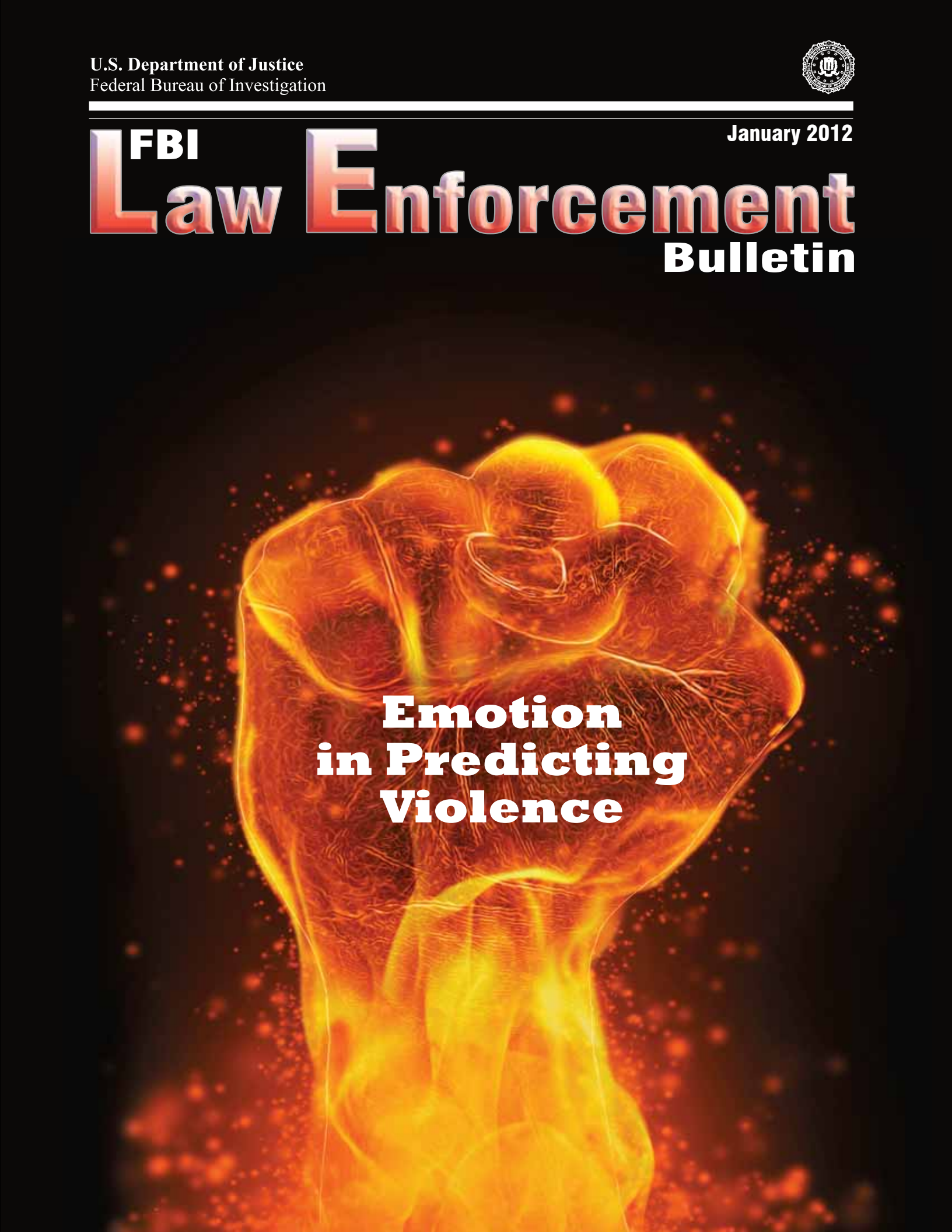
U.S. Department of Justice
Federal Bureau of Investigation

January 2012

FBI Law Enforcement Bulletin



Emotion in Predicting Violence

January 2012
Volume 81
Number 1

**United States
Department of Justice
Federal Bureau of Investigation
Washington, DC 20535-0001**

**Robert S. Mueller III
Director**

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The attorney general has determined that the publication of this periodical is necessary in the transaction of the public business required by law. Use of funds for printing this periodical has been approved by the director of the Office of Management and Budget.

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135.

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The Training Division's Outreach and Communications Unit produces this publication with assistance from the division's National Academy Unit. Issues are available online at *http://www.fbi.gov.*

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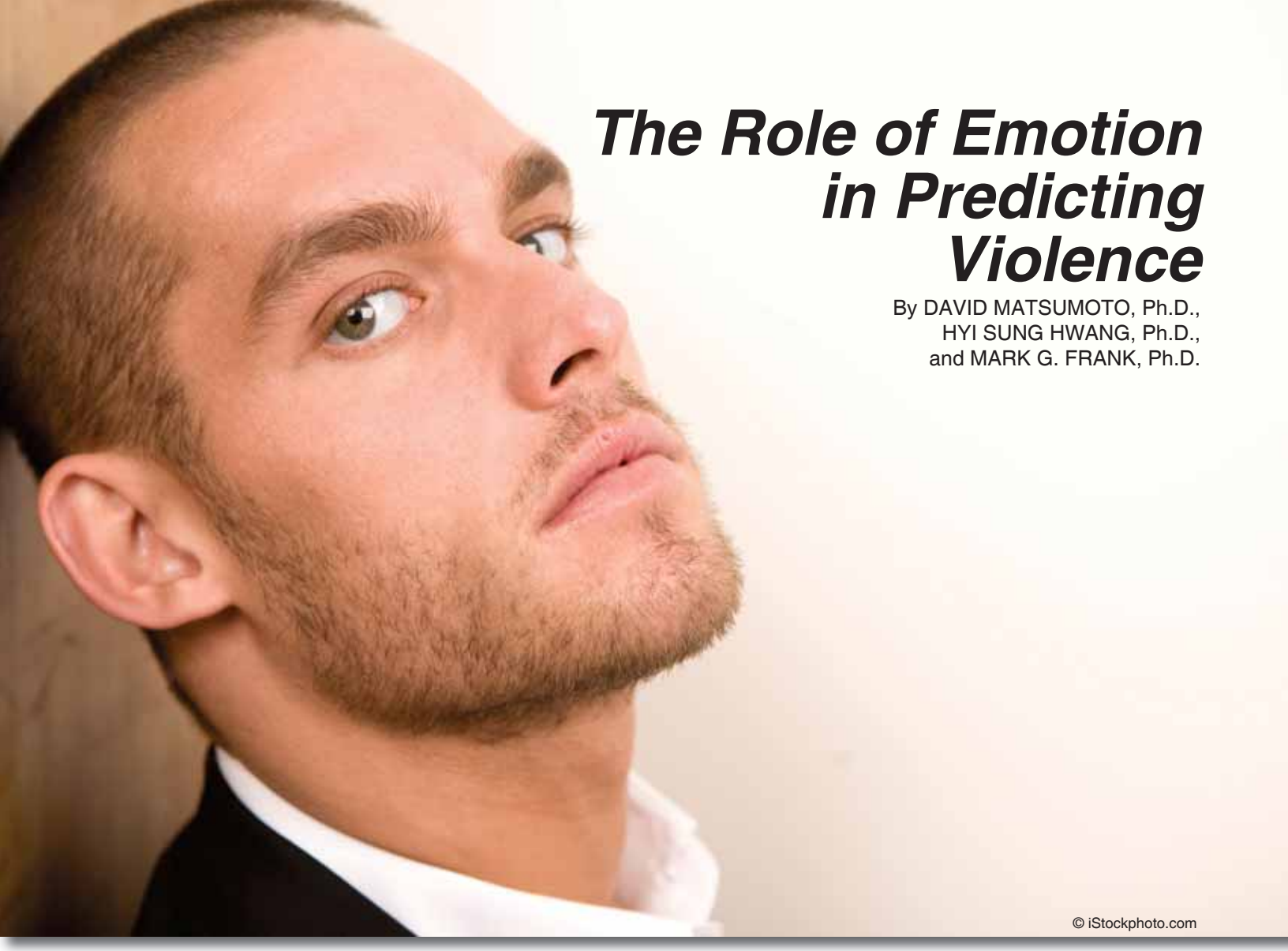
ISSN 0014-5688 USPS 383-310



The Role of Emotion in Predicting Violence

By DAVID MATSUMOTO, Ph.D.,
HYI SUNG HWANG, Ph.D.,
and MARK G. FRANK, Ph.D.

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Emotion, one crucial aspect of human behavior often overlooked by researchers, operators, and policymakers who often view it as too "soft" for serious consideration or research, serves a crucial purpose in understanding any individual or group behavior. For the individual, emotions are evolved information-processing systems that aid in survival.[1] These transient, fleeting reactions to events can impact a person's welfare and require immediate response.[2] Emotions prime behaviors by initiating unique physiological signatures and mental structures, aid in bonding memories and cognitions, and, most important, serve as a motivator of human behavior.[3]

Group emotions arise when a sufficient proportion of members share similar emotions about their group (the "ingroup") or another group (the "outgroup"), although no definition or consensus in the field exists about what that proportion may be. As in individuals, groups have emotional reactions to events that impact their perceived welfare and survival. Group-level emotions motivate members' behaviors as a whole. Woven into the group's overarching narratives of life, they provide guidelines and bases for making attributions about ingroups and outgroups. They aid in regulating social behavior and preventing social chaos.[4] Thus, a complete understanding of individual or group behavior starts with recognizing the importance of

emotion, which *is* motivation.[5] The authors assert that this is important for recognizing the behavior of individuals and groups in predicting acts of hostility or violence.

THEORETICAL FRAMEWORK

Emotions as Discrete Constructs

Many methods exist of understanding and categorizing emotions. For instance, a simple way—popular among laypersons, as well as those in academic psychology—is to classify emotions simply by their valence (positive versus negative) or intensity (strong versus weak); its simplicity merits attention.[6] But, much literature demonstrates convincingly that not all emotions are the same, nor should they be reduced to such simple dimensions as valence or intensity.[7] This framework is known as a *discrete emotions* perspective in which different categories of emotion are qualitatively and uniquely distinct from each other.

