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leb@fbiacademy.edu

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FBI Law Enforcement Bulletin

Features

Departments

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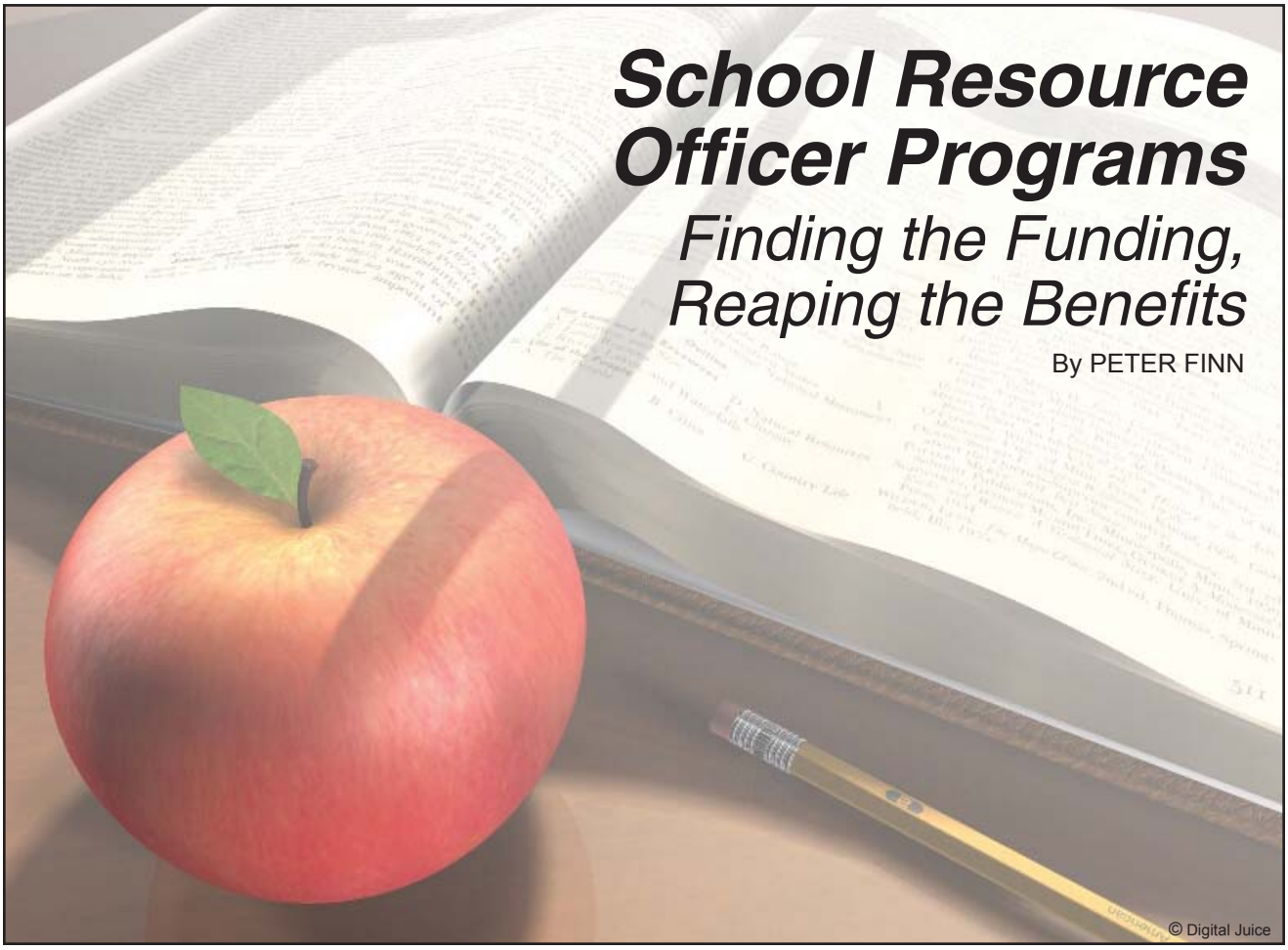


School Resource Officer Programs

Finding the Funding, Reaping the Benefits

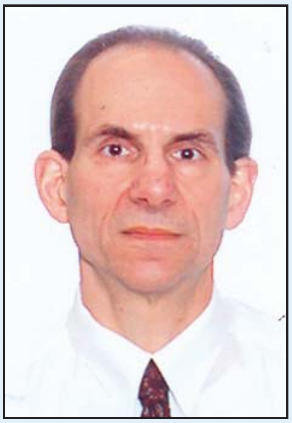
By PETER FINN

"We pay for the [SRO] program because, by assigning officers to the schools, we free up manpower on the street. Before we had SROs, we were constantly sending patrol officers to the schools. It makes sense from a deployment point of view to have officers in the schools, rather than send over patrol officers whenever there is a problem. The high school has 2,300 kids and 200 staff; it's a small town."[1]

Interest has grown in placing sworn law enforcement personnel in schools to improve school safety and relations between officers and young people. During 1999, 30 percent of local police departments, employing 62 percent of all officers, had about 9,100 full-time school resource officers (SROs) assigned to schools.[2] In 1997, an estimated 38 percent of sheriff's departments had a total of 2,900 deputies assigned full time as SROs.[3]

In the accepted school resource officer model, SROs engage in three types of activities: law enforcement, teaching, and mentoring. However, the relative emphasis devoted to these duties varies considerably from SRO to SRO and from program to program. Often, efforts begin with an initial focus on law enforcement that evolves into a more balanced approach with increased teaching and mentoring.[4]

Knowledge about SRO programs within the law enforcement community varies also. Some police departments and sheriff's offices are unfamiliar with the programs, while others know about them but believe



> ***"Interest has grown in placing sworn law enforcement personnel in schools to improve school safety and relations between officers and young people."***

Mr. Finn is a senior associate with Abt Associates, Inc., in Cambridge, Massachusetts, and served 8 years as a volunteer sworn auxiliary/special officer with the Belmont, Massachusetts, Police Department.

they provide few, if any, benefits, and still other agencies feel that they do not have available funding to pay for a program. However, numerous law enforcement agencies have gained substantial benefits by operating an SRO program. Furthermore, while departments frequently have difficulty finding program funding, many have managed to pay for SROs by sharing costs with other groups. The author presents information he collected as part of two reports prepared for the U.S. Department of Justice, Office of Community Oriented Policing Services (the COPS Office), and the National Institute of Justice to demonstrate how SRO programs have benefitted several law enforcement agencies and the communities they serve, as well as how these departments have funded their efforts.[5]

REAPING THE BENEFITS

The author's research found four main benefits of an SRO program. It can reduce the workload of patrol officers or road deputies, improve the image of officers among juveniles, create and maintain better relationships with the schools, and enhance the agency's reputation in the community.

Reduce Workload

According to the author's research, many agencies said that before they began their SRO programs, they had to send patrol officers or deputies to schools to handle problems up to several times a day, sometimes tying up the officers for hours at a time. As a result, law enforcement administrators felt (and subsequently discovered) that placing officers in the schools as SROs would reduce and even eliminate 911 calls from the schools. Based on an analysis of 911 calls in 1999 before the program began and again in 2001 after the SROs were in the schools, one sheriff's office determined that SROs handled 280 calls in 2001, thereby freeing deputies for other duties. A chief of police reported that the number one reason he fought for the SRO position was because patrol officers spent many hours each week investigating crimes at the school, so it only made sense to assign an officer to the school full time. An assistant police chief in another jurisdiction advised that at a meeting on department budget cuts, he did not raise the idea of reducing the SRO program, although some personnel felt it took too many officers away from patrol duties because they did not realize the volume of calls SROs handle.

In addition to freeing patrol officers from responding to 911 calls from the schools, SROs *prevent* problems that would have resulted in an emergency call, thereby reducing the burden on patrol officers even more. Often, SROs accomplish this because students realize that with an officer stationed in the school, they likely will be arrested if they break the law. In addition, many students tell SROs when trouble is brewing,

and the officers then take steps to control it.

SRO programs can save time for individual bureaus within an agency. One police department's administrators found that funding three additional SROs reduced the juvenile bureau's workload because these officers now respond to many incidents that detectives previously had to handle. In addition, SROs can give their detective bureau or patrol division personnel valuable information about crimes in the community that students warn them about.

Finally, SROs not only save patrol officers time but also frustration and stress. SROs have been screened for their interest in working with young people and trained in how to deal effectively with them. As a result, they not only spare patrol officers a difficult assignment but also improve the agency's image with juveniles through their firm but sensitive behavior.

Improve Image Among Juveniles

Many law enforcement administrators reported that putting SROs in the schools improves the attitude and behavior of young people toward police officers, resulting in increased crime reporting. One chief of police related that when he visited the school with the SRO, students approached him, asking to talk about problems.[6]

Create Better Police-School Relationships

A number of police and sheriff's departments valued the collaborative atmosphere that SROs typically create between the agency and the school district. For example, one chief of police reported that the program changed the relationship between the department and the school system. Now, he can pick up the telephone and talk immediately to the superintendent. "There's a trust because they know us, so they are much more comfortable bringing the department into the schools. They also bring us problems they might not have shared with us in the past. Principals and the superintendent now call the captain about potential issues that could come up, such as problems with a teacher, 'Here's what we've got; what should our next steps be?' Before the SRO program began, the schools would have handled the problem on their own and maybe ruined a chance to do a decent investigation."[7]

> ***"School districts represent the most common source agencies have turned to for funding SRO programs.***

Enhance Agency Reputation

Finally, the author's research found that SROs enhanced the agencies' images in their communities. Some personnel reported that the program aided their sheriffs' bids for reelection. A member of one sheriff's office pointed out that a large number of school employees voted in the election.

ESTIMATING THE COSTS

Despite what might seem insuperable obstacles to finding money for an SRO program, a large number of police departments and sheriff's offices have managed to secure the necessary funding. However, before looking for possible funding sources, agencies need to develop a realistic estimate of what their programs will cost.

While expenses vary according to the number of SROs in their program, agencies need to consider other factors, including the officers' length of employment with the department and local salary levels, whether the budget covers supervisory and support staff salaries, and any costs related to training,

overtime pay, equipment, and cruisers. As a result of these and other considerations, the author's research indicated that SRO program budgets ranged from $80,000 for 1 officer in a small community to $2.4 million for 27 SROs, 3 supervisors, and 1 office manager in a large city.

Typically, the law enforcement agency and one or more school districts share program costs. Some departments have a fixed formula for paying for SROs. In one state, interested school districts submit a formal request for an SRO to the state police, wherein the school agrees to pay the salary of a newly hired trooper. But, because the state police prefers to place a seasoned—and relatively expensive—officer in the school as the SRO, it contributes the difference between the salary of a newly hired trooper and an experienced one.

More often, law enforcement agencies and school districts negotiate each party's share of the costs. For example, one police department and secondary school district agreed to split the cost of 12 SROs and 1 field agent. The elementary school district agreed to pay 40 percent of the cost of the 6 SROs and 1 field agent, while the police department paid the remaining 60 percent. Program funds are supplemented by a COPS in Schools grant.

Some law enforcement agencies have arranged for automatic modifications of each contributor's share of program costs. For example, as law enforcement grant money fluctuates, the school district's and city's shares automatically compensate.

