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FBI Law Enforcement BULLETIN

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Reexamining the Importance of Firearm Investigations

By WILLIAM J. VIZZARD, M.S.

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Historically, most firearm laws in the United States have focused on prohibiting specific dangerous classes of persons, especially felons, from receiving or possessing firearms. While these laws have advocated denying these individuals access to firearms, critics often complain that the laws have been somewhat ineffective in accomplishing this task.[1]

However, in 1986, firearm violations took on a new impetus when Congress mandated 15-year minimum sentences for certain career criminals convicted in federal court of firearm possession.[2] This "armed career criminal" statute now mandates a minimum 15-year incarceration for possession of any firearm by a person with three prior convictions for violent or drug-trafficking crimes.[3] Sentences can range as high as life imprisonment if the defendant's record proves extensive.[4]

Some states have created even more severe sanctions. For example, California now mandates a sentence of 25 years to life for any felony conviction if the defendant has two previous convictions for serious or violent crimes.[5]

Such draconian sentences for the mere possession of a firearm might, at first glance, seem out of proportion to the offense and a waste of public resources. However, an intensive survey of incarcerated felons in 10 states concluded that approximately 20 percent of the subjects surveyed

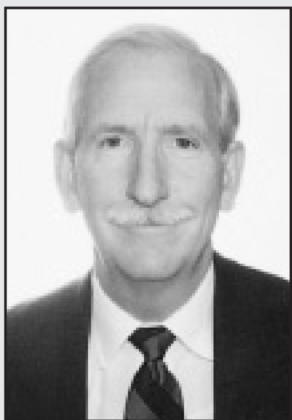
accounted for about 50 percent of all crimes and most of the violent crimes reported by the sample.[6] This same group of subjects, described in the survey as firearm predators, also reported habitually acquiring, possessing, and carrying firearms, which differentiated them from the majority of other felons. This subset of criminals apparently accounts for a significant portion of serious crime and presumably generates a significant portion of the police workload. For example, one third of active armed robbers in a St. Louis, Missouri, study reported having committed 50 or more robberies and over half reported having committed burglaries, assaults, and larcenies.[7] Thus, time spent developing a firearm case for court may prove more productive in terms of impacting public safety than conducting follow-up investigations on robberies or assaults.[8] Also, besides improving the quality of investigation and trial preparation of opportunistic seizures of firearms from serious felons, police can initiate proactive efforts at targeting specific, high-risk offenders.

RECOGNIZING TACTICAL ADVANTAGES

Many law enforcement agencies establish career offender units to arrest and prosecute active violent offenders. Firearm statutes can help in such efforts. Offenders maximize their sensitivity to surveillance and police observation immediately before, during, and after criminal activities. Thus, subjects who perennially possess or carry firearms may prove vulnerable to arrest and prosecution for possessing a firearm rather than for their more substantive crimes. Also, operations that seek to arrest suspects during, or immediately after, violent crimes require extensive resources and present a variety of risks. One of the most difficult decisions for tactical commanders remains whether to allow the crime to take place and risk injury to the public or act before the crime occurs and risk forgoing prosecution. However, in cases involving perennial firearm carriers, commanders can employ firearm laws to help reduce both the operational complexity and the physical risk of such proactive operations.

From a tactical perspective, firearm violations offer investigators another advantage. Often, proactive enforcement efforts against career offenders require inside information from a confidential informant regarding the details of a pending crime. Because only a few individuals know these details, acting on that information can compromise the informant's identity. Thus, investigators find themselves in a moral and professional dilemma—to act and place the informant at risk or not act and allow a crime to occur. However, because they often know about offenders who usually possess or carry firearms, investigators can use parole search authority or other means to make a seizure and arrest, which will provide little or no evidence that they had inside information. Then, when investigators must disclose an informant's existence, as in a search warrant affidavit, they can conceal the informant's identity, if necessary.

Additionally, investigators can enhance the probability of obtaining a search warrant if they capitalize on certain characteristics of firearms and reasons for their possession. Unlike many items, the utility of a firearm, unless it is being held as a commodity, depends upon ready availability. Therefore,



> ***"...administrators should recognize unlawful firearm possession as a serious offense and assign cases for...follow-up investigation...."***

A retired Bureau of Alcohol, Tobacco and Firearms special agent, Mr. Vizzard currently is an associate professor of criminal justice at California State University in Sacramento, California.

offenders usually keep firearms on their persons, in their vehicles, or in their residences.[9] Also, because firearms are durable, offenders generally retain them for a long time.[10] While Bureau of Alcohol, Tobacco and Firearms (ATF) agents and investigators who specialize in firearm investigations have capitalized on these characteristics to obtain search warrants for firearms, other investigators may not be as aware of how these characteristics can be used to expand both the scope and the duration of probable cause. For example, if informants observe suspects in possession of firearms on several occasions but have not had access to their residences, investigators can draw on their past experience and logic to explain why probable cause exists for them to believe that the suspects store the firearms at their residences. If the purpose of a firearm is primarily self-defense, and ample scholarly and experiential evidence supports this assumption for repeat offenders,[11] then it follows that offenders will keep their weapons nearby. Moreover, research and investigative experience support the idea that firearm possession is a pattern behavior. When investigators can provide adequate documentation of such a pattern, they may convince a magistrate that a "fair probability" exists that the suspects currently possess firearms on their persons or in their vehicles or residences.[12]

Most experienced investigators have recognized this pattern of behavior in subjects of their investigations. In fact, most experienced officers instinctively will search the area around the bed for weapons almost immediately upon initiating a search of a residence. However, translating this intuitive knowledge into a written affidavit that someone without the officer's specialized knowledge and experience will understand remains the challenge. First, investigators must become aware of such knowledge and then document it. By maintaining a record of past experiences, investigators build a foundation of specialized knowledge that they can translate into such statements as:

> I have participated in the service of over 100 search warrants for firearms and over 200 parole searches. It has been my experience that individuals engaged in criminal activity who possess firearms do so primarily for personal protection. As a result, they routinely retain these firearms in places easily accessible to them, such as on their persons, in their vehicles, and in their places of residence.

Just as they do during narcotics and stolen property investigations, officers can use their personal experiences and expertise to interpret the facts in the affidavit.

> ***"...firearm violations took on a new impetus when Congress mandated 15-year minimum sentences for... firearm possession."***

The broad discretion granted police officers in firearm searches illustrates the final tactical advantage of firearm violations. Because guns present a unique danger, courts have granted substantial latitude to officers during firearm searches. For example, in *Terry v. Ohio*, the court allowed pat-downs for weapons without probable cause.[13]

MAXIMIZING THE USE OF FIREARM LAWS

How can officers maximize the potential utility of firearm laws to impact career offenders? First, they must have access to statutes that impose significant incarceration on armed career offenders. Federal statutes apply throughout the country and both ATF and the majority of U.S. Attorneys have shown a willingness to adopt quality cases for federal prosecution. State statutes, such as California's three strikes law, offer a less cumbersome and potentially more effective alternative. Police agencies in states without effective statutes should cultivate a close cooperation with ATF, while working on more effective state laws. Also, officers should consider both reactive and proactive strategies when employing firearm laws against career criminals.

Reactive Strategies

At the organizational level, several reactive strategies may help to enhance the use of firearm laws. First, administrators should recognize unlawful firearm possession as a serious offense and assign cases for proper follow-up investigation

and court preparation. Prosecutions can fail for such basic oversights as not checking for prior criminal records or obtaining proof of prior convictions. Because officers may detect armed career offenders in a wide variety of circumstances, including disturbances and individuals unlawfully carrying a firearm, all incidents involving firearms should include a criminal record check of the individual in possession of the firearm. Additionally, when possible, departments should form investigative task forces with ATF, thus increasing expertise and resources at no cost to the agencies. Also, police departments can supplement their own resources by training parole and probation officers to alert investigators upon discovering a firearm in the possession of a career offender. This cooperation allows police officers to respond and initiate a proper follow-up investigation of the scene and to interview potential witnesses.

Moreover, proper training of officers proves critical to maximizing the use of firearm laws. Patrol personnel must remember to focus on the prosecution of these criminals, as well as their apprehension. Because new technologies have increased the probability of obtaining usable latent prints from firearms, both recruit academies and refresher training programs should emphasize the proper handling and packing of all firearms. Managers should encourage patrol officers to verify identities and check criminal records for all individuals found in possession of firearms. Even when suspects are not known felons, officers should inquire about the circumstances surrounding firearm possession and note the responses. Further, by obtaining critical information while the original scene remains intact, officers can increase follow-up investigative opportunities.

Proactive Strategies

Although most firearm arrests result from other police actions, some simple initiatives can enhance proactive efforts. All officers, particularly narcotics officers, should inquire about weapons possessed by known felons when interviewing informants or witnesses. This procedure proves most effective when administrators assign officers the responsibility of investigating firearm violations and train them in obtaining firearm search warrants.

> ***“All officers...should inquire about weapons possessed by known felons when interviewing informants or witnesses.”***

Administrators also can capitalize on the unique nature of firearms to maximize the scope of search authority and overcome problems with probable cause by training officers and familiarizing prosecutors and judges with the underlying logic. Assigning responsibility for firearm investigations also can facilitate this process by developing expertise and rewarding continued focus on the investigation and prosecution of these offenses. Officers assigned responsibility for firearm violations should ensure that other personnel understand the potential value of proper investigative procedures and apply them to all firearm cases.

Another proactive strategy involves understanding the unique nature of proof required to prevail in cases of illegal firearm possession. For example, in most jurisdictions, firearms are not contraband. Therefore, any third party can, absent a felony conviction or other disability, step forward and claim ownership of a firearm. Such claims serve to raise issues of doubt regarding the possession of the firearm by the prohibited person and constitute a common defense strategy when efforts to suppress evidence fail.

Because the elements of firearm possession are simple and the key witnesses are usually police officers, creating doubt regarding possession remains one of the few available defenses. When officers find the firearm on the defendant, such defense strategies prove virtually useless. However, officers routinely seize firearms from vehicles and residences, as well as find those discarded by suspects prior to their arrest.

To counter such a defense, officers should interview all potential firearm possessors as quickly as possible. At the early stages of investigations, suspects and other third-party individuals, such as friends, family, and associates, routinely deny ownership or knowledge of firearms. Officers should document these denials, which may become critical in impeaching or

precluding later claims. Officers should ask questions regarding access and control of the vehicle or area where the firearm was found and should note and photograph the surrounding items. If officers find a firearm in a drawer with items of clothing, they should note the type and size.

Officers also should ensure that search warrants include such indicia of ownership and evidence as holsters, ammunition, receipts, and photographs of firearms. In one case, a shoulder holster harness adjusted for a large-framed man served to undercut a claim by his wife that the pistol belonged to her. In another, the defense began to negotiate a plea after examining photographs of the defendant posing with the firearm. Additionally, both ammunition and ammunition boxes can provide fingerprints, and, under federal law, ammunition is the legal equivalent of a firearm.[14]

Moreover, firearm cases need the same follow-up investigation that other serious felonies require, including such basic procedures as interviewing all potential witnesses and tracing all firearms. Third-party witnesses can serve to counter a popular defense strategy of claiming that the police planted evidence. Also, testimony of witnesses who observed the incident that brought officers to the scene may provide the jury with a better understanding of the events. Similarly, tracing firearms often can bolster a circumstantial case and make the difference between winning and losing.

In two cases, suspects being pursued by police discarded their handguns before being arrested. Although officers found the guns nearby, no physical evidence linked the defendants to the guns. In both instances, investigators traced the guns from the original purchasers to locations where the defendants had access to them. Both owners of the firearms testified that the guns disappeared near the time the defendants were present, and both defendants, who collectively committed at least five homicides and numerous other felonies, were convicted and sentenced to over 20 years each.