For example, considering anger and fear, most law enforcement agencies have heard the phrase "fight or flight" to describe these emotions. Every emotion activates separate areas of the brain and produces different patterns of nonverbal expressions and body reactions (e.g., sweat, surface vasoconstriction vs. dilation), and laypeople do not confuse the subjective sensations associated with them. Someone's expression of fear versus anger has major implications for the person's well-being; inmates who show fear are assaulted, while those who express anger are not. Yet, a valence/intensity model would label both anger and fear similarly as "negative" and "intense."

However, when comparing anger, contempt, and disgust, all, perhaps, negative in terms of valence, important differences among these emotions clearly show that they are not alike, which raises major practical implications. Anger, contempt, and disgust have different physiologies, mental states, and nonverbal expressions, implying different behaviors.[8] Angry people have an increased

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heart rate, and their blood flows differentially to their arms and hands; this prepares them to fight because anger functions to remove obstacles.[9] However, disgust causes an individual to eliminate or reject contaminated objects. As a primary function, contempt makes someone communicate their evaluations of another's actions vis-à-vis status and hierarchy. Therefore, anger focuses on persons' or groups' *actions*, while contempt and disgust focus on *who they are*.

Laypersons often do not recognize the important distinctions among emotions. In particular, for several reasons, disgust plays a special role in understanding terrorism and violence. First, studies of emotions in interpersonal conflicts indicate that disgust (and contempt), not anger, contributes to the breakdown of relationships (which also could represent a component of hostile acts between groups).[10] Second, disgust is a basic, primary emotion elicited by the perception of contamination or disease agents. It is universal, not only in its signal properties but also in terms of its elicitors.[11] Third, disgust is a moral emotion often used to sanction persons' moral beliefs and behaviors.[12] Fourth, anecdotal observations of the videos of terrorists, such as Usama Bin Ladin or Virginia Tech shooter Cho Seung Hui, as well as the speeches and writings of world leaders (e.g., Hitler, Milosevic) who incited wars, revealed an escalation of disgust, as seen in facial expressions, leading up to violent acts. Disgust drives individuals to kill without discretion. For instance, terrorists do not differentiate between men, women, or children; infidels (or vermin) must be eliminated.

Although research on aggression has focused on anger, the authors believe, in today's context of terrorism as a global phenomenon, that disgust must represent a central emotion to study on the group level. There, it represents a shift toward making an assessment of the inherent characteristics of the other group, rather than a temporary judgment about an act committed by that group. Disgust transforms aggression (sometimes constructive) into hostility (usually not) and anger into hatred. The transformation of anger to contempt and then disgust resembles a conversion of a situational attribution to an act to a dispositional attribution to the person. Consequently, if a person or group does something "bad," anger focuses on the act, but the person or group may or may not be considered bad and, in fact, may be rehabilitated somehow in the future. Evaluations resulting in contempt and disgust, however, indicate that the person or group is inherently bad and there is no chance for rehabilitation; thus, the logical recourse is to eliminate them. Elimination can occur in various ways, from extreme forms of violence to shunning, avoiding, or simply dissociating them.

> ***Laypersons often do not recognize the important distinctions among emotions.***

Intergroup Emotions

While the scientific study of emotion traditionally has focused on the individual, in recent years, it increasingly has centered on group emotions. Most studies have examined the types of emotions felt by members of groups toward outgroups. For instance, studies suggest that intergroup anxiety toward outgroups may occur because of potential embarrassment about not knowing what to do with the outgroup's members, apprehension about negative behavioral consequences, fear of disapproving evaluations, past negative intergroup relations, minimal previous contact with the outgroup, large status differences between the

ingroup and outgroup, or higher ratios of outgroup members compared with ingroup members (more of "them" than "us").[13] Studies on the Stereotype Content Model suggest that group members have different emotions toward outgroups based on the dimensions of perceived warmth and competence.[14] The Intergroup Emotions Theory suggests that ingroup members feel anger toward an outgroup it is in conflict with when the ingroup view is that of the majority; this anger will lead to confronting, opposing, or attacking the outgroup.[15]

Studies also have examined the emotions attributed to ingroup and outgroup members. For example, the Infrahumanization Theory suggests that ingroup favoritism and outgroup derogation leads to the attribution of more human characteristics, including emotions, toward the ingroup.[16] Thus, ingroups more likely will attribute the more human emotions of compassion, shame, serenity, bitterness, or contempt to ingroup members. At the same time, ingroups attribute more basic (or primary) emotions, such as surprise, anger, pleasure, fear, attraction, or disgust, to outgroups. Researchers consider these emotions shared between humans and primates.[17] Thus, the dehumanization of outgroups involves the attribution of emotions associated with animals to the outgroups, and intergroup emotions keep such attitudes about outgroups connected. Without their emotional bases, these attitudes would have little meaning or practical consequence. But, intergroup relations are complex and potentially deadly, especially among ideologically based groups, precisely because outgroup cognitions are associated with strong emotions.

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EMOTIONS AND ESCALATION TO VIOLENCE

Cultures of Emotion-Based Hatred

Because emotions function primarily to motivate behavior on both the individual and group levels, not only are they instrumental in creating and maintaining intergroup attitudes and relations but changes in those emotions over time may become associated with different intergroup behaviors. In the authors' view, violence and hostility directly result from the planned inculcation and careful, methodical nurturing of hatred in terrorist groups. This theoretical framework is based on a view of discrete emotions, most notably those related to morality.[18] Although such emotions as shame and guilt have received considerable attention as moral emotions in the past, more recent work has focused on anger, contempt, and disgust and their relationship to autonomy, community, and divinity.[19] Specifically, some experts have proposed that anger, contempt, and disgust often result from violations of community, autonomy, and divinity, respectively known as the CAD Triad Hypothesis.[20]

Another expert has proposed a triarchic theory of hatred based on anger, contempt, disgust, and fear.[21] He proposes that hatred is based on 1) a negation of intimacy (originating from disgust); 2) passion (resulting from anger and fear); 3) and decision-commitment deriving from the devaluation and diminution of others (based on contempt). According to his model, different kinds of hatred can exist based on different combinations of these three components. Because there are three components, they can yield seven different

combinations of hatred: cold, cool, hot, simmering, boiling, seething, and burning.

An interesting aspect of his theory is that hatred is propagated via stories or narratives.[22] Stories serve an important and interesting purpose, bringing to life the various components of hatred in a concise, easy-to-understand and easy-to-communicate method. They provide group leaders with a platform by which shared emotions can be developed, fostered, maintained, or extinguished; in turn, group members communicate those stories to others. Many different types of hate stories achieve this purpose.[23]

- Strangers
- Impure others (versus pure ingroup members)
- Controllers (versus controlled)
- Faceless foes (versus individuated ingroup members)
- Enemies of God (versus servants of God)
- Morally bankrupt persons (versus morally sound individuals)
- Death (versus life)
- Barbarians (versus civilized ingroup members)
- Greedy enemies (versus financially responsible ingroup members)
- Criminals (versus innocent parties)
- Torturers (versus victims)
- Murderers (versus victims)
- Seducer-rapists (versus victims)
- Animal pests (versus humans)
- Power-crazed individuals (versus mentally balanced persons)
- Subtle infiltrators (versus infiltrated)

> ***"While the scientific study of emotion traditionally has focused on the individual, in recent years, it increasingly has centered on group emotions."***

- Comic characters (versus sensible ingroup members)
- Thwarter-destroyers of destiny (versus seekers of destiny)

Stories also serve the important function of providing members a way to communicate attitudes, values, beliefs, and opinions across generations, a central component of culture that refers to a shared meaning and information system transmitted across generations.[24]

Unique cultures characterize terrorist groups. Cultural systems provide guidelines for normative behavior, the basis for the nature and function of attributions, communication systems, and intergroup relations. Sacred values and beliefs also characterize terrorist organizations but, then again, also many ideologically-based organizations.[25] Research on terrorists and other ideologically based groups suggests comparability to each other in their social-psychological dynamics.[26] A culture of disdain permeated throughout the group facilitates hatred of others, and future generations are similarly enculturated. Emotionally laden narratives color the perception of all new data; group members accept at face value information that confirms the narrative and dismiss details that disconfirm the narrative through accusations of bias, conspiracies, or even flat-out logical fallacies.[27] Once established, narratives become self-perpetuating.

Emotions Leading to Violence

Building on these theoretical frameworks, the authors propose that emotions transform over time, often via stories, to inculcate cultures with hatred and violence. Specifically, this emotional transformation follows three phases.

Phase 1: Outrage Based on Anger

This involves the group identifying events that obstruct goals or stem from perceived injustice. It also may involve the group identifying threats to its well-being, physical safety, or way of life. These interpretations and attributions lead to or are fueled by feelings of anger toward the outgroup.

Phase 2: Moral Superiority Based on Contempt

Groups begin to reinterpret anger-eliciting situations and events identified in Phase 1 and take the high road. That is, they reappraise the events from a position of moral superiority and identify links between similar behaviors or events, no matter how tenuous, thus, making the attribution that the outgroup is morally inferior. These reappraisals and attributions lead to or are fueled by the emotion of contempt.

Phase 3: Elimination Based on Disgust

A further reappraisal of events and situations leads to the conclusion that distance is necessary (the mild form of elimination) between the ingroup and outgroup or that the outgroup needs to be removed altogether (the extreme form). These ideas are promulgated by the emotion of disgust.

This perspective helps to understand that groups can hate, but that not all hatred leads to violence or hostility. Hatred based primarily on anger or contempt likely will *not* be associated with violence or hostility, but hatred that involves disgust—the emotion of repulsion and elimination—likely will be. Groups can be angry or contemptuous but, when also disgusted, they may become

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dangerous. Further, interestingly, many definitions of hatred involve concepts of intense aversion related to the emotions of disgust or intense animosity, which has its roots in animals and also relates to disgust.