> ***A number of… departments valued the collaborative atmosphere that SROs typically create between the agency and the school district.***

FINDING THE FUNDING

School Districts

School districts represent the most common source agencies have turned to for funding SRO programs. Law enforcement organizations have used three main points to encourage school districts to contribute money.

Improve Safety

Most school district administrators support efforts they believe will improve safety in the schools because protecting students represents one of their responsibilities. As one high school principal said, "If you have the opportunity to have an SRO at your school, how stupid of you to say no. It is an awesome responsibility to be a principal and in charge of the safety of students today. We are very vulnerable."

SROs serve to keep principals and assistant principals, not just students, out of harm's way. For example, one high school assistant principal advised that the SRO was extremely important for him to do his job because he knows he has backup, someone skilled in dealing with contentious situations. Another one said that she has the SRO sit in with her when she has to discipline a student and feels the situation may potentially escalate. A third high school assistant principal reported that when parents become belligerent, she asks the SRO to sit in to "observe," which usually produces a calming effect.

Some law enforcement agencies explain to school administrators that SROs can contribute to school safety by developing or reviewing school crisis management plans. One SRO sits on the school board's security committee and has assessed the physical safety of each building. He helped devise crisis plans to implement during various types of emergency situations. As a result, a school official reported that the officer had proven immensely helpful during a meningitis scare by

coordinating communication and contact among public health experts, parents, students, and school district personnel.

Another reason many school administrators support program funding is because SROs routinely prevent crime and violence. One high school principal said he could not count the number of times that the SRO's contact with students had prevented more serious problems from breaking out on campus. A school board member stated that most board members felt that they were getting their money's worth because the SROs were a great deterrent. Moreover, some school systems provide funding because SRO programs can help reduce their legal liability.

Increase Perception of Safety

According to a superintendent of schools, students need to feel safe, and the SRO's presence makes a difference in their perception of safety. A school board member reported that the school district conducted surveys of students that showed safety as one of their top concerns, and the SRO program is a small price to pay to help do that.

Quick Response Time

Over and over in the author's research, law enforcement agencies reported receiving funding because school administrators appreciate the quick response from their SROs in a crisis compared with the time it took in the past for an officer or deputy to arrive after they called 911. The quick response relieves administrators from having to detain and pacify an often agitated, accused student for a long period of time. One high school assistant principal reported that if she called 911 every time a violent incident occurred, she would

have to wait for a patrol officer to arrive. Instead, the SRO handles it immediately. When one city budget committee considered making cuts in the SRO program to save money, the principals opposed the reduction because their major concern was preventing disruption and having an immediate capacity to deal with it when it occurred. A council member in another jurisdiction said that the town had accepted the SRO program as part of the police department's budget because the high school principal and chief convincingly demonstrated to the council that an officer assigned to the school full time dramatically reduces the response time for incidents.

Local Government

Typically, local elected and appointed officials, as well as school committee or board members, decide on the funding for the local law enforcement agency and school system. As such, they often are in the best position to provide or find funding for an SRO program.

Law enforcement organizations can help motivate public officials to provide funding by reminding them of their responsibility for ensuring student safety and the risk of being blamed if a tragedy occurs. One city's chief public safety officer and mayor decided to continue to fund the SRO program after a grant ran out because, in light of the need to provide homeland security, they said that it was the mayor's responsibility to protect students and to have a liaison in the schools.[8] To meet this obligation, government officials have made sacrifices in other areas, such as funding for recreation, library expenses, and public works, to help pay for SROs.

Federal Government

Law enforcement officials often know that the COPS

Office has provided grants to over 3,000 law enforcement agencies to cover entry-level salaries for SROs up to $125,000 per SRO over a 3-year period.[9] However, they may not realize that Safe and Drug-Free Schools Act formula grants (Public Law 107-110) expressly allow school districts to spend up to 40 percent of their Title IV money to hire and train school security personnel.[10] For example, several school districts use Title IV funds to reimburse the sheriff's office for providing SROs to their schools, whereas another sheriff's department covers some of its SROs' training costs using school district Safe and Drug-Free Schools grant funds.

The Edward Byrne Memorial State and Local Law Enforcement Assistance Program (Byrne Formula Grant Program)—funded by the Bureau of Justice Assistance, U.S. Department of Justice—provides money to states and units of local government to support personnel, equipment, training, technical assistance, and information systems to improve the criminal justice response to violent and serious crimes. One county funded 75 percent of two SROs' salaries for 3 years with Byrne grants.[11] One police department used $1.8 million in Juvenile Accountability Incentive block grants from the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention to establish and maintain accountability and prevention programs and to provide overtime for SROs to participate in activities that involve interacting with students after school.[12]

Innovative Approaches

Several law enforcement agencies have obtained funds from private sources, fund-raising events, and donations of money and materials. When a COPS in School grant ran out in the middle of the school year, city officials in one community agreed to pay two-thirds of the SRO's cost if the school district paid the remainder. Because the school district did not have the money, local civic organizations and charities raised the funds.[13] One police department secured about $15,000 for its program from national and local businesses. And, a sheriff's office obtained a grant from a community foundation to purchase laptop computers for elementary school SROs. The program raised money by hosting a charity golf tournament and secured in-kind office space in a building owned by the school district.[14]

MAINTAINING THE FUNDING

Once a program has proven itself, school districts often increase their share of program funds because they see that it helps protect students. Also, a tragedy at a school where board members had reduced or eliminated the SRO program could constitute a political disaster. One school board member acknowledged his concern about cutting the program and then experiencing a critical incident, after which constituents would ask, "Why did you cut the SRO?"

Schools often can find the money if they value the program enough. The superintendent of schools in one community reported that when the COPS in Schools grant ran out, he tried to "go it on the cheap"—without an SRO—but, in 3 weeks "all heck broke loose." So, he reduced each school line-item budget by 1 to 2 percent—sports, classroom supplies, technology—to obtain the funds to pay for the officer to return. One high school found some of the money

needed to retain its SRO by adding a surcharge to the fees it charges for parking lot passes. When a sheriff told his school district it would have to increase its contributions to its SRO's salary and fringe benefits, the superintendent of schools secured one-third of the total from the school district's general fund. He raised the remaining amount from a local foundation and an individual donor.

In several communities, objections by parents helped motivate local officials to continue to provide funding. One city council member said that constituents called him when an SRO had surgery because they were concerned that it was not merely a temporary situation but a long-term loss. When a county commission tried to reduce the number of SRO positions in the elementary schools, school administrators, teachers, and parents attended the budget meetings to support continued funding.[15]

CONCLUSION

According to the author's research, a large number of police departments and sheriff's offices have found that operating and contributing to the cost of a school resource officer program repays the agencies in significant ways, from keeping patrol officers on the streets to forging important relationships with juveniles and schools. Furthermore, many law enforcement organizations have learned that they can minimize SRO program costs by sharing expenses with school districts and local government and by finding other sources of funding. In light of these considerations—and given the recent tragedies

involving violence that have occurred in a number of schools—every agency should give serious consideration to initiating an SRO program. In addition, those departments that have programs in place can explore the variety of options available for reducing law enforcement's share of the costs. ✦

Endnotes

[1] Sergeant Paul Marchand, SRO program supervisor, Salem, New Hampshire, Police Department.

[2] Matthew J. Hickman and Brian A. Reaves, U.S. Department of Justice, Bureau of Justice Statistics, *Local Police Departments 1999* (Washington, DC, May 2001).

[3] Andrew L. Goldberg and Brian A. Reeves, U.S. Department of Justice, Bureau of Justice Statistics, *Sheriff's Departments 1977* (Washington, DC, February 2000).

[4] For more information about SRO programs, see Peter Finn et al., U.S. Department of Justice, Office of Community Oriented Policing Services, *A Guide to Developing, Maintaining, and Succeeding with Your School Resource Officer (SRO) Program: Practices from the Field for Law Enforcement and School Administration* (Washington, DC, 2005); and Peter Finn et al., "Case Studies of 19 School Resource Officer (SRO) Programs" and "Comparison of Program Activities and Lessons Learned Among 19 School Resource Officer (SRO) Programs," both available at *www.ojp.usdoj.gov/nij/*.

[5] U.S. Department of Justice, Office of Community Oriented Policing Services (COPS Office), Cooperative Agreement #2003-HS-WX-K041.

[6] Chief Paul Donovan, Salem, New Hampshire, Police Department, interview by author.

[7] Ibid.

[8] Nicholas Bakas, Chief Public Safety Officer, Albuquerque, New Mexico, interview by author.

[9] Information about the grant program may be found at *www.cops.usdoj.gov/Default.asp?Item=240*. While there is no funding for SRO programs in the U.S. Department of Justice 2006-07 budget request to Congress, it is likely that Congress will include funding.

[10] See *www.ed.gov/nclb/overview/intro/progsum/sum_pg9.html*.

[11] See *www.ojp.usdoj.gov* or call 800-421-6770.

[12] See *www.ojjdp.ncjrs.org* or call 800-638-8736.

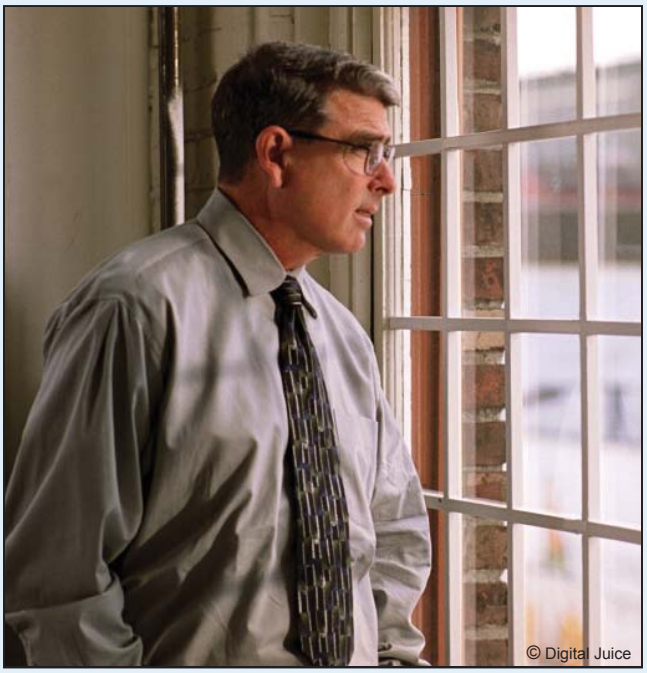
[13] "Mason [Michigan] Schools Regain Resource Officer," *Lansing State Journal*, January 6, 2004.

[14] Captain Tim Carney, Sarasota County, Florida, Sheriff's Office, interview by author.

[15] James Bailey, mayor of Maury County, Tennessee, interview by author.

Concerned Reliable Citizens' Program

By H. Wayne Duff, Jr., M.S.



Progressive law enforcement agencies strive to protect the people they serve and to work with citizens to solve neighborhood problems. To provide the best quality of service possible, these departments try innovative approaches to community policing.

