributing raw or finished intelligence to consumers



Source: <http://www.fbi.gov/intelligence/process.htm>

the north Texas area. One such situation involved a utility company representative e-mailing the license plate number of a suspect's vehicle over the ERN and receiving a same-day response from the FBI. Internet hacking incidents also have been reported via the network.

The ERN was used to send out mass e-mails in several situations. For example, when FBI Headquarters released a notice that the Department of Homeland Security planned to raise the national threat level during the 2003 Christmas season, the Dallas field office

made area law enforcement authorities aware of the decision in advance. Police received an e-mail through the ERN letting them know that the change in the threat level would be announced to the media in 2 hours. Further, the e-mail gave some information on the reasons behind the decision and helped area police departments lessen the anxiety for their employees and the public.

### Computers and Policing

Cybercrime represents another area in which FIGs are creating new ways to share intelligence with state and local

police. For instance, in Dallas, authorities investigated an Internet fraud complaint in which the complainant told police he purchased \$5,300 worth of merchandise from a local business but never received the goods. The investigating officer contacted the Dallas FIG. When personnel entered the case information into a specialized database, it matched an ongoing FBI investigation into the same business. If the match had involved, for instance, two police departments in different areas, the FBI would have put the appropriate officers in touch with each

other. It then would have been up to the two investigators to decide which agency should take the lead in the case and how to share information.

This system works well with cybercases in which jurisdiction becomes an issue due to the location of suspects, witnesses, and Internet servers in different areas.

The Dallas FIG also is adding child pornography cases to the database, with the goal of having the system go nationwide so that police departments can coordinate their cases with counterparts in other areas of the country. Of course, agency participation will determine

how fast the database expands and how useful police will find it.

### Conclusion

Now, more than ever, the FBI understands the need to share intelligence—pertaining not only to terrorism but also other crimes, such as gang activity, fraud, child pornography, and cargo theft. The ability to communicate and disseminate intelligence through FIGs has proven effective, greatly improving coordination between agencies at the federal, state, and local levels and helping personnel solve crimes and make arrests.

Of course, many difficult tasks lie ahead. But, by working together, law enforcement personnel can rest assured that they are doing all they can to obtain and share information that will help them protect the citizens they serve. ♦

### Endnotes

<sup>1</sup> National Commission on Terror Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC, 2004), 427.

<sup>2</sup> *Ibid.*, 417.

<sup>3</sup> The FBI's Directorate of Intelligence (formerly known as the Office of Intelligence) was established in January 2003 to promote and standardize the agency's efforts to collect, analyze, and share intelligence.

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

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We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions about the magazine. Please include your name, title, and agency on all e-mail messages.

Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.



## *The Impact of Leadership Communication*

The difference between mere management and leadership is communication. And that art of communication is the language of leadership.

— James Humes

Communication encompasses more than what comes out of the mouth or into the ear. It includes hand, arm, and leg movements; facial expressions; voice tones; and other body gestures. Such nonverbal behavior can send a different meaning or message than the spoken word. Leaders must recognize that success or failure may stem from these actions.

Effective communication represents one of the most significant opportunities and challenges of successful leadership. It can serve as the greatest tool leaders have. James Humes observed in his book *The Sir Winston Method*, “The difference between mere management and leadership is communication. And that art of communication is the language of leadership.” Street sergeants to agency heads hold responsibility for the success or failure of communication in an organization. If the department does not have an effective communication process, laterally and horizontally, chances are that it will fail to successfully provide appropriate services.

Leaders influence the success and tone of communications within their organization. If leaders and leadership teams do not ensure accurate communication flow, they will negatively impact the confidence and trust of their most valuable asset: their people. Trust develops over time, not overnight, but it can be destroyed in a moment. The nature and quality of communication with employees will have

an effect on the level of trust they have for the organization. Communication is not just downward; it also is upward and lateral. It involves listening at all levels. Listening entails leaders putting down what they are doing and giving undivided attention while evaluating words and nonverbal actions.

Also, with advancing technology, venues of communication have dramatically changed; agencies now commonly employ e-mails, memorandums, text messages, newsletters, and blogs. However, leaders must evaluate the appropriateness of using these different mediums to communicate their message. For example, upon conclusion of a staff meeting, they should consider the best ways to clearly and effectively deliver an important message. They may consider writing and then personally appearing before employees to effectively answer questions. By being cognizant of verbal and nonverbal messages and remaining flexible, leaders will maximize their success in communicating with their employees. ♦

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*Daniel W. Ford, J.D., division chief, human resources, for the Orange County, Florida, Sheriff's Office and leadership fellow with the FBI's Leadership Development Institute, prepared Leadership Spotlight.*

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## Community Governance An Organized Approach to Fighting Crime

By Joe Reiss, M.S.

© Anaheim Police Department



Since the late 1970s, law enforcement agencies have studied, developed, and practiced community policing strategies. Today, it has become an integral part of all departments and can be found in mission statements, recruitment flyers, training programs, and evaluations. Almost every agency professes practicing it, encouraging officers to engage citizens in solving problems. Several research studies conducted on the effectiveness of community policing have shown that it does help deter crime. But, one question remains, Where does law enforcement go from here?

Community policing is both a philosophy and an organizational strategy that allows the police and residents to work closely together to address crime, physical and social disorders, and neighborhood decay. In this partnership, each component assumes responsibility for improving the quality of life.<sup>1</sup> If law enforcement does not deal with the

little problems, such as an abandoned dwelling where vandals regularly break the windows, then communities will become apathetic to crime and begin to lose pride in their neighborhoods.<sup>2</sup> Soon, the entire area will look like the deserted house with the broken windows.<sup>3</sup> This puts a tremendous amount of pressure on law enforcement to solve community problems. Agencies are beginning to realize that they need more support in their efforts to deter crime, and they have started to look toward others for help.

### THE ANAHEIM EXPERIENCE

In the mid-1990s, the city of Anaheim, California, experienced a tremendous problem with gangs, narcotics dealers, and opportunistic criminals preying on a small apartment neighborhood in the city. On a daily basis, someone got shot, stabbed, or robbed. Narcotics sales happened, and new graffiti appeared each day as well. To combat the problem, the Anaheim Police Department assigned six community policing officers and a sergeant to the neighborhood to improve conditions. Using traditional enforcement tactics, the officers arrested 30 to 40 individuals in the neighborhood each month. This strategy continued for a year until the department conceded that enforcement efforts did not have any impact on reducing crime in the neighborhood; these illegal activities remained rampant.

### Revising the Strategy

Recognizing that they could not clean up the neighborhood on their own, the police solicited help from other city departments (e.g., community preservation,<sup>4</sup> public works, utilities, and the city attorney's office) and the community to develop a strategy. Working as a team, they established a successful plan, and, within a year, neighborhood crime decreased by almost 80 percent. The majority of the efforts for this reduction did not come from law enforcement but from other city departments and the community. For instance, members

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from both public works and utilities created “no parking” areas on the streets, repaved roads and alleyways, and increased lighting. In addition, the Community Preservation Department strictly enforced code violations, and the neighborhood began cleanups and celebrations. Taking care of the little things brought pride back to the neighborhood.<sup>5</sup> This feeling became contagious, and everyone wanted to take part in improving the area.

### Thinking Long-Range

In May 2000, the Anaheim Police Department established a long-range strategic plan to meet the needs of both the agency and community. One initiative involved the continued development of community policing, which had been principally located in a specialized section with ongoing efforts to introduce the concepts into all segments of the agency. If citizens called the police department about a gang or narcotics problem, they might be transferred to a community policing officer, the gang or narcotics unit, or the patrol bureau—no systematic approach to dealing with problems existed. Multiple sections frequently handled the same problems without ever contacting each other; the lack of communication and coordination of efforts and resources caused a tremendous duplication of work.

The police department recognized that to further its community policing attempts, it needed to develop a coordinated response within the agency and a decentralized service delivery model outside the organization. This would allow the agency to establish unique partnerships with various segments of the community and, as a result, tailor services to meet individual needs. To accomplish this, the department divided the city into four

districts: west, central, south, and east. A lieutenant, identified as a district commander (DC), was assigned to a command position in each of the four districts. The DC coordinated all of the agency’s efforts in providing service to the four districts while meeting the unique needs of each of the neighborhoods in those areas. Decentralizing the police department helped it provide a responsive and organized approach to the needs of the community while developing better partnerships with other city agencies.

The DC heard the concerns of the community and became known as the person who could solve most problems in the district by using all of the available resources within the police department,

other city agencies, and the community. In many ways, the DC became the “chief of police” in each of the districts. Having a central point of contact inside and outside the department helped in its support of streamlining responses to the needs of the community. The DC was identified as the number one client for everyone working at the police department. For example, when the DC requested assistance, it became a high priority. Because

of their awareness of all of the problems going on within the district, DCs were responsible for prioritizing law enforcement’s response. Each DC also had a sergeant and five community policing officers assigned to them to help coordinate problem-solving efforts in their districts.

