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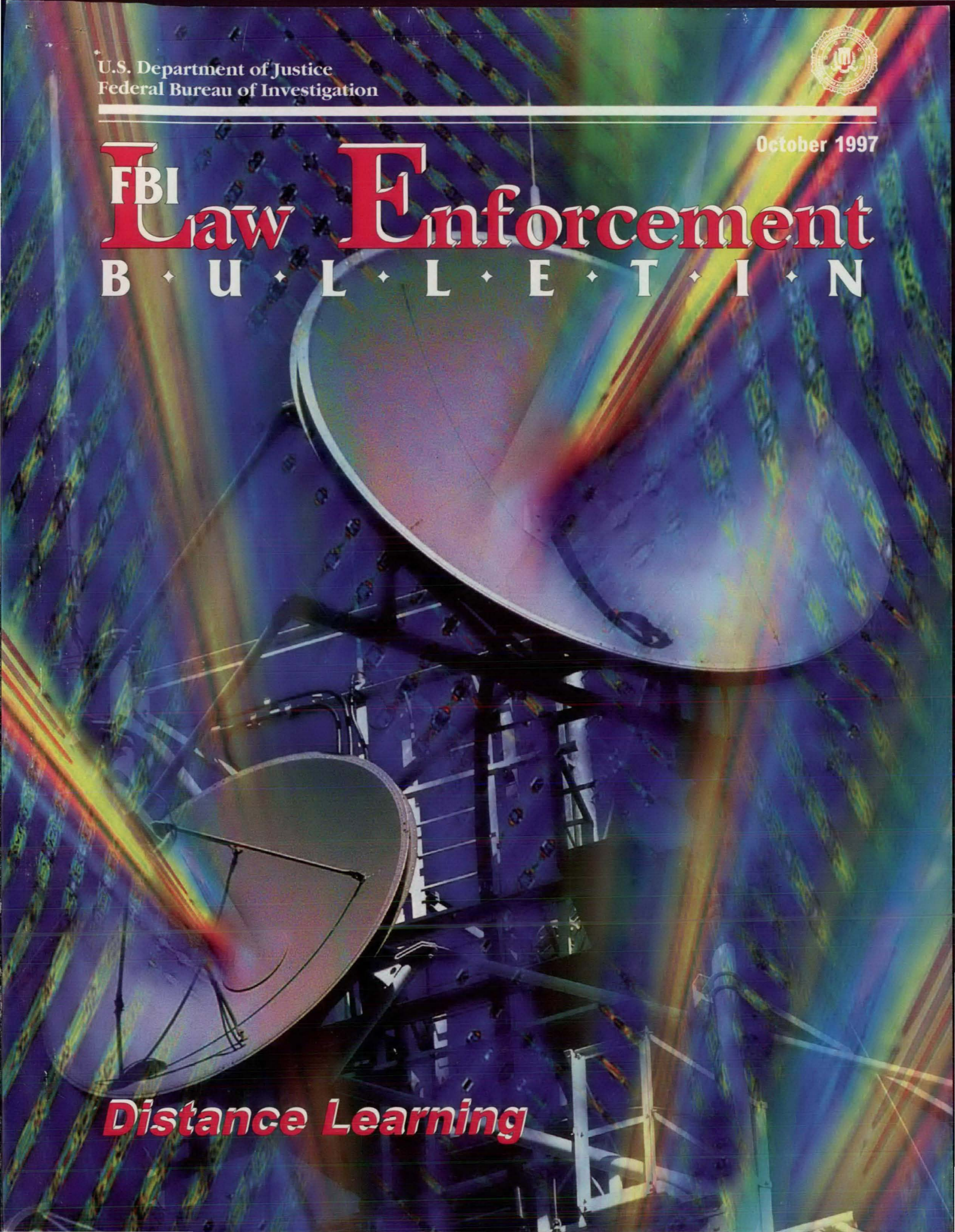

Distance Learning

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Louis J. Freeh Director

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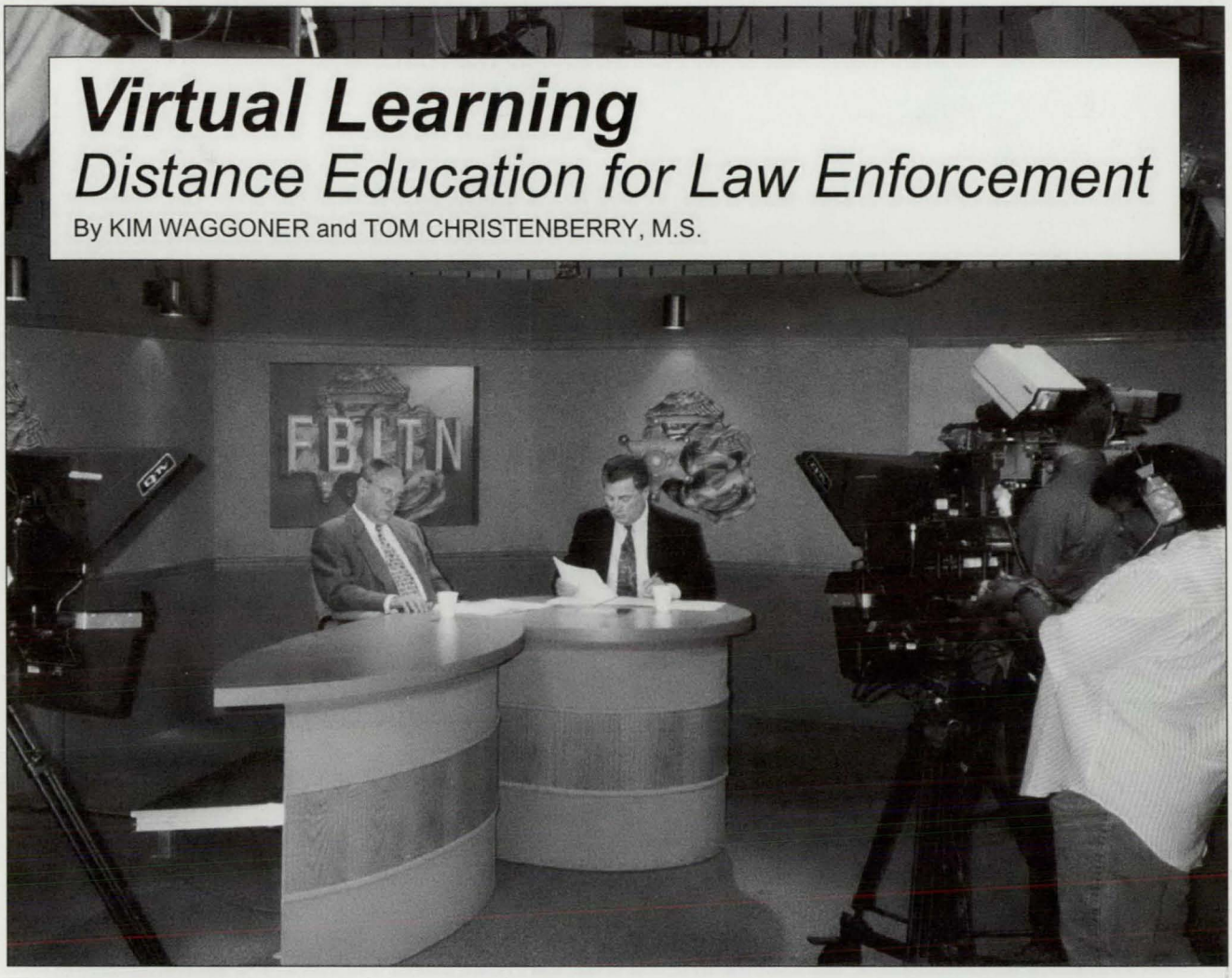
Virtual Learning
Distance Education for Law Enforcement

By KIM WAGGONER and TOM CHRISTENBERRY, M.S.



Imagine a police department's roll-call room at noon, where 30 homicide detectives have gathered for in-service training on crime scene evidence. As the detectives watch, a leading forensic scientist at a university 200 miles away discusses the details of a recently concluded murder investigation.

A detective in the back of the room with a puzzled expression raises her hand. The detective's image fills the screen of a monitor at the front of the room as she asks about a blood stain found at the crime scene. A photograph of the stain now appears on the screen as the scientist answers the detective's question. Thanks to a videoconferencing system, the police detectives and the forensic expert are having a live, two-way training session despite the many miles that separate them.

Also called video teleconferencing, this technology is merely one aspect of an educational concept being implemented all over the world. Known as distance education, or distance learning,[1] it is the delivery of education or training, through a variety of means, to students separated from instructors and possibly from one another. For law enforcement agencies working with limited budgets, distance learning represents a cost-effective way to provide the training that their employees might not receive otherwise. Moreover, the technology that some programs use enables organizations to conduct long-distance meetings and seminars and tap a vast pool of expert resources.

This article explains the concept of distance education and features a number of agencies that have implemented successful distance

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education initiatives. It also presents guidelines that can help other law enforcement agencies start their own programs.

WHAT IS DISTANCE EDUCATION?

Technology has changed the way people accomplish tasks in every area of their lives, and education is no exception. At one time, correspondence courses provided the primary means for students to learn at a distance. Today, distance education can be as simple as a lecture prerecorded on an audio- or videotape or as complex as two-way, real-time audio- and video interaction using videoconferencing equipment. These techniques represent the limits of a broad spectrum that encompasses the two general categories of distance education: asynchronous and synchronous.[2]

Asynchronous Distance Education

Students who view lectures from prerecorded videotapes can do so from the comfort of their homes, with no interaction with the instructor or one another. This type of learning, which is known as asynchronous, does not require simultaneous participation.

Audio- and videotapes represent simple and affordable options for asynchronous education. More technologically advanced means include electronic mail and the Internet-based World Wide Web.

Because asynchronous methods involve no real-time interaction, they provide a flexible, convenient way of learning. Students who need the structure and personal interaction found in the traditional classroom, however, might prefer the interactivity provided by synchronous instruction.

Synchronous Distance Education

As its name implies, synchronous distance education requires the simultaneous participation of students and instructors. As such, it occurs in real time and, depending on the technology used, can provide two-way audio and video. Satellite training, for example, involves two-way audio but only one-way video. Specifically, students can see and hear the instructors but must ask questions or make comments using methods that, at the most, transmit their voices only. At the other end of the spectrum, certain types of videoconferencing allow participants both to see and hear one another.

WHO IS USING DISTANCE EDUCATION?

Whichever delivery method they choose, law enforcement agencies around the country are using distance education. Administrators can use these examples to design similar programs or take advantage of the distance education courses the following organizations provide to members of the criminal justice community.

The Law Enforcement Training Network

Like a cable network for law enforcement officers, the Law Enforcement Training Network (LETN) provides subscribers with a variety of training and educational programs for a monthly fee. Viewers can tune in to both live and prerecorded programs on a variety of law enforcement topics.

LETN's satellite feed makes live programming possible, and shows come from such sources as the International Association of Chiefs of Police, the National Sheriffs' Association, and the FBI. Once recorded, these programs are broadcast numerous times during the course of a month. LETN's regular programs include Roll Call, 10 minutes of daily

training; Command Center, 15 minutes of news, new-product information, and videos from law enforcement agencies in action; and LETN News, featuring law enforcement headline news.

LETN's Training On Demand (TOD) series provides training and testing in a video format. Law enforcement agencies can watch TOD Monday through Thursday, or they can order the videotapes and use them at their own convenience. Many TOD programs evaluate students' knowledge with pre- and posttests and can earn students continuing education units with the Southern Police Institute at the University of Louisville or Pennsylvania State University.

Combining curriculum-based training with technology, LETN developed the Specialized Training Testing and Recordkeeping System (STTAR). STTAR comes with a desktop computer system that allows students to view live LETN satellite broadcasts. A VCR hookup makes it possible to record live programs or watch prerecorded tapes. Students can take pre- and posttests on the computer and send them electronically to LETN for grading. The system's touch screen and voice instructions make computer literacy unnecessary. The STTAR program also serves as a paperless database, giving departments an easy and efficient way to track their in-service training.

Christopher Newport University

Recognizing the need to reach students who may find it difficult to attend on-campus classes, institutions of higher learning have been at the forefront of the distance education movement. Christopher Newport University (CNU) in Newport News, Virginia, offers an online bachelor of science degree in governmental administration with a choice of four concentrations, including criminal justice administration.

Dubbed CNU ONLINE, this asynchronous program allows students to access their classes via the Internet, download assignments to be completed offline, then reenter the system to turn in their work. To do this, students post completed assignments to an electronic mailing list, where the entire class can read them and make comments. The class uses the list to discuss other issues, as well. A chat-room function allows students to communicate with one another in real time. Professors usually use this capability to hold online office hours for student questions and concerns.