Finally, investigators intent on solving other crimes should not overlook the innovative use of firearm charges. For instance, felons seeking firearms represent potential targets for undercover stings. Also, little justification for high-risk undercover drug purchases exists if investigators can arrest multi-convicted felons on a firearm violation. Once officers understand that a conviction for possession of a firearm will impact a career offender as seriously as a conviction for a violent felony, successful prosecutions will follow.

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CONCLUSION

Effective law enforcement management requires that resources be directed in a way that will maximize desired outcomes. If a primary goal of police agencies is to reduce serious crimes, then firearm prosecutions offer a unique opportunity to do so at little cost. By using existing firearm laws and joining forces with other agencies, including the ATF and local probation and parole efforts, officers can pursue another avenue of attack on those criminals who may have evaded capture on more serious charges. Further, by reexamining the importance of firearm investigations, administrators can offer their officers an alternative to the often dangerous and costly apprehension of violent repeat offenders. With the lives of their officers and the citizens they serve at stake, administrators should remain alert to any viable methods of solving violent crimes.✦

Endnotes

[1] Polsby, Daniel D., "The False Promise of Gun Control," *The Atlantic Monthly*, March 1994.

[2] 18 U.S.C. § 922 (a)(6).

[3] *Id*.

[4] U.S. Sentencing Commission, *Sentencing Guidelines Manual*, Washington, DC, 1995.

[5] California Penal Code § 1170.12 (c)(2).

[6] James D. Wright and Peter Rossi, *Armed and Considered Dangerous*: Aldine De Gruyter, 1986, 13 and 75.

[7] Richard T. Wright and Scott H. Decker, *Armed and Considered Dangerous*: Northeastern University Press, 1997, 13 and 17.

[8] Only 26.9 percent of reported robberies and 58 percent of reported assaults are cleared by arrests, see Federal Bureau of Investigation, *Crime in the United States* (Washington, DC, 1996) 205. About 40 percent of assault arrests and 54 percent of robbery arrests subsequently result in convictions for some felony crime, see Brain Reaves, "Felony Defendants in Large Urban Centers, 1994," Bureau of Justice Statistics, 1998. However, even the probabilities implied by these statistics, 14.6 percent conviction rate for robbery investigations, overstates the probability of any given investigation resulting in a conviction absent certain advantages such as a patrol arrest or a suspect known to the victim.

[9] *See United States v. Steeves*, 525 F.2d 33, 38 (8th Cir. 1975).

[10] *See United States v. Singer*, 943 F.2d 758, 763 (7th Cir. 1991) and *United States v. Collins* 61 F.3d 1379, 1384 (9th Cir. 1995).

[11] Supra note 6, 14.

[12] Regarding threshold of evidence necessary for issuance of a warrant, see *United States v. Mendonsa*, 989 F.2d 366, 368 (9th Cir.1993) and *United States v. Clark*, 31 F.3d 831, 834 (9th Cir.1994).

[13] *Terry v. Ohio*, 392 U. S. 1 (1968) (although probable cause is not required for the protective pat-down, the police are required to possess reasonable suspicion or other legitimate reason for the initial contact).

[14] 18 U.S.C. 922(g).

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

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

Publication

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

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Laser Threats to Law Enforcement

By Douglas A. Johnson, M.S.

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Over the past year, police in Europe and the United States have received reports of juveniles temporarily blinding subway drivers with laser lights. Also, reports of British sports fans aiming laser pointers at soccer players and American basketball spectators shooting lasers at the eyes of opposing players on the free throw line have surfaced.

Law enforcement officers in the United States have begun experiencing similar situations. Low-power, visible-light lasers, whether designed for use in the classroom, laboratory, or on the battlefield, are the easiest to obtain, detect, and most likely to be used by low-tech hooligans. They also may be used as an alternative to firearms because of favorable laws that do not define possession of a laser as a deadly weapon.

Law enforcement officers could encounter low-power lasers during routine operations, such as traffic stops, or in special operations, such as hostage situations. In most instances, light from this type of laser would not, for the reasons of power and length of time on the eye, cause actual eye damage. However, the laser's incredible brilliance could surprise and functionally disable officers. Also, ungrounded fear of permanent blindness could further impair their judgment. The susceptibility of officers to this type of debilitation remains largely psychological and would depend on their preparedness, training, and the conditions at the time of the incident. What is this new threat, and what can officers do to protect themselves?

Lasers and the Human Response

In simplest terms, a laser is an intensely bright light.[1] Unlike conventional light, however, laser light travels out from the laser device in a narrow beam maintaining its brightness at long distances. Some high-power laser beams can vaporize steel or other materials. Also, laser beams are not only visible (colors that range from red to violet within the visible color spectrum) but also invisible at both the infrared and ultraviolet ends of the color spectrum.

Although invented over 30 years ago, in the past decade, medical researchers, military authorities, and even criminals have found multiple applications for laser devices. Like computers and digital cameras, lasers also have become smaller, more powerful, less costly, and more available than ever before. Annual sales now exceed $1 billion.

Military uses of these lasers include range finding, target designation, and live-fire training (laser tag). Medical lasers, visible and invisible, are powerful and now as small as a suitcase but remain expensive and require line voltage as opposed to batteries. These uses represent some of the positive purposes of the technical advances in laser manufacturing. However, world arms merchants openly advertise invisible-beam laser weapons, notably of Chinese manufacture, which criminals obtain to use in such illegal activities as terrorist attacks and narcotics operations.[2]

While most lasers found outside of research laboratories or medical/industrial facilities cannot penetrate metal or even damage skin, the eye remains vulnerable. As laser light passes into the eye, it becomes focused by the cornea onto the retina. Located at the back of the eye, the retina is a layer of

living cells that intense light (by causing highly localized heating of the area) can damage or permanently destroy. The actual effect on the eye will vary with the power of the laser, the length of time the laser remains trained on the eye, and the portion of the retina that the focused light impacts. The effect of looking into a laser beam can range from true blindness, to dazzling (similar to closely viewing a camera flash), to annoyance. In many cases, the effects will not last long, perhaps only several seconds to some minutes. Also, temporary irritation or the presence of afterimages (visual sensations occurring after the external cause has ceased) could last several days but eventually should disappear and cause no further problems.

While lasers can cause a variety of visual impairments, the dazzle effect represents the greatest threat to law enforcement officers and could constitute a critical distraction in a tactical situation. The reaction to dazzle has both physiological and psychological components. Experts do not entirely understand the relationship between these two aspects. However, sudden exposure to dazzling and overwhelming light tends to startle some individuals. Sometimes an immediate, though temporary, loss of vision will occur. Functional vision loss can happen either because of the biological action of the eye to direct light or because of indirect glare caused by reflections from other objects.

These visual distractions of the dazzle effect prove more powerful at night because the pupil becomes dilated and allows the greatest amount of light into the eye. The dark-adapted eye becomes more sensitive to the effects of light stimulus. Therefore, the dazzle effect occurs when a bright light overwhelms the eye as a sensor. The effect can become worse if the light passes through a visor, windshield, or other transparent lens. If the transparent material is dirty or scratched from use or age, the effect becomes more pronounced and, therefore, more effective in obscuring vision. Further, viewing a laser through magnifying optics increases the potential to damage the eye and places officers using binoculars or magnifying scopes at greater risk.[3]

Such a laser use could cause mission failure, allow suspects to escape, or if used on officers while driving a vehicle or piloting an aircraft, cause a loss of control, which could lead to injury or death. Moreover, in tactical situations, affected officers could become targets for suspects armed with lethal weapons.

“The effect of looking into a laser beam can range from true blindness, to dazzling..., to annoyance.”

Lasers and the Police Response

In a recent report, a university detective referred to an incident during a crowded student activity where a red dot appeared on the chest of a security officer. The detective stated, “From a police perspective, laser dots are usually attached to firearms. Seeing a laser dot outside of [a] classroom obviously caused us great concern.”[4] Because they associate lasers with firearms, officers illuminated by even a laser pointer may respond by drawing or even discharging their service weapons. If officers draw their weapons, then perpetrators may respond in kind with the same ultimate end: fired weapons. An even worse scenario involves youths playing with laser pointers not realizing the potentially dangerous situation they could initiate with police. Therefore, police departments should consider developing a tactical laser defense plan and training officers in how to minimize laser threats.

First, laser eyewear protection represents an effective hardware countermeasure, but it has some severe limitations. For example, protective eyewear guards against only specific colors and laser power levels; therefore, officers must know the type of laser employed against them. Also, protective eyewear costs over $100 per pair, is uncomfortable, prone to fogging, and may skew normal color perception. And, finally, officers must wear the eyewear prior to any engagement where laser use could occur.

Reporting Lasers Used in Crimes

Because some states may not have a reporting category for lasers used in the commission of a crime, Texas A&M University, in conjunction with Walter Reed Army Institute of Research has developed a Website to collect this type of report for statistical purposes. The U.S. Army Medical Research Detachments Automated LASER Accident/Incident Reporting Website at *http://hoxie.brooks.af.mil/.LASER* has a concise, easy-to-use Automated LASER Accident/Incident Report form for officers to submit factual accounts of lasers used in a criminal manner. Information collected includes lighting conditions, color of laser, description of the effects on the eye, and several other categories. To gather as much information as possible, all law enforcement officers are encouraged to submit laser incidents to the Website. In time, the results will be compiled and available online. Officers can direct questions to Douglas Johnson at dougjohnson@tamu.edu.

Most important, officers should know that no clinically accepted treatment for laser-related eye injuries exists at the present time. While it may seem judicious to evacuate known laser-related eye casualties, officers must evaluate the tactical situation prior to doing so. Neither the affected officers, nor members of their team, should expose themselves to other risks for the sake of evacuation.

Additionally, annual or less frequent training should emphasize probabilities of encounter, biological effects, and understanding the biological and psychological responses (particularly for pilots and drivers) caused by lasers. Departments should develop competent technical resources—such as local military, university, industrial, or medical laser consultants—who could train their officers or, on short notice, assist with special missions. Also, departments should modify their rules of engagement to include specific criteria for evaluating laser threats.

Conclusion

The rising trend in laser use, whether legitimate or criminal, warrants careful consideration by law enforcement officials. Currently, lasers have a fear factor that may exceed their actual hazards. However, law enforcement agencies should understand that even a small threat can cause grave consequences to uninformed officers.

Because the greatest laser threat environment occurs at night and primarily to aircraft or vehicle operators, officers in these situations must receive information about the dangers associated with laser usage. Agencies should evaluate the potential of laser encounters in their jurisdictions and implement basic laser defensive instruction as part of an existing training program. Educating the law enforcement community about such new potential hazards as laser threats remains the most effective method of protecting officers from forms of technology developed for society's enhancement but often exploited for malicious purposes. ✦

Endnotes

[1] The word laser was originally an acronym derived from *light amplification by stimulated emission of radiation*.

[2] *Jane's Defense Weekly* (May 18, 1995) 3.

[3] Questions have arisen about the effect of lasers on night vision goggles. Laser light cannot harm the eye if it first passes through the goggles. What the eye sees is a processed signal, not the actual light environment. How vision is affected will depend on the specifics of the laser and the technology incorporated into the goggles. A possible range of effects varies from temporary saturation of all or part of the viewing field (temporary failure) to permanent burnout of a portion of the viewing field.

[4] Information obtained from Detective Sergeant David J. Villarreal, Texas A&M University Police Department.