### Realizing Value

Within the first year, the police department began to recognize the value of the community governance program because of the overwhelming positive response from citizens. Residents had someone to call (the DC) who instantly responded

“

**Within the first year, the police department began to recognize the value of the community governance program....**

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### Anaheim's Guiding Principles

- Use the expertise of all city departments.
- Assist neighborhoods by developing a strategic plan.
- Ensure active participation by all stakeholders.
- Work with neighborhood stakeholders to create a vision.

- Work with neighborhood stakeholders to create a vision of what the neighborhood can achieve in becoming a quality place to live.

Today, on a monthly basis, district teams meet to discuss ongoing problems in their districts. Collectively, they provide

to their concerns. In addition, the DC often was in the community, attending meetings and functions and listening to citizens' concerns. As a result of that involvement, residents felt they had someone they could talk to who would assist them and take action to resolve issues in their neighborhoods. Further, the city manager's and mayor's offices received fewer citizen complaints regarding law enforcement's lack of response to community problems.

#### Expanding the Success

The city manager's office examined the success of the district policing plan and decided that all city departments should develop the model. Each agency identified its own DC and created a team in all four districts of the city. The formation of the teams had several guiding principles.

- Use the expertise of all city departments in a coordinated effort to improve the livability of Anaheim's neighborhoods.
- Assist severely deteriorated neighborhoods, as well as those beginning to show signs of decline, by developing a strategic plan to improve the quality of life in these areas.
- Ensure active participation by all neighborhood stakeholders, including single-family home residents, property and apartment owners, tenants, school and church officials, business owners, and city staff.

input on how their individual city departments can help handle a particular issue. This type of involvement has resolved small problems in the districts, preventing them from becoming larger ones. Further, each city department contributes to finding a solution and, at the monthly meetings, provides an update on its progress in fulfilling the objectives of the strategic plans developed for improving the quality of life in the deteriorated neighborhoods within its district. This encourages the department to move forward in accomplishing its goals. In addition, at every monthly meeting, each city department has the opportunity to provide input as to how new developments in the city will impact its particular district. This has proven extremely helpful in ensuring that the city has carefully deliberated on and planned for future growth, encouraging input from all agencies and the community in the final decision.

#### Staying Up-To-Date

The Anaheim Police Department also has taken a number of steps to ensure that the district teams remain responsive to the community. On a quarterly basis, all DCs meet with the stakeholders in their districts to provide updates and obtain feedback from the community and to send quarterly newsletters with this information. Additionally, an annual survey is conducted with residents in various neighborhoods throughout each of the districts to determine if the district team's efforts



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are effectively improving the quality of life in their neighborhoods. Because members of the community now have personal relationships with individuals from each city agency, the city of Anaheim no longer is a faceless government to its citizens.

## CONCLUSION

Many jurisdictions have similar success stories where the police have worked closely with other city departments and the community to improve the quality of life. However, typically, these groups only come together when a major problem or crisis occurs. They usually do not work together on a regular basis to deal with small issues. This overall lack of coordination, planning, and consensus among all city departments and the community produces duplication of effort and an individual pursuit of each group's own objectives. There also is a tendency to pass a problem on to another city agency. For example, many people believe that it is the responsibility of the police to fight crime. How many would say it is everyone's obligation? Mutual responsibility coupled with interdepartmental and community engagement forms the basis of community governance—bringing city and county agencies, schools, religious and nonprofit organizations, businesses, and residential communities together to openly communicate on how to improve the quality of life. This requires all stakeholders to meet on a regular basis to discuss current, ongoing problems in the neighborhood, develop strategic plans to repair deteriorated neighborhoods, and establish goals for their future.

Community governance breaks down organizational and communal barriers by enlisting everyone to work as a team in solving problems. Some cities and counties have found that this organized

approach has done more to fight crime than the traditional community policing strategy. Community governance is not a new concept to the law enforcement profession. This strategy takes the existing community policing practices and brings them together in an organized and focused approach. The Anaheim, California, experience has shown that when all city departments, as well as the community, understand that their roles are as important as the police department's in fighting crime, real progress will occur in improving the quality of life in neighborhoods. Community governance means it is everyone's responsibility to fight crime and improve the quality of life. ♦

“

**...this organized approach has done more to fight crime than the traditional community policing strategy.**

”

## Endnotes

<sup>1</sup> Robert Trojanowicz and Bonnie Bucqueroux, *Community Policing: A Contemporary Perspective* (Cincinnati, OH: Anderson Publishing Company, 1990), 8. For additional information, see Clyde L. Cronkhite, “Fostering Community Partnerships That Prevent

Crime and Promote Quality of Life,” *FBI Law Enforcement Bulletin*, May 2005, 7-10.

<sup>2</sup> James Q. Wilson and George L. Kelling, “Broken Windows,” *The Atlantic Monthly*, March 1982. For additional information, see Frank Perry, “Repairing Broken Windows: Preventing Corruption Within Our Ranks,” *FBI Law Enforcement Bulletin*, February 2001, 23-26

<sup>3</sup> *Ibid.*, 23.

<sup>4</sup> Anaheim's Community Preservation Division “promotes and maintains standards to preserve and enhance the quality of life and public safety for all who work, live, and play in the city of Anaheim. This is achieved through community involvement, education, and regulation, which enhance local neighborhoods.” The division includes such programs as code enforcement, graffiti removal, volunteers, and security lighting. For more information, see <http://www.anaheim.net/section.asp?id=140>.

<sup>5</sup> *Supra* note 2.

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*Captain Reiss serves in the Special Operations Division of the Anaheim, California, Police Department.*

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# ***Training for Law Enforcement Managers***

## ***What Does Professional Military Education Offer?***

By ROGER TROTT

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**T**he demands on law enforcement managers have increased as their agencies' missions have grown more diverse and complex since September 11, 2001. New investigative priorities and programs and current laws, along with corresponding changes in policies and procedures, all place elevated demands on managers' knowledge, skills, and abilities. Several aspects of a professional military education (PME) approach, combining the academic rigor of graduate-level

education with a professionally focused curriculum, can help local, state, and federal senior law enforcement managers become better prepared to carry out their responsibilities.<sup>1</sup>

While "warfighting" and "crimefighting" clearly are different professions, both military officers and law enforcement managers often operate in a similar environment frequently filled with uncertainty, crisis, and danger, as well as complicated by a considerable responsibility for

the well-being of others. Success for both professions in these circumstances often depends heavily upon the thought processes, which must be timely, rational, and even innovative, and the capabilities of the person in charge. All elements of America's strength, as represented by the military services, law enforcement agencies, and other civilian organizations, are needed to effectively protect the country from terrorists and support the global war on terrorism.

## The Professional Military Education System

The PME system is designed to educate and prepare officers to operate in a joint (multiservice) environment and equip them with the ability to generate quality tactical, operational, and strategic thought. It aims to produce critical thinkers who view military affairs in the broadest context and can identify and evaluate probable changes. Finally, the PME system aspires to produce senior officers who can develop and execute national military strategies that effectively employ the armed services to fulfill the goals of national security and strategy policy.<sup>2</sup> To achieve these results, the services and joint chiefs relied upon a structured and long-term academic educational approach, rather than a more narrow training system. “[T]hroughout military education in the last fifty years of the twentieth century there has been an increasing tendency to draw professional military education closer to the academic standards of universities, in terms of both quality and of breadth.”<sup>3</sup> Further, “warfighting is the greatest challenge to a student’s capacity for dealing with the unknown, and those trained as opposed to educated, have seldom managed to muster the wherewithal to cope with that environment.”<sup>4</sup>

Currently, all military branches operate multiple educational facilities for officers of all services to attend at different stages of their careers. There are four levels of military education: primary (lieutenants and captains or equivalent); intermediate (field-grade officers and majors or equivalent); senior (lieutenant colonels and colonels or equivalent); and generals/flag officers. Each level of military education focuses at the appropriate categories of war (tactical, operational, and strategic), building upon the knowledge and values gained in previous ones.<sup>5</sup>

The U.S. Marine Corps University (MCU), through its various schools, is the primary provider of resident PME for its almost 19,000 officers.<sup>6</sup> It simultaneously renders PME to officers from other U.S. military

branches, international officers from allied military services, and representatives of certain U.S. civilian agencies. The MCU is part of and similar to the other service institutions that comprise the PME system in the United States.

The MCU’s largest and oldest PME school is the Command and Staff College (CSC), which has the primary purpose of preparing military officers “for command and staff duties with Marine Air-Ground Task Forces and for assignment with joint, multinational, and high-level service organizations.”<sup>7</sup> The CSC offers a 10-month curriculum of graduate-level rigor to educate officers in various aspects of the strategic, operational, and tactical levels of war. The CSC student body, with U.S. and international military officers and select civilians, represent a wide range

**“...professional education can focus on improving a number of core competencies within a specific occupational environment.”**



*Special Agent Trott is an assistant section chief in the Training and Development Division at the FBI Academy.*

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of military operational specialties and experiences all learning together. While admission processes vary by student type, candidates must apply to attend the CSC resident program and go through a selection process. Admission requirements include a bachelor's degree from an accredited institution.