> ***"The cornerstone of any law enforcement organization is its ability to educate and train its personnel."***

The Mid-Atlantic Police Supervisory Institute

Oftentimes, police officers who gain promotions into management find they are not quite sure how to supervise their former peers. Unfortunately, few resources exist to provide this type of training, and worse, the combined toll of work and personal obligations make outside education nearly impossible.

Recognizing this dilemma, faculty members from Christopher Newport University, the chiefs of several southeastern Virginia police departments, and other law enforcement executives founded the Mid-Atlantic Police Supervisory Institute (MAPSI). Conducted almost completely online, MAPSI courses give first-line supervisors a convenient way to learn supervisory, administrative, and ethical skills and earn college credit without missing valuable time from work.

Local students visit the campus to attend four Saturday workshops. At these seminars, guest speakers cover such topics as emergency preparedness, community-based policing, and employee discipline, as well as other personnel issues. Students who cannot travel to campus can view the program on videotape and e-mail the speaker later with questions or comments. In the future, the university plans to install videoconferencing equipment, which will allow officers from remote locations to view the workshops live.

The Online Police Academy

In today's complex policing environment, administrators may find it difficult to meet the training needs of their officers with only a limited number of qualified instructors. The Online Police Academy (OPA) of the Millersville University of Pennsylvania was born of the frustration some police trainers felt over this dilemma. With its World Wide Web-based delivery system,

OPA links students and instructors from all over the world.

Both police officers and other interested students with a personal computer, a modem, and Internet access can attend OPA and earn continuing education units for course offerings, which include Introduction to Law Enforcement and Media Relations for Law Enforcement. After registering and obtaining a password, students access OPA's Web page, download course assignments, complete them, and send them to the instructor by modem. Discussions can take place in groups via an online conference or one-on-one using e-mail.

The FBI Training Network

Formerly the Law Enforcement Satellite Training Network , the FBI Training Network (FBITN) incorporates distance education into three of its programs. First, FBITN's "Viewpoints from the FBI Academy" series highlights the expertise of FBI Academy instructors. The show airs regularly on LETN, and tapes of prior broadcasts are available.

Second, FBITN uses satellite technology to present teleconferences on a variety of criminal justice topics. Programs feature a panel of experts from different law enforcement agencies and weave graphics and video clips into the discussion format. During each live broadcast, viewers can call or fax with questions or comments.

Viewers can tape the broadcasts themselves or purchase tapes through FBITN. Previously aired programs have included "Child Abuse and Exploitation," "Training and Technology," and "Cargo Theft."

The third component of FBITN's distance learning initiative is a pilot project that will enhance the FBI's ability to train its own personnel and members of the law enforcement community as well. To date, several FBI field offices, FBI Headquarters, and the FBI Academy have installed video teleconferencing equipment that allows them to transmit two-way audio and video in real time.

Equipped with a multipoint control unit (MCU), the FBI's system permits conferences among several sites at once. At the host site, four preset controls vary what participants view. One focuses the host-site camera, another directs the remote-site cameras, a third broadcasts any visual aids incorporated into the program, and a fourth allows the use of a VCR or computer. The system's "picture within a picture" feature broadcasts multiple views simultaneously, with the 27-inch monitor providing ample viewing space. A device known as a coder/decoder or, more commonly, CODEC converts the audio and video signals into data that can be transferred over specially designed phone lines.

> ***"...the success of distance learning initiatives often hinges on the people involved in their implementation."***

Earlier this year, an instructor from the FBI Academy formally christened the new equipment during a long-distance training session with supervisors from New York, Washington, Louisville, and Tampa field offices. The interactive multimedia presentation served as a primer for conducting efficient and effective meetings.

In the future, the FBI's videoconferencing system will enable FBI personnel not only to receive the education and training they need but also to conduct meetings, discuss ongoing cases, handle crisis situations, and the like. Encryption software can overcome security concerns, allowing participants to discuss even sensitive matters.

Law Enforcement OnLine

The FBI's commitment to providing law enforcement with state-of-the-art training and education continues with the establishment of Law Enforcement OnLine (LEO). This new computer network, sponsored jointly by the FBI and Louisiana State University, provides a cost-free means for law enforcement officers to conduct research, communicate with peers, and, ultimately, take courses online.

Users need nothing more than a personal computer and a modem to access LEO's many features, which include

- Custom Web-type pages that present general law enforcement information using text, graphics, audio, and video
- Areas reserved for members of special law enforcement groups, such as the National

Where To Go for Help

United States Distance Learning Association
800-275-5162 or 510-606-5160
On the Internet: http://www.usdla.org

Federal Government Distance Learning Association
On the Internet: http://www.fgdla.com

The Distance Learning Resource Network
800-662-4160
On the Internet: http://fwl.org/edtech/dlrn.html

American Society of Law Enforcement Trainers
302-645-4080,
102414.2150@compuserve.com

International Association of Directors of Law Enforcement Standards and Training
On the Internet: http://www.iadlest.org

Association of Technical Investigators and the National Executive Institute

- Bulletin boards, maintained by both general and specialized law enforcement groups, which allow users to download information for themselves and post messages for others
- E-mail for secure, one-on-one communication between LEO members
- A library of law enforcement-related articles written by leading experts.

Although the exchange of information afforded by communication systems such as LEO technically qualifies as distance learning, the true distance learning component of LEO will allow members to take classes online. FBI National Academy students most likely will represent LEO's first class.

Southern Illinois Forensics Science Centre

When the state of Illinois hired 85 forensic scientists for its 8 regional laboratories, someone had to train them. Normally, new hires travel to the Forensics Science Centre for training. Unfortunately, the size of the training facility and its staff compared to the number of students made the centre a less-than-ideal site. For state administrators, the time seemed perfect to institute a distance education program, and they selected videoconferencing as the way to do it.

At a cost of about $25,000 each, the state's eight regional laboratories feature complete systems with conferencing software and CODEC equipment. Each site also has two 27-inch monitors, a camera that focuses on the audience, and a document camera. The centre's upgraded system has two 31-inch monitors, as well as a tracker camera that follows instructors as they move about the classroom.

The centre's investment has yielded substantial dividends. With its videoconferencing network in place, the centre took recent college graduates with little or no work experience who were separated in some cases by hundreds of miles and turned them into forensic scientists. In addition to providing training to new recruits, the centre uses its videoconferencing equipment to conduct meetings and in-services and even has held a remote deposition.

HOW CAN AGENCIES SELECT THE RIGHT SYSTEM?

Some readers already may have decided the distance learning program they want to implement. Others may have thrown up their hands in frustration and confusion. Given the vast array of options available now, in addition to the rate at which new technology develops, how can administrators choose the best option for their agencies?

By Getting Help

Administrators should seek assistance before they establish distance learning programs. Organizations that have implemented similar programs can offer guidance. In many areas, schools, libraries, cable companies, and correctional facilities offer distance education. Professional associations, such as

Program Contacts

For more information on the programs featured in this article contact the references listed below.

LETN
Glenn Dreyfuss, program manager, 972-417-4343

Christopher Newport University and MAPSI
Professor Tom Dempsey, 804-594-7097, tdempsey@cnu.edu

Online Police Academy
Jacob Haber, 302-654-9091, jacob.haber@dol.net or 104706.3627@compuserve.com

FBITN
SSA Tom Christenberry, program manager, 800-862-7577, tc6v@virginia.edu or biograph@ix.netcom.com

Law Enforcement OnLine
Contact the police training coordinator at the local FBI field office for more information

Southern Illinois Forensics Science Centre
Robert Gonsowski, laboratory director, 618-457-6714

the United States Distance Learning Association and the Federal Government Distance Learning Association, can provide assistance. Commercial vendors can help, but in their zeal to promote their own equipment, they might not be the best source for objective advice.

The best source of information may be an instructional designer. This person does not have to be a professional who earns a living designing courses. A graduate student from the local university might have just as much knowledge and might work for the experience alone. By getting this much-needed help, administrators take the first step toward implementing successful programs.

By Conducting a Needs Assessment

First and foremost, instructional designers conduct needs assessments. Simply put, they determine what kind of system will best meet their client's needs. To do this, they ask such questions as: What purpose will the training/education serve? What kind of courses will the agency present? What audience will it target? Is real-time instruction important, or should user convenience prevail? What level of interactivity should exist between instructors and students? How much money does the agency have to spend on the program?

With the answers to these and other questions, instructional designers can find a technology that most closely matches the agency's criteria. Satellite training, for example, can provide training for large groups of people at one time. However, the technology's one-way video limits interaction between instructors and students. In addition, to receive live satellite programs, agencies must buy a dish; a KU-band dish (the most common) costs around $10,000. Additional costs apply for agencies that initiate the training from their own sites.

Computer-based videoconferencing represents another option. Each training/learning site must have a high-end computer and special conferencing software, in addition to lines to transmit data. The quality of the transmission depends on these lines and is proportional to installation and monthly fees.

Yet, even the most expensive lines cannot keep pace with fast or extensive action. As a result, a department planning to use its system to train officers on defensive tactics, for example, probably should choose another method. And, although it is difficult to train large groups using this technology, for long-distance meetings and other

events involving smaller numbers of people, video teleconferencing works well.

HOW CAN AGENCIES AFFORD THIS NEW TECHNOLOGY?

Satellite training and videoconferencing represent two delivery methods that can prove expensive for law enforcement agencies. Fortunately, other means that cost less may meet the agency's needs instead. For example, using a personal computer with a modem and Internet connection, the right software (available free from Cornell University[3]), and a camera that costs around $100, small groups can meet for training or discussion. Audio conferencing connects participants via the telephone. And, a number of training programs come on videocassette.

Whatever the cost, agencies can find ways to pay for distance learning programs. The Kansas Law Enforcement Training Center[4] defrayed 75 percent of the cost of its videoconferencing training program through a grant from the U.S. Department of Justice's Bureau of Justice Assistance. The rest of the money comes from law enforcement agencies that receive the training.

Community policing has shown police departments that they cannot fight crime alone; training should be a collaborative effort, as well. Partnerships with community residents and business leaders can secure needed equipment and funding.

When the Los Angeles Police Department needed computers, Los Angeles businesses made sure they got them.[5] And, when the Farmington Hills, Michigan, police and fire departments needed new equipment, city residents voted to increase property taxes to pay for it.[6] In addition, by banding together, agencies not only can pool resources, but they also can increase their bargaining power with vendors.

In short, the money to pay for distance learning exists; agencies merely need to use creative approaches to obtain it. As one expert said, "'It's not in the budget' is the anthem of the unimaginative."[7]

> ***"...the money to pay for distance learning exists; agencies merely need to use creative approaches to obtain it."***

NOW THAT THE EQUIPMENT IS IN PLACE

A few decades ago, many people feared they would lose their jobs to computers. Instead, the job market has exploded; even the most sophisticated technology needs people to make it work. Likewise, the success of distance learning initiatives often hinges on the people involved in their implementation. First, proper planning and forethought are needed to create classes and events that will involve participants and hold their interest even after the "wow factor" wears off. This means moving from the traditional lecture format and incorporating dynamic, multimedia presentations.

Next, students need to learn how to learn in this manner. They may find being on camera disconcerting or the time-delay inherent in some systems a hindrance.[8] To help overcome these obstacles and to help lead the discussion and involve participants, trained facilitators must be present at each site.

Instructors at the Southern Illinois Forensics Science Centre discovered that site facilitators played a critical role in their students' success. Facilitators who made sure students understood the material had more students pass.

Finally, all instructors must be trained in the theory and practice of using technology as a teaching aid. In short, "technology without sound instructional integrity will fail."[9]

CONCLUSION

The cornerstone of any law enforcement organization is its ability to educate and train its personnel. Yet, this decade's belt-tightening has left most agencies unable to bridge the gaps that exist in their employees' knowledge, as well as the physical distance between employees and the training sites available to them.

Moreover, some criminals continue to take technological leaps ahead of the officers tasked with pursuing them. A number of law enforcement administrators still debate the merits of installing computers in their departments or establishing a presence on the Internet. Many will continue to vacillate even as defendants walk away unpunished or their departments lose

costly lawsuits because they failed to train their officers. Rather than wonder whether they can afford to implement distance training in their departments, law enforcement administrators should ask themselves if they can afford not to.✦

Endnotes

[1] Although this article uses the terms "distance education" and "distance learning" interchangeably, some experts make distinctions between the two. *See, for example*, Virginia Steiner, "What is Distance Education?" which distinguishes between the *delivery* of distance *education* by instructors and the *receipt* of distance *learning* by students. *See also* Leigh Maxwell, "Integrating Open Learning and Distance Education," *Educational Technology*, November-December 1995, 43-48.

[2] Virginia Steiner, "What is Distance Education?" [online article]; available from http://www.fwl.org/edtech/distance.html; Internet; accessed January 28, 1997.

[3] For a free copy, go to http://cu-seeme.cornell.edu/#get.