How do these appraisals and reappraisals occur and group emotions get created or transformed? Powerful leaders set the tone for groups to interpret or reinterpret events in certain ways that then lead to group emotions. Leaders do this by creating stories based on their appraisals or reappraisals of critical events and situations and by communicating the emotions associated with their reappraised stories to their followers and subordinates. The communication occurs through specific types of emotion-laden words, metaphors, images, and analogies, as well as nonverbally through their faces, voices, gestures, and body language. That is, emotions are not communicated directly to groups (e.g., we perceived an obstacle, so we must be angry). Instead, emotions are communicated indirectly via the associations made to groups with emotion-laden words, metaphors, analogies, and nonverbal behaviors. Through the careful use of language and nonverbal behaviors, leaders can motivate, escalate, or defuse situations and incite action—or not—through emotion.

Empirical Evidence

Recently, the authors conducted an initial test of these ideas by examining the emotions expressed by world leaders and heads of ideologically motivated groups in archived speeches about outgroups the leaders despised. There never had been a formal analysis of the emotional content of such statements, and archives served

as a rich source of information that allowed the authors to test the hypothesis that verbal expressions of anger, contempt, and disgust toward outgroups over time lead to violence and hostility against that group.

The authors anchored these speeches to an identified act of aggression and selected for analysis those speeches available at five specified points in time (3, 6, 12, 18, and 24 months) prior to the acts of aggression. They also included for comparison a small group of acts and speeches of ideologically motivated groups that focused on hated outgroups but did not result in violence.

The authors analyzed the speeches for their emotional content and tested the differences in that content, separating the ones from groups that committed an act of aggression from those that did not, which they labeled acts of resistance. The authors hypothesized that acts of aggression would be characterized by an increase in anger, contempt, and disgust as speeches toward the outgroups neared the event, whereas acts of resistance would follow where there was no increase in these emotions.

As predicted, acts of aggression were associated with increases in anger, contempt, and disgust in the time periods immediately preceding the act of aggression. Interestingly, acts of resistance followed *decreases* in these emotions during this same time period. There were no differences in any other emotions for acts of aggression or resistance. These findings were not affected by the time when the events occurred as separate analyses of only events within the last 50 years produced the same results.

> ***…emotions transform over time…to inculcate cultures with hatred and violence.***

These findings demonstrated how an analysis of specific emotions of anger, contempt, and disgust—not just any negative emotion—proves especially meaningful in terms of understanding how group emotions contribute to aggression or hostility. As mentioned, anger is about what an individual or a group *did*; however, contempt and disgust focus on who people or groups *are*. The combination of contempt and disgust, along with anger, allows groups and individuals to make emotional dispositions about the moral character of others. When people and groups feel contempt and disgust toward others, they are evaluating the target of their contempt and disgust as inherently bad or contaminated. No chance for rehabilitation exists; the only logical recourse is elimination. Anger focuses on actions, but not necessarily the underlying morality of the act or the individuals or groups performing it. Martin Luther King, Jr., Mahatma Gandhi, and the Dalai Lama all have been angry and, perhaps, even contemptuous, but they did not become disgusted with their outgroups.

Although the findings from the authors' study demonstrated that the emotions expressed in the language used by leaders of ideologically motivated groups determined groups' violence, emotions expressed in the words may constitute only part of the overall emotional message delivered. Nonverbal behaviors, such as facial expressions and tones of voice, that accompany the emotionally laden language probably amplify the overall emotional messages delivered. Therefore, quite possibly, when emotionally laden language is imbedded within a rich repertoire of nonverbal behaviors that also portray emotions, the overall

emotional message to the listeners may hold substantially more power than simply reading the words. The authors currently are researching this possibility.

FACIAL EXPRESSIONS OF EMOTION AND AGGRESSION

Signs of Imminent Aggression

Another line of the authors' research program has attempted to identify the nonverbal signals of imminent aggression. This work holds the view of emotions as evolved, rapid information-processing systems that enable humans to adapt to changes in their environment with minimal conscious intervention.[28] When elicited, emotions recruit a host of physiological, cognitive, and expressive behaviors organized and coordinated with each other.[29] Facial expressions constitute part of this coordinated response package. Charles Darwin claimed, in his principle of serviceable habits, that facial expressions are the residual actions of more complete, whole-body responses that prepare individuals for action by priming the body to act.[30] Thus, people express anger when furrowing their brow and tightening their lips with teeth displayed because these actions form part of an attack response. Individuals show disgust with an open mouth, nose wrinkle, and tongue protrusion as part of a vomiting response. Recent research has suggested that different facial expressions (e.g., those showing fear and disgust) facilitate the acquisition or rejection of sensory information.[31]

This important theoretical perspective suggests a link between specific facial expressions of emotion and subsequent behavior. Although disgust may energize the narrative to produce violence at a distal level, anger energizes the physical action of assault at the proximal level. Recently, the authors examined the possibility that variants of the facial expression of anger represent a reliable association with acts of immediate, subsequent violent behavior. Logically, signs of anger may arise prior to acts of aggression or assault if anger primes the body to aggress, and facial expressions are part of the anger-response package. Given that assassinations, shootings, and physical violence often occur in a matter of seconds, the existence of such facial signs is a distinct possibility and has important practical ramifications.

In the authors' studies, a single Caucasian male—a professional actor—demonstrated an array of faces for law enforcement officers (LEOs) in five countries. Each expression depicted a variant of the full-face, prototypic version of anger found in stimulus sets, such as the Pictures of Facial Affect or the Japanese and Caucasian Facial Expressions of Emotion stimulus sets.[32] That is, all expressions included at least some of the muscles identified by the Facial Action Coding System (FACS) involved in the full-face prototype; the expressions differed in the amount and intensity of those muscles and in the presence or absence of *zygomatic major* (the smiling muscle).[33]

The expressions were generated by first asking the actor to produce the face seen in previous videos involving assaults, attacks, and assassination attempts. Additional expressions then were portrayed when the actor demonstrated as many different kinds of anger as he knew. This resulted in a preliminary selection of 16

expressions. Pilot testing with a separate group of American LEOs indicated that some of the expressions almost never were selected in the procedures; 4 expressions were, thus, dropped, resulting in a final stimulus set of 12 expressions, which the authors placed in a random array and numbered.

LEOs in each of the countries selected a face from the 12 that they saw moments before either a premeditated physical assault or an assault due to a momentary loss of impulse control. Prior to this task, the LEOs were asked if they ever were involved in such attacks, if they remembered the face of the attacker, and if they could recall the face if they saw it again. The LEOs identified 2 faces—1 for premeditated assaults and 1 for loss of impulse control—at high agreement rates. Moreover, LEOs in different countries, two of which were non-English speaking, identified the same faces.

University students shown the same set of faces and engaged in the same experimental procedures did *not* select the same faces at the previous chance rates, suggesting that the authors' findings did not result from a process of elimination among the 12 provided. More recently, the authors replicated the findings with LEOs and university students using a different array of faces, ensuring that the initial findings were not limited to a single expresser.

Potential Research Possibilities

The authors hope to expand the notion of violence from the spontaneous and planned to include the special category of suicide bombers, particularly those who believe they have divine dispensation to conduct their attack. The authors have no data concerning the facial signs of this type of imminent aggression and have no reason to believe that the face of the suicide bomber is the same as that of the person carrying out a premeditated attack or who loses control and attacks. They would like to study additional video footage prior to a violent event for signs of impending attack through both facial expressions and bodily movements, such as gait or tension.

> ***"Emotions…serve to motivate. Gaining an understanding… can help predict acts of hostility and violence."***

Moreover, additional questions can follow on this line of research. For example, the authors have developed tools to help train individuals to identify the two types of dangerous faces identified by LEOs in their studies; as of this date, however, they have no data concerning its efficacy either as a training tool or in the field. Such data are a must. The authors have developed the necessary experimental protocols and plan to conduct their research within a relatively short period of time.

IMPLICATIONS

The findings to date have significant potential implications for national defense and security, intelligence, and law enforcement operations. For example, the elucidation of the role of emotion in leading to acts of aggression by members of ideologically motivated groups suggests the existence of signs that can serve as markers of escalation toward hostility. This, combined with the creation of sensor technologies that can recognize those markers, either through the analysis of the emotional content of verbal statements, nonverbal behavior, or the emotional profiles of groups, leads to the interesting potential for these markers to predict hostile acts before enacted, allowing for evasive or preemptive action that may save lives.

Technologies that analyze the verbal content of speeches can identify emotions associated with this escalation, allowing for the production of automated detectors of aggression potential based on ramp-ups of disgust across time. The same potential exists for automated detectors of aggression ramp-ups based on video analyses of faces or voices. These technological advances all are predicated on the establishment of empirically validated signs of aggression escalation based on emotion, which have been found preliminarily but require further validation. The identification of facial signs of premeditated assault leads to the interesting possibility that automated expression-recognition technologies can be developed to scan crowds for such faces to identify individuals of interest; this capability surely would be useful for those in the protective services. And, the identification of the face displaying a loss of impulse control is important for anyone who interacts with individuals who may explode to violence at any time.

CONCLUSION

Emotions are essential to understanding individual and group behavior as they serve to motivate. Gaining an understanding of this behavior can help predict acts of hostility and violence.