The CSC has a learning environment, curriculum, and instructional approach based on educational and adult-learning principles. The faculty uses a variety of instructional methodologies in support of the curriculum, which contains a broad spectrum of courses that range from the theoretical to the specific application of warfighting doctrine. The faculty of the CSC includes civilian staff members who are experienced educators and recognized experts in their fields of study with doctorate degrees and seasoned command-level military officers who generally have completed their senior-level PME with a graduate degree. The CSC military officers on the faculty represent all U.S. military services.

The MCU is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to award a CSC master of military studies degree, a voluntary program that requires additional work beyond the CSC's PME

curriculum. One CSC faculty member succinctly summarized the objective of the curriculum and the faculty's mission, "We equip officers through PME to solve problems more effectively, improve the speed of their decision cycle, and simply fight smarter." The synergy America reaps from combining its tailored educational program



for military officers with its battlefield technological achievements is evident. "The dollars that our nation invested in educating the leaders of Operation Allied Force and Desert Storm paid off in terms of the strategy and the operational concepts that our men and women in uniform followed to victory."<sup>8</sup>

### **Current Concerns**

During interviews with FBI Academy and MCU faculty and administrators, several educational strategies were discussed. FBI interviewees felt that, historically, the FBI relied too

heavily on on-the-job training and would benefit from additional comprehensive formalized instruction for mid-level managers. They commented that training provided by external entities often lacked relevance to the workplace. One interviewee explained that using a purely academic model to educate FBI agent managers has limited value for the organization. Several indicated that while the mission of the FBI has substantially changed, managers have not received adequate preparation to meet these new challenges. However, in the past year, the FBI has made significant progress through an initiative to address career-long development with a well integrated, competency-based leadership training framework.

An MCU interviewee indicated that Marines educate in a broad-based way to develop problem solvers. Further, he advised that using external providers for education does not offer current and relevant military knowledge or networking value among other military officers. MCU interviewees noted that resident PME provides education and training that effectively prepared U.S. Marine Corps officers to serve successfully in their future positions.

Today, some organizations have the erroneous idea that they can adequately develop



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their managers and executives simply by sending them to the latest leadership courses and seminars. Undoubtedly, leadership development constitutes an important feature of professional education, but it should not be substituted for a more comprehensive preparation of managers. Professional education enhances a wide range of cognitive skills, improves critical thinking ability, and provides increased professional knowledge. It also offers managers the freedom of a learning environment to sharpen their analytical, innovative, and evaluative thought processes on occupational issues. All of these factors prepare managers to select the best path before they can inspire and lead others down it. An FBI interviewee stated that successful FBI SSAs (supervisory special agents) must “possess the art of managing and possess the fine art of leadership.”

### **Benefits to Law Enforcement**

Professional education at the graduate level improves students’ abilities to perform the intellectual tasks of analyzing, synthesizing, and evaluating information within their professions. These tasks are at the highest level of Benjamin Bloom’s “Taxonomy of the Cognitive Domain.” Bloom, an educational psychologist, developed classification levels

of intellectual behavior important in learning (knowledge, comprehension, application, analysis, synthesis, and evaluation, in ascending order of complexity).<sup>9</sup> Improvements in the higher levels of intellectual behavior, such as synthesis or innovative thought, require instructional methodologies that offer opportunities for students to use these more complex cognitive functions. Graduate-level education provides these

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***...both military officers and law enforcement managers often operate in a similar environment....***

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options. However, professional education is intended to do more than increase generic intellectual capability. Courses are designed to increase the practitioners’ levels of professional knowledge and to develop a better understanding of the principles, theories, and concepts that comprise the foundation and environment of their occupations. By its nature, professional education is more relevant to the workplace than general graduate-level studies.

Individuals more readily can transfer the knowledge, cognitive skills, and abilities acquired from professional education to job performance because of their pertinence, providing a more direct and positive impact on the organization.

Because of its more comprehensive nature, professional education can focus on improving a number of core competencies within a specific occupational environment. For example, such an approach can improve FBI managers’ core competencies for use in the complex environment in which they interact. It also requires more opportunity for learning than a 1- or 2-week seminar can offer to significantly improve intellectual capabilities and enhance core competencies. “The exploration of new ideas occurs over a longer time and requires a different level of engagement than an 8-hour in-service training session.”<sup>10</sup>

### **The Approach**

The importance of critical thinking and professional competency is equally important to military officers and law enforcement managers. Mid-level law enforcement managers, similar to military officers, must think critically and creatively and act decisively in stressful and uncertain situations to effectively and efficiently solve problems. The government

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entrusts both with carrying out some of the country's most important responsibilities, such as their duties to protect life, liberty, and property and to ensure that America's way of life and rule of law endure for subsequent generations. They have the authority to take lives in defense of themselves and others as necessary to meet these responsibilities. The successful fulfillment of these obligations requires important leadership, management, and intellectual capabilities.

If the purpose for the professional education of military officers is to develop a smarter warfighter, then the purpose of a PME-like approach for preparing law enforcement managers is to produce a smarter crimefighter. "[W]hen educated people are faced with a novel situation, they should be able to analyze, interpret, and make judgments about the situation themselves, rather than rely on others to tell them what to do."<sup>11</sup> Professional education accomplishes this by improving practitioners' abilities to reason and effectively solve problems within the realm of their occupational environments. It also simultaneously increases their knowledge and understanding of their profession.

One law enforcement educator makes relevant comments linking law enforcement and the military. He indicates that

members of the U.S. military displayed exceptional war-fighting expertise and effectiveness in Afghanistan while also operating within the values of justice, compassion, freedom, and respect for human rights.<sup>12</sup> He attributes this outstanding performance to their "solid foundation of education and training." Further, he argues that professional policing is

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***Agencies could establish the program through a partnership with a university....***

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second only to the military in its importance to America because both institutions protect the safety, health, and welfare of the country. The current cooperative efforts to combat terrorism highlight this commonality of mission. He infers it is as equally important to provide the best possible education and training to police officers if law enforcement is to successfully "carry out the contradictory mandate of policing a free society" as effectively as the military carried out its mission in Afghanistan. Because of the importance of rank and management positions within

law enforcement organizations (their paramilitary nature), agencies need to make a significant commitment to preparing and developing mid-level managers. The proper "preparation and development of management personnel should be comprehensive, intellectually progressive, and continual." Instruction for lieutenants and captains should be "disproportionately educationally based" and "focused heavily on the conceptual principles of organizational and transformation leadership." The "level of abstraction" of the education provided to managers should increase with rank in the organization. The education should prepare command officers for their future roles and responsibilities.

### **A Model**

A professional education program should provide a pragmatic and academically challenging graduate-level course of study in a multiagency environment that will sharpen intellectual capabilities and increase professional competencies of law enforcement and national security managers (intelligence and counterintelligence) committed to vigorously maintaining the security of the United States. The program's curriculum should have two principal objectives. First, it should dramatically increase

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the capability of law enforcement managers and their counterparts in other departments to initiate, conduct, oversee, and evaluate investigative and intelligence initiatives that will protect the United States from terrorism, cybercrime, and other major criminal and national security threats. Second, it should develop a corps of managers within U.S. law enforcement and national security agencies, along with representatives of the military services, who possess a common understanding of law enforcement investigative/intelligence concepts, principles, and strategies and who have completed a similar comprehensive management development program. Participants selected to attend the program could obtain a national investigation and intelligence manager certification, as well as an optional master's degree in national investigation and intelligence studies.

Law enforcement and national security agencies generally do not have the training positions or billets provided to the military services for PME. They would be unable to support a PME residence program to keep significant numbers of their senior mid-level managers away from operational responsibilities for several months. The delivery structure of a PME-like program must meet agency and

department operational and administrative realities. For example, one curriculum possibility would require four to six 12-week quarters. A 12-week quarter would have 2 weeks in residence with 10 weeks of network learning. This structure would combine the strengths of a residence program with the flexibility of a nonresidence one.



Agencies could establish the program through a partnership with a university that could provide graduate-level education in support of the designed curriculum. For example, the FBI, in partnership with the university and possibly another federal investigative or national security agency, could assist in developing and overseeing such a program. A university's prior experience with providing a professional education program combined with its distance learning capability would

significantly help further these goals.

## Conclusion

Success in the war on terrorism requires more than military strength alone can provide. It commands unmatched military service and civilian agency cooperation and coordination with all entities operating at the highest levels of effectiveness. A graduate-level, multiagency, professional educational approach modeled after professional military education represents an excellent way for local, state, and federal law enforcement and national security partners to significantly improve the education, preparation, and development of their senior mid-level managers. Further, such a program's characteristics will build stronger partnerships between law enforcement departments, intelligence agencies, and military services.