[4] For more information, contact Director Ed Pavey, Kansas Law Enforcement Training Center, P.O. Box 647, Hutchinson, Kansas 67504-0647, 316-662-3378, fax 316-662-4720, e-mail kletc@southwind.net, on the Internet, http://www2.southwind.net/~kletc.

[5] Richard Abshire, "Training and Technology," FBI Training Network teleconference, January 8, 1997.

[6] *See* William J. Dwyer, M.S., and Melissa Faulkner Motschall, Ph.D., "Making Taxes Less Taxing, A Public Safety Millage Campaign," *FBI Law Enforcement Bulletin*, December 1996, 15-18.

[7] Supra note 5.

[8] For an enlightening article that compares the experiences of high school, university, and community college students taking two different courses, each delivered via videoconferencing, *see* Patricia Comeaux, "The Impact of an Interactive Distance Learning Network on Classroom Communication," *Communication Education*, October 1995. *See also* Chere C. Gibson and Terry L. Gibson, "Lessons Learned from 100+ Years of Distance Learning," *Adult Learning*, September/October 1995, 15; Marcia Baird, "Training Distance Education Instructors, Strategies That Work," *Adult Learning*, September/October 1995, 24-27; and Ellen D. Wagner, "Distance Education Success Factors," *Adult Learning*, September/October 1995, 18-19, 26.

[9] Patricia Boord, "Training and Technology," FBI Training Network teleconference, January 8, 1997.

Author Guidelines

Manuscript Specifications

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.

Query Letters: Authors may submit a query letter, along with a detailed one- to two-page outline before writing an article. This is intended to help authors but does not guarantee publication of the article.

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

Editing: The *Bulletin* reserves the right to edit all manuscripts for length, clarity, format, and style.

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Caller ID
Maintaining Investigative Security

By DAVID P. WILLIAMS

The telephone has become such a staple of modern life that few people give it a second thought. When callers pick up the receiver, it is doubtful they consider the millions of signals being routed through switching stations that their call is about to join. They just know that when they want to check in with a family member across town or a business associate across an ocean, they only need to pick up the telephone. Even when power goes out in a community, the telephones generally continue to work. So, it might be easy to take this workhorse of the information age for granted.

However, advances in telephone service options—most notably caller identification services—require that law enforcement agencies take a close look at how they use the telephone. The growing prevalence of caller identification services (generally referred to as caller ID) dictates that investigators take special precautions, especially during undercover operations.

Caller ID: Help or Hindrance

As its name implies, the caller ID device displays the originating telephone number of an incoming call, allowing the recipient to know, before answering the call, the number of the party calling.

For law enforcement, caller ID has proven to be a valuable

intelligence tool. When investigators install a court-authorized wiretap or dialed number recorder on a telephone line, for instance, they also generally request caller ID. With caller ID on the line, investigators not only know whom the targeted subject calls but also who calls the subject.

Investigators also can include a suspect's caller ID device on a search warrant request. A properly worded search warrant allows investigators to seize the caller ID box and thus obtain an accurate record of the last 25 to 100 calls received by the subject.

Nevertheless, despite its benefits, caller ID poses some potentially serious problems for the police. Critics claim that it invades citizens' privacy. There are also concerns that caller ID may reduce the number of calls to police crime tip lines, crisis centers, and suicide and abuse hotlines.

For law enforcement agencies, concerns primarily revolve around the effects caller ID and related services have on undercover operations. By understanding the functions of these services, however, investigators can develop strategies to maintain telephone security during investigations.

THE MECHANICS OF CALLER ID

Caller ID comes in two forms. Basic caller ID (sometimes referred to as single message) represents the first generation of caller identification services, widely available since the early 1980s. During the last several years, telephone companies have been converting to enhanced caller ID (also known as deluxe or multimessage).

The primary difference between the two systems is the amount of information provided about the originating telephone call. While basic service provides only the caller's telephone number and the date and time of the call, enhanced service supplies this information, as well as the name and in some cases, the address of the caller.

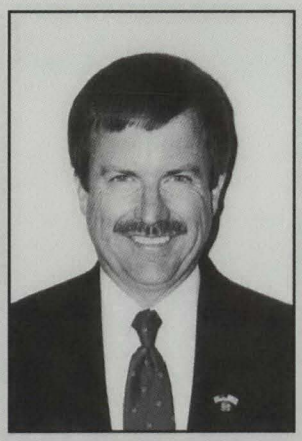
Regardless of which form of caller ID serves a particular locality, the mechanics of its operation remain the same. The local telephone company attaches caller ID at its central office after the originating call has been placed. This makes it nearly impossible for the caller to trick or defeat the system.

Once the caller ID codes have been attached, the caller's identifying information is routed on the line with the call itself to the destination telephone. Caller ID information reaches the receiving telephone between the first and second rings. If a call is answered before or during caller ID delivery, the answering party will not receive the data.

CALL BLOCKING

If a caller has installed call blocking—an optional service to prevent transmission of the originating telephone number and other identifying information—this request is attached at the central telephone office *after* the commands for caller ID have been attached. When the call reaches the central office for the area serving the destination telephone, the office handles caller ID according to local programming. If the party at the destination telephone has paid for caller ID services, identifying information from the originating call will be sent.

If a call blocking command has been attached by the party making the call, the call will go through but the identifying information will not be relayed. Instead, a message



"...investigators should assume every subject can identify them when they call."

Mr. Williams serves with the Electronic Surveillance Unit, Office of Investigations, at the U.S. Customs Service headquarters in Woodbridge, Virginia.

indicating that all identifying information has been blocked will accompany the call. Generally, the word "private" or some variation appears on the caller ID screen, notifying the recipient that the caller has concealed the originating telephone number.

AVAILABILITY

Newly relaxed regulations and advances in technology soon will make caller ID and related services available on a much larger scale. Until recently, regional telephone companies dictated local service availability. Often, parties with caller ID would receive an "out of area" message, indicating that an incoming call was being placed from a locality that did not relay caller identification information.

In December 1995, the Federal Communications Commission allowed caller ID services to be relayed nationwide. As telephone companies gradually expand service availability, caller ID will become a truly national system. Already, there are indications that caller ID will be offered on a worldwide basis in the not-too-distant future.

Rapidly advancing technology also has enabled carriers to offer caller ID services on calls originating from sources that were once immune, including cellular and pay telephones. As with calls from localities that do not pass caller ID, calls from these types of telephones previously would relay an "out of area" message. Now, calls placed from cellular or pay telephones, as well as long-distance calls paid for via credit or phone cards, may provide identifying information to the party being called.

In fact, some firms that specialize in emerging technologies heavily promote their caller identification capabilities. The newest competition to cellular service, personal communications systems (PCS), pass identifying information in both directions. A screen on the handset lets users know the originating telephone number of the party calling them. Likewise, callers using PCS will pass on their identifying information to anyone with a PCS unit or caller ID. PCS users do not need to activate caller ID service separately; the caller identification features are included in the basic service contract.

> ***"Evolving caller ID services represent a potentially serious threat to undercover operations...."***

With expanding caller identification services, law enforcement agencies should study the various methods available to respond to the threats posed to undercover investigations. Because no single antidote exists for every situation, investigators should be aware of the broad range of possible countermeasures to caller ID.

COUNTERMEASURES TO CALLER ID

Given the dramatic growth of caller ID and the impracticality of determining whether an individual has this service option before a call is placed, investigators should assume every subject can identify them when they call. Although caller ID cannot be defeated after a call is placed, investigators can minimize its effects.

Call Blocking

While placing call blocking on the originating telephone line may be the most obvious countermeasure, certain features of this service make it less than practical for undercover operations. As discussed, a message will alert the party on the receiving end that the caller has placed a block on the outgoing line. Such a signal could further inflame the suspicions of an already wary subject.

Then, because call block commands are attached to a call after the caller ID commands, investigators must gamble that the commands—sometimes routed by two different telephone companies—are attached properly. If not, a call from the police station could be routed unblocked to a subject. While such mishaps are extremely rare, just one could prove disastrous.

In response to widespread concerns about privacy issues surrounding caller ID, telephone companies have developed more specialized call blocking features. Per-call blocking defeats delivery of caller ID on a call-by-call basis; per-line blocking defeats caller ID

on a specific outgoing telephone line.

In most areas where these features have been introduced, however, the local telephone carrier also offers service options to counter call blocking. The anonymous call rejection feature automatically routes calls with call blocking to a recording that advises callers to dial again without blocking caller ID.

Some state and local governments have arranged with telephone companies to provide call blocking features only for government lines. Still, whether in a general form or on a per-call or per-line basis, call blocking might not provide the stealth necessary for undercover operations.

If, however, a law enforcement agency decides to use call blocking in any of its forms, investigators must be careful to ensure that it is attached properly. In some areas, telephone companies use the same code to block caller ID as they do to cancel the block. This can become an especially confusing issue with per-line blocking. When investigators enter the blocking code on a particular line, the end result actually may be to reactivate caller ID on a line where it previously had been blocked. To avoid such scenarios, investigators should not rely on call blocking.

Credit or Phone Cards

While placing calls using a credit or phone card has, in the past, been a fairly safe way to defeat caller ID, investigators cannot assume that these tactics will continue to work every time. An increasing number of telephone companies have begun to relay some type of identifying information via calls placed with credit and phone cards. Telephone companies also may periodically test new features, intermittently relaying identifying information on a limited number of calls before fully engaging a system.

It is increasingly dangerous for investigators to assume that a credit or phone card call will not betray their identities to parties with caller ID. Recent reports indicate that some calls routed by a particular carrier would display "U.S. Government" when placed with a government credit card. Revelations of this type pose obvious dangers both to investigations and investigators.

> ***"Newly relaxed regulations and advances in technology soon will make caller ID and related services available on a much larger scale."***

Pay Telephones

Investigators should remember the limitations of using pay telephones to defeat caller ID. Today, most pay phones relay caller ID information. Industrious subjects can use databases (available to the public) that show the location of each pay phone in a given city to pinpoint a caller's location. One investigator described a case where he called a subject from a pay telephone. While they were still talking, the subject tracked the investigator's position and went to the phone booth shortly after the call.

Investigators should be aware that although a call placed from a pay telephone will not show the caller's name and address, it may show the caller's location. A call placed from a phone booth outside the police station or federal building may be just as disruptive to a case as a call placed from the office telephone.

Undercover Lines

Agencies can use telephone lines dedicated solely to undercover operations. However, regardless of what name is on file, the telephone company will maintain a record of the physical location of the telephone. To enhance security, agency administrators should work with telephone company officials to ensure that the billing address does not reflect a law enforcement connection. The computer containing the wiring information still will connect to the actual location of the telephone, no matter where the bill is sent.

Call Diverters

A device called a call diverter represents one of the more effective countermeasures to caller ID. These devices forward outgoing calls from one telephone line to another, effectively masking the identity of the original caller. By enabling agencies to forward calls at the source, these devices offer more

security than call forwarding and other services available from the telephone company.

Units cost between $400 and $5,000, depending on the features included, but may prove well worth the investment for agencies that engage regularly in undercover operations. Investigators should be able to obtain detailed information about call diverters from their agency's electronic surveillance support unit.

Testing Caller ID Availability

Regardless of what technical countermeasure investigators employ to defeat caller ID, they should periodically make test calls from the telephone they normally use for undercover operations to monitor how caller ID is being handled in a particular area. By calling a telephone equipped with caller ID, investigators can determine what type of identifying information is being relayed via the telephone lines. Calling the local telephone company is not a good indicator; customer service representatives do not always know what specific information is relayed at any given time because, among other reasons, technicians frequently activate new features for testing purposes. However, even conducting regular tests does not ensure security because a subject may have different caller ID capabilities than the investigator's test line.

AUTOMATIC NUMBER IDENTIFICATION

Like much of the general population, many investigators might be unfamiliar with automatic number identification (ANI). Intended for use primarily by businesses, ANI provides subscribers with a wealth of identifying information concerning callers. As is the case with caller ID, this service option poses potential security problems for investigators.

Despite its obscurity, ANI actually predates caller ID. The systems serve similar purposes, but unlike caller ID, ANI coding is sent on a separate wire, rather than with the call itself. ANI is available only on numbers beginning with either 800, 888, 900, or 911 or a 976 exchange. Businesses routinely use ANI to gather information on their callers for billing purposes. There is no way to block ANI delivery.

In the wrong hands, ANI can provide criminals with personal information about anyone placing a call to them. During a recent case, a law enforcement officer used an 800 number to access a subject's personal pager. The officer punched in a telephone number different from the one he was calling from for the subject to call. But, because the subject's pager service tracked ANI data and forwarded it to subscribers, the subject was able to tell the officer the number of the telephone from which he originally called.

Because telephone companies do not offer services to counteract ANI, law enforcement agencies must rely on alternate methods to safeguard security. While call diverters represent the most effective countermeasure against ANI, given their cost and impracticality for use during many fast-paced investigative scenarios, investigators cannot rely on them to ensure security for every situation.