A Reserve Navy Lieutenant Commander assigned to environmental health matters, Mr. Johnson serves as the laser safety officer for Texas A&M University in College Station, Texas, and sits on the American National Standards Institute for Laser Safety committee.

Combating Check Fraud
A Multifaceted Approach

By WALTER N. HANSEN

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Check fraud can affect anyone. Almost every business owner, government agency, and financial institution, as well as millions of private citizens have been victimized by people who have written bad checks with the intent of getting something for nothing. In some jurisdictions, the large number of reports of fraudulent checks means that law enforcement officers can address only the cases with the most substantial losses. Since 1987, bank frauds committed by nonemployees have risen dramatically and now account for more than 60 percent of all financial institution fraud.[1] Most of these frauds involve counterfeit or stolen checks.

Various sources have estimated that the total economic impact of check fraud on financial institutions, private businesses, and the public ranges from $815 million[2] to between $5 and $10 billion[3] annually. Unfortunately, because there is no source of reliable statistics, no one knows the total losses incurred. However, based on anecdotal information and the experience of bank executives, check fraud represents the most important crime problem affecting our nation's financial community. By identifying organized check fraud activity and implementing investigative and preventive strategies, law enforcement officers can have a measurable impact on this pervasive crime problem.

CHECK FRAUD INDICATORS

Investigators must remain alert to indicators that signal check fraud activity. They can identify such leading indicators by completing a comprehensive crime survey, which requires evaluating demographic information, analyzing crime reports, and collecting data from financial and business communities, civic groups, and other law enforcement agencies. By analyzing suspicious activity reports, which financial institutions submit to the Financial Crimes Enforcement Network of the U.S. Department of the Treasury, and other check fraud complaints, local law enforcement agencies can identify a variety of factors, such as the types of fraud schemes prevalent in the area and the identities of banks that seem prone to check fraud activity.

Frequent check fraud attacks against a particular bank may result from its location, inadequate internal controls, or marketing strategies that present opportunities to savvy check fraud artists. Some mutual fund companies, for example, regularly allow customers to open accounts by mail. A significant number of check fraud complaints from a particular geographic area may indicate the presence of an active, organized group that warrants law enforcement attention.

Maintaining contact with banks and regulators may help investigators identify weaknesses, develop controls, and prevent future losses. At the same time, analyzing the complaints received from other victims—such as department stores, check cashing establishments, and grocery stores—may help law enforcement determine the modus operandi of the fraud artists and assist in developing investigative strategies.

Other types of criminal activity related to check fraud may serve as leading indicators. Counterfeit identification documents, theft of identification by pickpockets, credit card fraud, and structured cash transactions may point to organized check fraud operations. Confidential informants with knowledge of underworld trafficking in stolen and counterfeit identification documents can help investigators identify check passers and others involved in organized check frauds. An organized group may include a counterfeiter or printer, a distributer, one or more providers of false identification, and several "smurfs," who open false bank accounts or visit check cashing establishments to negotiate fraudulent checks.

Organized pickpocket rings represent excellent sources of false identification. On the streets of New York, a stolen wallet complete with identification and credit cards, referred to as a "spread," has resale value. People buy spreads for a variety of uses, including welfare, check immigration, and tax frauds. Therefore, informants who are familiar with pickpockets in the community can become reliable sources of information about people who buy stolen wallets, helping investigators uncover those involved in check fraud.

"...check fraud represents the most important crime problem affecting our nation's financial community."

Special Agent Hansen serves as an assistant special agent in charge of the FBI's New York field office.

INVESTIGATIVE STRATEGIES

Investigators can use a variety of investigative strategies to address check fraud, including traditional techniques, proactive approaches, joint investigations, and task forces. Each of these strategies may prove appropriate, depending on the nature of the crime problem and the manner in which the complaint comes to the attention of law enforcement. Law enforcement officers should not view any single technique as a panacea; rather, they should develop a balanced approach that incorporates several methods to address the identified crime problems.

The overall strategy also should include all agencies that have jurisdiction over the crimes being committed. Above all, regular communication and coordination remain essential when several agencies become actively involved in attacking this crime problem. This proves especially important when undercover operatives serve in proactive investigations of violations that fall within the jurisdiction of multiple agencies. Each agency must take precautions not only to protect its undercover operatives but also to avoid the embarrassment that results when one agency learns that it has arranged to buy counterfeit checks from the undercover agent of another agency.

Traditional Investigative Techniques

At first glance, the typical investigative approach appears relatively straightforward. Following receipt of a complaint, the investigator interviews the victim; obtains the original check, copies of identification documents, and surveillance camera films; and interviews everyone else who came in contact with the check and the person who passed it, in an effort to identify a suspect. The victim and witnesses may view a photo spread or lineup

that includes the suspect. After identifying a subject, the investigator may use a confrontational interview to seek a confession. Failing that, the subject's handwriting and fingerprints may be subpoenaed. The forensic laboratory compares latent fingerprints and handwriting on the check with known fingerprints and handwriting exemplars to determine if they can be identified as the subject's. The evidence gets presented to a grand jury, which returns an indictment, thereby initiating the judicial process.

In reality, such cases can prove extremely difficult to solve. In many instances, investigators cannot develop key elements needed to resolve them. The surveillance cameras may not work, or the witnesses cannot give a consistent description of the suspect. The check passer wears gloves or does not leave prints on the checks, or the prints do not match any known prints. The laboratory may be unable to match the handwriting on the check with the writing sample provided by the suspect. Such obstacles may arise after investigators have worked for weeks or months examining documents and interviewing victims and witnesses.

If the investigation proves successful and the suspect goes to trial, another year or more may pass before the trial and sentencing. Check fraud investigations generally take the same amount of time, regardless of the amount of the check. An average of 2 years elapses between the opening of a traditional New York FBI check fraud case and its final disposition. Professional check passers know how long these investigations take. They also are confident that, as long as they do not become too greedy and remain willing to move around so as not to saturate a particular area with bad checks, the chances of getting caught using traditional methods are minimal.

Moreover, under federal sentencing guidelines, individuals with no prior convictions who pass checks for less than $70,000 can expect to receive probation. This serves as an incentive for defendants to plead guilty to a single count but provides no motivation for them to cooperate with law enforcement. Consequently, traditional investigations frequently result solely in the conviction of the check passer. It remains extremely difficult to identify, let alone convict, the passer's associates, such as the thief or counterfeiter and those involved in distributing the checks.

> **"*Investigators must remain alert to indicators that signal check fraud activity.*"**

Traditional methods of addressing check fraud may be necessary, based on the timing of the complaint and the circumstances of the offense. These techniques can promote fairly regular case clearance rates and can successfully convict individual check passers. But because of the amount of time required to process these cases, they may not make a significant impact on the crime problem. Proactive approaches may work best to identify the criminal networks that pose the greatest threat to the financial community.

Proactive Approaches

Proactive techniques involve the use of undercover operatives and cooperative witnesses or subjects. Other proactive measures, such as telephone intercepts and other technical and physical surveillance techniques, can successfully identify members of organized groups and develop evidence of their activities.[4]

An undercover operation, properly formulated and supported, can penetrate and break up organized fraud rings. Added benefits of this technique include the continual development of cooperative witnesses, who help to develop additional cases, and the ability to uncover other criminal enterprises, such as money laundering, drug trafficking, stolen goods fencing, illegal arms dealing, and other organized crime endeavors. Because of their intrusive nature, undercover operations must be carefully formulated and evaluated to ensure the safety of undercover officers, minimize civil liability, and guard against entrapping potential subjects.

The typical undercover scenario begins with the arrest of a check passer who agrees to cooperate and introduce investigators to others involved in the fraud. Consensually recorded conversations between the cooperative witness, undercover officer, and subjects,

coupled with the purchase of fraudulent checks, identification documents, and other contraband or evidence, capture the illegal activity as it occurs. This scenario, when properly executed, produces extremely strong evidence against the subjects. It also helps the prosecutor to define the true nature of the fraud by demonstrating that multiple transactions and high losses would have occurred without the investigation.

Investigators and prosecutors also can take advantage of stronger penalties to encourage subjects to cooperate, thereby supporting the expansion and continuation of the operation. For example, one FBI undercover operation has been active for over 14 years and has resulted in the arrest and conviction of over 700 individuals, dozens of whom have agreed to cooperate to further the investigation. Violations revealed and prosecuted during this investigation have included bank, wire, and mail fraud; conspiracy; drug trafficking; illegal arms trafficking; and counterfeiting. Subjects have been equally diverse, ranging from illegal immigrants to diplomats, car service operators, grocery store owners, and members of organized crime families.

While proactive efforts are best supported by undercover officers or agents, cooperative witnesses may help investigators gain introductions into organized fraud activities. Close supervision of cooperating individuals and electronic and physical surveillance during their operational activities remains essential to maintain control over the investigation. By involving experienced investigators and exercising close managerial oversight and control, the risks inherent in this approach can be minimized.

Red Flags that May Signal Check Fraud

FBI investigations identified common techniques used by fraudulent check passers in New York:

- Customer attempts to open an account with a corporate check or other third-party check
- Customer tries to flatter, hurry, or confuse the teller to draw attention away from the transaction
- Customer delays endorsing a check or producing identification during peak hours to frustrate the teller and hurry the transaction
- Customer presents for cash a low-numbered check drawn on a new account
- Customer offers foreign documentation (birth certificate, passport, visa) or nonphoto identification (social security card, credit card) in lieu of photo identification to open an account or cash a check
- Customer offers altered or damaged identification to open an account or cash a check
- Customer attempts to cash or convert several small checks into wire transfer, gold, or other tender
- Customer requests an exception to established rules to force the transaction.

Joint Investigations

When enforcement agencies actively work together on a case, they can reduce the time required to bring it to a conclusion while adding depth and flexibility to their investigative and prosecutive strategies. Federal investigative agencies can provide a variety of resouces, such as advanced laboratory analysis, specialized expertise, funding, and endurance, that is, the ability to concentrate on one case for a long period of time. Local police departments can share their strengths, such as rapid response, institutional knowledge of local criminal elements, community support, broad information coverage, staffing, and specific knowledge of identified subjects, repeat offenders, in particular. The combination of these assets, coupled with the ability to select a prosecutive venue in either the local or federal courts, results in a formidable array of weapons that can be directed against organized fraud rings. Other agencies, such as banking regulators and offices of

inspectors general, also can add expertise and inside information that can provide valuable assistance to more complex investigations.

When agencies work closely together, they must agree on how to handle sensitive or protected material, such as grand jury and informant information. Participants have a responsibility to agree on answers to a host of potential questions. Who will participate in interviews? Who will take notes during interviews? Whose reporting formats will be used? Who will maintain custody of documents and evidence? Who will contact informants and deal with cooperative witnesses? Who will prosecute the case? Close cooperation by first-line management remains essential, both at the beginning and throughout the investigation, to ensure that the participating agencies agree upon protocols to address such questions and other potential areas of concern so that investigators can concentrate on solving the case.

Joint investigations can accomplish great results if managers and investigators can set aside their institutional pride and professional allegiances to work together to solve problems. For example, in one instance, several New York banks reported to the FBI that they were being defrauded by customers who opened checking accounts using counterfeit Russian identification documents and stolen checks. The subjects withdrew most of the funds as soon as the checks cleared and before the thefts were reported. At the same time, U.S. postal inspectors learned that bags of mail were being stolen from large office buildings in Manhattan. Through close communication and cooperation, the FBI and the postal service quickly determined that the deposited checks had been stolen from the same Manhattan office buildings.