This educational endeavor would move the U.S. law enforcement community from an era of multiagency cooperation toward the concept of jointness practiced by U.S. military services. It also would be another step in the development of U.S. law enforcement education. "What an organization needs is not just good people; it needs people that are improving with education."<sup>13</sup> ♦

## Endnotes

<sup>1</sup> The author gathered information for this article while attending the U.S. Marine Corps (USMC) University (MCU), Command and Staff College (CSC). Research included semistructured interviews of FBI Training and Development Division (TDD) and MCU administrators and faculty members. Questions and discussions in these interviews focused on the training, preparation, and development of FBI supervisory special agents (SSAs), FBI agent mid-level managers, and field-grade USMC officers. The author examined the MCU PME program, as represented by the CSC, to determine what aspects of PME the FBI can apply to improve how it trains agent mid-level managers. In October 2005, the FBI approved a feasibility study as the next step in exploring the potential implementation of this educational approach.

<sup>2</sup> Chairman of the Joint Chiefs of Staff, Instruction 1800.01B, *Officer Professional Military Education Policy* (Washington, DC, August 30, 2004), A-A-1.

<sup>3</sup> George C. Kennedy and Keith Neilson, *Military Education Past, Present, and Future* (Westport, CT: Praeger Publishers, 2002), 10.

<sup>4</sup> Ibid., preface, xi.

<sup>5</sup> Supra note 2, A-A-2.

<sup>6</sup> *Marine Corps Concepts and Programs 2004*, "Marine Corps Almanac," retrieved on September 6, 2004, from <http://hqinet001.hqmc.usmc.mil/p&r/concepts/2004/toc5.htm>.

<sup>7</sup> U.S. Marine Corps University Command and Staff College Catalog AY 2004-2005, 1.

<sup>8</sup> Harry H. Shelton, "Professional Education: The Key to Transformation," *Parameters* 31: 3 (Autumn 2001): 4.

<sup>9</sup> W. Huitt, "Bloom, et al's Taxonomy of the Cognitive Domain," *Educational*

*Psychology Interactive* (Valdosta, GA: Valdosta State University); retrieved on January 13, 2005, from <http://chiron.valdosta.edu/whuitt/col/cogsys/bloom.htm>.

<sup>10</sup> Michael Buerger, "Educating and Training the Future Police Officer," *FBI Law Enforcement Bulletin*, January 2004, 30.

<sup>11</sup> M.L. Dantzker, *Contemporary Policing: Personnel Issues and Trends* (Boston, MA: Butterworth-Heinemann, 1997), 76.

<sup>12</sup> Information in this paragraph was derived from James O'Keefe, *Protecting the Republic: The Education and Training of American Police Officers* (Upper Saddle River, NJ: Pearson Prentice Hall, 2004), 53 and 253-254.

<sup>13</sup> W. Edwards Deming, *Out of Crisis* (Cambridge, MA: Massachusetts Institute of Technology, 1982).

## FBI Law Enforcement Bulletin Author Guidelines

**Length:** Manuscripts should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced) for feature articles and 1,200 to 2,000 words (5 to 8 pages, double-spaced) for specialized departments, such as Police Practice.

**Format:** Authors should submit three copies of their articles typed and double-spaced on 8½- by 11-inch white paper with all pages numbered, along with an electronic version saved on computer disk, or e-mail them.

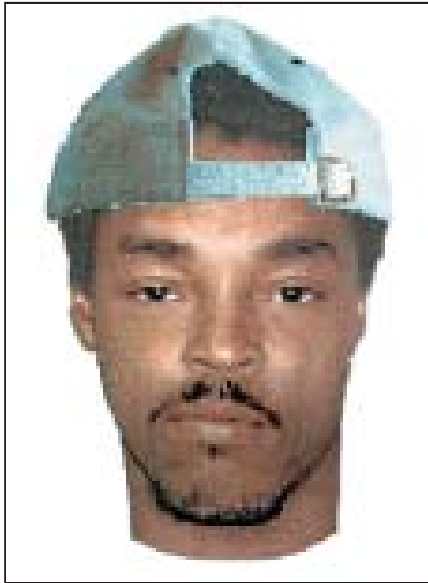
**Criteria:** The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. It generally does not publish articles on similar topics within a 12-month period or accept those previously published or currently under consideration by other magazines. Because it is a

government publication, the *Bulletin* cannot accept articles that advertise a product or service. To ensure that their writing style meets the *Bulletin's* requirements, authors should study several issues of the magazine and contact the staff or access <http://www.fbi.gov/publications/leb/leb.htm> for the expanded author guidelines, which contain additional specifications, detailed examples, and effective writing techniques. The *Bulletin* will advise authors of acceptance or rejection but cannot guarantee a publication date for accepted articles, which the staff edits for length, clarity, format, and style.

**Submit to:** Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Bldg., Room 201, Quantico, VA 22135; telephone: 703-632-1952; fax: 703-632-1968; e-mail: [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu).



### Assistance Needed



*Black Male  
Mid-20s to 30s  
5'10" to 6'2"  
Thin to medium build  
Medium complexion*

*Last seen wearing a  
white baseball cap or  
doo rag, white T-shirt,  
white nylon running  
pants with a black  
stripe on pant leg*

**T**he Oak Park, Illinois, Police Department needs assistance identifying a black male. In June 2005, an 18-year-old male suffered a fractured skull after being blitz attacked by an unknown subject. Witnesses observed a black male in the area, carrying what looked like a large hammer.

Five days later, a 22-year-old male was walking home when he noticed a black male, dressed in white, following him. The witness was able to run the short distance home without incident. Several minutes later, a university professor walking home from a train station was blitz attacked and suffered fatal head injuries. Witnesses in the area reportedly observed a black male dressed in white, carrying what appeared to be a sledgehammer. The subject might have left the area in an older model, light blue

or turquoise vehicle with a maroon or dark-colored front fender.

### Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all homicide divisions, crime analysis units, officers investigating crimes against persons, and special victims units. Any agency that has had similar cases or has any information as to the identity of this unknown black male may contact Detective James Sperandio of the Oak Park Police Department, Criminal Investigation Division, Oak Park, Illinois, at 708-386-3800, extension 5540; or Crime Analyst Suzanne Stiltner of the Violent Criminal Apprehension Program (ViCAP), FBI Academy, Quantico, Virginia, at 703-632-4173 or [ssiltner@fbiacademy.edu](mailto:ssiltner@fbiacademy.edu). ♦

## ***The Future of Policing in Ottawa***

By Vince Bevan

**T**imes are changing, and leaders in the law enforcement community must confront some key challenges to the future of policing. This involves a transformation, succession planning, and the opportunity to shape the future of policing in Ontario and across Canada, as well as in the United States. Right now, we face a shortage of qualified recruits who have the skills and knowledge the law enforcement profession needs. And, in a people-intensive activity like policing, technology cannot replace individuals.

Declining birth rates since the 1970s are far below those required to replace the existing workforce.<sup>1</sup> The exit of baby boomers from the labor force cannot be replaced by the entry of today's population of individuals under age 20 because more people in Canada fall between the ages of 45 and 64. By 2011, with current participation rates, any increase in the labor force in Ontario will come directly or indirectly from immigration to Canada in the under-35 age group.<sup>2</sup> All police services should make sure that they have enough frontline officers with the skills and knowledge to get the job done. For example, the Ottawa Police Service faces a changing of the guard. In the next 5 years, a complete turnover of senior-ranking officers and a renewal of our organization will occur. Through retirement and promotions, virtually 100 percent of senior officers will change—20 percent of all constables and sergeants will retire during this time period. Approximately 60 percent of officers now on the front lines have about 5 years of experience. To this end, the next few years are critical for the Ottawa Police Service, and the stakes are enormous. As an organization, we risk losing hundreds of years of experience and expertise from those retiring. We must take the necessary steps to preserve corporate knowledge and

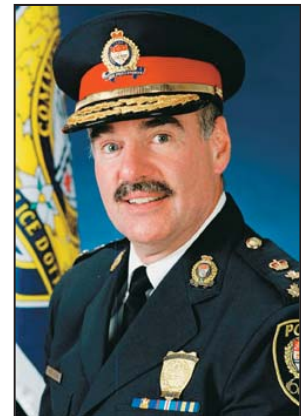
ensure that we have the people to effectively police our increasingly complex community.

### **Acknowledging Demographics**

Given the extent of change in the demographic and cultural makeup of cities, law enforcement leaders need to double their efforts to grow trust and confidence in all of the communities they serve. We police an increasingly diverse society; the total immigrant population in Ottawa is growing at twice the pace of the city's overall population. Between 1996 and 2001, the city's immigrant community grew by 14 percent, compared with an overall population increase of about 7 percent.<sup>3</sup> This trend, similar in cities across the province of Ontario, is expected to continue.