CONCLUSION

While it might be easy to take the telephone for granted, law enforcement agencies cannot afford to become complacent about telephone security. Evolving caller ID services represent a potentially serious threat to undercover operations for law enforcement agencies in an increasing number of communities around the country.

By developing a flexible array of countermeasures, agencies can minimize the dangers posed by caller ID. Investigators must remember that no countermeasure can be guaranteed effective for every situation. Instead, they should take precautions and be prepared for any problem that might arise from breaches of security due to caller ID. After all, the security of law enforcement operations is on the line. ✦

Notable Speech

Legitimizing Criminal Justice Policies and Practices

By Mark H. Moore, Ph.D.

I'd like to speak about the legitimation of the criminal justice system in the United States. It is a subject that I take very seriously because we could easily take for granted that the system will be legitimate and, therefore, fail to do the work that will legitimate it in the eyes of citizens.

As citizens, we ask a great deal from the criminal justice system. We ask it to protect us from criminal attack—not just from the reality but also from the fear of being victimized. When criminal attacks occur, we want the system to soothe our indignation by catching the crooks and giving them their just desserts (while protecting their constitutional rights). We expect it to achieve these ambitious goals without reaching too deeply into our privacy and freedom. We also want reassurances that the money and authority entrusted to criminal justice agencies will be used fairly, allocated toward need rather than an ability to pay, and used to enforce the law without fear or favor. Increasingly, we ask them to take a step further; and in the words of Attorney General Janet Reno, "Help to reweave the fabric of community."

My purpose is to discuss how criminal justice agencies—police, prosecutors, public defenders, courts, and correctional agencies—can meet these ambitious goals. In discussing this topic, I'll adopt the point of view of those who manage these agencies and look for some concrete ways to use the resources entrusted to them to accomplish their broad and diverse goals. But my focus will not be on the common concerns of management: downward and inward management of personnel policies and procedures. I will focus instead on the efforts criminal justice agencies can and must make to legitimate themselves in the eyes of the citizens they serve. That includes a focused effort on the encounters that criminal justice agencies have with citizens, in particular:

1) Ensuring quality in encounters with citizens, not only when they are providing service to citizens who appeal to them for help but also when they engage in what I would describe as an "obligation encounter"—when they ask citizens to stand still for the orderly processes of justice.

2) Rendering their organizations transparent and accountable to citizen overseers and their representatives, who demand assurances that the agencies are achieving their complex purposes in an appropriate way.

3) Engaging citizens as coproducers of crime control and justice in operations designed to help criminal justice agencies achieve goals that they cannot achieve alone and must have citizen input to accomplish.

Finally, and most important, is to extend the effect of all three of these kinds of citizen contacts with a kind of moral leadership that teaches people what it is that justice requires in a democracy and, through that device, to help reweave the fabric of the community that is gradually becoming tattered.

In short, I am most interested in how managers of criminal justice agencies engage external actors through political and legal processes. In the past, the goal of enhancing the legitimacy of criminal justice agencies and the specific efforts required to accomplish this goal have been badly neglected and, to some degree, misdirected. This failure has not only weakened the standing but also the real performance of the criminal justice system. Finally, I will argue that much of the increased focus on community justice should be understood as increased efforts to legitimate criminal justice agencies and capture the

Dr. Moore, a professor at the John F. Kennedy School of Government, Harvard University, delivered this address as part of the Perspectives on Crime and Justice Series sponsored by the National Institute of Justice.

substantive operational benefits that come from such efforts.

Let me start, however, by recalling the important work that the President's Crime Commission did in the late 1960s to frame society's understanding of the operations of criminal justice agencies and in setting an agenda for reform. One of the most enduring products of the Crime Commission's work was the image of the criminal justice system as a large funnel that channeled criminal justice cases to their ultimate disposition. This image scythed through a tangle of institutional complexity and local variability to create an enduring schematic image of how criminal justice agencies were supposed to operate.

> **"The popular legitimacy of the [criminal justice] system faded even as the system was becoming fairer and more effective."**

Everyone understood, of course, that this was not a system in the sense that the agencies were being explicitly directed toward a particular objective by some coherent centralized authority. It was only a system in the far more limited sense that the different agencies were linked together through a process in which one agency's outputs became the next agency's inputs....

Now, this so-called criminal justice system was judged to be valuable to society in two broadly different ways. First, it was an instrument of practical purposes. As an instrument of practical purposes, this system was thought to be accountable for the efficient and effective reduction of crime. The criminal justice system was thought to accomplish this result largely through four distinct mechanisms: deterrence, both general and specific; incapacitation; and rehabilitation. That practical goal and those practical means were what the system as a whole seemed to be designed to do, and that was what the citizens who paid to support the system wanted as a result. That makes up frame one, the practical frame.

But the criminal justice system was also considered important in an entirely different way—not as a practical instrument for achieving specific results but also as an instrument of justice, a way of holding offenders accountable for their crimes while also protecting their constitutional rights. It's important to understand that the second idea— *the criminal justice system is there to produce justice, not just crime control*—could constitute a stand-alone justification for criminal justice system processing. From this point of view, the system did not have to show that it was producing any practical effect such as reducing crime; it was enough that it produce justice. There were widely varying views about what constituted justice, of course, both in general and individual cases; but the point is that the idea of creating justice is quite different than the idea of producing crime control. Further, the production of justice could constitute a separate and complete justification for the operations of the system.

These two different evaluative frames laid out the different ways in which individual agencies in the criminal justice system and the system as a whole could legitimate and justify themselves in the eyes of the citizenry. The system could legitimate itself as an effective and efficient means of reducing crime, or it could establish itself as an important instrument of justice, a means for ensuring that citizens live up to their responsibilities to one another and society. Since both were important, the goals of reform advanced on both fronts simultaneously: To make the criminal justice system more efficient and effective and to make it more fair and just....

One important feature of the funnel diagram was that the central drama it evoked was whether a particular case and an associated offender would make it all the way through the process, that is, to prison. This seemed to suggest that the whole point of the exercise was to ensure that offenders were ultimately incarcerated. This orientation ignored, of course, two important facts. First, most cases did not, in fact, make it all the way through the system. What was to be done with cases that couldn't be solved or with offenders that couldn't be convicted? Second, the funnel diagram seemed to ignore that most of the actual work of and expense to the criminal justice

system occurred both before and after the moment of adjudication. In short, a majority of the work in which the system engaged involved assisting the community to cope with the facts that some cases could not be resolved and that most offenders would be returned to the community sooner or later. Obscured was the important reality that we live with crime and live with offenders.

Second, because the diagram made the processing of cases to imprisonment so important, it naturally tended to focus attention on serious criminal cases, primarily adult felonies. Lesser cases, such as misdemeanors or juvenile offenses, would not be worth the trouble of such elaborate attention nor the expense of a prison sentence.

Besides, a sharp focus on serious offenses and offenders seemed closely allied to the goals of producing an efficient and fair criminal justice system. It seemed obvious as a matter of efficiency and effectiveness that scarce resources should be reserved for the most serious offenses and offenders. It also seemed important that the aggressive use of state authority should be limited to crimes that were bad in themselves, not simply bad because they were prohibited. Such policy ensured consistency and integrity, as well as economy, in the enforcement of laws.

Third, the funnel diagram presented a fundamentally reactive view of crime control and thereby underemphasized some potentially important preventive opportunities. Of course, the Crime Commission did not ignore prevention. Deterrence, after all, is a preventive concept. It seeks to dissuade people from committing crimes by threatening them with bad consequences if they do. Incapacitation and rehabilitation can also be seen as preventive ideas. They may not prevent a potential offender's first crime, but they might well have an effect on future offending. And given the importance of criminal recidivism and overall patterns of crime, preventing future crimes by those who have already committed one would be an important preventive contribution.

> **"Citizens...remember when they have been treated well and badly, and they respond with more or less loyalty and interest."**

It also is true that the commission insisted that the root causes of crime included poverty, economic inequality, and racism; and that crime could only be reduced significantly by alleviating these broad social conditions—the ultimate preventive argument. Still, in retrospect, it seems that there were some important opportunities for preventing crime that could have been noted more prominently, specifically those that lay between the limited reactions of the criminal justice system on one end and broad social actions directed at the root causes of crime on the other....

Perhaps the most important omission of the Crime Commission, however, was that in focusing attention on the publicly supported agencies of the criminal justice system, it necessarily deemphasized the role that private individuals and institutions of civil society—families, community groups, churches, merchant associations—play in controlling crime, both by themselves and as adjuncts to the criminal justice system. The funnel diagram did not emphasize the central role that victims and witnesses play in activating and focusing the attention of criminal justice agencies on particular crimes. Nor did it point to the important role played by citizens who make individual and collective efforts to guard their own property and intervene with fellow citizens who behave badly. Nor did it draw attention to the role local merchants might play in seeking to enforce orderly conditions on the streets that fronted their stores or in providing jobs to neighborhood kids. Nor did it emphasize the role of church groups in giving support to single parents struggling to supervise and raise their children. Such private efforts were viewed as beyond the boundaries of the criminal justice system—they might have an effect on levels of crime and disorder but are largely independent and beyond the reach of agencies of the criminal justice system. This omission was, in my view, particularly important given the fact that many offenders would never be taken from the community or would be quickly returned into the community for handling.

The neglect of actors outside the criminal justice system related to the last omission of the Crime Commission and most closely relates to the subject of this talk. Namely, there were important sources of legitimacy for the criminal justice system beyond the pursuit of efficiency and lawfulness that were not only neglected but implicitly rejected by the Crime Commission as important sources of legitimacy. That is the kind of legitimacy that is rooted, on one hand, in moral passion and, on the other, in the political and individual responsiveness of the criminal justice system. To the Crime Commission, moral passion and politics were viewed with great caution. Behind moral passion, they saw the lynch mob. Behind political responsiveness, they saw the threat of political control of the system by the powerful against the weak. Thus, establishing important links between criminal justice processing on one side and moral passion and politics on the other was viewed not as a way to anchor and legitimate the system but, instead, as a way of exposing the operations of the criminal justice system to powerful tides of ignorance and bias. Rather than being sought out, these were to be avoided. To do their work, it was better that the agencies of the criminal justice system be insulated from both moral passion and politics. Their legitimacy could be established in law and professional competence rather than in responding to the moral passions of individuals and politicians.

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The paradigm constructed by the Crime Commission proved to be a powerful one. Over the next two decades, agencies of the criminal justice system pursued the agenda laid out for them with great enthusiasm. They made significant progress in increasing their professionalism and technical knowledge and in reducing the amount of racial and class bias in the operations of the criminal justice system.

By rights, this should have increased the standing and overall effectiveness of the system. It seems to me, though, that what happened was that the criminal justice system agencies found that their overall effectiveness and standing weakened over this period. The popular legitimacy of the system faded even as the system was becoming fairer and more effective. Legislatures took discretion back from the hands of the sentencing judges. Community groups demanded the establishment of civilian review boards, and they removed the civil service protections of police chiefs. Increasingly, citizens turned to private security arrangements to meet their desires for protection.

The criminal justice system, even as it was becoming fairer and more professionally competent, seemed to be becoming increasingly irrelevant to citizens' efforts to guarantee their own security and satisfy their appetites for justice. The system's role in producing social justice seemed less and less important.

So the question that faces us now, 30 years after the Crime Commission's report, is how we can restore the standing and effectiveness of the criminal justice system as a social institution that can not only guarantee our safety but also help us understand what our obligations are to one another in a conception of justice.

The loss of popular legitimacy for the criminal justice system produces disastrous consequences for the system's performance. If citizens do not trust the system, they will not use it. If citizens do not want to use the system, the expensive apparatus we constructed will be useless where it depends fundamentally on citizen mobilizations. Moreover, to the extent that confidence in the system is illdistributed, with poor, racial minorities more suspicious of the system than wealthier majorities, the capacity of the system to act fairly is undermined, along with its future legitimacy and effectiveness and its capacity to teach what we owe to one another. The system's ability to mobilize citizens to comply with laws voluntarily also will be undermined if citizens view it as inefficient or unjust. Without proper legitimacy supporting criminal justice operations, instead of having a collectively

established criminal justice system helping to enforce a widely shared conception of a just moral order, we will live in a world of gated communities, each with its own conception of right conduct and each enthusiastically excluding citizens from other communities from moving into their own. To avoid this result, we must find a way to restore the popular legitimacy of the nation's criminal justice system.

Legitimacy could be viewed as an abstract value, an ideal to be achieved. Viewed from this vantage point, what particular individuals and groups actually think about the system and its operations would be viewed as irrelevant. What is important is the extent to which the system could realize a particular set of values, such as fairness or efficiency. Its successes in doing so would be registered through technical professional evaluations, not in popular sentiment.