In today's world, agencies need as many tools as possible to carry out their mission of protecting the public. The authors offer their findings in this regard. Knowing what signs to look for is important for anyone potentially in harm's way.✦

> ***"Powerful leaders set the tone for groups to interpret or reinterpret events in certain ways that then lead to group emotions."***

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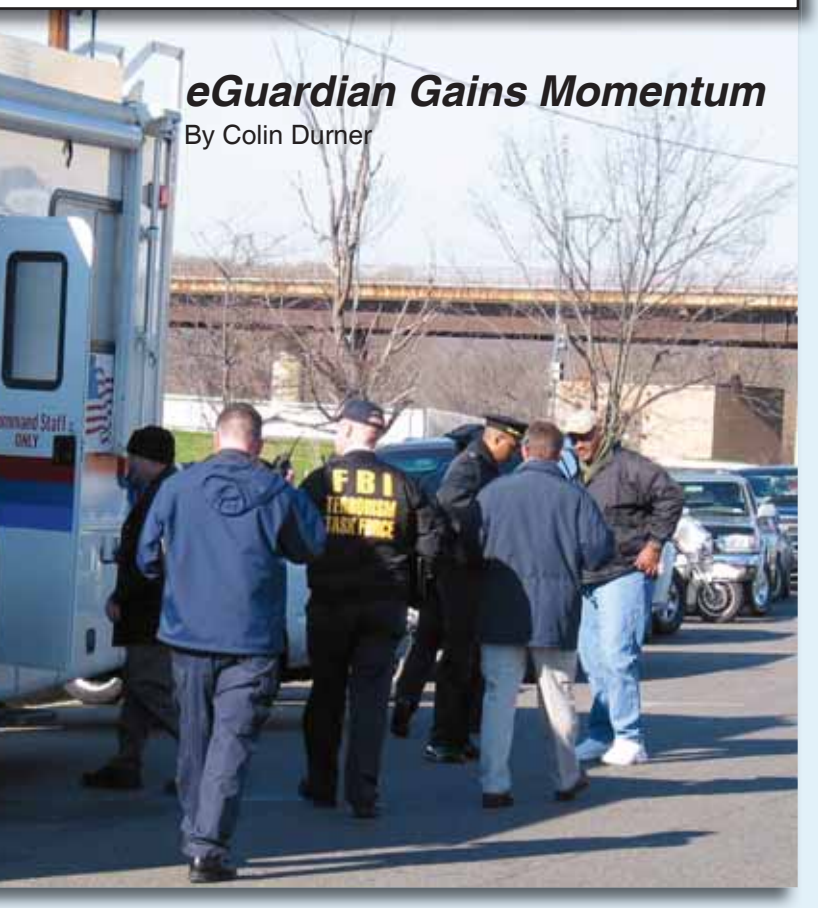
Technology Update



eGuardian Gains Momentum

By Colin Durner

With the ever-present threat of another serious terrorist attack occurring on American soil, law enforcement agencies must remain vigilant and resist complacency. The main advantage for law enforcement personnel now, as opposed to before 9/11, is that there are more tools in place to detect and disrupt such an attack from happening. One such tool, eGuardian, has proven an ideal collaborative solution in bridging the gap that formerly existed in the law enforcement information sharing realm.

Information sharing has been discussed extensively at law enforcement conferences and mentioned by several politicians and law enforcement officials, including FBI Director Robert Mueller, Attorney General Eric Holder, and President Barack Obama.[1] What exactly *is* information sharing, though, and how was eGuardian born out of such a vague term?

Sharing Information

Following the 9/11 terrorist attacks, reforms began to take place within the American federal law enforcement community. In 2007, as detailed in the National Strategy for Information Sharing (NSIS), the National Security Council under President George W. Bush directed the FBI to share more information—namely terrorist—with law enforcement agencies.[2] In this case, terrorism information includes four main categories: specific threats, actual events that already have occurred, encounters between law enforcement and individuals on a terrorism watch list, and suspicious activity reports (SARs), which document observed behaviors that may indicate the preoperational planning of a terrorist attack.[3] As a response to the NSIS, the eGuardian system was created, providing three critical functions that are unprecedented in terms of information sharing.

First, the system allows local law enforcement agencies to put terrorism-related information in a database where it has a direct electronic path to the FBI's Joint Terrorism Task Force (JTTF). The JTTF then can investigate the incidents in conjunction with state and local authorities.

Second, eGuardian allows the FBI to share its unclassified terrorism information with the rest of the domestic law enforcement community. In the past, the FBI put all of its terrorism-related reports that required further assessment into a classified, in-house system called Guardian. The only people who could see them were FBI personnel and law enforcement officials assigned to the JTTF. Although the FBI still inputs most of its terrorism

information directly into Guardian, the majority of it now also is passed electronically to eGuardian. This system feature directly resulted from receiving feedback from local law enforcement agencies. In fact, many of eGuardian's new system enhancements, which constantly are being added, have resulted from suggestions received from police agencies across the United States.

Third, information entered into eGuardian can be seen nationwide by all law enforcement entities with system access. System users also have the ability to add information to all incidents. For instance, this would allow a local officer in New York to attach an old police report involving a person who is the main subject of a new incident entered by a police department in California. This type of collaboration within eGuardian can lead to patterns being established and help connect the ever-elusive "dots" with regard to potential terrorism activity.

> "The system has allowed…law enforcement agencies to actively share and exchange terrorism-related information at an unprecedented level."

Having Remarkable Success

The pilot program for eGuardian ended in December 2008, and the system was put to the test during the inauguration of President Barack Obama on January 20, 2009. As eGuardian approaches its third anniversary, its success is evident. Using information received through eGuardian, the FBI has initiated over 106 new terrorism cases and enhanced approximately 388 cases already in existence. The system has allowed federal, state, local, and tribal law enforcement agencies to actively share and exchange terrorism-related information at an unprecedented level.

For example, a woman in California suspected that her son had become obsessed with jihad after he began voicing support for al Qaeda and stockpiling weapons illegally. Based on the mother's complaint, the local sheriff's office could justify entering the information in eGuardian based upon the presence of a potential nexus to terrorism. The information passed through one of California's state fusion centers and to the JTTF. An investigation subsequently was opened.

In another instance, a man was discovered to be in the possession of extensive explosive-making materials after police responded to a report of fire at his residence. The FBI put the incident into eGuardian while simultaneously opening a JTTF investigation. The subject since has been indicted and currently awaits trial.

In the past, quite possibly, no one outside the JTTF would have been privy to either of these incidents until the story appeared on the evening news. eGuardian has changed all that through its collaborative functions.

Gaining Access

Sworn law enforcement officers or persons (e.g., a crime analyst or dispatcher for a police department) working in direct support of a law enforcement agency can use eGuardian. However, they first must obtain a free account from Law Enforcement Online (LEO) at *http://www.leo.gov*. LEO is a secure, unclassified network that not only hosts eGuardian but also is home to many other useful and free law enforcement services and online tools. LEO prompts all potential users to verify their status within the law enforcement community. This is

the first check to ensure that only appropriate law enforcement personnel gain access to the system. Users can register for eGuardian access once their LEO account is established. Their law enforcement credentials will be verified again, and they will be placed in a custom account created for their respective agencies.

Once users gain access and agree to the terms of use, they will have the ability to search for, read, add to, and create new incidents. Any new incidents will be sent to the agency's local fusion center or similar entity for approval per policy standards before they are pushed out for systemwide dissemination. Incidents also are electronically passed to the Guardian system, which ensures that they will be sent to and assessed by the appropriate JTTF to determine whether or not they will be converted to an investigation. The FBI's Guardian system also provides automatic updates to eGuardian users regarding the status of any referred incidents once they are being assessed by a JTTF.

Protecting Civil Liberties

Whenever a U.S. government system is used to collect information on American citizens or U.S. persons, scrutiny may arise from both the public and the media with regard to civil liberties.[4] From the day eGuardian was envisioned, it was apparent to the FBI that there needed to be a robust system of checks in place to assure that eGuardian would protect the civil liberties guaranteed by the Constitution.

All eGuardian users must abide by the system user agreement, which contains language specific to civil liberties protection, in keeping with the U.S. Department of Justice's privacy policies. In addition, all information entered into eGuardian must pass from the entering agency to a state fusion center (or similar approving agency) where policy checks are conducted. FBI JTTF and FBI headquarters personnel also constantly monitor eGuardian incidents to assure policy compliance. Instruction on eGuardian system usage and policy is provided for users via Web-based training.

Conclusion

The eGuardian system began its official program pilot with fewer than 40 law enforcement agencies. After its pilot ended, 95 incidents had been entered and shared within the system. As of November 2011, eGuardian has a customer base of 4,050 individual users representing 1,227 law enforcement agencies. The system contains 10,435 incidents that can be searched, analyzed, and enhanced by any system user. These incidents now come from three different sources: individual eGuardian agencies and fusion centers, the FBI's internal Guardian system, and the National SAR Initiative's (NSI) Shared Space tool, which gathers SARs and other terrorism information from 13 fusion center sites across the country.[5]

The FBI is an official partner of the NSI, a collaborative effort to promote an effective, standardized SAR sharing process.[6] The NSI's efforts are partially reflected in the Web tutorial, which now mandatory for all eGuardian users, addresses the preservation of civil liberties while using an information system, such as eGuardian.

In the future, eGuardian will continue to develop new features that will incorporate geospatial software and allow for even more advanced incident analysis. This continually upgraded technology will aid in discovering trends and patterns of behavior when identifying terrorist threats.✦

Endnotes

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Colin Durner, a staff operations specialist in the FBI's Counterterrorism Division, prepared this Technology Update.

To learn more about obtaining access to eGuardian, law enforcement personnel can visit http://www.fbi.gov/eGuardian.

Wanted: Photographs

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

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

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Bulletin Honors

Sedgwick County, Kansas Law Enforcement Memorial

After her husband was killed in an explosion while working on the bomb squad, Mary Galvin approached the police chief and sheriff in Sedgwick County, Kansas. Even though there was a national memorial to fallen officers in Washington, D.C., and a state memorial in Topeka, Kansas, she felt that Sedgwick County should memorialize its local heroes. In 2002, a volunteer committee was formed to plan the memorial.

On April 2, 2011, the Law Enforcement Memorial of Sedgwick County, Kansas, was officially dedicated. The memorial is designed to honor fallen law enforcement officers and to be a public work of art. Twenty-nine officers, dating from 1871 to 2009, are honored on the memorial. The centerpiece of the memorial is a life-size bronze statue of two lions, one male and one female, watching over the community. The lions stand at the base of an eternal flame comprised of a bronze frame and blue glass, which is illuminated. Bronze replicas of the United States and Kansas flags stand between the lions. Behind a wall there is a meditation area where each of the 29 fallen Sedgwick County officers is represented with a plaque and a pair of bronze boots or shoes—in many cases, a casting of the fallen officer's actual footwear. When viewed from above, the memorial looks like a badge with a black granite bench representing the black mourning band officers wear in remembrance of a fallen comrade.

Training Mexican Police Officers and City Council Members

The West Texas A&M University Model

By Harry Hueston, Ph.D.