As of the last census, 22 percent of Ottawa's residents were born in another country. Eighteen percent are visible minorities, a number growing at almost four times the pace of the overall population. Our community has become a reflection of the world. People in Ottawa speak more than 70 languages. Chinese has become the third most

*Chief Bevan heads  
Canada's Ottawa  
Police Service.*



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spoken in the city after English and French, followed by Arabic, Italian, and Spanish. This change in Ottawa's population seriously tests our ability to police the diverse community that the city has become; operational requirements have become much more complex.

During the days after September 11, 2001, to assist with national security investigations, we identified which of our members spoke Arabic. More recently, the pressures brought on by a large-scale drug investigation dictated the need for officers who could speak Vietnamese and understand the cultural issues we faced. Combined with the retirement of baby boomers, our diverse communities present us with both a challenge and an opportunity. We cannot postpone action; this long-term problem requires a long-term solution. If we fail to invest in remedies today, we will pay a significant price tomorrow.

We must recruit from our immigrant communities not just because we want to better reflect the makeup of the community at large but for operational reasons as well. We will not be legitimate public policing organizations unless we have the capacity to communicate with and understand the diverse people who now call our country home. If we cannot communicate with victims, who will investigate crimes committed against them? If we are unable to penetrate organized crime because we cannot speak the language and do not understand the culture, who will halt its spread? Criminal acts of a few can affect us all, no matter what language we speak or the color of our skin. We have an obligation to position ourselves to be effective—these are the operational reasons for doing what we are doing. This new approach to recruiting will bring officers who communicate in the languages spoken in our neighborhoods and who understand and appreciate the cultures alive on our streets,

thereby strengthening our links with those we serve and protect.

### **Developing a Strategy**

In Ottawa, we have a distinctive vision of policing. We plan to meet the impending staffing crisis by recruiting individuals with the skills, knowledge, and awareness needed to meet our operational requirements; hiring them based on merit; ensuring a welcoming and supportive organizational culture; and providing opportunities to assume leadership positions in the next few years.

Before we developed a strategy to address our staffing crisis, we examined the culture within the Ottawa Police Service. Recruiting individuals from diverse communities is meaningless if they feel unwelcome because they will leave and, even

worse, spread the word that the Ottawa Police Service is not a desirable place to work. Therefore, we observed our department and asked some tough questions about incidents and complaints of harassment involving women inside the organization. We then asked a local university to study impediments to implementing a new recruitment strategy. The results identi-

fied an unofficial culture within the police service resistant to members from diverse communities in the organization, as well as a lingering resistance to the presence of women. Clearly, evidence showed that we were not the organization we thought.

For the management team of the Ottawa Police Service, the study crystallized the need to articulate our vision in a clear and powerful manner so all members can rally behind it and be inspired to support the needed changes for the future. Further, the analysis identified the following six areas we need to focus on to move our vision forward:

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**We must  
recruit from  
our immigrant  
communities....**

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- 1) changing behaviors;
  - 2) providing leadership;
  - 3) developing a critical mass of support;
  - 4) improving communications;
  - 5) ensuring training and education; and
  - 6) supporting a framework for consistent change.

### Implementing Recruitment Projects

With the study as a backdrop, the Ottawa Police Service created the Outreach Recruitment Project, which aims to find ways to recruit and retain qualified applicants for the service while addressing the organization's need for diversity not only as it relates to what is visible, such as skin color, language, or gender, but also invisible, including sexual orientation or knowledge of other cultures or religious beliefs. The Outreach Recruitment Project opens doors for people who may not have considered a career in policing and enhances the Ottawa Police Service as an employer of choice. In short, we want to broaden our horizons so we can understand and work effectively with all of the different parts of our increasingly complex community. The Outreach Recruitment Project will not only increase our numbers but our skills and awareness as well. For the Ottawa Police Service, diversification makes sound business sense.

The Outreach Recruitment Champions, which includes sworn and civilian members of the Ottawa Police Service and community members and leaders, is one of the recruitment project's pivotal elements. The program identifies individuals suitable for and interested in a policing career, encourages them to apply, and supports them throughout the recruitment process, as well as after hired. The joint community-police partnership in recruitment

is a groundbreaking initiative by our police service. In spite of the budget pressures the Ottawa Police Service faces, we address staffing needs through a carefully planned set of initiatives that—

- promotes those ready to take leadership positions;
- captures current experience and expertise so that when we lose our current leadership, the next generation will be ready; and
- recruits qualified candidates who have the skills and knowledge we need from outside the service; only those with merit will advance in the Ottawa Police Service.

The Ottawa Police Service needs to protect its investment in its people and the human capital it developed. The same proves true when it comes to new recruits—they will bring new skills and knowledge to the service. The Outreach Recruitment Program does not espouse equity for select groups. That practice, in itself, creates inequity for others. Instead, the Ottawa Police Service carefully constructed a program based on merit. Meeting our staffing and operational requirements will

not be easy, but we always strive to improve. Hopefully, the work that comes out of the Outreach Recruitment Project will make the agency a more effective police service. We will have constables who have the skills to do the job now and in the future while building on the experiences and knowledge of those who came before them. They will be able to communicate in various languages and understand different cultures and lifestyles, leading to—

- better crime prevention due to the trust and confidence of all our communities;
- greater detection of crime by encouraging people who otherwise might not want to

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**The Outreach Recruitment Project will not only increase our numbers but our skills and awareness as well.**

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help to come forward as sources or witnesses;  
and

- comprehensive understanding of other cultures and lifestyles to deliver even better service and satisfaction to victims.

Our ability to fight crime and serve victims depends on the success of this renewal program. Increasing the diversity of the workforce will help the Ottawa Police Service enhance the trust and confidence of all communities; harness the energy and support of a wider section of the community; be more effective in investigating crimes against vulnerable people; identify important gaps in service to ensure everyone has access to the Ottawa Police Service; and recruit from the widest possible pool of people who can speak other languages, understand other cultures and lifestyles, and are willing to use those skills to benefit the organization and community at large.

### Conclusion

Today, all law enforcement agencies face a time of great challenge and opportunity. Although a lack of qualified employees could potentially limit police services, organizations can take steps to ensure they have strategies in place to effectively police increasingly diverse communities. Leaders must recruit individuals who have the appropriate tools and skills, which include understanding various languages, cultures, and lifestyles, to continue performing the job for the next generation. If the law enforcement profession fails to enhance its services today, it risks crippling them tomorrow. This daunting task will take hard work, patience, and unwavering dedication. Everyone in law enforcement must accept this challenge for the well-being of the profession we love and the citizens we are sworn to protect and serve. ♦

### Endnotes

<sup>1</sup> David Baxter, "Changing Demographics and Dimensions of Policing in Ontario," *HQ Magazine*, Fall 2004, 14-15.

<sup>2</sup> Ibid.

<sup>3</sup> Statistics Canada, Census 1996 and 2001.

## Wanted: Notable Speeches

**T**he *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8½- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

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Room 201  
Quantico, VA 22135  
telephone: 703-632-1952,  
e-mail: [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu)

## Courts

*Federal Criminal Case Processing, 2002: With Trends 1982-2002, Reconciled Data* describes the case processing of defendants in the federal criminal justice system. The report includes the number and disposition of suspects investigated by U.S. attorneys, the number of arrests for federal offenses, the number of defendants in cases filed in U.S. district courts, sanctions imposed on criminal defendants, the number of persons under federal correctional supervision (probation, parole, supervised release, and incarceration), and trends in annual federal criminal case processing. Highlights feature the following: between 1994 and 2002, investigations initiated by U.S. attorneys have increased 25 percent (from 99,251 to 124,335), including a rise in investigations for both immigration violations (from 5,526 to 16,699) and drug offenses (from 29,311 to 38,150); during 2002, criminal cases involving 80,424 defendants were concluded in U.S. district court, and not only were 89 percent of the individuals convicted but 96 percent of those convicted pleaded guilty or no contest; and U.S. attorneys declined to prosecute a smaller proportion of those investigated, as declinations of matters concluded decreased from 36 percent during 1994 to 27 percent during 2002. This report is available online at <http://www.ojp.usdoj.gov/bjs/abstract/fccp02.htm>.

## Personnel

The National Institute of Justice (NIJ) presents *Enhancing Police Integrity: Research for Practice*, which describes a study that surveyed more than 3,000 officers from 30 law enforcement agencies to determine what factors or strategies increase or diminish officer integrity. This report summarizes the researchers' findings and includes hypothetical scenarios and assessment questions that police chiefs can use to measure integrity within their departments, as well as strategies to foster officer integrity. This report is available online at <http://www.ncjrs.org/pdffiles1/nij/209269.pdf> or by calling the National Criminal Justice Reference Service at 800-851-3420.

# Cell Phone Technology and Physical Surveillance

By M. WESLEY CLARK, J.D., LL.M.