The Lynchburg, Virginia, Police Department represents such an agency. Recently, inspired by the large number of anonymous calls from well-meaning citizens who want to report criminal conduct, typically drug activity in active open-air markets, the department, along with representatives from the Office of the Commonwealth's Attorney, devised and implemented the unique Concerned Reliable Citizens' Program.

Innovative Program

Anonymous tipsters have legitimate concerns about possible retaliation from those responsible for the criminal activity they report. And, although the information provided by these people usually proves correct, officers cannot act on it without establishing a tremendous amount of additional evidence. This resulted from several cases decided in the Virginia court system that determined the value of uncorroborated anonymous complaints of ongoing criminal activity. For example, in *Harris v. Commonwealth*, the Virginia Supreme Court decided that an anonymous tip identifying a person by location and appearance and asserting that the individual is armed does not justify temporarily detaining the suspect to conduct a pat–down search; officers also must corroborate the tipster's assertion that the individual has conducted illegal activity.[1]

With this in mind, a team consisting of representatives from the Lynchburg Police Department and the Commonwealth's Attorney's Office looked at the agency's use of criminal informants, who usually are motivated by either the potential of financial gain or the possibility of leniency on criminal charges. In reviewing this relationship and the manner in which reliability of criminal informants becomes established, the team believed that the police department could have such a rapport with law-abiding citizens who wish only to help officers improve the quality of life in their neighborhoods.

The team's goal was to develop an innovative community policing program in which the police could establish confidential relationships with concerned citizens. This would give them a way to securely provide information that could establish reasonable suspicion and probable cause to believe subjects are involved in criminal activity, thereby allowing officers to search and arrest these individuals.

Personnel began by meeting with local Neighborhood Watch programs, faith-based organizations, and civic groups. They found tremendous interest in such an idea within the community. After beginning the program, the team advertised it through print and broadcast media. Visits with various organizations and one-on-one meetings with citizens continue. A brochure, available for distribution to groups and individuals, describes the program; many officers keep supplies on hand.

For those who choose to participate, representatives from the team conduct a 1-hour session to provide these concerned citizens with the necessary training to readily recognize illicit drug activity. This covers drug recognition, methods of operation of a narcotics market, and ways to identify persons involved in this illegal conduct.

> **"Citizens have welcomed the opportunity to get involved in the betterment of their community…."**

These citizens also undergo a voluntary background investigation that includes a check of their criminal history, driving records, work status, family members, number of children, and ties to the community. This establishes that they are good citizens with the sole motivation of bettering their neighborhoods by assisting the police.

After completion of the training and the background investigation, the citizens become established as reliable sources of information.[2] The participants receive a code name and instructions to call the police department's communications center when they observe criminal activity in progress. Upon contact, dispatchers notify officers in the affected patrol area and provide them with the code name and contact number of the concerned citizen. Officers call the tipsters directly to get the information firsthand. Then, they respond to the location and, based on their observations upon arrival, take the appropriate action—in cases of arrest, the Commonwealth's Attorney's Office represents the neighborhood in court.

Positive Results

The Concerned Reliable Citizens' Program has seen great success. Citizens have welcomed the opportunity to get involved in the betterment of their community without the fear of retaliation by criminals. And, the department has enjoyed the strengthening of its relationship with the people it serves. Membership in the program continues to increase and, in addition, several other agencies have expressed interest in starting it in their jurisdictions.

As an example of how well this program works, in one instance, the department received information from a participant that a subject possessed marijuana. The citizen provided a description of the person and the individual's location. A patrol officer responded, approached the suspect, and immediately noticed the odor of the drug. The officer detained him, conducted a search, and found marijuana in his possession. The person was arrested and charged.

Team personnel involved in the program have received formal recognition as a result of their innovation and creativity in its development and implementation. Honors include the city of Lynchburg's Customer Service Award and the Lynchburg Police Department's Distinguished Honorable Service Award.

Conclusion

The Lynchburg Police Department strives to maintain peace and order in its city. The agency does this in a variety of ways. These include preventing crime, protecting people and property, investigating criminal activity, arresting perpetrators, educating those it serves, and maintaining cooperative working relationships with the people—part of this is to continue using innovative community policing programs.

The Concerned Reliable Citizens' Program has been well received in the community. Not only does it empower citizens but it strengthens the line of communication between neighborhoods and the police. ✦

Endnotes

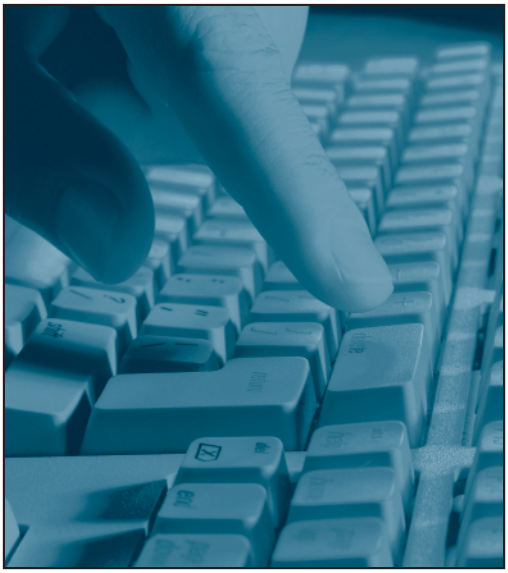
[1] 262 Va. 0407, 551 S.E. 2d 606 (2001).

[2] While the program is targeted at drug activity, citizens also have provided valuable information regarding other types of criminal conduct.

The Lynchburg Police Department provides a description of the Concerned Reliable Citizens' Program, as well as a copy of its brochure, on the agency's Web site, at http://www.lynchburgpolice.org.

Captain Duff serves with the Lynchburg, Virginia, Police Department.

The *Bulletin's* E-mail Address



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

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Power or Empowerment?

> *"Knowledge is paradoxical; it increases to the extent that a leader shares it."*
>
> Warren Blank

Last month in *Leadership Spotlight*, Special Agent Jeff Lindsey addressed the relationship between power and leadership. This is a tremendously important topic that I devote several hours to in my National Academy (NA) classes. Recently, I asked my NA Enlightened Leadership class to write a short paper answering the following question: "One of the most talked about leadership themes in recent years is employee empowerment, the idea of giving power away. However, another tenet of leadership is that we must build our power to be effective. Which one is it?"

The brief answer is that they are not mutually exclusive; empowerment actually increases a leader's power. As Warren Blank observed, "Knowledge is paradoxical; it increases to the extent that a leader shares it." While the students' responses were generally of this nature, one was particularly interesting and unique. Instead of a traditional essay response, Commander Steve Wright of the Vail, Colorado, Police Department took a unique approach by offering the following insights:

- Power is a more potent commodity than money. It can be earned, bestowed, taken by force, stolen, purchased, and bartered.
- Power can be inspiring and corrupting.
- Power, if not corrupt, must be linked to positive values and ethics.
- We acquire and surrender power every day.
- There is no such thing as "fire and forget" empowerment.
- It is hazardous to assume people with power are smarter.
- People with power over others should strive to deserve it.
- The misuse of power leads to the misuse of empowerment.
- I like what power I have.
- With empowerment comes upward and downward responsibility and accountability.
- Empowerment creates instant partnerships.
- Power and empowerment are tools of leadership, and, like colors on a palette, they can be used to create a positive or negative image.

Each of these points is worthy of considerable attention. Those of us wanting to lead more effectively must recognize the interdependent and multidirectional relationship between power and empowerment. Effective leaders empower their followers. Ironically, leaders are effective only when followers give them the power to lead. ✦

Dr. Jeff Green, a special agent in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Book Review

Criminal Law: The Basics, *Frank A. Schubert, Roxbury Publishing, Los Angeles, California, 2004.*

Author Frank Schubert has done a nice job distilling the seemingly endless facets of criminal law into an easily readable and comprehensive textbook of only eight chapters. The singular aspect of this text that makes it so attractive is how the author first describes the foundation and intent behind criminal law and then succinctly outlines the general principles of construction for various crimes. Because of the use of common law and the Model Penal Code, the theory applies to any state and can be combined with a particular state's criminal code or body of case law to show various contrasts.

Chapters 1 and 2 lay the foundation for why American criminal law is designed as it is, along with its origins and limitations. The theme that runs throughout the first two chapters deals with the similarities and differences between American law and English common law and why American jurisprudence is decentralized primarily to the states instead of centralized into a national government.

Chapters 3 and 4 cover criminal liability. Schubert describes two particularly interesting areas of criminal law that have received attention of late—corporate criminality and liability for failing to supervise a child. In the wake of several sensational corporate scandals, likening corporations to humans for prosecution purposes constitutes an emerging area of law not easily dealt with. These investigations and resulting prosecutions typically are lengthy and complex, often necessitating expertise in finances, accounting, and other business practices that require an inordinate amount of time and resources not readily available at the local level.

Parental liability for children represents another area of law that recently has gained popularity, particularly at the local level where authorities enact municipal ordinances as crime-control measures. For example, in developing a juvenile crime-control initiative, police planners might use this type of ordinance in conjunction with a curfew to control delinquency. The two work together: the curfew enables the police to effect an arrest, whereas parental liability holds parents or guardians accountable for any resulting criminal behavior.

Chapters 5 through 8 outline some of the most common and important aspects of criminal law, including inchoate crimes, criminal defenses, and offenses against persons and property. Each chapter begins with an analysis of the subject followed by a relevant piece of case law, which authenticates the legal concept. Following the case law, the author provides thought-provoking questions that departments can use to spur debate or as test questions. After each subject, Schubert offers his own analysis and commentary, which

improves comprehension and interpretation. At the end of each chapter, the author presents discussion questions and hypothetical scenarios that relate directly to the aforementioned text, which provides instructor flexibility in designing a training syllabus or course curriculum. The textbook also offers a convenient Web site (*http://www.roxbury.net*) that posts additional material too lengthy for inclusion in the book.

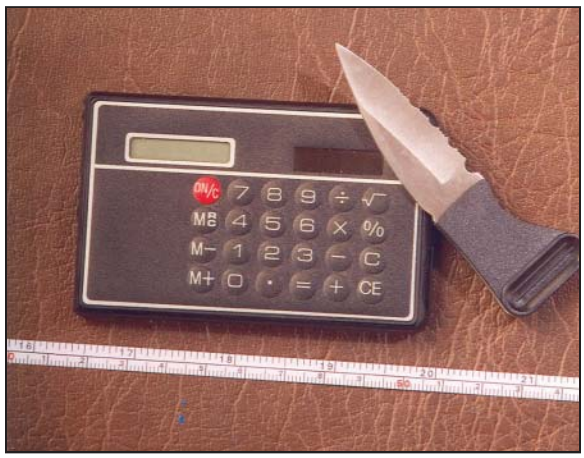
Schubert's *Criminal Law: The Basics* is an excellent book for introductory courses in criminal law or as an adjunct to an in-service investigative course. The author organizes the material in a way that officers can see the interconnectedness of their actions from the outset of an investigation to the consequences of those actions during prosecution.

Reviewed by
Captain Jon M. Shane, Ret.
Newark, New Jersey, Police Department

Unusual Weapon

Pocket Calculator

Law enforcement should be aware that offenders may use this unusual weapon, which looks like a pocket calculator. Instead, this object conceals a knife, posing a serious, unexpected threat to law enforcement officers.