> **"...in the end, the system cannot operate without the support of the citizenry for its fundamental tenets."**

Alternatively, one could think of legitimacy as something that exists in the minds of citizens. This perspective looks for what citizens really think about the system—whether they think it is fair or efficient or responsive to their conceptions of justice. From this vantage point, we could learn about the system's legitimacy not by looking at its performance and comparing it with some ideal but by finding out what people really think about it and on what basis they have formed their views.

From an operational and managerial perspective, this second category is the more important type of legitimacy—the kind that exists in the minds of citizens the system is supposed to serve. That may be very different and require different kinds of performance than the first kind of legitimacy. Indeed, some worry that the ideals that many think should define the legitimacy of the system are not, in fact, embraced by ordinary citizens. In this view, we face a stark choice between legitimating the system through political responsiveness on one hand, which threatens the ideals of justice, or trying to make the system meet the standards of efficiency and fairness on the other. Yet, the facts are that many of the system's most important ideals are embraced by the populace. The populace, too, likes procedural fairness. Citizens like a sense of proportionality. They like efficiency and economy. And, even if they did not like those things (which give us an enormous advantage), the problem that we as leaders and managers of the criminal justice agencies would face would be to help them come to love those things rather than not. The reason is that in the end, the system cannot operate without the support of the citizenry for its fundamental tenets.

This, then, defines the problem to be addressed. How can we enhance the popular and moral legitimacy of the system while at the same time enhancing the legitimacy that comes from being technically proficient and aligned with important legal virtues, such as fairness and restraint?

My answer to this is a simple one. As managers of criminal justice agencies, we must pay attention to the quality of the interactions we have with citizens in three distinct roles: as *clients*, as *overseers*, and as *co-producers* of justice. In managing these interactions, we must stand for the important democratic values of fairness and restraint. This seems to be consistent with the challenge of establishing community justice and using the nation's criminal justice institutions to reweave the fabric of the community.

Let me explain why. Abrecht, writing to America's corporate executives about how to improve the performance of their organizations, develops the idea that success lies in paying attention to the quality of what he calls "moments of truth," the particular moments when customers encounter an organization's operation and begin forming impressions about the company and its product. From my point of view, labeling such mundane events as being put on hold when one calls to order a product as a moment of truth seems a little grandiose. But even in the commercial world, this grandiosity helps to focus attention on the details of these all-important customer contacts.

The concept, to me, seems far less out of place when we are talking about the ways the nation's criminal justice agencies might legitimate themselves in the eyes of citizens they serve. These contacts really do qualify as important moments of truth. These are moments when citizens encounter a criminal justice agency as clients asking for help or being obliged to stand still; moments when, as citizens, they contemplate the work of the criminal justice system and decide whether it is performing well or badly; and moments when they are asking to participate in the production of justice either as part of a community-based patrol or as part of a jury. These three moments of truth are what we have to pay attention to.

The most obvious points of contact between citizens and criminal justice agencies consist of those moments when citizens call the system for help. We imagine victims and witnesses calling the police for emergency aid or demanding justice from prosecutors. This is, of course, an important client group that criminal justice agencies must serve. If anyone qualifies as a "retail customer" of a criminal justice agency, it must be these individuals. And it doesn't take much experience in a radio patrol car or even in a prosecutor's office to learn that many citizens want things from criminal justice agencies other than the prosecution of criminal cases. We all know that citizens call the police for many things other than the response to serious crime. One of the most important ideas associated with community-oriented policing is to view these noncrime calls for service as worth a response, rather than as a distracting nuisance. The idea is that these calls may represent opportunities to intervene earlier in situations that might escalate to crimes. Or, even if they are not, they may be an opportunity to establish a relationship with a citizen that can become a bankable asset in the future.


Photo © Mark Ide

Similarly, prosecutors have figured out that not only do they have to attend carefully to victims and witnesses to maintain their cases through the long process of adjudication but also that it pays to give close attention to the less serious crimes adjudicated in misdemeanor as well as felony courts.

Agencies of the criminal justice system have important "retail" contacts, if you will, with another groups of clients, as well. These contacts consist of not just those who call for help but also those who become the focus of enforcement efforts. In addition to alleged criminal offenders, it also includes those who have been stopped for traffic offenses or asked to cooperate in some kind of crowd control. It has long been accepted that there is little chance of pleasing these clients of the system and little prospect that they could become supporters. The reason is that unlike the clients identified above who need help from the criminal justice agencies, this group of clients is obligated to do something they did not choose to do or are punished for something they should not have done. As recipients of obligations and penalties rather than service it seems unlikely that these clients could be satisfied. In any case, it seems improbable that satisfying these clients should be the goal of the enterprise. Consequently, with respect to these encounters, the primary goal is to satisfy *others* that the encounters proceed properly—that a subject is, in fact, reasonably suspected; that a traffic stop is made in accord with the law; that the person is sentenced without fear or favor.

More recently, however, this pessimistic view of how we should interact even with our "obligatees" has changed. Some who manage criminal justice agencies believe that arrestees, defendants, and prisoners can tell the difference between being treated well and badly, or fairly and unfairly, and that this difference should matter to their colleagues throughout the system....

It is also worth noting that citizens want things from criminal justice agencies as *groups*, as well as discrete individuals. Particularly important are those groups that form around residential communities. Sometimes there are particular interest groups that become important, as well, such as small-business associations, women who fear domestic violence, or

parents who fear their children will become involved with drugs or gangs. One can easily imagine that it might be important to think of such groups as having an account with criminal justice agencies, and that it would be important for those who manage criminal justice agencies to attend to the character and quality of the relationships they are maintaining through those accounts.

From the perspective of this speech, what is important about these encounters with clients, both those receiving aid and those receiving obligations (individuals as well as groups), is that all such encounters leave a residue of experience and feelings—that these in turn become the bases for diminished legitimacy of the system. Citizens, like customers in commercial transactions, remember when they have been treated well and badly, and they respond with more or less loyalty and interest. They may even come to identify and value the aims of those who treated them well and learn to suspect and despise the aims of those who treated them badly. Thus, these interactions form the basis for communicating values, as well as for building support and legitimacy for criminal justice agencies.

> **"...it is the task of criminal justice agencies to take on the burden of producing quality justice in society's response to crime and criminal offending."**

While the most intense moments of truth between citizens and criminal justice agencies may occur when citizens have discrete transactions with the system that involve their particular interest, the most common moments of truth may be those when citizens *hear* something about the performance of the system and decide whether it is performing well or poorly. These are the moments when they interact with the system as overseers, not as either clients or coproducers. The views of citizen overseers may be important not only because they affect their willingness to support the criminal justice system with taxes and grants of authority, but also because their views about whether the system is just may affect their willingness to obey the law. Citizens want to know that the system has written rules that are fair, that the laws are enforced equitably, that the system can respond to some important differences among individuals, and that the whole system is designed to operate to good effect.

The views of citizen overseers, however, may be profoundly influenced by the concrete experiences they had as clients of the system. They may also form their views based on the experience of their friends and families. For this reason, client contacts are very important....

The point I want to make about citizen overseers, however, is that if we wish to engage citizens as effective overseers of criminal justice systems, it is important that we find ways to make our operations *transparent* to citizens and to present our operations in a comprehensive, consistent, and reliable way. Many in the criminal justice world have been reluctant to take on that responsibility for fear that their operations would become too exposed and too vulnerable to political interference. But I think that many officials have now had the experience that, when they make the effort to expose and render transparent their operations, they win a grant of support and enthusiasm from the citizens that would stand them in good stead in those moments when, occasionally, the system fails. However, it takes a certain amount of courage to decide to make your organization transparent and accountable to citizens. That turns out to be crucial for getting the most out of that particular moment of truth, when a criminal justice agency relates to a citizen as an overseer.

Citizens also make contact with criminal justice agencies through their important role as coproducers of justice. Victims and witnesses are important coproducers, as well as clients and customers of the system. Their efforts are essential to making the system work. One can even imagine some offenders are coproducers, in the sense that they have to do a great deal of work on their own to allow rehabilitation to succeed. Beyond this, we can imagine many other

ways in which citizens can become coproducers. They are asked to serve on juries. They often organize themselves in block groups. They are sometimes asked to serve on sentencing councils, to provide mentoring to kids, or to help monitor offenders released in communities. Indeed, families of offenders might turn out to be important allies in efforts to reduce future offending, and not only in juvenile cases. That idea, that there are people in the communities who are coproducers, is advanced most prominently by the ideas of community justice. People are inventing new ways to engage citizens in the concrete operations of the system, and in doing so, they not only increase the power and impact of the system, but they also increase its standing with communities.


Photo © K.L. Morrison

If managed well, these contacts with citizens as coproducers provide an opportunity to increase the legitimacy of the system. Each contact forms an impression; each contact provides an opportunity to express and advocate a particular set of values through the operations of the system. When the police arrest suspects and read them their rights in front of victims and witnesses, when prosecutors explain how a particular case will be handled and why, when defense attorneys explain the case against their client, when citizen-jurors are given their instructions by a judge, citizens are being taught about the basic values of the criminal justice system. These include: measured indignation about criminal offending tempered by respect for the rights of citizens, the need to share responsibility in the exercise of social control, and the ambition to be fair. It is from this material that we can construct a constituency for justice and the criminal justice system.

Aristotle observed that the first virtue of a state was the quality of justice it could produce among its citizens. There is an important meaning of justice in that idea, of right relationships among individuals, as well as between individuals and the society and state. Within this broad notion of justice, right reactions to criminal offending are only one small topic. But in many ways, this is the most exacting test of justice, the hottest crucible, the place where our commitments to and understanding of one another are tested very sharply. Thus, it may be that an important base for all these other interactions with one another is established by the quality we can produce in these particularly demanding relationships.

I believe it is the task of criminal justice agencies to take on the burden of producing quality justice in society's response to crime and criminal offending. In doing so, it falls to the nation's criminal justice agencies to teach two of the hardest lessons that citizens in democracies have to learn. The first is the most obvious: that it is wrong to *give* offense to other citizens and you must practice restraint—you have to respect other people's lives and properties. The second lesson is far less obvious but potentially as important: namely, that it is wrong to *take* offense too easily or to respond to offense disproportionately. It is the second lesson that carries the burden of forcing us to be tolerant, and in many ways, it is a much more "inhuman" act to be tolerant than to be offended when one is attacked.

By building a constituency for these values, we not only increase the legitimacy of the criminal justice institutions and enhance their efficiency, we also accomplish the broader goal of reweaving the fabric of a liberal community—"liberal" in the old-fashioned sense. We can teach what we most fundamentally owe to one another. After all, it is in the interstices created by the restraint we impose on ourselves and the wide latitude we give to others that the maximum of liberty and security is found. And it is that maximum we seek through the various initiatives that comprise the movement for community justice. If we are to produce justice, we must learn to love it, and that is what the movement to create community justice is all about. ✦

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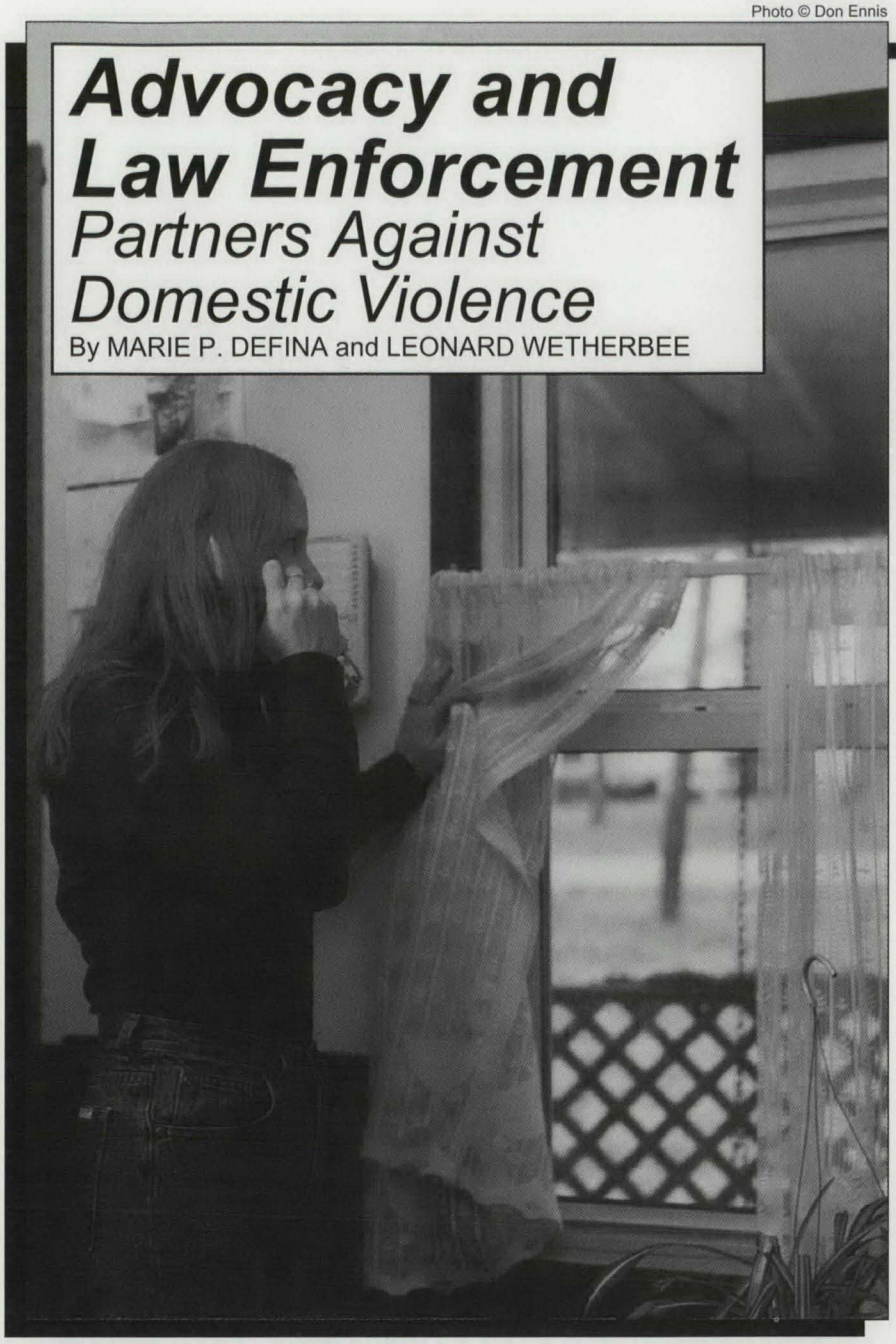