This case quickly grew from a postal inspection matter to a joint investigation with the FBI and the U.S. Secret Service in New York and Miami. Violations included theft from the mail, over which the U.S. postal inspector has primary jurisdiction; bank fraud, in which the FBI has primary jurisdiction; and credit card fraud, in which the FBI and Secret Service share jurisdiction. Several of the subjects had ties to a recognized organized crime family, and one of the conspirators allegedly was murdered when he failed to turn over proceeds from stolen checks that he had been entrusted with, facts that further whetted the interest of the FBI.

> ***"Proactive approaches may work best to identify the criminal networks that pose the greatest threat to the financial community."***

The indictment charged multiple subjects with violating the Racketeering and Corrupt Organizations (RICO) statute and included allegations of murder and conspiracy in addition to the financial crimes charged. The successful accumulation of all of the evidence in this investigation resulted from the willingness of the investigating agents to work together informally using both traditional and proactive investigative techniques. Although each agency could have pursued its own aspect of the case individually, separate indictments would not have had the impact of the RICO charges that resulted from their joint efforts.

Task Force Operations

Unlike joint investigations, which address specific illegal acts, task forces tend to address more general crime problems. The formation of a task force provides a more formal environment for investigators from different agencies to work together. A task force may encompass a number of separate investigations or be set up to support a specific investigation. For example, task forces have been used to investigate complex terrorist bombing investigations, such as the bombing of the Oklahoma City Federal Building and the Olympic Park bombing in Atlanta. Task forces also may provide an efficient way to address a particular problem. Joint federal and local fugitive and violent crime task forces remain fairly common in larger U.S. cities.

Financial crime task forces, though not as numerous, also are being used in several states with great success. The formality of a task force, which differentiates it from a less formal joint investigation, is embodied in a memorandum of understanding (MOU) that describes the protocols to be followed and is endorsed by the leaders of the participating agencies. The MOU spells out such broad issues

as mission, goals, and objectives, as well as such details as the location of office space, transportation, supervision, funding, equipment, evidence storage, and record retention.

Task forces addressed bank failures that occurred in the early 1990s in several cities, including Dallas and Boston. The Arizona Bank Fraud Task Force (BFTF), which focuses on check fraud and other attacks on banks by nonemployees, was formed on March 2, 1992, to address the fraud problem in Maricopa County, Arizona. This task force includes representatives from the Phoenix division of the FBI; the Maricopa County Attorney's Office; the Phoenix, Glendale, Tempe, Mesa, and Scottsdale police departments; the Arizona Attorney General's Office; and the U.S. Attorney's Office for the District of Arizona. Improving cooperation and communication among participating agencies and the financial institutions in the area represents one of the primary functions of the BFTF. To accomplish this, the BFTF serves as a central reporting entity for bank fraud complaints, thereby reducing the confusion that often results when complaints are submitted to multiple agencies with overlapping jurisdiction. This central facility also permits better analysis of complaints and improves the possibility of identifying organized fraud rings that operate in the area.[5] As of February 1998, this task force had investigated 1,898 cases, involving more than $33.5 million in losses, which resulted in 539 indictments, 482 convictions, and more than $10.5 million in court-ordered restitution.[6]

The Arizona BFTF served as the prototype for the Metro Denver Bank Fraud Task Force, formed in Denver, Colorado, in 1996, to promote communication, establish and maintain an information base, investigate multijurisdictional cases, and serve as an educational resource for financial institutions.

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The Denver BFTF includes participants from 13 federal and local investigative agencies and six federal, state, and local prosecutors' offices. Task force guidelines call for reporting financial institutions to submit standardized suspicious activity reports that allow task force analysts to collate complaints, identify similarities that could indicate organized frauds, and initiate investigations in a timely fashion.[7] Both the Arizona and Denver task forces demonstrate the finest qualities of initiative, creativity, and cooperation in law enforcement as they work to serve their communities.

PREVENTIVE STRATEGIES

Law enforcement agencies can develop preventive strategies to combat check fraud. These include working with potential victims to implement fraud prevention measures and training financial professionals to recognize and prevent fraud. Such strategies can help the financial community develop an understanding of the problem, allocate appropriate resources to address it, and reduce the demand on limited investigative resources while providing a relatively low-cost way to reduce check fraud losses.

Fraud Prevention Measures

Law enforcement agencies may think of fraud prevention measures as the internal responsibility of banks and other potential fraud victims in the financial community. The banking and investment industries stress the concept of "know your customer" and the performance of "due diligence" as keystones of their fraud prevention methodology. Neither of these concepts appears, at least on the surface, to involve law enforcement. However, a role does exist for investigators to help potential victims of fraud guard against loss.

Regular communication of fraud-related information can benefit both the law enforcement and financial communities. Although privacy laws and dissemination rules and regulations may restrict the type of information communicated, all parties can benefit if they establish appropriate protocols for exchanging information. In the Russian check fraud case, based upon information provided from

victim banks, investigators disseminated a profile of the fraud scheme to all banks in the area. The profile increased the awareness of banks to the scheme, thereby preventing direct losses. Banks also identified other fraudulent accounts before they incurred further losses. Thus, by sharing fraud profile information, investigators can help financial institutions and industry regulators devise audit techniques and other preventive measures that they can use on a regular basis to prevent fraud.

Law enforcement also can support innovative fraud prevention techniques, such as the inkless fingerprinting campaigns that some financial institutions have launched. Banks in Nevada, Arizona, and Texas experienced remarkable reductions in check fraud losses after they began requiring that noncustomers provide inkless fingerprints when cashing checks at the teller line. Although initial tests of this technique in New York and California more than 10 years earlier met with mixed results, modern innovations in automated fingerprint processing and aggressive marketing by financial institutions resulted in more recent loss reductions of between 43 and 59 percent.[8] According to the American Bankers Association, financial institutions in other states, encouraged by the successes in Arizona and Texas, are considering the use of the inkless fingerprints, as well.[9] While, ultimately, financial institutions and other check cashing establishments must decide if they wish to employ this strategy, law enforcement officials can support the expansion of inkless fingerprinting techniques by reinforcing marketing strategies and speaking to civic groups about the advantages of the process. In addition, by ensuring that they will act upon complaints involving fingerprinted checks in a timely manner, law enforcement officials also can provide incentive for financial institutions to invest in these programs.

Banks also have used fingerprinting in other ways to minimize the risk of fraud. Some banks require that corporate customers submit the fingerprints of employees who have access to company accounts. In one instance, this practice resulted in the apprehension of a fugitive who had been wanted for murder for almost 20 years. In 1995, when Aramark Food Services Corporation, the maker of Tupperware, gave an employee access to its corporate bank account, the bank required him to be fingerprinted. After forwarding his fingerprints to the FBI, the bank discovered that he was wanted for the 1976 drive-by murder of a 52-year-old man in a suburb of Brooklyn, New York.[10] Thus, law enforcement should encourage business owners to establish policies that require all employees who handle checks to be fingerprinted as a reasonable condition of employment, which not only can reduce fraud losses but also can result in unexpected benefits.

> ***"Law enforcement agencies can develop preventive strategies to combat check fraud."***

Training

Most financial institutions require periodic training of tellers and other employees. Law enforcement agencies can offer to provide check fraud awareness training to financial institutions, retailers, accountants, and civic groups, as well as to others who may come in contact with fraudulent transactions. Training sessions that identify the red flags that signal fraud and reinforce internal controls and fraud reporting procedures can effectively reduce check fraud losses. The attendance of a law enforcement officer at this training can improve student interest and emphasize the importance of the information. Some banks and large retailers can provide professional videotapes that demonstrate red flags and show check passers in action.[11] Using such training aids, along with examples of actual cases, reinforces the subject matter and helps employees remember important points.

Training sessions also promote and improve relationships between law enforcement agencies and the communities they serve. Additional benefits may include better communication between investigators and officers of victim institutions, more timely reporting of fraud attempts, quicker responses to subpoenas, and easier access to employee witnesses.

Enforcement officials also can benefit from fraud awareness

training. Patrol officers and those who concentrate on other types of crime—whether violent crime, organized crime, or drug-related offenses—can help financial crimes investigators by remaining alert for check fraud paraphernalia, stolen or counterfeit identification documents, and other indicators of fraud activity during their routine arrest, search, and investigative activities. Police officers and investigators, who may not deal with financial crimes on a regular basis, can receive clear instruction that includes how to spot fraud and process fraud evidence.

CONCLUSION

Check fraud is a significant crime problem that victimizes corporations, government agencies, and private individuals. Law enforcement organizations must work with the communities they serve to identify the leading indicators of fraud and develop investigative and preventive strategies to effectively combat this problem. Investigative strategies should include a balanced approach that incorporates both traditional and proactive investigative methods. Joint investigations and task forces comprised of several agencies have proven highly successful in some jurisdictions.

Preventive strategies can include the use of fraud prevention measures, such as developing fraud profiles and instituting fingerprinting policies, as well as providing training for potential victims. Preventive techniques can reduce the demand on limited investigative resources and provide a relatively low cost way to reduce check fraud losses.

The ability of law enforcement officers to develop protective and mutually beneficial relationships with the communities they serve remains the cornerstone of any crime prevention effort. Together, law enforcement agencies and financial institutions can employ innovative strategies to combat check fraud.✦

Endnotes

[1] FBI Financial Institution Fraud Criminal Referral Statistics for Fiscal Year 1995, September 30, 1995.

[2] American Bankers Association, "1994 ABA Check Fraud Survey," November 30, 1994.

[3] Saul Hansell, "New Breed of Check Forgers Exploits Desktop Publishing," *The New York Times*, August 19, 1994.

[4] Because laws vary among jurisdictions, officers should consult their legal advisors or local prosecutors before using any of these techniques.

[5] Howard D. Sukenic, J.D., and James G. Blake, J.D., "Combating Bank Fraud in Arizona, *FBI Law Enforcement Bulletin*, November 1994, 8-12.

[6] Rudy N. Ruiz, financial analyst, Arizona Bank Fraud Task Force, FBI, Phoenix, AZ, personal interview, March 26, 1998; see also Howard D. Sukenic and James G. Blake, "Teaming Up Against Financial Fraud," *Independent Banker*, September 1996, 50-51.

[7] "Metro Area Bank Fraud Task Force Operating Guidelines and Procedures," unpublished internal document, September 17, 1996.

[8] Genilee Swope Parent, "An Effective Check Fraud Prevention Tool," *Bank Security and Fraud Prevention* 3, no. 6 (June 1996): 5.

[9] Supra note 8, 1-7.

[10] Dennis Hevesi, "Fingerprints Reveal Suspect on the Run from '76 Killing," *The New York Times*, August 19, 1995, 1.

[11] The New York Clearinghouse, an association of major New York banks, has produced a training video that emphasizes red flags. In addition, the FBI, in concert with the City of London, England, Police Department, has produced a video with an accompanying training guide, titled "A Meeting of Minds," which examines complex fraud schemes.

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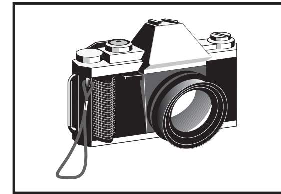

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Police Practice

Buffalo's Alternative to 911

By Gerald W. Schoenle, Jr.

The three-digit telephone number, 911, has grown into a huge success. However, too much of a good thing has overloaded the emergency number's infrastructure and caused major problems for many cities, including Buffalo, New York.

For years, Buffalo citizens called 911 for all police services. In time, however, the system became bogged down with calls, which proved mostly nonemergency in nature. In Buffalo, as in other cities, citizens who called 911 often encountered busy lines during peak calling times. Something had to be done.