Submitted by John F. Brannigan, a retired law enforcement officer and weapons concealment instructor.

Hazardous Devices School

By DAVID K. JERNIGAN, M.S.

A village awakens to shaking windows and the thunder of explosives detonating in the distance. Human forms dressed in protective life-support systems move about with high-tech diagnostic gear and weapons. Robotic platforms move in and out of buildings, scanning potentially dangerous items and destroying them with pinpoint accuracy.

While this scenario may sound like a scene from a science fiction movie or the events in a war-torn area of the world, it describes day-to-day reality in a training facility at Redstone Arsenal, Alabama. The Hazardous Devices School (HDS), a joint effort between the FBI and the U.S. Army, represents the government's only civilian bomb school. During the last 35 years, it has trained over 18,000 bomb technicians on the techniques and procedures for disposing of hazardous devices, including WMD. Today, over 2,700 active technicians from local, state, federal, and U.S. territorial agencies represent 459 nationally accredited bomb squads.

EVENTFUL HISTORY

1970s and 1980s

The idea for HDS emerged in 1970. In those days, bomb-disposal work was relegated to a few large cities, including New

York, Miami, and Los Angeles. Bomb squads consisted of former military explosive ordnance disposal (EOD) soldiers who went into the public safety field upon separation from the service. Outside of these few cities, the responsibility for providing bomb-squad response for the rest of the United States fell on active-duty EOD units, primarily from the Army, which found its resources strained by the war in Vietnam and increasing terrorist bombings across the country.

The Law Enforcement Assistance Administration (LEAA) began funding civilian bomb-squad training. Additionally, the International Association of Chiefs of Police (IACP) formed the National Bomb Data Center, which administered the program. Subsequently, IACP asked the Army to create a plan to train these civilian bomb squads. This task fell to the Missile and Munitions Center and School at Redstone Arsenal. January 1971 saw the first 3-week Basic Course conducted.

During this time, the FBI's Bomb Data Center (BDC) had been publishing bulletins and summaries of bomb incidents; the National Bomb Data Center continued its own publications until it closed in 1975. This brought a consolidation of the efforts of both centers. In 1981, Congress officially made BDC responsible for both the cost and administration of the HDS program after depletion of the LEAA funding.

> ***"...HDS consists of a strong, effective partnership between the FBI...and the U.S. Army...."***

Special Agent Jernigan, of the FBI's Critical Incident Response Group, is the program administrator of the Hazardous Devices School.

In 1983, HDS added the 1-week Refresher Course to its program to allow graduates of the Basic Course to return to the classroom and range to sharpen their skills at bomb-disposal work and to observe changes in procedures and equipment. Later that year, HDS extended the Basic Course to 4 weeks. By this time, bomb-suit technology had substantially improved and the apparel began to serve an important role in training. Also, this period saw advancements in portable X-ray systems, disruptors, and robotics. And, upon its development, the total-containment vessel became part of the HDS curriculum.

1990s to Present

In the mid 1990s, a budget increase allowed for expansion of courses, personnel, and equipment. The added frequency of training resulted in more bomb technicians working in the field.

The late 1990s saw HDS aggressively respond to terrorist-device construction when it added the Weapons of Mass Destruction Bomb Technician Emergency Action Course as a one-time project to train every civilian bomb technician in the United States to deal with these weapons. Later, HDS included this material in its Basic Course, extending it to 5 weeks. An Executive Management Course added later that year has provided law enforcement command-staff executives with a better understanding of bomb squad operations and responsibilities. HDS also added a Robotics Course—the only one of its kind in the United States.

During this time, the newly formed National Bomb Squad Commanders Advisory Board

ratified certification requirements for bomb technicians and accreditation standards for bomb squads. It gave HDS the responsibility for certifying technicians and set the time limit at 3 years for them to return to the school for recertification.

In 2004, HDS moved into its new training facility. The following year, it extended the Basic Course to 6 weeks with the addition of the 1-week Robotics Course to help address the remote attack of hazardous devices.

Today, HDS consists of a strong, effective partnership between the FBI, which administers and funds the program, and the U.S. Army Ordnance Munitions and Electronics Maintenance School, which operates and provides instruction at the facility. The school's operations, including its administrative and oversight functions, are centralized in Redstone Arsenal. Its courses include training on all of the equipment the FBI has provided to bomb squads for WMD response. In addition, HDS gives state-of-the-art counterterrorism training to prepare students for the possibility of suicide bombers; large, vehicle-borne improvised explosive devices (IEDs) or homemade bombs; and hazardous devices with WMD components.

STATE-OF-THE-ART FACILITY

On September 13, 2004, the FBI unveiled the new $25 million HDS training facility. For construction of classrooms and training facilities, the Army added 295 acres to the 160-acre location of the HDS demolition ranges. The new complex includes three administrative buildings and 14 villages that have every type of building and amenity to allow for a realistic training environment. This modern facility includes space for robot operations and advanced bomb-response vehicle platforms. Its designers modeled it after the only other such facility of its kind worldwide—the British military's Felix Center in the United Kingdom.

The main administrative building consists of five classrooms, an X-ray laboratory, a dining room, FBI and Army offices, practical-problem laboratories, a conference room, and an auditorium with seating for 140. The facility complex also includes a student-deployment building capable of storing bomb squad equipment and response vehicles, a robot maintenance shop, a robot obstacle course, and a computer-simulation laboratory. An instructor-support building includes a specialty vehicle bay, device shop, secure storage facility, range safety office, and supply room.

In concept, the practical-problem village mirrors the FBI Academy's Hogan's Alley, a mock town that allows for a realistic training environment where students maneuver around and through alleys, doors, storefront businesses, stairs, sidewalks, parking lots, and residences to collect evidence, conduct investigations, and interview witnesses. However, unlike Hogan's Alley, which partially includes office space, the HDS village only serves training purposes. Closed-circuit television allows range safety officers to oversee all activity. As a "live fire" area, access to the village stays under tight control.

The construction of the village consists mainly of concrete that provides backstopping support for projectiles and

water-based, high-speed explosive tools that generate high-velocity cutting actions. These tools assist in the remote disruption (or opening) of suspicious packages or confirmed IEDs. This unique design provides a durable facility for current and future training missions. The outside facades of the buildings take on the character of various urban, suburban, and rural structures that students may encounter on the job.

The village consists of commercial areas, transportation hubs, strip malls, urban and suburban neighborhoods, municipal areas, farms, utilities, and primitive lodging. Some examples of its buildings include an airline terminal, a church, stores, a three-story apartment building with parking deck, a bank, a movie theater, a high school, a firehouse, a barn, a gas station, an oil-storage facility with pipeline, and an electric-power tower. Newspaper stands, playground equipment, vending machines, bicycle racks, trash cans, and an assortment of vehicles—including automobiles, trucks, tractors, vans, and semitrailers—comprise some of its props. A system of roads, complete with curbs, gutters, street signs, and intersections, interconnects all areas. Inside the buildings, students will notice different types of doors, multiple room sizes, stairways, mock kitchens and bathrooms, wall lockers, closets, and furnished rooms; this provides challenging obstacles during indoor response operations.

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Overall, the new HDS village affords students the opportunity to train in lifelike surroundings. For instance, they will transverse realistic distances in a bomb suit, conduct arrival drills in bomb trucks, and perform perimeter safety inspections. Students then can apply lessons learned to actual bomb squad responses in the future.

STUDENT SELECTION

HDS selects students through FBI offices that have liaison with local agencies featuring newly approved or accredited bomb squads. The school only takes individuals sponsored by their organizations. There is no tuition for any HDS course. And, the FBI provides reimbursement for travel and per diem costs pertaining to select courses.

CONCLUSION

As it has for 35 years, the Hazardous Devices School continues to provide first responders with the necessary instruction to counter criminal and terrorist bombers. The new facility offers realistic, superior training for students. Mistakes made and learned from in this lifelike environment will result in safer operations in the field when real situations arise.

Graduates will find themselves ready to face today's uncertain world. HDS strives to ensure that personnel from various agencies successfully will address not only today's challenges but tomorrow's as well. ✦

ViCAP Alert

Release of ViCAP's "New" Sexual Assault Software

The FBI's Critical Incident Response Group's (CIRG) Violent Criminal Apprehension Program (ViCAP) is a nationwide data information center that collects, collates, and analyzes crimes of violence. Cases submitted to ViCAP are compared with all cases in ViCAP's database to identify similar ones. The database, in existence since 1985, currently contains in excess of 168,000 cases of homicide, sexual assault, missing persons, and unidentified death.[1]

Currently, ViCAP has more than 18 crime analysts, along with program management personnel, instructional technology (IT) specialists, over 900 law enforcement agency clients throughout the United States, and a decentralized database management system all working together to solve violent crimes. Crime data is entered in a law enforcement organization's ViCAP client workstation at the user end and is provided in electronic format via their Law Enforcement Online (LEO) connection to CIRG. Alternatively, agencies can mail a media disk or hard copy of the data to ViCAP for entry in the system. The crime analysts collect all data and compare, analyze, link, and help solve crimes using the tools offered by ViCAP. However, due to the growth of the program, the current computer system and mode of operation has become too costly to operate due to the original system requirements and software licensing costs.

Creation of a Web-based Application

The FBI's Criminal Justice Information Services (CJIS) Division, Information Technology Operations Division (ITOD), and ViCAP have developed a short-term plan. The ITOD IT staff is working on a new design of the ViCAP system to deploy in fiscal year 2006. ViCAP is developing applications to enable the current client server-based application to transition to a more robust and user-friendly Web-based one. The updated system will eliminate the need for many of the system licenses required under the current design. Also, it will take advantage of the LEO system capabilities and allow local and state users to utilize their own suite of computers for data entry. These efforts will help save significant amounts of money once deployed. Further, users will be able to search on any field or combination of fields across the entire ViCAP database. Other advantages of a Web-based application include—

- a centralized database;
- instantaneous access to the database;
- no importing and exporting;
- easier maintenance;
- servers and a database in one location;
- no distribution of software to agencies; and
- structured and full-text searches.

Since July 1, 2005, ViCAP case data can be accepted only via LEO e-mail through portable storage media (e.g., CD-ROM, floppy diskette) or a hard copy. The LEO network is a secure means by which *all* state and local law enforcement agencies can share information with the FBI (and each other) via the Internet at no cost.

A New Component

ViCAP recently developed a comprehensive Sexual Assault Report form and designed, created, and implemented a corresponding application to work in conjunction with both the ViCAP Client Server and Client Server applications.[2] As a result of successful beta testing, a limited release of ViCAP Sexual Assault Version 3.0 software occurred on November 11, 2005, via ViCAP's sub-SIG (Special Interest Group) on the FBI's LEO. This sub-SIG, "The ViCAP Law Enforcement Administrators (LEA) Area" is restricted for use only by approved ViCAP LEAs, the primary person responsible for the day-to-day operation and administration of the ViCAP system within a law enforcement agency.[3] The ViCAP 3.1 features the new sexual assault component, so it is even more crucial that law enforcement-sensitive data does not travel across the Internet. Therefore, ViCAP will deploy the 3.1 version via the secure LEO Web site, which allows for the additional security features of:

- verifying that all users are entitled to be on LEO and are law enforcement personnel;
- ensuring that LEO issues all accounts and that users employ complicated passwords;
- using VPN technology, which allows users to enter LEO encrypted through the Internet from any location; and
- adding another form of security by using SIGs.