Photo courtesy of Rik Anderson

West Texas A&M University

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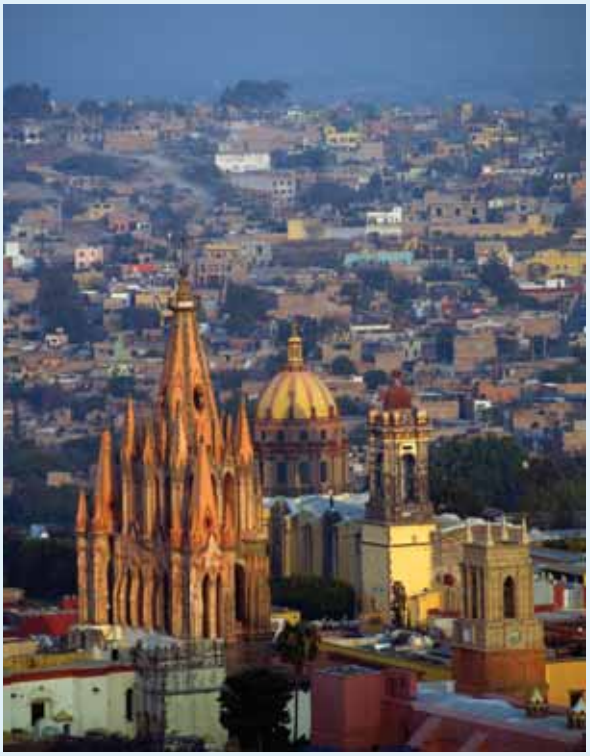
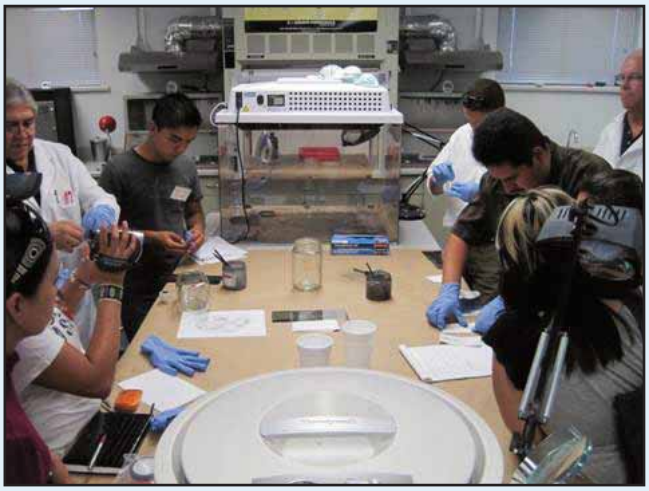


San Miguel de Allende, Mexico

Since 2005, members of the College of Education Study Abroad Program at West Texas A&M University (WTAMU) in Canyon have traveled to San Miguel de Allende, Mexico. Faculty and students in the WTAMU Criminal Justice Department also have visited San Miguel de Allende to study the Mexican criminal justice system. As a result of these programs, criminal justice faculty members have worked with San Miguel de Allende's training director and police chief to create an exchange program for officers in San Miguel de Allende; the first exchange occurred in August 2010. The author offers insight into developing, implementing, and evaluating the training of police officers, as well as city council politicians, from San Miguel de Allende.

Developing the Training Agenda

During the summer of 2010, the WTAMU dean of education; two criminal justice professors; one Amarillo, Texas, Police Department SWAT commander; and a warden from the Texas State Prison's Clements Unit discussed developing an exchange program between WTAMU and San Miguel de Allende's police department and city council. San Miguel de Allende's assistant police chief and a group of city council members presented various needs to the WTAMU professors visiting the city. As a result, the San Miguel de Allende police administration and city council members inquired about the possibility of their police officers and a few city council representatives traveling to WTAMU for a 1-week, intensive training



Trainees processing fingerprints at the Randall County, Texas, Sheriff's Office Crime Laboratory

Classroom training by PANTEX personnel on building security

program in August 2010. Endorsing this concept, the WTAMU dean of education and members of the criminal justice department identified topics to meet the needs of the department as defined by the assistant chief. In follow-up conversations with San Miguel de Allende city council members, the training agenda was revised to include additional sessions to meet the needs of the council members in charge of the city's public safety and victim services.

- Community policing
- Special weapons use and firing opportunities
- Dignitary protection
- Organization and structure of police departments (city, county, state, and university)
- Role of the local district attorney
- Visits to and reviews of the regional police academy
- SWAT
- Gang recognition
- Understanding of the U.S. criminal justice system
- Prison and county jail operations
- Prisoner tracking
- Crime scene investigation techniques
- Emergency center operations
- Building and parking lot security measures

Facing the Challenges

Bringing international visitors to WTAMU presented challenges. The participants needed a visitor's visa from their government to enter the United States, as well as permission from the Texas A&M University System (TAMUS). With the support and endorsement of the dean of the education department and the WTAMU president, TAMUS granted permission. A TAMUS legal department liability release form was translated into Spanish and signed by each Mexican guest prior to participation in the intense training schedule.

Once the visa and liability issues were resolved, numerous logistical details related to plans for visits and discussions with the local law enforcement community to implement the final training schedule were addressed. Specifically, the professors coordinated activities or scheduled visits with representatives of the Clements Prison Unit; Texas Department of Public Safety; Randall County Sheriff's Department and District Attorney's Office; SWAT, gang, and bomb squads of the Amarillo, Texas, Police Department and city

Training Schedule for Visitors from San Miguel de Allende, Mexico

Sunday	
4:00 p.m.	Arrive in Amarillo Dinner at a local, well-known restaurant Hotel check-in
8:00 p.m.	Orientation
Monday	
7:30 a.m.	Breakfast at the hotel
8:30 a.m.	Travel to Clements Prison Unit
9:00 a.m. - 12:00 p.m.	Tracking demonstration and participation, prison gang orientation, and update by Clements Criminal Investigations
12:00 p.m. - 1:00 p.m.	Lunch at the prison
1:00 p.m. - 4:00 p.m.	Visit various police agencies, beginning with an Amarillo College Police Training Academy and staff presentation
3:30 p.m.	WTAMU Police Department site visit
6:00 p.m. - 8:00 p.m.	Cookout with students (invited current and former students for discussions and updates on pending changes in the criminal justice system and the roles of police and district attorneys in Mexico)
8:30 p.m.	Hotel
Tuesday	
7:30 a.m.	Breakfast at the hotel
8:30 - 4:00 p.m.	Amarillo Police Department firearms range, SWAT participation, shoot house, and weapons training and tactics
6:00 p.m. - 10:00 p.m.	Baseball game
11:00 p.m.	Hotel
Wednesday	
7:30 a.m.	Breakfast at the hotel
8:30 a.m. - 11:30 a.m.	Amarillo Police Department dignitary protection, communications center, crime prevention (student participation)
11:30 a.m. - 12:30 p.m.	Lunch
1:00 p.m. - 4:00 p.m.	Community-oriented policing, emergency operations center, gang orientation and training (student participation)
4:00 p.m. - 5:00 p.m.	Hotel
6:00 p.m. - 11:00 p.m.	Dinner and play
11:00 p.m.	Hotel

Training Schedule (Continued)

Thursday	
7:30 a.m.	Breakfast at the hotel
8:30 a.m. - 11:30 a.m.	Lecture on building security, protection, and other security issues by security managers of a large Texas facility that maintains the safety and security of the nation's nuclear weapons (student participation)
11:30 a.m. - 12:30 p.m.	Lunch
12:30 p.m. - 4:00 p.m.	Randall County Sheriff's Department tour and presentation, including jail and patrol operations, communications, helicopter tour, and crime laboratory exercises (student participation)
6:00 p.m.	Dinner
8:00 p.m.	Hotel
Friday	
7:30 a.m.	Breakfast at the hotel
8:30 a.m. - 10:30 a.m.	District Attorney James Farrin, explanation of local court practices, role of the district attorney's office, and relationship with police on crime scene investigation and prosecution (student participation)
10:30 p.m. - 12:30 p.m.	Judge John Boyd, retired court of appeals judge, explanation of the U.S. criminal justice system (student participation)
12:30 p.m. - 1:30 p.m.	Lunch
1:30 p.m. - 4:00 p.m.	Homicide scene. This is a homicide class presentation where the police officers/guests get involved in handling the criminal investigation of a homicide. These actions include crime scene photography; video; and location, documentation, and collection of evidence. The use of blood collection and latent print collection also is included. Event is scheduled in a WTAMU classroom (student participation).
6:30 p.m. - 9:00 p.m.	Awards dinner at a local museum
9:30 p.m.	Hotel
Sunday	
1:35 p.m.	Depart Amarillo

Emergency Operations Center; Panhandle Regional Police Training Academy; Texas Court of Appeals; a large Texas facility that maintains the safety and security of the nation's nuclear weapons; and WTAMU Police Department. A criminal justice professor contacted each agency via letter, then followed up with several phone calls. In addition, the Clements Unit warden, the SWAT commander, and other specialty teams of the Amarillo Police Department assisted in coordinating the

various functions in each of these large facilities. A final training schedule resulted from the dedicated efforts of many individuals who made numerous contacts to adjust times, locations, and visits.

The international visitors enjoyed cultural experiences and activities unique to the Panhandle region of Texas. Because the majority of the visitors never had been to the United States, the events reflected the local flavor of the region:

- cookout with faculty and students who visited San Miguel de Allende during the past several years as part of the study abroad program;
- attendance at a baseball game featuring a local team in Amarillo;
- dinners at well-known, local restaurants;
- attendance at a musical drama performed in an outdoor amphitheater; and
- visits to local shopping areas.

Evaluating the Results

Because this was the first time WTAMU implemented an exchange program of this nature and duration, it received a great deal of media interest. Two of the three local television stations requested interviews in which one criminal justice professor and several Mexican police officers and councilwomen participated. The local Spanish-speaking television station also conducted an extensive interview with the assistant police chief, city council members, and the WTAMU criminal justice professor coordinating the exchange activities. Area newspapers published articles on various segments of the training, as well as numerous pictures of the Mexican guests engaged in classroom training activities.