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**R**apid changes in technology often present law enforcement with questions as to how these advances fit within an already-existing legal framework of laws and cases. The widespread availability of the cell phone is no different. Law enforcement has been presented with an investigative instrument capable of augmenting tools used to assist physical surveillance such as traditional tracking equipment.<sup>1</sup> Yet, the parameters for the lawful use of this technology to assist law enforcement

are not yet fully delineated. The traditional statutory framework governing electronic surveillance does not provide law enforcement with clear-cut guidance. This article covers the use of the cell phone as a surveillance aid and the extent to which current electronic surveillance statutory provisions address this use. In addition, the recent judicial analysis of this issue also will be discussed.

## Traditional Tracking Analysis

Traditional law enforcement methods of tracking, whether

through the use of a tracking device on a vehicle or other conveyance or placing a device inside a container, fit within the analysis provided by the U.S. Supreme Court in *United States v. Knotts*<sup>2</sup> and *United States v. Karo*.<sup>3</sup> These cases held that so long as the conveyance or thing to be monitored is out and about on the public thoroughfares,<sup>4</sup> open fields, or even on private property,<sup>5</sup> all instances where the information revealed by the target could be observed by visual surveillance engaged in by third parties, no showing of



evidence—let alone probable cause—is required.<sup>6</sup> This analysis holds true today so long as the tracking equipment belongs to the government; it does not resolve the issue when third-party assistance from the service provider is required.

Cell phone companies with mounting concerns about liability typically will not furnish cell phone location information to law enforcement absent a court order. The question of the moment surrounds the quantum of evidence that the government must articulate to a court before such an order for prospective or real-time data (critical for tracking the cell phone) will be issued.<sup>7</sup>

### **Within the Scope of an Existing Court Order**

In *United States v. Forest*,<sup>8</sup> the DEA had a court order to

intercept wire communications pursuant to “Title III”<sup>9</sup> that also directed the service provider to “disclose to the government all subscriber information, toll records, and other information relevant to the government’s investigation.”<sup>10</sup> As an aid to the establishment of visual contact with the subject, DEA personnel dialed the target’s cell phone (without letting it ring) several times in the course of the day and obtained the cell phone location through the cell site information given by the service provider.<sup>11</sup>

The defendant argued that in so doing, DEA personnel violated his Fourth Amendment rights. The threshold question was whether securing the cell site location information constituted either a search or a seizure within the meaning of the Fourth Amendment. The

Federal Court of Appeals for the Sixth Circuit concluded that because the data “was used to track [the target’s] movements only on public highways,” *Knotts* was controlling and that there was “no legitimate expectation of privacy in the cell site data because DEA agents could have obtained the same information by following [the target’s] car.”<sup>12</sup>

### **Absent an Existing Court Order**

In most location surveillance scenarios, law enforcement probably will not be fortunate enough to have a comprehensive court order in place as in *Forest*, thus squarely presenting the need for a stand-alone order. The type of order and quantum of information needed to obtain this information from the service provider are not yet clear. In several instances, federal law enforcement has relied on provisions within Title II of the Electronic Communications Privacy Act<sup>13</sup> (ECPA), primarily section 2703(d) of Title 18 of the U.S. Code (U.S.C.) either alone or in combination with the pen register and trap and trace statute, Title 18 at sections 3121-3127 (hereafter referred to as the pen/trap statute).<sup>14</sup>

This approach, however, has not proved to be entirely successful. In a series of late 2005 and early 2006 requests by the government in federal court



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“  
***The traditional statutory framework governing electronic surveillance does not provide law enforcement with clear-cut guidance.***  
”



seeking cell site information for tracking purposes, several federal courts have concluded that the equivalent of a search warrant based upon probable cause is required to compel a service provider to divulge real-time/prospective cell site location information. This contrasts with the government's attempt to use the pen/trap statute in conjunction with a 2703(d) court order. The latter is predicated on "specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication or the records or other information sought are relevant and material to an ongoing criminal investigation."

In two late 2005 cases out of the Eastern District of New York, the U.S. Attorney's Office (USAO) sought an order compelling the "disclosure of the location of cell site/sector (physical address) at call origination (for outbound calling), call termination (for incoming calls), and if reasonably available, during the progress of a call, for the Subject Telephone."<sup>15</sup> In support of its request, the government cited three provisions within section 2703, including subsection (d). Of the sections proffered, the U.S. magistrate judge found that only 2703(d) *might* provide a basis for the order sought. The U.S. magistrate judge concluded that the government

had provided the requisite level of evidence called for in 2703(d) and that under the statutory definition,<sup>16</sup> cell site location information would constitute the "contents of...[an] electronic communication" except for one thing, the definition of electronic communication<sup>17</sup> specifically excludes "any communication from a tracking device." A tracking device is defined as "an electronic or mechanical device which permits the tracking of the

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***Cell phone companies with mounting concerns about liability typically will not furnish cell phone location information to law enforcement absent a court order.***

”

movement of a person or object.”<sup>18</sup> The court concluded that based upon these statutory definitions, the targeted cell phone equated to—and was thus “precisely describe[d]” as—a tracking device. Thus, the court concluded that it was unable to grant the government's application for a tracking order.

Because the government's application also sought permission to conduct pen register, as

well as trap and trace, operations, the court held that “[i]n fairness...[it] must also consider whether the relief is available simply by virtue of the government's otherwise proper application” for this additional authority.<sup>19</sup> The U.S. magistrate judge concluded that the pen/trap statute did not provide such a basis because specific language in the Communications Assistance for Law Enforcement Act (CALEA)<sup>20</sup> precluded it. Among other things, CALEA mandated that telecommunications carriers be technologically able to

expeditiously isolat[e] and enabl[e] the government, pursuant to a court order or other lawful authorization, to access call-identifying information...except that with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices..., such call-identifying information shall not include any information that may disclose the physical location of the subscriber.<sup>21</sup>

The U.S. magistrate judge further stated that “where a carrier's assistance to law enforcement is ordered on the basis of something less than probable cause, such assistance must not include disclosure of a subscriber's physical location.”<sup>22</sup> Upon reconsideration, the court again denied the

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gov-ernment's request for real-time cell site information reiterating, "existing law does not permit the government to obtain the requested information on a prospective, real-time basis without a showing of probable cause."<sup>23</sup>

In a request in the Southern District of Texas,<sup>24</sup> the government combined a pen register and trap/trace request with one seeking subscriber records. The application also sought, in part, the prospective/real-time "location of cell site/sector (physical address) at call origination (for outbound calling), call termination (for incoming calls) and, if reasonably available, during the progress of a call."<sup>25</sup> In addition to this, the government also requested data to include "information regarding the strength, angle, and timing of the caller's signal measured at two or more cell sites...."<sup>26</sup> The question the U.S. magistrate judge found himself confronting was whether

this location information [is] merely another form of subscriber record accessible upon a showing of "specific and articulable facts" under 18 U.S.C. § 2703(d), as the government contends, [or whether] this type of surveillance require[s] a more exacting standard such as probable cause under Federal Rule of Criminal Procedure 41[.]<sup>27</sup>

Like the New York U.S. magistrate judge, the court rejected all of the government's theories—the pen/trap statute, the Stored Communications Act, and the hybrid mix of the two. The court then stated, "[d]enial of the government's request for prospective cell site data in this instance should have no dire consequences for law enforcement. This type of surveillance is unquestionably available upon a traditional probable cause showing under Rule 41."<sup>28</sup>

**“  
...the equivalent of a search warrant based upon probable cause is required to compel a service provider to divulge real-time/prospective cell site location information.  
”**

The government again sought an order relying on its hybrid theory advanced in the request described above and again was denied next by a U.S. magistrate judge in Maryland.<sup>29</sup> Although the outcome for the government was the same here as in the earlier court decisions, the U.S. magistrate judge in this request at least recognized—but to no effect on the ultimate outcome—that "[i]f acquisition

of real-time cell site information is equivalent to a tracking device, it would seem the government is not constitutionally required to obtain a warrant provided the phone remains in a public place where visual surveillance would be available."<sup>30</sup>

Given the less than fully successful results achieved so far, in a request for an order before a U.S. magistrate judge in the District of Columbia, the government tried a different approach by attempting a union of the Fourth Amendment with a 2703(d) court order. In this request, the government sought a court order by "demonstrat[ing] probable cause to believe that the requested prospective cell site information is relevant and material to an ongoing criminal investigation."<sup>31</sup>

The court rejected the government's approach, acknowledging the probable cause showing but concluding that this did not help the government overcome the fact that "the statutes upon which the government purports to rely on in those cases and in this one...do not authorize the government to secure cell site data that would disclose the location of the person using the cell phone," and, in the court's analogy, that the attempt was akin to designing a horse by committee and instead

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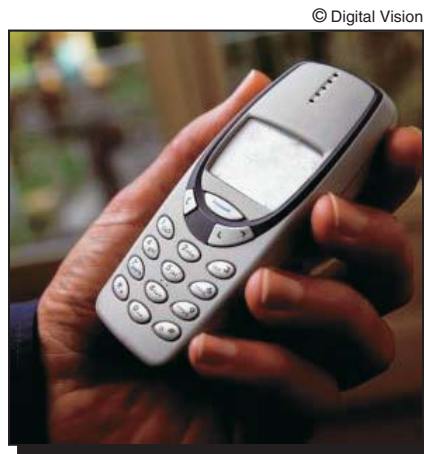
constructing a camel.<sup>32</sup> A month later, the government went to the same U.S. magistrate judge with the same request but, this time buttressing its application with an affidavit. The court concluded that this did nothing to change its view.<sup>33</sup>

### **The Impact of CALEA on the Government's Request**

One of the most important matters CALEA addressed was law enforcement's continued access to the fast-changing telecommunications infrastructure for the purpose of conducting lawful electronic surveillance. With the emergence of wireless technology, law enforcement did not want to be in a worse situation when attempting to engage in such surveillance than it was when telephony was accomplished only through copper wires.<sup>34</sup> Providers, thus, are required by CALEA to ensure that their deploying technologies permit the same electronic surveillance access as before while, at the same time, ensuring continuing safeguards against unwarranted privacy intrusions.