Recently, Buffalo and at least three other cities have taken steps to stem the flow of nonemergency calls into their 911 systems by providing an alternative telephone number. For example, Dallas, Baltimore, and Chicago established 311, while Buffalo set up 853-2222, as options for nonemergency situations.[1]

Sizing Up the Problem

Buffalo has a population of approximately 340,000 and covers about 42 square miles. Its police department employs almost 1,000 sworn and 300 civilian employees. The surrounding County of Erie, however, maintains the 911 system, which receives nearly 2,000 calls every day and over 600,000 calls a year.[2] After county employees enter the calls into the Buffalo Police Department's (BPD) computer aided dispatch system, BPD dispatchers take control of those in their jurisdiction.

Because of the overwhelming number of 911 calls, the Buffalo commissioner of police set up a committee to research the problem of managing these calls for service. The committee included the commissioner, the commanding officer of communications, the county 911 coordinator, and a consultant from a local advertising agency. The committee identified the scope of the problem and discussed the available options. Ultimately, the committee decided that instituting a nonemergency telephone number program represented the best solution for Buffalo.

Because the number needed to be easy to remember, the committee debated the merits of a seven-digit versus a three-digit nonemergency telephone number. While advantages exist for both, the committee decided to implement a seven-digit number because of the immediate availability of one at virtually no added cost. Additionally, the county was concerned that a three-digit number might vastly increase the total volume of calls into the system. In fact, this happened in Baltimore after that city implemented its 311 number. From October 1996 through March 1997, the Baltimore Police Department had an 11 percent increase in total calls compared to the same period the year before. Fortunately, the department experienced no significant problems because it had enough limited-duty personnel to staff the nonemergency number.[3] However, because every city has different needs and resources, police agencies should evaluate these factors carefully before implementing a nonemergency telephone system.

Defining Emergency Calls

BPD defines emergency calls as police, fire, or medical emergencies that include any life-threatening situations or a crime in progress. However, even after implementing the nonemergency telephone number,

the department still encourages citizens to call 911 if they cannot determine if a situation is a true emergency. Primarily, BPD asks citizens to call the nonemergency number whenever they need advice or assistance that does not require an immediate emergency response.

Educating the Public

After deciding to use an alternative nonemergency telephone number, BPD developed the objectives that it wanted to communicate to the public concerning the new system. Next, BPD hired a professional advertising agency to assist in educating the public about these objectives, which included

- creating a message that would change the public's perceptions and expectations in regard to 911;
- making the public aware of what constitutes a real emergency versus a nonemergency;
- decreasing the number of nonemergency 911 calls so BPD personnel could respond where they are truly needed—to potentially life-threatening situations;
- enhancing the scope of the differential response program[4] by increasing the staff and the types of calls they handle; and
- providing officers with more time for community policing efforts.

To promote and link the new nonemergency number with the well-known 911 system, the advertising agency created a lyrical jingle: *For real emergencies, call 911 and we'll quickly send someone. For nonemergencies, it's 853-2222 and we'll tell you what to do!*[5] The agency also developed brochures explaining what constitutes a real emergency and what illustrates a nonemergency. Other educational and promotional materials included outdoor graphics, street banners, newspaper ads, television and radio commercials, stickers for telephones, bookmarks for school children, and bumper stickers for police and private vehicles.

Hiring the advertising agency proved of great value to the success of implementing the program. In addition to promoting the message, the agency also assisted in obtaining funds for the program from both the public and private sector. For example, the local transit company donated advertising space on its buses, various private agencies donated billboard space, both the broadcast and print media provided public service announcements, and a private sector group committed to assisting the City of Buffalo funded the additional advertising. Further, having a local advertising agency as a member of the committee proved very beneficial because the agency understood both the concept of the program from the beginning and the limitations of the city's resources.

> "...freeing up 911 lines for true emergencies has proved a goal worth pursuing for the City of Buffalo."

Managing Calls for Service

The communications section of BPD views the nonemergency number program as an important step in assisting public safety agencies to manage calls for service. The bigger picture involves the entire community policing effort, including differential response programs that encourage citizens to call and report crimes over the telephone. Also, part of this process includes informing citizens of the correct agency they should contact in a given situation. BPD accomplished this, in part, by listing the 10 most frequently called referral agencies in its nonemergency number brochures. Therefore, the public can contact the appropriate agency directly and help to further reduce calls to the 911 and the alternative nonemergency systems.

Another element in the successful management of calls involves personnel. While BPD has civilian employees answering the nonemergency calls, Baltimore has limited-duty police officers answering them. The Baltimore system proves beneficial because trained police officers can give appropriate advice that could eliminate the need for a patrol

Seven-digit Number and Three-digit Number Considerations

Advantages of Seven-digit Number	Advantages of Three-digit Number
• Minimal cost to the taxpayers • Ease of implementation (number was already available) • Citizens must evaluate their situations, which could decrease calls to police • Total volume of calls would be less likely to increase, thereby avoiding the 911 problem	• Easy number to remember • Ability to make free calls from pay telephones • Possibility of one nonemergency number for the entire country • Ability to have calls routed to several different off-site locations that correspond with locations of originating calls

Disadvantages of Seven-digit Number	Disadvantages of Three-digit Number
• More difficult to remember • Calls from pay telephones are not free • Confusing to citizens from other jurisdictions	• Likelihood of increased volume of calls • Costs—two systems and dedicated revenue source are needed • Timeliness of implementation

Advantages of Both Systems
• Assists with managing calls for service • 911 dispatchers are released for true emergencies • Educates the public about what constitutes a real emergency • Increases public awareness that certain calls do not require an emergency response • Enhances community policing efforts • Encourages an aggressive differential response program

response. This method clearly enhances the differential response program in Baltimore and seems to be a major reason for the city's success. Further, by reducing calls for service, the officer on the street has additional discretionary time. Proper channeling of this time further enhances community policing efforts.

Determining the Results

Both Buffalo and Baltimore kicked off their nonemergency number programs on October 1, 1996. While the programs have existed for only 2 years, both have enjoyed varying degrees of success. Most important, both cities have reduced 911 calls by nearly 20 percent.[6] Moreover, the Department of

Justice Community Oriented Policing office recently visited Buffalo and is considering studying all three nonemergency programs. Whatever the ultimate outcome of such a study, freeing up 911 lines for true emergencies has proved a goal worth pursuing for the City of Buffalo.

Conclusion

Faced with a 911 emergency telephone system overloaded with nonemergency calls, the Buffalo Police Department needed to find a viable alternative. As in a few other cities, Buffalo elected to implement a separate telephone number for all nonemergency calls for service. After weighing the advantages and disadvantages of a seven-digit versus a three-digit telephone number, Buffalo chose the seven-digit option based on the city's needs and available resources.

Other jurisdictions faced with the same problem may consider Buffalo's solution. Several factors prove critical when deciding if this approach will work for them, including evaluating their needs and resources, defining their objectives, and educating their citizens. Because effectively and efficiently managing their calls for service proves an ongoing dilemma for most law enforcement agencies, Buffalo's alternative may provide a new outlook on an increasingly burdensome problem. ✦

Endnotes

[1] Additional jurisdictions, including San Jose, California, are considering implementing similar systems.

[2] Records from Erie County 911.

[3] Baltimore Police Communications Division evaluation report, April 1997.

[4] Differential response programs include citizens reporting crimes by telephone and officers conducting initial investigations of certain crimes by telephone rather than immediately sending officers to the scene.

[5] The Schutte Group.

[6] Records from Erie County 911 and the Baltimore Police Department.

Captain Schoenle serves as the director of communications with the Buffalo, New York, Police Department.

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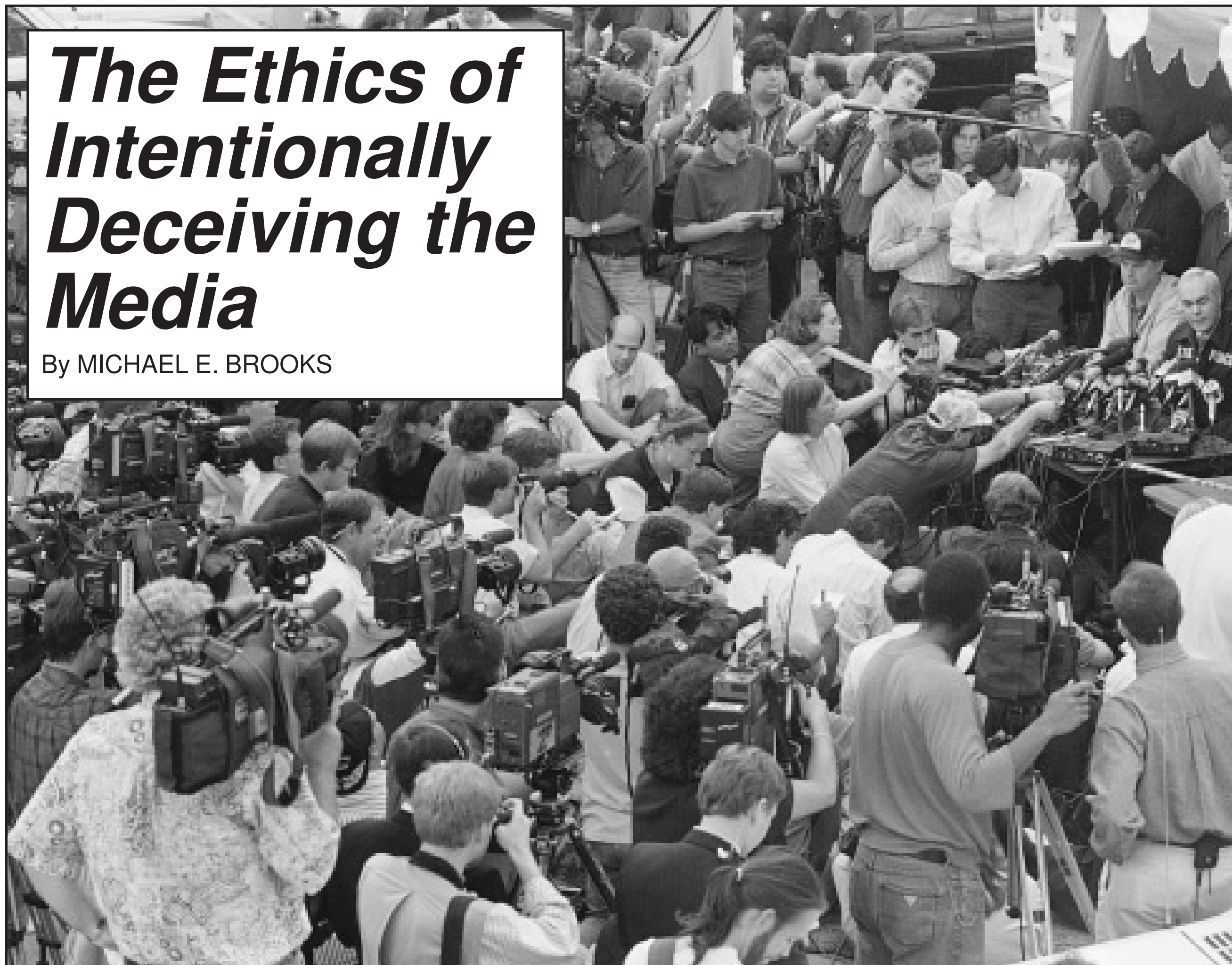


The Ethics of Intentionally Deceiving the Media

By MICHAEL E. BROOKS

Law enforcement administrators interact with the news media on a daily basis. Several reasons exist for this relationship. In addition to providing current events, the news media have a distinct role in a democracy to oversee the actions of the traditional three branches of government and thereby prevent abuses of power by those branches. Law enforcement officials routinely inform the general public of their activities, and often use the news media to present this information, as well as to convey their side of a particular incident or their position on an issue.