During the week, debriefings were held to ascertain if the training programs met the expressed needs of the San Miguel de Allende police officers and city council members. The criminal justice faculty sought input directly from participants to gauge their learning comprehension and to answer questions about any of the topics. They

Trainees under the state of Texas seal in the supreme court

demonstrated their learning accomplishments at one of the SWAT training sessions. On the second training day, the Amarillo SWAT team began an all-day session with participants. In the morning, they had the opportunity to shoot a variety of sniper rifles, automatic weapons, and handguns. During the handgun training, the SWAT team directed each person to shoot at a paper target, aiming at the square in the middle. During this timed exercise (one bullet for every 10 seconds), everyone's shots were clearly outside the square or off the silhouette. The SWAT team immediately noticed that the officers lacked sight picture, trigger squeeze, and proper sight alignment (front and rear sighting). Once these issues were discussed and new strategies were applied and practiced, officers' scores rose by 100 percent during follow-up timed exercises. Next, the SWAT team moved the participants to exercises that involved shooting metal targets. Again, the officers and officials practiced their sight picture, alignment, and trigger squeeze, successfully hitting over 90 percent of the targets in under 30 seconds. The improvement and understanding by the participants continued numerous times during more training sessions.

The use of a translator was another important factor in the program's success. The translator was critical in helping the Mexican officers and officials become comfortable in their new environment. The

bilingual, nontraditional students previously had participated in the summer study abroad program in San Miguel de Allende. The translator possessed exceptional interpersonal skills and had interacted with many of the police officers and city council officials while she was in San Miguel de Allende. She bonded easily with the officers and officials and made them feel comfortable by explaining the activities for each day, encouraging participants to ask questions on topics they did not understand, and assisting instructors with their questions. At times, the translator and guests were comfortably laughing and joking about the area, Panhandle geography, and other cultural nuances.

San Miguel de Allende police officers viewing the Armarillo Police Department's SWAT van

San Miguel de Allende police officers handling an automatic rifle used by the WTAMU Police Department

One unintended but critical area of learning resulted during the training: The two city councilwomen learned a great deal about the complexity of the job their officers face every day. The council members also received practical hands-on experience shooting weapons, observing equipment in police vehicles, and learning techniques used to investigate a homicide scene by taking photographs and latent fingerprints and collecting evidence. Both officials commented on how much they learned and how grateful they felt to their officers performing duties in San Miguel de Allende.

The training also highlighted the San Miguel de Allende Police Department's funding challenges. The economic plight with regard to salary, equipment, training, and preparation for violence was a main topic of conversation during most of the training discussion sessions. Budget concerns are one of the biggest problems facing the San Miguel de Allende Police Department.

Conclusion

The summer 2010 exchange program between West Texas A&M University and the San Miguel de Allende Police Department and city council obviously was a success. The WTAMU Provost College of Education dean, faculty in the criminal justice department, and all police executives and criminal justice officials involved believe this exchange program could serve as a model for similar ones in the future. As WTAMU criminal justice faculty members continue to travel with students to San Miguel de Allende each year, they hope a new group of officers and city council officials will visit the campus for another exchange program.✦

Dr. Hueston, a retired police chief, is an associate professor of criminal justice at West Texas A&M University in Canyon.

Crime Statistics for 2010

According to the FBI's report *Crime in the United States, 2010,* the incidence of crime nationwide decreased again. Overall, the estimated volume of violent crimes in 2010 dropped 6 percent compared with the 2009 figure, the fourth consecutive year it has declined. For the eighth consecutive year, the volume of property crimes also went down—2.7 percent. Violent crime offenses decreased across the board; the largest drop was for robbery, down 10 percent. Property crime offenses went down, as well—the largest decline, 7.4 percent, was for motor vehicle thefts.

Crime in the United States, 2010, was compiled from data submitted by more than 18,000 city, county, university and college, state, tribal, and federal law enforcement agencies from around the nation. It contains information on the number of reported murders and nonnegligent manslaughters, forcible rapes, robberies, aggravated assaults, burglaries, larceny-thefts, motor vehicle thefts, and arsons. Highlights include the following:

- total number of crimes reported—10,329,135 (1,246,248 violent crimes and 9,082,887 property crimes);
- most common violent crime—aggravated assault (62.5 percent of all violent crimes during 2010);
- top three crimes for which law enforcement reported arrests—drug abuse violations (1,638,846), driving while intoxicated (1,412,223), and larceny-theft (1,271,410);
- most common property crime—larceny-theft (68.2 percent of all property crimes during 2010);
- total number of arrests, excluding traffic violations—13,120,947, including 552,077 for violent crimes and 1,643,962 for property crimes (the number of arrests does not reflect the number of individuals arrested as some persons may have been arrested more than once);
- most common characteristics of arrestees—74.5 percent were male, and 69.4 percent were white;
- prevalence of firearms use in crimes—67.5 percent of reported murders, 41.4 percent of reported robberies, and 20.6 percent of aggravated assaults; and
- total losses for victims of property crimes, excluding arsons—an estimated $15.7 billion.

The full report is available online. To access *Crime in the United States, 2010,* visit *http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010*.

Leadership Spotlight

Learning

"Being a leader is like being a lady, if you have to tell someone you are, you're probably not."

—Margaret Thatcher

Can we learn leadership? Many perspectives differ as to whether or not we can. Some people view leadership as something that simply comes naturally, while others believe that individuals can develop and learn it through life experiences and crucibles. One thing remains certain in my view: We can learn leadership if we will open our minds, be self-reflective, and strive for continuous improvement. Our minds operate like a parachute: They only work if open.

I feel extremely humbled to serve as a leadership instructor in the FBI National Academy. In this role, I often view myself more as a *learner* than an *instructor*. I strive to facilitate discussions with the goal of all of us learning from each other. Leadership truly is behavior driven, and it is observable. Unfortunately, poor leadership also is observable and something we can learn from as well.

I find that I continually observe others' behavior for leadership in action. How do they treat others? Are they concerned about the welfare of their team? Do they lead by example? Do they model the behavior they expect from other personnel? How do they make decisions? Do they take risks? Sometimes, the best lessons of leadership are not in classrooms or textbooks. Rather, they exist all around us, and we can observe and learn from them. If you are committed to becoming a better leader, do not miss the daily lessons of those around us. What I often find fascinating is that, frequently, persons who do not even hold positions of authority display the best leadership.

In their recent book *Pick Up Your Own Brass: Leadership the FBI Way*, former FBI executives Kathleen McChesney and William Gavin explore leadership by providing real-world examples demonstrated by action.[1] As the title depicts, sometimes, the little things speak volumes about persons' character and their desire to lead.

The best leaders are lifelong learners. Whether we observe a law enforcement executive, government official, military leader, or corporate official, we constantly see lessons on leadership. Perhaps, you are reading the latest leadership article or book or studying at a university. There are so many ways to develop yourself. But, do not miss the greatest opportunity to learn—reflectively observing your own behavior and that of those around you.✦

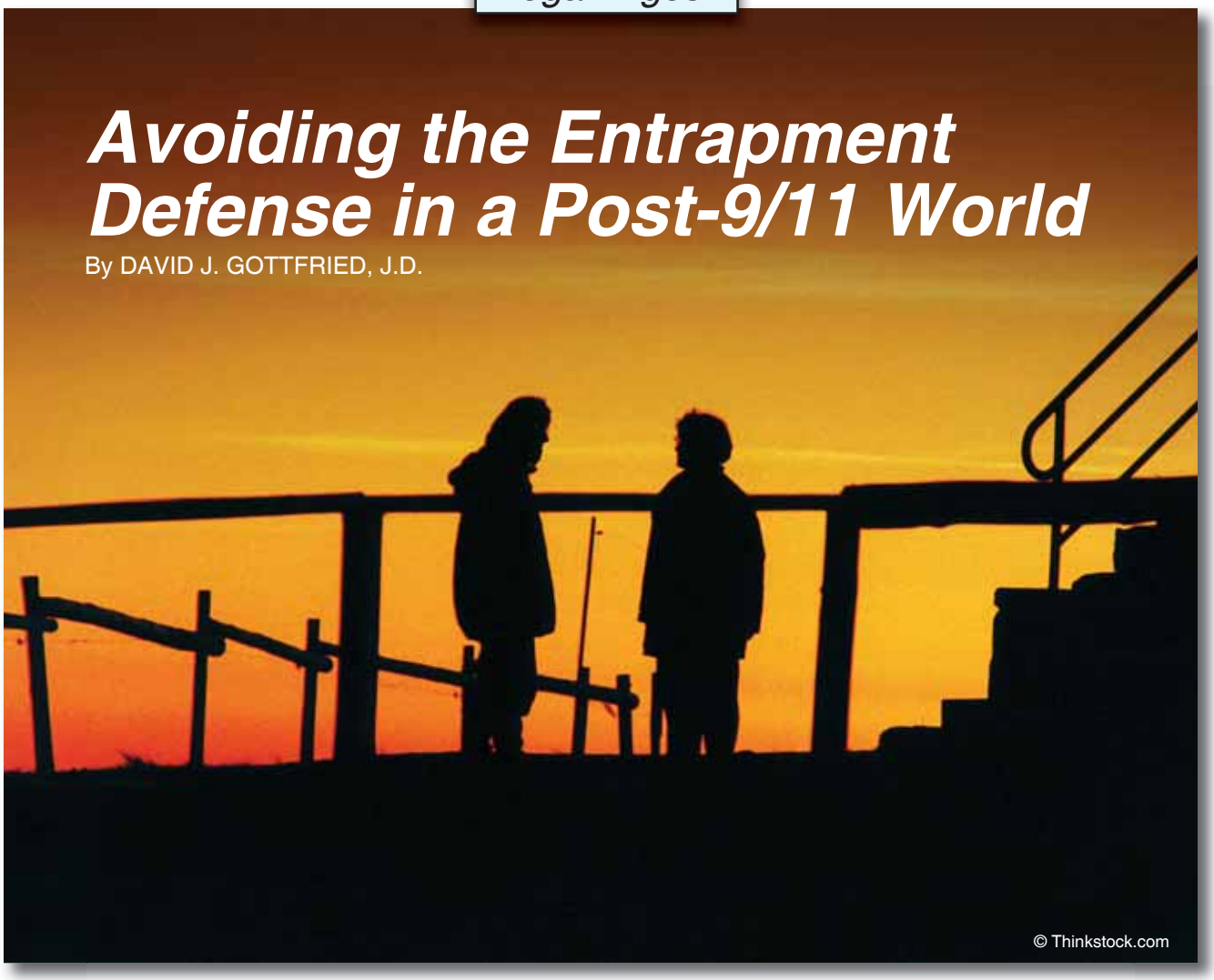
Endnotes

[1] Kathleen McChesney and William Gavin, *Pick Up Your Own Brass: Leadership the FBI Way* (Washington, DC: Potomac Books, Inc., 2011).