Advocacy and Law Enforcement
Partners Against Domestic Violence

By MARIE P. DEFINA and LEONARD WETHERBEE

Domestic disturbances generate some of the most frustrating calls for police officers. Such calls often are repetitious as officers respond to the same homes over and over, take up valuable time that could be spent on other investigative matters, and frequently produce no legal action against offenders.

In the late 1980s, increased public awareness that violence in the home is a criminal matter, not a private one, fueled changes in Massachusetts state law.[1] Under the revised law, officers no longer are restricted to mediating a volatile situation or merely walking the perpetrator around to cool off. Now, officers may arrest a battering spouse on probable cause.

With the burden of pressing charges lifted from the victim, who is often reluctant to proceed against an abusive mate, the number of arrests for domestic violence has increased statewide.[2] Other legislative mandates have enhanced law enforcement's efforts to thwart domestic violence. These include:

- Changes in firearms regulations, which allow for "immediate suspension and surrender (when the order is served) of [the offender's] license to carry firearms and/or [firearms identification] cards as well as any firearms, rifles, shotguns, machine guns, and ammunition...if the plaintiff can demonstrate a substantial likelihood of immediate danger of abuse"[3]
- Bail reform allowing pretrial release of domestic violence offenders to be based on hearings about the defendant's alleged dangerousness[4]
- Special training of officers assigned to domestic violence cases in every police department in the state.[5]

Nevertheless, 5 years after the state legislature enacted these changes, police officers still met victim resistance to arresting their abusive partners. And, even though the number of arrests for domestic violence increased, the number of repeat offenses did not decrease as hoped.

While the revised state laws dramatically increased the tools available to police, law enforcement officials in the cities of Concord and Newton, Massachusetts, felt that something else needed to be done. Officers still left the scene of domestic disturbances frustrated that they could not do more, wondering how to convince a victim to leave.

In the upper middle-class communities of Newton and Concord, police encountered additional obstacles unique to their wealthy suburbs. They found some victims of domestic violence reluctant to call the police because they wanted to preserve appearances (not wanting a patrol car in the driveway); others did not seek help because they doubted that action would be taken against abusers who were influential in the community. The willingness of victims to call police proved contingent on several factors, including whether:

- The incident would be reported in the local newspaper
- Family pressure against disclosure was brought to bear on the victim
- The victim had peer support
- The victim was willing or able to sustain the possible emotional and financial loss associated with disclosure
- The victim perceived negative impact on the perpetrator's job or community standing.

Further, police in Concord and Newton were surprised to find that many well-educated citizens did not believe domestic violence posed a serious problem in their communities. Despite the relative affluence of the citizens in the community, there were fewer resources for battered individuals in suburbia than in the inner city, and individuals at risk seemed reluctant to seek out the available resources for fear of being traced by the abuser.

When victims did choose to contact such crisis intervention services as shelters, counselors, and legal aid, these agencies could be reached only during business hours. This often meant a time lag of as much as 72 hours existed between the violent act and the delivery of ancillary services to the victim.

Due to the complex psychological dynamics underlying domestic abuse, the emotional and economic loss associated with family violence,[6] and the potential lethality of future violence, these communities needed a multilevel response *delivered within a critical window of time*. Because the responding officer's role ends with arrest and containment of the abuser, police in these two communities looked for help outside their departments to strengthen and improve the total response to the domestic violence call.

THE PARTNERSHIP APPROACH

The chief of the Concord Police Department (CPD) approached the problem with the community policing philosophy in mind, seeking to be part of the problem-solving process by developing a partnership with residents. The CPD began to collaborate with the Domestic Violence Training and Resource Institute (DVTRI), a local, all-volunteer, nonprofit, grassroots organization that deals specifically with crisis intervention for domestic abuse victims. The neighboring

Ms. Defina founded the Domestic Violence Training and Resource Institute, in Concord, Massachusetts, and now serves as its executive director.

Chief Wetherbee commands the Concord, Massachusetts, Police Department.

Newton Police Department (NPD) also joined the partnership. Both police departments appointed lieutenants to serve as domestic violence coordinators to oversee the implementation process and act as liaisons with the civilian organization.

Working Together

Whenever people from different disciplines join forces to address an issue, problems can arise from the clash between their divergent mindsets and approaches. The initial task of the partnership between the police and the civilian advocacy group was to identify such problem areas and propose solutions.

Historically, civilian advocacy groups and law enforcement officers have tended to mistrust one another. Most law enforcement personnel have not been trained in the psychological theories of domestic abuse. Likewise, civilians usually do not understand the policies and procedures of basic law enforcement.

In seeking models for interdisciplinary cooperation, neither the domestic violence coordinators nor the DVTRI could find suitable examples. Training curricula and related materials generally were limited to one discipline and did not integrate perspectives from other areas. In addition, like many smaller police departments, the CPD and NPD do not have civilian volunteer programs operating within the station on a 24-hour basis, so concerns arose over security, domain, and space availability.

To overcome these difficulties, the partners sought to build trust among participating groups by forging a style of communication and a method of working together. First, they pioneered a model for policies and procedures, working out the details of the interaction between the police departments and the civilian group. Then, to bridge the gap between the advocacy group and the law enforcement personnel, they devised training curricula that cross traditional role lines. Next, the Concord Police Department provided secure space within the police station accessible to DVTRI peer advocates around the clock. Finally, the partnership established criteria to measure the success of the program in reaching its projected goals.

> ***"The partnership has enhanced the services available and increased their accessibility to victims in these suburban communities."***

TRAINING

To take advantage of the expertise and insight of both the civilian domestic violence counselors and the police personnel involved, the partnership established two training programs. One program concentrated on educating police officers about domestic violence, and the other trained civilian volunteers as peer advocates.

For Police Officers

The director of the Domestic Violence Training and Resource Institute devised a 16-hour curriculum for all sworn police personnel in Concord and Newton. The classwork not only addressed the legislative changes regarding spousal abuse but also delved into the underlying issues of domestic violence.

Through role-playing exercises, officers experienced the victim's dilemma by assuming the identity of a battered spouse. These exercises proved highly effective in raising police sensitivity to victims and in curbing the impulse to ask judgmental and blaming questions, such as "Why do you stay with him?" Instead, officers learned how to identify and deal effectively with batterers' controlling and manipulative behaviors.

The training also helped police officers overcome the frustration they typically felt at the scene of a domestic disturbance when they were unable to resolve the crisis. Leaving an abusive partner is a process, not an event. Law enforcement officers, by orientation, respond to crisis events with the expectation of an immediate resolution, but that is an inappropriate expectation for the unique nature of this crime. Officers learned that an interdisciplinary team approach is logical and necessary to address the complex and multiple needs that must be met during a domestic violence crisis and before a victim can safely leave a relationship. This insight provided the extra dimension that police in Concord and Newton had been seeking in their response to domestic violence calls.

For Civilian Volunteers

The DVTRI then recruited and trained a cadre of civilian volunteers for the Certified Peer Advocate Program (CPAP). After extensive character and psychological screening, volunteers attended a rigorous program consisting of 55 hours of classroom instruction, followed by 187 practicum hours. Upon successful completion of the program, volunteers become certified by the DVTRI to work with police and other service providers for victims of domestic violence.

The primary goal of the CPAP is to provide around-the-clock crisis intervention services, victim rights information, and extensive safety planning for domestic violence victims. Safety planning involves reviewing predictable behaviors or actions that occur between the abuser and the victim. The advocate then helps develop a plan of action the victim can take that would lend to her safety. For example, safety plans might include devising an escape route, designating a person to call in the event of an emergency, or locating a safe place to hide keys, money, and important documents. In addition, the CPAP provides ongoing follow-up services for victims; furnishes referrals for legal aid, shelters, and counseling; sends advocates to court with victims of battering; and runs support group services and life skills workshops.

The DVTRI also offers a safe space network for those in need of immediate, short-term shelter. This network of homes scattered throughout several communities provides domestic violence victims a safe place to stay for several days until other accommodations become available. Also, victims in transit who need a place to stay on their way to another destination can use the safe space network.


Photo © K.L. Morrison

ASSISTING VICTIMS

The partnership between the police and the DVTRI provides services to domestic violence victims in three basic ways. First, when a domestic disturbance call comes into the police department, officers respond to the location and secure the site. Responding officers tell the victim about the available advocacy services. If the victim chooses to obtain the services of a civilian volunteer, the police notify the DVTRI.

Second, victims sometimes do not want to involve the police at their homes. In these instances, the victims can call or visit the police station to request an advocate, or they can contact the DVTRI directly.

Finally, local hospital emergency rooms and other service providers within the communities, including the local clergy, may refer victims to the DVTRI. They may do so with or without the intercession of the police department.

PUBLICITY

Crisis intervention services can be useful only if the intended recipients know about them, and several avenues provided publicity for the Certified Peer Advocate Program early on. Through direct contact with domestic violence victims, word spread. The local media picked up the story and reported on the police-civilian advocate partnership.

The participating agencies also developed a pamphlet describing available services and how to obtain them. Many local clergy members who participated in the peer advocate training agreed to keep materials about CPAP in their offices to use when counseling victims. In addition, the Concord Police Department posted the information on its Internet home page.[7]

CONCLUSION

From a law enforcement perspective, the partnership among the Concord and Newton Police Departments and the DVTRI proved to be a logical and necessary choice. Now, the police can offer victims a range of services—from resource information to emotional support to safety planning—without any critical lapse of time. The partnership has enhanced the services available and increased their accessibility to victims in these suburban communities. It also has helped to educate citizens about the nature and prevalence of domestic violence, a crime

that occurs even in their seemingly serene backyards.

The success of this partnership has born statistical fruit already. From April 1994, when the program began, through October 1995, the number of repeat assaults in Concord has dropped 80 percent.[8] While the number of repeat assaults fell, the prosecution rate climbed due to greater willingness of victims, now backed by advocate support, to testify against abusers and to follow through on obtaining restraining orders. In the first 9 months of the partnership, 57 individuals requested the services of a peer advocate. By the end of 1995, more than 350 adults and 450 children had been served by the Certified Peer Advocate Program.

Combining police and civilian resources in this way can generate significant long-term changes in social attitude and behavior. With a unified voice, the police and peer advocates speak the powerful message that domestic violence will not be tolerated. ✦

Endnotes

[1] MGL 209A.

[2] Susan Schechter and Lisa Klee Mihaly, "Ending Violence Against Women and Children in Massachusetts Families: Critical Steps for the Next Five Years," Massachusetts Coalition of Battered Women Service Groups, November 1992, 1.

[3] MGL 209A, Sections 3B, 129B, and 131 CH 140.

[4] MGL c. 276, s. 58A; *See also* Samuel E. Zoll, Chief Justice, District Court, Commonwealth of Massachusetts, "New Law Regarding Bail and Dangerousness," *Trial Court of the Commonwealth, District Court Department*, August 1994.

[5] Scott Harshbarger, Attorney General, Commonwealth of Massachusetts, "Domestic Violence: Strategies for Prevention and Enforcement," Paper presented at Attorney General's Conference, Northeastern University, Burlington, MA, October 21, 1994.