This relationship between the media and law enforcement sometimes creates certain antagonisms between the two parties. To begin with, law enforcement officials do not always want particular matters reported to the general public, often to protect the integrity of an investigation or even to avoid embarrassment to their departments. However, media representatives act under a responsibility (i.e., the public's right to know) to present certain information regardless of the desires of law enforcement officials. Also, they zealously avoid appearing as the voice of law enforcement in order to appear impartial. Because the public has an interest in the activities of law enforcement, the media, as a business entity, has an economic interest to report on law enforcement matters.

Moreover, because media representatives have ethical obligations to present only the information they believe to be factual, they must not allow government officials to use them to present false information to the general public, regardless of the reason.[1] Therefore, the question remains, are law enforcement officials under any similar ethical obligation to not

intentionally present false information to the media, either for dissemination to the public, or to thwart a media inquiry into law enforcement activities?[2] Making the decision to lie to the media involves many complex issues, including some important ethical concerns.

The Decision to Lie

Before intentionally manipulating the media by means of deception, law enforcement officials must consider their actions carefully. For example, many ethics scholars have stated that law enforcement officials should never knowingly present false information to the media.[3] However, suppose a law enforcement administrator conducts an undercover operation designed to expose a ring of narcotics suppliers in a particular area of a city. The administrator may desire to entice the ring to move into another area of the city where undercover officers can purchase narcotics without suspicion. To accomplish this, the administrator drafts a press release announcing the seizure of a large supply of narcotics destined for the area of the city where the undercover officers are operating and gives it to the department press officer, who does not know that it contains false information. After local newspapers print the press release, the undercover officers approach the subjects of the investigation claiming they need a new supplier. This approach succeeds, and the subjects eventually are arrested after passing narcotics to the undercover officers.

Clearly, the individuals involved in deciding to lie to the press made a choice to present false information because of a belief that the use of deception prevented a greater evil than the lie (i.e., narcotics suppliers being apprehended). This remains a moral and ethical choice. Individuals, including law enforcement officials, make such choices frequently. Most individuals will lie to protect another's feelings, to get someone else to do or feel as desired, or even to avoid embarrassment to themselves. Consciously or subconsciously, this decision to lie always comes down to a moral balancing of the consequences involved.

Moreover, law enforcement officers often use deception as a part of their duties in conducting criminal investigations. Informants, undercover operations, and stings serve as just a few examples. While some ethics scholars and researchers question whether such practices by government entities are ethical, most accept them as morally permissible as long as they are conducted within certain legal parameters such as the restrictions on entrapment.[4]

The common deceptive practices employed by law enforcement officials primarily involve deceiving individuals who they have identified as being involved in criminal activities. The officials must develop information and evidence not readily available from other sources but necessary to successfully prosecute a criminal case. Some argue that the ethical justification for such practices far outweighs any negative effect of the deception by the positive results surrounding the identification and successful prosecution of a criminal who would otherwise evade detection and prosecution. However, other ethical issues arise when the target of the deception becomes the news media, as opposed to a suspected criminal.

Ethical Obligations

The first ethical issue concerns the fact that the ultimate "victim" of

> **"Law enforcement administrators must think about more than just law enforcement objectives in deciding whether to use deception involving the media."**

Special Agent Brooks teaches ethics at the FBI Academy.

the deception is the general public who receives the false information from the media. Because law enforcement serves the general public, a question arises whether law enforcement officials have ethical obligations to present only truthful information to the public. Some accept "no comment" as a morally sound response when law enforcement officials have information that they cannot or should not share with the general public. Where public disclosure laws exist, the courts can decide whether to force law enforcement to provide information to the news media. But some scholars believe that a "no comment" response and a disagreement concerning the applicability of laws technically are not lies. While a suspected criminal may not always have a right to expect truthfulness from law enforcement, citizens should have a right to expect the truth from public officials, including law enforcement officials, at all times. Some officials question whether they should ever ethically ignore that right.

A second ethical issue revolves around the reason law enforcement officials use deception with the news media. While law enforcement officials practice deception with suspected criminals to gather information for presentation to appropriate prosecutorial or judicial authorities, they also may need to get false information into the public arena in order to elicit some action from these suspects. For example, in a case where a criminal is unknown, the false information can cause the offender to be identified.[5] Because media attention on high-profile cases can hinder professional and thorough investigations, some law enforcement officials may attempt to divert media attention from such sensitive incidents. Yet other law enforcement administrators may desire to discourage media attention from matters which prove an embarrassment to another official or their agency. However, a question arises whether these reasons prove ethically sufficient to legitimately deceive the media.

> ***"The decision to lie to the media remains, in effect, a decision to lie to the general public."***

Ethical Justifications

In order to help law enforcement officials resolve ethical dilemmas, they should look at some basic principles. Ethics scholars often argue that in order to justify an act, the actor must be willing to publicize it—in other words, they must be willing to justify the act publicly.[6]

Another theory proposes three requirements an act must meet to have integrity: "1) discerning what is right and what is wrong; 2) acting on what you have discerned, even at personal cost; and 3) saying openly that you are acting on your understanding of right and wrong."[7] This third step, acting openly, constitutes the publicity essence of the publicity requirement. Therefore, before individuals can morally and ethically justify deception, they must be willing to publicly justify the decision to deceive. Police officials who engage in the common forms of law enforcement deception generally do not find it difficult to meet this requirement. For example, no law enforcement official would hesitate to publicly defend a decision to conduct an undercover operation designed to gather evidence against organized crime figures. In fact, this defense occurs routinely during criminal trials.

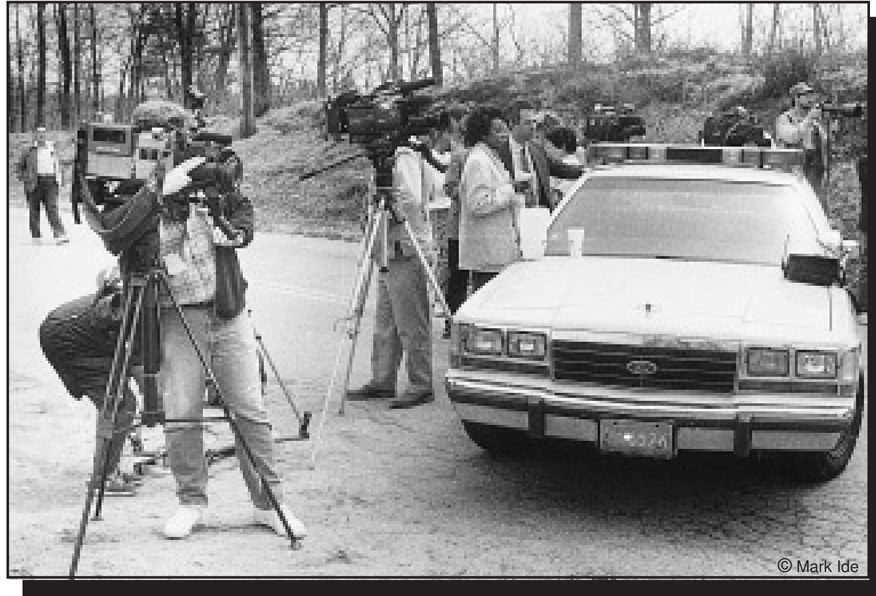
Law enforcement officials contemplating intentionally deceiving the media should ask similar questions—if the official would be willing to publicly explain why the deception was used, and if they are willing to accept any consequences of the public disclosure. The decision to lie to the media remains, in effect, a decision to lie to the general public. Law enforcement officials should only consider such a decision in the rarest of circumstances when some overriding public safety issue forces the action. The ethical requirement of publicity becomes part of this equation when a law enforcement officer considers a lie to the public, as opposed to a lie to the media, to avoid public panic. If some morally overriding reason, such as public safety, obliges an official to lie, then it also requires an explanation or apology for the deception later, after the crisis has passed. The possible consequences of such an admission deserve consideration in the initial decision.[8]

Ethical Restraints

Compared to those legitimate instances when law enforcement officials must intentionally deceive the media, it becomes clear that no ethical justification exists for those officials who lie to avoid embarrassment to another official or their agency. No official who does so would publicly defend such a decision later, and may even go to great lengths to avoid the deception ever becoming public knowledge.

Likewise, it becomes difficult to imagine law enforcement officials desiring to publicly explain why they decided to deceive the media in order to divert their interest in a pending investigation. Such an action would threaten the First Amendment because public officials would thwart a legitimate press inquiry. Officials should only use such a justification in the most serious public safety issues, and even in those instances, they may consider an appeal to the media to delay a story. The events prior to the apprehension of the Unabomber serve as an example of responsible media outlets heeding such requests in the interest of public safety.

The final rationale for intentional deception of the media is a desire to expand a pending investigation by distributing false information to a suspect. While practical issues may force an official to decide that such deception may not be in the best interest of the law enforcement mission, no basic ethical principles exist that would absolutely prohibit such an act. As long as the official remains reasonably willing to publicly defend such a decision, the ethical issues justifying this type of deception are the same as those for more traditional forms of law enforcement deception.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The Consequences of the Decision to Lie

Law enforcement officials should weigh the consequences of the decision to use deception. The result that the deception might have on the credibility of the law enforcement organization with the media and the public represents a significant consequence that officials must consider. Citizens, unlike suspected criminals in certain situations, have a right to expect the truth from public officials. Officials should view this right as more than a minor consideration in the balancing of consequences. In some situations, the consequences could prove significant enough that the administrator may decide not to use the deception. However, no one can coherently argue that this right remains absolute for all times and circumstances.

In those cases where the official decides that all of the positive consequences of deception outweigh all of the negative consequences, the official must then publicize the deception after the fact. Even if criminal court proceedings do not force the official to publicize the deception, the official still has an ethical obligation to do so. The official must consider the likely consequences of this public disclosure in the decision process.

Conclusion

Law enforcement administrators must think about more than just law enforcement objectives in deciding whether to use deception involving the media. The practical and ethical considerations of such a decision extend beyond any one investigation. In considering the actions of the administrator illustrated in the narcotics undercover investigation, the ethical dilemma poses a significant problem. If the administrator does not publicize the media deception once the case has

concluded, most ethics scholars would say that the deception was not ethical. If the administrator does publicize the deception, the media will likely condemn the deception and will certainly be less trusting of the next press release issued from the department. Either way, administrators pay a price—ethics or credibility. Law enforcement administrators should explore ways of handling these ethical dilemmas in a way that keeps the cost to a minimum. ✦

Endnotes

[1] The Ethical Principals of the *American Society of Newspaper Editors*, Article IV, provides in part, "Every effort must be made to insure the news content is accurate. . . ." Similar provisions appear in the *Associated Press Managing Editors Code of Ethics* and *The Society of Professional Journalists Sigma Delta Chi Code of Ethics*.

[2] The Federal Bureau of Investigation does not advocate the intentional deception of the news media.

[3] Edwin J. Delattre, *Character and Cops Ethics in Policing Third Edition*, (Washington: The AEI Press, 1996), 162.

[4] For a discussion of the general ethical issues surrounding the use of deception by law enforcement, see Jerome H. Slotnick, "Deception by Police" *Criminal Justice Ethics*, Vol. 1, Number 2, Summer/Fall 1982, 40-54; Delattre, Ibid, 160-173; and John Kleinig, *The Ethics of Policing,* (Cambridge: Cambridge University Press, 1996), Chapter 7.