Special Agent Michael O. McAuliffe, an instructor in the Leadership Development Institute at the FBI Academy, prepared this Leadership Spotlight.

Avoiding the Entrapment Defense in a Post-9/11 World

By DAVID J. GOTTFRIED, J.D.



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Michael, a 19-year-old college student, was born and raised in middle America. According to his roommate, Michael has developed a peculiar fascination, almost an obsession, with al Qaeda and its cause. The roommate watches over the next several months as Michael makes numerous comments indicating support for violence against the United States and, in particular, its military forces. This concern increases when he sees an order Michael placed on the Internet for a how-to guide to building a homemade explosive device. Unnerved with Michael's recent attraction to al Qaeda and support for the use of violence, the roommate approaches the local police department to share his observations.

The Joint Terrorism Task Force (JTTF) begins looking at open-source information about Michael. A 20-year-old JTTF informant makes contact with Michael at a fraternity party, and the two men engage in a conversation about the need to teach America another lesson. Michael proudly announces that he willingly would become a martyr in the name of jihad, but that he lacks money with which to pull off a "glorious" event. A few weeks later, the informant tells Michael that, through his father, he could come up with $50,000 and that he has a source

willing to provide enough materials to "take out a city block." Michael's face lights up, and they agree to make a plan.

This fictional scenario bears a striking resemblance to an emerging trend in the United States. Young people, some still in their teenage years and often from upper-middle-class families, have developed a fervor for anti-American sentiment. Since 9/11, law enforcement agencies have identified many such cases, causing a chilling revelation: If these cases represent the ones authorities have become aware of, how many remain undetected?

PROACTIVE APPROACH

Given this trend, law enforcement agencies face a difficult task. In the aftermath of 9/11, it no longer proves sufficient to solve crimes after people have committed them. Rather, a top priority of law enforcement is preventing another terrorist attack against U.S. interests. The American people expect federal, state, and local law enforcement officers to proactively prevent another terrorist attack, and even one failure is unacceptable. Law enforcement officials cannot afford to wait for a terrorist plot to mature before they break it up. A delay could enable an unidentified plotter to launch an attack. In other words, law enforcement must, in a controlled manner, divert someone determined to harm the United States and its people into a plot bound to fail from the outset, instead of one that might succeed.

This approach of proactively identifying criminal activity in its infancy raises unique concerns. Can law enforcement officials exploit an individual's mere desire to kill tens of thousands of innocent people and even facilitate the commission of the crime right up until the last second, controlling the unfolding events to ensure that the perpetrators remain unaware they are dealing with undercover agents? Where is the line between an individual's thoughts and desires and criminal activity?

The answer to these questions requires an understanding of an important legal principle—entrapment. Prosecutors will attempt to refute claims of entrapment in the courtroom, but, actually, cases are won or lost in the planning stages of the investigation. In other words, law enforcement officers play a critical role in conducting an investigation in a manner that prevents the successful assertion of entrapment. The consequence of a successful entrapment defense—the acquittal of an otherwise guilty defendant—is unacceptable. Understanding the contours of the entrapment defense and factoring this into the planning phases of an investigation can make the difference between a successful attack on the government's case and a guilty plea.

"…it no longer proves sufficient to solve crimes after people have committed them. Rather, a top priority of law enforcement is preventing another terrorist attack against U.S. interests."

Assistant General Counsel Gottfried is an instructor at the FBI Academy.

Certain investigative techniques used by law enforcement raise the likelihood of the assertion of an entrapment defense. Perhaps, the highest probability of an entrapment defense arises in undercover operations. Law enforcement agencies need not shy away from using undercover operations, but they must structure them carefully. Terrorist recruits susceptible to undercover agents also will be susceptible to real terrorists. This shows the importance of undercover agents recruiting these individuals first. Executed properly, undercover operations—even those in which law enforcement provides both the means and the opportunity for an individual to succeed in committing a "terrorist act"—are entrapment proof. This article examines the history of the concept of entrapment and demonstrates the importance of structuring an investigation in anticipation of an entrapment defense.

ENTRAPMENT

In its most basic form, entrapment occurs when government authorities induce persons to commit a crime they were not predisposed to commit. A successful claim of entrapment in the legal system can result in defendants' acquittal regardless of whether they actually committed the alleged crime. More precisely, to successfully assert an entrapment defense in federal and most state courts, defendants must show by a preponderance of the evidence (hence the characterization of entrapment as an "affirmative" defense) that officers induced them to commit the crime.[1] Assuming defendants make their showing of inducement, the burden of proof moves to the prosecution, which must prove beyond a reasonable doubt that the defendant was predisposed to commit the crime.[2] Thus, the entrapment defense can fail in one of two ways: 1) the defendant cannot show inducement; or 2) despite a showing of inducement, the government can prove predisposition.[3]

> ***"This approach of proactively identifying criminal activity in its infancy raises unique concerns."***

While federal and most state courts follow the definition described above (also known as the "subjective" test), a few states still follow the "objective" test, which focuses solely on the government's actions and the degree of inducement—in other words, how coercive and persuasive the authorities were.[4] The key to the objective test is whether the degree of governmental persuasion would have induced an innocent person to engage in the criminal activity.

For example, in the 1973 case of *People of the State of Michigan v. Turner,* the defendant had a 3-year friendship with an undercover agent who served as a part-time sheriff's deputy and a part-time truck driver.[5] The defendant responded to the undercover officer's concern about falling asleep at the wheel by providing caffeine pills. Believing that Turner's access to caffeine pills meant he also had access to narcotics, the agent concocted a story that his girlfriend, a drug addict, would break off their relationship unless he provided her with some heroin. After repeated refusals, Turner provided $20 worth of heroin and $17 worth of marijuana. Turner refused to provide more, but offered to bring the agent to his source. The Michigan Supreme Court overturned Turner's 24- to 40-year sentence for possession and sale of heroin and marijuana, finding law enforcement's actions so reprehensible that a conviction should not be tolerated.[6]

Origin

In 1932, the Supreme Court first recognized the defense of entrapment in *Sorrells v. United States,* a prohibition-era case.[7] A prohibition agent learned from informants that Sorrells, a factory worker, had a reputation as a "rumrunner." The agent and three acquaintances of Sorrells spent 90 minutes reminiscing with them about World War I and then asked him "if he would be so kind as to get a fellow soldier some liquor." Initially, Sorrells refused, but later provided a half-gallon bottle of whiskey in exchange for $5. He then was arrested for violating the National Prohibition Act.

In his defense, Sorrells said he told the agent several times that he "did not fool with whiskey" before finally giving in and producing the bottle of liquor. In the majority opinion, Justice Hughes wrote, "it is clear that the evidence was sufficient to warrant a finding that the act for which defendant was prosecuted was instigated by the prohibition agent, that it was the creature of his purpose, that defendant had no previous predisposition to commit it but was an industrious, law-abiding citizen, and that the agent lured defendant, otherwise innocent, to its commission by repeated and persistent solicitation in which he succeeded by taking advantage of the sentiment aroused by reminiscences of their experiences in arms in the World War."[8] As a result, the entrapment defense was born.

Inducement

The first prong of the entrapment defense requires a demonstration of inducement by law enforcement. A successful showing of inducement generally requires more than merely establishing that an officer approached and requested a defendant to engage in criminal conduct. While evidence that the officer engaged in persuasion, threats, coercive tactics, harassment, or pleas based on sympathy or friendship may prove sufficient in showing inducement, most courts also require the defendant to demonstrate that law enforcement's actions led an otherwise innocent person to commit the crime.[9]

> ***Law enforcement officers play a critical role in preventing a successful entrapment defense.***

Inducement generally can be categorized in one of two ways. The first involves a situation in which a law enforcement officer makes an essential contribution to the commission of the crime. The second type of inducement involves repeated requests, sometimes made in an atmosphere of camaraderie, that even may include coercion to induce criminal behavior.

In 1973, the Supreme Court permitted the government to participate in the illegal actions in *United States v. Russell.*[10] Joe Shapiro, an undercover agent for what later would become the Drug Enforcement Agency, was assigned to locate an illegal methamphetamine production laboratory in Washington state. His investigation led him to Richard Russell and John and Patrick Connolly, the laboratory's proprietors. Shapiro went to Russell's home where he learned that the men had been making methamphetamines for 6 months and already had produced 3 pounds of it. The laboratory recently had been dormant because, as Russell told the undercover agent, he had difficulty procuring *phenyl-2-propanone (P2P)*, a legal but rare and essential ingredient in methamphetamines. Shapiro said he could procure P2P and would do so in exchange for half of the laboratory's production. Shapiro provided P2P and, later, received his share of the finished product.

At trial, defendants asserted the entrapment defense, calling attention to the fact that Shapiro affirmatively had participated in the plot, even going so far as to point out that without Shapiro's inducement and contribution of P2P, no illegal drugs could have been produced.