Passage of the legislation, which guarantees continued access by law enforcement—given the advent of wireless technologies—to call-identifying information via pen registers, was ensured by inserting the restriction that in no event could such data “include any

information that may disclose the physical location of the subscriber[.]”<sup>35</sup> The U.S. magistrate judge in the District of Columbia case relied extensively on testimony before Congress of then FBI Director Freeh concerning privacy and



the bill that ultimately became CALEA. The court found the director's statement compelling, stating

The Director's offer and its acceptance by Congress led to the exception codified at 47 U.S.C. § 1002(a)(2)... [T]he exception was based on the express representation by the government to Congress that the authority for pen registers and trap and trace devices would not and could not be used to secure location information, the very information the government wants to secure by using a pen register and trap and trace device.<sup>36</sup>

In a case in December 2005 in the Southern District of New York, the government was able to obtain location information.<sup>37</sup> However, while this decision was helpful, in reviewing this case it is important to bear in mind that the location information sought in this request was relatively imprecise (less intrusive) when compared with the more focused data at issue in the requests already discussed. In this case, the court granted the government's application seeking “information pertaining to the location of cell site towers receiving signal from a particular cellular telephone[.]” i.e., “cell site activations,”<sup>38</sup> and requesting that the cell phone company provide a map detailing the locations of its cell towers, i.e., their “locations/addresses, sectors and orientations” to include “the physical address/location of all cellular towers in the specified market.”<sup>39</sup> As might be expected given the differing call volumes, there are more towers in a given urban area than would be present in a rural area of the same size. This means that the towers will be closer to each other in the city than in outlying areas. Therefore, the closeness of the towers will help determine more precisely the location of an operating cell phone.

The U.S. magistrate judge emphasized the importance of the less exact types

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of information sought in the request before him than in the requests for orders previously discussed, stating

First, the cell site information provided in this District is tied only to telephone calls actually made or received by the telephone user. Thus, no data is provided as to the location of the cell phone when no call is in progress. Second, at any given moment, data is provided only as to a single cell tower with which the cell phone is communicating. Thus, no data is provided which could be “triangulated” to permit the precise location of the cell phone user. Third, the data is not obtained by the Government directly [from the user’s phone] but it is instead transmitted from the provider digitally to a computer maintained by the Government.<sup>40</sup>

The government again relied upon the pen register and trap and trace statutes and section 2703 in its request. The court echoed observations made in the earlier cell phone tracking decisions, agreeing that “the Pen Register Statute would by itself provide authority for the order being sought by the Government were it not for [47 U.S.C. § 1002].”<sup>41</sup> The court seized upon language in CALEA providing that

subscriber physical location information may not be “acquired *solely* pursuant” to the pen/trap statute. The court reasoned that there is “simply impose[d] upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices.”<sup>42</sup> In attempting to resolve what this authorization may consist of, the court considered the government’s



argument that section 2703(c) may provide the solution. This provision, along with 2703(d), permits the government to petition for an order upon a showing of specific and articulable facts establishing reasonable grounds to believe that the contents of a communication or the *records* or *other information* sought are relevant and material to an ongoing criminal investigation. The U.S. magistrate judge concluded that “cell site or tracking information comes within section

2703(c) and consequently is the sort of ‘information’ that the Government may seek pursuant to an order under section 2703(d).”<sup>43</sup>

The next issue to confront the U.S. magistrate judge was whether section 2703 provided authority to obtain prospective information. Indeed, chapter 121 of the U.S. Code, Title 18, of which 2703 is a part, is captioned “*Stored Wire and Electronic Communications and Transactional Records Access*,”<sup>44</sup> thus suggesting that its provisions relate to acquired or historical data. The court dismissed this contention, relying on the notion that cell site location information “is transmitted to the Government only after it has come into the possession of the cellular telephone provider in the form of a record.”<sup>45</sup>

Not surprisingly, the uncertainty continues. A ruling on another request from the government was issued by a U.S. magistrate judge in the Eastern District of Wisconsin who rejected the government’s request for prospective information.<sup>46</sup> The court’s primary concern was with the CALEA caveat discussed earlier limiting access to information disclosing the physical location of the subscriber when sought through a pen register or trap and trace device. In the court’s view, this proved insurmountable.



In yet another ruling in January 2006, a U.S. magistrate judge in the Western District of Louisiana allowed the government to acquire some limited cell site information stating “the Government will know only that the user has made or received a call on his cell phone, and that his cell phone communicated with a particular tower or towers during the call [, thus,]...no Fourth Amendment concerns are implicated.”<sup>47</sup>

## Conclusion

The only thing certain with respect to the legal requirements for acquisition of cell site information by the government for purposes of identifying the location of a cellular telephone and its user is that nothing is certain at this moment. The path that the use of cell site tracking is headed down is likely toward a legislative solution. In the interim, law enforcement should track judicial developments closely within their jurisdictions. State and local law enforcement also should take a proactive role with respect to legislative solutions to this uncertainty within their own state electronic surveillance statutes. ♦

## Endnotes

<sup>1</sup> Even government-owned tracking devices are undergoing modernization in the 21st century, moving from radio tracking devices to those using the more precise global positioning satellite system (GPS). GPS tracking by law enforcement has been upheld on the same basis

as the older, more traditional, radio-based tracking equipment, *United States v. Moran*, 349 F.Supp.2d 425 (N.D.N.Y. 2005). Note, however, that today “the traditional homing devices...are now monitored via radio signals using the same cell phone towers used to transmit cell site data.” *In the Matter of the Application of the United States of America for an Order Authorizing the Installation and Use of a Pen Register and a Caller Identification System on Telephone Numbers [sealed] and [sealed] and the Production of Real Time Cell Site Information*, 402 F.Supp.2d 597, 604 (D.Md. 2005) (hereafter *DMD*).



**State and local law enforcement... should take a proactive role with respect to legislative solutions to this uncertainty within their own state electronic surveillance statutes.**



<sup>2</sup> 460 U.S. 276 (1983).

<sup>3</sup> 468 U.S. 705 (1984).

<sup>4</sup> “A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.... [The subject] voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property.” *Knotts*, *supra* note 2 at 281-282.

<sup>5</sup> “[N]otions of physical trespass based on the law of real property [are] not dispositive....” *Id.* at 285.

<sup>6</sup> Probable cause to monitor will be required if electronic tracking is to occur “within a private dwelling,” i.e., a “location not open to visual surveillance.” *Karo*, *supra* note 3 at 714-715.

<sup>7</sup> It is submitted that for other than stored, previously acquired cell site location data,

“real-time” and “prospective cell site information” are conceptually the same thing: permission is being sought to obtain “yet-to-be” information that is to be acquired/become available during a span of time that is to occur after an authorizing court order would be signed. However, one court has suggested that the two terms can mean different things. *DMD supra* note 1 at 599.

<sup>8</sup> 355 F.3d 942 (6th Cir.), *cert. denied*, 543 U.S. 856 (2004).

<sup>9</sup> 18 U.S.C. § 2510 *et seq.*

<sup>10</sup> *Forest supra* note 8 at 947.

<sup>11</sup> DEA “used Sprint’s computer data to determine which cellular transmission towers were being ‘hit’ by the [target’s] phone. This ‘cell site data’ revealed the general locations of [the target].” *Id.*

<sup>12</sup> *Id.* at 950-951. “Although the DEA agents were not able to maintain visual contact with [the target’s] car at all times, visual observation was possible by any member of the public. The DEA simply used the cell site data to ‘augment the sensory faculties bestowed upon them by birth,’ which is permissible under *Knotts*.... [T]he cell site data is simply a proxy for [the target’s] visually observable location.” *Id.* at 951. (original emphasis).