Releasing the Sexual Assault Version 3.1 through LEO provides ViCAP with an opportunity to begin instituting the necessary minimum administrative and technical requirements agencies need to successfully convert from their existing standalone systems to the ViCAP Web. This transition is scheduled for the second half of fiscal year 2006.

System Requirements

Minimum system requirements needed to operate the current version of ViCAP software include

- Pentium chip with 100 MHZ speed;
- Pentium 3;
- 128 MB of RAM;
- 17" monitor with XVGA capability;
- Windows 95 or higher;
- 1024 X 768 resolution;
- CD ROM;
- SQL Anywhere, Version 5.5, by Sybase, except for the free, stand-alone install that ViCAP provides; and
- 40 MB of hard drive space (40 MB is required for ViCAP installation only, additional space will be necessary as the database grows and imaging features are added. Any recently purchased computer will exceed the minimally acceptable requirements.).

Note: Agencies that have signed an MOU with ViCAP and currently operate ViCAP software should ensure that they are running ViCAP version 2.3 or higher. Agencies that require additional information concerning system requirements should contact ViCAP Technical Project Manager Anthony Gallo at 703-632-4184 or by e-mail at apgallo@leo.gov.

Due to the size of the download, approved LEAs should obtain broadband Internet access prior to initiating a download. A CD will be available for LEAs who do not have broadband access or are not interested in participating in the ViCAP Web but want to obtain Version 3.1 software. ViCAP LEAs should complete the ViCAP Sexual Assault Version 3.0 Download Request form and send it directly to the ViCAP administrative

program manager, Special Agent Gary Cramer, via email at *gcramer@leo.gov*. The ViCAP unit chief, system administrator, and information security officer will determine who receives permission to download the file. Once approval is granted, ViCAP's LEO SIG moderators will then extend ViCAP SIG and sub-SIG access to the download site.

The FBI provides the free ViCAP software to any law enforcement agency that has entered into a formal memorandum of understanding (MOU) with ViCAP. Many large and small departments nationwide have embraced the program. Agencies that would like to enter into an MOU with ViCAP are encouraged to call 703-632-4254 and ask for the ViCAP regional program manager assigned to their geographical location.

For agencies currently using ViCAP 2.33 or an earlier version, the major enhancement in the new edition is the inclusion of several screens of sexual assault data. The installation includes a migration utility that makes changing 2.3 data to ViCAP 3.1 nearly effortless. Any agency that currently does not have ViCAP (any version) should go to the download area to get ViCAP 3.1. Agencies running a version prior to 2.33 should contact Randy Avis at 703-632-4176 or by e-mail at *ravis@leo.gov* for instructions on upgrading their database. A number of technical upgrades essential to continued successful operation are available. ✦

Endnotes

[1] For more information on the FBI's ViCAP program, see Eric W. Witzig, "The New ViCAP: More User-Friendly and Used by More Agencies," *FBI Law Enforcement Bulletin*, June 2003, 1-7.

[2] ViCAP data currently reside on a Sybase Adaptive Server Small Business Edition (12.5) database, and the application runs on Windows 95, 98, NT, 2000, and XP workstations connected to a server.

[3] Only LEAs who have entered into and signed a formal memorandum of understanding (MOU) with ViCAP, actively participate in the program, and have submitted the required ViCAP Sexual Assault Version 3.0 Download Request Form for approval will be granted access to this site. The form can be accessed via LEO at ViCAP's open SIG area. Active participation is defined as the routine submission of cases for inclusion into the national ViCAP database.

Wanted: Photographs

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

We can use color prints, digital photographs, and slides. It is our policy to credit photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

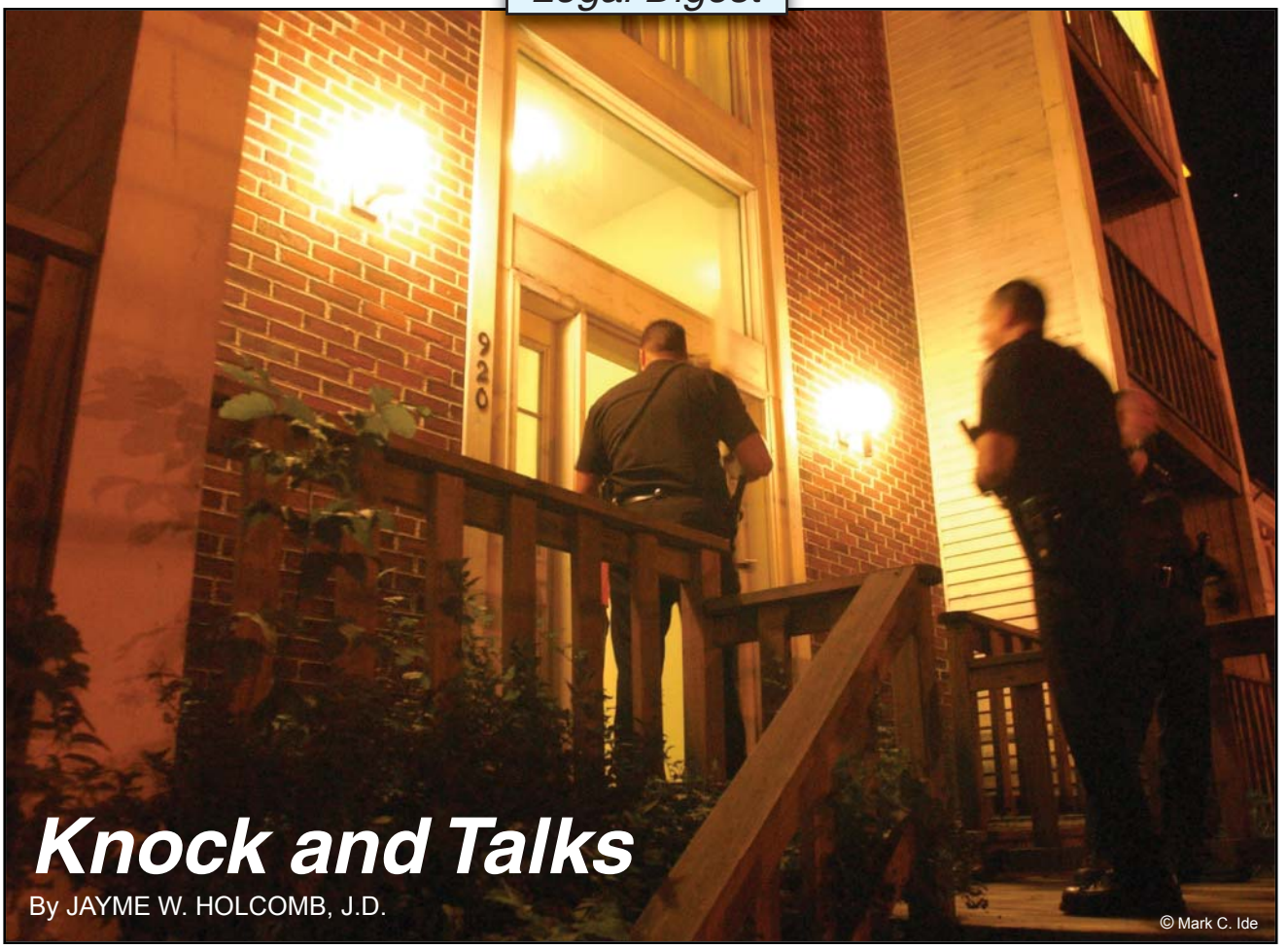
Art Director
FBI Law Enforcement Bulletin, FBI Academy,
Madison Building,
Room 201, Quantico,
VA 22135.

Sexual Offenses

The National Institute of Justice (NIJ) presents *Sexual Assault on Campus: What Colleges and Universities Are Doing About It*. Colleges and universities are not always the safe havens they are thought to be; enrolled women are at higher risk for sexual assault than females not attending college. Yet, many rapes and attempted rapes go unreported, perhaps, because for the majority of these crimes, victim and assailant are acquainted. Schools vary widely in how they comply with federal requirements to report and respond to sexual victimization. These are among the findings from the first major survey of national colleges and universities to inquire about sexual assault on campus and how schools are reporting and handling the problem. Many schools need guidance on how to comply with federal requirements to disclose security procedures, report crime data, and ensure victims' rights. Promising practices in prevention, policy, victim support services, and other areas are discussed. This report is available online at *http://www.ncjrs.org/pdffiles1/nij/205521.pdf*.

School Safety

As part of a project funded by the National Institute of Justice (NIJ), the International Association of Chiefs of Police (IACP) has published a guide to digital imaging titled *Digital Imaging for Safe Schools: A Public Safety Response to Critical Incidents*. The IACP partnered with Arlington and Fairfax counties in Virginia in a project to employ digital images taken in schools as the foundation for constructing virtual classrooms to be used during a critical incident. With the photos compiled from each school, first responders arriving on scene have access to school maps and floor plans through either the Internet or a CD-ROM. They can then use the 360-degree images to quickly ascertain trouble spots and develop a tactical plan even before entering the building. The result of this partnership is a how-to resource guide for public safety practitioners and school administrators to use in developing their own response plans. More information and a version of the guide are available at *http://www.theiacp.org/research/RCDTechCuttingEdge.html*.



Knock and Talks

By JAYME W. HOLCOMB, J.D.

Two law enforcement officers conducting an investigation decide they will walk up to the door of a house, knock on the door, and ask the occupant to speak with them. The officers do not have an arrest warrant for anyone at the residence. The officers do not have a search warrant to search the home. The officers do not have reasonable suspicion or probable cause to believe that there is either contraband or a suspect in the dwelling. Can the officers lawfully carry out their plan to walk up to the house, knock on the door, and ask whether the resident will talk with them?

The technique the officers seek to employ in the scenario is commonly known as a "knock and talk." Courts have described the knock and talk technique as "a noncustodial procedure where the officer identifies himself and asks to talk to the home occupant and then eventually, requests permission to search the residence."[1] The knock and talk technique is essentially a form of a consensual encounter that occurs at a residence.[2] One court examining a knock and talk case noted that "[t]he utility of this procedure is obvious: It avoids the necessity of securing a search warrant from a judicial officer. While the potential for abuse is apparent, courts and commentators appear to concur the practice can be lawful."[3] This article explores the legal issues associated with the use of the knock and talk technique. Specifically, the article addresses the following: the general rule; getting to the location; the encounter, including the knock and the talk; and issues that can

arise during the course of the knock and talk.