[5] In 1990, Clay County, Arkansas, Sheriff Darvin Stowe gave media outlets a false story that an attorney had been assaulted in order to deceive a suspect into believing that the assault had been performed pursuant to a payment by the suspect to an undercover officer. *Law and Order*, Vol. 39 No. 1, January 1991, 4.

[6] Sissela Bok, *Lying, Moral Choice in Public and Private Life*, (New York: Vintage, 1989) 92.

[7] Stephen L. Carter, *Integrity*, (New York: HarperCollins, 1997), 7.

[8] Supra note 3, 165.

Request for Assistance

Developing Law Enforcement Photography Guidelines

Digital imaging technologies have been used in a variety of scientific fields for decades, but their application within the criminal justice system is relatively recent. Therefore, there is a need to gather and disseminate accurate information regarding the proper application of these and other imaging technologies throughout the criminal justice system. In 1997, the FBI Laboratory formed a group now identified as the "Scientific Working Group on Imaging Technologies" (SWGIT), to address that need.

The group includes approximately 25 representatives from law enforcement agencies at the federal, state, and local levels, as well as imaging scientists from academia. They have recently completed a preliminary set of general guidelines and recommendations relating to the use of various imaging technologies by law enforcement professionals. This draft document is titled: *"Definitions and Guidelines for the Use of Imaging Technologies in the Criminal Justice System."* While this first document addresses law enforcement imaging applications in the most general of terms, subsequent documents will focus on different applications such as crime scene photography and surveillance photography.

The purpose of this notice is to request your assistance in the development of these guidelines. This document is available for review on the Internet via the FBI home page as part of the FBI Laboratory's electronic journal "Forensic Science Communications." To view the document there, access the FBI home page at www.fbi.gov, click on Science and Technology, and select Forensic Science Communications. Individuals with access to Law Enforcement On-line (LEO) can also find this document via links at the SWGIT special interest group location.

If you are interested in responding, please do so prior to June 1, 1999. Instructions for submitting comments are included with the document. The SWGIT will incorporate the responses generated by this draft prior to issuing a final version of this document.

Search Incident to Arrest
Another Look

By THOMAS D. COLBRIDGE, J.D.

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Patrick Knowles was stopped for speeding by a police officer in Newton, Iowa. The officer issued Knowles a citation, although he had the option under Iowa law to arrest him. The officer then conducted a thorough search of Knowles' car. He found a bag of marijuana and a "pot pipe." Knowles was arrested and charged under Iowa's controlled substances statutes.[1]

Prior to his trial, Knowles moved to suppress the marijuana and pot pipe as fruits of an unconstitutional search. His motion was denied by the trial court, and he was convicted. Knowles appealed. His appeal set in motion a review process culminating in arguments before the U.S. Supreme Court regarding the scope of police authority to search someone incident to arrest. The Supreme Court recently delivered its unanimous opinion on the matter.[2] This article reviews the development of federal constitutional law regarding search incident to arrest, including Iowa's interpretation of an officer's authority to search incident to arrest that led to the Supreme Court's review of the issue.

SEARCH AND SEIZURE FOURTH AMENDMENT BASICS

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures by government agents.[3] The Supreme Court has defined a search as a

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> **"Mere probable cause to arrest, or the citation process alone, are not sufficient to justify the [warrantless] search."**

government infringement into a person's reasonable expectation of privacy.[4] A reasonable expectation of privacy exists when a person actually believes that his activity will be private and that belief is reasonable; or in other words, when the person's subjective expectation of privacy is objectively reasonable.[5]

The Fourth Amendment prohibits only unreasonable searches by the government. What makes some searches reasonable and others unreasonable? The Supreme Court's answer is simple: any government search conducted without a search warrant is *per se* unreasonable, unless the government can justify its search as one judicially excepted from this warrant requirement.[6] This rule arises from the Supreme Court's preference that the existence of probable cause to search be determined by a neutral third party, the magistrate, rather than the police officer.[7]

However, not all searches can or should be subject to this warrant requirement. Consequently, the Supreme Court has recognized some exceptions: consent searches;[8] emergency searches;[9] motor vehicle searches;[10] inventory searches;[11] and searches incident to arrest.[12] The search incident to arrest exception to the warrant requirement is the issue in the *Knowles v. Iowa* case.[13]

THE HISTORY OF SEARCH INCIDENT TO ARREST

American courts have long recognized a police officer's authority to search individuals without a warrant incident to their arrest. In the 1867 case of *Closson v. Morrison*[14] the New Hampshire Supreme Court cited an even older Vermont case[15] for the proposition that an officer is authorized to search a person without a warrant for weapons and means of escape incident to arrest. In 1914, the U.S. Supreme Court recognized the same authority. While discussing the government's argument in the case before it, the Court said:

> "It is not an assertion of the right on the part of the government, always recognized under English and American law, to search the person of the accused when legally arrested, to discover and seize the fruits or evidences of crime. This right has been uniformly maintained in many cases."[16]

However, a warrantless search incident to arrest may only be conducted if the arrest itself is lawful.[17] That means that the arrest is based upon probable cause to believe the person arrested committed a crime,[18] and is accomplished without violating the Fourth Amendment. The Fourth Amendment requires, absent consent or an emergency, that police have at least an arrest warrant and probable cause to believe a subject is inside someone's home, before they may enter it to arrest that individual.[19] The Amendment also requires a search warrant naming the arrestee as the object of the search, before they may enter a third party's home, absent consent or an emergency, to arrest a wanted person.[20]

The right of an officer to search incident to an arrest is not limited to situations where weapons or evidence of the crime are likely to be found. In *United States v. Robinson,*[21] the Supreme Court made it clear that the authority to conduct the warrantless search incident to arrest does not depend on "what a court may later decide was the probability...that weapons or evidence would, in fact, be found...."[22] The Court reasoned that since a probable cause arrest is a reasonable Fourth Amendment intrusion, a search incident to that arrest "requires no additional justification."[23]

The Scope of Search Incident to Arrest

While the authority to conduct a warrantless search incident to arrest has a long history, the issue of where the officer is permitted to search has been a matter of much debate. The officer clearly is entitled to search the body of a prisoner, as well as items such as a wallet or purse that are immediately associated with the arrestee.[24] This warrantless search of the person following an arrest was explicitly authorized in several state cases during the 19th century,[25] as well as virtually all of the U.S. Supreme Court cases dealing with the issue.[26]

An arresting officer is also authorized to conduct an area search when arresting someone. The size of this area search has changed over the years. In 1925, the Supreme Court described the area search this way:

> "When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution."[27]

Shortly thereafter, the Court expanded the concept of the area "in his control" to "the place where the arrest is made...."[28] The broadest scope of this area search was expressed in *Harris v. United States,*[29] decided in 1947, and *United States v. Rabinowitz*[30] decided in 1950. In *Harris*, officers arrested the defendant in the living room of his four room apartment and proceeded to search the entire apartment. Rabinowitz was arrested in his one room office and arresting officers then searched the office desk, safe, and file cabinets for an hour and a half. The Supreme Court approved both searches as incident to arrest.

The expansion of the area search incident to arrest abruptly ended in 1969 with the case of *Chimel v. California.*[31] Chimel was arrested in his home for burglary. Incident to that arrest, officers searched his entire three-bedroom home, including the attic, garage, and small workshop. They seized evidence that was used at his trial over his objection. He was convicted and appealed. The Supreme Court decided that the officers had conducted an unconstitutional search. The Court said that the warrantless search incident to arrest should be limited to a search of the person arrested, as well as "the area into which an arrestee might reach in order to grab a weapon or evidentiary items...."[32] The Court expressly overruled the expansive definition of the "area within the control" of the arrestee used in the *Harris* and *Rabinowitz* cases, and limited the area search to wherever the arrestee "might gain possession of a weapon or destructible evidence."[33]

> ***"The area within the arrestee's immediate control is defined as of the time of arrest, not the time of the search."***

In cases since *Chimel*, the Supreme Court has further defined this area search incident to arrest. When an officer arrests an occupant of an automobile, the interior passenger compartment of that automobile may be searched incident to arrest as well as any open or closed containers found inside.[34] In 1990, the Supreme Court expanded the area search incident to an arrest inside a building to include a search of immediately adjoining areas for people posing a threat to the arresting officers.[35]

The area within the arrestee's immediate control is defined as of the time of arrest, not the time of the search.[36] Defendants often argue that once they have been moved from the scene of the actual arrest, police no longer have the authority to search that area since it is no longer within the arrestee's control. The Supreme Court and federal circuit courts have rejected this argument.[37]

The Timing of Search Incident to Arrest

When must the search incident to arrest be conducted? Clearly, the search must occur *incident* to the arrest, but the actual timing is no precise matter. Searches occurring before formal arrest are *incident* to the arrest so long as probable cause to arrest existed prior to the search.[38]

The timing of the search incident to arrest varies according to what is being searched. If the officer is searching the person,

clothing, or personal effects of the arrestee, the search is likely to be upheld even if done hours after the arrest.[39] This permissible time frame is not limitless, however. While the justification for the search will last for a reasonable time after the item is seized by police, there cannot be indefinite delay.[40]

The courts are not as flexible, however, when reviewing area searches of automobiles or rooms incident to arrest. Those searches must be "contemporaneous with" the arrest.[41] One court has stated that such area searches must be conducted "at about the same time as the arrest."[42] It does not matter that the arrestee has been removed from the area so long as the search is restricted to the area within his immediate control at the time of the arrest, and events occurring after the arrest but before the search do not render the search unreasonable.[43]

The timing of a lawful search incident to arrest must be judged with an eye toward the realities of law enforcement. As the court said in *United States v. Nelson:*[44]

> "...[police officers] need not reorder the sequence of their conduct during arrest simply to satisfy an artificial rule that would link the validity of the search to the duration of the risks. Pragmatic necessity requires that we uphold the validity and reasonableness of the search incident to arrest if the search is part of the specific law enforcement operation during which the search occurs."

The Object of Search Incident to Arrest

What is an arresting officer permitted to look for during a search incident to arrest? Courts have long agreed that arresting officers may search the arrestee and the immediate area for weapons of any kind and for any object that could aid the arrestee's escape.[45] Evidence of crime—any crime— is also a legitimate object of the search incident to arrest.[46] The Supreme Court has specifically rejected attempts to limit searches incident to arrest only to evidence of the crime for which the arrest was made.[47]

> ***"The Supreme Court ruled Iowa's search incident to citation exception to the Fourth Amendment unconstitutional."***

IOWA'S SEARCH INCIDENT TO CITATION LAW

The issue before the Supreme Court in *Knowles v. Iowa*[48] was Iowa's expansion of the warrantless search incident to arrest to the warrantless search incident to a citation. Iowa has a law that permits its police officers to immediately arrest traffic violators and take them to a magistrate.[49] State law also permits Iowa officers to issue a citation in lieu of arrest if the person would be eligible for bail.[50] Iowa law also provided that the issuance of the citation in lieu of an arrest did not "affect the officer's authority to conduct an otherwise lawful search."[51] The Iowa Supreme Court interpreted this statutory scheme as authorization for its police officers to conduct a search, having the same scope as the search incident to arrest recognized by the federal Constitution, whenever officers have probable cause to arrest, but choose, instead of arresting the violator, to issue a citation.[52] The Iowa Supreme Court reasoned that the search incident to arrest authority is triggered not by the physical act of the arrest, but by the establishment of probable cause to make the arrest.[53] In Iowa, then, when a police officer chose to issue a citation in lieu of arrest, he was authorized to conduct a search since he had the requisite probable cause to arrest. It was this theory of the search incident to citation that the Iowa courts used to sustain the search of Knowles' vehicle.