The Supreme Court ruled that entrapment had not occurred, noting that neither the fact of deceit (through the undercover operation) nor the fact that government officers afforded an opportunity or facilitated the commission of the offense would defeat the prosecution.[11] The Court stated that only when government deception actually implants criminal design in the mind of a defendant does the defense of entrapment come into play.[12] Simply put, the entrapment defense prohibits law enforcement officers from instigating criminal acts by otherwise innocent persons to lure them to commit crimes and then punish them for the acts.[13]

In 1992, the Supreme Court further examined this issue in *Jacobson v. United States*.[14] In this case, a middle-aged Nebraska farmer with no criminal record lawfully ordered from an adult bookstore two magazines containing photographs of naked teenage boys. In 1984, Congress passed the Child Protection Act of 1984 (CPA), which made it illegal to receive such materials through the mail. The U.S. Postal Service obtained Jacobson's name from a mailing list seized at the adult bookstore and, in January 1985, initiated an undercover operation targeting him. Government agents, using fictitious organizations and a contrived pen pal, contacted Jacobson by mail, making available the opportunity to purchase additional child pornography. The communications also contained disparaging remarks about the legitimacy and constitutionality of efforts made by Congress to restrict the availability of sexually explicit material and, ultimately, offered Jacobson the opportunity to order illegal child pornography. More than 2 years after the initial contact, government agents sent Jacobson a brochure advertising photographs of two teenage boys engaged in sexual activity. In response to this solicitation, Jacobson placed an order. After government agents effectuated the delivery of Jacobson's order, law enforcement officers searched his house, revealing only the magazine the government provided and two other magazines lawfully acquired before the CPA was passed.

Jacobson was charged with receiving child pornography through the mail in violation of federal law.[15] He was convicted, but the Supreme Court, ultimately, overturned the conviction based on Jacobson's claim of entrapment. The Supreme Court held that "law enforcement officers may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal

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act, and then induce commission of the crime so that the government may prosecute."[16]

The inducement in *Jacobson* in and of itself did not perfect the successful entrapment defense. The prosecution still had an opportunity to prove that the defendant was predisposed to commit the crime. However, this example clearly demonstrates that the more forceful the inducement, the more critical the showing of predisposition becomes.

Predisposition

While inducement focuses on the conduct of law enforcement, predisposition focuses on the defendant's actions and statements. Predisposition is a willingness to commit a crime prior to the introduction of any law enforcement inducement. It often is demonstrated by showing a reasonable indication that the defendant has engaged or intends to engage in criminal activity.[17] However, predisposition also can be shown through an overall eagerness to participate in general criminal activity, or a quick response to law enforcement's inducement. In other words, while the predisposition must exist *before* law enforcement's inducement, it may be proved by actions or events in response to inducement.

As with evidence in general, the more indicia of predisposition, the more entrapment-proof the case will be. Arguably, the single best indicia of predisposition is when the defendant has suggested the crime (i.e., a complete absence of any inducement). Other common factors include:

- prior, recent convictions/arrests for similar conduct;
- having (or bragging about) experience or expertise in the suggested illegal activity;
- associating with or expressing sympathies for terrorists/criminals;
- expecting to profit from the crime (either monetarily or through an increase in perceived status); and
- a quick response to the undercover agent's inducement offer and the absence of any reluctance at either the undercover agent's mere suggestion to commit the crime or the proposal of other nonviolent alternatives.

> ***"Investigative activity that preempts crimes, particularly terrorism in a post-9/11 world, has become commonplace."***

For example, in the 2011 case of *U.S. v. Lewis,* the defendant was convicted of conspiring to possess cocaine with intent to distribute and carrying and possessing a firearm during and in relation to a drug trafficking offense.[18] In response to Lewis' assertion of the entrapment defense, the court allowed the prosecution to introduce prior convictions for felonies in possession of a firearm and theft, holding that evidence of previous criminal acts is admissible to prove predisposition "because in such a case the defendant's predisposition to commit the charged crime is legitimately at issue.[19] To be admissible, however, this evidence must show an act that is similar enough and close enough in time to be relevant to the matter at issue."[20]

UNDERCOVER OPERATIONS

Law enforcement officers play a critical role in preventing a successful entrapment defense. Recognizing that this role starts at the inception of the

operation, not in the courtroom, is essential. Using the fictitious example at the beginning of this article, in Michael's case, law enforcement officers could initiate an undercover operation. As part of the operation, the officers may develop a plan, perhaps, created in consultation with prosecutors. This plan could identify both the inducements to be used, as well as how to demonstrate predisposition. In addition, law enforcement officers and attorneys working together could identify specific places during the operation where predisposition may be documented and used in court later.

Finally, law enforcement officers should document each instance where a defendant demonstrates indicia of predisposition. In Michael's case, law enforcement officers could document his conversations with the source, specifically the discussions regarding the need to teach America another lesson, indicating that he willingly would become a martyr in the name of jihad and that he lacked money with which to pull off such an event. Also, the undercover agent may strengthen predisposition by suggesting that Michael use alternatives to violence and reminding him that thousands of innocent women and children would be killed. If these suggestions failed to sway Michael from his stated goal, it should be documented and used to further demonstrate predisposition. Use of video and audio devices to record communications with undercover officers and cooperating witnesses and to capture observations of the defendant also warrant consideration. It is one thing for a law enforcement officer to testify that the subject was eager to engage in the criminal activity; it is another to hear the eagerness in the subject's voice and see it in the individual's expressions.

CONCLUSION

In the wake of 9/11, it no longer is enough for law enforcement officers to solve crimes after their commission. Investigative activity that preempts crimes, particularly terrorism in a post-9/11 world, has become commonplace. To help ensure a successful prosecution, law enforcement officers need to recognize the risks associated with proactive investigations and anticipate affirmative defenses, such as entrapment, as they initiate undercover operations. With proper planning and execution, law enforcement officers can use all available tools to prevent another terrorist attack and to help effectively overcome an entrapment defense.✦

Endnotes

[1] *U.S. v. Taylor,* 475 F.3d 65 (2nd Cir. 2007).

[2] *U.S. v. Jacobson,* 503 U.S. 540 (1992).

[3] *Sherman v. U.S.,* 356 U.S. 369 (1958); *U.S. v. Gendron,* 18 F. 3d 955 (1st Cir. 1994); and *U.S. v. Luisi,* 482 F. 3d 43 (1st Cir. 2007).

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[4] As of 2011, the following 14 states still follow the "objective" standard for the entrapment defense: Alaska, Arkansas, California, Colorado, Hawaii, Iowa, Kansas, Michigan, New York, North Dakota, Pennsylvania, Texas, Utah and Vermont.

[5] 390 Mich. 7 (1973).

[6] 390 Mich. 7 (1973).

[7] 287 U.S. 435 (1932).

[8] *Sorrells v. United States,* 287 U.S. at 438.

[9] *U.S. v. Mendoza-Salgado,* 964 F. 2d. 993 (10th Cir. 1992).

[10] 411 U.S. 423 (1973).

[11] *United States v. Russell,* 411 U.S. at 435-436.

[12] *Russell,* 411 U.S. at 436.

[13] In *Russell,* the Supreme Court raised the possibility that even in a case where predisposition exists, a constitutional challenge based on the Due Process Clause of the Constitution (U.S. Const., Amendment V) still may exist based on the outrageous nature of the government's conduct. The Supreme Court stated, "We may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction." *Russell,* 411 U.S. at 431-432. The Due Process outrageous-government-conduct challenge presents a small opportunity to challenge the government's actions based on the egregious nature of the government's investigative efforts. See, for example, *U.S. v. Twigg,* 588 F. 2d 373 (3rd Cir. 1978) where the government initiated the criminal activity, coerced individuals to engage in it, and provided all the means to carry it out.

[14] 503 U.S. 540 (1992).

[15] Specifically, Title 18, U.S. Code § 2252(a)(2)(A).

[16] *Jacobson,* 503 U.S. at 542.

[17] *U.S. v. Ortiz,* 804 F.2d 1161,1165 (10th Cir. 1986) (predisposition explores whether defendant was "ready and willing to commit the crime" when approached by law enforcement).

[18] 641 F. 3d 773 (7th Cir. 2011).

[19] *U.S. v. Swiatek,* 819 F. 2d 721, 728 (7th Cir. 1987).

[20] *Swiatek,* 819 F. 2d at 728.

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

The *Bulletin's* E-mail Address

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Bulletin Notes

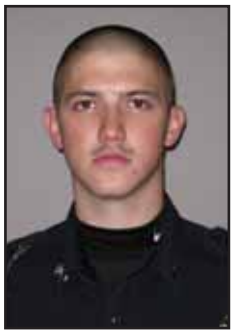
Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those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

Corporal Franklin

Patrolman Maniskas

Corporal John Franklin of the Huntington, West Virginia, Police Department spotted a fire on the back porch of a local residence just after 2 a.m. and contacted Cabell County 911 for fire assistance. He then approached the front door of the home, pounding on it and shouting to awaken the family sleeping inside. Patrolman Stephen Maniskas joined Franklin moments later, and both officers forced their way into the residence. One of the homeowners heard the two officers shouting downstairs and awoke her husband, daughter, and son-in-law. The family then exited the home as firefighters arrived to extinguish the blaze. The upstairs smoke detector failed to alert the residents of the fire.

Sergeant Burdick



Officer Henley

Sergeant Richard Burdick and Officer David Henley of the Nevada, Missouri, Police Department responded to a radio call regarding a fire at a local apartment building. Upon their arrival, both officers evacuated the building's residents to safety. However, they soon became aware of a child who was trapped in a lower level apartment. The officers entered the building a second time and forced open the front door of the apartment, but were unable to go inside due to the extreme heat and smoke caused by the fire. With the assistance of a neighbor, they located and broke out the apartment's back bedroom window, finding the terrified child hiding within. Unable to coax the 8-year-old girl to them, Officer Henley climbed into the smoke filled bedroom, pulled the child out of danger, and handed her to Sergeant Burdick and members of the Nevada Fire Department. Both officers and the child were treated at the scene and released.

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

U.S. Department of Justice
Federal Bureau of Investigation
FBI Law Enforcement Bulletin
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Periodicals
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use $300

Patch Call

The patch of the Hallowell, Maine, Police Department is based on the city's seal, illustrating the area's commerce in the 1800s. In the center of the seal, a train is shown transporting valuable granite. Also, two ships are depicted in the Kennebec River, representing both the shipbuilding industry and the transport of goods that made Hallowell a very active port in central Maine.

The City of Lynchburg, Virginia, was founded along the James River in 1786 by ferry operator John Lynch. The patch of its police department depicts a figure holding the scales of justice and a cornucopia, a symbol of nourishment and abundance. Behind the figure is a vase with growth, symbolizing plentiful water, and a train, signifying a transportation crossroads. The nearby Blue Ridge Mountains are in the background.