The General Rule

The use of the knock and talk technique raises a number of Fourth Amendment issues. The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause...."[4] The U.S. Supreme Court has further stated, "It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable."[5] The general rule under federal law is that the knock and talk is a lawful investigative technique that does not violate the Fourth Amendment.[6] Many state courts have taken the same position.[7] Citing both federal and state case law, the Supreme Court of Wyoming stated that "[t]he prevailing rule is that, absent a clear expression by the owner to the contrary, police officers are permitted to approach a dwelling and seek permission to question an occupant in the course of their official business."[8] Federal law does not require officers to have reasonable suspicion or probable cause to knock on the door of a residence[9] and talk to an individual.[10]

The Walk

One of the first legal issues presented by the knock and talk technique is whether it is lawful for law enforcement officers to walk up to a domicile and knock on the door without any kind of warrant. This is a particularly significant issue because, as noted by the U.S. Supreme Court, "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."[11]

The most frequently referenced statement with regard to this issue comes from the U.S. Court of Appeals for the Ninth Circuit decision in *Davis v. United States,*[12] wherein the court stated that

> there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's "castle" with the honest intent of asking questions of the occupant thereof—whether the questioner be a pollster, a salesman, or an officer of the law.[13]

Exactly where an officer can walk to reach the domicile without violating the Fourth Amendment is a significant question. The U.S. Supreme Court has stated that the curtilage of a house is protected by the Fourth Amendment.[14] In *United States v. Dunn*,[15] the Supreme Court stated that four factors should be considered in determining the extent of the curtilage: "the proximity of the area claimed to be curtilage to the home,

"The general rule under federal law is that the knock and talk is a lawful investigative technique that does not violate the Fourth Amendment."

Ms. Holcomb serves as chief of the Legal Instruction Section, DEA Training Academy.

whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by."[16]

Under federal law, open fields are not curtilage, and, therefore, they are not protected by the Fourth Amendment. Accordingly, officers do not need a warrant to enter open fields under federal law.[17]

To use the knock and talk technique, officers frequently must walk along a driveway or sidewalk to reach a door upon which to knock. As one commentator noted "[W]hen the police come on to private property to conduct an investigation... and restrict their movements —to places visitors could be expected to go (e.g., walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment."[18] Where officers have conducted knock and talks by going to doors other than the front door, courts look to whether it is reasonable for the officers to believe that such a door is the primary entry or the officers, in good faith, moved away from the front door to another entryway to the home when trying to contact the occupants.[19]

In the case of *United States v. Hatfield*,[20] officers began an investigation after receiving a tip that Hatfield was growing marijuana behind his house. Upon arriving at the scene, one of the officers went to the front door of the home while the other stood on a parking pad at the side of the dwelling. The officer at the front door asked the occupant of the house for consent to search the property. The occupant refused to consent to a search. The officer who stood on the parking pad could see small structures in the backyard from the driveway that could have concealed marijuana.

> ***"Federal law does not require officers to have reasonable suspicion or probable cause to knock on the door of a residence and talk to an individual."***

The officers left the premises and called their supervisor. The supervisor arrived at the location, got out of his car, and walked down a county road alongside a fenced pasture to a point where he could see into the backyard. The supervisor believed that he could see marijuana plants in a chicken coop in the backyard. To confirm what he had seen, he walked back along the road, crossed into a pasture, and walked beside a fence to a point across from the chicken coop where he could look inside and confirm the sighting of the plants. The resident of the house, who by this time had come outside, was placed under arrest, and the officers obtained a search warrant. In analyzing the curtilage issue presented in the case, the U.S. Court of Appeals for the Tenth Circuit found that the observations made by the officer while standing on the parking pad were permissible because the driveway was open and accessible to the public. With regard to the observations made by the supervisor, the court found that the supervisor had remained in open fields while looking into the curtilage and observing the plants in the chicken coop. The court held that "police observation of a defendant's curtilage from a vantage point in the defendant's open field is not a search under the Fourth Amendment."[21]

The Encounter

The knock and talk is essentially a form of a consensual encounter.[22] As such, in *United States v. Adeyeye*,[23] the U.S. Court of Appeals for the Seventh Circuit stated that the relevant test "is an objective one and requires consideration of the totality of the circumstances."[24] Circumstances that

courts will consider in assessing whether a person would feel free to decline the officers' request or otherwise terminate the encounter include the location,[25] the knock,[26] the talk,[27] the time of day,[28] the duration,[29] the number of officers present,[30] whether the officers wore plain clothes,[31] the use of physical force,[32] the display of weapons,[33] and the situation of the occupant.[34]

In *United States v. Cormier*,[35] an officer determined that a guest with an extensive criminal history had registered at a motel in a traditionally high-crime area. Another police officer arrived at the motel to conduct a knock and talk interview with the identified motel room occupant. One of the officers went to the room and briefly knocked on the door. The room occupant answered the door, whereupon the police officer identified herself as an officer and asked if she might speak with him inside the motel room so that other motel guests would not hear their conversation. The officer was dressed in plainclothes and displayed her badge from a chain hanging around her neck. The officer found a gun in the motel room after the occupant consented to a search of the room and arrested the occupant for being a convicted felon in possession of a firearm. The U.S. Court of Appeals for the Ninth Circuit analyzed the actions undertaken by the officer in *Cormier* during the knock and talk and specifically noted that

> [h]ere, [the officer] knocked on the door for only a short period spanning seconds. In addition, [the officer] never announced that she was a police officer while knocking nor did she ever compel Cormier to open the door

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> under the badge of authority. Because there was no police demand to open the door..., and [the officer] was not unreasonably persistent in her attempt to obtain access to Cormier's motel room,...there is no evidence to indicate that the encounter was anything other than consensual. Therefore, no suspicion [would] need to be shown in order to justify the "knock and talk."[36]

As noted by one court: "[a] knock and talk is ordinarily consensual unless coercive circumstances, such as unreasonable persistence by the officers, turns the encounter into an investigatory stop."[37] Officers must have reasonable suspicion to believe that a crime either has been or is being committed if a knock and talk becomes an investigatory stop or probable cause if a knock and talk becomes an arrest.[38]

The Knock

The way in which officers knock on a door is a significant factor to consider in assessing whether the knock and talk is a consensual encounter or a seizure. The loudness, frequency, and repetitiveness of the knock will be examined by courts. For example, in the U.S. Court of Appeals for the Seventh Circuit case of *United States v. Jerez,*[39] the court held that evidence found in the defendant's hotel room should be suppressed because the manner in which officers conducted the knock and talk resulted in an investigative stop without the requisite reasonable suspicion.

In *Jerez,* officers in Milwaukee located a car with Florida license plates parked at a hotel in close proximity to both the airport and an interstate highway. The officers obtained a criminal history for the registered owner of the vehicle and determined that the person had a suspended driver's license and had previously been

arrested for smuggling contraband into a county jail. After leaving the area for a time, the officers returned to the hotel, noted that the car was no longer there, and set up surveillance to see if the car and driver would come back. The officers completed their shift without the car returning; however, one of the officers spotted it in the parking lot when he drove past the hotel on his way home from work.

Slightly after 11 p.m., both officers went to the room indicated by the hotel clerk as that of the car's driver. At that point, the officers knocked on the door for several minutes. No one responded to the initial knocking, so the officers took turns knocking for approximately 3 minutes. During the course of the knocking, one officer directed his voice toward the door and said, "Police. Open up the door. We'd like to talk with you."[40] While that officer continued to knock on the door, the other officer went to the room window and knocked on the window loudly enough for the first officer at the door to hear the knocking. After knocking on the window for 1½ to 2 minutes, the officer at the window testified that he heard movement in the room. After knocking on the window a few more times, the officer looked in the window, shined his flashlight inside, and saw the defendant move under the bedcovers. Shortly thereafter, the defendant came to the window and opened the drapes where he saw the officer standing. The officer was wearing a jacket with a police emblem.

> ***"The way in which officers knock on a door is a significant factor to consider in assessing whether the knock and talk is a consensual encounter or a seizure."***

The officer identified himself as a police officer and asked the defendant if he would open the door and talk. The defendant, clad only in his underwear, opened the door to speak with the officers. The officers asked if they could enter the room and talk with the defendant. The defendant agreed to let the officers enter the room. Once inside, the officers asked the second defendant to get out of bed. The officers obtained consent to search the room and found cocaine.

The defendants appealed the denial of their motion to suppress the cocaine. The appellate court reversed the district court's ruling and held that a Fourth Amendment seizure occurred in *Jerez*. The court noted that the district court failed to adequately address two important factors: "the place and the time of the encounter."[41] The court also discussed the amount and duration of the knocking undertaken by the officers, concluding

> [s]imply stated, this is a case in which the law enforcement officers refused to take "no" for an answer. Their actions, when objectively assessed, "convey[ed] a message that compliance with their requests [was] required." When [the defendant] finally opened the door to his motel room in his underwear, he was submitting to the [officers'] show of authority. We hold that the totality of the circumstances surrounding this encounter—the late hour of the episode, the three minutes of knocking on the door, the commands and requests to open the door, the one-and-a half to two minutes of knocking on the outside window, and the shining of the flashlight through the small opening in the window's drapes onto the face of [the defendant] as he lay in bed—makes clear that a seizure took place.[42]

The court further concluded that the officers did not have reasonable suspicion or probable cause to conduct a seizure.

Additionally, while consent to search, in some instances, may "be purged of the primary taint," in the *Jerez* case the court found the consent to the search was tainted because it occurred almost immediately after the unlawful seizure.[43]

The Talk

Just as the way in which the knock is conducted can create a Fourth Amendment seizure, what is said and how the officers talk during the course of a knock and talk are significant factors in the assessment of whether the knock and talk is a consensual encounter or a seizure. The content, tone, volume, and repetitiveness of what is said by officers will be carefully considered. For example, in *United States v. Pena-Sarabia,*[44] officers decided to conduct a knock and talk after learning, through the use of an informant, that the defendants had cocaine at their house. The officer conducting the knock and talk knocked on the door and asked the occupant of the house, "[c]an you come out to the front door, please?"[45] An individual inside the house opened the door. The officer showed the person her badge and asked to speak with her. The officer asked the individual if she could come inside the house. The person responded, "[c]ome on in," and the two officers entered the house. The officers were given permission to search the house. The officers found a gun and 2 kilograms of cocaine during the search.

The defendant argued in *Pena-Sarabia* in the district court that because the officer conducting the knock and talk commanded the defendant to go to the door of the house, thus rendering the defendant's consent to search involuntary. The


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district court stated that the four decisions cited in support of the defense argument stood "for the proposition that a defendant's acquiescence to the assertion of authority by police does not constitute consent for police to enter a residence"[46] and quickly distinguished the facts from those cases. Specifically, the judge stated,

> [The officer] did not command that the door be opened to allow police to enter the defendant's home. Instead, [the officer] asked the defendant to come to the door, even ending her request with "please." Upon the defendant opening the door, the police asked if they could enter the house and the defendant said, "come on in." Consent to search was given by the defendant shortly thereafter. Unlike the cases cited by defense counsel, the prosecution does not claim that the defendant's act of opening the door constituted consent for the police to enter or search the house. The fact that [the officer] asked the defendant to open the door does not make the defendant's subsequent consent to search involuntary. In fact, [the officer's] politeness weighs in favor of finding that the subsequent consent to search was voluntary.[47]

In cases where officers have ordered occupants to open the door, however, courts have found that "if an officer knocks and announces himself by saying 'Police. Open the door,' opening the door is neither consensual nor voluntary."[48] As illustrated by the district court's analysis of the consent search in *Pena-Sarabia*, the specific facts surrounding the knock and talk encounter also can significantly impact other Fourth Amendment issues that arise during or subsequent to the encounter, such as whether the defendant consented to have officers either

enter the house or conduct a search of the house.