[6] Susan F. Turner and Constance Hoenk Shapiro, "Battered Women: Mourning the Death of a Relationship," *The National Association of Social Workers, Inc.*, 1986.

[7] The Concord, MA, home page address is http://www.concordma.com.

[8] Domestic Violence Training and Resource Institute, *Annual Report for 1995*, Concord, MA.

Bulletin Alert

Counterfeit Cigarette Lighter

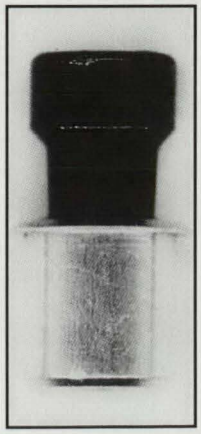
While confronting juveniles in a park, officers from the Plantation, Florida, Police Department, discovered a pipe disguised as an automobile cigarette lighter. The pipe had a smoking cigarette icon on top and looked exactly like a lighter, but had no heat source.

The lighter unscrews into two pieces, and once apart, can be filled with drugs and reassembled. Holes in both the top and bottom pieces allow the drugs to be lit and smoked. The owners of this pipe apparently used it to smoke marijuana, as it appeared to have residue inside. The pipe fits into a standard automobile cigarette lighter outlet and easily could go unnoticed during a search. ✦

Submitted by Officer Steve Huskisson, Plantation, Florida, Police Department.

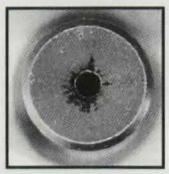
Hole outside lighter top

Hole inside lighter top

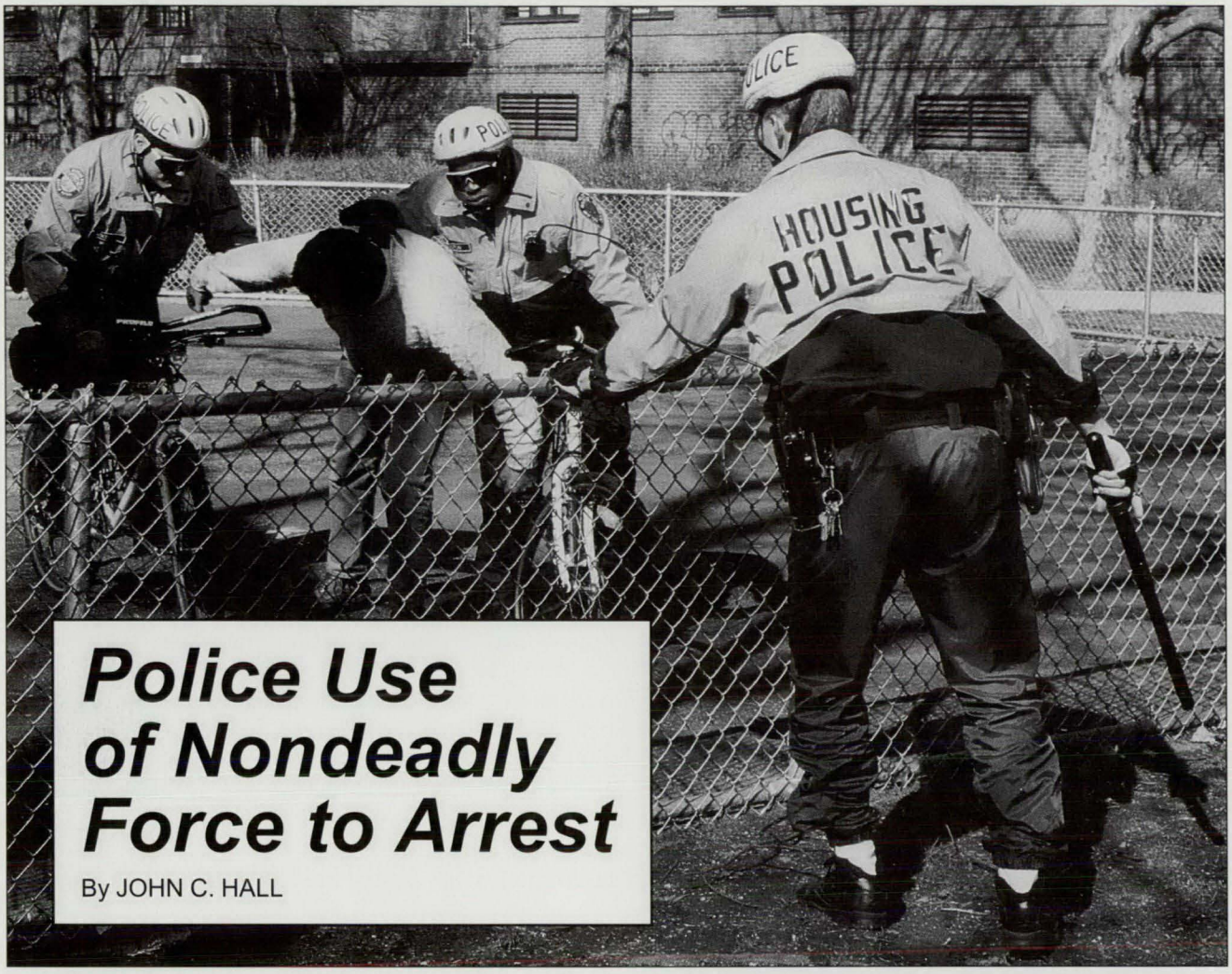


Fully assembled lighter

Hole inside lighter bottom



Hole outside lighter bottom



Police Use of Nondeadly Force to Arrest

By JOHN C. HALL

"[O]ur Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."

—U.S. Supreme Court, *Graham* v. *Connor,* 490 U.S. 386, 396 (1989)

The use of force is an integral part of a law enforcement officer's job, particularly when arresting criminal suspects. Because arrests and investigative detentions are "seizures" of persons, they are governed by the Fourth Amendment to the U.S. Constitution.[1] Not only must they be justified at their inception—i.e., officers must have probable cause to make a valid arrest[2]—the manner in which they are carried out, including the level of force that may be used, must be "reasonable."[3] Deadly force may be constitutionally reasonable in defense of life or when necessary to arrest dangerous suspects.[4] This article discusses the appropriate level of force officers may use when deadly force is not a reasonable option.

THE FOURTH AMENDMENT STANDARD

The Fourth Amendment standard of "reasonableness" is not conducive to "precise definition or mechanical application,"[5] but "requires careful attention to the facts and circumstances of each

particular case," as viewed "...from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight...." Moreover, allowances must be made for the fact that officers "...are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."[6]

Among the "totality of circumstances" that may govern the reasonableness of using a particular level of force, the Supreme Court has emphasized 1) the severity of the crime; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether the suspect actively is resisting arrest or attempting to evade arrest by flight.[7]

It is important to consider how these factors have been weighed by the courts in recent cases assessing the application of nondeadly force by law enforcement officers while making arrests.

SEVERITY OF THE CRIME

The severity of a suspect's crime is clearly relevant in judging whether a suspect poses "a threat of serious physical harm to the officer or to others,"[8] thus justifying the use of deadly force when necessary to make an arrest. It likewise can be relevant to an officer's decision to use nondeadly force when deadly force is not an appropriate option. For example, the manner in which officers approach a suspect to make the arrest is often affected by a suspect's known propensities for violence or resistance.

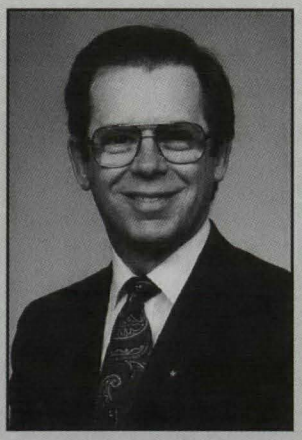
In *Dean* v. *City of Worcester,*[9] officers had a warrant to arrest a man with a history of violence who was known to threaten violent resistance during arrest attempts. Officers encountered a man matching the suspect's description at a location where reliable information had indicated he would be. The officers immediately seized him, threw him to the ground, and handcuffed him. However, the arrestee, Dean, was the wrong man. In a lawsuit against the officers and the police department, Dean alleged that he had offered no resistance and that the officers had used excessive force against him. Upholding a district court's judgment in favor of the officers, the federal appellate court noted that in view of the real suspect's known propensities for violence and his threats to shoot any police officer who tried to arrest him, the officers were justified in anticipating that resistance. Because the officers reasonably believed that Dean was the suspect, they were "entitled to do what the law would have allowed them to do if [Dean] had in fact been [the suspect]."[10]

THREATS TO SAFETY

It is not disputed that law enforcement officers are permitted to protect themselves and others from threats to their safety. What is often disputed is an officer's assessment of a threat and the level of force selected to counter it. As a general principle, the level of force used should be tailored to the nature of the threat that prompted its use. The Fourth Amendment does not require that officers choose the least intrusive level of force, only a reasonable one.[11]

Armed or Unarmed Suspects

What is reasonable in one set of circumstances may not be reasonable in another. Courts and even so-called police experts differ as to



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

"The Fourth Amendment does not require that officers choose the least intrusive level of force, only a reasonable one."

the level of force an officer would be justified in using in the face of a threat to safety. For example, an unarmed suspect does not present the same clear and significant threat to an officer's safety as an armed and noncompliant suspect. Yet, an unarmed suspect still can seriously injure or kill an officer. An unarmed suspect may succeed—through superior strength, skill, or luck—in temporarily disabling an officer sufficiently to gain control of the officer's firearm. In fact, approximately 10 percent of officers killed by criminal assailants each year are slain with their own firearms.[12] Perhaps that statistic reflects a reality often overlooked—that officers who engage in physical struggles with aggressive assailants are often at a disadvantage because the playing field is seldom equal.

Criminal suspects, even unarmed ones, who ignore commands and aggressively threaten law enforcement officers are exhibiting dangerous tendencies. Moreover, when officers attempt to subdue such suspects, they must do so while protecting their firearms from the suspect's grasp. The suspect does not have to subdue the officer; he only needs a chance to gain access to the officer's sidearm.

The element of chance is present in all violent encounters, and while its significance can be somewhat reduced through such factors as weapons retention training and tactical skill, it cannot be eliminated entirely . Simply stated, the "best" person does not always win. In the words of the ancient proverb: "The race is not to the swift, nor the battle to the strong...but time and chance happeneth to them all."[13]

Aggressive Noncompliance

In *Tom* v. *Voida*[14] an officer saw a young man fall from his bicycle and remain on the ground with his arms and legs in the air "like a bug." The officer did not suspect him of any crime but stopped to see if medical assistance was needed. Without responding to the officer's inquiries, the young man got up and began rapidly walking away with the bicycle. When the officer asked him to "wait a minute," the young man looked over his shoulder at the officer, threw down the bike, and ran away.

> **"...the level of force used should be tailored to the nature of the threat that prompted its use."**

Suspecting that the bicycle was stolen, the officer pursued the suspect on foot for several blocks until the suspect slipped on ice and fell down. The officer's efforts to handcuff the suspect led to a violent struggle in which the suspect repeatedly hit the officer's head against the concrete pavement. When the suspect broke free and continued to flee, the officer resumed pursuit. The officer overtook the suspect once more, initiating a second struggle in which the suspect again struck the officer repeatedly. The officer managed to pull away from the suspect and draw her sidearm even though her left arm had been disabled during the struggle. When the suspect ignored commands to stop and continued to act aggressively, the officer shot and killed him.

A lawsuit against the officer and the police department alleged that the officer had used excessive force and had no legal justification to stop the suspect in the first place. The federal district judge granted summary judgment in favor of the officer and the department. The judgment was affirmed later by the appellate court.

The court concluded that from the moment the individual ignored the officer's inquiries and began running away, the officer had a reasonable suspicion that the suspect was engaged in criminal activity. Moreover, the suspect's continued flight from the officer "ripened [the officer's] reasonable suspicion into probable cause..." and justified the suspect's arrest for stealing the bicycle and resisting a law enforcement officer.[15] Accordingly, the court considered that the officer was reasonable in trying to restrain the suspect with handcuffs and in using deadly force to protect herself against the suspect.

Articulating Law Enforcement Perspective

The general principle that officers confronted with threats to their safety are not required to select the least intrusive alternative to counter the threat does not suggest

that officers always are justified in using deadly force. For example, in *Hopkins* v. *Andaya*,[16] an officer shot and killed an unarmed suspect who had managed to grab the officer's baton and begin striking the officer. The officer fell to the ground, drew his sidearm, and ordered the suspect to stop. When the suspect continued his assault, the officer fired six times. The suspect went down after being struck by several of the shots but got back to his feet without the baton and advanced on the officer again. The officer retreated, reloaded his revolver, and radioed for help. When the suspect continued to ignore commands to stop, the officer fired four more times. The suspect later died from nine gunshot wounds: two to the head, five to the torso, and one in each hand.