<sup>13</sup> Pub.L.No. 99-508, 100 Stat. 1848 (1986). Note that 18 U.S.C. § 2701-2712 (Title II of the ECPA, as amended) is referred to sometimes informally as the Stored Communications Act (SCA) even though it is not denominated as such within the body of ECPA.

<sup>14</sup> Note that prior to passage of the USA PATRIOT Act of 2001, Pub.L.No. 107-56, 115 Stat. 272 (2001), 18 U.S.C. § 3127(3) defined pen register as a “device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached[.]” Prior to the advent of cell phones (when telephones were connected by copper wires), a pen register was actually a machine that printed onto a roll of paper all numbers dialed from the targeted phone. It also would print the times that the telephone receiver was picked up (off hook) and when it was replaced (on hook). Today, most of the data that the machines used to acquire and print out are collected and arranged by service provider computer feeds and software. “[Information that was heretofore captured by a pen register can now be transmitted digitally by the telephone service provider.” *SDNY, infra* note 37 at 439 n. 1. In recognition of this technology shift, section 216 of the USA PATRIOT Act updated the pen register definition (and, relatedly, that

of the trap and trace “device” as well) so that § 3127 (3) now describes a pen register as “a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted[.]”

<sup>15</sup> *In the Matter of an Application of the United States for an Order 1) Authorizing the Use of a Pen Register and a Trap and Trace Device and 2) Authorizing Release of Subscriber Information and/or Cell Site Information*, 384 F.Supp.2d 562, 563 (E.D.N.Y. 2005) (hereafter *EDNY #1*).

<sup>16</sup> 18 U.S.C. § 2510 (12) (definition of electronic communication).

<sup>17</sup> *Id.*

<sup>18</sup> 18 U.S.C. § 3117(b).

<sup>19</sup> *Supra* note 15 at 564.

<sup>20</sup> Pub.L.No. 103-414, § 103, 108 Stat. 4279, 4280-81 (1994), codified at 47 U.S.C. § 1002(a)(2)(B).

<sup>21</sup> 47 U.S.C. §§ 1002(a)(2) and (a)(2)(B).

<sup>22</sup> *Supra* note 15 at 565. To the extent the government seeks a cell phone user’s location based upon the pen/trap statute, this is correct. However, a strong argument exists that such information can be obtained from carriers based upon a less than probable cause order issued pursuant to Federal Rule of Criminal Procedure 57 and the All Writs Act, 28 U.S.C. § 1651. 18 U.S.C. § 3117(a) states in pertinent part that “a court is empowered to issue a warrant or other order for the installation of a mobile tracking device[.]”

<sup>23</sup> *EDNY #1, upon reconsideration*, 396 F.Supp.2d 294, 295 (hereafter *EDNY #2*). “Congress plainly intended the ‘location’ prohibition in CALEA to regulate not only what a carrier can provide, but also what law enforcement can lawfully ‘obtain.’” *EDNY #2* at 307, n. 9.

<sup>24</sup> *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F.Supp.2d 747 (S.D.Tex. 2005) (hereafter *SDTX*).

<sup>25</sup> *Id.* at 749.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 749-750.

<sup>28</sup> *Id.* at 765.

<sup>29</sup> *Supra* note 1 at 600.

<sup>30</sup> *Id.* at 604.

<sup>31</sup> *In the Matter of the Application of the United States of America for an Order Authorizing the Release of Prospective Cell Site Information*, 407, F.Supp.2d. 132-133 (D.D.C. 2005).

<sup>32</sup> *Id.* at 133.

<sup>33</sup> *In the Matter of the Application of the United States of America for an Order Authorizing the Release of Prospective Cell Site Information*, 407 F.Supp.2d 134 (D.D.C. 2006) (hereafter *DDC #2*).

<sup>34</sup> “The purpose of [CALEA] is to preserve the government’s ability, pursuant to court order or other lawful authorization, to intercept communications involving advanced technologies such as digital or wireless transmission modes...while protecting the privacy of communications and without impeding the introduction of new technologies, features, and services.” H.Rep. No. 103-827 (1994), at 9, reprinted in 1994 U.S.C.C.A.N. 3489.

<sup>35</sup> 47 U.S.C. § 1002(a)(2)(B).

<sup>36</sup> *Supra* note 33 at 138.

<sup>37</sup> *In re Application of the United States of America for an Order for Disclosure of Telecommunications Records and Authorizing the Use of a Pen Register and Trap and Trace Device*, 405 F.Supp.2d 435 (S.D.N.Y. 2005) (hereafter *SDNY*). See also *In the Matter of the Application of the United States for an Order: 1) Authorizing the Installation and Use of a Pen Register and Trap and Trace Device; and 2) Authorizing Release of Subscriber Information and/or Cell Site Information*, 411 F.Supp.2d 678, (W.D.La. 2006) (hereafter *WDLA*).

<sup>38</sup> “Cell site activations” refers to “cell site information concerning the physical location of the antenna towers associated with the beginning and termination of calls to and from a particular cellphone[.]” but not during the course of the call. *SDNY supra* note 37 at 437.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 438.

<sup>41</sup> *Id.* at 440.

<sup>42</sup> *Id.* at 443 (internal citations omitted).

<sup>43</sup> *Id.* at 445. In a friend of the court brief filed in the case, the Federal Defenders of New York, Inc., argued that such a 2703(d) order could not properly be issued because the statutory definition of electronic communication specifically excludes “any communication from a tracking device.” 18 U.S.C. § 2510(12). This is the same argument which the *EDNY* magistrate judge found sufficiently compelling to be determinative. In *SDNY*, the magistrate judge deflected that contention: first, by recognizing that a cell phone user is a consumer of “electronic communication service” and, second, by acknowledging that such service includes a number of capabilities, i.e., a package that is more than just cell site information and, thus, information pertaining to

a subscriber of that service is obtainable under section 2703(c). *SDNY supra* note 37 at 446.

<sup>44</sup> Emphasis supplied.

<sup>45</sup> *SDNY supra* note 37 at 447.

<sup>46</sup> *In the Matter of the Application of the United States of America for an Order Authorizing the Disclosure of Prospective Cell Site Information*, 412 F.Supp.2d 947 (E.D. Wis. 2006).

<sup>47</sup> *WDLA supra* note 37 at 682. Just before this article went to press, five more U.S. magistrate judge decisions relating to cell phone tracking were issued: *In the Matter of the Application of the United States of America for an Order Authorizing the Installation and Use of a Pen Register and/or Trap and Trace for Mobile Identification Number (585) 111-1111 and the Disclosure of Subscriber and Activity Information Under 18 U.S.C. § 2703*, No. 06-MJ-506, 2006 WL 354289 (W.D.N.Y. Feb. 15, 2006); *In the Matter of the Application of the United States of America for an Order Authorizing the Installation and Use of a Pen Register with Caller Identification Device and Cell Site Location Authority on Certain Cellular Telephone*, No. MISC.2:06 MC 0028, 2006 WL 445922 (S.D.W.Va. Feb 17, 2006); *In the Matter of the Application of the United States of America for Orders Authorizing the Installation and Use of Pen Registers and Caller Identification Devices on Telephone Numbers [Sealed] and [Sealed]*, Misc. No. 06-41, 2006 WL 462338 (D. Md. Feb. 27, 2006); *In Re Application of the United States for an Order for Prospective Cell Site Location Information on a Certain Cellular Telephone*, No. 06 CRIM, MISC. 01, 2006 WL 468300 (S.D.N.Y. Feb. 28, 2006); and *In Re Application for an Order Authorizing the Installation and Use of a Pen Register Device, Trap and Trace Device, Dialed Number Interceptor, Number Search Device, and Caller Identification Service, and the Disclosure of Billing, Subscriber, and Air Time Information*, No.S-06-SW-0041 (E.D. Cal. filed Mar. 15, 2006).

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

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## The Bulletin Notes

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



Officer Molchan



Officer Stoneback

Officers Matthew Molchan and Steven Stoneback of the Quakertown, Pennsylvania, Police Department responded to a house fire. Upon arrival, they observed flames and smoke throughout the front of the building. Quickly, both officers proceeded to the rear of the home, where they made entry. As they crawled along the floor in search of the lone victim, Officer Stoneback located the individual, who laid unconscious on the floor in a hallway. The two officers removed the victim from the residence, and emergency medical personnel began treatment. Later that same

day, the person was released from a local trauma center. The quick, decisive actions of Officers Molchan and Stoneback saved the life of this individual.



Officer Nicholson

Officer Scott Nicholson of the Thiensville, Wisconsin, Police Department responded to a fire at the home of an elderly disabled woman. Upon arrival, he noticed flames on the second floor and smoke coming from several windows. Without regard for his own safety, Officer Nicholson entered the smoke-filled residence and located the owner in the kitchen. She was disoriented and unwilling to leave without her dog. After finding the animal, Officer Nicholson helped the woman and her dog outside, where fire and medical authorities were arriving. The actions of this brave officer saved the lives of the owner and her pet.

Nominations for the *Bulletin Notes* should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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