Other Issues Associated with Knock and Talks

The use of the knock and talk technique often gives rise to additional legal issues. These issues include, but are not limited to, open view, stop and frisk, consent, exigent circumstances, protective sweeps, and plain view. For example, in the U.S. Court of Appeals for the Eighth Circuit case *United States v. Peters,*[49] officers received information from an informant that an individual was selling drugs from a hotel room. The officers determined that there was an outstanding warrant for failure to appear for the individual renting the room. The officers went to the room and knocked on the door. The defendant opened the door and an officer immediately looked into the room and saw a scale, razor blade, and what he believed to be cocaine. The officers arrested the defendant, who argued that it was a violation of the Fourth Amendment for the officers to look into his room. The court found that "[w]hen an individual voluntarily opens the door of his or her place of residence in response to a simple knock, the individual is knowingly exposing to the public anything that can be seen through that open door and thus is not afforded fourth amendment protection."[50]

In contrast to the officer's actions in *Peters*, the U.S. Court of Appeals for the Ninth Circuit in *United States v. Washington*[51] was faced with a situation in which six officers went to a hotel room to conduct a knock and talk after receiving a tip that an individual was operating a methamphetamine laboratory there. After one of the officers knocked on the door, the defendant opened the door, walked into the hallway, and closed the door behind him. Shortly thereafter, the officers realized that someone else was in the hotel room, so they ordered that individual out of the room and directed that the room door be left open. The officers also could then see inside the room. In addition to finding the defendant's consent to search the room involuntary, the court stated,

> ***Officers must have reasonable suspicion to believe that a crime either has been or is being committed if a knock and talk becomes an investigatory stop....***

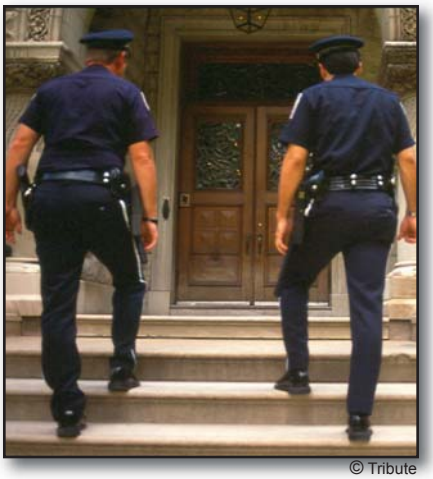
> Whether a hotel room door is opened in response to a threat or command or is kept open against the wishes of the room's occupant, police officers obtain visual access to the room by using their power to require that the door be open. Both scenarios result in a search within the meaning of the Fourth Amendment, and both scenarios require consent, a warrant, or probable cause plus an exception to the warrant requirement. Here the officers possessed none of these legal grounds for gaining visual access to [the defendant's] room. Thus, the officers violated [the defendant's] Fourth Amendment rights when they gained visual access to his room by refusing to let [the second occupant] close its door.[52]

Officers will frequently have no probable cause or reasonable suspicion to believe that there is any criminal activity occurring when they conduct a knock and talk. In *United States v. Johnson,*[53] four officers decided to conduct a knock and talk on New Year's Eve after receiving a report of possible drug activity at an apartment. At the moment one of the officers was about to knock on the door, an individual opened it and stepped out of the apartment. The officer at the door told one of the other officers to take control of the person. Even

though the second officer did not have any reason to believe the individual had a weapon, the second officer attempted to frisk the person. After the individual indicated he did not wish to be frisked and tried to leave, other officers struggled with him and eventually recovered a handgun and cocaine. In analyzing the actions taken by the officers, the U.S. Court of Appeals for the Seventh Circuit stated that

> [w]e do not hold today that the "knock and talk" technique is automatically unconstitutional. Nevertheless, just as in *Knowles*, the police themselves must recognize the inherent limits in this more informal way of proceeding. Without reasonable suspicion, they cannot detain a person just because that individual walks out of an apartment on New Year's Eve, even if some unspecified individual (whose reliability is utterly untested, *cf. Illinois v. Gates,* 462 U.S. 213, 103 S. Ct. 2317, 76 L.E.2d 527 (1983)), thinks something fishy is sometimes going on there. The district court's findings of historical fact here confirm that nothing more than this supported their detention of [the defendant] that evening.[54]

Significant issues also can arise in investigations where officers seek consent to enter a premises or seek consent to search a location during the course of a knock and talk. While a complete discussion of consent searches is beyond the scope of this article, officers must remember that the person consenting to the search must have the authority to consent to the search[55] and must voluntarily give consent.[56] Because the government bears the burden of proving the voluntariness of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the consent,[57] officers need to be extremely familiar with how to properly conduct consent searches if such a warrantless search is to be conducted after a knock and talk.[58] Additionally, while beyond the scope of what is addressed in this article, officers should familiarize themselves with the law regarding exigent circumstances[59] and protective sweeps[60] in their respective jurisdictions as those issues also may arise in investigations in which the knock and talk technique[61] is used.

Conclusion

This article has explored a number of legal issues associated with the "knock and talk" technique. While the general rule under federal law is that the use of the technique is lawful, it is useful to consider the following discussion of the technique by a concurring judge in the *Johnson* case:

> The police had no warrant when they went to apartment 7. They were taking a shortcut in the hope that something good (from a drug-busting perspective) would turn up. A little more work would have given the police the probable cause they needed to secure a warrant, but they didn't want to take the time to do something more. They wanted to go directly to apartment 7 and see what, if anything, was up.... As I see it, the seeds of this bad search were sown when the police decided to use the "knock and talk" technique. And that process—which sounds more like a friendly visit to sell tickets to a police picnic than a perilous visit to a suspected drug hive—is fraught with danger, not to mention constitutional problems....[62]

Officers contemplating whether to conduct a knock and talk are reminded that, whenever possible, it is always best to obtain a search or

arrest warrant in a case. While the knock and talk is generally viewed as a consensual encounter requiring no reasonable suspicion or probable cause, officers must understand the full spectrum of legal issues associated with using the knock and talk technique. Additionally, officers must keep in mind that if reasonable suspicion or probable cause does not develop during the course of a lawful knock and talk and they do not have a warrant or have circumstances that meet the criteria for a valid exception to the search warrant requirement, they must terminate the knock and talk and consider other investigative avenues. ✦

Endnotes

[1] *United States v. Cruz,* 838 F. Supp. 535, 537 (D. Utah 1993).

[2] *See, e.g., United States v. Spence,* 397 F.3d 1280 (10th Cir. 2005).

[3] *United States v. Powell,* 929 F. Supp. 231, 232 n.3 (S.D. W.Va. 1996).

[4] U.S. Const. Amend. IV.

[5] *United States v. Payton,* 445 U.S. 573, 586 (1980).

[6] *See United States v. Thomas,* 430 F.3d 274, 277 (6th Cir. 2005) ("A number of courts including this one, have recognized 'knock and talk' consensual encounters as a legitimate investigative technique at the home of a suspect or an individual with information about an investigation.") (*citing United States v. Chambers*, 395 F.3d 563, 568 n.2 (6th Cir. 2005); *United States v. Gould,* 364 F.3d 578, 590 (5th Cir. 2004); *Ewolski v. City of Brunswick*, 287 F.3d 492, 504-05 (6th Cir. 2002); *Nash v. United States,* 117 Fed.Appx. 992, 2004 WL 2912796, at *1 (6th Cir. Dec. 16, 2004); *United States v. Jones,* 239 F.3d 716, 720 (5th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103, 1109 (9th Cir. 2000); *United States v. Jerez,* 108 F.3d 684, 691-92 (7th Cir. 1997); *United States v. Titemore,* 335 F. Supp. 502, 505 (D. Vt. 2004)).

[7] *See, e.g., State v. Mann,* 857 A.2d 329 (Conn. 2004); *State v. Reinier,* 628 N.W.2d 460 (Iowa, 2001) (consent found invalid in the case but general use of knock and talk not found unlawful); *Brown v. State,* 835 A.2d 1208 (Md. 2003); *State v. Johnston,* 839 A.2d 830 (N.H. 2004); *State v. Smith,* 488 S.E.2d 210 (N.C. 1997); *Gompf v. State,* 120 P.3d 980 (Wyo. 2005). Courts in at least two states have found that officers must inform individuals of their right to refuse consent to search during the course of a knock and talk before entering a home. *See State v. Ferrier,* 960 P.2d 927 (Wash. 1998) (must inform of right to refuse, revoke, and limit scope of consent); *State v. Brown,* 156 S.W.3d 722, 726 (Ark. 2004).

> ***Officers contemplating whether to conduct a knock and talk are reminded that, whenever possible, it is always best to obtain a search or arrest warrant in a case.***

[8] *Gompf v. State,* 120 P.3d at 986.

[9] The knock and talk technique also is frequently used at motel or hotel rooms. It is well settled that "[t]he same protection against unreasonable searches and seizures extends to a person's privacy in temporary dwelling places, such as hotel or motel rooms." *United States v. Conner,* 127 F.3d 663, 666 (8th Cir. 1997).

[10] *See, e.g., United States v. Cephas,* 254 F.3d 488, 493 (4th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103, 1109 (9th Cir. 2000); *United States v. Cruz-Roman*, 312 F. Supp. 2d 1355, 1361-62 (W.D. Wash. 2004); *United States v. Gray,* 302 F. Supp. 2d 646, 649 n.1 (S.D. W.Va. 2004).

[11] *United States v. Payton,* 445 U.S. 573*,* 589-90 (1980).

[12] 327 F.2d 301 (9th Cir. 1964).

[13] *Id.* at 303.

[14] *United States v. Dunn,* 480 U.S. 294 (1987).

[15] *Id.*

[16] *Id.* at 301.

[17] *Id.* at 303-05. Officers should be aware that state law may be more restrictive than federal law regarding the issues of law enforcement officers entering open fields. *See, e.g., State v. Bullock,* 901 P.2d 61, 75-76 (Mont. 1995). For an excellent discussion of the concept of curtilage and associated issues, see the article by Edward M. Hendrie, "Curtilage—The Expectation of Privacy in the Yard," *FBI Law Enforcement Bulletin*, April 1998, 25.

[18] Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 2.3(f), at 506-08 (3d ed. 1996). *See also United States v. Titemore,* 437 F.3d 251 (2d Cir. 2006); *United States v. Carter,* 360 F.3d 1235, 1239 (10th Cir. 2004); *United States v. Hatfield,* 333 F.3d 1189, 1194 (10th Cir. 2003); *United States v. Hammett*, 236 F.3d 1054, 1059-60 (9th Cir. 2001); *United States v. Taylor,* 90 F.3d 903, 908-09 (4th Cir. 1996). This article focuses on officer observations made from a position in which the officer is lawfully entitled to be during the course of the knock and talk. A complete discussion of the issues related to officers looking into homes is beyond the scope of this article.