In a subsequent lawsuit against the officer, the federal appellate court reversed a lower court's summary judgment in favor of the officer. The appellate court raised two "troubling factual issues" that rendered summary judgment inappropriate. The first factor was that the medical evidence did not appear to support the officer's statements regarding the nature or severity of the suspect's attack. In addition, the officer's initial statement presented "a milder version" of the altercation than was described in later statements. Another factor that troubled the court was the "second" shooting, after the officer had first shot the suspect and then retreated. The court opined:

> ...we cannot say as a matter of law that [the officer] acted reasonably when he then shot the unarmed [suspect] four more times. At the time of the second shooting, it was far from clear that [the officer] reasonably feared for his life.[17]

The court noted that the suspect already had been wounded several times and suggested that the officer could have evaded the suspect or attempted to subdue him with "his fists, his feet, his baton, or the butt of his gun."[18] The court recognized that these facts might well be resolved in favor of the officer at trial but concluded that the questions raised made summary judgment inappropriate.

> ***"...once control has been established over an arrestee, officers still may use reasonable force to maintain that control and to protect themselves from danger."***

The court's decision in *Andaya* appears to be inconsistent in some respects with the general premise that officers are not required to choose the least intrusive alternative, only a reasonable one. On the other hand, the officer's choice must, after all, be reasonable, and courts and juries must have sufficient information upon which to base a judgment.

For example, in *Andaya,* the court was clearly troubled by the notion that an unarmed person, already suffering from gunshot wounds, was still viewed as a threat by the officer. Only an informed court is likely to recognize that gunshot wounds may not stop—or even discourage—certain determined assailants, and striking a suspect with a gun butt may not be a safe option. If, as the Supreme Court has declared, the issue must be viewed from the perspective of the reasonable law enforcement officer, that perspective must be presented clearly if law enforcement interests are to prevail.

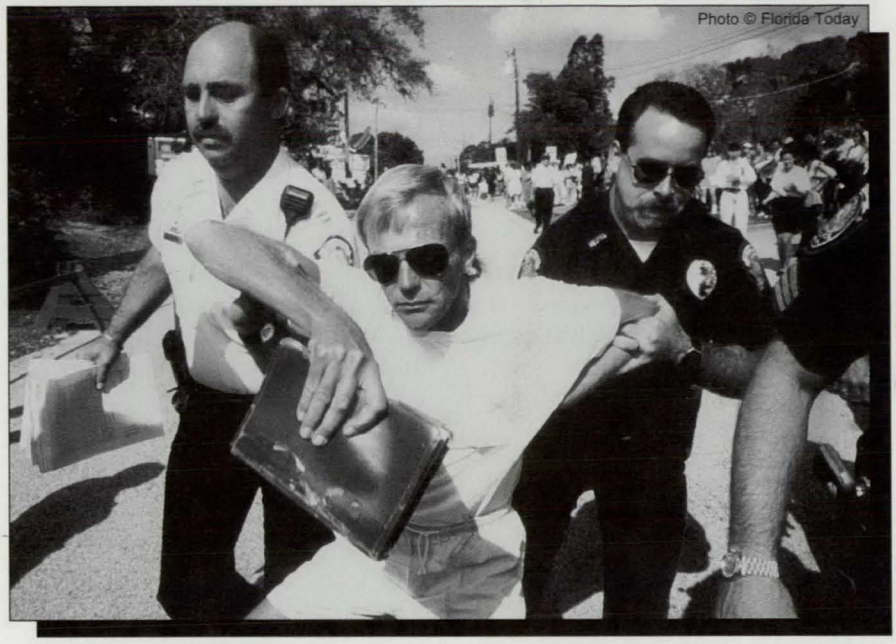
RESISTING ARREST

Passive NonCompliance

By far, the greater number of cases involving police use of nondeadly force are those in which it is alleged that the suspect resisted or attempted to evade arrest. This is undoubtedly due to the fact that the suspects are not posing immediate threats to the officers or others necessarily but are simply being noncompliant.

An example is *Forrester* v. *City of San Diego,*[19] where police officers used "pain compliance" techniques to arrest several anti-abortion demonstrators who had ignored police commands to disperse. Before using any force, the officers warned the demonstrators that they would be subject to pain compliance measures if they did not move. Demonstrators were told that such measures would hurt, but they could reduce the pain by standing up.

When the demonstrators did not comply, the officers used pain compliance techniques to remove them. In their lawsuit, the arrestees



complained of injuries to their hands and arms, including bruises, pinched nerves, and one broken wrist. They contended that dragging and carrying them would have been more reasonable.

A jury returned a verdict in favor of the city and the police officers, and that verdict was upheld by the federal appellate court for three reasons. First, the court observed that "the nature and quality of the intrusion upon the arrestees' personal security" was not excessive; rather, "...the force consisted only of physical pressure administered on the demonstrators' limbs in increasing degrees, resulting in pain."[20]

Second, the city had a legitimate interest in quickly dispersing and removing lawbreakers with the least amount of injury to the police and others, even though many of the crimes were misdemeanors. Third, the court noted that the decision not to drag and carry was based upon the officer's desire to maximize police control over the anticipated large crowds and to avoid back injuries that often are sustained by officers in those situations.

Finally, the court stated: "Police officers...are not required to use the least intrusive degree of force possible....Whether officers hypothetically could have used less painful, less injurious, or more effective force in executing an arrest is simply not the issue."[21]

Active Arrest Resistance

In *Forrester*, the arrestees were engaged in passive noncompliance. Obviously, an officer may require higher levels of force to overcome a suspect engaged in active arrest resistance. In *Mayard* v. *Hopwood*[22] Elsie Mayard was cited by police for selling liquor without a license. Although the police did not intend to make an arrest at that time, they did so when she became agitated and began screaming and shouting at them for removing her inventory as evidence. The officers took her by the arms to escort her to the police car. When she began to struggle with them, they placed her in handcuffs. When she refused to get into the car, the officers picked her up and placed her face down on the rear seat. When she began kicking they placed a hobble restraint on her legs. She later sued the police officers, alleging excessive force.

The U.S. district court granted summary judgment to the officers, and Mayard appealed. The federal appellate court upheld the summary judgment as it related to the force used to make the arrest, noting that it was objectively reasonable "particularly...in light of [her] resistance."[23]

Using Force Against a Controlled Subject

The *Mayard* case raised a second issue that the court found more troublesome. Mayard contended that while being transported to the police station, she was slapped in the face, punched in the chest, and subjected to a racial epithet. The court viewed such allegations, if substantiated, as constituting an objectively unreasonable use of force against an arrestee already under control and remanded to the district court for further consideration.

A similar issue was raised in *Frazell* v. *Flanigan*,[24] where the arrestee alleged that officers used excessive force against him *after* he already had been subdued. Upholding a jury verdict against the officers, the appellate court observed that "...it is one thing to use force in subduing a potentially dangerous or violent suspect and quite another to proceed to gratuitously beat him...."[25] These cases point out that

when the circumstances justifying a particular level of force no longer exist, that level of force must be discontinued.

However, once control has been established over an arrestee, officers still may use reasonable force to maintain that control and to protect themselves from danger. They may also use reasonable force to protect themselves from an arrestee's actions that are demeaning or distasteful.

For example, in *Prymer* v. *Odgen*,[26] officers were escorting an arrestee to the police car when they heard him making a "gurgling" noise in his throat as if he were going to spit on the officers. One of the officers struck the arrestee in the head with a straight-arm technique "to redirect [his] head." The arrestee later sued the police, alleging, *inter alia*, that the officer had used excessive force by striking him in the head. The U.S. district court disagreed, and the ap-pellate court concurred. The court reasoned, "...it was reasonable for an officer not to want to be spat upon...we cannot say that [the officer's] reaction to [the arrestee's] attempt to spit on him was objectively unreasonable in the context of this case."[27]

CONCLUSION

The Supreme Court has held that the level of force law enforcement officers may use to effect arrests or investigative detentions of suspects must be "reasonable" to comport with the Fourth Amendment. As the Court has stated and these cases illustrate, "reasonableness" is not conducive to "precise definition or mechanical application." Law enforcement policy makers and instructors must avoid the natural temptation to reduce these critical issues to overly simple and rigid rules of application. Apparent gains in clarity most likely will be offset by loss of flexibility and practicality in the face of the realities of law enforcement.

> ***"...when the circumstances justifying a particular level of force no longer exist, that level of force must be discontinued."***

As an alternate approach, consideration should be given to carefully crafting guidelines that provide officers with a range of options within which to make decisions regarding the appropriate level of force in particular situations. In addition, sustained training sessions that include practical application of the principles to realistic scenarios will increase officer skill and confidence in making the tough decisions. Policy and training should strike an appropriate balance between the rights of citizens to be free from "unreasonable" seizures and the interests of society in maintaining effective law enforcement while protecting the officers who must perform that duty. ✦

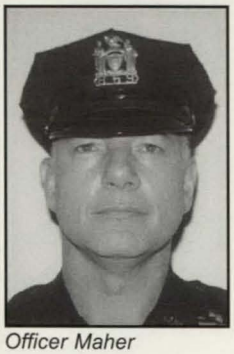
Endnotes

[1] *Graham* v. *Connor*, 490 U.S. 386 (1989).
[2] *Beck* v. *Ohio*, 379 U.S. 89 (1964).
[3] *See, e.g, Tennessee* v. *Garner*, 471 U.S. 1, 8 (1985): "...it is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out."
[4] *Id.*
[5] *Bell* v. *Wolfish*, 441 U.S. 520 (1979).
[6] *Graham*, 490 U.S. at 396-397.
[7] *Id.* at 396.
[8] *Tennessee* v. *Garner*, supra, at 8.
[9] 924 F.2d 364 (1st Cir. 1991).
[10] *Id.* at 368.
[11] *See, e.g., Illinois* v. *Lafayette*, 462 U.S. 640 (1983); *Roy* v. *Inhabitants of the City of Lewiston*, 42 F.3d 691 (1st Cir. 1994); *Plakas* v. *Drinski*, 19 F.3d 1143 (7th Cir.) *cert. denied*, 115 S. Ct. 81 (1994); *Scott* v. *Henrich*, 39 F. 3d 912 (9th Cir. 1994); *Schulz* v. *Long*, 44 F. 3d 643 (8th Cir. 1995); *Wilson* v. *Meeks*, 52 F. 3d 1547 (10th Cir. 1995); *Menuel* v. *Atlanta*, 25 F. 3d 990 (11th Cir. 1994).
[12] Uniform Crime Report, *Law Enforcement Officers Killed and Assaulted*, Federal Bureau of Investigation, 1994.
[13] Ecclesiastes 9:11.
[14] 963 F. 2d 952 (7th Cir. 1992).
[15] *Id.* at 959.
[16] 958 F. 3d 881 (9th Cir. 1992).
[17] *Id.* at 887.
[18] *Id.*
[19] 25 F. 3d 804 (9th Cir. 1994), *cert. denied*, 116 S.Ct. 1104 (1995).
[20] *Id.* at 807.
[21] *Id.* at 807-808.
[22] *Mayard v. Hopwood*, 105 F. 3d 1226 (8th Cir. 1997).
[23] *Id.* at 1228.
[24] *Frazell* v. *Flanagan*, 102 F. 3d 877 (7th Cir. 1996).
[25] *Id.* at 885.
[26] 29 F. 3d 1208 (7th Cir. 1994).
[27] *Id.* at 1216.

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.



Officer Maher

While off duty, Officer John Maher of the Port Authority of New York and New Jersey Police Department was driving in a nearby community when he came upon a house in flames. A woman standing in the front yard informed Officer Maher that her mother and infant were trapped in the house. After instructing a neighbor to call 911, Officer Maher and an off-duty volunteer fire fighter broke down the front door but were driven back by the intense heat and smoke. Officer Maher then crawled into the house, followed by the firefighter. Over the roar of the flames, Officer Maher heard moans coming from a back room. He located the woman, who was carrying the infant in her arms. Officer Maher handed the child to the firefighter in the hallway and reentered the room, where he discovered that the woman's clothes had caught fire. He tore the burning garments from the unconscious woman as he pulled her to safety. Moments later, the windows exploded as flames fully engulfed the home. Although near exhaustion, Officer Maher rendered first aid to the victim until ambulance crews arrived.

Patrolman Givens

Shortly after receiving a report of a stolen vehicle, Patrolman Alfredo Givens of the Beaufort, South Carolina, Police Department observed the automobile speeding toward the busy downtown area. As Patrolman Givens initiated pursuit, the driver sped up and jumped from the vehicle while it was still in motion. The driverless vehicle continued forward, endangering pedestrians on the sidewalk and a small child playing near the roadway. Sensing the danger of the situation, Patrolman Givens quickly stopped, exited his patrol car, and ran to the vehicle. He was able to stop the runaway vehicle before it caused any injuries. The vehicle sustained no damage and was returned to its owner.

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

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