THE *KNOWLES'* CASE

The facts in the case of *Knowles v. Iowa* are simple. When the police officer stopped Knowles, he had probable cause to believe Knowles had violated traffic laws. He could have arrested Knowles for that violation, but chose instead to issue a citation. The officer searched Knowles' car based solely upon Iowa's statutory search incident to a citation exception to the warrant requirement; he had neither consent nor probable cause to conduct the search. In arguments on the motion to suppress, Knowles argued that Iowa's search incident to citation

theory violated the Fourth Amendment of the federal Constitution, which requires that a person be arrested before a search incident to arrest may occur. The state argued that the search was justified solely by the officer's probable cause to arrest Knowles for the traffic infraction.

In an unanimous decision, the U.S. Supreme Court agreed with Knowles. Citing *United States v. Robinson,*[54] the Court noted two historical rationales for the search incident to arrest—disarming the subject and preserving evidence for trial. Regarding the first rationale, officer safety, the Court believed there is less danger to an officer issuing a citation than to an officer making a custodial arrest. In the Court's view, a person receiving a citation is less likely to be hostile than one being arrested. In addition, there is less contact between officer and citizen in the citation situation, exposing the officer to less danger.

Regarding the second rationale, preventing the destruction of evidence, the Court said that in this case there was little likelihood that the officer would have found additional evidence of the speeding offense. The state of Iowa argued that anyone who is stopped for a traffic violation may destroy evidence of other crimes, but the Supreme Court simply said the possibility that an officer would stumble onto such evidence of other crimes during a traffic stop "seems remote."[55]

The Supreme Court ruled Iowa's search incident to citation exception to the Fourth Amendment unconstitutional. It concluded that the search incident to arrest exception to the Fourth Amendment is a bright-line rule, justified only by a lawful, full custodial arrest, and based upon a concern for officer safety and for the loss of evidence. It refused Iowa's invitation to extend the bright-line rule to a situation where, in its opinion, neither concern exists.

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THE VEHICLE EXCEPTION UNAFFECTED BY *KNOWLES*

The *Knowles* opinion had no impact upon the long recognized vehicle exception to the Fourth Amendment warrant requirement. The vehicle exception permits an officer to search a motor vehicle without a search warrant when he has probable cause to believe evidence or contraband will be found inside.[56] The scope of this warrantless search is the same as a search warrant would authorize.[57]

The parties in the *Knowles* case all agreed that the officer who conducted the search had no probable cause to believe there was evidence or contraband in Knowles' car, and that the officer was relying entirely upon statutory authorization to conduct the search.[58] Consequently, the motor vehicle exception was never an issue before any court during the life of this case. The motor vehicle exception is alive and well in American jurisprudence.

CONCLUSION

The Supreme Court has recognized a police officer's authority to conduct a warrantless search incident to a lawful custodial arrest. The scope of the search includes the person of the arrestee, personal items in his possession, the area into which the arrestee could reach at the time of arrest to retrieve a weapon, any means of escape, or destructible evidence, as well as a search of immediately adjoining areas for people posing a threat. The timing of the search of the person and personal items is fairly flexible; the area searches should be contemporaneous with the arrest. The objects of the search incident to arrest are weapons, any means of escape, and evidence of any crime the arrestee could destroy. This authority is predicated upon the dual concerns of officer safety and preservation of evidence for trial.

In *Knowles v. Iowa*, the Supreme Court emphasized that the warrantless search incident to arrest is triggered only by a lawful custodial arrest. Mere probable cause to arrest, or the citation process alone, are not sufficient to justify the search. This decision is consistent with the Court's long-held position that any police search should be conducted with a warrant, authorized by a neutral and detached magistrate, unless the officer can justify the search under a recognized exception to the rule.[59] Because the Supreme Court favors the

use of search warrants by police officers, the justices are hesitant to discourage their use by creating new exceptions to the rule or expanding exceptions already recognized. ✦

Endnotes

[1] He was charged with violating Iowa Code section 124.401(3)(1995): possession of a Schedule I Controlled Substance (marijuana); and section 124.402(1)(e): keeping a controlled substance in an automobile.

[2] *Knowles v. Iowa*, 119 S. Ct. 484 (1998); 1998 WL840933 (U.S. Iowa).

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

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

[5] *Id.* at 361 (J. Harlan, concurring).

[6] *Id.* at 357.

[7] *Id.* at 356.

[8] *Schneckloth v. Bustmonte*, 412 U.S. 218 (1973); *Ohio v. Robinette*, 117 S. Ct. 417 (1996).

[9] *Schmerber v. California*, 384 U.S. 757 (1966); *Cupp v. Murphy*, 412 U.S. 291 (1973).

[10] *Carroll v. U.S.*, 267 U.S. 132 (1925); *California v. Acevedo*, 111 S. Ct. 1982 (1991).

[11] *South Dakota v. Opperman*, 428 U.S. 364 (1976); *Florida v. Wells*, 495 U.S. 1 (1990).

[12] *United States v. Robinson*, 414 U.S. 218 (1973).

[13] *Supra* note 2.

[14] 47 N.H. 482 (1867).

[15] *Spalding v. Preston*, 21 Vt. 9 (1848).

[16] *Weeks v. United States*, 232 U.S. 383, 392 (1914).

[17] *United States v. Robinson*, *supra* note 12; *United States v. Anchondo*, 156 F.3rd 1043 (10th Cir. 1998).

[18] *Henry v. United States*, 361 U.S. 98 (1959).

[19] *Payton v. New York*, 445 U.S. 573 (1980).

[20] *Steagald v. United States*, 451 U.S. 204 (1981).

[21] *United States v. Robinson*, *supra* note 12.

[22] *Id*. at 235.

[23] *Id.*

[24] *United States v. Passaro*, 624 F.2d 938 (9th Cir. 1980), *cert. denied* 449 U.S. 1113 (1980); *Curd v. City of Judsonia, Ark.*, 141 F.3d 839 (8th Cir. 1998).

[25] *Supra* notes 14 and 15.

[26] *See, e.g., Weeks v. United States*, *supra* note 17; *Carroll v. United States*, 267 U.S. 132 (1925); *Chimel v. California*, 395 U.S. 752 (1969); *United States v. Robinson*, 414 U.S. 218 (1973); *Maryland v. Buie*, 494 U.S. 325 (1990)

[27] *Carroll v. United States*, 267 U.S. 132, 158 (1925).

[28] *Agnello v. United States*, 269 U.S. 20 (1925); *Marron v. United States*, 275 U.S. 192 (1927).

[29] 331 U.S. 145 (1947).

[30] 339 U.S. 56 (1950).

[31] 395 U.S. 752 (1969).

[32] *Id.* at 763.

[33] Id. This area search includes open, unlocked containers found within the area that could hold weapons, evidence, or means of escape: *United States v. Han*, 74 F.3d 537 (4th Cir. 1996), *cert. denied* 517 U.S. 1239 (1996); *United States v. Hudson*, 100 F.3d 1409 (9th Cir. 1996), *cert. denied* 118 S. Ct. 353 (1997). Locked containers are likely not included in the rationale of the search incident to arrest, but the Supreme Court has not resolved the issue. Officers should consult their Legal Advisors.

> **"...the Supreme Court emphasized that the warrantless search incident to arrest is triggered only by a lawful custodial arrest."**

[34] *New York v. Belton*, 453 U.S. 950 (1981). The Supreme Court has not resolved the issue of whether or not locked containers may be opened incident to arrest. Officers should consult with their legal advisors regarding this issue.

[35] *Maryland v. Buie*, 494 U.S. 325 (1990).

[36] *In Re Sealed Case*, 153 F.3d 759 (D.C. Cir. 1998).

[37] *New York v. Belton*, *supra* note 34; *United States v. Hudson*, *supra* note 33; *United States v. Abdul-Saboor*, 85 F.3d 664 (D.C. Cir. 1996).

[38] *Rawlings v. Kentucky*, 448 U.S. 98 (1990); *United States v. Bizier*, 111 F.3d 214 (1st Cir. 1997); *United States v. Anchondo*, 156 F.3d 1043 (10th Cir. 1998).

[39] *United States v. Edwards*, 415 U.S. 800 (1974).

[40] *United States v. Chadwick*, 433 U.S. 1 (1977); *United States v. Nelson*, 102 F.3d 1344 (4th Cir.1996), *cert denied* 117 S. Ct. 1567 (1997).

[41] *United States v. Belton*, *supra* note 34; *United States v. Abdul-Saboor*, *supra* note 37.

[42].*United States v. Hudson*, *supra* note 33, quoting *United States v. Turner*, 926 F.2d 883 (9th Cir. 1991), *cert. denied* 502 U.S. 830 (1991).

[43] *Id*.

[44] *Supra* note 40, at page 1347.

[45] *See Closson v. Morison*, *supra* note 14; *United States v. Robinson*, *supra* note 12.

[46] *United States v. Robinson*, *supra* note 12.

[47] *Id.*

[48] *Supra note* 2.

[49] Iowa Code Annotated, Section 321.485 (1)(a)(West Supp. 1997).

[50] Iowa Code Annotated, Section 805.1(1)(West Supp. 1997).

[51] Iowa Code Annotated, Section 805.4(West Supp. 1997).

[52] *State v. Becker*, 458 N.W.2d 604 (IA 1990); *State v. Meyer*, 543 N.W.2d 876 (IA 1996).

[53] *State v. Doran*, 563 N.W.2d 620 (IA 1997).

[54] *Supra* note 12.

[55] *Supra* note 2.

[56] *Carroll v. United States*, 267 U.S. 132 (1925); *United States v. Patterson*, 140 F.3d 767 (8th Cir. 1998), *cert. denied* 119 S. Ct. 245 (1998).

[57] *United States v. Ross*, 456 U.S. 789 (1982); *California v. Acevedo*, 111 S. Ct. 1982 (1991).

[58] *Supra* note 2.

[59]*Katz v. United States*, *supra* note 4.

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.

The Bulletin Notes

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

Investigator Ward

During the early morning, while driving on an interstate, off-duty Patrol Investigator James Ward of the Lakewood, Ohio, Police Department came upon an automobile accident. Smoke was coming from the vehicle, which had struck a center guard rail after the driver apparently had fallen asleep. Investigator Ward and another passing motorist rescued the driver moments before the car burst into flames. Despite the high-speed traffic and dark conditions, Investigator Ward carried the victim to safety on the side of the highway and administered first aid until emergency services arrived. Investigator Ward's unselfish and courageous actions saved the driver's life.

Officer Miles

Officer Octaveious Miles of the Detroit, Michigan, Police Department received a radio broadcast concerning the pursuit of a stolen vehicle. Because he was nearby, Officer Miles proceeded to the location and observed the speeding vehicle approach an intersection where a group of schoolchildren were crossing the street. As he realized that the vehicle was not going to stop, Officer Miles pulled his patrol car into its path. The speeding vehicle slammed into the cruiser. All the children were unharmed, but Officer Miles had to be pried from his patrol unit. He was treated for his injuries at a local hospital and released. Other officers arrested the driver at the scene. Without regard for his own safety, Officer Miles placed himself in harms way to save the schoolchildren from certain injury or death.

Officer Struve

Officer Michael Struve of the Wyoming, Michigan, Police Department was off duty at a local water park when his daughters told him that they saw a young male on the bottom of the pool. Officer Struve found the male submerged in about 6 feet of water, pulled him out of the pool, and began resuscitative efforts. As this victim began breathing, Officer Struve's son told him that another young male was lying on the bottom of the pool. Officer Struve alerted life guards who rescued the second victim. Both young men survived due to the prompt actions of Officer Struve and his children.