[19] *See United States v. Titemore,* 437 F.3d 251, 260 (2d Cir. 2006) ("[W]e join our sister circuits in holding that when a police officer enters private property for a legitimate law enforcement purpose and embarks only upon places visitors could be expected to go, 'observations made from such vantage points are not covered by the Fourth Amendment.'") (*citing United States v. Daoust,* 916 F.2d 757, 758 (1st Cir. 1990); *United States v. Raines,* 243 F.3d 419, 420-21 (8th Cir. 2001); *United States v. Thomas*, 120 F.3d 564, 571-72

(5th Cir. 1997); *United States v. Taylor*, 90 F.3d 903, 908-09 (4th Cir. 1996); *United States v. Garcia*, 997 F.2d 1273, 1279 (9th Cir. 1993)); *United States v. Hammett*, 236 F.3d 1054, 1060 (9th Cir. 2001); *United States v. Cota-Lopez,* 358 F. Supp. 2d 579, 590-91 (W.D. Tex. 2002) (approaching house via driveway and through garage found appropriate where there was no sidewalk or direct path to the front door).

[20] 333 F.3d 1189 (10th Cir. 2003).

[21] *Id.* at 1198.

[22] *See, e.g., United States v. Thomas,* 430 F.3d 274 (6th Cir. 2005); *United States v. Spence,* 397 F.3d 1280 (10th Cir. 2005); *United States v. Adeyeye*, 359 F.3d 457, 461 (7th Cir. 2004); *United States v. Cormier,* 220 F.3d 1103, 1109-10 (9th Cir. 2000); *United States v. Jerez,* 108 F.3d 684, 689-90 (7th Cir. 1997); *United States v. Velazco-Durazo,* 372 F. Supp. 2d 520, 525-26 (D. Ariz. 2005); *United States v. Ray,* 199 F. Supp. 2d 1104 (D. Kan. 2002); *United States v. Woodard,* 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

[23] 359 F.3d 457 (7th Cir. 2004).

[24] *Id.* at 462.

[25] *See, e.g., United States v. Spence,* 397 F.3d 1280 (10th Cir. 2005); *United States v. Washington,* 387 F.3d 1060 (9th Cir. 2004); *United States v. Jerez,* 108 F.3d 684 (7th Cir. 1997); *United States v. Ray,* 199 F. Supp. 2d 1104 (D. Kan. 2002).

[26] *See, e.g., United States v. Adeyeye*, 359 F.3d 457 (7th Cir. 2004); *United States v. Cephas,* 254 F.3d 488 (4th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner,* 127 F.3d 663 (8th Cir. 1997); *United States v. Jerez,* 108 F.3d 684 (7th Cir. 1997); *United States v. Velazco-Durazo,* 372 F. Supp. 2d 520, 525 (D. Ariz. 2005); *United States v. Thomas,* 430 F.3d 274, 278 (6th Cir. 2005) ("[the defendant] responded to a simple knock and request, not an order to emerge or the threat of firearms."); *United States v. Woodard,* 873 F. Supp. 535 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

[27] *See, e.g., United States v. Adeyeye*, 359 F.3d 457 (7th Cir. 2004); *United States v. Saari*, 272 F.3d 804 (6th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner,* 127 F.3d 663 (8th Cir. 1997); *United States v. Jerez,* 108 F.3d 684 (7th Cir. 1997); *United States v. Tobin*, 923 F.2d 1506 (11th Cir. 1991); *United States v. Edmondson,* 791 F.2d 1512 (11th Cir. 1986); *United States v. Velazco-Durazo,* 372 F. Supp. 2d 520, 525 (D. Ariz. 2005); *United States v. Thomas,* 430 F.3d 274 (6th Cir. 2005).

[28] *See, e.g., United States v. Adeyeye*, 359 F.3d 457 (7th Cir. 2004); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Jerez,* 108 F.3d 684 (7th Cir. 1997); *United States v. Velazco-Durazo,* 372 F. Supp. 2d 520, 525 (D. Ariz. 2005); *United States v. Ray,* 199 F. Supp. 2d 1104 (D. Kan. 2002); *United States v. Ponce Munoz,* 150 F. Supp. 2d 1125 (D. Kan. 2001) (no evidence regarding impact of late hour of encounter on defendant).

[29] *See, e.g., United States v. Ray,* 199 F. Supp. 2d 1104 (D. Kan. 2002).

[30] *See, e.g., United States v. Washington,* 387 F.3d 1060 (9th Cir. 2004); *United States v. Saari*, 272 F.3d 804 (6th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner,* 127 F.3d 663 (8th Cir. 1997).

[31] *See, e.g., United States v. Washington,* 387 F.3d 1060 (9th Cir. 2004); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner,* 127 F.3d 663 (8th Cir. 1997); *United States v. Woodard,* 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

[32] *See, e.g., United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Gray,* 302 F. Supp. 2d 646 (S.D. W.Va. 2004) (officer touched defendant's chest); *United States v. Woodard,* 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

[33] *See, e.g., United States v. Thomas,* 430 F.3d 274 (6th Cir. 2005) (officers did not threaten the defendant with firearms); *United States v. Washington,* 387 F.3d 1060 (9th Cir. 2004); *United States v. Saari*, 272 F.3d 804 (6th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Tobin*, 923 F.2d 1506 (11th Cir. 1991); *United States v. Woodard,* 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

[34] *United States v. Jerez,* 108 F.3d 684 (7th Cir. 1993).

[35] 220 F.3d 1103 (9th Cir. 2000).

[36] *Id.* at 1109 (citations omitted).

[37] *United States v. Ponce Munoz,* 150 F. Supp. 2d 1125, 1133 (D. Kan. 2001). In *United States v. Velazco-Durazo,* 372 F. Supp. 2d 520, 525 (D. Ariz. 2005), the court stated: "[i]n *Cormier* the Ninth Circuit identified two sets of coercive circumstances that would transform a knock and talk into a seizure: (1) if the police compelled an occupant to open the door under the badge of authority and (2) if the police were unreasonably persistent in attempting to gain entry.... The court further noted that a nighttime encounter weighs in favor of a seizure" (citations omitted).

[38] *See, e.g., United States v. Jerez,* 108 F.3d 684, 693 (7th Cir. 1997); *United States v. Velazco-Durazo,* 372 F. Supp. 2d 520, 526 (D. Ariz. 2005). In *United States v. Thomas,* 430 F.3d 274, 275 (6th Cir. 2005), the court held that "a consensual encounter at the doorstep may evolve into a 'constructive entry' when the police, while not entering the house, deploy overbearing tactics that essentially force the individual out of the home," and further stated that "[t]he difference between the two–between a permissible consensual encounter and an impermissible constructive entry–turns on the show of force exhibited by the police."

[39] 108 F.3d 684 (7th Cir. 1997).

[40] *Id.* at 687.

[41] *Id.* at 690.

[42] *Id.* at 692 (citations omitted).

[43] *Id.* at 695.

[44] 172 F. Supp. 2d 1344 (D. Kan. 2001), *aff'd,* 297 F.3d 983 (10th Cir. 2002).

[45] 297 F.3d at 985.

[46] 172 F. Supp. 2d 1344, 1346.

[47] *Id.*

[48] *United States v. Cruz-Roman*, 312 F. Supp. 2d 1355, 1362 (W.D. Wash. 2004) (*citing United States v. Winsor,* 846 F.2d 1569, 1573 n.3 (9th Cir. 1988)).

[49] 912 F.2d 208 (8th Cir. 1990).

[50] *Id.* at 210.

[51] 387 F.3d 1060 (9th Cir. 2004).

[52] *Id.* at 1070-71.

[53] 170 F. 3d 708 (7th Cir. 1999).

[54] *Id.* at 720. *Cf. State v. Mann,* 857 A.2d 329 (Conn. 2004).

[55] *Georgia v. Randolph*, 126 S. Ct. 1515 (2006) (*citing Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990)). *See United States v. Bowden,* 380 F.3d 266 (6th Cir. 2004); *United States v. Corral,* 339 F. Supp. 2d 781 (W.D. Tex. 2004).

[56] *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

[57] *Bumper v. North Carolina,* 391 U.S. 543 (1968).

[58] The Maryland Court of Appeals has stated that: "[a]lthough the courts have generally sustained the 'knock and talk' procedure as a legitimate police technique, not amounting to an unconstitutional seizure, they have examined with caution the consents allegedly obtained by the police once they are permitted to enter the room. To the extent that the courts invalidate searches conducted as part of a 'knock and talk' procedure, it is usually upon a finding that the consent, actually given, was not voluntary." *Scott v. State,* 782 A.2d 862, 873 (Md. 2001).

[59] *See, e.g., United States v. Scroger,* 98 F.3d 1256 (10th Cir. 1996); *United States v. Torres,* 274 F. Supp. 2d 146 (D.R.I. 2003). For a discussion of issues related to exigent circumstances, see the article by Edward M. Hendrie, "Creating Exigent Circumstances," *FBI Law Enforcement Bulletin*, September 1996, p. 25.

[60] *See generally Maryland v. Buie,* 494 U.S. 325 (1990); *United States v. Mendez*, 431 F.3d 420 (5th Cir. 2005); *United States v. Gould*, 364 F.3d 578 (5th Cir. 2004); *United States v. Rucker*, 348 F. Supp. 2d 981 (S.D. Ind. 2004); *United States v. Groce*, 255 F. Supp. 2d (E.D. Wisc. 2003). For a review and discussion of issues related to protective sweeps, see the article by Thomas A. Colbridge, "Protective Sweeps," *FBI Law Enforcement Bulletin*, July 1998, p. 25.

[61] *See also* Morely Swingle & Kevin M. Zoellner, *"Knock and Talk" Consent Searches: If Called by a Panther Don't Anther*, 55 J. Mo. B. 25 (1999).

[62] *United States v. Johnson,* 170 F.3d 708, 721 (7th Cir. 1999) (Evans, concurring).

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

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The Bulletin Notes

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

Officer Keel

Officer Joseph Keel of the Wind River Police Department in Fort Washakie, Wyoming, responded to a house fire on an Indian Reservation. After learning from bystanders that a woman remained inside, he quickly began to look through windows until he saw her legs behind a door. Immediately, Officer Keel entered the residence to try to stir the victim, but had to retreat outside because of the heat and smoke. He had himself doused with water and again went into the building, but could not remove the woman without damaging her skin. He then left and returned with the help of a neighbor; together, they took her to safety. Officer Keel then remained at the scene to warn people to stay away from the house because of an attached gas line. As a result of Officer Keel's brave, selfless actions, the woman survived this terrible tragedy.

Sergeant Parks

Sergeant David Parks of the Lewis County, West Virginia, Sheriff's Office, while off duty visiting family, noticed thick black smoke bellowing from the second floor of a nearby residence. He ran into the back door of the house, calling for occupants and trying to determine if anyone was home. Sergeant Parks could not see because of the thick smoke, but, without regard for his own safety, he followed a male and a female voice up the stairs. Once at the top, he began to blindly crawl across the floor until he reached the leg of an elderly man. Sergeant Parks helped him downstairs and handed him over to a newly arrived neighbor, who carried him to safety. Sergeant Parks then found a towel, wet it, put it over his nose and mouth, and went back upstairs for the female victim. After he found her, he led her outside to safety by the hand. The selfless actions of Sergeant Parks saved the lives of these two people.

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